

# Senate Bill 521

Sponsored by Senator STARR (Pre-session filed.)

## 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**.

Establishes Oregon Department of Natural Resources and Oregon Natural Resources Commission. Directs Governor to appoint Director of Oregon Department of Natural Resources and members of commission. Establishes Oregon Natural Resources Fund. Continuously appropriates moneys in fund to department for purpose of carrying out its duties, functions and powers.

Abolishes State Department of Fish and Wildlife, State Fish and Wildlife Commission, State Parks and Recreation Department, State Parks and Recreation Commission, Department of State Lands, Department of Land Conservation and Development, Land Conservation and Development Commission, Land Use Board of Appeals, State Department of Geology and Mineral Industries, Water Resources Department, Water Resources Commission, Oregon Watershed Enhancement Board, State Forestry Department, State Board of Forestry and Oregon Forest Resources Institute.

Transfers duties, functions and powers from abolished departments, commissions and boards to Oregon Department of Natural Resources.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

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Relating to the Oregon Department of Natural Resources; creating new provisions; amending ORS 30.942, 30.943, 34.102, 35.550, 60.674, 62.720, 63.674, 65.674, 90.425, 93.230, 93.270, 93.690, 93.710, 94.508, 94.538, 97.774, 97.776, 97.780, 97.784, 98.050, 98.302, 98.329, 98.348, 98.352, 98.353, 98.354, 98.356, 98.362, 98.366, 98.372, 98.376, 98.382, 98.384, 98.386, 98.388, 98.392, 98.396, 98.402, 98.412, 98.416, 98.424, 98.991, 98.992, 105.699, 105.810, 112.055, 113.045, 113.085, 113.105, 113.235, 113.238, 113.242, 114.505, 114.520, 116.193, 116.203, 116.243, 116.253, 137.138, 146.125, 164.814, 166.220, 166.291, 166.660, 181.637, 181.715, 181.725, 182.415, 182.535, 183.457, 183.530, 183.635, 183.700, 184.668, 186.130, 192.502, 195.020, 195.025, 195.034, 195.040, 195.085, 195.120, 195.141, 195.145, 195.225, 195.250, 195.260, 195.300, 195.312, 195.314, 195.316, 195.326, 195.336, 196.107, 196.115, 196.408, 196.435, 196.438, 196.443, 196.465, 196.471, 196.485, 196.540, 196.545, 196.550, 196.555, 196.575, 196.600, 196.610, 196.615, 196.620, 196.623, 196.625, 196.630, 196.635, 196.640, 196.645, 196.650, 196.655, 196.674, 196.676, 196.678, 196.681, 196.682, 196.684, 196.686, 196.687, 196.688, 196.692, 196.795, 196.805, 196.810, 196.815, 196.817, 196.818, 196.820, 196.825, 196.830, 196.835, 196.845, 196.850, 196.860, 196.865, 196.870, 196.875, 196.880, 196.885, 196.890, 196.895, 196.900, 196.905, 196.910, 197.015, 197.040, 197.045, 197.047, 197.050, 197.060, 197.065, 197.070, 197.090, 197.158, 197.160, 197.165, 197.173, 197.175, 197.178, 197.180, 197.195, 197.225, 197.230, 197.235, 197.240, 197.245, 197.250, 197.251, 197.253, 197.254, 197.265, 197.270, 197.274, 197.277, 197.279, 197.283, 197.296, 197.299, 197.301, 197.302, 197.319, 197.320, 197.324, 197.328, 197.335, 197.340, 197.350, 197.375, 197.390, 197.395, 197.405, 197.416, 197.430, 197.445, 197.455, 197.505, 197.520, 197.530, 197.540, 197.610, 197.615, 197.620, 197.625, 197.626, 197.628, 197.629, 197.631, 197.633, 197.636, 197.637, 197.638, 197.639, 197.644, 197.646, 197.649, 197.650, 197.651, 197.652, 197.654, 197.656, 197.658, 197.659, 197.712, 197.717, 197.732, 197.736, 197.747, 197.763, 197.768, 197.770, 197.796, 197.820, 197.825, 197.828, 197.829, 197.830, 197.831, 197.835, 197.840, 197.845, 197.850, 197.860, 215.203, 215.209, 215.213, 215.263, 215.275, 215.278, 215.282, 215.283, 215.304, 215.416,

**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.

1 215.418, 215.427, 215.435, 215.457, 215.459, 215.503, 215.730, 215.740, 215.780, 215.788, 215.794,  
2 221.034, 223.317, 225.300, 227.175, 227.178, 227.181, 227.186, 227.350, 238.005, 238A.005, 244.050,  
3 261.330, 270.100, 270.110, 271.445, 272.050, 273.006, 273.020, 273.041, 273.045, 273.051, 273.055,  
4 273.061, 273.065, 273.075, 273.081, 273.085, 273.091, 273.099, 273.101, 273.105, 273.115, 273.119,  
5 273.121, 273.125, 273.131, 273.135, 273.141, 273.145, 273.151, 273.155, 273.185, 273.196, 273.197,  
6 273.199, 273.225, 273.235, 273.241, 273.245, 273.247, 273.261, 273.265, 273.275, 273.281, 273.285,  
7 273.290, 273.295, 273.300, 273.306, 273.311, 273.316, 273.321, 273.326, 273.331, 273.340, 273.345,  
8 273.350, 273.360, 273.370, 273.375, 273.388, 273.413, 273.431, 273.447, 273.511, 273.523, 273.525,  
9 273.531, 273.541, 273.551, 273.553, 273.554, 273.571, 273.586, 273.715, 273.751, 273.755, 273.761,  
10 273.780, 273.785, 273.787, 273.790, 273.805, 273.815, 273.820, 273.825, 273.870, 273.902, 273.903,  
11 273.992, 273.994, 274.005, 274.040, 274.043, 274.210, 274.220, 274.230, 274.240, 274.250, 274.280,  
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20 308A.359, 308A.360, 308A.362, 308A.365, 308A.368, 308A.374, 308A.380, 308A.383, 308A.406,  
21 308A.409, 308A.412, 308A.415, 308A.418, 308A.421, 308A.424, 308A.430, 308A.700, 308A.709,  
22 308A.743, 311.804, 314.840, 315.104, 315.106, 315.138, 316.045, 317.063, 319.320, 319.831, 321.005,  
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1 541.710, 541.720, 541.725, 541.730, 541.735, 541.740, 541.741, 541.745, 541.750, 541.765, 541.770,  
2 541.780, 541.830, 541.835, 541.840, 541.845, 541.850, 541.855, 541.875, 542.010, 542.030, 542.040,  
3 542.050, 542.060, 542.075, 542.080, 542.100, 542.110, 542.520, 542.620, 542.630, 542.750, 543.010,  
4 543.015, 543.017, 543.050, 543.055, 543.060, 543.078, 543.080, 543.082, 543.085, 543.088, 543.090,  
5 543.092, 543.150, 543.175, 543.210, 543.220, 543.225, 543.230, 543.250, 543.255, 543.260, 543.265,  
6 543.270, 543.280, 543.290, 543.300, 543.410, 543.420, 543.430, 543.440, 543.530, 543.540, 543.550,  
7 543.560, 543.610, 543.662, 543.664, 543.710, 543.720, 543.730, 543.765, 543.990, 543A.005, 543A.020,  
8 543A.025, 543A.030, 543A.035, 543A.040, 543A.045, 543A.055, 543A.060, 543A.065, 543A.071,  
9 543A.075, 543A.080, 543A.095, 543A.115, 543A.120, 543A.125, 543A.130, 543A.135, 543A.140,  
10 543A.145, 543A.150, 543A.300, 543A.305, 543A.400, 543A.405, 543A.410, 543A.415, 545.643, 548.940,  
11 548.955, 549.605, 549.610, 549.615, 549.620, 549.625, 549.630, 549.635, 549.640, 549.645, 552.403,  
12 555.020, 555.030, 555.040, 555.050, 555.060, 555.070, 555.090, 555.100, 555.110, 555.120, 555.130,  
13 555.140, 555.150, 555.160, 555.180, 555.190, 555.310, 555.320, 555.330, 555.340, 555.350, 555.360,  
14 555.370, 555.390, 555.400, 555.410, 561.020, 561.191, 561.362, 561.400, 564.105, 565.021, 565.030,  
15 565.040, 565.050, 565.060, 565.080, 565.090, 565.095, 565.103, 565.107, 565.109, 565.114, 565.116,  
16 565.120, 565.130, 565.140, 565.150, 565.160, 565.170, 565.610, 565.620, 565.630, 565.640, 566.320,  
17 566.330, 566.340, 566.360, 568.552, 570.770, 570.780, 570.850, 570.855, 570.860, 570.865, 576.215,  
18 609.345, 610.002, 610.003, 610.020, 619.095, 619.105, 622.220, 624.165, 634.322, 634.550, 634.660,  
19 646.515, 652.405, 652.710, 653.256, 653.370, 659A.855, 672.615, 686.040, 701.010, 708A.430, 708A.655,  
20 711.225, 711.230, 711.235, 711.590, 716.905, 716.910, 723.466, 723.844, 725.910, 757.266, 772.305,  
21 772.310, 777.095, 777.100, 777.347, 783.400, 802.125, 803.030, 803.305, 803.601, 805.256, 811.560,  
22 814.516, 821.170, 821.260, 821.291, 825.017, 830.175, 830.185, 830.560, 830.909, 835.114, 835.200,  
23 836.608, 836.610, 836.616, 836.619, 836.623, 836.630 and 836.642 and section 2, chapter 45, Oregon  
24 Laws 1989, section 19, chapter 659, Oregon Laws 1993, section 2, chapter 460, Oregon Laws  
25 1995, section 6, chapter 1059, Oregon Laws 1999, sections 2 and 4, chapter 496, Oregon Laws  
26 2001, sections 11, 12 and 14, chapter 516, Oregon Laws 2001, section 1, chapter 461, Oregon  
27 Laws 2003, sections 23 and 24, chapter 705, Oregon Laws 2003, sections 4 and 5, chapter 669,  
28 Oregon Laws 2005, sections 6, 7, 8 and 10, chapter 424, Oregon Laws 2007, sections 5 and 6,  
29 chapter 13, Oregon Laws 2008, section 4, chapter 504, Oregon Laws 2009, sections 3, 5, 6, 7, 8,  
30 9 and 10, chapter 636, Oregon Laws 2009, sections 2, 3, 4, 5, 6, 8, 9, 17, 18, 20 and 21, chapter  
31 855, Oregon Laws 2009, sections 37, 38 and 38a, chapter 865, Oregon Laws 2009, section 1,  
32 chapter 871, Oregon Laws 2009, sections 17, 20, 25, 26, 29 and 33, chapter 907, Oregon Laws  
33 2009, section 11, chapter 913, Oregon Laws 2009, sections 2, 4, 6 and 7, chapter 8, Oregon Laws  
34 2010, section 1, chapter 11, Oregon Laws 2010, section 28, chapter 23, Oregon Laws 2010,  
35 sections 1 and 2, chapter 44, Oregon Laws 2010, section 1, chapter 63, Oregon Laws 2010,  
36 sections 2 and 3, chapter 68, Oregon Laws 2010, section 5, chapter 84, Oregon Laws 2010, and  
37 sections 3, 4, 5, 6 and 9, chapter 85, Oregon Laws 2010; repealing ORS 197.030, 197.035, 197.075,  
38 197.085, 197.095, 197.810, 197.815, 197.832, 273.071, 273.161, 273.165, 273.171, 273.175, 273.183,  
39 390.005, 390.114, 390.117, 390.127, 390.131, 390.200, 390.231, 390.295, 496.080, 496.090, 496.108,  
40 496.112, 496.116, 496.121, 496.300, 496.306, 496.311, 496.815, 508.326, 516.020, 516.080, 516.090,  
41 516.120, 516.130, 516.133, 517.735, 522.275, 526.008, 526.009, 526.016, 526.031, 526.054, 526.600,  
42 526.610, 526.615, 526.620, 526.625, 526.632, 526.650, 526.660, 526.670, 526.730, 536.022, 536.025,  
43 536.026, 536.027, 536.032, 536.037, 536.039, 537.249, 537.895, 541.360, 541.362 and 541.363; appro-  
44 priating money; and declaring an emergency.

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

OREGON DEPARTMENT OF NATURAL RESOURCES

(Establishment, Duties and Powers)

**SECTION 1.** The Oregon Department of Natural Resources is established. The department shall:

- (1) Administer the wildlife laws of this state and issue licenses and permits under ORS chapter 497;
- (2) Administer the commercial fishing laws of this state and issue licenses and permits under ORS chapter 508;
- (3) Manage, control and utilize all state parks, waysides, and scenic, historic and state recreation areas;
- (4) Administer programs relating to lost, unclaimed or abandoned property;
- (5) Manage and control, under the direction of the State Land Board, land belonging to this state;
- (6) Regulate removal and fill activities and issue permits under ORS 196.600 to 196.905;
- (7) Establish statewide land use goals and guidelines for local governments and special districts and review land use decisions, limited land use decisions and expedited land divisions;
- (8) Administer programs related to geology, mines, minerals, mineral industries and geologic hazards;
- (9) Administer programs related to water resources and laws pertaining to the appropriation of water rights, the development of water resources and the protection and enhancement of watersheds;
- (10) Administer programs related to the protection of forests from fire; and
- (11) Manage and control the forestland of this state.

(Appointment of Director)

**SECTION 2.** (1) The Oregon Department of Natural Resources is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers of the department.

(2) The Governor shall appoint the Director of the Oregon Department of Natural Resources, who holds office at the pleasure of the Governor.

(3) The director shall be paid a salary as provided by law or, if not so provided, as prescribed by the Governor.

(4) For purposes of administration, subject to the approval of the Governor, the director may organize and reorganize the department as the director considers necessary to properly conduct the work of the department.

(5) The director may divide the functions of the department into administrative divisions. Subject to the approval of the Governor, the director may appoint an individual to administer each division. The administrator of each division serves at the pleasure of the director and is not subject to the provisions of ORS chapter 240. Each individual appointed under this subsection must be well-qualified by technical training and experience in the functions to be performed by the individual.

**SECTION 3.** The Director of the Oregon Department of Natural Resources may be appointed before the operative date of sections 1 to 17 of this 2011 Act and may take any action before that date that is necessary to enable the director to exercise, on and after the operative date of sections 1 to 17 of this 2011 Act, the duties, functions and powers of the director pursuant to sections 1 to 17 of this 2011 Act.

**SECTION 4.** The appointment of the Director of the Oregon Department of Natural Resources is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(Duties and Powers of Director)

**SECTION 5.** (1) The Director of the Oregon Department of Natural Resources shall administer and enforce all of the following:

(a) The wildlife laws of this state.

(b) The commercial fishing laws of this state.

(c) The laws of this state that pertain to the administration of state parks and other real property or a right to or interest in real property acquired by this state under ORS chapter 390.

(d) The laws of this state that pertain to the water resources of this state. As used in this paragraph, “water resources of this state” has the meaning given that term in ORS 536.007.

(e) The laws of this state that pertain to forestland. As used in this paragraph, “forestland” has the meaning given that term in ORS 526.005.

(f) The laws of this state that pertain to land use decisions, limited land use decisions and expedited land divisions. As used in this paragraph, “land use decision” and “limited land use decision” have the meanings given those terms in ORS 197.015 and “expedited land division” has the meaning given that term in ORS 197.360.

(g) The laws of this state that pertain to state land. As used in this paragraph, “state land” has the meaning given that term in ORS 273.006.

(2) In administering and enforcing the laws of this state under subsection (1)(a) to (f) of this section, the director shall establish the administrative policies of the Oregon Department of Natural Resources in accordance with the rules and policies of the Oregon Natural Resources Commission established in section 11 of this 2011 Act.

(3) In administering and enforcing the laws of this state under subsection (1)(g) of this section, the director shall establish the administrative policies of the department in accordance with the rules and policies of the State Land Board established under section 5, Article VIII of the Oregon Constitution and ORS 273.031.

(4) In addition to the duties imposed by subsection (1) of this section, the director shall:

(a) Administer and enforce the laws of this state that pertain to geology, mines, minerals, mineral industries and geologic hazards. As used in this paragraph, “geology,” “mine,” “minerals,” “mineral industries” and “geologic hazard” have the meanings given those terms in ORS 516.010.

(b) Administer a watershed enhancement program under ORS 541.351 to 541.415 and coordinate the activities of the department that are related to watershed enhancement projects approved by the department under ORS 541.375 with the activities of other cooperating state

1 and federal agencies that are participating in the projects.

2 (c) Adopt rules that govern the review of land use decisions and limited land use deci-  
3 sions under ORS 197.830 to 197.845.

4 (5) The director may:

5 (a) Participate in any proceeding before any public officer, commission or body of the  
6 United States or any state for the purpose of representing the interests of Oregon residents  
7 in proceedings that concern the duties imposed on the director by this section.

8 (b) Enter private property to perform duties that are statutorily imposed on the director.

9 (c) Retain, manage, sell, lease, exchange or otherwise convey real property or a right to  
10 or interest in real property under the jurisdiction of the department.

11  
12 (Authority of Director to Adopt Rules)

13  
14 **SECTION 6.** In accordance with applicable provisions of ORS chapter 183, the Director  
15 of the Oregon Department of Natural Resources may adopt rules necessary for the admin-  
16 istration of the laws that the Oregon Department of Natural Resources is charged with ad-  
17 ministering except for those laws over which the Oregon Natural Resources Commission has  
18 rulemaking authority. Rules necessary for the administration of laws over which the com-  
19 mission has rulemaking authority may be adopted only in the manner prescribed by section  
20 16 of this 2011 Act.

21  
22 (Employees)

23  
24 **SECTION 7.** (1) The Director of the Oregon Department of Natural Resources shall, by  
25 written order filed with the Secretary of State, appoint a deputy director who serves the  
26 pleasure of the director, has authority to act for the director in the absence of the director,  
27 and is subject to the control of the director at all times.

28 (2) Subject to any applicable provisions of ORS chapter 240, the director:

29 (a) Shall appoint, prescribe the duties for and fix the compensation of:

30 (A) A panel of no fewer than three officers to review appeals of land use decisions or  
31 limited land use decisions under ORS 197.830 to 197.845. Officers appointed under this sub-  
32 paragraph may not participate in the enforcement of an order issued under ORS 197.830 to  
33 197.845.

34 (B) An officer who is qualified to perform and direct the technical and executive work  
35 of the Oregon Department of Natural Resources related to geology, mines, minerals, mineral  
36 industries and geologic hazards. The officer appointed under this subparagraph must be a  
37 geologist, engineer or other technical specialist with a broad background of practical expe-  
38 rience related to geology, mines, minerals, mineral industries and geologic hazards. As used  
39 in this paragraph, “geology,” “mine,” “minerals,” “mineral industries” and “geologic  
40 hazard” have the meanings given those terms in ORS 516.010.

41 (C) An officer who is qualified to direct and administer programs under ORS chapters 477  
42 and 526 and other programs that are related to the prevention and combating of forest fires.

43 (b) May appoint, prescribe the duties for and fix the compensation of any other officers  
44 and employees whom the director deems necessary to carry out the duties, functions and  
45 powers of the Oregon Department of Natural Resources.



## (Oaths, Witnesses and Subpoenas)

**SECTION 8.** The Director of the Oregon Department of Natural Resources, the deputy director and authorized representatives of the director may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of documents or other written information necessary to carry out the provisions of sections 1 to 17 of this 2011 Act. If any person fails to comply with a subpoena issued under this section, or refuses to testify on matters on which the person lawfully may be interrogated, the procedure set out in ORS 183.440 must be followed to compel obedience.

## (Authority of Department to Require Fingerprints)

**SECTION 9.** For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Oregon Department of Natural Resources may require the fingerprints of a person who:

- (1)(a) Is employed or applying for employment by the department;
- (b) Provides services or seeks to provide services to the department as a contractor, vendor or volunteer; or
- (c) Is a licensee of the department or who is applying for a license, or for a renewal of a license, that is issued by the department.
- (2) Is, or will be, working or providing services in a position:
  - (a) In which the person has direct access to persons under 18 years of age, elderly persons or persons with disabilities;
  - (b) That has personnel or human resources functions as one of the position's primary responsibilities;
  - (c) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;
  - (d) That involves the use, possession, issuance, transport, purchase, sale or forfeiture of firearms or munitions, access to firearms or munitions, or the training of others in the use or handling of firearms;
  - (e) In which the person resides on property managed by the department;
  - (f) In which the person provides security, design or construction services for government buildings, grounds or facilities;
  - (g) In which the person has key access to buildings and grounds that contain private property belonging or entrusted to exhibitors, promoters, licensees or event coordinators;
  - (h) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;
  - (i) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property, or in which the person has access to property held in trust or to private property in the temporary custody of the state;
  - (j) That has mailroom duties as a primary duty or job function;
  - (k) In which the person has responsibility for auditing the department;

1 (L) In which the person has access to Social Security numbers, dates of birth or criminal  
 2 background information of employees or members of the public;

3 (m) In which the person has access to tax or financial information about individuals or  
 4 business entities;

5 (n) In which the person may issue citations under ORS 390.050; or

6 (o) In which the person investigates or fights wildland fires and the criminal records  
 7 check is requested to search for crimes associated with arson.

8  
 9 (Oregon Natural Resources Fund)

10  
 11 **SECTION 10.** The Oregon Natural Resources Fund is established in the State Treasury,  
 12 separate and distinct from the General Fund. Interest earned by the Oregon Natural Re-  
 13 sources Fund shall be credited to the fund. Moneys in the fund are continuously appropriated  
 14 to the Oregon Department of Natural Resources for the purpose of carrying out the duties,  
 15 functions and powers of the department pursuant to sections 1 to 17 of this 2011 Act.

16  
 17 **OREGON NATURAL RESOURCES COMMISSION**

18  
 19 (Establishment, Initial Appointments)

20  
 21 **SECTION 11.** (1) There is established within the Oregon Department of Natural Re-  
 22 sources the Oregon Natural Resources Commission, consisting of nine members appointed  
 23 by the Governor.

24 (2) The term of office of each member is four years, but a member serves at the pleasure  
 25 of the Governor. Before the expiration of the term of a member, the Governor shall appoint  
 26 a successor whose term begins on January 1 next following. A member is eligible for reap-  
 27 pointment. If there is a vacancy for any cause, the Governor shall make an appointment to  
 28 become immediately effective for the unexpired term.

29 (3) The appointment of a member of the commission is subject to confirmation by the  
 30 Senate in the manner prescribed in ORS 171.562 and 171.565.

31 (4) A member of the commission is entitled to compensation and expenses as provided in  
 32 ORS 292.495.

33 **SECTION 12.** Notwithstanding the term of office specified by section 11 of this 2011 Act,  
 34 of the members first appointed to the Oregon Natural Resources Commission:

35 (1) Three shall serve for a term ending December 31, 2013.

36 (2) Two shall serve for a term ending December 31, 2014.

37 (3) Two shall serve for a term ending December 31, 2015.

38 (4) Two shall serve for terms ending December 31, 2016.

39 **SECTION 13.** The members of the Oregon Natural Resources Commission may be ap-  
 40 pointed before the operative date of sections 1 to 17 of this 2011 Act and may take any action  
 41 before that date that is necessary to enable the commission to exercise, on and after the  
 42 operative date of sections 1 to 17 of this 2011 Act, the duties, functions and powers of the  
 43 commission pursuant to sections 1 to 17 of this 2011 Act.

44  
 45 (Qualifications of Commission Members)

1       **SECTION 14.** (1) The members of the Oregon Natural Resources Commission must be  
2 residents of this state and well-informed on the laws of this state that pertain to land use  
3 decisions, limited land use decisions and expedited land divisions. As used in this subsection,  
4 “land use decision” and “limited land use decision” have the meanings given those terms in  
5 ORS 197.015 and “expedited land division” has the meaning given that term in ORS 197.360.

6       (2) The commission must have:

7       (a) At least one member who is well-informed on the wildlife laws of this state.

8       (b) At least one member who is well-informed on the commercial fishing laws of this  
9 state.

10       (c) At least one member who is well-informed on the policy of this state toward outdoor  
11 recreation resources, as described in ORS 390.010.

12       (d) At least one member who is well-informed on the laws of this state that pertain to  
13 the administration of state land. As used in this paragraph, “state land” has the meaning  
14 given that term in ORS 273.006.

15       (e) At least one member who is well-informed on the laws of this state that pertain to  
16 geology, mines, minerals, mineral industries and geologic hazards. As used in this paragraph,  
17 “geology,” “mine,” “minerals,” “mineral industries” and “geologic hazard” have the meanings  
18 given those terms in ORS 516.010.

19       (f) At least one member who is well-informed on the laws of this state that pertain to  
20 the administration of the water resources of this state. As used in this paragraph, “water  
21 resources of this state” has the meaning given that term in ORS 536.007.

22       (g) At least one member who is well-informed on the laws of this state that pertain to  
23 the administration of forestland. As used in this paragraph, “forestland” has the meaning  
24 given that term in ORS 526.005.

25       (h) At least one member who represents the interests of persons that grow, harvest, or  
26 produce timber or timber products.

27       (3) In addition to the requirements of subsection (2) of this section, the commission must  
28 have:

29       (a) At least one member representing Clatsop, Columbia, Coos, Curry, Lincoln and  
30 Tillamook Counties and the portions of Douglas and Lane Counties lying west of the summit  
31 of the Coast Range.

32       (b) At least one member representing Clackamas, Multnomah and Washington Counties.

33       (c) At least one member representing Benton, Linn, Marion, Polk and Yamhill Counties  
34 and the portion of Lane County lying east of the summit of the Coast Range.

35       (d) At least one member representing Jackson and Josephine Counties and the portion  
36 of Douglas County lying east of the summit of the Coast Range.

37       (e) At least one member representing Baker, Crook, Deschutes, Gilliam, Grant, Harney,  
38 Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union,  
39 Wallowa, Wasco and Wheeler Counties.

40       (f) At least one member who is, or has been, an elected city or county official in this  
41 state.

42       (4) The member who meets the qualifications of subsection (2)(h) of this section may not  
43 receive compensation directly from persons or organizations that are subject to regulation  
44 under ORS 527.610 to 527.770, 527.990 (1) or 527.992 or ORS chapter 520 or 522.

45

(Officers, Quorum and Meetings)

**SECTION 15.** (1) The Oregon Natural Resources Commission shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every month at a place, day and hour determined by the commission. The commission may also meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission.

(Authority of Commission to Adopt Rules)

**SECTION 16.** (1) In accordance with applicable provisions of ORS chapter 183, the Oregon Natural Resources Commission may adopt rules necessary for the administration of the laws that the commission is charged with administering.

(2) The commission may delegate to the Director of the Oregon Department of Natural Resources any of the functions, duties or powers granted to or imposed upon the commission by law.

(3) Notwithstanding subsection (2) of this section, the commission may not delegate to the director the power to adopt and amend goals and guidelines pursuant to ORS 197.225 and 197.230. As used in this subsection, "goals" and "guidelines" have the meanings given those terms in ORS 197.015.

(Advisory and Technical Committees)

**SECTION 17.** (1) The Oregon Natural Resources Commission may establish such advisory and technical committees as the commission considers necessary to aid and advise the commission in the performance of its functions. These committees may be continuing or temporary committees. The commission shall determine the representation, membership, terms and organization of the committees and shall appoint their members.

(2) Members of the committees are not entitled to compensation, but at the discretion of the commission may be reimbursed from funds available to the commission for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amount provided in ORS 292.495.

STATE DEPARTMENT OF FISH AND WILDLIFE

(Abolishment and Transfer of Duties, Functions and Powers)

**SECTION 18.** (1) The State Department of Fish and Wildlife and the State Fish and Wildlife Commission are abolished. On the operative date of this section, the tenure of office of the members of the State Fish and Wildlife Commission and of the State Fish and Wildlife

1 Director ceases.

2 (2)(a) All the duties, functions and powers of the State Department of Fish and Wildlife  
3 are imposed upon, transferred to and vested in the Oregon Department of Natural Re-  
4 sources.

5 (b) Where the law imposed the duty or function upon or vested the power in the State  
6 Fish and Wildlife Director, the duty, function or power is imposed upon, transferred to or  
7 vested in the Director of the Oregon Department of Natural Resources.

8 (c) Where the law imposed the duty or function upon or vested the power in the State  
9 Fish and Wildlife Commission, the duty, function or power is imposed upon, transferred to  
10 and vested in the Oregon Natural Resources Commission.

11  
12 (Transfer of Records, Property and Employees)

13  
14 **SECTION 19.** (1) The State Fish and Wildlife Director and the State Fish and Wildlife  
15 Commission shall:

16 (a) Deliver to the Oregon Department of Natural Resources all records and property  
17 within the jurisdiction of the director or the commission that relate to the duties, functions  
18 and powers transferred by section 18 of this 2011 Act; and

19 (b) Transfer to the Oregon Department of Natural Resources those employees engaged  
20 primarily in the exercise of the duties, functions and powers transferred by section 18 of this  
21 2011 Act.

22 (2) The Director of the Oregon Department of Natural Resources and the Oregon Natural  
23 Resources Commission shall take possession of the records and property, and shall take  
24 charge of the employees and employ them in the exercise of the duties, functions and powers  
25 transferred by section 18 of this 2011 Act, without reduction of compensation but subject to  
26 change or termination of employment or compensation as provided by law.

27 (3) The Governor shall resolve any dispute between the State Department of Fish and  
28 Wildlife and the Oregon Department of Natural Resources, or the State Fish and Wildlife  
29 Commission and the Oregon Natural Resources Commission, relating to transfers of records,  
30 property and employees under this section, and the Governor's decision is final.

31  
32 (Transfer of Unexpended Revenues)

33  
34 **SECTION 20.** (1) The unexpended balances of amounts authorized to be expended by the  
35 State Department of Fish and Wildlife for the biennium beginning July 1, 2011, from revenues  
36 dedicated, continuously appropriated, appropriated or otherwise made available for the pur-  
37 pose of administering and enforcing the duties, functions and powers transferred by section  
38 18 of this 2011 Act are transferred to and are available for expenditure by the Oregon De-  
39 partment of Natural Resources for the biennium beginning July 1, 2011, for the purpose of  
40 administering and enforcing the duties, functions and powers transferred by section 18 of  
41 this 2011 Act.

42 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
43 expenditures by the State Department of Fish and Wildlife remain applicable to expenditures  
44 by the Oregon Department of Natural Resources under this section.

45 (3) The unexpended balances of amounts authorized to be expended by the State Fish and

1 **Wildlife Commission for the biennium beginning July 1, 2011, from revenues dedicated, con-**  
 2 **tinuously appropriated, appropriated or otherwise made available for the purpose of admin-**  
 3 **istering and enforcing the duties, functions and powers transferred by section 18 of this 2011**  
 4 **Act are transferred to and are available for expenditure by the Oregon Natural Resources**  
 5 **Commission for the biennium beginning July 1, 2011, for the purpose of administering and**  
 6 **enforcing the duties, functions and powers transferred by section 18 of this 2011 Act.**

7 (4) **The expenditure classifications, if any, established by Acts authorizing or limiting**  
 8 **expenditures by the State Fish and Wildlife Commission remain applicable to expenditures**  
 9 **by the Oregon Natural Resources Commission under this section.**

10  
 11 (Action, Proceeding and Prosecution)

12  
 13 **SECTION 21. The transfer of duties, functions and powers to the Oregon Department of**  
 14 **Natural Resources by section 18 of this 2011 Act does not affect any action, proceeding or**  
 15 **prosecution involving or with respect to such duties, functions and powers begun before and**  
 16 **pending at the time of the transfer, except that:**

17 (1) **The Oregon Department of Natural Resources is substituted for the State Department**  
 18 **of Fish and Wildlife where the State Department of Fish and Wildlife is involved in the**  
 19 **action, proceeding or prosecution; or**

20 (2) **The Oregon Natural Resources Commission is substituted for the State Fish and**  
 21 **Wildlife Commission where the State Fish and Wildlife Commission is involved in the action,**  
 22 **proceeding or prosecution.**

23  
 24 (Liability, Duty and Obligation)

25  
 26 **SECTION 22. (1) Nothing in sections 18 to 24 of this 2011 Act, the amendments to stat-**  
 27 **utes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257, 1269**  
 28 **to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS**  
 29 **496.080, 496.090, 496.108, 496.112, 496.116, 496.121, 496.300, 496.306, 496.311, 496.815 or 508.326 by**  
 30 **section 2161 of this 2011 Act relieves a person of a liability, duty or obligation accruing under**  
 31 **or with respect to the duties, functions and powers transferred by section 18 of this 2011 Act.**  
 32 **The Oregon Department of Natural Resources may undertake the collection or enforcement**  
 33 **of any such liability, duty or obligation.**

34 (2) **The rights and obligations of the State Department of Fish and Wildlife, or of the**  
 35 **State Fish and Wildlife Commission, legally incurred under contracts, leases and business**  
 36 **transactions executed, entered into or begun before the operative date of section 18 of this**  
 37 **2011 Act are transferred to the Oregon Department of Natural Resources or the Oregon**  
 38 **Natural Resources Commission. For the purpose of succession to these rights and obli-**  
 39 **gations:**

40 (a) **The Oregon Department of Natural Resources is a continuation of the State Depart-**  
 41 **ment of Fish and Wildlife where the right or obligation was incurred by the State Depart-**  
 42 **ment of Fish and Wildlife; or**

43 (b) **The Oregon Natural Resources Commission is a continuation of the State Fish and**  
 44 **Wildlife Commission where the right or obligation was incurred by the State Fish and**  
 45 **Wildlife Commission.**

## (Rules)

1  
2  
3 **SECTION 23.** (1) Notwithstanding the transfer of duties, functions and powers by section  
4 18 of this 2011 Act, the rules of the State Department of Fish and Wildlife, or of the State  
5 Fish and Wildlife Commission, in effect on the operative date of section 18 of this 2011 Act  
6 continue in effect until superseded or repealed by rules of the Oregon Department of Natural  
7 Resources or the Oregon Natural Resources Commission.

8 (2) References in rules of the State Department of Fish and Wildlife to the State De-  
9 partment of Fish and Wildlife, or to an officer or employee of the State Department of Fish  
10 and Wildlife, are considered to be references to the Oregon Department of Natural Resources  
11 or to an officer or employee of the Oregon Department of Natural Resources.

12 (3) References in rules of the State Fish and Wildlife Commission to the State Fish and  
13 Wildlife Commission, or to an officer or employee of the State Fish and Wildlife Commission,  
14 are considered to be references to the Oregon Natural Resources Commission or to an officer  
15 or employee of the Oregon Natural Resources Commission.

## (References)

16  
17  
18  
19 **SECTION 24.** (1) Whenever, in any uncodified law or resolution of the Legislative As-  
20 sembly or in any rule, document, record or proceeding authorized by the Legislative Assem-  
21 bly, reference is made to the State Department of Fish and Wildlife, or to an officer or  
22 employee of the State Department of Fish and Wildlife, the reference is considered to be a  
23 reference to the Oregon Department of Natural Resources or to an officer or employee of  
24 the Oregon Department of Natural Resources.

25 (2) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any  
26 rule, document, record or proceeding authorized by the Legislative Assembly, reference is  
27 made to the State Fish and Wildlife Commission, or to an officer or employee of the State  
28 Fish and Wildlife Commission, the reference is considered to be a reference to the Oregon  
29 Natural Resources Commission or to an officer or employee of the Oregon Natural Resources  
30 Commission.

## (Agency Name Change)

31  
32  
33  
34 **SECTION 25.** (1) For the purpose of harmonizing and clarifying statutory law, the Leg-  
35 islative Counsel may substitute for words designating the "State Department of Fish and  
36 Wildlife," wherever they occur in statutory law, words designating the "Oregon Department  
37 of Natural Resources."

38 (2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel  
39 may substitute for words designating the "State Fish and Wildlife Director," wherever they  
40 occur in statutory law, words designating the "Director of the Oregon Department of Natural  
41 Resources."

## (Fund and Account Name Changes)

42  
43  
44  
45 **SECTION 26.** For the purpose of harmonizing and clarifying statutory law, the Legislative

1 **Counsel may substitute for words designating the “State Wildlife Fund,” “Commercial**  
2 **Fisheries Fund” or “Fish and Wildlife Account,” wherever they occur in statutory law, words**  
3 **designating the “Oregon Natural Resources Fund.”**

4  
5 **(Commission Name Change)**  
6

7 **SECTION 27. For the purpose of harmonizing and clarifying statutory law, the Legislative**  
8 **Counsel may substitute for words designating the “State Fish and Wildlife Commission,”**  
9 **wherever they occur in statutory law, words designating the “Oregon Natural Resources**  
10 **Commission.”**

11  
12 **(Conforming Amendments)**  
13

14 **SECTION 28.** ORS 137.138 is amended to read:

15 137.138. (1) In addition to and not in lieu of any other sentence it may impose, a court shall  
16 require a defendant convicted under ORS 164.365, 166.663, 167.315, 498.056 or 498.146 or other state,  
17 county or municipal laws, for an act involving or connected with injuring, damaging, mistreating or  
18 killing a livestock animal, to forfeit any rights in weapons used in connection with the act under-  
19 lying the conviction.

20 (2) In addition to and not in lieu of any other sentence it may impose, a court shall revoke any  
21 hunting license possessed by a defendant convicted as described in subsection (1) of this section.

22 (3) The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
23 **Resources** shall refuse to issue a hunting license to a defendant convicted as described under sub-  
24 section (1) of this section for a period of two years following the conviction.

25 (4) As used in this section, “livestock animal” has the meaning given **that term** in ORS 164.055.

26 **SECTION 29.** ORS 166.220 is amended to read:

27 166.220. (1) A person commits the crime of unlawful use of a weapon if the person:

28 (a) Attempts to use unlawfully against another, or carries or possesses with intent to use un-  
29 lawfully against another, any dangerous or deadly weapon as defined in ORS 161.015; or

30 (b) Intentionally discharges a firearm, blowgun, bow and arrow, crossbow or explosive device  
31 within the city limits of any city or within residential areas within urban growth boundaries at or  
32 in the direction of any person, building, structure or vehicle within the range of the weapon without  
33 having legal authority for such discharge.

34 (2) This section does not apply to:

35 (a) Police officers or military personnel in the lawful performance of their official duties;

36 (b) Persons lawfully defending life or property as provided in ORS 161.219;

37 (c) Persons discharging firearms, blowguns, bows and arrows, crossbows or explosive devices  
38 upon public or private shooting ranges, shooting galleries or other areas designated and built for  
39 the purpose of target shooting;

40 (d) Persons lawfully engaged in hunting in compliance with rules and regulations adopted by the  
41 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**; or

42 (e) An employee of the United States Department of Agriculture, acting within the scope of  
43 employment, discharging a firearm in the course of the lawful taking of wildlife.

44 (3) Unlawful use of a weapon is a Class C felony.

45 **SECTION 30.** ORS 166.291, as amended by section 7, chapter 826, Oregon Laws 2009, is



1 amended to read:

2 166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed  
3 handgun license, upon receipt of the appropriate fees and after compliance with the procedures set  
4 out in this section, shall issue the person a concealed handgun license if the person:

5 (a)(A) Is a citizen of the United States; or

6 (B) Is a legal resident alien who can document continuous residency in the county for at least  
7 six months and has declared in writing to the United States Citizenship and Immigration Services  
8 the intent to acquire citizenship status and can present proof of the written declaration to the  
9 sheriff at the time of application for the license;

10 (b) Is at least 21 years of age;

11 (c) Is a resident of the county;

12 (d) Has no outstanding warrants for arrest;

13 (e) Is not free on any form of pretrial release;

14 (f) Demonstrates competence with a handgun by any one of the following:

15 (A) Completion of any hunter education or hunter safety course approved by the [*State Depart-*  
16 *ment of Fish and Wildlife*] **Oregon Department of Natural Resources**, or by a similar agency of  
17 another state, if handgun safety was a component of the course;

18 (B) Completion of any National Rifle Association firearms safety or training course if handgun  
19 safety was a component of the course;

20 (C) Completion of any firearms safety or training course or class available to the general public  
21 offered by law enforcement, community college, or private or public institution or organization or  
22 firearms training school utilizing instructors certified by the National Rifle Association or a law  
23 enforcement agency if handgun safety was a component of the course;

24 (D) Completion of any law enforcement firearms safety or training course or class offered for  
25 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-  
26 cers if handgun safety was a component of the course;

27 (E) Presents evidence of equivalent experience with a handgun through participation in organ-  
28 ized shooting competition or military service;

29 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been  
30 revoked; or

31 (G) Completion of any firearms training or safety course or class conducted by a firearms in-  
32 structor certified by a law enforcement agency or the National Rifle Association if handgun safety  
33 was a component of the course;

34 (g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295,  
35 of a felony;

36 (h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS  
37 161.295, of a misdemeanor within the four years prior to the application;

38 (i) Has not been committed to the Oregon Health Authority under ORS 426.130;

39 (j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that  
40 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

41 (k) Has been discharged from the jurisdiction of the juvenile court for more than four years if,  
42 while a minor, the person was found to be within the jurisdiction of the juvenile court for having  
43 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-  
44 volving violence, as defined in ORS 166.470;

45 (L) Has not been convicted of an offense involving controlled substances or participated in a

1 court-supervised drug diversion program, except this disability does not operate to exclude a person  
2 if:

3 (A) The person has been convicted only once of violating ORS 475.864 (3) and has not completed  
4 a court-supervised drug diversion program under ORS 135.907; or

5 (B) The person has completed a court-supervised drug diversion program under ORS 135.907 and  
6 has not been convicted of violating ORS 475.864 (3);

7 (m) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866,  
8 107.700 to 107.735 or 163.738;

9 (n) Has not received a dishonorable discharge from the Armed Forces of the United States; and

10 (o) Is not required to register as a sex offender in any state.

11 (2) A person who has been granted relief under ORS 166.274 or 166.293 or section 5, chapter 826,  
12 Oregon Laws 2009, or 18 U.S.C. 925(c) or has had the person's record expunged under the laws of  
13 this state or equivalent laws of other jurisdictions is not subject to the disabilities in subsection  
14 (1)(g) to (L) of this section.

15 (3) Before the sheriff may issue a license:

16 (a) The application must state the applicant's legal name, current address and telephone number,  
17 date and place of birth, hair and eye color and height and weight. The application must also list the  
18 applicant's residence address or addresses for the previous three years. The application must contain  
19 a statement by the applicant that the applicant meets the requirements of subsection (1) of this  
20 section. The application may include the Social Security number of the applicant if the applicant  
21 voluntarily provides this number. The application must be signed by the applicant.

22 (b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff  
23 shall fingerprint and photograph the applicant and shall conduct any investigation necessary to  
24 corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal  
25 records check is necessary, the sheriff shall request the Department of State Police to conduct the  
26 check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal  
27 Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records  
28 check and may not keep any record of the fingerprints. The Department of State Police shall report  
29 the results of the fingerprint-based criminal records check to the sheriff. The Department of State  
30 Police shall also furnish the sheriff with any information about the applicant that the Department  
31 of State Police may have in its possession from its central bureau of criminal identification includ-  
32 ing, but not limited to, manual or computerized criminal offender information.

33 (4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon re-  
34 quest. The forms shall be uniform throughout the state in substantially the following form:

35 \_\_\_\_\_  
36  
37 APPLICATION FOR LICENSE TO CARRY  
38 CONCEALED HANDGUN

39 Date \_\_\_\_\_

40 I hereby declare as follows:

41 I am a citizen of the United States or a legal resident alien who can document continuous res-  
42 idency in the county for at least six months and have declared in writing to the United States Cit-  
43 izenship and Immigration Services my intention to become a citizen and can present proof of the  
44 written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have  
45 been discharged from the jurisdiction of the juvenile court for more than four years if, while a mi-

1 nor, I was found to be within the jurisdiction of the juvenile court for having committed an act that,  
2 if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined  
3 in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under  
4 ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years,  
5 been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a  
6 misdemeanor. Except as provided in ORS 166.291 (1)(L), I have not been convicted of an offense in-  
7 volving controlled substances or completed a court-supervised drug diversion program. There are  
8 no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not  
9 been committed to the Oregon Health Authority under ORS 426.130, nor have I been found mentally  
10 ill and presently subject to an order prohibiting me from purchasing or possessing a firearm because  
11 of mental illness. If any of the previous conditions do apply to me, I have been granted relief or wish  
12 to petition for relief from the disability under ORS 166.274 or 166.293 or section 5, chapter 826,  
13 Oregon Laws 2009, or 18 U.S.C. 925(c) or have had the records expunged. I am not subject to a ci-  
14 tation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738.  
15 I have never received a dishonorable discharge from the Armed Forces of the United States. I am  
16 not required to register as a sex offender in any state. I understand I will be fingerprinted and  
17 photographed.

18

19 Legal name \_\_\_\_\_  
20 Age \_\_\_\_\_ Date of birth \_\_\_\_\_  
21 Place of birth \_\_\_\_\_  
22 Social Security number \_\_\_\_\_

23 (Disclosure of your Social Security account number is voluntary. Solicitation of the number is au-  
24 thorized under ORS 166.291. It will be used only as a means of identification.)

25

26 Proof of identification (Two pieces of current identification are required, one of which must bear a  
27 photograph of the applicant. The type of identification and the number on the identification are to  
28 be filled in by the sheriff.):

- 29 1. \_\_\_\_\_
- 30 2. \_\_\_\_\_

31

32 Height \_\_\_\_\_ Weight \_\_\_\_\_  
33 Hair color \_\_\_\_\_ Eye color \_\_\_\_\_

34

35 Current address \_\_\_\_\_

36

(List residence addresses for the  
past three years on the back.)

37

38

39 City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

40

41

42 I have read the entire text of this application, and the statements therein are correct and true.  
43 (Making false statements on this application is a misdemeanor.)

44

45

\_\_\_\_\_  
(Signature of Applicant)

1 Character references.

2 \_\_\_\_\_  
 3           Name            Address  
 4 \_\_\_\_\_

5           Name            Address  
 6 \_\_\_\_\_

7 Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ by \_\_\_\_\_

8  
9 Competence with handgun demonstrated by \_\_\_\_\_ (to be filled in by sheriff)

10 Date \_\_\_\_\_ Fee Paid \_\_\_\_\_

11 License No. \_\_\_\_\_  
12 \_\_\_\_\_

13  
14 (5)(a) Fees for concealed handgun licenses are:

15 (A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.

16 (B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.

17 (C) \$15 to the sheriff for the duplication of a license because of loss or change of address.

18 (b) The sheriff may enter into an agreement with the Department of Transportation to produce  
19 the concealed handgun license.

20 (6) No civil or criminal liability shall attach to the sheriff or any authorized representative en-  
21 gaged in the receipt and review of, or an investigation connected with, any application for, or in the  
22 issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful  
23 performance of duties under those sections.

24 (7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff  
25 shall enter the applicant's name into the Law Enforcement Data System indicating that the person  
26 is an applicant for a concealed handgun license or is a license holder.

27 (8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section  
28 for a resident of a contiguous state who has a compelling business interest or other legitimate  
29 demonstrated need.

30 (9) For purposes of subsection (1)(c) of this section, a person is a resident of a county if the  
31 person:

32 (a) Has a current Oregon driver license issued to the person showing a residence address in the  
33 county;

34 (b) Is registered to vote in the county and has a memorandum card issued to the person under  
35 ORS 247.181 showing a residence address in the county;

36 (c) Has documentation showing that the person currently leases or owns real property in the  
37 county; or

38 (d) Has documentation showing that the person filed an Oregon tax return for the most recent  
39 tax year showing a residence address in the county.

40 **SECTION 31.** ORS 166.291, as amended by sections 7 and 10, chapter 826, Oregon Laws 2009,  
41 is amended to read:

42 166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed  
43 handgun license, upon receipt of the appropriate fees and after compliance with the procedures set  
44 out in this section, shall issue the person a concealed handgun license if the person:

45 (a)(A) Is a citizen of the United States; or

1 (B) Is a legal resident alien who can document continuous residency in the county for at least  
2 six months and has declared in writing to the United States Citizenship and Immigration Services  
3 the intent to acquire citizenship status and can present proof of the written declaration to the  
4 sheriff at the time of application for the license;

5 (b) Is at least 21 years of age;

6 (c) Is a resident of the county;

7 (d) Has no outstanding warrants for arrest;

8 (e) Is not free on any form of pretrial release;

9 (f) Demonstrates competence with a handgun by any one of the following:

10 (A) Completion of any hunter education or hunter safety course approved by the [*State Depart-*  
11 *ment of Fish and Wildlife*] **Oregon Department of Natural Resources**, or **by** a similar agency of  
12 another state, if handgun safety was a component of the course;

13 (B) Completion of any National Rifle Association firearms safety or training course if handgun  
14 safety was a component of the course;

15 (C) Completion of any firearms safety or training course or class available to the general public  
16 offered by law enforcement, community college, or private or public institution or organization or  
17 firearms training school utilizing instructors certified by the National Rifle Association or a law  
18 enforcement agency if handgun safety was a component of the course;

19 (D) Completion of any law enforcement firearms safety or training course or class offered for  
20 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-  
21 cers if handgun safety was a component of the course;

22 (E) Presents evidence of equivalent experience with a handgun through participation in organ-  
23 ized shooting competition or military service;

24 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been  
25 revoked; or

26 (G) Completion of any firearms training or safety course or class conducted by a firearms in-  
27 structor certified by a law enforcement agency or the National Rifle Association if handgun safety  
28 was a component of the course;

29 (g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295,  
30 of a felony;

31 (h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS  
32 161.295, of a misdemeanor within the four years prior to the application;

33 (i) Has not been committed to the Oregon Health Authority under ORS 426.130;

34 (j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that  
35 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

36 (k) Has been discharged from the jurisdiction of the juvenile court for more than four years if,  
37 while a minor, the person was found to be within the jurisdiction of the juvenile court for having  
38 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-  
39 volving violence, as defined in ORS 166.470;

40 (L) Has not been convicted of an offense involving controlled substances or participated in a  
41 court-supervised drug diversion program, except this disability does not operate to exclude a person  
42 if:

43 (A) The person has been convicted only once of violating ORS 475.864 (3) and has not completed  
44 a court-supervised drug diversion program under ORS 135.907; or

45 (B) The person has completed a court-supervised drug diversion program under ORS 135.907 and

1 has not been convicted of violating ORS 475.864 (3);

2 (m) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866,  
3 107.700 to 107.735 or 163.738;

4 (n) Has not received a dishonorable discharge from the Armed Forces of the United States; and

5 (o) Is not required to register as a sex offender in any state.

6 (2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or  
7 has had the person’s record expunged under the laws of this state or equivalent laws of other ju-  
8 risdictions is not subject to the disabilities in subsection (1)(g) to (L) of this section.

9 (3) Before the sheriff may issue a license:

10 (a) The application must state the applicant’s legal name, current address and telephone number,  
11 date and place of birth, hair and eye color and height and weight. The application must also list the  
12 applicant’s residence address or addresses for the previous three years. The application must contain  
13 a statement by the applicant that the applicant meets the requirements of subsection (1) of this  
14 section. The application may include the Social Security number of the applicant if the applicant  
15 voluntarily provides this number. The application must be signed by the applicant.

16 (b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff  
17 shall fingerprint and photograph the applicant and shall conduct any investigation necessary to  
18 corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal  
19 records check is necessary, the sheriff shall request the Department of State Police to conduct the  
20 check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal  
21 Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records  
22 check and may not keep any record of the fingerprints. The Department of State Police shall report  
23 the results of the fingerprint-based criminal records check to the sheriff. The Department of State  
24 Police shall also furnish the sheriff with any information about the applicant that the Department  
25 of State Police may have in its possession from its central bureau of criminal identification includ-  
26 ing, but not limited to, manual or computerized criminal offender information.

27 (4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon re-  
28 quest. The forms shall be uniform throughout the state in substantially the following form:

29 \_\_\_\_\_  
30  
31 APPLICATION FOR LICENSE TO CARRY  
32 CONCEALED HANDGUN

33 Date\_\_\_\_\_

34 I hereby declare as follows:

35 I am a citizen of the United States or a legal resident alien who can document continuous res-  
36 idency in the county for at least six months and have declared in writing to the United States Cit-  
37 izenship and Immigration Services my intention to become a citizen and can present proof of the  
38 written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have  
39 been discharged from the jurisdiction of the juvenile court for more than four years if, while a mi-  
40 nor, I was found to be within the jurisdiction of the juvenile court for having committed an act that,  
41 if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined  
42 in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under  
43 ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years,  
44 been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a  
45 misdemeanor. Except as provided in ORS 166.291 (1)(L), I have not been convicted of an offense in-

1 volving controlled substances or completed a court-supervised drug diversion program. There are  
2 no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not  
3 been committed to the Oregon Health Authority under ORS 426.130, nor have I been found mentally  
4 ill and presently subject to an order prohibiting me from purchasing or possessing a firearm because  
5 of mental illness. If any of the previous conditions do apply to me, I have been granted relief or wish  
6 to petition for relief from the disability under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or have  
7 had the records expunged. I am not subject to a citation issued under ORS 163.735 or an order is-  
8 sued under ORS 30.866, 107.700 to 107.735 or 163.738. I have never received a dishonorable discharge  
9 from the Armed Forces of the United States. I am not required to register as a sex offender in any  
10 state. I understand I will be fingerprinted and photographed.

11

12 Legal name \_\_\_\_\_  
13 Age \_\_\_\_\_ Date of birth \_\_\_\_\_  
14 Place of birth \_\_\_\_\_  
15 Social Security number \_\_\_\_\_

16 (Disclosure of your Social Security account number is voluntary. Solicitation of the number is au-  
17 thorized under ORS 166.291. It will be used only as a means of identification.)

18

19 Proof of identification (Two pieces of current identification are required, one of which must bear a  
20 photograph of the applicant. The type of identification and the number on the identification are to  
21 be filled in by the sheriff.):

- 22 1. \_\_\_\_\_
- 23 2. \_\_\_\_\_

24

25 Height \_\_\_\_\_ Weight \_\_\_\_\_  
26 Hair color \_\_\_\_\_ Eye color \_\_\_\_\_

27

28 Current address \_\_\_\_\_

(List residence addresses for the  
past three years on the back.)

29

30  
31  
32 City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_  
33 Phone \_\_\_\_\_

34

35 I have read the entire text of this application, and the statements therein are correct and true.  
36 (Making false statements on this application is a misdemeanor.)

37

\_\_\_\_\_  
(Signature of Applicant)

38

39

40 Character references.

41

\_\_\_\_\_  
Name Address

42

\_\_\_\_\_  
Name Address

43

44

45

1 Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ by \_\_\_\_\_

2

3 Competence with handgun demonstrated by \_\_\_\_\_ (to be filled in by sheriff)

4 Date \_\_\_\_\_ Fee Paid \_\_\_\_\_

5 License No. \_\_\_\_\_

6

7

8 (5)(a) Fees for concealed handgun licenses are:

9 (A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.

10 (B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.

11 (C) \$15 to the sheriff for the duplication of a license because of loss or change of address.

12 (b) The sheriff may enter into an agreement with the Department of Transportation to produce  
13 the concealed handgun license.

14 (6) No civil or criminal liability shall attach to the sheriff or any authorized representative en-  
15 gaged in the receipt and review of, or an investigation connected with, any application for, or in the  
16 issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful  
17 performance of duties under those sections.

18 (7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff  
19 shall enter the applicant’s name into the Law Enforcement Data System indicating that the person  
20 is an applicant for a concealed handgun license or is a license holder.

21 (8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section  
22 for a resident of a contiguous state who has a compelling business interest or other legitimate  
23 demonstrated need.

24 (9) For purposes of subsection (1)(c) of this section, a person is a resident of a county if the  
25 person:

26 (a) Has a current Oregon driver license issued to the person showing a residence address in the  
27 county;

28 (b) Is registered to vote in the county and has a memorandum card issued to the person under  
29 ORS 247.181 showing a residence address in the county;

30 (c) Has documentation showing that the person currently leases or owns real property in the  
31 county; or

32 (d) Has documentation showing that the person filed an Oregon tax return for the most recent  
33 tax year showing a residence address in the county.

34 **SECTION 32.** ORS 166.660 is amended to read:

35 166.660. (1) A person commits the crime of unlawful paramilitary activity if the person:

36 (a) Exhibits, displays or demonstrates to another person the use, application or making of any  
37 firearm, explosive or incendiary device or any technique capable of causing injury or death to per-  
38 sons and intends or knows that such firearm, explosive or incendiary device or technique will be  
39 unlawfully employed for use in a civil disorder; or

40 (b) Assembles with one or more other persons for the purpose of training with, practicing with  
41 or being instructed in the use of any firearm, explosive or incendiary device or technique capable  
42 of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive  
43 or incendiary device or technique in a civil disorder.

44 (2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed  
45 in the otherwise lawful performance of the officer’s official duties.



1 (b) Nothing in this section makes unlawful any activity of the [*State Department of Fish and*  
 2 *Wildlife*] **Oregon Department of Natural Resources**, or any activity intended to teach or practice  
 3 self-defense or self-defense techniques, such as karate clubs or self-defense clinics, and similar lawful  
 4 activity, or any facility, program or lawful activity related to firearms instruction and training in-  
 5 tended to teach the safe handling and use of firearms, or any other lawful sports or activities related  
 6 to the individual recreational use or possession of firearms, including but not limited to hunting  
 7 activities, target shooting, self-defense, firearms collection or any organized activity including, but  
 8 not limited to any hunting club, rifle club, rifle range or shooting range which does not include a  
 9 conspiracy as defined in ORS 161.450 or the knowledge of or the intent to cause or further a civil  
 10 disorder.

11 (3) Unlawful paramilitary activity is a Class C felony.

12 (4) As used in this section:

13 (a) "Civil disorder" means acts of physical violence by assemblages of three or more persons  
 14 which cause damage or injury, or immediate danger thereof, to the person or property of any other  
 15 individual.

16 (b) "Firearm" has the meaning given that term in ORS 166.210.

17 (c) "Explosive" means a chemical compound, mixture or device that is commonly used or in-  
 18 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous  
 19 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,  
 20 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,  
 21 smokeless powder, small arms ammunition and small arms ammunition primers.

22 (d) "Law enforcement officer" means any duly constituted police officer of the United States,  
 23 any state, any political subdivision of a state or the District of Columbia, and also includes members  
 24 of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the or-  
 25 ganized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or  
 26 the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C.  
 27 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS  
 28 161.015 (4) when in the performance of official duties.

29 **SECTION 33.** ORS 181.715 is amended to read:

30 181.715. (1) The Department of State Police or another criminal justice agency designated by the  
 31 Director of the Oregon Department of Administrative Services shall operate a Criminal Justice In-  
 32 formation Standards program that coordinates information among state criminal justice agencies.  
 33 The program shall:

34 (a) Ensure that in developing new information systems, data can be retrieved to support evalu-  
 35 ation of criminal justice planning and programs, including, but not limited to, the ability of the  
 36 programs to reduce future criminal conduct;

37 (b) Ensure that maximum effort is made for the safety of public safety officers;

38 (c) Establish methods and standards for data interchange and information access between crim-  
 39 inal justice information systems, in compliance with the technology standards and policies of the  
 40 Oregon Department of Administrative Services;

41 (d) Design and implement improved applications for exchange of agency information; and

42 (e) Implement the capability to exchange images between criminal justice agencies.

43 (2) The program shall develop a plan to accelerate data sharing and information integration  
 44 among criminal justice agencies. The plan shall include, but is not limited to, priorities, timelines,  
 45 development costs, resources needed, the projected ongoing cost of support, critical success factors

1 and any known barriers to accomplishing the plan. Representatives of criminal justice agencies and  
 2 public safety agencies, including but not limited to local law enforcement agencies, courts of crimi-  
 3 nal jurisdiction, district attorneys, city attorneys with criminal prosecutive functions, public  
 4 defender organizations established under ORS chapter 151, community corrections directors, jail  
 5 managers and county juvenile departments, shall be invited to participate in the planning process.  
 6 The program shall present the plan to the Director of the Oregon Department of Administrative  
 7 Services no later than May 30 of each even-numbered year for development of the Governor's budget  
 8 report. The program shall submit the plan to the Joint Legislative Committee on Information Man-  
 9 agement and Technology no later than December 31 of each even-numbered year.

10 (3) Notwithstanding the meaning given "criminal justice agency" in ORS 181.010, as used in this  
 11 section and ORS 181.720, "criminal justice agency" includes, but is not limited to:

- 12 (a) The Judicial Department;
- 13 (b) The Attorney General;
- 14 (c) The Department of Corrections;
- 15 (d) The Department of State Police;
- 16 (e) Any other state agency with law enforcement authority designated by order of the Governor;
- 17 (f) The Department of Transportation;
- 18 (g) The State Board of Parole and Post-Prison Supervision;
- 19 (h) The Department of Public Safety Standards and Training;
- 20 (i) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**;
- 21 (j) The Oregon Liquor Control Commission;
- 22 (k) The Oregon Youth Authority; and
- 23 (L) The State Commission on Children and Families.

24 **SECTION 34.** ORS 181.725 is amended to read:

25 181.725. (1) There is established a Criminal Justice Information Standards Advisory Board to  
 26 advise the Department of State Police or the criminal justice agency designated by the Director of  
 27 the Oregon Department of Administrative Services under ORS 181.715 (1) about the department's  
 28 or the agency's duties under ORS 181.715. The board consists of the following members:

- 29 (a) The State Court Administrator or the administrator's designee;
- 30 (b) The Director of the Department of Corrections or the director's designee;
- 31 (c) The Superintendent of State Police or the superintendent's designee;
- 32 (d) The executive director of the Oregon Criminal Justice Commission or the executive  
 33 director's designee;
- 34 (e) The Director of Transportation or the director's designee;
- 35 (f) The chairperson of the State Board of Parole and Post-Prison Supervision or the  
 36 chairperson's designee;
- 37 (g) The Director of the Department of Public Safety Standards and Training or the director's  
 38 designee;
- 39 (h) A chief of police designated by the Oregon Association Chiefs of Police;
- 40 (i) A sheriff designated by the Oregon Sheriffs' Association;
- 41 (j) A jail manager designated by the Oregon Jail Managers' Association;
- 42 (k) A county juvenile department director designated by the Oregon Juvenile Department  
 43 Directors' Association;
- 44 (L) A community corrections agency director designated by the Oregon Association of Commu-  
 45 nity Corrections Directors;

1 (m) A district attorney designated by the Oregon District Attorneys Association;

2 (n) The administrator of the Enterprise Information Strategy and Policy Division of the Oregon  
3 Department of Administrative Services or the administrator's designee;

4 (o) The Director of the Oregon Youth Authority or the director's designee;

5 (p) The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
6 **Resources** or the director's designee;

7 (q) The administrator of the Oregon Liquor Control Commission or the administrator's designee;  
8 and

9 (r) The staff director of the State Commission on Children and Families or the staff director's  
10 designee.

11 (2) The board shall meet at such times and places as the board deems necessary.

12 (3) The members of the board are not entitled to compensation but are entitled to expenses as  
13 provided in ORS 292.495.

14 **SECTION 35.** ORS 197.770 is amended to read:

15 197.770. (1) Any firearms training facility in existence on September 9, 1995, shall be allowed to  
16 continue operating until such time as the facility is no longer used as a firearms training facility.

17 (2) For purposes of this section, a "firearms training facility" is an indoor or outdoor facility  
18 that provides training courses and issues certifications required:

19 (a) For law enforcement personnel;

20 (b) By the [*State Department of Fish and Wildlife*] **Oregon Department of Natural**  
21 **Resources**; or

22 (c) By nationally recognized programs that promote shooting matches, target shooting and  
23 safety.

24 **SECTION 36.** ORS 215.203 is amended to read:

25 215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the  
26 county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use  
27 except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established  
28 only when such zoning is consistent with the comprehensive plan.

29 (2)(a) As used in this section, "farm use" means the current employment of land for the primary  
30 purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding,  
31 breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or  
32 honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural  
33 use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage  
34 and disposal by marketing or otherwise of the products or by-products raised on such land for hu-  
35 man or animal use. "Farm use" also includes the current employment of land for the primary pur-  
36 pose of obtaining a profit in money by stabling or training equines including but not limited to  
37 providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propa-  
38 gation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under  
39 the jurisdiction of the [*State Fish and Wildlife Commission, to the extent allowed by the rules adopted*  
40 *by the commission*] **Oregon Department of Natural Resources, to the extent allowed by the**  
41 **rules adopted by the Oregon Natural Resources Commission.** "Farm use" includes the on-site  
42 construction and maintenance of equipment and facilities used for the activities described in this  
43 subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter  
44 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3)  
45 of this section or land described in ORS 321.267 (3) or 321.824 (3).

- 1 (b) "Current employment" of land for farm use includes:
- 2 (A) Farmland, the operation or use of which is subject to any farm-related government program;
- 3 (B) Land lying fallow for one year as a normal and regular requirement of good agricultural
- 4 husbandry;
- 5 (C) Land planted in orchards or other perennials, other than land specified in subparagraph (D)
- 6 of this paragraph, prior to maturity;
- 7 (D) Land not in an exclusive farm use zone which has not been eligible for assessment at special
- 8 farm use value in the year prior to planting the current crop and has been planted in orchards,
- 9 cultured Christmas trees or vineyards for at least three years;
- 10 (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically
- 11 tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and
- 12 which is not currently being used for any economic farm use;
- 13 (F) Except for land under a single family dwelling, land under buildings supporting accepted
- 14 farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r)
- 15 and the processing of farm crops into biofuel as commercial activities in conjunction with farm use
- 16 under ORS 215.213 (2)(c) and 215.283 (2)(a);
- 17 (G) Water impoundments lying in or adjacent to and in common ownership with farm use land;
- 18 (H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the
- 19 owner of land specially valued for farm use even if the land constituting the woodlot is not utilized
- 20 in conjunction with farm use;
- 21 (I) Land lying idle for no more than one year where the absence of farming activity is due to
- 22 the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph,
- 23 illness includes injury or infirmity whether or not such illness results in death;
- 24 (J) Any land described under ORS 321.267 (3) or 321.824 (3);
- 25 (K) Land used for the primary purpose of obtaining a profit in money by breeding, raising,
- 26 kenneling or training of greyhounds for racing; and
- 27 (L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:
- 28 (i) Only the crops of the landowner are being processed;
- 29 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm
- 30 of the landowner; or
- 31 (iii) The landowner is custom processing crops into biofuel from other landowners in the area
- 32 for their use or sale.
- 33 (c) As used in this subsection, "accepted farming practice" means a mode of operation that is
- 34 common to farms of a similar nature, necessary for the operation of such farms to obtain a profit
- 35 in money, and customarily utilized in conjunction with farm use.
- 36 (3) "Cultured Christmas trees" means trees:
- 37 (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive culti-
- 38 vation methods such as plowing or turning over the soil;
- 39 (b) Of a marketable species;
- 40 (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as
- 41 specified by the Agriculture Marketing Services of the United States Department of Agriculture; and
- 42 (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed
- 43 and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and
- 44 disease control, stump culture, soil cultivation, irrigation.
- 45 **NOTE:** Section 37 was deleted. Subsequent sections were not renumbered.

1       **SECTION 38.** ORS 308A.056 is amended to read:

2       308A.056. (1) As used in ORS 308A.050 to 308A.128, “farm use” means the current employment  
3 of land for the primary purpose of obtaining a profit in money by:

4       (a) Raising, harvesting and selling crops.

5       (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees  
6 or the produce thereof.

7       (c) Dairying and selling dairy products.

8       (d) Stabling or training equines, including but not limited to providing riding lessons, training  
9 clinics and schooling shows.

10       (e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal  
11 species to the extent allowed by the rules adopted by the [*State Fish and Wildlife Commission*]

12       **Oregon Natural Resources Commission.**

13       (f) On-site constructing and maintaining equipment and facilities used for the activities described  
14 in this subsection.

15       (g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products  
16 raised for human or animal use on land described in this section.

17       (h) Implementing a remediation plan previously presented to the assessor for the county in  
18 which the land that is the subject of the plan is located.

19       (i) Using land described in this section for any other agricultural or horticultural use or animal  
20 husbandry or any combination thereof.

21       (2) “Farm use” does not include the use of land subject to timber and forestland taxation under  
22 ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land de-  
23 scribed in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber,  
24 including hybrid cottonwood).

25       (3) For purposes of this section, land is currently employed for farm use if the land is:

26       (a) Farmland, the operation or use of which is subject to any farm-related government program;

27       (b) Land lying fallow for one year as a normal and regular requirement of good agricultural  
28 husbandry;

29       (c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of  
30 this subsection, prior to maturity;

31       (d) Land not in an exclusive farm use zone that has not been eligible for assessment at special  
32 farm use value in the year prior to planting the current crop and has been planted in orchards,  
33 cultured Christmas trees or vineyards for at least three years;

34       (e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically  
35 tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that  
36 is not currently being used for any economic farm use;

37       (f) Except for land under a single family dwelling, land under buildings supporting accepted  
38 farming practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r)  
39 and the processing of farm crops into biofuel as commercial activities in conjunction with farm use  
40 under ORS 215.213 (2)(c) and 215.283 (2)(a);

41       (g) Water impoundments lying in or adjacent to and in common ownership with farm use land;

42       (h) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the  
43 owner of land specially valued for farm use even if the land constituting the woodlot is not utilized  
44 in conjunction with farm use;

45       (i) Land lying idle for no more than one year when the absence of farming activity is the result

1 of the illness of the farmer or a member of the farmer’s immediate family, including injury or  
 2 infirmity, regardless of whether the illness results in death;

3 (j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain  
 4 hardwood timber, including hybrid cottonwood);

5 (k) Land used for the primary purpose of obtaining a profit in money by breeding, raising,  
 6 kenneling or training greyhounds for racing;

7 (L) Land subject to a remediation plan previously presented to the assessor for the county in  
 8 which the land that is the subject of the plan is located; or

9 (m) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

10 (i) Only the crops of the landowner are being processed;

11 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm  
 12 of the landowner; or

13 (iii) The landowner is custom processing crops into biofuel from other landowners in the area  
 14 for their use or sale.

15 (4) As used in this section:

16 (a) “Accepted farming practice” means a mode of operation that is common to farms of a similar  
 17 nature, necessary for the operation of these similar farms to obtain a profit in money and custom-  
 18 arily utilized in conjunction with farm use.

19 (b) “Cultured Christmas trees” means trees:

20 (A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cul-  
 21 tivation methods such as plowing or turning over the soil;

22 (B) Of a marketable species;

23 (C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as  
 24 specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

25 (D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed  
 26 and brush control and one or more of the following practices:

27 (i) Basal pruning;

28 (ii) Fertilizing;

29 (iii) Insect and disease control;

30 (iv) Stump culture;

31 (v) Soil cultivation; or

32 (vi) Irrigation.

33 **SECTION 39.** ORS 308A.350 is amended to read:

34 308A.350. As used in ORS 308A.350 to 308A.383:

35 (1) “Owner” means the party or parties having the fee interest in land, except that where land  
 36 is subject to a real estate sales contract, “owner” means the contract vendee under a recorded  
 37 contract.

38 [(2) “Department” means the State Department of Fish and Wildlife.]

39 [(3)] (2) “Designated riparian land” means the beds of streams, the adjacent vegetation commu-  
 40 nities, and the land thereunder, which are predominantly influenced by their association with water,  
 41 not to extend more than 100 feet landward of the line of nonaquatic vegetation, which are privately  
 42 owned and which qualify for exemption under ORS 308A.350 to 308A.383.

43 [(4)] (3) “Urban growth boundary” means an urban growth boundary contained in a city or  
 44 county comprehensive plan that has been acknowledged by the [Land Conservation and Development  
 45 Commission] **Oregon Natural Resources Commission** pursuant to ORS 197.251 or an urban growth

1 boundary that has been adopted by a metropolitan service district council under ORS 268.390 (3).

2 **SECTION 40.** ORS 308A.356 is amended to read:

3 308A.356. An owner of land desiring designation and exemption of that land from ad valorem  
4 taxation as riparian land under ORS 308A.350 to 308A.383 shall make application to the county  
5 assessor upon forms prescribed by the Department of Revenue and supplied by the county assessor.  
6 The owner shall describe the land for which designation as riparian lands is requested and the  
7 current use of the land. The application shall include any other information as is reasonably nec-  
8 essary to properly designate an area of land as riparian land under ORS 308A.350 to 308A.383 with  
9 a verification of the truth thereof. Applications to the county assessor shall be made on or before  
10 December 31 of the calendar year preceding the first tax year for which such designation is re-  
11 quested. The county assessor shall notify the [*State Department of Fish and Wildlife*] **Oregon De-**  
12 **partment of Natural Resources** if a recorded sale or transfer of the land granted exemption under  
13 ORS 308A.350 to 308A.383 occurs for the purpose of determining continued eligibility of the land for  
14 the exemption. The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
15 **sources** shall notify the county assessor in writing of the finding within 120 days after the date the  
16 county assessor's notice is mailed or delivered. Failure of the assessor to notify the [*State Depart-*  
17 *ment of Fish and Wildlife*] **Oregon Department of Natural Resources** shall not prevent the im-  
18 position of the additional tax prescribed by ORS 308A.368 (2).

19 **SECTION 41.** ORS 308A.359 is amended to read:

20 308A.359. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
21 **sources** shall develop standards and criteria for the designation of land as riparian. Upon the re-  
22 ceipt of an application referred to it by the county assessor, the department shall determine if the  
23 land described in the application is qualified for designation as riparian.

24 (2) The **Oregon Department of Natural Resources** shall review riparian management plans  
25 submitted by applicants to assure compliance with the intent of ORS 308A.353. Standards and cri-  
26 teria to be used to determine consistency with the intent of ORS 308A.350 to 308A.383 shall be de-  
27 veloped by the department and shall be reviewed by the department annually. These criteria shall  
28 be in addition to the following provisions limiting participation under ORS 308A.350 to 308A.383:

29 (a)(A) Subject to subparagraph (B) of this paragraph, and except as provided in subparagraph (C)  
30 of this paragraph, only lands planned and zoned as forest or agricultural lands, including rangeland,  
31 in compliance with the statewide planning goals adopted under ORS 197.240 and outside adopted  
32 urban growth boundaries shall qualify.

33 (B) Lands that, as of July 1, 1997, are outside adopted urban growth boundaries and also as of  
34 that date are planned and zoned as forest or agricultural lands, including rangeland, in compliance  
35 with the statewide planning goals adopted under ORS 197.240 qualify, for tax years beginning on or  
36 after July 1, 1998, for riparian designation if [*they*] **the lands** are managed in the manner provided  
37 for designated riparian lands and are otherwise eligible for riparian designation under ORS 308A.350  
38 to 308A.383 even though the lands are no longer outside adopted urban growth boundaries or  
39 planned or zoned as forest or agriculture.

40 (C) Lands within the boundaries of a city and an urban growth boundary, if the city and county  
41 governing bodies have authorized the exemption under ORS 308A.360, may qualify if the lands are  
42 managed in the manner provided for riparian designation under ORS 308A.350 to 308A.383.

43 (b) Land management activities permitted within designated riparian lands shall be consistent  
44 with the intent of ORS 308A.350 to 308A.383.

45 (3) Land that the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**

1 **sources** determines may qualify for designation as riparian shall be approved by the department for  
 2 designation and exemption under ORS 308A.350 to 308A.383 only if the owner of the land has de-  
 3 veloped and implemented, in accordance with the standards adopted under subsections (1) and (2)  
 4 of this section, adequate measures for:

5 (a) The continued protection of the land; or

6 (b) Techniques for rehabilitation of the riparian land and those measures or techniques are ap-  
 7 proved by the department.

8 (4) The **Oregon Department of Natural Resources** may approve the application for designation  
 9 of land as riparian with respect to only part of the land that is the subject of the application, but  
 10 if any part of the application is denied, the applicant may withdraw the entire application.

11 **SECTION 42.** ORS 308A.360 is amended to read:

12 308A.360. (1) Land located within the boundaries of a city and an urban growth boundary is  
 13 exempt from the ad valorem property taxes of the city and county in which the land is located if:

14 (a) The governing bodies of the city and the county in which the land is located have both  
 15 adopted ordinances or resolutions:

16 (A) Permitting the designation of land as riparian land; and

17 (B) If possible, describing how the city or county will provide technical assistance to landowners  
 18 preparing riparian management plans pursuant to ORS 308A.359 and will monitor landowner com-  
 19 pliance with approved plans; and

20 (b) The land qualifies for designation and exemption as riparian land under ORS 308A.350 to  
 21 308A.383.

22 (2) Copies of the authorizing ordinances or resolutions must be given to the county assessor and  
 23 to the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**.

24 **SECTION 43.** ORS 308A.362 is amended to read:

25 308A.362. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
 26 **sources** shall immediately notify the county assessor and the applicant of its approval or disap-  
 27 proval of an application, which shall in no event be later than April 1 of the year following the year  
 28 of receipt of the application. Subject to subsection (2) of this section and the mileage limitation of  
 29 ORS 308A.380, an application not denied by April 1 shall be deemed approved, and the land that is  
 30 the subject of the application shall be considered to be land that qualifies under ORS 308A.359.

31 (2) An application for land described in ORS 308A.359 (2)(a)(B) shall be approved only if filed  
 32 on or before five years after the date the land became land no longer outside adopted urban growth  
 33 boundaries or planned or zoned as forest or agricultural land.

34 (3) An application for land described in ORS 308A.360 (1) may be approved only if ordinances  
 35 or resolutions authorizing the exemption have been adopted by the city and county in which the  
 36 land is located and these ordinances or resolutions are in effect on the date of application.

37 (4) The **Oregon Department of Natural Resources** may not approve more than 50 applications  
 38 for land described in ORS 308A.360 (1) for any tax year. An application that is not approved because  
 39 of the limitation imposed by this subsection shall be held for consideration for the next tax year.

40 (5)(a) When the **Oregon Department of Natural Resources** approves land for designation as  
 41 riparian under ORS 308A.359, [*it*] **the department** shall enter an order of approval and file a copy  
 42 of the order with the county assessor within 10 days. Upon receipt of the order, the county assessor  
 43 shall enter a notation on the assessment roll that the land described in the order is exempt from  
 44 ad valorem taxation.

45 (b) If the land is as described in ORS 308A.360 (1), the exemption shall apply only to the ad



1 valorem property taxes of the city and county that have authorized the exemption.

2 (6) On approval of an application filed under ORS 308A.356, for each year of designation the  
3 assessor shall indicate on the assessment and tax roll that the property is exempt from taxation as  
4 riparian land or, in the case of land described in ORS 308A.360 (1), partially exempt from taxation.  
5 The assessor shall also indicate on the tax roll that the land is subject to potential additional taxes  
6 as provided by ORS 308A.368, by adding the notation “designated riparian land (potential add'l  
7 tax).”

8 (7) Any owner whose application for designation has been denied may appeal to the **Oregon**  
9 **Department of Natural Resources** under the provisions of ORS chapter 183 governing contested  
10 cases.

11 **SECTION 44.** ORS 308A.365 is amended to read:

12 308A.365. (1) When land has once been designated as riparian under ORS 308A.350 to 308A.383,  
13 it shall remain under that designation and it shall not be applied to any use other than those spe-  
14 cifically included in the management plan or consistent with the intent of ORS 308A.350 to 308A.383  
15 unless withdrawn from designation as provided in subsection (2) of this section.

16 (2) During any year after designation, notice of request for withdrawal may be given by the  
17 owner to the county assessor or assessors of the county or counties in which the land is situated.  
18 The county assessor or assessors, as the case may be, shall withdraw such land from designation  
19 as riparian and shall immediately give written notice of the withdrawal to the [*State Department of*  
20 *Fish and Wildlife*] **Oregon Department of Natural Resources**.

21 **SECTION 45.** ORS 308A.368 is amended to read:

22 308A.368. (1) When land that has been designated as exempt from taxation under ORS 308A.350  
23 to 308A.383 as riparian is applied to some use other than that compatible with riparian use, as de-  
24 fined in the management plan, except through compliance with ORS 308A.365 (2), or except as a  
25 result of the exercise of the power of eminent domain, the owner shall within 60 days after the  
26 change in use notify the county assessor of the change in use. The assessor or assessors shall  
27 withdraw the land from designation and immediately give written notice of the withdrawal to the  
28 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**. Thereafter, the  
29 land shall be assessed and taxed as other property similarly situated is assessed and taxed.

30 (2) The assessor, upon discovery of the change in use to a use other than that compatible with  
31 riparian or upon withdrawal by the owner of the land from designation, shall compute an additional  
32 tax equal to the difference between the taxes assessed against the land and the taxes that otherwise  
33 would have been assessed against the land had the land not received exemption for each of the last  
34 five years (or such lesser number of years, corresponding to the number of years of exemption under  
35 ORS 308A.350 to 308A.383 applicable to the property after its most recent change of ownership)  
36 preceding the tax year in which the land was withdrawn from designation.

37 **SECTION 46.** ORS 308A.374 is amended to read:

38 308A.374. (1) The assessor shall at all times be authorized to demand and receive reports by  
39 registered or certified mail from owners of land designated as riparian under ORS 308A.350 to  
40 308A.383 as to the use of the same. If the owner fails, after 90 days' notice in writing by certified  
41 mail to comply with such demand, the assessor shall give written notice to the [*State Department*  
42 *of Fish and Wildlife*] **Oregon Department of Natural Resources** and to the landowner of the  
43 assessor's intention to withdraw the land from designation and apply the payments and penalties  
44 provided in ORS 308A.368 not less than 30 days prior to automatic withdrawal of the riparian land  
45 from designation. If, prior to the expiration of the 30-day period, the landowner fails to file the re-

1 requested report, the assessor immediately shall withdraw the land from designation and apply the  
2 payments and penalties provided in ORS 308A.368.

3 (2) If the assessor has reason to believe that land designated as riparian land no longer qualifies  
4 for designation and special assessment, the assessor shall request the [*State Department of Fish and*  
5 *Wildlife*] **Oregon Department of Natural Resources** to determine if the land continues to qualify.  
6 The request shall be in writing. Upon receipt of the request, the [*State Department of Fish and*  
7 *Wildlife*] **department** shall inspect the property and may take whatever steps are necessary to de-  
8 termine if the land continues to qualify for special assessment. The [*State Department of Fish and*  
9 *Wildlife*] **department** shall notify the assessor of the determination made pursuant to the request  
10 of the assessor within 120 days after the request is received. A determination by the [*State Depart-*  
11 *ment of Fish and Wildlife*] **department** that the property no longer qualifies shall constitute a dis-  
12 covery described in ORS 308A.368 (2).

13 **SECTION 46a.** ORS 308A.380 is amended to read:

14 308A.380. (1)(a) For the tax years beginning prior to July 1, 2004, the **Oregon Department of**  
15 **Natural Resources** may approve for designation as riparian land not more than 200 miles of private  
16 streambank in any county.

17 (b) The land approved for designation as riparian land under this subsection each year shall be  
18 in addition to, and not restricted by, the approval of designation of land as riparian during the  
19 previous year. However, the department may, in addition, approve for designation as riparian land  
20 each year an amount of land equal to the amount of land withdrawn from, or disqualified for, des-  
21 ignation as riparian land during the previous year, and, an amount of land equal to the difference  
22 between the amount of land approved for designation as riparian land during the previous years and  
23 the maximum established under paragraph (a) of this subsection.

24 (2) If the **Oregon Department of Natural Resources** receives applications for designation of  
25 land as riparian in excess of the maximum established under subsection (1) of this section, prefer-  
26 ence shall be afforded according to the date the application was filed with the county assessor.  
27 Applications which are not approved because the maximum has been reached shall be held for con-  
28 sideration for approval for the next tax year.

29 **SECTION 47.** ORS 308A.383 is amended to read:

30 308A.383. The Department of Revenue and the [*State Department of Fish and Wildlife*] **Oregon**  
31 **Department of Natural Resources** shall make such rules consistent with ORS 308A.350 to  
32 308A.383 as may be necessary or desirable to permit its effective administration.

33 **SECTION 48.** ORS 308A.406 is amended to read:

34 308A.406. As used in ORS 308A.403 to 308A.430:

35 (1) "Cooperating agency" means the [*State Department of Fish and Wildlife*] **Oregon Depart-**  
36 **ment of Natural Resources**, the United States Fish and Wildlife Service, the Natural Resources  
37 Conservation Service of the United States Department of Agriculture, the Oregon State University  
38 Extension Service or other persons with wildlife habitat conservation and management training  
39 considered appropriate for the preparation of a wildlife habitat conservation and management plan,  
40 as established by rules adopted by the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
41 **sources Commission** under ORS 308A.409.

42 [(2) "*Department*" means the *State Department of Fish and Wildlife*.]

43 [(3)] (2) "Lot" has the meaning given that term in ORS 92.010.

44 [(4)] (3) "Parcel" has the meaning given that term in ORS 215.010.

45 [(5)] (4) "Wildlife habitat conservation and management plan" or "plan" means a plan developed

1 by a cooperating agency and landowner that specifies the conservation and management practices,  
 2 including farm and forest uses consistent with the overall intent of the plan, that will be conducted  
 3 to preserve and improve wildlife habitat on an affected lot or parcel.

4 **SECTION 49.** ORS 308A.409 is amended to read:

5 308A.409. (1)(a) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
 6 **mission** shall adopt rules specifying the form and content of a wildlife habitat conservation and  
 7 management plan that is sufficient for land that is subject to the plan to be specially assessed under  
 8 ORS 308A.403 to 308A.430.

9 (b) The rules adopted pursuant to this section shall:

10 (A) Specify the conservation and management practices that are appropriate to preserve and  
 11 enhance wildlife common to the diverse regions of this state; and

12 (B) Specify that wildlife habitat conservation and management plans may include those efforts  
 13 that improve water quality, protect and restore fish and wildlife habitats, recover threatened or  
 14 endangered species, enhance streamflows and maintain or restore long-term ecological health, di-  
 15 versity and productivity on a broad geographic scale.

16 (2) Under rules adopted pursuant to this section, the commission shall allow:

17 (a) Accepted agricultural and forestry practices as an integral part of the wildlife habitat con-  
 18 servation and management practices specified in an approved plan; and

19 (b) The lease or sale of in-stream water rights as an integral part of the wildlife habitat con-  
 20 servation and management practices specified in an approved plan.

21 (3) The rules shall be reviewed periodically by the commission and revised when considered  
 22 necessary or appropriate by the commission.

23 **SECTION 50.** ORS 308A.412 is amended to read:

24 308A.412. (1) An owner of land described in ORS 308A.415 who seeks special assessment under  
 25 ORS 308A.403 to 308A.430 shall first submit a proposed wildlife habitat conservation and manage-  
 26 ment plan to the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
 27 **sources** for review.

28 (2) The **Oregon Department of Natural Resources** shall review each submitted plan for com-  
 29 pliance with the standards set forth in the rules adopted under ORS 308A.409 and shall determine  
 30 if the plan is being implemented.

31 (3) Upon completing a review of a proposed plan and determining that the plan is in compliance  
 32 with the standards set forth in the rules adopted under ORS 308A.409 and is being implemented, the  
 33 **Oregon Department of Natural Resources** shall issue to the landowner a written declaration that  
 34 the land is subject to a wildlife habitat conservation and management plan approved by the depart-  
 35 ment and that the landowner has begun implementing the plan.

36 (4) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may es-  
 37 tablish by rule a limit on the number of plans that may be approved in each calendar year. An ap-  
 38 plication that is not approved because the maximum number of plans for a year has already been  
 39 approved shall be held for consideration for approval for the next year.

40 **SECTION 51.** ORS 308A.415 is amended to read:

41 308A.415. (1) At the request of the governing body of a county, the [*State Fish and Wildlife*  
 42 *Commission*] **Oregon Natural Resources Commission** may designate the following land in  
 43 unincorporated areas within the county as eligible for wildlife habitat special assessment:

44 (a) Any land that is zoned for exclusive farm use, mixed farm and forest use or forest use under  
 45 a land use planning goal protecting agricultural land or forestland; or

1 (b) Land that is clearly identifiable as containing significant wildlife habitat.

2 (2) At the request of the governing body of a city, the commission may designate the following  
3 land within the city as eligible for wildlife habitat special assessment:

4 (a) Any land that is zoned for exclusive farm use, mixed farm and forest use or forest use under  
5 a land use planning goal protecting agricultural land or forestland; or

6 (b) Land that is clearly identifiable as containing significant wildlife habitat.

7 (3) With the prior consent of the governing body of a city, the county in which all or a part of  
8 the city is located may apply to the commission on behalf of the city for designation of any area that  
9 is within both the city and the county as eligible for wildlife habitat special assessment.

10 (4) The commission may designate land described in subsection (1) or (2) of this section as eli-  
11 gible for wildlife habitat special assessment only if the commission finds:

12 (a) That designation will promote the findings in ORS 308A.400 and the policy in ORS 308A.403;  
13 and

14 (b) That the land described in subsection (1) or (2) of this section is of the nature and quality  
15 to allow for implementation of wildlife habitat conservation and management plans approved under  
16 rules adopted pursuant to ORS 308A.409.

17 (5) Land may not qualify for wildlife habitat special assessment under ORS 308A.424 unless the  
18 commission has determined that the land is eligible for wildlife habitat special assessment under this  
19 section.

20 **SECTION 52.** ORS 308A.418 is amended to read:

21 308A.418. (1) The governing body of the city or county that requested designation under ORS  
22 308A.415 may request that the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
23 **Commission** remove that designation.

24 (2) The commission shall remove the designation if:

25 (a) The city or county demonstrates that the designation creates an economic burden for the  
26 city or county; and

27 (b) The commission finds that the economic burden is significant.

28 (3) In making its determination under subsection (2) of this section, the commission shall give  
29 significant weight to the demonstration of economic burden made by the city or county.

30 **SECTION 53.** ORS 308A.421 is amended to read:

31 308A.421. A determination by the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
32 **sources Commission** to designate land as eligible for wildlife habitat special assessment under ORS  
33 308A.415 or to remove that designation under ORS 308A.418 shall for property tax purposes be ef-  
34 fective as of the tax year beginning the July 1 immediately following the determination.

35 **SECTION 54.** ORS 308A.424 is amended to read:

36 308A.424. (1) When a wildlife habitat conservation and management plan is approved by the  
37 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** and is being  
38 implemented, the owner of the land subject to the plan may apply to the county assessor to receive  
39 wildlife habitat special assessment.

40 (2) Application shall be made to the county assessor on forms prepared by the Department of  
41 Revenue and supplied by the county assessor.

42 (3) Applications for wildlife habitat special assessment shall be made to the county assessor on  
43 or before April 1 of the first assessment year for which the assessment is desired. The application  
44 shall include:

45 (a) A copy of the wildlife habitat conservation and management plan.

1 (b) A certified copy of the declaration described in ORS 308A.412 (3).

2 (c) A description of the land that is the subject of the application that is sufficient for the  
3 county assessor to determine whether the land for which wildlife habitat special assessment is  
4 sought is within an area eligible for wildlife habitat special assessment.

5 (d) A statement that the applicant is aware of the potential tax liability that arises under ORS  
6 308A.703 upon disqualification from wildlife habitat special assessment.

7 (e) An affirmation that the statements contained in the application are true.

8 (4) An application to the county assessor shall be deemed approved unless, before August 15 of  
9 the year in which the application was filed, the assessor notifies the applicant in writing that the  
10 application has been wholly or partially denied.

11 (5) Whether land that is subject to a wildlife habitat conservation and management plan quali-  
12 fies for special assessment under this section shall be determined as of January 1 of the assessment  
13 year. If land so qualified becomes disqualified prior to July 1 of the same assessment year, the land  
14 shall be valued under ORS 308.232 at its real market value as defined by law without regard to this  
15 section and shall be assessed at its assessed value under ORS 308.146 or as otherwise provided by  
16 law. If the land becomes disqualified on or after July 1, the land shall continue to qualify for special  
17 assessment as provided in this section for the current tax year.

18 **SECTION 55.** ORS 308A.430 is amended to read:

19 308A.430. (1) Land subject to a wildlife habitat conservation and management plan shall be in-  
20 spected by the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
21 periodically to ensure that the land is managed in accordance with the plan. If the plan is not being  
22 implemented as approved, the department shall notify the landowner and require compliance meas-  
23 ures to be taken within six months. If the plan is still not being implemented as required by the  
24 department at the end of the six-month period, the department shall notify the county assessor that  
25 the plan is not being implemented as approved.

26 (2) The county assessor shall disqualify the land from wildlife habitat special assessment upon:

27 (a) Notice from the **Oregon Department of Natural Resources** as described in subsection (1)  
28 of this section;

29 (b) Notice of request by the landowner for withdrawal of the land from wildlife habitat special  
30 assessment;

31 (c) Sale or transfer to an ownership making the land exempt from ad valorem property taxation;

32 (d) The land qualifying for another special assessment listed in ORS 308A.703 (1); or

33 (e) The act of recording a subdivision plat under ORS chapter 92.

34 (3) If, pursuant to subsection (2)(e) of this section, the county assessor disqualifies land for  
35 wildlife habitat special assessment upon the act of recording a subdivision plat, the land may re-  
36 qualify for wildlife habitat special assessment upon:

37 (a) Payment of all additional tax and interest that remains due and owing as a result of the  
38 disqualification;

39 (b) Compliance with ORS 308A.403 to 308A.430; and

40 (c) Submission of an application for wildlife habitat special assessment under ORS 308A.424 and  
41 approval of the application by the county assessor.

42 (4) Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to  
43 308A.733.

44 **SECTION 56.** ORS 308A.709 is amended to read:

45 308A.709. Notwithstanding that land may have been disqualified from special assessment, no

1 additional taxes may be imposed under ORS 308A.703 if, as of the date the disqualification is taken  
 2 into account on the assessment and tax roll, the land is any of the following:

3 (1) Acquired by a governmental agency as a result of the lawful exercise of the power of eminent  
 4 domain or the threat or imminence thereof.

5 (2) Acquired by purchase, agreement or donation under ORS 390.121 (relating to [*State Parks*  
 6 *and Recreation Commission*] acquisitions **by the Oregon Natural Resources Commission**).

7 (3) Acquired by a city, county, metropolitan service district created under ORS chapter 268 or  
 8 park and recreation district organized under ORS chapter 266 for public recreational purposes or  
 9 for the preservation of scenic or historic places.

10 (4) Acquired for wildlife management purposes under ORS 496.146.

11 (5) Public property that was leased or rented to a taxable owner as described in ORS 307.110  
 12 at the time of disqualification, and the reason for the disqualification was the termination of the  
 13 lease under which the land was assessed.

14 (6) Land that ceases to be located within the boundaries of an exclusive farm use zone as the  
 15 result of a change in the boundaries of the zone or removal of the zone following an action by the  
 16 governing body of the county or city that:

17 (a) Was not requested or initiated by the owner of the land; or

18 (b) Was requested by[.] **the Oregon Department of Natural Resources for public park pur-**  
 19 **poses under ORS 390.121 or wildlife management purposes under ORS 496.146.**

20 [(A) *The State Parks and Recreation Department for public park purposes under ORS 390.121;*  
 21 *or*]

22 [(B) *The State Fish and Wildlife Commission for wildlife management purposes under ORS*  
 23 *496.146.*]

24 (7) Forestland acquired by a federal, state or local governmental agency. In the case of an ac-  
 25 quisition described in this subsection, a lien for additional taxes and interest may not attach on the  
 26 day preceding the day of transfer of the forestland to the governmental agency.

27 **SECTION 57.** ORS 308A.743 is amended to read:

28 308A.743. (1) Land that is specially assessed under ORS 308A.050 to 308A.128, 308A.300 to  
 29 308A.330, 308A.403 to 308A.430, 308A.450 to 308A.465, 321.257 to 321.390, 321.700 to 321.754 or  
 30 321.805 to 321.855, or land that is exempt from property tax under ORS 308A.350 to 308A.383, may  
 31 not be disqualified from the special assessment or exemption, and may not be subject to additional  
 32 taxes under ORS 308A.700 to 308A.733 or other law, if the property owner has:

33 (a) Entered into a wildlife habitat conservation and management plan, as described in ORS  
 34 308A.403 to 308A.430, approved by the [*State Department of Fish and Wildlife*] **Oregon Department**  
 35 **of Natural Resources**; or

36 (b) Executed a conservation easement, as defined in ORS 271.715, or a deed restriction and the  
 37 land:

38 (A) Is managed in compliance with the conservation easement or deed restriction; and

39 (B) Continues to meet the requirements for special assessment or exemption. The existence of  
 40 the conservation easement or deed restriction may not cause the disqualification of the land from  
 41 special assessment or exemption or preclude the disqualification of the land from special assessment  
 42 or exemption for some other reason.

43 (2) A property owner who executes a conservation easement may convey the easement to a land  
 44 trust or other qualified entity without a loss of benefits under this section.

45 (3) In order for land to be subject to this section:

1 (a) The conservation easement, deed restriction or wildlife habitat conservation and management  
2 plan must be recorded in the records of the clerk of the county in which the land is located; and

3 (b) A copy of the conservation easement, deed restriction or wildlife habitat conservation and  
4 management plan, along with the property tax account number for the land, must be sent to the  
5 county assessor.

6 **NOTE:** Section 58 was deleted. Subsequent sections were not renumbered.

7 **SECTION 59.** ORS 315.138 is amended to read:

8 315.138. (1) There shall be allowed a credit against tax due under ORS chapter 316, or if the  
9 taxpayer is a corporation, under ORS chapter 317, for taxpayers that install screening devices, by-  
10 pass devices or fishways, pursuant to ORS 498.306 or 509.585, and the diversion is not part of a  
11 hydroelectric project required to be licensed under the Federal Energy Regulatory Commission.  
12 Except as allowed in subsection (4) of this section, the credit shall be taken in the tax year in which  
13 the final certification is issued under subsection (10) of this section.

14 (2) The credit shall be equal to 50 percent of the taxpayer's net certified costs of installing a  
15 screening device, by-pass device or fishway. The total credit allowed shall not exceed \$5,000 per  
16 device installed.

17 (3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

18 (4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in  
19 a particular tax year may be carried forward and offset against the taxpayer's tax liability for the  
20 next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be  
21 carried forward and used in the second succeeding tax year. Any credit remaining unused in such  
22 second succeeding tax year may be carried forward and used in the third succeeding tax year. Any  
23 credit remaining unused in such third succeeding tax year may be carried forward and used in the  
24 fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may  
25 be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year  
26 thereafter.

27 (5) The credit provided by this section shall be in addition to and not in lieu of any depreciation  
28 or amortization deduction to which the taxpayer otherwise may be entitled with respect to the in-  
29 stallation of a screening device, by-pass device or fishway. The taxpayer's adjusted basis for de-  
30 termining gain or loss shall not be further decreased by any tax credits allowed under this section.

31 (6) In the case of a credit allowed under this section for purposes of ORS chapter 316:

32 (a) A nonresident shall be allowed the credit in the same manner and subject to the same limi-  
33 tations as a resident. However, the credit shall be prorated using the proportion provided in ORS  
34 316.117.

35 (b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the  
36 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-  
37 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

38 (c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to  
39 resident occurs, the credit allowed by this section shall be determined in a manner consistent with  
40 ORS 316.117.

41 (7) To qualify for the credit the taxpayer must be issued a certificate by the [*State Department*  
42 *of Fish and Wildlife*] **Oregon Department of Natural Resources**.

43 (8) To obtain credit under subsection (1) of this section, any person proposing to apply for cer-  
44 tification of a screening device, by-pass device or fishway, before installing the screening device,  
45 by-pass device or fishway, shall file a request for preliminary certification with the [*State Department*

1 of Fish and Wildlife] **Oregon Department of Natural Resources**. The request shall be in a form  
2 prescribed by the [State Department of Fish and Wildlife] **department**. The following conditions shall  
3 apply:

4 (a) Within 30 days of the receipt of a request for preliminary certification, the [State Department  
5 of Fish and Wildlife] **department** may require, as a condition precedent to issuance of a preliminary  
6 certificate of approval, the submission of plans and specifications. After examination thereof, the  
7 [State Department of Fish and Wildlife] **department** may request corrections and revisions to the  
8 plans and specifications. The [State Department of Fish and Wildlife] **department** may also require  
9 any pertinent information necessary to determine whether the proposed screening device, by-pass  
10 device or fishway is in accordance with [State Department of Fish and Wildlife] **department** re-  
11 quirements.

12 (b) If the [State Department of Fish and Wildlife] **department** determines that the proposed  
13 screening device, by-pass device or fishway is in accordance with [State Department of Fish and  
14 Wildlife] **department** requirements, [it] **the department** shall issue a preliminary certificate ap-  
15 proving the screening device, by-pass device or fishway. If the [State Department of Fish and  
16 Wildlife] **department** determines that the screening device, by-pass device or fishway does not  
17 comply with [State Department of Fish and Wildlife] **department** requirements, the [State Department  
18 of Fish and Wildlife] **department** shall issue an order denying certification.

19 (c) If within 90 days of the receipt of plans, specifications or any subsequently requested re-  
20 visions or corrections to the plans and specifications or any other information required pursuant to  
21 this section, the [State Department of Fish and Wildlife] **department** fails to issue a preliminary  
22 certificate of approval and the [State Department of Fish and Wildlife] **department** fails to issue an  
23 order denying certification, the preliminary certificate shall be considered to have been issued. The  
24 capital investment must comply with the plans, specifications and any corrections or revisions  
25 thereto, if any, previously submitted.

26 (d) Within 30 days from the date of mailing of the order, any person against whom an order is  
27 directed pursuant to paragraph (b) of this subsection may demand a hearing. The demand shall be  
28 in writing, shall state the grounds for hearing and shall be mailed to the [State Fish and Wildlife  
29 Director] **Director of the Oregon Department of Natural Resources**. The hearing shall be con-  
30 ducted in accordance with the applicable provisions of ORS chapter 183.

31 (9) A screening device, by-pass device or fishway that is installed by the [State Department of  
32 Fish and Wildlife] **Oregon Department of Natural Resources** pursuant to ORS 498.306 (8) in re-  
33 sponse to noncompliance by the person responsible for the water diversion is not eligible for the  
34 credit provided in subsection (1) of this section.

35 (10) Upon completion and pursuant to application for final certification, final certification shall  
36 be issued by the [State Department of Fish and Wildlife] **Oregon Department of Natural Re-  
37 sources** if the screening device, by-pass device or fishway was constructed and installed in accord-  
38 ance with [State Department of Fish and Wildlife] **department** requirements. Final certification shall  
39 include a statement of the costs of installation as verified by the [State Department of Fish and  
40 Wildlife] **department**. The credit allowed under this section shall be claimed first for the tax year  
41 of the taxpayer in which final certification is issued.

42 (11) Pursuant to the procedures for a contested case under ORS chapter 183, the [State Depart-  
43 ment of Fish and Wildlife] **Oregon Department of Natural Resources** may order the revocation  
44 of the certificate issued under this section of any taxpayer, if [it] **the department** finds that:

45 (a) The certificate was obtained by fraud or misrepresentation; or



1 (b) The holder of the certificate fails to meet [*State Department of Fish and Wildlife*] **depart-**  
2 **ment** requirements.

3 (12) As soon as the order of revocation under this section has become final the [*State Department*  
4 *of Fish and Wildlife*] **Oregon Department of Natural Resources** shall notify the Department of  
5 Revenue of such order.

6 (13) If the certificate of a screening device, by-pass device or fishway is ordered revoked pur-  
7 suant to subsection (11) of this section, all prior tax relief provided to the holder of the certificate  
8 by virtue of the certificate shall be forfeited and the Department of Revenue shall proceed to collect  
9 those taxes not paid by the certificate holder as a result of the tax relief provided to the holder.

10 (14) If the certificate of a screening device, by-pass device or fishway is ordered revoked pur-  
11 suant to subsection (11) of this section, the certificate holder shall be denied any further relief  
12 provided under this section in connection with the screening device, by-pass device or fishway, as  
13 the case may be, from and after the date that the order of revocation becomes final.

14 (15) In the event that the screening device, by-pass device or fishway is destroyed by flood, na-  
15 tural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless  
16 claim the credit as if no destruction had taken place.

17 (16) Screening devices, by-pass devices or fishways that are financed by funds obtained from the  
18 Water Development Fund, pursuant to ORS 541.700 to 541.855, shall not be eligible for the credit  
19 under any circumstances.

20 (17) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
21 shall adopt rules for carrying out the provisions of this section and report to the interim committee  
22 created under ORS 171.605 to 171.640 to make studies of and inquiries into state revenue matters.

23 **SECTION 60.** ORS 316.045 is amended to read:

24 316.045. (1) As used in this section:

25 (a) "Farming" means:

26 (A) Raising, harvesting and selling crops;

27 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees  
28 or the produce thereof;

29 (C) Dairying and selling dairy products;

30 (D) Stabling or training equines, including but not limited to providing riding lessons, training  
31 clinics and schooling shows;

32 (E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal  
33 species to the extent allowed by the rules adopted by the [*State Fish and Wildlife Commission*]

34 **Oregon Natural Resources Commission;**

35 (F) On-site constructing and maintaining equipment and facilities used for the activities de-  
36 scribed in this subsection;

37 (G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products  
38 raised for human or animal use on land employed in activities described in this subsection; or

39 (H) Any other agricultural or horticultural activity or animal husbandry, or any combination  
40 of these activities, except that "farming" does not include growing and harvesting trees of a  
41 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood  
42 timber described in ORS 321.267 (3) or 321.824 (3).

43 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue  
44 Code.

45 (2) Notwithstanding ORS 316.037, taxable income that consists of net long-term capital gain shall

1 be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

2 (a) The gain is:

3 (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a  
4 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned  
5 at least a 10 percent ownership interest; or

6 (B) Section 1231 gain.

7 (b) The property that was sold or exchanged consisted of:

8 (A) Ownership interests in a corporation, partnership or other entity that is engaged in the  
9 trade or business of farming; or

10 (B) Property that is predominantly used in the trade or business of farming.

11 (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of  
12 the Internal Revenue Code.

13 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's  
14 ownership interests in a trade or business that is engaged in farming or a substantially complete  
15 termination of all of the taxpayer's ownership interests in property that is employed in the trade  
16 or business of farming. Ownership of a farm dwelling or farm homesite does not constitute owner-  
17 ship of property employed in the trade or business of farming.

18 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of  
19 property described in subsection (2)(b) of this section and in part from the sale or exchange of all  
20 other property, the net long-term capital gain that is subject to tax under this section shall be de-  
21 termined as follows:

22 (a) Compute the net long-term capital gain derived from all property described in subsection  
23 (2)(b) of this section that was sold or exchanged during the tax year.

24 (b) Compute the net capital gain or loss from the sale or exchange of all other property during  
25 the tax year.

26 (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the  
27 gain that is subject to tax under subsection (2) of this section shall be the amount determined under  
28 paragraph (a) of this subsection.

29 (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain  
30 that is subject to tax under subsection (2) of this section shall be the amount determined under  
31 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

32 **SECTION 61.** ORS 317.063 is amended to read:

33 317.063. (1) As used in this section:

34 (a) "Farming" means:

35 (A) Raising, harvesting and selling crops;

36 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees  
37 or the produce thereof;

38 (C) Dairying and selling dairy products;

39 (D) Stabling or training equines, including but not limited to providing riding lessons, training  
40 clinics and schooling shows;

41 (E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal  
42 species to the extent allowed by the rules adopted by the [*State Fish and Wildlife Commission*]

43 **Oregon Natural Resources Commission;**

44 (F) On-site constructing and maintaining equipment and facilities used for the activities de-  
45 scribed in this subsection;

1 (G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products  
2 raised for human or animal use on land employed in activities described in this subsection; or

3 (H) Any other agricultural or horticultural activity or animal husbandry, or any combination  
4 of these activities, except that “farming” does not include growing and harvesting trees of a  
5 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood  
6 timber described in ORS 321.267 (3) or 321.824 (3).

7 (b) “Section 1231 gain” has the meaning given that term in section 1231 of the Internal Revenue  
8 Code.

9 (2) Notwithstanding ORS 317.061, taxable income that consists of net long-term capital gain shall  
10 be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

11 (a) The gain is:

12 (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a  
13 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned  
14 at least a 10 percent ownership interest; or

15 (B) Section 1231 gain.

16 (b) The property that was sold or exchanged consisted of:

17 (A) Ownership interests in a corporation, partnership or other entity that is engaged in the  
18 trade or business of farming; or

19 (B) Property that is predominantly used in the trade or business of farming.

20 (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of  
21 the Internal Revenue Code.

22 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer’s  
23 ownership interests in a trade or business that is engaged in farming or a substantially complete  
24 termination of all of the taxpayer’s ownership interests in property that is employed in the trade  
25 or business of farming.

26 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of  
27 property described in subsection (2)(b) of this section and in part from the sale or exchange of all  
28 other property, the net long-term capital gain that is subject to tax under this section shall be de-  
29 termined as follows:

30 (a) Compute the net long-term capital gain derived from all property described in subsection  
31 (2)(b) of this section that was sold or exchanged during the tax year.

32 (b) Compute the net capital gain or loss from the sale or exchange of all other property during  
33 the tax year.

34 (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the  
35 gain that is subject to tax under subsection (2) of this section shall be the amount determined under  
36 paragraph (a) of this subsection.

37 (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain  
38 that is subject to tax under subsection (2) of this section shall be the amount determined under  
39 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

40 **SECTION 62.** ORS 419A.260 is amended to read:

41 419A.260. (1) As used in this section and ORS 419A.262:

42 (a) “Contact” means any instance in which a person’s act or behavior, or alleged act or behav-  
43 ior, which could result in a juvenile court’s assumption of jurisdiction under ORS 419B.100 (1)(a) to  
44 (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this sub-  
45 section.

1 (b) "Expunction" means:

2 (A) The removal and destruction or sealing of a judgment or order related to a contact and all  
3 records and references; and

4 (B) Where a record is kept by the Department of Human Services or the Oregon Youth Au-  
5 thority, either the sealing of such record by the department or the Oregon Youth Authority or, in  
6 a multiperson file, the affixing to the front of the file, by the department or the youth authority, a  
7 stamp or statement identifying the name of the individual, the date of expunction and instruction  
8 that no further reference shall be made to the material that is subject to the expunction order ex-  
9 cept upon an order of a court of competent jurisdiction.

10 (c) "Person" includes a person under 18 years of age.

11 (d) "Record" includes a fingerprint or photograph file, report, exhibit or other material which  
12 contains information relating to a person's contact with any law enforcement agency or juvenile  
13 court or juvenile department and is kept manually, through the use of electronic data processing  
14 equipment, or by any other means by a law enforcement or public investigative agency, a juvenile  
15 court or juvenile department or an agency of the State of Oregon. "Record" does not include:

16 (A) A transcript of a student's Youth Corrections Education Program academic record;

17 (B) Material on file with a public agency which is necessary for obtaining federal financial  
18 participation regarding financial assistance or services on behalf of a person who has had a contact;

19 (C) Records kept or disseminated by the Department of Transportation, State Marine Board and  
20 [State Fish and Wildlife Commission] **Oregon Natural Resources Commission** pursuant to juvenile  
21 or adult order or recommendation;

22 (D) Police and court records related to an order of waiver where the matter is still pending in  
23 the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

24 (E) Records related to a support obligation;

25 (F) Medical records;

26 (G) Records of a proposed or adjudicated termination of parental rights and adoptions;

27 (H) Any law enforcement record of a person who currently does not qualify for expunction or  
28 of current investigations or cases waived to the adult court;

29 (I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;

30 (J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be  
31 within the jurisdiction of the court based upon the person's commission of an act which if done by  
32 an adult would constitute one of the following offenses:

33 (i) Aggravated murder under ORS 163.095;

34 (ii) Murder under ORS 163.115;

35 (iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;

36 (iv) Manslaughter in the first degree under ORS 163.118;

37 (v) Manslaughter in the second degree under ORS 163.125;

38 (vi) Criminally negligent homicide under ORS 163.145;

39 (vii) Assault in the first degree under ORS 163.185;

40 (viii) Criminal mistreatment in the first degree under ORS 163.205;

41 (ix) Kidnapping in the first degree under ORS 163.235;

42 (x) Rape in the third degree under ORS 163.355;

43 (xi) Rape in the second degree under ORS 163.365;

44 (xii) Rape in the first degree under ORS 163.375;

45 (xiii) Sodomy in the third degree under ORS 163.385;

- 1 (xiv) Sodomy in the second degree under ORS 163.395;
- 2 (xv) Sodomy in the first degree under ORS 163.405;
- 3 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 4 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 5 (xviii) Sexual abuse in the third degree under ORS 163.415;
- 6 (xix) Sexual abuse in the second degree under ORS 163.425;
- 7 (xx) Sexual abuse in the first degree under ORS 163.427;
- 8 (xxi) Promoting prostitution under ORS 167.012;
- 9 (xxii) Compelling prostitution under ORS 167.017;
- 10 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;
- 11 (xxiv) Aggravated vehicular homicide under ORS 163.149; or
- 12 (xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the
- 13 second degree and criminally negligent homicide;

14 (K) Blood samples, buccal samples and other physical evidence and identification information  
 15 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,  
 16 181.085 or 419C.473; or

17 (L) Records maintained in the Law Enforcement Data System under ORS 181.592.

18 (e) "Termination" means:

19 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,  
 20 the final disposition of a case by informal means, by a decision not to place the person on probation  
 21 or make the person a ward of the court after the person has been found to be within the court's  
 22 jurisdiction, or by a discontinuance of probation or of the court's wardship.

23 (B) For a person who is the subject of a record kept by a law enforcement or public investi-  
 24 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final  
 25 disposition of the person's most recent contact with a law enforcement agency.

26 (2) The juvenile court or juvenile department shall make reasonable effort to provide written  
 27 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or  
 28 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's  
 29 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the  
 30 legal effect of an expunction order and the procedures for seeking relief from the duty to report as  
 31 a sex offender provided under ORS 181.823, at the following times:

32 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-  
 33 ment;

34 (b) At the time of termination;

35 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile  
 36 department or motion on a juvenile court; and

37 (d) At the time of notice of execution of an expunction order.

38 **SECTION 63.** ORS 452.140 is amended to read:

39 452.140. The board of trustees of a district:

40 (1) May not apply pesticides to waters in the district that are frequented by waterfowl or that  
 41 contain any game fish without obtaining annual approval [*of the State Fish and Wildlife*  
 42 *Commission*] **from the Oregon Natural Resources Commission.**

43 (2) May not apply pesticides for public health vectors without first obtaining approval [*of the*  
 44 *State Fish and Wildlife Commission*] **from the commission.**

45 **SECTION 64.** ORS 452.245 is amended to read:

1 452.245. In exercising its powers under ORS 452.210 to 452.250, a county court:

2 (1) May not order the application of pesticides to waters in the county that are frequented by  
3 waterfowl or that contain any game fish without obtaining annual approval [*of the State Fish and*  
4 *Wildlife Commission*] **from the Oregon Natural Resources Commission.**

5 (2) May not order the application of pesticides for public health vectors without first obtaining  
6 the approval [*of the State Fish and Wildlife Commission*] **from the commission.**

7 **SECTION 65.** ORS 468B.060 is amended to read:

8 468B.060. (1) Where the injury, death, contamination or destruction of fish or other wildlife or  
9 injury or destruction of fish or wildlife habitat results from pollution or from any violation of the  
10 conditions set forth in any permit or of the orders or rules of the Environmental Quality Commis-  
11 sion, the person responsible for the injury, death, contamination or destruction shall be strictly lia-  
12 ble to the state for the value of the fish or wildlife so injured or destroyed and for all costs of  
13 restoring fish and wildlife production in the affected areas, including habitat restoration.

14 (2) In addition to the penalties provided for by law, the state may seek recovery of such damages  
15 in any court of competent jurisdiction in this state if the person responsible under subsection (1)  
16 of this section fails or refuses to pay for the value of the fish or wildlife so destroyed and for all  
17 costs of restoring fish and wildlife production in the affected areas, including habitat restoration,  
18 within a period of 60 days from the date of mailing by registered or certified mail of written demand  
19 therefor.

20 (3) Any action or suit for the recovery of damages described in subsection (1) of this section  
21 shall be brought in the name of the State of Oregon upon relation of the Department of Environ-  
22 mental Quality or [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
23 **sources** or the Attorney General. Amounts recovered under this section shall be paid to the state  
24 agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages  
25 were recovered.

26 **SECTION 66.** ORS 468B.090 is amended to read:

27 468B.090. (1) The Department of Environmental Quality may issue a permit to discharge shrimp  
28 and crab processing by-products into the waters of an Oregon estuary under ORS 468B.050 or  
29 468B.053 for the purpose of enhancing aquatic life production. The permit shall impose the following  
30 conditions:

31 (a) No toxic substances shall be present in the by-products discharged.

32 (b) The oxygen content of the estuarine waters shall not be reduced.

33 (c) The discharge shall not create a public nuisance.

34 (d) Other beneficial uses of the estuary shall not be adversely affected.

35 (2) The [*department shall consult the State Department of Fish and Wildlife*] **Department of**  
36 **Environmental Quality shall consult with the Oregon Department of Natural Resources** and  
37 obtain its approval before issuing a permit under this section.

38 **SECTION 67.** ORS 468B.400 is amended to read:

39 468B.400. The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
40 **sources** shall develop and implement a program to provide wildlife rescue training for volunteers.  
41 In developing the program, the [*State Department of Fish and Wildlife*] **department** shall:

42 (1) Work with agencies responsible for wildlife protection in other west coast states;

43 (2) Rely upon the oil wildlife rehabilitation plan developed under ORS 468B.495; and

44 (3) Take such action as is required for reimbursement in accordance with the provisions of the  
45 federal Oil Pollution Act of 1990 (P.L. 101-380).

1        **SECTION 68.** ORS 468B.450 is amended to read:

2        468B.450. (1) Any person who willfully or negligently causes or permits the discharge of oil into  
3 the waters of the state shall incur, in addition to any other penalty provided by law, a civil penalty  
4 commensurate with the amount of damage incurred. The amount of the penalty shall be determined  
5 by the Director of the Department of Environmental Quality with the advice of the [*State Fish and*  
6 *Wildlife Director*] **Director of the Oregon Department of Natural Resources** after taking into  
7 consideration the gravity of the violation, the previous record of the violator in complying, or failing  
8 to comply, with the provisions of ORS 468B.450 to 468B.460, and such other considerations as the  
9 Director **of the Department of Environmental Quality** considers appropriate. The penalty pro-  
10 vided for in this subsection shall be imposed and enforced in accordance with ORS 468.135.

11        (2) The director may, upon written application therefor received within 15 days after receipt of  
12 notice under ORS 468.135, and when considered in the best interest of this state in carrying out the  
13 purposes of ORS chapters 468, 468A and 468B, remit or mitigate any penalty provided for in sub-  
14 section (1) of this section or discontinue any prosecution to recover the same upon such terms as  
15 the director in the director's discretion considers proper.

16        **SECTION 69.** ORS 496.004 is amended to read:

17        496.004. As used in the wildlife laws, unless the context requires otherwise:

18        (1) "Angle" means to take or attempt to take a fish for personal use by means involving hook  
19 and line.

20        [(2) "*Commission*" means the *State Fish and Wildlife Commission* created by ORS 496.090.]

21        [(3)] (2) "Compatible" means capable of existing in harmony so as to minimize conflict.

22        [(4) "*Department*" means the *State Department of Fish and Wildlife* created by ORS 496.080.]

23        [(5) "*Director*" means the *State Fish and Wildlife Director* appointed pursuant to ORS 496.112.]

24        [(6)] (3) "Endangered species" means:

25        (a) Any native wildlife species determined by the [*commission*] **Oregon Natural Resources**  
26 **Commission** to be in danger of extinction throughout any significant portion of its range within this  
27 state.

28        (b) Any native wildlife species listed as an endangered species pursuant to the federal Endan-  
29 gered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended.

30        [(7) "*Fund*" means the *State Wildlife Fund* created by ORS 496.300.]

31        [(8)] (4) "Fur-bearing mammal" means beaver, bobcat, fisher, marten, mink, muskrat, otter,  
32 raccoon, red fox and gray fox.

33        [(9)] (5) "Game mammal" means antelope, black bear, cougar, deer, elk, moose, mountain goat,  
34 mountain sheep, silver gray squirrel and gray wolf as a special status mammal defined **by the**  
35 **Oregon Natural Resources Commission** by [*commission*] rule.

36        [(10)] (6) "Hunt" means to take or attempt to take any wildlife by means involving the use of  
37 a weapon or with the assistance of any mammal or bird.

38        [(11)] (7) "Manage" means to protect, preserve, propagate, promote, utilize and control wildlife.

39        [(12)] (8) "Optimum level" means wildlife population levels that provide self-sustaining species  
40 as well as taking, nonconsumptive and recreational opportunities.

41        [(13)] (9) "Person with a disability" means a person who complies with the requirement of ORS  
42 496.018.

43        [(14)] (10) "Shellfish" has the meaning given that term in ORS 506.011.

44        [(15)] (11) "Species" means any species or subspecies of wildlife.

45        [(16)] (12) "Take" means to kill or obtain possession or control of any wildlife.

1 [(17)] (13) "Threatened species" means:

2 (a) Any native wildlife species the commission determines is likely to become an endangered  
3 species within the foreseeable future throughout any significant portion of its range within this  
4 state.

5 (b) Any native wildlife species listed as a threatened species pursuant to the federal Endangered  
6 Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended.

7 [(18)] (14) "Trap" means to take or attempt to take any wildlife by means involving the use of  
8 a trap, net, snare or other device used for the purpose of capture.

9 [(19)] (15) "Wildlife" means fish, shellfish, amphibians and reptiles, feral swine as defined by  
10 State Department of Agriculture rule, wild birds as defined by commission rule and other wild  
11 mammals as defined by **the** commission **by** rule.

12 **SECTION 70.** ORS 496.012 is amended to read:

13 496.012. It is the policy of the State of Oregon that wildlife shall be managed to prevent serious  
14 depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits  
15 for present and future generations of the [*citizens*] **residents** of this state. In furtherance of this  
16 policy, the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** shall  
17 represent the public interest of the State of Oregon and implement the following coequal goals of  
18 wildlife management:

19 (1) To maintain all species of wildlife at optimum levels.

20 (2) To develop and manage the lands and waters of this state in a manner that will enhance the  
21 production and public enjoyment of wildlife.

22 (3) To permit an orderly and equitable utilization of available wildlife.

23 (4) To develop and maintain public access to the lands and waters of [*the*] **this** state and the  
24 wildlife resources thereon.

25 (5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is  
26 compatible with primary uses of the lands and waters of [*the*] **this** state.

27 (6) To provide optimum recreational benefits.

28 (7) To make decisions that affect wildlife resources of [*the*] **this** state for the benefit of the  
29 wildlife resources and to make decisions that allow for the best social, economic and recreational  
30 utilization of wildlife resources by all user groups.

31 **SECTION 71.** ORS 496.018 is amended to read:

32 496.018. In order to be considered a person with a disability under the wildlife laws, a person  
33 shall provide to the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
34 either:

35 (1) Written certification from a licensed physician, certified nurse practitioner or licensed phy-  
36 sician assistant that states that the person:

37 (a) Is permanently unable to walk without the use of, or assistance from, a brace, cane, crutch,  
38 prosthetic device, wheelchair, scooter or walker;

39 (b) Is restricted by lung disease to the extent that the person's forced expiratory volume for one  
40 second, when measured by a spirometer, is less than 35 percent predicted, or arterial oxygen tension  
41 is less than 55 mm/Hg on room air at rest;

42 (c) Has a cardiac condition to the extent that the person's functional limitations are classified  
43 in severity as Class III or Class IV, according to standards established by the American Heart As-  
44 sociation;

45 (d) Has a permanent, physical impairment that prevents the person from holding or shooting a



1 firearm or bow or from holding a fishing rod in hand; or

2 (e) Has central visual acuity that permanently does not exceed 20/200 in the better eye with  
3 corrective lenses, or the widest diameter of the visual field is no greater than 20 degrees; or

4 (2) Written proof that the last official certification of record by the United States Department  
5 of Veterans Affairs or any branch of the Armed Forces of the United States shows the person to  
6 be at least 65 percent disabled.

7 **SECTION 72.** ORS 496.085 is amended to read:

8 496.085. (1) There is established within the [*State Department of Fish and Wildlife*] **Oregon De-**  
9 **partment of Natural Resources** the Fish Screening Task Force consisting of seven members ap-  
10 pointed by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission.**

11 (2) Three members shall be appointed to represent agricultural interests, three shall be ap-  
12 pointed to represent fishing or fish conservation interests and one member shall be appointed to  
13 represent the public. Members of the task force shall serve for two-year terms. No member of the  
14 task force shall serve for more than three consecutive two-year terms.

15 (3) A member of the task force shall receive no compensation for services as a member. How-  
16 ever, subject to any applicable law regulating travel and other expenses of state officers and em-  
17 ployees, a member shall be reimbursed for actual and necessary travel and other expenses incurred  
18 in the performance of official duties from such moneys as may be available therefor in the [*State*  
19 *Wildlife Fund*] **Oregon Natural Resources Fund.**

20 (4) The task force shall meet at such times and places as may be determined by the chair or by  
21 a majority of the members of the task force.

22 (5) The duties of the task force are:

23 (a) To advise the department in the development of a comprehensive cost-sharing program for  
24 the installation of fish screening or by-pass devices in water diversions.

25 (b) To advise the department in establishing a stable and equitable funding system for the in-  
26 stallation and maintenance of fish screening and by-pass devices.

27 (c) To advise the department in identifying sources and applying for grants from local, state and  
28 federal governmental agencies for funding the installation and maintenance of fish screening and  
29 by-pass devices.

30 (d) To advise the department in monitoring fish screening programs.

31 (e) To advise the department in a survey and study of fish screening technology to determine  
32 the most cost-effective alternatives for screening in the various situations that may be encountered  
33 in the implementation of fish screening in this state.

34 (f) To advise the department in preparing a report on the capital costs and effectiveness of the  
35 program provided in ORS 498.306.

36 (g) To advise the department on the creation of the priority criteria and the priority listing re-  
37 ferred to in ORS 498.306 (14)(a) or (d).

38 **SECTION 73.** ORS 496.118 is amended to read:

39 496.118. [(1) *Subject to policy direction by the State Fish and Wildlife Commission, the State Fish*  
40 *and Wildlife Director shall:)] **In administering the wildlife laws and commercial fishing laws of**  
41 **this state, and subject to policy direction by the Oregon Natural Resources Commission, the**  
42 **Director of the Oregon Department of Natural Resources shall:***

43 [(a) *Be the administrative head of the State Department of Fish and Wildlife;*]

44 [(b) *Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240,*  
45 *to hire, assign, reassign and coordinate personnel of the department;*]

1        *[(c) Administer and enforce the wildlife laws of the state;]*

2        *[(d)] (1) Be authorized to participate in any proceeding before any public officer, commission or*  
 3 *body of the United States or any state for the purpose of representing the [citizens] interests of*  
 4 *Oregon residents concerning the wildlife resources of this state;*

5        *[(e) Establish such sections and divisions as are necessary to properly carry out the work of the*  
 6 *commission;]*

7        *[(f)] (2) Be responsible for the collection, application and dissemination of information pertinent*  
 8 *to the management of the wildlife resources, and to the regulation of the uses of such resources; and*

9        *[(g)] (3) Coordinate any activities of the [department related to a watershed enhancement project*  
 10 *approved by the Oregon Watershed Enhancement Board] Oregon Department of Natural Resources*  
 11 **related to a watershed enhancement project approved by the department** under ORS 541.375  
 12 **with the activities of other cooperating state and federal agencies that are participating in the**  
 13 **project.**

14        *[(2) In addition to duties otherwise required by law, the director shall prescribe internal policies*  
 15 *and procedures for the government of the department, the conduct of its employees, the assignment and*  
 16 *performance of its business and the custody, use and preservation of its records, papers and property*  
 17 *in a manner consistent with applicable law.]*

18        *[(3)] (4) [In addition to any other duties assigned to the director, the director shall] Report quar-*  
 19 *terly on the activities of the department to the appropriate legislative committee.*

20        *[(4) The director may delegate to any employee of the department the exercise or discharge in the*  
 21 *director's name of any power, duty or function of whatever character, vested in or imposed by law upon*  
 22 *the director. The official act of a person so acting in the director's name and by the director's authority*  
 23 *shall be considered to be an official act of the director.]*

24        *[(5) The director may restrict or otherwise limit the participation of an employee of the department*  
 25 *in any program administered by the department to ensure that the programs of the department are*  
 26 *administered in a fair and equitable manner and that no employee of the department gains an advan-*  
 27 *tage over the public.]*

28        *[(6) Notwithstanding the provisions of ORS 496.112 (3), in times of emergency or with respect to*  
 29 *regulating wildlife taking, the director may exercise the full powers of the commission until such times*  
 30 *as the emergency ends or the commission meets in formal session.]*

31        **SECTION 74.** ORS 496.124 is amended to read:

32        496.124. In addition to *[such divisions as may be established by the State Fish and Wildlife Di-*  
 33 *rector pursuant to ORS 496.118, there are established within the State Department of Fish and Wildlife*  
 34 *a Fish Division and a Wildlife Division]* **any administrative division established by the Director**  
 35 **of the Oregon Department of Natural Resources pursuant to section 2 of this 2011 Act, a Fish**  
 36 **Division and a Wildlife Division are established in Oregon Department of Natural**  
 37 **Resources.** The Wildlife Division shall be responsible for the management of all wildlife, except fish  
 38 and other marine life, *[over which the State Fish and Wildlife Commission has regulatory*  
 39 *jurisdiction].*

40        **SECTION 75.** ORS 496.128 is amended to read:

41        496.128. (1) The *[State Fish and Wildlife Commission]* **Oregon Natural Resources Commission**  
 42 shall report biennially to the Governor and to the Legislative Assembly on the *[activities of the*  
 43 *commission]* **commission's administration of the wildlife laws and commercial fishing laws of**  
 44 **this state** during the preceding biennium. The commission shall make such additional reports as the  
 45 Governor or the Legislative Assembly may direct.

1 (2) The reports required by subsection (1) of this section shall be in such form and contain such  
 2 information as the commission considers appropriate, and shall contain such other information as  
 3 the Governor and the Legislative Assembly may require. Such reports shall include all new or  
 4 amended rules, policies or procedures adopted by the commission **that pertain to wildlife or**  
 5 **commercial fishing** and shall include a summary of significant consultation activity under ORS  
 6 496.164.

7 **SECTION 76.** ORS 496.138 is amended to read:

8 496.138. (1) Consistent with the policy of ORS 496.012, the [*State Fish and Wildlife Commission*]  
 9 **Oregon Natural Resources Commission** shall implement the policies and programs of this state  
 10 for the management of wildlife. These policies and programs shall consider the uses of public and  
 11 private lands and utilize voluntary partnerships with private and public landowners to protect and  
 12 enhance wildlife habitat and effectively manage wildlife. In addition, the commission shall perform  
 13 any other duty vested in it by law.

14 (2) In accordance with the applicable provisions of ORS chapter 183, the commission shall adopt  
 15 such rules and standards as it considers necessary and proper to implement the policy and objec-  
 16 tives of ORS 496.012 and perform the functions vested by law in the commission.

17 (3) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held  
 18 on any proposed rule or standard prior to its adoption. The hearing may be before the commission,  
 19 any designated member thereof or any person designated by and acting for the commission.

20 (4) Before submitting budget requests or information to the Governor pursuant to ORS 291.201  
 21 to 291.222, the commission shall hold a public hearing on proposals for planned expenditures and  
 22 enhancement packages that the commission intends to recommend to the Governor for inclusion in  
 23 the Governor's budget.

24 **SECTION 77.** ORS 496.141 is amended to read:

25 496.141. On or before February 1 of each odd-numbered year, the [*State Department of Fish and*  
 26 *Wildlife*] **Oregon Department of Natural Resources** shall provide to the Joint Committee on Ways  
 27 and Means a complete annual report regarding activities initiated by the department in regard to  
 28 the fish screening program. The report shall include a complete budget analysis of all costs, in-  
 29 cluding in-kind costs associated with the program, the number of screening or by-pass devices in-  
 30 stalled and the size of the diversions on which such devices were installed. The budget analysis shall  
 31 identify all costs associated with the construction and installation of screening or by-pass devices,  
 32 administrative costs and research and development costs associated with the program.

33 **SECTION 78.** ORS 496.146 is amended to read:

34 496.146. In addition to any other duties or powers provided by law, the [*State Fish and Wildlife*  
 35 *Commission*] **Oregon Natural Resources Commission**:

36 (1) May accept, from whatever source, appropriations, gifts or grants of money or other property  
 37 for the purposes of wildlife management, and use such money or property for wildlife management  
 38 purposes.

39 (2) May sell or exchange property owned by [*the*] **this** state and used for wildlife management  
 40 purposes when the commission determines that such sale or exchange would be advantageous to the  
 41 state wildlife policy and management programs.

42 (3) May acquire, introduce, propagate and stock wildlife species in such manner as the com-  
 43 mission determines will carry out the state wildlife policy and management programs.

44 (4) May by rule authorize the issuance of such licenses, tags and permits for angling, taking,  
 45 hunting and trapping and may prescribe such tagging and sealing procedures as the commission

1 determines necessary to carry out the provisions of the wildlife laws or to obtain information for  
2 use in wildlife management. Permits issued pursuant to this subsection may include special hunting  
3 permits for a person and immediate family members of the person to hunt on land owned by that  
4 person in areas where permits for deer or elk are limited by quota. As used in this subsection,  
5 “immediate family members” means husband, wife, father, mother, brothers, sisters, sons, daughters,  
6 stepchildren and grandchildren. A landowner who is qualified to receive landowner preference tags  
7 from the commission may request two additional tags for providing public access and two additional  
8 tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with  
9 supporting evidence that the access is significant and the habitat programs benefit wildlife. The  
10 board may recommend that the commission grant the request. When a landowner is qualified under  
11 landowner preference rules adopted by the commission and receives a controlled hunt tag for that  
12 unit or a landowner preference tag for the landowner’s property and does not use the tag during the  
13 regular season, the landowner may use that tag to take an antlerless animal, when approved by the  
14 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**, to alleviate  
15 damage that is presently occurring to the landowner’s property.

16 (5) May by rule prescribe procedures requiring the holder of any license, tag or permit issued  
17 pursuant to the wildlife laws to keep records and make reports concerning the time, manner and  
18 place of taking wildlife, the quantities taken and such other information as the commission deter-  
19 mines necessary for proper enforcement of the wildlife laws or to obtain information for use in  
20 wildlife management.

21 (6) May establish special hunting and angling areas or seasons in which only persons less than  
22 18 years of age or over 65 years of age are permitted to hunt or angle.

23 (7) May acquire by purchase, lease, agreement or gift real property and all appropriate interests  
24 therein for wildlife management and wildlife-oriented recreation purposes.

25 (8) May acquire by purchase, lease, agreement, gift, exercise of eminent domain or otherwise  
26 real property and all interests therein and establish, operate and maintain thereon public hunting  
27 areas.

28 (9) May establish and develop wildlife refuge and management areas and prescribe rules gov-  
29 erning the use of such areas and the use of wildlife refuge and management areas established and  
30 developed pursuant to any other provision of law.

31 (10) May by rule prescribe fees for licenses, tags, permits and applications issued or required  
32 pursuant to the wildlife laws, and user charges for angling, hunting or other recreational uses of  
33 lands owned or managed by the commission, unless such fees or user charges are otherwise pre-  
34 scribed by law. Except for licenses issued pursuant to subsection (14) of this section, no fee or user  
35 charge prescribed by the commission pursuant to this subsection shall exceed \$100.

36 (11) May enter into contracts with any person or governmental agency for the development and  
37 encouragement of wildlife research and management programs and projects.

38 (12) May perform such acts as may be necessary for the establishment and implementation of  
39 cooperative wildlife management programs with agencies of the federal government.

40 (13) May offer and pay rewards for the arrest and conviction of any person who has violated  
41 any of the wildlife laws. No such reward shall exceed \$100 for any one arrest and conviction.

42 (14) May by rule prescribe fees for falconry licenses issued pursuant to the wildlife laws, unless  
43 such fees are otherwise prescribed by law. Fees prescribed by the commission pursuant to this sub-  
44 section shall be based on actual or projected costs of administering falconry regulations and shall  
45 not exceed \$250.

1 (15) May establish special fishing and hunting seasons and bag limits applicable only to persons  
2 with disabilities.

3 (16) May adopt optimum populations for deer and elk consistent with ORS 496.012. These popu-  
4 lation levels shall be reviewed at least once every five years.

5 (17) Shall establish a preference system so that individuals who are unsuccessful in controlled  
6 hunt permit drawings for deer and elk hunting have reasonable assurance of success in those  
7 drawings in subsequent years. In establishing the preference system, the commission shall consider  
8 giving additional preference points to persons who have been issued a resident pioneer hunting li-  
9 cense pursuant to ORS 497.102.

10 (18) May sell advertising in [*State Department of Fish and Wildlife*] **Oregon Department of**  
11 **Natural Resources** publications, including annual hunting and angling regulation publications.

12 (19) May, notwithstanding the fees required by ORS 497.112, provide free hunting tags to an  
13 organization that sponsors hunting trips for terminally ill children.

14 (20) Shall, after consultation with the State Department of Agriculture, adopt rules prohibiting  
15 the use of the World Wide Web, other Internet protocols or broadcast or closed circuit media to  
16 remotely control a weapon for the purpose of hunting any game bird, wildlife, game mammal or  
17 other mammal. The rules may exempt the [*State Department of Fish and Wildlife*] **Oregon Depart-**  
18 **ment of Natural Resources** or agents of the department from the prohibition.

19 (21) May adopt rules establishing a schedule of civil penalties, not to exceed \$6,500 per vio-  
20 lation, for violations of provisions of the wildlife laws or rules adopted by the commission under the  
21 wildlife laws. Civil penalties established under this subsection must be imposed in the manner pro-  
22 vided by ORS 183.745 and must be deposited in the [*State Wildlife Fund established under ORS*  
23 *496.300.*] **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection**  
24 **are continuously appropriated to the Oregon Department of Natural Resources for the pur-**  
25 **pose of carrying out the duties, functions and powers of the department as prescribed by**  
26 **sections 1 (1) and (2) and 5 (1)(a) and (b) of this 2011 Act.**

27 **SECTION 79.** ORS 496.151 is amended to read:

28 496.151. Notwithstanding any other provision of the wildlife laws, the [*State Fish and Wildlife*  
29 *Commission*] **Oregon Natural Resources Commission** by rule shall establish a system for allocat-  
30 ing hunting permits that are limited by maximum number for the taking of deer and elk by nonres-  
31 ident hunters so that a number equal to one-half of the number of those permits issued to  
32 nonresident hunters in the previous year are made available to the holders of registrations issued  
33 pursuant to ORS chapter 704, and who are certified pursuant to ORS 704.060, for the use of the  
34 clients of those registration holders. Such a system shall include but not be limited to:

35 (1) Provisions to prevent misuse of the permits by the registrant or by employees of the regis-  
36 trant.

37 (2) Provisions for revocation and refusal to issue all or any portion of the permits based upon  
38 a commission finding of an emergency situation or biological needs.

39 **SECTION 80.** ORS 496.154 is amended to read:

40 496.154. (1) The [*State Fish and Wildlife Commission shall*] **Oregon Natural Resources Com-**  
41 **mission may** not commence any proceeding to exercise the power of eminent domain to acquire any  
42 real property, or interest therein, that was devoted to farm use on January 1, 1974, unless the  
43 commission first obtains approval therefor from the Joint Committee on Ways and Means, or from  
44 the Emergency Board if the Legislative Assembly is not then in session. Upon a change in the use  
45 of such land from farm use, the commission may acquire such property, and interests therein, by

1 exercise of the power of eminent domain without first obtaining legislative approval therefor. As  
 2 used in this section, “farm use” has the meaning for that term provided in ORS 215.203.

3 (2) The commission [shall] **may** not commence any proceeding as provided in subsection (1) of  
 4 this section unless the commission has obtained approval of its intended use of such property from  
 5 the local governmental agencies having land use planning authority over such lands.

6 **SECTION 81.** ORS 496.156 is amended to read:

7 496.156. (1)(a) In carrying out duties, functions and powers regarding the propagation of  
 8 anadromous fish prescribed in the wildlife laws and the commercial fishing laws, the [*State Fish and*  
 9 *Wildlife Commission*] **Oregon Natural Resources Commission** shall give high priority to expen-  
 10 ditures for propagation assistance by means of transportation of upstream and downstream migrants  
 11 in those areas where dams and other such obstacles present a passage problem to juvenile or adult  
 12 salmon.

13 [(2)] (b) For the purposes of this [section] **subsection**, “transportation” means any method of  
 14 helping anadromous fish to pass dams and other obstacles so as to reduce the mortality associated  
 15 with passage.

16 [(3)] (2) Nothing in subsection (1) of this section prevents the cooperation of the commission  
 17 with the federal government in programs financed pursuant to ORS 506.405.

18 **SECTION 82.** ORS 496.162 is amended to read:

19 496.162. (1) After investigation of the supply and condition of wildlife, the [*State Fish and*  
 20 *Wildlife Commission*] **Oregon Natural Resources Commission**, at appropriate times each year,  
 21 shall by rule:

22 (a) Prescribe the times, places and manner in which wildlife may be taken by angling, hunting,  
 23 trapping or other method and the amounts of each of those wildlife species that may be taken and  
 24 possessed.

25 (b) Prescribe such other restrictions or procedures regarding the angling, taking, hunting, trap-  
 26 ping or possessing of wildlife as the commission determines will carry out the provisions of wildlife  
 27 laws.

28 (2) In carrying out the provisions of subsection (1) of this section, the power of the commission  
 29 includes, but is not limited to:

30 (a) Prescribing the amount of each wildlife species that may be taken and possessed in terms  
 31 of sex, size and other physical characteristics.

32 (b) Prescribing such regular and special time periods and areas closed to the angling, taking,  
 33 hunting and trapping of any wildlife species when the commission determines such action is neces-  
 34 sary to protect the supply of such wildlife.

35 (c) Prescribing regular and special time periods and areas open to the angling, taking, hunting  
 36 and trapping of any wildlife species, and establishing procedures for regulating the number of per-  
 37 sons eligible to participate in such angling, taking, hunting or trapping, when the commission de-  
 38 termines such action is necessary to maintain properly the supply of wildlife, alleviate damage to  
 39 other resources, or to provide a safe and orderly recreational opportunity.

40 (3) Notwithstanding subsections (1) and (2) of this section, except as provided in ORS 498.146  
 41 or during those times and at those places prescribed by the commission for the hunting of elk, the  
 42 commission shall not prescribe limitations on the times, places or amounts for the taking of  
 43 predatory animals. As used in this subsection, “predatory animal” has the meaning [*for*] **given** that  
 44 term provided in ORS 610.002.

45 (4) In carrying out the provisions of this section, before prescribing the numbers of deer and elk

1 to be taken, the commission shall consider:

2 (a) The supply and condition of deer and elk herds;

3 (b) The availability of forage for deer, elk and domestic livestock on public and private range  
4 and forest lands;

5 (c) The recreational opportunities derived from deer and elk populations; and

6 (d) The effects of deer and elk herds on public and private range and forest lands.

7 **SECTION 83.** ORS 496.164 is amended to read:

8 496.164. The [*State Fish and Wildlife Commission and the State Department of Fish and*  
9 *Wildlife*] **Oregon Department of Natural Resources and the Oregon Natural Resources Com-**  
10 **mission** may advise, consult and cooperate with other agencies of this state and political subdivi-  
11 sions, other states or the federal government and private landowners with respect to fish and  
12 wildlife management. The [*commission and the*] department **and the commission** shall provide such  
13 information, recommendations or advice in writing if requested by another state or federal agency  
14 to do so. Technical advice and information shall be based on the best available scientific informa-  
15 tion. Policy or implementation recommendations provided in administrative rulemaking proceedings  
16 shall be based on consideration of all the goals of wildlife management in ORS 496.012, in addition  
17 to applicable scientific information. State agencies, boards or commissions receiving policy or im-  
18 plementation recommendations shall consider such recommendations in the context of their respec-  
19 tive statutory responsibilities, and shall take into account the extent to which such  
20 recommendations are substantiated with the best available scientific information and based on con-  
21 sideration of all of the goals of wildlife management in ORS 496.012.

22 **SECTION 84.** ORS 496.166 is amended to read:

23 496.166. The Legislative Assembly finds, in the interest of all Oregonians, a necessity to improve  
24 Oregon's resource access and wildlife habitat through the further involvement of its [*citizens*] **resi-**  
25 **dents**, through voluntary partnership between the [*State Department of Fish and Wildlife*] **Oregon**  
26 **Department of Natural Resources** and landowners to manage wildlife on private lands and  
27 through support by additional financial revenues.

28 **SECTION 85.** ORS 496.172 is amended to read:

29 496.172. In carrying out the provisions of the wildlife laws with regard to the management of  
30 wildlife that is a threatened species or an endangered species, the [*State Fish and Wildlife Commis-*  
31 *sion*] **Oregon Natural Resources Commission:**

32 (1) Shall conduct investigations of wildlife species native to this state and shall determine  
33 whether any such species is a threatened species or an endangered species.

34 (2) By rule, shall establish and publish, and from time to time may revise, a list of wildlife spe-  
35 cies that are threatened species or endangered species. Listed threatened species or endangered  
36 species shall be protected as provided in ORS 496.182.

37 (3) Shall work cooperatively with state agencies that have land management authority or regu-  
38 latory authority to determine their roles within their statutory obligations in the conservation of  
39 endangered species, as described in ORS 496.182 (8).

40 (4) By rule, shall establish a system of permits for scientific taking of threatened species and  
41 endangered species and shall establish a system of state permits for incidental taking of state-  
42 designated threatened species and endangered species not listed by the federal government under  
43 such terms and conditions as the commission determines will minimize the impact on the species  
44 taken. An incidental taking permit or statement issued by a federal agency for a species listed under  
45 the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended, shall be re-

1 cognized by the state as a waiver of any state protection measures or requirements otherwise ap-  
2 plicable to the actions allowed under the federal permit.

3 (5) Shall cooperate with the State Department of Agriculture in carrying out the provisions of  
4 ORS 564.105.

5 (6) Shall adopt administrative rules to carry out the provisions of ORS 496.171 to 496.182 and  
6 498.026.

7 **SECTION 85a.** ORS 496.176 is amended to read:

8 496.176. (1) The lists of threatened species or endangered species established pursuant to ORS  
9 496.172 (2) shall include:

10 (a) Those species of wildlife listed as of May 15, 1987, as a threatened species or an endangered  
11 species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as  
12 amended; and

13 (b) Those species determined as of May 15, 1987, by the State Fish and Wildlife Commission to  
14 be threatened species or endangered species.

15 (2) The **Oregon Natural Resources** Commission, by rule, may add or remove any wildlife spe-  
16 cies from either list, or change the status of any species on the lists, upon a determination that the  
17 species is or is not a threatened species or an endangered species.

18 (3) A determination that a species is a threatened species or an endangered species shall be  
19 based on documented and verifiable scientific information about the species' biological status. To list  
20 a species as a threatened species or an endangered species under ORS 496.004 and 496.171 to  
21 496.182, the **Oregon Natural Resources** Commission shall determine that the natural reproductive  
22 potential of the species is in danger of failure due to limited population numbers, disease, predation  
23 or other natural or human actions affecting its continued existence and, to the extent possible, as-  
24 sess the relative impact of human actions. In addition, the commission shall determine that one or  
25 more of the following factors exists:

26 (a) That most populations are undergoing imminent or active deterioration of their range or  
27 primary habitat;

28 (b) That overutilization for commercial, recreational, scientific or educational purposes is oc-  
29 curring or is likely to occur; or

30 (c) That existing state or federal programs or regulations are inadequate to protect the species  
31 or its habitat.

32 (4) Determinations required by subsection (3) of this section shall be made by the **Oregon Na-**  
33 **tural Resources** Commission on the basis of verifiable scientific and other data after consultation  
34 with federal agencies, other interested state agencies, the Natural Heritage Advisory Council, other  
35 states having a common interest in the species and interested persons and organizations.

36 (5) Any person may petition the **Oregon Natural Resources** Commission to, by rule, add, re-  
37 move or change the status of a species on the list:

38 (a) A petition shall clearly indicate the action sought and shall include documented scientific  
39 information about the species' biological status to justify the requested action.

40 (b) Within 90 days of receipt of a petition, the commission shall respond in writing to the  
41 petitioner indicating whether the petition presents substantial scientific information to warrant the  
42 action requested.

43 (c) If the petition is found to present such information, the commission shall commence  
44 rulemaking.

45 (d) A final determination by the commission concerning the action requested in a petition shall



1 be provided within one year from the date of receipt of the petition, with the option for an additional  
 2 12-month extension of time to complete the listing if the commission determines that limited infor-  
 3 mation or other appropriate considerations require the extension.

4 (e) If the petition is denied, the petitioner may seek judicial review as provided in ORS 183.484.

5 (6) The **Oregon Natural Resources** Commission may determine not to list a species as a  
 6 threatened species or an endangered species in any of the following cases:

7 (a) If the species has been listed pursuant to the federal Endangered Species Act of 1973 (P.L.  
 8 93-205, 16 U.S.C. 1531), as amended.

9 (b) If the species is currently on the list as a sensitive species, or is a candidate species or has  
 10 been petitioned for listing pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16  
 11 U.S.C. 1531), as amended.

12 (c) If the species has been determined, pursuant to the federal Endangered Species Act of 1973  
 13 (P.L. 93-205, 16 U.S.C. 1531), as amended, to not qualify as a threatened species or an endangered  
 14 species.

15 (7) Notwithstanding subsections (1) to (5) of this section, the **Oregon Natural Resources** Com-  
 16 mission shall take emergency action to add a species to the list of threatened species or endangered  
 17 species if it determines there is a significant threat to the continued existence of the species within  
 18 the state:

19 (a) The commission shall publish notice of such addition in the Secretary of State's bulletin and  
 20 shall mail notice to affected or interested persons whose names are included on the commission's  
 21 mailing list for such purposes.

22 (b) Such emergency addition shall take effect immediately upon publication in the Secretary of  
 23 State's bulletin and shall remain valid for a period no longer than one year, unless during the period  
 24 the commission completes rulemaking procedures as provided in subsection (5) of this section.

25 (8) The **Oregon Natural Resources** Commission shall periodically review the status of all  
 26 threatened species and endangered species listed under ORS 496.171 to 496.192. Each species shall  
 27 be reviewed at least once every five years to determine whether verifiable scientific information  
 28 exists to justify its reclassification or removal from the list, according to the criteria listed under  
 29 subsections (3) and (4) of this section. If a determination is made to reclassify a species or remove  
 30 it from the list, the commission, within 90 days, shall commence rulemaking to change the status  
 31 of the species.

32 (9) Notwithstanding the provisions of this section, the **Oregon Natural Resources** Commission:

33 (a) May decide not to list a species that otherwise qualifies as a threatened or endangered  
 34 species within this state if the commission determines that the species is secure outside this state  
 35 or the species is not of cultural, scientific or commercial significance to the people of this state.

36 (b) May not include *Branta canadensis leucopareia*, commonly known as the Aleutian Canada  
 37 goose, on the lists of threatened species or endangered species.

38 **SECTION 86.** ORS 496.182 is amended to read:

39 496.182. (1) The burden of protecting and recovering threatened species or endangered species  
 40 can be a significant cost to the [*citizens*] **residents** of this state and it is therefore the policy of this  
 41 state to minimize duplication and overlap between state and federal laws dealing with threatened  
 42 species or endangered species. To this end, nothing in this section is intended to prevent the  
 43 adoption of cooperative state or federal programs when such programs provide protection for listed  
 44 species without significant impact on the primary uses of state lands.

45 (2) At the time the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commis-**

1 **sion** adds a species to the list of threatened species or endangered species under ORS 496.172, the  
2 commission shall establish by rule quantifiable and measurable guidelines that it considers necessary  
3 to ensure the survival of individual members of the species. These guidelines may include take  
4 avoidance and protecting resource sites such as spawning beds, nest sites, nesting colonies or other  
5 sites critical to the survival of individual members of the species.

6 (3) For threatened species listed under ORS 496.172 and in the absence of an approved endan-  
7 gered species management plan described in subsection (8) of this section for an endangered species,  
8 if a state agency determines that a proposed action on land it owns or leases, or for which it holds  
9 a recorded easement, has the potential to violate the guidelines established under subsection (2) of  
10 this section, it shall notify the [*State Department of Fish and Wildlife*] **Oregon Department of Na-**  
11 **tural Resources**. Within 90 days of such notice, the department shall recommend reasonable and  
12 prudent alternatives, if any, to the proposed action [*which*] **that** are consistent with the guidelines.

13 (4) If a state agency fails to adopt the recommendations made under subsection (3) of this sec-  
14 tion, it shall, after consultation with the department, demonstrate that:

15 (a) The potential public benefits of the proposed action outweigh the potential harm from failure  
16 to adopt the recommendations; and

17 (b) Reasonable mitigation and enhancement measures shall be taken, to the extent practicable,  
18 to minimize the adverse impact of the action on the affected species.

19 (5) When an action under this section is initiated by a person other than a state agency, the  
20 agency shall provide final approval or denial of the proposed action within 120 days of receipt of a  
21 written request for final determination.

22 (6) The provisions of this section do not apply to lands acquired through foreclosures of loans  
23 made pursuant to programs of the Department of Veterans' Affairs.

24 (7) State land owning or managing agencies shall set priorities for establishing endangered spe-  
25 cies management plans required by subsection (8) of this section after consultation with the com-  
26 mission on the level of biological threat and, in consideration of available funds, the immediacy and  
27 seriousness of the threat to any listed species.

28 (8)(a)(A) Within four months of the listing of an endangered species, the commission, in consul-  
29 tation and cooperation with the state land owning or managing agency, shall determine if state land  
30 can play a role in the conservation of endangered species. The commission and the land owning  
31 or managing agency shall consider species biology and geography of the land base to determine if  
32 the species or its habitat is found on state land. If the species or its habitat is not found on state  
33 land, the commission shall determine that state land has no role to play in the conservation of the  
34 species.

35 (B) If the species or its habitat is found on state land, the land owning or managing agency, in  
36 consultation with the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
37 **sources**, shall determine the role its state land shall serve in the conservation of the endangered  
38 species. This role may include, but is not limited to conservation, contribution toward conservation  
39 or take avoidance. To carry out its consulting role under this subsection, the department shall pro-  
40 vide state agencies with an assessment of the conservation needs of the endangered species. In  
41 making this determination, the land owning or managing agency shall balance the statutory re-  
42 quirements, rules and policies applicable to the agency's programs, the social and economic impacts  
43 that conservation would have on the state, the conservation needs of the species, the purpose of the  
44 land and the roles of other ownership categories. The agency shall balance these factors consistent  
45 with the commission's rules related to the biological aspects of species management and the statu-

1 tory obligations of the land owning or managing agency, including the statutory purpose of the land.

2 (C) After determining the role its state land shall serve in conservation of the species, the land  
 3 owning or managing agency, in consultation with the [*State Department of Fish and Wildlife*] **Oregon**  
 4 **Department of Natural Resources** and consistent with the commission's rules related to endan-  
 5 gered species management plans, shall develop and approve an endangered species management plan  
 6 within 18 months from the date the species is first listed as endangered. Endangered species man-  
 7 agement plans shall be based on the statutes, rules and policies applicable to the agency's programs  
 8 and shall take into account any social or economic impacts that the plan may have on the state.  
 9 The land owning or managing agency shall submit the plan to the commission for review and ap-  
 10 proval as provided in subparagraph (D) of this paragraph.

11 (D) The commission shall review the endangered species management plan approved by the land  
 12 owning or managing agency under subparagraph (C) of this paragraph to determine whether the plan  
 13 achieves the role defined for the land under subparagraph (B) of this paragraph. Based on the biol-  
 14 ogy of the endangered species the commission may modify the endangered species management plan  
 15 if necessary to be consistent with the role the land owning or managing agency has defined for the  
 16 land under subparagraph (B) of this paragraph and shall approve the plan as submitted or modified  
 17 within 24 months from the date the species is listed as endangered.

18 (b) For state agencies other than land owning or managing agencies, the commission, in con-  
 19 sultation and cooperation with the agency, shall determine whether the agency can serve a role in  
 20 the conservation of endangered species. If the commission determines that the agency has a role to  
 21 play in conservation of the endangered species, the agency shall determine what role it shall serve  
 22 in conservation of the endangered species. The agency shall make this determination as provided in  
 23 the commission's rules related to the biological aspects of species management and in a manner  
 24 consistent with the agency's statutory obligations.

25 **SECTION 87.** ORS 496.201 is amended to read:

26 496.201. (1) The State of Oregon shall, through the [*State Department of Fish and Wildlife*]  
 27 **Oregon Department of Natural Resources**, provide surplus salmon:

28 (a) To the Confederated Coos, Lower Umpqua and Siuslaw Indian tribes for their historical,  
 29 traditional and cultural salmon ceremonies that take place each year.

30 (b) To the Cow Creek Band of the Umpqua Indians for their historical, traditional and cultural  
 31 salmon ceremonies that take place each year.

32 (c) To the Coquille Tribe for their historical, traditional and cultural salmon ceremonies that  
 33 take place each year.

34 (d) To the Burns Paiute Tribe for their historical, traditional and cultural salmon ceremonies  
 35 that take place each year.

36 (2) The salmon provided by the state shall meet the expressed needs of the Confederated Coos,  
 37 Lower Umpqua and Siuslaw tribes, up to 1,000 pounds total, the Coquille Tribe, up to 1,000 pounds  
 38 total, the Cow Creek Band of the Umpqua Indians, up to 1,000 pounds total, and the Burns Paiute  
 39 Tribe, up to 500 pounds total.

40 (3) The salmon provided by the state may be either surplus whole fish or carcasses.

41 (4) Salmon may be taken from hatcheries under either the complete or joint control of the state.

42 **SECTION 88.** ORS 496.206 is amended to read:

43 496.206. (1) The Indian tribes referred to in ORS 496.201 (1) are required to set forth, in writing,  
 44 their request for salmon. This request shall be submitted by the duly elected tribal governing body  
 45 no later than 40 days prior to the ceremony and shall include:

- 1 (a) The poundage of salmon required;  
 2 (b) The date of the ceremony; and  
 3 (c) A contact person that the state may refer questions to.

4 (2) Prior to any state action, the written request must be received by:

- 5 (a) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**;  
 6 (b) The Attorney General; and  
 7 (c) The United States Department of Interior.

8 (3) The salmon shall be provided to the Indian tribes referred to in ORS 496.201 (1) no later than  
 9 30 days after receiving a proper written request therefor.

10 **SECTION 89.** ORS 496.211 is amended to read:

11 496.211. (1) The State of Oregon shall be limited to a once a year provision of salmon pursuant  
 12 to ORS 496.201.

13 (2) If the Indian tribes referred to in ORS 496.201 (1) use salmon provided by the state for this  
 14 purpose in any manner other than that described in ORS 496.201, they shall pay to the [*State De-*  
 15 *partment of Fish and Wildlife*] **Oregon Department of Natural Resources** the prevailing wholesale  
 16 rate per pound of the entire amount of salmon supplied to that tribe or tribes for that year.

17 **SECTION 90.** ORS 496.228 is amended to read:

18 496.228. (1) There is established within the [*State Department of Fish and Wildlife*] **Oregon De-**  
 19 **partment of Natural Resources** the Access and Habitat Board, consisting of seven members ap-  
 20 pointed by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**.

21 (2) Three members shall be appointed to represent the broad spectrum of hunters. In making  
 22 appointments pursuant to this subsection, the commission shall consider recommendations from the  
 23 [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural Resources**.

24 (3) Three members of the board shall be appointed to represent the broad spectrum of agricul-  
 25 ture and timber landowners. In making appointments pursuant to this subsection, the commission  
 26 shall consider recommendations [*from the State Fish and Wildlife Director*] from a list of at least five  
 27 persons submitted by the [*State Forester*] **Director of the Oregon Department of Natural Re-**  
 28 **sources** and the Director of Agriculture.

29 (4) One member of the board shall be appointed to represent the public and shall serve as the  
 30 board chairperson.

31 (5) A member of the board shall receive no compensation for services as a member. However,  
 32 subject to any applicable law regulating travel and other expenses of state officers and employees,  
 33 a member shall be reimbursed for actual and necessary travel and other expenses incurred in the  
 34 performance of official duties from such moneys as are made available by section 19, chapter 659,  
 35 Oregon Laws 1993.

36 (6) The term of office of a member of the board is four years. A member of the board is eligible  
 37 for reappointment.

38 (7) An official action of the board may be taken only upon the affirmative vote of at least four  
 39 members.

40 (8) The board shall select such officers for such terms and with such duties and powers as the  
 41 board considers necessary for the performance of those offices.

42 (9) The board shall meet at such times and at such places as may be determined by the chair  
 43 or by the majority of the members of the board.

44 **SECTION 91.** ORS 496.232 is amended to read:

45 496.232. (1) The Access and Habitat Board shall [*meet, adopt and*] recommend **access and**

1 **habitat programs** to the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
 2 **mission**, within 120 days after November 4, 1993, and at not more than 120-day intervals  
 3 thereafter[, *access and habitat programs*].

4 (2) The commission shall review such programs and may approve or disapprove the program  
 5 recommendation by the board. Funds may be expended from the **Access and Habitat Board** Sub-  
 6 account [*referred to*] **described** in ORS 496.242 for projects that have been approved by the com-  
 7 mission.

8 (3) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** and  
 9 the board jointly shall submit to each biennial session of the Legislative Assembly a report on ex-  
 10 penditure of funds for the access and habitat programs and on the status of various projects.

11 (4) In recommending access and habitat programs, the board shall:

12 (a) Recommend a mix of projects that provides a balance between access and habitat benefits.

13 (b) Recommend projects that are to be implemented by volunteers under volunteer coordinators  
 14 and nonprofit organizations engaged in approved access and habitat activities.

15 (c) Recommend programs that recognize and encourage the contributions of landowners to  
 16 wildlife and programs that minimize the economic loss to those landowners.

17 (d) Encourage agreements with landowners who request damage control hunts to ensure public  
 18 access to those hunts.

19 (e) Encourage projects that result in obtaining matching funds from other sources.

20 (5) All moneys made available for the access and habitat programs from surcharges received  
 21 under section 19, chapter 659, Oregon Laws 1993, and from gifts and grants made to carry out the  
 22 access and habitat programs may be expended only if the board so recommends and the commission  
 23 so approves. Such amounts may be expended:

24 (a) On programs that benefit wildlife by improving habitat. These programs shall be in coordi-  
 25 nation with the Wildlife Division and shall be in addition to programs provided by federal funds.  
 26 These programs may:

27 (A) Be on private lands.

28 (B) Provide seed and fertilizer to offset forage consumed by wildlife and for other programs that  
 29 enhance forage.

30 (C) Be adjacent to agricultural and forest land to attract animals from those crops.

31 (b) On programs that promote access to public and private lands:

32 (A) Through contracting for various levels of management of these lands. These management  
 33 programs may include:

34 (i) Creating hunting lease programs that provide access at present levels or stimulate new ac-  
 35 cess.

36 (ii) Controlling access.

37 (iii) Opening vehicle access.

38 (iv) Promoting land exchanges.

39 (v) Promoting proper hunting behavior.

40 (B) Through the acquisition of easements.

41 (c) On programs that would provide for wildlife feeding to alleviate damage, to intercept wildlife  
 42 before wildlife becomes involved in a damage situation and for practical food replacement in severe  
 43 winters.

44 (d) On programs to coordinate volunteers to improve habitat, repair damage to fences or roads  
 45 by wildlife or recreationists, monitor orderly hunter utilization of public and private lands and assist

1 the Oregon State Police in law enforcement activities.

2 (e) On programs that provide for auction or raffle of tags to provide incentives for habitat or  
3 access.

4 (6) The board may accept, from whatever source, gifts or grants for the purposes of access and  
5 habitat. All moneys so accepted shall be deposited in the **Access and Habitat Board** Subaccount  
6 [referred to] **described** in ORS 496.242. Unless otherwise required by the terms of a gift or grant,  
7 gifts or grants shall be expended as provided in subsection (5) of this section.

8 **SECTION 92.** ORS 496.236 is amended to read:

9 496.236. (1) Individuals who reside in the various regions established for administration of the  
10 wildlife resources may form advisory councils, with membership in the same proportion as described  
11 for the board, to discuss and consider access and habitat programs and projects and to make rec-  
12 ommendations thereon to the Access and Habitat Board. When the board considers proposals af-  
13 fecting a region, the board shall consult with the advisory council for that region if one exists.

14 (2) Employees of the [State Department of Fish and Wildlife] **Oregon Department of Natural**  
15 **Resources** or other professional biologists who **have knowledge of wildlife habitat and** are resi-  
16 dents of the various regions may act in an advisory capacity to the various councils.

17 (3) An individual who serves as a member of an advisory council shall receive no compensation  
18 or expenses for service as a member.

19 **SECTION 93.** ORS 496.242 is amended to read:

20 496.242. (1) [Notwithstanding ORS 496.300, all moneys received by the State Fish and Wildlife  
21 Commission] **All moneys received by the Oregon Natural Resources Commission** pursuant to  
22 section 19, chapter 659, Oregon Laws 1993, shall be deposited in the Access and Habitat Board  
23 Subaccount established in the [Fish and Wildlife Account. Moneys in the subaccount may be expended  
24 only for] **Oregon Natural Resources Fund. Moneys deposited in the subaccount under this**  
25 **section are continuously appropriated to the Oregon Department of Natural Resources for**  
26 **payment of expenses related to** the access and habitat programs recommended by the Access and  
27 Habitat Board [for the benefit of the wildlife resources of this state] **pursuant to ORS 496.232.**

28 (2) The [State Department of Fish and Wildlife] **Oregon Department of Natural Resources**  
29 shall credit the subaccount with a sum equal to 15 percent of the other fund budget for the green  
30 forage and Deer Enhancement and Restoration programs in each biennium.

31 (3) The department [shall] **may** not assess its personnel costs in the administration of ORS  
32 496.166 and 496.228 to 496.242 against the subaccount referred to in this section without the prior  
33 approval of the Access and Habitat Board.

34 **NOTE:** Sections 94 and 95 were deleted. Subsequent sections were not renumbered.

35 **SECTION 96.** ORS 496.270 is amended to read:

36 496.270. (1) The Legislative Assembly declares that it is the policy of the State of Oregon to  
37 encourage operators, timber owners and landowners to voluntarily improve fish and wildlife habitat.  
38 In order to carry out this policy, the Legislative Assembly encourages cooperation among operators,  
39 timber owners and landowners and other volunteers.

40 (2) Consistent with the limitations of ORS 105.672 to 105.696, a landowner is not liable in con-  
41 tract or tort for any personal injury, death or property damage that arises out of the use of the land  
42 by:

43 (a) A volunteer conducting a fish and wildlife habitat improvement project; or

44 (b) A participant of a state-funded or federally funded watershed or stream restoration or en-  
45 hancement program.

1 (3) An operator, timber owner or landowner shall not be held liable for any damages resulting  
2 from:

3 (a) A fish and wildlife habitat improvement project done in cooperation and consultation with  
4 the [State Department of Fish and Wildlife or the Oregon Watershed Enhancement Board,] **Oregon**  
5 **Department of Natural Resources** or conducted as part of a forest management practice in ac-  
6 cordance with ORS 527.610 to 527.770, 527.990 and 527.992; or

7 (b) Leaving large woody debris within the waters of this state to protect, retain and recruit  
8 large woody debris for the purposes of fish habitat and water quality improvement.

9 (4) The limitations to liability provided by subsections (2) and (3) of this section do not apply if  
10 the damages, injury or death was caused by willful, wanton or intentional conduct on the part of the  
11 operator, timber owner or landowner or by the gross negligence of the operator, timber owner or  
12 landowner. As used in this subsection “gross negligence” means negligence which is materially  
13 greater than the mere absence of reasonable care under the circumstances, and which is charac-  
14 terized by indifference to or reckless disregard of the rights of others.

15 (5) The limitation on liability provided by subsection (3) of this section does not apply to claims  
16 for death or personal injuries.

17 **SECTION 97.** ORS 496.275 is amended to read:

18 496.275. (1) The Legislative Assembly hereby declares the necessity to review all options and  
19 means for the protection and restoration of Oregon’s salmon resource that promote local economic  
20 development and enjoyment by all [*the citizens*] **residents** of Oregon. Options and means shall in-  
21 clude operation of salmon production facilities, in cooperation with the [State Department of Fish  
22 and Wildlife] **Oregon Department of Natural Resources**, by both public and private nonprofit  
23 agencies as well as by public local partnerships, to meet local production and harvest needs as well  
24 as to help restore and maintain natural salmon spawning populations. Such cooperative production  
25 projects shall be operated using scientifically sound hatchery practices and shall be consistent with  
26 objectives to protect and restore natural fish production.

27 [(2) *The State Department of Fish and Wildlife shall:*]

28 **(2) The department shall:**

29 (a) Review and revise existing state administrative rules so that the different forms of hatchery  
30 production are recognized as a necessary and critical element in the state’s salmon production sys-  
31 tem in order to provide harvest opportunities for Oregon’s [*citizens*] **residents**. In so doing, the de-  
32 partment shall identify low natural production areas and, using genetically compatible stocks  
33 approved by the department, encourage volunteer efforts such as the salmon and trout enhancement  
34 program to maintain and to enhance production.

35 (b) Identify existing private and public salmon production facilities that are currently either  
36 underutilized or subject to decommissioning and that may be appropriate for other forms of opera-  
37 tion.

38 (c) Inventory other appropriate local sites, identify possible types of production facilities, re-  
39 commend stock selection and release size, and assist in securing the acquisition of brood stock ap-  
40 proved by the department that maximizes local production.

41 (d) Investigate and implement ways to improve hatchery smolt survival and reduce predation by  
42 such means as night releases, net pen acclimation, alternate release sites, volitional and other re-  
43 lease strategies, transport and other means that may be effective and consistent with the conserva-  
44 tion of native salmon and genetic resources.

45 (e) Make recommendations on methods by which operations of facilities referred to in this sub-

1 section and subsection (3) of this section can generate revenue for sustainable production, including  
 2 but not limited to state bonding, license surcharges, ad valorem taxes, local economic development  
 3 funds, service districts, sale of excess eggs and salmon, and gifts, grants and donations.

4 (f) Identify needed monitoring and evaluation activities to ensure protection of natural spawning  
 5 fish populations and to assess the contribution of such cooperative projects to public fisheries.

6 (g) Assist in developing, for department approval, plans of operation for such cooperative  
 7 hatchery projects consistent with applicable rules and standards of sound, scientific fish manage-  
 8 ment practice.

9 (3) The department shall encourage and assist in planning hatchery facilities that seek to im-  
 10 plement innovative plans or programs designed to meet production for harvest needs consistent with  
 11 conservation objectives.

12 (4) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** shall  
 13 approve, prior to implementation, operational plans for any fish propagation facilities operated by  
 14 contractor agreement with other state or federal agencies, local governments, special districts and  
 15 nonprofit organizations.

16 **SECTION 98.** ORS 496.283 is amended to read:

17 496.283. (1) Notwithstanding ORS 506.306, all moneys received by the [*State Fish and Wildlife*  
 18 *Commission*] **Oregon Natural Resources Commission** pursuant to sections 4, 6 and 8, chapter 512,  
 19 Oregon Laws 1989, shall be deposited in a separate subaccount in the [*State Wildlife Fund*] **Oregon**  
 20 **Natural Resources Fund**. Except as provided in subsection (2) of this section, moneys in the sub-  
 21 account may be expended only for [*the department's*] fish restoration and enhancement programs **of**  
 22 **the Oregon Department of Natural Resources that are operated** for the benefit of the fish re-  
 23 sources of this state.

24 (2) Fees collected from salmon ranching permits authorized under ORS 508.700 to 508.745 [*will*]  
 25 **may** not be commingled with public fishery funds collected and deposited in the subaccount [*referred*  
 26 *to*] **described** in this section. Notwithstanding any other provision of law, these funds will be used  
 27 to monitor the effect and impact of private salmon ranching on the fishery resources of Oregon.

28 (3) The department [*shall*] **may** not divert present budgeted funds to other projects as user  
 29 surcharge funds become available and [*shall*] **may** not embark on new programs not vital to the  
 30 restoration of Oregon fisheries as required by Oregon Revised Statutes and administrative rules. The  
 31 department [*shall*] **may** not assess its personnel costs in the administration of chapter 512, Oregon  
 32 Laws 1989, against the subaccount [*referred to*] **described** in this section without the prior approval  
 33 of the Restoration and Enhancement Board.

34 **SECTION 99.** ORS 496.286 is amended to read:

35 496.286. (1) There is established within the [*State Department of Fish and Wildlife*] **Oregon De-**  
 36 **partment of Natural Resources** the Restoration and Enhancement Board, consisting of seven  
 37 members appointed by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
 38 **mission**.

39 (2) Three members shall be appointed to represent the ocean and inland recreational fisheries.  
 40 In making appointments pursuant to this subsection, the commission shall consider recommendations  
 41 from the [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural Re-**  
 42 **sources**.

43 (3) Three members of the board shall be appointed to represent the commercial troll and gillnet  
 44 fisheries and the fish processing industry. In making appointments pursuant to this subsection, the  
 45 commission shall consider recommendations from the [*State Fish and Wildlife*] director.



1 (4) One member of the board shall be appointed to represent the public.

2 (5) A member of the board shall receive no compensation for services as a member. However,  
3 subject to any applicable law regulating travel and other expenses of state officers and employees,  
4 a member shall be reimbursed for actual and necessary travel and other expenses incurred in the  
5 performance of official duties from such moneys made available by sections 4, 6 and 8, chapter 512,  
6 Oregon Laws 1989.

7 (6) The term of office of a member of the board is four years. A member of the board is eligible  
8 for reappointment.

9 (7) An official action of the board may be taken only upon the affirmative vote of four members.

10 (8) The board shall select such officers for such terms and with such duties and powers as the  
11 board considers necessary for the performance of those offices.

12 (9) The board shall meet at such times and at such places as may be determined by the chair  
13 or by the majority of the members of the board.

14 **SECTION 100.** ORS 496.289 is amended to read:

15 496.289. (1) The Restoration and Enhancement Board shall [*meet, adopt and*] recommend **fish**  
16 **restoration and enhancement programs** to the [*State Fish and Wildlife Commission*] **Oregon**  
17 **Natural Resources Commission**, within 120 days after July 1, 1989, and at not more than 120-day  
18 intervals thereafter[, *fish restoration and enhancement programs*].

19 (2) The commission shall review such programs and may approve or disapprove any or all pro-  
20 gram recommendations by the board. Funds may be expended from the subaccount [*referred to*]  
21 **described** in ORS 496.283 for projects that have been approved by the commission.

22 (3) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** and  
23 the board jointly shall submit to each biennial session of the Legislative Assembly a report on ex-  
24 penditure of funds for the fish restoration and enhancement program and on the status of various  
25 projects.

26 (4) In recommending fish restoration and enhancement programs, the board shall:

27 (a) Recommend a mix of projects that provide a balance between restoration and enhancement  
28 benefits.

29 (b) Recommend projects that are to be implemented by the salmon and trout enhancement pro-  
30 gram and nonprofit organizations engaged in approved restoration and enhancement activities.

31 (c) Encourage projects that result in obtaining matching funds from other sources.

32 (5) All moneys made available for the fish restoration and enhancement program from sur-  
33 charges received under sections 4, 6 and 8, chapter 512, Oregon Laws 1989, and from gifts and  
34 grants made to carry out the fish restoration and enhancement program may be expended only if  
35 recommended by the board and approved by the commission. Such amounts may be expended:

36 (a) On programs benefiting the commercial fishing industry in the same proportion as revenues  
37 received from surcharges under sections 6 and 8, chapter 512, Oregon Laws 1989, bear to the total  
38 amount of surcharge revenues.

39 (b) On programs benefiting recreational angling in the same proportion as revenues received  
40 from the surcharge under section 4, chapter 512, Oregon Laws 1989, bear to the total amount of  
41 surcharge revenues.

42 (6) The board may accept, from whatever source, gifts or grants for the purposes of fish resto-  
43 ration and enhancement. All moneys so accepted shall be deposited in the subaccount [*referred to*]  
44 **described** in ORS 496.283. Unless otherwise required by the terms of a gift or grant, gifts or grants  
45 shall be expended as provided in subsection (5) of this section.

(7) As used in this section:

(a) "Enhancement" includes, but is not limited to, the following activities:

(A) Angler access.

(B) New fishways and screens.

(C) Habitat.

(D) New hatchery equipment and technology.

(E) Public education.

(F) Aquatic inventories.

(b) "Restoration" includes, but is not limited to, the following activities:

(A) Modification of existing fishways and existing screens.

(B) Hatchery restoration.

(C) Liberation equipment.

**SECTION 101.** ORS 496.291 is amended to read:

496.291. (1) Individuals who reside in the various regions established for administration of the salmon and trout enhancement program may form advisory councils to discuss and consider fish restoration and enhancement programs and projects and shall make recommendations thereon to the Restoration and Enhancement Board. When the board considers proposals affecting a region, the board shall consult with the advisory council for that region if one exists.

(2) Employees of the *[State Department of Fish and Wildlife who]* **Oregon Department of Natural Resources who have knowledge of fish restoration and enhancement and** are residents of the various regions may act in an advisory capacity to the various councils.

(3) Individuals who serve as members of an advisory council shall receive no compensation or expenses for service as a member.

**SECTION 102.** ORS 496.303 is amended to read:

496.303. *[(1) The Fish and Wildlife Account is established in the State Treasury, separate and distinct from the General Fund. All moneys in the account are continuously appropriated to the State Fish and Wildlife Commission. The Fish and Wildlife Account shall consist of the moneys in its various subaccounts and any moneys transferred to the account by the Legislative Assembly. Unless otherwise specified by law, interest earnings on moneys in the account shall be paid into the State Treasury and credited to the State Wildlife Fund.]*

*[(2)]* (1)(a) The Fish Screening Subaccount is established in the *[Fish and Wildlife Account]* **Oregon Natural Resources Fund**. The subaccount shall consist of:

(A) All penalties recovered under ORS 536.900 to 536.920.

(B) All moneys received pursuant to ORS 498.306.

(C) All gifts, grants and other moneys from whatever source that may be used to carry out the provisions of ORS 498.306.

(D) All moneys received from the surcharge on angling licenses imposed by ORS 497.124.

(b) All moneys in the subaccount shall be used to carry out the provisions of ORS 315.138, 498.306 and 509.620. However, moneys received from the surcharge on angling licenses imposed by ORS 497.124 shall be expended only to carry out the provisions of law relating to the screening of water diversions.

*[(3)]* (2) The Fish Endowment Subaccount is established in the *[Fish and Wildlife Account]* **Oregon Natural Resources Fund**. The subaccount shall consist of transfers of moneys authorized by the Legislative Assembly from the *[State Wildlife Fund]* **fund** and gifts and grants of moneys from whatever source for the purpose of paying the expense of maintaining fish hatcheries operated by

1 the **Oregon Department of Natural Resources**.

2 [(4)] (3) The Migratory Waterfowl Subaccount is established in the [*Fish and Wildlife Account*]  
 3 **Oregon Natural Resources Fund**. All moneys received by the **Oregon Natural Resources** Com-  
 4 mission from the sale of art works and prints related to the migratory waterfowl stamp shall be  
 5 deposited in the subaccount. Moneys in the subaccount may be expended only for activities that  
 6 promote the propagation, conservation and recreational uses of migratory waterfowl and for activ-  
 7 ities related to the design, production, issuance and arrangements for sale of the migratory  
 8 waterfowl stamps and related art works and prints. Expenditures of moneys in the subaccount may  
 9 be made within this state, in other states or in foreign countries, in such amounts as the commission  
 10 determines appropriate. Expenditures in other states and foreign countries shall be on such terms  
 11 and conditions as the commission determines will benefit most directly the migratory waterfowl re-  
 12 sources of this state.

13 [(5)] (4) The Halibut Research Subaccount is established in the [*Fish and Wildlife Account*]  
 14 **Oregon Natural Resources Fund**. Based on the annual number of recreational halibut anglers, a  
 15 portion of the moneys derived from the sale of the salmon, steelhead trout, sturgeon and halibut tag  
 16 pursuant to ORS 497.121 shall be credited to the subaccount. Moneys in the subaccount may be  
 17 expended only for halibut population studies and other research.

18 [(6)] (5) The Upland Bird Subaccount is established in the [*Fish and Wildlife Account*] **Oregon**  
 19 **Natural Resources Fund**. All moneys received by the [*State Fish and Wildlife Commission*] **Oregon**  
 20 **Natural Resources Commission** from the sale of upland bird stamps, from the sale of any art  
 21 works and prints related to the upland bird stamp and from private hunting preserve permit fees  
 22 shall be deposited in the subaccount. Moneys in the subaccount may be expended only for promoting  
 23 the propagation and conservation of upland birds and the acquisition, development, management,  
 24 enhancement, sale or exchange of upland bird habitat, and for activities related to the design, pro-  
 25 duction, issuance and arrangements for sale of the upland bird stamps and related art works and  
 26 prints. Expenditures of moneys in the subaccount shall be made for the benefit of programs within  
 27 this state in such amounts and at such times as the commission determines appropriate to most di-  
 28 rectly benefit the upland bird resources of [*the*] **this** state.

29 [(7)] (6)(a) The Fish and Wildlife Deferred Maintenance Subaccount is established in the [*Fish*  
 30 *and Wildlife Account*] **Oregon Natural Resources Fund**. Interest earnings on moneys in the sub-  
 31 account shall be credited to the subaccount. The subaccount shall consist of moneys authorized by  
 32 the Legislative Assembly from the [*State Wildlife Fund*] **fund** and moneys obtained by gift, grant,  
 33 bequest or donation from any other public or private source.

34 (b) The principal in the subaccount may be utilized only as provided in paragraph (c) of this  
 35 subsection. Interest earnings on the moneys in the subaccount may be expended only for the main-  
 36 tenance of fish hatcheries and [*State Department of Fish and Wildlife facilities other than*] **facilities**  
 37 **of the Oregon Department of Natural Resources that are related to the administration of the**  
 38 **wildlife and commercial fishing laws of this state, except for** administrative facilities located in  
 39 Salem.

40 (c) The department may borrow funds from the principal of the subaccount to maintain adequate  
 41 cash flow requirements. However, moneys borrowed from the principal must be repaid to the sub-  
 42 account:

43 (A) Within six months from the date on which the moneys were borrowed.

44 (B) With interest at the standard rate that the State Treasurer charges to state agencies for  
 45 other loans. Interest paid under this subparagraph shall be paid to the subaccount.

1 (d) For purposes of this subsection, “principal” means moneys authorized by the Legislative  
2 Assembly for transfer to the subaccount from the [*State Wildlife Fund*] **fund**, including any assign-  
3 ment of earnings on moneys in the fund and other moneys obtained by gift, grant, bequest or do-  
4 nation deposited into the subaccount.

5 [(8)] (7) The Access and Habitat Board Subaccount is established in the [*Fish and Wildlife Ac-*  
6 *count*] **Oregon Natural Resources Fund**. The subaccount shall consist of moneys transferred to the  
7 subaccount pursuant to ORS 496.242. Moneys in the subaccount may be used for the purposes  
8 specified in ORS 496.242.

9 [(9)] (8) The Marine Shellfish Subaccount is established in the [*Fish and Wildlife Account*]  
10 **Oregon Natural Resources Fund**. Interest earnings on moneys in the subaccount shall be credited  
11 to the subaccount. All moneys received by the **Oregon Natural Resources** Commission from the  
12 sale of resident and nonresident shellfish licenses pursuant to ORS 497.121 shall be deposited in the  
13 subaccount. Moneys in the subaccount shall be used for the protection and enhancement of shellfish  
14 for recreational purposes, including shellfish sanitation costs and the cost of enforcement of wildlife  
15 laws pertaining to the taking of shellfish. The [*State Fish and Wildlife Director*] **Director of the**  
16 **Oregon Department of Natural Resources**, or a designee, the Director of Agriculture, or a  
17 designee, and the Superintendent of State Police, or a designee, shall jointly make a recommendation  
18 to the Governor for inclusion in the Governor’s budget beginning July 1 of each odd-numbered year.

19 [(10)] (9)(a) The Mountain Sheep Subaccount is established in the [*Fish and Wildlife Account*]  
20 **Oregon Natural Resources Fund**, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

21 (b) All moneys in the subaccount shall be used for the propagation and conservation of mountain  
22 sheep, for research, development, management, enhancement and sale or exchange of mountain  
23 sheep habitat and for programs within the state that in the discretion of the **Oregon Natural Re-**  
24 **sources** Commission most directly benefit mountain sheep resources of this state.

25 [(11)] (10)(a) The Antelope Subaccount is established in the [*Fish and Wildlife Account*] **Oregon**  
26 **Natural Resources Fund**, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

27 (b) All moneys in the subaccount shall be used for the propagation and conservation of antelope,  
28 for research, development, management, enhancement and sale or exchange of antelope habitat and  
29 for programs within the state that in the discretion of the **Oregon Natural Resources** Commission  
30 most directly benefit antelope resources of this state.

31 [(12)] (11)(a) The Mountain Goat Subaccount is established in the [*Fish and Wildlife Account*]  
32 **Oregon Natural Resources Fund**, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

33 (b) All moneys in the subaccount shall be used for the propagation and conservation of mountain  
34 goats for research, development, management, enhancement and sale or exchange of mountain goat  
35 habitat and for programs within the state that in the discretion of the **Oregon Natural Resources**  
36 Commission most directly benefit mountain goat resources of this state.

37 [(13)] (12)(a) The **Oregon Natural Resources** Commission shall keep a record of all moneys  
38 deposited in the [*Fish and Wildlife Account*] **Oregon Natural Resources Fund pursuant to this**  
39 **section**. The record shall indicate by separate cumulative accounts the sources from which the  
40 moneys are derived and the individual activity or programs against which each withdrawal is  
41 charged.

42 (b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall  
43 report, in the budget documents submitted to the Legislative Assembly, on the application of in-  
44 vestment and interest earnings to the maintenance of fish hatcheries and other [*State Department*  
45 *of Fish and Wildlife*] facilities **of the Oregon Department of Natural Resources**.

1        **SECTION 103.** ORS 496.303, as amended by section 14, chapter 625, Oregon Laws 2007, is  
2 amended to read:

3        496.303. [(1) *The Fish and Wildlife Account is established in the State Treasury, separate and*  
4 *distinct from the General Fund. All moneys in the account are continuously appropriated to the State*  
5 *Fish and Wildlife Commission. The Fish and Wildlife Account shall consist of the moneys in its vari-*  
6 *ous subaccounts and any moneys transferred to the account by the Legislative Assembly. Unless oth-*  
7 *erwise specified by law, interest earnings on moneys in the account shall be paid into the State*  
8 *Treasury and credited to the State Wildlife Fund.*]

9        [(2) (1)(a) The Fish Screening Subaccount is established in the [*Fish and Wildlife Account*]  
10 **Oregon Natural Resources Fund.** The subaccount shall consist of:

11        (A) All penalties recovered under ORS 536.900 to 536.920.

12        (B) All moneys received pursuant to ORS 498.306.

13        (C) All gifts, grants and other moneys from whatever source that may be used to carry out the  
14 provisions of ORS 498.306.

15        (D) All moneys received from the surcharge on angling licenses imposed by ORS 497.124.

16        (b) All moneys in the subaccount shall be used to carry out the provisions of ORS 498.306 and  
17 509.620. However, moneys received from the surcharge on angling licenses imposed by ORS 497.124  
18 shall be expended only to carry out the provisions of law relating to the screening of water diver-  
19 sions.

20        [(3) (2) The Fish Endowment Subaccount is established in the [*Fish and Wildlife Account*]  
21 **Oregon Natural Resources Fund.** The subaccount shall consist of transfers of moneys authorized  
22 by the Legislative Assembly from the [*State Wildlife Fund*] **fund** and gifts and grants of moneys from  
23 whatever source for the purpose of paying the expense of maintaining fish hatcheries operated by  
24 the **Oregon Department of Natural Resources.**

25        [(4) (3) The Migratory Waterfowl Subaccount is established in the [*Fish and Wildlife Account*]  
26 **Oregon Natural Resources Fund.** All moneys received by the **Oregon Natural Resources** Com-  
27 mission from the sale of art works and prints related to the migratory waterfowl stamp shall be  
28 deposited in the subaccount. Moneys in the subaccount may be expended only for activities that  
29 promote the propagation, conservation and recreational uses of migratory waterfowl and for activ-  
30 ities related to the design, production, issuance and arrangements for sale of the migratory  
31 waterfowl stamps and related art works and prints. Expenditures of moneys in the subaccount may  
32 be made within this state, in other states or in foreign countries, in such amounts as the commission  
33 determines appropriate. Expenditures in other states and foreign countries shall be on such terms  
34 and conditions as the commission determines will benefit most directly the migratory waterfowl re-  
35 sources of this state.

36        [(5) (4) The Halibut Research Subaccount is established in the [*Fish and Wildlife Account*]  
37 **Oregon Natural Resources Fund.** Based on the annual number of recreational halibut anglers, a  
38 portion of the moneys derived from the sale of the salmon, steelhead trout, sturgeon and halibut tag  
39 pursuant to ORS 497.121 shall be credited to the subaccount. Moneys in the subaccount may be  
40 expended only for halibut population studies and other research.

41        [(6) (5) The Upland Bird Subaccount is established in the [*Fish and Wildlife Account*] **Oregon**  
42 **Natural Resources Fund.** All moneys received by the [*State Fish and Wildlife Commission*] **Oregon**  
43 **Natural Resources Commission** from the sale of upland bird stamps, from the sale of any art  
44 works and prints related to the upland bird stamp and from private hunting preserve permit fees  
45 shall be deposited in the subaccount. Moneys in the subaccount may be expended only for promoting

1 the propagation and conservation of upland birds and the acquisition, development, management,  
 2 enhancement, sale or exchange of upland bird habitat, and for activities related to the design, pro-  
 3 duction, issuance and arrangements for sale of the upland bird stamps and related art works and  
 4 prints. Expenditures of moneys in the subaccount shall be made for the benefit of programs within  
 5 this state in such amounts and at such times as the commission determines appropriate to most di-  
 6 rectly benefit the upland bird resources of *[the]* **this** state.

7 *[(7)]* **(6)(a)** The Fish and Wildlife Deferred Maintenance Subaccount is established in the *[Fish*  
 8 *and Wildlife Account]* **Oregon Natural Resources Fund**. Interest earnings on moneys in the sub-  
 9 account shall be credited to the subaccount. The subaccount shall consist of moneys authorized by  
 10 the Legislative Assembly from the *[State Wildlife Fund]* **fund** and moneys obtained by gift, grant,  
 11 bequest or donation from any other public or private source.

12 (b) The principal in the subaccount may be utilized only as provided in paragraph (c) of this  
 13 subsection. Interest earnings on the moneys in the subaccount may be expended only for the main-  
 14 tenance of fish hatcheries and *[State Department of Fish and Wildlife facilities other than]* **facilities**  
 15 **of the Oregon Department of Natural Resources that are related to the administration of the**  
 16 **wildlife and commercial fishing laws of this state, except for** administrative facilities located in  
 17 Salem.

18 (c) The department may borrow funds from the principal of the subaccount to maintain adequate  
 19 cash flow requirements. However, moneys borrowed from the principal must be repaid to the sub-  
 20 account:

21 (A) Within six months from the date on which the moneys were borrowed.

22 (B) With interest at the standard rate that the State Treasurer charges to state agencies for  
 23 other loans. Interest paid under this subparagraph shall be paid to the subaccount.

24 (d) For purposes of this subsection, “principal” means moneys authorized by the Legislative  
 25 Assembly for transfer to the subaccount from the *[State Wildlife Fund]* **fund**, including any assign-  
 26 ment of earnings on moneys in the fund and other moneys obtained by gift, grant, bequest or do-  
 27 nation deposited into the subaccount.

28 *[(8)]* **(7)** The Access and Habitat Board Subaccount is established in the *[Fish and Wildlife Ac-*  
 29 *count]* **Oregon Natural Resources Fund**. The subaccount shall consist of moneys transferred to the  
 30 subaccount pursuant to ORS 496.242. Moneys in the subaccount may be used for the purposes  
 31 specified in ORS 496.242.

32 *[(9)]* **(8)** The Marine Shellfish Subaccount is established in the *[Fish and Wildlife Account]*  
 33 **Oregon Natural Resources Fund**. Interest earnings on moneys in the subaccount shall be credited  
 34 to the subaccount. All moneys received by the **Oregon Natural Resources** Commission from the  
 35 sale of resident and nonresident shellfish licenses pursuant to ORS 497.121 shall be deposited in the  
 36 subaccount. Moneys in the subaccount shall be used for the protection and enhancement of shellfish  
 37 for recreational purposes, including shellfish sanitation costs and the cost of enforcement of wildlife  
 38 laws pertaining to the taking of shellfish. The *[State Fish and Wildlife Director]* **Director of the**  
 39 **Oregon Department of Natural Resources**, or a designee, the Director of Agriculture, or a  
 40 designee, and the Superintendent of State Police, or a designee, shall jointly make a recommendation  
 41 to the Governor for inclusion in the Governor’s budget beginning July 1 of each odd-numbered year.

42 *[(10)]* **(9)(a)** The Mountain Sheep Subaccount is established in the *[Fish and Wildlife Account]*  
 43 **Oregon Natural Resources Fund**, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

44 (b) All moneys in the subaccount shall be used for the propagation and conservation of mountain  
 45 sheep, for research, development, management, enhancement and sale or exchange of mountain

1 sheep habitat and for programs within the state that in the discretion of the **Oregon Natural Re-**  
 2 **sources** Commission most directly benefit mountain sheep resources of this state.

3 [(11)] (10)(a) The Antelope Subaccount is established in the [*Fish and Wildlife Account*] **Oregon**  
 4 **Natural Resources Fund**, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

5 (b) All moneys in the subaccount shall be used for the propagation and conservation of antelope,  
 6 for research, development, management, enhancement and sale or exchange of antelope habitat and  
 7 for programs within the state that in the discretion of the **Oregon Natural Resources** Commission  
 8 most directly benefit antelope resources of this state.

9 [(12)] (11)(a) The Mountain Goat Subaccount is established in the [*Fish and Wildlife Account*]  
 10 **Oregon Natural Resources Fund**, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

11 (b) All moneys in the subaccount shall be used for the propagation and conservation of mountain  
 12 goats for research, development, management, enhancement and sale or exchange of mountain goat  
 13 habitat and for programs within the state that in the discretion of the **Oregon Natural Resources**  
 14 Commission most directly benefit mountain goat resources of this state.

15 [(13)] (12)(a) The **Oregon Natural Resources** Commission shall keep a record of all moneys  
 16 deposited in the [*Fish and Wildlife Account*] **Oregon Natural Resources Fund pursuant to this**  
 17 **section**. The record shall indicate by separate cumulative accounts the sources from which the  
 18 moneys are derived and the individual activity or programs against which each withdrawal is  
 19 charged.

20 (b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall  
 21 report, in the budget documents submitted to the Legislative Assembly, on the application of in-  
 22 vestment and interest earnings to the maintenance of fish hatcheries and other [*State Department*  
 23 *of Fish and Wildlife*] facilities **of the Oregon Department of Natural Resources**.

24 **SECTION 104.** ORS 496.340 is amended to read:

25 496.340. (1) Except as provided in subsection (3)(b) of this section, whenever real property owned  
 26 by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** is exempt  
 27 from taxation on January 1 of any year by reason of its ownership by the state, the commission shall  
 28 pay to the county in which the property is situated an amount equal to the ad valorem taxes that  
 29 would have been charged against the property if it had been assessed to a taxable owner as of  
 30 January 1 of such year as provided in subsection (2) of this section. The county assessor shall de-  
 31 termine the value of such property and shall notify the commission of the determination of the  
 32 county assessor. Upon request of the commission, the Department of Revenue shall review the de-  
 33 termination of value and shall redetermine the value if it concludes the value initially determined  
 34 was substantially incorrect.

35 (2)(a) Except as provided in paragraph (b) or (c) of this subsection, the value of the property  
 36 shall be computed at its assessed value under ORS 308A.107 or for forestland use, whichever is ap-  
 37 plicable.

38 (b) Paragraph (a) of this subsection shall not apply to any property upon which open field  
 39 burning takes place. If open field burning takes place on any property described in this section, the  
 40 property shall be valued at its highest and best use rather than the values authorized in paragraph  
 41 (a) of this subsection on the January 1 following the date of the open field burning. If in the next  
 42 year, the open field burning is discontinued, paragraph (a) of this subsection shall apply the next  
 43 January 1 and each year thereafter as long as no open field burning occurs.

44 (c) Paragraph (a) of this subsection shall not apply to any property acquired by the commission  
 45 after September 9, 1971, if such property was valued under farm use or forestland use special as-

1 sessment provisions, at the time the property was acquired by the commission. However, no pay-  
 2 ments in lieu of taxes made to a county pursuant to this section prior to January 1, 1974, shall be  
 3 refunded to the commission.

4 **(3)(a) This section applies only to real property used in the regulation of the wildlife laws  
 5 and commercial fishing laws of this state.**

6 [(3)] **(b)** This section does not apply to real property used for bird farms, fish hatcheries, office  
 7 quarters, fishing access sites or impoundments, capital improvements or real property acquired  
 8 pursuant to the Act of May 19, 1948 (62 Stat. 240), Public Law 80-537.

9 (4) The amount prescribed in subsection (1) of this section shall be determined annually by the  
 10 assessor of the county in which the property is situated and certified by the assessor to the county  
 11 court or the board of county commissioners. A notice of the determination, signed by the county  
 12 judge or the chairperson of the board of county commissioners, shall be mailed to the principal office  
 13 of the **Oregon Natural Resources** Commission not later than October 15. The notice shall contain  
 14 a statement of the value of the property and a complete explanation of the method used in comput-  
 15 ing the amount claimed pursuant to subsection (1) of this section. Not later than November 15, the  
 16 **Oregon Natural Resources** Commission shall pay each amount, less a discount equivalent to that  
 17 which is provided in ORS 311.505. Payment shall be made to the county treasurer, who shall dis-  
 18 tribute the payment to the taxing districts of the county in accordance with the schedule of per-  
 19 centages computed under ORS 311.390.

20 (5) Notwithstanding any other provision of the wildlife laws, the commission shall make the  
 21 payments to counties required by this section annually from the moneys in the [*State Wildlife Fund*  
 22 *established by ORS 496.300*] **Oregon Natural Resources Fund.**

23 **SECTION 105.** ORS 496.375 is amended to read:

24 496.375. As used in ORS 496.380 to 496.390 “nongame wildlife” means all wildlife species over  
 25 which the [*State Fish and Wildlife Commission*] **Oregon Department of Natural Resources** has  
 26 jurisdiction, except game mammals, as defined in ORS 496.004, fur-bearing mammals as defined in  
 27 ORS 496.004, game birds as defined in ORS 496.007, and game fish as defined in ORS 496.009.

28 **SECTION 106.** ORS 496.390 is amended to read:

29 496.390. The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-  
 30 sources** shall have access to and control of the moneys held in the Nongame Wildlife Fund, but  
 31 shall use such moneys only to protect and preserve nongame wildlife and their habitat.

32 **SECTION 107.** ORS 496.440 is amended to read:

33 496.440. **The Oregon Department of Natural Resources shall conduct** a salmon and trout  
 34 enhancement program [*shall be conducted by the State Fish and Wildlife Commission*] to benefit all  
 35 users of the salmon and trout resources in this state. The program shall be conducted in such  
 36 manner as to provide the greatest possible opportunity for citizen volunteer participation to achieve  
 37 the goals of the program.

38 **SECTION 108.** ORS 496.445 is amended to read:

39 496.445. In carrying out the salmon and trout enhancement program, the [*State Fish and Wildlife  
 40 Commission*] **Director of the Oregon Department of Natural Resources** shall:

41 (1) Provide appropriate [*State Department of Fish and Wildlife*] personnel to act as community  
 42 advisors to cooperatively develop enhancement projects with citizen volunteers and to cooperatively  
 43 evaluate enhancement projects with the citizens responsible for project implementation.

44 (2) Provide technical assistance to citizens responsible for implementation of enhancement  
 45 projects.



1 (3) Coordinate the implementation of enhancement projects with the activities of department  
2 staff and other agencies.

3 (4) Provide educational and informational materials to promote public awareness and involve-  
4 ment in the salmon and trout enhancement program.

5 (5) Supervise the activities of citizens developing local brood stock for enhancement projects.

6 (6) Grant funds to citizens for the implementation of approved enhancement projects from such  
7 moneys as may be available to the [*commission therefor*] **director for that purpose**.

8 (7) Develop and implement a remote hatchbox program as described in ORS 496.458.

9 (8) Report annually to the Legislative Assembly on the progress of the salmon and trout en-  
10 hancement program.

11 **SECTION 109.** ORS 496.450 is amended to read:

12 496.450. (1) Any citizen or group of citizens may submit to the [*State Fish and Wildlife Com-*  
13 *mission*] **Director of the Oregon Department of Natural Resources** a proposal for a project  
14 consistent with the recovery or sustainability of native stocks to be implemented under the salmon  
15 and trout enhancement program or may submit a request for advice and assistance in developing  
16 such a project.

17 (2) An enhancement project may include, but is not limited to, habitat improvement, installation  
18 and operation of streamside incubators, brood stock development, fish stocking and spawning ground  
19 surveys and data collection.

20 (3) The [*commission*] **director** shall approve for implementation only those enhancement projects  
21 based on sound biological principles and shall use fish stocks most adapted to the project locale.  
22 To the greatest extent practicable, a project must be designed to maximize survival, adult returns  
23 and genetic diversity while minimizing disease.

24 (4) Conditions for approval by the [*commission*] **director** for implementation of a project include  
25 but are not limited to:

26 (a) Provisions satisfactory to the [*commission*] **director** for inspection and evaluation of the im-  
27 plementation of a project; and

28 (b) Provisions satisfactory to the [*commission*] **director** for controlling the expenditure of and  
29 accounting for any funds granted by the [*commission*] **director** for implementation of the project.

30 **SECTION 110.** ORS 496.455 is amended to read:

31 496.455. In carrying out any duties, functions or power under the wildlife laws or the commercial  
32 fishing laws, the [*State Fish and Wildlife Commission*] **Director of the Oregon Department of**  
33 **Natural Resources** may authorize the taking of native stocks and their sexual products, but may  
34 not provide any such native stocks or the sexual products therefrom to any person granted a permit  
35 by the [*commission*] **Oregon Natural Resources Commission** pursuant to ORS 508.700 to 508.745  
36 unless, at a minimum, sufficient fish are returned to the donor stream to compensate fully for native  
37 smolts [*which*] **that** might have resulted from eggs removed from the donor stock. When entering  
38 into a contract for the taking of native stock with a person granted a permit pursuant to ORS  
39 508.700 to 508.745, the [*commission*] **director** shall consider the use of the facilities for the taking  
40 of additional native stock for public management activities, including the salmon and trout en-  
41 hancement program.

42 **SECTION 111.** ORS 496.458 is amended to read:

43 496.458. (1) The [*State Fish and Wildlife Commission*] **Oregon Department of Natural Re-**  
44 **sources** shall develop and implement a remote hatchbox program.

45 (2) To implement the remote hatchbox program required under subsection (1) of this section, the

1 *[commission]* **Director of the Oregon Department of Natural Resources** shall:

2 (a) Identify sites in tributaries that are suitable for remote hatchboxes;

3 (b) Adopt rules necessary to implement the remote hatchbox program;

4 (c) Investigate the potential of producing remote hatchboxes through an inmate work program  
5 of the Department of Corrections; and

6 (d) Report annually to the Legislative Assembly on the progress of the remote hatchbox pro-  
7 gram. The report shall include but need not be limited to the sites the *[commission]* **director** has  
8 chosen, a copy of rules the *[commission]* **director** has adopted and findings on the extent to which  
9 the *[commission]* **director** is utilizing labor, supplies or services provided by an inmate work pro-  
10 gram.

11 (3) Rules adopted by the *[commission]* **director** under subsection (2) of this section shall:

12 (a) Ensure that the program is scientifically sound;

13 (b) Be consistent with the goals of the Oregon Plan, as described in ORS 541.405; and

14 (c) Identify protocols for determining when the use of remote hatchboxes is an appropriate ac-  
15 tivity under the Oregon Plan.

16 **SECTION 112.** ORS 496.460 is amended to read:

17 496.460. (1) The Salmon and Trout Enhancement Program Advisory Committee is established as  
18 an advisory committee to the *[State Fish and Wildlife Commission]* **Oregon Department of Natural**  
19 **Resources and the Oregon Natural Resources Commission**. The committee shall be of such size  
20 and have such geographical representation as the commission determines appropriate. Members of  
21 the committee shall be appointed by the Governor.

22 (2) The committee shall review *[the policies of the State Department of Fish and Wildlife]* **de-**  
23 **partment policies** and make recommendations to the *[State Fish and Wildlife Commission and to*  
24 *the]* department **and the commission** concerning the implementation of salmon and trout enhance-  
25 ment projects.

26 (3) A member of the committee shall receive no compensation for services as a member. How-  
27 ever, subject to any applicable law regulating travel and other expenses of state officers and em-  
28 ployees, a member shall be reimbursed for actual and necessary travel and other expenses incurred  
29 in the performance of official duties from *[such moneys as may be available to the department*  
30 *therefor]* **moneys available to the department**.

31 **SECTION 113.** ORS 496.470 is amended to read:

32 496.470. (1) The *[State Fish and Wildlife Commission]* **Oregon Natural Resources Commission**  
33 shall adopt by rule plans for the natural production of anadromous fish runs in the basins set forth  
34 in subsection (2) of this section. The commission shall adopt the plans after government-to-  
35 government consultation in the forum established pursuant to United States v. Oregon, United  
36 States District Court Case No. 68-513 MA, among the *[State Department of Fish and Wildlife]*  
37 **Oregon Department of Natural Resources** and the Confederated Tribes of the Umatilla Indian  
38 Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Nez Perce  
39 Tribe.

40 (2) The basins for which plans may be adopted under subsection (1) of this section are:

41 (a) Hood;

42 (b) Deschutes;

43 (c) Fifteenmile Creek;

44 (d) John Day;

45 (e) Umatilla;

- 1 (f) Walla Walla;  
2 (g) Grande Ronde; and  
3 (h) Imnaha.

4 (3) Of the basins set forth in subsection (2) of this section, the commission shall give priority to  
5 adopting plans for the Grande Ronde, Imnaha, Umatilla, Walla Walla and Hood basins.

6 **SECTION 114.** ORS 496.480 is amended to read:

7 496.480. The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
8 **sources** shall report at least once every six months to the appropriate legislative committee and the  
9 Governor on the progress of the department and the [*State Fish and Wildlife Commission*] **Oregon**  
10 **Natural Resources Commission** in implementing ORS 496.470 and 496.475.

11 **SECTION 115.** ORS 496.490 is amended to read:

12 496.490. (1)(a) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural**  
13 **Resources** shall establish a Keep Oregon's Rivers Clean program for the collection, recycling and  
14 proper disposal of fishing tackle, including monofilament line, fluorocarbon leaders, lines, lead  
15 weights and lures.

16 **(b) The department may establish a method by which deposited tackle may be collected**  
17 **for recycling and disposal.**

18 (2) The program shall consist of collection points located at or near established fishing areas  
19 and boat ramps. At each collection point, the department shall work with conservation and outdoor  
20 sports groups to provide a container for collection of tackle and post permanent signs or other no-  
21 tices that explain the program, the benefits of proper tackle recycling and disposal and the Oregon  
22 conservation ethic.

23 [(3) *The State Department of Fish and Wildlife may work cooperatively with the State Parks and*  
24 *Recreation Department to establish a method by which deposited tackle may be collected for recycling*  
25 *and disposal.*]

26 [(4)] (3) The [*State Department of Fish and Wildlife*] **department** shall include in any statewide  
27 sportfishing regulations publication produced by the department a statement explaining the col-  
28 lection and recycling program and encouraging nongovernmental organization participation in the  
29 program.

30 **SECTION 116.** ORS 496.510 is amended to read:

31 496.510. The State of Oregon assents to the Act of Congress entitled, "An Act to provide that  
32 the United States shall aid the states in wildlife-restoration projects, and for other purposes," ap-  
33 proved September 2, 1937, Public Law No. 415, 75th Congress (50 Stat. 917, 16 U.S.C.A. 669). The  
34 [*State Fish and Wildlife Commission*] **Oregon Department of Natural Resources** shall perform  
35 such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration  
36 projects, as defined in said Act of Congress, in compliance with said Act and with rules and regu-  
37 lations promulgated by the **United States** Secretary of the Interior thereunder.

38 **SECTION 117.** ORS 496.525 is amended to read:

39 496.525. (1) The State of Oregon assents to the provisions of the Act of Congress entitled, "An  
40 Act to provide that the United States shall aid the states in fish restoration and management  
41 projects, and for other purposes," approved August 9, 1950, Public Law No. 681, 81st Congress (64  
42 Stat. 430, 16 U.S.C.A. 777).

43 (2) The [*State Fish and Wildlife Commission*] **Oregon Department of Natural Resources** shall  
44 perform such acts as may be necessary to the conduct and establishment of cooperative fish resto-  
45 ration projects, as defined in said Act of Congress, in compliance with said Act and rules and reg-

1 ulations promulgated thereunder by the **United States** Secretary of the Interior.

2 **SECTION 118.** ORS 496.550 is amended to read:

3 496.550. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
4 shall arrange, by contest or other appropriate means, for the selection of the design of the annual  
5 migratory waterfowl stamp required by ORS 497.151 and for the production and sale of the stamps.

6 (2) The commission may produce stamps in such number as the commission considers appropri-  
7 ate and may make stamps available for the creation of migratory waterfowl art prints and other  
8 related art works and may arrange for the sale of stamps, prints and art works to persons desiring  
9 to purchase those items.

10 **SECTION 119.** ORS 496.555 is amended to read:

11 496.555. In carrying out its duties, functions and powers with regard to the migratory waterfowl  
12 stamp, the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may  
13 contract for the performance of those duties, functions and powers. The contract may include, among  
14 other matters, provisions for advance payment or reimbursement for services performed pursuant to  
15 any such contract. All costs and expenses incurred pursuant to this section shall be paid from the  
16 Migratory Waterfowl Subaccount established under ORS 496.303.

17 **SECTION 120.** ORS 496.562 is amended to read:

18 496.562. The purposes of this section and ORS 496.558, 496.566 and 497.153 are to:

19 (1) Authorize the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commis-**  
20 **sion** to issue to hunters an upland bird stamp for a specified fee;

21 (2) Establish a fund to be financed by the sale of upland bird stamps and any art works and  
22 prints related to the upland bird stamp for the purposes of promoting the propagation and conser-  
23 vation of upland birds and acquiring, developing, managing, enhancing, purchasing or acquiring  
24 through lands exchange upland bird habitat; and

25 (3) Provide the [*State Fish and Wildlife*] commission with improved data on the location and  
26 number of upland bird hunters.

27 **SECTION 121.** ORS 496.566 is amended to read:

28 496.566. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
29 shall arrange, by contest or other appropriate means, for the selection of the design of the annual  
30 upland bird stamp authorized by ORS 497.153 and for the production and sale of the stamps.

31 (2) The commission may produce stamps in such number as the commission considers appropri-  
32 ate and may make stamps available for the creation of upland bird art prints and other related art  
33 works and may arrange for the sale of stamps, prints and art works to persons desiring to purchase  
34 those items.

35 (3) In carrying out its duties, functions and powers with regard to the upland bird stamp, the  
36 [*State Fish and Wildlife*] commission may contract for the performance of those duties, functions and  
37 powers. The contract may include, among other matters, provisions for advance payment or re-  
38 imbursement for services performed pursuant to any such contract. All costs and expenses incurred  
39 pursuant to this section shall be paid from the Upland Bird Subaccount established under ORS  
40 496.303.

41 **SECTION 122.** ORS 496.605 is amended to read:

42 496.605. The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
43 **Resources** and any deputies of the director and all other peace officers of this state or any political  
44 subdivision thereof have jurisdiction of and may enforce any of the provisions of the wildlife laws.

45 **SECTION 123.** ORS 496.610 is amended to read:

1 496.610. (1) The Department of State Police shall employ a sufficient number of state police to  
2 enforce the wildlife laws.

3 (2) The services and expenses of the Department of State Police incurred in the enforcement of  
4 the wildlife laws shall be paid from the [*State Wildlife Fund*] **Oregon Natural Resources Fund**.

5 (3) The Superintendent of State Police may appoint special enforcement officers authorized to  
6 enforce the wildlife laws. Individuals so appointed must be special agents of the United States Fish  
7 and Wildlife Service or the National Marine Fisheries Service, and shall serve at the pleasure of the  
8 superintendent without additional compensation. Each such special enforcement officer shall have  
9 all powers and authority of a peace officer of this state in serving warrants, subpoenas and other  
10 legal process in enforcement of the wildlife laws.

11 **SECTION 124.** ORS 496.615 is amended to read:

12 496.615. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**,  
13 with the approval of the Governor and Superintendent of State Police, may employ such persons as  
14 [*they deem*] **the commission deems** necessary or expedient for the enforcement of the wildlife laws.  
15 The services and expenses of these persons are payable out of the [*State Wildlife Fund*] **Oregon**  
16 **Natural Resources Fund**. It is the intention of this section and ORS 496.610 that the commission  
17 employ only such persons as agreed upon between the commission, the Governor and the Super-  
18 intendent of State Police, and that the duties of wildlife law enforcement, [*so*] **as** far as is economical  
19 and practicable, be performed by the Department of State Police.

20 **SECTION 125.** ORS 496.620 is amended to read:

21 496.620. No person authorized to enforce the wildlife laws shall suffer any civil liability for the  
22 enforcement or attempted enforcement of any provisions of the wildlife laws or for the exercise or  
23 attempted exercise of any of the duties or privileges granted to or imposed by law upon the [*State*  
24 *Fish and Wildlife Commission*] **Oregon Natural Resources Commission** or such persons.

25 **SECTION 126.** ORS 496.630 is amended to read:

26 496.630. (1) Upon information or complaint of the [*State Fish and Wildlife Commission*] **Oregon**  
27 **Natural Resources Commission** or any person authorized to enforce the wildlife laws, district at-  
28 torneys shall prosecute every criminal case in which it appears that there has been a violation of  
29 the wildlife laws or any rule promulgated pursuant thereto.

30 (2) Unless otherwise specifically provided, justice courts have concurrent jurisdiction in the first  
31 instance with the circuit court of all wildlife law offenses.

32 **SECTION 127.** ORS 496.665 is amended to read:

33 496.665. (1) Any court having jurisdiction of the offense, upon receiving proof or probable cause  
34 for believing in the concealment of any wildlife taken, killed or had in possession, under control,  
35 or shipped contrary to the wildlife laws, shall issue a search warrant and cause a search to be made  
36 in any place, and to that end cause any building, enclosure, car, automobile, boat, apartment, chest,  
37 box, parcel, crate or basket to be opened and the contents examined by any person authorized to  
38 enforce the wildlife laws.

39 (2) All wildlife, or parts thereof, thus discovered shall be held by the [*State Fish and Wildlife*  
40 *Commission*] **Oregon Natural Resources Commission** as evidence against any party accused of the  
41 crime in connection therewith.

42 (3) Upon conviction of the parties accused, such wildlife, or parts thereof, shall be disposed of  
43 by the commission. Any funds arising from the disposal shall [*become a part of the State Wildlife*  
44 *Fund.*] **be deposited in the Oregon Natural Resources Fund. Moneys deposited in the fund**  
45 **under this subsection are continuously appropriated to the Oregon Department of Natural**

1 **Resources for the purpose of carrying out the duties, functions and powers of the depart-**  
 2 **ment as prescribed by sections 1 (1) and (2) and 5 (1)(a) and (b) of this 2011 Act.**

3 **SECTION 128.** ORS 496.680 is amended to read:

4 496.680. (1) All wildlife taken by, or in the possession of any person in violation of the wildlife  
 5 laws, and all guns, boats, traps, fishing apparatus and implements used in angling, hunting or trap-  
 6 ping or taking any wildlife in violation of the wildlife laws may be seized by any person authorized  
 7 to enforce the wildlife laws, and may be forfeited.

8 (2) All wildlife shot by any person while violating any provision of ORS 164.245 to 164.270 or  
 9 498.120 shall be seized by any person authorized to enforce the wildlife laws and shall be forfeited.

10 (3) If forfeited, such property shall be turned over to the [*State Fish and Wildlife Commission*]  
 11 **Oregon Natural Resources Commission** by order of the court at the time of passing sentence for  
 12 the violation.

13 (4) The commission may dispose of such property in any manner it considers proper, but the  
 14 clear proceeds derived from the sale of any seized guns, boats, traps, fishing apparatus or imple-  
 15 ments shall be deposited in the Common School Fund. Any wildlife taken in violation of the wildlife  
 16 laws may be disposed of forthwith or used for food purposes, under rules of the commission, to  
 17 prevent spoilage.

18 (5) Upon conviction of a person for taking wildlife while violating any provision of ORS 164.245  
 19 to 164.270 or 498.120, the court shall include in the sentence a requirement that the convicted per-  
 20 son pay to the seizing agency an amount equal to the cost incurred in seizing, storing and disposing  
 21 of the seized and forfeited wildlife.

22 **SECTION 129.** ORS 496.700 is amended to read:

23 496.700. (1) Where the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
 24 **mission** has been furnished information of the violation of any of the wildlife laws, the commission,  
 25 or [*one especially*] **an agent** authorized by [*it*] **the commission**, may proceed to the place where the  
 26 offense is said to have been committed and summon and examine under oath witnesses to ascertain  
 27 the facts and to avoid useless and frivolous indictments or prosecutions.

28 (2) Witnesses shall be paid by the commission from the [*State Wildlife Fund*] **Oregon Natural**  
 29 **Resources Fund** at the rate of \$5 per day and mileage from their places of residence at the rate  
 30 of eight cents per mile.

31 (3) No witness so summoned shall refuse to attend or testify under this section.

32 **SECTION 130.** ORS 496.705 is amended to read:

33 496.705. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
 34 may institute suit for the recovery of damages for the unlawful taking or killing of any of the  
 35 wildlife referred to in subsection (2) of this section that are the property of the state.

36 (2)(a) The damages referred to in subsection (1) of this section are as follows:

37 (A) Each game mammal other than moose, mountain sheep, mountain goat, elk or silver gray  
 38 squirrel, or deer or antelope described in subparagraphs (D) and (E) of this paragraph, \$800.

39 (B) Each moose, mountain sheep or mountain goat, other than those described in subparagraphs  
 40 (F), (G) and (H) of this paragraph, \$10,000.

41 (C) Each elk, other than those described in subparagraph (I) of this paragraph, \$1,500.

42 (D) Each deer with at least four points on one antler, \$7,500.

43 (E) Each antelope with at least one horn equal to or greater than 14 inches, \$7,500.

44 (F) Each moose with antlers, \$25,000.

45 (G) Each mountain sheep that has at least one horn equal to or greater than one half curl,

1 \$25,000.

2 (H) Each mountain goat that has at least one horn equal to or greater than six inches, \$25,000.

3 (I) Each elk with at least six points on one antler, \$15,000.

4 (J) Each silver gray squirrel, \$20.

5 (K) Each game bird other than wild turkey, \$20.

6 (L) Each wild turkey, \$100.

7 (M) Each game fish other than salmon, steelhead trout, halibut or sturgeon, \$10.

8 (N) Each sturgeon other than those specified in subparagraph (O) of this paragraph, salmon,  
9 steelhead trout or halibut, \$250.

10 (O) Each oversized sturgeon, as specified by the commission by rule, \$1,000.

11 (P) Each fur-bearing mammal other than bobcat or fisher, \$100.

12 (Q) Each bobcat or fisher, \$700.

13 (R) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the  
14 laws of the United States as threatened or endangered, \$1,000.

15 (S) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws  
16 of the United States, but not otherwise referred to in this subsection, \$50.

17 (T) Each bald eagle, golden eagle, goshawk, osprey, peregrine falcon or any other raptor listed  
18 as a threatened species or an endangered species by the commission by rule, \$5,000.

19 (U) Each raptor except those specified in subparagraph (T) of this paragraph, \$2,000.

20 (b) For purposes of this subsection:

21 (A) A point must be at least one inch, measured from the main beam of the antler to the tip of  
22 the point.

23 (B) Horn length must be measured from the base of the hairline to the tip of the horn.

24 (3) In any such action, the court shall award to the prevailing party, in addition to costs and  
25 disbursements, reasonable attorney fees.

26 (4) Such civil damages shall be in addition to other penalties prescribed by the wildlife laws for  
27 the unlawful taking or killing of wildlife.

28 (5) Any circuit or justice court has jurisdiction to try any case for the recovery of damages for  
29 the unlawful taking or killing of any of the wildlife as provided by this section.

30 **NOTE:** Section 131 was deleted. Subsequent sections were not renumbered.

31 **SECTION 132.** ORS 496.820 is amended to read:

32 496.820. (1) **As used in this section and ORS 496.825, "person" means an individual, cor-**  
33 **poration, association, firm, partnership, joint stock company, municipal corporations and all**  
34 **other political subdivisions of the State of Oregon. The federal government or any of its**  
35 **agencies are specifically excluded.**

36 [(1)] (2) Any person applying for a permit to appropriate water for hydroelectric purposes under  
37 ORS 537.150 to 537.252 or any person applying for a preliminary permit or license under ORS  
38 543.010 to 543.610 shall pay an administration fee of \$350 to the [State Department of Fish and  
39 Wildlife] **Oregon Department of Natural Resources.**

40 [(2)] (3) If a person pays the administration fee under subsection [(1)] (2) of this section at the  
41 time the person applies for a preliminary permit under ORS 543.210, the person shall not also be  
42 required to pay the fee when applying for a license for the same project under ORS 543.010 to  
43 543.610.

44 **SECTION 133.** ORS 496.825 is amended to read:

45 496.825. (1) In addition to any other fee required by law, at the time the person applies to the

1 [Water Resources Department] **Oregon Department of Natural Resources** for a license to operate  
 2 a hydroelectric project under ORS 543.010 to 543.610 or for a permit to appropriate water for hy-  
 3 droelectric purposes under ORS 537.150 to 537.230, the person shall pay to the [State Fish and  
 4 Wildlife Director] **department** an application fee the amount of which shall be the greater of:

5 (a) \$1,000; or

6 (b) Thirty-five cents for each kilowatt of proposed capacity of the project.

7 (2) The [director] **department** shall postpone the payment of the fee under subsection (1) of this  
 8 section for a permit to appropriate water under ORS 537.150 to 537.230 until the person submits final  
 9 plans and specifications for the project to the [Water Resources] department under ORS 537.150.

10 (3) Subsection (1) of this section shall not apply to any applicant for a permit or license for a  
 11 project producing 100 theoretical horsepower or less.

12 (4) **The department shall use moneys collected pursuant to subsection (1) of this section**  
 13 **to administer the wildlife laws and commercial fishing laws of this state.**

14 **SECTION 134.** ORS 496.830 is amended to read:

15 496.830. A person who fails to pay the fee required under section 4, chapter 674, Oregon Laws  
 16 1985, or the assessment under section 5, chapter 674, Oregon Laws 1985, or ORS 543.265 on the due  
 17 date shall pay in addition to the assessed amount due, a penalty in the amount of one percent of the  
 18 fee per month for the period that the fee is past due. The [State Fish and Wildlife Director] **Director**  
 19 **of the Oregon Department of Natural Resources** may bring an action to collect an unpaid fee  
 20 or assessment in the name of the State of Oregon in the Circuit Court of Marion County or the  
 21 circuit court of the county in which the project is located. The director shall be entitled to recover  
 22 all costs and attorney fees incurred in the legal action.

23 **SECTION 135.** ORS 496.835 is amended to read:

24 496.835. (1) There is [created within] **established in** the State Treasury a revolving fund known  
 25 as the Oregon Fish and Wildlife Hydroelectric Fund, separate and distinct from the General Fund.  
 26 The moneys in [this fund] **The Oregon Fish and Wildlife Hydroelectric Fund** are continuously  
 27 appropriated [for use by the State Department of Fish and Wildlife] **to the Oregon Department of**  
 28 **Natural Resources for use** in its activities related to hydroelectric projects, including payment of  
 29 necessary administrative expenses.

30 (2) The [fund created by subsection (1) of this section] **Oregon Fish and Wildlife Hydroelectric**  
 31 **Fund** shall consist of all moneys received under sections 4 and 5, chapter 674, Oregon Laws 1985,  
 32 ORS 496.820 and 496.825 and moneys transferred from the [Water Resources Department Hydroelectric  
 33 Fund] **Oregon Natural Resources Fund** as provided in ORS 536.015.

34 (3) Moneys in the **Oregon Fish and Wildlife Hydroelectric** Fund may be invested as provided  
 35 in ORS 293.701 to 293.820. Interest from any source derived from the investment of the moneys of  
 36 the fund shall be credited to the fund.

37 **SECTION 136.** ORS 497.002 is amended to read:

38 497.002. Except as provided in ORS 497.006, as used in this chapter:

39 (1) "Resident" means a person who has resided in this state at least six consecutive months  
 40 immediately prior to the date of making application for a license, tag or permit issued by the [State  
 41 Fish and Wildlife Commission] **Oregon Natural Resources Commission**. Temporary absence from  
 42 [the] **this** state for a purpose other than establishing residency outside [the] **this** state shall not be  
 43 considered in determining whether a person meets the residency requirements of this subsection.

44 (2) "Nonresident" means any person other than a resident.

45 **SECTION 137.** ORS 497.006 is amended to read:



1 497.006. (1) As used in this section:

2 (a) "Active member of the Armed Forces of the United States" means officers and enlisted per-  
3 sonnel of the Armed Forces of the United States who:

4 (A) Reside in this state while assigned to duty at any base, station, shore establishment or other  
5 facility in this state;

6 (B) Reside in this state while serving as members of the crew of a ship that has an Oregon port  
7 or shore establishment as its home port or permanent station; or

8 (C) Reside in another state or a foreign country and establish Oregon residency by filing Oregon  
9 state income taxes no later than 12 months before leaving active duty.

10 (b) "Armed Forces of the United States" means:

11 (A) The Army, Navy, Air Force, Marine Corps and Coast Guard of the United States;

12 (B) The reserves of the Army, Navy, Air Force, Marine Corps and Coast Guard of the United  
13 States; and

14 (C) The Oregon National Guard and the National Guard of any other state or territory.

15 (c) "Dependent children" includes any children of an active member of the Armed Forces of the  
16 United States who:

17 (A) Are under 18 years of age and not married, otherwise emancipated or self-supporting; or

18 (B) Are under 23 years of age, unmarried, enrolled in a full-time course of study in an institution  
19 of higher learning and dependent on the member for over one-half of their support.

20 (2) The following persons shall be considered resident persons for the purpose of purchasing li-  
21 censes, tags and permits issued by the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
22 **sources Commission:**

23 (a) Active members of the Armed Forces of the United States who furnish to the commission  
24 evidence satisfactory to the commission that the person is permanently assigned to active duty in  
25 this state and the spouses and dependent children of such members.

26 (b) Any active member of the Armed Forces of the United States who furnishes to the commis-  
27 sion evidence satisfactory to the commission that the person is a member of the Armed Forces of  
28 the United States and the spouse and dependent children of such member.

29 (c) Aliens who furnish to the commission evidence satisfactory to the commission that the per-  
30 son is attending a school in this state pursuant to a foreign student exchange program.

31 **SECTION 138.** ORS 497.014 is amended to read:

32 497.014. (1) A person may take fish or shellfish in the waters of the Pacific Ocean within three  
33 miles of the coast of the State of Oregon or the State of Washington, between the Oregon-  
34 Washington boundary and Cape Falcon, or in the waters of the Columbia River where it forms the  
35 Oregon-Washington boundary, if the person holds either a valid Oregon or Washington license  
36 therefor in accordance with the laws and rules of the respective state. However, a person other than  
37 a Washington resident landing fish or taking shellfish by boat in Oregon must hold a valid Oregon  
38 angling or shellfish license. All persons landing fish by boat in Oregon are subject to all Oregon  
39 laws, rules and regulations relating to taking fish or shellfish, including bag and length require-  
40 ments.

41 (2) Subsection (1) of this section applies only if the [*State Fish and Wildlife Commission*] **Oregon**  
42 **Natural Resources Commission** by rule determines that laws, rules or regulations of the State of  
43 Washington, in substance or effect, contain provisions that make a valid Oregon license lawful in  
44 the waters of the Pacific Ocean within three miles of the coast of the State of Oregon or the State  
45 of Washington, between the Oregon-Washington boundary and Leadbetter Point, or in the waters

1 of the Columbia River where it forms the Oregon-Washington boundary.

2 **SECTION 139.** ORS 497.016 is amended to read:

3 497.016. Unless otherwise provided by law, all licenses, tags and permits issued by the [*State*  
4 *Fish and Wildlife Commission*] **Oregon Natural Resources Commission** shall be valid for such  
5 period of time as the commission prescribes.

6 **SECTION 140.** ORS 497.022 is amended to read:

7 497.022. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
8 may appoint agents to issue any of the licenses, tags or permits the commission is authorized by law  
9 to issue. The commission shall prescribe the procedure for the issuance of such licenses, tags and  
10 permits. Agents of the commission shall issue licenses, tags and permits in accordance with the  
11 prescribed procedure and shall charge and collect the fees prescribed by law therefor.

12 (2) In addition to the fees prescribed by law for the issuance of a license, tag or permit, the is-  
13 suing agent shall charge and collect \$5 for each resident annual sportsperson's license issued pur-  
14 suant to ORS 497.132 (2)(a) and \$2 each for any other license, tag or permit. If the agent is a county  
15 clerk, the agent shall deposit such additional fees in the general fund of the county for which the  
16 agent is the clerk. If the agent is an employee of the [*State Department of Fish and Wildlife*] **Oregon**  
17 **Department of Natural Resources**, the moneys shall be deposited in the [*State Wildlife Fund*]  
18 **Oregon Natural Resources Fund**. Agents other than county clerks or department employees who  
19 issue licenses without the use of a state computerized licensing system may retain such additional  
20 fees for their license tag or permit issuance services. Agents other than county clerks or department  
21 employees who issue licenses, tags or permits using a state computerized licensing system may re-  
22 tain such portion of the additional fees, but not less than \$2.50 for each resident annual  
23 sportsperson's license issued pursuant to ORS 497.132 (2)(a) or \$1 for any other license, tag or per-  
24 mit, as may be specified by contract between the department and the agent for license, tag or permit  
25 issuance service performed by the agent.

26 (3) If the commission finds that an agent appointed pursuant to this section has violated any of  
27 the provisions of law or the procedures prescribed by the commission for the issuance of licenses,  
28 tags or permits or the collection and disposition of fees therefrom, the commission may revoke the  
29 authority of the agent to issue licenses, tags and permits, or may suspend such authority for such  
30 time as the commission considers appropriate.

31 **(4) Moneys deposited in the Oregon Natural Resources Fund under subsection (2) of this**  
32 **section are continuously appropriated to the department for the purpose of carrying out the**  
33 **duties, functions and powers as prescribed by sections 1 (1) and (2) and 5 (1)(a) and (b) of this**  
34 **2011 Act.**

35 **SECTION 141.** ORS 497.026 is amended to read:

36 497.026. (1) No agent appointed by the [*State Fish and Wildlife Commission*] **Oregon Natural**  
37 **Resources Commission** to issue licenses, tags or permits shall fail to remit to the commission  
38 moneys received from the issuance of licenses, tags and permits in the manner required by this  
39 section.

40 (2) The commission shall, by rule, prescribe the method in which license agents shall remit all  
41 moneys belonging to the state accruing from the issuance of licenses, tags and permits.

42 (3) Notwithstanding subsection (2) of this section, the commission shall not require a license  
43 agent to remit moneys from the issuance of licenses, tags and permits more often than once each  
44 month if:

45 (a) The license agent issues licenses, tags and permits in the amount of \$12,500 or less each

1 year; and

2 (b) The license agent does not use a state computerized licensing system to issue licenses, tags  
3 and permits.

4 **SECTION 142.** ORS 497.032 is amended to read:

5 497.032. If a license, tag or permit issued by the [*State Fish and Wildlife Commission*] **Oregon**  
6 **Natural Resources Commission** is lost, destroyed or stolen, the holder thereof may submit to the  
7 commission a certificate stating that the license, tag or permit has been lost, stolen or destroyed,  
8 together with a fee of \$15 for each such license, tag or permit. If the fee paid for the license, tag  
9 or permit that was lost, destroyed or stolen was less than \$15, the same fee shall be charged for the  
10 duplicate license, tag or permit. Upon receipt of the certificate and appropriate fees, the commission  
11 shall issue to the person a duplicate license, tag or permit that may be used in lieu of the lost, de-  
12 stroyed or stolen licenses, tags or permits.

13 **SECTION 143.** ORS 497.036 is amended to read:

14 497.036. The holder of any license, tag or permit to angle, take, hunt or trap must consent to  
15 the inspection of any such license, tag or permit and any wildlife taken pursuant to such license,  
16 tag or permit:

17 (1) By any employee of the [*State Fish and Wildlife Commission*] **Oregon Department of Na-**  
18 **tural Resources** or any person authorized to enforce the wildlife laws.

19 (2) By the owner, or the agent of the owner, of any land upon which the license, tag or permit  
20 holder is angling for, taking, hunting or trapping any wildlife.

21 **SECTION 144.** ORS 497.071 is amended to read:

22 497.071. The Legislative Assembly finds it imperative that the wildlife resources of the State of  
23 Oregon be augmented to a level sufficient to provide Oregonians the recreational benefits of hunting  
24 and angling, an abundance of wildlife, and the reasonable expectation that their efforts will result  
25 in the taking of game or fish. The intent of this legislation is to provide adequate revenue to the  
26 [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** whereby game  
27 mammal herds and game fish populations may be increased for the benefit of Oregon hunters and  
28 anglers. Concomitant with the purposes for which the Legislative Assembly approves this legislation,  
29 the [*State Fish and Wildlife*] commission is directed to expend the revenues created by this section  
30 and ORS 497.102 to 497.134 in achieving wildlife management objectives including, but not limited  
31 to the following:

32 (1) Habitat management.

33 (2) Predator control.

34 (3) Replenishment of fish and game populations.

35 (4) Reduction of the anadromous bag limit.

36 (5) Adjustment of seasons and deadlines to protect returning anadromous adults.

37 (6) Supplemental wildlife feeding.

38 (7) Protection of game mammals and game birds with characteristics of high reproductive po-  
39 tential.

40 (8) Enforcement of closings necessitated by herd or population depletion.

41 (9) Expansion of the road and access closure program when necessary to reduce hunting pres-  
42 sure in specific areas.

43 **SECTION 145.** ORS 497.075 is amended to read:

44 497.075. (1) Except as provided in subsections (2), (3) and (4) of this section, no person shall  
45 angle for, take, hunt or trap, or assist another in angling for, taking, hunting or trapping, any

1 wildlife unless the person has in possession such valid licenses, tags and permits therefor as the  
2 [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** issues.

3 (2) An angling or shellfish license is not required:

4 (a) Of a person younger than 14 years of age. However, each such person who angles for salmon,  
5 steelhead trout, sturgeon or halibut must have in possession a valid annual tag to angle for salmon,  
6 steelhead trout, sturgeon and halibut while so angling.

7 (b) Of a resident person to angle or take shellfish on land owned by that person. However, each  
8 such person who angles for salmon, steelhead trout, sturgeon or halibut must have in possession a  
9 valid annual tag to angle for salmon, steelhead trout, sturgeon and halibut while so angling.

10 (c) Of a resident person to angle or take shellfish on land owned by a member of the person's  
11 immediate family and upon which the person resides. However, each such person who angles for  
12 salmon, steelhead trout, sturgeon or halibut must have in possession a valid annual tag to angle for  
13 salmon, steelhead trout, sturgeon and halibut while so angling.

14 (d) Of a person to angle for or otherwise take smelt.

15 (e) Of a person to take crayfish or freshwater clams.

16 (3) A hunting license is not required:

17 (a) Of a person younger than 14 years of age to hunt wildlife, except those species for which a  
18 tag or permit is required by the wildlife laws or by any rule promulgated pursuant thereto.

19 (b) Of a resident person to hunt wildlife, except those species of wildlife for which a tag or  
20 permit is required by the wildlife laws or by any rule promulgated pursuant thereto, on land upon  
21 which the person resides and is owned by the person or a member of the person's immediate family.

22 (c) Of a person who holds a valid trapping license to take, by any means involving the use of  
23 a weapon, fur-bearing mammals during authorized trapping seasons or predators.

24 (d) Of a person to take wildlife pursuant to ORS 498.012, notwithstanding any other provision  
25 of this subsection.

26 (4) A trapping license is not required:

27 (a) Of a resident person to trap fur-bearing mammals or predators, except those species for  
28 which a tag or permit is required by the wildlife laws or any rule promulgated pursuant thereto, on  
29 land upon which the person resides and is owned by the person or a member of the person's imme-  
30 diate family.

31 (b) Of a person younger than 14 years of age to trap fur-bearing mammals or predators, except  
32 those species for which a tag or permit is required by the wildlife laws or by any rule promulgated  
33 pursuant thereto.

34 (c) Of a person to trap wildlife that is not protected by the wildlife laws or the laws of the  
35 United States.

36 **SECTION 146.** ORS 497.079 is amended to read:

37 497.079. Notwithstanding ORS 497.075, 497.121 and 497.132, the [*State Fish and Wildlife Com-*  
38 *mission*] **Oregon Natural Resources Commission** may issue an order that authorizes individuals  
39 to angle for fish or take shellfish in the waters of this state without the licenses or tags, or without  
40 the licenses and tags otherwise required by law, on any two consecutive days each year.

41 **SECTION 147.** ORS 497.102 is amended to read:

42 497.102. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
43 is authorized to issue, upon application, to persons desiring to hunt wildlife the following licenses  
44 and permits and shall charge therefor the following fees:

45 (a) Resident annual hunting license to hunt wildlife, \$23.50.

- 1 (b) Nonresident annual hunting license to hunt wildlife, \$134.50.
- 2 (c) Resident annual juvenile hunting license for persons 12 through 17 years of age to hunt  
3 wildlife, \$11.50.
- 4 (d) Nonresident annual juvenile hunting license for persons 12 through 17 years of age to hunt  
5 wildlife, \$17.50.
- 6 (e) Resident pioneer hunting license to hunt wildlife for persons 65 years of age or older who  
7 have resided in the state for not less than 50 years prior to the date of application, free.
- 8 (f) Resident annual senior citizen hunting license to hunt wildlife for persons 70 years of age  
9 or older who have resided in the state for not less than five years prior to the date of application,  
10 one-half the fee imposed under paragraph (a) of this subsection for a resident annual hunting license  
11 to hunt wildlife.
- 12 (g) Resident disabled veteran hunting license to hunt wildlife for a person who files with the  
13 commission written proof that the last official certification of record by the United States Depart-  
14 ment of Veterans Affairs or any branch of the Armed Forces of the United States shows the person  
15 to be at least 25 percent disabled, free.
- 16 (h) Annual resident private hunting preserve permit to hunt privately owned hunting preserve  
17 game birds, \$4.
- 18 (i) Annual nonresident private hunting preserve permit to hunt privately owned hunting pre-  
19 serve game birds, \$10.
- 20 (j) Nonresident hunting license to hunt migratory waterfowl and upland birds for three consec-  
21 utive days, \$24.50.
- 22 (2) The hunting preserve permits referred to in subsection (1)(h) and (i) of this section are in lieu  
23 of the hunting licenses required by the wildlife laws.
- 24 **SECTION 148.** ORS 497.112 is amended to read:
- 25 497.112. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
26 is authorized to issue, upon application, to persons desiring to hunt wildlife the following general  
27 tags and shall charge therefor the following fees:
- 28 (a) Resident annual elk tag to hunt elk, \$40.50.
- 29 (b) Nonresident annual elk tag to hunt elk, \$498.50.
- 30 (c) Special annual elk tag for holders of pioneer or disabled veteran hunting licenses to hunt  
31 elk, one-half the fee imposed under paragraph (a) of this subsection for a resident annual elk tag to  
32 hunt elk.
- 33 (d) Resident annual deer tag to hunt deer, \$22.50.
- 34 (e) Nonresident annual deer tag to hunt deer, \$373.50.
- 35 (f) Resident annual black bear tag to hunt black bear, \$12.50.
- 36 (g) Nonresident annual black bear tag to hunt black bear, \$180.50.
- 37 (h) Resident annual mountain sheep tag to hunt mountain sheep, \$120.50.
- 38 (i) Nonresident annual mountain sheep tag to hunt mountain sheep, \$1,298.50.
- 39 (j) Resident annual mountain goat tag to hunt mountain goat, \$120.50.
- 40 (k) Nonresident annual mountain goat tag to hunt mountain goat, \$1,298.50.
- 41 (L) Resident annual cougar tag to hunt cougar, \$12.50.
- 42 (m) Nonresident annual cougar tag to hunt cougar, \$12.50.
- 43 (n) Resident annual antelope tag to hunt antelope, \$42.50.
- 44 (o) Nonresident annual antelope tag to hunt antelope, \$331.50.
- 45 (p) Resident annual turkey tag to hunt turkeys, \$20.50.

1 (q) Resident annual juvenile turkey tag to hunt turkeys, \$8.50.

2 (r) Nonresident annual juvenile turkey tag to hunt turkeys, \$8.50.

3 (s) Nonresident annual turkey tag to hunt turkeys, \$75.50.

4 (t) Outfitter and guide annual deer tag to hunt deer, \$495.25.

5 (u) Outfitter and guide annual elk tag to hunt elk, \$731.75.

6 (2)(a) Notwithstanding ORS 496.146 (10), the commission is authorized to issue each year one  
7 special tag that is auctioned to the highest bidder in a manner prescribed by the commission for  
8 each of the following:

9 (A) Mountain sheep;

10 (B) Antelope; and

11 (C) Mountain goat.

12 (b) In addition to the tags referred to in paragraph (a) of this subsection, the commission is au-  
13 thorized to issue each year one special tag that is raffled in a manner prescribed by the commission  
14 for each of the following:

15 (A) Mountain sheep;

16 (B) Antelope; and

17 (C) Mountain goat.

18 (c) Moneys received under this subsection for:

19 (A) Mountain sheep tags shall be placed in the Mountain Sheep Subaccount established in ORS  
20 496.303;

21 (B) Antelope tags shall be placed in the Antelope Subaccount established in ORS 496.303; and

22 (C) Mountain goat tags shall be placed in the Mountain Goat Subaccount established in ORS  
23 496.303.

24 (d) Notwithstanding ORS 496.146 (10), the commission, upon the recommendation of the Access  
25 and Habitat Board to fulfill the board's charge of providing incentives to increase public access and  
26 habitat improvements to private land, is authorized to issue each year up to 10 elk and 10 deer tags  
27 to hunt deer or elk. The tags shall be auctioned or raffled to the highest bidder in a manner pre-  
28 scribed by the commission. The Access and Habitat Board, in recommending any tags, shall include  
29 a proposal as to the land on which each tag can be used and a percentage of funds received from  
30 the tags that may revert to the landowner if the tag is limited to private land. However, the per-  
31 centage cannot be more than 50 percent and the programs must, by written agreement, provide for  
32 public access and habitat improvements.

33 (3) The tags referred to in subsection (1) of this section are in addition to and not in lieu of the  
34 hunting licenses required by law.

35 (4) The commission may, at the time of issue only, indorse upon the tags referred to in sub-  
36 section (1) of this section an appropriate designation indicating whether it is for a game animal to  
37 be taken with bow and arrow or with firearms, at the choice of the applicant. The commission may  
38 prescribe by rule that the holder of such a tag is not authorized to take the game animal by any  
39 other means than the tag so indorsed.

40 (5) Except as provided in subsection (6) of this section, a person is not eligible to obtain, in a  
41 lifetime, more than one controlled hunt tag issued by the commission to hunt mountain sheep and  
42 one controlled hunt tag issued by the commission to hunt mountain goat.

43 (6) A person is eligible to obtain mountain sheep tags, antelope tags or mountain goat tags de-  
44 scribed in subsection (2)(a) and (b) of this section, regardless of whether the person has previously  
45 taken a mountain sheep, antelope or mountain goat or previously obtained a mountain sheep tag,

1 antelope tag or mountain goat tag issued pursuant to subsection (1) or (2)(a) or (b) of this section.

2 (7) The number of nonresident mountain goat tags and nonresident mountain sheep tags shall  
3 be decided by the commission, but:

4 (a) The number of nonresident mountain goat tags may not be less than five percent nor more  
5 than 10 percent of all mountain goat tags issued.

6 (b) The number of nonresident mountain sheep tags may not be less than five percent nor more  
7 than 10 percent of all mountain sheep tags issued.

8 (8) The number of tags issued by drawing under subsection (1)(g), (m) and (o) of this section shall  
9 be decided by the commission, but for each class of tag so issued, the number may not be more than  
10 three percent of all tags of that class issued for hunting in a particular area except one nonresident  
11 tag may be issued for each hunt when the number of authorized tags is less than 35. The number  
12 of tags issued under subsection (1)(g) of this section for the general hunting season may be decided  
13 by the commission, but the number may not be more than three percent of all tags issued the pre-  
14 vious year for hunting in a particular area.

15 (9) The number of tags issued by drawing under subsection (1)(b) and (e) of this section shall  
16 be decided by the commission, but for each class of tag so issued, the number may not be more than  
17 five percent of all tags of that class issued for hunting in a particular area except one nonresident  
18 tag may be issued for each hunt when the number of authorized tags is fewer than 35. The com-  
19 mission shall set the percentage by rule each year after holding a public hearing.

20 (10) If a controlled hunt for game mammals is undersubscribed during the primary controlled  
21 hunt drawing, the commission may issue the unallocated tags to licensed hunters at up to four times  
22 the standard tag fee on a first-come, first-served basis. This controlled hunt tag program shall be in  
23 addition to and not replace any existing controlled hunt tag program.

24 **SECTION 149.** ORS 497.121 is amended to read:

25 497.121. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
26 is authorized to issue, upon application, to persons desiring to angle for fish or take shellfish the  
27 following licenses and tags and shall charge therefor the following fees:

28 (a) Resident annual angling license, \$26.

29 (b) Nonresident annual angling license, \$93.25.

30 (c) Nonresident angling license to angle for seven consecutive days, \$51.75.

31 (d) Angling license to angle for one day, \$11.75.

32 (e) Resident annual juvenile angling license for persons 14 through 17 years of age, \$4.

33 (f) Nonresident annual juvenile angling license for persons 14 through 17 years of age, \$17.25.

34 (g) Resident annual shellfish license, \$5.

35 (h) Nonresident annual shellfish license, \$18.50.

36 (i) Nonresident three-day shellfish license, \$9.50.

37 (j) Two rod angling license valid in lakes and reservoirs for anglers who also hold a valid annual  
38 angling license, \$15.

39 (k) Resident pioneer angling license for persons 65 years of age or older who have resided in  
40 the state for not less than 50 years prior to the date of application, free.

41 (L) Resident annual senior citizen angling license for persons 70 years of age or older who have  
42 resided in the state for not less than five years prior to the date of application, one-half the fee  
43 imposed under paragraph (a) of this subsection for a resident annual angling license.

44 (m) Resident disabled veteran angling license for a person who files with the commission written  
45 proof that the last official certification of record by the United States Department of Veterans Af-

1 fairs or by any branch of the Armed Forces of the United States shows the person to be at least  
2 25 percent disabled, free.

3 (n) Resident disabled veteran shellfish license for a person who files with the commission written  
4 proof that the last official certification of record by the United States Department of Veterans Af-  
5 fairs or by any branch of the Armed Forces of the United States shows the person to be at least  
6 25 percent disabled, free.

7 (o) Annual tag to angle for salmon, steelhead trout, sturgeon and halibut, \$24.50.

8 (p) Annual tag for persons under 18 years of age to angle for salmon, steelhead trout, sturgeon  
9 and halibut, \$6.50.

10 (q) Renewable tag to angle for hatchery salmon and steelhead, \$14.50.

11 (2) Any person who holds a valid permanent angling license for persons who are blind or a  
12 permanent angling license for persons in a wheelchair issued by the commission before January 1,  
13 2000, need not obtain a resident annual angling license under this section.

14 (3) The annual tags to angle for salmon, steelhead trout, sturgeon and halibut referred to in  
15 subsection (1)(o), (p) and (q) of this section are in addition to and not in lieu of the angling licenses  
16 required by the wildlife laws. However, an annual tag to angle for salmon, steelhead trout, sturgeon  
17 and halibut is not required of a person who holds a valid angling license referred to in subsection  
18 (1)(c) or (d) of this section.

19 **SECTION 150.** ORS 497.123 is amended to read:

20 497.123. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
21 shall adopt rules for the issuance of hatchery harvest tags to persons holding an annual angling li-  
22 cense and an annual tag to angle for salmon and steelhead. The rules shall allow persons holding  
23 a hatchery harvest tag to angle for 10 fin clipped or otherwise marked returning hatchery salmon  
24 and steelhead.

25 **SECTION 151.** ORS 497.132 is amended to read:

26 497.132. (1) In lieu of issuing to resident persons separate licenses for angling and hunting, the  
27 [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** is authorized to is-  
28 sue resident annual combination angling and hunting licenses, and charge therefor a fee of \$47.

29 (2)(a) In lieu of issuing to resident persons separate licenses and tags for various hunting and  
30 angling activities, the commission is authorized to issue resident annual sportsperson's licenses and  
31 shall charge therefor a fee of \$159.75. The purchaser of each such license is authorized to engage  
32 in those hunting and angling activities for which the following licenses and tags are required:

33 (A) Combination license;

34 (B) Black bear tag;

35 (C) Cougar tag;

36 (D) General season elk tag;

37 (E) General season deer tag;

38 (F) Upland bird stamp;

39 (G) Oregon migratory waterfowl stamp;

40 (H) Turkey tag;

41 (I) Annual tag to angle for salmon, steelhead trout, sturgeon and halibut; and

42 (J) Resident annual shellfish license.

43 (b) The holder of each sportsperson's license who wishes to engage in hunting or angling ac-  
44 tivities for which permits are required that are limited by quota must participate in the process for  
45 allocation of the permits in the same manner as all other permit applicants. However, if the holder



1 of a sportsperson's license is unsuccessful in obtaining a permit limited by quota for a particular  
2 activity, the holder will be issued a tag valid for any general season for that species.

3 (c) Notwithstanding any other provision of the wildlife laws, of the moneys received from the  
4 sale of sportsperson's licenses:

5 (A) Four dollars from each such license shall be credited to the **Access and Habitat Board**  
6 Subaccount [*referred to*] **described** in ORS 496.242.

7 (B) Four dollars from each such license shall be credited to the subaccount [*referred to*] **de-**  
8 **scribed** in ORS 496.283.

9 (C) Seventy-five cents from each such license shall be credited to the Fish Screening Subaccount  
10 established under ORS 496.303.

11 (D) Twenty-five cents from each such license shall be credited to the Fish Passage Fund estab-  
12 lished under ORS 497.139.

13 (3)(a) In lieu of issuing to resident persons under 18 years of age separate licenses and tags for  
14 angling and hunting, the commission is authorized to issue resident annual sportsperson's licenses  
15 for persons under 18 years of age and shall charge therefor a fee of \$50. The purchaser of each such  
16 license is authorized to engage in those hunting and angling activities for which the following li-  
17 censes and tags are required:

18 (A) Resident annual juvenile hunting license for persons 12 through 17 years of age;

19 (B) Resident annual juvenile angling license for persons 14 through 17 years of age;

20 (C) Black bear tag;

21 (D) Cougar tag;

22 (E) General season elk tag;

23 (F) General season deer tag;

24 (G) Upland bird stamp;

25 (H) Oregon migratory waterfowl stamp;

26 (I) Juvenile turkey tag;

27 (J) Annual tag for persons under 18 years of age to angle for salmon, steelhead trout, sturgeon  
28 and halibut; and

29 (K) Resident annual shellfish license.

30 (b) The holder of each resident annual sportsperson's license for persons under 18 years of age  
31 who wishes to engage in hunting or angling activities for which permits are required that are lim-  
32 ited by quota must participate in the process for allocation of the permits in the same manner as  
33 all other permit applicants. However, if the holder of a resident annual sportsperson's license for  
34 persons under 18 years of age is unsuccessful in obtaining a permit limited by quota for a particular  
35 activity, the holder will be issued a tag valid for any general season for that species.

36 (c) Notwithstanding any other provision of the wildlife laws, of the moneys received from the  
37 sale of resident annual sportsperson's licenses for persons under 18 years of age:

38 (A) One dollar from each such license shall be credited to the **Access and Habitat Board**  
39 Subaccount [*referred to*] **described** in ORS 496.242.

40 (B) One dollar from each such license shall be credited to the subaccount [*referred to*] **described**  
41 in ORS 496.283.

42 (C) Seventy-five cents from each such license shall be credited to the Fish Screening Subaccount  
43 established under ORS 496.303.

44 (D) Twenty-five cents from each such license shall be credited to the Fish Passage Fund estab-  
45 lished under ORS 497.139.

1       **SECTION 152.** ORS 497.134 is amended to read:

2       497.134. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
3 may provide a means for persons to make voluntary contributions to be used for special fish and  
4 wildlife management programs, including programs to improve access for recreational angling. The  
5 commission may seek voluntary contributions in conjunction with the sale of hunting and angling  
6 licenses and tags or by such other means as the commission considers appropriate.

7       (2) If the commission implements an electronic licensing system, the commission shall provide  
8 a means for persons to make voluntary contributions in conjunction with the sale of licenses and  
9 tags referred to in ORS 497.121 (1). All such voluntary contributions received by the commission  
10 may be expended only for projects for which applications are made pursuant to ORS 496.450.

11       **SECTION 153.** ORS 497.136 is amended to read:

12       497.136. The moneys received from the fee increases prescribed in the amendments to ORS  
13 497.121 and 497.132 and section 4, chapter 512, Oregon Laws 1989, and section 15, chapter 858,  
14 Oregon Laws 1991, by sections 1 to 4, chapter 619, Oregon Laws 1993, shall be used by the [*State*  
15 *Department of Fish and Wildlife*] **Oregon Department of Natural Resources** for recreational fish-  
16 ing activities, including fish hatchery production, freshwater fish programs, groundfish sampling, fish  
17 research projects, Oregon State Police Game Bureau enforcement, a name and address database, and  
18 the Hatchery Maintenance Information System.

19       **SECTION 154.** ORS 497.139 is amended to read:

20       497.139. The Fish Passage Fund is established in the State Treasury, separate and distinct from  
21 the General Fund. Interest earned by the Fish Passage Fund shall be credited to the fund. Moneys  
22 in the fund are continuously appropriated to the [*State Department of Fish and Wildlife*] **Oregon**  
23 **Department of Natural Resources** for purposes related to fish passage.

24       **SECTION 155.** ORS 497.142 is amended to read:

25       497.142. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
26 is authorized to issue, upon application, to persons desiring to take fur-bearing mammals the fol-  
27 lowing licenses and tags and shall charge therefor the following fees:

28       (a) Resident annual license to trap or hunt fur-bearing mammals, \$45.

29       (b) Juvenile annual license to trap or hunt fur-bearing mammals, \$15.

30       (c) Resident annual license to hunt fur-bearing mammals, \$20.

31       (d) Nonresident annual fur-takers license to trap or hunt fur-bearing mammals, \$350.

32       (e) Furbearer annual tags to take fur-bearing mammals, such amount for each tag as the com-  
33 mission may prescribe, but not more than \$20.

34       (2) The tags referred to in subsection (1)(e) of this section are in addition to and not in lieu of  
35 the licenses referred to in subsection (1)(c) and (d) of this section.

36       **SECTION 156.** ORS 497.146 is amended to read:

37       497.146. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
38 **Commission**, by rule, shall prescribe and administer a trapper education program to provide in-  
39 struction in the proper use of trapping equipment. The program may also include instruction on  
40 wildlife and natural resource conservation, firearms safety, first aid and survival and such other  
41 subjects as the commission considers desirable to promote good outdoor conduct and respect for the  
42 rights and property of others. The commission may cooperate and enter into agreements with other  
43 public or private agencies and individuals in carrying out the provisions of this section.

44       (2) Except as provided in subsection (3) of this section, no person shall trap mammals with  
45 commercial fur value unless the person has in possession a certificate issued by the commission in-

1 dicating that the person has satisfactorily completed a course in trapper education prescribed or  
2 approved by the commission. However, the commission shall issue the certificate automatically,  
3 without the necessity of completing the course, to any person who has previously held a valid  
4 trapping license issued by the commission and who is 18 years of age or older on July 1, 1986.

5 (3) The certificate referred to in subsection (2) of this section is not required of a person to trap  
6 mammals with commercial fur value on land owned or leased by that person or a member of that  
7 person's immediate family.

8 (4) Nothing in this section is intended to prevent any person or the persons' agent from taking  
9 mammals with commercial fur value that are damaging livestock or agricultural crops on lands the  
10 person owns or leases.

11 (5) As used in this section, "mammals with commercial fur value" means badger, beaver, bobcat,  
12 coyote, red fox, gray fox, marten, mink, muskrat, nutria, opossums, raccoon, river otter, striped  
13 skunk, spotted skunk and weasel.

14 **SECTION 157.** ORS 497.151 is amended to read:

15 497.151. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
16 is authorized to issue, upon application, to resident persons desiring to hunt migratory waterfowl  
17 an annual migratory waterfowl stamp and shall charge therefor a fee of \$9.50.

18 (2) The stamp referred to in subsection (1) of this section is in addition to and not in lieu of the  
19 hunting licenses required by ORS 497.102.

20 (3) Notwithstanding subsection (1) of this section, a migratory waterfowl stamp is not required  
21 of a person younger than 14 years of age.

22 (4) ORS 497.016 to 497.026 and 497.036 apply to the stamp referred to in subsection (1) of this  
23 section.

24 (5) Nothing in this section is intended to prevent nonresident persons from purchasing resident  
25 migratory waterfowl stamps for stamp collecting or other purposes. However, possession of a resi-  
26 dent migratory waterfowl stamp does not authorize a nonresident to hunt migratory waterfowl.

27 **SECTION 158.** ORS 497.153 is amended to read:

28 497.153. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
29 is authorized to issue, upon application, to resident persons desiring to hunt upland birds an annual  
30 upland bird stamp and shall charge therefor a fee of \$6.50.

31 (2) The stamp referred to in subsection (1) of this section is in addition to and not in lieu of the  
32 hunting licenses required by ORS 497.102.

33 (3) Notwithstanding subsection (1) of this section, an upland bird stamp is not required of a  
34 person younger than 14 years of age.

35 (4) ORS 497.016 to 497.026 and 497.036 apply to the stamp referred to in subsection (1) of this  
36 section.

37 (5) Nothing in this section is intended to prevent nonresident persons from purchasing resident  
38 upland bird stamps for stamp collecting or other purposes. However, possession of a resident upland  
39 bird stamp does not authorize a nonresident to hunt upland birds.

40 **SECTION 159.** ORS 497.156 is amended to read:

41 497.156. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
42 is authorized to issue, upon application, to nonresident persons desiring to hunt either migratory  
43 waterfowl or upland birds an annual bird-waterfowl stamp and shall charge therefor a fee of \$36.50.

44 (2) The stamp referred to in subsection (1) of this section is in addition to and not in lieu of the  
45 hunting licenses required by ORS 497.102.

1 (3) Notwithstanding subsection (1) of this section, a bird-waterfowl stamp is not required of:

2 (a) A person younger than 14 years of age; or

3 (b) A nonresident hunter on a private hunting preserve who holds an annual private hunting  
4 preserve permit issued under ORS 497.102.

5 (4) ORS 497.016 to 497.026 and 497.036 apply to the stamp referred to in subsection (1) of this  
6 section.

7 **SECTION 160.** ORS 497.158 is amended to read:

8 497.158. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
9 shall adopt a system for renewing licenses issued under ORS 497.102 and 497.121 through the mail  
10 and the World Wide Web.

11 **SECTION 161.** ORS 497.162 is amended to read:

12 497.162. (1) Upon application of the Oregon Youth Authority, the Oregon Health Authority or  
13 the Department of Human Services, the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
14 **sources Commission** shall issue, without fee, a license to angle for the temporary use of any person  
15 in a state institution as described in ORS 179.610, any student in a youth correction facility or re-  
16 lated camps or programs operated by the Oregon Youth Authority, any child placed by the Depart-  
17 ment **of Human Services** and under the care of a foster home or a private nonprofit child-caring  
18 agency certified by the department, or any person in an alternative to state hospitalization program  
19 as described in ORS 430.630 (2)(b) or (c). The licenses issued under this subsection shall be in bearer  
20 form and, subject to applicable laws and regulations relating to angling, shall be used as the agency  
21 applying for the license directs.

22 (2) Upon application of the Department of Human Services, the commission shall issue, without  
23 fee, a license to take shellfish for the temporary use of any child placed by the department and un-  
24 der the care of a foster home or a private nonprofit child-caring agency certified by the department.  
25 The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and  
26 regulations relating to taking shellfish, shall be used as the Department **of Human Services** directs.

27 (3) Upon application of the director of any veteran's administration hospital or domiciliary  
28 within this state, the commission shall issue, without fee, to each hospital or domiciliary 30 licenses  
29 to angle or to take shellfish for the temporary use of any person who is a patient or resident in the  
30 hospital or domiciliary. The licenses issued under this subsection shall be in bearer form and, sub-  
31 ject to applicable laws and regulations relating to angling and to taking shellfish, shall be used as  
32 the director of the hospital or domiciliary provides.

33 **SECTION 162.** ORS 497.170 is amended to read:

34 497.170. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
35 shall furnish a permanent hunting and angling license, without payment of fee, to all Columbia River  
36 Indians who are eligible to hunt and angle under the terms of the Treaty of 1855 between the  
37 Columbia River Indians and the United States of America. The chief authority of the Columbia River  
38 Indians shall furnish from time to time to the commission a list of all Indians who have become el-  
39 igible, and shall certify under oath that the Indians named in the list are included in the terms of  
40 the treaty.

41 **SECTION 163.** ORS 497.218 is amended to read:

42 497.218. (1) No person shall engage in the business of buying the skins or pelts of any fur-bearing  
43 mammal unless the person has first obtained from the [*State Fish and Wildlife Commission*] **Oregon**  
44 **Natural Resources Commission** a fur dealer license.

45 (2) Every fur dealer shall maintain a record of transactions involving the skins or pelts of fur-

1 bearing mammals. The record shall be in such form and contain such information as the commission,  
 2 by rule, prescribes to accurately indicate the date, type and number of skins or pelts received and  
 3 the name and address of the person with whom such transaction was made.

4 **SECTION 164.** ORS 497.228 is amended to read:

5 497.228. (1) No person shall engage in the business of propagating game birds or game mammals  
 6 for sale unless a wildlife propagation license is first obtained from the [*State Department of Fish and*  
 7 *Wildlife*] **Oregon Natural Resources Commission**.

8 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may re-  
 9 fuse to issue a license to an applicant if the commission finds that the conduct of the wildlife  
 10 propagation business would tend to be harmful to existing wildlife populations.

11 (3) The commission, by rule, may prescribe requirements for the care, inspection, transportation  
 12 and the sale, taking or other disposition of the game birds or game mammals and for such record  
 13 keeping and reporting procedures as will insure that the propagation activities are conducted in  
 14 such manner as will not be harmful to existing wildlife populations.

15 **SECTION 165.** ORS 497.238 is amended to read:

16 497.238. (1) No person shall engage in the business of taxidermy unless the person first obtains  
 17 from the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** a  
 18 taxidermist license.

19 (2) Every licensed taxidermist shall maintain a record of the taxidermy work the person per-  
 20 forms. The record shall be in such form and contain such information as the commission, by rule,  
 21 prescribes to accurately indicate the date, type and number of wildlife species received for  
 22 taxidermy work and the name and address of the persons from whom the wildlife species were re-  
 23 ceived.

24 **SECTION 166.** ORS 497.248 is amended to read:

25 497.248. (1) No person shall engage in the business of operating a private hunting preserve for  
 26 the hunting of privately owned or propagated game birds unless the person first obtains from the  
 27 [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** a private hunting  
 28 preserve license.

29 (2) The commission shall issue a private hunting preserve license to an applicant therefor if the  
 30 commission finds that the operation of the preserve will meet the following requirements:

31 (a) The preserve is on one continuous tract of land owned by the applicant or leased by the  
 32 applicant and contains:

33 (A) Not more than 640 acres, if the preserve is located in the area west of the summit of the  
 34 Cascade Mountains; or

35 (B) Not more than 1,280 acres, if the preserve is located in the area east of the summit of the  
 36 Cascade Mountains.

37 (b) The preserve is located at least one-half mile from any other licensed private hunting pre-  
 38 serve.

39 (c) No portion of the preserve is located closer than one-half mile to any park, wilderness area,  
 40 refuge or wildlife management area operated by any agency of the state or federal government.

41 (d) The exterior boundaries of the preserve are clearly defined and posted with signs erected  
 42 around the extremity at intervals of 1,320 feet or less. The signs shall comply with requirements  
 43 prescribed by the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
 44 **sources**.

45 (e) The applicant has facilities to propagate or hold not less than 500 of each wildlife species

1 to be released for hunting.

2 (f) The applicant will not prevent or attempt to prevent public hunting on lands adjacent to the  
3 preserve.

4 (3)(a) The commission, by rule, shall prescribe the time, manner and place of hunting on private  
5 preserves, the wildlife species to be hunted, requirements for the care and marking of wildlife raised  
6 on the preserve, the release of wildlife received from another state, the procedures for marking  
7 indigenous wildlife incidentally taken on the preserve and the fees therefor, and record keeping and  
8 reporting procedures.

9 (b) Pursuant to paragraph (a) of this subsection, the commission shall:

10 (A) Allow private hunting preserve operators to use plastic poultry leg bands for marking  
11 wildlife species to be released for hunting.

12 (B) Allow the transportation of game birds killed on a private hunting preserve if the birds are  
13 cleaned, wrapped, packaged and accompanied by a transportation form from the preserve that states  
14 the number and sex of the birds being transported.

15 (C) Require private hunting preserve operators to have at least 10 resident private hunting  
16 preserve permits, 10 nonresident private hunting preserve permits and 10 wild bird seals. This re-  
17 quirement shall apply to each operator, regardless of the number of preserves operated by that  
18 person.

19 (4) No person shall hunt on a private hunting preserve unless the person first obtains from the  
20 commission a hunting license or a private hunting preserve permit.

21 **SECTION 167.** ORS 497.249 is amended to read:

22 497.249. (1) In addition to the penalties provided in ORS 496.992, the [*State Department of Fish*  
23 *and Wildlife*] **Oregon Department of Natural Resources** may revoke or refuse to renew a license  
24 issued under ORS 497.248 if the operator fails to comply with any provision of ORS 497.248 or any  
25 rule adopted by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
26 in relation to the operation of private hunting preserves.

27 (2) A new license may not be issued to a person whose license has been revoked unless it ap-  
28 pears to the satisfaction of the department that the person will comply with the provisions of ORS  
29 497.248 and the rules adopted by the commission in relation to the operation of private hunting  
30 preserves.

31 (3) Notwithstanding subsection (1) of this section, the department may not revoke a license for  
32 a first violation.

33 (4) Prior to revoking or refusing to renew a license, the department shall serve written notice,  
34 in the manner prescribed for contested case proceedings pursuant to ORS 183.415, on the operator  
35 of the private hunting preserve, ordering the operator to:

36 (a) Notify the department within 30 days of the service of the notice if the operator seeks a  
37 review of the proposed revocation or refusal to renew the license in the manner provided for con-  
38 tested case proceedings in ORS 183.413 to 183.470; and

39 (b) Set forth in any notification under paragraph (a) of this subsection the operator's reasons  
40 why the license should be renewed or not be revoked.

41 (5) At the conclusion of a contested case proceeding conducted by the department pursuant to  
42 subsection (4) of this section, an operator may petition the commission for a review of the determi-  
43 nation by the department.

44 **SECTION 168.** ORS 497.252 is amended to read:

45 497.252. (1) Except as provided in ORS 508.700 to 508.745 and 622.220, no person shall engage

1 in the business of propagating game fish or food fish for sale unless a fish propagation license is first  
 2 obtained from the [*State Department of Fish and Wildlife*] **Oregon Natural Resources**  
 3 **Commission**.

4 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may re-  
 5 fuse to issue a license to an applicant if the commission finds that the conduct of the fish propa-  
 6 gation business would tend to be harmful to existing game fish or food fish populations.

7 (3) The commission, by rule, may prescribe requirements for the care, inspection, transportation  
 8 and the sale, taking or other disposition of the game fish or food fish, and for such record keeping  
 9 and reporting procedures as will insure that the propagation activities are conducted in such man-  
 10 ner as will not be harmful to existing game fish or food fish populations.

11 (4) Persons propagating the following food fish under the license prescribed in subsection (1) of  
 12 this section are exempt from the licensing provisions of ORS 508.025 and 508.035:

13 (a) Food fish raised entirely in, then harvested from facilities [*which*] **that** are enclosed or de-  
 14 signed to prevent escape and from which the fish are not released for natural rearing.

15 (b) Food fish harvested from the wild under licenses prescribed in ORS 508.025 and 508.035 and  
 16 on which the appropriate fee has been paid at the time holding or rearing commences in the licensed  
 17 fish propagation facility.

18 (5) As used in this section, food fish has the meaning as defined in ORS 506.011.

19 **SECTION 169.** ORS 497.258 is amended to read:

20 497.258. The [*State Department of Fish and Wildlife*] **Oregon Natural Resources Commission**  
 21 is authorized to issue, upon application, to persons desiring to engage in the following occupations  
 22 the following licenses and shall charge therefor the following fees:

23 (1) Resident annual fur dealer license, \$50.

24 (2) Resident annual taxidermist license, \$50.

25 (3) Resident annual wildlife propagation license, \$25.

26 (4) Resident annual fish propagation license, \$125.

27 (5) Resident annual private hunting preserve license, \$200.

28 **SECTION 170.** ORS 497.298 is amended to read:

29 497.298. (1) Any person desiring to take wildlife for scientific purposes shall first obtain from the  
 30 [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** a scientific taking  
 31 permit. The commission, by rule, shall prescribe a procedure for applying for permits and the form  
 32 thereof, and shall prescribe the terms and conditions of taking wildlife under the permit to insure  
 33 that wildlife taken pursuant to the permit will be used only for scientific purposes.

34 (2) No person who holds a scientific taking permit shall violate any of the terms or conditions  
 35 of the permit.

36 (3) As used in this section, "scientific purposes" means the study or examination of wildlife for  
 37 the acquisition of knowledge thereof.

38 **SECTION 171.** ORS 497.308 is amended to read:

39 497.308. (1) No person shall remove from its natural habitat or acquire and hold in captivity any  
 40 live wildlife in violation of the wildlife laws or of any rule promulgated pursuant thereto.

41 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may  
 42 promulgate rules to carry out the provisions of subsection (1) of this section that include but are  
 43 not limited to:

44 (a) Providing for the issuance and form of permits for the holding or removal from habitat of  
 45 wildlife.

1 (b) Prescribing the wildlife species for which holding or habitat removal permits are required.

2 (c) Prescribing the terms and conditions of holding wildlife and removing wildlife from habitat  
3 to insure the humane care and treatment of the wildlife.

4 (3) No person to whom a wildlife holding or removal from habitat permit has been issued shall  
5 violate any of the terms or conditions thereof.

6 **SECTION 172.** ORS 497.312 is amended to read:

7 497.312. (1) Any rules promulgated by the [*State Fish and Wildlife Commission*] **Oregon Natural**  
8 **Resources Commission** pursuant to ORS 497.308 that authorize the acquisition and holding in  
9 captivity of a coyote must require, among other matters:

10 (a) That the holder of the permit obtain for the animal rabies inoculations;

11 (b) That the animal must at all times wear an identification tag issued by the commission;

12 (c) That the holder of the permit notify the commission upon the death or the sale, transfer,  
13 removal from the state or other disposition of the animal;

14 (d) That the holder of the permit not abandon the animal; and

15 (e) That the holder of the permit cause the animal to be neutered.

16 (2) The holder of a permit referred to in subsection (1) of this section is subject to the same li-  
17 ability and other requirements of ORS 609.135 to 609.190 as provided for dogs.

18 (3) The holder of any permit referred to in subsection (1) of this section shall at all times be able  
19 to demonstrate to the satisfaction of the commission that the holder has physical custody of the  
20 animal or evidence of the death or other disposition of the animal in compliance with the provisions  
21 of this section and ORS 497.308.

22 (4) Nothing in this section or in ORS 497.308 authorizes the acquisition and holding in captivity  
23 of any coyote not held in captivity at the [*State Fish and Wildlife Facility*] **Oregon Department**  
24 **of Natural Resources facility** at Pendleton before September 10, 1976, or held pursuant to a sci-  
25 entific taking permit issued pursuant to ORS 497.298.

26 **SECTION 173.** ORS 497.318 is amended to read:

27 497.318. In accordance with any applicable provision of ORS chapter 183, the [*State Fish and*  
28 *Wildlife Commission*] **Oregon Natural Resources Commission** may revoke a permit issued pursu-  
29 ant to ORS 497.298 or 497.308 if the commission determines that the holder of the permit has vio-  
30 lated any of the terms or conditions thereof. Revocation of a permit is in addition to and not in lieu  
31 of any other penalty provided by law for violation of the terms or conditions of the permit.

32 **SECTION 174.** ORS 497.325 is amended to read:

33 497.325. (1) A person may not operate a fish hatchery for those members of the family  
34 Acipenseridae, commonly known as green sturgeon or white sturgeon, without holding a permit  
35 therefor from the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**.

36 (2) Any permit issued pursuant to this section shall be subject to such terms and conditions as  
37 the commission considers appropriate to protect, perpetuate and enhance the sturgeon population  
38 of the Columbia River and other waters of this state.

39 (3) The commission by rule shall specify:

40 (a) The number of permits under this section that may be issued each calendar year;

41 (b) The method for allocating the permits; and

42 (c) The standards and criteria under which a permit must be exercised.

43 (4) When issuing a permit under this section, the commission may impose any additional condi-  
44 tions that the commission deems necessary to ensure compliance with this section.

45 (5)(a) A permit issued under this section for a fish hatchery operated for commercial purposes



1 may not authorize the use of green sturgeon or white sturgeon broodstock taken from the wild.

2 (b) The commission shall collect an annual fee of \$3,000 for any permit issued under this section  
 3 that allows the artificial propagation of green sturgeon or white sturgeon for commercial purposes.  
 4 Payment of a fee under this subsection satisfies the payment of the fee required for a fish propa-  
 5 gation license under ORS 497.252.

6 **SECTION 175.** ORS 497.327 is amended to read:

7 497.327. When considering an application for a permit under ORS 497.325, the [*State Fish and*  
 8 *Wildlife Commission*] **Oregon Natural Resources Commission** shall, to the greatest extent practi-  
 9 cable, give priority to any person who holds a permit on December 31, 2007, unless the commission  
 10 finds good cause not to give such priority.

11 **SECTION 176.** ORS 497.360 is amended to read:

12 497.360. (1) No person younger than 18 years of age shall hunt wildlife, except on the person's  
 13 own land or land owned by the parent or legal guardian of the person, unless the person:

14 (a) Has in possession a certificate, issued by the [*State Fish and Wildlife Commission*] **Oregon**  
 15 **Natural Resources Commission** or by an agency of another state, stating that the person has  
 16 satisfactorily completed a course prescribed or approved by the commission in the safe handling of  
 17 lawful hunting weapons; or

18 (b) Is participating in a supervised hunt as provided in subsection (3) of this section.

19 (2) The commission, by rule, shall prescribe and administer a hunter safety training program to  
 20 provide instruction in the safe handling of lawful hunting weapons. The program may also include  
 21 instruction on wildlife and natural resource conservation, first aid and survival and such other  
 22 subjects as the commission considers desirable to promote good outdoor conduct and respect for the  
 23 rights and property of others. The commission may cooperate and enter into agreements with other  
 24 public or private agencies and individuals in carrying out the provisions of this subsection. The  
 25 Department of State Police and the Department of Education are directed to cooperate with the  
 26 commission in carrying out the provisions of this section.

27 (3)(a) The commission, by rule, shall prescribe and administer a youth hunter mentoring program  
 28 that allows a person who is between nine and 14 years of age to hunt while in the presence of a  
 29 supervisory hunter who is 21 years of age or older and who holds the appropriate licenses, tags and  
 30 permits issued pursuant to the wildlife laws. Only one lawful hunting weapon may be carried during  
 31 a supervised hunt under this subsection. A person participating in a supervised hunt under this  
 32 subsection may hunt wildlife under the same conditions applicable to the supervisory hunter's li-  
 33 censes, tags and permits.

34 (b) The commission, by rule, may prescribe any relevant safety and ethical standards for par-  
 35 ticipation in a supervised hunt under this subsection.

36 **SECTION 177.** ORS 497.400 is amended to read:

37 497.400. No person shall:

38 (1) Apply for, obtain or possess for personal use or for the use of any other person more licenses,  
 39 tags or permits issued by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
 40 **Commission** than are authorized for personal use during the current year by the wildlife laws and  
 41 rules promulgated pursuant thereto.

42 (2) Alter, borrow, loan or transfer to another person any license, tag or permit issued by the  
 43 commission.

44 (3) In applying for a license, tag or permit issued by the commission, knowingly make any false  
 45 statement of any information required by the application regarding the person in whose name the

1 license, tag or permit is to be issued.

2 (4) Possess any license, tag or permit that has been altered, borrowed, loaned or transferred or  
3 for which any false statements were knowingly made in applying therefor.

4 (5) Apply for or obtain any license, tag or permit issued by the commission when civil damages  
5 due pursuant to ORS 496.705 or when moneys due the [*State Department of Fish and Wildlife*]  
6 **Oregon Department of Natural Resources** from court-ordered restitutions for violations of the  
7 wildlife laws have not been paid.

8 **SECTION 178.** ORS 497.415, as amended by section 1, chapter 58, Oregon Laws 2010, is  
9 amended to read:

10 497.415. (1) When any person is convicted of a violation of law or any rule adopted pursuant  
11 thereto or otherwise fails to comply with the requirements of a citation in connection with such  
12 violation as provided in subsection (2) of this section, the court may order the [*State Fish and*  
13 *Wildlife Commission*] **Oregon Natural Resources Commission** to revoke all licenses, tags and  
14 permits issued to that person pursuant to the wildlife laws. Revocation of licenses, tags and permits  
15 is in addition to and not in lieu of other penalties provided by law.

16 (2) The license, tag and permit revocation provisions of subsection (1) of this section apply to  
17 the following persons:

18 (a) Any person who is convicted of a violation of the wildlife laws, or any rule adopted pursuant  
19 thereto, or who otherwise fails to comply with the requirements of a citation in connection with any  
20 such offense when the base fine amount for the offense is \$50 or more.

21 (b) Any person who is convicted of a violation of ORS 164.245, 164.255, 164.265, 164.345, 164.354  
22 or 164.365 committed while the person was angling, taking shellfish, hunting or trapping or who  
23 otherwise fails to comply with the requirements of a citation in connection with any such offense  
24 when the base fine amount for the offense is \$50 or more.

25 (c) Any person who is convicted of a violation of ORS 166.630 or 166.638 committed while  
26 hunting or who otherwise fails to comply with the requirements of a citation in connection with any  
27 such offense when the base fine amount for the offense is \$50 or more.

28 (3) When a court orders the revocation of a license, tag or permit pursuant to this section, the  
29 court shall take up any such licenses, tags and permits and forward them, together with a copy of  
30 the revocation order, to the commission. Upon receipt thereof, the commission shall cause revoca-  
31 tion of the appropriate licenses, tags and permits in accordance with the court order.

32 (4) For purposes of the Wildlife Violator Compact:

33 (a) The commission shall suspend a violator's license as defined in ORS 496.750 for failure to  
34 comply with the terms of a citation from a party state. A copy of a report of failure to comply from  
35 the licensing authority of the issuing state shall be conclusive evidence. Suspension under this par-  
36 agraph commences on the date the commission issues a final order pursuant to the provisions of  
37 ORS chapter 183 to suspend the license in this state. The period of suspension under this paragraph  
38 is the period provided by Oregon law or such longer period as provided by commission rule based  
39 on the period of suspension imposed by the party state.

40 (b) The commission shall revoke a violator's license as defined in ORS 496.750 for a conviction  
41 in a party state. A report of conviction from the licensing authority of the issuing state shall be  
42 conclusive evidence. Revocation under this paragraph commences on the date the commission issues  
43 a final order pursuant to the provisions of ORS chapter 183 to revoke the license in this state. The  
44 period of revocation under this paragraph is the period provided by Oregon law or such longer pe-  
45 riod as provided by commission rule based on the period of revocation imposed by the party state.

1 (5)(a) No person who has had a license, tag or permit revoked pursuant to this section for the  
 2 first time shall apply for or obtain another such license, tag or permit for the period of 36 months  
 3 from the date the court or commission ordered the revocation.

4 (b) Upon having a license, tag or permit revoked for a second time pursuant to this section, no  
 5 person shall apply for or obtain another such license, tag or permit for the period of five years.

6 (c) Upon having a license, tag or permit revoked for a third or subsequent time pursuant to this  
 7 section, a person is prohibited from applying for or obtaining another such license, tag or permit.

8 (6)(a) If a person convicted of conduct described in subsection (2) of this section does not possess  
 9 at the time of conviction those licenses, tags and permits issued pursuant to the wildlife laws that  
 10 the court would have revoked pursuant to this section, the court shall specify by order those li-  
 11 censes, tags and permits that would have been revoked and shall forward a copy of the order to the  
 12 commission. No person who is the subject of such a court order shall apply for, possess or obtain  
 13 another such license, tag or permit for the period of 36 months from the date of the order.

14 (b) Upon being the subject of a court order under this subsection for a second time, no person  
 15 shall apply for or obtain another such license, tag or permit for the period of five years.

16 (c) Upon being the subject of a court order under this subsection for a third time, a person is  
 17 prohibited from applying for or obtaining another such license, tag or permit.

18 **SECTION 179.** ORS 498.006 is amended to read:

19 498.006. Except as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
 20 **mission** by rule may provide otherwise, no person shall chase, harass, molest, worry or disturb any  
 21 wildlife except while engaged in lawfully angling for, taking, hunting or trapping such wildlife.

22 **SECTION 180.** ORS 498.012 is amended to read:

23 498.012. (1) Nothing in the wildlife laws is intended to prevent any person from taking any  
 24 wildlife that is causing damage, is a public nuisance or poses a public health risk on land that the  
 25 person owns or lawfully occupies. However, no person shall take, pursuant to this subsection, at a  
 26 time or under circumstances when such taking is prohibited by the [*State Fish and Wildlife Com-*  
 27 *mission*] **Oregon Natural Resources Commission**, any game mammal or game bird, fur-bearing  
 28 mammal or nongame wildlife species, unless the person first obtains a permit for such taking from  
 29 the commission.

30 (2)(a) Nothing in subsection (1) of this section requires a permit for the taking of cougar, bobcat,  
 31 red fox or bear pursuant to that subsection. However, any person who takes a cougar, bobcat, red  
 32 fox or bear must have in possession written authority therefor from the landowner or lawful occu-  
 33 pant of the land that complies with subsection (4) of this section.

34 (b) Nothing in subsection (1) of this section requires the commission to issue a permit for the  
 35 taking of any wildlife species for which a U. S. Fish and Wildlife Service permit is required pursuant  
 36 to the Migratory Bird Treaty Act (16 U.S.C. §§703 to 711), as amended.

37 (3) Any person who takes, pursuant to subsection (1) of this section, any cougar, bobcat, red fox,  
 38 bear, game mammal, game bird, fur-bearing mammal or wildlife species whose survival the commis-  
 39 sion determines is endangered shall immediately report the taking to a person authorized to enforce  
 40 the wildlife laws, and shall dispose of the wildlife in such manner as the commission directs. In de-  
 41 termining procedures for disposal of bear and cougar, the commission shall direct the [*State De-*  
 42 *partment of Fish and Wildlife*] **Oregon Department of Natural Resources** to first offer the animal  
 43 to the landowner incurring the damage.

44 (4) The written authority from the landowner or lawful occupant of the land required by sub-  
 45 section (2) of this section for the taking of cougar, bobcat, red fox or bear must set forth all of the

1 following:

2 (a) The date of issuance of the authorization;

3 (b) The name, address, telephone number and signature of the person granting the authorization;

4 (c) The name, address and telephone number of the person to whom the authorization is granted;

5 (d) The wildlife damage control activities to be conducted, whether for bear, cougar, red fox or  
6 bobcat; and

7 (e) The expiration date of the authorization, which shall be not later than one year from the  
8 date of issuance of the authorization.

9 (5) Any regional office of the [*State Department of Fish and Wildlife*] **department** ordering the  
10 disposal of an animal under subsection (3) of this section shall file a report with the [*State Fish and*  
11 *Wildlife Director*] **Director of the Oregon Department of Natural Resources** within 30 days after  
12 the disposal. The report shall include but need not be limited to the loss incurred, the financial im-  
13 pact and the disposition of the animal. The director shall compile all reports received under this  
14 subsection on a bimonthly basis. The reports compiled by the director shall be available to the  
15 public upon request.

16 (6) As used in this section:

17 (a) "Damage" means loss of or harm inflicted on land, livestock or agricultural or forest crops.

18 (b) "Nongame wildlife" has the meaning given that term in ORS 496.375.

19 (c) "Public nuisance" means loss of or harm inflicted on gardens, ornamental plants, ornamental  
20 trees, pets, vehicles, boats, structures or other personal property.

21 **SECTION 181.** ORS 498.016 is amended to read:

22 498.016. Nothing in the wildlife laws is intended to prohibit any person from killing any crippled  
23 or helpless wildlife when the killing is done for a humane purpose. Any person so killing any wildlife  
24 shall immediately report such killing to a person authorized to enforce the wildlife laws, and shall  
25 dispose of the wildlife in such manner as the [*State Fish and Wildlife Commission*] **Oregon Natural**  
26 **Resources Commission** directs.

27 **SECTION 182.** ORS 498.019 is amended to read:

28 498.019. (1) If the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commis-**  
29 **sion**, pursuant to its authority under ORS 498.022, establishes a license for the purchase of deer,  
30 elk and antelope hides and antlers, any person holding such license shall also be authorized to  
31 purchase, sell or exchange, or offer to purchase, sell or exchange, the hooves, dewclaws and sinews  
32 of deer, elk and antelope.

33 (2) A licensee under subsection (1) of this section shall maintain a record of transactions in-  
34 volving specimens of deer, elk or antelope. The record shall be in such form and contain such in-  
35 formation as the commission, by rule, prescribes to accurately indicate the date, type and number  
36 of specimens received and the name and address of the person with whom such transaction was  
37 made.

38 **SECTION 183.** ORS 498.022 is amended to read:

39 498.022. Except as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
40 **mission** by rule may provide otherwise, no person shall purchase, sell or exchange, or offer to  
41 purchase, sell or exchange any wildlife, or any part thereof.

42 **SECTION 184.** ORS 498.029 is amended to read:

43 498.029. (1) No person shall offer for sale, trade, barter or exchange as a household pet any fox,  
44 skunk or raccoon.

45 (2) An animal specified in subsection (1) of this section may be offered for sale, trade, barter or

1 exchange to a public park, zoo, museum or educational institution for educational, medical, scientific  
 2 or exhibition purposes if the organization possesses a permit from the [*State Fish and Wildlife*  
 3 *Commission*] **Oregon Natural Resources Commission**. The commission may refuse to issue a per-  
 4 mit if the commission finds that the organization requesting the permit does not have physical fa-  
 5 cilities adequate to maintain the animal in health and safety and to prevent the escape of the animal  
 6 from confinement.

7 **SECTION 185.** ORS 498.036 is amended to read:

8 498.036. Except as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
 9 **mission** by rule may provide otherwise, no person shall possess in the field or forest, or in transit  
 10 from the field or forest, the carcass of any wildlife that has been skinned, plucked or mutilated in  
 11 any manner so that the sex, size or species of the wildlife cannot be determined.

12 **SECTION 186.** ORS 498.042 is amended to read:

13 498.042. (1) No person shall remove from the carcass of any game mammal or game bird, the  
 14 head, antlers, horns, hide or plumage, and utilize only those parts so removed, except:

15 (a) When engaged in lawful trapping activities.

16 (b) When utilizing those game mammals or game birds that the [*State Fish and Wildlife Com-*  
 17 *mission*] **Oregon Natural Resources Commission** by rule declares to be inedible.

18 (2) No person shall waste any edible portion of any game mammal, game bird or game fish or  
 19 the pelt of any fur-bearing mammal.

20 **SECTION 187.** ORS 498.052 is amended to read:

21 498.052. No person shall release within this state any domestically raised wildlife or wildlife  
 22 brought to this state from any place outside this state unless the person first obtains a permit  
 23 therefor from the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**.

24 **SECTION 188.** ORS 498.106 is amended to read:

25 498.106. Competitive field trials for hunting dogs may be held at such times and places and un-  
 26 der such conditions as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
 27 **mission** may prescribe by rule.

28 **SECTION 189.** ORS 498.126 is amended to read:

29 498.126. (1) A person may not:

30 (a) Hunt game mammals or game birds from or with the aid of an aircraft.

31 (b) Transmit from an aircraft to a person not in the aircraft information regarding the location  
 32 of any game mammals or game birds.

33 (c) Otherwise use an aircraft to assist another person in hunting or locating game mammals or  
 34 game birds for the purpose of hunting.

35 (2) A person may not hunt any game mammal within eight hours after having been transported  
 36 by aircraft to or from any place other than a recognized airport that the Oregon Department of  
 37 Aviation has licensed as a public use airport, registered as a personal use airport or specifically  
 38 exempted from licensing or registration.

39 (3) Every pilot shall maintain a log book that shows the names and addresses of record of the  
 40 persons transported, point of departure, point of destination, time and date of each flight that the  
 41 pilot makes in an aircraft within this state to transport a person to or from any place to hunt. The  
 42 log book is subject to inspection by any person authorized to enforce the wildlife laws.

43 (4)(a) Notwithstanding subsections (1) to (3) of this section, and except as provided in subsection  
 44 (5) of this section, the [*State Department of Fish and Wildlife*] **Oregon Department of Natural**  
 45 **Resources**, or its agents, may conduct wildlife management activities necessary for scientific re-

1 search or, in emergency situations, to protect human safety, wildlife species or property by:

2 (A) Hunting game mammals or game birds from or with the aid of an aircraft; or

3 (B) Transmitting from an aircraft information regarding the location of any game mammal or  
4 game bird.

5 (b) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** shall  
6 define by rule the terms “emergency situations” and “necessary” for purposes of implementation of  
7 this section.

8 (5) If the definition of “game mammal” in ORS 496.004 is modified to include wolves, then the  
9 department may conduct wolf management activities under this section only under a statewide wolf  
10 management plan adopted by the commission.

11 **SECTION 190.** ORS 498.136 is amended to read:

12 498.136. (1) Except as provided in subsection (2) of this section, a person may not hunt wildlife  
13 from a motor-propelled vehicle.

14 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**, by rule,  
15 may authorize hunting from a motor-propelled vehicle by a person with a disability or for the pur-  
16 pose of alleviating damage by wildlife to other resources.

17 (3)(a) Nothing in the wildlife laws, or rules adopted pursuant thereto, is intended to prohibit the  
18 companion of a person with a disability who is lawfully hunting from a motor-propelled vehicle from  
19 killing an animal wounded by the person and applying to the animal the tag issued to the person for  
20 the taking of the animal, even if the companion has already validated any tag required for the taking  
21 of such an animal.

22 (b) For purposes of this subsection, “companion” means a person who does not have a disability.

23 **SECTION 191.** ORS 498.142 is amended to read:

24 498.142. (1) Except as provided in subsection (2) of this section, no person shall hunt wildlife  
25 with the aid of any artificial light.

26 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**, by rule,  
27 may authorize hunting with the aid of an artificial light for the purpose of taking raccoon, opossum  
28 or bobcat or to alleviate damage by wildlife to other resources.

29 **SECTION 192.** ORS 498.152 is amended to read:

30 498.152. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
31 may enter into agreements with the owners or lawful possessors of land to restrict the operation  
32 or parking of motor-propelled vehicles on the land when the commission determines that such op-  
33 eration or parking is damaging wildlife or wildlife habitat.

34 (2) An agreement shall restrict the types and uses of motor-propelled vehicles on the land and  
35 shall specify the times and places that such restrictions apply.

36 (3) The commission shall cause notice of the restrictions, including the effective date thereof,  
37 to be posted on the main traveled roads entering the area to which the restrictions apply.

38 (4) Nothing in this section authorizes the establishment of any restrictions that impede normal  
39 forest or range management operations.

40 **SECTION 193.** ORS 498.158 is amended to read:

41 498.158. (1) Except as provided in ORS 448.305 and in subsection (2) of this section, no person  
42 shall hunt or trap any wildlife within the boundaries of any city, public park, cemetery or on any  
43 school lands.

44 (2) No hunting or trapping shall be allowed on any lands within the boundaries of any city,  
45 public park or on any school lands unless:

1 (a) The governing body or other agency that administers the affairs of the city, public park or  
2 school, after notice and hearing, authorizes such hunting or trapping by ordinance or resolution; and

3 (b) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**, after  
4 notice and hearing, determines that such hunting or trapping would not adversely affect public  
5 safety or unreasonably interfere with other authorized uses of such lands.

6 **SECTION 194.** ORS 498.164 is amended to read:

7 498.164. (1) Except as provided in subsections (2) to (4) of this section, a person may not use bait  
8 to attract or take black bears or use one or more dogs to hunt or pursue black bears or cougars.

9 (2) Nothing in subsection (1) of this section prohibits the use of bait or one or more dogs by  
10 employees or agents of county, state or federal agencies while acting in their official capacities.

11 (3)(a) As allowed by subsection (2) of this section, the [*State Department of Fish and Wildlife*]  
12 **Oregon Department of Natural Resources** is authorized to appoint persons to act as agents for  
13 the department for the purpose of using one or more dogs to hunt or pursue black bears or cougars.  
14 Such hunt or pursuit must be in compliance with any black bear management plan and any cougar  
15 management plan adopted by rule by the [*State Fish and Wildlife Commission*] **Oregon Natural**  
16 **Resources Commission**. An agent acts on the department's behalf and, subject to the department's  
17 direction and control, implements specific management programs of the department. An agent may  
18 not engage in any other hunting or pursuit while acting on the department's behalf.

19 (b) The department shall:

20 (A) Make the appointment in written form; and

21 (B) Ensure that the written appointment is available to the public for review at the main office  
22 of the department in Salem.

23 (c) Upon appointment of an agent by the department, the department shall fix the compensation  
24 of the agent and prescribe the duties of the agent. The authority of the agent to act shall be limited  
25 to the terms set forth in the written appointment under paragraph (b) of this subsection.

26 (d) The commission shall adopt by rule a process and criteria for selecting and training persons  
27 to act as agents pursuant to paragraph (a) of this subsection. The process and criteria shall include,  
28 but are not limited to, the qualifications and training for agents and are to cover any guidelines,  
29 policies or codes of conduct of the department regarding firearms, first aid, all-terrain vehicles and  
30 snowmobiles and the use of alcohol or drugs. The department may also require fingerprints as  
31 specified in [*ORS 496.121*] **section 9 of this 2011 Act** for the purpose of requesting state or na-  
32 tionwide criminal records checks.

33 (4) Nothing in subsection (1) of this section prohibits the use of bait or dogs by persons for the  
34 taking of black bears or cougars in accordance with the provisions of ORS 498.012 relating to taking  
35 wildlife that is causing damage.

36 (5) Any person who violates subsection (1) of this section commits a Class A misdemeanor and,  
37 upon conviction, shall in addition to appropriate criminal penalties have his or her privilege to apply  
38 for any hunting license suspended for a period of five years for a first offense and permanently  
39 suspended for any subsequent offense.

40 (6) For the purposes of this section, "bait" means any material placed for the purpose of at-  
41 tracting or attempting to attract bears.

42 **SECTION 195.** ORS 498.166 is amended to read:

43 498.166. (1) Notwithstanding the licensing and tag requirements of ORS 497.102 and 497.112, a  
44 person may take a cougar or bear that poses a threat to human safety.

45 (2) Any person who takes a cougar or bear pursuant to subsection (1) of this section shall im-

1 mediate report the taking to a person authorized to enforce the wildlife laws and shall dispose of  
 2 the animal in such manner as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
 3 **Commission** directs.

4 (3) Any regional office of the [*State Department of Fish and Wildlife*] **Oregon Department of**  
 5 **Natural Resources** ordering the disposal of an animal under subsection (2) of this section shall file  
 6 a report with the [*State Fish and Wildlife Director*] **Director of the Oregon Department of Na-**  
 7 **tural Resources** within 30 days after the disposal. The report shall include but need not be limited  
 8 to the disposition of the animal, the events leading to the taking of the animal and any injury caused  
 9 by the animal to humans or domesticated animals. The director shall compile all reports received  
 10 under this subsection on a bimonthly basis. The reports compiled by the director shall be available  
 11 to the public upon request.

12 (4) As used in this section:

13 (a) "Structure" includes a building being used as a residence, a building located on land actively  
 14 used for agricultural, timber management, ranching or construction purposes or a building used as  
 15 part of a business.

16 (b) "Threat to human safety" means the exhibition by a cougar or bear of one or more of the  
 17 following behaviors:

18 (A) Aggressive actions directed toward a person or persons, including but not limited to charg-  
 19 ing, false charging, growling, teeth popping and snarling.

20 (B) Breaking into, or attempting to break into, a residence.

21 (C) Attacking a pet or domestic animal as defined in ORS 167.310.

22 (D) Loss of wariness of humans, displayed through repeated sightings of the animal during the  
 23 day near a permanent structure, permanent corral or mobile dwelling used by humans at an agri-  
 24 cultural, timber management, ranching or construction site.

25 **SECTION 196.** ORS 498.170 is amended to read:

26 498.170. (1) A person who does not have a visual impairment and who accompanies a hunter who  
 27 possesses a visually impaired hunter license may:

28 (a) Assist the hunter in selecting a game animal or bird;

29 (b) Assist the aiming or sighting of a firearm;

30 (c) Advise the hunter when to fire a firearm;

31 (d) Shoot a game animal or bird on behalf of the hunter while in the immediate presence of the  
 32 hunter; and

33 (e) Tag and retrieve game animals and birds on behalf of the hunter.

34 (2) The person accompanying a hunter who has a visual impairment shall be required to possess  
 35 a valid hunting license. The person accompanying a hunter who has a visual impairment may also  
 36 hunt game animals or birds if the person possesses the appropriate tags, permits and stamps for the  
 37 area and time period.

38 (3) A hunter who possesses a visually impaired hunter license must comply with all other tag,  
 39 permit and stamp requirements of the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
 40 **sources Commission** and applicable hunting laws.

41 (4) As used in this section, "hunter who has a visual impairment" means a person who files proof  
 42 with the commission that the person's central visual acuity does not exceed 20/200 in the better eye  
 43 with best correction or that the person's visual acuity, if better than 20/200, is accompanied by a  
 44 limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater  
 45 than 20 degrees.



1        **SECTION 197.** ORS 498.180 is amended to read:

2        498.180. (1) A person may not offer for sale or sell a hunt for feral swine on public or private  
3 lands.

4        (2) Violation of subsection (1) of this section is a Class A misdemeanor. A person may not be  
5 convicted under this subsection if a civil penalty has been imposed against the person under sub-  
6 section (3) of this section.

7        (3)(a) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may  
8 impose a civil penalty of \$1,000 for a violation of subsection (1) of this section.

9        (b) Civil penalties described in this subsection shall be imposed in the manner provided in ORS  
10 183.745. A civil penalty may not be imposed against a person under this subsection if the person has  
11 been convicted under subsection (2) of this section.

12        (4) Notwithstanding ORS 497.415 (1), (2), (3) and (5) and in addition to any criminal penalty or  
13 civil penalty imposed under this section, when a person is convicted under subsection (2) of this  
14 section or a civil penalty is imposed under subsection (3) of this section, the commission shall revoke  
15 all hunting licenses, tags and permits issued to the person under the wildlife laws, and the person  
16 may not apply for or obtain any hunting license, tag or permit for a period of 24 months after the  
17 conviction or imposition of the civil penalty.

18        **SECTION 198.** ORS 498.182 is amended to read:

19        498.182. (1) A person, or an employee of that person who acts as a land manager, may not  
20 knowingly, as defined in ORS 161.085, allow feral swine to roam on land owned or controlled by that  
21 person.

22        (2) A person, or an employee of that person who acts as a land manager, shall take action in a  
23 manner consistent with rules adopted by the [*State Fish and Wildlife Commission*] **Oregon Natural**  
24 **Resources Commission** to remove any feral swine that roams on land owned or controlled by that  
25 person if the person or employee knows that feral swine roam on land owned or controlled by that  
26 person. ORS 497.075 does not apply to this subsection.

27        (3) A person, or an employee of that person who acts as a land manager, shall, within 10 days  
28 after discovering feral swine on land owned or controlled by that person, inform the [*State Depart-*  
29 *ment of Fish and Wildlife*] **Oregon Department of Natural Resources** about the feral swine.

30        **SECTION 199.** ORS 498.208 is amended to read:

31        498.208. (1) Except as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
32 **Commission** by rule may provide otherwise, no person shall:

33        (a) Use in any body of water any electric current that may attract, frighten, retard, stun, kill  
34 or obstruct the movement of any game fish.

35        (b) Place in any body of water any foreign substance such as blood or fish offal or any gas,  
36 chemical, drug or powder that may attract, frighten, retard, stun, kill or obstruct the movement of  
37 any game fish.

38        (c) Use in any body of water any explosive device for the purpose of taking game fish.

39        (2) No person shall possess any game fish that the person knows or has reason to know was  
40 taken in violation of subsection (1) of this section.

41        **SECTION 200.** ORS 498.216 is amended to read:

42        498.216. Except as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
43 **mission** by rule may provide otherwise, no person shall trespass upon or angle from any fishway  
44 or angle within an area of a body of water bounded by a line extending across the body of water  
45 200 feet above the upper end of a fishway and a line across the body of water 200 feet below the

1 lower end of a fishway.

2 **SECTION 201.** ORS 498.222 is amended to read:

3 498.222. (1) No person shall:

4 (a) Transport any live fish unless the person has first obtained a permit therefor from the [*State*  
5 *Fish and Wildlife Commission*] **Oregon Natural Resources Commission**.

6 (b) Release or attempt to release into any body of water any live fish that was not taken from  
7 that body of water, unless the person has first obtained a permit therefor from the commission.

8 (2) The commission may refuse to issue the permit referred to in subsection (1)(b) of this section  
9 if the commission finds that release of the fish into a body of water would adversely affect existing  
10 fish populations.

11 (3) Subsection (1)(a) of this section does not apply to live fish that are for aquaria use.

12 (4) Notwithstanding ORS 496.992, violation of subsection (1)(b) of this section is:

13 (a) A Class C felony if the violation is committed intentionally or knowingly.

14 (b) A Class A misdemeanor if the violation is committed recklessly or with criminal negligence.

15 (5)(a) Notwithstanding ORS 497.415 (1), (2), (3) and (5), when a person is convicted of violating  
16 subsection (1)(b) of this section, the court in which the conviction occurs shall notify the commis-  
17 sion, which shall revoke all angling licenses and tags issued to that person pursuant to the wildlife  
18 laws. Revocation of licenses and tags is in addition to and not in lieu of other penalties provided  
19 by law.

20 (b) No person who has been convicted of violating subsection (1)(b) of this section shall apply  
21 for, obtain or possess any angling license or tag issued pursuant to the wildlife laws within five  
22 years after the conviction.

23 (6)(a) The commission may institute suit for the recovery of damages for the control or  
24 eradication of live fish released into a body of water in violation of subsection (1)(b) of this section.  
25 The damages awarded under this subsection shall be the amount necessary to return the body of  
26 water to its condition prior to the violation.

27 (b) In any action under this subsection, the court shall award to the prevailing party, in addition  
28 to costs and disbursements, reasonable attorney fees.

29 (c) Damages awarded under this subsection shall be in addition to other penalties prescribed by  
30 the wildlife laws for releasing or attempting to release live fish without a permit.

31 (d) Any circuit or justice court has jurisdiction to try any case for the recovery of damages as  
32 provided by this subsection.

33 **SECTION 202.** ORS 498.234 is amended to read:

34 498.234. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
35 shall, by rule, establish a program to protect all finfish and shellfish in waters of this state, both  
36 public and private, from infection by the introduction of detrimental fish diseases.

37 (2) Rules adopted under subsection (1) of this section shall not apply to live aquaria species  
38 imported or transported for aquaria use unless those species are reared in facilities from which  
39 effluent directly enters waters of this state.

40 (3) The requirements of subsection (1) of this section are in addition to any other requirement  
41 of law, or rule promulgated pursuant thereto, regarding the importation into this state of live game  
42 fish or game fish eggs.

43 **SECTION 203.** ORS 498.242 is amended to read:

44 498.242. (1) Except as provided in subsections (2) and (3) of this section, no person shall possess  
45 any live fish of the various species:

1 (a) Of the family Clariidae, commonly known as walking catfish; or

2 (b) Of the subfamily Serrasalminae of the family Characidae, commonly known as caribe or  
3 piranha.

4 (2) A public park, zoo, museum or educational institution may possess any of the fish referred  
5 to in subsection (1) of this section for educational, medical, scientific or exhibition purposes if the  
6 organization first obtains a permit from the [*State Fish and Wildlife Commission*] **Oregon Natural  
7 Resources Commission**. The commission may refuse to issue the permit if the commission finds  
8 that the organization requesting the permit has physical facilities for holding the fish that are in-  
9 adequate to prevent their escape from confinement.

10 (3) Subsections (1) and (2) of this section do not prohibit the possession or require a permit for  
11 the possession of live fish that are of the genera *Pygocentrus*, *Serrasalmus* or *Pristobrycon* that are  
12 carnivorous fish in the subfamily Serrasalminae, from the family Characidae, commonly known as  
13 piranha or caribe.

14 **SECTION 204.** ORS 498.247 is amended to read:

15 498.247. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
16 shall issue not more than three permits annually for activities involving the protection of juvenile  
17 salmonids from cormorants (*Phalacrocoracidae*) on Oregon coastal river systems between Cape  
18 Falcon and Cascade Head.

19 (2) Activities authorized under the permits shall not include the killing, trapping or other taking  
20 of cormorants.

21 (3) Persons to whom permits are issued may subcontract with others for the performance of  
22 protection activities.

23 **SECTION 205.** ORS 498.279 is amended to read:

24 498.279. (1) A person, or group of persons, may conduct, sponsor and participate in any compe-  
25 tition or contest in which prizes are offered for the amount, quality, size, weight or other physical  
26 characteristics of black bass or walleye, provided that the rules of a competition or contest are  
27 prepared and distributed by the sponsors to the contestants and are administered and enforced by  
28 the sponsors. Such rules shall include, but are not limited to:

29 (a) A requirement that the contestants use aerated live wells or other equipment so that all  
30 reasonable efforts are made to maintain the fish taken in a live and healthy condition.

31 (b) A requirement that all fish caught that are in a healthy condition are immediately returned  
32 to the water where they were caught, after weighing. Black bass may be turned over to the [*State  
33 Department of Fish and Wildlife*] **Oregon Department of Natural Resources** for restocking.

34 (c) A requirement that bass tournament contestants use only artificial or other such prepared  
35 baits.

36 (2) As used in this section, "black bass" means largemouth bass, smallmouth bass, redeye bass,  
37 spotted bass and all other basses of the genus *Micropterus*.

38 (3) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may  
39 adopt rules to limit the number of contests and participants, determine the location of contests and  
40 prescribe other terms and conditions regarding the conduct of contests under this section.

41 **SECTION 206.** ORS 498.286 is amended to read:

42 498.286. (1) Except as provided in subsection (2) of this section and ORS 498.279, no person shall  
43 conduct, sponsor or participate in any competition or contest in which any prize of a retail value  
44 of more than \$1,000 is offered for the amount, quality, size, weight or other physical characteristic  
45 of game fish taken.

1 (2) When a prize is offered that exceeds \$1,000 for the amount, quality, size, weight or other  
2 physical characteristic of a game fish taken, the [*State Fish and Wildlife Commission*] **Oregon Na-**  
3 **tural Resources Commission**, by rule, may limit the number of contests and participants, deter-  
4 mine the location of contests and prescribe other terms and conditions regarding the conduct of  
5 contests.

6 **SECTION 207.** ORS 498.301 is amended to read:

7 498.301. It is the policy of the State of Oregon to prevent appreciable damage to game fish  
8 populations or populations of nongame fish that are classified as sensitive species, threatened spe-  
9 cies or endangered species by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
10 **Commission** as the result of the diversion of water for nonhydroelectric purposes from any body  
11 of water in this state.

12 **SECTION 208.** ORS 498.306 is amended to read:

13 498.306. (1) Any person who diverts water from any body of water in this state in which any fish,  
14 subject to the [*State Fish and Wildlife Commission's*] **Oregon Natural Resources Commission's**  
15 regulatory jurisdiction, exist may be required to install, operate and maintain screening or by-pass  
16 devices to provide adequate protection for fish populations present at the water diversion in ac-  
17 cordance with the provisions of this section.

18 (2)(a) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
19 shall establish a cost-sharing program to implement the installation of screening or by-pass devices  
20 on not less than 150 water diversions or 150 cubic feet per second of diverted water per biennium.  
21 The department shall select the water diversions to be screened from the priority listing of diver-  
22 sions established by the department and reviewed by the Fish Screening Task Force. The installation  
23 of a screening or by-pass device may be required only if:

24 (A) The water diversion is 30 cubic feet per second or more;

25 (B) A new water right is issued for the water diversion;

26 (C) The point of water diversion is transferred as described in ORS 540.525;

27 (D) Fewer than 150 persons per biennium volunteer to request such installation on the diver-  
28 sions for which they are responsible; or

29 (E) The Fish Screening Task Force has reviewed and approved the department's request to re-  
30 quire installation of screening or by-pass devices in order to complete the screening of a stream  
31 system or stream reach.

32 (b) The limitations on the number of diversions or cubic feet per second of diverted water to  
33 be screened as provided in this section do not prevent the installation of screening and by-pass de-  
34 vices for diversions by persons responsible for diversions who are willing to pay the full cost of in-  
35 stallating screening and by-pass devices.

36 (c) Cost-sharing program funds may not be provided under this subsection for screening or by-  
37 pass devices on a water diversion involving water rights issued on or after January 1, 1996, unless  
38 the Fish Screening Task Force finds there is good cause to allow an exception. The department shall  
39 give preference to diversions of 30 cubic feet per second or less when making cost-sharing program  
40 funds available.

41 (3) When selecting diversions to be equipped with screening or by-pass devices, the department  
42 shall attempt to solicit persons who may volunteer to request the installation of such devices on the  
43 diversions for which they are responsible. When selecting diversions to be equipped with screening  
44 or by-pass devices, the department shall select those diversions that will provide protection to the  
45 greatest number of indigenous naturally spawning fish possible.

1 (4) If the department constructs and installs the screening or by-pass device, a fee shall be as-  
2 sessed against the person responsible for the diversion in an amount that does not exceed 40 percent  
3 of the construction and installation costs of the device. The fee shall be paid into the Fish  
4 Screening Subaccount. If the person responsible for the diversion constructs and installs the by-pass  
5 or screening device, the person shall be reimbursed from the Fish Screening Subaccount or other  
6 state funds in an amount that does not exceed 60 percent of the actual construction and installation  
7 costs of the device.

8 (5) The department's cost of major maintenance and repair of screening or by-pass devices shall  
9 be paid from the Fish Screening Subaccount.

10 (6) The department is responsible for major maintenance and repair of screening or by-pass de-  
11 vices at water diversions of less than 30 cubic feet per second, and if failure by the department to  
12 perform major maintenance on or repair such devices results in damage or blockage to the water  
13 diversion on which a device has been installed, the person responsible for the water diversion shall  
14 give written notice of such damage or blockage to the department. If within seven days of the notice,  
15 the department fails to take appropriate action to perform major maintenance on or repair the de-  
16 vice, and to repair any damage that has occurred, the person responsible for the water diversion  
17 may remove the device. If an emergency exists that will result in immediate damage to livestock or  
18 crops, the person responsible for the water diversion may remove the screening or by-pass device.  
19 A person required to comply with this section is responsible for minor maintenance and shall, in a  
20 timely manner, notify the department of the need for activities associated with major maintenance.

21 (7) A person who diverts water at a rate of 30 cubic feet per second or more is responsible for  
22 all maintenance of an installed screening or by-pass device.

23 (8) A person required to comply with this section may design, construct and install screening  
24 or by-pass devices adequate to prevent fish from leaving the body of water and entering the diver-  
25 sion or may request the department to design, construct and install such devices. However, if a  
26 person required to comply with this section fails to comply within 180 days after notice to comply  
27 by the department, the department shall design, install, operate and maintain on that person's water  
28 diversion appropriate screening or by-pass devices and shall charge and collect from the person the  
29 actual costs thereof in an amount not to exceed the average cost for diversions of that size.

30 (9) If the diversion requiring screening or by-pass devices is located on public property, the de-  
31 partment shall obtain from the property owner approval or permits necessary for such devices.  
32 Activities of the department pursuant to this section may not interfere with existing rights of way  
33 or easements of the person responsible for the diversion.

34 (10)(a) The department or its agent has the right of ingress and egress to and from those places  
35 where screening or by-pass devices are required, doing no unnecessary injury to the property of the  
36 landowner, for the purpose of designing, installing, inspecting, performing major maintenance on or  
37 repairing such devices.

38 (b) If a screening or by-pass device installed by the department must be removed or replaced  
39 due to inadequate design or faulty construction, the person responsible for the diversion shall bear  
40 no financial responsibility for its replacement or reconstruction.

41 (c) If a screening or by-pass device installed by the person responsible for the diversion must  
42 be removed or replaced due to faulty construction, the person shall bear full financial responsibility  
43 for its replacement or reconstruction.

44 (d) If the person responsible for a diversion on which a screening or by-pass device is installed  
45 fails to conduct appropriate inspection and minor maintenance, the department may perform such

1 activities and charge and collect from the person responsible a fee not to exceed \$150 for each re-  
2 quired visit to the location of the screening or by-pass device.

3 (e) If the department determines that a person must install, operate, maintain, repair or replace  
4 a screening or by-pass device under this section, the department shall notify the person, by regis-  
5 tered mail, of the specific action the person is required to take. The person may request a contested  
6 case hearing before the [*State Fish and Wildlife Commission*] **commission**, to be conducted as pro-  
7 vided in ORS chapter 183.

8 (11) A person may not interfere with, tamper with, damage, destroy or remove in any manner  
9 not associated with regular and necessary maintenance procedures any screening or by-pass devices  
10 installed pursuant to this section.

11 (12) The department may maintain an action to cover any costs incurred by the department  
12 when a person who is required to comply with this section fails to comply. Such action shall be  
13 brought in the circuit court for the county in which the screening or by-pass device is located.

14 (13) Upon receiving notice from the department to comply with this section, a person responsible  
15 for a water diversion may be excused from compliance if the person demonstrates to the Fish  
16 Screening Task Force that:

17 (a) The installation and operation of screening or by-pass devices would not prevent appreciable  
18 damage to the fish populations in the body of water from which water is being diverted.

19 (b) Installation and operation of screening or by-pass devices would not be technically feasible.

20 (c) Installation of screening or by-pass devices would result in undue financial hardship.

21 (14)(a) Not later than January 1, 1996, the department, with the assistance of the Fish Screening  
22 Task Force [*and the Water Resources Department*], shall establish and publish an updated priority  
23 listing of 3,500 water diversions in the state that should be equipped with screening or by-pass de-  
24 vices. Changes may be made to the list whenever deletions are made for any reason. The priority  
25 listing shall include the name and address of the person currently responsible for the water diver-  
26 sion, the location of the diversion, size of the diversion, type of screening or by-pass device required,  
27 estimated costs for construction and installation of screening or by-pass devices for the individual  
28 diversion and species of fish present in the water body. When developing the priority listing, the  
29 department shall base priorities for the installation of screening or by-pass devices on unscreened  
30 diversions on the following criteria:

31 (A) Fish species status.

32 (B) Fish numbers.

33 (C) Fish migration.

34 (D) Diversion size.

35 (E) Diversion amount.

36 (F) Any other criteria that the department, in consultation with the Fish Screening Task Force,  
37 considers appropriate.

38 (b) Criteria identified in this subsection shall be given appropriate consideration by the depart-  
39 ment when updating its priority listing. The priority listing will be updated to give the highest pri-  
40 ority to those diversions that save the greatest number of fish and simultaneously protect the  
41 greatest number of threatened or endangered fish species.

42 (c) After the priority listing has been updated, the persons responsible for the diversions on the  
43 list shall be notified that their diversions appear on the list. Such persons also shall be furnished a  
44 description of the fish screening cost-sharing program.

45 (d)(A) The department shall notify, by means of registered mail, each person responsible for the

1 first 250 diversions on the priority listing on or before January 1, 1996. The department shall furnish  
2 information regarding the fish screening cost-sharing program to each person responsible for a di-  
3 version included in the first 250 diversions on the priority listing on or before January 1, 1996. A  
4 person may not be required to install a screening or by-pass device unless previously notified by the  
5 department of the requirement to install such devices.

6 (B) On January 1 of each even-numbered year, the department shall notify each person respon-  
7 sible for a diversion included in the first 250 diversions on the priority listing. However, the de-  
8 partment is not required to notify in a subsequent year any person previously notified. The  
9 department shall include with such notification information regarding the fish screening cost-sharing  
10 program.

11 (C) Before any person is required to install a screening or by-pass device, the department shall  
12 confirm the need for the device through a visual, on-site inspection by appropriate staff of the fish  
13 screening division of the department, or a district biologist of the department.

14 (15) As used in this section:

15 (a) "Behavioral barrier" means a system that utilizes a stimulus to take advantage of natural  
16 fish behavior to attract or repel fish. A behavioral barrier does not offer a physical impediment to  
17 fish movement, but uses such means as electricity, light, sound or hydraulic disturbance to move or  
18 guide fish.

19 (b) "Body of water" includes but is not limited to irrigation ditches, reservoirs, stock ponds and  
20 other artificially created structures or impoundments.

21 (c) "By-pass device" means any pipe, flume, open channel or other means of conveyance that  
22 transports fish back to the body of water from which the fish were diverted but does not include  
23 fishways or other passages around a dam.

24 (d) "Fish screen" means a screen, bar, rack or other barrier, including related improvements  
25 necessary to ensure its effective operation, to provide adequate protection for fish populations  
26 present at a water diversion.

27 (e) "Major maintenance" means all maintenance work done on a screening or by-pass device  
28 other than minor maintenance.

29 (f) "Minor maintenance" means periodic inspection, cleaning and servicing of screening or by-  
30 pass devices at such times and in such manner as to ensure proper operation of the screening or  
31 by-pass device.

32 (g) "Person" means any person, partnership, corporation, association, municipal corporation,  
33 political subdivision or governmental agency.

34 (h) "Screening device" means a fish screen or behavioral barrier.

35 **SECTION 209.** ORS 498.316 is amended to read:

36 498.316. ORS 498.306 does not require the installation of screening or by-pass devices in those  
37 water diversions for which the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
38 **Commission**, by contract or other form of agreement with the person diverting the water, has made  
39 such other provision as the commission determines is adequate for the protection of the game fish  
40 in the body of water from which water is being diverted.

41 **SECTION 210.** ORS 498.321 is amended to read:

42 498.321. (1) In order to carry out the provisions of ORS 498.301 and 498.306, the following min-  
43 imum standards and criteria apply to actions of the [*State Fish and Wildlife Commission and the*  
44 *State Department of Fish and Wildlife*] **Oregon Department of Natural Resources and the Oregon**  
45 **Natural Resources Commission** with regard to fish screening or by-pass devices:

1 (a) Standards and criteria shall address the overall level of protection necessary at a given  
2 water diversion and may not favor one technology or technique over another.

3 (b) Standards and criteria shall take into account at least the following factors relating to the  
4 fish populations present at a water diversion:

5 (A) The source of the population, whether native or introduced and whether hatchery or wild.

6 (B) The status of the population, whether endangered, threatened or sensitive.

7 (c) Standards and criteria may take into account the cumulative effects of other water diver-  
8 sions on the fish populations being protected.

9 (d) Design and engineering recommendations shall consider cost-effectiveness.

10 (e) Alternative design and installation proposals must be approved if they can be demonstrated  
11 to provide an equal level of protection to fish populations as those recommended by the department.

12 (2) In order to maximize effectiveness and promote consistency relating to the protection of fish  
13 at nonhydroelectric water diversions, the department shall establish a single organizational entity  
14 to administer all agency activities related to fish screening and by-pass devices.

15 (3) The department shall emphasize cooperative effort and mutual understanding with those re-  
16 sponsible for water diversions that need fish screening or by-pass devices.

17 (4) The department shall aggressively investigate and encourage the development of new tech-  
18 nologies and techniques to provide protection for fish populations at water diversions in order to  
19 reduce initial costs, reduce operating costs and improve cost-effectiveness.

20 **SECTION 211.** ORS 498.326 is amended to read:

21 498.326. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
22 **sources** shall establish guidelines to determine the need for and location of potential fish screening  
23 and by-pass projects. The guidelines shall include a plan to be used for determining priorities for  
24 and expected costs of installing and maintaining the fish screening and by-pass devices.

25 (2) Nothing in subsection (1) of this section is intended to prevent the [*State Department of Fish*  
26 *and Wildlife*] **department** from expending federal or other funds if such funds become available for  
27 the installation and maintenance of fish screening and by-pass projects.

28 **SECTION 212.** ORS 498.341 is amended to read:

29 498.341. Notwithstanding the limitations imposed by ORS 498.306, if sufficient funds are made  
30 available in the Fish Screening Subaccount of the [*Fish and Wildlife Account,*] **Oregon Natural**  
31 **Resources Fund** by allocation from the Administrative Services Economic Development Fund or  
32 from other sources, the [*State Department of Fish and Wildlife*] **Oregon Department of Natural**  
33 **Resources** may provide financial assistance for construction and installation of screening or by-pass  
34 devices on additional water diversions.

35 **SECTION 213.** ORS 498.346 is amended to read:

36 498.346. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
37 may maintain a suit to enjoin any person, including governmental agencies of this state and political  
38 subdivisions of this state, from violating the provisions of ORS 498.306. The circuit court for any  
39 county in which are situated any waters in which any such violations are threatened has jurisdic-  
40 tion of the suit authorized by this section.

41 **SECTION 214.** ORS 498.406 is amended to read:

42 498.406. (1) Except as provided in ORS 498.412, no person shall operate an outdoor club unless  
43 the person has a valid license for such operation issued by the [*State Fish and Wildlife*  
44 *Commission*] **Oregon Natural Resources Commission**, if the outdoor club activities are to be  
45 conducted on land that is leased from the owners thereof and if:



1 (a) The members of the club are not parties to the lease; and

2 (b) The members of the club do not have any financial or proprietary interest in the club.

3 (2) No person required by subsection (1) of this section to obtain a license to operate an outdoor  
4 club shall engage in promotional plan activities for the sale of membership in the outdoor club un-  
5 less the person first obtains the license.

6 **SECTION 215.** ORS 498.418 is amended to read:

7 498.418. (1) A person who is required to obtain a license from the [*State Fish and Wildlife*  
8 *Commission*] **Oregon Natural Resources Commission** to operate an outdoor club shall submit to  
9 the commission an application for such license, on a form approved by the commission, that contains  
10 such information as the commission may require regarding the ownership, financial condition and  
11 operation of the club and promotional plans for sale of membership therein.

12 (2) The application shall be accompanied by a fee of \$100.

13 **SECTION 216.** ORS 498.424 is amended to read:

14 498.424. (1) A person who is licensed to operate an outdoor club shall report immediately to the  
15 [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** any material  
16 changes in the information required to be contained in the application.

17 (2) Upon receipt of any such report, the commission may suspend a license that has been issued  
18 for such time as the commission considers necessary to adequately investigate and approve the in-  
19 formation submitted.

20 **SECTION 217.** ORS 498.432 is amended to read:

21 498.432. (1) Upon receipt in proper form of an application for a license to operate an outdoor  
22 club, the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** shall issue  
23 a notice of filing to the applicant. Within 30 days from the date of the notice of filing, the commis-  
24 sion shall enter an order granting or denying the license. If the license is denied, the commission  
25 shall give the applicant notice of the reasons therefor.

26 (2) If an order denying a license is not entered within 60 days from the date of notice of filing  
27 of an application, a license shall be considered granted unless the applicant has consented in writing  
28 to a delay.

29 (3) Orders of the commission regarding the issuance, renewal, suspension or revocation of a li-  
30 cense shall be issued and reviewed in accordance with ORS chapter 183.

31 **SECTION 218.** ORS 498.438 is amended to read:

32 498.438. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
33 may cause to be investigated, to such extent as the commission considers appropriate, the activities  
34 and operations of an outdoor club for which a license to operate has been received, previously  
35 granted or previously denied. The commission's power to investigate includes, but is not limited to:

36 (1) Contracting for investigative services with, and receiving information and recommendations  
37 from, any other agency or political subdivision of this state, another state or of the United States.

38 (2) Making on-site inspections of all lands upon which outdoor club activities are to be con-  
39 ducted.

40 **SECTION 219.** ORS 498.444 is amended to read:

41 498.444. Each application to the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
42 **sources Commission** for a license to operate an outdoor club, all information submitted with the  
43 application, and all information obtained by the commission through investigation of applications,  
44 is a public record.

45 **SECTION 220.** ORS 498.452 is amended to read:

1       498.452. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
 2 may refuse to issue or renew a license to operate an outdoor club, or may revoke a license that has  
 3 been previously issued if the commission finds:

4       (1) Failure by the outdoor club or person advertising the sale of membership in the outdoor club  
 5 to comply with the provisions of ORS 498.400 to 498.464 and 498.993 or any rule promulgated pur-  
 6 suant thereto;

7       (2) That the promotional plan for the sale of outdoor club membership is false, deceptive or  
 8 misleading, or that the promotional plan for the sale of membership is not in conformity with the  
 9 plan submitted with the license application and approved by the commission;

10       (3) That any land upon which it has been represented that outdoor club activities are to be  
 11 conducted is unsuitable for the purposes for which represented;

12       (4) That any obligation, guaranty or warranty to members of the club by the outdoor club that  
 13 was included in the promotional plan for the sale of membership or in the contract or other docu-  
 14 ments relating to membership is not being fulfilled or that adequate financial arrangements to se-  
 15 cure performance of such obligations, guaranties or warranties has not been made; or

16       (5) That the proposed outdoor club activities would have adverse effect upon existing wildlife  
 17 populations or habitat or upon wildlife-oriented recreation.

18       **SECTION 221.** ORS 498.458 is amended to read:

19       498.458. A license to operate an outdoor club expires one year from the date of its issuance. A  
 20 person who desire to renew a license shall submit an application therefor to the [*State Fish and*  
 21 *Wildlife Commission*] **Oregon Natural Resources Commission**, together with a fee of \$100. The  
 22 application shall be in such form, contain such information and be submitted at such time as the  
 23 commission prescribes.

24       **SECTION 222.** ORS 498.464 is amended to read:

25       498.464. (1) Whenever the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
 26 **Commission** has cause to believe that any person is engaged in or is about to engage in any acts  
 27 or practices that constitute a violation of ORS 498.400 to 498.464 and 498.993, or any rule  
 28 promulgated pursuant thereto, that requires immediate action to protect the wildlife resources of  
 29 this state, the commission shall institute actions or proceedings for legal or equitable remedies to  
 30 restrain the violation or threatened action.

31       (2) The actions or proceedings authorized by subsection (1) of this section may be instituted  
 32 without necessity of a prior administrative proceeding, or at any time during an administrative  
 33 proceeding if a proceeding has been commenced.

34       **SECTION 223.** ORS 501.005 is amended to read:

35       501.005. (1) The Governor by proclamation may suspend any season established by the [*State*  
 36 *Fish and Wildlife Commission*] **Oregon Natural Resources Commission** for hunting when the  
 37 Governor determines that hunting may result in extreme fire danger in any part of the state.

38       (2) The suspension referred to in subsection (1) of this section may be applicable in all or any  
 39 portion of this state, and shall be effective for a specified or indeterminate period until it appears  
 40 to the Governor that the possible excessive fire danger no longer exists. A suspension for an inde-  
 41 terminate period shall be terminated by proclamation of the Governor.

42       (3) No person shall hunt during a period when or in an area where the appropriate season has  
 43 been suspended pursuant to this section.

44       **SECTION 224.** ORS 501.015 is amended to read:

45       501.015. Except as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**

1 **mission** by rule may provide otherwise, no person shall hunt or trap any wildlife on any wildlife  
2 refuge created by any law of this state or any rule promulgated pursuant thereto.

3 **SECTION 225.** ORS 501.025 is amended to read:

4 501.025. Notwithstanding any restrictions to the contrary regarding the uses of any wildlife  
5 refuge created by any law of this state or any rule promulgated pursuant thereto, the [*State Fish*  
6 *and Wildlife Commission*] **Oregon Natural Resources Commission** may authorize the hunting or  
7 trapping of wildlife on any such wildlife refuge when the commission determines that such action  
8 is necessary to properly manage the supply or condition of the wildlife on such refuge.

9 **SECTION 226.** ORS 501.035 is amended to read:

10 501.035. (1) When any wildlife refuge is created by the laws of this state or any rule promulgated  
11 thereto, the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** shall  
12 post signs around the boundary of the refuge giving notice of restrictions on hunting or trapping  
13 of wildlife on the refuge and on such other uses of the refuge as are specified by law or rule.

14 (2) No person shall remove, deface, alter or destroy any sign referred to in subsection (1) of this  
15 section.

16 **SECTION 227.** ORS 501.045 is amended to read:

17 501.045. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
18 may enter into contracts with the owners of land for the purpose of establishing a wildlife refuge  
19 on the land. The contract shall be for such period and shall contain such terms, conditions and re-  
20 strictions regarding the hunting and trapping of wildlife and other uses of the land as the commis-  
21 sion considers appropriate to properly manage the supply and condition of the wildlife on the land.

22 **SECTION 228.** ORS 501.505 is amended to read:

23 501.505. (1) The following described lakes, the islands therein and the lands adjacent thereto  
24 shall be known as the Sturgeon Lake Wildlife Refuge:

25 (a) Big Sturgeon Lake, situated in sections 9, 10, 15, 16, 21, 22, 23, 26, 27, 28, 33 and 34, township  
26 3 north, range 1 west, Willamette Meridian.

27 (b) West Sturgeon Lake, situated in sections 20, 28, 29, 30, 32 and 33, township 3 north, range  
28 1 west, Willamette Meridian.

29 (c) Little Sturgeon Lake, situated in sections 32 and 33, township 3 north, range 1 west,  
30 Willamette Meridian, and sections 4 and 5, township 2 north, range 1 west, Willamette Meridian.

31 (d) Marquam Lake, situated in sections 34 and 35, township 3 north, range 1 west, Willamette  
32 Meridian, and sections 2 and 3, township 2 north, range 1 west, Willamette Meridian.

33 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** by rule  
34 shall establish the exact boundaries of the wildlife refuge referred to in subsection (1) of this section  
35 in such manner as the commission determines will provide adequate protection for the wildlife  
36 within the area. However, the boundaries so established shall not include land adjacent to any lake  
37 referred to in subsection (1) of this section that is further than 100 yards from the line of ordinary  
38 high water of such lake.

39 **SECTION 229.** ORS 506.006 is amended to read:

40 506.006. As used in the commercial fishing laws, unless the context requires otherwise:

41 (1) "Angling" means fishing for personal use with one line attached to a pole held in hand while  
42 landing the fish, or with a hand-operated line without rod or reel, to which may be attached not to  
43 exceed three hooks, except on floating bass plugs.

44 (2) "Boat" means any vessel, any floating craft, powered, towed, rowed or otherwise propelled  
45 which is used for landing or taking food fish.

(3) “Buy” includes offer to buy, barter, exchange or trade.

(4) “Commercial purposes” means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

[(5) “Commission” means the State Fish and Wildlife Commission created by ORS 496.090.]

[(6) “Department” means the State Department of Fish and Wildlife.]

[(7) “Director” means the State Fish and Wildlife Director appointed pursuant to ORS 496.112.]

[(8)] (5) “Fishing gear” means any appliance or device intended for or capable of being used to take food fish except by angling.

[(9)] (6) “Fixed fishing gear” includes but is not limited to stationary gear operated at a fixed location.

[(10)] (7) “Personal use” means taking or fishing for food fish by angling or by such other means and with such gear as the **Oregon Natural Resources** Commission may authorize for fishing for personal use, or possessing the same for the use of the person fishing for, taking or possessing the same and not for sale or barter.

[(11)] (8) “Sell” includes offer or possess for sale, barter, exchange or trade.

[(12)] (9) “Take” means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

[(13)] (10) “Transport” means transport by any means, and includes offer or receive for transportation.

[(14)] (11) “Waters of this state” means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

**SECTION 230.** ORS 506.011 is amended to read:

506.011. As used in the commercial fishing laws, unless the context requires otherwise:

(1) “Anadromous fish” includes but is not limited to salmon, as defined in ORS 506.016; roccus saxatilis, commonly known as striped bass; alosa sapidissima, commonly known as shad; acipenser medirostris and acipenser transmontanus, commonly known as sturgeon; and thaleichthys pacificus, commonly known as smelt.

(2) “Animals living intertidally on the bottom” includes but is not limited to starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates and shore, hermit and other small crabs not included within subsection (1) or (7) of this section.

(3) “Black rockfish” means sebastes melanops, commonly known as black rockfish.

(4) “Blue rockfish” means sebastes mystinus, commonly known as blue rockfish.

(5) “Food fish” means any animal over which the [State Fish and Wildlife Commission] **Oregon Department of Natural Resources** has jurisdiction pursuant to ORS 506.036.

(6) “Nearshore fish” means:

- (a) Enophrys bison, commonly known as buffalo sculpin;
- (b) Hemilepidotus hemilepidotus, commonly known as red Irish lord;
- (c) Hemilepidotus spinosus, commonly known as brown Irish lord;
- (d) Scorpaenichthys marmoratus, commonly known as cabezon;
- (e) Hexagrammos decagrammus, commonly known as kelp greenling;
- (f) Hexagrammos lagocephalus, commonly known as rock greenling;

- 1 (g) *Hexagrammos stelleri*, commonly known as whitespotted greenling;  
 2 (h) *Oxylebius pictus*, commonly known as painted greenling;  
 3 (i) *Sebastes atrovirens*, commonly known as kelp rockfish;  
 4 (j) *Sebastes auriculatus*, commonly known as brown rockfish;  
 5 (k) *Sebastes carnatus*, commonly known as gopher rockfish;  
 6 (L) *Sebastes caurinus*, commonly known as copper rockfish;  
 7 (m) *Sebastes chrysomelas*, commonly known as black and yellow rockfish;  
 8 (n) *Sebastes dalli*, commonly known as calico rockfish;  
 9 (o) *Sebastes maliger*, commonly known as quillback rockfish;  
 10 (p) *Sebastes miniatus*, commonly known as vermilion rockfish;  
 11 (q) *Sebastes nebulosus*, commonly known as china rockfish;  
 12 (r) *Sebastes nigrocinctus*, commonly known as tiger rockfish;  
 13 (s) *Sebastes rastrelliger*, commonly known as grass rockfish;  
 14 (t) *Sebastes serranoides*, commonly known as olive rockfish; or  
 15 (u) *Sebastes serriceps*, commonly known as treefish.  
 16 (7) "Shellfish" includes but is not limited to abalone, clams, crabs, crayfish or crawfish, mussels,  
 17 oysters, piddocks, scallops and shrimp.

18 **SECTION 231.** ORS 506.036 is amended to read:

19 506.036. (1) Except as otherwise provided in subsection (4) of this section and in ORS 506.045  
 20 and 506.050, the [*State Fish and Wildlife Commission*] **Oregon Department of Natural Resources**  
 21 has exclusive jurisdiction over all fish, shellfish, and all other animals living intertidally on the  
 22 bottom, within the waters of this state. The [*commission*] **department** has joint or other jurisdiction  
 23 with any other state or government over all such fishes within the waters of the Columbia River  
 24 and its tributaries where such waters form the boundaries of this state.

25 (2) The [*commission*] **department** has jurisdiction over those species of fish, shellfish and all  
 26 other animals living intertidally on the bottom referred to in subsection (1) of this section trans-  
 27 ported into or landed in this state which have been taken in waters outside this state.

28 (3) The duty of protection, preservation, propagation, cultivation, development and promotion  
 29 of all fishes under its jurisdiction is delegated to and imposed upon the [*commission*] **department**.

30 (4) The [*commission*] **department** has no regulatory authority or jurisdiction over the commer-  
 31 cial cultivation of oysters in the waters of this state. However, nothing in this subsection is intended  
 32 to affect the authority of the **Oregon Natural Resources Commission** under ORS 509.140.

33 **SECTION 232.** ORS 506.050 is amended to read:

34 506.050. (1) The United States Fish and Wildlife Service, the [*State Fish and Wildlife*  
 35 *Commission*] **Oregon Department of Natural Resources** and their duly authorized agents may  
 36 conduct fish cultural operations and scientific investigations in the waters of this state in such  
 37 manner and at such times as may be considered necessary and proper by the service, the [*commis-*  
 38 *sion*] **department** or their agents.

39 (2) The [*commission*] **department** shall propagate and stock the waters of this state with such  
 40 fish as it considers proper.

41 **SECTION 233.** ORS 506.119 is amended to read:

42 506.119. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
 43 has the authority to formulate and implement the policies and programs of this state for the man-  
 44 agement of food fish, and may perform all acts necessary to administer and carry out the provisions  
 45 of the commercial fishing laws.

1 (2) In accordance with any applicable provision of ORS chapter 183, the commission may  
2 promulgate rules to carry out the provisions of the commercial fishing laws.

3 **SECTION 234.** ORS 506.124 is amended to read:

4 506.124. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
5 shall adopt rules governing public and private salmon hatchery practices by July 1, 1984. The com-  
6 mission shall also submit quarterly reports to the Emergency Board on matters related to the  
7 adoption of rules and the impact of hatchery practices on the salmon resource.

8 **SECTION 235.** ORS 506.129 is amended to read:

9 506.129. (1) After investigation of the supply and condition of food fish, the [*State Fish and*  
10 *Wildlife Commission*] **Oregon Natural Resources Commission**, at appropriate times each year,  
11 shall by rule:

12 (a) Prescribe the times, places and manner in which food fish may be taken or sold, except when  
13 canned or otherwise processed, and the amount of those food fish species that may be taken or sold.

14 (b) Prescribe such other restrictions or procedures regarding the taking, selling or possessing  
15 of food fish as the commission determines will carry out the provisions of the commercial fishing  
16 laws.

17 (2) In carrying out the provisions of subsection (1) of this section, the power of the commission  
18 includes, but is not limited to:

19 (a) Prescribing the amount of each food fish species that may be taken and possessed in terms  
20 of sex, size and other physical characteristics.

21 (b) Prescribing such regular and special time periods and areas closed to the taking and selling  
22 of any food fish species when the commission determines such action is necessary to protect the  
23 supply of such food fish.

24 (c) Prescribing regular and special time periods and areas open to the taking and selling of any  
25 food fish species, and prescribing means by which the taking of food fish is permitted.

26 **SECTION 236.** ORS 506.136 is amended to read:

27 506.136. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
28 shall:

29 (1) Investigate the habits, supply and economic uses of, and classify all food fish.

30 (2) Classify all fishing gear and such classification shall be final.

31 **SECTION 237.** ORS 506.142 is amended to read:

32 506.142. The Fish Division established pursuant to ORS 496.124 shall be responsible for the  
33 management of all fish and other marine life over which the [*State Fish and Wildlife Commission*]  
34 **Oregon Department of Natural Resources** has regulatory jurisdiction.

35 **SECTION 238.** ORS 506.154 is amended to read:

36 506.154. The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
37 **Resources** shall:

38 (1) Be responsible to the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
39 **Commission** for the administration and enforcement of the commercial fishing laws.

40 (2) Be responsible for the collection, application and dissemination of information pertinent to  
41 the management of food fish resources and to the regulation of the uses of such resources.

42 **SECTION 239.** ORS 506.201 is amended to read:

43 506.201. The [*State Fish and Wildlife Commission*] **Oregon Department of Natural Resources**  
44 **and the Oregon Natural Resources Commission** may:

45 (1) Acquire by purchase, lease, gift, agreement or donation, real property, or any right or in-

1 terest therein, including any easement or right of access, necessary:

2 (a) To construct or maintain fish hatcheries, fishways or research facilities;

3 (b) To remove logjams; or

4 (c) Otherwise to carry out the duties imposed on the **department or the** commission by law.

5 (2) Acquire by exercise of the power of eminent domain any easement or right of access neces-  
6 sary to construct or maintain fishways or remove logjams. Proceedings instituted by the **depart-**  
7 **ment or the** commission under this subsection shall be conducted in accordance with ORS chapter  
8 35.

9 (3) Lease, dispose of or grant easements upon any property owned by the state and used for the  
10 protection, propagation or preservation of food fish, which is found to be of no further use or value  
11 to the state. The **department or the** commission shall turn over the proceeds arising from such  
12 disposition to the State Treasurer to be credited to the General Fund.

13 **SECTION 240.** ORS 506.211 is amended to read:

14 506.211. (1) Subject to subsection (2) of this section, the [*State Fish and Wildlife Commission*]  
15 **Oregon Department of Natural Resources** may acquire by gift or purchase, and may acquire by  
16 capture or otherwise in this state, any fish, eggs or larvae thereof for propagation, experimental or  
17 scientific purposes.

18 (2) The [*commission*] **department** or any other person authorized by it who takes salmon eggs  
19 from the waters of the Rogue River for the purpose of supplying the various hatcheries of this state,  
20 shall return at least 40 percent of the fish hatched from the eggs to the Rogue River.

21 **SECTION 241.** ORS 506.213 is amended to read:

22 506.213. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
23 shall cause to be commenced and shall supervise the construction of a fish hatchery on the Oregon  
24 coast for the purpose of rearing coho and chinook salmon. The location for the site of the hatchery  
25 shall be at the discretion of the commission. Selection of the site shall be based upon the most re-  
26 cent research data available to the commission.

27 (2) The hatchery constructed pursuant to subsection (1) of this section shall be maintained and  
28 operated by the commission.

29 **SECTION 242.** ORS 506.215 is amended to read:

30 506.215. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
31 may construct, maintain or operate hatcheries in an adjoining state, but no hatchery shall be con-  
32 structed or operated on any stream in an adjoining state that is not a tributary of the Columbia  
33 River, or whose waters do not flow into the Columbia River.

34 **SECTION 243.** ORS 506.220 is amended to read:

35 506.220. Whenever deadlines are established on any of the waters of this state, either by legis-  
36 lative enactment or by order of the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
37 **sources Commission**, the commission shall, within a reasonable time, erect suitable monuments or  
38 markers in the water or on the banks of the water designating the closed portion of the water. It  
39 is unlawful to remove, destroy, alter or mutilate any of these monuments or markers.

40 **SECTION 244.** ORS 506.226 is amended to read:

41 506.226. Notwithstanding any other provision of law the [*State Department of Fish and Wildlife*]  
42 **Oregon Department of Natural Resources** shall not use in any body of water any electric current  
43 or electric shock device for the purpose of capturing any adult salmonids for a person granted a  
44 permit pursuant to ORS 508.700 to 508.745.

45 **SECTION 245.** ORS 506.231 is amended to read:

1       506.231. The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
2 **sources** shall prepare and make available to the public upon request monthly reports of fish  
3 hatchery operations. Information in the report shall include, but is not limited to:

4       (1) The location of each state facility at which salmon eggs were taken and the number of eggs  
5 taken.

6       (2) The number and destination of salmon eggs transferred from one state facility to another.

7       (3) The number of salmon eggs to be reared at each state facility.

8       (4) The number of salmon eggs sold from each state facility to any person granted a permit  
9 pursuant to ORS 508.700 to 508.745.

10       (5) The number of salmon eggs from state facilities allocated for volunteer salmonid improve-  
11 ment program activities.

12       (6) The location and circumstances of each mortality incident involving 10,000 or more salmon  
13 eggs at a state facility.

14       **SECTION 246.** ORS 506.241 is amended to read:

15       506.241. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**, by  
16 rule, may prescribe a commercial fishing vessel fleet reduction program that complies with the fed-  
17 eral Salmon and Steelhead Conservation and Enhancement Act of 1980.

18       **SECTION 247.** ORS 506.306 is amended to read:

19       506.306. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
20 shall collect all moneys to be paid to this state for the protection, preservation, propagation and  
21 development of the commercial fishing industry and arising under the commercial fishing laws and  
22 deposit such moneys in the [*Commercial Fisheries Fund*] **Oregon Natural Resources Fund. Except**  
23 **as provided in ORS 506.690, all moneys deposited in the fund under this subsection are con-**  
24 **tinuously appropriated to the Oregon Department of Natural Resources for the adminis-**  
25 **tration and enforcement of the commercial fishing laws of this state and for the**  
26 **management, propagation, research, or habitat improvement of the food fish resources of**  
27 **this state or other activities that protect, maintain or enhance the food fish resource of this**  
28 **state.**

29       (2) **Except as provided in ORS 508.949, all moneys collected pursuant to ORS 508.505 to**  
30 **508.550 for fish species taken pursuant to developmental fishery activities described in ORS**  
31 **506.460 shall be credited to a separate subaccount in the Oregon Natural Resources Fund.**  
32 **Notwithstanding subsection (1) of this section, the department shall expend 25 percent of**  
33 **moneys collected under this subsection on general fish management purposes and 75 percent**  
34 **on expenses related to developmental fishery activities described in ORS 506.460.**

35       [(2)] (3) Except as provided in ORS 506.630, all fines collected for violation of the commercial  
36 fishing laws shall be credited and distributed under ORS 137.293 and 137.295 as monetary obligations  
37 payable to the state.

38       **SECTION 248.** ORS 506.316 is amended to read:

39       506.316. Except as otherwise provided in ORS 506.321, all expenditures of the [*State Fish and*  
40 *Wildlife Commission*] **Oregon Natural Resources Commission** pursuant to the commercial fishing  
41 laws shall be made from moneys appropriated for the purposes for which such moneys are used, upon  
42 claims presented and warrants drawn pursuant to law.

43       **SECTION 249.** ORS 506.321 is amended to read:

44       506.321. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
45 may accept gifts of money, lands or other property and use the same for the protection, preservation,



1 propagation and development of the fishery resource, subject to the terms of the gift. Subject to such  
 2 terms the gifts may be used or exchanged for the acquisition of other lands, waters, rights, ease-  
 3 ments or other property. Any moneys received under this section not otherwise appropriated hereby  
 4 are appropriated for such purposes.

5 **SECTION 250.** ORS 506.405 is amended to read:

6 506.405. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
 7 may:

8 (1) Enter into such contracts, appoint such officers and do any other act or thing necessary fully  
 9 to meet the requirements of the United States and the officers acting under federal statute in aid  
 10 of the conservation and preservation of fish and fisheries in this state or concerning any federal  
 11 project wherein the conservation and preservation of such fish and fisheries are involved.

12 (2) Accept contributions of funds from the federal government for such purposes.

13 **SECTION 251.** ORS 506.450 is amended to read:

14 506.450. As used in ORS 506.450 to 506.465, “developmental fishery” means activity for the de-  
 15 velopment of commercial taking of an underutilized food fish species. The [*State Fish and Wildlife*  
 16 *Commission*] **Oregon Natural Resources Commission** by rule shall determine those species of food  
 17 fish that are underutilized.

18 **SECTION 252.** ORS 506.460 is amended to read:

19 506.460. In consultation with the Developmental Fisheries Board, the [*State Fish and Wildlife*  
 20 *Commission*] **Oregon Natural Resources Commission** shall:

21 (1) Establish an annual list of food fish species that are considered to be developmental fishery  
 22 species.

23 (2) Establish and review commercial harvest programs for developmental fishery species.

24 (3) Establish methods to obtain biological information necessary to determine the long term  
 25 sustainability of the resource.

26 (4) Establish limited entry harvest systems for developmental fisheries. An annual fee of not  
 27 more than \$100 to participate in a developmental fishery may be charged by the commission.

28 (5) Issue permits for developmental fisheries within 14 days of receiving a written request for  
 29 a permit.

30 **SECTION 253.** ORS 506.462 is amended to read:

31 506.462. (1) A person whose application for a developmental fisheries permit or a restricted  
 32 permit established under subsection (6) of this section, or for the renewal or transfer of a develop-  
 33 mental fisheries permit or restricted permit, is denied may make written request to the Commercial  
 34 Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of  
 35 any review by the [*State Department of Fish and Wildlife or the State Fish and Wildlife*  
 36 *Commission*] **Oregon Department of Natural Resources or the Oregon Natural Resources**  
 37 **Commission**. The request shall be in such form and shall contain such information as the board  
 38 considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125. The fee  
 39 shall apply toward any applicable permit fees resulting from an order of the board in favor of the  
 40 requesting applicant.

41 (2) The board shall review a denial as a contested case under ORS chapter 183. Orders issued  
 42 by the board are not subject to review by the commission, but may be appealed as provided in ORS  
 43 183.482.

44 (3) The board may waive requirements for renewal of a developmental fisheries permit or a re-  
 45 stricted permit established under subsection (6) of this section if the board finds that an individual

1 applicant fails to meet the requirements as the result of illness, accident or other circumstances  
2 beyond the individual's control.

3 (4) The board may delegate to the department the board's authority to waive requirements for  
4 renewal of developmental fisheries permits or restricted permits established under subsection (6) of  
5 this section.

6 (5) The board may adopt such rules as it determines necessary to carry out its duties, functions  
7 and powers under this section.

8 (6) Once the commission determines that a commercial harvest of a developmental fishery can  
9 be sustained, it may remove that fishery from the developmental fisheries list, and may, by rule,  
10 establish a restricted participation system or a restricted vessel permit system for that fishery.  
11 These restricted permit systems may include, but are not limited to, provisions relating to the fol-  
12 lowing matters:

13 (a) Establishment of criteria for initial entry into the restricted permit system and criteria for  
14 annual qualification for continued participation in the system; and

15 (b) Establishment of terms and conditions for transferring participation rights.

16 **SECTION 254.** ORS 506.465 is amended to read:

17 506.465. (1) The Developmental Fisheries Board is established in the [*State Department of Fish*  
18 *and Wildlife*] **Oregon Department of Natural Resources**. The board shall consist of members ap-  
19 pointed by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** after  
20 consultation with commercial fishing industry representatives to [*insure*] **ensure** representation on  
21 the board of a broad range of fishing interests.

22 (2) The commission shall appoint:

23 (a) Two members who are commercial fishermen licensed in this state and who are the operators  
24 of commercial fishing vessels that are less than 60 feet in length.

25 (b) Two members who are commercial fishermen licensed in this state and who are the operators  
26 of commercial fishing vessels that are 60 feet or more in length.

27 (c) One member who represents commercial fishing interests in general.

28 (d) One member who is employed by a fish processor having fewer than 50 employees.

29 (e) One member who is employed by a fish processor having 50 or more employees.

30 (f) One member who is an employee of the [*State Department of Fish and Wildlife*] **Oregon De-**  
31 **partment of Natural Resources who has knowledge of the commercial fishing industry.**

32 (g) One member who is an employee of the State Department of Agriculture.

33 (3) A member of the board shall receive no compensation for services as a member. However,  
34 subject to any applicable law regulating travel and other expenses of state officers and employees,  
35 a member shall be reimbursed for actual and necessary travel and other expenses incurred in the  
36 performance of duties as a board member. The board shall meet at least once each year.

37 **SECTION 255.** ORS 506.501 is amended to read:

38 506.501. The [*State Fish and Wildlife Commission has*] **Oregon Department of Natural Re-**  
39 **sources and the Oregon Natural Resources Commission have** jurisdiction and authority to en-  
40 force the commercial fishing laws, except as provided in ORS 506.506 to 506.516.

41 **SECTION 256.** ORS 506.506 is amended to read:

42 506.506. It is the intent of ORS 506.511 and 506.516 to permit the [*State Fish and Wildlife Com-*  
43 *mission*] **Oregon Department of Natural Resources** to employ only such deputy fish wardens as  
44 are agreed necessary or expedient among the [*commission*] **department**, the Governor and the Su-  
45 perintendent of State Police, and that the duties of enforcing criminal provisions of the commercial

1 fishing laws, so far as is economical and practicable, be performed by the Department of State Po-  
2 lice.

3 **SECTION 257.** ORS 506.516 is amended to read:

4 506.516. The [*State Fish and Wildlife Commission*] **Oregon Department of Natural**  
5 **Resources**, with the approval of the Governor and the Superintendent of State Police, may employ  
6 deputy fish wardens to the extent necessary or expedient.

7 **SECTION 258.** ORS 506.518 is amended to read:

8 506.518. The [*State Fish and Wildlife Commission*] **Oregon Department of Natural Resources**  
9 may appoint special deputy fish wardens who shall serve without compensation except for what the  
10 [*commission*] **Oregon Natural Resources Commission** may allow for special services.

11 **SECTION 259.** ORS 506.521 is amended to read:

12 506.521. Each member of the [*State Fish and Wildlife Commission, the State Fish and Wildlife*  
13 *Director*] **Oregon Natural Resources Commission, the Director of the Oregon Department of**  
14 **Natural Resources** and every inspector, deputy fish warden, special deputy fish warden, and all  
15 peace officers of this state or any political subdivision therein, shall enforce the commercial fishing  
16 laws within their respective jurisdictions. In the performance of these duties such officers are sub-  
17 ject to the direction and control of the commission or director.

18 **SECTION 260.** ORS 506.526 is amended to read:

19 506.526. (1) The [*State Fish and Wildlife Director*] **Director of the Oregon Department of**  
20 **Natural Resources** or any inspector, deputy fish warden or special deputy fish warden may arrest  
21 any person the officer has probable cause to believe is in the act of committing a violation of the  
22 commercial fishing laws. Such officers are peace officers of the state for this purpose and may exe-  
23 cute all criminal process issued for the arrest or detention of any person complained against for  
24 violation of the commercial fishing laws. It is unlawful knowingly or willfully to resist or oppose  
25 such officers in the discharge of their duties.

26 (2) Any officer described in subsection (1) of this section who makes an arrest must report it,  
27 together with the disposition of the case, to the director within 30 days after the date of the arrest.  
28 Failure so to report subjects the officer to removal from office by the authority that appointed the  
29 officer.

30 (3) The officers described in subsection (1) of this section have all the powers and authority of  
31 a peace officer in serving warrants, subpoenas and other legal process in the enforcement of the  
32 commercial fishing laws.

33 **SECTION 261.** ORS 506.535 is amended to read:

34 506.535. (1) Unless otherwise specifically provided, justice courts have concurrent jurisdiction  
35 in the first instance with circuit courts of all offenses under the commercial fishing laws.

36 (2) Any action or proceedings under the commercial fishing laws shall be commenced on order  
37 of the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** or a person  
38 duly authorized to enforce such laws, or by any district attorney, in the county in which the offense  
39 is alleged to have been committed.

40 **SECTION 262.** ORS 506.540 is amended to read:

41 506.540. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
42 may offer and authorize payment of rewards for the arrest and conviction of any person who has  
43 violated any of the commercial fishing laws, but no reward of more than \$100 shall be offered or  
44 paid for any one arrest or conviction.

45 **SECTION 263.** ORS 506.620 is amended to read:

1       506.620. The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
 2 **Resources, or the authorized agent of the director,** may enter and inspect all canneries, cold  
 3 storage houses, packing establishments, business places, boats, fishing gear, and all property used  
 4 in the taking, processing and packing of food fish, for the purpose of enforcing the commercial  
 5 fishing laws.

6       **SECTION 264.** ORS 506.690 is amended to read:

7       506.690. (1) All fish taken by or in the possession of any person in violation of the commercial  
 8 fishing laws or the rules of the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
 9 **Commission** shall be seized by any member of the commission or any officer described in ORS  
 10 506.521.

11       (2) Any fish seized under the provisions of subsection (1) of this section may be disposed of, sold,  
 12 preserved or used for food purposes, under the rules of the commission, to prevent loss or spoilage.  
 13 At the time the court passes sentence in the criminal prosecution for violation of the commercial  
 14 fishing laws, the court may order that any fish seized under subsection (1) of this section or the  
 15 proceeds from the sale of such fish shall be forfeited. Any moneys derived from the sale of any for-  
 16 feited fish shall be deposited in the [*Commercial Fisheries Fund.*] **Oregon Natural Resources Fund.**  
 17 **Moneys deposited in the fund under this subsection are continuously appropriated to the**  
 18 **Oregon Department of Natural Resources for the purpose of carrying out the duties, func-**  
 19 **tions and powers of the department as prescribed by sections 1 (1) and (2) and 5 (1)(a) and**  
 20 **(b) of this 2011 Act.**

21       (3) If the fish seized under subsection (1) of this section are not subsequently forfeited, the  
 22 commission shall pay to the person from whom the fish were seized an amount equal to the market  
 23 value of the fish at the time of seizure.

24       (4) The commission shall approve the amount to be paid under subsection (3) of this section, and  
 25 the claim shall be paid from the [*Commercial Fisheries Fund*] **Oregon Natural Resources Fund** in  
 26 the manner provided by law for the payment of claims against the state. There is [*appropriated*  
 27 *continuously from the Commercial Fisheries Fund*] **continuously appropriated from the fund** an  
 28 amount equal to the amounts approved by the commission under this subsection.

29       **SECTION 265.** ORS 506.695 is amended to read:

30       506.695. (1) All boats, fishing gear and vehicles used in violation of the commercial fishing laws  
 31 or the rules of the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
 32 may be seized, and piling driven for the sole or primary purposes of violation of such laws may be  
 33 removed, by any member of the commission or any officer described in ORS 506.521. The agency  
 34 that seizes property under this subsection shall retain custody of the seized property until it is or-  
 35 dered returned to the owner or confiscation is adjudged pursuant to this section.

36       (2) Upon the order of the court at the time of passing sentence for a crime, the property seized  
 37 under subsection (1) of this section may be forfeited. If forfeited, such property shall be turned over  
 38 to the commission.

39       (3) The commission may dispose of such forfeited property in any manner it deems proper, but  
 40 the clear proceeds derived from the sale of any forfeited property shall be deposited with the State  
 41 Treasury to be placed in the Common School Fund.

42       **SECTION 266.** ORS 506.720 is amended to read:

43       506.720. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
 44 may institute suit for the recovery of damages for the unlawful taking, possession or killing of food  
 45 fish referred to in this section that are the property of the state.

1 (2) The damages referred to in subsection (1) of this section shall be as follows:

2 (a) For food fish other than pink shrimp, salmon or steelhead, twice the average market value  
3 of the food fish.

4 (b) For salmon or steelhead taken in waters other than the waters of the Pacific Ocean, \$125  
5 per fish.

6 (c) For salmon or steelhead taken in the waters of the Pacific Ocean:

7 (A) For the first violation, twice the average market value of the food fish.

8 (B) For the second and each subsequent violation within a five-year period, \$125 per fish.

9 (d) For pink shrimp:

10 (A) For the first violation, five percent of the average market value of the food fish.

11 (B) For the second violation within a five-year period, 10 percent of the average market value  
12 of the food fish.

13 (C) For the third and each subsequent violation within a five-year period, 20 percent of the av-  
14 erage market value of the food fish.

15 (3) The commission shall by rule in January of each year establish the average market value for  
16 each species of food fish for the year.

17 (4) No person shall apply for or obtain any license, tag or permit issued by the commission when  
18 civil damages due pursuant to this section, or when moneys due the [*State Department of Fish and*  
19 *Wildlife*] **Oregon Department of Natural Resources** from court-ordered restitutions for violations  
20 of the commercial fishing laws have not been paid.

21 **SECTION 266a.** ORS 506.755 is amended to read:

22 506.755. (1) The State of Oregon adopts a Fisheries Conservation Zone for the maintenance,  
23 preservation and protection of all coastal species of fish and other marine fisheries resources be-  
24 tween the mean high water mark of the state and a straight line extension of the lateral boundaries  
25 of the state drawn seaward to a distance of 50 statute miles.

26 (2) Activities of marine commercial fishing within the limits and boundaries of the Fisheries  
27 Conservation Zone shall be under the jurisdiction and regulation of the [*commission*] **Oregon De-**  
28 **partment of Natural Resources.**

29 (3) The [*commission*] **department** shall study the fishery within the zone and when appropriate  
30 adopt, amend or repeal all rules, according to the provisions of ORS 506.119 and 506.129 necessary  
31 for the maintenance, preservation and protection of all coastal species of fish and other marine  
32 fisheries resources.

33 (4) The jurisdiction within the Fisheries Conservation Zone shall include, but not be limited to,  
34 provisions for inspection of catch, particularly regarding anadromous fish; rules relating to methods  
35 of fishing, size and kind of gear and nets; rules designating seasons, closures and restricted areas.

36 (5) ORS 506.501 to 506.695 shall provide the authority for enforcing rules adopted by the [*com-*  
37 *mission*] **department** as specified in this section.

38 (6) Subject to ORS 153.022, any person convicted of violating any rule authorized under the  
39 provisions of this section shall be punished by a fine not to exceed \$10,000.

40 (7) Nothing contained within this section is intended to abrogate a nation's right of free passage  
41 or navigation of the high seas.

42 (8) Nothing contained within this section is intended to abrogate international fish compacts,  
43 agreements or treaties providing for the management of anadromous or pelagic fish species.

44 **SECTION 267.** ORS 506.991 is amended to read:

45 506.991. (1) Except as provided in this section, and subject to ORS 153.022, violation of any

1 provision of the commercial fishing laws, or of any rule promulgated by the [*State Fish and Wildlife*  
2 *Commission*] **Oregon Natural Resources Commission** in carrying out the commercial fishing laws,  
3 is a Class A misdemeanor.

4 (2) In lieu of the fine provided in ORS 161.635, and in addition to the imprisonment provided in  
5 ORS 161.615, any violation of this section is punishable as follows:

6 (a) For the first conviction, a fine not to exceed \$2,500.

7 (b) For the second conviction within a 10-year period, a fine not to exceed \$4,000.

8 (c) For the third conviction within a 10-year period, a fine not to exceed \$10,000.

9 (d) For the fourth and subsequent convictions within a 10-year period, a fine not to exceed  
10 \$25,000.

11 (3) Violation of any provision of ORS 509.011 which occurs more than 12 hours prior to or more  
12 than 12 hours subsequent to a season established under ORS 506.129 by the commission for the  
13 lawful taking of food fish when the total value of the food fish is \$200 or more is a Class C felony.

14 (4) In addition to the penalties of this section and notwithstanding the provisions of ORS  
15 506.690, all fish or sexual products therefrom taken by or in the possession of any person sentenced  
16 under this section shall be seized and confiscated, condemned, and sold.

17 **SECTION 268.** ORS 506.995 is amended to read:

18 506.995. (1) As used in this section, "gain" means the amount of money and the value of any  
19 property derived from the violation.

20 (2) In addition to any other sanction imposed by law, if a person derives a gain of at least \$5,000  
21 from violating any commercial fishing law or rule promulgated pursuant to such laws, the person  
22 shall be subject to a civil penalty that is equal to twice the amount of the gain.

23 (3) Civil penalties under this section shall be imposed pursuant to ORS 183.745.

24 (4) Any civil penalty received by the [*State Department of Fish and Wildlife*] **Oregon Depart-**  
25 **ment of Natural Resources** under this section shall be deposited in the [*Commercial Fisheries*  
26 *Fund.*] **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection**  
27 **are continuously appropriated to the department for the purpose of carrying out the duties,**  
28 **functions and powers of the department as prescribed by sections 1 (1) and (2) and 5 (1)(a)**  
29 **and (b) of this 2011 Act.**

30 **SECTION 269.** ORS 507.030 is amended to read:

31 507.030. (1) The [*State Fish and Wildlife Commission*] **Director of the Oregon Department of**  
32 **Natural Resources and the Oregon Natural Resources Commission**, on behalf of the State of  
33 Oregon, may enter into an agreement with the constituted authority of the State of Washington, to  
34 modify the existing agreement with respect to fishing in the waters of the Columbia River and its  
35 tributaries, within the confines of the States of Oregon and Washington, where such waters are state  
36 boundaries between the States of Oregon and Washington, as approved by the United States Con-  
37 gress on April 8, 1918.

38 (2) The **director and the** commission, in entering into any agreement with the constituted au-  
39 thority of the State of Washington, as provided in subsection (1) of this section, may hold a hearing  
40 jointly with such constituted authority of the State of Washington within the State of Washington.  
41 However, any such joint meeting scheduled in either state shall be held not more than 25 miles from  
42 an area of the Columbia River where commercial fishing is permitted.

43 **SECTION 270.** ORS 507.050 is amended to read:

44 507.050. The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
45 **Resources**, one legislator appointed as provided in this section and one public member appointed

1 by the Governor shall act as representatives of the State of Oregon on the Pacific States Marine  
2 Fisheries Commission in accordance with the provisions of and with the powers and duties in the  
3 compact set forth in ORS 507.040. The legislative member shall be appointed by the President of the  
4 Senate or the Speaker of the House of Representatives from among those legislators who, at the time  
5 of appointment, are serving on the Pacific Fisheries Legislative Task Force. The legislative member  
6 shall serve for a term of four years. The Speaker of the House of Representatives and the President  
7 of the Senate shall alternate in making the appointment of the legislative member.

8 **SECTION 271.** ORS 508.025 is amended to read:

9 508.025. (1) It is unlawful for any person, without first procuring a license from the [*State Fish*  
10 *and Wildlife Commission*] **Oregon Natural Resources Commission**, to:

11 (a) Take food fish in any of the waters of this state for commercial purposes or land food fish  
12 in this state for commercial purposes.

13 (b) Buy, sell or otherwise deal in food fish for commercial purposes.

14 (c) Process or can food fish for commercial purposes.

15 (2) In a prosecution under this section, it is no defense that a person did take the person's own  
16 food fish for commercial purposes.

17 **SECTION 272.** ORS 508.030 is amended to read:

18 508.030. It is unlawful for any individual to operate, or leave in a condition to take food fish in  
19 any of the waters of this state, any fishing gear used in taking food fish, without first obtaining from  
20 the [*State Fish and Wildlife Director or the authorized agent of the director*] **Oregon Natural Re-**  
21 **sources Commission** such license as may be prescribed by this chapter. The license must be in the  
22 possession of such individual at the time the fishing gear is being used.

23 **SECTION 273.** ORS 508.035 is amended to read:

24 508.035. (1) Separate licenses are required for each:

25 (a) Person other than an employee operating as a canner of food fish.

26 (b) Person other than an employee operating as a wholesale fish dealer, for each separate place  
27 of business.

28 (c) Individual acting or engaged as a fish buyer by a person licensed under paragraph (a) or (b)  
29 of this subsection.

30 (d) Person licensed under paragraph (a) or (b) of this subsection, for each permanent site or lo-  
31 cation operated by such person as a fish-buying station.

32 (e) Individual taking or assisting in the taking of food fish for commercial purposes as described  
33 in ORS 508.235.

34 (f) Boat, used in taking food fish for commercial purposes, as described in ORS 508.260.

35 (g) Single delivery of food fish from the Pacific Ocean for commercial purposes in the absence  
36 of licenses under paragraphs (e) and (f) of this subsection.

37 (h) Person other than an employee operating as a fish bait dealer, for each separate place of  
38 business.

39 (i) Individual taking or assisting in the taking of food fish for sale to a fish bait dealer.

40 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** shall  
41 classify and define the various licenses provided for in this section and shall [*direct the State Fish*  
42 *and Wildlife Director*] **authorize the Director of the Oregon Department of Natural Resources**  
43 to issue licenses accordingly and the classification shall be final.

44 **SECTION 274.** ORS 508.106 is amended to read:

45 508.106. (1) Upon receiving a written application therefor, accompanied by a fee of \$30, the

1 [State Fish and Wildlife Commission] **Oregon Natural Resources Commission** may issue to any  
2 person a permit to take carp or other nongame fish.

3 (2) The kind or kinds of fish, the method to be used and the name and location of the body of  
4 water from which the fish are to be taken, shall be specified in the permit.

5 (3) After having obtained a permit as provided for in subsection (1) of this section, and subject  
6 to any rules of the commission, any person may take carp or nongame fish from any of the waters  
7 of this state described in the permit.

8 (4) It is unlawful to:

9 (a) Retain any fish other than described in the permit in connection with the use of any permit  
10 issued under subsection (1) of this section, and any other fish taken shall at once be set free; or

11 (b) Take any fish for commercial purposes by a permit issued under subsection (1) of this section  
12 without first having obtained a license under ORS 508.035.

13 **SECTION 275.** ORS 508.111 is amended to read:

14 508.111. The [State Fish and Wildlife Director] **Director of the Oregon Department of Natural**  
15 **Resources** may issue to any person a permit to take food fish solely for educational and scientific  
16 purposes.

17 **SECTION 276.** ORS 508.116 is amended to read:

18 508.116. (1) The [State Fish and Wildlife Director] **Director of the Oregon Department of**  
19 **Natural Resources** may issue to any person a permit to take animals living intertidally on the  
20 bottom. The annual fee for a permit issued under this section is \$40.

21 (2) It is unlawful to take animals living intertidally on the bottom for commercial purposes by  
22 a permit issued under subsection (1) of this section without first having obtained a license under  
23 ORS 508.035.

24 **SECTION 277.** ORS 508.121 is amended to read:

25 508.121. (1) Any juvenile may secure from the [State Fish and Wildlife Commission] **Oregon**  
26 **Natural Resources Commission** free of charge a juvenile jig line license to take herring, pilchard,  
27 perch, anchovies and candlefish by a hand or jig line and to sell such fish so taken by the juvenile  
28 to a wholesale fish dealer or a fish bait dealer.

29 (2) As used in this section, "juvenile" means any individual 17 years of age or younger as of  
30 January 1 of the year for which the license is issued.

31 (3) The license, for the purposes authorized in this section, is in lieu of the commercial fisher-  
32 man and boat licenses required under ORS 508.235 and 508.260.

33 **SECTION 278.** ORS 508.235 is amended to read:

34 508.235. (1) A commercial fishing license must be obtained by each individual who, for commer-  
35 cial purposes:

36 (a) Takes or assists in the taking of any food fish from the waters or land of this state;

37 (b) Operates or assists in the operation of any boat or fishing gear for the taking of food fish  
38 in the waters of this state; or

39 (c) Lands food fish from the waters of the Pacific Ocean at any point in this state.

40 (2) A commercial fishing license must be in the possession of the licensee, when engaged in the  
41 taking or landing of commercial fish, and is required in addition to any other license under this  
42 chapter.

43 (3) Notwithstanding any other provision of this section or ORS 508.035, upon application of the  
44 holder of a boat license, the [State Fish and Wildlife Commission] **Oregon Natural Resources**  
45 **Commission** shall issue to the applicant in the name of the boat, one commercial fishing license for



1 each individual who assists the holder of the boat license in the taking of fish for commercial pur-  
2 poses. Notwithstanding ORS 508.465, licenses issued pursuant to this subsection are transferable to  
3 all individuals who assist in the taking of fish for commercial purposes on the boat for which the  
4 licenses are issued. Notwithstanding ORS 508.285, the fee for the license issued pursuant to this  
5 subsection in the name of a boat:

6 (a) With a resident boat license is \$125 for each individual.

7 (b) With a nonresident boat license is \$350 for each individual.

8 **SECTION 279.** ORS 508.260 is amended to read:

9 508.260. (1) A boat license must be obtained by the owner or operator of any boat used in taking  
10 food fish or shellfish for commercial purposes except for the taking of clams or crayfish.

11 (2) A pair of decals bearing the last two numbers of the year for which the license is issued shall  
12 be included with the license for placement on the licensed boat.

13 (3) In accordance with rules promulgated by [*it, the State Fish and Wildlife Commission*] **the**  
14 **Oregon Natural Resources Commission, the commission** shall assign a number to each licensed  
15 boat and shall designate the size, location and manner of placement of the number and license year  
16 decal on the boat.

17 **SECTION 280.** ORS 508.306 is amended to read:

18 508.306. (1) Any person may obtain a fish bait dealer license to purchase food fish directly from  
19 a commercial fisherman licensed under ORS 508.235 or commercial bait fisherman licensed under  
20 ORS 508.312, for retail sale as fish or shellfish bait.

21 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** by reg-  
22 ulation may designate those species of food fish or parts thereof which may not be used for fish or  
23 shellfish bait.

24 **SECTION 281.** ORS 508.316 is amended to read:

25 508.316. Except as provided in ORS 508.843 and 508.883, the [*State Fish and Wildlife Director*]  
26 **Director of the Oregon Department of Natural Resources** shall not issue a boat more than one  
27 single delivery license under ORS 508.285 during a 12-month period as established by rule of the  
28 director. For purposes of this section, the disqualification from receiving additional single delivery  
29 licenses shall apply to a boat without regard to ownership or changes in ownership.

30 **SECTION 282.** ORS 508.406 is amended to read:

31 508.406. The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
32 **Resources** or the authorized agent of the director shall issue or renew any license required by the  
33 commercial fishing laws to a qualified person upon proper application and payment of the license  
34 fee required by ORS 508.285.

35 **SECTION 283.** ORS 508.410 is amended to read:

36 508.410. All applications for licenses under ORS 508.406 shall be made on blanks furnished by  
37 the [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural Resources**  
38 and shall contain such information as the [*State Fish and Wildlife Commission*] **Oregon Natural**  
39 **Resources Commission** determines to be necessary for proper administration and enforcement of  
40 the commercial fishing laws.

41 **SECTION 284.** ORS 508.415 is amended to read:

42 508.415. (1) In case of license applications by canners or wholesalers, the [*State Fish and Wildlife*  
43 *Director*] **Director of the Oregon Department of Natural Resources**, in addition to license fees  
44 provided by law, may exact from the applicant a bond from a corporate surety, authorized to do  
45 business in this state, guaranteeing the payment of fees, if the director considers such action is

1 necessary to insure compliance with ORS 508.505 to 508.540.

2 (2) In lieu of any bond that may be required under subsection (1) of this section, any applicant  
3 may deposit with the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
4 **Commission**, under such terms and conditions as the director may prescribe, a like amount of  
5 lawful money of the United States or an irrevocable letter of credit issued by an insured institution,  
6 as defined in ORS 706.008. The commission shall turn over to the State Treasurer for safekeeping  
7 all such deposits so received.

8 **SECTION 285.** ORS 508.445 is amended to read:

9 508.445. In all prosecutions requiring proof as to the issuance or nonissuance of a license by the  
10 [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural Resources** un-  
11 der any of the laws of this state, the certificate of the director as to the issuance or nonissuance  
12 of the license by the director shall be sufficient proof on that question to establish the fact. This  
13 certificate shall be admitted in evidence as to the issuance or nonissuance of the license in any such  
14 prosecution.

15 **SECTION 286.** ORS 508.450 is amended to read:

16 508.450. Each license issued under ORS 508.406 shall be numbered and dated by the [*State Fish*  
17 *and Wildlife Director*] **Director of the Oregon Department of Natural Resources** or an author-  
18 ized agent **of the director** and contain the site or address where the appliance or business is lo-  
19 cated and the name of the person to whom the license is granted.

20 **SECTION 287.** ORS 508.470 is amended to read:

21 508.470. All licenses for which fees are provided for under ORS 508.285 unless otherwise speci-  
22 fied in law expire as of midnight, December 31, following the dates of their issuance or on such date  
23 as may be specified by rule of the [*State Department of Fish and Wildlife*] **Oregon Department of**  
24 **Natural Resources**. The licenses may be renewed annually thereafter upon application and payment  
25 of fees required therefor.

26 **SECTION 288.** ORS 508.485 is amended to read:

27 508.485. Except for vessel licenses prescribed in ORS 508.285, 508.470, 508.775 to 508.796, 508.801  
28 to 508.825, 508.880, 508.883 and 508.889 to 508.910, the [*State Fish and Wildlife Commission*] **Oregon**  
29 **Natural Resources Commission** may, in its discretion, revoke for the remainder of the license year  
30 any license issued to a person under the authority of the commission or the [*State Fish and Wildlife*  
31 *Director*] **Director of the Oregon Department of Natural Resources**, and in its discretion may  
32 refuse the issuance of any license issued under the authority of the commission or director during  
33 any period not to exceed one year from the date of the license revocation order:

34 (1) Upon conviction within this state of any person of violation of any of the commercial fishing  
35 laws or rules;

36 (2) Upon receiving notice from the agency that regulates commercial fishing in the State of  
37 Washington of the conviction of any person in that state of an offense that was a violation of  
38 Columbia River commercial fishing rules adopted pursuant to the Columbia River Compact and that  
39 if committed in this state would be grounds for license revocation pursuant to subsection (1) of this  
40 section;

41 (3) Upon conviction within this state of any person for violation of ORS 498.022, or any rule  
42 promulgated pursuant thereto, involving game fish, through the use of a license issued pursuant to  
43 the commercial fishing laws; or

44 (4) Upon conviction within this state of a person for violation of ORS 164.043 to 164.065 when  
45 the subject of the theft is commercial fishing crab rings or crab pots, or the crabs taken therefrom.

1        **SECTION 289.** ORS 508.490 is amended to read:

2        508.490. Except for vessel licenses prescribed in ORS 508.260 and vessel permits prescribed in  
3        ORS 508.285, 508.470, 508.775 to 508.796, 508.801 to 508.825, 508.880, 508.883 and 508.889 to 508.910,  
4        the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may, in its dis-  
5        cretion, refuse the issuance of any license issued under the authority of the commission or the [*State*  
6        *Fish and Wildlife Director*] **Director of the Oregon Department of Natural Resources** during any  
7        period not to exceed two years from the date of the license revocation order:

8        (1) Upon conviction within this state of any person of violation of any of the commercial fishing  
9        laws or rules after the person has once been convicted and penalized under ORS 508.485; or

10        (2) Upon receiving notice from the agency that regulates commercial fishing in the State of  
11        Washington of the conviction of any person in that state of an offense that was a violation of  
12        Columbia River commercial fishing rules adopted pursuant to the Columbia River Compact and that  
13        if committed in this state would be grounds for refusal to issue a license pursuant to subsection (1)  
14        of this section.

15        **SECTION 290.** ORS 508.495 is amended to read:

16        508.495. Upon the receipt of a fee of \$16.50 and the filing of an affidavit that a license issued  
17        under authority of ORS 508.406 has been lost or destroyed, the [*State Fish and Wildlife Director*]  
18        **Director of the Oregon Department of Natural Resources** or the authorized agent of the direc-  
19        tor shall issue a certificate that such license has been issued and has been lost or destroyed. Except  
20        as provided in ORS 508.260, the certificate may be used in lieu of the lost or destroyed license.

21        **SECTION 291.** ORS 508.500 is amended to read:

22        508.500. No person shall:

23        (1) Alter, borrow or loan to any other person any license or permit issued by the department.

24        (2) In applying for a license or permit issued by the [*State Department of Fish and Wildlife*]  
25        **Oregon Department of Natural Resources** knowingly make any false statement of any information  
26        required by the application regarding the person in whose name the license or permit is to be issued.

27        (3) Possess any license or permit that has been altered, borrowed or loaned or for which any  
28        false statements were knowingly made in applying therefor.

29        **SECTION 292.** ORS 508.505 is amended to read:

30        508.505. (1) Additional fees shall be collected by the [*State Fish and Wildlife Director*] **Director**  
31        **of the Oregon Department of Natural Resources** in the amount prescribed by this section, except  
32        as provided in ORS 508.510. Every person operating within the state as a canner, buyer, bait dealer  
33        or wholesaler of any food fish or shellfish shall pay, in addition to all other licenses or fees provided  
34        by law, a fee equal to the value of the food fish at the point of landing multiplied by the following  
35        rates:

36        (a) All salmon and steelhead, 3.15 percent.

37        (b) All black rockfish, blue rockfish and nearshore fish, five percent.

38        (c) All other food fish and shellfish, 2.25 percent.

39        (d) All tuna, 1.09 percent.

40        (2) Only live, fresh or frozen in the round or dressed food fish or shellfish are subject to the fees  
41        provided in this section. "Dressed" includes but is not limited to beheaded, gutted, filleted, loined  
42        or shucked. However, frozen food fish or frozen shellfish received in a wrapped package to which  
43        a legible label is stamped or printed showing the name, address, brand or trade name of the original  
44        processor or wholesale distributor under which the package is marketed and the kind of frozen food  
45        fish or frozen shellfish contained therein, for distribution and ultimate sale in the original package

1 are not subject to the fees provided in this section.

2 **SECTION 293.** ORS 508.515 is amended to read:

3 508.515. (1) The fee required by ORS 508.505 shall be paid to the [*State Fish and Wildlife Di-*  
4 *rector*] **Director of the Oregon Department of Natural Resources** on or before the 20th day of  
5 each calendar month for the preceding calendar month.

6 (2) The fee shall be accompanied by a report showing the total number of pounds of all varieties  
7 of food fish, stated separately upon blanks furnished by the director, and the value at the point of  
8 landing.

9 (3) In the event that such fee is not paid within the time for payment provided in subsection (1)  
10 of this section, there shall be added as a late payment charge a sum equal to five percent of the  
11 unpaid fees or \$5, whichever is greater, and there shall be charged an interest rate of one percent  
12 per month until the principal and interest is paid.

13 (4) Notwithstanding subsection (1), (2) or (3) of this section, the [*State Fish and Wildlife Com-*  
14 *mission*] **Oregon Natural Resources Commission** may waive or extend payment of any fees re-  
15 quired by ORS 508.505 amounting to less than \$10 during any calendar year.

16 **SECTION 294.** ORS 508.520 is amended to read:

17 508.520. It is the intention that only one fee based on the value of the fish at the point of landing  
18 shall be collected for each fish purchased or received, and in order that this end may be accom-  
19 plished the [*State Fish and Wildlife Commission and the State Fish and Wildlife Director*] **Director**  
20 **of the Oregon Department of Natural Resources and the Oregon Natural Resources Com-**  
21 **mission** may determine finally any dispute arising out of the operation and enforcement of ORS  
22 508.505.

23 **SECTION 295.** ORS 508.525 is amended to read:

24 508.525. The fee required by ORS 508.505 constitutes a first lien upon the cannery, packing  
25 plant, scow, boat and its equipment used in the canning, receiving or transporting of the fish. This  
26 lien may be foreclosed by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
27 **Commission** in the name of the state by a suit in equity in the circuit court of the county in which  
28 the property upon which a lien is given by this section is situated. If situated in two or more  
29 counties the court first acquiring jurisdiction of a part of the property shall have jurisdiction of all  
30 the property described in such foreclosure suit.

31 **SECTION 296.** ORS 508.530 is amended to read:

32 508.530. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
33 may make such rules and require such reports to be made as, in its judgment, are necessary to [*in-*  
34 *sure*] **ensure** the collection and payment of the fee required by ORS 508.505.

35 (2) It is unlawful for any person to falsify any of the reports or to violate any of the rules made  
36 or required by the commission.

37 **SECTION 297.** ORS 508.535 is amended to read:

38 508.535. (1) Every fish canner, fish buyer, retail fish dealer, fish bait dealer or wholesale fish  
39 dealer shall keep a record, of all food fish received and bought, in accordance with rules  
40 promulgated by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
41 **Commission**. Such information may be required as is necessary to enable the commission to carry  
42 out its duties of conservation, protection, administration or enforcement under the commercial fish-  
43 ing laws without imposing undue hardship on the licensees.

44 (2) At least one copy of this record shall be kept:

45 (a) On each boat, vessel, scow, pickup boat or other craft, truck, automobile, motor vehicle or

1 other vehicle of any kind whatsoever used in buying, receiving or transporting the fish.

2 (b) By the canner, buyer, retailer, fish bait dealer or wholesaler.

3 (3) This record is subject to inspection by the [*commissioners, the State Fish and Wildlife Di-*  
4 *rector*] **commission, the Director of the Oregon Department of Natural Resources**, the au-  
5 thorized agent of the director, or any duly authorized police officer. This record shall be transmitted  
6 to the office of the director at such times and in such manner as the commission directs.

7 (4) Every person shall always keep open to inspection by the commission or [*its*] **an authorized**  
8 agent any books, records, papers or memoranda [*which*] **that** are pertinent to the administration of  
9 ORS 508.505 to 508.540. For the purpose of ascertaining the correctness of any fee record or report  
10 or the number of pounds or value of fish upon which the additional fee is based or such other in-  
11 formation as may be necessary to the administration of ORS 508.505 to 508.540, the commission or  
12 [*its*] **an authorized** agent may inspect such books, records, papers or memoranda.

13 (5) Restaurants licensed under ORS 624.020 shall keep a record of all fresh or frozen fish re-  
14 ceived or bought while such fish are in the restaurant's possession. This record shall be subject to  
15 inspection by the [*commissioners*] **commission**, the director, [*the*] **an** authorized agent [*of the*  
16 *director*], or any duly authorized police officer. An invoice or receipt shall be adequate for the pur-  
17 poses of this subsection.

18 **SECTION 298.** ORS 508.540 is amended to read:

19 508.540. (1) In addition to the penalty prescribed by ORS 506.991, the [*State Fish and Wildlife*  
20 *Director, under the authority of the State Fish and Wildlife Commission,*] **Director of the Oregon**  
21 **Department of Natural Resources** may suspend or revoke any license for which a fee is required  
22 under ORS 508.285 if the person holding the license fails to keep the record required by ORS 508.535  
23 or fails to submit the books, records, papers or memoranda of the person for inspection, pursuant  
24 to ORS 508.535 (4), to any member of the commission or any of its representatives presenting written  
25 authority from the commission.

26 (2) The [*State Fish and Wildlife*] director may suspend, deny the renewal of or refuse to issue  
27 any license for which a fee is required under ORS 508.285 if the person holding or applying for the  
28 license is more than 60 days past due in an amount of more than \$400 owed:

29 (a) From fees pursuant to ORS 508.505;

30 (b) From overage, incidental catch or bycatch charges; or

31 (c) To any food fish commodity commission established under ORS chapter 576.

32 (3) The [*State Fish and Wildlife Commission*] **director and the Oregon Natural Resources**  
33 **Commission** may contact any food fish commodity commission at any time to obtain lists of persons  
34 who owe past due fees to the commodity commission.

35 (4) For purposes of this section:

36 (a) "Bycatch" means the unintended taking of a species of food fish that:

37 (A) Occurs while targeting another species of food fish; and

38 (B) Is prohibited due to time, place, manner, regulations or quota restrictions.

39 (b) "Incidental catch" means the unintended legal taking of a species of food fish that occurs  
40 while targeting another species of food fish.

41 (c) "Overage" means the amount of food fish taken for commercial purposes that exceeds the  
42 amount allowed by federal and state law.

43 **SECTION 299.** ORS 508.550 is amended to read:

44 508.550. Notwithstanding any other provision of this chapter, a person who holds a valid Oregon  
45 commercial fishing license may sell any species of food fish taken in lawful commercial fishing ac-

1 tivity directly from the license holder's boat, subject to the following conditions:

2 (1) The person must first obtain from the [*State Fish and Wildlife Commission*] **Oregon Natural**  
 3 **Resources Commission** an annual limited fish seller permit for such sales, the fee for which is \$40.  
 4 The commission by rule may limit the number of permits available for any species of food fish.

5 (2) Prior to making any sale pursuant to this section, the person must notify the commission, in  
 6 such manner as the commission prescribes, of the estimated number of food fish on board the boat  
 7 and of the location where the sale is to take place.

8 (3) Within seven days of making any sale pursuant to this section, the person shall submit to the  
 9 commission a report thereof, in such form as the commission may prescribe. The person must pay  
 10 the fees required as prescribed in ORS 508.505 to 508.540, or in such other manner as the commis-  
 11 sion by rule may prescribe.

12 (4) The person may sell food fish from any port and dock location in this state.

13 (5) If a person fails to comply with subsection (3) of this section, the commission may revoke  
 14 and thereafter refuse to issue another limited fish seller permit.

15 **SECTION 300.** ORS 508.700 is amended to read:

16 508.700. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
 17 may issue a permit, subject to such restrictions and regulations as the commission deems desirable,  
 18 to any person to construct and operate a hatchery for:

19 (a) Chinook salmon, also known as *Oncorhynchus tshawytscha*; or

20 (b) Chum salmon, also known as *Oncorhynchus keta* or dog salmon; or

21 (c) Silver salmon, also known as *Oncorhynchus kisutch* or coho salmon; or

22 (d) Pink salmon, also known as *Oncorhynchus gorbuscha* or humpback salmon.

23 (2) The application for a permit to construct and operate a chum salmon, chinook salmon, silver  
 24 salmon, or pink salmon hatchery shall include an application fee of \$3,000.

25 **SECTION 301.** ORS 508.705 is amended to read:

26 508.705. (1) Prior to issuance of any permit by the [*State Fish and Wildlife Commission*] **Oregon**  
 27 **Natural Resources Commission**, a public hearing shall be held. Notice of the hearing shall be  
 28 published at least once and at least 10 days prior to the hearing in a newspaper of general circ-  
 29 ulation in each of the counties in which the hearing is to be held, or if no such newspaper is pub-  
 30 lished in that county or counties, then such a newspaper in an adjoining county.

31 (2) The hearing shall be conducted by either the commission or a representative designated by  
 32 the commission.

33 **SECTION 302.** ORS 508.710 is amended to read:

34 508.710. No permit shall be issued:

35 (1) [*Which*] **That** may tend to deplete any natural run of anadromous fish or any population of  
 36 resident game fish.

37 (2) [*Which*] **that** may result in waste or deterioration of fish.

38 (3) If the proposed operation is to be located on the same stream or river or tributary thereof  
 39 on which a state or federal fish culture facility is established or is planned to be established.

40 (4) If the proposed operation is not consistent with sound resource management and is not in  
 41 close proximity to the ocean.

42 (5) If the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** deter-  
 43 mines the applicant does not have the financial capability to successfully construct and operate the  
 44 hatchery or may not properly conduct the operation authorized under the permit.

45 **SECTION 303.** ORS 508.715 is amended to read:

1       508.715. Any permit granted by the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
2 **sources Commission** pursuant to ORS 508.700 to 508.745 shall contain at least the following con-  
3 ditions:

4       (1) All propagated fish released into state waters shall be marked annually at no less than the  
5 level of marking of the same species of fish by hatcheries operated by the commission for the pur-  
6 pose of determining contributions to ocean fisheries.

7       (2) All propagated coho and chinook salmon released into state waters shall be marked annually,  
8 consistent with subsection (8) of this section, at a minimum level necessary to determine the pro-  
9 portion of straying of hatchery coho and chinook salmon into the spawning beds of natural and  
10 hatchery produced native stocks of salmon. However, the commission shall not require private  
11 hatcheries to meet marking standards that the commission would not apply to its own operations in  
12 similar circumstances.

13       (3) Prior to release into state waters, the fish must be subject to examination by a qualified fish  
14 pathologist approved by the commission to determine that [*they*] **the fish** are not diseased or in-  
15 fected with any disease [*which*] **that**, in the opinion of the commission, may be detrimental to the  
16 state fishery resources. Cost of such examination shall be paid by the permittee. No fish shall be  
17 released without written approval from the commission. The commission may require diseased fish  
18 to be destroyed. The commission shall not suffer civil or criminal liability for any fish destroyed  
19 under this section.

20       (4) The permittee may be authorized by the commission to divert all fish returning to the stream  
21 to an inspection area, the location of such area to be approved by the commission, to examine all  
22 fish for the purpose of identifying propagated fish.

23       (5) Notwithstanding the provisions of ORS chapters 509 and 511, the permittee shall have the  
24 right to take for commercial purposes, only those fish the commission determines were propagated  
25 by the permittee, and the commission's decision is final.

26       (6) It shall be unlawful for the permittee to select stocks of fish or to genetically alter the life  
27 history or habits of propagated fish in a way the [*State Department of Fish and Wildlife*] **Oregon**  
28 **Department of Natural Resources** determines is inconsistent with the provisions of ORS 496.012  
29 or 506.109.

30       (7) It shall be unlawful for the permittee to conduct any activity not authorized by the permit  
31 or fail to conduct activities required by the permit without approval of the commission after public  
32 hearings.

33       (8) The permittee shall pay all reasonable costs incurred by the commission as a result of the  
34 operation of the private hatchery.

35       **SECTION 304.** ORS 508.718 is amended to read:

36       508.718. (1) The Legislative Assembly finds that protecting the natural runs and genetic diversity  
37 of anadromous fish is essential to the long-term health of Oregon's natural resources and sport and  
38 commercial fisheries.

39       (2) Not later than January 1, 1990, the [*State Department of Fish and Wildlife*] **Oregon De-**  
40 **partment of Natural Resources** shall:

41       (a) Develop and implement monitoring programs, consistent with ORS 508.715 (8) at a minimum  
42 level necessary to determine the proportion of straying of hatchery fish into the spawning beds of  
43 natural and hatchery produced native stocks of salmon.

44       (b) Utilizing the best available scientific evidence, adopt rules, after public hearing, that deter-  
45 mine the proportion of straying that by indicator stock is likely to cause deterioration of the genetic

1 diversity and habitat necessary to maintain long-term species viability or that causes a deterioration  
2 of natural or native stocks of salmon.

3 (3) The Legislative Assembly further finds that private hatcheries are a significant part of  
4 Oregon's salmon resource and that the Legislative Assembly relies on the [*State Fish and Wildlife*  
5 *Commission*] **Oregon Natural Resources Commission** to monitor and regulate private hatcheries  
6 in a way that will optimize [*their*] **the** long-term contribution of **private hatcheries** to Oregon's  
7 salmon resource in conformity with the findings under subsection (1) of this section.

8 **SECTION 305.** ORS 508.720 is amended to read:

9 508.720. (1) If the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commis-**  
10 **sion** finds that the operation described in the permit is not in the best public interest, [*it*] **the**  
11 **commission** shall alter the conditions of the permit to mitigate such adverse effects or may cause  
12 an orderly termination of the operation under the permit. Proceedings to cause such alteration or  
13 termination shall be conducted in accordance with ORS chapter 183. An orderly termination shall  
14 not exceed a four-year period and shall culminate in the revocation of the permit in its entirety.  
15 During this period the permittee may continue to examine and take specified propagated chum  
16 salmon, chinook salmon, silver salmon or pink salmon according to the provisions of the permit but  
17 may not release additional fish.

18 (2) If the commission finds the operation has caused deterioration of the natural run of  
19 anadromous fish or any population of resident game fish in the waters covered by the permit, [*it*]  
20 **the commission** may require the permittee to return the fish populations to the same condition that  
21 existed prior to issuance of the permit. If the permittee fails to take appropriate action, the com-  
22 mission shall take such action and the permittee shall bear any cost incurred by the commission.

23 **SECTION 306.** ORS 508.725 is amended to read:

24 508.725. (1) [*All fish released under ORS 508.700 to 508.745*] During the time [*they*] **all fish re-**  
25 **leased under ORS 508.700 to 508.745** are in the wild, **the fish** will be the property of [*the*] **this**  
26 state and may be taken under angling or commercial fishing laws of this state until [*they*] **the fish**  
27 return to the private hatchery.

28 (2) In carrying out the provisions of ORS 496.162 or 506.129, the [*State Fish and Wildlife Com-*  
29 *mission shall*] **Oregon Natural Resources Commission** may not consider evidence of or argument  
30 regarding the prospect of adverse economic impact on the activities of hatcheries for which permits  
31 have been issued unless the commission determines that it is necessary in order to comply with the  
32 policies set forth in ORS 496.012 or 506.109.

33 **SECTION 307.** ORS 508.730 is amended to read:

34 508.730. After first ensuring that all natural and artificial fish production needs of the [*State*  
35 *Department of Fish and Wildlife*] **Oregon Department of Natural Resources** have been met, the  
36 [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may provide at a  
37 reasonable fee chum salmon, chinook salmon, silver salmon or pink salmon, or the sexual products  
38 therefrom, for the needs of any person granted a permit by the commission pursuant to ORS 508.700  
39 to 508.745 in the following order of priority:

40 (1) The needs of the salmon and trout enhancement program.

41 (2) The needs of fish propagation facilities operated under contract or agreement with other  
42 state or federal agencies, local governments, special districts and nonprofit organizations.

43 (3) The needs of all federal and other fish propagation facilities located on the Columbia River  
44 and its tributaries.

45 **SECTION 308.** ORS 508.735 is amended to read:



1 508.735. The provisions of this chapter shall apply to the taking and sale of chum salmon,  
2 chinook salmon, silver salmon or pink salmon artificially reared under any permit granted by the  
3 [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** pursuant to ORS  
4 508.700 to 508.745.

5 **SECTION 309.** ORS 508.745 is amended to read:

6 508.745. All moneys received by the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
7 **sources Commission** under ORS 508.700 to 508.745 except those under ORS 508.735 shall be paid  
8 over to the State Treasurer to be held in a suspense account established under ORS 293.445. After  
9 the payment of costs of administration incurred by the commission in carrying out the provisions  
10 of ORS 508.700 to 508.745, that portion of the balance of the moneys in this suspense account as of  
11 the end of each fiscal year shall be deposited to the General Fund for general governmental pur-  
12 poses.

13 **SECTION 310.** ORS 508.755 is amended to read:

14 508.755. (1) There is established within the [*State Department of Fish and Wildlife*] **Oregon De-**  
15 **partment of Natural Resources** the Commercial Fishery Permit Board. The board shall consist of  
16 members appointed by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
17 **mission** as follows:

18 (a) Three members shall be chosen to represent the Columbia River gillnet salmon fishing in-  
19 dustry.

20 (b) Three members shall be chosen to represent the ocean troll salmon fishing industry.

21 (c) Three members shall be chosen to represent the ocean pink shrimp fishing industry.

22 (d) Three members shall be chosen to represent the Yaquina Bay roe-herring fishing industry.

23 (e) Three members shall be chosen to represent the sea urchin commercial fishery.

24 (f) Three members shall be chosen to represent the ocean Dungeness crab fishing industry.

25 (g) Three members shall be chosen to represent the black rockfish and blue rockfish fishing in-  
26 dustry and the nearshore fish fishing industry.

27 (h) Three members shall be chosen to represent developmental fisheries as described in ORS  
28 506.450 to 506.465.

29 (i) Three members shall be chosen to represent each restricted participation system or restricted  
30 vessel permit system established by rule of the commission under ORS 506.462.

31 (j) Two members shall be chosen to represent the public.

32 (2) A member of the board shall receive no compensation for services as a member. However,  
33 subject to any applicable law regulating travel and other expenses of state officers and employees,  
34 a member shall be reimbursed for travel and other expenses incurred in the performance of official  
35 duties.

36 (3) The board shall select such officers, for such terms and with such duties and powers, as the  
37 board considers necessary for the performance of those offices.

38 (4) A majority of the members of the board constitutes a quorum for the transaction of business.

39 (5) The board shall meet at such times and places as may be determined by the chairperson or  
40 by a majority of the members of the board.

41 (6) Notwithstanding any other provision of law:

42 (a) Members of the board representing the Columbia River gillnet salmon fishing industry shall  
43 participate in actions of the board only on matters arising under ORS 508.285, 508.470 and 508.775  
44 to 508.796.

45 (b) Members of the board representing the ocean troll salmon fishing industry shall participate

1 in actions of the board only on matters arising under ORS 508.801 to 508.825.

2 (c) Members of the board representing the ocean pink shrimp fishing industry shall participate  
3 in actions of the board only on matters arising under ORS 508.880, 508.883 and 508.889 to 508.910.

4 (d) Members of the board representing the Yaquina Bay roe-herring fishing industry shall partic-  
5 cipate in actions of the board only on matters arising under ORS 508.765.

6 (e) Members of the board representing the sea urchin commercial fishery shall participate in  
7 actions of the board only on matters arising under ORS 508.760.

8 (f) Members of the board representing the ocean Dungeness crab fishing industry shall partic-  
9 ipate in actions of the board only on matters arising under ORS 508.921.

10 (g) Members of the board representing the black rockfish and blue rockfish fishing industry and  
11 the nearshore fish fishing industry shall participate in actions of the board only on matters arising  
12 under ORS 508.947, 508.957 or 508.960.

13 (h) Members of the board representing developmental fisheries shall participate in actions of the  
14 board only on matters arising under ORS 506.450 to 506.465.

15 (i) Members of the board representing a restricted participation system or a restricted vessel  
16 permit system established by rule of the commission under ORS 506.462 shall participate in actions  
17 of the board only on matters related to that system.

18 **SECTION 311.** ORS 508.760 is amended to read:

19 508.760. (1) Notwithstanding any other provision of the commercial fishing laws, in order to  
20 provide a sea urchin (*Strongylocentrotus franciscanus*, *S. purpuratus* and *S. droebachiensis*) com-  
21 mercial fishery with optimum profits to those engaged in the fishery and to prevent a concentration  
22 of fishing effort that would deplete the resource, the [*State Fish and Wildlife Commission*] **Oregon**  
23 **Natural Resources Commission**, by rule, shall establish a system for limiting participation in the  
24 sea urchin commercial fishery. Any such system may include, but is not limited to, provisions on the  
25 following matters:

26 (a) Establishment of criteria for initial entry into fishery participation and for annual qualifica-  
27 tion for participation thereafter.

28 (b) Establishment of terms and conditions for transferring participation rights.

29 (2)(a) The annual fee to participate in the sea urchin fishery is:

30 (A) \$100 for resident applicants.

31 (B) \$290 for nonresident applicants.

32 (b) A fee of \$100 shall be charged for each transfer of participation rights under this section.

33 **SECTION 312.** ORS 508.762 is amended to read:

34 508.762. (1) A person whose application for renewal or transfer of a permit established pursuant  
35 to ORS 508.760 is denied may make written request to the Commercial Fishery Permit Board for  
36 review of the denial. The review provided in this subsection is in lieu of any such review by the  
37 [*State Department of Fish and Wildlife or the State Fish and Wildlife Commission*] **Oregon Depart-**  
38 **ment of Natural Resources or the Oregon Natural Resources Commission.** The request shall  
39 be in such form and shall contain such information as the board considers appropriate. The request  
40 shall be accompanied by a nonrefundable fee of \$125. Such fee shall apply toward the permit fee of  
41 an applicant seeking review who is successful in obtaining a permit.

42 (2) The board shall review a denial of an application for renewal or request to transfer a permit  
43 according to the applicable provisions of ORS chapter 183. Orders issued by the board are not sub-  
44 ject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.500.

45 (3) According to the applicable provisions of ORS chapter 183, the board may promulgate such

1 rules as *[it]* **the board** considers necessary to carry out its duties, functions and powers.

2 (4) The board may delegate to the department its authority to waive requirements for renewal  
3 of permits.

4 **SECTION 313.** ORS 508.765 is amended to read:

5 508.765. (1) Notwithstanding any other provision of the commercial fishing laws, in order to  
6 provide a roe-herring commercial fishery with optimum profits to those engaged in the fishery and  
7 to prevent a concentration of fishing effort that would deplete the resource, the [*State Fish and*  
8 *Wildlife Commission*] **Oregon Natural Resources Commission**, by rule, shall establish a system for  
9 limiting participation in the roe-herring commercial fishing. Any such system may include, but is not  
10 limited to, provisions on the following matters:

11 (a) Establishment of criteria for initial entry into fishery participation and for annual qualifica-  
12 tion for participation thereafter.

13 (b) Establishment of terms and conditions for transferring participation rights.

14 (2)(a) The annual fee to participate in the roe-herring fishery is:

15 (A) \$125 for resident applicants.

16 (B) \$290 for nonresident applicants.

17 (b) A fee of \$100 shall be charged for each transfer of participation rights under this section.

18 (3)(a) A denial by the commission of an application for renewal of any permit or transfer of any  
19 permit established under this section shall be subject to review by the Commercial Fishery Permit  
20 Board upon written request of the applicant. The review provided under this subsection shall be in  
21 lieu of any such review by the commission or the [*State Department of Fish and Wildlife*] **Oregon**  
22 **Department of Natural Resources**.

23 (b) Request for review under this subsection shall be on such forms and contain such informa-  
24 tion as the board shall determine. Requests for review shall be accompanied by a \$125 fee, which  
25 fee shall apply toward any applicable permit fees resulting from an order of the board in favor of  
26 the requesting applicant.

27 (4) Orders issued by the board are not subject to review by the commission but may be appealed  
28 as provided in ORS chapter 183.

29 (5) According to the provisions of ORS chapter 183, the board shall adopt such rules as *[it]* **the**  
30 **board** determines necessary to carry out its duties, functions and powers.

31 **SECTION 314.** ORS 508.781 is amended to read:

32 508.781. An individual who obtained the permit required by ORS 508.775 for a particular calen-  
33 dar year is eligible to obtain renewal of the permit in a subsequent calendar year, upon application  
34 and payment of the fees therefor by December 31 of the permit year or by such date as may be  
35 specified by rule of the [*State Department of Fish and Wildlife*] **Oregon Department of Natural**  
36 **Resources**.

37 **SECTION 315.** ORS 508.784 is amended to read:

38 508.784. In making determinations regarding renewal of the permits required by ORS 508.775, the  
39 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** and the Com-  
40 mercial Fishery Permit Board may consider as evidence of permit qualifications or requirements  
41 department records and such receipts, accounts, contracts and other business records of private  
42 parties as the department or the board consider reliable evidence of the qualifications or require-  
43 ments in question.

44 **SECTION 316.** ORS 508.790 is amended to read:

45 508.790. (1) The annual fee for the vessel permit required by ORS 508.775 is:

1 (a) \$26 for resident applicants.

2 (b) \$216 for nonresident applicants.

3 (2) Applications shall be in such form and contain such information as the [*State Department of*  
4 *Fish and Wildlife*] **Oregon Department of Natural Resources**, by rule, may prescribe.

5 **SECTION 317.** ORS 508.792 is amended to read:

6 508.792. (1) Except as provided in subsection (2) of this section, if the number of permits renewed  
7 under ORS 508.781 falls below 200, the [*State Department of Fish and Wildlife*] **Oregon Department**  
8 **of Natural Resources** shall issue permits by a lottery system for vessels that do not meet the re-  
9 quirements of ORS 508.781. However, the number of permits issued pursuant to any such lottery  
10 system shall not increase the number of permits issued to a total number greater than 200.

11 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may, in  
12 its discretion, suspend the lottery for up to two years. Suspension shall be based on the commission's  
13 assessment of the condition of the resource and shall account for the recommendations of the Gillnet  
14 Salmon Review Board.

15 **SECTION 318.** ORS 508.793 is amended to read:

16 508.793. (1) The vessel permit required by ORS 508.775 is transferable:

17 (a) To a replacement vessel of the permit holder.

18 (b) To the purchaser of the vessel when the vessel is sold.

19 (2) Notwithstanding subsection (1) of this section, upon request of a permit holder, the [*State*  
20 *Department of Fish and Wildlife*] **Oregon Department of Natural Resources** may authorize trans-  
21 fer of a permit to a replacement vessel owned by an individual other than the permit holder. How-  
22 ever, any transfer of a permit away from a vessel without the written consent of each person holding  
23 a security interest in such vessel is void.

24 (3) A fee of \$100 shall be charged for each transfer of a vessel permit under this section.

25 **SECTION 319.** ORS 508.796 is amended to read:

26 508.796. (1) An individual whose application for renewal of the permit required by ORS 508.775  
27 is denied by the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
28 may make written request to the Commercial Fishery Permit Board for review of the denial. The  
29 review provided in this subsection is in lieu of any such review by the department or the [*State Fish*  
30 *and Wildlife Commission*] **Oregon Natural Resources Commission**. The request shall be in such  
31 form and shall contain such information as the board considers appropriate. The request shall be  
32 accompanied by a nonrefundable fee of \$125. Such fees shall apply toward the permit fee of suc-  
33 cessful applicants.

34 (2) In accordance with any applicable provision of ORS chapter 183, the board shall review de-  
35 nials of applications for renewal of permits. Orders issued by the board are not subject to review  
36 by the commission, but may be appealed as provided in ORS 183.480 to 183.500. The board may waive  
37 requirements for renewal of permits if the board finds:

38 (a) That the individual for personal or economic reasons chose to actively commercially fish in  
39 some other fishery during the Columbia River gillnet salmon seasons; or

40 (b) That the individual failed to meet the requirements as the result of illness, accident or other  
41 circumstances beyond the individual's control.

42 (3) In accordance with any applicable provision of ORS chapter 183, the board may promulgate  
43 such rules as it considers necessary to carry out its duties, functions and powers.

44 (4) The board may delegate to the department its authority to waive requirements for renewal  
45 of permits.

1 (5) Notwithstanding any other provision of law, without the prior approval of the Commercial  
2 Fishery Permit Board, a Columbia River gillnet salmon vessel permit acquired as a result of a  
3 waiver pursuant to subsection (2) of this section may not be transferred to another vessel until the  
4 vessel for which the permit was issued has been used in the Columbia River gillnet salmon fishery  
5 for two or more calendar years.

6 **SECTION 320.** ORS 508.807 is amended to read:

7 508.807. (1) An individual who obtained the permit required by ORS 508.801 for a particular  
8 calendar year is eligible to obtain renewal of the permit in a subsequent calendar year upon ob-  
9 taining the annual boat license referred to in ORS 508.285. The permit must be renewed, and the  
10 boat license obtained, not later than December 31 of each year or such date as may be established  
11 by rule of the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**.

12 (2) Notwithstanding any other provision of law, an individual who permanently loses the ser-  
13 vices of a vessel through capsizing, sinking, fire, collision or other catastrophic accident has a pe-  
14 riod of two years from the date of loss to replace the vessel without losing eligibility to renew the  
15 vessel permit.

16 **SECTION 321.** ORS 508.808 is amended to read:

17 508.808. (1) In order to be able to renew the vessel permit in any subsequent year, an individual  
18 is not required to renew the boat license as provided in ORS 508.807 if:

19 (a) In the year prior to renewal there was not an ocean troll salmon season of more than 20  
20 consecutive days between May 1 and July 31 in the Pacific Fisheries Management Council man-  
21 agement area adjacent to the port where the vessel lands fish; and

22 (b) The vessel landed salmon in only one single Oregon port and no other during the preceding  
23 three years in which there was a salmon season of more than 20 consecutive days between May 1  
24 and July 31 in the Pacific Fisheries Management Council management area adjacent to the port.

25 (2) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
26 may, upon written request by the purchaser, refund any amount paid for a boat license for a boat  
27 that qualifies under the provisions of subsection (1) of this section.

28 **SECTION 322.** ORS 508.810 is amended to read:

29 508.810. In making determinations regarding renewal of the permits required by ORS 508.801, the  
30 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** and the Com-  
31 mercial Fishery Permit Board may consider as evidence of permit qualifications or requirements  
32 department records and such receipts, accounts, contracts and other business records of private  
33 parties as the department or the board considers reliable evidence of the qualifications or require-  
34 ments in question.

35 **SECTION 323.** ORS 508.816 is amended to read:

36 508.816. (1) The annual fee for the vessel permit required by ORS 508.801 is:

37 (a) \$35 for resident applicants.

38 (b) \$225 for nonresident applicants.

39 (2) Applications shall be in such form and contain such information as the [*State Department of*  
40 *Fish and Wildlife*] **Oregon Department of Natural Resources**, by rule, may prescribe.

41 **SECTION 324.** ORS 508.819 is amended to read:

42 508.819. (1)(a) Except as provided in subsections (2) and (3) of this section, if the number of  
43 permits renewed under ORS 508.807 falls below 1,000, the [*State Department of Fish and Wildlife*]  
44 **Oregon Department of Natural Resources** shall issue permits by a lottery system for vessels that  
45 do not meet the requirements of ORS 508.807. However, the number of permits issued pursuant to

1 any such lottery system may not increase the number of permits issued to a total number greater  
2 than 1,000.

3 (b) In issuing permits under the lottery system, the department shall issue permits for vessels  
4 based on the following categories:

5 (A) Vessels less than or equal to 30 feet;

6 (B) Vessels greater than 30 feet and less than or equal to 42 feet; or

7 (C) Vessels greater than 42 feet.

8 (c) When a vessel in one category does not renew its permit, only another vessel in the same  
9 category, or a vessel in a category for vessels of a smaller size, may qualify for the permit.

10 (d) When the department holds a lottery under this section, the following fees shall be charged  
11 for each vessel permit that the department issues as a result of the lottery:

12 (A) For vessels less than or equal to 30 feet, \$250.

13 (B) For vessels greater than 30 feet and less than or equal to 42 feet, \$500.

14 (C) For vessels greater than 42 feet, \$750.

15 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may, in  
16 its discretion, suspend the lottery for up to two years. Suspension shall be based on the commission's  
17 assessment of the condition of the resource and shall account for the recommendations of the Troll  
18 Salmon Permit Review Board.

19 (3) The department shall consider a permit transferred to, purchased by or otherwise held by the  
20 federal government as a permit renewed under ORS 508.807. A permit transferred to, purchased by  
21 or otherwise held by the federal government is a permit under the limit of 1,000 permits established  
22 by this section.

23 **SECTION 325.** ORS 508.822 is amended to read:

24 508.822. (1) The vessel permit required by ORS 508.801 is transferable:

25 (a) To a replacement vessel of the permit holder.

26 (b) To the purchaser of the vessel when the vessel is sold.

27 (c) Upon request of a permit holder, transfer of a permit to a replacement vessel owned by an  
28 individual other than the permit holder if authorized by the [*State Department of Fish and Wildlife*]  
29 **Oregon Department of Natural Resources**. However, any transfer of a permit away from a vessel  
30 without the written consent of each person holding a security interest in such vessel is void.

31 (2) Permits may be transferred between vessels where both vessels fall within any one of the  
32 following categories:

33 (a) Vessels less than or equal to 30 feet;

34 (b) Vessels greater than 30 feet and less than or equal to 42 feet; or

35 (c) Vessels greater than 42 feet.

36 (3) A permit may be transferred from a vessel that is in one of the categories defined in sub-  
37 section (2) of this section to a vessel that is in a different category provided that no vessel permit  
38 may be transferred to a vessel more than five feet longer than the vessel from which the permit is  
39 being transferred.

40 (4)(a) Notwithstanding subsection (3) of this section and except for transfer to another vessel  
41 owned by the current permit holder, a vessel permit may be transferred to a vessel over 30 feet in  
42 length only if, in the calendar year prior to transfer, the vessel from which the permit is being  
43 transferred was used in the ocean troll salmon fishery in Oregon, Alaska, Washington or California  
44 to take 100 pounds of salmon. The department, by rule, may require proof of vessel ownership prior  
45 to the transfer of a permit away from any vessel. This section shall not be effective in the calendar

1 year following a year in which the number of permits issued pursuant to ORS 508.801 is less than  
2 1,000.

3 (b) A vessel permit may not be transferred more than once in any 12-month period. However,  
4 the Commercial Fishery Permit Board may waive the waiting period for additional transfer if the  
5 board finds that strict adherence to the waiting period would create undue hardship for the indi-  
6 vidual seeking transfer of the permit.

7 (5) Persons requesting the transfer of a permit pursuant to subsection (1)(c) of this section shall  
8 provide to the department copies of documents or state registration for each vessel as proof of the  
9 length and ownership.

10 (6) A fee of \$100 shall be charged for each transfer of a vessel permit under this section.

11 **SECTION 326.** ORS 508.825 is amended to read:

12 508.825. (1) An individual whose application for renewal or transfer of the permit required by  
13 ORS 508.801 is denied by the [*State Department of Fish and Wildlife*] **Oregon Department of Na-**  
14 **tural Resources** may make written request to the Commercial Fishery Permit Board for review of  
15 the denial. The review provided in this subsection is in lieu of any such review by the department  
16 or the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**. The request  
17 shall be in such form and shall contain such information as the board considers appropriate. The  
18 request shall be accompanied by a nonrefundable fee of \$125. Such fee shall apply toward the permit  
19 fee of successful applicants.

20 (2) In accordance with any applicable provision of ORS chapter 183, the board shall review de-  
21 nials of applications for renewal or transfer of permits. Orders issued by the board are not subject  
22 to review by the commission, but may be appealed as provided in ORS 183.480 to 183.540. The board  
23 may waive requirements for renewal or transfer of permits if the board finds that the individual fails  
24 to meet the requirements as the result of illness, accident or other circumstances beyond the  
25 individual's control.

26 (3) In accordance with any applicable provision of ORS chapter 183, the board may promulgate  
27 such rules as it considers necessary to carry out its duties, functions and powers.

28 (4) The board may delegate to the department its authority to waive requirements for renewal  
29 or transfer of permits.

30 **SECTION 327.** ORS 508.828 is amended to read:

31 508.828. Notwithstanding ORS 508.801 to 508.825, 508.880, 508.883 and 508.889 to 508.910, subject  
32 to ORS 508.316, a vessel not having a permit may in an emergency and with the approval of the  
33 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** land salmon  
34 by purchase of a single delivery license.

35 **SECTION 328.** ORS 508.852 is amended to read:

36 508.852. In making determinations regarding renewal of the permits required by ORS 508.840, the  
37 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** and the Com-  
38 mercial Fishery Permit Board may consider as evidence of permit qualifications or requirements  
39 department records and such receipts, accounts, contracts and other business records of private  
40 parties as the department or the board considers reliable evidence of the qualifications or require-  
41 ments in question.

42 **SECTION 329.** ORS 508.861 is amended to read:

43 508.861. The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
44 **sources** may establish by rule a lottery system for issuing permits to vessels that do not meet the  
45 requirements of ORS 508.849. The department, by rule, shall determine the number of permits and

1 the criteria for issuance.

2 **SECTION 330.** ORS 508.867 is amended to read:

3 508.867. (1) Notwithstanding ORS 508.755 (6)(b) and (c), an individual whose application for re-  
4 newal of the permit required by ORS 508.840 is denied by the [*State Department of Fish and*  
5 *Wildlife*] **Oregon Department of Natural Resources** may make written request to the Commercial  
6 Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of  
7 any such review by the department or the [*State Fish and Wildlife Commission*] **Oregon Natural**  
8 **Resources Commission**. The request shall be in such form and shall contain such information as  
9 the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125.  
10 Such fee shall apply toward the permit fee of successful applicants.

11 (2) In accordance with any applicable provision of ORS chapter 183, the board shall review de-  
12 nials of applications for renewal of permits. Orders issued by the board are not subject to review  
13 by the commission, but may be appealed as provided in ORS 183.480 to 183.540. The board may waive  
14 requirements for renewal of permits if the board finds that the individual for personal or economic  
15 reasons chooses to actively fish the permit vessel in some other ocean fishery or if the board finds  
16 that the individual fails to meet the requirements as the result of illness, accident or other circum-  
17 stances beyond the individual's control.

18 (3) In accordance with any applicable provision of ORS chapter 183, the board may promulgate  
19 such rules as it considers necessary to carry out its duties, functions and powers.

20 (4) The board may delegate to the department the authority to waive eligibility requirements for  
21 renewal of permits.

22 **SECTION 331.** ORS 508.883 is amended to read:

23 508.883. (1) Notwithstanding ORS 508.880, an individual who holds valid commercial fishing  
24 permits required by or issued pursuant to the laws of the states of Washington or California to take  
25 pink shrimp may land pink shrimp in this state that were taken in the ocean pink shrimp fishery  
26 without the permit required by ORS 508.880 if the vessel possesses a single delivery license referred  
27 to in ORS 508.285. However, a single delivery license may be used to land pink shrimp only once in  
28 a 12-month period as established by rule of the [*State Fish and Wildlife Director*] **Director of the**  
29 **Oregon Department of Natural Resources**.

30 (2) Subsection (1) of this section shall apply to a vessel registered under the laws of another  
31 state only while laws or administrative rules are operative in that state that contain, in substance  
32 or effect, provisions similar to the provisions of subsection (1) of this section.

33 **SECTION 332.** ORS 508.892 is amended to read:

34 508.892. (1) An individual who obtained the permit required by ORS 508.880 for a particular  
35 calendar year is eligible to obtain renewal of the permit in a subsequent calendar year upon appli-  
36 cation and payment of the fees therefor and upon obtaining the annual boat license referred to in  
37 ORS 508.285. The permit must be applied for, and the boat license obtained, not later than December  
38 31 of each year or such date as may be established by rule of the [*State Department of Fish and*  
39 *Wildlife*] **Oregon Department of Natural Resources**.

40 (2) An individual who permanently loses the services of a vessel through capsizing, sinking, fire,  
41 collision or other catastrophic accident shall remain eligible to obtain a vessel permit for a re-  
42 placement vessel for two years from the date of loss.

43 **SECTION 333.** ORS 508.895 is amended to read:

44 508.895. In making determinations regarding renewal of the permits required by ORS 508.880, the  
45 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** and the Com-



1 commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements  
2 department records and such receipts, accounts, contracts and other business records of private  
3 parties as the department or the board considers reliable evidence of the qualifications or require-  
4 ments in question.

5 **SECTION 334.** ORS 508.901 is amended to read:

6 508.901. (1) The annual fee for the vessel permit required by ORS 508.880 is:

7 (a) \$125 for resident applicants.

8 (b) \$290 for nonresident applicants.

9 (2) Applications shall be in such form and contain such information as the [*State Department of*  
10 *Fish and Wildlife*] **Oregon Department of Natural Resources**, by rule, may prescribe.

11 **SECTION 335.** ORS 508.904 is amended to read:

12 508.904. (1) Except as provided in subsection (2) of this section, if the number of permits renewed  
13 under ORS 508.892 falls below 150, the [*State Department of Fish and Wildlife*] **Oregon Department**  
14 **of Natural Resources** shall issue permits by lottery systems for vessels that do not meet such re-  
15 quirements, first among those individuals who landed pink shrimp pursuant to a single delivery li-  
16 cense referred to in ORS 508.285, and then among all other individuals making application therefor.  
17 However, the number of permits issued pursuant to any such lottery system may not increase the  
18 total number of permits issued beyond 150.

19 (2) The department shall consider a permit transferred to, purchased by or otherwise held by the  
20 federal government as a permit renewed under ORS 508.892. A permit transferred to, purchased by  
21 or otherwise held by the federal government is a permit under the limit of 150 permits established  
22 by this section.

23 **SECTION 336.** ORS 508.910 is amended to read:

24 508.910. (1) An individual whose application for renewal of the permit required by ORS 508.880  
25 is denied by the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
26 may make written request to the Commercial Fishery Permit Board for review of the denial. The  
27 review provided in this subsection is in lieu of any such review by the department or the [*State Fish*  
28 *and Wildlife Commission*] **Oregon Natural Resources Commission**. The request shall be in such  
29 form and shall contain such information as the board considers appropriate. The request shall be  
30 accompanied by a nonrefundable fee of \$125. Such fee shall apply toward the permit fee of successful  
31 applicants.

32 (2) In accordance with any applicable provision of ORS chapter 183, the board shall review de-  
33 nials of applications for renewal of permits. Orders issued by the board are not subject to review  
34 by the commission, but may be appealed as provided in ORS 183.480 to 183.540. The board may waive  
35 requirements for renewal of permits if the board finds that the individual fails to meet the require-  
36 ments as the result of illness, accident or other circumstances beyond the individual's control.

37 (3) In accordance with any applicable provision of ORS chapter 183, the board may promulgate  
38 such rules as it considers necessary to carry out its duties, functions and powers.

39 (4) The board may delegate to the department its authority to waive requirements for renewal  
40 of permits.

41 **SECTION 337.** ORS 508.915 is amended to read:

42 508.915. The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
43 **Resources** shall work with the appropriate authorities in the States of California and Washington  
44 to negotiate reciprocal agreements that would allow vessels registered under the laws of those  
45 states to land pink shrimp in Oregon to the same extent that vessels registered in Oregon may land

1 pink shrimp in California or Washington.

2 **SECTION 338.** ORS 508.921 is amended to read:

3 508.921. The Legislative Assembly finds that the Oregon ocean Dungeness crab fishery is over-  
4 capitalized. This overcapitalization has led to economic destabilization of the ocean Dungeness crab  
5 industry and the coastal communities relying on the crab harvest and can cause excessive harvest-  
6 ing pressure on Oregon's ocean Dungeness crab resources. Since the state legislatures of  
7 Washington and California have enacted programs restricting participation in the ocean Dungeness  
8 crab fishery, the possibility of increased effort in Oregon coastal waters by displaced vessels is in-  
9 creased. Notwithstanding any other provision of the commercial fishing laws, in order to promote  
10 the economic well-being of the Oregon ocean Dungeness crab industry and the coastal communities  
11 relying on the harvest, to protect the livelihood of participants in the Oregon ocean Dungeness crab  
12 fishery who have historically and continuously participated in the ocean Dungeness crab fishery and  
13 to prevent a concentration of fishing effort, the [*State Fish and Wildlife Commission*] **Oregon Na-  
14 tural Resources Commission** by rule shall establish a system for restricting participation in the  
15 Oregon ocean Dungeness crab fishery.

16 **SECTION 339.** ORS 508.931 is amended to read:

17 508.931. (1) The system established under ORS 508.921 shall provide initial eligibility for vessels  
18 to participate in the ocean Dungeness crab fishery seasons established by the [*State Fish and  
19 Wildlife Commission*] **Oregon Natural Resources Commission**, beginning on December 1, 1995,  
20 with a transferable ocean Dungeness crab permit only if:

21 (a) The vessel for which application is made was continuously licensed pursuant to ORS 508.260  
22 for the calendar years 1991 through 1994, and was used in the ocean Dungeness crab fishery to  
23 lawfully land into Oregon ports at least 500 pounds of ocean Dungeness crab in each of two crab  
24 fishing seasons between December 1, 1988, and December 31, 1994;

25 (b) The vessel for which application is made was under construction between December 1, 1988,  
26 and August 14, 1991, for the purpose of ocean Dungeness crab fishing in waters of this state, and  
27 the vessel lawfully landed into Oregon ports at least 500 pounds of ocean Dungeness crab in each  
28 of two crab fishing seasons between December 1, 1988, and December 31, 1994, and was licensed as  
29 an Oregon vessel from the date of completion;

30 (c) The vessel for which application is made was used in the ocean Dungeness crab fishery to  
31 lawfully land into Oregon ports at least 500 pounds of ocean Dungeness crab in each of two crab  
32 fishing seasons between December 1, 1991, and December 31, 1994, and is owned by a person who,  
33 prior to December 31, 1994, sold a vessel that was used prior to sale in the ocean Dungeness crab  
34 fishery to lawfully land into Oregon ports at least 500 pounds of ocean Dungeness crab in each of  
35 two crab fishing seasons between December 1, 1988, and December 31, 1994, and who, as a condition  
36 of the sale, retained the sold vessel's commercial fishing rights to fish for ocean Dungeness crab in  
37 the ocean waters of Oregon;

38 (d) The vessel for which application is made was continuously licensed pursuant to ORS 508.260  
39 for the calendar years 1991 through 1994, was used in the ocean Dungeness crab fishery to lawfully  
40 land into Oregon ports at least 10,000 pounds of ocean Dungeness crab in one crab fishing season  
41 between December 1, 1988, and December 31, 1994, and the owner of the vessel on December 31,  
42 1994, demonstrates possession of one or more vessel licenses described in ORS 508.260 in each of  
43 10 separate years during the period December 1, 1980, to December 31, 1994; or

44 (e) The vessel for which application is made was licensed pursuant to ORS 508.260 during 1994,  
45 is 26 feet or less in length and was used in the ocean Dungeness crab fishery to lawfully land into

1 Oregon ports at least 100 pounds of ocean Dungeness crab in at least one crab fishing season be-  
 2 tween December 1, 1988, and December 31, 1994.

3 (2) As used in this section:

4 (a) "Crab fishing season" is the time period from December 1 of one year through August 14 of  
 5 the next year.

6 (b) "Owner" includes any ownership interest in a vessel, including interests arising from part-  
 7 nership or corporation.

8 **SECTION 340.** ORS 508.936 is amended to read:

9 508.936. (1) The system established under ORS 508.921 shall include provisions to make the  
 10 vessel ocean Dungeness crab permit required by ORS 508.926 transferable:

11 (a) To another vessel; or

12 (b) To the purchaser of the vessel when the vessel is sold.

13 (2) The vessel to which a permit is transferred may not be:

14 (a) More than 10 feet longer than the vessel from which the permit is transferred; or

15 (b) More than 99 feet in length.

16 (3) Notwithstanding subsection (2) of this section, a permit issued to a vessel:

17 (a) Under ORS 508.931 (1)(e) shall be transferred only to a vessel that is 26 feet or less in length.

18 (b) May not be transferred to a vessel that is more than 10 feet longer than the vessel for which  
 19 the permit was held on January 1, 2006. However, the Commercial Fishery Permit Board may waive  
 20 the length restriction in this paragraph if the board finds that strict adherence to the length re-  
 21 striction would create undue hardship, as that term is defined by rule by the [*State Fish and Wildlife*  
 22 *Commission*] **Oregon Natural Resources Commission**, for the individual seeking transfer of the  
 23 permit.

24 (4) Transfer of a permit under this section is subject to the approval of the [*State Department*  
 25 *of Fish and Wildlife*] **Oregon Department of Natural Resources** according to such rules as the  
 26 [*State Fish and Wildlife*] commission may adopt. Any transfer of a permit from a vessel without the  
 27 written consent of each person holding a security interest in the vessel is void.

28 (5) For purposes of this section, the length of a vessel shall be determined by the manufacturer's  
 29 specification of overall length, United States Coast Guard documentation stating overall length or  
 30 a survey of overall length by a certified marine surveyor, as the [*State Fish and Wildlife*] commission  
 31 by rule shall establish.

32 (6) A fee of \$100 shall be charged for each transfer of a vessel permit under this section.

33 **SECTION 341.** ORS 508.941 is amended to read:

34 508.941. (1) The system established under ORS 508.921 shall include any other provisions for  
 35 participation that the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commis-**  
 36 **sion** considers appropriate.

37 (2) Any determination by the commission regarding the eligibility of a vessel to participate in  
 38 the ocean Dungeness crab commercial fishery or to transfer participation rights is subject to review  
 39 by the Commercial Fishery Permit Board, in accordance with ORS chapter 183. The board may  
 40 waive the eligibility requirements contained in ORS 508.931 if the board finds that the individual  
 41 fails to meet the requirements as the result of illness, fire, sinking, accident or other circumstances  
 42 beyond the individual's control. In making a determination of eligibility under this section, the board  
 43 shall consider the applicant's history of participation in the Oregon ocean Dungeness crab fishery.  
 44 If a vessel for which application is made is owned by a person who has served in the Armed Forces  
 45 of the United States and the person establishes that a service-related disability prevented the person

1 from lawfully landing crab in two seasons during the prescribed time period, there is a rebuttable  
2 presumption in favor of issuing an illness waiver for one of the two seasons of lawfully landing crab  
3 in Oregon required under ORS 508.931 so as to require the landing of crab in only one season during  
4 the prescribed time period. The rebuttable presumption created by this subsection may be overcome  
5 only by clear and convincing evidence that the service-related disability of the person did not pre-  
6 vent the person from lawfully landing crab in two seasons during the prescribed time period. Orders  
7 issued by the board are not subject to review by the commission, but may be appealed as provided  
8 in ORS 183.480 to 183.540.

9 (3) A commercial fishing vessel that holds a valid Washington or California permit to fish for  
10 ocean Dungeness crab shall be eligible to participate in the Oregon ocean Dungeness crab fishery  
11 provided there is reciprocal statutory authority in Washington or California that provides for equal  
12 access for vessels holding Oregon ocean Dungeness crab permits to Washington or California  
13 coastal waters and Washington waters of the Columbia River. If such reciprocal statutory authority  
14 exists, a vessel licensed by Washington or California is eligible to participate in accordance with  
15 rules that establish reciprocal border agreements that recognize traditional fishing patterns.

16 (4) The annual fee to participate in the ocean Dungeness crab fishery is:

17 (a) \$125 for resident applicants.

18 (b) \$290 for nonresident applicants.

19 **SECTION 342.** ORS 508.945 is amended to read:

20 508.945. (1) Notwithstanding any other provision of the commercial fishing laws and except as  
21 provided in subsection (4) of this section, a person may not operate a vessel for:

22 (a) Landing black rockfish or blue rockfish in a fishery without a black rockfish and blue  
23 rockfish vessel permit issued under ORS 508.947; or

24 (b) Landing nearshore fish in a fishery without a black rockfish and blue rockfish vessel permit  
25 with a nearshore fish endorsement issued under ORS 508.947.

26 (2)(a) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may  
27 prescribe by rule the type of fishing gear that a vessel required to have a permit under this section  
28 shall use to land black rockfish, blue rockfish or nearshore fish.

29 (b) The commission may not prescribe a rule under this subsection that allows a vessel to use:

30 (A) Diving gear.

31 (B) Pots, unless a vessel was issued a pot endorsement in the Interim Nearshore Fisheries Plan  
32 through the Developmental Fisheries Program enacted by the commission.

33 (3) Notwithstanding any other provision of the commercial fishing laws, a wholesaler, canner  
34 or buyer may not buy or receive black rockfish, blue rockfish or nearshore fish taken in a fishery  
35 from a vessel for which the permit required by this section has not been issued, unless the black  
36 rockfish, blue rockfish or nearshore fish were taken pursuant to subsection (4)(a), (b) or (c) of this  
37 section.

38 (4) A person may operate a vessel without a permit required by this section if the person:

39 (a) For only one landing per day, lands no more than 15 pounds of black rockfish, blue rockfish,  
40 nearshore fish or a combination of black rockfish, blue rockfish or nearshore fish and if the black  
41 rockfish, blue rockfish and nearshore fish:

42 (A) Make up 25 percent or less of the total poundage of the landing; and

43 (B) Are landed with fishing gear that is legal to use in the fishery in which the black rockfish,  
44 blue rockfish or nearshore fish are landed;

45 (b) Operates a vessel in the ocean troll salmon fishery pursuant to ORS 508.801 to 508.825 and

1 the person lands black rockfish, blue rockfish or a combination of black rockfish and blue rockfish  
2 in the same landing in which the person lands a salmon under the permit required by ORS 508.801  
3 to 508.825. The black rockfish or blue rockfish landed under this paragraph must be landed dead.  
4 A person who lands black rockfish and blue rockfish under this paragraph may land up to the  
5 greater of:

6 (A) 30 black rockfish or 30 blue rockfish per landing or a combination of 30 black rockfish and  
7 blue rockfish per landing; or

8 (B) 100 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue  
9 rockfish per landing;

10 (c) Operates a vessel in the west coast groundfish trawl fishery pursuant to federal regulations  
11 and lands no more than 1,000 pounds of black rockfish, blue rockfish or a combination of black  
12 rockfish and blue rockfish per calendar year and if the black rockfish and blue rockfish:

13 (A) Make up 25 percent or less of the total poundage of each landing; and

14 (B) Are landed dead; or

15 (d) Is a nonprofit aquarium or has contracted with a nonprofit aquarium to land black rockfish,  
16 blue rockfish or nearshore fish for the purpose of displaying or conducting research on the black  
17 rockfish, blue rockfish or nearshore fish.

18 (5) Notwithstanding the amounts set forth in subsection (4)(b) of this section, the [*State Fish and*  
19 *Wildlife Commission*] **Oregon Natural Resources Commission** may change the amounts of black  
20 rockfish, blue rockfish or the combination of black rockfish and blue rockfish allowed to be landed  
21 under subsection (4)(b) of this section by rule based on an assessment of the resource.

22 **SECTION 343.** ORS 508.947 is amended to read:

23 508.947. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
24 **sources** may issue a black rockfish and blue rockfish vessel permit to an owner of a vessel that  
25 landed a minimum of 750 pounds of nontrawl caught black rockfish, blue rockfish or nearshore fish  
26 in any one calendar year between January 1, 1995, and January 1, 2001, or in the six-month period  
27 between January 1, 2001, and July 1, 2001, for delivery to a fish processor licensed pursuant to ORS  
28 508.025.

29 (2) The department may issue a black rockfish and blue rockfish vessel permit with a nearshore  
30 fish endorsement to an owner of a vessel that was issued a permit under the Interim Nearshore  
31 Fisheries Plan through the Developmental Fisheries Program.

32 (3) The department may renew a black rockfish and blue rockfish vessel permit or a black  
33 rockfish and blue rockfish vessel permit with a nearshore fish endorsement if the vessel made a  
34 minimum of five commercial fish landings during the calendar year prior to the request for renewal  
35 for delivery to a fish processor licensed pursuant to ORS 508.025.

36 (4) Permits issued under this section expire on December 31 of each year or on such date as  
37 may be specified by department rule. An owner of a vessel with a permit must submit a renewal  
38 application to the department by January 1 of each year or by such date as may be specified by  
39 department rule. If the owner of a vessel with a permit does not timely submit a renewal application,  
40 the department shall, not more than 30 days after the application was due, send to the owner by  
41 certified letter a notice of the failure to submit the renewal application. An owner may submit a late  
42 application to renew a permit not more than 90 days after the application was due if the owner pays  
43 a \$150 late fee in addition to the fee required in ORS 508.949.

44 (5) In making determinations regarding initial eligibility for and renewal of a permit issued un-  
45 der this section, the department may consider department records and receipts and accounts, con-

1 tracts and other business records of private parties that the department considers reliable.

2 (6) Except as provided in ORS 508.955, new vessel permits may not be issued under this section  
3 after December 30, 2005.

4 **SECTION 344.** ORS 508.949 is amended to read:

5 508.949. (1) The annual fee for a black rockfish and blue rockfish vessel permit or a black  
6 rockfish and blue rockfish vessel permit with a nearshore fish endorsement issued under ORS  
7 508.947 is \$100.

8 (2) Applications for a permit shall be in such form and contain such information as the [*State*  
9 *Department of Fish and Wildlife*] **Oregon Department of Natural Resources**, by rule, may pre-  
10 scribe.

11 (3) All fees collected under this section and ORS 508.505 (1)(b) and 508.947 shall be placed into  
12 the Black Rockfish, Blue Rockfish and Nearshore Species Research Account established in ORS  
13 508.951.

14 **SECTION 345.** ORS 508.951 is amended to read:

15 508.951. (1) There is established a Black Rockfish, Blue Rockfish and Nearshore Species Re-  
16 search Account in the State Treasury, separate and distinct from the General Fund. Interest on  
17 moneys in the account shall be credited to the account.

18 (2) The account shall consist of moneys deposited into the account by the [*State Department of*  
19 *Fish and Wildlife*] **Oregon Department of Natural Resources** from fees collected for the value of  
20 black rockfish, blue rockfish or nearshore fish at the point of landing pursuant to ORS 508.505 (1)(b)  
21 and black rockfish and blue rockfish vessel permit fees and late fees collected under ORS 508.947  
22 and 508.949. The moneys in the account are continuously appropriated to the [*State Department of*  
23 *Fish and Wildlife*] **department** for gathering and analyzing data and conducting research on the  
24 black rockfish and blue rockfish fishery and the nearshore species fishery.

25 **SECTION 346.** ORS 508.953 is amended to read:

26 508.953. (1) An owner of a vessel that has a black rockfish and blue rockfish vessel permit or  
27 a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement shall keep a log  
28 book that includes:

29 (a) The amount of food fish that are caught;

30 (b) The date on which the food fish are caught;

31 (c) The species of food fish that are caught by the vessel; and

32 (d) Any other information that the [*State Department of Fish and Wildlife*] **Oregon Department**  
33 **of Natural Resources** may prescribe.

34 (2) The [*State Department of Fish and Wildlife*] **department** shall:

35 (a) Annually collect and summarize the information required by subsection (1) of this section;  
36 and

37 (b) Present a report on the black rockfish and blue rockfish fishery and the nearshore species  
38 fishery, including the summary prepared in paragraph (a) of this subsection, to the [*State Fish and*  
39 *Wildlife Commission*] **Oregon Natural Resources Commission** during a public meeting held by July  
40 1.

41 **SECTION 347.** ORS 508.955 is amended to read:

42 508.955. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
43 may establish by rule a lottery for issuing permits to vessels under ORS 508.947.

44 (2) A vessel may qualify for the lottery if the vessel:

45 (a) Has a boat license issued pursuant to ORS 508.260 for the current year; and

1 (b) Had a boat license issued pursuant to ORS 508.260 for the previous year.

2 (3) Based on an assessment of the resource, the commission may:

3 (a) Suspend the lottery for up to two years; and

4 (b) Renew a suspension of the lottery every two years.

5 (4) The commission shall establish by rule a threshold number of permits below which the  
6 **Oregon Department of Natural Resources** shall issue permits through the lottery.

7 **SECTION 348.** ORS 508.960 is amended to read:

8 508.960. (1) A person whose application for issuance, renewal or transfer of a permit under ORS  
9 508.947 is denied by the [*State Department of Fish and Wildlife*] **Oregon Department of Natural**  
10 **Resources** may make written request to the Commercial Fishery Permit Board for review of the  
11 denial. The review provided in this subsection is in lieu of any such review by the department or  
12 the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**. The request  
13 shall be in such form and shall contain such information as the board considers appropriate. The  
14 request shall be accompanied by a nonrefundable fee of \$125, which shall apply toward the permit  
15 fee if the application is approved.

16 (2) In accordance with the applicable provisions of ORS chapter 183, the board shall review  
17 denials of applications for issuance, transfer or renewal of permits. Orders issued by the board are  
18 not subject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.540.  
19 The board may waive requirements for renewal or transfer of permits if the board finds that the  
20 person fails to meet the requirements as the result of illness, accident or other circumstances be-  
21 yond the person's control.

22 (3) In accordance with the applicable provisions of ORS chapter 183, the board may promulgate  
23 such rules as it considers necessary to carry out its duties, functions and powers under this section.

24 **SECTION 349.** ORS 509.015 is amended to read:

25 509.015. (1) In addition to the penalty prescribed by ORS 506.991, upon conviction of a violation  
26 of ORS 509.011, the court may order the forfeiture of the boat, vessel, vehicle and fishing gear un-  
27 lawfully used, in the manner provided by ORS 506.695 and 506.700, and the clear proceeds of the  
28 property forfeited shall be deposited with the State Treasury in the Common School Fund.

29 (2) All food fish taken, transported or possessed in violation of ORS 509.011 are subject to sei-  
30 zure by the [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
31 **Resources**, a deputy fish or game warden or a member of the state police, either with or without  
32 arrest. Upon such seizure, the fish are subject to forfeiture and disposition pursuant to ORS 506.690.

33 **SECTION 350.** ORS 509.031 is amended to read:

34 509.031. (1) It shall be the policy of the State of Oregon that rainbow trout, *Oncorhynchus*  
35 *mykiss*, including steelhead trout are game fish, and shall be managed to provide recreational angl-  
36 ing for the people and to protect wild native stocks. Recognizing that rainbow trout are sometimes  
37 intermingled with food fish, the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
38 **Commission** shall regulate to minimize the incidental catch of rainbow trout that may be taken  
39 under subsection (2) of this section by commercial fishing gear, including but not limited to regu-  
40 lations as to season, gear and area.

41 (2) Any rainbow trout, *Oncorhynchus mykiss*, including steelhead trout taken as an incidental  
42 catch, by any person fishing commercially shall be returned immediately to the water and shall not  
43 be bought or sold within the state.

44 (3) Nothing in this section is intended to affect Indian fishing rights as granted by federal  
45 treaties.

1        **SECTION 351.** ORS 509.040 is amended to read:

2        509.040. (1) Any person who takes any immature salmon of any variety less than 20 inches in  
3 length, or any mature salmon of any variety less than 15 inches in length, by any means other than  
4 angling, shall immediately return such salmon alive to the water.

5        (2) It is unlawful to:

6        (a) Take, buy, sell or possess immature salmon less than 20 inches or mature salmon less than  
7 15 inches in length, taken in any waters of this state, at any time or in any manner except by an-  
8 gling.

9        (b) Take, molest, kill or injure, in any manner at any time, or expose for sale or have in pos-  
10 session, except for the purpose of propagation when authorized by law, any spawning salmon.

11        (3) Notwithstanding subsections (1) and (2) of this section it is lawful to take precocious salmon  
12 commonly called jack salmon less than 15 inches in length from the waters of this state, except the  
13 Pacific Ocean and to buy, sell or possess such salmon.

14        (4) To further protect immature salmon the [*State Fish and Wildlife Commission*] **Oregon Na-**  
15 **tural Resources Commission** may establish by rule a minimum size for any species of salmon  
16 which is greater than 20 inches.

17        **SECTION 352.** ORS 509.075 is amended to read:

18        509.075. If the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
19 or its authorized representatives finds that food fish about to be processed, packed, canned, pre-  
20 served in ice or sold in the open market are unfit for human consumption, it or they shall notify the  
21 packer or possessor of such fish of the fact. If, in spite of any warning given to such packer or  
22 possessor, such fish are packed, demand shall be made upon the packer to keep such fish separate  
23 and apart from the balance of the output or pack of the packer, and a full report shall be made of  
24 the matter to both the state and the federal health authorities.

25        **SECTION 353.** ORS 509.110 is amended to read:

26        509.110. (1) All transportation companies, common carriers or other persons or agencies trans-  
27 porting food fish, fresh, frozen, salted, smoked, kippered or preserved in ice, shall require of the  
28 shipper, before accepting such shipments, a signed statement in writing showing:

29        (a) The name of the consignor or shipper.

30        (b) The name of the consignee.

31        (c) The net weight in pounds of each species of fish in the shipment, in the whole or round, or  
32 dressed.

33        (d) The date of the shipment.

34        (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may re-  
35 quire such statement to be forwarded to its office.

36        (3) The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
37 **Resources** or the authorized representative of the director may at any time examine the records  
38 of any such transportation companies, common carriers or other persons or agencies, for the purpose  
39 of enforcing this section.

40        **SECTION 354.** ORS 509.115 is amended to read:

41        509.115. It is unlawful, without written authority from the [*State Fish and Wildlife Commission*]  
42 **Oregon Natural Resources Commission**, to place in any of the waters of this state any species  
43 or variety of fish whatsoever which are inimical to or destructive of food fish.

44        **SECTION 355.** ORS 509.120 is amended to read:

45        509.120. It is unlawful to use or permit to be used in any of the waters of this state any elec-



1 trical device, appliance or current which in any manner has a tendency to retard, scare, frighten  
 2 or obstruct any food fish in their migrations or movements in such waters without first having ob-  
 3 tained the consent of and a permit from the [*State Fish and Wildlife Director*] **Director of the**  
 4 **Oregon Department of Natural Resources.**

5 **SECTION 356.** ORS 509.140 is amended to read:

6 509.140. (1) Whenever in the course of removing any obstruction in any waters of this state, or  
 7 in constructing any foundations for dams, bridges or other structures, or in carrying on any trade  
 8 or business, any person, municipal corporation, political subdivision or governmental agency desires  
 9 to use explosives or any substances deleterious to fish, such person, municipal corporation, political  
 10 subdivision or governmental agency shall make application to the [*State Fish and Wildlife Commis-*  
 11 *sion*] **Oregon Natural Resources Commission** for a permit to use the explosives or substances in  
 12 such waters.

13 (2) If the commission finds it necessary that the explosives or substances be used, it may make  
 14 an order granting such person, municipal corporation, political subdivision or governmental agency  
 15 the right to use the explosives or substances and shall:

16 (a) Designate the places and period within which the explosives or substances may be used; and

17 (b) Prescribe such precautions as will save fish from injury.

18 (3) It is unlawful to disregard such order or fail to obtain such order or permit before using  
 19 explosives or substances deleterious to fish.

20 **SECTION 357.** ORS 509.150 is amended to read:

21 509.150. Nothing in ORS 509.125 to 509.155 prevents the [*State Fish and Wildlife Commission*]  
 22 **Oregon Natural Resources Commission** from using any explosives or substances deleterious to  
 23 fish for the purpose of destroying German carp or any other predatory fish inimical to food fish, or  
 24 from carrying out any of the commercial fishing laws.

25 **SECTION 358.** ORS 509.216 is amended to read:

26 509.216. (1) Except as provided in subsection (2) of this section, it is unlawful to take food fish  
 27 by means of fixed fishing gear or seines in any of the waters of this state.

28 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** by rule  
 29 may permit fixed fishing gear or seines for the taking of certain species of food fish other than  
 30 salmon or steelhead from the waters of this state. In enacting any such rule the commission shall  
 31 give due consideration to [*insuring*] **ensuring** that the use of such fishing gear will not restrict the  
 32 free migration or impair the ultimate supply of salmon or steelhead. Any salmon or steelhead taken  
 33 as an incidental catch in operation of such gear shall immediately, with care and the least possible  
 34 injury to the salmon or steelhead, be released and transferred to the water without violence.

35 **SECTION 359.** ORS 509.230 is amended to read:

36 509.230. (1) Subject to the conditions provided in this section, ORS 509.216 and ORS chapter 513,  
 37 it is unlawful to have in possession any food fish taken in the waters of the Pacific Ocean outside  
 38 the territorial jurisdiction of this state by means of any fishing gear except as provided by law or  
 39 rule of the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**, for:

40 (a) The purpose of commercially packing, canning or preserving the fish.

41 (b) The manufacture of fish meal, fish oil or other fish products or by-products.

42 (c) Sale as fresh fish for general consumption.

43 (d) Bait.

44 (2) It is also unlawful to take any salmon for commercial purposes in any of the waters of the  
 45 Pacific Ocean within the jurisdiction of this state or over which this state has concurrent jurisdic-

tion by means of any fishing gear other than by “troll.”

**SECTION 360.** ORS 509.240 is amended to read:

509.240. It is lawful to operate or use a net consisting of a single nylon or cotton web of a mesh not less than 14 inches, taut measure, hung or attached to not to exceed two lead lines combined and used as a single line and a single cork line, in any of the waters of this state, during any season or period closed to commercial fishing by law or by rule of the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**, for the purpose of clearing away or removing snags or similar obstructions from gillnet drifts and other suitable or desirable fishing areas.

**SECTION 361.** ORS 509.245 is amended to read:

509.245. Any person desiring to operate a snagging net as provided in ORS 509.240 shall, before operating or attempting to so operate such net, obtain from the [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural Resources** a snagging permit by forwarding a written request to the office of the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** specifically providing:

(1) The particular gillnet drift, fishing ground or other area to be cleared;

(2) The waters in which located;

(3) The mesh size of the snagging net to be used; and

(4) The dates on which or within which the proposed snagging operations will be carried on. In specifying any such dates, no one notice is valid for a period of more than 30 days from the date thereof.

**SECTION 362.** ORS 509.580 is amended to read:

509.580. As used in ORS 509.580 to 509.590, 509.600 to 509.645 and 509.910:

(1) “Artificial obstruction” means any dam, diversion, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

(2) “Construction” means:

(a) Original construction;

(b) Major replacement;

(c) Structural modifications that increase storage or diversion capacity; or

(d) For purposes of culverts, installation or replacement of a roadbed or culvert.

(3) “Emergency” means unforeseen circumstances materially related to or affected by an artificial obstruction that, because of adverse impacts to a population of native migratory fish, requires immediate action. The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural Resources** may further define the term “emergency” by rule.

(4) “Fundamental change in permit status” means a change in regulatory approval for the operation of an artificial obstruction where the regulatory agency has discretion to impose additional conditions on the applicant, including but not limited to licensing, relicensing, reauthorization or the granting of new water rights, but not including water right transfers or routine maintenance permits.

(5) “In-proximity” means within the same watershed or water basin and having the highest likelihood of benefiting the native migratory fish populations directly affected by an artificial obstruction.

(6) “Native migratory fish” means those native fish that migrate for their life cycle needs and that are listed in the rules of the [*State Fish and Wildlife Director*] **Oregon Department of Natural Resources**.

(7) “Net benefit” means an increase in the overall, in-proximity habitat quality or quantity that

1 is biologically likely to lead to an increased number of native migratory fish after a development  
2 action and any subsequent mitigation measures have been completed.

3 (8) "Oregon Plan" means the guidance statement and framework described in ORS 541.405.

4 **SECTION 363.** ORS 509.585 is amended to read:

5 509.585. (1) It is the policy of the State of Oregon to provide for upstream and downstream  
6 passage for native migratory fish and the Legislative Assembly finds that cooperation and collab-  
7 oration between public and private entities is necessary to accomplish the policy goal of providing  
8 passage for native migratory fish and to achieve the enhancement and restoration of Oregon's native  
9 salmonid populations, as envisioned by the Oregon Plan. Therefore, except as provided in ORS  
10 chapter 509, fish passage is required in all waters of this state in which native migratory fish are  
11 currently or have historically been present.

12 (2) Except as otherwise provided by this section or ORS 509.645, a person owning or operating  
13 an artificial obstruction may not construct or maintain any artificial obstruction across any waters  
14 of this state that are inhabited, or historically inhabited, by native migratory fish without providing  
15 passage for native migratory fish.

16 (3) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
17 shall complete and maintain a statewide inventory of artificial obstructions in order to prioritize  
18 enforcement actions based on the needs of native migratory fish. This prioritization shall include,  
19 but need not be limited to, the degree of impact of the artificial obstruction on the native migratory  
20 fish, the biological status of the native migratory fish stocks in question and any other factor es-  
21 tablished by the department by rule. The department shall establish a list of priority projects for  
22 enforcement purposes. Priority artificial obstructions are subject to the [*State Fish and Wildlife*  
23 *Commission's*] authority **of the Oregon Natural Resources Commission** as provided in ORS  
24 509.625. Unless requested by persons owning or operating an artificial obstruction, the department  
25 shall primarily direct its enforcement authority toward priority projects, emergencies and projects  
26 described in subsection (4) of this section. The priority project list shall be subject to periodic re-  
27 view and amendment by the department and to formal review and amendment by the commission  
28 no less frequently than once every five years.

29 (4) A person owning or operating an artificial obstruction shall, prior to construction, funda-  
30 mental change in permit status or abandonment of the artificial obstruction in any waters of this  
31 state, obtain a determination from the department as to whether native migratory fish are or his-  
32 torically have been present in the waters. If the department determines that native migratory fish  
33 are or historically have been present in the waters, the person owning or operating the artificial  
34 obstruction shall either submit a proposal for fish passage to the department or apply for a waiver  
35 pursuant to subsection (7) of this section. Approval of the proposed fish passage facility or of the  
36 alternatives to fish passage must be obtained from the department prior to construction, permit  
37 modification or abandonment of the artificial obstruction.

38 (5) Consistent with the purpose and goals of the Oregon Plan, the department shall seek coop-  
39 erative partnerships to remedy fish passage problems and to ensure that problems are corrected as  
40 soon as possible. The department and the person owning or operating the artificial obstruction are  
41 encouraged to negotiate the terms and conditions of fish passage or alternatives to fish passage,  
42 including appropriate cost sharing. The negotiations may include, but are not limited to, consider-  
43 ation of equitable factors.

44 (6) The department shall submit a proposed determination of the required fish passage or alter-  
45 natives to fish passage to the commission for approval. The determination may be the result of the

1 negotiations described in subsection (5) of this section or, if no agreement was reached in the ne-  
2 gotiations, a determination proposed by the department. If a protest is not filed within the time pe-  
3 riod specified in ORS 509.645, the proposed determination shall become a final order.

4 (7)(a) The commission shall waive the requirement for fish passage if the commission determines  
5 that the alternatives to fish passage proposed by the person owning or operating the artificial ob-  
6 struction provide a net benefit to native migratory fish.

7 (b) Net benefit to native migratory fish is determined under this subsection by comparing the  
8 benefit to native migratory fish that would occur if the artificial obstruction had fish passage to the  
9 benefit to native migratory fish that would occur using the proposed alternatives to fish passage.  
10 Alternatives to fish passage must result in a benefit to fish greater than that provided by the arti-  
11 ficial obstruction with fish passage. The net benefit to fish shall be determined based upon condi-  
12 tions that exist at the time of comparison.

13 (c) The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
14 **Resources** shall develop rules establishing general criteria for determining the adequacy of fish  
15 passage and of alternatives to fish passage. The general criteria shall include, but not be limited to:

16 (A) The geographic scope in which alternatives must be conducted;

17 (B) The type and quality of habitat;

18 (C) The species affected;

19 (D) The status of the native migratory fish stocks;

20 (E) Standards for monitoring, evaluating and adaptive management;

21 (F) The feasibility of fish passage and alternatives to fish passage;

22 (G) Quantified baseline conditions;

23 (H) Historic conditions;

24 (I) Existing native migratory fish management plans;

25 (J) Financial or other incentives and the application of incentives;

26 (K) Data collection and evaluation; and

27 (L) Consistency with the purpose and goals of the Oregon Plan.

28 (d) To the extent feasible, the department shall coordinate its requirements for adequate fish  
29 passage or alternatives to fish passage with any federal requirements.

30 (8) A person owning or operating an artificial obstruction may at any time petition the com-  
31 mission to waive the requirement for fish passage in exchange for agreed-upon alternatives to fish  
32 passage that provide a net benefit to native migratory fish as determined in subsection (7) of this  
33 section.

34 (9)(a) Artificial obstructions without fish passage are exempt from the requirement to provide  
35 fish passage if the commission:

36 (A) Finds that a lack of fish passage has been effectively mitigated;

37 (B) Has granted a legal waiver for the artificial obstruction; or

38 (C) Finds there is no appreciable benefit to providing fish passage.

39 (b) The commission shall review, at least once every seven years, the artificial obstructions ex-  
40 empted under this subsection that do not have an exemption expiration date to determine whether  
41 the exemption should be renewed. The commission may revoke or amend an exemption if it finds  
42 that circumstances have changed such that the relevant requirements for the exemption no longer  
43 apply. The person owning or operating the artificial obstruction may protest the decision by the  
44 commission pursuant to ORS 509.645.

45 (10) If the fundamental change in permit status is an expiration of a license of a federally li-

1 censed hydroelectric project, the commission's determination shall be submitted to the Federal En-  
 2 ergy Regulatory Commission as required by ORS 543A.060 to 543A.410.

3 (11) To the extent that the requirements of this section are preempted by the Federal Power  
 4 Act or by the laws governing hydroelectric projects located in waters governed jointly by Oregon  
 5 and another state, federally licensed hydroelectric projects are exempt from the requirements of this  
 6 section.

7 (12) A person subject to a decision of the **Oregon Natural Resources** Commission under this  
 8 section shall have the right to a contested case hearing according to the applicable provisions of  
 9 ORS chapter 183.

10 **SECTION 364.** ORS 509.590 is amended to read:

11 509.590. (1) The [*State Fish and Wildlife Director*] **Director of the Oregon Department of**  
 12 **Natural Resources** shall establish a Fish Passage Task Force to advise the director and the [*State*  
 13 *Department of Fish and Wildlife*] **Oregon Department of Natural Resources** on matters related to  
 14 fish passage in Oregon, including but not limited to funding, cost sharing and prioritization of ef-  
 15 forts. The director shall determine the members and the specific duties of the task force by rule.

16 (2) The department shall provide staff necessary for the performance of the functions of the task  
 17 force.

18 (3) A member of the task force may not receive compensation for services as a member of the  
 19 task force. In accordance with ORS 292.495, a member of the task force may receive reimbursement  
 20 for actual and necessary travel or other expenses incurred in the performance of official duties.

21 (4) The task force shall report semiannually to the appropriate legislative committee with re-  
 22 sponsibility for salmon restoration or species recovery, to advise the committee on matters related  
 23 to fish passage.

24 **SECTION 365.** ORS 509.595 is amended to read:

25 509.595. The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
 26 **Resources** shall report to the Governor, the Speaker of the House of Representatives, the President  
 27 of the Senate and the appropriate legislative committee with responsibility for salmon restoration  
 28 or species recovery:

29 (1) Prior to the adoption of rules relating to fish passage;

30 (2) Prior to the establishment of the general criteria for determining the adequacy of fish pas-  
 31 sage and of alternatives to fish passage required to be established under ORS 509.585 (7)(c); and

32 (3) Semiannually on the progress that the director has made in implementing ORS 509.580 to  
 33 509.590.

34 **SECTION 366.** ORS 509.600 is amended to read:

35 509.600. (1) A person may not willfully or knowingly destroy, injure or take fish within 600 feet  
 36 of any fishway, except as permitted by subsection (2) of this section. Actions that violate this section  
 37 include, but are not limited to:

38 (a) Hindering, annoying or disturbing fish entering, passing through, resting in or leaving such  
 39 fishway, or obstructing the passage of fish through the fishway at any time or in any manner.

40 (b) Placing anything in the fishway.

41 (c) Using any fishing gear within 600 feet of the fishway.

42 (d) Taking fish at any time anywhere within 600 feet of the fishway.

43 (e) Doing any injury to the fishway.

44 (2) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may by  
 45 rule or by issuance of permits authorize the taking of fish within 600 feet of any fishway.

1        **SECTION 367.** ORS 509.610 is amended to read:

2        509.610. (1) Subject to ORS 509.645, when the [*State Department of Fish and Wildlife*] **Oregon**  
3 **Department of Natural Resources** requires fish passage to be provided pursuant to ORS 509.585,  
4 the person owning or operating an artificial obstruction shall keep the fish passage in such repair  
5 as to provide adequate fish passage of native migratory fish at all times.

6        (2) Each day of neglect or refusal to comply with subsection (1) of this section, after notification  
7 in writing by the department, constitutes a separate offense.

8        (3) A person owning or operating an artificial obstruction is responsible for maintaining, moni-  
9 toring and evaluating the effectiveness of fish passage or alternatives to fish passage.

10       **SECTION 368.** ORS 509.620 is amended to read:

11       509.620. If, in the judgment of the [*State Department of Fish and Wildlife*] **Oregon Department**  
12 **of Natural Resources**, fish passage is not functioning as intended or is inadequate, as constructed  
13 under ORS 509.585, the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
14 **mission** may condemn the fish passage and order new fish passage installed in accordance with  
15 plans and specifications determined by the department.

16       **SECTION 369.** ORS 509.625 is amended to read:

17       509.625. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
18 **sources** may determine or ascertain by inspection of any artificial obstruction whether it would be  
19 advisable to construct fish passage, or order the construction pursuant to ORS 509.585 of fish pas-  
20 sage, at the artificial obstruction. Without affecting other remedies to enforce the requirement to  
21 install fish passage, if the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
22 **mission** determines that an emergency exists, the commission may order the construction, pursuant  
23 to ORS 509.585, of fish passage in the waters of this state inhabited by native migratory fish as  
24 deemed adequate to provide passage for native migratory fish.

25       (2) Where fish passage has previously been constructed with or without the approval of the  
26 commission and has proved useless or inadequate for the purposes for which it is intended, the  
27 commission may improve or rebuild such fish passage. However, such construction or reconstruction  
28 shall not interfere with the prime purpose of the artificial obstruction. This subsection may not be  
29 construed to require the improvement or rebuilding of fish passage by the commission.

30       (3)(a) The commission may order a person owning or operating an artificial obstruction on the  
31 priority list created pursuant to ORS 509.585 who has been issued a water right, owners of lawfully  
32 installed culverts or owners of other lawfully installed obstructions to install fish passage or to  
33 provide alternatives to fish passage if the commission can arrange for nonowner or nonoperator  
34 funding of at least 60 percent of the cost.

35       (b) Notwithstanding paragraph (a) of this subsection, the commission may order installation of  
36 fish passage or alternatives to fish passage without regard to funding sources:

37       (A) If the person owning or operating the artificial obstruction is already subject to an obli-  
38 gation to install fish passage or to provide alternatives to fish passage under ORS 509.585;

39       (B) If the commission declares an emergency under this section; or

40       (C) If the person owning or operating the artificial obstruction has not been issued a water right  
41 or if the artificial obstruction has been otherwise unlawfully installed.

42       (4) If a person who owns or operates an artificial obstruction and who is required to provide fish  
43 passage under ORS 509.585 fails to provide fish passage in the manner and time required by the  
44 [*State Department of Fish and Wildlife*] **department**, the commission may remove, replace or repair  
45 the artificial obstruction or any parts of the obstruction at the expense of the owner or operator.

1        **SECTION 370.** ORS 509.630 is amended to read:

2        509.630. The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
 3 **sources** may determine or ascertain by inspection of any natural obstruction whether it would be  
 4 advisable to construct fish passage over or around such natural obstruction. If it is deemed advis-  
 5 able the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may con-  
 6 struct fish passage that provides adequate passage for native migratory fish in the waters of this  
 7 state inhabited by native migratory fish.

8        **SECTION 371.** ORS 509.635 is amended to read:

9        509.635. (1) The fishways over the falls in the Willamette River, near Oregon City, are under the  
 10 care and control of the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
 11 **mission**, which may make any extensions, additions, alterations or repairs to the same that become  
 12 necessary.

13        (2) The commission, or its duly authorized representatives, may remove any artificial ob-  
 14 structions placed in the Willamette River above the falls which would prevent the free passage of  
 15 fish up the river.

16        **SECTION 372.** ORS 509.645 is amended to read:

17        509.645. (1) A person owning or operating an artificial obstruction may request alternative dis-  
 18 pute resolution at any point in the process of determining fish passage requirements.

19        (2) A person owning or operating an artificial obstruction may file a protest with the [*State Fish*  
 20 *and Wildlife Commission*] **Oregon Natural Resources Commission** within 30 days from the receipt  
 21 of the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** deter-  
 22 minations under ORS 509.585. The person shall identify the grounds for protesting the department's  
 23 determinations.

24        (3) The commission may, after sufficient opportunity for public review and comment, approve,  
 25 deny or modify the proposed determinations.

26        **SECTION 373.** ORS 509.910 is amended to read:

27        509.910. (1) The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
 28 may maintain an action for an injunction to enjoin and restrain any person, municipal corporation,  
 29 political subdivision or governmental agency of this state from violating any of the provisions of  
 30 ORS 509.130, 509.140, 509.505, 509.585, 509.610 and 509.625.

31        (2) Any action authorized by this section shall be tried in the circuit court of the county in  
 32 which the violation occurs or in Marion or Multnomah County.

33        (3) If the defendant is a corporation with its principal office and place of business in a county  
 34 other than in which the waters flow or are situated, such action shall be deemed an action of local  
 35 nature and service of summons made on a corporation in any county where the corporation has its  
 36 principal office and place of business. If it is a foreign corporation, service may be made on the  
 37 statutory agent but if there is no such statutory agent then upon the Secretary of State as in other  
 38 cases provided by law.

39        **SECTION 374.** ORS 511.070 is amended to read:

40        511.070. It shall be lawful for the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
 41 **sources Commission** by rule to establish a season for commercial fishing for chum salmon and the  
 42 incidental take of salmon in Tillamook Bay. Such season may not exceed 30 calendar days total  
 43 length each year and may only be between October 25 and December 5. Fishing areas under this  
 44 section shall be limited to:

45        (1) Tillamook Bay except that portion of Hathaway Slough above a line extended due south from

1 a point on the northerly bank or shoreline of the slough 1,000 feet downstream from the Southern  
2 Pacific railroad trestle.

3 (2) The Miami River below a line drawn across the Miami River due north and south through  
4 a point 1,000 feet west from the northwest corner of the Southern Pacific railroad bridge crossing  
5 the Miami River.

6 (3) The Kilchis River below a point at the intersection of the Kilchis River by the section line  
7 between sections 11 and 12, township 1 south, range 10 west of the Willamette Meridian.

8 (4) The Wilson River below a point 500 feet below the bridge crossing the Wilson River in sec-  
9 tion 13, township 1 south, range 10 west of the Willamette Meridian.

10 (5) The Tillamook River below a point 100 feet below the mouth of Frasier Slough.

11 **SECTION 375.** ORS 513.020 is amended to read:

12 513.020. In order that all fish or parts thereof suitable for human consumption may be conserved  
13 and used for that purpose, and to provide sanitary methods and prevent waste in the use, sale,  
14 packing, preserving, manufacturing, processing or other handling of fish or fish products, other than  
15 salmon, the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission** may  
16 control and regulate fishing boats, barges, lighters or tenders, receptacles or vehicles containing fish  
17 or fishing gear, fish reduction plants or plants where fish products are manufactured, in so far as  
18 may be necessary to insure the taking, catching, delivery of fish, canning, packing, preserving, re-  
19 duction of and manufacture of fish products or by-products in a wholesome and sanitary manner, and  
20 to prevent deterioration or waste of any fish.

21 **SECTION 376.** ORS 513.030 is amended to read:

22 513.030. Any member, assistant or employee of the [*State Fish and Wildlife Commission*] **Oregon**  
23 **Natural Resources Commission**, or duly authorized officer of the state, may enter any canning,  
24 packing, preserving or reduction plant or place of business where fish or other fish products are  
25 packed, preserved, manufactured, bought or sold, or board and inspect any fishing boat, barge,  
26 lighter or tender, receptacle or vehicle, containing fish, for the purpose of examining any fish or fish  
27 products and to ascertain the amount of fish received, or kind and amount of fish products packed  
28 or manufactured and the number and size of containers or cans for fish products purchased, re-  
29 ceived, used or on hand.

30 **SECTION 377.** ORS 513.040 is amended to read:

31 513.040. The [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
32 may:

33 (1) Control, regulate and establish, by order, the proportion or percentage of sardines, pilchards,  
34 herring or other species of fish other than salmon, to be used for reduction purposes or the manu-  
35 facture of fish flour, fish meal, fish scrap, fertilizer or oil, and may further, through such order,  
36 specifically name or prescribe the particular species of fish which may be used for reduction pur-  
37 poses, food for animals or other purposes.

38 (2) Exercise full jurisdiction and control over the processing, packing or preserving of sardines,  
39 and prescribe and specify the process to be used in the canning of such fishes in order to assure a  
40 quality product and prevent the use of certain substitute oils resulting in inferior grades.

41 **SECTION 378.** ORS 538.150 is amended to read:

42 538.150. The waters of Hackett Creek, a tributary of the Sandy River located in Clackamas  
43 County, and of the tributaries of Hackett Creek, are withdrawn from appropriation or condemnation  
44 and shall not be diverted or interrupted for any purpose whatsoever, except for protecting fish life  
45 therein by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**.



1        **SECTION 379.** ORS 538.170 is amended to read:

2        538.170. (1) Except as provided in subsection (2) of this section, the waters of Johnson Creek, a  
3 tributary of the Willamette River and located in Multnomah and Clackamas Counties and all  
4 tributaries thereof, except flows of Crystal Springs Creek and its tributaries in excess of 10 cubic  
5 feet per second measured at the mouth of Crystal Springs Creek:

6        (a) Are withdrawn from appropriation or condemnation; and

7        (b) Shall not be diverted or interrupted for any purpose whatsoever, except for the purpose of  
8 protecting fish life therein by the [*State Department of Fish and Wildlife*] **Oregon Department of**  
9 **Natural Resources** or for the purpose of developing hydroelectric power not to exceed 25 theoret-  
10 ical horsepower if such hydroelectric development does not diminish perennial streamflow required  
11 for the maintenance of fish life.

12        (2) The tributaries withdrawn from appropriation and condemnation, but not the main channel,  
13 of Johnson Creek are open to appropriation and storage from December 1 to June 1 of each year.  
14 Water stored during this period may be used at any time.

15        **SECTION 380.** ORS 538.210 is amended to read:

16        538.210. ORS 538.200 shall not prevent the condemnation for public park purposes of any lands  
17 through which any of the streams flow; nor affect vested rights or the rights of riparian proprietors  
18 of such lands in or to the waters of the creeks or streams; nor prevent the condemnation of any  
19 lands through which any of the streams flow, for the purpose of establishing, maintaining and op-  
20 erating thereon salmon fish culture work, nor prevent the [*State Fish and Wildlife Commission*]  
21 **Oregon Natural Resources Commission** from appropriating any waters for fish culture work; nor  
22 prevent the appropriation, for irrigation purposes, of waters between the Union Pacific Railroad  
23 tracks and the Columbia River that flow from any of the streams other than Herman Creek; pro-  
24 vided, that no waters shall be taken from above the falls in the streams mentioned in ORS 538.200.

25        **SECTION 381.** ORS 538.220 is amended to read:

26        538.220. (1) The waters described as follows are withdrawn from appropriation or condemnation,  
27 and shall not be diverted or interrupted for any purpose whatsoever, except for domestic purposes  
28 and protecting fish life therein by the [*State Fish and Wildlife Commission*] **Oregon Natural Re-**  
29 **sources Commission:**

30        (a) The waters of Mill Creek, in Jackson County, beginning in section 22, township 31 south,  
31 range 4 east, Willamette Meridian, running thence southwesterly through township 31 south, range  
32 3 east, Willamette Meridian, and township 32 south, range 3 east, Willamette Meridian, to a junction  
33 with the Rogue River in section 32, township 32 south, range 3 east, Willamette Meridian, together  
34 with the tributaries of said Mill Creek; and

35        (b) Barr Creek, in Jackson County, beginning in section 1, township 32 south, range 3 east,  
36 Willamette Meridian, and in section 6 and section 7, township 32 south, range 4 east, Willamette  
37 Meridian, running thence in a general southwesterly direction through township 32 south, range 3  
38 east, Willamette Meridian, to a junction with the Rogue River in section 32, township 3 east,  
39 Willamette Meridian, together with the tributaries of said Barr Creek.

40        (2) Subsection (1) of this section shall not prevent the appropriation of the waters of Mill Creek,  
41 in Jackson County, for the development of hydroelectric power not to exceed one megawatt if:

42        (a) The hydroelectric project is located on Mill Creek at a point at least two miles above the  
43 confluence of Mill Creek and the Rogue River;

44        (b) All water appropriated from the stream is returned to the stream at a point at least one-half  
45 mile above the confluence of Mill Creek and the Rogue River; and

1 (c) The facility will be constructed and operated in compliance with recommendations by the  
2 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** concerning fish  
3 conservation, including streamflow requirements based upon biological criteria.

4 **SECTION 382.** ORS 538.251 is amended to read:

5 538.251. Except as otherwise provided in this section, the following waters, all being tributaries  
6 of the Columbia River, are withdrawn from appropriation and shall not be diverted or interrupted  
7 for any purpose, except for protecting fish life therein by the [*State Fish and Wildlife Commission*]  
8 **Oregon Natural Resources Commission:**

9 (1) Clatskanie River and its tributaries, except Fall Creek in Columbia County, for purposes of  
10 hydroelectric generation if the facility is constructed and operated in compliance with recommen-  
11 dations by the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
12 concerning fish conservation, including streamflow requirements based upon biological criteria.

13 (2) Klaskanine River and its tributaries in Clatsop County except an unnamed tributary of the  
14 South Fork Klaskanine River in Clatsop County, on which there is located an existing fish culture  
15 project, for purposes of hydroelectric generation if the facility is less than 100 horsepower and the  
16 electricity generated is for use in conjunction with the existing fish culture project.

17 (3) Lewis and Clark River in Clatsop County.

18 (4) Sandy River and its tributaries in Multnomah and Clackamas Counties, except:

19 (a) Beaver Creek and its tributaries.

20 (b) Buck Creek and its tributaries.

21 (c) The tributary of the Sandy River in Multnomah County which empties into the Sandy River  
22 near the north quarter corner, section 10, township 1 south, range 4 east, Willamette Meridian, and  
23 its tributaries, and is locally known as Big Creek.

24 (d) All tributaries, but not the main channel, of the Sandy River are open for appropriation and  
25 storage from December 1 to June 1 of each year. Water stored during this period may be used at  
26 any time.

27 (e) Trout Creek in Multnomah County and its tributaries.

28 (5) Scappoose Creek in Columbia County.

29 (6) Tillasqua Creek in Clatsop County.

30 **SECTION 383.** ORS 538.430 is amended to read:

31 538.430. (1) Subject to water rights existing on May 29, 1925, the City of Medford, in Jackson  
32 County, is granted the exclusive right to use for municipal purposes all the waters of Big Butte  
33 Creek, a tributary of Rogue River situated in Jackson County, and of the springs at the head which  
34 form the creek, and of its tributaries. The City of Medford, any of its officers, and others on its  
35 behalf may appropriate all the waters for these purposes and an application therefor may be made  
36 for the benefit of the city, either by it in its own name, or by any of its officers or by any other  
37 person on its behalf. No person shall appropriate or be granted a permit to use any of the waters  
38 except as provided in this section, and for the use and benefit of the city. But the City of Medford  
39 may, under this grant, divert such waters from their watershed and convey them to the city and  
40 elsewhere for use by it for municipal purposes, either within or without the city limits. All of such  
41 waters are withdrawn from future appropriation, except for such use and benefit of the City of  
42 Medford; provided however, that the Eagle Point Irrigation District may establish and use an addi-  
43 tional point of diversion below the diversion point in use on April 1, 1953, under its permit number  
44 6396 which authorizes the appropriation of not to exceed 100 cubic feet per second.

45 (2) Subject to rights existing on July 21, 1953, to the use of the waters of Big Butte Creek, and

1 of the springs at the head which form the creek, and of its tributaries, including the rights granted  
 2 in subsection (1) of this section to the City of Medford to the use of such waters and the right of  
 3 future appropriation of such waters, the Eagle Point Irrigation District is granted the right to ap-  
 4 propriate and use up to and including 100 cubic feet per second of the waters of Big Butte Creek,  
 5 using the diversion site of the Eagle Point Irrigation District existing on April 1, 1953, for the pur-  
 6 pose of generating electric energy; provided, however, that not less than 10 cubic feet per second  
 7 of said waters shall be permitted to pass said diversion point and remain in the channel of said  
 8 stream at all times other than times when said waters are diverted for irrigation purposes. The  
 9 Eagle Point Irrigation District may:

10 (a) Enter into such contracts and perform such other acts as it deems necessary or desirable for  
 11 the generation of electric energy and the construction and maintenance of facilities for the gener-  
 12 ation of electric energy.

13 (b) Enter into such arrangements as it deems proper for the use, sale or distribution of the  
 14 electric energy which is generated.

15 (3) In performing any of the acts under subsection (2) of this section, the Eagle Point Irrigation  
 16 District shall not be deemed a public utility as defined in ORS 757.005.

17 (4) Subsections (1) and (2) of this section shall not prevent the appropriation of the waters of  
 18 Clark Creek, in Jackson County, for the development of hydroelectric power not to exceed two  
 19 megawatts if the facility will be constructed and operated in compliance with recommendations by  
 20 the [State Department of Fish and Wildlife] **Oregon Department of Natural Resources** concerning  
 21 fish conservation, including streamflow requirements based upon biological criteria.

22 **SECTION 384.** ORS 541.405 is amended to read:

23 541.405. (1) As used in this section when referring to salmonid recovery:

24 (a) "Listed unit" means one population or a group of populations of a species, such as an  
 25 evolutionarily significant unit, that has been listed as threatened or endangered under the federal  
 26 Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

27 (b) "Native fish" means a fish indigenous to Oregon and not introduced. Naturally produced fish  
 28 and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not intro-  
 29 duced.

30 (c) "Naturally produced" means a fish that reproduces and completes its full life cycle in its  
 31 natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

32 (d) "Population" means a group of fish that:

33 (A) Originates and reproduces in a particular area at a particular time;

34 (B) Does not interbreed to any substantial degree with any other group reproducing in a dif-  
 35 ferent area or in the same area at a different time; and

36 (C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

37 (e) "Recovery" means that a proportion of the constituent populations of naturally produced  
 38 native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histo-  
 39 ries and distribution such that the listed unit as a whole is likely to be self-sustaining into the  
 40 foreseeable future.

41 (f) "Self-sustaining" means having a sufficient proportion and distribution of constituent popu-  
 42 lations:

43 (A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental condi-  
 44 tions that are detrimental to a population; and

45 (B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate

1 to maintain associated ecological, cultural and economic benefits.

2 (2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the  
3 creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission  
4 and goals:

5 (a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the  
6 fish and wildlife populations of those watersheds to productive and sustainable levels in a manner  
7 that provides substantial ecological, cultural and economic benefits.

8 (b) The goals of the Oregon Plan that guide the [citizens] **residents** of Oregon in achieving the  
9 mission of the Oregon Plan are the:

10 (A) Establishment and maintenance of an infrastructure that provides long-term continuity in  
11 leadership, direction and oversight of watershed restoration and species recovery.

12 (B) Continued opportunity for a wide range of natural resource uses that are consistent with  
13 watershed restoration and species recovery.

14 (C) Implementation of existing laws and environmental regulations to achieve the mission before  
15 enacting new laws and environmental regulations.

16 (D) Development and maintenance of funding for programs to protect and restore watersheds.

17 (E) Development of expectations for the sustainability of interrelated natural resources that  
18 accurately reflect a scientific understanding of the physical and biological constraints of the  
19 ecosystem.

20 (F) Enhancement of habitat available to support healthy populations of fish and wildlife  
21 throughout the state.

22 (G) Production of populations of threatened or endangered species to achieve levels of natural  
23 production consistent with overall restoration goals.

24 (H) Establishment of a science-based system that supports evaluation of the Oregon Plan and  
25 provides a basis for making appropriate future changes to management programs.

26 (I) Coordination of activities and programs among federal, state and local governments and other  
27 entities.

28 (J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan  
29 whenever possible.

30 (3) The Oregon Plan is a comprehensive program for the protection and recovery of species and  
31 for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory  
32 and other actions of state and federal agencies and local governments with voluntary watershed  
33 restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

34 (a) Programs and policies found in the following statutes:

35 (A) ORS 196.600 to 196.905;

36 (B) ORS chapter 197;

37 (C) ORS chapter 274;

38 (D) ORS chapter 366;

39 (E) ORS chapter 390;

40 (F) ORS chapters 465, 466, 468 and 468B;

41 (G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

42 (H) ORS chapter 477;

43 (I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

44 (J) ORS 517.702 to 517.989;

45 (K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

- 1 (L) ORS chapter 530;  
2 (M) ORS chapters 536 to 543A;  
3 (N) ORS 543A.005 to 543A.415; and  
4 (O) ORS 568.210 to 568.808 and 568.900 to 568.933;  
5 (b) Commitments of state agencies in the form of measures;  
6 (c) Actions of local governments and federal agencies taken in coordination with the state and  
7 consistent with the purposes of the Oregon Plan;  
8 (d) Voluntary activities undertaken by watershed councils, soil and water conservation districts,  
9 landowners and other entities and consistent with the purposes of the Oregon Plan;  
10 (e) Scientific review by the Independent Multidisciplinary Science Team, and others, of the ac-  
11 tivities performed under the Oregon Plan;  
12 (f) Programs and activities identified to address a coordinated approach for the recovery of na-  
13 tive salmonid populations within Oregon;  
14 (g) The guidance statement and framework provided by the healthy streams partnership devel-  
15 oped to provide cooperative solutions and voluntary approaches to improving the water quality of  
16 streams and to achieve healthy streams throughout Oregon; and  
17 (h) Programs for the restoration and enhancement of multiple species and of the habitat of those  
18 species.
- 19 (4) The Oregon Plan is subject to modification and alteration to enhance program efforts con-  
20 sistent with appropriate guidance principles developed by the Legislative Assembly.
- 21 (5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid  
22 populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy  
23 economy.
- 24 (6) The Oregon Plan shall:
- 25 (a) Provide for coordination of local, state, federal and tribal agency responsibilities and au-  
26 thorities for native salmonid, watershed and habitat restoration throughout Oregon.
- 27 (b) Rely on watershed councils and soil and water conservation districts, which are directed to  
28 cooperate in the development of local watershed plans that assess watershed conditions and create  
29 watershed action plans and strategies for the implementation of the local watershed action plans.
- 30 (c) Focus state policies and resources on achieving native salmonid recovery and watershed  
31 restoration while sustaining a healthy economy and environment.
- 32 (7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or en-  
33 dangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time  
34 as recovery is achieved. Once recovery has been achieved for any species listed as threatened or  
35 endangered under ORS 496.171 to 496.192, the Governor shall direct the [*State Fish and Wildlife*  
36 *Commission*] **Oregon Natural Resources Commission** to begin rulemaking, as provided in ORS  
37 496.176, to remove the species from the list created pursuant to ORS 496.172. Upon recovery, ade-  
38 quate measures pursuant to the Oregon Plan shall remain in place, as necessary, to help a species  
39 avoid a return to threatened or endangered status.
- 40 (8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain  
41 assurances to the effect that compliance with the Oregon Plan and the programs and policies found  
42 in the statutes listed in subsection (3) of this section and implementation of related state programs  
43 and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Spe-  
44 cifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of  
45 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or

1 shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

2 (b) State agencies responsible for implementing the programs and policies found in the statutes  
3 listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and  
4 with federal officials to provide the information necessary to obtain the exemptions, agreement or  
5 permit specified in paragraph (a) of this subsection.

6 **SECTION 385.** ORS 541.423 is amended to read:

7 541.423. (1) As used in this section, "stewardship agreement" means an agreement voluntarily  
8 entered into and signed by a landowner, or representative of the landowner, and the State Depart-  
9 ment of Agriculture or the [*State Board of Forestry*] **Oregon Natural Resources Commission** that  
10 sets forth the terms under which the landowner will self-regulate to meet and exceed applicable  
11 regulatory requirements and achieve conservation, restoration and improvement of fish and wildlife  
12 habitat or water quality.

13 (2) The [*State Department of Agriculture and the State Board of Forestry*] **department and the**  
14 **commission** may, individually or jointly, enter into stewardship agreements with landowners.

15 (3) The purposes of a stewardship agreement are to provide:

16 (a) An incentive for landowners to provide for conservation, restoration and improvement of fish  
17 and wildlife habitat or water quality;

18 (b) A mechanism to coordinate, facilitate and memorialize a landowner's compliance with the  
19 requirements of state and federal regulatory schemes; and

20 (c) A mechanism to combine or coordinate multiple incentive programs among agencies and  
21 levels of government to:

22 (A) Improve the delivery of financial and technical assistance to landowners engaged in con-  
23 servation activities;

24 (B) Reduce redundancy among programs;

25 (C) Simplify application procedures;

26 (D) Leverage the investment of federal funds;

27 (E) Make more efficient use of technical assistance funds;

28 (F) Provide greater incentives for landowners;

29 (G) Foster partnerships and improve cooperation with nongovernmental organizations;

30 (H) Provide greater environmental benefits;

31 (I) Tailor and more effectively target conservation programs administered by federal, state and  
32 local governments to the unique conservation needs of, and opportunities presented by, individual  
33 parcels of eligible land; and

34 (J) Give landowners an increased level of regulatory certainty.

35 (4) The [*State Board of Forestry and the State Department of Agriculture, in consultation with the*  
36 *State Department of Fish and Wildlife,*] **department and the commission** shall adopt by rule pro-  
37 cedures and criteria for stewardship agreements. The procedures and criteria shall include, but need  
38 not be limited to:

39 (a) The certification of a land management plan which shall, at a minimum, include:

40 (A) A comprehensive description and inventory of the subject property, its features and uses;  
41 and

42 (B) A prescription for the protection of resources that exceeds land management practices,  
43 standards and activities otherwise required by law and that is designed to achieve conservation,  
44 restoration and improvement of fish and wildlife habitat or water quality.

45 (b) A requirement that each landowner subject to a stewardship agreement demonstrate a clear

1 capability to carry out the provisions of the land management plan and have a past record of good  
2 compliance with applicable laws and regulations regarding land use and management.

3 (5) Each government agency that is a party to a stewardship agreement shall conduct periodic  
4 audits on lands subject to the stewardship agreement to determine whether the land management  
5 plan is being implemented and whether the agreement should be continued, revised or discontinued.

6 (6) Stewardship agreements may provide benefits to landowners that include, but are not limited  
7 to:

8 (a) Expedited permit processing;

9 (b) Regulatory certainty;

10 (c) Priority consideration for cost-share assistance or other financial incentives and technical  
11 assistance; and

12 (d) Government certification that certain land management practices have been implemented.

13 (7) Within a stewardship agreement and on a case-by-case basis, the [*State Department of Agri-*  
14 *culture or the State Board of Forestry*] **department or the commission** may provide a landowner  
15 with an increased level of regulatory certainty regarding state rules. The stewardship agreement  
16 may identify specific voluntary landowner actions that exceed regulatory requirements. In return,  
17 the [*State Department of Agriculture or the State Board of Forestry*] **department or the commission**  
18 may agree to exempt the landowner from future changes to a specific rule.

19 (8) The [*State Department of Agriculture and the State Board of Forestry*] **department and the**  
20 **commission** may, individually or jointly, make a binding determination that activities undertaken  
21 by a particular landowner, or a representative of the landowner, as part of a stewardship agreement  
22 are consistent with the purposes and policies of any relevant Safe Harbor Agreements or Candidate  
23 Conservation Agreements entered into between the State of Oregon and agencies of the United  
24 States Government, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C.  
25 1531 et seq.) and federal regulations.

26 **SECTION 386.** ORS 564.105 is amended to read:

27 564.105. The Director of Agriculture has the responsibility to protect and conserve the native  
28 plants of this state that are threatened species or endangered species. In carrying out that respon-  
29 sibility, the director:

30 (1) Shall conduct investigations of plant species native to this state and determine whether any  
31 such species is a threatened species or an endangered species.

32 (2) By rule, shall establish and publish, and from time to time may revise, a list of plant species  
33 that are threatened species or endangered species.

34 (3) By rule, shall establish programs for the protection and conservation of plant species that  
35 are threatened species or endangered species. As used in this subsection, "conservation" means the  
36 use of methods and procedures necessary to bring a species to the point at which the measures  
37 provided under ORS 564.105 to 564.120 are no longer necessary. The methods and procedures in-  
38 clude, but are not limited to, activities associated with scientific resources management such as re-  
39 search, census, law enforcement, habitat acquisition and maintenance, propagation and  
40 transplantation.

41 (4) By rule, shall establish a system of permits for scientific taking of threatened species and  
42 endangered species under terms and conditions that the director determines will minimize the im-  
43 pact on the species taken.

44 (5) Shall cooperate with the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
45 **Commission** in carrying out the provisions of ORS 496.172.

1 (6) Shall adopt administrative rules to carry out the provisions of ORS 564.105 to 564.120.

2 (7) Shall set priorities for establishing programs under this section after consideration of avail-  
 3 able funds and the immediacy and seriousness of the threat to any listed species.

4 **SECTION 387.** ORS 570.850 is amended to read:

5 570.850. As used in ORS 570.855 to 570.865:

6 (1) “Aquatic invasive species” means any aquatic species of wildlife or any freshwater or marine  
 7 invertebrate, as specified by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
 8 **Commission** by rule, or any aquatic noxious weeds as specified by the State Department of Agri-  
 9 culture by rule.

10 (2) “Recreational or commercial watercraft” means any boat, any equipment used to transport  
 11 a boat and any auxiliary equipment for a boat, including but not limited to attached or detached  
 12 outboard motors.

13 **SECTION 388.** ORS 570.855 is amended to read:

14 570.855. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
 15 **sources**, the State Marine Board and the State Department of Agriculture are authorized to:

16 (a) Operate check stations for the purpose of inspecting recreational or commercial watercraft  
 17 for the presence of aquatic invasive species.

18 (b) Decontaminate, or recommend decontamination of, any recreational or commercial  
 19 watercraft that is inspected at a check station operated under authority of this section.

20 (2) All check stations operated under authority of this section must be plainly marked by signs  
 21 that comply with all state and federal laws and must be staffed by at least one uniformed employee  
 22 of the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**, the  
 23 State Marine Board or the State Department of Agriculture trained in inspection and decontam-  
 24 ination of recreational or commercial watercraft.

25 **SECTION 389.** ORS 570.860 is amended to read:

26 570.860. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
 27 **sources**, after consultation with the State Marine Board, the State Department of Agriculture and  
 28 the Department of State Police, shall report biennially to the Legislative Assembly on efforts to  
 29 prevent aquatic invasive species from entering this state and may include in the report suggested  
 30 legislation necessary to more effectively prevent aquatic invasive species from entering this state.

31 (2) Reports to the Legislative Assembly required under this section must be made in accordance  
 32 with ORS 192.245.

33 **SECTION 390.** ORS 570.865 is amended to read:

34 570.865. (1) A person is subject to a civil penalty in an amount to be determined by the [*State*  
 35 *Fish and Wildlife Director*] **Director of the Oregon Department of Natural Resources** of not  
 36 more than \$6,250 if the person knowingly transports aquatic invasive species on or in a recreational  
 37 or commercial watercraft. A second or subsequent violation of this subsection within a five-year  
 38 period shall result in a civil penalty in an amount not less than \$5,000 and not more than \$15,000.

39 (2) Subsection (1) of this section does not apply to:

40 (a) A person who transports aquatic invasive species in ballast water.

41 (b) A person who complies with all instructions for the proper decontamination of the recre-  
 42 ational or commercial watercraft given by an employee authorized under ORS 570.855 (1) to inspect  
 43 recreational or commercial watercraft.

44 (c) A person who transports aquatic invasive species to the [*State Department of Fish and*  
 45 *Wildlife*] **Oregon Department of Natural Resources** or the State Department of Agriculture, or



1 to another destination designated by the [*State Fish and Wildlife Commission*] **Oregon Natural**  
 2 **Resources Commission** by rule, in a manner designated by the commission for purposes of identi-  
 3 fying or reporting an aquatic invasive species.

4 (3) The civil penalties authorized in this section shall be imposed as provided in ORS 183.745.  
 5 Any civil penalty recovered under this section shall be deposited in [*the State Wildlife Fund.*]  
 6 **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection are**  
 7 **continuously appropriated to the Oregon Department of Natural Resources for the purpose**  
 8 **of carrying out the duties, functions and powers as prescribed by sections 1 (1) and (2) and**  
 9 **5 (1)(a) and (b) of this 2011 Act.**

10 (4) The commission by rule shall adopt the formula the [*State Fish and Wildlife*] director shall  
 11 use in determining the amount of civil penalties under this section.

12 **SECTION 391.** ORS 576.215 is amended to read:

13 576.215. The Director of Agriculture and the Dean of the College of Agricultural Sciences of  
 14 Oregon State University, or their respective official representative, shall be ex officio members of  
 15 a commodity commission, without right to vote. When a commission is established for a seafood  
 16 commodity, the chairperson of the [*State Fish and Wildlife Commission*] **Oregon Natural Resources**  
 17 **Commission** or the official representative of the chairperson shall also be an ex officio member of  
 18 the **commodity** commission, without right to vote. ORS 576.206 and 576.225 to 576.255 do not apply  
 19 to ex officio members.

20 **SECTION 392.** ORS 609.345 is amended to read:

21 609.345. (1) The requirements for a permit in ORS 609.335 and 609.341 do not apply to the fol-  
 22 lowing:

23 (a) A wildlife rehabilitation center operated under a valid permit issued by the [*State Fish and*  
 24 *Wildlife Commission*] **Oregon Natural Resources Commission** pursuant to ORS 497.308.

25 (b) A facility operated under a valid license or research facility registration issued by the  
 26 United States Department of Agriculture pursuant to the federal Animal Welfare Act of 1970 (7  
 27 U.S.C. 2133 or 2136).

28 (c) An exotic animal protection organization, including humane societies and animal shelters,  
 29 incorporated under ORS chapter 65, that houses an exotic animal at the written request of the state  
 30 or a state agency for a period not to exceed 30 days.

31 (d) A law enforcement agency.

32 (e) A licensed veterinary hospital or clinic.

33 (f) An educational facility that houses a member of the order Crocodylia pursuant to a written  
 34 request of the state, a local government or a state agency stating the need to house the member of  
 35 the order Crocodylia at the educational facility.

36 (g) A person or organization that takes in an exotic animal in an emergency situation but that  
 37 does not otherwise qualify for an exemption under this section. The person or organization may keep  
 38 the exotic animal for not more than 48 hours during which time the person or organization must  
 39 make a good faith effort to contact a law enforcement agency, the State Department of Agriculture  
 40 or a wildlife rehabilitation center described in paragraph (a) of this subsection.

41 (h) A person with a disability as defined in 42 U.S.C. 12102(2)(A) who possesses a service  
 42 monkey if:

43 (A) The person presents, at the request of the State Department of Agriculture, written proof  
 44 from a medical doctor that the person has a disability and that the service monkey performs specific  
 45 tasks for the benefit of the person with the disability;

1 (B) The service monkey was obtained from, and trained at, a nonprofit organization whose  
2 mission is to improve the quality of life of persons with disabilities; and

3 (C) The person complies with any requirements of the Americans with Disabilities Act relating  
4 to service animals.

5 (2) As used in subsection (1)(h) of this section, “service monkey” means a nonhuman primate of  
6 the genus *Cebus* that is trained to perform specific tasks for a person with a disability.

7 **SECTION 393.** ORS 610.002 is amended to read:

8 610.002. As used in this chapter, “predatory animal” or “predatory animals” includes feral swine  
9 as defined by State Department of Agriculture rule, coyotes, rabbits, rodents and birds that are or  
10 may be destructive to agricultural crops, products and activities, but excluding game birds and other  
11 birds determined by the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Com-**  
12 **mission** to be in need of protection.

13 **SECTION 394.** ORS 610.003 is amended to read:

14 610.003. Notwithstanding any other provision of law, the State Department of Agriculture, after  
15 consultation with the [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
16 **sources**, may implement bobcat and red fox control procedures as authorized under this chapter, for  
17 a specified period of time and within a specified area, if the State Department of Agriculture de-  
18 termines such action is necessary to protect domestic mammals or birds.

19 **SECTION 395.** ORS 610.020 is amended to read:

20 610.020. (1) From all money received by the [*State Fish and Wildlife Commission*] **Oregon Na-**  
21 **tural Resources Commission** from the General Fund, or from any funds eligible for the purpose  
22 set forth in subsection (2) of this section, the [*State Fish and Wildlife*] commission shall set aside  
23 an amount of at least \$60,000 in any one calendar year in a budget fund to be known as the  
24 Predatory Animal, Rabbit and Rodent Control Fund.

25 (2) Such fund shall be expended by the [*State Fish and Wildlife*] commission in cooperation with  
26 the State Department of Agriculture and the United States Department of Agriculture for the con-  
27 trol and destruction of predatory animals, rabbits and rodents in the state. Any part of such fund  
28 remaining unexpended at the end of any calendar year shall remain in the fund for expenditure  
29 during the succeeding year.

30 **SECTION 396.** ORS 619.095 is amended to read:

31 619.095. (1) Game meat donated to charitable organizations shall be inspected by the State De-  
32 partment of Agriculture to determine fitness for human consumption as provided in ORS 603.045 and  
33 619.031 or shall be inspected and determined fit for human consumption by employees of the [*State*  
34 *Department of Fish and Wildlife*] **Oregon Department of Natural Resources** or the Department  
35 of State Police who have been trained by the State Department of Agriculture in the procedures  
36 provided in ORS 603.045 and 619.031, and shall be processed by an establishment approved by the  
37 State Department of Agriculture as provided in ORS 619.026 and 619.031 and may be served for  
38 human consumption by charitable organizations.

39 (2) As used in subsection (1) of this section:

40 (a) “Charitable organization” means the Department of Human Services, Oregon Health Au-  
41 thority, Oregon Youth Authority, Department of Corrections institutions, low-income nutritional  
42 centers, public school nutritional centers, senior nutritional centers, state hospitals and other  
43 charitable organizations or public institutions approved by the [*State Department of Fish and*  
44 *Wildlife*] **Oregon Department of Natural Resources**.

45 (b) “Game meat” includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

1        **SECTION 397.** ORS 619.105 is amended to read:

2        619.105. No civil or criminal sanctions shall be imposed upon State Department of Agriculture  
3 employees, [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources**  
4 employees or Department of State Police employees for the good faith inspection of game meat as  
5 provided in ORS 619.095.

6        **SECTION 398.** ORS 622.220 is amended to read:

7        622.220. (1) The commercial cultivation of oysters, clams and mussels is declared to be an agri-  
8 cultural activity subject to the regulatory authority of the State Department of Agriculture. The  
9 [*State Fish and Wildlife Commission*] **Oregon Department of Natural Resources** has jurisdiction  
10 over all native oysters, clams and mussels in the waters of this state, but not cultivated oysters,  
11 clams and mussels in plats. The [*commission*] **Oregon Natural Resources Commission** shall pre-  
12 scribe [*such*] rules for the protection of native oysters, clams and mussels and for the taking of na-  
13 tive oysters and oyster spat shells subject to the [*commission's jurisdiction as in the judgment of the*  
14 *commission is for the best interests of the resource*] **jurisdiction of the Oregon Department of Na-**  
15 **tural Resources.**

16        (2) It is unlawful for any person to take native oysters, clams and mussels in violation of the  
17 rules adopted by the commission.

18        **SECTION 399.** ORS 624.165 is amended to read:

19        624.165. (1) Subject to ORS 624.070, game meat that has been donated to a charitable organiza-  
20 tion and has been inspected and processed as provided in ORS 619.095 may be served for human  
21 consumption by that charitable organization.

22        (2) As used in subsection (1) of this section:

23        (a) "Charitable organization" means the Department of Human Services, Oregon Health Au-  
24 thority, Oregon Youth Authority, Department of Corrections institutions, low-income nutritional  
25 centers, public school nutritional centers, senior nutritional centers, state hospitals and other  
26 charitable organizations or public institutions approved by the [*State Department of Fish and*  
27 *Wildlife*] **Oregon Department of Natural Resources.**

28        (b) "Game meat" includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

29        **SECTION 400.** ORS 646.515 is amended to read:

30        646.515. As used in ORS 646.515 to 646.545, unless the context requires otherwise:

31        (1) "Agricultural commodity" means any and all agricultural, horticultural, viticultural and  
32 vegetable products produced in this state, either in their natural state or as processed by a producer  
33 for the purpose of marketing such product, including bees and honey, but not including timber or  
34 timber products.

35        (2) "Cooperative bargaining association" means:

36        (a) An association of producers formed or operated pursuant to ORS chapter 62 with the purpose  
37 of group bargaining with respect to the sale of any agricultural commodity or Oregon seafood com-  
38 modity.

39        (b) A fishermen's marketing association or fishermen's trade association organized under ORS  
40 chapter 62 or 65.

41        (3)(a) "Dealer" means, except as provided in paragraph (b) of this subsection, any person or  
42 agent of the person who purchases or contracts to purchase an agricultural commodity or Oregon  
43 seafood commodity from a producer or agent of the producer, for the purpose of packing, processing  
44 or marketing such commodity.

45        (b) "Dealer" does not include any organization operating as an agricultural cooperative or

1 Oregon seafood harvester cooperative.

2 (4) "Oregon seafood commodity" means any food fish as defined in ORS 506.011 over which the  
3 [*State Fish and Wildlife Commission*] **Oregon Department of Natural Resources** has jurisdiction.

4 (5) "Producer" means a person engaged in the business of producing agricultural commodities  
5 or harvesting Oregon seafood commodities.

6 **SECTION 401.** ORS 686.040 is amended to read:

7 686.040. (1) ORS 686.020 (1)(a) does not apply to commissioned veterinary officers of the United  
8 States Army, or those in the employ of other United States Government agencies while engaged in  
9 their official capacity, unless they enter into a private practice.

10 (2) Nothing in ORS 686.020 (1)(a) shall be so construed as to prevent any person or the agent  
11 or employee of the person from practicing veterinary medicine and surgery or dentistry in a humane  
12 manner on any animal belonging to the person, agent or employee or for gratuitous services or from  
13 dehorning and vaccinating cattle for the person, agent or employee.

14 (3) Nothing in ORS 686.020 (1)(a) shall be so construed as to prevent the selling of veterinary  
15 remedies and instruments by a licensed pharmacist at the regular place of business of the licensed  
16 pharmacist.

17 (4) A practitioner of allied health methods may practice that method on animals without vio-  
18 lating ORS 686.020 (1)(a), as long as the practice is in conformance with laws and rules governing  
19 the practitioner's practice and the practice is upon referral from a licensed veterinarian for treat-  
20 ment or therapy specified by the veterinarian.

21 (5) ORS 686.020 (1)(a) does not apply to the lay testing of poultry by the whole blood  
22 agglutination test.

23 (6) A certified euthanasia technician holding an active, current certificate may inject sodium  
24 pentobarbital, and any other euthanasia substance approved by the Oregon State Veterinary Med-  
25 ical Examining Board without violating ORS 686.020 (1)(a).

26 (7) The board by rule may specify circumstances under which unlicensed persons may give  
27 vaccinations, administer an anesthetic or otherwise assist in the practice of veterinary medicine.

28 (8) Any individual licensed as a veterinarian in another state may be used in consultation in this  
29 state with a person licensed to practice veterinary medicine in this state provided the consultation  
30 does not exceed 30 days in any 365 consecutive days.

31 (9) ORS 686.020 (1)(a) does not apply to authorized representatives of the State Department of  
32 Agriculture in the discharge of any duty authorized by the department.

33 (10) ORS 686.020 (1)(a) does not apply to an unlicensed representative of a livestock association,  
34 cow-testing association, or poultry association who, for the benefit of the association, takes blood  
35 samples for laboratory tests for the diagnosis of livestock or poultry diseases, but only if this person  
36 has received authorization from the State Department of Agriculture following a written request to  
37 the department.

38 (11) ORS 686.020 (1)(a) does not apply to persons permitted by the [*State Department of Fish and*  
39 *Wildlife*] **Oregon Department of Natural Resources** to rehabilitate orphaned, sick or injured  
40 wildlife, as defined in ORS 496.004, for the purpose of restoring the animals to the wild.

41 (12) ORS 686.020 (1)(a) does not apply to students, agents or employees of public or private ed-  
42 ucational or medical research institutions involved in educational or research activities under the  
43 auspices of those institutions.

44 (13) ORS 686.020 (1)(a) does not apply to:

45 (a) Veterinarians employed by Oregon State University;

1 (b) Instructors of veterinary courses; or

2 (c) Students of veterinary science who participate in the diagnosis and treatment of animals if  
 3 the students:

4 (A) Are participating in the diagnosis and treatment of animals while engaged in an educational  
 5 program approved by the board or a college of veterinary medicine accredited by the American  
 6 Veterinary Medical Association; and

7 (B) Are under the direct supervision of an Oregon licensed veterinarian or a veterinarian ap-  
 8 proved by the board or Oregon State University to supervise students in the educational program.

9 **SECTION 402.** ORS 811.560 is amended to read:

10 811.560. This section provides exemptions from ORS 811.550 and 811.555. The following ex-  
 11 emptions are applicable as provided under ORS 811.550:

12 (1) When applicable, this subsection exempts school buses or worker transport buses stopped on  
 13 a roadway to load or unload workers or children, providing that the flashing school bus safety lights  
 14 on the bus are operating.

15 (2) When applicable, this subsection exempts vehicles stopped, standing or parked momentarily  
 16 to pick up or discharge a passenger.

17 (3) When applicable, this subsection exempts vehicles stopped, standing or parked momentarily  
 18 for the purpose of and while actually engaged in loading or unloading property or passengers.

19 (4) When applicable, this subsection exempts vehicles owned or operated by the state, a county  
 20 or city when stopping, standing or parking is necessary to perform maintenance or repair work on  
 21 the roadway.

22 (5) When applicable, this subsection exempts vehicles from the prohibitions and penalties when  
 23 the driver's disregard of the prohibitions is necessary to avoid conflict with other traffic.

24 (6) When applicable, this subsection exempts vehicles acting in compliance with law or at the  
 25 direction of a police officer or a traffic control device.

26 (7) When applicable, this subsection exempts the driver of a vehicle that is disabled in such  
 27 manner and to such extent that the driver cannot avoid stopping or temporarily leaving the disabled  
 28 vehicle in a prohibited position.

29 (8) When applicable, this subsection exempts vehicles owned or operated by the [*State Depart-*  
 30 *ment of Fish and Wildlife*] **Oregon Department of Natural Resources** when stopping, standing or  
 31 parking is necessary to enable employees to release fish.

32 (9) When applicable, this subsection exempts vehicles momentarily stopped to allow oncoming  
 33 traffic to pass before making a right-hand or left-hand turn or momentarily stopped in preparation  
 34 for or while negotiating an exit from the road.

35 **SECTION 403.** ORS 821.260 is amended to read:

36 821.260. (1) A person commits the offense of hunting or harassing animals from a snowmobile  
 37 or an all-terrain vehicle if the person does any of the following:

38 (a) Operates a snowmobile or an all-terrain vehicle in a manner so as to run down, harass, chase  
 39 or annoy any game animals or birds or domestic animals.

40 (b) Hunts from a snowmobile or an all-terrain vehicle.

41 (2) This section does not apply to:

42 (a) Officers of the [*State Fish and Wildlife Commission*] **Oregon Department of Natural Re-**  
 43 **sources.**

44 (b) Persons under contract to the commission in the performance of their official duties.

45 (c) Individuals who have secured a permit from the commission for purposes of research and

1 study.

2 (3) In addition to other penalties provided by this section, operators or owners of a snowmobile  
 3 or an all-terrain vehicle may be liable as provided under ORS 821.310.

4 (4) The offense described in this section, hunting or harassing animals from a snowmobile or an  
 5 all-terrain vehicle, is a Class C misdemeanor.

6 **SECTION 404.** ORS 830.175 is amended to read:

7 830.175. (1) The State Marine Board, upon consideration of the size of a body of water and  
 8 traffic conditions, may make special regulations consistent with the safety and the property rights  
 9 of the public or when traffic conditions become such as to create excessive congestion, relating to  
 10 the operation of boats in any waters within the territorial limits of any political subdivision of this  
 11 state. The regulations may include, but need not be limited to, the establishment of designated  
 12 speeds, the prohibition of the use of motorboats and the designation of areas and times for testing  
 13 racing motorboats.

14 (2) The governing body of a political subdivision of this state may apply to the board for special  
 15 regulations relating to the designation of moorage areas on lakes or reservoirs which are under the  
 16 jurisdiction of a public agency, or to the operation of boats on the waters within the territorial  
 17 limits of the political subdivision. Within a reasonable time, the board shall act upon the application  
 18 in the manner provided in subsection (1) of this section. When special regulations have been estab-  
 19 lished within a political subdivision in accordance with this subsection, the governing body shall  
 20 establish and maintain the navigational markers prescribed by the board.

21 (3) The board may make special regulations relating to the operation of boats, including the  
 22 establishment of designated speeds and prohibition of the use of motorboats for the protection of  
 23 game and game fish at the request of the [*State Fish and Wildlife Commission*] **Oregon Natural**  
 24 **Resources Commission**, or for carrying out the provisions of the federal Wild and Scenic Rivers  
 25 Act, Public Law 90-542, and the Oregon Scenic Waterways Act, ORS 390.805 to 390.925. Action  
 26 necessary to implement this section, including but not limited to the operation and manner of oper-  
 27 ation of boats, shall be by a permit system initiated by the board.

28 (4) The board may designate certain rivers or sections of rivers as hazardous. In making such  
 29 designations, the board may consider recommendations of guide associations incorporated in this  
 30 state.

31 (5) Regulations regarding operation of boats pursuant to this section shall be adopted in ac-  
 32 cordance with the provisions of ORS chapter 183.

33 (6) Any speeds in excess of the speeds designated by the board, as provided in this section, shall  
 34 be prima facie evidence of the violation of ORS 830.315.

35 **SECTION 405.** ORS 830.185 is amended to read:

36 830.185. (1) No person shall operate a boat with an outboard or inboard motor at a speed in  
 37 excess of 10 miles per hour during those hours of the day and on those days of the year that it is  
 38 lawful to fish, on East Lake, Paulina Lake and Elk Lake in Deschutes County; Magone Lake in  
 39 Grant County; Timothy Lake in Clackamas County; and Davis Lake in Deschutes and Klamath  
 40 Counties.

41 (2) No person shall operate a boat with an outboard or inboard motor at a speed in excess of  
 42 10 miles per hour on the following named waters of this state located in the counties named:

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43  
 44

<u>Counties</u>	<u>Lakes and Reservoirs</u>
-----------------	-----------------------------

45

1	Clackamas	On that portion of the waters of the reservoir known as North Fork Reservoir which
2		lies upstream from a line drawn across the reservoir at right angles to the thread
3		of the stream at a point 2.3 miles upstream from the North Fork Dam measured along
4		the thread of the stream
5	Deschutes	Hosmer, Lava, Little Cultus, Little Lava, Sparks Lakes and Crane Prairie Reservoir
6	Jefferson	On that portion of the waters behind Pelton Dam, known as Lake Simtustus, which
7		lies upstream from a line drawn across the lake at right angles to the thread of the
8		stream at a point 0.85 miles upstream from the Pelton Dam measured along the
9		thread of the stream
10	Klamath	That portion of Upper Klamath Lake that lies west of a line beginning at a point on
11		the north shore of Pelican Bay one-quarter mile east of Crystal Creek and extending
12		due south to the opposite shore of the lake; any stream, creek or canal that leads into
13		the portion of Upper Klamath Lake described above including Crystal Creek, Recre-
14		ation Creek and Four-Mile Creek, also known as Harriman Creek
15	Lane	Waldo Lake
16	Linn	Smith and Trailbridge Reservoirs
17	Wasco	Clear Lake

18  
19

20 (3)(a) The State Marine Board shall establish an appropriate decibel rating and speed restriction  
21 on Diamond Lake in Douglas County to allow recreational boating that is not limited to fishing.  
22 Recreational boating does not include operating a jet ski or similar personal watercraft. The speed  
23 established by the board:

- 24 (A) May not exceed 45 miles per hour between the hours of 9 a.m. and 6 p.m.;
- 25 (B) May not exceed 10 miles per hour between the hours of 6 p.m. and 9 a.m.; and
- 26 (C) Shall be restricted to 10 miles per hour at all times in any area within 200 yards of any boat  
27 ramp, boat dock, swimming area, inlet or outlet of the lake, designated campground or summer  
28 home.

29 (b) The board shall reduce the speed restriction on Diamond Lake to 10 miles per hour at all  
30 hours when the [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
31 **Resources** determines that the health of Diamond Lake is restored and the lake can be restocked  
32 for fishing.

33 **SECTION 406.** ORS 830.560 is amended to read:

34 830.560. (1) As used in this section:

35 (a) "Aquatic invasive species" means any aquatic life or marine life determined by the [*State*  
36 *Fish and Wildlife Commission*] **Oregon Natural Resources Commission** by rule to be invasive or  
37 any aquatic noxious weed determined by the State Department of Agriculture to be invasive.

38 (b) "Launch" means any act that places a boat into a waterway for recreational boating, for  
39 flushing or testing an engine or for any other purpose.

40 (2) Except as provided in subsection (3) of this section, a person may not launch a boat into the  
41 waters of this state if:

42 (a) The boat has any visible aquatic species on its exterior hull or attached to any motor, propul-  
43 sion system or component, anchor or other attached apparatus outside of the hull, or on the  
44 trailer or other device used to transport the boat; or

45 (b) The boat has any aquatic invasive species within its bilge, livewell, motorwell or other in-

1 terior location.

2 (3) The [*State Fish and Wildlife*] commission, in consultation with the State Department of Ag-  
3 riculture, by rule may allow the presence of certain aquatic species on or within a boat for activities  
4 including but not limited to hunting and photography.

5 (4) The State Marine Board shall provide information to the public about any rules adopted  
6 under subsection (3) of this section.

7 **SECTION 407.** Section 2, chapter 460, Oregon Laws 1995, as amended by section 1, chapter 227,  
8 Oregon Laws 2001, section 1, chapter 349, Oregon Laws 2009, and section 2a, chapter 832, Oregon  
9 Laws 2009, is amended to read:

10 **Sec. 2.** Notwithstanding any other provision of the wildlife laws, during the period beginning  
11 January 1, 1996, and ending January 2, 2014, the following provisions apply with regard to the is-  
12 suance and use of landowner preference tags referred to in ORS 496.146 (4):

13 (1) Landowner preference tags shall be issued for the hunting of deer, elk or antelope.

14 (2) Landowner preference tags may be used only for hunting on the landowner's property.

15 (3) Landowner preference tags for the hunting of deer or elk may be transferred to any person  
16 of the landowner's choosing and shall be used for the taking of antlerless animals except as au-  
17 thorized by subsection (6) of this section.

18 (4) Landowner preference tags for the hunting of antelope are not transferable and may not be  
19 used for the taking of buck antelope.

20 (5) Each landowner preference tag for the hunting of deer or elk may be used to take two  
21 antlerless animals before, during or after the hunting season for which the tags are valid for the  
22 purpose of alleviating damage that is presently occurring to the landowner's property, in accordance  
23 with such rules as the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commis-**  
24 **sion** may adopt.

25 (6) Landowner preference tags for the hunting of deer or elk that are transferred to a person  
26 of the landowner's choosing who is not a member of the landowner's immediate family may be used  
27 to take an antlered animal only as follows:

28 (a) If the landowner receives one preference tag, that tag may not be so used.

29 (b) If the landowner receives two, three or four preference tags, one of those tags may be so  
30 used.

31 (c) If the landowner receives five, six or seven preference tags, two of those tags may be so used.

32 (d) If the landowner receives eight, nine or 10 preference tags, three of those tags may be so  
33 used.

34 (7) Landowners must pay a \$30 fee to register for participation in the program.

35 (8) Establishes a \$15 fee for landowners to modify the landowner's tag distribution.

36 **SECTION 408.** Section 1, chapter 461, Oregon Laws 2003, as amended by section 1, chapter 8,  
37 Oregon Laws 2007, and section 1, chapter 832, Oregon Laws 2009, is amended to read:

38 **Sec. 1.** Notwithstanding any other provision of the wildlife laws, the [*State Department of Fish*  
39 *and Wildlife*] **Oregon Department of Natural Resources** shall create and implement a Southwest  
40 Oregon Landowner Preference Pilot Program during the period beginning July 1, 2004, and ending  
41 June 30, 2014, that:

42 (1) Addresses damage caused by elk on privately owned lands in Jackson, Josephine, Coos,  
43 Curry and Douglas Counties.

44 (2) Provides landowner preference tags only for areas where elk are currently causing damage,  
45 where there has been a history of elk damage coupled with actions to alleviate elk damage or where



1 the department has designated the area as an elk deemphasis area.

2 (3) Limits the use of tags to taking antlerless elk.

3 (4) Limits the use of tags to taking elk on property owned, leased or rented by the landowner  
4 complaining of elk damage or on property owned, leased or rented by a business entity that includes  
5 the landowner as a principal partner or shareholder.

6 (5) Allows exchange of unused general season elk tags or controlled hunt elk tags for landowner  
7 preference tags.

8 (6) Does not impose a limit on the number of total tags available for each property, except that  
9 no more than five tags may be valid at any one time on a particular property.

10 (7) Does not impose a minimum acreage requirement for landowner participation.

11 (8) Allows landowners to register for participation in the program at any time prior to the is-  
12 suance of tags.

13 (9) Establishes a \$30 fee for landowners to register for participation in the program.

14 (10) Establishes a \$15 fee for landowners to modify the landowner's tag distribution.

15 (11) Authorizes department biologists to sell and exchange tags.

16 (12) Authorizes department biologists to establish the period of validity for tags through nego-  
17 tiation with landowners.

18 (13) Requires landowners to record the number of elk taken and, within 10 days after the end  
19 of a designated hunt period, to report to the local department biologist the number of elk taken.

20 **SECTION 409.** Section 1, chapter 871, Oregon Laws 2009, is amended to read:

21 **Sec. 1.** For the period commencing January 1, 2010, and ending December 31, 2015, the [*State*  
22 *Fish and Wildlife Commission*] **Director of the Oregon Department of Natural Resources** may  
23 evaluate the remote hatchbox program, established pursuant to ORS 496.445 and 496.458, in select  
24 Rogue River basin streams after consultation with local communities, groups participating in the  
25 salmon and trout enhancement program established under ORS 496.440, conservation groups working  
26 on matters related to the Rogue River basin and the National Marine Fisheries Service of the Na-  
27 tional Oceanic and Atmospheric Administration. Consultation under this section must include, but  
28 not be limited to, matters related to remote hatchbox placement and monitoring, data collection,  
29 adult returns and fishery contribution.

30 **SECTION 410.** Section 19, chapter 659, Oregon Laws 1993, as amended by section 1, chapter  
31 246, Oregon Laws 1997, section 12, chapter 1006, Oregon Laws 1999, section 1, chapter 203, Oregon  
32 Laws 2003, and section 1, chapter 291, Oregon Laws 2009, is amended to read:

33 **Sec. 19.** (1) In addition to the fees otherwise prescribed by law, the issuer of each of the fol-  
34 lowing licenses shall charge and collect each time the license is issued, during the period beginning  
35 January 1, 1994, and ending December 31, 2019, the following surcharges:

36 (a) Resident annual combination license issued under ORS 497.132, \$4.

37 (b) Resident annual hunting license issued under ORS 497.102 (1)(a), \$4.

38 (c) Nonresident annual hunting license issued under ORS 497.102 (1)(b), \$4.

39 (d) Resident annual juvenile hunting license issued under ORS 497.102 (1)(c), \$1.

40 (2) Payment of the surcharges required by this section does not entitle the license holder to  
41 special access to any property or to any other privilege. Notice to this effect shall be printed in  
42 materials distributed by the [*State Department of Fish and Wildlife*] **Oregon Department of Natural**  
43 **Resources** to licensees.

44 **SECTION 411.** Section 11, chapter 913, Oregon Laws 2009, is amended to read:

45 **Sec. 11.** The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**

1 **sources** may not issue a preliminary certificate of approval under ORS 315.138 after January 1,  
 2 2012.

3  
 4 **STATE PARKS AND RECREATION DEPARTMENT**

5  
 6 **(Abolishment and Transfer of**  
 7 **Duties, Functions and Powers)**

8  
 9 **SECTION 412.** (1) The State Parks and Recreation Department and the State Parks and  
 10 Recreation Commission are abolished. On the operative date of this section, the tenure of  
 11 office of the members of the State Parks and Recreation Commission and of the State Parks  
 12 and Recreation Director ceases.

13 (2)(a) All the duties, functions and powers of the State Parks and Recreation Department  
 14 and the State Parks and Recreation Commission are imposed upon, transferred to and vested  
 15 in the Oregon Department of Natural Resources.

16 (b) Where the law imposed the duty or function upon or vested the power in the State  
 17 Parks and Recreation Director, the duty, function or power is imposed upon, transferred to  
 18 or vested in the Director of the Oregon Department of Natural Resources.

19 (c) Where the law imposed the duty or function upon or vested the power in the State  
 20 Parks and Recreation Commission, the duty, function or power is imposed upon, transferred  
 21 to and vested in the Oregon Natural Resources Commission.

22  
 23 **(Transfer of Records, Property and Employees)**

24  
 25 **SECTION 413.** (1) The State Parks and Recreation Director and the State Parks and Re-  
 26 creation Commission shall:

27 (a) Deliver to the Oregon Department of Natural Resources all records and property  
 28 within the jurisdiction of the director or the commission that relate to the duties, functions  
 29 and powers transferred by section 412 of this 2011 Act; and

30 (b) Transfer to the Oregon Department of Natural Resources those employees engaged  
 31 primarily in the exercise of the duties, functions and powers transferred by section 412 of  
 32 this 2011 Act.

33 (2) The Director of the Oregon Department of Natural Resources and the Oregon Natural  
 34 Resources Commission shall take possession of the records and property, and shall take  
 35 charge of the employees and employ them in the exercise of the duties, functions and powers  
 36 transferred by section 412 of this 2011 Act, without reduction of compensation but subject  
 37 to change or termination of employment or compensation as provided by law.

38 (3) The Governor shall resolve any dispute between the State Parks and Recreation De-  
 39 partment and the Oregon Department of Natural Resources, or the State Parks and Recre-  
 40 ation Commission and the Oregon Natural Resources Commission relating to transfers of  
 41 records, property and employees under this section, and the Governor's decision is final.

42  
 43 **(Transfer of Unexpended Revenues)**

44  
 45 **SECTION 414.** (1) The unexpended balances of amounts authorized to be expended by the

1 State Parks and Recreation Department for the biennium beginning July 1, 2011, from re-  
 2 venues dedicated, continuously appropriated, appropriated or otherwise made available for  
 3 the purpose of administering and enforcing the duties, functions and powers transferred by  
 4 section 412 of this 2011 Act are transferred to and are available for expenditure by the  
 5 Oregon Department of Natural Resources for the biennium beginning July 1, 2011, for the  
 6 purpose of administering and enforcing the duties, functions and powers transferred by sec-  
 7 tion 412 of this 2011 Act.

8 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
 9 expenditures by the State Parks and Recreation Department remain applicable to expen-  
 10 ditures by the Oregon Department of Natural Resources under this section.

11 (3) The unexpended balances of amounts authorized to be expended by the State Parks  
 12 and Recreation Commission for the biennium beginning July 1, 2011, from revenues dedi-  
 13 cated, continuously appropriated, appropriated or otherwise made available for the purpose  
 14 of administering and enforcing the duties, functions and powers transferred by section 412  
 15 of this 2011 Act are transferred to and are available for expenditure by the Oregon Natural  
 16 Resources Commission for the biennium beginning July 1, 2011, for the purpose of adminis-  
 17 tering and enforcing the duties, functions and powers transferred by section 412 of this 2011  
 18 Act.

19 (4) The expenditure classifications, if any, established by Acts authorizing or limiting  
 20 expenditures by the State Parks and Recreation Commission remain applicable to expen-  
 21 ditures by the Oregon Natural Resources Commission under this section.

22  
 23 (Action, Proceeding and Prosecution)

24  
 25 **SECTION 415.** The transfer of duties, functions and powers to the Oregon Department  
 26 of Natural Resources by section 412 of this 2011 Act does not affect any action, proceeding  
 27 or prosecution involving or with respect to such duties, functions and powers begun before  
 28 and pending at the time of the transfer, except that:

29 (1) The Oregon Department of Natural Resources is substituted for the State Parks and  
 30 Recreation Department where the State Parks and Recreation Department is involved in the  
 31 action, proceeding or prosecution; or

32 (2) The Oregon Natural Resources Commission is substituted for the State Parks and  
 33 Recreation Commission where the State Parks and Recreation Commission is involved in the  
 34 action, proceeding or prosecution.

35  
 36 (Liability, Duty and Obligation)

37  
 38 **SECTION 416.** (1) Nothing in sections 412 to 418 of this 2011 Act, the amendments to  
 39 statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257,  
 40 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS  
 41 390.005, 390.114, 390.117, 390.127, 390.131, 390.200, 390.231 or 390.295 by section 2161 of this 2011  
 42 Act relieves a person of a liability, duty or obligation accruing under or with respect to the  
 43 duties, functions and powers transferred by section 412 of this 2011 Act. The Oregon De-  
 44 partment of Natural Resources may undertake the collection or enforcement of any such li-  
 45 ability, duty or obligation.





1 family burial places and metropolitan cemeteries.

2 **SECTION 424.** ORS 97.780 is amended to read:

3 97.780. The Oregon Commission on Historic Cemeteries shall:

4 (1) Maintain a listing of all historic cemeteries in this state.

5 (2) Assist in coordination of restoration, renovation and maintenance of Oregon's historic cem-  
6 eteries.

7 (3) Make recommendations to the [*State Parks and Recreation Director*] **Director of the Oregon**  
8 **Department of Natural Resources** for projects and funding to help maintain and improve Oregon's  
9 historic cemeteries.

10 (4) Obtain grant funding and seek legislative appropriations for individual historic cemeteries  
11 and groups of historic cemeteries.

12 (5) Make recommendations to the Legislative Assembly for changes in law that will help protect  
13 historic cemeteries as part of Oregon's heritage.

14 (6) Assist the director in locating and listing historic cemeteries.

15 (7) Assist cemeteries listed as historic cemeteries with the commission to rehabilitate and  
16 maintain those cemeteries and to promote public education relating to historic cemeteries.

17 (8) Establish a process to obtain advice from authorities on the subject of the care of old grave  
18 markers and graveyards as part of any restoration process.

19 **SECTION 425.** ORS 97.784 is amended to read:

20 97.784. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
21 **sources** shall provide support services to the Oregon Commission on Historic Cemeteries. One staff  
22 person of the department shall be the executive secretary of the commission.

23 **SECTION 426.** ORS 186.130 is amended to read:

24 186.130. (1) The Champoeg Historical Pageant is proclaimed to be the official pageant of Oregon  
25 statehood.

26 (2) The [*State Parks and Recreation Department*] **Oregon Department of Natural Resources**  
27 shall encourage the further development of the pageant and promote increased attendance at its  
28 performances.

29 **SECTION 427.** ORS 276.003 is amended to read:

30 276.003. (1) There is created in the General Fund of the State Treasury a State Capitol Operat-  
31 ing Account. Moneys credited to the account are **continuously** appropriated [*continuously*] to the  
32 Legislative Administration Committee to pay the expenses of operating, maintaining, protecting and  
33 insuring the State Capitol and to reimburse the [*State Parks and Recreation Department*] **Oregon**  
34 **Department of Natural Resources** for a share of the expenses of ground maintenance, utilities and  
35 other necessary expenses.

36 (2) There is established the Oregon State Capitol Foundation Fund in the State Capitol Operat-  
37 ing Account of the General Fund established under subsection (1) of this section. All moneys re-  
38 ceived by the Legislative Administration Committee allocated to the Oregon State Capitol  
39 Foundation shall be credited to the Oregon State Capitol Foundation Fund. All moneys received  
40 under ORS 292.047 and directed to the Oregon State Capitol Foundation Fund shall be credited to  
41 the Oregon State Capitol Foundation Fund. All moneys credited to the Oregon State Capitol Foun-  
42 dation Fund are continuously appropriated to the foundation for the purposes of ORS 173.500, except  
43 that moneys received under ORS 292.047 and credited to the Oregon State Capitol Foundation Fund  
44 are continuously appropriated for the purposes of ORS 173.500 (2)(e).

45 (3) The Legislative Administration Committee may on behalf of the State of Oregon solicit and

1 accept gifts, grants and donations from public and private sources for the purposes set out in ORS  
 2 276.002. Such gifts, grants and donations shall be deposited by the committee in separate, appropri-  
 3 ate trust accounts until such time as required to meet the obligations for which the gifts, grants or  
 4 donations were intended. When so required, the committee shall deposit the amounts in the Oregon  
 5 State Capitol Foundation Fund, subject to any limitations imposed by the donors.

6 (4) A gift or donation to the Legislative Administration Committee or to the Oregon State Cap-  
 7 itol Foundation is a gift or donation to the State of Oregon.

8 **SECTION 428.** ORS 276.053 is amended to read:

9 276.053. (1) The State Capitol State Park is created, consisting of:

10 (a) The grounds immediately surrounding the State Capitol bordered by State Street on the  
 11 south, Court Street on the north, Cottage Street on the west and Waverly Street on the east; and

12 (b) The grounds surrounding the Department of Transportation Building, the Public Service  
 13 Building, the Bureau of Labor and Industries Building and the State Library, bordered by Court  
 14 Street on the south, Center Street on the north, Winter Street on the west and Capitol Street on the  
 15 east.

16 (2) Except as provided in ORS 276.002 (4) and subsection (3) of this section, the [*State Parks and*  
 17 *Recreation Department*] **Oregon Department of Natural Resources** shall manage and control the  
 18 utilization of the State Capitol State Park.

19 (3) The Oregon Department of Administrative Services shall manage and control the utilization  
 20 of the underground parking structures located beneath the area described in subsection (1)(b) of this  
 21 section and all aboveground structures that provide access to the underground parking structures.

22 (4) The Oregon Department of Administrative Services shall construct one or more permanent  
 23 lavatories on the grounds of the State Capitol State Park. Upon completion of construction, the  
 24 [*State Parks and Recreation Department*] **Oregon Department of Natural Resources** shall maintain  
 25 and control the utilization of the lavatories.

26 (5)(a) To commemorate and honor Indian tribes, the [*State Parks and Recreation Department*]  
 27 **Oregon Department of Natural Resources** shall plan, erect and maintain one or more monuments  
 28 or other suitable markers that are sited within, and are compatible with, the Walk of the Flags on  
 29 the grounds of the State Capitol State Park.

30 (b) The department shall consult with the Oregon State Capitol Foundation, the Commission on  
 31 Indian Services and each of the federally recognized Indian tribes in Oregon in carrying out its  
 32 duties under this section.

33 (c) The department shall carry out its duties under **paragraph (a) of this** subsection [(5)(a) of  
 34 *this section*] only after obtaining funding from private sources.

35 **SECTION 429.** ORS 276.058 is amended to read:

36 276.058. The Capitol Planning Commission shall:

37 (1) Investigate the advisability of additions to, reductions of or other changes in state buildings  
 38 and grounds in the areas described by ORS 276.054;

39 (2) Investigate, review and make recommendations on all proposals of state agencies to add to,  
 40 reduce or otherwise change the use of a state building or grounds in the areas described by ORS  
 41 276.054;

42 (3) Advise the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 43 **sources** on matters related to the State Capitol State Park and on matters related to development  
 44 that is located within the State Capitol State Park; and

45 (4) Advise the Oregon Department of Administrative Services on:

1 (a) The planning and location of state buildings in the areas described by ORS 276.054;

2 (b) The development of the areas described by ORS 276.054, including but not limited to general  
3 design, landscaping, traffic management, monuments, statues and fountains; and

4 (c) All other matters connected with a proposed construction or development to be undertaken  
5 by the state within the areas described by ORS 276.054.

6 **SECTION 430.** ORS 276.096 is amended to read:

7 276.096. (1) In carrying out the duties of the Director of the Oregon Department of Administra-  
8 tive Services under ORS 276.095, the director shall consult with the Capitol Planning Commission,  
9 the designated State Historic Preservation Officer, the [*State Parks and Recreation Department*]  
10 **Oregon Department of Natural Resources**, the Oregon Historical Society, the Arts Program of  
11 the Oregon Business Development Department, local landmark commissions and historic societies  
12 and the chief executive officers of those units of local government in each area served by existing  
13 or proposed state offices and shall solicit the comments of other community leaders and members  
14 of the general public that the director considers appropriate.

15 (2) Whenever the director undertakes a review of state building needs within a geographical  
16 area, the director shall request the cooperation of the state historic preservation officer to identify  
17 an existing building within the geographical areas that is of historical, architectural or cultural  
18 significance and that is suitable, whether or not in need of repair, alteration or addition, for acqui-  
19 sition or purchase to meet the building needs of state government.

20 **SECTION 431.** ORS 291.055 is amended to read:

21 291.055. (1) Notwithstanding any other law that grants to a state agency the authority to es-  
22 tablish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered  
23 year:

24 (a) Are not effective for agencies in the executive department of government unless approved  
25 in writing by the Director of the Oregon Department of Administrative Services;

26 (b) Are not effective for agencies in the judicial department of government unless approved in  
27 writing by the Chief Justice of the Supreme Court;

28 (c) Are not effective for agencies in the legislative department of government unless approved  
29 in writing by the President of the Senate and the Speaker of the House of Representatives;

30 (d) Shall be reported by the state agency to the Oregon Department of Administrative Services  
31 within 10 days of their adoption; and

32 (e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine  
33 die of the regular session of the Legislative Assembly meeting in that year, whichever is later, un-  
34 less otherwise authorized by enabling legislation setting forth the approved fees.

35 (2) This section does not apply to:

36 (a) Any tuition or fees charged by the State Board of Higher Education and state institutions  
37 of higher education.

38 (b) Taxes or other payments made or collected from employers for unemployment insurance re-  
39 quired by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contri-  
40 butions and assessments calculated by cents per hour for workers' compensation coverage required  
41 by ORS 656.506.

42 (c) Fees or payments required for:

43 (A) Health care services provided by the Oregon Health and Science University, by the Oregon  
44 Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

45 (B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS



1 735.614 and 735.625.

2 (C) Copayments and premiums paid to the Oregon medical assistance program.

3 (D) Assessments paid to the Department of Consumer and Business Services under ORS 743.951  
4 and 743.961.

5 (d) Fees created or authorized by statute that have no established rate or amount but are cal-  
6 culated for each separate instance for each fee payer and are based on actual cost of services pro-  
7 vided.

8 (e) State agency charges on employees for benefits and services.

9 (f) Any intergovernmental charges.

10 (g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the  
11 Oregon Forest Land Protection Fund fees established by ORS 477.760.

12 (h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

13 (i) Any charges established by the [*State Parks and Recreation Director*] **Director of the Oregon**  
14 **Department of Natural Resources** in accordance with ORS 565.080 (3).

15 (j) Assessments on premiums charged by the Insurance Division of the Department of Consumer  
16 and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and  
17 Corporate Securities of the Department of Consumer and Business Services to banks, trusts and  
18 credit unions pursuant to ORS 706.530 and 723.114.

19 (k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid  
20 to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

21 (L) Fees charged by the Housing and Community Services Department for intellectual property  
22 pursuant to ORS 456.562.

23 (m) New or increased fees that are anticipated in the legislative budgeting process for an  
24 agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted  
25 budget for the agency.

26 (n) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.

27 (o) Convenience fees as defined in ORS 182.126 and established by the Oregon Department of  
28 Administrative Services under ORS 182.132 (3) and recommended by the Electronic Government  
29 Portal Advisory Board.

30 (3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unex-  
31 pected and temporary revenue surpluses may be increased to not more than their prior level without  
32 compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency  
33 specifies the following:

34 (A) The reason for the fee decrease; and

35 (B) The conditions under which the fee will be increased to not more than its prior level.

36 (b) Fees that are decreased for reasons other than those described in paragraph (a) of this sub-  
37 section may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

38 **SECTION 432.** ORS 307.110 is amended to read:

39 307.110. (1) Except as provided in ORS 307.120, all real and personal property of this state or  
40 any institution or department thereof or of any county or city, town or other municipal corporation  
41 or political subdivision of this state, held under a lease or other interest or estate less than a fee  
42 simple, by any person whose real property, if any, is taxable, except employees of the state,  
43 municipality or political subdivision as an incident to such employment, shall be subject to assess-  
44 ment and taxation for the assessed or specially assessed value thereof uniformly with real property  
45 of nonexempt ownerships.

1 (2) Each leased or rented premises not exempt under ORS 307.120 and subject to assessment and  
 2 taxation under this section which is located on property used as an airport and owned by and  
 3 serving a municipality or port shall be separately assessed and taxed.

4 (3) Nothing contained in this section shall be construed as subjecting to assessment and taxation  
 5 any publicly owned property described in subsection (1) of this section that is:

6 (a) Leased for student housing by a school or college to students attending such a school or  
 7 college.

8 (b) Leased to or rented by persons, other than sublessees or subrenters, for agricultural or  
 9 grazing purposes and for other than a cash rental or a percentage of the crop.

10 (c) Utilized by persons under a land use permit issued by the Department of Transportation for  
 11 which the department's use restrictions are such that only an administrative processing fee is able  
 12 to be charged.

13 (d) County fairgrounds and the buildings thereon, in a county holding annual county fairs,  
 14 managed by the county fair board under ORS 565.230, if utilized, in addition to county fair use, for  
 15 any of the purposes described in ORS 565.230 (2), or for horse stalls or storage for recreational ve-  
 16 hicles or farm machinery or equipment.

17 (e) The properties and grounds managed and operated by the [*State Parks and Recreation Di-*  
 18 *rector*] **Director of the Oregon Department of Natural Resources** under ORS 565.080, if utilized,  
 19 in addition to the purpose of holding the Oregon State Fair, for horse stalls or for storage for rec-  
 20 reational vehicles or farm machinery or equipment.

21 (f) State property that is used by the Oregon University System or the Oregon Health and Sci-  
 22 ence University to provide parking for employees, students or visitors.

23 (g) Property of a housing authority created under ORS chapter 456 which is leased or rented to  
 24 persons of lower income for housing pursuant to the public and governmental purposes of the  
 25 housing authority. For purposes of this paragraph, "persons of lower income" has the meaning given  
 26 the phrase under ORS 456.055.

27 (h) Property of a health district if:

28 (A) The property is leased or rented for the purpose of providing facilities for health care  
 29 practitioners practicing within the county; and

30 (B) The county is a frontier rural practice county under rules adopted by the Office of Rural  
 31 Health.

32 (4) Property determined to be an eligible project for tax exemption under ORS 285C.600 to  
 33 285C.626 and 307.123 that was acquired with revenue bonds issued under ORS 285B.320 to 285B.371  
 34 and that is leased by this state, any institution or department thereof or any county, city, town or  
 35 other municipal corporation or political subdivision of this state to an eligible applicant shall be  
 36 assessed and taxed in accordance with ORS 307.123. The property's continued eligibility for taxation  
 37 and assessment under ORS 307.123 is not affected:

38 (a) If the eligible applicant retires the bonds prior to the original dates of maturity; or

39 (b) If any applicable lease or financial agreement is terminated prior to the original date of ex-  
 40 piration.

41 (5) The provisions of law for liens and the payment and collection of taxes levied against real  
 42 property of nonexempt ownerships shall apply to all real property subject to the provisions of this  
 43 section. Taxes remaining unpaid upon the termination of a lease or other interest or estate less than  
 44 a fee simple, shall remain a lien against the real or personal property.

45 (6) If the state enters into a lease of property with, or grants an interest or other estate less

1 than a fee simple in property to, a person whose real property, if any, is taxable, then within 30 days  
2 after the date of the lease, or within 30 days after the date the interest or estate less than a fee  
3 simple is created, the state shall file a copy of the lease or other instrument creating or evidencing  
4 the interest or estate with the county assessor. This section applies notwithstanding that the prop-  
5 erty may otherwise be entitled to an exemption under this section, ORS 307.120 or as otherwise  
6 provided by law.

7 **SECTION 433.** ORS 358.487 is amended to read:

8 358.487. (1) An owner of historic property desiring classification and special assessment under  
9 ORS 358.487 to 358.543 for the property shall apply to the State Historic Preservation Officer on  
10 forms approved by the officer.

11 (2) The application must include or be accompanied by:

12 (a) A preservation plan as defined in ORS 358.480. The preservation plan must commit the ap-  
13 plicant to expend, within the first five years for which historic property special assessment is  
14 granted, an amount not less than 10 percent of the historic property's real market value determined  
15 as of the assessment date for the first tax year to which the historic property special assessment  
16 applies. The focus of the preservation plan must be on exterior features, especially those visible from  
17 a public way, and structural members of the property. The treatment of significant interior features,  
18 as determined by the State Historic Preservation Officer, may also be included in the plan, but un-  
19 less specifically required by the officer, work in bathrooms, kitchens, basements and attics is not  
20 included in the preservation plan. Work proposed in the plan must meet the historic rehabilitation  
21 standards.

22 (b) Payment of an application fee equal to:

23 (A) One-tenth of one percent of the assessed value of the property, as of the assessment date,  
24 for the year in which application is made; or

25 (B) For property that does not have an assessed value, one-tenth of one percent of the product  
26 of the real market value of the property for the tax year in which the application is made multiplied  
27 by the ratio of the average maximum assessed value over the average real market value for that tax  
28 year of property in the same area and property class.

29 (c) A copy of the property's current tax statement.

30 (d) Proof that the owner has property insurance on the property in an amount equal to the re-  
31 placement value of the property.

32 (e) The written consent of the owner to the viewing of the property by the State Historic Pres-  
33 ervation Officer.

34 (3) The application must be made before April 1 of the assessment year for which classification  
35 and special assessment as historic property are desired.

36 (4)(a) Property must be classified as historic property in order to be certified for historic prop-  
37 erty special assessment.

38 (b) Notwithstanding paragraph (a) of this subsection, property may be certified for historic  
39 property special assessment upon a determination of eligibility by the State Historic Preservation  
40 Officer under ORS 358.480 (11)(b) or (c). Property certified under this paragraph must become listed  
41 in the National Register of Historic Places within two years of certification under ORS 358.490.

42 (5) Classification and special assessment pursuant to an application made under this section are  
43 granted for 10 consecutive property tax years, starting in the tax year beginning on July 1 of the  
44 assessment year described in subsection (3) of this section.

45 (6) The application fee required under subsection (2) of this section shall be deposited in the

1 *[State Parks and Recreation Department Fund for use by the State Parks and Recreation Director]*  
 2 **Oregon Natural Resources Fund for use by the Director of the Oregon Department of Na-**  
 3 **tural Resources**, or for transfer to the Oregon Property Management Account established under  
 4 ORS 358.680 to 358.690, upon the advice of the State Advisory Committee on Historic Preservation.  
 5 The application fee becomes nonrefundable after certification as described in ORS 358.495.

6 **SECTION 434.** ORS 358.570 is amended to read:

7 358.570. (1) To *[assure]* **ensure** the conservation and development of Oregon's heritage there is  
 8 established in the *[State Parks and Recreation Department]* **Oregon Department of Natural Re-**  
 9 **sources** the Oregon Heritage Commission consisting of nine voting members appointed by the Gov-  
 10 ernor and eight ex officio members as described in ORS 358.575.

11 (2) The term of office of each member is four years, but a member serves at the pleasure of the  
 12 Governor. Before the expiration of the term of a member, the Governor shall appoint a successor  
 13 whose term begins on July 1 next following. A member is eligible for reappointment. If there is a  
 14 vacancy for any cause, the Governor shall make an appointment to become immediately effective for  
 15 the unexpired term.

16 (3) A member of the commission is entitled to actual and necessary travel and other expenses  
 17 as provided in ORS 292.495.

18 **SECTION 435.** ORS 358.583 is amended to read:

19 358.583. (1) As used in this section, "museum" means a public institution or private nonprofit  
 20 Oregon corporation primarily devoted to the acquisition and public exhibition of specimens,  
 21 artifacts, articles, documents and other items that relate to history, anthropology, archaeology, sci-  
 22 ence or art and that have historical significance.

23 (2) The purpose of this section is to direct the Oregon Heritage Commission to assist in projects  
 24 for the collection and management of heritage collections and for heritage-related tourism and to  
 25 assist in projects related to the heritage aspects of education and interpretation.

26 (3) In addition to the other duties of the commission, the commission shall:

27 (a) Make biennial competitive grants to museums for projects related to Oregon's heritage, in-  
 28 cluding but not limited to projects involving the collection and management of heritage collections,  
 29 the promotion of heritage-related tourism and the provision of education and other interpretations  
 30 related to heritage;

31 (b) With the assistance of the Oregon Historical Society and the Oregon Museums Association,  
 32 determine the eligibility of a museum for a competitive grant;

33 (c) Advise, upon request, museum governing bodies, county governing bodies, city governing  
 34 bodies and interested citizens of the availability of competitive grants; and

35 (d) Request, with the advice of the Oregon Historical Society and the Oregon Museums Associ-  
 36 ation, rules for the *[State Parks and Recreation Commission]* **Oregon Natural Resources Commis-**  
 37 **sion** to adopt under ORS 358.585 for the purpose of carrying out the grant program.

38 **SECTION 436.** ORS 358.585 is amended to read:

39 358.585. In accordance with applicable provisions of ORS chapter 183, the *[State Parks and Re-*  
 40 *creation Commission]* **Oregon Natural Resources Commission** may adopt rules, as requested by  
 41 the Oregon Heritage Commission, for the administration of the laws that the commissions are  
 42 charged with administering.

43 **SECTION 437.** ORS 358.640 is amended to read:

44 358.640. (1) The *[State Parks and Recreation Department]* **Oregon Department of Natural Re-**  
 45 **sources**, in consultation with the Oregon Heritage Commission, shall identify and catalog state-

1 owned historic artifacts.

2 (2) The [*State Parks and Recreation*] department shall make recommendations to any state  
3 agency or political subdivision that possesses any historic artifact relating to its retention, preser-  
4 vation, maintenance, use or transfer to the custody of any public or private agency or person.

5 (3) Any state agency shall obtain approval from the [*State Parks and Recreation*] department  
6 prior to transferring, selling, demolishing, substantially altering or otherwise disposing of any his-  
7 toric artifact.

8 (4) The [*State Parks and Recreation*] department shall adopt rules pursuant to ORS chapter 183  
9 to implement ORS 358.635 to 358.653.

10 **SECTION 438.** ORS 358.645 is amended to read:

11 358.645. A private owner of any historic artifact believed to have state or national historic sig-  
12 nificance that the owner wishes to give to the state or to a political subdivision may request review  
13 of the significance of the property by the [*State Parks and Recreation Department*] **Oregon De-**  
14 **partment of Natural Resources.**

15 **SECTION 439.** ORS 358.650 is amended to read:

16 358.650. (1) Whenever a prospective donor of any historic artifact identified as historically sig-  
17 nificant pursuant to ORS 358.645 requires immediate acceptance of the property as a condition of  
18 a gift, the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources** may  
19 accept the gift on behalf of the state or political subdivision and may place the gift in the custody  
20 of a state agency or political subdivision under agreement between the department and the agency  
21 or political subdivision.

22 (2) The [*State Parks and Recreation*] department may transfer under agreement between the de-  
23 partment and the agency or political subdivision any gift accepted pursuant to this section to the  
24 custody of an appropriate state agency or political subdivision.

25 (3) The [*State Parks and Recreation*] department may, pursuant to procedures adopted by rule,  
26 pay finders fees, rewards or otherwise expend funds to acquire historic artifacts previously owned  
27 by the state.

28 **SECTION 440.** ORS 358.680 is amended to read:

29 358.680. As used in ORS 358.683 to 358.690:

30 [(1) "*Director*" means the *State Parks and Recreation Director*.]

31 [(2)] (1) "Committee" means the State Advisory Committee on Historic Preservation established  
32 in ORS 358.622.

33 [(3)] (2) "Oregon Property Management Program" means the program established in ORS  
34 358.683.

35 [(4)] (3) "State Historic Preservation Officer" means the officer designated under ORS 358.565.

36 **SECTION 441.** ORS 358.683 is amended to read:

37 358.683. (1) The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
38 **Natural Resources**, with the advice of the State Advisory Committee on Historic Preservation shall  
39 formulate and implement an Oregon Property Management Program. The program shall include, but  
40 need not be limited to:

41 (a) Policies and plans for accepting and preserving historic sites and property in Oregon;

42 (b) Criteria for selecting sites and property according to the provisions of ORS 358.680 to  
43 358.690; and

44 (c) Any other provision necessary to administer the program.

45 (2) The director and the State Advisory Committee on Historic Preservation shall coordinate

1 activities concerning historic properties with the State Historic Preservation Officer.

2 (3) In accordance with any applicable provision of ORS chapter 183, the director may  
3 promulgate rules to carry out the provisions of the Oregon Property Management Program.

4 **SECTION 442.** ORS 358.685 is amended to read:

5 358.685. In addition to any other duties or powers provided by law, the [*State Parks and Recre-*  
6 *ation Director*] **Director of the Oregon Department of Natural Resources** may, with the advice  
7 of the State Advisory Committee on Historic Preservation:

8 (1) Except as otherwise provided in ORS 358.650 (1), accept, from whatever source, appropri-  
9 ations, gifts or grants of money or other property for the preservation of significant historic sites  
10 and properties, and use the money or property to preserve significant historic sites and properties.

11 (2) Sell or exchange property owned by the state and used for state heritage or historic pres-  
12 ervation purposes if the director determines that the sale or exchange would be advantageous to the  
13 state for the preservation of significant historic sites and properties.

14 (3) Acquire by purchase, lease, agreement or gift real property and all appropriate interests  
15 therein for significant sites and properties of recreational value and purpose.

16 (4) Acquire by purchase, lease, agreement, gift or otherwise real property and all interests  
17 therein and establish, operate and maintain thereon significant historic sites and properties.

18 (5) Establish and develop significant historic sites and properties and prescribe rules governing  
19 the use of significant historic sites and properties established and developed under any other pro-  
20 vision of state law.

21 (6) By rule prescribe reasonable fees for recreational uses of real property owned or managed  
22 by the [*administrator*] **director**, unless those fees or user charges are otherwise prescribed by law  
23 or administrative rule.

24 (7) Enter into contracts with any person or governmental agency for the development and en-  
25 couragement of programs and projects designed to preserve significant historic sites and properties.

26 (8) Perform the acts necessary for the establishment and implementation of programs designed  
27 to preserve significant historic sites and properties with agencies of the federal government.

28 (9) Offer and pay rewards for the arrest and conviction of any person who has violated any of  
29 the state heritage or historic preservation laws. No reward shall exceed \$100 for a single arrest and  
30 conviction.

31 **SECTION 443.** ORS 358.687 is amended to read:

32 358.687. (1) The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
33 **Natural Resources** shall report biennially to the Governor and to the Legislative Assembly on ac-  
34 tivities of the State Advisory Committee on Historic Preservation during the preceding biennium.  
35 The director shall make any additional reports required by the Governor or the Legislative Assem-  
36 bly.

37 (2) Reports required under subsection (1) of this section shall be in the form and contain the  
38 information the director considers appropriate, and shall contain the information required by the  
39 Governor or the Legislative Assembly.

40 **SECTION 444.** ORS 358.690 is amended to read:

41 358.690. (1) The Oregon Property Management Account is established as a separate account in  
42 the [*State Parks and Recreation Department Fund*] **Oregon Natural Resources Fund**. Except as  
43 otherwise provided by law, all moneys received by the State Advisory Committee on Historic Pres-  
44 ervation under law shall be paid into the State Treasury and credited to the account. All moneys  
45 in the account and all income, interest and earnings from the moneys in the account are **contin-**

1 **uously** appropriated [*continuously*] to the committee to carry out the state heritage and historic  
2 preservation laws.

3 (2) The committee shall keep a record of all moneys deposited in the Oregon Property Manage-  
4 ment Account. The record shall indicate by separate cumulative accounts the source from which the  
5 moneys are derived and the individual activity or program against which each withdrawal is  
6 charged.

7 (3) Moneys in the Oregon Property Management Account shall be accounted for separately and  
8 shall be stated separately in the [*State Parks and Recreation Department*] biennial budget **of the**  
9 **Oregon Department of Natural Resources.**

10 **SECTION 445.** ORS 366.155 is amended to read:

11 366.155. (1) The Department of Transportation shall, among other things:

12 (a) [*So*] **As** far as practicable, compile statistics relative to the public highways of the state and  
13 collect all information in regard thereto which the Director of Transportation may deem important  
14 or of value in connection with highway location, construction, maintenance, improvement or opera-  
15 tion.

16 (b) Keep on file in the office of the department copies of all plans, specifications and estimates  
17 prepared by the department.

18 (c) Make all necessary surveys for the location or relocation of highways and cause to be made  
19 and kept in the department a general highway plan of the state.

20 (d) Collect and compile information and statistics relative to the mileage, character and condi-  
21 tion of highways and bridges in the different counties in the state, both with respect to state and  
22 county highways.

23 (e) Investigate and determine the methods of road construction best adapted in the various  
24 counties or sections of the state, giving due regard to the topography, natural character and avail-  
25 ability of road-building materials and the cost of building and maintaining roads under this Act.

26 (f) Prepare surveys, plans, specifications and estimates for the construction, reconstruction, im-  
27 provement, maintenance and repair of any bridge, street, road and highway. In advertising for bids  
28 on any such project the director shall invite bids in conformity with such plans and specifications.

29 (g) Keep an accurate and detailed account of all moneys expended in the location, survey, con-  
30 struction, reconstruction, improvement, maintenance or operation of highways, roads and streets,  
31 including costs for rights of way, under this Act, and keep a record of the number of miles so lo-  
32 cated, constructed, maintained or operated in each county, the date of construction, the width of  
33 such highways and the cost per mile for the construction and maintenance of the highways.

34 (h) Upon request of a county governing body, assist the county on matters relating to road lo-  
35 cation, construction or maintenance. Plans and specifications for bridges or culverts that are pro-  
36 vided under this paragraph shall be provided without cost to the 10 counties with the lowest  
37 dedicated county road funding, as defined in ORS 366.772. Standard specifications for road projects  
38 shall be provided without cost to all counties. The Department of Transportation shall determine  
39 an amount to be charged for assistance under this paragraph in establishing specifications and  
40 standards for roads under ORS 368.036. The costs of assistance not specifically provided for under  
41 this paragraph shall be paid as provided by agreement between the county governing body and the  
42 director.

43 (i) Upon request of the [*State Parks and Recreation Department, assist the State Parks and Re-*  
44 *creation Department*] **Director of the Oregon Department of Natural Resources, assist the**  
45 **Oregon Department of Natural Resources** in evaluating the potential need for construction, re-

1 construction, improvement, maintenance or operation of highways, roads and streets that would re-  
2 sult if the [*State Parks and Recreation Commission*] **Oregon Natural Resources Commission**  
3 acquired and developed a new historic site, park or recreation area under the criteria established  
4 pursuant to ORS 390.112 or any other criteria **established by the commission for acquiring a new**  
5 **historic site, park or recreation area** [*for acquisition established by the State Parks and Recreation*  
6 *Commission*].

7 (2) The director may require duties with respect to audits and accounting procedures provided  
8 for in this section and ORS 366.165 to be performed and responsibilities to be assumed by the fiscal  
9 officer of the [*department*] **Department of Transportation** appointed under ORS 184.637.

10 (3) In carrying out the duties set forth in this section, the director shall act in a manner that  
11 is consistent with the goal set forth in ORS 468B.155.

12 **SECTION 446.** ORS 366.512 is amended to read:

13 366.512. (1) The Department of Transportation shall collect all registration fees for campers,  
14 motor homes and travel trailers. Such fees shall be [*paid into the State Parks and Recreation De-*  
15 *partment Fund.*] **transferred to the Oregon Natural Resources Fund. Moneys deposited in the**  
16 **fund under this section are continuously appropriated to the Oregon Department of Natural**  
17 **Resources for purposes described in ORS 390.134 and 390.848.**

18 (2) As used in this section:

19 (a) "Camper" has the meaning given that term in ORS 801.180.

20 (b) "Motor home" has the meaning given that term in ORS 801.350.

21 (c) "Travel trailer" has the meaning given that term in ORS 801.565.

22 **SECTION 447.** ORS 366.552 is amended to read:

23 366.552. (1) The Department of Transportation and the [*State Parks and Recreation Department*]  
24 **Oregon Department of Natural Resources** shall prepare and manage a historic road program, in  
25 consultation with the Historic Columbia River Highway Advisory Committee and other affected en-  
26 tities, consistent with the purposes of the Columbia River Gorge National Scenic Area Act of 1986  
27 and the public policy of this state declared in ORS 366.551.

28 (2) The departments shall inform the advisory committee of those activities of the departments  
29 which may affect the continuity, historic integrity and scenic qualities of the Historic Columbia  
30 River Highway.

31 (3) The departments shall undertake efforts to rehabilitate, restore, maintain and preserve all  
32 intact and usable segments of the Historic Columbia River Highway and associated state parks. The  
33 Department of Transportation may expend funds dedicated for footpaths and bicycle trails under  
34 ORS 366.514 to construct footpaths and bicycle trails on those portions of the Historic Columbia  
35 River Highway that are parts of the state highway system or that are county roads or city streets  
36 and the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources** may  
37 incorporate those segments into the Oregon recreation trails system under the provisions of ORS  
38 390.950 to 390.989 and 390.995 (2).

39 (4) The departments may acquire real property, or any right or interest therein, deemed neces-  
40 sary for the preservation of historic, scenic or recreation qualities of the Historic Columbia River  
41 Highway, for the connection of intact and usable segments, or for the development and maintenance  
42 of parks along or in close proximity to the highway. The departments shall encourage the acquisi-  
43 tion of lands, or interests in lands, by donation, agreement, exchange or purchase.

44 (5) The departments shall assist and cooperate with other agencies and political subdivisions of  
45 the state, state agencies, the federal government, special purpose districts, railroads, public and



1 private organizations and individuals to the extent necessary to carry out the provisions of ORS  
2 366.550 to 366.553. The departments may enter into such contracts as are necessary to carry out  
3 these provisions.

4 **SECTION 448.** ORS 366.553 is amended to read:

5 366.553. (1) There is created in the Department of Transportation an advisory committee to ad-  
6 vise the Director of Transportation and the Oregon Transportation Commission on policy matters  
7 pertaining to the preservation and restoration of the Historic Columbia River Highway. The com-  
8 mittee shall consist of 10 members, including the [*State Parks and Recreation Director*] **Director of**  
9 **the Oregon Department of Natural Resources**, State Historic Preservation Officer, Director of  
10 the Oregon Business Development Department or their delegates, one member appointed by the Di-  
11 rector of Transportation and six citizen members, two residents each from Wasco, Hood River and  
12 Multnomah Counties. The Governor shall appoint one member from each of the three counties and  
13 each county commission shall appoint one member respectively. Citizen members shall have  
14 knowledge or specific interest in historic or scenic preservation, engineering design, recreation or  
15 related disciplines.

16 (2) The citizen members shall be appointed to terms of four years, commencing on July 1 of the  
17 year of appointment. Members of the advisory committee shall be entitled to expenses as provided  
18 by ORS 292.495 (2).

19 (3) The committee shall review the department's preparation of the historic road program and  
20 its ongoing management and submit recommendations to the Director of Transportation.

21 (4) The committee shall review proposed highway-related activities and other public actions,  
22 except for routine highway maintenance, which may affect the historic integrity, continuity, scenic  
23 values, public access and public recreational opportunities within the Columbia River Highway  
24 Historic District and submit recommendations to the director. The committee may appoint subcom-  
25 mittees composed of qualified members or other technical specialists, as required, to review plans,  
26 construction or other subjects as designated by the committee. The director shall provide notice to  
27 the committee of proposed activities, actions or projects at the earliest possible opportunity.

28 (5) The committee may recommend to the director that a public hearing with appropriate public  
29 notification be held for proposed activities, actions or projects which significantly affect the Historic  
30 Columbia River Highway.

31 (6) The committee shall meet regularly a minimum of four times a year at times and places fixed  
32 by the chairperson of the committee. The department shall provide personnel services to assist the  
33 committee within the limits of available funds. The committee shall adopt rules to govern its pro-  
34 ceedings and may select officers it considers necessary.

35 **SECTION 449.** ORS 366.744 is amended to read:

36 366.744. (1) The following moneys shall be allocated as provided in subsection (2) of this section:

37 (a) The amount attributable to the increase in title fees by the amendments to ORS 803.090 by  
38 section 1, chapter 618, Oregon Laws 2003.

39 (b) The amount attributable to the increase in registration fees by the amendments to ORS  
40 803.420 by section 2, chapter 618, Oregon Laws 2003, except for the amount [*paid to the State Parks*  
41 *and Recreation Department Fund*] **deposited in the Oregon Natural Resources Fund** under ORS  
42 366.512; and

43 (c) The amount attributable to the increase in fees and tax rates by the amendments to ORS  
44 818.225, 825.476 and 825.480 by sections 3, 4 and 5, chapter 618, Oregon Laws 2003.

45 (2) The moneys described in subsection (1) of this section shall be allocated as follows:

1 (a) 57.53 percent to the Department of Transportation.

2 (b) 25.48 percent to the department to pay the principal and interest due on bonds authorized  
3 under ORS 367.620 (3) that are issued for replacement and repair of bridges on county highways.  
4 However, any portion of the 25.48 percent that is not needed for payment of principal and interest  
5 on the bonds described in this paragraph shall be allocated to counties. Moneys allocated to coun-  
6 ties under this paragraph shall be distributed in the same manner as moneys allocated to counties  
7 under ORS 366.739 are distributed.

8 (c) 16.99 percent to the department to pay the principal and interest due on bonds authorized  
9 under ORS 367.620 (3) that are issued for replacement and repair of bridges on city highways.  
10 However, any portion of the 16.99 percent that is not needed for payment of principal and interest  
11 on the bonds described in this paragraph shall be allocated to cities. Moneys allocated to cities  
12 under this paragraph shall be distributed in the same manner as moneys allocated to cities under  
13 ORS 366.739 are distributed.

14 (3)(a) Multnomah County shall spend a majority of moneys distributed to it under subsection  
15 (2)(b) of this section on bridges in the county.

16 (b) Moneys distributed to Multnomah County under subsection (2)(b) of this section that are not  
17 spent on bridges shall be distributed equitably within the county, based on the agreement described  
18 in paragraph (c) of this subsection.

19 (c) Multnomah County and the cities within the county shall agree upon the distribution of  
20 moneys described in paragraph (b) of this subsection. When the county and the cities have reached  
21 an agreement, they shall notify the Oregon Transportation Commission of the agreement. If the  
22 commission does not receive notice of an agreement by June 30, 2004, the Department of Transpor-  
23 tation may not distribute moneys that would otherwise go to the county under paragraph (b) of this  
24 subsection. Such moneys shall revert to the State Highway Fund for use by the Department of  
25 Transportation.

26 **SECTION 449a.** ORS 367.173 is amended to read:

27 367.173. The principal, interest, premium, if any, and the purchase or tender price of the grant  
28 anticipation revenue bonds issued under ORS 367.161 to 367.181 are payable solely from the follow-  
29 ing moneys:

30 (1) Federal transportation funds.

31 (2) To the extent affirmatively pledged at the time issuance of revenue bonds is authorized, the  
32 following moneys that are lawfully available:

33 (a) Moneys deposited in the State Highway Fund established under ORS 366.505.

34 (b) Except as provided in paragraph (c) of this subsection, moneys, once deposited in the State  
35 Highway Fund established under ORS 366.505, from the following sources may be affirmatively  
36 pledged:

37 (A) Moneys from the taxes and fees on motor carriers imposed under ORS 825.474 and 825.480.

38 (B) Moneys from the tax on motor vehicle fuel imposed under ORS 319.020.

39 (C) Moneys from the tax on fuel used in motor vehicles imposed under ORS 319.530.

40 (D) Moneys described under ORS 803.090 from the titling of vehicles.

41 (E) Moneys described under ORS 803.420 from the registration of vehicles.

42 (F) Moneys described under ORS 807.370 relating to the issuance of driver licenses and driver  
43 permits.

44 (G) Moneys received by the Department of Transportation from taxes, fees or charges imposed  
45 after January 1, 2001, or other revenues or moneys received by the department from sources not

1 listed in subparagraphs (A) to (F) of this paragraph that are lawfully available to be pledged under  
2 this section.

3 (c) Moneys described in paragraph (b) of this subsection do not include:

4 (A) Moneys provided for appropriations to counties under ORS 366.762 to 366.768.

5 (B) Moneys provided for appropriations to cities under ORS 366.785 to 366.820.

6 (C) Moneys [*in the account established under*] **transferred to the Oregon Natural Resources**  
7 **Fund pursuant to** ORS 366.512 for parks and recreation.

8 **SECTION 449b.** ORS 367.605 is amended to read:

9 367.605. (1) Moneys deposited in the State Highway Fund established under ORS 366.505 are  
10 pledged to payment of Highway User Tax Bonds issued under ORS 367.615.

11 (2) Except as provided in subsection (3) of this section, moneys, once deposited in the highway  
12 fund from the following sources are subject to the use or pledge described in subsection (1) of this  
13 section:

14 (a) Moneys from the taxes and fees on motor carriers imposed under ORS 825.474 and 825.480.

15 (b) Moneys from the tax on motor vehicle fuel imposed under ORS 319.020.

16 (c) Moneys from the tax on fuel used in motor vehicles imposed under ORS 319.530.

17 (d) Moneys described under ORS 803.090 from the titling of vehicles.

18 (e) Moneys described under ORS 803.420 from the registration of vehicles.

19 (f) Moneys described under ORS 807.370 relating to the issuance of driver licenses and driver  
20 permits.

21 (g) Moneys received by the Department of Transportation from taxes, fees or charges imposed  
22 after January 1, 2001, or other revenues received by the department from sources not listed in par-  
23 agraphs (a) to (f) of this subsection that are available for the use or pledge described by this section.

24 (3) Moneys described under subsection (2) of this section do not include:

25 (a) Moneys provided for appropriations to counties under ORS 366.762 to 366.768.

26 (b) Moneys provided for appropriations to cities under ORS 366.785 to 366.820.

27 (c) Moneys [*in the account established under*] **transferred to the Oregon Natural Resources**  
28 **Fund pursuant to** ORS 366.512 for parks and recreation.

29 (4) To the extent affirmatively pledged, moneys from the following sources are subject to the  
30 use or pledge described in subsection (1) of this section:

31 (a) Moneys received by the Department of Transportation from the United States government.

32 (b) Any other moneys legally available to the department.

33 (5) Notwithstanding ORS 366.507, the lien or charge of any pledge of moneys securing bonds  
34 issued under ORS 367.615 is superior or prior to any other lien or charge and to any law of the state  
35 requiring the department to spend moneys for specified highway purposes.

36 **SECTION 450.** ORS 390.050 is amended to read:

37 390.050. (1) In addition to any other persons permitted to enforce violations, the [*State Parks and*  
38 *Recreation Department and any employee of the State Parks and Recreation Department specifically*  
39 *designated by the State Parks and Recreation Director*] **Oregon Department of Natural Resources,**  
40 **the Director of the Oregon Department of Natural Resources and employees of the depart-**  
41 **ment who are authorized by the director** may issue citations for park and recreation violations  
42 established under this chapter in the manner provided by ORS chapter 153.

43 (2) All fines and court costs recovered from park and recreation violations shall be paid to the  
44 clerk of the court involved. Such moneys shall be credited and distributed under ORS 137.290 and  
45 137.295 as monetary obligations payable to the state.

1        **SECTION 451.** ORS 390.065 is amended to read:

2        390.065. The Legislative Assembly finds that:

3        (1) Expenditures by visitors to Oregon state parks, and by employees of the [*State Parks and*  
4        *Recreation Department*] **Oregon Department of Natural Resources pursuant to this chapter**,  
5        currently contribute approximately \$549 million each year to local economies throughout Oregon.  
6        The acquisition, development, improvement, upgrading, preservation and expansion of the capacity  
7        of facilities of the system of state parks, including parks, park facilities, ocean shores, scenic  
8        waterways, trails and historic sites in the State of Oregon, do and will accomplish the purpose of  
9        creating jobs and furthering economic development in Oregon by:

10        (a) Increasing the capacity, usefulness and attractive qualities of public recreational facilities,  
11        thereby promoting travel and tourism in Oregon;

12        (b) Generating business for and supporting the operations and prosperity of businesses located  
13        in the areas of the public recreational facilities; and

14        (c) Creating employment opportunities within this state through the funding of development and  
15        improvement projects on which workers will be employed.

16        (2) Based on the findings made in this section, the use of the net proceeds from the operation  
17        of the Oregon State Lottery to fund state park projects and to pay state park lottery bonds de-  
18        scribed in ORS 390.063 is an appropriate use of state lottery funds under section 4, Article XV of  
19        the Oregon Constitution, and ORS 461.510.

20        **SECTION 452.** ORS 390.067 is amended to read:

21        390.067. (1) State park lottery bonds shall be issued only at the request of the [*State Parks and*  
22        *Recreation Director*] **Director of the Oregon Department of Natural Resources**. State park lot-  
23        tery bonds may be issued in an amount sufficient to provide no more than \$105 million of net pro-  
24        ceeds to pay costs of state park projects, plus the amounts required to pay bond-related costs.

25        (2) The Oregon Parks for the Future Fund is established in the State Treasury, separate and  
26        distinct from the General Fund. The net proceeds from the sale of the state park lottery bonds  
27        [*which*] **that** are available to pay costs of state park projects shall be credited to the Oregon Parks  
28        for the Future Fund. Investment earnings on amounts in the Oregon Parks for the Future Fund  
29        shall be credited to the Oregon Parks for the Future Fund. All moneys from time to time credited  
30        to the Oregon Parks for the Future Fund, including any investment earnings, are [*appropriated*  
31        *continuously to the State Parks and Recreation Department*] **continuously appropriated to the**  
32        **Oregon Department of Natural Resources** only for payment of costs of state park projects and  
33        for payment of bond-related costs that are allocable to state park lottery bonds. Amounts in the  
34        Oregon Parks for the Future Fund shall be disbursed upon the written request of the [*State Parks*  
35        *and Recreation Director*] **Director of the Oregon Department of Natural Resources** to pay for  
36        costs of state park projects pursuant to subsection (3) of this section, and upon the written request  
37        of the Director of the Oregon Department of Administrative Services to pay for bond-related costs  
38        that are allocable to state park lottery bonds.

39        (3) The [*State Parks and Recreation Director*] **Director of the Oregon Department of Natural**  
40        **Resources** shall apply amounts in the Oregon Parks for the Future Fund to pay costs of state park  
41        projects. The [*State Parks and Recreation*] director may make and administer contracts to carry out  
42        state park projects. In addition, the director may enter into agreements with any state agency or  
43        local government that commits the [*State Parks and Recreation Department*] **Oregon Department**  
44        **of Natural Resources** to pay anticipated funds from the Oregon Parks for the Future Fund to the  
45        agency or local government for state park projects. Agreements under this subsection may, subject

1 to the provisions of this section, provide for the remittance of the moneys on such periodic basis,  
 2 in such amounts, over such period of years and with such priority over other commitments of such  
 3 funds as the director shall specify in the agreements. The obligation of the state and the department  
 4 to provide funds under any such agreement shall be subject to the availability of amounts in the  
 5 Oregon Parks for the Future Fund and any other amounts lawfully available to the [*State Parks and*  
 6 *Recreation*] department. The [*State Parks and Recreation Department*] **Oregon Department of Na-**  
 7 **tural Resources** and any agency or local government receiving proceeds of state park lottery bonds  
 8 shall, if so directed by the Oregon Department of Administrative Services, take any action specified  
 9 by the Oregon Department of Administrative Services which is necessary to maintain the  
 10 excludability of lottery bond interest from gross income under the United States Internal Revenue  
 11 Code.

12 **SECTION 453.** ORS 390.111 is amended to read:

13 390.111. [(1) *The State Parks and Recreation Department is created. The department consists of the*  
 14 *State Parks and Recreation Commission, the State Parks and Recreation Director and all other officers*  
 15 *and employees of the department.*]

16 [(2)] (1) Except as may be provided by an agreement to the contrary between the [*State Parks*  
 17 *and Recreation Commission*] **Oregon Natural Resources Commission** and the county, city or poli-  
 18 tical subdivision thereof which exercised jurisdiction and authority over the park, ground or place  
 19 prior to acquisition by the state, the [*department*] **Oregon Department of Natural Resources** has  
 20 complete jurisdiction and authority over all state parks, waysides, and scenic, historic [*or*] **and** state  
 21 recreation areas, **and** recreational grounds or places acquired by the state for scenic, historic, na-  
 22 tural, cultural or recreational purposes except as otherwise provided by law.

23 [(3)] (2) The department shall manage and control the utilization of the grounds included within  
 24 the State Capitol State Park under ORS 276.053.

25 **SECTION 454.** ORS 390.112 is amended to read:

26 390.112. The [*State Parks and Recreation Department shall propose to the State Parks and Re-*  
 27 *creation Commission*] **Oregon Department of Natural Resources shall propose to the Oregon**  
 28 **Natural Resources Commission** additional criteria for the acquisition and development of new  
 29 historic sites, parks and recreation areas. The criteria shall include but need not be limited to:

30 (1) Criteria to address opportunities that may be lost to the department if acquisition is delayed,  
 31 such as Whelan Island in Tillamook County and Cape Sebastian in Curry County;

32 (2) Criteria to protect significant cultural and historic properties, such as Thompson's Mills in  
 33 Linn County, Fort Rock Cave in Lake County, Fort Yamhill in Polk County and Keil House in  
 34 Marion County; and

35 (3) Criteria to satisfy the need for overnight and large group use facilities on the perimeter of  
 36 urban population centers, such as Columbia and Washington Counties.

37 **SECTION 455.** ORS 390.121 is amended to read:

38 390.121. In carrying out its responsibilities[, *the State Parks and Recreation Commission*] **under**  
 39 **this chapter, the Oregon Natural Resources Commission** may:

40 (1) Acquire by purchase, agreement, donation or by exercise of eminent domain, real property  
 41 or any right or interest therein deemed necessary for the operation and development of state parks,  
 42 roads, trails, campgrounds, picnic areas, boat ramps, nature study areas, waysides, relaxation areas,  
 43 visitor and interpretive centers, department management facilities, such as shops, equipment sheds,  
 44 office buildings, park ranger residences or other real property or any right or interest because of  
 45 its natural, scenic, cultural, historic or recreational value, or any other places of attraction and

1 scenic or historic value which in the judgment of the [*State Parks and Recreation Department*]  
2 **Oregon Department of Natural Resources** will contribute to the general welfare, enjoyment and  
3 pleasure of the public.

4 (2) Construct, improve, develop, manage, operate and maintain facilities and areas, including but  
5 not limited to roads, trails, campgrounds, picnic areas, boat ramps and nature study areas named in  
6 subsection (1) of this section.

7 (3) Sell, lease, exchange or otherwise dispose or permit use of real or personal property, in-  
8 cluding equipment and materials acquired by the department, if in the opinion of the department it  
9 is no longer needed, required or useful for department purposes, except that:

10 (a) Real property may be leased when such real property will not be needed for department  
11 purposes during the leasing period.

12 (b) Real property used for park purposes may be donated to the United States Department of  
13 Interior for the purpose of establishing a national monument when in the judgment of the depart-  
14 ment such disposition would best serve the interests of this state.

15 (c) Proceeds from the sale of all surplus or unsuitable lands held for park purposes shall be de-  
16 posited in the Parks Donation Trust Fund for use for park land acquisition or development. Pro-  
17 ceeds from the sale of other property shall be [*paid by the department to the State Treasurer for credit*  
18 *to the State Parks and Recreation Department Fund, and any interest from this fund shall be credited*  
19 *to this fund*] **deposited in the Oregon Natural Resources Fund and are continuously appropri-**  
20 **ated to the department for purposes related to the administration of this chapter.**

21 (d)(A) Before offering forest products for sale, the department shall cause the forest products to  
22 be appraised.

23 (B) If the appraised value of the forest products exceeds \$15,000, the department shall offer them  
24 for sale by competitive bid. Prior to such bid offering, the department shall give notice not less than  
25 once a week for three consecutive weeks by publication in one or more newspapers of general cir-  
26 culation in the county in which the forest products are located and by such other media of com-  
27 munication as the department deems advisable. The minimum bid price and a brief statement of the  
28 terms and conditions of the sale shall be in the notice.

29 (C) The notice and competitive bidding under subparagraph (B) of this paragraph shall not be  
30 required if the [*State Parks and Recreation Director*] **Director of the Oregon Department of Na-**  
31 **tural Resources** declares an emergency to exist that requires the immediate removal of the timber.  
32 If an emergency has been so declared:

33 (i) The timber, regardless of value, may be sold by a negotiated price; and

34 (ii) The director shall make available for public inspection a written statement giving the rea-  
35 sons for declaring the emergency.

36 (e) In the case of real property acquired by eminent domain, the prior owner of real property  
37 for which sale, lease, exchange or other disposal is proposed must be given the first opportunity to  
38 reacquire the property in accordance with ORS chapter 35.

39 (4) Enter into contracts deemed necessary for the construction, maintenance, operation, im-  
40 provement or betterment of parks or for the accomplishment of the purposes of chapter 904, Oregon  
41 Laws 1989. All contracts executed by the department shall be made in the name of this state, by and  
42 through the department.

43 (5) In carrying out its duties, functions and powers under this chapter, publish guides and other  
44 materials relating to recreational opportunities in this state or to any program or function admin-  
45 istered by the department. The department may arrange for the sale of such publications. The price

1 of such publications shall include the cost of publishing and distributing the materials. All moneys  
 2 received by the department from the sale of publications shall be deposited in the [*State Parks and*  
 3 *Recreation Department Fund*] **Oregon Natural Resources Fund and are continuously appropri-**  
 4 **ated to the department for purposes related to the administration of this chapter.** The de-  
 5 partment may contract for the publication of the materials described in this subsection, including  
 6 the research, design and writing of the materials. The contract may include, among other matters,  
 7 provisions for advance payment or reimbursement for services performed under the contract.

8 **SECTION 456.** ORS 390.122 is amended to read:

9 390.122. In establishing its priorities for [*acquisition, the State Parks and Recreation Commission*  
 10 *shall:*] **acquiring real property, or a right to or interest in real property, pursuant to this**  
 11 **chapter, the Oregon Natural Resources Commission shall:**

12 (1) Consider the criteria and specific examples set forth in ORS 390.112; and

13 (2) Encourage public nominations of significant resources that meet the criteria established  
 14 pursuant to ORS 390.112 and other criteria pertaining to the acquisition of historic sites, parks and  
 15 recreation areas.

16 **SECTION 457.** ORS 390.124 is amended to read:

17 390.124. [(1) *In accordance with any applicable provision of ORS chapter 183, the State Parks and*  
 18 *Recreation Commission may adopt rules necessary to carry out the duties, functions and powers im-*  
 19 *posed by law upon the commission and the State Parks and Recreation Department. Rules adopted*  
 20 *pursuant to this section shall be duly entered in the minutes and records of the commission.*]

21 [(2)] (1) The [*commission*] **Oregon Natural Resources Commission** may adopt rules that assess  
 22 reasonable charges, including fee reductions, waivers and exemptions, for the use of areas estab-  
 23 lished and maintained by the [*department*] **Oregon Department of Natural Resources pursuant**  
 24 **to this chapter.** However, the commission shall authorize the use of any state park, individual  
 25 campsite or day use fee area without charge:

26 (a) Upon the showing of proper identification, by a person maintaining a foster home, as defined  
 27 by ORS 418.625, and the person's children, when accompanied by a foster child residing in the home.

28 (b) Upon the showing of proper identification, by a person maintaining a developmental disabil-  
 29 ity child foster home, as defined by ORS 443.830, and the person's children, when accompanied by  
 30 a foster child residing in the home.

31 (c) If a deed to, lease of or contract to use the property used as a state park, campsite or day  
 32 use fee area prohibits the charging of fees for use of the property.

33 (d) Upon the showing of proper identification, by either a disabled veteran or a person on leave  
 34 from military active duty status on Memorial Day, Independence Day or Veterans Day.

35 [(3)] (2) The commission shall report to an appropriate committee of the Legislative Assembly,  
 36 no later than January 31 of each odd-numbered year, on the fee reductions, waivers and exemptions  
 37 adopted by rule by the commission pursuant to subsection [(2)] (1) of this section.

38 **SECTION 458.** ORS 390.134 is amended to read:

39 390.134. (1) As used in this section:

40 (a) "Camper" has the meaning given that term in ORS 801.180.

41 (b) "County" includes a metropolitan service district organized under ORS chapter 268, but only  
 42 to the extent that the district has acquired, through title transfer, and is operating a park or re-  
 43 creation site of a county pursuant to an intergovernmental agreement.

44 (c) "Motor home" has the meaning given that term in ORS 801.350.

45 (d) "Travel trailer" has the meaning given that term in ORS 801.565.

1        [(2) *The State Parks and Recreation Department Fund is established separate and distinct from the*  
 2 *General Fund. Moneys in the fund are continuously appropriated to the State Parks and Recreation*  
 3 *Department for the purposes provided by law. The fund shall consist of the following:*]

4        [(a) *All moneys placed in the fund as provided by law. Any interest or other income derived from*  
 5 *the depositing or other investing of the fund must be credited to the fund.*]

6        [(b)] (2) All registration fees received by the Department of Transportation for campers, motor  
 7 homes and travel trailers that are transferred to the [*fund under ORS 366.512. The funds*] **Oregon**  
 8 **Natural Resources Fund under ORS 366.512** must be deposited in a separate subaccount estab-  
 9 lished under subsection (3) of this section.

10        [(c) *Revenue from fees and charges pursuant to ORS 390.124.*]

11        (3) Any moneys [*placed in the fund for a particular purpose may be placed*] **deposited in the**  
 12 **Oregon Natural Resources Fund for a particular purpose under this chapter must be depos-**  
 13 **ited** in a separate subaccount within the fund. Each separate subaccount established under this  
 14 subsection must be separately accounted for. Moneys [*placed*] **deposited** in a subaccount must be  
 15 used for the purposes for which [*they*] **the moneys** are deposited.

16        (4) [*All of the moneys in the fund except those*] **Except for** moneys described in subsection (3),  
 17 (5), (6) or (7) of this section, **all moneys deposited in the Oregon Natural Resources Fund under**  
 18 **this chapter** must be deposited in a separate subaccount within the fund. [*and used by the State*  
 19 *Parks and Recreation Department*] **Moneys deposited in a subaccount under this subsection are**  
 20 **continuously appropriated to the Oregon Department of Natural Resources** for the acquisition,  
 21 development, maintenance, care and use of park and recreation sites and for the maintenance and  
 22 operation of the Oregon State Fair. The moneys **deposited** in [*the*] a subaccount under this sub-  
 23 section must be accounted for separately and stated separately in the [*State Parks and Recreation*  
 24 *Department's*] **department's** biennial budget.

25        (5)(a) Thirty-five percent of the amount transferred to the [*State Parks and Recreation*] depart-  
 26 ment under ORS 366.512 from the registration of travel trailers, campers and motor homes and under  
 27 ORS 803.601 from recreational vehicle trip permits must be deposited in a separate subaccount  
 28 within the [*fund*] **Oregon Natural Resources Fund** to be distributed for the acquisition, develop-  
 29 ment, maintenance, care and use of county park and recreation sites. The moneys **deposited** in the  
 30 subaccount under this paragraph must be accounted for separately. The following apply to the dis-  
 31 tribution of moneys under this paragraph:

32        (A) The moneys must be distributed among the several counties for the purposes described in  
 33 this paragraph. The distribution shall be made at times determined by the [*State Parks and Recre-*  
 34 *ation*] department but must be made not less than once a year.

35        (B) The sums designated under this paragraph must be remitted to the county treasurers of the  
 36 several counties by warrant.

37        (b) The department shall establish an advisory committee to advise the department in the per-  
 38 formance of its duties under this subsection. The composition of the advisory committee under this  
 39 subsection is as determined by the department by rule. In determining the composition of the advi-  
 40 sory committee, the department shall attempt to provide reasonable representation for county offi-  
 41 cials or employees with responsibilities relating to county parks and recreation sites.

42        (c) The department, by rule, shall establish a program to provide moneys to counties for the  
 43 acquisition, development, maintenance, care and use of county park and recreation sites. The rules  
 44 **adopted** under this paragraph shall provide for distribution of moneys based on use and need and,  
 45 as the department determines necessary, on the need for the development and maintenance of facil-



ities to provide camping sites for campers, motor homes and travel trailers.

(6) The department shall create a separate City and County Subaccount within the *[fund]* **Oregon Natural Resources Fund** to be used to reimburse cities and counties as provided in ORS 390.290.

(7) The department shall create a separate rural Fire Protection District Subaccount **within the Oregon Natural Resources Fund** to be used to provide funds for the fire protection districts as provided in ORS 390.290.

(8) On or before January 15 of each odd-numbered year, the *[State Parks and Recreation Director]* **Director of the Oregon Department of Natural Resources** shall report to the Joint Committee on Ways and Means created by ORS 171.555 on the use of moneys deposited pursuant to ORS 805.256 in the **Oregon Natural Resources Fund**. The director shall make the report in a form and manner as the committee may prescribe.

**SECTION 459.** ORS 390.134, as amended by section 2, chapter 792, Oregon Laws 2007, and section 47, chapter 11, Oregon Laws 2009, is amended to read:

390.134. (1) As used in this section:

(a) "Camper" has the meaning given that term in ORS 801.180.

(b) "County" includes a metropolitan service district organized under ORS chapter 268, but only to the extent that the district has acquired, through title transfer, and is operating a park or recreation site of a county pursuant to an intergovernmental agreement.

(c) "Motor home" has the meaning given that term in ORS 801.350.

(d) "Travel trailer" has the meaning given that term in ORS 801.565.

*[(2) The State Parks and Recreation Department Fund is established separate and distinct from the General Fund. Moneys in the fund are continuously appropriated to the State Parks and Recreation Department for the purposes provided by law. The fund shall consist of the following:]*

*[(a) All moneys placed in the fund as provided by law. Any interest or other income derived from the depositing or other investing of the fund must be credited to the fund.]*

*[(b)]* **(2)** All registration fees received by the Department of Transportation for campers, motor homes and travel trailers that are transferred to the *[fund under ORS 366.512. The funds]* **Oregon Natural Resources Fund under ORS 366.512** must be deposited in a separate subaccount established under subsection (3) of this section.

*[(c) Revenue from fees and charges pursuant to ORS 390.124.]*

(3) Any moneys *[placed in the fund for a particular purpose may be placed]* **deposited in the Oregon Natural Resources Fund under this chapter may be deposited** in a separate subaccount within the fund. Each separate subaccount established under this subsection must be separately accounted for. Moneys *[placed]* **deposited** in a subaccount must be used for the purposes for which *[they]* **the moneys** are deposited.

(4) *[All of the moneys in the fund except those]* **Except for** moneys described in subsection (3), (5), (6) or (7) of this section, **all moneys deposited in the Oregon Natural Resources Fund under this chapter** must be deposited in a separate subaccount within the fund. *[and used by the State Parks and Recreation Department]* **Moneys deposited in a subaccount under this subsection are continuously appropriated to the Oregon Department of Natural Resources** for the acquisition, development, maintenance, care and use of park and recreation sites and for the maintenance and operation of the Oregon State Fair. The moneys **deposited** in *[the]* a subaccount under this subsection must be accounted for separately and stated separately in the *[State Parks and Recreation Department's]* **department's** biennial budget.

1 (5)(a) Thirty percent of the amount transferred to the [*State Parks and Recreation*] department  
 2 under ORS 366.512 from the registration of travel trailers, campers and motor homes and under ORS  
 3 803.601 from recreational vehicle trip permits must be deposited in a separate subaccount within the  
 4 [*fund*] **Oregon Natural Resources Fund** to be distributed for the acquisition, development, main-  
 5 tenance, care and use of county park and recreation sites. The moneys **deposited** in the subaccount  
 6 under this paragraph must be accounted for separately. The following apply to the distribution of  
 7 moneys under this paragraph:

8 (A) The moneys must be distributed among the several counties for the purposes described in  
 9 this paragraph. The distribution shall be made at times determined by the [*State Parks and Recre-*  
 10 *ation*] department but must be made not less than once a year.

11 (B) The sums designated under this paragraph must be remitted to the county treasurers of the  
 12 several counties by warrant.

13 (b) The department shall establish an advisory committee to advise the department in the per-  
 14 formance of its duties under this subsection. The composition of the advisory committee under this  
 15 subsection is as determined by the department by rule. In determining the composition of the advi-  
 16 sory committee, the department shall attempt to provide reasonable representation for county offi-  
 17 cials or employees with responsibilities relating to county parks and recreation sites.

18 (c) The department, by rule, shall establish a program to provide moneys to counties for the  
 19 acquisition, development, maintenance, care and use of county park and recreation sites. The rules  
 20 **adopted** under this paragraph shall provide for distribution of moneys based on use and need and,  
 21 as the department determines necessary, on the need for the development and maintenance of facil-  
 22 ities to provide camping sites for campers, motor homes and travel trailers.

23 (6) The department shall create a separate City and County Subaccount within the [*fund*]  
 24 **Oregon Natural Resources Fund** to be used to reimburse cities and counties as provided in ORS  
 25 390.290.

26 (7) The department shall create a separate rural Fire Protection District Subaccount **within the**  
 27 **Oregon Natural Resources Fund** to be used to provide funds for the fire protection districts as  
 28 provided in ORS 390.290.

29 (8) On or before January 15 of each odd-numbered year, the [*State Parks and Recreation*  
 30 *Director*] **Director of the Oregon Department of Natural Resources** shall report to the Joint  
 31 Committee on Ways and Means created by ORS 171.555 on the use of moneys deposited pursuant to  
 32 ORS 805.256 in the **Oregon Natural Resources Fund**. The director shall make the report in a form  
 33 and manner as the committee may prescribe.

34 **SECTION 460.** ORS 390.137 is amended to read:

35 390.137. (1) There is established in the [*State Parks and Recreation Department*] **Oregon De-**  
 36 **partment of Natural Resources** a revolving fund known as the State Parks and Recreation [*De-*  
 37 *partment*] Operating Fund. Moneys shall be transferred from the [*State Parks and Recreation*  
 38 *Department Fund*] **Oregon Natural Resources Fund** to the State Parks and Recreation  
 39 [*Department*] Operating Fund as needed.

40 (2) Parks Donation Trust Fund moneys shall be transferred to the State Parks and Recreation  
 41 [*Department*] Operating Fund for disbursement for purposes stated in ORS 390.153 (2).

42 (3) Disbursements may be made by check of the department upon the State Treasurer signed by  
 43 such officer or administrative head as the [*State Parks and Recreation Director*] **Director of the**  
 44 **Oregon Department of Natural Resources** appoints for that purpose. Disbursements shall be  
 45 made only in payment of claims authorized by law for the ordinary expenditures of the [*State Parks*

1 *and Recreation*] department incurred in the operation of the department or any of its divisions  
 2 **pursuant to this chapter or ORS chapter 565.** The department shall keep accurate account of the  
 3 funds.

4 (4) Upon approval of the Oregon Department of Administrative Services and the State Treas-  
 5 urer, the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources** may  
 6 contract to write checks upon the State Treasury to pay for claims and expenditures of the depart-  
 7 ment.

8 **SECTION 461.** ORS 390.139 is amended to read:

9 390.139. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 10 **sources** shall administer a program designed to allow volunteers to assist in the operation and  
 11 maintenance of Oregon's state parks. The program shall include public informational activities, but  
 12 shall be directed primarily toward encouraging and facilitating involvement of volunteers in park  
 13 operation and maintenance, assigning each volunteer to a specific state park. The program shall be  
 14 called the Oregon Adopt-a-Park Program.

15 (2) Private landowners with parks adjacent to their property are vital to the success of the  
 16 Oregon Adopt-a-Park Program. The [*State Parks and Recreation*] department shall ensure that par-  
 17 ticipants in the program comply with requirements to obtain permission from landowners for access  
 18 across private property if necessary to perform the volunteers' duties.

19 (3) Program funding is an authorized use of the [*State Parks and Recreation Department Fund*]  
 20 **Oregon Natural Resources Fund** under ORS 390.134.

21 (4) The [*State Parks and Recreation*] department may adopt any rules necessary for implemen-  
 22 tation of the Oregon Adopt-a-Park Program.

23 (5) An agreement entered into between the [*State Parks and Recreation*] department and a vol-  
 24 unteer under subsection (1) of this section shall include but need not be limited to:

25 (a) Identification of the designated state park. The volunteer may request a specific state park  
 26 the volunteer wishes to adopt, but the assignment shall be at the discretion of the [*State Parks and*  
 27 *Recreation*] department. In assigning parks, the department shall coordinate and cooperate with af-  
 28 fected federal, state and local management agencies and private landowners.

29 (b) Specification of the duties of the volunteer.

30 (c) Specification of the responsibilities of the volunteer. The volunteer shall agree to abide by  
 31 all rules related to the program that are adopted by the [*State Parks and Recreation*] department.

32 (d) Specification of the duration of the agreement. The volunteer shall contract to care for the  
 33 designated state park for one year.

34 (6) The [*State Parks and Recreation*] department shall create a recognition program to ac-  
 35 knowledge the efforts of volunteers, agencies and businesses that participate in the Oregon Adopt-  
 36 a-Park Program.

37 (7) The [*State Parks and Recreation*] department may provide trash bags, supplies, equipment and  
 38 safety information and assistance to the participating volunteers.

39 (8) As used in this section, "volunteer" may include an individual, a group of individuals, a  
 40 volunteer group or service club, or any entity that is tax exempt under section 501(c)(3) of the  
 41 Internal Revenue Code, as amended.

42 **SECTION 462.** ORS 390.140 is amended to read:

43 390.140. [(1) *Under the direction of the State Parks and Recreation Commission, the State Parks*  
 44 *and Recreation Director shall:*]

45 (1) **For purposes related to the administration of state parks and other real property, or**

1 **right or interest in a real property, acquired under this chapter, the Director of the Oregon**  
 2 **Department of Natural Resources shall:**

3 (a) Study and appraise the recreation needs of this state and assemble and disseminate infor-  
 4 mation relative to recreation, considering both tourist and local needs.

5 (b) Investigate the recreation facilities, personnel, activities and programs existing or needed in  
 6 the various areas in this state and, by consultation with the appropriate public or private authorities  
 7 in such areas, assist in the development and coordination of recreation facilities, activities and  
 8 programs.

9 (c) Advise, cooperate with and encourage counties, cities, districts and other local agencies,  
 10 areas and communities interested in the development and use of recreation facilities, activities and  
 11 programs for the public benefit.

12 (d) Recommend and promote standards for recreation facilities, personnel, activities and pro-  
 13 grams.

14 (e) Aid in recruiting, training and placing recreation personnel.

15 (f) Promote recreation institutes and conferences.

16 *[(2) Under the direction of the commission, the State Parks and Recreation Director may:]*

17 **(2) For purposes related to the administration of state parks and other real property, or**  
 18 **a right to or interest in real property, acquired under this chapter, the director may:**

19 (a) Encourage and render assistance in the promotion of training programs for volunteer and  
 20 professional recreation leaders in cooperation with other public and private agencies, persons,  
 21 groups, organizations and institutions interested in recreation, and encourage the establishment of  
 22 standards for recreation personnel.

23 (b) Assist any state agency in rendering recreation services and carrying out recreation func-  
 24 tions in conformity with the authorized powers and duties of such state agency, and encourage and  
 25 assist in the coordination of federal, state and local recreation facilities, personnel, activities and  
 26 programs.

27 **SECTION 463.** ORS 390.143 is amended to read:

28 390.143. (1) In order to further the interpretive and educational functions of recreation facilities  
 29 in Oregon, the *[State Parks and Recreation Director]* **Director of the Oregon Department of Na-**  
 30 **tural Resources** may enter into an agreement with a private, nonprofit scientific, historic or edu-  
 31 cational organization organized solely for the purpose of providing interpretive services to  
 32 recreation facilities in Oregon.

33 (2) An organization entering into an agreement with the director under subsection (1) of this  
 34 section may:

35 (a) Provide educational or interpretive material for sale at a recreation facility;

36 (b) Acquire display materials and equipment for exhibits at a recreation facility;

37 (c) Provide support for special recreation facility interpretive programs or environmental edu-  
 38 cation programs;

39 (d) Support recreation facility libraries; or

40 (e) Provide support for other interpretive projects related to a specific recreation facility.

41 (3) If the director enters into an agreement with a private organization under subsection (1) of  
 42 this section, the *[State Parks and Recreation Department]* **Oregon Department of Natural Re-**  
 43 **sources** may:

44 (a) Provide incidental personnel services to the organization's interpretive program; and

45 (b) Provide space at a recreation facility for the interpretive materials provided by the organ-

1 ization.

2 (4) Any money received from the sale of publications or other materials provided by an organ-  
3 ization pursuant to an agreement entered into under this section shall be retained by the organiza-  
4 tion for use in the interpretive or educational services of the recreation facility for which the  
5 organization provides interpretive services.

6 (5) As used in this section, "recreation facility" includes but is not limited to state parks and  
7 all recreational, historical and scenic attractions owned or under the control of the State of Oregon  
8 and administered by the [*State Parks and Recreation*] department.

9 **SECTION 464.** ORS 390.144 is amended to read:

10 390.144. The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
11 **Natural Resources** shall adopt rules to carry out the purpose of ORS 390.143. The rules shall in-  
12 clude but need not be limited to:

13 (1) Procedures and forms to be used by an organization desiring to enter into an agreement with  
14 the director under ORS 390.143;

15 (2) Guidelines for approving the interpretive material an organization proposes to provide to a  
16 recreation facility; and

17 (3) Provisions for renewing or dissolving an agreement between an organization and the direc-  
18 tor.

19 **SECTION 465.** ORS 390.150 is amended to read:

20 390.150. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
21 **sources** may accept and expend, use or dispose of moneys and property from any public or private  
22 source, including the federal government, made available to the department in the form of grants,  
23 gifts, devises, bequests or endowments for the purpose of carrying out any of the provisions and  
24 purposes of ORS 390.140 to 390.150 or to facilitate the carrying out of any of the functions of the  
25 [*State Parks and Recreation Director*] **Director of the Oregon Department of Natural Resources**  
26 under ORS 390.140 to 390.150.

27 **SECTION 466.** ORS 390.153 is amended to read:

28 390.153. (1) The Parks Donation Trust Fund is established as a fund in the State Treasury. All  
29 gifts or donations of money received by the [*State Parks and Recreation Department*] **Oregon De-**  
30 **partment of Natural Resources for purposes related to the acquisition or management of**  
31 **state parks or other real property, or a right or interest to real property, acquired under this**  
32 **chapter** shall be deposited with the State Treasurer and credited by the treasurer to the fund. The  
33 treasurer may establish subaccounts in the fund established in this section if the treasurer deter-  
34 mines that the terms of a gift or donation require a separate subaccount. Any interest or other in-  
35 come derived from the depositing or other investing of the fund shall be credited monthly to the fund  
36 except that interest or other income attributable to a subaccount shall be credited to that subac-  
37 count.

38 (2) Moneys in the Parks Donation Trust Fund and in any subaccount of the fund are contin-  
39 uously appropriated to the [*State Parks and Recreation Department*] **Oregon Department of Na-**  
40 **tural Resources** for the purposes specified in the gift or donation or, if no specific purpose is  
41 specified, for park and recreation purposes determined by the [*State Parks and Recreation Commis-*  
42 *sion*] **Oregon Natural Resources Commission.**

43 **SECTION 467.** ORS 390.155 is amended to read:

44 390.155. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
45 **sources** may accept gifts or donations of moneys or property to be used for specific or general park

1 and recreational purposes. Subject to the terms specified in a gift or donation, the [*State Parks and*  
2 *Recreation Commission*] **Oregon Natural Resources Commission** may authorize use of gifts or do-  
3 nations in a manner that, in the commission's judgment, best carries out the intent of the gift or  
4 donation.

5 **SECTION 468.** ORS 390.180 is amended to read:

6 390.180. (1) The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
7 **Natural Resources** shall adopt rules that:

8 (a) Establish the standards [*the State Parks and Recreation Department shall use when that de-*  
9 *partment*] **that the Oregon Department of Natural Resources must use when the department:**

10 (A) Performs comprehensive statewide recreational planning; or

11 (B) Disburses any moneys to local governments or other state agencies under **park or recre-**  
12 **ational** programs established under state or federal law.

13 (b) Establish a process for the development of a master plan for each state park, including public  
14 participation and coordination with affected local governments.

15 (c) Establish a master plan for each state park, including an assessment of resources and a de-  
16 termination of the capacity for public use and enjoyment of each park, that the [*State Parks and*  
17 *Recreation*] department shall follow in its development and use of each park.

18 (d) Make state funding assistance available to nonprofit veterans' organizations for the con-  
19 struction and restoration of memorials honoring veterans and war memorials located on public  
20 property.

21 (2) The [*State Parks and Recreation*] director shall submit an adopted state park master plan to  
22 the local government with land use planning responsibility for the subject park.

23 **SECTION 469.** ORS 390.190 is amended to read:

24 390.190. (1) A revolving fund not to exceed the aggregate amount of \$100,000 may be established  
25 within the [*State Parks and Recreation Department Fund*] **Oregon Natural Resources Fund** by a  
26 warrant drawn on any funds, other than **the** General Fund, appropriated to or authorized for ex-  
27 penditure by the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
28 **sources.**

29 [*(2) The fund shall be at the disposal of the State Parks and Recreation Department and may be*  
30 *used by the department.*]

31 **(2) The revolving fund shall be at the disposal of the department and may be used by the**  
32 **department:**

33 (a) To compensate employees for salaries, travel expenses, relocation expenses and other work-  
34 related expenditures **necessary for the department to fulfill its duties under this chapter;** and

35 (b) To pay for services, supplies and materials not to exceed \$300 for any transaction **necessary**  
36 **for the department to fulfill its duties under this chapter.**

37 (3) All vouchers for claims paid from the revolving fund shall be approved by the [*State Parks*  
38 *and Recreation Director*] **Director of the Oregon Department of Natural Resources.** When claims  
39 are so approved and audited, warrants covering them shall be drawn in favor of the director and  
40 shall be used by the director to reimburse the fund.

41 **SECTION 470.** ORS 390.195 is amended to read:

42 390.195. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
43 **sources** shall use state correctional institution inmate labor to improve, maintain and repair  
44 buildings and property at state parks and recreation areas whenever feasible. The provisions of ORS  
45 279.835 to 279.855 and ORS chapters 279A, 279B and 279C do not apply to the use of state

1 correctional institution inmate labor under this section.

2 (2) The [*State Parks and Recreation Director*] **Director of the Oregon Department of Natural**  
3 **Resources** shall assign and supervise the work of the state inmates who are performing the work  
4 described in subsection (1) of this section.

5 (3) Nothing in this section is intended to exempt the [*State Parks and Recreation*] department  
6 from the provisions of ORS 279.835 to 279.855 for any purpose other than the use of state  
7 correctional institution inmate labor.

8 **SECTION 471.** ORS 390.230 is amended to read:

9 390.230. (1) The right, title and interest of all state agencies, other than the [*State Fish and*  
10 *Wildlife Commission and*] political subdivisions, in the lands described in subsection (2) of this sec-  
11 tion are hereby vested in the State [*or*] **of Oregon** by and through [*its State Parks and Recreation*  
12 *Department*] **the Oregon Department of Natural Resources.**

13 (2) All of the lands, together with the accretions thereto lying westerly of the east line of sec-  
14 tion 7, township 8 north, range 10 west, Willamette Meridian, Clatsop County, State of Oregon, ex-  
15 tending northerly to the main channel of the Columbia River as it existed on May 19, 1967; bounded  
16 on the south by the south line of said section 7 extended westerly to the low water of the Pacific  
17 Ocean; and bounded on the north by the main channel of said Columbia River extended downstream  
18 to the Pacific Ocean.

19 **NOTE:** Section 472 was deleted. Subsequent sections were not renumbered.

20 **SECTION 473.** ORS 390.235 is amended to read:

21 390.235. (1)(a) A person may not excavate or alter an archaeological site on public lands, make  
22 an exploratory excavation on public lands to determine the presence of an archaeological site or  
23 remove from public lands any material of an archaeological, historical, prehistorical or  
24 anthropological nature without first obtaining a permit issued by the [*State Parks and Recreation*  
25 *Department*] **Oregon Department of Natural Resources.**

26 (b) If a person who obtains a permit under this section intends to curate or arrange for alternate  
27 curation of an archaeological object that is uncovered during an archaeological investigation, the  
28 person must submit evidence to the State Historic Preservation Officer that the Oregon State Mu-  
29 seum of Anthropology and the appropriate Indian tribe have approved the applicant's curatorial fa-  
30 cilities.

31 (c) No permit shall be effective without the approval of the state agency or local governing body  
32 charged with management of the public land on which the excavation is to be made, and without the  
33 approval of the appropriate Indian tribe.

34 (d) The [*State Parks and Recreation Director*] **Director of the Oregon Department of Natural**  
35 **Resources**, with the advice of the Oregon Indian tribes and Executive Officer of the Commission  
36 on Indian Services, shall adopt rules governing the issuance of permits.

37 (e) Disputes under paragraphs (b) and (c) of this subsection shall be resolved in accordance with  
38 ORS 390.240.

39 (f) Before issuing a permit, the [*State Parks and Recreation*] director shall consult with:

40 (A) The landowning or land managing agency; and

41 (B) If the archaeological site in question is associated with a prehistoric or historic native In-  
42 dian culture:

43 (i) The Commission on Indian Services; and

44 (ii) The most appropriate Indian tribe.

45 (2) The [*State Parks and Recreation*] department may issue a permit under subsection (1) of this

1 section under the following circumstances:

2 (a) To a person conducting an excavation, examination or gathering of such material for the  
3 benefit of a recognized scientific or educational institution with a view to promoting the knowledge  
4 of archaeology or anthropology;

5 (b) To a qualified archaeologist to salvage such material from unavoidable destruction; or

6 (c) To a qualified archaeologist sponsored by a recognized institution of higher learning, private  
7 firm or an Indian tribe as defined in ORS 97.740.

8 (3) Any archaeological materials, with the exception of Indian human remains, funerary objects,  
9 sacred objects and objects of cultural patrimony, recovered by a person granted a permit under  
10 subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated  
11 by the Oregon State Museum of Anthropology unless:

12 (a) The Oregon State Museum of Anthropology with the approval from the appropriate Indian  
13 tribe approves the alternate curatorial facilities selected by the permittee;

14 (b) The materials are made available for nondestructive research by scholars; and

15 (c)(A) The material is retained by a recognized scientific, educational or Indian tribal institution  
16 for whose benefit a permit was issued under subsection (2)(a) of this section;

17 (B) The State Board of Higher Education with the concurrence of the appropriate Indian tribe  
18 grants approval for material to be curated by an educational facility other than the institution that  
19 collected the material pursuant to a permit issued under subsection (2)(a) of this section; or

20 (C) The sponsoring institution or firm under subsection (2)(c) of this section furnishes the  
21 Oregon State Museum of Anthropology with a complete catalog of the material within six months  
22 after the material is collected.

23 (4) The Oregon State Museum of Anthropology shall have the authority to transfer permanent  
24 possessory rights in subject material to an appropriate Indian tribe.

25 (5) Except for sites containing human remains, funerary objects and objects of cultural  
26 patrimony as defined in ORS 358.905, or objects associated with a prehistoric Indian tribal culture,  
27 the permit required by subsection (1) of this section or by ORS 358.920 shall not be required for  
28 forestry operations on private lands for which notice has been filed with the [*State Forester*] **direc-**  
29 **tor** under ORS 527.670.

30 (6) As used in this section:

31 (a) "Private firm" means any legal entity that:

32 (A) Has as a member of its staff a qualified archaeologist; or

33 (B) Contracts with a qualified archaeologist who acts as a consultant to the entity and provides  
34 the entity with archaeological expertise.

35 (b) "Qualified archaeologist" means a person who has the following qualifications:

36 (A) A post-graduate degree in archaeology, anthropology, history, classics or other germane  
37 discipline with a specialization in archaeology, or a documented equivalency of such a degree;

38 (B) Twelve weeks of supervised experience in basic archaeological field research, including both  
39 survey and excavation and four weeks of laboratory analysis or curating; and

40 (C) Has designed and executed an archaeological study, as evidenced by a Master of Arts or  
41 Master of Science thesis, or report equivalent in scope and quality, dealing with archaeological field  
42 research.

43 (7) Violation of the provisions of subsection (1)(a) of this section is a Class B misdemeanor.

44 **SECTION 474.** ORS 390.240 is amended to read:

45 390.240. (1) The following disputes shall be submitted to mediation and if mediation is not suc-



1 cessful to arbitration as described in this section:

2 (a) A dispute with regard to the issuance of an archaeological permit under ORS 390.235; or

3 (b) A dispute over the disposition of human skeletal remains or burial goods under ORS 97.750.

4 (2) The [*State Parks and Recreation Commission*] **Oregon Natural Resources Commission** in  
5 consultation with the Mark O. Hatfield School of Government and the governing bodies of the  
6 Oregon Indian tribes shall adopt rules to establish mediation and arbitration procedures.

7 **SECTION 475.** ORS 390.245 is amended to read:

8 390.245. (1) The State Treasurer may issue commemorative coins for sale to the public. Such  
9 coins shall commemorate Oregon history, people or resources and shall not constitute legal tender  
10 and may include the use of the state seal of Oregon under ORS 186.023. If the State Treasurer de-  
11 cides to issue commemorative coins using the state seal, no private entity shall be authorized to use  
12 the state seal on any commemorative coins.

13 (2) All moneys received by the State Treasurer from the sale of commemorative coins shall be  
14 paid into the State Treasury and credited to a separate Commemorative Coin Account established  
15 within the [*State Parks and Recreation Department Fund*] **Oregon Natural Resources Fund**. The  
16 State Treasurer is authorized to charge the account the reasonable expenses incurred in the design,  
17 production and sale of the coins.

18 (3) All moneys in the account, net of expenses charged, are [*appropriated continuously to the*  
19 *State Parks and Recreation Department*] **continuously appropriated to the Oregon Department**  
20 **of Natural Resources** for park land acquisition and development and for historical observances  
21 related to historical areas and sites.

22 **SECTION 476.** ORS 390.250 is amended to read:

23 390.250. (1) In furtherance of the state policy declared in ORS 390.010, the governing body of  
24 Jackson County, Oregon, may prepare and adopt a plan to promote the public scenic, park and  
25 recreational use of lands along Bear Creek that lie within the boundaries of Jackson County. The  
26 county governing body may, in preparing any such plan, designate lands or interest in such lands  
27 situated within the county that the county and all cities described in subsection (2) of this section  
28 consider necessary for immediate or future acquisition for public use for scenic, park or recreational  
29 purposes.

30 (2) Each plan adopted under subsection (1) of this section shall be prepared in cooperation with  
31 and with the concurrence of all cities within the county that have lands within their respective  
32 boundaries that are adjacent or contiguous to Bear Creek.

33 (3) After the adoption of a plan under subsection (1) of this section, the governing body of a city  
34 in Jackson County or of Jackson County may apply to the [*State Parks and Recreation Department*]  
35 **Oregon Natural Resources Commission** under ORS 390.255 for grants of money to be used by the  
36 city or county in the acquisition of lands or any interests therein to carry out any such plan.

37 **SECTION 477.** ORS 390.255 is amended to read:

38 390.255. (1) The [*State Parks and Recreation Department*] **Oregon Natural Resources Com-**  
39 **mission** may enter into agreements with cities in Jackson County and with Jackson County and  
40 make grants of money from such funds as may be available therefor to assist them in acquiring any  
41 lands or any interest therein for scenic, park and recreational purposes in accordance with a plan  
42 adopted by the governing body of Jackson County. The grants of money that may be made by the  
43 department for the acquisition of any lands or interests shall not be less than 50 percent of such  
44 acquisition cost subject to availability of funds therefor. All remaining costs, including but not lim-  
45 ited to future operation and maintenance costs, shall be borne by the city or county in a manner

1 satisfactory to the department. No grant of money shall be made by the department under this sub-  
 2 section for any lands or interests acquired by a city or county prior to July 22, 1973.

3 (2) The department may require such information, as it considers advisable, from a city or the  
 4 county applying for a grant of money under ORS 390.250 (3). The department may impose such  
 5 conditions on the agreements entered into under subsection (1) of this section and on the use of  
 6 moneys granted pursuant thereto as the department considers necessary in carrying out the state  
 7 policy declared in ORS 390.010.

8 **SECTION 478.** ORS 390.280 is amended to read:

9 390.280. In addition to the other duties of the [*State Parks and Recreation Department*] **Oregon**  
 10 **Department of Natural Resources**, the department shall:

11 (1) Make grants to cities, counties and rural fire protection districts to reimburse [*them*] **the**  
 12 **cities, counties and rural fire protection districts** for funds used to make capital acquisitions for  
 13 and pay expenses incurred in providing lifesaving services along the ocean shore as provided in ORS  
 14 390.285 and 390.290.

15 (2) Determine the eligibility of a city, county or rural fire protection district for, and the  
 16 amounts of, such matching fund grants.

17 (3) Establish and adopt minimum standards for lifesaving services at such places.

18 (4) Advise governing bodies how to acquire and qualify for matching fund grants.

19 (5) Adopt rules to carry out ORS 390.270 to 390.290.

20 **SECTION 479.** ORS 390.285 is amended to read:

21 390.285. (1) To obtain a grant for reimbursement of the expenses incurred in providing lifesaving  
 22 services along the ocean shore, a governing body of a city, county or rural fire protection district  
 23 shall file with the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 24 **sources** a request for reimbursement of funds used during the prior fiscal year for capital acqui-  
 25 sitions made and to pay expenses incurred for direct program costs in providing such services. The  
 26 request shall include:

27 (a) A detailed statement of the funds expended for such services or capital acquisitions during  
 28 the prior fiscal year, and shall indicate the source of such funds; and

29 (b) Such other information as may be required by the department.

30 (2) To be entitled to continue to receive a grant for reimbursement as authorized by ORS 390.270  
 31 to 390.290, the city, county or rural fire protection district with its request to the department shall  
 32 submit a report of the capital acquisitions made and the lifesaving services provided during the  
 33 previous year.

34 **SECTION 480.** ORS 390.290 is amended to read:

35 390.290. (1) Expenditures made from city, county or rural fire protection district funds to provide  
 36 lifesaving services along the ocean shore shall be reimbursed by the [*State Parks and Recreation*  
 37 *Department*] **Oregon Department of Natural Resources** in accordance with this section.

38 (2) Within the limit of the funds available therefor, there shall be paid to an applicant city,  
 39 county or rural fire protection district, on account of expenditures subject to reimbursement, 75  
 40 percent of any amount in excess of \$5,000 so expended from the funds of the applicant in the prior  
 41 fiscal year.

42 (3) Upon approval of a request of a governing body, the department shall enter into a matching  
 43 fund relationship to reimburse the funds used to pay expenses of providing such lifesaving services.

44 (4) When approved by the department, claims by a city or county for reimbursement under sub-  
 45 sections (2) and (3) of this section shall be presented for payment and paid from the City and County

1 Subaccount of the [*State Parks and Recreation Department Fund*] **Oregon Natural Resources Fund**  
 2 in the manner other claims against that account are paid[;]. However, if in any fiscal year the ag-  
 3 gregate amount of the grants approved exceeds the funds available in that subaccount for the pur-  
 4 poses of ORS 390.270 to 390.290, the department shall prorate the available funds among the grants  
 5 approved.

6 (5) When approved by the department, claims by a rural fire protection district under sub-  
 7 sections (2) and (3) of this section shall be presented for payment and paid from the Fire Protection  
 8 District Subaccount of the [*State Parks and Recreation Department Fund*] **Oregon Natural Re-**  
 9 **sources Fund** in the manner other claims against that account are paid. However, if in any fiscal  
 10 year the aggregate amount of the grants approved exceeds the funds available in that subaccount  
 11 for the purposes of ORS 390.270 to 390.290, the department shall prorate the available funds among  
 12 the grants approved.

13 **SECTION 481.** ORS 390.300 is amended to read:

14 390.300. (1) The Tillamook Forest Recreation Trust Account is established as a subaccount in  
 15 the Parks Donation Trust Fund established pursuant to ORS 390.153. All gifts or donations of money  
 16 received by the state for purposes of developing or implementing the recreation plan described in  
 17 section 1, chapter 889, Oregon Laws 1991, shall be deposited with the State Treasurer and credited  
 18 to the subaccount.

19 (2) Moneys in the Tillamook Forest Recreation Trust Account subaccount are continuously ap-  
 20 propriated to the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 21 **sources** for the purposes specified in the gift or donation or, if no purpose is specified, for purposes  
 22 consistent with the recreation plan [*established under ORS 390.295 and this section*].

23 **SECTION 482.** ORS 390.314 is amended to read:

24 390.314. (1) The Legislative Assembly finds that, to protect and preserve the natural, scenic and  
 25 recreational qualities of lands along the Willamette River, to preserve and restore historical sites,  
 26 structures, facilities and objects on lands along the Willamette River for public education and en-  
 27 joyment and to further the state policy established under ORS 390.010, it is in the public interest  
 28 to develop and maintain a natural, scenic, historical and recreational greenway upon lands along the  
 29 Willamette River to be known as the Willamette River Greenway.

30 (2) In providing for the development and maintenance of the Willamette River Greenway, the  
 31 Legislative Assembly:

32 (a) Recognizing the need for coordinated planning for such greenway, finds it necessary to pro-  
 33 vide for development and implementation of a plan for such greenway through the cooperative ef-  
 34 forts of the state and units of local government.

35 (b) Recognizing the need of the people of this state for existing residential, commercial and ag-  
 36 ricultural use of lands along the Willamette River, finds it necessary to permit the continuation of  
 37 existing uses of lands that are included within such greenway; but, for the benefit of the people of  
 38 this state, also to limit the intensification and change in the use of such lands so that such uses  
 39 shall remain, to the greatest possible degree, compatible with the preservation of the natural, scenic,  
 40 historical and recreational qualities of such lands.

41 (c) Recognizing that the use of lands for farm use is compatible with the purposes of the  
 42 Willamette River Greenway, finds that the use of lands for farm use should be continued within the  
 43 greenway without restriction.

44 (d) Recognizing the need for central coordination of such greenway for the best interests of all  
 45 the people of this state, finds it necessary to place the responsibility for the coordination of the

1 development and maintenance of such greenway in the [*State Parks and Recreation Department*]

2 **Oregon Department of Natural Resources.**

3 (e) Recognizing the lack of need for the acquisition of fee title to all lands along the Willamette  
4 River for exclusive public use for recreational purposes in such greenway, finds it necessary to limit  
5 the area within such greenway that may be acquired for state parks and recreation areas and for  
6 public recreational use within the boundaries of units of local government along the Willamette  
7 River.

8 **SECTION 482a.** ORS 390.318 is amended to read:

9 390.318. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
10 **sources**, in cooperation with units of local government that have lands along the Willamette River  
11 within their respective boundaries, shall prepare a plan for the development and management of the  
12 Willamette River Greenway as described in ORS 390.314. Such plan may be prepared for segments  
13 of the Willamette River and may be submitted as segments for approval under ORS 390.322. Such  
14 plan shall specify the boundaries of the Willamette River Greenway and the lands and interests in  
15 land situated within such boundaries to be acquired in the development of such greenway. There  
16 shall be included within the boundaries of the Willamette River Greenway all lands situated within  
17 150 feet from the ordinary low water line on each side of each channel of the Willamette River and  
18 such other lands along the Willamette River as the department and units of local government con-  
19 sider necessary for the development of such greenway; however, the total area included within the  
20 boundaries of such greenway shall not exceed, on the average, 320 acres per river mile along the  
21 Willamette River. The Willamette River Greenway shall also include all islands and all state parks  
22 and recreation areas situated along the Willamette River; however, for the purposes of computing  
23 the maximum acreage of lands within such greenway, the acreage of lands situated on such islands  
24 and within such state parks and recreation areas shall be excluded.

25 (2) The plan prepared pursuant to subsection (1) of this section, shall depict, through the use  
26 of descriptions, maps, charts and other explanatory materials:

27 (a) The boundaries of the Willamette River Greenway.

28 (b) The boundaries of lands acquired or to be acquired as state parks and recreation areas under  
29 ORS 390.338.

30 (c) The lands and interests in lands acquired or to be acquired by units of local government  
31 under ORS 390.330 to 390.360.

32 (d) Lands within the Willamette River Greenway for which the acquisition of a scenic easement,  
33 as provided in ORS 390.332, is sufficient for the purposes of such greenway.

34 (3) The plan shall include the location of all known subsurface mineral aggregate deposits situ-  
35 ated on lands within the boundaries of the Willamette River Greenway.

36 **SECTION 483.** ORS 390.322 is amended to read:

37 390.322. (1) Following the preparation of the plan or any segment thereof under ORS 390.318, the  
38 [*State Parks and Recreation Department shall submit such plan or segment to the Land Conservation*  
39 *and Development Commission. The commission shall investigate and review such*] **Oregon Natural**  
40 **Resources Commission shall investigate and review the** plan or segment as [*it*] **the commission**  
41 considers necessary. If the commission finds that the plan or segment complies with ORS 390.310 to  
42 390.368, [*it*] **the commission** shall approve the plan or segment. If the commission finds revision of  
43 any part of the submitted plan or segment to be necessary, [*it*] **the commission** may revise the plan  
44 or segment [*itself or require such revision by the department and units of local government*] **or may**  
45 **require the appropriate units of local government to revise the plan or segment.**

1 (2) Upon approval of the plan for the Willamette River Greenway or segment thereof, the com-  
 2 mission shall cause copies of such plan or segment to be filed with the recording officer for each  
 3 county having lands within the Willamette River Greenway situated within its boundaries. Such plan  
 4 or segment filed as required by this subsection shall be retained in the office of the county recording  
 5 officer open for public inspection during reasonable business hours.

6 (3) If the plan for the Willamette River Greenway is prepared and approved in segments, the  
 7 total of all such approved segments shall constitute the plan for the Willamette River Greenway for  
 8 the purposes of ORS 390.310 to 390.368. The department and units of local government, with the  
 9 approval of the commission, may revise the plan for the Willamette River Greenway from time to  
 10 time.

11 **SECTION 484.** ORS 390.330 is amended to read:

12 390.330. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 13 **sources** may enter into agreements with units of local government and make grants of money to  
 14 assist units of local government in acquiring lands or any interest in lands situated within the  
 15 boundaries of the Willamette River Greenway for exclusive public use for scenic and recreational  
 16 purposes and to assist units of local government in preserving and restoring historical sites, struc-  
 17 tures, facilities and objects on lands along the Willamette River as may be determined by the de-  
 18 partment to be in accordance with the plan approved under ORS 390.322 and to further the purposes  
 19 of the Willamette River Greenway as set forth in ORS 390.314. Each such agreement shall provide  
 20 for the transfer by the department to the unit of local government of any scenic or public easement  
 21 acquired by the department under ORS 390.310 to 390.368 with respect to lands acquired by the unit  
 22 of local government under this section. The grants of money that may be made by the department  
 23 for any property or property rights or for the initial preservation and restoration of historical sites,  
 24 structures, facilities and objects shall not exceed 50 percent of the cost thereof. All remaining costs,  
 25 including future operation and maintenance, shall be borne by the unit or units of local government  
 26 in a manner satisfactory to the department. No grant of money shall be made by the department for  
 27 property acquired by any unit of local government prior to June 30, 1967, or for costs incurred by  
 28 any unit of local government prior to October 5, 1973, in the preservation and restoration of his-  
 29 torical sites, structures, facilities and objects.

30 (2) Except as provided in subsection (3) of this section, a unit of local government is not au-  
 31 thorized, for the purposes of this section, to acquire water rights or installations used in connection  
 32 with such water rights or to acquire any property or property rights by condemnation.

33 (3) A city, in the acquisition of any property or property rights within the boundaries of the  
 34 Willamette River Greenway with grants of money made under this section, may use any power of  
 35 condemnation otherwise provided by law for use by the city in such acquisition.

36 **SECTION 485.** ORS 390.332 is amended to read:

37 390.332. (1) Except as otherwise provided in subsection (4) of this section, the [*State Parks and*  
 38 *Recreation Department*] **Oregon Department of Natural Resources** may acquire scenic easements  
 39 on any lands situated within 150 feet from the ordinary low water line on each side of each channel  
 40 of the Willamette River and on any lands situated within 150 feet from the ordinary low water line  
 41 of each island within the Willamette River. The department may acquire such easements by any  
 42 method, including but not limited to the exercise of the power of eminent domain.

43 (2) Each scenic easement acquired under subsection (1) of this section shall:

44 (a) Be designed to preserve the vegetation along the Willamette River and the natural and sce-  
 45 nic qualities of the lands subject to such easements and authorize the department, at its own ex-

1 pense, to engage in natural vegetative landscaping on such lands to enhance the natural and scenic  
2 qualities of such lands.

3 (b) Require the owner of the lands subject to such easement to carry on the use of such lands  
4 in a manner to preserve the existing vegetation and natural and scenic qualities of such lands and  
5 require the repair by the department, at its own expense, of any damage resulting from natural  
6 causes to vegetation on such lands.

7 (c) Not provide for public access or use of the lands subject to such easement, if such easement  
8 was acquired by the department through the exercise of the power of eminent domain.

9 (d) Provide that any subsequent farm use, as defined in ORS 215.203 (2), of the land subject to  
10 such easement is compatible with the purposes of the Willamette River Greenway and that any re-  
11 strictions on the use of the land under such easement are suspended while such land is devoted to  
12 such farm use.

13 (e) Prevent the change in use of the lands subject to such easements except with the consent  
14 of the department and in accordance with the conditions imposed with such consent. The consent  
15 of the department and the conditions imposed therewith shall be in accordance with the intent and  
16 purposes of the Willamette River Greenway.

17 (3) Each scenic easement acquired under this section on lands that, on the date of the acqui-  
18 sition of such easement, were a part of a larger tract of land not subject to a scenic easement under  
19 ORS 390.310 to 390.368, shall provide for the right of the department to acquire fee title to the lands  
20 subject to such easement upon a change in the use of the lands in the remainder of such tract that  
21 is inconsistent with such scenic easement under ORS 390.310 to 390.368.

22 (4) The department may not acquire, through the exercise of the power of eminent domain, sce-  
23 nic easements under subsection (1) of this section on any lands that on October 5, 1973, were de-  
24 voted to farm use, as defined in ORS 215.203 (2) or were a portion of a larger tract of land under  
25 single ownership that is devoted to such use. Upon a change in the use of any such lands from farm  
26 use, the department may acquire scenic easements in such lands as provided in ORS 390.334. Noth-  
27 ing in this subsection is intended to limit the power of the department to acquire, by any means  
28 other than the exercise of the power of eminent domain, a scenic easement on lands described in this  
29 subsection while such lands are devoted to such farm use.

30 **SECTION 486.** ORS 390.334 is amended to read:

31 390.334. (1) Except as otherwise provided in subsection (2) of this section, after the date of the  
32 approval of the plan for the Willamette River Greenway or any segment thereof under ORS 390.322,  
33 the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources** may ac-  
34 quire scenic easements in any lands described in such plan or segment pursuant to ORS 390.318  
35 (2)(d). Each such easement may be acquired by any means, including but not limited to the exercise  
36 of the power of eminent domain.

37 (2) The department shall not acquire, through the exercise of the power of eminent domain,  
38 scenic easements in any lands situated within the boundaries of the Willamette River Greenway that  
39 are devoted to farm use on October 5, 1973, while such lands remain devoted to farm use. Upon a  
40 change in the use of any such lands from farm use, the department may acquire scenic easements  
41 in such lands as provided in subsection (1) of this section. Nothing in this subsection is intended  
42 to limit the power of the department to acquire, by any means other than the exercise of the power  
43 of eminent domain, a scenic easement on lands described in this subsection while such lands are  
44 devoted to such farm use. For the purpose of this subsection, "farm use" has the meaning given that  
45 term in ORS 215.203 (2).

1 (3) Each scenic easement acquired under subsection (1) of this section shall:

2 (a) Specify the use of the land existing on the date of the acquisition of the easement and permit  
3 the continuation of such use while the land is subject to such easement.

4 (b) With respect to scenic easements acquired through the exercise of the power of eminent  
5 domain, not provide for any rights of public access to or use of such lands under such easements.

6 (c) Provide that any subsequent farm use, as defined in ORS 215.203 (2), of the land subject to  
7 such easement is compatible with the purposes of the Willamette River Greenway and that any re-  
8 strictions on the use of the land under such easement are suspended while such land is devoted to  
9 such farm use.

10 (d) Prevent the change in use of the lands subject to such easements except with the consent  
11 of the department and in accordance with the conditions imposed with such consent. The consent  
12 of the department and the conditions imposed therewith shall be in accordance with the intent and  
13 purposes of the Willamette River Greenway.

14 (4) In addition to a scenic easement acquired by the department under this section, the depart-  
15 ment may acquire, by any means other than the exercise of the power of eminent domain, a public  
16 easement providing for public access and use of such lands.

17 (5) At any time after the approval of the plan for the Willamette River Greenway or any seg-  
18 ment thereof under ORS 390.322, the department may acquire, by any means other than the exercise  
19 of the power of eminent domain, lands or interests therein that are situated outside the boundaries  
20 of the Willamette River Greenway or the segment thereof as approved. Each such acquisition shall  
21 be designed to preserve the natural or scenic character of such lands in conjunction with the lands  
22 within the boundaries of the Willamette River Greenway.

23 **SECTION 487.** ORS 390.338 is amended to read:

24 390.338. (1) Notwithstanding ORS 390.121, the [*State Parks and Recreation Department*] **Oregon**  
25 **Department of Natural Resources** may [*only*] exercise the power of eminent domain **only** in the  
26 acquisition of lands or interests therein that are situated within the boundaries of the Willamette  
27 River Greenway for state parks or recreation areas in the parcels of land described in section 8a,  
28 chapter 558, Oregon Laws 1973.

29 (2) If any land acquired by the department under subsection (1) or (4) of this section is a part  
30 of a larger tract of land devoted to farm use on the date of the acquisition of such portion of the  
31 tract and such acquisition would render uneconomic an otherwise economic farming unit on the  
32 whole tract of land, upon the request of the owner of such tract of land, the department shall pur-  
33 chase the entire tract of land. The department shall, whenever practicable, acquire the remainder  
34 of any such tract of land with state funds so that the subsequent disposition of any such land will  
35 not be subject to restrictions imposed under agreements made for the receipt of nonstate funds  
36 otherwise available for the acquisition of such lands.

37 (3) The department may dispose of lands acquired pursuant to subsection (2) of this section that  
38 are located outside the boundaries of the Willamette River Greenway as it considers advisable.  
39 However, the disposition of any such lands must comply with the laws of this state and the appli-  
40 cable provisions of any agreement by which the department acquired funds for the purchase of such  
41 lands.

42 (4) Notwithstanding ORS 390.121, the department may [*only*] acquire, by any means other than  
43 the exercise of eminent domain, for state parks and recreation areas, **only** lands and interests in  
44 lands that are situated within the boundaries of the Willamette River Greenway and that are situ-  
45 ated outside the boundaries of the parcels of land described in section 8a, chapter 558, Oregon Laws

1 1973.

2 (5) In the acquisition of any lands pursuant to subsections (1), (2) and (4) of this section, the  
3 department shall include in the compensation and damages, if any, paid for such lands:

4 (a) As a part of the compensation, in valuing such lands as a whole, paid for any such lands  
5 acquired without condemnation proceedings initiated as provided in ORS 35.235, the estimated mar-  
6 ket value of economically extractable subsurface mineral aggregate deposits of reasonably foresee-  
7 able demand known to exist in such lands or shown by the owner to exist in such lands.

8 (b) As a part of the compensation and damages, if any, in valuing such lands as a whole, for the  
9 appropriation of any such lands, acquired by the department after the commencement of condemna-  
10 tion proceedings under ORS 35.235 but not pursuant to an award in a condemnation action initiated  
11 under ORS 35.245, the estimated market value of economically extractable subsurface mineral ag-  
12 gregate deposits of reasonably foreseeable demand agreed upon by the department and the owner  
13 of lands so acquired.

14 (c) As a part of the true value and damages, in valuing such lands as a whole, for the appro-  
15 priation of such lands acquired by award in a condemnation action initiated under ORS 35.245, the  
16 estimated market value of economically extractable subsurface mineral aggregate deposits of rea-  
17 sonably foreseeable demand alleged in the answer of the defendant made pursuant to ORS 35.295  
18 and proved by the defendant as a matter of defense to be a part of the true value of such lands so  
19 acquired.

20 (6) This section does not apply to the acquisition of any lands or interests therein acquired for  
21 state parks or recreation areas prior to October 5, 1973, and to any lands or interests in land subject  
22 to a legally enforceable option held by the state on October 5, 1973, for the purposes of the acqui-  
23 sition of such lands or interests for state parks and recreation areas.

24 **SECTION 488.** ORS 390.340 is amended to read:

25 390.340. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
26 **sources** shall make and promulgate rules and regulations that it considers necessary in carrying  
27 out ORS 390.310 to 390.368.

28 **SECTION 489.** ORS 390.350 is amended to read:

29 390.350. Units of local government may enter into agreements with the [*State Parks and Recre-*  
30 *ation Department*] **Oregon Department of Natural Resources** and with each other in carrying out  
31 the purposes of the Willamette River Greenway, and may accept and use gifts and grants from the  
32 department or others.

33 **SECTION 490.** ORS 390.360 is amended to read:

34 390.360. All lands or interests in lands acquired and all historical sites, structures, facilities and  
35 objects preserved and restored by the units of local government pursuant to ORS 390.330 with grants  
36 of money from the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
37 **sources**, may be used only for the purposes of the Willamette River Greenway as set forth in ORS  
38 390.314, unless a different use is authorized by the department. Title to the lands or interest therein  
39 so acquired shall be held by the unit of local government acquiring the same. Such lands or interest  
40 therein and such historical sites, structures, facilities and objects preserved and restored shall never  
41 be disposed of or sold except upon the approval and consent of the department.

42 **SECTION 491.** ORS 390.368 is amended to read:

43 390.368. In carrying out the purposes of ORS 390.310 to 390.368 the [*State Parks and Recreation*  
44 *Department*] **Oregon Department of Natural Resources** may enter into contracts with any agency  
45 of the United States, this state or a political subdivision thereof, or with any private person, agency



1 or corporation to perform natural vegetative landscaping or to perform work to restore damage re-  
2 sulting from natural causes to vegetation on any land subject to a scenic easement within the  
3 boundaries of the Willamette River Greenway in accordance with the terms of the scenic easement  
4 acquired on such land.

5 **SECTION 492.** ORS 390.555 is amended to read:

6 390.555. The All-Terrain Vehicle Account is established as a separate account in the [*State*  
7 *Parks and Recreation Department Fund*] **Oregon Natural Resources Fund**, to be accounted for  
8 separately. Interest earned by the All-Terrain Vehicle Account shall be credited to the account.  
9 After deduction of expenses of collection, transfer and administration, including the expenses of es-  
10 tablishment and operation of Class I all-terrain vehicle safety education courses and examinations  
11 under ORS 390.570 and Class III all-terrain vehicle safety education courses and examinations under  
12 ORS 390.575, the following moneys shall be transferred to the account:

13 (1) Fees collected by the [*State Parks and Recreation Department*] **Oregon Department of Na-**  
14 **tural Resources** for issuance of operating permits for all-terrain vehicles under ORS 390.580 and  
15 390.590.

16 (2) Fees collected by the **Oregon Department of Natural Resources** from participants in the  
17 Class I and Class III all-terrain vehicle safety education courses under ORS 390.570 and 390.575.

18 (3) The moneys transferred from the Department of Transportation under ORS 802.125 that  
19 represent unrefunded fuel tax.

20 **SECTION 493.** ORS 390.560 is amended to read:

21 390.560. Moneys in the All-Terrain Vehicle Account established under ORS 390.555 shall be used  
22 for the following purposes only:

23 (1) In each 12-month period, no less than 10 percent of the moneys described in ORS 390.555 that  
24 are attributable to Class I all-terrain vehicles shall be transferred to the Department of Transpor-  
25 tation for the development and maintenance of snowmobile facilities as provided in ORS 802.110;

26 (2) Planning, promoting and implementing a statewide all-terrain vehicle program, including the  
27 acquisition, development and maintenance of all-terrain vehicle recreation areas;

28 (3) Education and safety training for all-terrain vehicle operators;

29 (4) Provision of first aid and police services related to all-terrain vehicle recreation;

30 (5) Paying the costs of instigating, developing or promoting new programs for all-terrain vehicle  
31 users and of advising people of possible usage areas for all-terrain vehicles;

32 (6) Paying the costs of coordinating between all-terrain vehicle user groups and the managers  
33 of public lands;

34 (7) Paying the costs of providing consultation and guidance to all-terrain vehicle user programs;

35 (8) Paying the costs of administration of the all-terrain vehicle programs, including staff support  
36 provided under ORS 390.565 as requested by the All-Terrain Vehicle Advisory Committee;

37 (9) Paying the costs of law enforcement activities related to the operation of Class I and Class  
38 III all-terrain vehicles. The [*State Parks and Recreation Department*] **Oregon Department of Na-**  
39 **tural Resources** shall determine the amount required for law enforcement activities and the inter-  
40 vals at which the moneys shall be distributed. The funds available shall be apportioned according  
41 to the terms of an intergovernmental agreement entered into between the [*State Parks and Recre-*  
42 *ation Department*] **Oregon Department of Natural Resources** and a city, the Department of State  
43 Police or the sheriff of a county; and

44 (10) Control and eradication of invasive species related to all-terrain vehicle recreation.

45 **SECTION 494.** ORS 390.565 is amended to read:

1 390.565. (1) The All-Terrain Vehicle Advisory Committee is established. The committee shall  
 2 consist of eleven **members** [*voting members and one nonvoting member*] appointed by the [*State*  
 3 *Parks and Recreation Commission*] **Oregon Natural Resources Commission** for a term of four  
 4 years. Members are eligible for reappointment for a second term and vacancies may be filled by the  
 5 commission. A majority of members constitutes a quorum for the transaction of business. Recom-  
 6 mendations under subsection (4)(a) of this section on allocation of moneys in the All-Terrain Vehicle  
 7 Account must receive an affirmative vote from at least six of the [*voting*] members of the committee.

8 (2) Of the [*voting*] members of the committee:

9 (a) One shall be a representative of a Class I all-terrain vehicle user organization.

10 (b) One shall be a representative of a Class II all-terrain vehicle user organization.

11 (c) One shall be an all-terrain vehicle dealer.

12 (d) One shall be an at-large all-terrain vehicle user.

13 (e) One shall be a representative of a Class III all-terrain vehicle user organization.

14 (f) One shall be a representative of the United States Forest Service.

15 (g) One shall be a representative of the Bureau of Land Management.

16 (h) One shall be a representative of the Department of Transportation who is knowledgeable  
 17 about transportation safety.

18 (i) One shall be a representative of the [*State Forestry Department*] **Oregon Department of**  
 19 **Natural Resources** who is knowledgeable about all-terrain vehicle recreation areas on state lands.

20 (j) One shall be a representative of the Department of Human Services who is knowledgeable  
 21 about public health and safety.

22 (k) One shall be a representative of a law enforcement agency.

23 [(3) *One representative from the State Parks and Recreation Department shall be a nonvoting*  
 24 *member of the committee.*]

25 [(4)] (3) The committee shall:

26 (a) Advise the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 27 **sources** on the allocation of moneys in the All-Terrain Vehicle Account established [*by*] **under** ORS  
 28 390.555.

29 (b) Review accidents and fatalities resulting from all-terrain vehicle recreation and make rec-  
 30 ommendations to the [*State Parks and Recreation Commission*] **Oregon Natural Resources Com-**  
 31 **mission**.

32 (c) Review changes to statutory vehicle classifications as necessary for safety considerations  
 33 and make recommendations to the commission.

34 (d) Review safety features of all classes of off-highway vehicles and make recommendations to  
 35 the commission.

36 (e) Recommend appropriate safety requirements to protect child operators and riders of off-  
 37 highway vehicles to the commission.

38 [(5)] (4)(a) A subcommittee shall be established consisting of the following [*voting*] members:

39 (A) The representative of a Class I all-terrain vehicle user organization.

40 (B) The representative of a Class II all-terrain vehicle user organization.

41 (C) The representative of a Class III all-terrain vehicle user organization.

42 (D) The at-large all-terrain vehicle user.

43 (E) The representative of a law enforcement agency.

44 (b) The subcommittee shall review grant proposals and make recommendations to the commis-  
 45 sion as to which projects should receive grant funding.

1 (c) Recommendations under this subsection on grant proposals must receive an affirmative vote  
2 from at least three of the members of the subcommittee.

3 (6) The [*State Parks and Recreation Department*] **Oregon Department of Natural Resources**  
4 shall provide staff support for the committee and shall provide for expansion of programs for all-  
5 terrain vehicle users.

6 **SECTION 495.** ORS 390.570 is amended to read:

7 390.570. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
8 **sources** shall issue or provide for issuance of a Class I all-terrain vehicle operator permit to any  
9 person who:

10 (a) Has taken a Class I all-terrain vehicle safety education course established under this section  
11 and has been found qualified to operate a Class I all-terrain vehicle; or

12 (b) Is at least 16 years of age, has five or more years of experience operating a Class I all-  
13 terrain vehicle and passes an equivalency examination.

14 (2) The department shall adopt rules to provide for Class I all-terrain vehicle safety education  
15 courses, equivalency examinations and the issuance of Class I all-terrain vehicle operator permits  
16 consistent with this section. The rules adopted by the department shall be consistent with the fol-  
17 lowing:

18 (a) The courses must be given by instructors designated by the department as qualified to con-  
19 duct the courses and issue the permits.

20 (b) The instructors may be provided and permits issued through public or private local and state  
21 organizations meeting qualifications established by the department.

22 (c) The department may collect a fee of not more than \$5 from each participant in a course es-  
23 tablished under this section.

24 **SECTION 496.** ORS 390.575 is amended to read:

25 390.575. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
26 **sources** shall issue or provide for issuance of a Class III all-terrain vehicle operator permit to any  
27 person who:

28 (a) Has taken a Class III all-terrain vehicle safety education course established under this sec-  
29 tion and has been found qualified to operate a Class III all-terrain vehicle; or

30 (b) Is at least 16 years of age, has five or more years of experience operating a Class III all-  
31 terrain vehicle and passes an equivalency examination.

32 (2) The department shall adopt rules to provide for Class III all-terrain vehicle safety education  
33 courses, equivalency examinations and the issuance of Class III all-terrain vehicle operator permits  
34 consistent with this section. The rules adopted by the department shall be consistent with the fol-  
35 lowing:

36 (a) The courses must be given by instructors designated by the department as qualified to con-  
37 duct the courses and issue the permits.

38 (b) The instructors may be provided and permits issued through public or private local and state  
39 organizations meeting qualifications established by the department.

40 (c) The department may collect a fee of not more than \$5 from each participant in a course es-  
41 tablished under this section.

42 **SECTION 497.** ORS 390.580 is amended to read:

43 390.580. (1)(a) An all-terrain vehicle off-road operating permit issued under this section is a decal  
44 that authorizes use of the all-terrain vehicle for which it is issued on trails and in areas designated  
45 for such use by the appropriate authority.

1 (b) An all-terrain vehicle decal issued under this section must be permanently affixed to the  
 2 vehicle and displayed in a clearly visible manner. The [*State Parks and Recreation Department*]  
 3 **Oregon Department of Natural Resources** shall prescribe by rule the manner in which the decal  
 4 shall be displayed.

5 (2) The department shall issue an all-terrain vehicle off-road operating permit to any person who  
 6 completes the application described in subsection (4) of this section and pays the fee specified in  
 7 subsection (5) of this section.

8 (3) The department shall specify by rule the form of the permit and the information to be con-  
 9 tained on the permit.

10 (4) Application for an all-terrain vehicle off-road operating permit for a Class I, Class II or Class  
 11 III all-terrain vehicle shall be in a form furnished by the department. The application shall include:

12 (a) The name and address of the owner of the all-terrain vehicle; and

13 (b) The make and body style of the all-terrain vehicle for which application is made.

14 (5) The department shall establish by rule a fee for a permit issued or renewed under this sec-  
 15 tion. The fee shall be designed to cover the costs to the department for issuing or renewing permits  
 16 under this section but shall not exceed \$10.

17 (6) Permits issued under this section are valid for two years. A permit may be renewed upon  
 18 submission of an application that contains the information specified in subsection (4) of this section  
 19 and payment of the renewal fee specified in subsection (5) of this section.

20 (7) The department may appoint agents to issue permits for all-terrain vehicles. The department  
 21 shall prescribe the procedure for the issuance of the permits. Agents appointed under this subsection  
 22 shall issue permits in accordance with the prescribed procedure and shall charge and collect the  
 23 fees prescribed in this section for the permits.

24 **SECTION 498.** ORS 390.585 is amended to read:

25 390.585. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 26 **sources** may adopt rules necessary for carrying out the duties imposed by ORS 390.550 to 390.590.

27 (2) The department shall adopt rules establishing rider fit guidelines to ensure that an all-terrain  
 28 vehicle properly fits the operator of the vehicle.

29 **SECTION 499.** ORS 390.590 is amended to read:

30 390.590. (1) An out-of-state all-terrain vehicle operating permit is a vehicle permit that is issued  
 31 as evidence of a grant of authority to operate in this state an all-terrain vehicle that is owned by  
 32 a resident of another state.

33 (2) The [*State Parks and Recreation Department*] **Oregon Department of Natural Resources**  
 34 shall establish a program for the issuance of out-of-state all-terrain vehicle permits under this sec-  
 35 tion. The program established by the department shall comply with all of the following:

36 (a) A permit may only be issued for all-terrain vehicles owned by the resident of another state  
 37 where registration is not required by law.

38 (b) A permit is valid for not more than two years.

39 (c) Application for a permit shall state the name and address of each owner.

40 (d) The fee for issuance of a permit shall be \$10.

41 **SECTION 500.** ORS 390.605 is amended to read:

42 390.605. As used in ORS 390.610, 390.620 to 390.676, 390.690 and 390.705 to 390.770, unless the  
 43 context requires otherwise:

44 (1) "Improvement" includes filling a portion of the ocean shore, removal of material from the  
 45 ocean shore or a structure, appurtenance or other addition, modification or alteration constructed,

1 placed or made on or to the land.

2 (2) "Ocean shore" means the land lying between extreme low tide of the Pacific Ocean and the  
3 statutory vegetation line as described by ORS 390.770 or the line of established upland shore vege-  
4 tation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS  
5 196.800.

6 (3) "State recreation area" means a land or water area, or combination thereof, under the ju-  
7 risdiction of the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-  
8 sources and** used by the public for recreational purposes.

9 **SECTION 501.** ORS 390.620 is amended to read:

10 390.620. (1) No portion of the lands described by ORS 390.610 or any interest either therein now  
11 or hereafter acquired by the State of Oregon or any political subdivision thereof shall be alienated  
12 except as expressly provided by state law. The [*State Parks and Recreation Department*] **Oregon  
13 Department of Natural Resources** and the State Land Board shall have concurrent jurisdiction  
14 to undertake appropriate court proceedings, when necessary, to protect, settle and confirm all such  
15 public rights and easements in the State of Oregon.

16 (2) No portion of the ocean shore declared a state recreation area by ORS 390.610 shall be al-  
17 ienated by any of the agencies of the state except as provided by law.

18 (3) In carrying out its duties under subsection (1) of this section with respect to lands and in-  
19 terests in land within the ocean shore, the State Land Board shall act with respect to the portion  
20 of the tidal submerged lands, as defined in ORS 274.705 (7), and the submersible lands, as defined in  
21 ORS 274.005 [(8)] **(6)**, that are situated within the ocean shore as it does with respect to other  
22 state-owned submerged and submersible lands within navigable waters of this state.

23 (4) In carrying out its duties under subsection (1) of this section with respect to lands and in-  
24 terests in land within the ocean shore, the [*State Parks and Recreation*] **Oregon Department of  
25 Natural Resources** shall act with respect to such lands and interests as it does with respect to  
26 other lands and interests within state recreation areas.

27 **SECTION 502.** ORS 390.630 is amended to read:

28 390.630. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-  
29 sources**, in accordance with ORS 390.121, may acquire ownership of or interests in the ocean shore  
30 or lands abutting, adjacent or contiguous to the ocean shore as may be appropriate for state recre-  
31 ation areas or access to such areas where such lands are held in private ownership. However, when  
32 acquiring ownership of or interests in lands abutting, adjacent or contiguous to the ocean shore for  
33 such recreation areas or access where such lands are held in private ownership, the department  
34 shall consider the following:

35 (1) The availability of other public lands in the vicinity for such recreational use or access.

36 (2) The land uses, improvements, and density of development in the vicinity.

37 (3) Existing public recreation areas and accesses in the vicinity.

38 (4) Any local zoning or use restrictions affecting the area in question.

39 **SECTION 503.** ORS 390.632 is amended to read:

40 390.632. (1) In order to further the policy established in ORS 390.610 and to preserve the right  
41 of public access to the ocean shore, the [*State Parks and Recreation Department*] **Oregon Depart-  
42 ment of Natural Resources** shall coordinate with affected local governments to provide increased  
43 public access to the coastal shorelands.

44 (2) The [*State Parks and Recreation*] department may:

45 (a) Ensure that beach access sites are posted for public use;

1 (b) Maintain parking and trash disposal facilities at beach access sites; and

2 (c) Maintain beach access sites in a safe and litter-free manner.

3 **SECTION 504.** ORS 390.635 is amended to read:

4 390.635. Except as provided by ORS 273.551, 274.710 and 390.620, the [*State Parks and Recreation*  
5 *Department*] **Oregon Department of Natural Resources** has jurisdiction over the land and inter-  
6 ests in land acquired under ORS 390.610, 390.615, 390.620 or 390.630 in order to carry out the pur-  
7 poses of ORS 390.610, 390.620 to 390.676, 390.690 and 390.705 to 390.770.

8 **SECTION 505.** ORS 390.650 is amended to read:

9 390.650. (1) Any person who desires a permit to make an improvement on any property subject  
10 to ORS 390.640 shall apply in writing to the [*State Parks and Recreation Department*] **Oregon De-**  
11 **partment of Natural Resources** on a form and in a manner prescribed by the department, stating  
12 the kind of and reason for the improvement.

13 (2) Upon receipt of a properly completed application, the [*State Parks and Recreation*] depart-  
14 ment shall provide notice of the proposal by causing notice of the application to be posted at or near  
15 the location of the proposed improvement. The notice shall include the name of the applicant, a  
16 description of the proposed improvement and its location and a statement of the time within which  
17 interested persons may file a request with the department for a hearing on the application. The de-  
18 partment shall give notice of any application, hearing or decision to any person who files a written  
19 request with the department for such notice.

20 (3) Within 30 days after the date of posting the notice required in subsection (2) of this section,  
21 the applicant or 10 or more other interested persons may file a written request with the [*State Parks*  
22 *and Recreation*] department for a hearing on the application. If such a request is filed, the depart-  
23 ment shall set a time for a hearing to be held by the department. The department shall cause notice  
24 of the hearing to be posted in the manner provided in subsection (2) of this section. The notice shall  
25 include the time and place of the hearing. After the hearing on an application or, if a hearing is not  
26 requested, after the time for requesting a hearing has expired, the department shall grant the permit  
27 if approval would not be adverse to the public interest. ORS chapter 183 does not apply to a  
28 hearing or decision under this section.

29 (4) In acting on an application, the [*State Parks and Recreation*] department shall take into  
30 consideration the matters described by ORS 390.655. The department shall act on an application  
31 within 60 days after the date of receipt or, if a hearing is held, within 45 days after the date of the  
32 hearing.

33 (a) The decision of the department shall include written findings setting forth the specific rea-  
34 sons for the approval or denial and, if the application is approved, any conditions the department  
35 considers necessary to maintain the standards established under ORS 390.655.

36 (b) A copy of the written findings shall be furnished to the applicant at the time of approval or  
37 denial of the application by the department as provided in this subsection.

38 (5) Subsections (2) and (3) of this section do not apply to an application for a permit for the  
39 repair, replacement or restoration, in the same location, of an authorized improvement or improve-  
40 ment existing on or before May 1, 1967, if the repair, replacement or restoration is commenced  
41 within three years after the damage to or destruction of the improvement being repaired, replaced  
42 or restored occurs.

43 (6) The [*State Parks and Recreation*] department may, upon application therefor, either written  
44 or oral, grant an emergency permit for a new improvement, dike, revetment, or for the repair, re-  
45 placement or restoration of an existing, or authorized improvement where property or property

1 boundaries are in imminent peril of being destroyed or damaged by action of the Pacific Ocean or  
 2 the waters of any bay or river of this state. Said permit may be granted by the department without  
 3 regard to the provisions of subsections (1), (2), (3), (4) and (5) of this section. Any emergency permit  
 4 granted hereunder shall be reduced to writing by the department within 10 days after granting the  
 5 same with a copy thereof furnished to the applicant.

6 (7) Except as provided by subsection (8) of this section, each application under subsection (1)  
 7 of this section shall be accompanied by a fee to cover, in part, the expenses of the department in  
 8 investigating, reviewing and issuing the improvement permits. The application fee for each permit  
 9 shall be:

10 (a) \$400 for any project for which the construction value is less than \$2,500.

11 (b) \$400 for any project for which the construction value is equal to or greater than \$2,500, plus  
 12 an additional amount equal to three percent of the construction value over \$2,500.

13 (8) The department may waive or reduce the fee required by subsection (7) of this section for  
 14 an application submitted by a public body, as [*that term is defined by*] **defined in** ORS 174.109, or  
 15 tribal government if the primary purpose of the improvement is:

16 (a) Restoring, conserving or protecting the natural, resource, scenic, recreational, cultural or  
 17 economic values of the ocean shore;

18 (b) Restoring native beach or dune habitat contributing to the recovery of sensitive species, in-  
 19 cluding state and federally listed threatened or endangered species; or

20 (c) Improving native biological values of the ocean shore.

21 (9) Fees received under this section shall be deposited into a subaccount of the [*State Parks and*  
 22 *Recreation Department Fund*] **Oregon Natural Resources Fund**. Such fees are continuously appro-  
 23 priated to the [*department*] **Oregon Department of Natural Resources** for the purpose of carrying  
 24 out the ocean shore program.

25 (10) As used in this section, "construction value" includes but is not limited to the costs of labor  
 26 and equipment rental. For a project involving only the movement of sand or similar material on the  
 27 ocean shore, "construction value" shall equal the costs of labor, fees and equipment rental.

28 **SECTION 506.** ORS 390.655 is amended to read:

29 390.655. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 30 **sources** shall consider applications and issue permits under ORS 390.650 in accordance with stan-  
 31 dards designed to promote the public health, safety and welfare and carry out the policy of ORS  
 32 390.610, 390.620 to 390.676, 390.690 and 390.705 to 390.770. The standards shall be based on the fol-  
 33 lowing considerations, among others:

34 (1) The public need for healthful, safe, aesthetic surroundings and conditions; the natural scenic,  
 35 recreational and other resources of the area; and the present and prospective need for conservation  
 36 and development of those resources.

37 (2) The physical characteristics or the changes in the physical characteristics of the area and  
 38 suitability of the area for particular uses and improvements.

39 (3) The land uses, including public recreational use if any, and the improvements in the area,  
 40 the trends in land uses and improvements, the density of development and the property values in the  
 41 area.

42 (4) The need for recreation and other facilities and enterprises in the future development of the  
 43 area and the need for access to particular sites in the area.

44 **SECTION 507.** ORS 390.659 is amended to read:

45 390.659. (1) Any applicant whose application for a permit under ORS 390.650 has been denied

1 or who objects to any condition imposed on the permit or any person aggrieved or adversely affected  
 2 by the granting of a permit may, within 30 days after the denial of the permit or the imposition of  
 3 the condition, request a hearing from the [*State Parks and Recreation Director*] **Director of the**  
 4 **Oregon Department of Natural Resources.**

5 (2) Upon receipt of a request for hearing from the applicant or if the director finds that the  
 6 person other than the applicant making the request has a legally protected interest that is adversely  
 7 affected by the grant of the permit, the director shall set the matter down for hearing within 30 days  
 8 after receipt of the request. The hearing shall be conducted as a contested case in accordance with  
 9 ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. The applicant shall be a party to any con-  
 10 tested case hearing requested by a person other than the applicant.

11 (3) Within 45 days after the hearing the director shall enter an order containing findings of fact  
 12 and conclusions of law. The order shall rescind, affirm or modify the director's original order. Ap-  
 13 peals from the director's final order may be taken to the Court of Appeals in the manner provided  
 14 by ORS 183.482.

15 (4) A permit granted by the director may be suspended by the director during the pendency of  
 16 the proceedings before the director and any appeal. The director shall not suspend the permit unless  
 17 the person aggrieved or adversely affected by grant of permit makes a showing before the director  
 18 by clear and convincing evidence that commencement or continuation of the improvement would  
 19 cause irreparable damage and would be inconsistent with ORS 390.610, 390.620 to 390.676, 390.690  
 20 and 390.705 to 390.770.

21 **SECTION 508.** ORS 390.660 is amended to read:

22 390.660. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 23 **sources** is hereby directed to protect, to maintain and to promulgate rules governing use of the  
 24 public of property that is subject to ORS 390.640, property subject to public rights or easements  
 25 declared by ORS 390.610 and property abutting, adjacent or contiguous to those lands described by  
 26 ORS 390.615 that is available for public use, whether such public right or easement to use is ob-  
 27 tained by dedication, prescription, grant, state-ownership, permission of a private owner or other-  
 28 wise.

29 **SECTION 509.** ORS 390.663 is amended to read:

30 390.663. (1) If the [*State Parks and Recreation Director*] **Director of the Oregon Department**  
 31 **of Natural Resources** determines that any improvement is being made on property within the ocean  
 32 shore without a permit issued under ORS 390.650, or in a manner contrary to the conditions set out  
 33 in the permit, the director may:

34 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 390.620 to  
 35 390.676, as soon as possible.

36 (b) For the purpose of investigating conditions relating to such improvements, through the em-  
 37 ployees or the duly authorized representatives of the [*State Parks and Recreation Department*]  
 38 **Oregon Department of Natural Resources**, enter at reasonable times upon any private or public  
 39 property.

40 (c) Conduct public hearings in accordance with ORS chapter 183.

41 (d) Publish findings and recommendations as they are developed relative to public policies and  
 42 procedures necessary for the correction of conditions or violations of ORS 390.620 to 390.676.

43 (e) Give notice of any proposed order relating to a violation by personal service or by mailing  
 44 the notice by registered or certified mail to the person or governmental body affected. Any person  
 45 aggrieved by a proposed order of the director may request a hearing within 20 days of the date of



1 personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS  
2 chapter 183 applicable to contested cases, and judicial review of final orders shall be conducted in  
3 the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to  
4 appear, a final order shall be issued upon a prima facie case on the record of the department.

5 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of  
6 ORS 390.620 to 390.676 or of any rule or final order of the director under ORS 390.620 to 390.676  
7 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. In any  
8 such proceedings, the director may seek and the court may award a sum of money sufficient to  
9 compensate the public for any destruction or infringement of any public right of navigation, fishery  
10 or recreation resulting from such violation. Proceedings brought by the director shall set forth, if  
11 applicable, the dates of notice and hearing and the specific rule or order of the director, together  
12 with the facts of noncompliance, the facts giving rise to the public nuisance and a statement of the  
13 damages to any public right of navigation, fishery or recreation, if any, resulting from such vio-  
14 lation.

15 (2) In addition to the administrative action the director may take under subsection (1) of this  
16 section, the director may enter an order requiring any person to cease and desist from any violation  
17 if the director determines that such violation presents an imminent and substantial risk of injury,  
18 loss or damage to the ocean shore.

19 (3) An order under subsection (2) of this section:

20 (a) May be entered without prior notice or hearing.

21 (b) Shall be served upon the person by personal service or by registered or certified mail.

22 (c) Shall state that a hearing will be held on the order if a written request for hearing is filed  
23 by the person subject to the order within 10 days after receipt of the order.

24 (d) Shall not be stayed during the pendency of a hearing conducted under subsection (4) of this  
25 section.

26 (4) If a person subject to an order under subsection (2) of this section files a timely demand for  
27 hearing, the director shall hold a contested case hearing according to the applicable provisions of  
28 ORS chapter 183. If the person fails to request a hearing, the order shall be entered as a final order  
29 upon prima facie case made on the record of the department.

30 (5) [Neither] The director, **or a** [nor any] duly authorized representative of the department, **is**  
31 **not** [shall be] liable for any damages a person may sustain as a result of a cease and desist order  
32 issued under subsection (2) of this section.

33 (6) The state and local police shall cooperate in the enforcement of any order issued under  
34 subsection (2) of this section and shall require no further authority or warrant in executing or en-  
35 forcing such order. If any person fails to comply with an order issued under subsection (2) of this  
36 section, the circuit court of the county in which the violation occurred or is threatened shall compel  
37 compliance with the director's order in the same manner as with an order of that court.

38 (7) As used in this section, "violation" means making an improvement on property within the  
39 ocean shore without a permit or in a manner contrary to the conditions set out in a permit issued  
40 under ORS 390.650.

41 **SECTION 510.** ORS 390.666 is amended to read:

42 390.666. If the [State Parks and Recreation Director] **Director of the Oregon Department of**  
43 **Natural Resources** finds that a person or governmental body holding a permit issued under ORS  
44 390.650 is making an improvement on property within the ocean shore contrary to the conditions  
45 set out in the permit, the director may revoke, suspend or refuse to renew such permit. The director

1 may revoke a permit only after giving notice and opportunity for a hearing as provided in ORS  
2 183.415 to 183.430, 183.440 to 183.460 and 183.470.

3 **SECTION 511.** ORS 390.669 is amended to read:

4 390.669. (1) In addition to any enforcement action taken under ORS 390.663, civil proceedings  
5 to abate alleged public nuisances under ORS 390.661 may be instituted in the name of the State of  
6 Oregon upon relation of the [*State Parks and Recreation Director*] **Director of the Oregon De-**  
7 **partment of Natural Resources** or by any person in the person's name.

8 (2) Before beginning any action under subsection (1) of this section, a person other than the  
9 director shall provide to the director 60 days' notice of the intended action. A person other than the  
10 director may not begin an action under subsection (1) of this section if the director has commenced  
11 and is diligently prosecuting civil, criminal or administrative proceedings in the same matter.

12 (3) The director may institute an action in the name of the State of Oregon for a temporary  
13 restraining order or preliminary injunction if a threatened or existing public nuisance under ORS  
14 390.661 creates an emergency that requires immediate action to protect the public health, safety or  
15 welfare. The director [*shall not be*] **is not** required to furnish a bond in such proceeding.

16 (4) The [*State Parks and Recreation Commission, the State Parks and Recreation Director and the*  
17 *employees or duly authorized representatives of the State Parks and Recreation Department shall not*  
18 *be*] **director, Oregon Natural Resources Commission and employees or duly authorized rep-**  
19 **resentatives of the Oregon Department of Natural Resources are not** liable for any damages  
20 a defendant may sustain as a result of an injunction, restraining order or abatement order issued  
21 under this section.

22 (5) A case filed under this section shall be given preference on the docket over all other civil  
23 cases except those given an equal preference by statute.

24 (6) In any action brought under this section, the plaintiff may seek and the court may award a  
25 sum of money sufficient to compensate the public for any destruction or infringement of any public  
26 right of navigation, fishery or recreation resulting from an existing public nuisance under ORS  
27 390.661. [*Any money*] **Moneys** received by the plaintiff under this subsection shall be deposited in  
28 [*an account of the State Parks and Recreation Department for use by the department*] **the Oregon**  
29 **Natural Resources Fund. Moneys deposited in the fund under this subsection are contin-**  
30 **uously appropriated to the Oregon Department of Natural Resources for use by the depart-**  
31 **ment** in administering the ocean shore program.

32 **SECTION 512.** ORS 390.672 is amended to read:

33 390.672. (1) If any person or governmental body, through negligence, violates ORS 390.640, the  
34 [*State Parks and Recreation Director*] **Director of the Oregon Department of Natural**  
35 **Resources**, in a proceeding brought pursuant to ORS 390.669, may seek and the court may award  
36 double a sum of money sufficient to compensate the public for any destruction or infringement of  
37 any public right of navigation, fishery or recreation resulting from such violation.

38 (2) If any person or governmental body intentionally violates ORS 390.640, the director, in a  
39 proceeding brought pursuant to ORS 390.669, may seek and the court may award treble a sum of  
40 money sufficient to compensate the public for any destruction or infringement of any public right  
41 of navigation, fishery or recreation resulting from such violation.

42 (3) An award made pursuant to this section shall be in addition to and not in lieu of any crim-  
43 inal penalties imposed for a violation of ORS 390.640.

44 (4) In any action brought under ORS 390.669, the court shall award to the prevailing party the  
45 costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS

1 20.140, any costs and attorney fees so awarded to the director shall be deposited in [*an account of*  
 2 *the State Parks and Recreation Department*] **the Oregon Natural Resources Fund** to offset the  
 3 director's expenses of bringing such action.

4 **SECTION 513.** ORS 390.674 is amended to read:

5 390.674. (1) Civil penalties under ORS 390.992 shall be imposed as provided in ORS 183.745.

6 (2) The provisions of this section are in addition to and not in lieu of any other penalty or  
 7 sanction provided by law. An action taken by the [*State Parks and Recreation Director*] **Director**  
 8 **of the Oregon Department of Natural Resources** under this section may be joined by the director  
 9 with any other action taken against the same person under ORS 390.995 (1).

10 (3) Any civil penalty recovered under this section shall be deposited [*into an account of the State*  
 11 *Parks and Recreation Department*] **in the Oregon Natural Resources Fund. Moneys deposited in**  
 12 **the fund under this subsection are continuously appropriated to the Oregon Department of**  
 13 **Natural Resources** for use by the department in administration of the ocean shore program.

14 **SECTION 514.** ORS 390.676 is amended to read:

15 390.676. (1) The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
 16 **Natural Resources** shall adopt by rule the amount of civil penalty that may be imposed for a par-  
 17 ticular violation under ORS 390.992.

18 (2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the  
 19 director shall consider the following factors:

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

22 (b) Any prior violations of statutes, rules, orders and permits pertaining to waters of this state.

23 (c) The impact of the violation on public interests in navigation, fishery and recreation.

24 (d) Any other factors determined by the director to be relevant and consistent with the policy  
 25 of ORS 390.610.

26 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and  
 27 conditions as the director determines to be proper and consistent with the policy of ORS 390.610.  
 28 Upon the request of the person incurring the penalty, the director shall consider evidence of the  
 29 economic and financial condition of the person in determining whether a penalty shall be remitted  
 30 or mitigated.

31 **SECTION 515.** ORS 390.678 is amended to read:

32 390.678. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 33 **sources** may establish zones on the ocean shore where travel by motor vehicles or landing of any  
 34 aircraft except for an emergency shall be restricted or prohibited. After the establishment of a zone  
 35 and the erection of signs or markers thereon, no such use shall be made of such areas except in  
 36 conformity with the rules of the department.

37 (2) Proceedings to establish a zone:

38 (a) May be initiated by the department on its own motion; or

39 (b) Shall be initiated upon the request of 20 or more landowners or residents or upon request  
 40 of the governing body of a county or city contiguous to the proposed zone.

41 (3) A zone shall not be established unless the department first holds a public hearing in the vi-  
 42 cinity of the proposed zone. The department shall cause notice of the hearing to be given by pub-  
 43 lication, not less than seven days prior to the hearing, by at least one insertion in a newspaper of  
 44 general circulation in the vicinity of the zone.

45 (4) Before establishing a zone, the department shall seek the approval of the local government

1 whose lands are adjacent or contiguous to the proposed zone.

2 **SECTION 516.** ORS 390.715 is amended to read:

3 390.715. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
4 **sources** may issue permits under ORS 390.650 to 390.659 for pipelines, cable lines and other conduits  
5 across and under the ocean shore, state recreation areas and the submerged lands adjacent to the  
6 ocean shore, upon payment of just compensation by the permittee. A permit issued under this sub-  
7 section is not a sale or lease of tide and overflow lands within the scope of ORS 274.040.

8 (2) Whenever the issuance of a permit under subsection (1) of this section will affect lands  
9 owned privately, the [*State Parks and Recreation*] department shall withhold the issuance of the  
10 permit until the permittee obtains from the private owner an easement, license or other written  
11 authorization that meets the approval of the [*State Parks and Recreation*] department, except as to  
12 the compensation to be paid to the private owner.

13 (3) All permits issued under this section are subject to conditions that will ensure safety of the  
14 public and the preservation of economic, scenic and recreational values and to rules promulgated  
15 by state agencies having jurisdiction over the activities of the grantee or permittee.

16 **SECTION 517.** ORS 390.725 is amended to read:

17 390.725. (1) Removal of natural products such as fish or wildlife, agates or small amounts of  
18 driftwood from a state recreation area as defined in ORS 390.605 for personal, noncommercial use  
19 is not subject to the provisions of ORS 390.650.

20 (2) The collection of natural products for the purpose of trade, sale or resale shall be subject  
21 to the permit provisions and standards of ORS 390.650 and 390.655. Permits shall provide for the  
22 payment of just compensation by the permittee as provided by rule adopted under subsection (4) of  
23 this section.

24 (3) No archaeological object associated with an archaeological site, as [*those terms*] **both** are  
25 defined in ORS 358.905, shall be removed from the ocean shore except as provided in ORS 358.920  
26 and 390.235.

27 (4) Rules or permits shall be made or granted by the [*State Parks and Recreation Department*  
28 *only after consultation with the State Fish and Wildlife Commission, the State Department of Geology*  
29 *and Mineral Industries and the Department of State Lands*] **Oregon Department of Natural Re-**  
30 **sources**. Rules and permits shall contain provisions necessary to protect the areas from any use,  
31 activity or practice inimicable to the conservation of natural resources or public recreation.

32 (5) The terms, royalty and duration of a permit under this section are at the discretion of the  
33 [*State Parks and Recreation*] department. A permit is revocable at any time in the discretion of the  
34 department without liability to the permittee.

35 (6) Whenever the issuance of a permit under this section will affect lands owned privately, the  
36 [*State Parks and Recreation*] department shall withhold the issuance of such permit until such time  
37 as the permittee shall have obtained an easement, license or other written authorization from the  
38 private owner, which easement, license or other written authority must meet the approval of the  
39 department, except as to the compensation to be paid to the private owner.

40 **SECTION 518.** ORS 390.729 is amended to read:

41 390.729. (1) A person may not operate a Class I all-terrain vehicle on the ocean shore unless the  
42 person obtains a permit from the [*State Parks and Recreation Department*] **Oregon Department of**  
43 **Natural Resources** as provided in this section.

44 (2) The department may issue a permit for the operation of a Class I all-terrain vehicle on the  
45 ocean shore if the operator of the vehicle holds a permit issued under ORS 390.570, if the vehicle

1 has a current operating permit issued under ORS 390.580 and if the vehicle will be used to meet the  
2 transportation needs of:

- 3 (a) Individuals with disabilities;
- 4 (b) Emergency response or emergency aid workers; or
- 5 (c) Biologists, wildlife monitors or other natural resources workers.

6 (3) Application for a permit issued under this section shall be in a form determined by the de-  
7 partment. The department shall specify the information to be contained in the application, the re-  
8 newal period and the manner in which the permit must be displayed.

9 (4) The department may not charge for a permit issued under this section.

10 **SECTION 519.** ORS 390.755 is amended to read:

11 390.755. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
12 **sources** is directed to periodically reexamine the [*line*] **lines** of vegetation as established and de-  
13 scribed by ORS 390.770 for the purpose of obtaining information and material suitable for a  
14 re-evaluation and re-definition, if necessary, of [*such line*] **the lines** so that the private and public  
15 rights and interest in the ocean shore [*shall be*] **are** preserved.

16 (2) The [*State Parks and Recreation*] department may, from time to time, recommend to the  
17 Legislative Assembly adjustment of the [*line*] **lines** described in ORS 390.770.

18 **NOTE:** Section 520 was deleted. Subsequent sections were not renumbered.

19 **SECTION 521.** ORS 390.805 is amended to read:

20 390.805. As used in ORS 390.805 to 390.925, unless the context requires otherwise:

21 (1) "Related adjacent land" means all land within one-fourth of one mile of the bank on the side  
22 of Waldo Lake, or a river or segment of river within a scenic waterway, except land that, in the  
23 [*State Parks and Recreation Department's*] judgment **of the Oregon Department of Natural Re-**  
24 **sources**, does not affect the view from the waters within a scenic waterway.

25 (2) "Scenic easement" means the right to control the use of related adjacent land, including air  
26 space above such land, for the purpose of protecting the scenic view from waters within a scenic  
27 waterway; but such control does not affect, without the owner's consent, any regular use exercised  
28 prior to the acquisition of the easement, and the landowner retains the right to uses of the land not  
29 specifically restricted by the easement.

30 (3) "Scenic waterway" means Waldo Lake, or a river or segment of river that has been desig-  
31 nated as such in accordance with ORS 390.805 to 390.925 or any subsequent Act, and includes re-  
32 lated adjacent land.

33 **SECTION 522.** ORS 390.835 is amended to read:

34 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways  
35 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained  
36 in quantities necessary for recreation, fish and wildlife uses. [*No*] **A** dam, [*or*] reservoir[,] or other  
37 water impoundment facility [*shall*] **may not** be constructed on waters within scenic waterways.  
38 [*No*] **A** water diversion facility [*shall*] **may not** be constructed or used except by right previously  
39 established or as permitted by the [*Water Resources Commission*] **Director of the Oregon Depart-**  
40 **ment of Natural Resources**, upon a finding that such diversion is necessary to uses designated in  
41 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to  
42 390.925. [*The Water Resources Commission shall administer and enforce the provisions of this sub-*  
43 *section.*]

44 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of  
45 scenic waterways for purposes other than recreational prospecting not requiring a permit shall be

1 prohibited, except as permitted by the director [*of the Department of State Lands*] upon a finding that  
 2 such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic  
 3 waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and  
 4 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this  
 5 state. [*The Director of the Department of State Lands shall administer and enforce the provisions of*  
 6 *this subsection.*]

7 **(3) The director shall administer and enforce the provisions of subsections (1) and (2) of**  
 8 **this section.**

9 [(3)(a)] **(4)(a)** Upon a finding of emergency circumstances, the director [*of the Department of State*  
 10 *Lands*] may issue a temporary permit for the removal, filling or alteration of the beds or banks  
 11 within a scenic waterway. [*The temporary permit shall include conditions developed after consultation*  
 12 *with the State Department of Fish and Wildlife and the State Parks and Recreation Department.*]

13 (b) As used in this subsection, “emergency circumstances” exist if prompt action is necessary  
 14 to prevent irreparable harm, injury or damage to persons or property.

15 [(4)] **(5)** Any person adversely affected or aggrieved by the grant or denial of a permit under  
 16 subsection (2) or [(3)] **(4)** of this section may appeal in accordance with the procedure set forth in  
 17 ORS 196.835.

18 [(5)] **(6)** Nothing in ORS 390.805 to 390.925 affects the authority of the [*State Fish and Wildlife*  
 19 *Commission*] **Oregon Department of Natural Resources or the Oregon Natural Resources**  
 20 **Commission** to construct facilities or make improvements to facilitate the passage or propagation  
 21 of fish, **to exercise other responsibilities in managing fish and wildlife resources** or [*to exercise*  
 22 *other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 af-*  
 23 *fects the authority of the Water Resources Commission*] to construct and maintain stream gauge  
 24 stations and other facilities related to the [*commission’s duties in*] administration of the water laws.

25 [(6)] **(7)** Upon a finding of necessity under subsection (1) of this section, the [*Water Resources*  
 26 *Commission*] **director** may issue a water right for human consumption not to exceed 0.005 cubic feet  
 27 per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot  
 28 per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic  
 29 waterway if the [*Water Resources Commission*] **director** makes the following findings:

30 (a) That issuing the water right does not significantly impair the free-flowing character of these  
 31 waters in quantities necessary for recreation, fish and wildlife.

32 (b) That issuing the water right is consistent with provisions pertaining to water appropriation  
 33 and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

34 (c) That construction, operation and maintenance of the diversion system will be carried out in  
 35 a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

36 (d) If the water right is for human consumption, an additional finding that:

37 (A) The applicant cannot reasonably obtain water from any other source;

38 (B) Denial of the water right would result in loss of reasonable expectations for use of the  
 39 property; and

40 (C) The system installed to divert water shall include monitoring equipment to permit water use  
 41 measurement and reporting.

42 (e) If the water right is for livestock consumption, an additional finding that:

43 (A) The right is necessary to prevent the livestock from watering in or along the stream bed;

44 (B) The applicant cannot reasonably obtain water from any other source; and

45 (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

1 [(7)] (8) In making the findings required under subsection [(6)] (7) of this section, the [*Water*  
2 *Resources Commission*] **director** shall consider the existing or potential cumulative impacts of issu-  
3 ing the water right.

4 [(8)] (9) The [*Water Resources Commission*] **director** may not allow human consumption and  
5 livestock uses authorized under subsection [(6)] (7) of this section in excess of a combined cumula-  
6 tive total of one percent of the average daily flow or one cubic foot per second, whichever is less,  
7 unless:

8 [(a) *The Water Resources Commission, the State Parks and Recreation Department, the State De-*  
9 *partment of Fish and Wildlife, the Department of Environmental Quality and the Department of State*  
10 *Lands unanimously agree to exceed that amount; and*]

11 **(a) The Department of Environmental Quality agrees to exceed that amount; and**

12 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-  
13 ters in quantities necessary for recreation, fish and wildlife.

14 [(9)(a)] (10)(a)(A) The provisions of this section [*shall*] **do** not apply to a water right application  
15 for the use of ground water as defined in ORS 537.515, except upon a finding by the [*Water Re-*  
16 *sources*] director based on a preponderance of evidence that the use of ground water will measurably  
17 reduce the surface water flows necessary to maintain the free-flowing character of a scenic  
18 waterway in quantities necessary for recreation, fish and wildlife.

19 [(b)] (B) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
20 review every application for the use of ground water to determine whether to make the finding  
21 specified in [*paragraph (a) of this subsection*] **subparagraph (A) of this paragraph**. The finding  
22 shall be based upon the application of generally accepted hydrogeologic methods using relevant and  
23 available field information concerning the proposed use.

24 [(c)] (C) In making the determination required by [*paragraph (a) of this subsection, the Water*  
25 *Resources Department*] **subparagraph (A) of this paragraph, the director** shall consider the timing  
26 of projected impacts of the proposed use in relation to other factors, including but not limited to[:]  
27 changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

28 [(d)] (D) If the [*Water Resources*] director makes the finding specified in [*paragraph (a) of this*  
29 *subsection, the Water Resources*] **subparagraph (A) of this paragraph, the director** shall issue an  
30 order denying the application unless:

31 [(A)] (i) Mitigation is provided in accordance with subsection [(10)] (11) of this section; or

32 [(B)] (ii) The applicant submits evidence to overcome the finding under [*paragraph (a) of this*  
33 *subsection*] **subparagraph (A) of this paragraph**.

34 [(e)] (E) Except as provided under subsection (13) of this section, if the [*Water Resources*] di-  
35 rector does not make the finding specified in [*paragraph (a) of this subsection, the Water Resources*]  
36 **subparagraph (A) of this paragraph, the director** shall issue an order approving the application  
37 if the application otherwise meets the requirements of ORS 537.505 to 537.795.

38 [(f)] (F) A protest of any order issued under this subsection may be filed in the same manner  
39 as a protest on any application for a right to appropriate ground water.

40 [(g)] (G) Each water right permit and certificate for appropriation of ground water issued after  
41 July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be  
42 conditioned to allow the regulation of the use if analysis of data available after the permit or cer-  
43 tificate is issued discloses that the appropriation will measurably reduce the surface water flows  
44 necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for  
45 recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may

1 be subsequently reduced.

2 [(h)] **(H)** *[Nothing in this subsection shall]* **This subsection does not** limit the use of ground  
3 water for a use exempted under ORS 537.545.

4 **(b) As used in this subsection, “measurably reduce” means that the use authorized under**  
5 **this subsection will individually or cumulatively reduce surface water flows within the scenic**  
6 **waterway in excess of a combined cumulative total of one percent of the average daily flow**  
7 **or one cubic foot per second, whichever is less, unless:**

8 **(A) The Department of Environmental Quality agrees to exceed that amount; and**

9 **(B) Exceeding that amount will not significantly impair the free-flowing character of**  
10 **these waters in quantities necessary for recreation, fish and wildlife.**

11 [(10)] **(11)** The *[Water Resources Commission or Water Resources]* director shall consider miti-  
12 gation measures and may include mitigation measures as conditions in any water right permit or  
13 certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quan-  
14 tities necessary for recreation, fish and wildlife.

15 [(11)] **(12)** The *[Water Resources Commission and the Water Resources]* director **and the Oregon**  
16 **Natural Resources Commission** shall carry out their responsibilities under ORS 536.220 to 536.590  
17 with respect to the waters within scenic waterways in conformity with the provisions of this section.

18 [(12) *As used in this section, “measurably reduce” means that the use authorized under subsection*  
19 *(9) of this section will individually or cumulatively reduce surface water flows within the scenic*  
20 *waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic*  
21 *foot per second, whichever is less, unless:]*

22 [(a) *The Water Resources Department, the State Parks and Recreation Department, the State De-*  
23 *partment of Fish and Wildlife, the Department of Environmental Quality and the Department of State*  
24 *Lands unanimously agree to exceed that amount; and]*

25 [(b) *Exceeding that amount will not significantly impair the free-flowing character of these waters*  
26 *in quantities necessary for recreation, fish and wildlife.]*

27 (13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway  
28 in amounts up to but not exceeding the amounts described in subsection [(12)] **(9)(b)** of this section,  
29 the *[Water Resources]* director shall find:

30 (a) That the appropriation will not significantly impair the free-flowing character of these waters  
31 in quantities necessary for recreation, fish and wildlife.

32 (b) That the appropriation is consistent with provisions pertaining to water appropriations and  
33 water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

34 (c) That construction, operation and maintenance of the appropriation will be carried out in a  
35 manner consistent with the purposes set forth in ORS 390.805 to 390.925.

36 (14) *[No placer mining shall be]* **Placer mining is not** permitted on waters within scenic  
37 waterways other than recreational placer mining.

38 (15) *[No person shall]* **A person may not** be required to obtain a permit for recreational pros-  
39 pecting resulting in the fill, removal or other alteration of less than one cubic yard of material at  
40 any one individual site and, cumulatively, not more than five cubic yards of material from within the  
41 bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall  
42 not occur at any site where fish eggs are present.

43 (16) *[No provision of this section shall be construed to]* **This section does not** exempt recre-  
44 ational placer mining on a scenic waterway, other than recreational prospecting not requiring a  
45 permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or



1 rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

2 (17) Recreational placer mining, other than recreational prospecting not requiring a permit,  
3 [*shall*] **may** not:

4 (a) Dam or divert a waterway or obstruct fish passage;

5 (b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the  
6 wet perimeter;

7 (c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter  
8 other than movement by hand and nonmotorized equipment;

9 (d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, re-  
10 gardless of their location;

11 (e) Include excavation from the streambank;

12 (f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon  
13 leaving the site;

14 (g) Include operation of a suction dredge without a suction dredge waste discharge permit from  
15 the Department of Environmental Quality including, but not limited to, a prohibition against dredg-  
16 ing during periods when fish eggs could be in the dredging site gravel;

17 (h) Be conducted on federal lands except as allowed by agencies of the federal government;

18 (i) Impede boating;

19 (j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a  
20 residence or within 500 feet of a campground except within a federally designated recreational  
21 mining site; or

22 (k) Include operation of a dredge within the marked or posted swimming area of a designated  
23 campground or day use area except within a federally designated recreational mining site.

24 (18) As used in this section:

25 (a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel  
26 bar.

27 (b) "Prospecting" means to search or explore for samples of gold, silver or other precious min-  
28 erals, using nonmotorized methods, from among small quantities of aggregate.

29 (c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equip-  
30 ment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding  
31 four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-  
32 installed noise reduction standards. "Recreational placer mining" does not include recreational  
33 prospecting that does not require a permit.

34 (d) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a non-  
35 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the  
36 activity occurs.

37 **SECTION 523.** ORS 390.835, as amended by section 8, chapter 516, Oregon Laws 2001, is  
38 amended to read:

39 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways  
40 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained  
41 in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water  
42 impoundment facility may not be constructed on waters within scenic waterways. A water diversion  
43 facility may not be constructed or used except by right previously established or as permitted by the  
44 [*Water Resources Commission*] **Director of the Oregon Department of Natural Resources**, upon  
45 a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner

1 consistent with the policies set forth under ORS 390.805 to 390.925. *[The Water Resources Commis-*  
 2 *sion shall administer and enforce the provisions of this subsection.]*

3 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of  
 4 scenic waterways for purposes other than recreational prospecting not requiring a permit shall be  
 5 prohibited, except as permitted by the director *[of the Department of State Lands]* upon a finding that  
 6 such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic  
 7 waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and  
 8 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this  
 9 state. *[The Director of the Department of State Lands shall administer and enforce the provisions of*  
 10 *this subsection.]*

11 **(3) The director shall administer and enforce the provisions of subsections (1) and (2) of**  
 12 **this section.**

13 *[(3)(a)] (4)(a)* Upon a finding of emergency circumstances, the director *[of the Department of State*  
 14 *Lands]* may issue a temporary permit for the removal, filling or alteration of the beds or banks  
 15 within a scenic waterway. *[The temporary permit shall include conditions developed after consultation*  
 16 *with the State Department of Fish and Wildlife and the State Parks and Recreation Department.]*

17 (b) As used in this subsection, “emergency circumstances” exist if prompt action is necessary  
 18 to prevent irreparable harm, injury or damage to persons or property.

19 *[(4)] (5)* Any person adversely affected or aggrieved by the grant or denial of a permit under  
 20 subsection (2) or *[(3)] (4)* of this section may appeal in accordance with the procedure set forth in  
 21 ORS 196.835.

22 *[(5)] (6)* Nothing in ORS 390.805 to 390.925 affects the authority of the *[State Fish and Wildlife*  
 23 *Commission]* **Oregon Department of Natural Resources or the Oregon Natural Resources**  
 24 **Commission** to construct facilities or make improvements to facilitate the passage or propagation  
 25 of fish, **to exercise other responsibilities in managing fish and wildlife resources** or *[to exercise*  
 26 *other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 af-*  
 27 *fects the authority of the Water Resources Commission]* to construct and maintain stream gauge  
 28 stations and other facilities related to the *[commission’s duties in]* administration of the water laws.

29 *[(6)] (7)* Upon a finding of necessity under subsection (1) of this section, the *[Water Resources*  
 30 *Commission]* **director** may issue a water right for human consumption not to exceed 0.005 cubic feet  
 31 per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot  
 32 per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic  
 33 waterway if the *[Water Resources Commission]* **director** makes the following findings:

34 (a) That issuing the water right does not significantly impair the free-flowing character of these  
 35 waters in quantities necessary for recreation, fish and wildlife.

36 (b) That issuing the water right is consistent with provisions pertaining to water appropriation  
 37 and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

38 (c) That construction, operation and maintenance of the diversion system will be carried out in  
 39 a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

40 (d) If the water right is for human consumption, an additional finding that:

41 (A) The applicant cannot reasonably obtain water from any other source;

42 (B) Denial of the water right would result in loss of reasonable expectations for use of the  
 43 property; and

44 (C) The system installed to divert water shall include monitoring equipment to permit water use  
 45 measurement and reporting.

1 (e) If the water right is for livestock consumption, an additional finding that:

2 (A) The right is necessary to prevent the livestock from watering in or along the stream bed;

3 (B) The applicant cannot reasonably obtain water from any other source; and

4 (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

5 [(7)] **(8)** In making the findings required under subsection [(6)] **(7)** of this section, the [*Water*  
6 *Resources Commission*] **director** shall consider the existing or potential cumulative impacts of issu-  
7 ing the water right.

8 [(8)] **(9)** The [*Water Resources Commission*] **director** may not allow human consumption and  
9 livestock uses authorized under subsection [(6)] **(7)** of this section in excess of a combined cumula-  
10 tive total of one percent of the average daily flow or one cubic foot per second, whichever is less,  
11 unless:

12 [(a) *The Water Resources Commission, the State Parks and Recreation Department, the State De-*  
13 *partment of Fish and Wildlife, the Department of Environmental Quality and the Department of State*  
14 *Lands unanimously agree to exceed that amount; and*]

15 **(a) The Department of Environmental Quality agrees to exceed that amount; and**

16 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-  
17 ters in quantities necessary for recreation, fish and wildlife.

18 [(9)(a)] **(10)(a)(A)** The provisions of this section do not apply to a water right application for the  
19 use of ground water as defined in ORS 537.515, except upon a finding by the [*Water Resources*] di-  
20 rector based on a preponderance of evidence that the use of ground water will measurably reduce  
21 the surface water flows necessary to maintain the free-flowing character of a scenic waterway in  
22 quantities necessary for recreation, fish and wildlife.

23 [(b)] **(B)** The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
24 review every application for the use of ground water to determine whether to make the finding  
25 specified in [*paragraph (a) of this subsection*] **subparagraph (A) of this paragraph**. The finding  
26 shall be based upon the application of generally accepted hydrogeologic methods using relevant and  
27 available field information concerning the proposed use.

28 [(c)] **(C)** In making the determination required by [*paragraph (a) of this subsection, the Water*  
29 *Resources Department*] **subparagraph (A) of this paragraph, the director** shall consider the timing  
30 of projected impacts of the proposed use in relation to other factors, including but not limited to[:]  
31 changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

32 [(d)] **(D)** If the [*Water Resources*] director makes the finding specified in [*paragraph (a) of this*  
33 *subsection, the Water Resources*] **subparagraph (A) of this paragraph, the director** shall issue an  
34 order denying the application unless:

35 [(A)] **(i)** Mitigation is provided in accordance with subsection [(10)] **(11)** of this section; or

36 [(B)] **(ii)** The applicant submits evidence to overcome the finding under [*paragraph (a) of this*  
37 *subsection*] **subparagraph (A) of this paragraph**.

38 [(e)] **(E)** Except as provided under subsection (13) of this section, if the [*Water Resources*] di-  
39 rector does not make the finding specified in [*paragraph (a) of this subsection, the Water Resources*]  
40 **subparagraph (A) of this paragraph, the director** shall issue an order approving the application  
41 if the application otherwise meets the requirements of ORS 537.505 to 537.795.

42 [(f)] **(F)** A protest of any order issued under this subsection may be filed in the same manner  
43 as a protest on any application for a right to appropriate ground water.

44 [(g)] **(G)** Each water right permit and certificate for appropriation of ground water issued after  
45 July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be

1 conditioned to allow the regulation of the use if analysis of data available after the permit or cer-  
 2 tificate is issued discloses that the appropriation will measurably reduce the surface water flows  
 3 necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for  
 4 recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may  
 5 be subsequently reduced.

6 [(h)] (H) This subsection does not limit the use of ground water for a use exempted under ORS  
 7 537.545.

8 (b) As used in this subsection, “measurably reduce” means that the use authorized under  
 9 this subsection will individually or cumulatively reduce surface water flows within the scenic  
 10 waterway in excess of a combined cumulative total of one percent of the average daily flow  
 11 or one cubic foot per second, whichever is less, unless:

12 (A) The Department of Environmental Quality agrees to exceed that amount; and

13 (B) Exceeding that amount will not significantly impair the free-flowing character of  
 14 these waters in quantities necessary for recreation, fish and wildlife.

15 [(10)] (11) The [Water Resources Commission or Water Resources] director shall consider miti-  
 16 gation measures and may include mitigation measures as conditions in any water right permit or  
 17 certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quan-  
 18 tities necessary for recreation, fish and wildlife.

19 [(11)] (12) The [Water Resources Commission and the Water Resources] director **and the Oregon**  
 20 **Natural Resources Commission** shall carry out their responsibilities under ORS 536.220 to 536.590  
 21 with respect to the waters within scenic waterways in conformity with the provisions of this section.

22 [(12) As used in this section, “measurably reduce” means that the use authorized under subsection  
 23 (9) of this section will individually or cumulatively reduce surface water flows within the scenic  
 24 waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic  
 25 foot per second, whichever is less, unless:]

26 [(a) The Water Resources Department, the State Parks and Recreation Department, the State De-  
 27 partment of Fish and Wildlife, the Department of Environmental Quality and the Department of State  
 28 Lands unanimously agree to exceed that amount; and]

29 [(b) Exceeding that amount will not significantly impair the free-flowing character of these waters  
 30 in quantities necessary for recreation, fish and wildlife.]

31 (13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway  
 32 in amounts up to but not exceeding the amounts described in subsection [(12)] (9)(b) of this section,  
 33 the [Water Resources] director shall find:

34 (a) That the appropriation will not significantly impair the free-flowing character of these waters  
 35 in quantities necessary for recreation, fish and wildlife.

36 (b) That the appropriation is consistent with provisions pertaining to water appropriations and  
 37 water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

38 (c) That construction, operation and maintenance of the appropriation will be carried out in a  
 39 manner consistent with the purposes set forth in ORS 390.805 to 390.925.

40 (14) Placer mining is not permitted on waters within scenic waterways, other than recreational  
 41 placer mining.

42 (15) A person may not be required to obtain a permit for recreational prospecting or other  
 43 nonmotorized recreational activity resulting in the fill, removal or other alteration of less than one  
 44 cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards  
 45 of material from within the bed or wet perimeter of any single scenic waterway in a single year.

1 Recreational prospecting shall not occur at any site where fish eggs are present.

2 (16) This section does not exempt recreational placer mining on a scenic waterway, other than  
3 recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800  
4 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845  
5 to 196.870.

6 (17) Recreational placer mining may not:

7 (a) Dam or divert a waterway or obstruct fish passage;

8 (b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the  
9 wet perimeter;

10 (c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter  
11 other than movement by hand and nonmotorized equipment;

12 (d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, re-  
13 gardless of their location;

14 (e) Include excavation from the streambank;

15 (f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon  
16 leaving the site;

17 (g) Include operation of a suction dredge without a suction dredge waste discharge permit from  
18 the Department of Environmental Quality including, but not limited to, a prohibition against dredg-  
19 ing during periods when fish eggs could be in the dredging site gravel;

20 (h) Be conducted on federal lands except as allowed by agencies of the federal government;

21 (i) Impede boating;

22 (j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a  
23 residence or within 500 feet of a campground except within a federally designated recreational  
24 mining site; or

25 (k) Include operation of a dredge within the marked or posted swimming area of a designated  
26 campground or day use area except within a federally designated recreational mining site.

27 (18) As used in this section:

28 (a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel  
29 bar.

30 (b) "Prospecting" means to search or explore for samples of gold, silver or other precious min-  
31 erals, using nonmotorized methods, from among small quantities of aggregate.

32 (c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equip-  
33 ment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding  
34 four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-  
35 installed noise reduction standards. "Recreational placer mining" does not include recreational  
36 prospecting that does not require a permit.

37 (d) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a non-  
38 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the  
39 activity occurs.

40 **SECTION 524.** ORS 390.845 is amended to read:

41 390.845. (1) [Except as provided in ORS 390.835,] Scenic waterways shall be administered by the  
42 [State Parks and Recreation Department] **Oregon Department of Natural Resources**, each in such  
43 manner as to protect and enhance the values [which] **that** caused such scenic waterway to be in-  
44 cluded in the system **and to fulfill the department's duties under ORS 390.835**. In such adminis-  
45 tration primary emphasis shall be given to protecting the aesthetic, scenic, fish and wildlife,

1 scientific and recreation features, based on the special attributes of each area.

2 (2) After consultation with [*the State Board of Forestry, the State Department of Agriculture and*  
3 *the affected counties and with the concurrence of the Water Resources Commission, the department*] **the**  
4 **State Department of Agriculture and the affected counties, the Oregon Department of Na-**  
5 **tural Resources** shall adopt rules governing the management of related adjacent land. Such rules  
6 shall be adopted in accordance with ORS chapter 183. Such rules shall reflect management princi-  
7 ples, standards and plans applicable to scenic waterways, their shore lines and related adjacent land  
8 and, if necessary, establish varying intensities of protection or development based on special attri-  
9 butes of each area. Such management principles, standards and plans shall protect or enhance the  
10 aesthetic and scenic values of the scenic waterways and permit compatible agricultural, forestry and  
11 other land uses. Specifically, and not in limitation of the foregoing, such rules shall provide that:

12 (a) No roads, railroads or utilities shall be constructed within any scenic waterway except  
13 where necessary to serve the permissible uses, as [*defined in subsection (2) of this section*] **described**  
14 **in this subsection** and in the rules of the department, of the related adjacent land or unless de-  
15 partment approval of such use is obtained as provided in subsection (4) or (5) of this section. The  
16 department wherever practicable shall require the sharing of land and air space by such roads,  
17 railroads and utilities. All permissible roads, railroads and utilities shall be located in such a man-  
18 ner as to minimize the disturbance of the natural beauty of a scenic waterway;

19 (b) Forest crops shall be harvested in such manner as to maintain as nearly as reasonably is  
20 practicable the natural beauty of the scenic waterway;

21 (c) Occupants of related adjacent land shall avoid pollution of waters within a scenic waterway;

22 (d) The surface of related adjacent land shall not be disturbed for prospecting or mining unless  
23 the department's approval is obtained under subsection (4) or (5) of this section; and

24 (e) Unless department approval of the proposed use is obtained under subsection (4) or (5) of this  
25 section, no commercial, business or industrial structures or buildings other than structures or  
26 buildings erected in connection with an existing use shall be erected or placed on related adjacent  
27 land. All structures and buildings erected or placed on such land shall be in harmony with the  
28 natural beauty of the scenic waterway and shall be placed a sufficient distance from other struc-  
29 tures or buildings so as not to impair substantially such natural beauty. No signs or other forms  
30 of outdoor advertising that are visible from waters within a scenic waterway shall be constructed  
31 or maintained.

32 (3) No person shall put related adjacent land to uses that violate ORS 390.805 to 390.925 or the  
33 rules of the department adopted under ORS 390.805 to 390.925 or to uses to which the land was not  
34 being put before December 3, 1970, or engage in the cutting of trees, or mining, or prospecting on  
35 such lands or construct roads, railroads, utilities, buildings or other structures on such lands, unless  
36 the owner of the land has given to the department written notice of such proposed use at least one  
37 year prior thereto and has submitted to the department with the notice a specific and detailed de-  
38 scription of such proposed use or has entered into agreement for such use with the department un-  
39 der subsection (5) of this section. The owner may, however, act in emergencies without the notice  
40 required by ORS 390.805 to 390.925 when necessary in the interests of public safety.

41 (4) Upon receipt of the written notice provided in subsection (3) of this section, the department  
42 shall first determine whether in its judgment the proposed use would impair substantially the na-  
43 tural beauty of a scenic waterway. If the department determines that the proposal, if put into effect,  
44 would not impair substantially the natural beauty of the scenic waterway, the department shall no-  
45 tify in writing the owner of the related adjacent land that the owner may immediately proceed with

1 the proposed use as described to the department. If the department determines that the proposal, if  
2 put into effect, would impair substantially the natural beauty of the scenic waterway, the depart-  
3 ment shall notify in writing the owner of the related adjacent land of such determination and no  
4 steps shall be taken to carry out such proposal until at least one year after the original notice to  
5 the department. During such period:

6 (a) The department and the owner of the land involved may agree upon modifications or alter-  
7 ations of the proposal so that implementation thereof would not in the judgment of the department  
8 impair substantially the natural beauty of the scenic waterway; or

9 (b) The department may acquire by purchase, gift or exchange, the land involved or interests  
10 therein, including scenic easements, for the purpose of preserving the natural beauty of the scenic  
11 waterway.

12 (5) The department, upon written request from an owner of related adjacent land, shall enter  
13 into negotiations and endeavor to reach agreement with such owner establishing for the use of such  
14 land a plan that would not impair substantially the natural beauty of the scenic waterway. At the  
15 time of such request for negotiations, the owner may submit a plan in writing setting forth in detail  
16 proposed uses. Three months after the owner makes such a request for negotiations with respect to  
17 use of land, either the department or the owner may give written notice that the negotiations are  
18 terminated without agreement. Nine months after the notice of termination of negotiations the  
19 owner may use land in conformity with any specific written plan submitted by the owner prior to  
20 or during negotiations. In the event the department and the owner reach agreement establishing a  
21 plan for land use, such agreement is terminable upon at least one year's written notice by either the  
22 department or the owner.

23 (6) [*With the concurrence of the Water Resources Commission,*] The department may institute  
24 condemnation proceedings and by condemnation acquire related adjacent land:

25 (a) At any time subsequent to nine months after the receipt of notice of a proposal for the use  
26 of such land that the department determines would, if carried out, impair substantially the natural  
27 beauty of a scenic waterway unless the department and the owner of such land have entered into  
28 an agreement as contemplated by subsection (4) or (5) of this section or the owner shall have noti-  
29 fied the department of the abandonment of such proposal; or

30 (b) At any time related adjacent land is used in a manner violating ORS 390.805 to 390.925, the  
31 rules of the department or any agreement entered into by the department pursuant to subsection (4)  
32 or (5) of this section; or

33 (c) At any time related adjacent land is used in a manner which, in the judgment of the de-  
34 partment, impairs substantially the natural beauty of a scenic waterway, if the department has not  
35 been given at least one year's advance written notice of such use and if there is not in effect de-  
36 partment approval of such use pursuant to subsection (4) or (5) of this section.

37 (7) In such condemnation the owner of the land shall not receive any award for the value of any  
38 structure, utility, road or other improvement constructed or erected upon the land after December  
39 3, 1970, unless the department has received written notice of such proposed structure, utility, road  
40 or other improvement at least one year prior to commencement of construction or erection of such  
41 structure, utility, road or other improvement or unless the department has given approval for such  
42 improvement under subsection (4) or (5) of this section. If the person owned the land on December  
43 3, 1970, and for a continuous period of not less than two years immediately prior thereto, the person  
44 shall receive no less for the land than its value on December 3, 1970. The department shall not ac-  
45 quire by condemnation a scenic easement in land. When the department acquires any related adja-

1 cent land that is located between a lake or river and other land that is owned by a person having  
2 the right to the beneficial use of waters in the river by virtue of ownership of the other land:

3 (a) The right to the beneficial use of such waters shall not be affected by such condemnation;  
4 and

5 (b) The owner of the other land shall retain a right of access to the lake or river necessary to  
6 use, store or divert such waters as the owner has a right to use, consistent with concurrent use of  
7 the land so condemned as a part of the Oregon Scenic Waterways System.

8 (8) Any owner of related adjacent land, upon written request to the department, shall be pro-  
9 vided copies of rules then in effect or thereafter adopted by the department pursuant to ORS 390.805  
10 to 390.925.

11 (9) The department shall furnish to any member of the public upon written request and at ex-  
12 pense of the member a copy of any notice filed pursuant to subsection (3) of this section.

13 (10) If a scenic waterway contains lands or interests therein owned by or under the jurisdiction  
14 of an Indian tribe, the United States, another state agency or local governmental agency, the de-  
15 partment may enter into agreement with the tribe or the federal, state or local agency for the ad-  
16 ministration of such lands or interests therein in furtherance of the purposes of ORS 390.805 to  
17 390.925.

18 **SECTION 525.** ORS 390.848 is amended to read:

19 390.848. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
20 **sources** shall establish, by rule, a system for issuing passes necessary to comply with the require-  
21 ments under ORS 390.851. The department shall establish a reasonable fee for issuance of a pass  
22 under this section. The department may establish any form of proof of payment of the user fees that  
23 it deems appropriate.

24 (2) The system for issuance of passes established by the department under this section may in-  
25 clude issuance of the passes by governmental entities or private persons who have entered into ap-  
26 propriate agreements with the department for issuance of the passes. Agreements under this  
27 subsection may include, but are not limited to, terms providing for locations for the collection of  
28 fees, methods the department determines appropriate to assure payment of moneys collected and  
29 provisions for the distribution of river-user information.

30 (3) The department shall issue, without charge, annual passes to comply with the requirements  
31 under ORS 390.851 to persons who own ranch, farm or residential property immediately abutting  
32 those portions of the Deschutes River designated as scenic waterways under ORS 390.826 and to  
33 members of the immediate family of such persons. This subsection does not authorize the issuance  
34 without charge of passes to persons holding less than a majority interest in a firm, corporation or  
35 cooperative organization which owns land immediately abutting the Deschutes River designated as  
36 scenic waterways under ORS 390.826.

37 (4)(a) Moneys collected under this section shall be deposited in the [*separate fund established for*  
38 *the State Parks and Recreation Department under*] **Oregon Natural Resources Fund pursuant to**  
39 ORS 366.512. [*and,*]

40 (b) Subject to the limitations [*under subsection (5) of this section, are continually appropriated to*  
41 *that department to be used.*] **of paragraph (c) of this subsection, moneys collected under this**  
42 **section are continuously appropriated to the department:**

43 [(a)] (A) For operation of the pass system established under this section;

44 [(b)] (B) For providing river-user oriented law enforcement services;

45 [(c)] (C) For providing river recreation information and education;



1 [(d)] (D) For developing and maintaining river oriented recreation facilities; and

2 [(e)] (E) For any other purposes the department considers appropriate for the maintenance, en-  
3 hancement or protection of the natural and scenic beauty of the scenic waterway consistent with  
4 ORS 390.805 to 390.925.

5 [(5)] (c) The use of moneys for purposes described under [subsection (4) of this section] **para-**  
6 **graph (b) of this subsection** is limited to the performance of those purposes for areas of the  
7 Deschutes River designated as scenic waterways under ORS 390.826.

8 **SECTION 526.** ORS 390.855 is amended to read:

9 390.855. The [State Parks and Recreation Department] **Oregon Department of Natural Re-**  
10 **sources** shall undertake a continuing study and submit periodic reports to the Governor, [with the  
11 concurrence of the Water Resources Commission,] recommending the designation of additional rivers  
12 or segments of rivers and related adjacent land by the Governor as scenic waterways subject to the  
13 provisions of ORS 390.805 to 390.925. Consistent with such recommendation, the Governor may des-  
14 ignate any river or segment of a river and related adjacent land as a scenic waterway subject to  
15 the provisions of ORS 390.805 to 390.925. The department shall consult with [the State Fish and  
16 Wildlife Commission,] the State Department of Agriculture, the Environmental Quality  
17 Commission[, the Department of State Lands,] and such other persons or agencies as it considers  
18 appropriate. The [State Parks and Recreation Department] **Oregon Department of Natural Re-**  
19 **sources** shall conduct hearings in the counties in which the proposed additional rivers or segments  
20 of rivers are located. The following criteria shall be considered in making such report:

21 (1) The river or segment of river is relatively free-flowing and the scene as viewed from the  
22 river and related adjacent land is pleasing, whether primitive or rural-pastoral, or these conditions  
23 are restorable.

24 (2) The river or segment of river and its setting possess natural and recreation values of out-  
25 standing quality.

26 (3) The river or segment of river and its setting are large enough to sustain substantial recre-  
27 ation use and to accommodate existing uses without undue impairment of the natural values of the  
28 resource or quality of the recreation experience.

29 **SECTION 527.** ORS 390.875 is amended to read:

30 390.875. Any public land within or adjacent to a scenic waterway, with the consent of the gov-  
31 erning body having jurisdiction thereof, may be transferred to the jurisdiction of the [State Parks  
32 and Recreation Department] **Oregon Department of Natural Resources** with or without compen-  
33 sation. Any land so transferred shall become state recreational land and shall be administered as a  
34 part of the scenic waterway. Any such land within a scenic waterway which is not transferred to  
35 the jurisdiction of the department, to the fullest extent consistent with the purposes for which the  
36 land is held, shall be administered by the body having jurisdiction thereof in accordance with the  
37 provisions of ORS 390.805 to 390.925.

38 **SECTION 528.** ORS 390.885 is amended to read:

39 390.885. In acquiring related adjacent land by exchange, the [State Parks and Recreation De-  
40 partment] **Oregon Department of Natural Resources** may accept title to any property within a  
41 scenic waterway, and in exchange therefor, may convey to the grantor of such property any prop-  
42 erty under its jurisdiction that the department is not otherwise restricted from exchanging. In so far  
43 as practicable, the properties so exchanged shall be of approximately equal fair market value. If they  
44 are not of approximately equal fair market value, the department may accept cash or property from,  
45 or pay cash or grant property to, the grantor in order to equalize the values of the properties ex-

1 changed.

2 **SECTION 529.** ORS 390.895 is amended to read:

3 390.895. In addition to State of Oregon funds available for the purposes of ORS 390.805 to  
4 390.925, the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources**  
5 shall use such portion of moneys made available to it by the [*Bureau of Outdoor Recreation and other*  
6 *federal agencies*] **federal government**, including matching funds, as the department determines are  
7 necessary and available to carry out the purposes of ORS 390.805 to 390.925.

8 **SECTION 530.** ORS 390.910 is amended to read:

9 390.910. In carrying out the provisions of ORS 390.805 to 390.925, the [*State Parks and Recre-*  
10 *ation Department*] **Oregon Department of Natural Resources** may enter into intergovernmental  
11 agreements to form committees to advise the various governmental agencies involved regarding  
12 management of the scenic waterways. Each such agreement must provide for membership on the  
13 committee of a representative of one of the governing bodies of the counties through which the  
14 scenic waterway flows. The county representative shall be chosen by the Governor from among  
15 those individuals recommended to the Governor by the county governing bodies.

16 **SECTION 531.** ORS 390.925 is amended to read:

17 390.925. In addition to any other penalties provided by law for violation of ORS 390.805 to  
18 390.925 or rules adopted thereunder, the [*State Parks and Recreation Department*] **Oregon Depart-**  
19 **ment of Natural Resources** is vested with power to obtain injunctions and other appropriate relief  
20 against violations of any provisions of ORS 390.805 to 390.925 and any rules adopted under ORS  
21 390.805 to 390.925 and agreements made under ORS 390.805 to 390.925.

22 **SECTION 532.** ORS 390.930 is amended to read:

23 390.930. As used in ORS 390.930 to 390.940:

24 (1) "Managing agencies" includes:

25 [(a) *State Parks and Recreation Department*];

26 [(b) *State Department of Fish and Wildlife*];

27 [(c)] (a) Confederated Tribes of the Warm Springs Indian Reservation;

28 [(d)] (b) State Marine Board;

29 [(e)] (c) Sherman, Wasco and Jefferson Counties;

30 [(f)] (d) Oregon State Police;

31 [(g)] (e) United States Bureau of Land Management;

32 [(h)] (f) United States Bureau of Indian Affairs; and

33 [(i)] (g) The City of Maupin.

34 (2) "Recreation area" means the Deschutes River Scenic Waterway Recreation Area created  
35 under ORS 390.932.

36 **SECTION 533.** ORS 390.934 is amended to read:

37 390.934. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
38 **sources** shall have primary management responsibility for the State of Oregon to manage the  
39 Deschutes River Scenic Waterway Recreation Area. In managing the recreation area, the depart-  
40 ment shall cooperate with other managing agencies having jurisdiction to manage all or part of the  
41 recreational area.

42 (2) The department shall adopt a management plan by rule. The department shall implement the  
43 plan and shall prepare a budget for implementation taking into consideration the provisions of the  
44 management plan.

45 **SECTION 534.** ORS 390.936 is amended to read:

1 390.936. In accordance with applicable provisions of ORS chapter 183, the [*State Parks and Re-*  
2 *creation Department*] **Oregon Department of Natural Resources** shall adopt rules necessary to  
3 carry out those provisions of ORS 390.930 to 390.940 that the department is charged with adminis-  
4 tering.

5 **SECTION 535.** ORS 390.940 is amended to read:

6 390.940. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
7 **sources** and state and local managing agencies shall manage the Deschutes River Scenic Waterway  
8 Recreation Area according to the provisions of ORS 390.805 to 390.925 and 390.930 to 390.940 and  
9 rules adopted under ORS 390.805 to 390.925 and 390.930 to 390.940. Federal and tribal managing  
10 agencies with jurisdiction over their respective lands and waters shall be encouraged to manage  
11 their lands and waters in a manner consistent with the provisions of ORS 390.805 to 390.925 and  
12 390.930 to 390.940.

13 **SECTION 536.** ORS 390.959 is amended to read:

14 390.959. The system of Oregon recreation trails shall be composed of trails established as pro-  
15 vided in ORS 390.962 and 390.965. The [*State Parks and Recreation Department*] **Oregon Depart-**  
16 **ment of Natural Resources**, in consultation with appropriate federal, state and local governmental  
17 agencies and public and private organizations, shall establish a uniform marker for the system of  
18 Oregon recreation trails.

19 **SECTION 537.** ORS 390.962 is amended to read:

20 390.962. (1) Upon finding that such trails will meet the criteria established in ORS 390.950 to  
21 390.989 and 390.995 (2) and such supplementary criteria as the [*State Parks and Recreation Depart-*  
22 *ment*] **Oregon Department of Natural Resources** may prescribe, the department is encouraged and  
23 empowered to establish and designate Oregon recreation trails:

24 (a) Over lands owned by the State of Oregon, by the federal government or by any county,  
25 municipality or other local governmental body, with the consent of the state agency, federal agency,  
26 county, municipality or other local governmental body having jurisdiction over the lands involved;  
27 or

28 (b) Over lands owned by private persons, in the manner and subject to the limitations provided  
29 in ORS 390.950 to 390.989 and 390.995 (2).

30 (2) In establishing such trails, the department shall give special recognition to the need for the  
31 establishment of recreation trails in or near, or reasonably accessible to, urban areas. Upon the  
32 establishment of any such trail, the department shall designate the primary kind of trail it is to be,  
33 based upon the mode or modes of travel to be permitted on such trail, including one or more of the  
34 following:

35 (a) Footpath.

36 (b) Horseback riding trail.

37 (c) Bicycle path.

38 (3) Nothing in ORS 390.950 to 390.989 and 390.995 (2) affects any other statute authorizing trails  
39 for motorized vehicles which is not inconsistent with ORS 390.950 to 390.989 and 390.995 (2).

40 **SECTION 538.** ORS 390.965 is amended to read:

41 390.965. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
42 **sources** may establish trails after public meetings in the areas of the state where trails are planned  
43 and only in accordance with the following criteria:

44 (a) Emphasis shall be given to the development of trails across public lands.

45 (b) No trails shall cross private land occupied by a residential dwelling, or upon which a resi-

1 dental dwelling is under construction, within 300 feet of such residential dwelling, without the  
2 consent of the owner.

3 (c) Trails shall be selected to minimize the adverse effects on adjacent landowners or users and  
4 their operations.

5 (d) Development and management of trails shall be designed to harmonize with and complement  
6 any established forest, agricultural, or other use plan that is compatible with the purposes of ORS  
7 390.950 to 390.989 and 390.995 (2).

8 (2) Before establishing a trail, the department shall consider at a public meeting the following  
9 information:

10 (a) The proposed route of such trail (including maps and illustrations) and the recommended  
11 mode or modes of travel to be permitted thereon;

12 (b) The areas adjacent to such trails, to be utilized for scenic, historic, natural, cultural or de-  
13 velopmental purposes;

14 (c) The characteristics that, in the judgment of the department, make the proposed trail suitable  
15 as an Oregon recreation trail;

16 (d) The current status of land ownership and current and potential use along the designated  
17 route;

18 (e) The estimated cost of acquisition of lands or interest in lands, if any;

19 (f) The plans for developing and maintaining the trail and the cost thereof;

20 (g) Any anticipated problems of policing the use of such trail and any anticipated hazards to the  
21 use of any privately owned lands adjacent to such trail; and

22 (h) The extent to which the state or its political subdivisions and public and private organiza-  
23 tions might reasonably be expected to participate in acquiring the necessary lands and in the ad-  
24 ministration thereof.

25 **SECTION 539.** ORS 390.968 is amended to read:

26 390.968. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
27 **sources** shall select the rights of way for trails designated as Oregon Recreation Trails by ORS  
28 390.962 (1)(a) and (b). Such rights of way shall be:

29 (a) Of sufficient width and so located as to protect natural conditions, scenic and historic fea-  
30 tures, and any primitive character of the trail area; to provide campsites, shelters, and related  
31 public-use facilities along trails in more remote areas; and to provide reasonable public access.

32 (b) Located to avoid, in so far as reasonably practicable, established highways, motor roads,  
33 mining areas, power transmission lines, existing commercial and industrial developments, range  
34 fences and improvements, private logging operations, and any other activities that would be incom-  
35 patible with the protection of the trailside environment in its natural condition and the use of the  
36 trail for outdoor recreation.

37 (2) Notwithstanding subsection (1) of this section, it is recognized that in many instances (espe-  
38 cially in urban areas and for some types of trails across or near private land) it may be advisable  
39 to locate segments of trails in or near existing rights of way for roads, highways, public utilities or  
40 telecommunications utilities, excluding power transmission lines; and it is recognized that trail  
41 rights of way on occasion may be located, or from time to time relocated, through, or adjacent to,  
42 lands used for private timber (including logging), agriculture, commercial or industrial operations  
43 and that such location or relocation of a trail right of way, of itself, shall not impose any limitation  
44 upon an otherwise lawful use of the adjacent private land except to the extent of the terms of any  
45 agreement with the private landowner as provided in ORS 390.971 (1) and except as may be provided

1 by any zoning ordinance, law or regulation.

2 (3) The location and width of an Oregon recreation trail right of way across federal lands under  
3 the jurisdiction of a federal agency shall be by agreement between that agency and the department.

4 (4) In selecting a right of way, the department shall endeavor to obtain the advice and assist-  
5 ance of the local governments, private organizations, landowners, the land users concerned, and the  
6 advisory council established under ORS 390.977.

7 (5) The department shall hold a public hearing in the area of the state where the selection of  
8 such right of way is to be made. Subject to ORS 390.971, after public hearing, the department may  
9 revise the location and width of a right of way from time to time as required by circumstances, with  
10 the consent of the head of any federal agency involved, and with such advice and assistance of the  
11 local governments, private organizations, landowners, land users, and the advisory council, as the  
12 department considers necessary or advisable.

13 **SECTION 540.** ORS 390.971 is amended to read:

14 390.971. (1) Within the exterior boundaries of areas under its administration that are included  
15 in the right of way selected for an Oregon recreation trail as provided in ORS 390.950 to 390.989  
16 and 390.995 (2), the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
17 **sources** may do any of the following:

18 (a) Enter into written cooperative agreements with landowners, federal agencies, other state  
19 agencies, local governments, private organizations and individuals in order to provide for the de-  
20 velopment, operation, maintenance, location and relocation of the trail. Where the trail crosses  
21 commercial forestland, such agreement shall make reasonable provision for temporary relocation  
22 reasonably required for commercial forest management.

23 (b) Subject to limitations set forth in ORS 390.950 to 390.989 and 390.995 (2), acquire lands or  
24 interests in lands by donation, purchase with donated or appropriated funds or exchange, or with  
25 funds obtained under ORS 390.980.

26 (2) The department, in the exercise of its exchange authority, may accept title to any nonstate-  
27 owned property within a trail right of way, and, in exchange therefor, the department may convey  
28 to the grantor of such property any state-owned property under its jurisdiction or the jurisdiction  
29 of any state agency consenting to such exchange that the department or the applicable consenting  
30 state agency classifies as suitable for exchange or other disposal. The values of the properties so  
31 exchanged either shall be approximately equal or, if they are not approximately equal, the values  
32 shall be equalized by the payment of cash to the grantor or to the department or applicable con-  
33 senting state agency as the circumstances require.

34 (3) If lands included in an Oregon recreation trail right of way are outside the exterior bound-  
35 aries of state or federally administered areas, the department shall attempt, and any local govern-  
36 ments involved shall be encouraged, to enter into written cooperative agreements with landowners,  
37 local government, private organizations and individuals in order to develop, administer and maintain  
38 the trails and to acquire, develop and administer such lands or interests therein. However, if the  
39 department or local governments fail or are unable to enter into such agreements or to acquire such  
40 lands or interests therein within one year after the selection of the right of way, the department  
41 may acquire private lands or interests therein by donation, exchange or purchase with donated or  
42 appropriated funds and may develop and administer such lands or interests therein. Exchanges shall  
43 be governed by the provisions of subsection (2) of this section.

44 (4) Oregon recreation trails shall be administered, protected, developed and maintained by the  
45 department, or as provided under subsection (1)(a) of this section, to retain their natural, scenic and

1 historic features. Along trails in more remote areas, provision may be made for campsites, shelters  
2 and related public-use facilities. Other uses, including reasonable crossings for motor vehicles, public  
3 utilities and water pipes and ditches, that will not substantially interfere with the nature and pur-  
4 poses of the trails may be permitted or authorized, as appropriate. The use of motorized vehicles by  
5 the general public along any such Oregon recreation trail is prohibited. However, the department  
6 shall authorize the use of motorized vehicles when, in its judgment, such vehicles are necessary to  
7 meet emergencies, trail construction and maintenance needs or to enable adjacent landowners or  
8 land users to have reasonable access to their lands or timber rights. The fact that private lands are  
9 included in an Oregon recreation trail by cooperative agreement of a landowner does not preclude  
10 the owner of such lands or agents of the owner from using motorized vehicles on or across such  
11 trails or adjacent lands from time to time in accordance with such agreement. Except to the extent  
12 otherwise provided by law, the state laws, rules and regulations applicable to lands or areas in-  
13 cluded in any Oregon recreation trail shall continue to apply. Nothing in ORS 390.950 to 390.989  
14 and 390.995 (2) prohibits the use of roads existing on private lands on September 9, 1971, which may  
15 cross or traverse portions of the trail right of way, nor shall ORS 390.950 to 390.989 and 390.995 (2)  
16 prevent trails from crossing such roads.

17 (5) The department shall endeavor to induce agreements with appropriate state and federal  
18 agencies to provide for youth work projects to assist in the construction and maintenance of trails  
19 that are part of the Oregon recreation trails system.

20 (6) The department shall endeavor, when it considers such to be appropriate, to develop and  
21 enhance the educational values and opportunities of Oregon recreation trails. In this connection the  
22 department shall cooperate with schools, educators and other interested persons or groups in de-  
23 veloping and utilizing techniques and materials to demonstrate to and inform the trail-using public  
24 of various scenic and natural features visible along or from such trails, including geological, botan-  
25 ical, historical, zoological and similar features.

26 (7) The department shall place and endeavor to maintain signs at such places as it considers  
27 appropriate along Oregon recreation trails advising users of the Oregon laws of criminal trespass  
28 and encouraging users to protect the trails and the rights and property of adjacent landowners.

29 (8) The department, with the concurrence of any federal agency administering lands through  
30 which an Oregon recreation trail passes, and after consultation with the local governments, private  
31 organizations and landowners that the department knows or believes to be concerned, and the ad-  
32 visory council established under ORS 390.977, may adopt rules that may be revised from time to time  
33 governing protection, management, use, development and administration of an Oregon recreation  
34 trail.

35 (9) The department, on lands not within a forest protection district, upon recommendation of the  
36 [*State Forester*] **Director of the Oregon Department of Natural Resources**, shall have the au-  
37 thority to close trails during periods of high fire danger. The department shall also have the au-  
38 thority to close trails if it deems it necessary to protect the safety of the public.

39 (10) Notwithstanding the provisions of ORS chapter 477, forestland on which a fire exists that  
40 was caused by a person using, for recreational purposes, a trail established pursuant to ORS 390.950  
41 to 390.989, shall not be considered an operation area as defined by ORS 477.001, if the fire did not  
42 start within an operation.

43 **SECTION 541.** ORS 390.974 is amended to read:

44 390.974. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
45 **sources** is authorized and encouraged to consult and to cooperate with any state, federal or local

1 governmental agency or body and with any privately owned utility having jurisdiction or control  
2 over or information concerning the use, abandonment or disposition of roadways, utility rights of  
3 way or other properties suitable for the purpose of improving or expanding the Oregon recreation  
4 trails system in order to [assure] **ensure**, to the extent practicable, that any such properties having  
5 value for Oregon recreation trail purposes may be made available for such use.

6 **SECTION 542.** ORS 390.977 is amended to read:

7 390.977. (1) There is established an Oregon Recreation Trails Advisory Council consisting of  
8 seven members, at least one from each congressional district in the state. However, not less than  
9 two of such members shall be from separate counties bordering upon the ocean shore. Members of  
10 the council shall be appointed by the [*State Parks and Recreation Commission*] **Oregon Natural**  
11 **Resources Commission** and shall serve at the pleasure of the commission for terms of four years.  
12 Before the expiration of the term of a member, the commission shall appoint a successor. A member  
13 shall be eligible for reappointment. If there is a vacancy for any cause, the commission shall make  
14 an appointment to become immediately effective for the unexpired term.

15 (2) The commission and the [*State Parks and Recreation Department*] **Oregon Department of**  
16 **Natural Resources** shall consult with the council from time to time with respect to matters relating  
17 to Oregon recreation trails, including the designation and establishment of Oregon recreation trails,  
18 the selection of rights of way, the selection, erection and maintenance of markers along the trail  
19 routes and the administration of the trails.

20 (3) Members of the council shall serve without compensation, but the department may pay ex-  
21 penses as provided in ORS 292.495.

22 (4) The council shall select one of its members as chairperson.

23 (5) A majority of the members of the council constitutes a quorum for the transaction of busi-  
24 ness.

25 (6) The council shall meet at times and places specified by the call of the chairperson or a ma-  
26 jority of the members of the council.

27 **SECTION 543.** ORS 390.980 is amended to read:

28 390.980. In addition to State of Oregon funds available for the purposes of ORS 390.950 to  
29 390.989 and 390.995 (2), the [*State Parks and Recreation Department*] **Oregon Department of Na-**  
30 **tural Resources** may use such portion of moneys made available to it by any federal agency  
31 [*which*] **that** may be used for such purposes, including matching funds, as the department determines  
32 are necessary or desirable to carry out the purposes of ORS 390.950 to 390.989 and 390.995 (2). In  
33 addition to the foregoing, the department may receive and may encourage the receipt of donated  
34 funds or property from individuals, groups or organizations (including trail users) for specified or  
35 nonspecified uses in connection with the acquisition, development, maintenance and administration  
36 of Oregon recreation trails. The department if it considers it advisable, may provide under its rules  
37 and regulations, for the use of a portion of any such donated funds received for nonspecified pur-  
38 poses to grant to an owner of private land adjacent to an Oregon recreation trail, funds indemnify-  
39 ing such owner for damage clearly caused to the land of the owner, and property therein, by users  
40 of such trail and which such landowner has not been able to recover from the user causing such  
41 damage.

42 **SECTION 544.** ORS 390.986 is amended to read:

43 390.986. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
44 **sources** has power to obtain injunctions against violations of any provisions of ORS 390.950 to  
45 390.989 and any rules and regulations adopted under ORS 390.950 to 390.989 and agreements made

1 under ORS 390.950 to 390.989.

2 **SECTION 545.** ORS 390.989 is amended to read:

3 390.989. Any power of eminent domain otherwise vested in the [*State Parks and Recreation De-*  
4 *partment*] **Oregon Department of Natural Resources** does not apply to any power or duty vested  
5 in the department by ORS 390.950 to 390.989.

6 **SECTION 546.** ORS 390.992 is amended to read:

7 390.992. (1) Any person who violates any provision of ORS 390.610, 390.620 to 390.676, 390.690  
8 and 390.705 to 390.770 or any rule, order or permit adopted or issued under ORS 390.610, 390.620 to  
9 390.676, 390.690 and 390.705 to 390.770 shall be subject to a civil penalty in an amount to be deter-  
10 mined by the [*State Parks and Recreation Director*] **Director of the Oregon Department of Na-**  
11 **tural Resources** of not more than \$10,000 per day of violation.

12 (2) In addition to any other penalties provided under subsection (1) of this section, the [*State*  
13 *Parks and Recreation Department*] **Oregon Department of Natural Resources** is vested with power  
14 to obtain injunctions and other appropriate relief against a person who violates any provisions of  
15 ORS 390.610, 390.620 to 390.676, 390.690 and 390.705 to 390.770 or any rule, order or permit adopted  
16 or issued under ORS 390.610, 390.620 to 390.676, 390.690 and 390.705 to 390.770.

17 **SECTION 547.** ORS 476.710 is amended to read:

18 476.710. No person shall set or permit any fire on the Pacific Ocean shore, declared to be a state  
19 recreation area under ORS 390.615, adjacent to any structure or any timber or forest area except  
20 pursuant to rule, regulation or permit of or from the [*State Parks and Recreation Department*]  
21 **Oregon Department of Natural Resources.**

22 **SECTION 548.** ORS 476.990 is amended to read:

23 476.990. (1) Violation of ORS 476.150 (2) is a misdemeanor. All penalties, fees or forfeitures  
24 collected under the provisions of this subsection, ORS 476.010 to 476.090, 476.155 to 476.170 and  
25 476.210 to 476.270 shall be paid into the State Treasury.

26 (2) Violation of ORS 476.380 (1) is a misdemeanor.

27 (3) Violation of ORS 476.410 to 476.440 is punishable, upon conviction, by a fine of not less than  
28 \$25 nor more than \$250, or by imprisonment in the county jail for not less than 10 or more than 60  
29 days, or both. Justices of the peace and district judges shall have concurrent jurisdiction with the  
30 circuit courts over prosecutions for such violations.

31 (4) Violation of any provision of ORS 476.510 to 476.610 is a misdemeanor.

32 (5) Subject to ORS 153.022, violation of ORS 476.710 or 476.715 or of any rule or regulation of  
33 the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources**  
34 promulgated thereunder is punishable, upon conviction, by a fine not exceeding \$500 or  
35 imprisonment in the county jail not exceeding six months, or both.

36 **SECTION 549.** ORS 565.021 is amended to read:

37 565.021. (1) The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
38 **Natural Resources** shall appoint a State Fair Advisory Committee to provide advice and assistance  
39 to the director on matters regarding the operation of the Oregon State Fair.

40 (2) The advisory committee shall consist of seven members appointed by the director for four-  
41 year terms. The director shall appoint:

42 (a) A resident from each congressional district of Oregon. The director shall seek to ensure that  
43 those persons reflect a broad-based representation of the industrial, educational and cultural inter-  
44 ests active in state fair activities, such as agricultural, stock raising, horticultural, mining, me-  
45 chanical, artistic and industrial pursuits.



1 (b) Two persons to represent county fair interests. The director may give consideration to  
2 nominations suggested by the County Fair Commission established under ORS 565.410.

3 (3) The members of the advisory committee serve at the pleasure of the director. The director  
4 may fill a vacancy on the advisory committee by appointing a person to fill the unexpired term.

5 (4) Each member of the advisory committee is entitled to compensation and reimbursement of  
6 expenses, as provided in ORS 292.495, from moneys appropriated to the [*State Parks and Recreation*  
7 *Department*] **Oregon Department of Natural Resources** for that purpose.

8 (5) The advisory committee shall select one of its members as chairperson and another as vice  
9 chairperson, for such terms and with such duties and powers necessary for the performance of the  
10 functions of those offices as the advisory committee determines appropriate.

11 (6) The advisory committee shall meet at the call of the director.

12 **SECTION 550.** ORS 565.030 is amended to read:

13 565.030. The State Fair Advisory Committee shall provide advice and assistance to the [*State*  
14 *Parks and Recreation Director*] **Director of the Oregon Department of Natural Resources** on  
15 matters regarding the operation of the Oregon State Fair and shall solicit and encourage support  
16 throughout the state to improve the quality of and participation in the fair to achieve the purposes  
17 and objectives of ORS 565.050.

18 **SECTION 551.** ORS 565.040 is amended to read:

19 565.040. There is established a state institution to be designated and known as the Oregon State  
20 Fair, which shall be administered and operated by the [*State Parks and Recreation Department*]  
21 **Oregon Department of Natural Resources**.

22 **SECTION 552.** ORS 565.050 is amended to read:

23 565.050. The objects and purposes of the Oregon State Fair are to disseminate knowledge con-  
24 cerning, and to encourage the growth and prosperity of all agricultural, stock raising, horticultural,  
25 mining, mechanical, artistic and industrial pursuits in this state. To this end the [*State Parks and*  
26 *Recreation Director*] **Director of the Oregon Department of Natural Resources** shall operate the  
27 business and properties of the Oregon State Fair as a year-round fair and exposition center, display  
28 historical objects and do all things necessary or expedient for the full utilization of the properties  
29 and facilities of the fair. The director shall conduct an annual state fair for a period of not more  
30 than 17 days' duration beginning and ending on such dates as the director considers appropriate.

31 **SECTION 553.** ORS 565.060 is amended to read:

32 565.060. In accordance with any applicable provision of ORS chapter 183, the [*State Parks and*  
33 *Recreation Commission*] **Oregon Natural Resources Commission** may adopt rules to carry out the  
34 provisions of this chapter.

35 **SECTION 554.** ORS 565.080 is amended to read:

36 565.080. (1) The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
37 **Natural Resources** shall have care of the Oregon State Fair property and be entrusted with the  
38 direction of its business and financial affairs. The director shall prepare, adopt, publish and enforce  
39 all necessary rules for the management of the Oregon State Fair, its meetings and exhibitions and  
40 for the guidance of its officers or employees.

41 (2) The director may appoint all necessary marshals to keep order on the grounds and in the  
42 buildings of the Oregon State Fair during all exhibitions. The marshals so appointed shall be vested  
43 with the same authority for such purposes as executive peace officers are vested by law.

44 (3) The director shall establish charges for entrance fees, gate money, lease stalls, stands,  
45 parking space, buildings, restaurant sites; conduct shows, exhibitions, races and all manner of busi-

1 ness notwithstanding the provisions of ORS 227.286 and do all other things the director considers  
 2 proper in the operation of a year-round fair and exposition center and the annual state fair. The  
 3 state is in no event liable for any premium awarded or debt created by the director beyond the  
 4 amount annually appropriated therefor.

5 (4) The director may enter into sponsorship agreements for the receipt of moneys, services,  
 6 products or other items of value. A sponsorship agreement entered into under this subsection is  
 7 not subject to ORS 279.835 to 279.855 or ORS chapter 279A or 279B.

8 **SECTION 555.** ORS 565.090 is amended to read:

9 565.090. (1) The Oregon State Fair shall be permanently located on the present grounds now  
 10 owned by the state and heretofore devoted to Oregon State Fair purposes, located in the City of  
 11 Salem, in Marion County. Those grounds and such additional lands as may hereafter be obtained by  
 12 the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources** for the  
 13 purposes of the Oregon State Fair are dedicated for the use of the Oregon State Fair and for other  
 14 departmental programs.

15 (2) The department may obtain by donation, exchange or purchase such lands adjacent to the  
 16 present grounds, including improvements thereon, as it may deem necessary and advisable to facili-  
 17 tate the use of such grounds and may construct, remodel and repair buildings and facilities deemed  
 18 by it necessary in the operation of the Oregon State Fair and for other departmental programs.

19 **SECTION 556.** ORS 565.095 is amended to read:

20 565.095. (1) In accordance with any applicable provisions of ORS chapter 286A, the [*State Parks*  
 21 *and Recreation Director, with the approval of the State Parks and Recreation Commission,*] **Director**  
 22 **of the Oregon Department of Natural Resources** may request the State Treasurer to issue re-  
 23 venue bonds in an amount not to exceed \$10 million.

24 (2) Moneys received from the issuance of revenue bonds may be expended for land acquisition,  
 25 capital construction and improvements and for paying current operating and other expenses of the  
 26 Oregon State Fair.

27 (3) Revenue bonds issued pursuant to this section shall be secured by revenues received by the  
 28 director from activities conducted at the Oregon State Fair, and shall not be a general obligation  
 29 of the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources** or the  
 30 State of Oregon.

31 **SECTION 557.** ORS 565.103 is amended to read:

32 565.103. (1) Pursuant to ORS 286A.560 to 286A.585, lottery bonds may be issued to fund projects  
 33 for the improvement, restoration, upgrading and preservation of systems, facilities and equipment  
 34 of the Oregon State Fair.

35 (2) The use of lottery bond proceeds is authorized based on the following findings:

36 (a) The activities of the Oregon State Fair promote Oregon's agricultural industry and its pro-  
 37 ducts;

38 (b) The promotion of agricultural products expands markets, which in turn creates jobs and  
 39 stimulates economic development of the industry; and

40 (c) The Oregon State Fair draws patrons from throughout the region and creates jobs and sub-  
 41 stantial economic activity for the Salem and Keizer areas.

42 (3) The aggregate principal amount of lottery bonds issued pursuant to this section may not  
 43 exceed the sum of \$20,167,661 and an additional amount estimated by the State Treasurer to be  
 44 necessary to pay bond-related costs. Lottery bonds issued pursuant to this section shall be issued  
 45 only at the request of the [*State Parks and Recreation Director*] **Director of the Oregon Depart-**

1 **ment of Natural Resources.**

2 (4) The net proceeds of lottery bonds issued pursuant to this section shall be deposited in the  
3 State Fair Capital Project Fund, which is hereby established in the State Treasury separate and  
4 distinct from the General Fund.

5 (5) The proceeds of lottery bonds issued pursuant to this section shall be used only for the  
6 purposes set forth in subsection (1) of this section and for bond-related costs.

7 **SECTION 558.** ORS 565.107 is amended to read:

8 565.107. (1) The Oregon State Fair Account is established as a separate account within the [*State*  
9 *Parks and Recreation Department Fund*] **Oregon Natural Resources Fund**. Interest earned on  
10 moneys in the account shall be credited to the account. The account shall consist of:

11 (a) Proceeds from the sale of revenue bonds authorized to be issued by ORS 565.095.

12 (b) Moneys received by the [*State Parks and Recreation Director*] **Director of the Oregon De-**  
13 **partment of Natural Resources** from activities conducted at the Oregon State Fair.

14 (c) Moneys received by the director by appropriation, gift, grant or other donation from any  
15 source or otherwise paid to the director pursuant to law. Moneys received as a result of a gift, grant  
16 or donation shall be separately accounted for within the account and shall be available only for the  
17 purpose specified in the gift, grant or donation or, if no purpose is specified, for any purpose that  
18 the [*State Parks and Recreation Commission*] **Oregon Natural Resources Commission** determines  
19 is consistent with the intent of the donor or grantor.

20 (2) Interest earned on moneys held for debt service payments and rebates and interest earned  
21 on the proceeds from the sale of revenue bonds pursuant to ORS 565.095 shall be separately ac-  
22 counted for within the account and shall be available only for the purpose of retiring bond indebt-  
23 edness.

24 (3) Interest earned on moneys received by the director as a result of a gift, grant or donation  
25 shall be separately accounted for within the account and shall be available only for the purpose  
26 specified in the gift, grant or donation or, if no purpose is specified, for any purpose that the com-  
27 mission determines is consistent with the intent of the donor or grantor.

28 (4) Moneys in the account established by subsection (1) of this section are [*appropriated contin-*  
29 *uously to the State Parks and Recreation Department*] **continuously appropriated to the Oregon**  
30 **Department of Natural Resources**. Subject to subsection (2) of this section, the department may  
31 use the account moneys for:

32 (a) The payment of operating and other expenses of the Oregon State Fair.

33 (b) Land acquisition, capital construction and capital improvements at the Oregon State Fair.

34 (c) The payment of principal and interest on all revenue bonds issued pursuant to ORS 565.095.

35 (d) Any purpose designated by the donor or grantor of a gift, grant or donation, or for any other  
36 purpose that the commission determines is consistent with the intent of the donor or grantor.

37 **SECTION 559.** ORS 565.109 is amended to read:

38 565.109. The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
39 **Natural Resources** may accept gifts, grants and donations of moneys, property or any other valu-  
40 able thing on behalf of the Oregon State Fair. Unless use of moneys, property or valuable things  
41 received under this section is limited by the donor or grantor, the moneys, property or valuable  
42 thing may be used in any manner that the [*State Parks and Recreation Commission*] **Oregon Natural**  
43 **Resources Commission** determines to be consistent with the intent of the donor or grantor.

44 **SECTION 560.** ORS 565.114 is amended to read:

45 565.114. The Legislative Assembly finds and declares that:

1 (1) The successful solicitation of gifts, grants and donations for the benefit of the Oregon State  
 2 Fair allows the operation, improvement and maintenance of facilities or programs enjoyed by the  
 3 public. The receipt of gifts, grants and donations for the benefit of the Oregon State Fair reduces  
 4 the amount of public moneys that must be spent for the operation, improvement and maintenance  
 5 of facilities or programs.

6 (2) The successful solicitation of gifts, grants and donations by a nonprofit, tax exempt organ-  
 7 ization for the benefit of the Oregon State Fair minimizes the cost to the state of obtaining those  
 8 gifts, grants and donations. Cooperation between the [*State Parks and Recreation Department*]  
 9 **Oregon Department of Natural Resources** and such an organization, including the provision of  
 10 tickets and other promotional items, facilities, supplies, staff and services by the department for use  
 11 by such an organization in connection with fund raising efforts, serves a public purpose by in-  
 12 creasing the ability of the organization to successfully solicit gifts, grants and donations for the  
 13 benefit of the Oregon State Fair.

14 **SECTION 561.** ORS 565.116 is amended to read:

15 565.116. (1) The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
 16 **Natural Resources** may cooperate with any nonprofit, tax exempt organization designated by the  
 17 director as an appropriate organization to solicit gifts, grants and donations for the benefit of the  
 18 Oregon State Fair.

19 (2) The director may advise and receive advice from an organization described in subsection (1)  
 20 of this section. The director may, if allowed by the charter and bylaws of the organization, serve  
 21 as a regular or nonvoting board member of the organization. The director may not chair the board  
 22 of directors, vote for or appoint other board members, control the financial affairs of the organiza-  
 23 tion or oversee the day-to-day operation of the organization.

24 (3) The director may provide tickets, promotional items and facilities to the organization without  
 25 charge for use in increasing the ability of the organization to successfully solicit gifts, grants and  
 26 donations for the benefit of the Oregon State Fair.

27 (4) The director may provide supplies, staff and services to the organization at cost for use in  
 28 increasing the ability of the organization to successfully solicit gifts, grants and donations for the  
 29 benefit of the Oregon State Fair.

30 (5) The director shall submit an annual accounting report to an appropriate committee of the  
 31 Legislative Assembly designated by the Speaker of the House of Representatives and the President  
 32 of the Senate. The report must contain a detailed description of all tickets, promotional items, fa-  
 33 cilities, supplies, staff and services provided under subsections (3) and (4) of this section, the specific  
 34 disposition or application thereof made by the organization and any resulting benefit to the Oregon  
 35 State Fair.

36 (6) The director may enter into an agreement for the donation to the Oregon State Fair of goods,  
 37 services and public improvements by a nonprofit, tax exempt organization.

38 **SECTION 562.** ORS 565.120 is amended to read:

39 565.120. The [*State Parks and Recreation Director*] **Director of the Oregon Department of**  
 40 **Natural Resources** is authorized to issue a license permitting the holder of the license to conduct  
 41 any business therein named upon the grounds of the Oregon State Fair. Issuance of licenses shall  
 42 be in accordance with the competitive bidding requirements of ORS 279.835 to 279.855 and ORS  
 43 chapters 279A and 279B for the awarding of public contracts, to the extent those procedures are  
 44 practicable. The funds arising therefrom shall become a part of the Oregon State Fair Account.

45 **SECTION 563.** ORS 565.130 is amended to read:

1       565.130. (1) Licenses under ORS 565.120 may be issued permitting any business to be conducted  
2 upon the grounds of the Oregon State Fair [*which*] **that** under the laws of this state may be con-  
3 ducted at any place within the state, including the sale of malt, vinous or distilled liquor.

4       (2) Any business so licensed by the [*State Parks and Recreation Director*] **Director of the**  
5 **Oregon Department of Natural Resources** is not required to pay license to any city, county or  
6 state, other than to the director as provided in ORS 565.120, for conducting a business upon the  
7 grounds of the Oregon State Fair. However, nothing in this section shall interfere with the laws  
8 of this state requiring a license for the operation of a restaurant or requiring a license to be ob-  
9 tained from the Oregon Liquor Control Commission for the sale or distribution of alcoholic liquors.

10       **SECTION 564.** ORS 565.140 is amended to read:

11       565.140. The buildings and facilities therein that are planned, constructed, altered, furnished and  
12 equipped by the [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
13 **sources** at the state fairgrounds, as authorized by chapter 442, Oregon Laws 1957, shall be used  
14 primarily for the housing and dining of members of 4-H Clubs and of Future Farmers of America and  
15 for exhibit and contest space for nonlivestock exhibits of both groups. These buildings and facilities  
16 therein shall be available for other groups only at times other than during the state fair and as  
17 authorized by the department.

18       **SECTION 565.** ORS 565.150 is amended to read:

19       565.150. (1) When construction of an armory containing an auditorium is authorized under ORS  
20 396.505 to 396.545 in Marion County, if the [*State Parks and Recreation Department*] **Oregon De-**  
21 **partment of Natural Resources** and the General Staff of the Oregon National Guard arrive at a  
22 mutually satisfactory agreement for the use of the armory by the department, the department may,  
23 notwithstanding the provisions of ORS 565.090, permit such armory to be constructed on the grounds  
24 of the Oregon State Fair and grant control over such armory and grounds to the General Staff for  
25 the period that such armory and grounds are used for military purposes. When such armory and  
26 grounds are no longer used for military purposes, the control over them shall revert to the depart-  
27 ment.

28       (2) For purposes of this section, “control” does not include the power to sell, lease, mortgage  
29 or in any other way encumber an armory constructed under subsection (1) of this section.

30       **SECTION 566.** ORS 565.160 is amended to read:

31       565.160. (1) The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
32 **sources** shall plan, construct, alter, furnish and equip horse barn facilities at the Oregon State Fair  
33 suitable for stabling horses. These facilities shall also include rest rooms suitable for public use. The  
34 department shall also plan, construct, alter, furnish and equip storm sewers on the grounds of the  
35 Oregon State Fair.

36       (2) Notwithstanding any other provision of law pertaining to sale of public property, the State  
37 Treasurer, with the approval of the investing agency, may sell any site or facility described in sub-  
38 section (1) of this section or interest therein so acquired by offer for sale by sealed bid. However:

39       (a) Any or all bids may be rejected.

40       (b) The state has first option to purchase at the highest bid accepted.

41       **SECTION 567.** ORS 565.170 is amended to read:

42       565.170. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
43 **sources** shall plan, construct, alter, furnish and equip on the grounds of the Oregon State Fair a  
44 facility suitable for housing exhibits and providing contest space for the homemaking arts and crafts.

45       **SECTION 568.** ORS 565.610 is amended to read:

1       565.610. (1) No person shall set up any shop, booth, wagon or other vehicle for the sale of  
2       spirituous or other liquors, cigars, provisions or other articles of traffic, or shall sell or otherwise  
3       dispose of any liquors, cigars, goods, wares, merchandise, meals, lunch or any article of traffic  
4       whatever on the grounds of the Oregon State Fair, or on any grounds owned or occupied by a  
5       county fair board or any county or district society formed for the promotion and encouragement of  
6       agriculture, stock growing or horticulture, or within one-half mile of such grounds, without having  
7       paid the [State Parks and Recreation Department] **Oregon Department of Natural Resources**,  
8       county fair board or such society the license for the privilege, or obtained the written consent of  
9       the department or county fair board or of the president and secretary of such society.

10       (2) Nothing in this section shall restrain any person except during fairs or exhibitions or other  
11       public events or meetings on the grounds of the Oregon State Fair or of any county fair board or  
12       of such societies, and for two days prior and two days subsequent thereto. This section does not  
13       extend to any person regularly and continuously carrying on business within one-half mile of the  
14       premises mentioned.

15       **SECTION 569.** ORS 565.620 is amended to read:

16       565.620. No person shall gain admission, or attempt to gain admission, to the grounds of the  
17       Oregon State Fair or of a county fair board or of any society mentioned in ORS 565.610 during their  
18       annual fairs or exhibitions, or at any public events or meetings on the grounds of the Oregon State  
19       Fair, county fair board or societies on their grounds, or grounds occupied by them or either of them,  
20       except through the special gates kept by the [State Parks and Recreation Department] **Oregon De-**  
21       **partment of Natural Resources**, county fair boards or societies for that purpose.

22       **SECTION 570.** ORS 565.630 is amended to read:

23       565.630. The [State Parks and Recreation Director] **Director of the Oregon Department of**  
24       **Natural Resources**, any county fair board and every society mentioned in ORS 565.610 may regu-  
25       late its prices of admission, licenses and all matters pertaining to the conduct of its annual fairs,  
26       exhibitions or other public events or meetings. The penalty for violation of its rules and regulations  
27       is as provided by ORS 565.990 (2).

28       **SECTION 571.** ORS 565.640 is amended to read:

29       565.640. The peace officers of the [State Parks and Recreation Department] **Oregon Department**  
30       **of Natural Resources**, county fair board or any of the societies mentioned in ORS 565.610, during  
31       the continuance of each annual fair or other public event or meeting, and for three days prior and  
32       two days subsequent thereto, on the grounds of the Oregon State Fair or on any grounds owned or  
33       occupied by a county fair board or such society for fairs, exhibitions or other public events or  
34       meetings, shall have all the authority of a deputy sheriff and may make arrests for violations of the  
35       provisions of ORS 565.610 to 565.650 or other laws of this state, or the rules or regulations of the  
36       department, county fair board or such society.

37       **SECTION 572.** ORS 802.125 is amended to read:

38       802.125. The Department of Transportation shall transfer to the [State Parks and Recreation  
39       Department] **All-Terrain Vehicle Account established under ORS 390.555** that portion of the  
40       amount paid to the Department of Transportation as motor vehicle fuel tax under ORS 319.020 and  
41       319.530 that is determined by the department to be tax on fuel used by Class I, Class II and Class  
42       III all-terrain vehicles in off-highway operation and that is not refunded. The Department of Trans-  
43       portation shall determine the amount of moneys to be transferred under this section at quarterly  
44       intervals.

45       **SECTION 573.** ORS 803.601 is amended to read:

1 803.601. Fees collected by the Department of Transportation for recreational vehicle trip permits  
 2 described in ORS 803.600 shall be transferred to [*the State Parks and Recreation Department Fund*  
 3 *established by ORS 390.134 and*] **the Oregon Department of Natural Resources and deposited**  
 4 **in the Oregon Natural Resources Fund. Moneys transferred to the fund under this section**  
 5 are continuously appropriated to the [*State Parks and Recreation Department*] **Oregon Department**  
 6 **of Natural Resources** for the purposes specified in ORS 390.134.

7 **SECTION 574.** ORS 814.516 is amended to read:

8 814.516. The [*State Parks and Recreation Department*] **Oregon Department of Natural Re-**  
 9 **sources** may restrict or prohibit the operation of a motor assisted scooter on a bicycle lane or bi-  
 10 cycle path in a state park except that the department may not restrict or prohibit the operation of  
 11 a motor assisted scooter on a bicycle lane or bicycle path in a state park if the operator of the  
 12 motor assisted scooter is disabled.

13 **SECTION 575.** ORS 821.170 is amended to read:

14 821.170. (1) A person 16 years of age or older commits the offense of operation of a Class I all-  
 15 terrain vehicle without driving privileges if the person operates a Class I all-terrain vehicle on  
 16 public lands and the person does not hold a valid Class I all-terrain vehicle operator permit issued  
 17 under ORS 390.570.

18 (2) A child under 16 years of age commits the offense of operation of a Class I all-terrain vehicle  
 19 without driving privileges if the child operates a Class I all-terrain vehicle on public lands and the  
 20 child does not meet all the following conditions:

21 (a) The child must be accompanied by a person who is at least 18 years of age, holds a valid  
 22 all-terrain vehicle operator permit issued under ORS 390.570 or 390.575 and is able to provide im-  
 23 mediate assistance and direction to the child.

24 (b) The child must hold a valid Class I all-terrain vehicle operator permit issued under ORS  
 25 390.570.

26 (c) The child must meet rider fit guidelines established by the [*State Parks and Recreation De-*  
 27 *partment*] **Oregon Department of Natural Resources** under ORS 390.585.

28 (3) This section does not apply if the all-terrain vehicle is:

29 (a) Used exclusively in farming, agricultural or forestry operations or used by persons licensed  
 30 under ORS chapter 571 exclusively for nursery or Christmas tree growing operations; and

31 (b) Being used on land owned or leased by the owner of the vehicle.

32 (4) The offense described in this section, operation of Class I all-terrain vehicle without driving  
 33 privileges, is a Class C traffic violation.

34 **SECTION 575a.** ORS 821.291 is amended to read:

35 821.291. (1) A person commits the offense of endangering a Class I all-terrain vehicle operator  
 36 if the person is the parent, legal guardian or person with legal responsibility for the safety and  
 37 welfare of a child under 16 years of age and the child operates a Class I all-terrain vehicle on public  
 38 lands and:

39 (a) Does not have a Class I all-terrain vehicle operator permit issued under ORS 390.570;

40 (b) Is not accompanied by a person who is at least 18 years of age, holds a valid all-terrain ve-  
 41 hicle operator permit issued under ORS 390.570 or 390.575 and is able to provide immediate assist-  
 42 ance and direction to the child; and

43 (c) Is not in compliance with the rider fit guidelines established by the [*Parks and Recreation*  
 44 *Department*] **Oregon Department of Natural Resources** under ORS 390.585.

45 (2) This section does not apply if the all-terrain vehicle is:

1 (a) Used exclusively in farming, agricultural or forestry operations or used by persons licensed  
 2 under ORS chapter 571 exclusively for nursery or Christmas tree growing operations; and

3 (b) Being used on land owned or leased by the owner of the vehicle.

4 (3) The offense described in this section, endangering a Class I all-terrain vehicle operator, is  
 5 a Class C traffic violation.

6 **SECTION 576.** ORS 835.200 is amended to read:

7 835.200. (1) The State Aviation Board, pursuant to ORS 835.035 and utilizing the definitions  
 8 contained in ORS 830.005:

9 (a) Shall adopt rules governing seaplane safety and operations on state waters, as defined in  
 10 ORS 830.005, that shall be applicable to all seaplanes except when inconsistent with any applicable  
 11 laws or regulations of an agency of the United States.

12 (b) May adopt rules governing seaplane safety and operations on waters of this state, as defined  
 13 in ORS 830.005, that shall be applicable to all seaplanes except when inconsistent with any appli-  
 14 cable laws or regulations of an agency of the United States.

15 (2) The State Aviation Board shall adopt the rules in subsection (1) of this section in consulta-  
 16 tion with the State Marine Board and the [*State Parks and Recreation Department*] **Oregon De-  
 17 partment of Natural Resources.**

18 (3) The rules in subsection (1) of this section shall include identification of zones and bodies of  
 19 water on which seaplanes may not land, take off or operate.

20 (4) As used in this section and ORS 835.210, “seaplane” means an aircraft equipped to land on  
 21 water.

22  
 23 **DEPARTMENT OF STATE LANDS**

24  
 25 **(Abolishment and Transfer of**  
 26 **Duties, Functions and Powers)**

27  
 28 **SECTION 577.** (1) **The Department of State Lands is abolished. On the operative date of**  
 29 **this section, the tenure of office of the Director of the Department of State Lands ceases.**

30 (2) **All the duties, functions and powers of the Department of State Lands are imposed**  
 31 **upon, transferred to and vested in the Oregon Department of Natural Resources.**

32  
 33 **(Transfer of Records, Property and Employees)**

34  
 35 **SECTION 578.** (1) **The Director of the Department of State Lands shall:**

36 (a) **Deliver to the Oregon Department of Natural Resources all records and property**  
 37 **within the jurisdiction of the director that relate to the duties, functions and powers trans-**  
 38 **ferred by section 577 of this 2011 Act; and**

39 (b) **Transfer to the Oregon Department of Natural Resources those employees engaged**  
 40 **primarily in the exercise of the duties, functions and powers transferred by section 577 of**  
 41 **this 2011 Act.**

42 (2) **The Director of the Oregon Department of Natural Resources shall take possession**  
 43 **of the records and property, and shall take charge of the employees and employ them in the**  
 44 **exercise of the duties, functions and powers transferred by section 577 of this 2011 Act,**  
 45 **without reduction of compensation but subject to change or termination of employment or**



1 compensation as provided by law.

2 (3) The Governor shall resolve any dispute between the Department of State Lands and  
 3 the Oregon Department of Natural Resources relating to transfers of records, property and  
 4 employees under this section, and the Governor's decision is final.

5  
 6 (Transfer of Unexpended Revenues)  
 7

8 **SECTION 579.** (1) The unexpended balances of amounts authorized to be expended by the  
 9 Department of State Lands for the biennium beginning July 1, 2011, from revenues dedicated,  
 10 continuously appropriated, appropriated or otherwise made available for the purpose of ad-  
 11 ministering and enforcing the duties, functions and powers transferred by section 577 of this  
 12 2011 Act are transferred to and are available for expenditure by the Oregon Department of  
 13 Natural Resources for the biennium beginning July 1, 2011, for the purpose of administering  
 14 and enforcing the duties, functions and powers transferred by section 577 of this 2011 Act.

15 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
 16 expenditures by the Department of State Lands remain applicable to expenditures by the  
 17 Oregon Department of Natural Resources under this section.

18  
 19 (Action, Proceeding and Prosecution)  
 20

21 **SECTION 580.** The transfer of duties, functions and powers to the Oregon Department  
 22 of Natural Resources by section 577 of this 2011 Act does not affect any action, proceeding  
 23 or prosecution involving or with respect to such duties, functions and powers begun before  
 24 and pending at the time of the transfer, except that the Oregon Department of Natural Re-  
 25 sources is substituted for the Department of State Lands in the action, proceeding or pros-  
 26 ecution.

27  
 28 (Liability, Duty and Obligation)  
 29

30 **SECTION 581.** (1) Nothing in sections 577 to 583 of this 2011 Act, the amendments to  
 31 statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257,  
 32 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS  
 33 273.071, 273.161, 273.165, 273.171, 273.175, 273.183 or 517.735 by section 2161 of this 2011 Act  
 34 relieves a person of a liability, duty or obligation accruing under or with respect to the du-  
 35 ties, functions and powers transferred by section 577 of this 2011 Act. The Oregon Depart-  
 36 ment of Natural Resources may undertake the collection or enforcement of any such  
 37 liability, duty or obligation.

38 (2) The rights and obligations of the Department of State Lands legally incurred under  
 39 contracts, leases and business transactions executed, entered into or begun before the op-  
 40 erative date of section 577 of this 2011 Act are transferred to the Oregon Department of  
 41 Natural Resources. For the purpose of succession to these rights and obligations, the Oregon  
 42 Department of Natural Resources is a continuation of the Department of State Lands and  
 43 not a new authority.

44  
 45 (Rules)

1 **SECTION 582.** Notwithstanding the transfer of duties, functions and powers by section  
 2 577 of this 2011 Act, the rules of the Department of State Lands in effect on the operative  
 3 date of section 577 of this 2011 Act continue in effect until superseded or repealed by rules  
 4 of the Oregon Department of Natural Resources. References in rules of the Department of  
 5 State Lands to the Department of State Lands, or to an officer or employee of the Depart-  
 6 ment of State Lands, are considered to be references to the Oregon Department of Natural  
 7 Resources or to an officer or employee of the Oregon Department of Natural Resources.

8  
 9 (References)

10  
 11 **SECTION 583.** Whenever, in any uncodified law or resolution of the Legislative Assembly  
 12 or in any rule, document, record or proceeding authorized by the Legislative Assembly, ref-  
 13 erence is made to the Department of State Lands, or to an officer or employee of the De-  
 14 partment of State Lands, the reference is considered to be a reference to the Oregon  
 15 Department of Natural Resources or to an officer or employee of the Oregon Department  
 16 of Natural Resources.

17  
 18 (Agency Name Change)

19  
 20 **SECTION 584.** (1) For the purpose of harmonizing and clarifying statutory law, the Leg-  
 21 islative Counsel may substitute for words designating the “Department of State Lands,”  
 22 wherever they occur in statutory law, words designating the “Oregon Department of Natural  
 23 Resources.”

24 (2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel  
 25 may substitute for words designating the “Director of the Department of State Lands,”  
 26 wherever they occur in statutory law, words designating the “Director of the Oregon De-  
 27 partment of Natural Resources.”

28  
 29 (Conforming Amendments)

30  
 31 **SECTION 585.** ORS 35.550 is amended to read:

32 35.550. As used in ORS 35.550 to 35.575:

33 (1) “Property” means real property, water, watercourses, and water and riparian rights, or any  
 34 right or interest therein.

35 (2) “Board” means:

36 (a) The state board of commissioners, trustees, or other state board, having direction of the state  
 37 department or institution for which the property is desired; or

38 (b) The [*Department of State Lands*] **Oregon Department of Natural Resources**, if there is no  
 39 other state board for the department or institution for which the property is sought to be acquired.

40 **SECTION 586.** ORS 60.674 is amended to read:

41 60.674. Assets of a dissolved corporation that should be distributed to a creditor, claimant or  
 42 shareholder of the corporation who cannot be found shall be reduced to cash and, within one year  
 43 after the final distribution in such liquidation or winding up is payable, deposited [*with the Depart-*  
 44 *ment of State Lands*] **in the Common School Fund**. The receiver or other liquidating agent shall  
 45 prepare in duplicate and under oath a statement containing the names and last-known addresses of

1 the persons entitled to such funds. One of the statements shall be filed with the [*Department of State*  
 2 *Lands with the cash*] **Oregon Department of Natural Resources** and another shall be delivered to  
 3 the office for filing. The owner, heirs or personal representatives of the owner, may file a claim with  
 4 the department [*of State Lands*] in the manner provided by ORS 98.392 and 98.396.

5 **SECTION 587.** ORS 62.720 is amended to read:

6 62.720. (1) All intangible personal property distributable in the course of a voluntary or invol-  
 7 untary dissolution of a cooperative that is unclaimed by the owner within two years after the date  
 8 for final distribution is presumed abandoned. Such property shall be subject to the provisions of ORS  
 9 98.302 to 98.436 and 98.992, except that with respect to agricultural cooperatives, the report of un-  
 10 claimed property shall be filed with the [*Department of State Lands*] **Oregon Department of Na-**  
 11 **tural Resources** as set forth in ORS 98.352. A copy of the report shall also be filed with the State  
 12 Board of Higher Education.

13 (2) All unclaimed property specified in the report required by ORS 98.352 shall be delivered  
 14 within the time specified in ORS 98.362 to the department, [*of State Lands*] which shall assume  
 15 custody and shall be responsible for the safekeeping thereof. The department shall reconcile the  
 16 report to the delivered funds, deduct the costs as provided for in subsection (3) of this section, and  
 17 forward the funds to the State Board of Higher Education within 14 working days of receipt of the  
 18 funds. Any person who pays or delivers unclaimed property to the department [*of State Lands*] under  
 19 this section is relieved of all liability to the extent of the value of the property so paid or delivered  
 20 for any claim which then exists or which thereafter may arise or be made in respect to the property.

21 (3) All funds received under this section shall be used for the benefit of Oregon State University  
 22 in such programs related to agricultural research as the university may determine except for:

23 (a) The payment of claims which may be made pursuant to this section; and

24 (b) The payment of expenses of mailing and publication in connection with any unclaimed  
 25 property, reasonable service charges and expenses of the department [*of State Lands*] in connection  
 26 with claims made pursuant to ORS 98.392 to 98.402.

27 (4) The provisions of ORS 98.392 to 98.402 are applicable to claims against unclaimed property  
 28 delivered to the State Board of Higher Education pursuant to this section. The State Board of  
 29 Higher Education shall pay such claims from funds delivered to it pursuant to this section within  
 30 30 days of receipt of a verified copy of a finding and decision of the department [*of State Lands*]  
 31 made pursuant to ORS 98.396 or a certified copy of a judgment made pursuant to ORS 98.402.

32 (5) As used in this section, an agricultural cooperative is any cooperative in which farmers act  
 33 together in producing, processing, preparing for market, handling or marketing the agricultural  
 34 products of such farmers, and any cooperative in which farmers act together in purchasing, testing,  
 35 grading, processing, distributing and furnishing farm supplies or farm business services.

36 (6) The provisions of this section are applicable with respect to the voluntary or involuntary  
 37 dissolution of any cooperative, which dissolution commenced on or after January 1, 1970.

38 **SECTION 588.** ORS 63.674 is amended to read:

39 63.674. Assets of a dissolved limited liability company that should be distributed to a creditor,  
 40 claimant or member of the limited liability company who cannot be found or who is not competent  
 41 to receive them shall be reduced to cash and, within six months after the final distribution of such  
 42 liquidation or winding up is payable, deposited [*with the Department of State Lands*] **in the Common**  
 43 **School Fund**. The receiver or other liquidating agent shall prepare in duplicate and under oath a  
 44 statement containing the names and last-known addresses of the persons entitled to such funds. One  
 45 of the statements shall be filed with the [*Department of State Lands*] **Oregon Department of Na-**

1 **tural Resources** and another shall be delivered to the office for filing. The funds shall then escheat  
2 to and become the property of the State of Oregon [*and shall become a part of the Common School*  
3 *Fund of the state*]. The owners, heirs or personal representatives of the owner may reclaim any funds  
4 so deposited in the manner provided for estates which have escheated to the state.

5 **SECTION 589.** ORS 65.674 is amended to read:

6 65.674. Assets of a dissolved corporation [*which*] **that** should be transferred to a creditor,  
7 claimant or member of the corporation who cannot be found or who is not competent to receive  
8 [*them*] **the assets** shall be reduced to cash unless [*they*] **the assets** are subject to known trust re-  
9 strictions and deposited [*with the Department of State Lands for safekeeping*] **in the Common School**  
10 **Fund**. However, in the discretion of the Director of the [*Department of State Lands*] **Oregon De-**  
11 **partment of Natural Resources**, property of unusual historic or aesthetic interest may be received  
12 and held in kind. The receiver or other liquidating agent shall prepare in duplicate and under oath  
13 a statement containing the names and last-known addresses of the persons entitled to such funds.  
14 One of the statements shall be filed with the [*Department of State Lands*] **Oregon Department of**  
15 **Natural Resources** and another shall be delivered to the Secretary of State for filing. The funds  
16 shall then escheat to and become the property of the State of Oregon [*and shall become part of the*  
17 *Common School Fund of the state*]. The owner, heirs or personal representatives of the owner, may  
18 reclaim any funds so deposited in the manner provided for estates which have escheated to the state.

19 **SECTION 590.** ORS 90.425 is amended to read:

20 90.425. (1) As used in this section:

21 (a) "Current market value" means the amount in cash, as determined by the county assessor,  
22 that could reasonably be expected to be paid for a manufactured dwelling or floating home by an  
23 informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction  
24 occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the  
25 county assessor.

26 (b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may  
27 throw away the property or may give it without consideration to a nonprofit organization or to a  
28 person unrelated to the landlord. The landlord may not retain the property for personal use or  
29 benefit.

30 (c) "Goods" includes those goods left inside a recreational vehicle, manufactured dwelling or  
31 floating home or left upon the rental space outside a recreational vehicle, manufactured dwelling  
32 or floating home, whether the recreational vehicle, dwelling or home is located inside or outside of  
33 a facility.

34 (d) "Lienholder" means any lienholder of an abandoned recreational vehicle, manufactured  
35 dwelling or floating home, if the lien is of record or the lienholder is actually known to the landlord.

36 (e) "Of record" means:

37 (A) For a recreational vehicle that is not a manufactured structure as defined in ORS 446.561,  
38 that a security interest has been properly recorded with the Department of Transportation pursuant  
39 to ORS 802.200 (1)(a)(A) and 803.097.

40 (B) For a manufactured dwelling or recreational vehicle that is a manufactured structure as  
41 defined in ORS 446.561, that a security interest has been properly recorded for the manufactured  
42 dwelling or recreational vehicle in the records of the Department of Consumer and Business Ser-  
43 vices pursuant to ORS 446.611 or on a certificate of title issued by the Department of Transportation  
44 prior to May 1, 2005.

45 (C) For a floating home, that a security interest has been properly recorded with the State

1 Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board  
2 pursuant to ORS 830.715.

3 (f) "Owner" means any owner of an abandoned recreational vehicle, manufactured dwelling or  
4 floating home, if different from the tenant and either of record or actually known to the landlord.

5 (g) "Personal property" means goods, vehicles and recreational vehicles and includes manufac-  
6 tured dwellings and floating homes not located in a facility. "Personal property" does not include  
7 manufactured dwellings and floating homes located in a facility and therefore subject to being  
8 stored, sold or disposed of as provided under ORS 90.675.

9 (2) A landlord may not store, sell or dispose of abandoned personal property except as provided  
10 by this section. This section governs the rights and obligations of landlords, tenants and any  
11 lienholders or owners in any personal property abandoned or left upon the premises by the tenant  
12 or any lienholder or owner in the following circumstances:

13 (a) The tenancy has ended by termination or expiration of a rental agreement or by  
14 relinquishment or abandonment of the premises and the landlord reasonably believes under all the  
15 circumstances that the tenant has left the personal property upon the premises with no intention  
16 of asserting any further claim to the premises or to the personal property;

17 (b) The tenant has been absent from the premises continuously for seven days after termination  
18 of a tenancy by a court order that has not been executed; or

19 (c) The landlord receives possession of the premises from the sheriff following restitution pur-  
20 suant to ORS 105.161.

21 (3) Prior to selling or disposing of the tenant's personal property under this section, the landlord  
22 must give a written notice to the tenant that must be:

23 (a) Personally delivered to the tenant; or

24 (b) Sent by first class mail addressed and mailed to the tenant at:

25 (A) The premises;

26 (B) Any post-office box held by the tenant and actually known to the landlord; and

27 (C) The most recent forwarding address if provided by the tenant or actually known to the  
28 landlord.

29 (4)(a) In addition to the notice required by subsection (3) of this section, in the case of an  
30 abandoned recreational vehicle, manufactured dwelling or floating home, a landlord shall also give  
31 a copy of the notice described in subsection (3) of this section to:

32 (A) Any lienholder of the recreational vehicle, manufactured dwelling or floating home;

33 (B) Any owner of the recreational vehicle, manufactured dwelling or floating home;

34 (C) The tax collector of the county where the manufactured dwelling or floating home is located;  
35 and

36 (D) The assessor of the county where the manufactured dwelling or floating home is located.

37 (b) The landlord shall give the notice copy required by this subsection by personal delivery or  
38 first class mail, except that for any lienholder, mail service must be both by first class mail and by  
39 certified mail with return receipt requested.

40 (c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each  
41 lienholder at each address:

42 (A) Actually known to the landlord;

43 (B) Of record; and

44 (C) Provided to the landlord by the lienholder in a written notice that identifies the personal  
45 property subject to the lien and that was sent to the landlord by certified mail with return receipt

1 requested within the preceding five years. The notice must identify the personal property by de-  
2 scribing the physical address of the property.

3 (5) The notice required under subsection (3) of this section must state that:

4 (a) The personal property left upon the premises is considered abandoned;

5 (b) The tenant or any lienholder or owner must contact the landlord by a specified date, as  
6 provided in subsection (6) of this section, to arrange for the removal of the abandoned personal  
7 property;

8 (c) The personal property is stored at a place of safekeeping, except that if the property includes  
9 a manufactured dwelling or floating home, the dwelling or home must be stored on the rented space;

10 (d) The tenant or any lienholder or owner, except as provided by subsection (18) of this section,  
11 may arrange for removal of the personal property by contacting the landlord at a described tele-  
12 phone number or address on or before the specified date;

13 (e) The landlord shall make the personal property available for removal by the tenant or any  
14 lienholder or owner, except as provided by subsection (18) of this section, by appointment at rea-  
15 sonable times;

16 (f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b)  
17 of this section, the landlord may require payment of removal and storage charges, as provided by  
18 subsection (7)(d) of this section, prior to releasing the personal property to the tenant or any  
19 lienholder or owner;

20 (g) If the personal property is considered to be abandoned pursuant to subsection (2)(c) of this  
21 section, the landlord may not require payment of storage charges prior to releasing the personal  
22 property;

23 (h) If the tenant or any lienholder or owner fails to contact the landlord by the specified date,  
24 or after that contact, fails to remove the personal property within 30 days for recreational vehicles,  
25 manufactured dwellings and floating homes or 15 days for all other personal property, the landlord  
26 may sell or dispose of the personal property. If the landlord reasonably believes that the personal  
27 property will be eligible for disposal pursuant to subsection (10)(b) of this section and the landlord  
28 intends to dispose of the property if the property is not claimed, the notice shall state that belief  
29 and intent; and

30 (i) If the personal property includes a recreational vehicle, manufactured dwelling or floating  
31 home and if applicable, there is a lienholder or owner that has a right to claim the recreational  
32 vehicle, dwelling or home, except as provided by subsection (18) of this section.

33 (6) For purposes of subsection (5) of this section, the specified date by which a tenant, lienholder  
34 or owner must contact a landlord to arrange for the disposition of abandoned personal property is:

35 (a) For abandoned recreational vehicles, manufactured dwellings or floating homes, not less than  
36 45 days after personal delivery or mailing of the notice; or

37 (b) For all other abandoned personal property, not less than five days after personal delivery  
38 or eight days after mailing of the notice.

39 (7) After notifying the tenant as required by subsection (3) of this section, the landlord:

40 (a) Shall store any abandoned manufactured dwelling or floating home on the rented space and  
41 shall exercise reasonable care for the dwelling or home;

42 (b) Shall store all other abandoned personal property of the tenant, including goods left inside  
43 a recreational vehicle, manufactured dwelling or floating home or left upon the rented space outside  
44 a recreational vehicle, dwelling or home, in a place of safekeeping and shall exercise reasonable  
45 care for the personal property, except that the landlord may:

1 (A) Promptly dispose of rotting food; and

2 (B) Allow an animal control agency to remove any abandoned pets or livestock. If an animal  
3 control agency will not remove the abandoned pets or livestock, the landlord shall exercise reason-  
4 able care for the animals given all the circumstances, including the type and condition of the ani-  
5 mals, and may give the animals to an agency that is willing and able to care for the animals, such  
6 as a humane society or similar organization;

7 (c) Except for manufactured dwellings and floating homes, may store the abandoned personal  
8 property at the dwelling unit, move and store it elsewhere on the premises or move and store it at  
9 a commercial storage company or other place of safekeeping; and

10 (d) Is entitled to reasonable or actual storage charges and costs incidental to storage or dis-  
11 posal, including any cost of removal to a place of storage. In the case of an abandoned manufactured  
12 dwelling or floating home, the storage charge may be no greater than the monthly space rent last  
13 payable by the tenant.

14 (8) If a tenant, lienholder or owner, upon the receipt of the notice provided by subsection (3)  
15 or (4) of this section or otherwise, responds by actual notice to the landlord on or before the spec-  
16 ified date in the landlord's notice that the tenant, lienholder or owner intends to remove the per-  
17 sonal property from the premises or from the place of safekeeping, the landlord must make that  
18 personal property available for removal by the tenant, lienholder or owner by appointment at rea-  
19 sonable times during the 15 days or, in the case of a recreational vehicle, manufactured dwelling  
20 or floating home, 30 days following the date of the response, subject to subsection (18) of this sec-  
21 tion. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of  
22 this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment  
23 of removal and storage charges, as provided in subsection (7)(d) of this section, prior to allowing the  
24 tenant, lienholder or owner to remove the personal property. Acceptance by a landlord of such  
25 payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS  
26 90.412 or 90.417.

27 (9) Except as provided in subsections (18) to (20) of this section, if the tenant, lienholder or  
28 owner of a recreational vehicle, manufactured dwelling or floating home does not respond within the  
29 time provided by the landlord's notice, or the tenant, lienholder or owner does not remove the per-  
30 sonal property within the time required by subsection (8) of this section or by any date agreed to  
31 with the landlord, whichever is later, the tenant's, lienholder's or owner's personal property is con-  
32 clusively presumed to be abandoned. The tenant and any lienholder or owner that have been given  
33 notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution  
34 of sale proceeds pursuant to subsection (13) of this section, have no further right, title or interest  
35 to the personal property and may not claim or sell the property.

36 (10) If the personal property is presumed to be abandoned under subsection (9) of this section,  
37 the landlord then may:

38 (a) Sell the personal property at a public or private sale, provided that prior to the sale of a  
39 recreational vehicle, manufactured dwelling or floating home:

40 (A) The landlord may seek to transfer ownership of record of the personal property by comply-  
41 ing with the requirements of the appropriate state agency; and

42 (B) The landlord shall:

43 (i) Place a notice in a newspaper of general circulation in the county in which the recreational  
44 vehicle, manufactured dwelling or floating home is located. The notice shall state:

45 (I) That the recreational vehicle, manufactured dwelling or floating home is abandoned;

- 1 (II) The tenant's and owner's name, if of record or actually known to the landlord;
- 2 (III) The address and any space number where the recreational vehicle, manufactured dwelling  
3 or floating home is located, and any plate, registration or other identification number for a recre-  
4 ational vehicle or floating home noted on the certificate of title, if actually known to the landlord;
- 5 (IV) Whether the sale is by private bidding or public auction;
- 6 (V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be  
7 accepted; and
- 8 (VI) The name and telephone number of the person to contact to inspect the recreational vehi-  
9 cle, manufactured dwelling or floating home;
- 10 (ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-  
11 subparagraph (i) of this subparagraph to the tenant and to any lienholder and owner, by personal  
12 delivery or first class mail, except that for any lienholder, mail service must be by first class mail  
13 with certificate of mailing;
- 14 (iii) Obtain an affidavit of publication from the newspaper to show that the notice required un-  
15 der sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two  
16 consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted;  
17 and
- 18 (iv) Obtain written proof from the county that all property taxes and assessments on the manu-  
19 factured dwelling or floating home have been paid or, if not paid, that the county has authorized the  
20 sale, with the sale proceeds to be distributed pursuant to subsection (13) of this section;
- 21 (b) Destroy or otherwise dispose of the personal property if the landlord determines that:
- 22 (A) For a manufactured dwelling or floating home, the current market value of the property is  
23 \$8,000 or less as determined by the county assessor; or
- 24 (B) For all other personal property, the reasonable current fair market value is \$500 or less or  
25 so low that the cost of storage and conducting a public sale probably exceeds the amount that would  
26 be realized from the sale; or
- 27 (c) Consistent with paragraphs (a) and (b) of this subsection, sell certain items and destroy or  
28 otherwise dispose of the remaining personal property.
- 29 (11)(a) A public or private sale authorized by this section must:
- 30 (A) For a recreational vehicle, manufactured dwelling or floating home, be conducted consistent  
31 with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the  
32 method, manner, time, place and terms must be commercially reasonable; or
- 33 (B) For all other personal property, be conducted under the provisions of ORS 79.0610.
- 34 (b) If there is no buyer at a sale of a manufactured dwelling or floating home, the personal  
35 property is considered to be worth \$8,000 or less, regardless of current market value, and the land-  
36 lord shall destroy or otherwise dispose of the personal property.
- 37 (12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the  
38 condition of a manufactured dwelling or floating home, the landlord is not liable for the condition  
39 of the dwelling or home to:
- 40 (a) A buyer of the dwelling or home at a sale pursuant to subsection (10)(a) of this section, with  
41 or without consideration; or
- 42 (b) A person or nonprofit organization to whom the landlord gives the dwelling or home pursu-  
43 ant to subsection (1)(b), (10)(b) or (11)(b) of this section.
- 44 (13)(a) The landlord may deduct from the proceeds of the sale:
- 45 (A) The reasonable or actual cost of notice, storage and sale; and



1 (B) Unpaid rent.

2 (b) If the sale was of a manufactured dwelling or floating home, after deducting the amounts  
3 listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to  
4 the county tax collector to the extent of any unpaid property taxes and assessments owed on the  
5 dwelling or home.

6 (c) If the sale was of a recreational vehicle, manufactured dwelling or floating home, after de-  
7 ducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord  
8 shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance  
9 owed on the lien on the recreational vehicle, dwelling or home.

10 (d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if appli-  
11 cable, the landlord shall remit to the tenant or owner the remaining proceeds, if any, together with  
12 an itemized accounting.

13 (e) If the tenant or owner cannot after due diligence be found, the landlord shall deposit the  
14 remaining proceeds with the county treasurer of the county in which the sale occurred. If not  
15 claimed within three years, the deposited proceeds revert to the general fund of the county and are  
16 available for general purposes.

17 (14) The county tax collector shall cancel all unpaid property taxes and assessments owed on  
18 a manufactured dwelling or floating home, as provided under ORS 311.790, only under one of the  
19 following circumstances:

20 (a) The landlord disposes of the manufactured dwelling or floating home after a determination  
21 described in subsection (10)(b) of this section.

22 (b) There is no buyer of the manufactured dwelling or floating home at a sale described under  
23 subsection (11) of this section.

24 (c)(A) There is a buyer of the manufactured dwelling or floating home at a sale described under  
25 subsection (11) of this section;

26 (B) The current market value of the manufactured dwelling or floating home is \$8,000 or less;  
27 and

28 (C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments  
29 owed on the dwelling or home after distribution of the proceeds pursuant to subsection (13) of this  
30 section.

31 (d)(A) The landlord buys the manufactured dwelling or floating home at a sale described under  
32 subsection (11) of this section;

33 (B) The current market value of the manufactured dwelling or floating home is more than \$8,000;

34 (C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments  
35 owed on the manufactured dwelling or floating home after distribution of the proceeds pursuant to  
36 subsection (13) of this section; and

37 (D) The landlord disposes of the manufactured dwelling or floating home.

38 (15) The landlord is not responsible for any loss to the tenant, lienholder or owner resulting  
39 from storage of personal property in compliance with this section unless the loss was caused by the  
40 landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the  
41 landlord is liable for twice the actual damages sustained by the tenant, lienholder or owner.

42 (16) Complete compliance in good faith with this section shall constitute a complete defense in  
43 any action brought by a tenant, lienholder or owner against a landlord for loss or damage to such  
44 personal property disposed of pursuant to this section.

45 (17) If a landlord does not comply with this section:

1 (a) The tenant is relieved of any liability for damage to the premises caused by conduct that  
2 was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the  
3 landlord up to twice the actual damages sustained by the tenant;

4 (b) A lienholder or owner aggrieved by the noncompliance may recover from the landlord the  
5 actual damages sustained by the lienholder or owner. ORS 90.255 does not authorize an award of  
6 attorney fees to the prevailing party in any action arising under this paragraph; and

7 (c) A county tax collector aggrieved by the noncompliance may recover from the landlord the  
8 actual damages sustained by the tax collector, if the noncompliance is part of an effort by the  
9 landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to  
10 the prevailing party in any action arising under this paragraph.

11 (18) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home,  
12 the provisions of this section regarding the rights and responsibilities of a tenant to the abandoned  
13 vehicle, dwelling or home also apply to any lienholder except that the lienholder may not sell or  
14 remove the vehicle, dwelling or home unless:

15 (a) The lienholder has foreclosed its lien on the recreational vehicle, manufactured dwelling or  
16 floating home;

17 (b) The tenant or a personal representative or designated person described in subsection (20)  
18 of this section has waived all rights under this section pursuant to subsection (26) of this section;  
19 or

20 (c) The notice and response periods provided by subsections (6) and (8) of this section have ex-  
21 pired.

22 (19)(a) In the case of an abandoned manufactured dwelling or floating home but not including  
23 a dwelling or home abandoned following a termination pursuant to ORS 90.429 and except as pro-  
24 vided by subsection (20)(d) and (e) of this section, if a lienholder makes a timely response to a notice  
25 of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests,  
26 a landlord shall enter into a written storage agreement with the lienholder providing that the  
27 dwelling or home may not be sold or disposed of by the landlord for up to 12 months. A storage  
28 agreement entitles the lienholder to store the personal property on the previously rented space  
29 during the term of the agreement, but does not entitle anyone to occupy the personal property.

30 (b) The lienholder's right to a storage agreement arises upon the failure of the tenant, owner  
31 or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee  
32 to remove or sell the dwelling or home within the allotted time.

33 (c) To exercise the right to a storage agreement under this subsection, in addition to contacting  
34 the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder  
35 must enter into the proposed storage agreement within 60 days after the landlord gives a copy of  
36 the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement  
37 to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord  
38 may include a copy of the proposed storage agreement with the notice of abandoned property re-  
39 quired by subsection (4) of this section. A lienholder enters into a storage agreement by signing a  
40 copy of the agreement provided by the landlord and personally delivering or mailing the signed copy  
41 to the landlord within the 60-day period.

42 (d) The storage agreement may require, in addition to other provisions agreed to by the landlord  
43 and the lienholder, that:

44 (A) The lienholder make timely periodic payment of all storage charges, as described in sub-  
45 section (7)(d) of this section, accruing from the commencement of the 45-day period described in

1 subsection (6) of this section. A storage charge may include a utility or service charge, as described  
2 in ORS 90.532, if limited to charges for electricity, water, sewer service and natural gas and if in-  
3 cidental to the storage of personal property. A storage charge may not be due more frequently than  
4 monthly;

5 (B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date re-  
6 quired in the agreement, if the amount of the late charge is no greater than for late charges de-  
7 scribed in the rental agreement between the landlord and the tenant; and

8 (C) The lienholder maintain the personal property and the space on which the personal property  
9 is stored in a manner consistent with the rights and obligations described in the rental agreement  
10 between the landlord and the tenant.

11 (e) During the term of an agreement described under this subsection, the lienholder has the right  
12 to remove or sell the property, subject to the provisions of the lien. Selling the property includes a  
13 sale to a purchaser who wishes to leave the dwelling or home on the rented space and become a  
14 tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the  
15 landlord's approval of a purchaser or, if there was no such agreement, any reasonable conditions  
16 by the landlord regarding approval of any purchaser who wishes to leave the dwelling or home on  
17 the rented space and become a tenant. The landlord also may condition approval for occupancy of  
18 any purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

19 (f)(A) If the lienholder violates the storage agreement, the landlord may terminate the agreement  
20 by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the  
21 lienholder of the reason for the termination. Unless the lienholder corrects the violation within the  
22 notice period, the agreement terminates as provided and the landlord may sell or dispose of the  
23 dwelling or home without further notice to the lienholder.

24 (B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph  
25 for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the  
26 lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the  
27 landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder  
28 stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder  
29 corrects the violation within the notice period, the agreement terminates as provided and the land-  
30 lord may sell or dispose of the property without further notice to the lienholder.

31 (C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written  
32 notice to the landlord and may remove the property from the rented space if the lienholder has paid  
33 all storage charges and other charges as provided in the agreement.

34 (g) Upon the failure of a lienholder to enter into a storage agreement as provided by this sub-  
35 section or upon termination of an agreement, unless the parties otherwise agree or the lienholder  
36 has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose  
37 of the property pursuant to this section without further notice to the lienholder.

38 (20) If the personal property is a manufactured dwelling or floating home and is considered  
39 abandoned as a result of the death of a tenant who was the only tenant and who owned the dwelling  
40 or home, this section applies, except as follows:

41 (a) The following persons have the same rights and responsibilities regarding the abandoned  
42 dwelling or home as a tenant:

43 (A) Any personal representative named in a will or appointed by a court to act for the deceased  
44 tenant.

45 (B) Any person designated in writing by the tenant to be contacted by the landlord in the event

1 of the tenant's death.

2 (b) The notice required by subsection (3) of this section must be:

3 (A) Sent by first class mail to the deceased tenant at the premises; and

4 (B) Personally delivered or sent by first class mail to any personal representative or designated  
5 person, if actually known to the landlord.

6 (c) The notice described in subsection (5) of this section must refer to any personal represen-  
7 tative or designated person, instead of the deceased tenant, and must incorporate the provisions of  
8 this subsection.

9 (d) If a personal representative, designated person or other person entitled to possession of the  
10 property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period  
11 provided by subsection (6) of this section and so requests, the landlord shall enter into a written  
12 storage agreement with the representative or person providing that the dwelling or home may not  
13 be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate pro-  
14 ceedings, whichever is later. A storage agreement entitles the representative or person to store the  
15 personal property on the previously rented space during the term of the agreement, but does not  
16 entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may  
17 not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the  
18 agreement with the personal representative or designated person ends.

19 (e) If a personal representative or other person requests that a landlord enter into a storage  
20 agreement, subsection (19)(c), (d) and (f)(C) of this section applies, with the representative or person  
21 having the rights and responsibilities of a lienholder with regard to the storage agreement.

22 (f) During the term of an agreement described under paragraph (d) of this subsection, the rep-  
23 resentative or person has the right to remove or sell the dwelling or home, including a sale to a  
24 purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave  
25 the dwelling or home on the rented space and become a tenant, subject to any conditions previously  
26 agreed to by the landlord and tenant regarding the landlord's approval for occupancy of a purchaser,  
27 heir or devisee or, if there was no such agreement, any reasonable conditions by the landlord re-  
28 garding approval for occupancy of any purchaser, heir or devisee who wishes to leave the dwelling  
29 or home on the rented space and become a tenant. The landlord also may condition approval for  
30 occupancy of any purchaser, heir or devisee of the dwelling or home upon payment of all unpaid  
31 storage charges and maintenance costs.

32 (g) If the representative or person violates the storage agreement, the landlord may terminate  
33 the agreement by giving at least 30 days' written notice to the representative or person stating facts  
34 sufficient to notify the representative or person of the reason for the termination. Unless the rep-  
35 resentative or person corrects the violation within the notice period, the agreement terminates as  
36 provided and the landlord may sell or dispose of the dwelling or home without further notice to the  
37 representative or person.

38 (h) Upon the failure of a representative or person to enter into a storage agreement as provided  
39 by this subsection or upon termination of an agreement, unless the parties otherwise agree or the  
40 representative or person has sold or removed the manufactured dwelling or floating home, the  
41 landlord may sell or dispose of the property pursuant to this section without further notice to the  
42 representative or person.

43 (21) If the personal property is other than a manufactured dwelling or floating home and is  
44 considered abandoned as a result of the death of a tenant who was the only tenant and who owned  
45 the personal property, this section applies except as follows:

1 (a) The following persons have the same rights and responsibilities regarding the abandoned  
2 personal property as a tenant:

3 (A) An heir or devisee.

4 (B) Any personal representative named in a will or appointed by a court to act for the deceased  
5 tenant.

6 (C) Any person designated in writing by the tenant to be contacted by the landlord in the event  
7 of the tenant's death.

8 (b) The notice required by subsection (3) of this section must be:

9 (A) Sent by first class mail to the deceased tenant at the premises;

10 (B) Personally delivered or sent by first class mail to any heir, devisee, personal representative  
11 or designated person, if actually known to the landlord; and

12 (C) Sent by first class mail to the attention of an estate administrator of the [*Department of State*  
13 *Lands*] **Oregon Department of Natural Resources**.

14 (c) The notice described in subsection (5) of this section must refer to the heir, devisee, personal  
15 representative, designated person or estate administrator of the **Oregon Department of Natural**  
16 **Resources**, instead of the deceased tenant, and must incorporate the provisions of this subsection.

17 (d) The landlord shall allow a person that is an heir, devisee or personal representative of the  
18 tenant, or an estate administrator of the **Oregon Department of Natural Resources**, to remove the  
19 personal property if the person contacts the landlord within the period provided by subsection (6)  
20 of this section, complies with the requirements of this section and provides the landlord with rea-  
21 sonable evidence that the person is an heir, devisee or personal representative, or an estate ad-  
22 ministrator of the department.

23 (e) If neither an heir, devisee nor personal representative of the tenant, nor an estate adminis-  
24 trator of the **Oregon Department of Natural Resources**, contacts the landlord within the time pe-  
25 riod provided by subsection (6) of this section, the landlord shall allow removal of the personal  
26 property by the designated person of the tenant, if the designated person contacts the landlord  
27 within that period and complies with the requirements of this section and provides the landlord with  
28 reasonable evidence that the person is the designated person.

29 (f) A landlord who allows removal of personal property under this subsection is not liable to  
30 another person that has a claim or interest in the personal property.

31 (22) If a governmental agency determines that the condition of a manufactured dwelling, floating  
32 home or recreational vehicle abandoned under this section constitutes an extreme health or safety  
33 hazard under state or local law and the agency determines that the hazard endangers others in the  
34 immediate vicinity and requires quick removal of the property, the landlord may sell or dispose of  
35 the property pursuant to this subsection. The landlord shall comply with all provisions of this sec-  
36 tion, except as follows:

37 (a) The date provided in subsection (6) of this section by which a tenant, lienholder, owner,  
38 personal representative or designated person must contact a landlord to arrange for the disposition  
39 of the property must be not less than 15 days after personal delivery or mailing of the notice re-  
40 quired by subsection (3) of this section.

41 (b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder,  
42 owner, personal representative or designated person must remove the property must be not less than  
43 seven days after the tenant, lienholder, owner, personal representative or designated person contacts  
44 the landlord.

45 (c) The notice required by subsection (3) of this section must be as provided in subsection (5)

1 of this section, except that:

2 (A) The dates and deadlines in the notice for contacting the landlord and removing the property  
3 must be consistent with this subsection;

4 (B) The notice must state that a governmental agency has determined that the property consti-  
5 tutes an extreme health or safety hazard and must be removed quickly; and

6 (C) The landlord shall attach a copy of the agency's determination to the notice.

7 (d) If the tenant, a lienholder, owner, personal representative or designated person does not re-  
8 move the property within the time allowed, the landlord or a buyer at a sale by the landlord under  
9 subsection (11) of this section shall promptly remove the property from the facility.

10 (e) A landlord is not required to enter into a storage agreement with a lienholder, owner, per-  
11 sonal representative or designated person pursuant to subsection (19) of this section.

12 (23)(a) If an official or agency referred to in ORS 453.876 notifies the landlord that the official  
13 or agency has determined that all or part of the premises is unfit for use as a result of the presence  
14 of an illegal drug manufacturing site involving methamphetamine, and the landlord complies with  
15 this subsection, the landlord is not required to comply with subsections (1) to (22) and (24) to (27)  
16 of this section with regard to personal property left on the portion of the premises that the official  
17 or agency has determined to be unfit for use.

18 (b) Upon receiving notice from an official or agency determining the premises to be unfit for use,  
19 the landlord shall promptly give written notice to the tenant as provided in subsection (3) of this  
20 section. The landlord shall also attach a copy of the notice in a secure manner to the main entrance  
21 of the dwelling unit. The notice to the tenant shall include a copy of the official's or agency's notice  
22 and state:

23 (A) That the premises, or a portion of the premises, has been determined by an official or agency  
24 to be unfit for use due to contamination from the manufacture of methamphetamine and that as a  
25 result subsections (1) to (22) and (24) to (27) of this section do not apply to personal property left  
26 on any portion of the premises determined to be unfit for use;

27 (B) That the landlord has hired, or will hire, a contractor to assess the level of contamination  
28 of the site and to decontaminate the site;

29 (C) That upon hiring the contractor, the landlord will provide to the tenant the name, address  
30 and telephone number of the contractor; and

31 (D) That the tenant may contact the contractor to determine whether any of the tenant's per-  
32 sonal property may be removed from the premises or may be decontaminated at the tenant's expense  
33 and then removed.

34 (c) To the extent consistent with rules of the Department of Human Services, the contractor  
35 may release personal property to the tenant.

36 (d) If the contractor and the department determine that the premises or the tenant's personal  
37 property is not unfit for use, upon notification by the department of the determination, the landlord  
38 shall comply with subsections (1) to (22) and (24) to (27) of this section for any personal property left  
39 on the premises.

40 (e) Except as provided in paragraph (d) of this subsection, the landlord is not responsible for  
41 storing or returning any personal property left on the portion of the premises that is unfit for use.

42 (24) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home  
43 that is owned by someone other than the tenant, the provisions of this section regarding the rights  
44 and responsibilities of a tenant to the abandoned vehicle, dwelling or home also apply to that owner,  
45 with regard only to the vehicle, dwelling or home, and not to any goods left inside or outside the

1 vehicle, dwelling or home.

2 (25) In the case of an abandoned motor vehicle, the procedure authorized by ORS 98.830 and  
3 98.835 for removal of abandoned motor vehicles from private property may be used by a landlord  
4 as an alternative to the procedures required in this section.

5 (26)(a) A landlord may sell or dispose of a tenant's abandoned personal property without com-  
6 plying with subsections (1) to (25) and (27) of this section if, after termination of the tenancy or no  
7 more than seven days prior to the termination of the tenancy, the following parties so agree in a  
8 writing entered into in good faith:

9 (A) The landlord;

10 (B) The tenant, or for an abandonment as the result of the death of a tenant who was the only  
11 tenant, the personal representative, designated person or other person entitled to possession of the  
12 personal property, such as an heir or devisee, as described in subsection (20) or (21) of this section;  
13 and

14 (C) In the case of a manufactured dwelling, floating home or recreational vehicle, any owner and  
15 any lienholder.

16 (b) A landlord may not, as part of a rental agreement, require a tenant, a personal represen-  
17 tative, a designated person or any lienholder or owner to waive any right provided by this section.

18 (27) Until personal property is conclusively presumed to be abandoned under subsection (9) of  
19 this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal prop-  
20 erty.

21 **SECTION 591.** ORS 93.230 is amended to read:

22 93.230. (1) If parties to whom deeds have been issued by the [*Department of State Lands*] **Oregon**  
23 **Department of Natural Resources** have lost such deeds before [*they*] **the deeds** were placed on  
24 record in the county wherein the land conveyed is located, the Director of the [*Department of State*  
25 *Lands*] **Oregon Department of Natural Resources**, on application of the party entitled thereto,  
26 shall cause a certified copy of the record of the deed in the office of the department to be issued  
27 under its seal.

28 (2) If parties to whom patents for lands have been issued by the United States for lands in the  
29 State of Oregon have lost such patents before [*they*] **the patents** were placed on record in the  
30 county wherein the land conveyed is located, such parties, or their successors in interest, may apply  
31 to and obtain from the Bureau of Land Management, or its successor agency, copies of the records  
32 of such patents, duly certified to be correct copies of the original patents, or of the record thereof,  
33 by the appropriate federal officer.

34 (3) Every certified copy issued in accordance with subsection (1) or (2) of this section is entitled  
35 to record in the proper county with like effect as the original deed or patent. Every such copy so  
36 certified may be read in evidence in any court in this state without further proof thereof. The record  
37 of any such certified copy, or a transcript thereof certified by the county clerk in whose office it  
38 may have been recorded, may be read in evidence in any court in this state with like effect as the  
39 original thereof or the original lost deed or patent.

40 **SECTION 592.** ORS 93.690 is amended to read:

41 93.690. (1) The Director of the [*Department of State Lands*] **Oregon Department of Natural**  
42 **Resources** shall forward all patents and clear lists of land and other documents evidencing that  
43 title to land has passed from the United States to the State of Oregon, which have been or shall be  
44 received by the State of Oregon, to the officer in each county of the state in which any of such land  
45 is situated whose duty it is to record conveyances of real estate. Upon the receipt of such patents,

1 clear lists or other documents, the recording officer of the county shall forthwith record the in-  
 2 struments in the records of deeds of the county and index them in the manner provided for indexing  
 3 deeds. When the recording officer has properly recorded such instruments the recording officer shall  
 4 return them to the director [*of the Department of State Lands*].

5 (2) When any such instrument includes land in more than one county, the record of the instru-  
 6 ment in each county need include only the description of the land lying wholly or partly in that  
 7 county and all other land may be indicated as omitted.

8 **SECTION 593.** ORS 98.050 is amended to read:

9 98.050. (1) The administrator may compile information or data in the possession of the [*Depart-*  
 10 *ment of State Lands*] **Oregon Department of Natural Resources** into finder's reports at the request  
 11 of any person to assist in finding the owners of abandoned or unclaimed property.

12 (2) The administrator shall adopt by rule a fee for copies of finder's reports. The fee charged  
 13 shall be commensurate with preparation costs including production, duplication and staff time in-  
 14 volved.

15 (3) Any person requesting a copy of a finder's report shall be charged the fee.

16 (4) As used in subsections (1) to (3) of this section:

17 (a) "Administrator" [*has the same meaning as given by ORS 98.302*] **means the Director of the**  
 18 **Oregon Department of Natural Resources.**

19 (b) "Person" includes any natural person, corporation, partnership, firm or association.

20 (c) "Finder's report" means any report prepared by the administrator for the benefit of any  
 21 person to assist in finding the owners of abandoned or unclaimed property.

22 **SECTION 594.** ORS 98.302 is amended to read:

23 98.302. As used in ORS 98.302 to 98.436 and 98.992, unless the context otherwise requires:

24 (1) "Administrator" means the Director of the [*Department of State Lands*] **Oregon Department**  
 25 **of Natural Resources.**

26 (2) "Apparent owner" means the person whose name appears on the records of the holder as the  
 27 person entitled to property held, issued or owing by the holder.

28 (3) "Business association" means a nonpublic corporation, joint stock company, business trust,  
 29 partnership, investment company or an association for business purposes of two or more individuals,  
 30 whether or not for profit, including a financial institution, insurance company or utility.

31 (4) "Domicile" means the state of incorporation of a corporation and the state of the principal  
 32 place of business of an unincorporated person.

33 (5) "Financial institution" means a financial institution or a trust company, as those terms are  
 34 defined in ORS 706.008, a safe deposit company, a private banker, a savings and loan association,  
 35 a building and loan association or an investment company.

36 (6) "Holder" means a person, wherever organized or domiciled, who is in possession of property  
 37 belonging to another, a trustee or indebted to another on an obligation.

38 (7) "Insurance company" means an association, corporation, fraternal or mutual benefit organ-  
 39 ization, whether or not for profit, which is engaged in providing insurance coverage, including ac-  
 40 cident, burial, casualty, workers' compensation, credit life, contract performance, dental, fidelity,  
 41 fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine,  
 42 mortgage, surety and wage protection insurance.

43 (8) "Intangible property" includes:

44 (a) Credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid  
 45 wages, unused airline tickets and unidentified remittances;



1 (b) Stocks and other intangible ownership interests in business associations;

2 (c) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make dis-  
3 tributions;

4 (d) Amounts due and payable under the terms of insurance policies;

5 (e) Amounts distributed from a trust or custodial fund established under a plan to provide  
6 health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, em-  
7 ployee savings, supplemental unemployment insurance or similar benefits; and

8 (f) Moneys, checks, drafts, deposits, interest, dividends and income.

9 (9) "Last-known address" means a description of the location of the apparent owner sufficient  
10 for the purpose of delivery of mail.

11 (10) "Lawful deduction" means a deduction related to the purpose of an account or deposit, for  
12 example, to satisfy unpaid utility bills.

13 (11) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than  
14 a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person,  
15 or the person's legal representative, having a legal or equitable interest in property.

16 (12) "Person" means an individual, business association, state or other government or political  
17 subdivision or agency, public corporation, public authority, two or more persons having a joint or  
18 common interest, or any other legal or commercial entity.

19 (13) "Service charge" means fees or charges that are limited to a specific situation and that  
20 meet basic contractual and notice requirements.

21 (14) "State" means any state, district, commonwealth, territory, insular possession or any other  
22 area subject to the legislative authority of the United States.

23 (15) "Utility" means a person who owns or operates for public use, any plant, equipment, prop-  
24 erty, franchise or license for the transmission of communications or the production, storage, trans-  
25 mission, sale, delivery or furnishing of electricity, water, steam or gas.

26 **SECTION 595.** ORS 98.329 is amended to read:

27 98.329. A holder, with the written consent of the [*Department of State Lands*] **Oregon Depart-**  
28 **ment of Natural Resources**, and in compliance with rules prescribed by the department, may re-  
29 port and deliver property before the property is presumed abandoned.

30 **SECTION 596.** ORS 98.348 is amended to read:

31 98.348. (1) At any time after property has been paid or delivered to the [*Department of State*  
32 *Lands*] **Oregon Department of Natural Resources** under ORS 98.352, another state may recover  
33 the property if one or more of the following is true:

34 (a) The property was subjected to custody by this state because the records of the holder did  
35 not reflect the last-known address of the apparent owner when the property was presumed aban-  
36 doned under ORS 98.302 to 98.436 and 98.992; and the other state establishes that the last-known  
37 address of the apparent owner or other person entitled to the property was in that state and under  
38 the laws of that state the property escheated to or was subject to a claim of abandonment by that  
39 state.

40 (b) The last-known address of the apparent owner or other person entitled to the property, as  
41 reflected by the records of the holder, is in the other state and under the laws of that state the  
42 property has escheated to or become subject to a claim of abandonment by that state.

43 (c) The records of the holder were erroneous in that they did not accurately reflect the owner  
44 of the property and the last-known address of the owner is in the other state and under the laws  
45 of that state the property escheated to or was subject to a claim of abandonment by that state.

1 (d) The property was subjected to custody by this state and under the laws of the state of  
2 domicile of the holder the property has escheated to or become subject to a claim of abandonment  
3 by that state.

4 (e) The property is the sum payable on a traveler's check, money order or other similar instru-  
5 ment that was subjected to custody by this state under ORS 98.309, and the instrument was pur-  
6 chased in the other state and under the laws of that state the property escheated to or became  
7 subject to a claim of abandonment by that state.

8 (2) The claim of another state to recover escheated or unclaimed property must be presented in  
9 a form prescribed by the department [*of State Lands*]. The department shall decide the claim within  
10 90 days after it is presented.

11 (3) The department shall require a state, before recovering property under this section, to agree  
12 to indemnify this state and its officers and employees against any liability on a claim for the prop-  
13 erty.

14 **SECTION 597.** ORS 98.352 is amended to read:

15 98.352. (1) Every person holding funds or other property, tangible or intangible, presumed  
16 abandoned under ORS 98.302 to 98.436 and 98.992 shall report and pay or deliver to the [*Department*  
17 *of State Lands*] **Oregon Department of Natural Resources** all property presumed abandoned as  
18 provided in this section, except that:

19 (a) Funds transferred to the General Fund under ORS 293.455 (1)(a) shall only be reported to the  
20 department.

21 (b) Funds in the possession of the Child Support Program described in ORS 180.345 shall only  
22 be reported to the department.

23 (c) Funds in lawyer trust accounts shall only be reported to the department.

24 (2) The report shall be verified as to the accuracy of the information contained and shall in-  
25 clude:

26 (a) Except with respect to traveler's checks and money orders, the name, if known, and address,  
27 if known, of each person appearing from the records of the holder to be the owner of any property  
28 of value of \$50 or more presumed abandoned under ORS 98.302 to 98.436 and 98.992;

29 (b) In case of unclaimed funds of life insurance corporations, the full name of the insured or  
30 annuitant and last-known address according to the life insurance corporation's records;

31 (c) The nature and identifying number, if any, or description of the property and the amount  
32 appearing from the records to be due, except that items of value under \$50 each may be reported  
33 in aggregate;

34 (d) The date when the property became payable, demandable, or returnable, and the date of the  
35 last transaction with the owner with respect to the property; and

36 (e) Other information that the department prescribes by rule as necessary for the administration  
37 of ORS 98.302 to 98.436 and 98.992.

38 (3) If the person holding property presumed abandoned is a successor to other persons who  
39 previously held the property for the owner, or if the holder has had a name change while holding  
40 the property, the holder shall file with the report all prior known names and addresses and effective  
41 dates of changes if known of each holder of the property.

42 (4) The report shall be filed after October 1, but no later than November 1 of each year for  
43 accounts dormant as of June 30. The department may postpone the reporting date upon written  
44 request by any person required to file a report. All records are exempt from public review for 12  
45 months from the time the property is reportable and for 24 months after the property has been

1 remitted to the department. All lists of records or property held by a government or public authority  
2 under ORS 98.336 shall be exempt from public review until 24 months after the property is remitted  
3 to the department.

4 (5) If the holder of property presumed abandoned under ORS 98.302 to 98.436 and 98.992 knows  
5 the whereabouts of the owner and if the owner's claim has not been barred by the statute of limi-  
6 tations, the holder shall, before filing the annual report, communicate with the owner and take  
7 necessary steps to prevent abandonment from being presumed. The holder shall exercise due dili-  
8 gence to ascertain the whereabouts of the owner.

9 (6) If the property presumed abandoned is a lawyer trust account established by an attorney or  
10 law firm, the report required by this section must indicate that the account is a lawyer trust ac-  
11 count in addition to providing the information required by subsection (2) of this section.

12 (7) Verification, if made by a partnership, shall be executed by a partner; if made by an  
13 unincorporated association or private corporation, by an officer; and if made by a public corpo-  
14 ration, by its chief fiscal officer.

15 **SECTION 598.** ORS 98.353 is amended to read:

16 98.353. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall,  
17 on a regular basis, provide educational or informational materials to persons required to file a re-  
18 port under ORS 98.352. The educational or informational materials shall contain, but shall not be  
19 limited to, information describing:

- 20 (a) The types of property, tangible and intangible, that are subject to reporting;
- 21 (b) Persons who typically hold, knowingly or unknowingly, unclaimed property;
- 22 (c) Record keeping requirements for persons holding unclaimed property; and
- 23 (d) Any penalties for failing to comply with the provisions of ORS 98.302 to 98.436.

24 (2) Upon request by the [*Department of State Lands*] **Oregon Department of Natural Re-**  
25 **sources**, the Department of Revenue and the Office of the Secretary of State shall:

26 (a) Assist the [*Department of State Lands*] **Oregon Department of Natural Resources** in de-  
27 termining which persons are required to file a report under ORS 98.352; and

28 (b) Allow the [*Department of State Lands*] **Oregon Department of Natural Resources** to in-  
29 clude information about unclaimed property reporting requirements in the regular mailings of the  
30 Department of Revenue.

31 **SECTION 599.** ORS 98.354 is amended to read:

32 98.354. (1) Every holder required to file a report under ORS 98.352 as to any property for which  
33 the holder has obtained an address of the owner, shall maintain a record of the name and last-known  
34 address of the owner and such signature cards and other evidence which would assist in the iden-  
35 tification of the owner for three years after the property has been remitted to the [*Department of*  
36 *State Lands*] **Oregon Department of Natural Resources**.

37 (2) Any business association that sells in this state traveler's checks, money orders or other  
38 similar written instruments, other than third party bank checks on which the business association  
39 is directly liable, or that provides such instruments to others for sale in this state, shall maintain  
40 a record of those instruments while they remain outstanding, indicating the state and date of issue,  
41 for five years after the date the property has been remitted to the department.

42 **SECTION 600.** ORS 98.356 is amended to read:

43 98.356. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
44 publish notice of owners' unclaimed accounts reported under ORS 98.352. The notice shall be pub-  
45 lished at least twice in a newspaper or other generally circulated periodical published in this state.

1 The department may publish such notices at intervals to locate owners of accounts received under  
2 ORS 98.352 (4) in an expedient manner, but shall complete publication of all such accounts within  
3 one year of remittance.

4 (2) The department is not required to publish in such notice any item of less than \$100 unless  
5 the department deems such publication to be in the public interest.

6 (3) This section is not applicable to sums payable on traveler's checks or money orders presumed  
7 abandoned under ORS 98.309.

8 (4) The department shall undertake reasonable efforts to locate owners of unclaimed property  
9 reported to the department under ORS 98.352. The costs of such efforts may be deducted from the  
10 proceeds that are paid to the owners when and if an owner is located. The department shall specify,  
11 by rule, a maximum percentage of costs that may be deducted from a verified claim for unclaimed  
12 property.

13 (5) The [*Department of State Lands*] **Oregon Department of Natural Resources** may not dis-  
14 close to the general public any confidential information provided by the Department of Revenue  
15 from taxpayer returns.

16 **SECTION 601.** ORS 98.362 is amended to read:

17 98.362. (1) The holder of an intangible equity ownership interest presumed abandoned under ORS  
18 98.322 shall deliver a certificate of ownership or other evidence of ownership to the [*Department of*  
19 *State Lands*] **Oregon Department of Natural Resources** as follows:

20 (a) The original certificate shall be delivered to the department when it is held by the business  
21 association, transfer agent, registrar or other person acting on behalf of the business association.

22 (b) A duplicate certificate shall be issued to the department when the business association,  
23 transfer agent, registrar or other person acting on behalf of the holder does not hold the original.

24 (2) After issuance of a duplicate certificate under subsection (1) of this section, the rights of a  
25 protected purchaser of the original certificate shall be governed by ORS 78.4050. In such event, re-  
26 covery by the protected purchaser shall be against the department to the extent allowed under the  
27 Oregon Constitution.

28 **SECTION 602.** ORS 98.366 is amended to read:

29 98.366. (1) Upon the payment or delivery of unclaimed property to the [*Department of State*  
30 *Lands*] **Oregon Department of Natural Resources**, the state shall assume custody and shall be  
31 responsible for the safekeeping thereof. Any person who pays or delivers unclaimed property to the  
32 department under ORS 98.352 is relieved of all liability to the extent of the value of the property  
33 so paid or delivered for any claim which then exists or which thereafter may arise or be made in  
34 respect to the property.

35 (2) A holder who has paid money to the department under ORS 98.352 may make payment to any  
36 person appearing to the holder to be entitled to payment. The department shall reimburse the holder  
37 within 60 days of receiving proof that payment was made to a person who appeared to the holder  
38 to be entitled to payment. The department shall reimburse the holder for the payment without im-  
39 posing any fee or other charge.

40 **SECTION 603.** ORS 98.372 is amended to read:

41 98.372. The owner is not entitled to receive income or other increments [*which*] **that** have ac-  
42 crued on the property after the property is paid or delivered to the [*Department of State Lands*]  
43 **Oregon Department of Natural Resources** under ORS 98.352.

44 **SECTION 604.** ORS 98.376 is amended to read:

45 98.376. The expiration of any period of time specified by statute or court order, during which

1 an action, suit or proceeding may be commenced or enforced to obtain payment of a claim for money  
2 or recovery of property, shall not prevent the money or property from being presumed abandoned,  
3 nor affect any duty to file a report required by ORS 98.352 or to pay or deliver unclaimed property  
4 to the [Department of State Lands] **Oregon Department of Natural Resources**, provided that this  
5 section shall not affect any property interests which became vested prior to August 20, 1957.

6 **SECTION 605.** ORS 98.382 is amended to read:

7 98.382. (1)(a) All unclaimed property other than money and securities delivered to the [Depart-  
8 ment of State Lands] **Oregon Department of Natural Resources** under ORS 98.362 shall be sold  
9 by the department to the highest bidder at public sale by the method and at the location that the  
10 department determines are the most favorable for receiving the highest price for the property in-  
11 volved. The department may decline the highest bid and reoffer the property for sale if the depart-  
12 ment considers the price bid insufficient. The department need not offer any property for sale if, in  
13 the department's opinion, the probable cost of sale exceeds the value of the property.

14 (b) In choosing the most favorable method for the sale of property under this subsection, the  
15 department may consider:

16 (A) A public oral auction;

17 (B) An electronic commerce forum; and

18 (C) Any other method for sale that ensures the highest returns and provides for open, public  
19 participation.

20 (c) In choosing the most favorable location for the sale of property under this subsection, the  
21 department may consider:

22 (A) The population of the location;

23 (B) The cost of conducting the sale in the location;

24 (C) The type of property being sold;

25 (D) The public access to the proposed sale location, including parking; and

26 (E) Any other indicator of market potential of the location.

27 (2) For a sale by public oral auction held under subsection (1) of this section, the department  
28 shall publish at least a single notice of the sale at least 10 days in advance of the sale in a news-  
29 paper of general circulation in the county where the property is to be sold. For a sale by a method  
30 other than public oral auction, the department shall publish at least a single notice in a newspaper  
31 of general circulation in Marion County.

32 (3) Securities listed on an established stock exchange shall be sold on the exchange at prices  
33 prevailing on the exchange at the time of sale. Other securities may be sold over the counter at  
34 prices prevailing at the time of sale or by any other method the administrator considers advisable.

35 (4) All securities and other intangible properties presumed abandoned under ORS 98.362 and  
36 delivered to the department shall be sold by the department at such time and place and in such  
37 manner as in the department's judgment will bring the highest return.

38 (5) The department shall indemnify the holder of securities presumed abandoned under ORS  
39 98.322 to the extent allowed by the Oregon Constitution. The department shall establish procedures  
40 by administrative rule to pay the rightful owner proceeds received from securities that were sold  
41 before the owner filed a claim to recover such securities.

42 (6) The purchaser at a sale conducted by the department pursuant to this section shall receive  
43 title to the property purchased, free from all claims of the owner or prior holder of the property and  
44 of all persons claiming through or under them. The department shall execute all documents neces-  
45 sary to complete the transfer of title.

1        **SECTION 606.** ORS 98.384 is amended to read:

2        98.384. If the [*Department of State Lands*] **Oregon Department of Natural Resources** deter-  
3 mines after investigation that any property delivered under ORS 98.352 has insubstantial commercial  
4 value, the department may destroy or otherwise dispose of the property at any time. No action or  
5 proceeding may be maintained against the state or any officer or against the holder for or on ac-  
6 count of any action taken by the department pursuant to this section.

7        **SECTION 607.** ORS 98.386 is amended to read:

8        98.386. (1) Except as provided in subsection (2) of this section, all funds received under ORS  
9 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS  
10 98.382, shall be deposited by the [*Department of State Lands*] **Oregon Department of Natural Re-**  
11 **sources** in the Common School Fund [*Account*] with the State Treasurer. Before making the deposit  
12 the department shall record the name and last-known address of each person appearing from the  
13 holders' reports to be entitled to the unclaimed property and the name and last-known address of  
14 each insured person or annuitant, and with respect to each policy or contract listed in the report  
15 of a life insurance corporation, its number, the name of the corporation, and the amount due.

16        (2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352  
17 shall be paid or delivered by the person holding the amounts to the Oregon State Bar along with a  
18 copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are  
19 continuously appropriated to the Oregon State Bar, and may be used only for the funding of legal  
20 services provided through the Legal Services Program established under ORS 9.572, the payment of  
21 claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar  
22 in the administration of the Legal Services Program.

23        (3) Before making a deposit to the credit of the Common School Fund [*Account*], the department  
24 may deduct:

25        (a) Any costs in connection with sale of unclaimed property;

26        (b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed  
27 property as prescribed by rule; and

28        (c) Reasonable service charges.

29        **SECTION 608.** ORS 98.388 is amended to read:

30        98.388. There is created from unclaimed property funds an Unclaimed Property Revolving Fund.  
31 The moneys in the fund are [*appropriated continuously to the Department of State Lands*] **contin-**  
32 **uously appropriated to the Oregon Department of Natural Resources** for the purpose of re-  
33 paying claims as provided under ORS 98.396.

34        **SECTION 609.** ORS 98.392 is amended to read:

35        98.392. (1) A person claiming an interest in unclaimed property reported to the [*Department of*  
36 *State Lands*] **Oregon Department of Natural Resources** may file a claim to the property or to the  
37 proceeds from the sale of the property at any time after the person learns that the property has been  
38 reported to the department. Claims shall be filed on the form prescribed by the department. The  
39 department may require the person to provide a lost instrument bond if the claim is for securities  
40 and the person does not surrender the original certificate to the department.

41        (2) If a claim is filed under this section for amounts identified as lawyer trust account funds in  
42 the report required by ORS 98.352, the department shall forward the claim to the Oregon State Bar  
43 for review and for payment by the Oregon State Bar if the claim is allowed. The department and the  
44 Oregon State Bar shall adopt rules for the administration of claims subject to this subsection.

45        **SECTION 610.** ORS 98.396 is amended to read:

1 98.396. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
2 consider any claim filed under ORS 98.392 and may hold a hearing and receive evidence concerning  
3 the claim. If a hearing is held, the department shall prepare findings and a decision in writing on  
4 each claim filed, stating the substance of any evidence heard by the department and the reasons for  
5 the decision. The decision shall be a public record.

6 (2) If the claim allowed is for property deposited in the Common School Fund [*Account*], the  
7 department shall return the property or make payment of the proceeds of the sale of the property  
8 to the claimant.

9 (3) If the claim allowed is for funds deposited in the General Fund, the department shall pay the  
10 claim and file a request for reimbursement with the State Treasurer. The State Treasurer shall re-  
11 imburse the department within five working days from the fund against which the check or order  
12 represented in the claim was issued.

13 **SECTION 611.** ORS 98.402 is amended to read:

14 98.402. (1) A person aggrieved by a decision of the administrator may request a hearing re-  
15 garding the decision. The [*Department of State Lands*] **Oregon Department of Natural Resources**  
16 shall conduct the hearing as a contested case proceeding in accordance with ORS 183.413 to 183.470.

17 (2) If the administrator fails to act on a claim within 120 days after a person files the claim  
18 under ORS 98.392, the person may file a petition under ORS 183.484 to request a court to compel  
19 the department to act pursuant to ORS 183.490.

20 **SECTION 612.** ORS 98.412 is amended to read:

21 98.412. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
22 require a person who has not filed a report to file a verified report stating whether or not the per-  
23 son is holding any unclaimed property reportable or deliverable under ORS 98.352.

24 (2) The department may at reasonable times and upon reasonable notice examine the records  
25 of any person to determine whether the person has complied with the provisions of ORS 98.352. The  
26 department may conduct the examination even if the person believes it is not in possession of any  
27 property reportable or deliverable under this section.

28 (3) To the extent possible, the department shall enter into agreements with state and federal  
29 agencies that regularly examine the records of financial institutions, trust companies, financial  
30 holding companies and bank holding companies, as defined in ORS 706.008, and of subsidiaries of  
31 such financial institutions, trust companies, financial holding companies and bank holding compa-  
32 nies. Under the agreements, the state and federal agencies shall examine the records of the finan-  
33 cial institution, trust company, financial holding company, bank holding company or subsidiary to  
34 determine compliance with ORS 98.352. If a state or federal agency does not enter into an agreement  
35 with the department under this subsection, the department shall conduct the examination of the re-  
36 cords of financial institutions, trust companies, financial holding companies and bank holding com-  
37 panies to determine compliance with ORS 98.352.

38 (4) If a holder fails to maintain the records required by ORS 98.354 and the records of the holder  
39 available for the periods subject to ORS 98.302 to 98.436 and 98.992 are insufficient to permit the  
40 preparation of a report, the department may issue a finding that requires the holder to report and  
41 pay the amounts that the department reasonably estimates from the report and available records.  
42 The department shall include in its finding a notice substantially similar to that specified under ORS  
43 183.415. Additionally, the notice shall include information about opportunities to resolve disputes  
44 through a collaborative dispute resolution process.

45 (5) Any holder subject to examination under this section may request a hearing regarding the

1 findings issued by the department. The department shall conduct a hearing under this subsection  
2 as a contested case proceeding in accordance with ORS 183.413 to 183.470.

3 **SECTION 613.** ORS 98.416 is amended to read:

4 98.416. (1) If any person refuses to deliver property to the [*Department of State Lands*] **Oregon**  
5 **Department of Natural Resources** as required under ORS 98.352, the department may bring a suit  
6 or action in a court of appropriate jurisdiction to enforce delivery of the property.

7 (2) The department may require a person who fails to pay or deliver property within the time  
8 prescribed by ORS 98.302 to 98.436 and 98.992 to pay interest from the date the department deter-  
9 mines interest should have been paid. Interest shall be paid at the rate set by the Director of the  
10 Department of Revenue pursuant to ORS 305.220 (1) and (3).

11 **SECTION 614.** ORS 98.424 is amended to read:

12 98.424. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
13 enter into agreements with other states to exchange information needed to enable this or another  
14 state to audit or otherwise determine unclaimed property that this state or another state may be  
15 entitled to subject to a claim of custody under ORS 98.348. The department may adopt rules re-  
16 quiring the other states to report information needed to enable compliance with agreements made  
17 pursuant to this section and prescribing the form for making a claim of custody under ORS 98.348.

18 (2) To avoid conflicts between the department's procedures and the procedures of administrators  
19 in other jurisdictions that enact an unclaimed property act, the department, [*so*] **as** far as is con-  
20 sistent with the purposes, policies and provisions of ORS 98.302 to 98.436 and 98.992, before adopt-  
21 ing, amending or repealing rules, shall advise and consult with administrators in other jurisdictions  
22 that enact a substantially similar unclaimed property act and take into consideration the rules of  
23 administrators in other jurisdictions that enact an unclaimed property act.

24 (3) The department may join with other states to seek enforcement of ORS 98.302 to 98.436 and  
25 98.992 against any person who is or may be holding property reportable under ORS 98.352.

26 (4) At the request of another state, the Attorney General of this state may bring an action in  
27 the name of another state to enforce the unclaimed property laws of the other state against a holder  
28 in this state of property subject to escheat or a claim of abandonment by the other state, if the other  
29 state has agreed to pay expenses incurred by the attorney general in bringing the action, including  
30 attorney fees.

31 (5) The department, through the Attorney General of this state, may request the attorney gen-  
32 eral of another state or any other person to bring an action in the other state in the name of the  
33 department against the holder of property in the other state that is subject to escheat or a claim  
34 of abandonment by this state. This state shall pay all expenses including attorney fees in any action  
35 under this subsection. Any expenses paid pursuant to this subsection may not be deducted from the  
36 amount that is subject to the claim by the owner under ORS 98.302 to 98.436 and 98.992.

37 (6) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall not dis-  
38 close to any other state any confidential information provided by the Department of Revenue from  
39 taxpayer returns.

40 **SECTION 615.** ORS 98.991 is amended to read:

41 98.991. (1) Any person who willfully fails to render any report or perform other duties required  
42 under this Act is guilty of a misdemeanor.

43 (2) Any person who willfully refuses to pay or deliver unclaimed property to the [*Department*  
44 *of State Lands*] **Oregon Department of Natural Resources** as required under this Act is guilty of  
45 a misdemeanor.



1        **SECTION 616.** ORS 98.992 is amended to read:

2        98.992. A person who willfully fails to render any report, to pay or deliver property or to per-  
3 form other duties required by ORS 98.302 to 98.436 and 98.992 may be required to forfeit and pay  
4 to the State Treasurer to be deposited in the Common School Fund [*Account*], an amount determined  
5 by the [*Department of State Lands*] **Oregon Department of Natural Resources** pursuant to ORS  
6 183.745 of not more than \$1,000 for individuals and \$50,000 for corporations. This penalty shall be  
7 assessed only after at least one reporting cycle, and only after the department has provided the  
8 person with written instructions, including copies of applicable laws and policies. The department  
9 may waive any penalty due under this section with appropriate justification.

10       **SECTION 617.** ORS 112.055 is amended to read:

11       112.055. (1) If no person takes under ORS 112.025 to 112.045, the net intestate estate escheats  
12 to the State of Oregon.

13       (2) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or  
14 found, the share of that person escheats to the State of Oregon.

15       (3) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or  
16 found:

17       (a) The [*Department of State Lands*] **Oregon Department of Natural Resources** has the same  
18 preference as the missing devisee or person for the purpose of appointment as personal represen-  
19 tative under ORS 113.085;

20       (b) Title to property of the decedent that would vest in the missing devisee or person under ORS  
21 114.215 vests in the department [*of State Lands*]; and

22       (c) The department [*of State Lands*] has all of the rights of the missing devisee or person for the  
23 purposes of ORS chapters 111, 112, 113, 114, 115, 116 and 117, including but not limited to the fol-  
24 lowing:

25       (A) The right to contest any will of the decedent under ORS 113.075; and

26       (B) The right to information under ORS 113.145.

27       **SECTION 618.** ORS 113.045 is amended to read:

28       113.045. (1) Upon appointment, a personal representative shall deliver or mail to an estate ad-  
29 ministrator of the [*Department of State Lands*] **Oregon Department of Natural Resources** ap-  
30 pointed under ORS 113.235 a copy of the petition filed under ORS 113.035, and a copy of any last  
31 will of the decedent, if the personal representative has not identified and found all heirs and  
32 devisees of the decedent. The personal representative shall file proof of the delivery or mailing with  
33 the court.

34       (2) If at any time after the appointment of a personal representative it appears that any heir  
35 or devisee of the decedent cannot be identified and found, the personal representative shall promptly  
36 deliver or mail to an estate administrator of the department [*of State Lands*] appointed under ORS  
37 113.235 a notice indicating that an heir or devisee cannot be identified and found. The personal  
38 representative shall file proof of the delivery or mailing with the court.

39       (3) This section does not affect the requirements of ORS 113.085 (2).

40       **SECTION 619.** ORS 113.085 is amended to read:

41       113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition,  
42 if there is no will or there is a will and it has been proved, the court shall appoint a qualified person  
43 it finds suitable as personal representative, giving preference in the following order:

44       (a) The executor named in the will.

45       (b) The surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.

1 (c) The nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.

2 (d) The Director of Human Services, or an attorney approved by the director under ORS 113.086,  
3 if the decedent received public assistance pursuant to ORS chapter 411 or received care at an in-  
4 stitution described in ORS 179.321 (1), and it appears that the assistance or the cost of care may  
5 be recovered from the estate of the decedent.

6 (e) The Director of the Oregon Health Authority, or an attorney approved by the director under  
7 ORS 113.086, if the decedent received public assistance pursuant to ORS chapter 414 or received  
8 care at an institution described in ORS 179.321 (2), and it appears that the assistance or the cost  
9 of care may be recovered from the estate of the decedent.

10 (f) The Department of Veterans' Affairs, if the decedent was a protected person under ORS  
11 406.050 (8), and the department has joined in the petition for such appointment.

12 (g) Any other person.

13 (2) Except as provided in subsection (3) of this section, the court shall appoint the [*Department*  
14 *of State Lands*] **Oregon Department of Natural Resources** as personal representative if it appears  
15 that the decedent died wholly intestate and without known heirs. The Attorney General shall rep-  
16 resent the department [*of State Lands*] in the administration of the estate. Any funds received by the  
17 department [*of State Lands*] in the capacity of personal representative may be deposited in accounts,  
18 separate and distinct from the General Fund, established with the State Treasurer. Interest earned  
19 by such account shall be credited to that account.

20 (3) The court may appoint a person other than the [*Department of State Lands*] **Oregon De-**  
21 **partment of Natural Resources** to administer the estate of a decedent who died wholly intestate  
22 and without known heirs if the person filing a petition under ORS 113.035 attaches written author-  
23 ization from an estate administrator of the department [*of State Lands*] appointed under ORS 113.235  
24 approving the filing of the petition by the person. Except as provided by rule adopted by the Di-  
25 rector of the [*Department of State Lands*] **Oregon Department of Natural Resources**, an estate  
26 administrator may consent to the appointment of another person to act as personal representative  
27 only if it appears after investigation that the estate is insolvent.

28 **SECTION 620.** ORS 113.105 is amended to read:

29 113.105. (1) Unless a testator provides in a will that no bond shall be required of the executor  
30 of the estate, or unless the personal representative is the sole heir or devisee or is the [*Department*  
31 *of State Lands*] **Oregon Department of Natural Resources**, the Department of Veterans' Affairs,  
32 the Director of Human Services, the Director of the Oregon Health Authority or an attorney ap-  
33 proved under ORS 113.086, the personal representative may not act nor shall letters be issued to the  
34 personal representative until the personal representative files with the clerk of the court a bond.  
35 The bond shall be executed by a surety company authorized to transact surety business in this state,  
36 or by one or more sufficient personal sureties approved by the court. A personal surety must be a  
37 resident of this state. The court may, in its discretion, require a bond notwithstanding any provision  
38 in a will that no bond is required. The bond shall be for the security and benefit of all interested  
39 persons and shall be conditioned upon the personal representative faithfully performing the duties  
40 of the trust.

41 (2) The amount of the bond set by the court shall be adequate to protect interested persons, but  
42 in no event shall it be less than \$1,000. In setting the amount of the bond the court shall consider:

43 (a) The nature, liquidity and apparent value of the assets of the estate.

44 (b) The anticipated income during administration.

45 (c) The probable indebtedness and taxes.

1 (3) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company  
2 acting as personal representative.

3 (4) Notwithstanding any other provisions of this section, a court may, in its discretion, waive  
4 the requirement of a bond if all devisees and heirs known to the court agree in writing that the  
5 requirement be waived and the signed agreement is filed with the court at the time of filing of the  
6 petition for the appointment of a personal representative.

7 **SECTION 621.** ORS 113.235 is amended to read:

8 113.235. The Director of the [*Department of State Lands*] **Oregon Department of Natural Re-**  
9 **sources** shall appoint one or more estate administrators to act for the [*Department of State Lands*]  
10 **Oregon Department of Natural Resources** in administration of any estate in which the depart-  
11 ment [*of State Lands*] is appointed personal representative. An estate administrator appointed under  
12 this section is an employee of the department [*of State Lands*].

13 **SECTION 622.** ORS 113.238 is amended to read:

14 113.238. (1) A person who has knowledge that a decedent died wholly intestate, that the  
15 decedent owned property subject to probate in Oregon and that the decedent died without a known  
16 heir shall give notice of the death within 48 hours after acquiring that knowledge to an estate ad-  
17 ministrator of the [*Department of State Lands*] **Oregon Department of Natural Resources** ap-  
18 pointed under ORS 113.235.

19 (2) Except as provided by ORS 708A.430 and 723.466, a person may not dispose of or diminish  
20 any assets of the estate of a decedent who has died wholly intestate, who owned property subject  
21 to probate in Oregon and who died without a known heir unless the person has prior written ap-  
22 proval of an estate administrator of the department [*of State Lands*] appointed under ORS 113.235.  
23 The prohibition of this subsection:

24 (a) Applies to a guardian or conservator for the decedent; and

25 (b) Does not apply to a personal representative appointed under ORS 113.085 (3) or to an affiant  
26 authorized under ORS 114.520 to file an affidavit under ORS 114.515.

27 (3) For purposes of this section, a known heir is an heir who has been identified and found.

28 **SECTION 623.** ORS 113.242 is amended to read:

29 113.242. (1) An estate administrator of the [*Department of State Lands*] **Oregon Department of**  
30 **Natural Resources** appointed under ORS 113.235 may take custody of the property of a decedent  
31 who died owning property subject to probate in Oregon upon the estate administrator receiving  
32 notice that:

33 (a) The decedent died wholly intestate and without a known heir as described in ORS 113.238  
34 (3); or

35 (b) The decedent left a valid will, but no devisee has been identified and found.

36 (2) For any estate described in subsection (1) of this section, an estate administrator of the de-  
37 partment [*of State Lands*] appointed under ORS 113.235 may:

38 (a) Incur expenses for the funeral, burial or other disposition of the remains of the decedent in  
39 a manner suitable to the condition in life of the decedent;

40 (b) Incur expenses for the protection of the property of the estate;

41 (c) Incur expenses searching for a will or for heirs or devisees of the decedent;

42 (d) Have access to the property and records of the decedent other than records that are made  
43 confidential or privileged by statute;

44 (e) With proof of the death of the decedent, have access to all financial records of accounts or  
45 safe deposit boxes of the decedent at banks or other financial institutions; and

1 (f) Sell perishable property of the estate.

2 (3) The reasonable funeral and administrative expenses of the department [*of State Lands*] in-  
 3 curred under this section, including a reasonable attorney fee, shall be paid from the assets of the  
 4 estate with the same priority as funeral and administration expenses under ORS 115.125.

5 **SECTION 624.** ORS 114.505 is amended to read:

6 114.505. As used in ORS 114.505 to 114.560:

7 (1) “Affiant” means the person or persons signing an affidavit filed under ORS 114.515.

8 (2) “Claiming successors” means:

9 (a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an  
 10 estate administrator of the [*Department of State Lands*] **Oregon Department of Natural Resources**  
 11 appointed under ORS 113.235;

12 (b) If the decedent died testate, the devisee or devisees of the decedent; and

13 (c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS  
 14 114.545 (1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60  
 15 days after the date of the decedent’s death.

16 (3) “Estate” means decedent’s property subject to administration in Oregon.

17 **SECTION 625.** ORS 114.520 is amended to read:

18 114.520. (1) If a decedent dies intestate and without heirs, a creditor of an estate who is a  
 19 claiming successor may not file an affidavit under ORS 114.515 unless the creditor has received  
 20 written authorization from an estate administrator of the [*Department of State Lands*] **Oregon De-**  
 21 **partment of Natural Resources** appointed under ORS 113.235. Except as provided by rule adopted  
 22 by the Director of the [*Department of State Lands*] **Oregon Department of Natural Resources**, an  
 23 estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a creditor only  
 24 if it appears after investigation that the estate is insolvent.

25 (2) A creditor of an estate who is subject to subsection (1) of this section may give written no-  
 26 tice to an estate administrator of the department [*of State Lands*] informing the estate administrator  
 27 that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice permitted  
 28 by this subsection, the estate administrator shall investigate the assets and liabilities of the estate.  
 29 Within 30 days after receiving the notice required by this subsection, the estate administrator shall  
 30 either:

31 (a) Give written authorization to the creditor for the filing of an affidavit by the creditor under  
 32 ORS 114.515; or

33 (b) Inform the creditor that the department [*of State Lands*] will file an affidavit as claiming  
 34 successor under ORS 114.515.

35 (3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming  
 36 successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that  
 37 the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required  
 38 by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there  
 39 is attached to the affidavit written authorization for the filing of the affidavit by the creditor from  
 40 an estate administrator of the department [*of State Lands*]. The written authorization may be a copy  
 41 of a memorandum of an interagency agreement between the department [*of State Lands*] and another  
 42 state agency.

43 **SECTION 626.** ORS 116.193 is amended to read:

44 116.193. If it appears to the court, at any time after the expiration of four months after the date  
 45 of the first publication of notice to interested persons, that there is no known person to take by

1 descent the net intestate estate, the court shall order that the estate escheat to the State of Oregon  
2 and that the whole of the estate, after payment of claims, taxes and expenses of administration, be  
3 distributed to the [*Department of State Lands*] **Oregon Department of Natural Resources**. There  
4 shall be no further proceeding in the administration of the estate, and the estate shall summarily  
5 be closed.

6 **SECTION 627.** ORS 116.203 is amended to read:

7 116.203. If a report filed in the estate proceeding by the personal representative not less than  
8 30 days after the date of entry of the judgment of distribution shows that payment or delivery of  
9 property in the possession of the personal representative or under the control of the personal rep-  
10 resentative cannot be made to a distributee entitled thereto, either because the distributee refuses  
11 to accept the property or because the distributee cannot be found, the court may direct the personal  
12 representative to pay or deliver the property to the [*Department of State Lands*] **Oregon Depart-**  
13 **ment of Natural Resources**, to be placed in the escheat funds of the state. The personal repre-  
14 sentative shall take the receipt of the department [*of State Lands*] stating from whom the property  
15 was received, a description of the property and the name of the person entitled to the property. The  
16 person entitled thereto may apply for and recover the property in the manner provided for recovery  
17 of escheat funds.

18 **SECTION 628.** ORS 116.243 is amended to read:

19 116.243. A court clerk of any county in which the county court has judicial functions, the clerk  
20 of any county court that has jurisdiction over probate matters under ORS 111.075 or a court ad-  
21 ministrator, upon request, shall furnish to an estate administrator of the [*Department of State*  
22 *Lands*] **Oregon Department of Natural Resources** appointed under ORS 113.235 the titles of es-  
23 tates of decedents that have remained open for more than three years and in which no heirs, or only  
24 persons whose right to inherit the proceeds thereof is being contested, have appeared to claim the  
25 estate.

26 **SECTION 629.** ORS 116.253 is amended to read:

27 116.253. (1) Within 10 years after the death of a decedent whose estate escheated in whole or  
28 in part to the state, or within eight years after the entry of a judgment or order escheating property  
29 of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof,  
30 by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a  
31 person who at the time of the escheat was unable to prove entitlement to the escheated property.

32 (2) The claim shall be made by a petition filed with the Director of the [*Department of State*  
33 *Lands*] **Oregon Department of Natural Resources**. The claim is considered a contested case as  
34 provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The  
35 petition must include a declaration under penalty of perjury in the form required by ORCP 1 E and  
36 shall state:

37 (a) The age and place of residence of the claimant by whom or on whose behalf the petition is  
38 filed;

39 (b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the  
40 property or proceeds;

41 (c) That at the time the property escheated to the state the claimant had no knowledge or notice  
42 thereof or was unable to prove entitlement to the escheated property and has subsequently acquired  
43 new evidence of that entitlement;

44 (d) That the claimant claims the property or proceeds as an heir or devisee or as the personal  
45 representative of the estate of an heir or devisee, setting forth the relationship, if any, of the

1 claimant to the decedent who at the time of death was the owner;

2 (e) That 10 years have not elapsed since the death of the decedent, or that eight years have not  
3 elapsed since the entry of the judgment or order escheating the property to the state; and

4 (f) If the petition is not filed by the claimant, the status of the petitioner.

5 (3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the  
6 director [*of the Department of State Lands*] shall deliver the property to the petitioner, subject to  
7 and charged with any tax on the property and the costs and expenses of the state in connection  
8 therewith.

9 (4) If the person whose property escheated or reverted to the state was at any time an inmate  
10 of a state institution in Oregon for persons with mental illness or mental retardation, the reasonable  
11 unpaid cost of the care and maintenance of the person while a ward of the institution, regardless  
12 of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the  
13 amount of the escheated property. The reasonable unpaid cost of care and maintenance shall be  
14 determined by:

15 (a) The Department of Human Services for patients of the Eastern Oregon Training Center; and

16 (b) The Oregon Health Authority for patients of the Blue Mountain Recovery Center and the  
17 Oregon State Hospital.

18 (5) For the purposes of this section, the death of the decedent is presumed to have occurred on  
19 the date shown in the decedent's death certificate or in any other similar document issued by the  
20 jurisdiction in which the death occurred or issued by an agency of the federal government.

21 **SECTION 630.** ORS 146.125 is amended to read:

22 146.125. (1) The medical examiner, deputy medical examiner, district attorney or sheriff may  
23 temporarily retain possession of any property found on the body or in the possession of the deceased  
24 which in the opinion of the medical examiner, deputy medical examiner, district attorney or sheriff  
25 may be useful in establishing the cause or manner of death or may be used in further proceedings.

26 (2) When a medical examiner, deputy medical examiner, district attorney or sheriff assumes  
27 control or custody of money or personal property found on the body or in the possession of the de-  
28 ceased, the medical examiner, deputy medical examiner, district attorney or sheriff shall:

29 (a) Make a verified inventory of such money or property.

30 (b) File the inventory in the district medical examiner's office.

31 (c) Deposit the money with the county treasurer to the credit of the county general fund.

32 (3) If personal property is not retained by the medical examiner, deputy medical examiner, dis-  
33 trict attorney or sheriff, and is not claimed within 30 days, the inventory shall be filed with the  
34 board of county commissioners to be disposed of as follows:

35 (a) If the property has value, the board may order it sold and after deducting the cost of sale,  
36 shall deposit the proceeds of the sale with the county treasurer to the credit of the county general  
37 fund.

38 (b) If the property has no value in the judgment of the board, the board may order the sheriff  
39 to destroy such property.

40 (4) Any expenses incurred by the county in transporting or disposing of the body may be de-  
41 ducted from the money or proceeds of the sale of personal property before it is delivered to a  
42 claimant.

43 (5) If it appears that the person whose death required investigation died wholly intestate and  
44 without heirs, the county whose official has control or custody of the property shall notify an estate  
45 administrator of the [*Department of State Lands*] **Oregon Department of Natural Resources** ap-

1 pointed under ORS 113.235 within 15 days after the death.

2 (6) If a legally qualified personal representative, spouse, or next of kin:

3 (a) Claims the money of the deceased, the treasurer shall, subject to the provisions of subsection  
4 (4) of this section, deliver such money to the claimant.

5 (b) Within 30 days, claims the personal property of the deceased, the property shall be delivered  
6 to such claimant subject to the provisions of subsections (1) and (5) of this section.

7 (7) If money of the deceased is not claimed within seven years and is presumed abandoned as  
8 provided by ORS 98.302 to 98.436 and 98.992, the board of county commissioners shall order the  
9 money paid as required by law.

10 **SECTION 631.** ORS 196.600 is amended to read:

11 196.600. As used in ORS 196.600 to 196.655:

12 (1) "Compensatory mitigation" means activities conducted by a permittee or third party to cre-  
13 ate, restore, enhance or preserve the functions and values of the water resources of this state to  
14 compensate for the removal-fill related adverse effects of project development to waters of this state  
15 or to resolve violations of ORS 196.800 to 196.905. Compensatory mitigation for removal-fill activities  
16 does not affect permit requirements of other state departments.

17 (2) "Credit" means the measure of the increase in the functions and values of the water re-  
18 sources of this state achieved at a mitigation bank site.

19 (3) "Mitigation bank" means a site created, restored, enhanced or preserved in accordance with  
20 ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts to waters of this state due  
21 to activities which otherwise comply with the requirements of ORS 196.600 to 196.905.

22 (4) "Mitigation bank instrument" means the legally binding and enforceable agreement between  
23 the Director of the [*Department of State Lands*] **Oregon Department of Natural Resources** and a  
24 mitigation bank sponsor that formally establishes the mitigation bank and stipulates the terms and  
25 conditions of the mitigation bank's construction, operation and long-term management.

26 (5) "Off-site compensatory mitigation" means activities conducted away from the project site  
27 that create, restore, enhance or preserve the functions and values of the water resources of this  
28 state in order to compensate for the adverse impacts to waters of this state from project develop-  
29 ment.

30 (6) "On-site compensatory mitigation" means activities conducted at the project site to create,  
31 restore, enhance or preserve the functions and values of the water resources of this state in order  
32 to compensate for the adverse impacts to waters of this state from project development.

33 (7) "Permit action" means activity under a specific removal or fill permit or other authorization  
34 requested or issued under ORS 196.600 to 196.905.

35 (8) "Service area" means the boundaries set forth in a mitigation bank instrument that include  
36 one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map -  
37 1974, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects  
38 from project developments to waters of this state. Service areas for mitigation banks are not mutu-  
39 ally exclusive.

40 (9) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the [*State*  
41 *Parks and Recreation Department*] **Oregon Department of Natural Resources** pursuant to the  
42 federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460-L et seq.).

43 **SECTION 632.** ORS 196.610 is amended to read:

44 196.610. Subject to approval by the State Land Board, the Director of the [*Department of State*  
45 *Lands*] **Oregon Department of Natural Resources** may:

1 (1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to  
2 196.655.

3 (2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to preserve  
4 sensitive or unique habitat in or near the waters of this state.

5 (3) Pay costs incurred for alterations needed to create, restore, enhance or preserve waters of  
6 this state for purposes of carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to 196.905.

7 (4) Authorize payment of administrative, research or scientific monitoring expenses of the [*De-*  
8 *partment of State Lands*] **Oregon Department of Natural Resources** in carrying out the provisions  
9 of ORS 196.600 to 196.655 or 196.800 to 196.905.

10 (5) Disburse funds received under the federal Coastal Zone Management Act of 1972, as amended  
11 (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

12 (6) Receive funds under the federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, for  
13 the voluntary acquisition of wetlands and interests therein according to the wetlands provisions of  
14 the Statewide Comprehensive Outdoor Recreation Plan. Funds received under the federal Emer-  
15 gency Wetlands Resources Act of 1986, P.L. 99-645, shall be used for nonmitigation complementary  
16 purposes and programs of ORS 196.600 to 196.655.

17 **SECTION 633.** ORS 196.615 is amended to read:

18 196.615. (1) In accordance with the provisions of ORS 196.600 to 196.655, upon the approval of  
19 the State Land Board, the Director of the [*Department of State Lands*] **Oregon Department of**  
20 **Natural Resources** shall initiate and implement a program for mitigation banks. The director shall  
21 encourage the development of and the expeditious approval of mitigation banks and other types of  
22 compensatory mitigation.

23 (2) Subject to the approval of the State Land Board, the [*Department of State Lands*] **Oregon**  
24 **Department of Natural Resources** shall adopt, by rule, standards and criteria for the site se-  
25 lection process, operation and evaluation of mitigation banks. Criteria to be considered shall in-  
26 clude but need not be limited to:

27 (a) Historical trends relating to the waters of this state, including the estimated rate of current  
28 and future losses of the respective types of waters of this state.

29 (b) The contributions of the waters of this state to:

30 (A) Wildlife, migratory birds and resident species;

31 (B) Commercial and sport fisheries;

32 (C) Surface and ground water quality and quantity, and flood moderation;

33 (D) Outdoor recreation including enhancement of scenic waterways; and

34 (E) Scientific and research values.

35 (c) Regional economic needs.

36 (3) The rules adopted by the department under this section must also include:

37 (a) Guidelines for the use of mitigation banks to compensate for adverse effects of project de-  
38 velopment or to resolve violations of ORS 196.800 to 196.905 related to waters of this state; and

39 (b) Guidelines for allowing a permittee or third party to create a mitigation bank or to conduct  
40 compensatory mitigation in order to create, restore, enhance or preserve water resources of this  
41 state.

42 (4) For each mitigation bank, the department shall establish a well-defined plan, including pre-  
43 liminary objectives, inventory of resource values and an evaluation and monitoring program.

44 **SECTION 634.** ORS 196.620 is amended to read:

45 196.620. (1) For each mitigation bank, the [*Department of State Lands*] **Oregon Department of**



1 **Natural Resources** shall establish a system of resource values and credits.

2 (2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in  
3 accordance with ORS 196.825 (4), for any other authorization issued in accordance with ORS 196.800  
4 to 196.905 or to resolve a violation of ORS 196.800 to 196.905. At the request of a mitigation bank  
5 sponsor, the Director of the [*Department of State Lands*] **Oregon Department of Natural Re-**  
6 **sources** may authorize the withdrawal of mitigation bank credits by a public benefit corporation  
7 as defined in ORS 65.001 or a public body as defined by ORS 174.109 designated by the director for  
8 the purpose of reserving credits for future use in accordance with this subsection. The director shall  
9 manage such transactions to ensure that each credit is used no more than one time to satisfy a use  
10 in accordance with this section.

11 (3) Credits from a mitigation bank may be used only as described in subsection (2) of this section  
12 for permits, authorizations or resolutions of violations approved within the service area of the mit-  
13 igation bank, consistent with the mitigation bank instrument, unless the director determines that it  
14 is environmentally preferable to exceed this limitation.

15 (4) Credits from an estuarine mitigation bank may be used only as described in subsection (2)  
16 of this section for permits, authorizations or resolutions of violations approved within the same  
17 estuarine ecological system unless the director determines that it is environmentally preferable to  
18 exceed this limitation.

19 (5) The director may not withdraw any credits from any mitigation bank until the director has:

20 (a) Taken actions sufficient to establish hydrological function of the mitigation bank site;

21 (b) Conducted other creation, restoration, enhancement or preservation actions to establish  
22 other functions and values at the mitigation bank site; and

23 (c) Evaluated the results of the actions and determined that a high probability exists that the  
24 functions and values of the mitigation bank site are equal to or greater than the functions and val-  
25 ues of the area to be impacted or that the functions and values of the mitigation bank compensate  
26 for unavoidable adverse effects on the waters of this state due to the activities otherwise allowed  
27 under ORS 196.600 to 196.905.

28 (6) The price for any mitigation credit shall be set at an amount that will compensate the state  
29 for all of the costs and expenses the state has incurred and is expected to incur in establishing and  
30 maintaining that portion of the mitigation bank.

31 (7) The director shall not consider the availability or nonavailability of mitigation bank credits  
32 in deciding whether to grant or deny any removal or fill permit under ORS 196.600 to 196.905.

33 (8) The director annually shall:

34 (a) Evaluate the functions and values created within each mitigation bank site; and

35 (b) Compare the current functions and values with those that the director anticipated that the  
36 mitigation bank would provide. If the director finds any significant disparity between the actual and  
37 anticipated functions and values, the director shall:

38 (A) Suspend the withdrawal of credits to that mitigation site; or

39 (B) Take prompt action to ensure that the anticipated functions and values are established.

40 (9) The director may not withdraw credits from the mitigation bank for a specific permit, au-  
41 thorization or resolution of a violation if the director determines that:

42 (a) The credits for that specific permit, authorization or resolution of a violation would not ad-  
43 equately maintain habitat or species diversity;

44 (b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently  
45 similar in functions and values to the area to be impacted; or

1 (c) The functions and values of the mitigation bank do not compensate for unavoidable adverse  
2 effects on the waters of this state due to the activities otherwise allowed under ORS 196.600 to  
3 196.905.

4 **SECTION 635.** ORS 196.623 is amended to read:

5 196.623. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
6 approve a watershed enhancement program and certify the project as a mitigation bank under ORS  
7 196.600 to 196.655 if the watershed enhancement program complies with the rules adopted by the  
8 department under ORS 196.615 for certification of a program as a mitigation bank.

9 (2) A person, state agency, federal agency, federally recognized Indian tribe, watershed council  
10 or political subdivision in this state that owns land upon which is located a watershed enhancement  
11 program that qualifies as a mitigation bank under subsection (1) of this section may sell mitigation  
12 credit from the mitigation bank subject to ORS 196.600 to 196.655 and the rules of the department  
13 [*of State Lands*] adopted under ORS 196.600 to 196.655.

14 **SECTION 636.** ORS 196.625 is amended to read:

15 196.625. (1) The Director of the [*Department of State Lands*] **Oregon Department of Natural**  
16 **Resources** shall maintain a record of fill and removal activities and actions for each mitigation  
17 bank implemented and conduct monitoring of mitigation banks with moneys from the Oregon  
18 Removal-Fill Mitigation Fund.

19 (2) The director shall provide annual reports to the State Land Board on moneys spent and re-  
20 ceived for each mitigation bank.

21 **SECTION 637.** ORS 196.630 is amended to read:

22 196.630. Subject to the approval of the State Land Board, the Director of the [*Department of*  
23 *State Lands*] **Oregon Department of Natural Resources** shall adopt rules according to the pro-  
24 visions of ORS chapter 183 to carry out the provisions of ORS 196.600 to 196.655.

25 **SECTION 638.** ORS 196.635 is amended to read:

26 196.635. (1) The provisions of ORS 196.600 to 196.655 shall be carried out by the Director of the  
27 [*Department of State Lands. The Department of State Lands*] **Oregon Department of Natural Re-**  
28 **sources. The Oregon Department of Natural Resources** shall solicit, but not be bound by, com-  
29 ments from the [*State Department of Fish and Wildlife,*] Department of Transportation, [*Department*  
30 *of Land Conservation and Development,*] Department of Environmental Quality, Oregon Business  
31 Development Department, federal natural resources and regulatory agencies, affected local govern-  
32 ments and special districts, conservation organizations and other interested parties. All comments  
33 shall be in writing and provided to the [*Department of State Lands*] **Oregon Department of Natural**  
34 **Resources** and mitigation bank sponsor within 30 days of solicitation by the [*Department of State*  
35 *Lands*] **department**. If comments are not received by the [*Department of State Lands*] **department**  
36 from a state agency or from an affected local government or special district within 30 days of so-  
37 licitation, the director shall assume that the state agency, local government or special district does  
38 not desire to provide comments.

39 (2) In cooperation with the parties in subsection (1) of this section, the director, in consultation  
40 with the State Land Board, shall:

41 (a) Review opportunities for inclusion of appropriate wetlands in the Statewide Comprehensive  
42 Outdoor Recreation Plan.

43 (b) Develop and recommend a wetlands priority plan for inclusion in the Statewide Comprehen-  
44 sive Outdoor Recreation Plan. The wetlands priority plan shall be complementary to the purposes  
45 and programs under ORS 196.600 to 196.655.

1 (3) The director shall [*confer with the Oregon Watershed Enhancement Board to*] develop criteria  
2 to certify watershed enhancement projects as mitigation banks.

3 **SECTION 639.** ORS 196.640 is amended to read:

4 196.640. (1) The Oregon Removal-Fill Mitigation Fund is established, separate and distinct from  
5 the General Fund. All moneys received under ORS 196.645 shall be paid into the State Treasury and  
6 credited to the Oregon Removal-Fill Mitigation Fund. All moneys in the fund are [*appropriated*  
7 *continuously to the Department of State Lands*] **continuously appropriated to the Oregon Depart-**  
8 **ment of Natural Resources** to be used by the department as set forth in ORS 196.650. The moneys  
9 in the fund may be invested and reinvested as provided in ORS 293.701 to 293.820. Interest earned  
10 by the fund shall be credited to the fund.

11 (2) The department shall keep a record of all moneys deposited in the fund. The record shall  
12 indicate by separate cumulative accounts the source from which the moneys are derived and the  
13 individual activity or program against which each withdrawal is charged.

14 (3) The department shall publish annually the record of moneys deposited in and removed from  
15 the fund.

16 (4) The department may adopt rules for prioritizing expenditures from the fund for the purposes  
17 specified in ORS 196.650.

18 **SECTION 640.** ORS 196.645 is amended to read:

19 196.645. The following moneys shall be paid into the Oregon Removal-Fill Mitigation Fund:

20 (1) Any moneys appropriated for that purpose by the Legislative Assembly;

21 (2) Moneys received from conditions imposed on a permit, authorizations or resolutions of vio-  
22 lations, except civil penalties, involving compensatory mitigation in which the [*Department of State*  
23 *Lands*] **Oregon Department of Natural Resources** is the party responsible for the compensatory  
24 mitigation;

25 (3) Moneys awarded for such purposes as specifically stipulated under grants through the federal  
26 Emergency Wetlands Resources Act of 1986, P.L. 99-645, or the federal Coastal Zone Management  
27 Act of 1972, 16 U.S.C. 1451 et seq., as amended;

28 (4) Moneys obtained by gift, bequest, donation or grant from any other public or private source  
29 for the purposes of ORS 196.600 to 196.655 or 196.800 to 196.905;

30 (5) Repayment of moneys from the fund, including interest on such moneys; and

31 (6) Moneys obtained from interest or other earnings from investments of moneys in the fund.

32 **SECTION 641.** ORS 196.650 is amended to read:

33 196.650. The [*Department of State Lands*] **Oregon Department of Natural Resources** may use  
34 the moneys in the Oregon Removal-Fill Mitigation Fund for the following purposes:

35 (1) For the voluntary acquisition of land or interests therein suitable for use in mitigation banks.

36 (2) To pay for specific projects to create, restore, enhance or preserve water resources of this  
37 state for purposes of carrying out the provisions of ORS 196.600 to 196.905. Moneys deposited in the  
38 fund for impacts to the waters of this state may be used only for projects that create, restore, en-  
39 hance or preserve water resources of this state.

40 (3) For the implementation of long-term protection measures related to projects that create, re-  
41 store, enhance or preserve water resources of this state.

42 (4) For purchase of credits from approved mitigation banks.

43 (5) For payment of administrative, research or scientific monitoring expenses of the department  
44 in carrying out the provisions of ORS 196.600 to 196.655.

45 (6) For the disbursement of funds received under the federal Coastal Zone Management Act of 1972,

1 as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

2 (7) For the disbursement of funds received under the federal Emergency Wetlands Resources Act of  
3 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein as identified in the  
4 wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan.

5 **SECTION 642.** ORS 196.655 is amended to read:

6 196.655. As part of the report to the State Land Board required under ORS 196.885, the Director  
7 of the [*Department of State Lands*] **Oregon Department of Natural Resources** shall prepare an  
8 annual report on the Oregon Removal-Fill Mitigation Fund. The report shall include, but need not  
9 be limited to:

10 (1) The financial status of the fund;

11 (2) Creation, restoration, enhancement or preservation activities and credits sold, granted or  
12 otherwise disposed of or remaining in mitigation banks established under ORS 196.600 to 196.655;

13 (3) Portions of the waters of this state, including but not limited to wetlands, acquired with  
14 moneys in the fund;

15 (4) Compensatory mitigation projects financed with moneys in the fund; and

16 (5) For each mitigation bank, a summary of activities, including but not limited to:

17 (a) A description of the location, size, number of potential credits and credits withdrawn for  
18 each specific permit action; and

19 (b) The status of all mitigation bank activities pending or completed during the past year.

20 **SECTION 643.** ORS 196.674 is amended to read:

21 196.674. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
22 compile and maintain a comprehensive Statewide Wetlands Inventory.

23 (2) In compiling the Statewide Wetlands Inventory, the department shall develop, by rule, a  
24 system for uniform wetland identification, delineation and comprehensive mapping. Initial invento-  
25 ries shall be based upon the National Wetlands Inventory prepared by the United States Department  
26 of the Interior, Fish and Wildlife Service. The [*Department of State Lands*] **Oregon Department of**  
27 **Natural Resources** shall consult with the public, local governments and affected state and federal  
28 agencies concerning the accuracy of the inventory.

29 (3) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall revise the  
30 inventory maps as new or more complete information becomes available.

31 (4) The department [*of State Lands*] shall provide each city and county planning office with  
32 copies of the Statewide Wetlands Inventory covering the local jurisdiction.

33 (5) The department [*of State Lands*] shall provide each state agency with a copy of the inventory  
34 upon request.

35 (6) Copies of the Statewide Wetlands Inventory shall be made available to the general public,  
36 through the department [*of State Lands*], upon payment of a fee to offset administrative and re-  
37 production costs.

38 (7) A wetland inventory developed by another party may be utilized by the department [*of State*  
39 *Lands*] if it is consistent with standards adopted pursuant to this section, after consulting with the  
40 affected local government, and is reviewed and approved by the department [*of State Lands*] as  
41 complying with the standards adopted pursuant to subsection (2) of this section.

42 (8) Nothing in this section shall restrict the regulatory jurisdiction of the department [*of State*  
43 *Lands*] under ORS 196.800 to 196.905.

44 (9) In compiling and updating the Statewide Wetlands Inventory, the department [*of State*  
45 *Lands*] shall identify opportunities for wetland creation, restoration and enhancement when the in-

1 formation is available.

2 **SECTION 644.** ORS 196.676 is amended to read:

3 196.676. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall re-  
4 spond to the notice received from local governments pursuant to ORS 215.418 (1) and 227.350 (1)  
5 within 30 days of receipt of the notice. The response shall state whether a permit is or in the future  
6 will be required or whether a permit has been issued by the department for the activity which is  
7 subject to notice.

8 **SECTION 645.** ORS 196.678 is amended to read:

9 196.678. (1) Any city or county may develop and submit to the [*Department of State Lands*]  
10 **Oregon Department of Natural Resources** a wetland conservation plan for review pursuant to the  
11 provisions of ORS 196.678 to 196.684.

12 (2) A wetland conservation plan shall include the following elements:

13 (a) A description and maps of the area to be covered by the plan;

14 (b) A detailed inventory of the wetlands, identifying the location, quality and quantity of the  
15 wetland resource and the source of the water for the wetlands within the area covered by the plan;

16 (c) An assessment of wetland functions and values, including an historical analysis of wetland  
17 degradation, alterations and losses;

18 (d) Designation of wetland areas for protection, conservation or development. Wetlands within  
19 areas designated for development shall be delineated to determine regulatory boundaries;

20 (e) A mitigation plan, including a program for replacement of planned wetland losses and res-  
21 toration of lost functions and values through creation of new wetlands or enhancement of existing  
22 wetland areas which designates specific sites within the plan area and actions for restoration and  
23 enhancement;

24 (f) Policies and implementing measures establishing protection, conservation and best use of the  
25 wetlands in the plan area;

26 (g) Specification of sites for fill or removal, or both, and the conditions and procedures under  
27 which fill or removal, or both, may occur;

28 (h) Monitoring provisions that insure the wetland mitigation measures are implemented and  
29 mitigation goals are achieved;

30 (i) Identification of public uses of the wetlands and waters and conflicting planned uses; and

31 (j) Specification of buffer areas and uses allowed on lands which are adjacent to wetlands and  
32 which are necessary to maintain, protect or restore wetland functions and values.

33 (3) The proposed wetland conservation plan shall be adopted by the affected local government  
34 according to the procedures set forth in ORS 197.610 to 197.625.

35 **SECTION 646.** ORS 196.681 is amended to read:

36 196.681. (1) In accordance with rules adopted pursuant to this chapter, the [*Department of State*]  
37 [*Lands*] **Oregon Department of Natural Resources** shall:

38 (a) Review any proposed wetland conservation plan or proposed amendment to an approved  
39 wetland conservation plan against the standards in this section;

40 (b) Prepare a proposed order that approves, approves with conditions or denies the proposed  
41 wetland conservation plan or proposed amendment to an approved wetland conservation plan;

42 (c) Provide notice and the opportunity for public hearing and comment on the proposed order;

43 (d) Consult with affected local, state and federal agencies; and

44 (e) Consider the applicable findings made in the order of acknowledgment issued by the [*Land*]  
45 [*Conservation and Development Commission*] **Oregon Natural Resources Commission**.

1 (2) The Director of the [*Department of State Lands*] **Oregon Department of Natural Resources**  
2 may approve by order a wetland conservation plan that includes the necessary elements of ORS  
3 196.678 (2) and meets the standards of subsections (3) and (4) of this section.

4 (3) A wetland conservation plan shall comply with the following standards:

5 (a) Uses and activities permitted in the plan including fill or removal, or both, conform to sound  
6 policies of conservation and will not interfere with public health and safety;

7 (b) Uses and activities permitted in the plan including fill or removal, or both, are not incon-  
8 sistent with the protection, conservation and best use of the water resources of this state and the  
9 use of state waters for navigation, fishing and public recreation; and

10 (c) Designation of wetlands for protection, conservation and development is consistent with the  
11 resource functions and values of the area and the capability of the wetland area to withstand al-  
12 terations and maintain important functions and values.

13 (4) Wetland areas may be designated for development including fill or removal, or both, only if  
14 they meet the following standards:

15 (a) There is a public need for the proposed uses set forth in the acknowledged comprehensive  
16 plan for the area;

17 (b) Any planned wetland losses shall be fully offset by creation, restoration or enhancement of  
18 wetland functions and values or in an estuarine area, estuarine resource replacement is consistent  
19 with ORS 196.830; and

20 (c) Practicable, less damaging alternatives, including alternative locations for the proposed use  
21 are not available.

22 (5) Approval by the director of a wetland conservation plan shall be conditioned upon adoption  
23 by the affected local governments of comprehensive plan policies and land use regulations consistent  
24 with and sufficient to implement the wetland conservation plan. Appropriate implementing measures  
25 may include the following planning and zoning requirements regulating:

26 (a) Adjacent lands or buffer areas necessary to maintain, protect or restore wetland functions  
27 and values, including riparian vegetation, and the uses to be allowed in those areas;

28 (b) Sites for mitigation of impacts from development activities;

29 (c) Upland areas adjacent to wetlands; and

30 (d) Activities or location of buildings, structures and improvements which may affect wetland  
31 values or functions, such as storm water runoff.

32 (6) The director shall issue an order approving, approving with conditions or denying a wetland  
33 conservation plan, including a clear statement of findings which sets forth the basis for the approval,  
34 conditioning or denial. The order shall include:

35 (a) A clear statement of findings that the elements specified in ORS 196.678 (2) have been de-  
36 veloped;

37 (b) The findings in support of the determination of compliance or noncompliance with the stan-  
38 dards in subsections (3) and (4) of this section; and

39 (c) The conditions under which fill or removal or both may occur.

40 (7) The director may, as a part of an order approving a plan, authorize site-specific fill or re-  
41 moval without an individual permit as required by ORS 196.810 provided that:

42 (a) The director adopts findings demonstrating that fill or removal for any proposed project  
43 complies with ORS 196.682 (1)(a) to (e); or

44 (b) The director adopts findings that specific areas of fill or removal within areas designated as  
45 development in the plan meet the following standards:

1 (A) The fill or removal approved by the order will result in minimal impacts to the wetland  
2 system in the planning area;

3 (B) The public need for the proposed area of fill or removal outweighs the environmental damage  
4 likely to result from full development;

5 (C) The director conditions any such order as necessary to ensure that the fill or removal, or  
6 both, is designed to minimize impacts from implementing the project; and

7 (D) Full replacement of wetland losses is provided through creation, restoration or enhancement  
8 of wetlands with comparable functions and values.

9 (8) Upon a finding by the director that a fill or removal, or both, authorized under subsection  
10 (7)(b) of this section has caused or is likely to cause more than minimal adverse impact to the  
11 wetland system considering required mitigation conditions, the director shall revise the order to  
12 require individual permit review according to ORS 196.682 or provide additional conditions to ensure  
13 that adverse impacts are minimal. Such revision shall not be subject to ORS 196.684.

14 **SECTION 647.** ORS 196.682 is amended to read:

15 196.682. (1) Except where otherwise provided by the order approving the plan, individual permit  
16 applications shall be required for removal or fill, or both, in areas subject to an approved wetland  
17 conservation plan. If individual permit applications are to be reviewed under the authority of the  
18 Director of the [*Department of State Lands*] **Oregon Department of Natural Resources**, then ap-  
19 plication fees and review procedures shall be in accordance with ORS 196.815, 196.825 and 196.835.  
20 In lieu of the substantive standards for permit issuance in ORS 196.825 (2), the [*Department of State*  
21 *Lands*] **Oregon Department of Natural Resources** shall issue a permit if the removal or fill, or  
22 both, is consistent with the wetland conservation plan or can be conditioned to be consistent with  
23 the plan. The department shall condition any such permit as necessary to ensure that the project:

24 (a) Is properly designed or configured to minimize the need for alterations to waters of this  
25 state;

26 (b) Is the minimum size necessary to reasonably provide for the proposed use;

27 (c) Complies with applicable provisions of the acknowledged comprehensive plan and land use  
28 regulations for the area;

29 (d) Is designed to minimize impacts from implementing the project; and

30 (e) Is conditioned to ensure wetland creation, restoration, enhancement or preservation meas-  
31 ures are implemented to fully replace impacted resources.

32 (2) In any order approving a plan that authorizes any fill or removal or both, without the ne-  
33 cessity of subsequently obtaining an individual permit, the director shall condition such approval  
34 as necessary to ensure that the project complies with the conditions of subsection (1) of this section  
35 and clearly delineates the wetland area in which fill or removal, or both, is to occur.

36 **SECTION 648.** ORS 196.684 is amended to read:

37 196.684. (1) Local governments shall provide notice to the [*Department of State Lands*] **Oregon**  
38 **Department of Natural Resources** of any proposed amendments to the land use plan and ordi-  
39 nances affecting lands subject to a wetland conservation plan approved under this section.

40 (2) Amendments to plan policies, maps and implementing ordinances by the local government  
41 within an approved wetland conservation plan shall be reviewed by the department against the re-  
42 quirements of this section. These provisions do not exempt local governments from the provisions  
43 of ORS 197.610 to 197.625.

44 (3) The Director of the [*Department of State Lands*] **Oregon Department of Natural Resources**  
45 shall provide notice and the opportunity for public comment and hearing as defined by rule on the

1 matter of including the amendment in the wetland conservation plan.

2 (4) If the director finds that the proposed local government amendment to acknowledged com-  
3 prehensive plan and land use regulations meets the requirements of ORS 196.681, the director shall  
4 approve the plan by order, and notify the local government within 10 days of the completion of the  
5 public review provided in subsection (3) of this section.

6 (5) If the amendments to acknowledged comprehensive plan and land use regulations adopted  
7 by the local government are determined not to comply with the requirements of ORS 196.668 to  
8 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279,  
9 215.213, 215.283, 215.284, 215.418 and 227.350, the director shall revoke the approval order or amend  
10 the order to [*insure*] **ensure** compliance with the requirements of ORS 196.668 to 196.692, 196.800,  
11 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283,  
12 215.284, 215.418 and 227.350.

13 (6) The department shall review each approved wetland conservation plan every five years. After  
14 such review the director shall either modify, reissue or rescind the order approving the plan.

15 (7) In conducting the five-year review of an approved wetland conservation plan, the director  
16 shall provide notice and the opportunity for public comment and hearing on whether:

17 (a) There has been a substantial change in circumstances that would affect the wetland re-  
18 sources subject to the plan and would adversely affect the compliance of the plan with the standards  
19 in ORS 196.681;

20 (b) Changes have been made in applicable state law, statewide land use planning goals, federal  
21 law or agency rules that require the plan to be changed; and

22 (c) In the director's evaluation, the plan as implemented over the preceding five years meets the  
23 goals established in the plan.

24 (8) Wetland conservation plans approved by the director [*of the Department of State Lands*]  
25 pursuant to ORS 196.668 to 196.692 shall be deemed to comply with the requirements of any state-  
26 wide planning goals relating to wetlands, other than estuarine wetlands, for those areas, uses and  
27 activities which are regulated by the plan.

28 [(9) *An order by the director regarding approval, amendment or review of a wetland conservation*  
29 *plan shall be reviewable by the Land Use Board of Appeals as a land use decision of a state agency.*  
30 *For the purpose of such review, the director's order shall not become final until the local government*  
31 *adopts its wetland conservation plan or plan amendment. The Land Use Board of Appeals shall con-*  
32 *solidate for review appeals of the director's order and the local government adoption. The Land Use*  
33 *Board of Appeals shall review such order for compliance with the requirements of ORS 196.668 to*  
34 *196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279,*  
35 *215.213, 215.283, 215.284, 215.418 and 227.350.*]

36 [(10)] (9) Nothing in this section shall be construed to require a contested case proceeding re-  
37 garding approval, amendment or review of a wetland conservation plan.

38 [(11)] (10) Nothing in this section shall be construed to affect the evaluation of a permit appli-  
39 cation in areas that do not have a wetland conservation plan.

40 [(12)] (11) Upon a finding by the director, after a public hearing, that an affected local govern-  
41 ment is not enforcing the comprehensive plan provisions or land use regulations set forth in the  
42 conditions of the order, as specified in ORS 196.681 (5), and that such lack of enforcement has re-  
43 sulted or would result in adverse impacts to wetlands, the director shall modify, suspend or revoke  
44 approval of the wetland conservation plan.

45 **SECTION 649.** ORS 196.686 is amended to read:



1       196.686. (1) For the purposes of this section, an acknowledged estuary management plan includes  
2 the comprehensive plan and land use regulations adopted by cities and counties to satisfy the re-  
3 quirement of statewide planning goals related to estuarine resources including shoreland portions  
4 of estuarine sites designated for development as those plans and regulations existed on January 1,  
5 1989.

6       (2) Any city or county may submit an acknowledged estuary management plan for review and  
7 approval by the [*Department of State Lands*] **Oregon Department of Natural Resources** pursuant  
8 to the provisions of this section. The plan shall be submitted with a written request for review.

9       (3) To allow timely and effective review of acknowledged estuary management plans, the de-  
10 partment may limit acceptance for review to two plans but not more than one plan for a deep draft  
11 development estuary at any one time.

12       (4) With the consent of the city or county submitting an estuary management plan for review  
13 and approval, the department may extend any or all of the deadlines set forth in this section.

14       (5) Acknowledged estuary management plans shall be presumed to comply with requirements for  
15 approval of wetland conservation plans specified in ORS 196.681.

16       (6) Within 10 days of acceptance of a request for review, the department shall provide notice to  
17 affected state agencies, local governments, federal agencies and the public of receipt of the ac-  
18 knowledged estuary management plan and of the request for review and approval of the acknowl-  
19 edged estuary management plan as a wetland conservation plan.

20       (7) Within 30 days of acceptance of a request for review and upon provision of at least two  
21 weeks' notice, the department shall hold a public informational hearing on the proposed approval  
22 of the acknowledged estuary management plan as a wetland conservation plan.

23       (8) Within 60 days of acceptance of the request for review, the department shall conduct a pre-  
24 liminary review of the acknowledged estuary management plan. The department shall consult with  
25 the affected local government prior to finalizing the preliminary review.

26       (9) Except as provided in subsection (10) of this section, the Director of the [*Department of State*  
27 *Lands*] **Oregon Department of Natural Resources** shall approve the acknowledged estuary man-  
28 agement plan by order within 60 days of completion of the preliminary review.

29       (10) A contested case hearing shall be held within 30 days of the completion of the preliminary  
30 review or receipt of a request for hearing if:

31       (a) The director determines there is probable cause to believe that the estuary management plan  
32 does not meet the standards for approving wetland conservation plans or unreasonably interferes  
33 with the use of the estuary for navigation, fisheries or public recreation; or

34       (b) A hearing is requested and the request:

35       (A) Is made in writing within 60 days of the date of mailing of notice of completion of review;

36       (B) Clearly states the reasons for requesting the hearing; and

37       (C) Provides sufficient information for the director to determine that there is probable cause to  
38 believe that the estuary management plan does not meet the standards for approving wetland con-  
39 servation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or  
40 public recreation.

41       (11) The director shall approve the acknowledged estuary management plan as a wetland con-  
42 servation plan by order unless the director finds by a preponderance of the evidence that the  
43 estuary management plan does not meet the standards for approving wetland conservation plans or  
44 unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation or  
45 that substantial fills proposed in an estuary management plan for nonwater dependent use are not

1 for a public use and would not satisfy a public need that outweighs harm to navigation, fisheries  
2 or public recreation.

3 (12) The director shall prepare a proposed order for review by the parties within 30 days of any  
4 contested case hearing held pursuant to subsection (10) of this section.

5 (13) A final order from the director that recommends, pursuant to subsection (8) of this section,  
6 denial of an estuary management plan as a wetland conservation plan shall identify deficient ele-  
7 ments and provisions of the acknowledged estuary management plan and what measures may be  
8 taken to correct those deficiencies.

9 (14) Individual permit applications shall be required for removal or fill, or both, in areas subject  
10 to an approved estuary management plan. Individual permit applications shall be reviewed in ac-  
11 cordance with ORS 196.815, 196.825, 196.830 and 196.835. In lieu of the substantive standards for  
12 permit issuance in ORS 196.825 (2), the department shall issue a permit if the removal or fill, or  
13 both, is determined by the director to be consistent with the estuary management plan or can be  
14 conditioned to be consistent with the plan. The department shall condition any such permit as nec-  
15 essary to ensure that the project:

16 (a) Is designed or configured to minimize alterations to waters of this state;

17 (b) Is the minimum size necessary to reasonably provide for the proposed use;

18 (c) Is consistent with the resource capabilities of the area and the purposes of the management  
19 unit, unless this has been previously determined in the approved estuary management plan;

20 (d) Is designed to minimize impacts from implementing the project; and

21 (e) Has estuarine resource replacement measures for creation, restoration, enhancement or  
22 preservation that replaces impacted resources.

23 (15) Judicial review of an order granting or denying approval of an estuary management plan  
24 as provided in this section shall be as provided in ORS 183.470.

25 (16) Following approval by the director of an estuary management plan, the requirements of ORS  
26 196.684 shall apply to the approved estuary management plan.

27 **SECTION 650.** ORS 196.687 is amended to read:

28 196.687. (1) Notwithstanding the provisions of ORS 196.600 to 196.905, state or local governments  
29 shall not prohibit or restrict the alteration or fill of wetland areas up to one acre in size that have  
30 been artificially created from upland for the purpose of controlling, storing or maintaining storm  
31 water.

32 (2) An area that was developed as a storm water detention or retention facility as a condition  
33 of a development approval shall not be altered or filled without acceptance by the approving au-  
34 thority of a plan to mitigate the loss of functional capabilities of the detention or retention facility.

35 (3) Until a local government adopts an ordinance to conform its comprehensive plan and land  
36 use regulations to the provisions of this section, the provisions of subsection (1) of this section shall  
37 apply directly to proposed activities in wetland areas. Any portion of a goal, rule, comprehensive  
38 plan, land use regulation or ordinance not in conformance with the provisions of this section on  
39 September 9, 1995:

40 (a) Shall not be implemented or enforced; and

41 (b) Has no legal effect.

42 (4) The provisions of this section do not apply to land used to mitigate the loss of wetlands.

43 (5) If the [*Department of State Lands*] **Oregon Department of Natural Resources** assumes re-  
44 sponsibility under 33 U.S.C. §1344(g) of the Federal Water Pollution Control Act, ORS 196.600 to  
45 196.905 shall apply to artificially created wetlands described in subsections (1) and (2) of this sec-

1 tion.

2 **SECTION 651.** ORS 196.688 is amended to read:

3 196.688. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
4 develop a public information program to educate permit applicants and the general public about:

5 (a) Wetland functions and values.

6 (b) The status and trends of Oregon's wetlands.

7 (c) The Statewide Wetlands Inventory.

8 (d) Wetland regulation.

9 (2) Upon request, the department shall, within the limits of staffing ability, provide technical  
10 assistance to other state agencies and local governments and the public in identifying and deline-  
11 ating the boundaries of wetlands.

12 **SECTION 652.** ORS 196.692 is amended to read:

13 196.692. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
14 adopt rules to carry out the provisions of ORS 196.668 to 196.692, 196.800, 196.810, 196.818, 196.825,  
15 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and  
16 227.350.

17 (2) Rules adopted pursuant to subsection (1) of this section shall include rules governing the  
18 application for and issuance of permits to remove material from the beds or banks of any waters of  
19 this state or to fill any waters of this state including, but not limited to, clear and objective stan-  
20 dards and criteria for determining whether to grant or deny a permit.

21 **SECTION 653.** ORS 196.795 is amended to read:

22 196.795. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
23 continue to pursue methods to streamline the process for administering permits for the removal of  
24 material from the bed or banks of any waters of this state or for filling the waters of this state,  
25 reducing paperwork, eliminating duplication, increasing certainty and timeliness and enhancing re-  
26 source protection. The efforts of the department [*of State Lands*] shall include but need not be lim-  
27 ited to applying to the United States Army Corps of Engineers for a state program general permit  
28 as authorized in federal regulations implementing section 404 of the Federal Water Pollution Control  
29 Act, and section 10 of the Rivers and Harbors Act of 1899, as amended. In conjunction with these  
30 activities, the department [*of State Lands*] may continue to investigate the possibility of assuming  
31 the federal regulatory program under 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act.

32 (2) The department shall report periodically to the appropriate legislative committee on the  
33 progress in implementing subsection (1) of this section.

34 **SECTION 654.** ORS 196.805 is amended to read:

35 196.805. (1) The protection, conservation and best use of the water resources of this state are  
36 matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in  
37 this state, including not only water and materials for domestic, agricultural and industrial use but  
38 also habitats and spawning areas for fish, avenues for transportation and sites for commerce and  
39 public recreation, are vital to the economy and well-being of this state and its people. Unregulated  
40 removal of material from the beds and banks of the waters of this state may create hazards to the  
41 health, safety and welfare of the people of this state. Unregulated filling in the waters of this state  
42 for any purpose, may result in interfering with or injuring public navigation, fishery and recre-  
43 ational uses of the waters. In order to provide for the best possible use of the water resources of  
44 this state, it is desirable to centralize authority in the Director of the [*Department of State Lands*]  
45 **Oregon Department of Natural Resources**, and implement control of the removal of material from

1 the beds and banks or filling of the waters of this state.

2 (2) The director shall take into consideration all beneficial uses of water including streambank  
3 protection when administering fill and removal statutes.

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

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

10 (5) The *[Department of State Lands]* **Oregon Department of Natural Resources** shall give  
11 priority to the review of wetland delineation reports submitted with or in advance of an application  
12 for fill or removal of material from the waters of this state.

13 **SECTION 655.** ORS 196.810 is amended to read:

14 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person  
15 may not remove any material from the beds or banks of any waters of this state or fill any waters  
16 of this state without a permit issued under authority of the Director of the *[Department of State*  
17 *Lands]* **Oregon Department of Natural Resources**, or in a manner contrary to the conditions set  
18 out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland  
19 conservation plan.

20 (b) Notwithstanding the permit requirements of this section and notwithstanding the provisions  
21 of ORS 196.800 (3) and (12), if any removal or fill activity is proposed in essential indigenous  
22 anadromous salmonid habitat, except for those activities customarily associated with agriculture, a  
23 permit is required. "Essential indigenous anadromous salmonid habitat" as defined under this sec-  
24 tion shall be further defined and designated by rule by the *[Department of State Lands in consultation*  
25 *with the State Department of Fish and Wildlife]* **Oregon Department of Natural Resources** and in  
26 consultation with other affected parties.

27 (c) A person is not required to obtain a permit under paragraph (b) of this subsection for pros-  
28 pecting or other nonmotorized activities resulting in the removal from or fill of less than one cubic  
29 yard of material at any one individual site and, cumulatively, not more than five cubic yards of  
30 material within a designated essential indigenous anadromous salmonid habitat segment in a single  
31 year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet  
32 perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or  
33 filling activities customarily associated with mining require a permit under paragraph (b) of this  
34 subsection.

35 (d) A permit is not required under paragraph (b) of this subsection for construction or mainte-  
36 nance of fish passage and fish screening structures that are constructed, operated or maintained  
37 under ORS 498.306, 498.316, 498.326 or 509.600 to 509.645.

38 (e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

39 (f) As used in paragraphs (b) and (c) of this subsection:

40 (A) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel  
41 bar.

42 (B) "Essential indigenous anadromous salmonid habitat" means the habitat that is necessary to  
43 prevent the depletion of indigenous anadromous salmonid species during their life history stages of  
44 spawning and rearing.

45 (C) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho salmon, and

1 steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive,  
2 threatened or endangered by a state or federal authority.

3 (D) "Prospecting" means searching or exploring for samples of gold, silver or other precious  
4 minerals, using nonmotorized methods, from among small quantities of aggregate.

5 (E) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-  
6 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the  
7 activity occurs.

8 (2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in  
9 opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

10 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit  
11 or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967.  
12 However, no such contract, permit or lease may be renewed or extended on or after September 13,  
13 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

14 (4) Notwithstanding subsection (1) of this section, the [*Department of State Lands*] **Oregon De-**  
15 **partment of Natural Resources** may issue, orally or in writing, an emergency authorization to a  
16 person for the removal of material from the beds or banks or filling of any waters of this state in  
17 an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm,  
18 injury or damage to persons or property. The emergency authorization issued under this subsection:

19 (a) Shall contain conditions of operation that the department determines are necessary to mini-  
20 mize impacts to water resources or adjoining properties.

21 (b) Shall be based, whenever practicable, on the recommendations contained in an on-site eval-  
22 uation by an employee or representative of the department.

23 (c) If issued orally, shall be confirmed in writing by the department within five days.

24 (d) Does not relieve the person from payment of a fee calculated in the manner provided in ORS  
25 196.815.

26 **SECTION 656.** ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, section  
27 97, chapter 14, Oregon Laws 2003, section 64, chapter 71, Oregon Laws 2007, section 5, chapter 625,  
28 Oregon Laws 2007, and section 15, chapter 849, Oregon Laws 2007, is amended to read:

29 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person  
30 may not remove any material from the beds or banks of any waters of this state or fill any waters  
31 of this state without a permit issued under authority of the Director of the [*Department of State*  
32 *Lands*] **Oregon Department of Natural Resources**, or in a manner contrary to the conditions set  
33 out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland  
34 conservation plan.

35 (b) A permit is not required under paragraph (a) of this subsection for prospecting or other  
36 nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material  
37 at any one individual site and, cumulatively, not more than five cubic yards of material within a  
38 particular stream segment in a single year. Prospecting or other nonmotorized activities may be  
39 conducted only within the bed or wet perimeter of the waterway and may not occur at any site  
40 where fish eggs are present. Removal or filling activities customarily associated with mining require  
41 a permit under paragraph (a) of this subsection.

42 (c) A permit is not required under paragraph (a) of this subsection for construction or mainte-  
43 nance of fish passage and fish screening structures associated with irrigation ditches or the main-  
44 tenance of drainage ditches that are constructed, operated or maintained under ORS 498.306,  
45 498.316, 498.326 or 509.600 to 509.645.

1 (d) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

2 (2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in  
3 opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

4 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit  
5 or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967.  
6 However, a contract, permit or lease may not be renewed or extended on or after September 13,  
7 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

8 (4) Notwithstanding subsection (1) of this section, the [*Department of State Lands*] **Oregon De-**  
9 **partment of Natural Resources** may issue, orally or in writing, an emergency authorization to a  
10 person for the removal of material from the beds or banks or filling of any waters of this state in  
11 an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm,  
12 injury or damage to persons or property. The emergency authorization issued under this subsection:

13 (a) Shall contain conditions of operation that the department determines are necessary to mini-  
14 mize impacts to water resources or adjoining properties.

15 (b) Shall be based, whenever practicable, on the recommendations contained in an on-site eval-  
16 uation by an employee or representative of the department.

17 (c) If issued orally, shall be confirmed in writing by the department within five days.

18 (d) Does not relieve the person from payment of a fee calculated in the manner provided in ORS  
19 196.815.

20 (5) As used in this section:

21 (a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel  
22 bar.

23 (b) "Prospecting" means searching or exploring for samples of gold, silver or other precious  
24 minerals, using nonmotorized methods, from among small quantities of aggregate.

25 (c) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-  
26 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the  
27 activity occurs.

28 **SECTION 657.** ORS 196.815 is amended to read:

29 196.815. (1) A person who is required to have a permit to remove material from the bed or banks  
30 or fill any waters of this state shall file a written application with the Director of the [*Department*  
31 *of State Lands*] **Oregon Department of Natural Resources** for each individual project before per-  
32 forming any removal or fill.

33 (2)(a) Each application under subsection (1) of this section must be accompanied by a base fee  
34 in accordance with the following schedule:

35 (A) For a removal by a private operator, or a person contracting to perform services for a pri-  
36 vate operator, \$85.

37 (B) For a removal by a public body, \$250.

38 (C) For a removal by a commercial operator, \$250.

39 (D) For a fill by a private operator, or a person contracting to perform services for a private  
40 operator, \$250.

41 (E) For a fill by a public body, \$620.

42 (F) For a fill by a commercial operator, \$620.

43 (G) For erosion-flood repair, including riprap, no fee.

44 (b) In addition to the base fee for removal established under paragraph (a) of this subsection,  
45 each applicant shall also pay as part of the application fee the following fee based on the volume

1 of removal material:

2 (A) Less than 500 cubic yards, no volume fee.

3 (B) 500 to less than 5,000 cubic yards, \$125.

4 (C) 5,000 to less than or equal to 50,000 cubic yards, \$250.

5 (D) Over 50,000 cubic yards, \$375.

6 (c) In addition to the base fee for fill established under paragraph (a) of this subsection, each  
7 applicant shall also pay as part of the application fee the following fee based on the volume of fill  
8 material:

9 (A) Less than 500 cubic yards, no volume fee.

10 (B) 500 to less than 3,000 cubic yards, \$125.

11 (C) 3,000 to less than or equal to 10,000 cubic yards, \$250.

12 (D) Over 10,000 cubic yards, \$375.

13 (d) The [*department*] **Oregon Department of Natural Resources** may establish by rule a  
14 volume-based fee for the commercial removal of sand and gravel from the waters of this state for  
15 use in administering the provisions of the fill and removal law in this state.

16 (e) For the purposes of this subsection:

17 (A) "Private operator" means any person undertaking a project for exclusively a nonincome-  
18 producing and nonprofit purpose;

19 (B) "Public body" means federal, state, and local governmental bodies, unless specifically ex-  
20 empted by law, engaged in projects for the purpose of providing free public services;

21 (C) "Commercial operator" means any person undertaking a project having financial profit as  
22 a goal;

23 (D) "Riprap" means the facing of a streambank with rock or similar substance to control erosion  
24 in accordance with rules adopted by the department [*of State Lands*]; and

25 (E) "Erosion-flood repair" means riprap or any other work necessary to preserve existing facil-  
26 ities and land from flood and high streamflows, in accordance with regulations promulgated by the  
27 department.

28 (3) For each application that involves both removal and filling, the application fee assessed shall  
29 be either for removal or filling, whichever is higher according to the fee schedule in subsection (2)  
30 of this section.

31 (4) The department may waive the fees specified in subsection (2) of this section for a permit  
32 that will be used to perform a voluntary habitat restoration project.

33 (5) A person who receives an emergency authorization under ORS 196.810 to remove material  
34 from the beds or banks of any waters of this state or to fill any waters of this state shall, within  
35 45 days after receiving the authorization, submit a fee to the department calculated in the manner  
36 provided under this section for permit applications.

37 (6) Each holder of a material removal or fill permit shall pay a fee during the term of the permit  
38 in accordance with the schedule set forth in subsection (2) of this section, except that the applicant  
39 shall pay only the base fee. For multiyear permits valid over a period of more than one year, the  
40 department may assess a one-time fee that covers all fees due under subsection (2) of this section  
41 for the period of the permit. The permit shall be suspended during any period of delinquency of  
42 payment as though no permit was applied for. Notwithstanding this subsection the director may,  
43 before granting a renewal of the permit, require the permittee to show that the continued exercise  
44 of the permit is consistent with the protection, conservation and best use of the water resources of  
45 this state.

1 (7) Fees received under this section shall be credited to the Common School Fund for use by the  
2 department in administration of ORS 196.600 to 196.905.

3 (8) The director shall issue an order revising the fees specified in this section on January 1 of  
4 each year, beginning in 2009, based on changes in the Portland-Salem, OR-WA Consumer Price Index  
5 for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United  
6 States Department of Labor. The director shall round the amount of each fee to the nearest dollar.  
7 The revised fees shall take effect January 1 and apply for that calendar year.

8 **SECTION 658.** ORS 196.817 is amended to read:

9 196.817. (1)(a) Notwithstanding ORS 196.810, the [*Department of State Lands*] **Oregon Depart-**  
10 **ment of Natural Resources** may establish by rule a removal or fill general permit:

11 (A) For processing applications on a statewide or geographic basis; or

12 (B) For an applicant or group of applicants to cover activities that are substantially similar in  
13 nature, are recurring or ongoing, and have predictable effects and outcomes.

14 (b) The department must find that the project is in compliance with the review standards set  
15 forth in ORS 196.600 to 196.905 and would not result in long-term harm to water resources of this  
16 state.

17 (c) The department shall condition any such general permit upon actions necessary to minimize  
18 environmental effects.

19 (2) Any person proposing to conduct an action under a general permit shall apply to the de-  
20 partment in accordance with procedures set forth by the department by rule.

21 (3) The department shall amend or rescind any general permit upon a determination that the  
22 activities conducted under the permit have resulted in or would result in unacceptable individual  
23 or cumulative environmental effects or long-term harm to the water resources of this state.

24 (4) Any person proposing to conduct an action under a general permit shall pay the applicable  
25 fee required under ORS 196.815 for individual permit applications.

26 **SECTION 659.** ORS 196.818 is amended to read:

27 196.818. (1) A person or governmental body must pay to the [*Department of State Lands*] **Oregon**  
28 **Department of Natural Resources** a nonrefundable fee of \$350 when submitting a wetland delin-  
29 eation report to the department for a determination of:

30 (a) Whether waters of this state are present on a specific land parcel;

31 (b) Where the boundaries of waters of this state are located on a land parcel; or

32 (c) Whether the waters of this state or a proposed activity in the waters of this state is subject  
33 to permit requirements.

34 (2) The department shall review the wetland delineation report submitted under subsection (1)  
35 of this section within 120 days after submission of the wetland delineation report to the department.

36 (3) The fee described in subsection (1) of this section is in addition to any permit application fee  
37 required under ORS 196.815. A person or governmental body submitting a revised report to replace  
38 a previously rejected report must pay an additional nonrefundable fee of \$100.

39 (4) The Director of the [*Department of State Lands*] **Oregon Department of Natural Resources**  
40 shall issue an order revising the fee specified in subsection (1) of this section on January 1 of each  
41 year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Con-  
42 sumers for All Items as published by the Bureau of Labor Statistics of the United States Department  
43 of Labor. The director shall round the amount to the nearest dollar. The revised fee shall take ef-  
44 fect January 1 and apply for that calendar year.

45 (5) Fees received under this section shall be credited to the Common School Fund for use by the



1 department in administration of ORS 196.600 to 196.905.

2 **SECTION 660.** ORS 196.820 is amended to read:

3 196.820. (1) Notwithstanding any provision of ORS 196.600 to 196.905 to the contrary, except as  
4 provided in subsection (2) of this section, the Director of the [*Department of State Lands*] **Oregon**  
5 **Department of Natural Resources** shall not issue any permit to fill Smith Lake or Bybee Lake,  
6 located in Multnomah County, below the contour line which lies 11 feet above mean sea level as  
7 determined by the 1947 adjusted United States Coastal Geodetic Survey Datum.

8 (2) Notwithstanding the provision of subsection (1) of this section, the director [*of the Depart-*  
9 *ment of State Lands*] may issue a permit to fill Smith Lake or Bybee Lake, located in Multnomah  
10 County, if such fill is to enhance or maintain fish and wildlife habitat at or near Smith Lake or  
11 Bybee Lake. A fill shall be considered to be for the purpose of enhancing or maintaining fish and  
12 wildlife habitat [*if the proposed fill is approved by the State Department of Fish and Wildlife*].

13 **SECTION 661.** ORS 196.825 is amended to read:

14 196.825. (1) The Director of the [*Department of State Lands*] **Oregon Department of Natural**  
15 **Resources** shall issue a permit applied for under ORS 196.815 if the director determines that the  
16 project described in the application:

17 (a) Is consistent with the protection, conservation and best use of the water resources of this  
18 state as specified in ORS 196.600 to 196.905; and

19 (b) Would not unreasonably interfere with the paramount policy of this state to preserve the use  
20 of its waters for navigation, fishing and public recreation.

21 (2) In determining whether to issue a permit, the director shall consider all of the following:

22 (a) The public need for the proposed fill or removal and the social, economic or other public  
23 benefits likely to result from the proposed fill or removal. When the applicant for a permit is a  
24 public body, the director may accept and rely upon the public body's findings as to local public need  
25 and local public benefit.

26 (b) The economic cost to the public if the proposed fill or removal is not accomplished.

27 (c) The availability of alternatives to the project for which the fill or removal is proposed.

28 (d) The availability of alternative sites for the proposed fill or removal.

29 (e) Whether the proposed fill or removal conforms to sound policies of conservation and would  
30 not interfere with public health and safety.

31 (f) Whether the proposed fill or removal is in conformance with existing public uses of the wa-  
32 ters and with uses designated for adjacent land in an acknowledged comprehensive plan and land  
33 use regulations.

34 (g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive  
35 plan and land use regulations for the area where the proposed fill or removal is to take place or  
36 can be conditioned on a future local approval to meet this criterion.

37 (h) Whether the proposed fill or removal is for streambank protection.

38 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects  
39 of the proposed fill or removal in the manner set forth in ORS 196.800. In determining whether the  
40 applicant has provided all practicable mitigation, the director shall consider the findings regarding  
41 wetlands set forth in ORS 196.668 and whether the proposed mitigation advances the policy objec-  
42 tives for the protection of wetlands set forth in ORS 196.672.

43 (3) The director may issue a permit for a project that results in a substantial fill in an estuary  
44 for a nonwater dependent use only if the project is for a public use and would satisfy a public need  
45 that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other

1 criteria contained in ORS 196.600 to 196.905.

2 (4) If the director issues a permit, the director may impose such conditions as the director con-  
3 siders necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this  
4 section and to provide mitigation for the reasonably expected adverse effects of project development.  
5 In formulating such conditions the director may request comment from public bodies, as defined in  
6 ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid  
7 only for the time specified therein. The director shall impose, as conditions to any permit, general  
8 authorization or wetland conservation plan, measures to provide mitigation for the reasonably ex-  
9 pected adverse effects of project development. Compensatory mitigation shall be limited to replace-  
10 ment of the functions and values of the impacted water resources of this state.

11 (5) The director may request comment from interested parties and adjacent property owners on  
12 any application for a permit. The director shall furnish to any person, upon written request and at  
13 the expense of the person who requests the copy, a copy of any application for a permit or author-  
14 ization under this section or ORS 196.850.

15 (6) Any applicant whose application for a permit or authorization has been deemed incomplete  
16 or has been denied, or who objects to any of the conditions imposed under this section by the di-  
17 rector, may, within 21 days of the denial of the permit or authorization or the imposition of any  
18 condition, request a hearing from the director. Thereupon the director shall set the matter down for  
19 hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430,  
20 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing  
21 findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial  
22 order. Appeals from the director's final order may be taken to the Court of Appeals in the manner  
23 provided by ORS 183.482.

24 (7) Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the director  
25 shall:

26 (a) Determine whether an application is complete within 30 days from the date the [*Department*  
27 *of State Lands*] **Oregon Department of Natural Resources** receives the application. If the director  
28 determines that an application is complete, the director shall distribute the application for comment  
29 pursuant to subsection (4) of this section. If the director determines that the application is not  
30 complete, the director shall notify the applicant in writing that the application is deficient and ex-  
31 plain, in the same notice, the deficiencies.

32 (b) Issue a permit decision within 90 days after the date the director determines that the appli-  
33 cation is complete unless:

34 (A) An extension of time is granted under subsection (9)(b) of this section; or

35 (B) The applicant and the director agree to a longer time period.

36 (8) Permits issued under this section shall be in lieu of any permit or authorization that might  
37 be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055,  
38 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, [so] as long as:

39 (a) The operation is that for which the permit or authorization is issued; and

40 (b) The standards for granting the permit or authorization are substantially the same as those  
41 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,  
42 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

43 (9)(a) Any public body, as defined in ORS 174.109, federal agency or tribal government requested  
44 by the director to comment on an application for a permit must submit its comments to the director  
45 not more than 30 days after receiving the request for comment. If a public body, federal agency or

1 tribal government fails to comment on the application within 30 days, the director shall assume that  
2 the public body, federal agency or tribal government has no objection.

3 (b) The Department of Environmental Quality shall provide comments to the director within 75  
4 days after receiving notice under subsection (4) of this section if the permit action requires certif-  
5 ication under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

6 (10) In determining whether to issue a permit, the director may consider only standards and  
7 criteria in effect on the date the director receives the completed application.

8 (11) As used in this section:

9 (a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal  
10 or fill activity.

11 (b) "Completed application" means a signed permit application form that contains all necessary  
12 information for the director to determine whether to issue a permit, including:

13 (A) A map showing the project site with sufficient accuracy to easily locate the removal or fill  
14 site;

15 (B) A project plan showing the project site and proposed alterations;

16 (C) The fee required under ORS 196.815;

17 (D) Any changes that may be made to the hydraulic characteristics of waters of this state and  
18 a plan to minimize or avoid any adverse effects of those changes;

19 (E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within  
20 this state, documentation of existing conditions and resources and identification of the potential  
21 impact if the project is completed;

22 (F) An analysis of alternatives that evaluates practicable methods to minimize and avoid impacts  
23 to waters of this state;

24 (G) If the project is to fill or remove material from wetlands, a wetlands mitigation plan; and

25 (H) Any other information that the director deems pertinent and necessary to make an informed  
26 decision on whether the application complies with the policy and standards set forth in this section.

27 **SECTION 662.** ORS 196.830 is amended to read:

28 196.830. (1) As used in this section, "estuarine resource replacement" means the creation, res-  
29 toration or enhancement of an estuarine area to maintain the functional characteristics and pro-  
30 cesses of the estuary, such as its natural biological productivity, habitats and species diversity,  
31 unique features and water quality.

32 (2) Except as provided in subsection (4) of this section, the Director of the [*Department of State*  
33 *Lands*] **Oregon Department of Natural Resources** shall require estuarine resource replacement  
34 as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area  
35 of an estuary.

36 (3) If the director requires estuarine resource replacement, the director shall consider:

37 (a) The identified adverse impacts of the proposed activity;

38 (b) The availability of areas in which replacement activities could be performed;

39 (c) The provisions of land use plans for the area adjacent to or surrounding the area of the  
40 proposed activity;

41 (d) The recommendations of any interested or affected state or local agencies; and

42 (e) The extent of compensating activity inherent in the proposed activity.

43 (4) Notwithstanding any provisions of this chapter and ORS chapters 195 and 197 or the state-  
44 wide planning goals adopted thereunder to the contrary, the director may:

45 (a) Waive estuarine resource replacement in part for an activity for which replacement would

1 otherwise be required if, after consultation with appropriate state and local agencies the director  
2 determines that:

3 (A) There is no alternative manner in which to accomplish the purpose of the project;

4 (B) There is no feasible manner in which estuarine resource replacement could be accomplished;

5 (C) The economic and public need for the project and the economic and public benefits resulting  
6 from the project clearly outweigh the potential degradation of the estuary;

7 (D) The project is for a public use; and

8 (E) The project is water dependent or the project is publicly owned and water related; or

9 (b) Waive estuarine resource replacement wholly or in part for an activity for which replace-  
10 ment would otherwise be required if the activity is:

11 (A) Filling for repair and maintenance of existing functional dikes and negligible physical or  
12 biological damage to the tidal marsh or intertidal areas of the estuary will result;

13 (B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant ma-  
14 terial when a need for riprap protection is demonstrated that cannot be met with natural vegetation  
15 and no appreciable increase in existing upland will occur;

16 (C) Filling for repair and maintenance of existing roads and negligible physical or biological  
17 damage to the tidal marsh or intertidal areas of the estuary will result;

18 (D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair  
19 or maintenance conducted by or under contract with the Army Corps of Engineers;

20 (E) Dredging or filling required as part of an estuarine resource restoration or enhancement  
21 project agreed to by local, state and federal agencies; or

22 (F) A proposed alteration that would have negligible adverse physical or biological impact on  
23 estuarine resources.

24 (5) Nothing in this section is intended to limit the authority of the director to impose conditions  
25 on a permit under ORS 196.825.

26 **SECTION 663.** ORS 196.835 is amended to read:

27 196.835. Any person aggrieved or adversely affected by the grant of a permit by the Director  
28 of the [*Department of State Lands*] **Oregon Department of Natural Resources** may file a written  
29 request for hearing with the director within 21 days after the date the permit was granted. If the  
30 director finds that the person making the written request has a legally protected interest which is  
31 adversely affected by the grant of the permit, the director shall set the matter down for hearing  
32 within 30 days after receipt of the request. The hearing shall be conducted as a contested case in  
33 accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. The permittee shall be a  
34 party to the proceeding. Within 45 days of the hearing the director shall enter an order containing  
35 findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's ori-  
36 ginal order. Appeals from the director's final order may be taken to the Court of Appeals in the  
37 manner provided by ORS 183.482. A permit to fill granted by the director may be suspended by the  
38 director during the pendency of the proceedings before the director and any appeal. The director  
39 shall not suspend the permit unless the person aggrieved or adversely affected by grant of permit  
40 makes a showing before the director by clear and convincing evidence that commencement or con-  
41 tinuation of the fill would cause irreparable damage and would be inconsistent with ORS 196.600  
42 to 196.905.

43 **SECTION 664.** ORS 196.845 is amended to read:

44 196.845. In considering applications for permits, the Director of the [*Department of State Lands*]  
45 **Oregon Department of Natural Resources** may cause investigations or surveys to be made of the

1 location of the work contemplated to determine whether such removal or filling is consistent with  
2 ORS 196.805 and 196.825.

3 **SECTION 665.** ORS 196.850 is amended to read:

4 196.850. (1) Notwithstanding ORS 196.810, the [*Department of State Lands*] **Oregon Department**  
5 **of Natural Resources** may, by rule, grant general authorization for removal of material from the  
6 bed or banks of any waters of this state or the filling of any waters of this state without a permit  
7 from the department if the department finds that the activities subject to the general authorization:

8 (a) Are substantially similar in nature;

9 (b) Would cause only minimal individual and cumulative environmental impacts; and

10 (c) Would not result in long-term harm to water resources of the state.

11 (2) A general authorization may be granted on a statewide or other geographic basis.

12 (3) The department shall condition any general authorization upon actions necessary to minimize  
13 environmental impacts.

14 (4) The department shall provide notice of any proposed general authorization to affected federal  
15 and state agencies, local governments, tribal governments and the public. The notice shall include:

16 (a) A clear description of the proposal; and

17 (b) Draft findings and any proposed conditions pursuant to this section.

18 (5) Any person proposing to conduct an action under a general authorization shall:

19 (a) Notify the department in writing prior to conducting the action.

20 (b) Pay the applicable fee to the department as determined under subsection (9) of this section.

21 (6) The department shall amend or rescind any general authorization upon a determination that  
22 the activities conducted under the authorization have resulted in or would result in more than  
23 minimal environmental impacts or long-term harm to the water resources of this state.

24 (7) The department shall review each general authorization adopted pursuant to this section  
25 every five years. The review shall include public notice and opportunity for public hearing. After  
26 the review, the department may either modify, reissue or rescind the general authorization.

27 (8) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the  
28 validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence  
29 in the rulemaking record. The record shall include copies of all documents before the agency rele-  
30 vant to the findings required by subsection (1) of this section.

31 (9) If the rule adopting a general authorization under this section is:

32 (a) For actions that result in moving less than 50 cubic yards of material, the department may  
33 not charge a fee for the general authorization.

34 (b) For actions that result in moving 50 or more cubic yards of material, the department may  
35 establish a fee for the general authorization. The fee may not exceed \$250 and shall be based on the  
36 cost of processing the general authorization.

37 (10) The department shall credit any fee collected under this section to the Common School  
38 Fund for use by the department in administration of ORS 196.600 to 196.905.

39 **SECTION 666.** ORS 196.850, as amended by section 4, chapter 516, Oregon Laws 2001, section  
40 12, chapter 253, Oregon Laws 2003, and section 7, chapter 849, Oregon Laws 2007, is amended to  
41 read:

42 196.850. (1) Notwithstanding ORS 196.810, the [*Department of State Lands*] **Oregon Department**  
43 **of Natural Resources** may, by rule, grant general authorization for removal of material from the  
44 bed or banks of any waters of this state or the filling of any waters of this state without a permit  
45 from the department if the department finds that the activities subject to the general authorization:

- 1 (a) Are substantially similar in nature;  
2 (b) Would cause only minimal individual and cumulative environmental impacts; and  
3 (c) Would not result in long-term harm to water resources of the state.
- 4 (2) A general authorization may be granted on a statewide or other geographic basis.
- 5 (3) The department shall condition any general authorization upon actions necessary to minimize  
6 environmental impacts.
- 7 (4) The department shall provide notice of any proposed general authorization to affected federal  
8 and state agencies, local governments, tribal governments and the public. The notice shall include:  
9 (a) A clear description of the proposal; and  
10 (b) Draft findings and any proposed conditions pursuant to this section.
- 11 (5) Any person proposing to conduct an action under a general authorization shall:  
12 (a) Notify the department in writing prior to conducting the action. The person may not com-  
13 mence the action until the person receives a letter of authorization from the department.  
14 (b) Pay the applicable fee to the department as determined under subsection (10) of this section.
- 15 (6) The Director of the [*Department of State Lands*] **Oregon Department of Natural Resources**  
16 shall waive the requirements of subsection (5) of this section if the director issues a general au-  
17 thorization and the authorized activity:  
18 (a) Involves less than 50 cubic yards of material;  
19 (b) Will be conducted during periods that minimize adverse effects to fish and wildlife [*in ac-*  
20 *cordance with guidance provided by the State Department of Fish and Wildlife*];  
21 (c) Will not dam or divert a waterway in a manner that obstructs fish passage or vessel navi-  
22 gation; and  
23 (d) Will not violate water quality standards as established by the Department of Environmental  
24 Quality.
- 25 (7) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall amend  
26 or rescind any general authorization upon a determination that the activities conducted under the  
27 authorization have resulted in or would result in more than minimal environmental impacts or  
28 long-term harm to the water resources of this state.
- 29 (8) The department shall review each general authorization adopted pursuant to this section  
30 every five years. The review shall include public notice and opportunity for public hearing. After  
31 the review, the department may either modify, reissue or rescind the general authorization.
- 32 (9) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the  
33 validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence  
34 in the rulemaking record. The record shall include copies of all documents before the agency rele-  
35 vant to the findings required by subsection (1) of this section.
- 36 (10) If the rule adopting a general authorization under this section is:  
37 (a) For actions that result in moving less than 50 cubic yards of material, the department may  
38 not charge a fee for the general authorization.  
39 (b) For actions that result in moving 50 or more cubic yards of material, the department may  
40 establish a fee for the general authorization. The fee may not exceed \$250 and shall be based on the  
41 cost of processing the general authorization.
- 42 (11) The department shall credit any fee collected under this section to the Common School  
43 Fund for use by the department in administration of ORS 196.600 to 196.905.
- 44 **SECTION 667.** ORS 196.860 is amended to read:  
45 196.860. (1) If the Director of the [*Department of State Lands*] **Oregon Department of Natural**

1 **Resources** determines that material is being removed from or filling is occurring in any of the wa-  
2 ters of this state without a permit issued under ORS 196.825, or in a manner contrary to the con-  
3 ditions set out in the permit, or in a manner contrary to the conditions set out in an order approving  
4 a wetland conservation plan, the director may:

5 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to  
6 196.905, as soon as possible.

7 (b) For the purpose of investigating conditions relating to the removal or filling, through the  
8 employees or the duly authorized representatives of the [*Department of State Lands*] **Oregon De-**  
9 **partment of Natural Resources**, enter at reasonable times upon any private or public property.

10 (c) Conduct public hearings in accordance with ORS chapter 183.

11 (d) Publish findings and recommendations as they are developed relative to public policies and  
12 procedures necessary for the correction of conditions or violations of ORS 196.600 to 196.905.

13 (e) Give notice of any proposed order relating to a violation by personal service or by mailing  
14 the notice by registered or certified mail to the person affected. Any person aggrieved by a proposed  
15 order of the director may request a hearing within 20 days of the date of personal service or mailing  
16 of the notice. Hearings shall be conducted under the provisions of ORS chapter 183 applicable to  
17 contested cases, and judicial review of final orders shall be conducted in the Court of Appeals ac-  
18 cording to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall  
19 be issued upon a prima facie case on the record of the agency.

20 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of  
21 ORS 196.600 to 196.905 or of any rule or final order of the director under ORS 196.600 to 196.905  
22 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. In any  
23 such proceedings the director may seek and the court may award a sum of money sufficient to  
24 compensate the public for any destruction or infringement of any public right of navigation, fishery  
25 or recreation resulting from the violation. Proceedings thus brought by the director shall set forth  
26 if applicable the dates of notice and hearing and the specific rule or order of the director, together  
27 with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the  
28 damages to any public right of navigation, fishery or recreation, if any, resulting from the violation.

29 (2)(a) In addition to the administrative action the director may take under subsection (1) of this  
30 section, the director may enter an order requiring any person to cease and desist from any violation  
31 if the director determines that the violation presents an imminent and substantial risk of injury, loss  
32 or damage to water resources.

33 (b) An order under this subsection:

34 (A) May be entered without prior notice or hearing.

35 (B) Shall be served upon the person by personal service or by registered or certified mail.

36 (C) Shall state that a hearing will be held on the order if a written request for hearing is filed  
37 by the person subject to the order within 10 days after receipt of the order.

38 (D) May not be stayed during the pendency of a hearing conducted under paragraph (c) of this  
39 subsection.

40 (c) If a person subject to an order under this subsection files a timely demand for hearing, the  
41 director shall hold a contested case hearing according to the applicable provisions of ORS chapter  
42 183. If the person fails to request a hearing, the order shall be entered as a final order upon prima  
43 facie case made on the record of the agency.

44 (d) Neither the director nor any duly authorized representative of the department shall be liable  
45 for any damages a person may sustain as a result of a cease and desist order issued under this

1 subsection.

2 (e) The state and local police shall cooperate in the enforcement of any order issued under this  
3 subsection and shall require no further authority or warrant in executing or enforcing the order. If  
4 any person fails to comply with an order issued under this subsection, the circuit court of the county  
5 in which the violation occurred or is threatened shall compel compliance with the director's order  
6 in the same manner as with an order of that court.

7 (3) As used in this section, "violation" means removing material from or placing fill in any of  
8 the waters of this state without a permit or in a manner contrary to the conditions set out in a  
9 permit issued under ORS 196.825.

10 **SECTION 668.** ORS 196.865 is amended to read:

11 196.865. If the Director of the [*Department of State Lands*] **Oregon Department of Natural**  
12 **Resources** finds that a person holding a permit issued under ORS 196.825 is removing material from  
13 the bed or banks or filling any of the waters of this state contrary to the conditions set out in the  
14 permit, the director may revoke, suspend or refuse to renew such permit. The director may revoke  
15 a permit only after giving notice and opportunity for a hearing as provided in ORS 183.415 to  
16 183.430, 183.440 to 183.460 and 183.470.

17 **SECTION 669.** ORS 196.870 is amended to read:

18 196.870. (1) In addition to any enforcement action taken under ORS 196.860, civil proceedings  
19 to abate alleged public nuisances under ORS 196.855 may be instituted at law or in equity, in the  
20 name of the State of Oregon, upon relation of the Director of the [*Department of State Lands*]  
21 **Oregon Department of Natural Resources** or by any person in the person's name.

22 (2) Before beginning any action under subsection (1) of this section, a person other than the  
23 director shall provide 60 days notice to the director of the intended action. A person other than the  
24 director may not begin an action under subsection (1) of this section if the director has commenced  
25 and is diligently prosecuting civil, criminal or administrative proceedings in the same matter.

26 (3) The director may institute an action in the name of the State of Oregon for a temporary  
27 restraining order or preliminary injunction if a threatened or existing nuisance under ORS 196.855  
28 creates an emergency that requires immediate action to protect the public health, safety or welfare.  
29 The director shall not be required to furnish a bond in such proceeding.

30 (4) The State Land Board, the director [*of the Department of State Lands*] and the employees or  
31 duly authorized representatives of the [*Department of State Lands*] **Oregon Department of Natural**  
32 **Resources** shall not be liable for any damages a defendant may sustain as a result of an injunction,  
33 restraining order or abatement order issued under this section.

34 (5) A case filed under this section shall be given preference on the docket over all other civil  
35 cases except those given an equal preference by statute.

36 (6) In any action brought under this section, the plaintiff may seek and the court may award a  
37 sum of money sufficient to compensate the public for any destruction or infringement of any public  
38 right of navigation, fishery or recreation resulting from an existing public nuisance under ORS  
39 196.855. Any money received by the plaintiff under this subsection shall be deposited in the Common  
40 School Fund.

41 **SECTION 670.** ORS 196.875 is amended to read:

42 196.875. (1) If any person, through negligence, violates ORS 196.810, the Director of the [*De-*  
43 *partment of State Lands*] **Oregon Department of Natural Resources**, in a proceeding brought  
44 pursuant to ORS 196.870, may seek and the court may award double a sum of money sufficient to  
45 compensate the public for any destruction or infringement of any public right of navigation, fishery



1 or recreation resulting from such violation.

2 (2) If any person intentionally violates ORS 196.810, the director, in a proceeding brought pur-  
3 suant to ORS 196.870, may seek and the court may award treble a sum of money sufficient to com-  
4 pensate the public for any destruction or infringement of any public right of navigation, fishery or  
5 recreation resulting from such violation.

6 (3) An award made pursuant to this section shall be in addition to and not in lieu of any crim-  
7 inal penalties imposed for a violation of ORS 196.810.

8 (4) In any action brought under ORS 196.870, the court shall award to the prevailing party the  
9 costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS  
10 20.140, any costs and attorney fees so awarded to the director shall be deposited in the Common  
11 School Fund to offset the director's expenses of bringing such action.

12 **SECTION 671.** ORS 196.880 is amended to read:

13 196.880. If the Director of the [*Department of State Lands*] **Oregon Department of Natural**  
14 **Resources** issues a permit to fill pursuant to ORS 196.600 to 196.905, it shall be presumed that such  
15 fill does not infringe upon the public rights of navigation, fishery or recreation, and the public rights  
16 to lands created by the fill shall be considered extinguished.

17 **SECTION 672.** ORS 196.885 is amended to read:

18 196.885. The Director of the [*Department of State Lands*] **Oregon Department of Natural Re-**  
19 **sources** shall submit an annual report to the State Land Board on the activities conducted under  
20 ORS 196.600 to 196.905. The annual report shall include the following:

21 (1) The number of fill and removal permits applied for, denied and granted, organized according  
22 to whether or not the permits were for waters subject to section 404 of the Federal Water Pollution  
23 Control Act (P.L. 92-500, as amended). For all permits granted or outstanding during the prior year,  
24 a separate summary shall be included for fills and removals, organized by river or other water body,  
25 that shows:

26 (a) The total number of permits, the number of new permits and the number of renewal permits.

27 (b) The volume and acreage of fills and removals authorized during the past year, and the vol-  
28 ume and acreage of fills and removals completed during the past year.

29 (2) By river or other water body, a summary of the total volume and acreage of fills and re-  
30 movals made under a general waiver, general permit or similar authority.

31 (3) A summary of mitigation measures, including a description of each mitigation project ap-  
32 proved during the past year including the location and size of each mitigation project and a report  
33 on the status of all mitigation projects pending or completed during the past year.

34 (4) A summary of enforcement activities, including:

35 (a) The number of potential violations reported.

36 (b) The number of compliance investigations conducted.

37 (c) The results of compliance actions, including:

38 (A) The number of cases resolved by voluntary compliance, administrative hearings and judicial  
39 enforcement proceedings;

40 (B) The amount of damages and penalties assessed;

41 (C) The amount of damages and penalties recovered; and

42 (D) A brief description of each after-the-fact permit issued, including the location and size by  
43 volume and acreage.

44 (5) A description of staffing, including the number of full-time equivalent positions devoted to  
45 the permit program and, for each position, the qualifications and job description.

1 (6) The report on the Oregon Removal-Fill Mitigation Fund as required under ORS 196.655.

2 (7) The number of and average time for responding to notices received by local governments and  
3 the number of responses that took more than 30 days.

4 (8) The number of wetland conservation plans approved by the director and a description of  
5 each, including the issues raised during the approval process.

6 **SECTION 673.** ORS 196.890 is amended to read:

7 196.890. Any person who violates any provision of ORS 196.600 to 196.905 or any rule, order or  
8 permit adopted or issued under ORS 196.600 to 196.905 shall be subject to a civil penalty in an  
9 amount to be determined by the Director of the [*Department of State Lands*] **Oregon Department**  
10 **of Natural Resources** of not more than \$10,000 per day of violation.

11 **SECTION 674.** ORS 196.895 is amended to read:

12 196.895. (1) Civil penalties under ORS 196.890 shall be imposed as provided in ORS 183.745.

13 (2) The provisions of this section are in addition to and not in lieu of any other penalty or  
14 sanction provided by law. An action taken by the Director of the [*Department of State Lands*]  
15 **Oregon Department of Natural Resources** under this section may be joined by the director with  
16 any other action taken against the same person under ORS 196.860 (1)(f).

17 (3) Any civil penalty recovered under this section shall be deposited in the Common School Fund  
18 for use by the [*Department of State Lands*] **Oregon Department of Natural Resources** in admin-  
19 istration of ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

20 **SECTION 675.** ORS 196.895, as amended by section 5, chapter 516, Oregon Laws 2001, is  
21 amended to read:

22 196.895. (1) Except as provided in subsection (4) of this section, civil penalties under ORS  
23 196.890 shall be imposed as provided in ORS 183.745.

24 (2) The provisions of this section are in addition to and not in lieu of any other penalty or  
25 sanction provided by law. An action taken by the Director of the [*Department of State Lands*]  
26 **Oregon Department of Natural Resources** under this section may be joined by the director with  
27 any other action taken against the same person under ORS 196.860 (1)(f).

28 (3) Any civil penalty recovered under this section shall be deposited in the Common School Fund  
29 for use by the [*Department of State Lands*] **Oregon Department of Natural Resources** in admin-  
30 istration of ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

31 (4) Notwithstanding any provision of ORS 183.745, any person having an interest that is ad-  
32 versely affected or aggrieved by an alleged violation for which civil penalties are imposed under  
33 ORS 196.890 may intervene in a contested case proceeding pertaining to the imposition of civil  
34 penalties under this section.

35 **SECTION 676.** ORS 196.900 is amended to read:

36 196.900. (1) The Director of the [*Department of State Lands*] **Oregon Department of Natural**  
37 **Resources** shall adopt by rule the amount of civil penalty that may be imposed for a particular vi-  
38 olation.

39 (2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the  
40 director shall consider the following factors:

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

43 (b) Any prior violations of statutes, rules, orders and permits pertaining to waters of the state.

44 (c) The impact of the violation on public interests in fishery, navigation and recreation.

45 (d) Any other factors determined by the director to be relevant and consistent with the policy

1 of ORS 196.805.

2 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and  
3 conditions as the director determines to be proper and consistent with the policy of ORS 196.805.  
4 Upon the request of the person incurring the penalty, the director shall consider evidence of the  
5 economic and financial condition of the person in determining whether a penalty shall be remitted  
6 or mitigated.

7 **SECTION 677.** ORS 196.905 is amended to read:

8 196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this  
9 state for the purpose of constructing, operating and maintaining dams or other diversions for which  
10 permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which  
11 preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

12 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks  
13 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

14 (a) Such waterway or portion is situated within forestland; and

15 (b) Such removal or filling is directly connected with a forest management practice conducted  
16 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

17 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted  
18 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,  
19 cultivating, conventional crop rotation or harvesting.

20 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for  
21 exclusive farm use as described in ORS 215.203 for the following activities:

22 (a) Drainage or maintenance of farm or stock ponds; or

23 (b) Maintenance of farm roads in such a manner as to not significantly adversely affect wetlands  
24 or any other waters of this state.

25 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for subsurface  
26 drainage by deep ripping, tiling or moling on converted wetlands that are zoned for exclusive farm  
27 use pursuant to ORS 215.203.

28 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity  
29 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS  
30 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by  
31 the Natural Resources Conservation Service of the United States Department of Agriculture, or its  
32 successor agency, [so] as long as commercial agricultural production on the land has not been  
33 abandoned for five or more years.

34 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-  
35 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as  
36 in effect on January 1, 2010.

37 (8) The exemptions in subsections (3) to (7) of this section do not apply to any fill or removal  
38 that involves changing an area of wetlands to a nonfarm use.

39 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance  
40 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage  
41 ditches, irrigation ditches and tile drain systems, provided that:

42 (a) The structure was serviceable within the past five years; and

43 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or  
44 other waters of this state to a greater extent than the wetlands or waters of this state were affected  
45 as a result of the original construction of those structures.

1 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,  
2 including emergency reconstruction of recently damaged parts, of currently serviceable roads or  
3 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-  
4 ments or approaches.

5 (11) The [*Department of State Lands*] **Oregon Department of Natural Resources** may adopt a  
6 rule that exempts from the requirement to obtain a permit under ORS 196.800 to 196.900 voluntary  
7 habitat restoration projects that have only minimal adverse impact on waters of this state.

8 (12) As used in this section:

9 (a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,  
10 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or  
11 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that  
12 are managed for commercial agricultural purposes.

13 (b) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any  
14 other waters of this state that are located within or adjacent to a converted wetland area.

15 **SECTION 678.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, section  
16 13, chapter 253, Oregon Laws 2003, and section 4, chapter 342, Oregon Laws 2009, is amended to  
17 read:

18 196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit  
19 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters  
20 of this state when:

21 (a) The fill or removal is a part of an activity whose purpose is to bring an area of state waters  
22 into a use to which it was not previously subject; and

23 (b)(A) The flow or circulation of the waters of this state may be impaired; or

24 (B) The reach of the waters may be reduced.

25 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks  
26 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

27 (a) Such waterway or portion is situated within forestland; and

28 (b) Such removal or filling is directly connected with a forest management practice conducted  
29 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

30 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted  
31 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,  
32 cultivating, conventional crop rotation or harvesting.

33 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for  
34 exclusive farm use as described in ORS 215.203 for the following activities:

35 (a) Drainage or maintenance of farm or stock ponds; or

36 (b) Maintenance of farm roads, provided that:

37 (A) The farm roads are constructed and maintained in accordance with construction practices  
38 designed to minimize any adverse effects to the aquatic environment;

39 (B) Borrow material for farm road maintenance does not come from waters of this state unless  
40 authorized by the [*Department of State Lands*] **Oregon Department of Natural Resources**; and

41 (C) Maintenance activities are confined to the scope of construction for the original project.

42 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity  
43 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS  
44 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by  
45 the Natural Resources Conservation Service of the United States Department of Agriculture, or its

1 successor agency, [so] **as** long as commercial agricultural production on the land has not been  
2 abandoned for five or more years.

3 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-  
4 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as  
5 in effect on January 1, 2010.

6 (7) The exemptions in subsections (3) to (6) of this section do not apply to any fill or removal  
7 that involves changing an area of wetlands or converted wetlands to a nonfarm use.

8 (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance  
9 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage  
10 ditches, irrigation ditches and tile drain systems, provided that:

11 (a) The structure was serviceable within the past five years; and

12 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or  
13 other waters of this state to a greater extent than the wetlands or waters of this state were affected  
14 as a result of the original construction of those structures.

15 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams  
16 constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the  
17 following conditions are satisfied:

18 (a) The removal or filling is conducted during periods that minimize adverse effects to fish and  
19 wildlife in accordance with guidance provided by the [*State Department of Fish and Wildlife*] **Oregon**  
20 **Department of Natural Resources**;

21 (b) The removal or filling does not jeopardize a threatened or endangered species or adversely  
22 modify or destroy the habitat of a threatened or endangered species listed under federal or state  
23 law; and

24 (c) Temporary fills are removed in their entirety and the area is restored to its approximate  
25 original elevation.

26 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,  
27 including emergency reconstruction of recently damaged parts, of currently serviceable roads or  
28 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-  
29 ments or approaches.

30 (11) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance  
31 of access roads constructed to move mining equipment, subject to the following conditions:

32 (a) The access roads are constructed and maintained in accordance with construction practices  
33 that minimize adverse effects to the aquatic environment;

34 (b) Borrow material for access road maintenance does not come from waters of this state unless  
35 authorized by the [*Department of State Lands*] **department**; and

36 (c) Maintenance activities are confined to the scope of construction for the original project.

37 (12) The department may adopt a rule that exempts from the requirement to obtain a permit  
38 under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal adverse  
39 impact on waters of this state.

40 (13) As used in this section:

41 (a)(A) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,  
42 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or  
43 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that  
44 are managed for commercial agricultural purposes.

45 (B) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any

1 other waters of this state that are located within or adjacent to a converted wetland area.

2 (b) "Harvesting" means physically removing crops or other agricultural products.

3 (c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade  
4 plowing, disking, harrowing or similar means of breaking up, cutting, turning over or stirring soil  
5 to prepare it for planting crops or other agricultural products. "Plowing" does not include:

6 (A) The redistribution of soil, rock, sand or other surface materials in a manner that changes  
7 areas of waters of this state into dry land; or

8 (B) Rock crushing activities that result in the loss of natural drainage characteristics, the re-  
9 duction of water storage and recharge capability, or the overburdening of natural water filtration  
10 capacity.

11 (d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other  
12 agricultural products.

13 **SECTION 679.** ORS 196.910 is amended to read:

14 196.910. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall:

15 (1) Monitor removal and fill activities, including but not limited to prospecting and placer min-  
16 ing, within designated essential indigenous anadromous salmonid habitat areas to determine the ef-  
17 fects of such activities on salmonid spawning and rearing habitat and compile the results in an  
18 annual report.

19 (2) [*Cooperate with the State Department of Fish and Wildlife and other interested parties to*] De-  
20 velop and distribute, **in cooperation with interested parties**, public education and information  
21 materials designed to increase understanding and awareness of permit requirements and acceptable  
22 removal and fill practices related to prospecting and placer mining.

23 (3) Report periodically to the appropriate legislative committee on the progress of the depart-  
24 ment [*of State Lands*] in implementing ORS 196.810.

25 **SECTION 680.** ORS 197.279 is amended to read:

26 197.279. (1) Wetland conservation plans approved by the Director of the [*Department of State*  
27 *Lands*] **Oregon Department of Natural Resources** pursuant to ORS chapter 196 shall be deemed  
28 to comply with the requirements of statewide planning goals relating to other than estuarine  
29 wetlands for those areas, uses and activities [*which*] **that** are regulated by the wetland conservation  
30 plans.

31 (2) Wetland conservation plans shall be adopted and amended by local governments according  
32 to the procedures of ORS 197.610 to 197.625.

33 (3) The [*department*] **director** shall adopt by rule:

34 (a) Standards for cities and counties to use to inventory and identify wetlands; and

35 (b) Criteria for cities and counties to use to determine when a wetland is a significant wetland.

36 **SECTION 681.** ORS 215.418 is amended to read:

37 215.418. (1) After the [*Department of State Lands*] **Oregon Department of Natural Resources**  
38 has provided the county with a copy of the applicable portions of the Statewide Wetlands Inventory,  
39 the county shall provide notice to the department, the applicant and the owner of record, within five  
40 working days of the acceptance of any complete application for the following that are wholly or  
41 partially within areas identified as wetlands on the Statewide Wetlands Inventory:

42 (a) Subdivisions;

43 (b) Building permits for new structures;

44 (c) Other development permits and approvals that allow physical alteration of the land involving  
45 excavation and grading, including permits for removal or fill, or both, or development in floodplains

1 and floodways;

2 (d) Conditional use permits and variances that involve physical alterations to the land or con-  
3 struction of new structures; and

4 (e) Planned unit development approvals.

5 (2) The provisions of subsection (1) of this section do not apply if a permit from the department  
6 has been issued for the proposed activity.

7 (3) Approval of any activity described in subsection (1) of this section shall include one of the  
8 following notice statements:

9 (a) Issuance of a permit under ORS 196.665 and 196.800 to 196.900 by the department required  
10 for the project before any physical alteration takes place within the wetlands;

11 (b) Notice from the department that no permit is required; or

12 (c) Notice from the department that no permit is required until specific proposals to remove, fill  
13 or alter the wetlands are submitted.

14 (4) If the department fails to respond to any notice provided under subsection (1) of this section  
15 within 30 days of notice, the county approval may be issued with written notice to the applicant and  
16 the owner of record that the proposed action may require state or federal permits.

17 (5) The county may issue local approval for parcels identified as or including wetlands on the  
18 Statewide Wetlands Inventory upon providing to the applicant and the owner of record of the af-  
19 fected parcel a written notice of the possible presence of wetlands and the potential need for state  
20 and federal permits and providing the department with a copy of the notification of comprehensive  
21 plan map or zoning map amendments for specific properties.

22 (6) Notice of activities authorized within an approved wetland conservation plan shall be pro-  
23 vided to the department within five days following local approval.

24 (7) Failure by the county to provide notice as required in this section will not invalidate county  
25 approval.

26 **SECTION 682.** ORS 227.350 is amended to read:

27 227.350. (1) After the [*Department of State Lands*] **Oregon Department of Natural Resources**  
28 has provided the city with a copy of the applicable portions of the Statewide Wetlands Inventory,  
29 the city shall provide notice to the department, the applicant and the owner of record, within five  
30 working days of the acceptance of any complete application for the following activities that are  
31 wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory:

32 (a) Subdivisions;

33 (b) Building permits for new structures;

34 (c) Other development permits and approvals that allow physical alteration of the land involving  
35 excavation and grading, including permits for removal or fill, or both, or development in floodplains  
36 and floodways;

37 (d) Conditional use permits and variances that involve physical alterations to the land or con-  
38 struction of new structures; and

39 (e) Planned unit development approvals.

40 (2) The provisions of subsection (1) of this section do not apply if a permit from the department  
41 has been issued for the proposed activity.

42 (3) Approval of any activity described in subsection (1) of this section shall include one of the  
43 following notice statements:

44 (a) Issuance of a permit under ORS 196.600 to 196.905 by the department required for the project  
45 before any physical alteration takes place within the wetlands;

1 (b) Notice from the department that no permit is required; or

2 (c) Notice from the department that no permit is required until specific proposals to remove, fill  
3 or alter the wetlands are submitted.

4 (4) If the department fails to respond to any notice provided under subsection (1) of this section  
5 within 30 days of notice, the city approval may be issued with written notice to the applicant and  
6 the owner of record that the proposed action may require state or federal permits.

7 (5) The city may issue local approval for parcels identified as or including wetlands on the  
8 Statewide Wetlands Inventory upon providing to the applicant and the owner of record of the af-  
9 fected parcel a written notice of the possible presence of wetlands and the potential need for state  
10 and federal permits and providing the department with a copy of the notification of comprehensive  
11 plan map or zoning map amendments for specific properties.

12 (6) Notice of activities authorized within an approved wetland conservation plan shall be pro-  
13 vided to the department within five days following local approval.

14 (7) Failure by the city to provide notice as required in this section will not invalidate city ap-  
15 proval.

16 **SECTION 683.** ORS 270.110 is amended to read:

17 270.110. (1) Except as provided in subsection (2) of this section, whenever the state or any  
18 agency thereof possesses or controls real property not needed for public use, or whenever the public  
19 interest may be furthered, the state or its agency may sell, exchange, convey or lease for any period  
20 not exceeding 99 years all or any part of its interest in the property to or with the state or any  
21 political subdivision of the state or the United States or any agency thereof or private individual  
22 or corporation. Except where the state is exchanging real property, the consideration for the  
23 transfer or lease may be cash or real property, or both.

24 (2) If the ownership, right or title of the state to any real property set apart by deed, will or  
25 otherwise for a burial ground or cemetery, or for the purpose of interring the remains of deceased  
26 persons, is limited or qualified or the use of such real property is restricted, whether by dedication  
27 or otherwise, the state or its agency may, after first declaring by resolution that such real property  
28 is not needed for public use, or that the sale, exchange, conveyance or lease thereof will further the  
29 public interest, file a complaint in the circuit court for the county in which such real property is  
30 located against all persons claiming any right, title or interest in such real property, whether the  
31 interest be contingent, conditional or otherwise, for authority to sell, exchange, convey or lease all  
32 or any part of such real property. The resolution is prima facie evidence that such real property is  
33 not needed for public use, or that the sale, exchange, conveyance or lease will further the public  
34 interest. The action shall be commenced and prosecuted to final determination in the same manner  
35 as an action not triable by right to a jury. The complaint shall contain a description of such real  
36 property, a statement of the nature of the restrictions, qualifications or limitations, and a statement  
37 that the defendants claim some interest therein. The court shall make such judgment as it shall  
38 deem proper, taking into consideration the limitations, qualifications or restrictions, the resolution  
39 and all other matters pertinent thereto. Neither costs nor disbursements may be recovered against  
40 any defendant.

41 (3) The authority to lease property granted by this section includes authority to lease property  
42 not owned or controlled by the state at the time of entering into the lease. Such lease shall be  
43 conditioned upon the subsequent acquisition of the interest covered by the lease.

44 (4) Any lease of state real property exceeding five years must be approved in advance by the  
45 Oregon Department of Administrative Services, except for leases:



1 (a) Negotiated by the Oregon Department of Aviation;

2 (b) Of state forestlands;

3 (c) Of property controlled by the [*Department of State Lands*] **Oregon Department of Natural**  
4 **Resources**, Department of Transportation or Oregon University System; or

5 (d) Of property controlled by the legislative or judicial branches of state government.

6 **SECTION 684.** ORS 271.445 is amended to read:

7 271.445. (1) It is the intent of the Legislative Assembly that the state inform city and county  
8 governments of applications for the installation of fiber-optic lines on public land and in public  
9 rights of way that have been submitted to state agencies.

10 (2) The Governor shall direct the Department of Transportation and the [*Department of State*  
11 *Lands*] **Oregon Department of Natural Resources** to take such action as necessary to ensure that  
12 affected city and county governments are informed of applications for the installation and mainte-  
13 nance of fiber-optic lines on public land and in public rights of way that have been submitted to the  
14 state agencies.

15 **SECTION 685.** ORS 273.006 is amended to read:

16 273.006. As used in this chapter, unless the context requires otherwise:

17 [(1) "*Board*" means the *State Land Board*.]

18 [(2)] (1) "County recording officer" means the county clerk or other county officer carrying out  
19 ORS 205.130 to 205.220.

20 [(3) "*Department*" means the *Department of State Lands*.]

21 [(4) "*Director*" means the *Director of the Department of State Lands*.]

22 [(5)] (2) "Land" includes water, water rights, easements of every nature and all appurtenances  
23 to land.

24 [(6)] (3) "Material" includes gravel, rock, sand and silt, but does not include hard minerals  
25 subject to ORS 274.610, or oil, gas and sulfur subject to ORS 274.705 to 274.860.

26 [(7)] (4) "Public land" means any land or improvements thereon owned by the State of Oregon  
27 or any agency thereof.

28 [(8)] (5) "State land" means public land controlled by the [*Department of State Lands*] **Oregon**  
29 **Department of Natural Resources**.

30 [(9)] (6) "Terminal disposition" means the permanent relinquishment by an agency of rights in  
31 real property, including, but not limited to, sale, exchange, conveyance, relinquishment of title, or  
32 donation.

33 **SECTION 686.** ORS 273.020 is amended to read:

34 273.020. The Governor is Land Commissioner for the State of Oregon, and shall locate or select  
35 the lands to which the state is entitled under the laws of the United States, or otherwise. The  
36 Governor shall be allowed all necessary expenses incurred in the performance of duties in this ca-  
37 pacity prescribed by law. The [*Department of State Lands*] **Oregon Department of Natural Re-**  
38 **sources** shall assist the Governor as necessary in the performance of these duties.

39 **SECTION 687.** ORS 273.041 is amended to read:

40 273.041. [*The Department of State Lands is created, and consists of the Director of the Department*  
41 *of State Lands and all officers and employees of the department acting under the State Land Board.*  
42 *Subject to ORS 273.171, the department*] **The Oregon Department of Natural Resources** shall ex-  
43 ercise all of the administrative functions exercised by the clerk and other personnel of the State  
44 Land Board before January 1, 1968.

45 **SECTION 688.** ORS 273.045 is amended to read:

1       273.045. *[The Department of State Lands]* **In the administration of ORS chapter 274 and this**  
2 **chapter, the Oregon Department of Natural Resources** shall establish its *[administrative]* poli-  
3 cies in accordance with the laws prescribing its powers and duties and the general policies formu-  
4 lated by the State Land Board. Acting subject to the approval of the board and in compliance with  
5 ORS chapter 183, the Director of the *[Department of State Lands]* **Oregon Department of Natural**  
6 **Resources** shall promulgate *[such rules as are]* **rules** necessary to carry out the policies of the de-  
7 partment and to attain maximum efficiency in its administration.

8       **SECTION 689.** ORS 273.051 is amended to read:

9       273.051. (1) The *[Department of State Lands]* **Oregon Department of Natural Resources** may  
10 cancel certificates of sale for lands owned by this state, if unlawfully obtained.

11       (2) The State Land Board shall:

12       (a) Manage, control and protect the common school grazing lands under ORS 273.805 to 273.825  
13 so as to secure the greatest permanent value of the lands to all the people of this state, particularly  
14 for the dedicated purposes of the lands and the common schools to which the resources of the lands  
15 are devoted.

16       (b) Give due consideration, in the sale, exchange or leasing of any state lands under its control,  
17 to the protection and conservation of all natural resources, including scenic and recreational re-  
18 sources, of such lands, so as to conserve the public health and recreational enjoyment of the people,  
19 protect property and human life, and conserve plant, aquatic and animal life.

20       (3) The department shall coordinate the *[program and financial accounting]* **programs and** ac-  
21 tivities assigned to other **state** agencies under ORS 273.141 as directed by the *[State Land]* board.

22       **SECTION 690.** ORS 273.055 is amended to read:

23       273.055. If *[it]* **the Oregon Department of State Lands** finds it advisable in carrying out its  
24 duties, the department *[of State Lands]* in the name of the State of Oregon may take title to real and  
25 personal property in fee simple or absolutely, in trust or under such other conditions as *[it]* **the**  
26 **department** considers advisable, and may convey title thereto or execute agreements necessary to  
27 carry out its duties.

28       **SECTION 691.** ORS 273.061 is amended to read:

29       273.061. The power of eminent domain may be exercised by the State of Oregon at the request  
30 of the *[Department of State Lands]* **Oregon Department of Natural Resources** for the condemna-  
31 tion of property of any kind and all water rights, easements and appurtenances thereto necessary  
32 for carrying out its powers and duties.

33       **SECTION 692.** ORS 273.065 is amended to read:

34       273.065. All acts and decisions of the *[Department of State Lands]* **Oregon Department of Na-**  
35 **tural Resources** as to the legal title, and the right to a certificate of sale or deed from the state,  
36 shall be final.

37       **SECTION 693.** ORS 273.075 is amended to read:

38       273.075. When lands formerly belonging to the State of Oregon are disposed of and final payment  
39 has been made, the Director of the *[Department of State Lands]* **Oregon Department of Natural**  
40 **Resources** shall execute and deliver to the purchaser a deed in a manner and form prescribed by  
41 the rules of the *[Department of State Lands]* **Oregon Department of Natural Resources**, conveying  
42 all right, title and interest which the state may have in and to such lands, except as otherwise  
43 provided by law.

44       **SECTION 694.** ORS 273.081 is amended to read:

45       273.081. The Director of the *[Department of State Lands]* **Oregon Department of Natural Re-**

1 **sources** may execute on behalf of the [*Department of State Lands*] **Oregon Department of Natural**  
 2 **Resources** all documents required to carry out its powers and duties, in the manner and form pre-  
 3 scribed by the rules of the department. All documents so executed shall be admitted to record  
 4 without acknowledgment.

5 **SECTION 695.** ORS 273.085 is amended to read:

6 273.085. Copies of any document **relating to real property that are** permitted by law to be  
 7 recorded **and** that are executed by the Director of the [*Department of State Lands*] **Oregon De-**  
 8 **partment of Natural Resources**, or executed by the State Land Board before January 1, 1968, and  
 9 certified by the director, are entitled to record in the office of any county recording officer. Docu-  
 10 ments affecting the title to real property that are permitted by law to be recorded shall be recorded  
 11 in the county where [*such*] **the** real property is situated.[.] Copies of all other documents **that are**  
 12 permitted by law to be recorded [*that are executed by the Department of State Lands*] may be re-  
 13 corded in any county designated by the [*department*] **director**.

14 **SECTION 696.** ORS 273.091 is amended to read:

15 273.091. The person offering a copy of a document mentioned in ORS 273.085 for recording shall  
 16 pay the recording fee. When a copy of a document has been recorded it shall be returned by the  
 17 recording officer to the Director of the [*Department of State Lands*] **Oregon Department of Natural**  
 18 **Resources** or other party as stated on the recorded document.

19 **SECTION 697.** ORS 273.099 is amended to read:

20 273.099. Unless otherwise provided by law, all deeds, conveyances and leases belonging to this  
 21 state must be deposited and preserved [*in the office of the Department of State Lands*] **by the Oregon**  
 22 **Department of Natural Resources**. Upon the sale of any real property belonging to the state, a  
 23 copy of the instrument that conveys the property must be filed with the department by the officer  
 24 or agency in charge of the sale.

25 **SECTION 698.** ORS 273.101 is amended to read:

26 273.101. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall ad-  
 27 minister the Common School Fund as provided in ORS 327.405 to 327.480.

28 **SECTION 699.** ORS 273.105 is amended to read:

29 273.105. (1) The Distributable Income Account is established within the Common School Fund.  
 30 The [*Department of State Lands*] **Oregon Department of Natural Resources** shall administer this  
 31 account in accordance with section 4, Article VIII, Oregon Constitution, and applicable laws.

32 (2) The following moneys in the Common School Fund shall be credited to the Distributable In-  
 33 come Account:

34 (a) Moneys received under ORS 390.715 and 390.725 after deducting the administrative costs of  
 35 the [*State Parks and Recreation*] department.

36 (b) So much of the income derived from the investment of the Common School Fund as the State  
 37 Land Board deems appropriate after payment of the expenses of the [*State Land*] board authorized  
 38 to be paid under section 2 (2), Article VIII of the Oregon Constitution.

39 (c) The income derived from unclaimed property held by the Director of the [*Department of State*  
 40 *Lands*] **Oregon Department of Natural Resources** or deposited in the Common School Fund.

41 (d) Other moneys received by the department [*of State Lands*] that are required by law to be  
 42 credited to the Distributable Income Account.

43 (3) All other moneys received by the department [*of State Lands*] shall be credited to the Com-  
 44 mon School Fund.

45 (4) The moneys in the Distributable Income Account are **continuously** appropriated [*contin-*

1 *uously*] for apportionment according to ORS 327.410.

2 **SECTION 700.** ORS 273.115 is amended to read:

3 273.115. The [*Department of State Lands*] **Oregon Department of Natural Resources** may use  
4 so much of the Common School Fund as is necessary for:

5 (1) The acquisition of lands, easements, and all other interests in real property.

6 (2) Improvement, operation, and maintenance of property, crops, timber, fixtures and  
7 appurtenances whether granted or otherwise acquired at any time.

8 (3) Studies necessary for the fill and removal program that include, but are not limited to, the  
9 effects of sand and gravel mining on water quality and aquatic resources, sand and gravel recruit-  
10 ment and sediment transport, monitoring of sand and gravel removal operations, coordinating state  
11 and federal permitting efforts and the annual review process for permitting sand and gravel removal  
12 operations from the waters of this state.

13 **SECTION 701.** ORS 273.119 is amended to read:

14 273.119. The [*Department of State Lands*] **Oregon Department of Natural Resources** may apply  
15 for and receive any private or federal grants, loans or other funds available for the purposes of  
16 conducting studies related to [*the work of the department*] **state land** and coordinating state and  
17 federal permitting issues related to removal and fill.

18 **SECTION 702.** ORS 273.121 is amended to read:

19 273.121. Notwithstanding any other provision of law, all funds [*under the control of the Depart-*  
20 *ment of State Lands*] **available to the Oregon Department of Natural Resources under ORS**  
21 **273.115 and 273.119** shall be expended by warrant drawn on the State Treasurer, and then only upon  
22 proper claim approved by the Director of the [*Department of State Lands*] **Oregon Department of**  
23 **Natural Resources**, or the authorized representative of the director, submitted to the Secretary of  
24 State for audit.

25 **SECTION 703.** ORS 273.125 is amended to read:

26 273.125. Whenever [*it appears to the Department of State Lands that any moneys have been erro-*  
27 *neously paid to it*] **moneys for the acquisition or leasing of state land have been erroneously**  
28 **paid to the Oregon Department of Natural Resources**, the department may make an appropriate  
29 refund.

30 **SECTION 704.** ORS 273.131 is amended to read:

31 273.131. The [*Department of State Lands*] **Oregon Department of Natural Resources** may,  
32 whenever in its judgment such course is to the best interest of the state, compromise, settle, release  
33 and discharge any mortgage, judgment or other claim in favor of the State of Oregon, and arising  
34 out of the sale or lease of property within the jurisdiction of the department, upon such terms as  
35 the department may direct.

36 **SECTION 705.** ORS 273.135 is amended to read:

37 273.135. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
38 enter into written agreements with any governmental agency for the performance of specialized,  
39 technical, professional, administrative or other services and for the furnishing of facilities and ma-  
40 terials to [*carry out provisions of law applicable to the department.*]:

41 (a) **Acquire lands, easements and other interests in real property.**

42 (b) **Improve, operate and maintain property, crops, timber, fixtures and appurtenances.**

43 (c) **Study the fill and removal program.**

44 (2) The activities and programs performed under [*such agreements*] **an agreement entered into**  
45 **pursuant to subsection (1) of this section** remain subject to supervision and control by the de-

1 partment.

2 [(2)] (3) All expenses incurred by a governmental agency in performing services and furnishing  
3 facilities and materials under an agreement entered into pursuant to subsection (1) of this section  
4 shall be paid by the department to such performing agency in the manner other claims are paid.  
5 Payments by the department pursuant to this section and ORS 273.141 shall be made from moneys  
6 available to the department for the payment of its expenses. Before making any deposit to the credit  
7 of the Common School Fund, or any other fund or account managed by the department, the depart-  
8 ment may first deduct all expenses incurred pursuant to agreements entered into under this section  
9 and ORS 273.141.

10 [(3)] (4) Any state agency authorized under ORS 283.110 to furnish services, facilities and ma-  
11 terials to other state agencies may in like manner furnish such services, facilities and materials to  
12 the department under written agreement pursuant to this section. All moneys received by a state  
13 agency in payment for services, facilities and materials rendered under a written agreement with the  
14 department may be paid, deposited and credited in like manner as provided in ORS 283.110 (2), or  
15 credited to the account from which the cost of the services, facilities and materials was originally  
16 paid.

17 **SECTION 706.** ORS 273.141 is amended to read:

18 273.141. *[In order to provide the Department of State Lands with the specialized assistance neces-*  
19 *sary to its operations and the transaction of its business, and in addition to other agreements that may*  
20 *be entered into under ORS 273.135, the department]* **The Oregon Department of Natural Resources**  
21 may enter into written agreements with the state agencies designated in this section for the opera-  
22 tion of programs and activities assigned to the department. Subject to final review and approval by  
23 the State Land Board:

24 [(1)] *The State Forestry Department may perform the functions assigned by the board that relate to*  
25 *forest resources.]*

26 [(2)] *The State Department of Geology and Mineral Industries may perform the functions of the*  
27 *Department of State Lands that relate to mineral resources.]*

28 [(3)] (1) The Department of Veterans' Affairs may perform the functions of the *[Department of*  
29 *State Lands]* **Oregon Department of Natural Resources** that relate to investment of funds in  
30 mortgages secured by real property.

31 [(4)] (2) The State Treasurer may perform the functions of the *[Department of State Lands]*  
32 **Oregon Department of Natural Resources** that relate to investments of funds administered by the  
33 department *[of State Lands]* not described in subsection [(3)] (1) of this section[, and] that relate to  
34 escheated property.

35 [(5)] (3) The State Department of Agriculture may perform the functions assigned by the board  
36 and the functions pertaining to management and regulation of grazing land and other agricultural  
37 lands.

38 **SECTION 707.** ORS 273.145 is amended to read:

39 273.145. The *[Department of State Lands]* **Oregon Department of Natural Resources** may enter  
40 into contracts with any person owning lands adapted to the purposes of ORS 273.316 to 273.345 and  
41 273.511, for the subdivision, settlement and sale of all or any portion thereof, under the direction  
42 and supervision of the department and such conditions as may be agreed to.

43 **SECTION 708.** ORS 273.151 is amended to read:

44 273.151. The *[Department of State Lands]* **Oregon Department of Natural Resources** may co-  
45 operate with the federal government for the development, settlement, subdivision and disposition of

1 lands belonging to the State of Oregon, or which otherwise may be made available for carrying out  
2 the purposes of ORS 273.316 to 273.345 and 273.511. In such cooperation, the department may pro-  
3 vide the lands but the federal government shall provide the money necessary to meet the expenses  
4 of reclamation, subdivision, necessary improvement and equipment.

5 **SECTION 709.** ORS 273.155 is amended to read:

6 273.155. The [*Department of State Lands*] **Oregon Department of Natural Resources**, in carry-  
7 ing out its duties, may call upon all related state and county agencies, including Oregon State  
8 University and any state or county officers through whom necessary information and aid may be  
9 received. Such agencies, institution and officers shall cooperate with the department without addi-  
10 tional compensation.

11 **SECTION 710.** ORS 273.185 is amended to read:

12 273.185. (1) The Director of the [*Department of State Lands*] **Oregon Department of Natural**  
13 **Resources** shall investigate all trespasses on and damage to state lands and prosecute the same.  
14 The director shall appear before appropriate agencies of the United States in all cases involving the  
15 title or claim of the state to its granted land or lands selected in lieu thereof.

16 (2) Expenses incurred under this section shall be paid out of the moneys available to the [*De-*  
17 *partment of State Lands*] **Oregon Department of Natural Resources** for the payment of its ex-  
18 penses.

19 **SECTION 711.** ORS 273.196 is amended to read:

20 273.196. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
21 create a program whereby the department may enter into agreements with volunteers, businesses  
22 and other agencies to allow those parties, on a voluntary basis, [*to assist in the operation of depart-*  
23 *ment programs and*] to assist in the maintenance of state lands administered by the department. The  
24 program shall:

25 (a) Focus primarily on encouraging and facilitating involvement of participants in the [*operation*  
26 *of department programs and*] maintenance of state lands administered by the department and in ed-  
27 ucational programs [*on behalf of the department*] **about state lands**;

28 (b) Offer opportunities for participants to assist in public information activities **that concern**  
29 **state lands**; and

30 (c) Include a recognition element to acknowledge the efforts of participants in the program.

31 (2) The department shall ensure that participants in the program obtain permission from land-  
32 owners for access to private property if such access is necessary to perform activities under the  
33 program.

34 (3) An agreement entered into pursuant to subsection (1) of this section shall include, at a  
35 minimum:

36 (a) Identification of the state land where the participant intends to carry out voluntary activ-  
37 ities.

38 (b) Specification of the duties of the participant.

39 (c) Specification of the responsibilities of the participant, including the responsibility to abide  
40 by the rules of the program as adopted by the State Land Board.

41 (d) The duration of the agreement.

42 (4) The department may provide supplies, equipment, safety information and assistance to the  
43 participants.

44 (5) The [*State Land*] board may adopt any rules necessary for implementation of the program  
45 created under this section.

1 (6) Under the direction of the board, the Director of the [*Department of State Lands*] **Oregon**  
2 **Department of Natural Resources** may encourage and render assistance in the promotion of  
3 training programs for volunteers, businesses and other agencies participating in the program created  
4 under this section.

5 (7) As used in this section, “volunteer” includes any person, group of individuals, volunteer  
6 group, service club or other entity that is tax exempt under section 501(c)(3) of the Internal Revenue  
7 Code.

8 **SECTION 712.** ORS 273.197 is amended to read:

9 273.197. (1) In order to further the interpretive and educational functions of state lands in  
10 Oregon, the Director of the [*Department of State Lands*] **Oregon Department of Natural Re-**  
11 **sources** may enter into an agreement with a private, nonprofit scientific, historic or educational  
12 organization organized solely for the purpose of providing interpretive services for state lands fa-  
13 cilities in Oregon.

14 (2) An organization entering into an agreement with the director under subsection (1) of this  
15 section may:

- 16 (a) Provide educational or interpretive material for sale at state lands facilities;
- 17 (b) Acquire display materials and equipment for exhibits at state lands facilities;
- 18 (c) Provide support for interpretive or educational programs at state lands facilities;
- 19 (d) Provide support for state lands facility libraries; or
- 20 (e) Provide support for other interpretive projects related to a specific state lands facility.

21 (3) If the director enters into an agreement with an organization under subsection (1) of this  
22 section, the [*Department of State Lands*] **Oregon Department of Natural Resources** may:

- 23 (a) Provide incidental personnel services for the organization’s interpretive program; and
- 24 (b) Provide space at a state lands facility for the display and sale of materials provided by the  
25 organization.

26 (4) Any money received from the sale of publications or other materials provided by an organ-  
27 ization pursuant to an agreement entered into under this section shall be retained by the organiza-  
28 tion for use in the interpretive or educational services of the state lands facility for which the  
29 organization provides interpretive services.

30 (5) As used in this section, “state lands facility” includes a recreational, historical, educational,  
31 research or scenic attraction owned by or under the control of the State of Oregon and administered  
32 by the department [*of State Lands*] **for purposes related to state lands.**

33 **SECTION 713.** ORS 273.199 is amended to read:

34 273.199. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
35 adopt rules to carry out the purposes of ORS 273.197. The rules shall include:

36 (1) Procedures and forms to be used by an organization entering into an agreement with the  
37 Director of the [*Department of State Lands*] **Oregon Department of Natural Resources** under ORS  
38 273.197.

39 (2) Guidelines for approving the materials an organization proposes to provide or display at  
40 state lands facilities.

41 (3) Provisions for renewing or dissolving an agreement between an organization and the direc-  
42 tor.

43 **SECTION 714.** ORS 273.225 is amended to read:

44 273.225. Before any person shall take any material from any real property of the State of  
45 Oregon, except in the manner and for the purposes mentioned in ORS 274.525 or 274.550, the person

1 shall apply to the [*Department of State Lands*] **Oregon Department of Natural Resources** for a  
2 lease. The application shall include a complete description of the location of the contemplated op-  
3 eration, the time and manner of contemplated removal, and such other pertinent information as the  
4 department may require. Upon receipt of such application the department may award a lease to the  
5 applicant and fix a royalty in the same manner provided in ORS 274.530.

6 **SECTION 715.** ORS 273.235 is amended to read:

7 273.235. The [*Department of State Lands*] **Oregon Department of Natural Resources** may in-  
8 spect and audit books, records and accounts of each person removing material from any real prop-  
9 erty of the State of Oregon, and make other investigation and secure or receive other evidence  
10 necessary to determine whether or not the department is being paid the full amount payable to it  
11 for the removal of such material. The department may proceed by action or suit to enforce payment  
12 for all materials taken from any real property of the State of Oregon, for commercial uses, whether  
13 under lease, or otherwise, for which payment has not been made.

14 **SECTION 716.** ORS 273.241 is amended to read:

15 273.241. (1) Removal of material from any property of the State of Oregon under the control of  
16 the [*Department of State Lands*] **Oregon Department of Natural Resources** by any person without  
17 lawful authority is a trespass for which the state, in addition to any action commenced under ORS  
18 273.990, may also commence an action for damages. If damages are assessed against the defendant  
19 in any such action, the state shall be awarded double the amount of damages assessed if the trespass  
20 is willful. Proof by the state of its ownership of the premises is prima facie evidence that the  
21 trespass, if committed, was willful.

22 (2) Any action under subsection (1) of this section must be commenced within six years from the  
23 date of the trespass or the date on which the trespass is discovered by the state, whichever last  
24 occurs.

25 **SECTION 717.** ORS 273.245 is amended to read:

26 273.245. Not later than January 1, 1996, the State Land Board shall adopt an asset management  
27 plan in accordance with this section to guide management and disposition of real estate under the  
28 board's jurisdiction. The [*Department of State Lands*] **Oregon Department of Natural Resources**  
29 shall provide a report to each regular session of the Legislative Assembly on the progress of im-  
30 plementing the asset management plan. The asset management plan required by this section shall  
31 provide a schedule for disposition of state lands when the proper disposition, as determined, involves  
32 the sale, exchange or transfer of management responsibility from the department [*of State Lands*] to  
33 other entities.

34 **SECTION 718.** ORS 273.247 is amended to read:

35 273.247. (1) The State Land Board, by and through the [*Department of State Lands*] **Oregon**  
36 **Department of Natural Resources** or other agency acting on behalf of the State Land Board, shall  
37 dispose of isolated parcels of land classified as rangeland by the board in a manner consistent with  
38 the asset management plan adopted under ORS 273.245 and the board's trust responsibilities.

39 (2) As used in this section, "isolated parcel" means:

40 (a) Land largely surrounded by land not owned by the board or not contiguous to other larger  
41 tracts of state land; or

42 (b) Land determined by the board to be difficult or uneconomical to manage due to access, lo-  
43 cation, isolation, low production value or similar factors.

44 (3) To the extent consistent with the board's trust obligations and ORS 273.413, the department  
45 or other agency acting on behalf of the board shall establish a sale procedure for isolated parcels



1 of rangeland that is efficient and cost-effective.

2 **SECTION 719.** ORS 273.261 is amended to read:

3 273.261. An individual eligible under ORS 273.255 may file an application with the Director of  
4 the *[Department of State Lands]* **Oregon Department of Natural Resources** for the purchase of  
5 state lands other than farmlands. The application must be made in a form prescribed by the *[De-*  
6 *partment of State Lands]* **Oregon Department of Natural Resources**, contain a correct and precise  
7 description of the lands applied for in accordance with a survey acceptable to the department, and  
8 be verified before an officer authorized by law to administer oaths.

9 **SECTION 720.** ORS 273.265 is amended to read:

10 273.265. (1) If application is made for the purchase of submersible lands, the applicant must  
11 cause such lands to be surveyed at the expense of the applicant by a surveyor, whose selection is  
12 subject to prior approval by the *[Department of State Lands]* **Oregon Department of Natural Re-**  
13 **sources**. The survey must connect with and conform to adjacent surveys acceptable to the depart-  
14 ment, so far as practicable. The applicant must submit to the department, with the application, an  
15 accurate map of the lands applied for, showing the boundaries and stating the area. The map must  
16 be verified by the surveyor before an officer authorized by law to administer oaths.

17 (2) Each application to purchase submersible lands must, in addition to all other requirements,  
18 contain the applicant's statement that application is made with knowledge of the character of the  
19 land applied for and the title of the state thereto, and the waiver of the applicant of all claims upon  
20 the state for the return of the purchase price of the lands in the event that the lands, or any part  
21 thereof, do not belong to the state.

22 **SECTION 721.** ORS 273.275 is amended to read:

23 273.275. Except as limited by ORS 270.020 and 273.225 to 273.241 and 274.040, and as in its  
24 judgment the interests of the state demand, the *[Department of State Lands]* **Oregon Department**  
25 **of Natural Resources**:

26 (1) Shall fix the price at which all classes of state lands may be sold and the interest to be  
27 charged on deferred payments therefor under ORS 273.281, and may provide for the advertisement  
28 and sale of such lands to the highest bidder in a manner consistent with ORS 270.020 and 273.225  
29 to 273.241.

30 (2) May at any time withdraw any or all of such lands from sale.

31 **SECTION 722.** ORS 273.281 is amended to read:

32 273.281. The *[Department of State Lands]* **Oregon Department of Natural Resources** shall re-  
33 quire applicants for the purchase of submersible lands to pay in full for such lands at the time of  
34 purchase. Applicants for the purchase of school, agricultural college, university, swamp or indemnity  
35 lands shall make payments at such times, and with such interest for deferred payments as the de-  
36 partment may prescribe. However, the obligation may not be allowed to stand for a longer period  
37 than five years after the date of issuance of the certificate under ORS 273.285.

38 **SECTION 723.** ORS 273.285 is amended to read:

39 273.285. (1) When an applicant to purchase state lands desires to make payments in installments  
40 as provided in ORS 273.281, the *[Department of State Lands]* **Oregon Department of Natural Re-**  
41 **sources** shall, upon receipt of one-fifth of the purchase price of the land applied for, deliver to the  
42 purchaser a certificate that the purchaser has contracted to purchase the lands therein described.  
43 Upon performance under the contract and upon the surrender of the certificate of sale, the pur-  
44 chaser, or the heirs or assigns of the purchaser, shall be entitled to a deed issued under ORS 273.300  
45 for the lands therein described.

1 (2) The department shall maintain appropriate records of each sale.

2 **SECTION 724.** ORS 273.290 is amended to read:

3 273.290. If any installment of the purchase price of land, principal or interest, remains unpaid  
4 for one year after the same becomes due, the certificate issued under ORS 273.285 shall be canceled  
5 by order of the [*Department of State Lands*] **Oregon Department of Natural Resources**. All pay-  
6 ments thereon shall be forfeited and the land considered vacant and subject to sale as if it had not  
7 been previously contracted to be sold.

8 **SECTION 725.** ORS 273.295 is amended to read:

9 273.295. All assignments of certificates of sale shall be executed and acknowledged in the same  
10 manner as a deed to real estate. The assignee, upon full payment of the amount due on the purchase  
11 price, and delivery to the [*Department of State Lands*] **Oregon Department of Natural Resources**  
12 of such certificate and assignment, shall receive a deed for the land described in such certificate,  
13 in the name of the assignee.

14 **SECTION 726.** ORS 273.300 is amended to read:

15 273.300. Whenever any purchaser of state lands holding a certificate of sale therefor has paid  
16 three-fifths or more of the purchase price thereof, the Director of the [*Department of State Lands*]  
17 **Oregon Department of Natural Resources** may execute a deed conveying the lands to such pur-  
18 chaser, upon the purchaser's executing:

19 (1) A note for the remainder of the purchase price; and

20 (2) A mortgage on the premises in the same form and manner as other mortgages are executed  
21 for loans from the Common School Fund under ORS 327.405 to 327.480.

22 **SECTION 727.** ORS 273.306 is amended to read:

23 273.306. (1) Upon full payment of the purchase price and any accrued interest thereon the Di-  
24 rector of the [*Department of State Lands*] **Oregon Department of Natural Resources** shall execute  
25 a deed to the purchaser in a form prescribed by the rules of the [*Department of State Lands*] **Oregon**  
26 **Department of Natural Resources**.

27 (2) The department shall maintain appropriate records of all deeds issued under this section.

28 **SECTION 728.** ORS 273.311 is amended to read:

29 273.311. (1) In all cases where clerical errors have been made in deeds for any state lands sold,  
30 upon satisfactory proof and if the rights of innocent parties have not intervened, the Director of the  
31 [*Department of State Lands*] **Oregon Department of Natural Resources** may execute corrected  
32 deeds to the holders thereof.

33 (2) Where lands, other than submersible lands and unsurveyed or unpatented swamp lands have  
34 been sold and the state cannot convey title to the purchaser, the [*Department of State Lands*]  
35 **Oregon Department of Natural Resources** shall repay the purchaser, or the heirs or assigns of  
36 the purchaser, all sums which may have been paid to the department on the purchase price of the  
37 lands, including the interest paid upon deferred payments, upon the presentation of a proper appli-  
38 cation for repayment, satisfactory proof and the surrender of the certificate; or if deed has been is-  
39 sued, upon reconveyance by executed and recorded quitclaim deed of whatever title or color of title  
40 was received from the state.

41 (3) Where a certificate of sale has been issued by the department upon a fraudulent application  
42 and the certificate is held by assignment by a third party who had no knowledge of the fraud at the  
43 time of assignment, the department may refund to the holder such sums as were paid the department  
44 on the purchase price of the lands covered by the certificate, including the interest paid upon de-  
45 ferred payments, upon the holder making proper application to the department for repayment and

1 surrendering for cancellation the certificate and assignment.

2 **SECTION 729.** ORS 273.316 is amended to read:

3 273.316. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
4 exchange any state lands under its control for any other lands in this state for the purpose of ac-  
5 cumulating larger and contiguous tracts of state lands. The department may enter into the necessary  
6 contracts to accomplish such purposes, subject to the rights of lessees under ORS 273.321. The ex-  
7 change may be made on the basis of value or acreage, and the department may pay or accept money  
8 as part of the consideration to the extent required for a fair transaction.

9 (2) The object of this section is to authorize the department to exchange isolated tracts of state  
10 lands for the purpose of accumulating larger and contiguous tracts of state lands.

11 **SECTION 730.** ORS 273.321 is amended to read:

12 273.321. (1) Before exchanging any state lands for other lands under ORS 273.316, the [*Depart-*  
13 *ment of State Lands*] **Oregon Department of Natural Resources** shall give notice to the lessees  
14 of those state lands considered for exchange by sending by certified or registered mail a notice  
15 containing a general description of the state lands considered for exchange and a listing of the  
16 names and addresses of the lessees of such lands. The notice shall state that if written protest to  
17 such exchange is received by the department not later than the 20th day after the mailing of the  
18 notice, a hearing on such exchange will be held.

19 (2) If the department receives, not later than the 20th day after the mailing of the notice, written  
20 protest to such exchange from a lessee of state lands considered for exchange, the department shall  
21 hold a hearing on such exchange. The hearing shall be held not earlier than the 30th day after the  
22 mailing of the notice described in subsection (1) of this section. Notice of the hearing shall be mailed  
23 by certified or registered mail to all lessees of state lands considered for exchange. At the hearing  
24 the lessees of the lands, or their representatives, may present their views on the prospective ex-  
25 change.

26 (3) The department shall consider testimony presented at the hearing before making a protested  
27 exchange of state lands.

28 **SECTION 731.** ORS 273.326 is amended to read:

29 273.326. In all cases where the [*Department of State Lands*] **Oregon Department of Natural**  
30 **Resources** believes that any lands were acquired from the state by fraud or in violation of the laws  
31 relating to the disposal thereof, [*it*] **the department** may:

32 (1) Enter into contracts with the persons asserting ownership thereto for the subdivision and  
33 sale thereof on conditions agreed upon by the contracting parties; or

34 (2) Exchange or accept in lieu thereof other lands suitable for settlement and development or  
35 valuable for timber. The department may enter into contracts for disposal and settlement of such  
36 other lands as in the case of the lands [*first mentioned*] **described** in this section.

37 **SECTION 732.** ORS 273.331 is amended to read:

38 273.331. When lands that the [*Department of State Lands*] **Oregon Department of Natural Re-**  
39 **sources** believes were acquired from the State of Oregon by fraud or in violation of the laws of the  
40 state are held by any person owning other lands the title to which is not involved, the department  
41 may provide as a condition to the contract of settlement described in ORS 273.326 that such other  
42 lands, or such portion thereof as the department considers advisable, may also be subdivided and  
43 disposed of under the direction and supervision of the department according to the conditions agreed  
44 to.

45 **SECTION 733.** ORS 273.340 is amended to read:

1       273.340. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall as-  
 2       certain the amount of indemnity lands to which the State of Oregon is entitled from the federal  
 3       government and procure such lands in as large and contiguous tracts as practicable, having in view  
 4       its adaptability for agriculture or its value for forestry purposes.

5       **SECTION 734.** ORS 273.345 is amended to read:

6       273.345. Before making selections under ORS 273.340, the [*Department of State Lands*] **Oregon**  
 7       **Department of Natural Resources** shall determine the advisability of making such selections in  
 8       large and contiguous tracts within the national forest reserves. If [*it is found*] **the department**  
 9       **finds** that such selections will be advantageous to the State of Oregon, the department shall nego-  
 10      tiate with the appropriate agency of the United States to procure such lands. If necessary, the de-  
 11      partment may seek enactment of legislation to accomplish such object. The department may enter  
 12      into all necessary contracts relating to such lands.

13      **SECTION 735.** ORS 273.350 is amended to read:

14      273.350. (1) The Director of the [*Department of State Lands*] **Oregon Department of Natural**  
 15      **Resources** shall:

16      (a) Select as indemnity lands such vacant government lands as may be applied for by legal ap-  
 17      plicants, upon receipt of their applications to purchase, together with the nonmineral affidavit and  
 18      filing fees, as required by the rules and regulations of the Bureau of Land Management, and a pay-  
 19      ment fixed by the [*Department of State Lands*] **Oregon Department of Natural Resources**; and

20      (b) Upon return of a copy of the selection list approved by the appropriate officer of the United  
 21      States, pay over to the State Treasurer moneys received on account of the purchase price of such  
 22      lands.

23      (2) When such lands have been clear listed or patented to the state by the United States, the  
 24      department shall issue deeds or certificates to the applicants. However, no certificate or deed shall  
 25      be issued for indemnity lands until the same have been patented to the state by the United States.  
 26      If the state fails to secure patent, the money so received shall be repaid to the applicant upon proper  
 27      application to the department and surrender of the director's receipt.

28      **SECTION 736.** ORS 273.360 is amended to read:

29      273.360. Upon the execution and delivery to the [*Department of State Lands*] **Oregon Depart-**  
 30      **ment of Natural Resources** by any grantee to whom the State Land Board prior to February 21,  
 31      1916, erroneously conveyed various parcels of land in sections 16 and 36 to which the title of the  
 32      state was found by the board to be defective, of a written instrument sufficient to annul the  
 33      conveyance of the state to such grantee and to relinquish all other claims against the state arising  
 34      out of such conveyance, the department pursuant to ORS 273.125 shall:

35      (1) Refund to such grantee the purchase price paid to the state for such land, with interest at  
 36      the rate of six percent per annum from the time payment was made; and

37      (2) Pay to the grantee an amount equal to all ad valorem taxes paid by such grantee with re-  
 38      spect to such land before June 19, 1967, without interest.

39      **SECTION 737.** ORS 273.370 is amended to read:

40      273.370. If the [*Department of State Lands*] **Oregon Department of Natural Resources** finds  
 41      that the property erroneously conveyed has been identified generally as private property, as evi-  
 42      denced by the inclusion of the property on the assessment rolls of the county in which it is located  
 43      for a period of 20 years or more immediately preceding, the department may refund to the grantee  
 44      an amount not to exceed any of the following values:

45      (1) The current fair market value of the property erroneously conveyed;

1 (2) The amount of the most recently issued title insurance policy carried on the property, if such  
2 a title insurance policy has been issued regularly; or

3 (3) The estimated current value to the department of the indemnity selection rights reconveyed  
4 to the state.

5 **SECTION 738.** ORS 273.375 is amended to read:

6 273.375. In lieu of the procedure set out in ORS 273.360, 273.365 and 273.370, the [*Department*  
7 *of State Lands*] **Oregon Department of Natural Resources** may acquire for the use and benefit  
8 of the State of Oregon, by purchase or exchange, the interest of any applicant to whom the certif-  
9 icate described in ORS 273.620 (3) (1965 Replacement Part) has been issued before June 19, 1967,  
10 or who acts under ORS 273.360, 273.365 and 273.370. The price of any such purchase or acquisition  
11 shall be paid to such applicant out of the revenues of the Common School Fund, and shall not exceed  
12 the market value of the land that otherwise would have been available to the applicant under ORS  
13 273.620 (1965 Replacement Part).

14 **SECTION 739.** ORS 273.388 is amended to read:

15 273.388. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
16 acquire at fair market value and manage any or all of the Space Age Industrial Park:

17 (a) If the lessee thereof relinquishes all rights to any or all lands in the park under lease; and

18 (b) If a reasonable management plan can be prepared and implemented by the department [*of*  
19 *State Lands*], as approved by the legislative review agency defined in ORS 291.371.

20 (2) The Director of the Oregon Department of Administrative Services shall transfer title to any  
21 lands acquired by the [*Department of State Lands*] **Oregon Department of Natural Resources** un-  
22 der subsection (1) of this section to the [*Department of State Lands effective*] **Oregon Department**  
23 **of Natural Resources** on the date of acquisition.

24 (3) Any moneys paid by the [*Department of State Lands*] **Oregon Department of Natural Re-**  
25 **sources** under subsection (1) of this section shall be paid to the State Treasury to the credit of the  
26 General Fund.

27 **SECTION 740.** ORS 273.413 is amended to read:

28 273.413. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
29 dispose of isolated sections and fragments of sections of state lands which are not suitable for  
30 management according to long-range policies of the State Land Board. The proceeds of such sales  
31 shall be applied and are continuously appropriated to the department [*of State Lands*] for the ac-  
32 quisition of lands or other suitable investments as directed by the board in consultation with the  
33 Oregon Investment Council.

34 (2) The proceeds of any sale authorized by subsection (1) of this section shall be deposited in a  
35 revolving account in the Common School Fund. The costs of acquisition authorized by subsection (1)  
36 of this section shall be charged to the revolving account.

37 (3) When requested in writing by the [*Department of State Lands*] **Oregon Department of Na-**  
38 **tural Resources**, the Oregon Department of Administrative Services shall draw a warrant on the  
39 Common School Fund in favor of the [*Department of State Lands*] **Oregon Department of Natural**  
40 **Resources** for use as a revolving account. The State Treasurer shall hold the revolving account in  
41 special account against which the [*Department of State Lands*] **Oregon Department of Natural**  
42 **Resources** may draw checks.

43 (4) The [*Department of State Lands*] **Oregon Department of Natural Resources** may use the  
44 revolving account **described in subsection (3) of this section** for the purposes specified in sub-  
45 section (1) of this section.

1 (5) Before disposing of lands described in subsection (1) of this section, the department [*of State*  
2 *Lands*] shall cause owners or lessees of land adjoining the land to be disposed of to be notified of  
3 the pending disposition. The notice shall indicate the time and method of sale, the minimum or re-  
4 served price, if any, and shall invite the landowners or lessees to participate as a prospective pur-  
5 chaser if the landowner or lessee wishes to do so.

6 (6) Before purchasing or selling land, the department [*of State Lands*] shall obtain approval of  
7 the governing body of the county or counties in which such land is located.

8 (7) The department [*of State Lands*] shall prepare sales materials, including catalogs of lands  
9 available for sale, and may charge a fee for such materials.

10 (8) This section does not apply to the sale or management of state-owned submerged and  
11 submersible lands subject to ORS chapter 274.

12 **SECTION 741.** ORS 273.431 is amended to read:

13 273.431. (1) The value of the respective properties proposed to be exchanged shall be determined  
14 by the state agency, board or commission which has supervision and direction of the department or  
15 activity of the state for which such property is held or belongs, and if there be no such agency,  
16 board or commission, then by the [*Department of State Lands*] **Oregon Department of Natural**  
17 **Resources**. The state agency, board or commission may use an appraised value as one indicia of the  
18 value of the property.

19 (2) The state agency, board or commission shall cause the property to be appraised by one or  
20 more competent and experienced appraisers. The compensation, if any, of the appraisers shall be  
21 borne equally by the respective owners of the property. In case such valuation shall not be mutually  
22 satisfactory to the respective owners the same shall not be binding upon them.

23 **SECTION 742.** ORS 273.447 is amended to read:

24 273.447. The [*Department of State Lands*] **Oregon Department of Natural Resources** is hereby  
25 authorized to sell, convey, lease or exchange any or all state lands chiefly suitable for grazing, to  
26 or with Oregon counties, and with the United States of America for other lands either of equal  
27 acreage or of equal value. [*All powers herein granted to the Department of State Lands*] **The powers**  
28 **granted to the department under this section** are in addition to and not in derogation of **other**  
29 powers [*heretofore*] conferred **to the department** by law.

30 **SECTION 743.** ORS 273.511 is amended to read:

31 273.511. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall as-  
32 certain the amount of land to which it is entitled under the Acts of Congress relative to submersible  
33 and swamp lands, acquire title thereto and enter into contracts for drainage and reclamation in or-  
34 der that the lands may be available for development and settlement.

35 **SECTION 744.** ORS 273.523 is amended to read:

36 273.523. The [*Department of State Lands*] **Oregon Department of Natural Resources** may sell  
37 and dispose of the forest products on lands of the State of Oregon that have not been designated  
38 Common School Forest Lands under ORS 530.460, regardless of acreage and in such quantities to  
39 each purchaser as the department shall prescribe. If the value of the forest products, as appraised  
40 under ORS 273.525, exceeds \$25,000, the department shall sell the forest products to the highest and  
41 best bidder at public auction, or through sealed bids, as the department may determine prior to of-  
42 fering the forest products for sale.

43 **SECTION 745.** ORS 273.525 is amended to read:

44 273.525. (1) Before offering any forest products for sale under ORS 273.523, the [*Department of*  
45 *State Lands*] **Oregon Department of Natural Resources** shall cause the forest products to be ap-

1 praised in a manner that *[it]* **the department** considers appropriate.

2 (2) Prior to sale of forest products with an appraised value greater than \$25,000, notice thereof  
3 shall be given by the department for not less than four weeks by publication once each week in one  
4 or more newspapers of general circulation in the county in which such forest products are situated,  
5 and in such other manner as the department considers appropriate. The notice shall designate by  
6 legal subdivision the land having such forest products thereon, shall state the appraised value of  
7 such forest products and the minimum price at which the same may be sold and shall contain a brief  
8 statement of the terms of sale. No sale of forest products shall be made at less than the appraised  
9 value.

10 (3) The forest products on one or any number of legal subdivisions may be offered and sold  
11 separately, or in one body, as the department considers appropriate. In cases in which notice has  
12 been given by publication and no satisfactory bid has been received, or in cases in which the bidder  
13 fails to complete the purchase, the department may, at any time during a period of six months after  
14 the advertised date of sale, sell the forest products in such manner as it considers appropriate, but  
15 the sale price shall not be less than the minimum terms offered in the notice of sale or the highest  
16 bid received, whichever is the larger amount.

17 **SECTION 746.** ORS 273.531 is amended to read:

18 273.531. When more than one bid has been received, or in case of doubt as to which of a number  
19 of bids is the highest and most advantageous for the state, the decision of the *[Department of State*  
20 *Lands]* **Oregon Department of Natural Resources** is conclusive and not subject to review by the  
21 courts.

22 **SECTION 747.** ORS 273.541 is amended to read:

23 273.541. All documents required in carrying out ORS 273.522 to 273.541 shall be executed by the  
24 Director of the *[Department of State Lands]* **Oregon Department of Natural Resources**, and all  
25 bonds, contracts and other instruments required by ORS 273.522 to 273.541 for the protection of the  
26 interests of the state shall be delivered to the *[Department of State Lands]* **Oregon Department of**  
27 **Natural Resources.**

28 **SECTION 748.** ORS 273.551 is amended to read:

29 273.551. (1) *[The Department of State Lands, as to any land or mineral and geothermal resource*  
30 *rights subject to its jurisdiction and control and without restricting, limiting or repealing any other*  
31 *powers and authority which it has, after consultation with the State Department of Geology and Min-*  
32 *eral Industries and with concurrence of any state agency acting for the state with respect to surface*  
33 *rights in the subject land,]* **For any land or mineral or geothermal resource under the jurisdic-**  
34 **tion or control of the Oregon Department of Natural Resources, the department** may execute  
35 leases and contracts for the mining of gold, silver, copper, lead, cinnabar, gas and oil, or **for** other  
36 valuable minerals or the exploration and development of geothermal resources upon conditions  
37 agreed upon by the department *[of State Lands]* and the lessee. **The department may execute**  
38 **leases and contracts described in this subsection for another state agency with the state**  
39 **agency's concurrence.**

40 (2) All leases may be without limitation as to time,[,] but the department may cancel any lease  
41 upon failure by the lessee to exercise due diligence in the prosecution of the prospecting, develop-  
42 ment or continued operation of the mine or well, and **the department** shall insert in every such  
43 lease appropriate provisions for such cancellation.

44 (3) The authority granted by this section shall include the execution of leases and contracts  
45 covering submersible and submerged lands, as defined in ORS 274.005, the leasing of which is not

1 otherwise expressly authorized by statute.

2 (4) Leases and contracts executed under this section are not sales within the purview of ORS  
3 270.100.

4 (5) The department may charge a reasonable fee, to be paid by the applicant, for making nec-  
5 essary investigations before the execution of any such lease.

6 (6) This section does not apply to permits or leases under ORS 274.705 to 274.860.

7 **SECTION 749.** ORS 273.553 is amended to read:

8 273.553. (1) It is the policy of the State of Oregon to maintain the South Slough of Coos Bay,  
9 from Valino Island southward, inclusive, as a national estuarine research reserve, acquired as the  
10 South Slough Estuary Sanctuary pursuant to chapter 415, Oregon Laws 1975, as the first estuarine  
11 sanctuary in the United States to be created under Section 312 of the Coastal Zone Management  
12 Act of 1972 (P.L. 92-583) and redesignated as the South Slough National Estuarine Research Reserve  
13 by federal law (P.L. 99-272). The management policy for the reserve is to:

14 (a) Maintain the integrity of the estuary;

15 (b) Protect the estuary from uses and activities, both within and beyond its boundaries, that may  
16 alter or affect the ecosystem and its natural dynamic processes; and

17 (c) Preserve the area for long-term scientific and educational uses.

18 (2) Responsibility for completing purchase of the South Slough National Estuarine Research  
19 Reserve is vested with the [*Department of State Lands*] **Oregon Department of Natural**  
20 **Resources**. The department acts for the State of Oregon in any transaction respecting the purchase  
21 of acreage for the reserve on or after October 4, 1977.

22 (3) Except as necessary to achieve the policy set forth in subsection (1) of this section and any  
23 standards established in the Coastal Zone Management Act of 1972 (P.L. 92-583) or any rules, regu-  
24 lations or agreements adopted pursuant thereto, the reserve is open to the public. However, to  
25 protect the estuarine ecosystems, public use of the reserve may be limited and controlled by the  
26 South Slough National Estuarine Research Reserve Management Commission in consultation with  
27 any technical management team established pursuant to an agreement between the State of Oregon  
28 and the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmo-  
29 spheric Administration of the United States Department of Commerce. The commission shall adopt  
30 rules to carry out the intent of this subsection.

31 (4) The South Slough National Estuarine Research Reserve Management Commission shall ad-  
32 minister the reserve, subject to any agreement respecting the reserve between the State of Oregon  
33 and the federal Office of Ocean and Coastal Resource Management.

34 (5) The agency that acquired title to the reserve shall cause title to be cleared in the name of  
35 the State of Oregon.

36 **SECTION 750.** ORS 273.554 is amended to read:

37 273.554. (1) For the purpose of providing for the administration of the South Slough National  
38 Estuarine Research Reserve in a manner consistent with the provisions of ORS 273.553, there is  
39 created the South Slough National Estuarine Research Reserve Management Commission. The com-  
40 mission shall have the authority, in accordance with the policies formulated by the State Land  
41 Board, to:

42 (a) Conduct the day-to-day operation and management of the South Slough National Estuarine  
43 Research Reserve with the administrative support of the [*Department of State Lands*] **Oregon De-**  
44 **partment of Natural Resources**;

45 (b) Appoint a manager and other staff necessary to carry out this section; and



1 (c) Apply for, receive and expend moneys from the federal government and from this state or  
2 any agency thereof for the purpose of carrying out this section.

3 (2) In accordance with applicable provisions of ORS chapter 183, the commission may adopt  
4 rules necessary to:

5 (a) Carry out the commission's responsibilities pursuant to ORS 273.553; and

6 (b) Implement a system of fees to recover the costs of carrying out the management established  
7 in ORS 273.553, including fees for use of facilities at the reserve, fees for research activities con-  
8 ducted at the reserve, visitor activities fees and parking fees.

9 (3) The commission shall consist of nine members appointed by the Governor as follows:

10 (a) A representative of common schools in the area of the reserve;

11 (b) One authorized representative of the Coos County Board of Commissioners;

12 (c) One authorized representative of the governing body of the Port of Coos Bay;

13 (d) The Director of the [*Department of State Lands*] **Oregon Department of Natural Resources**  
14 or a designee thereof;

15 (e) One authorized representative of the federal Office of Ocean and Coastal Resource Manage-  
16 ment;

17 (f) Two representatives with an interest in marine science, one from the University of Oregon  
18 Institute of Marine Biology at Charleston and one from Oregon State University;

19 (g) One member selected from the general public at large; and

20 (h) One representative of Oregon Indian tribes appointed after consultation with the Commission  
21 on Indian Services.

22 (4) The members appointed by the Governor under subsection (3)(a), (f), (g) and (h) of this section  
23 shall serve for terms of four years and members appointed under subsection (3)(b) and (c) of this  
24 section shall serve for terms of two years. The Director of the [*Department of State Lands*] **Oregon**  
25 **Department of Natural Resources** or the designee of the director, if appointed in place of the di-  
26 rector, shall serve as the permanent chairperson of the commission. The commission shall select one  
27 of its members as vice chairperson. The chairperson and vice chairperson shall have duties and  
28 powers necessary for the performance of the functions of such offices as the commission determines.  
29 The vice chairperson shall act as the chairperson of the commission in the absence of the chair-  
30 person. The vice chairperson shall serve for a term of one year, subject to reelection by the com-  
31 mission.

32 (5) Each member of the commission shall have one vote, except that the member who is the  
33 authorized representative of the federal Office of Ocean and Coastal Resource Management shall  
34 be a nonvoting member. A majority of the commission constitutes a quorum for the transaction of  
35 business.

36 (6) Members of the commission are not entitled to compensation, but in the discretion of the  
37 State Land Board may be reimbursed for actual and necessary travel and other expenses incurred  
38 by them in the performance of their official duties, subject to laws regulating travel and other ex-  
39 penses of state officers and employees.

40 **SECTION 751.** ORS 273.571 is amended to read:

41 273.571. (1) The Natural Heritage Advisory Council is hereby established. The council shall  
42 consist of [17] **13** members, nine of whom shall be chosen as follows and who shall elect from its  
43 membership a chairperson:

44 (a) Four individuals, appointed by the Governor, shall be recognized experts in the ecology of  
45 natural areas. Desirable fields of expertise are botany, zoology, terrestrial ecology, aquatic biology

1 and geology; and

2 (b) Five *[citizens]* **residents of this state**, appointed by the Governor, shall be selected from the  
3 various regions of the state. These members shall have interest in natural resource conservation,  
4 management or the commodity use of natural resources.

5 (2) Appointed members shall serve for four-year terms.

6 (3) In addition to the nine members appointed by the Governor, the *[State Fish and Wildlife*  
7 *Director, the State Forester, the Director of Transportation, the Chancellor of the Oregon University*  
8 *System, the Director of Agriculture, the State Parks and Recreation Director, the State Geologist and*  
9 *the Director of the Department of State Lands]* **Director of the Oregon Department of Natural**  
10 **Resources, the Director of Transportation, the Director of Agriculture and the Chancellor**  
11 **of the Oregon University System**, or an authorized representative of each such officer, shall serve  
12 as ex officio, nonvoting members of the council.

13 (4) Any vacancy *[on]* **among the appointed members** of the council shall be filled by appoint-  
14 ment of the Governor.

15 (5) Members of the council shall serve without compensation, but the State Land Board may pay  
16 the expenses reasonably incurred by the council in the performance of its functions upon presenta-  
17 tion of vouchers signed by the chairperson of the council pursuant to ORS 292.495.

18 (6) The council shall:

19 (a) Meet at least quarterly;

20 (b) Develop policy for the Natural Areas Program through the review and approval of the  
21 Oregon Natural Areas Plan;

22 (c) Review nominations for registration and the voluntary dedication of state natural areas, and  
23 approve instruments of dedication for such areas;

24 (d) Advise the State Land Board, *[State Board of Forestry, State Fish and Wildlife Commission,*  
25 *State Parks and Recreation Commission,]* **Oregon Department of Natural Resources**, State Board  
26 of Higher Education and Oregon Transportation Commission regarding areas under their respective  
27 jurisdictions *[which]* **that** are appropriate for dedication; and

28 (e) Advise the **State Land** Board in the adoption of rules that *[it]* **the board** considers necessary  
29 in carrying out ORS 273.563 to 273.591.

30 (7) The **State Land** Board shall adopt any rules pursuant to ORS chapter 183 that *[it]* **the board**  
31 considers necessary to carry out ORS 273.563 to 273.591.

32 (8) Acting through the *[Department of State Lands]* **Oregon Department of Natural**  
33 **Resources**, the council may accept gifts or donations of real property. Such real property shall be  
34 held in the name of the State of Oregon by the State Land Board and shall be used for the purpose  
35 of carrying out the provisions of ORS 273.563 to 273.591.

36 **SECTION 752.** ORS 273.586 is amended to read:

37 273.586. (1) A private individual or organization that is the owner of any registered natural area  
38 may voluntarily agree to dedicate that area as a state natural area by executing with the State Land  
39 Board an instrument of dedication. The instrument of dedication shall be effective upon its recording  
40 in the real property records of the office of the clerk of the county in which any or all of the state  
41 natural area is located.

42 (2) Any public agency may dedicate lands under the provisions of ORS 273.563 to 273.591 fol-  
43 lowing the providing of opportunity for adequate public notice and hearing by the agency. The  
44 Oregon Transportation Commission, the *[State Fish and Wildlife Commission, the State Board of*  
45 *Forestry,]* **Oregon Natural Resources Commission**, the State Board of Higher Education*[, the State*

1 *Parks and Recreation Commission*] and the State Land Board shall, with the advice and assistance  
2 of the Natural Heritage Advisory Council, establish procedures for the dedication of state natural  
3 areas on land, the title of which is held by the State of Oregon, and which is under that agency's  
4 management and control.

5 (3) The instrument of dedication shall contain any information or provisions as the private  
6 owner, organization or agency and council consider necessary to complete the dedication.

7 (4) Dedication of a state natural area may be terminated as follows:

8 (a) The dedication of a state natural area by a public agency may be terminated following the  
9 providing of opportunity for adequate public notice and hearing and a finding by that agency of an  
10 imperative and unavoidable necessity, or a finding by that agency, with the approval of the council,  
11 that the state natural area is no longer needed according to the guidelines of the Oregon Natural  
12 Areas Plan.

13 (b) The dedication of a state natural area by a private individual or organization may be ter-  
14 minated by the private individual or organization after the council is assured that there has been  
15 compliance with the procedures required by the terms of the dedication instrument.

16 (c) The dedication of a state natural area may be terminated by the **State Land** Board upon the  
17 advice of the council if the area is no longer needed according to the guidelines of the plan, or has  
18 permanently lost its natural character.

19 **SECTION 753.** ORS 273.715 is amended to read:

20 273.715. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
21 prescribe rules governing the exploration for and removal of semiprecious stones and petrified wood  
22 from lands owned by the State of Oregon and under the jurisdiction of the department. Such rules  
23 shall be designed to maximize the public benefit of these resources, and shall permit the free use  
24 of lands under jurisdiction of the department for collection for noncommercial purposes of reason-  
25 able quantities of petrified wood and semiprecious stones.

26 (2) The department, by rule, shall require payment of a reasonable fee for a permit for the ex-  
27 ploration for and removal of semiprecious stones and petrified wood sufficient to cover the expenses  
28 of the department incurred under this section with respect to the permit.

29 (3) No person shall remove petrified wood or semiprecious stones for commercial purposes or in  
30 a quantity having a value of \$500 or more without a permit issued by the department under this  
31 section.

32 (4) If any person removes semiprecious stones or petrified wood from lands owned by the State  
33 of Oregon without a permit as required under this section or in a manner contrary to rules pre-  
34 scribed under this section, all the materials or objects so removed or the value of such materials  
35 or objects shall be subject to disposal by the department as property of the State of Oregon.

36 **SECTION 754.** ORS 273.751 is amended to read:

37 273.751. There is granted to all persons constructing railways built after February 21, 1891,  
38 within the boundaries of the state, and to their successors and assigns:

39 (1) A right of way through any unimproved state lands, of the width of 100 feet, being 50 feet  
40 in width on each side of the center line of the road.

41 (2) All necessary grounds for stations, depots, shops, side tracks, turntables and water stations,  
42 not exceeding 10 acres in any one place, upon payment to the state of the sum therefor as fixed by  
43 the [*Department of State Lands*] **Oregon Department of Natural Resources**.

44 (3) The right to take, from the lands of this state adjacent to the route lines of the road, mate-  
45 rial necessary for the construction of the roads.

1 (4) The right to construct and maintain railroad bridges over any navigable waters in this state.  
2 All bridges crossing navigable waters shall be subject to such regulations, restrictions and com-  
3 pensation as may be fixed by the department, and shall be so constructed as not unnecessarily to  
4 interfere with navigation.

5 **SECTION 755.** ORS 273.755 is amended to read:

6 273.755. (1) Whenever a railway company mentioned in ORS 273.751, or its successors or assigns,  
7 files with the [*Department of State Lands*] **Oregon Department of Natural Resources** a map of the  
8 definite location of its road lines through any state lands, the department thereafter shall except  
9 from sale such right of way and lands for purposes named in ORS 273.751.

10 (2) Whenever a railway company has selected a tract of state lands for any purpose mentioned  
11 in ORS 273.751, the company shall file with the department a map of the same, with a description  
12 connected with surveys acceptable to the department. After such map has been filed, after com-  
13 pletion of construction of a railroad through such lands and upon payment for the lands at the rate  
14 of \$1 per acre, the department shall execute and deliver to the company, its successors or assigns,  
15 deeds for the tracts of lands so selected.

16 **SECTION 756.** ORS 273.761 is amended to read:

17 273.761. (1) A right of way for construction of a water ditch to be used for irrigation, manufac-  
18 turing or mining purposes, ditches or water pipes for conveying water to political subdivisions for  
19 domestic purposes, or for the extinguishment of fires, is granted for a distance of 25 feet on each  
20 side of such ditches or water pipes to any person who may construct such water ditches or water  
21 pipes over any submersible, swamp or school lands.

22 (2) A right of way for the construction and maintenance of domestic and industrial water supply  
23 mains, sanitary pressure mains and storm water outfalls is granted for a distance of 25 feet on each  
24 side of such mains and outfalls to any municipal corporation that constructs and maintains them in  
25 or over submerged or submersible lands or new lands created thereon.

26 (3) All deeds, leases and easements granted by the State of Oregon for any of the lands men-  
27 tioned in this section shall be made subject to any vested rights of the owners of such water ditches,  
28 water pipes, mains or outfalls as may have been acquired under this section.

29 (4) The person or municipal corporation constructing such water ditches, water pipes, mains or  
30 outfalls shall file with the [*Department of State Lands*] **Oregon Department of Natural Resources**  
31 a copy of the field notes of the survey of such ditches, water pipes, mains or outfalls, showing their  
32 location.

33 (5) Any construction, maintenance, relocation or extension of a main or outfall described in  
34 subsection (2) of this section shall be carried out in accordance with any applicable rules of the  
35 department.

36 **SECTION 757.** ORS 273.780 is amended to read:

37 273.780. (1) Mineral and geothermal resource rights in property owned by any state agency and  
38 mineral and geothermal resource rights retained as an interest in lands previously sold, granted or  
39 otherwise conveyed by the state or any agency thereof are property of the State of Oregon. Except  
40 as provided in ORS 273.785, proceeds therefrom shall accrue to the Common School Fund, and the  
41 State Land Board is declared to be the state agency acting for the state in any transaction re-  
42 specting such mineral and geothermal resource rights.

43 (2) In addition to applicable requirements of ORS chapter 522, such mineral and geothermal re-  
44 source rights shall be subject to exploration permit or lease by the [*Department of State Lands*]  
45 **Oregon Department of Natural Resources**, in accordance with rules and conditions established

1 by law or adopted by the department.

2 (3) The mineral and geothermal resource rights shall be retained by the state in the absence of  
3 a finding by the [*State Land*] board upon adequate facts presented to it that their sale or exchange  
4 is for the purpose of obtaining the greatest benefit for the people of this state, consistent with the  
5 conservation of lands under its jurisdiction under sound techniques of land management.

6 (4) Notwithstanding subsection (3) of this section, when the department [*of State Lands*] offers  
7 real property for sale, the department may not retain the rights to mineral or geothermal resources  
8 if:

9 (a) On January 1, 2004, the real property was located:

10 (A) Inside an urban growth boundary; or

11 (B) Within an area zoned for residential use on a lot or parcel that is three acres or smaller in  
12 size; and

13 (b) The value, if any, of the rights to the mineral or geothermal resources is included in the total  
14 sale price of the real property.

15 **SECTION 758.** ORS 273.785 is amended to read:

16 273.785. ORS 273.551 and 273.775 to 273.790 do not apply to:

17 (1) Soil, clay, stone, sand and gravel acquired or used by state agencies for the purpose of con-  
18 structing or repairing roads or other state facilities, or the proceeds from those materials.

19 (2) Mineral or geothermal resource rights or proceeds from those rights acquired by the [*State*  
20 *Fish and Wildlife Commission*] **state** pursuant to an agreement with the federal government under  
21 16 U.S.C. 669 to 669i (P.L. 75-415).

22 (3) Mineral or geothermal resource rights or proceeds from those rights if other disposition is  
23 required by federal rules or regulations or any agreement entered into at the time of acquisition of  
24 the mineral or geothermal resource rights by the state.

25 (4) Proceeds of mineral and geothermal resource rights acquired by the state pursuant to ORS  
26 530.010 and 530.030, other than those distributed under ORS 530.110 (1)(c).

27 (5) Mineral or geothermal resource rights or proceeds from those rights acquired after January  
28 1, 1974, for the state by the Department of Veterans' Affairs pursuant to ORS 88.720, 406.050 (2),  
29 407.135 or 407.145. After consultation, the [*Department of State Lands*] **Oregon Department of**  
30 **Natural Resources** and the Department of Veterans' Affairs shall enter into an interagency  
31 agreement governing consultation between [*them*] **the departments** concerning mineral and  
32 geothermal resource values on properties acquired for the state by the Department of Veterans'  
33 Affairs. The Department of Veterans' Affairs shall adopt rules relating to the release of mineral and  
34 geothermal rights on such properties.

35 (6) Mineral or geothermal resource rights or proceeds from those rights given by a donor to any  
36 institution, department or activity under the control of the State Board of Higher Education that  
37 are acquired or held for the state by the State Board of Higher Education pursuant to ORS chapters  
38 351 and 567. In managing mineral or geothermal resource leases, the State Board of Higher Educa-  
39 tion shall consult with the [*Department of State Lands*] **Oregon Department of Natural Resources**  
40 in accordance with an interagency agreement established by the department and the State Board  
41 of Higher Education governing consultation between the department and the State Board of Higher  
42 Education and governing management of the mineral or geothermal resources.

43 (7) Mineral or geothermal resource rights or proceeds from those rights acquired and held by  
44 the Department of Transportation. In managing mineral or geothermal resource leases, the Depart-  
45 ment of Transportation shall enter into an intergovernmental agreement with the [*Department of*

1 *State Lands*] **Oregon Department of Natural Resources** governing consultation between the de-  
2 partments and governing management of the mineral or geothermal resources.

3 **SECTION 759.** ORS 273.787 is amended to read:

4 273.787. (1) As used in this section:

5 (a) "Owner" means:

6 (A) The record holder of fee title interest in residential real property; or

7 (B) The contract purchaser of residential real property.

8 (b) "Residential real property" means real property that is sold by the [*Department of State*  
9 *Lands*] **Oregon Department of Natural Resources** for the State Land Board and is located:

10 (A) Inside an urban growth boundary; or

11 (B) Within an area zoned for residential use on a lot or parcel that is three acres or smaller in  
12 size.

13 (2) An owner may apply to the department for release and transfer of the rights to mineral or  
14 geothermal resources reserved by the State of Oregon.

15 (3) Upon application by the owner, the department shall release and transfer to the owner the  
16 reserved rights to mineral and geothermal resources within 30 days after the first [*board*]  
17 **of the State Land Board** that is at least 60 days after the department received the completed ap-  
18 plication for release and transfer of the rights, unless the board finds that a significant mineral or  
19 geothermal resource exists. If the board finds that a significant mineral or geothermal resource ex-  
20 exists, the owner may:

21 (a) Offer to purchase the resource for the value of the resource; or

22 (b) Withdraw the application.

23 (4) If the board finds that a significant mineral or geothermal resource exists under subsection  
24 (3) of this section and the owner offers to purchase the resource for the value of the resource:

25 (a) The board shall determine the value of the resource on the basis of an appraisal conducted  
26 by a state certified appraiser certified under ORS 674.310 or by a geologist who is registered under  
27 ORS 672.505 to 672.705 and qualified to assess the value of mineral and geothermal deposits.

28 (b) The board may not:

29 (A) Require an owner to obtain an appraisal under this section; or

30 (B) Require an owner to pay the cost of an appraisal conducted at the request of the board  
31 under this section.

32 (5) The department may charge a reasonable fee, not to exceed \$150, to process an application  
33 under this section.

34 (6) The department may adopt rules to implement this section.

35 **SECTION 760.** ORS 273.790 is amended to read:

36 273.790. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall es-  
37 tablish and maintain a registry of mineral and geothermal resource rights placed under the juris-  
38 diction of the State Land Board.

39 **SECTION 761.** ORS 273.805 is amended to read:

40 273.805. (1) As used in ORS 273.805 to 273.825, "common school grazing lands" means lands  
41 owned by the State of Oregon and under the control of the [*Department of State Lands*] **Oregon**  
42 **Department of Natural Resources** that are chiefly suitable for the grazing of animals, as deter-  
43 mined by the department, and [*which*] **that** are within, but not limited to, the following land classi-  
44 fications:

45 (a) Lands defined by ORS 273.251 as indemnity lands, school lands or farmlands.

1 (b) Lands [*which*] **that** have escheated to the state.

2 (2) Nothing in ORS 273.805 to 273.825 is intended to be an express or implied limitation upon  
3 the powers of the department to acquire, lease, manage, control or protect land pursuant to au-  
4 thority otherwise granted by law. ORS 273.805 to 273.825 and 327.430 are not the result of a legis-  
5 lative intent or belief that the department is without authority to acquire, lease, manage, protect  
6 or control common school grazing lands.

7 **SECTION 762.** ORS 273.815 is amended to read:

8 273.815. (1) In order to accomplish the purpose of ORS 273.805 to 273.825, the [*Department of*  
9 *State Lands*] **Oregon Department of Natural Resources** may, with respect to common school  
10 grazing lands:

11 (a) Protect the lands from fire, disease and insect pests, cooperate with others in such protection  
12 and enter into all agreements necessary or convenient therefor.

13 (b) Lease the lands subject to such terms and conditions as the department prescribes or is  
14 otherwise prescribed by law. Leases shall be of sufficient duration so as to encourage the rehabil-  
15 itation and improvement of the lands by the lessee.

16 (c) Loan moneys belonging to the Common School Fund to lessees of the lands for the purpose  
17 of rehabilitating and improving the lands. The security for such loans shall be as prescribed by the  
18 department but shall not be more than equal in value to the amount loaned.

19 (d) Reseed or reforest the lands, including the destruction of undesirable vegetation, and coop-  
20 erate with others for such reseeding or reforestation, and make all agreements necessary or con-  
21 venient thereto.

22 (e) Require such undertakings, including performance bonds, as it considers appropriate to se-  
23 cure performance of any agreement or loan authorized by ORS 273.805 to 273.825.

24 (2) In order to accomplish the purpose of ORS 273.805 to 273.825, the department may, with re-  
25 spect to common school grazing lands, apply the following to all leases entered into by the depart-  
26 ment after January 1, 1985:

27 (a) The initial term of a lease shall be not less than 20 years, and at the end of the initial term  
28 the lease shall be renewed by the department for an additional term of 20 years. However, any  
29 lessee who is in default under the terms of the lease or has failed to comply with all management  
30 plans applicable to the lease shall not be eligible for renewal of the lease for an additional term of  
31 20 years as provided in this paragraph.

32 (b) The department shall give preference in the issuance of leases to:

33 (A) Persons who are current lessees; and

34 (B) Landowners engaged in the livestock business that seek to use the common school grazing  
35 lands for the grazing of livestock. For the purposes of this subparagraph, "landowner" means an  
36 individual or legal entity that is the owner of the land, water or water rights necessary to permit  
37 the proper use of the leased common school grazing lands in combination with the landowner's pri-  
38 vately owned or controlled land or water.

39 (c) The department may terminate a lease of common school grazing lands:

40 (A) Upon the default of the lessee as to any material term of the lease; or

41 (B) If the lessee has failed to comply with any management plan adopted by the department and  
42 applicable to the leasehold.

43 (d) Except as provided in paragraph (c) of this subsection, the department shall not terminate  
44 a common school grazing lands lease without the consent of the lessee. If the consent of the lessee  
45 cannot be obtained, the department may terminate a common school grazing lands lease only by

1 contemporaneously agreeing to pay to the lessee compensation as provided by law for all damages  
 2 caused by the termination of the lease, including any depreciation or loss of value to the remaining  
 3 lands or businesses of the lessee.

4 **SECTION 763.** ORS 273.820 is amended to read:

5 273.820. The [*Department of State Lands*] **Oregon Department of Natural Resources** may ex-  
 6 change common school grazing lands for land of approximately equal aggregate value, when such  
 7 exchange is in furtherance of the purposes of ORS 273.805 to 273.825. No exchange shall be made  
 8 until the title to the lands to be received has been validated by the Attorney General. All lands  
 9 received in exchange shall have the same status and be subject to the same provisions of law as  
 10 lands given in exchange therefor.

11 **SECTION 764.** ORS 273.825 is amended to read:

12 273.825. (1) The lessee of any common school grazing land, upon its classification for sale by the  
 13 [*Department of State Lands*] **Oregon Department of Natural Resources**, may purchase such land  
 14 at a price and on terms prescribed under subsection (2) of this section if the lessee is an individual  
 15 person, a resident of this state and owns, in fee simple, land immediately adjacent to the common  
 16 school grazing land for which the lessee has applied. For purposes of this section, lands are con-  
 17 sidered to be adjacent if their boundaries are common or intersect at a common point.

18 (2) Application to purchase common school grazing land under subsection (1) of this section must  
 19 be made in a manner prescribed by the rules of the department. Upon receiving an application, the  
 20 department shall determine whether the applicant qualifies under subsection (1) of this section. If  
 21 the applicant qualifies, the department shall cause an appraisal to be made of the land for which  
 22 application has been made. The department then shall fix a price for such land. ORS 270.020, 273.225  
 23 to 273.241 and 273.275 do not apply to the sale of land under this subsection. The applicant shall  
 24 pay not less than 10 percent of the purchase price at the time of purchase, and shall pay the re-  
 25 mainder in 10 equal installments, at least one installment to be paid each year, over a period not  
 26 to exceed 10 years from the time of purchase, with interest at the rate fixed by the department for  
 27 purposes of ORS 327.425.

28 (3) If application to purchase common school grazing land is made by a person other than the  
 29 lessee of such land, the department promptly shall notify the lessee by registered or certified mail.  
 30 Not later than the 90th day after notice was mailed to the lessee, the lessee may make written ap-  
 31 plication in a manner prescribed by the rules of the department to purchase such land. If the de-  
 32 partment determines that the lessee qualifies under subsection (1) of this section, the department  
 33 shall proceed under subsection (2) of this section. If the department determines that the lessee does  
 34 not so qualify, or if the lessee does not make timely application as required by this subsection, the  
 35 department shall proceed to sell such land in accordance with applicable provisions of law other  
 36 than this section.

37 **SECTION 765.** ORS 273.870 is amended to read:

38 273.870. (1) The Board of County Commissioners of Clatsop County shall give public notice of  
 39 each application received by it under ORS 273.865 (1), prior to its consideration thereof, by adver-  
 40 tisement not less than once each week for four successive weeks in a newspaper of general circu-  
 41 lation in Clatsop County. Such notice need not describe the lands applied for in legal terms, but  
 42 by the use of common descriptions or maps shall be designed to identify the lands in a manner  
 43 intelligible to the layperson. Each notice shall indicate that a protest against the execution of the  
 44 deed applied for may be filed, in a manner prescribed by the county board, with the county board  
 45 not later than the 60th day after the fourth publication of the notice, or within such further time



1 as the county board authorizes on a showing of good cause. Not later than the fifth day after the  
 2 first publication of the notice, the county board shall send written notice of the application to the  
 3 [*Department of State Lands*] **Oregon Department of Natural Resources**.

4 (2) If no protest is received within the time provided for in subsection (1) of this section, and if  
 5 the county board thereafter determines that the application conforms to the requirements of ORS  
 6 273.865 (1), the county board shall execute and deliver to the applicant a deed in accordance with  
 7 ORS 273.855 (1).

8 (3) If protest is received within the time provided for in subsection (1) of this section, the county  
 9 board shall cause a hearing to be held with respect to the protest, in a manner prescribed by its  
 10 rules, prior to the making of its findings with respect to an application.

11 (4) If two or more applications are filed with respect to the same lands, the county board shall  
 12 cause a hearing to be held at which all such applicants may appear or be represented.

13 **SECTION 766.** ORS 273.902 is amended to read:

14 273.902. (1) All the rights and title of the State of Oregon to the swamp and overflowed lands  
 15 of this state, and claimed by persons who have completed settlement thereon, or who may hereafter  
 16 complete settlement under the provisions of the preemption or homestead laws of the United States,  
 17 and have obtained a patent or certificate of final proof therefor, hereby are granted and confirmed  
 18 unto such claimant, or the heirs or assigns of the claimant, respectively.

19 (2) Upon application of any such claimant to the [*Department of State Lands*] **Oregon Depart-**  
 20 **ment of Natural Resources**, with proof of claim evidenced by United States patent or final certif-  
 21 icate of proof of settlement and payment, issued from the United States Land Office, the department  
 22 shall execute and deliver to such claimant, without charge, a quitclaim deed of the state's right and  
 23 title to the lands so claimed.

24 **SECTION 767.** ORS 273.903 is amended to read:

25 273.903. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall not  
 26 call in question the title of any person to any swamp lands which the person may not have acquired  
 27 by full and complete compliance with the preemption or homestead laws of the United States, nor  
 28 shall the department sell to anyone any unsurveyed swamp lands, or swamp lands on which any  
 29 settler shall have made and perfected bona fide legal entry under the laws of the United States.  
 30 [*"Swamp lands,"*] As used in this section, "**swamp lands**" means lands classified as swamp lands  
 31 pursuant to ORS 273.251.

32 **SECTION 768.** ORS 273.992 is amended to read:

33 273.992. (1) A person who violates any provision of ORS 273.225, 273.231, 273.551, 273.715,  
 34 273.780 or 273.815 or any rule adopted under ORS 273.045 related to those sections is subject to a  
 35 civil penalty in an amount to be determined by the Director of the [*Department of State Lands*]  
 36 **Oregon Department of Natural Resources** of not more than \$1,000 per day of violation.

37 (2) Civil penalties under this section shall be imposed in the manner provided in ORS 183.745.

38 (3) The provisions of this section are in addition to and not in lieu of any other penalty or  
 39 sanction provided by law.

40 (4) Any civil penalty recovered under this section shall be deposited in the Common School Fund  
 41 and made available for expenses of the [*Department of State Lands*] **Oregon Department of Natural**  
 42 **Resources** and as otherwise provided by law.

43 **SECTION 769.** ORS 273.994 is amended to read:

44 273.994. (1) The Director of the [*Department of State Lands*] **Oregon Department of Natural**  
 45 **Resources** shall adopt by rule a schedule establishing the amount of civil penalty that may be im-

1 posed for a particular violation of ORS 273.225, 273.231, 273.551, 273.715, 273.780 or 273.815 or any  
2 rule adopted under ORS 273.045 related to those sections.

3 (2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the  
4 director shall consider the following factors:

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

7 (b) Any prior violations by the person of statutes, rules, orders or authorizations pertaining to  
8 the use of state land;

9 (c) The immediacy and extent to which the violation threatens the public health or safety or the  
10 assets of the Common School Fund; and

11 (d) Any other factors determined by the director to be relevant and consistent with the policies  
12 established to implement the provisions of ORS 273.225, 273.231, 273.551, 273.715, 273.780 or 273.815  
13 or any rule adopted under ORS 273.045 related to those sections.

14 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and  
15 conditions as the director determines to be proper and consistent with the protection of the public  
16 health and safety and the protection of the assets of the Common School Fund. Upon the request  
17 of the person incurring the penalty, the director shall consider evidence of the economic and finan-  
18 cial condition of the person in determining whether a penalty shall be remitted or mitigated.

19 **SECTION 770.** ORS 274.005 is amended to read:

20 274.005. As used in this chapter, unless the context requires otherwise:

21 [(1) "Department" means the Department of State Lands.]

22 [(2) "Director" means the Director of the Department of State Lands.]

23 [(3)] (1) "Line of ordinary high water" means the line on the bank or shore to which the high  
24 water ordinarily rises annually in season.

25 [(4)] (2) "Line of ordinary low water" means the line on the bank or shore to which the low  
26 water ordinarily recedes annually in season.

27 [(5)] (3) "Land" includes water, water rights, easements of every nature and all appurtenances  
28 to land.

29 [(6)] (4) "Material" includes gravel, rock, sand and silt, but does not include hard minerals  
30 subject to ORS 274.610, or oil, gas and sulfur subject to ORS 274.705 to 274.860.

31 [(7)] (5) "Submerged lands," except as provided in ORS 274.705, means lands lying below the line  
32 of ordinary low water of all navigable waters within the boundaries of this state as heretofore or  
33 hereafter established, whether such waters are tidal or nontidal.

34 [(8)] (6) "Submersible lands," except as provided in ORS 274.705, means lands lying between the  
35 line of ordinary high water and the line of ordinary low water of all navigable waters and all is-  
36 lands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty,  
37 wherever applicable, within the boundaries of this state as heretofore or hereafter established,  
38 whether such waters or lands are tidal or nontidal.

39 **SECTION 771.** ORS 274.040 is amended to read:

40 274.040. (1) Except as provided in ORS 274.043 (1) to (3), in ORS 274.085 for leases of submersible  
41 lands acquired as an investment for the Common School Fund, in ORS 274.530 (1) for leases of  
42 submersible lands of less than one year's duration, in ORS 274.530 (3) for licenses of less than three  
43 years' duration and in subsections (2) and (3) of this section, submersible lands owned by the State  
44 of Oregon may be leased only to the highest bidder, bidding at least the minimum amount designated  
45 by the [Department of State Lands] **Oregon Department of Natural Resources** under subsection

1 (6) of this section for the lease of any such lands, after being advertised not less than once each  
 2 week for two successive weeks in one or more newspapers of general circulation in the county in  
 3 which the lands are situated. However, any owner of lands abutting or fronting on such submersible  
 4 lands shall have the preference right to lease the lands unless the submersible lands are occupied  
 5 by a person claiming the right of occupancy under a conveyance recorded before January 1, 1981,  
 6 from the present owner or predecessor in interest of lands abutting or fronting the submersible  
 7 lands. If so, the occupant of the submersible lands shall have the preference right to lease the lands.  
 8 An easement or license related to utility service on the submersible lands does not establish a  
 9 preference right under this subsection. The lands shall be leased for the amount designated by the  
 10 department under subsection (6) of this section as the minimum amount for the lease of any such  
 11 lands. The preference provided in this subsection applies to any lease of submersible land for one  
 12 year or more offered or issued under ORS 274.530. The preference provided in this subsection does  
 13 not apply to any lease offered or issued by the department under ORS 274.705 to 274.860.

14 (2) Submersible lands owned by the State of Oregon that are determined by the State Land  
 15 Board to be available for sale may be sold only to the highest bidder, after being advertised not less  
 16 than once each week for two successive weeks in one or more newspapers of general circulation in  
 17 the county in which the lands are situated. However:

18 (a) No such lands shall be sold for less than for a fair appraised value as determined by an ap-  
 19 praiser appointed by the department.

20 (b) All sales of such submersible lands shall be approved by the [*State Land*] board.

21 (c) Any owner of lands abutting or fronting on such submersible lands shall have the preference  
 22 right to purchase such lands for the fair appraised value provided that the sale of such lands be  
 23 approved by the [*State Land*] board.

24 (3)(a) The department may grant, to any person holding a permit from the [*Water Resources Di-*  
 25 *rector*] **department** authorizing the impoundment for beneficial use of the waters of any lake or  
 26 stream, easements over submersible lands for flowage and storage of waters, and for the con-  
 27 struction, maintenance and operation of any structures or facilities necessary for the use of the  
 28 water under the terms of the permit upon payment of just compensation by the grantee.

29 (b) In addition to the authority of the department under paragraph (a) of this subsection to grant  
 30 easements over submersible lands, a person holding a water right permit, water right certificate,  
 31 proposed or final order approving a water right permit or court decree evidencing a water right  
 32 may occupy state-owned submersible lands for the construction, maintenance and operation of any  
 33 structure or facility necessary for the use of water if the proposed use under the permit, certificate,  
 34 order or decree is for irrigation or domestic use. The department may not charge for the occupation  
 35 of state-owned submersible lands pursuant to this paragraph, nor may the department require that  
 36 a person obtain written documentation to substantiate the permission granted under this paragraph.  
 37 [*Upon request by the Department of State Lands, the Water Resources Department shall provide in-*  
 38 *formation to the Department of State Lands regarding any change of use of the water right.*] A person  
 39 may continue to occupy state-owned submersible lands pursuant to this paragraph until:

40 (A) The water right permit is canceled pursuant to ORS 537.260;

41 (B) The water right is canceled pursuant to ORS 540.641; or

42 (C) The water is no longer being applied to irrigation or domestic use.

43 (c) An easement or the permission granted under this subsection may not be construed to be a  
 44 sale or lease of the submersible lands within the meaning of subsections (1) and (2) of this section.

45 (d) A person granted an easement or permission to use or occupy state-owned submersible lands

1 under this subsection shall indemnify and hold harmless the state from all liability and claims arising from or attributable to the use or occupation.

3 (4) All easements or the permission granted pursuant to subsection (3) of this section shall be subject to conditions that will ensure the safety of the public and the preservation of economic, scenic and recreational values and to lawful rules promulgated by state agencies affected by the activities of the grantee.

7 (5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806, 622.270 or 622.320 to 622.350.

9 (6) The department [*of State Lands*] shall designate the minimum acceptable amount for the lease of any submersible lands otherwise authorized by law, other than any lease offered or issued by the department under ORS 274.705 to 274.860.

12 (7) For the purpose of sale, the value of state-owned submersible lands shall be determined by an appraiser appointed by the department.

14 (8) The act of any person entering into an agreement with the department under this section or ORS 274.530 for the lease of submersible lands shall not be considered a waiver by such person of any claim of ownership in the submersible lands described in the agreement.

17 **SECTION 772.** ORS 274.043 is amended to read:

18 274.043. (1) A privately owned float or dock occupying an area of 200 square feet or less is exempt from the leasing requirements of ORS 274.040 if:

20 (a) The structure belongs to the immediately adjacent riparian landowner; and

21 (b) The float or dock is uncovered, unenclosed and open on all sides.

22 (2) A privately owned float or dock constructed prior to September 29, 1991, and exempted under ORS 274.042 (1989 Edition) is exempt from the provisions of ORS 274.040.

24 (3) The [*Department of State Lands*] **Oregon Department of Natural Resources** may, by rule, provide for additional exemptions to the leasing requirements of ORS 274.040.

26 (4) Any float or dock described in subsections (1) to (3) of this section shall be registered with the department.

28 **SECTION 773.** ORS 274.210 is amended to read:

29 274.210. The [*Department of State Lands*] **Oregon Department of Natural Resources** on behalf of the State of Oregon may enter into contracts for:

31 (1) The drainage of submersible and submerged lands adjoining or underlying any lakes, marshes or swamps in this state, or for the drainage of that part which is in this state of submersible and submerged lands adjoining or underlying any lake, marsh or swamp lying partly in this state and partly in another state, and for the reclamation of any such lands; and

35 (2) The sale or disposal of such drained and reclaimed lands as provided for in ORS 274.210 to 274.260.

37 **SECTION 774.** ORS 274.220 is amended to read:

38 274.220. (1) Any person desiring to enter into a contract to drain submersible and submerged lands under ORS 274.210 to 274.260 and reclaim such lands shall file [*with the Department of State Lands*] an application **with the Oregon Department of Natural Resources**.

41 (2) The applicant, at the expense of the applicant and without any cost or charge to the state, shall make the necessary surveys and prepare a map of the lands proposed to be reclaimed. The map shall exhibit a plan showing the area that is submersible or submerged and the mode of the contemplated drainage and reclamation, and shall be accompanied by a list of the lands proposed to be drained, with sufficient description to identify the lands in accordance with rules promulgated

1 by the department.

2 (3) The application shall contain an estimate of the cost of the construction of the proposed  
3 system of drainage and reclamation.

4 **SECTION 775.** ORS 274.230 is amended to read:

5 274.230. (1) Upon receipt of the application, map and plan of drainage and reclamation under  
6 ORS 274.220, the [*Department of State Lands may require the Water Resources Director to*] **Oregon**  
7 **Department of Natural Resources may** make an investigation and report at the expense of the  
8 applicant. If the project appears feasible and desirable and such applicant responsible, the depart-  
9 ment may enter into a contract with the applicant for construction of the drainage and reclamation  
10 works.

11 (2) The applicant shall agree:

12 (a) To drain the submersible and submerged lands substantially in accordance with the plans set  
13 forth in the contract;

14 (b) To make such proofs of reclamation as are required by the department;

15 (c) To pay all costs incident to the contract and making of the proof and any other expense  
16 connected therewith;

17 (d) That work will be commenced upon the ditches or other works necessary for such drainage  
18 and reclamation at a time fixed by the department and agreed upon in the contract;

19 (e) That by the end of the first year after the time fixed in the contract for beginning such work,  
20 10 percent of the necessary expenditure will be made; and

21 (f) That this work will be prosecuted with due diligence until complete and the required proof  
22 of reclamation is made.

23 (3) The department shall require a bond subject to its approval in any sum it finds necessary to  
24 insure the faithful performance of the contract.

25 **SECTION 776.** ORS 274.240 is amended to read:

26 274.240. (1) Immediately upon execution of the contract, the contractor undertaking the drainage  
27 and reclamation may enter upon the lands for the purpose of reclaiming the same.

28 (2) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall fix the  
29 amount to which the contractor is entitled for reclaiming the lands and shall also fix the amount  
30 to be paid to the state for such lands. The department may permit the contractor to sell or dispose  
31 of the lands at such price and upon such terms as the department may fix in tracts not to exceed  
32 640 acres to any one person under such rules as the department may promulgate governing disposal.

33 (3) Upon proof satisfactory to the department that the amount fixed by the department as due  
34 for reclamation and the amount due the State of Oregon has been fully paid, the department shall  
35 issue a quitclaim deed for not more than 640 acres to the purchaser of such land.

36 **SECTION 777.** ORS 274.250 is amended to read:

37 274.250. (1) Upon failure of any parties having contracts with the State **of Oregon** for con-  
38 struction of drainage and reclamation works to begin the same within the time specified by the  
39 contract, or to complete the same within the time or in accordance with the specifications of the  
40 contract, the [*Department of State Lands*] **Oregon Department of Natural Resources** shall give  
41 such parties written notice of such failure. If the parties have failed to proceed with the work or  
42 to conform to the specifications of the contract on or before the 60th day after the sending of such  
43 notice, the contract and all work constructed thereunder is forfeited to the state.

44 (2) Upon forfeiture, the department shall immediately give notice once every week for a period  
45 of four weeks in some newspaper of general circulation in the county in which the work is situated,

1 and in one newspaper of general circulation in this state, declaring the forfeiture of the contract,  
2 and that upon a day stated in the notice proposals will be received at the office of the department  
3 for the purchase of incomplete works and for the completion of the contract, the time for receiving  
4 such bids to be not earlier than the 60th day after issuance of the last notice of the forfeiture. The  
5 sales shall be for cash to the highest responsible bidder. The money received from the sale of the  
6 partially completed works under this section shall first be applied to the expenses incurred by the  
7 state in their forfeiture and disposal, and any surplus shall be paid into the State Treasury and be-  
8 come a part of the Common School Fund.

9 (3) The contractors may appeal from the decision of the department. The appeal shall be heard  
10 in chambers by the circuit court of the district wherein the head works of the drainage system are  
11 situated.

12 **SECTION 778.** ORS 274.280 is amended to read:

13 274.280. In addition to its powers under ORS 274.210 to 274.260, the [*Department of State*  
14 *Lands*] **Oregon Department of Natural Resources** may cause reclamation surveys, plans and  
15 specifications to be made for the reclaiming of any unsold swamp lands and submersible lands under  
16 the control of the department.

17 **SECTION 779.** ORS 274.290 is amended to read:

18 274.290. The [*Department of State Lands may direct the Water Resources Director to submit an*  
19 *estimate of*] **Oregon Department of Natural Resources may estimate** the probable cost of any  
20 survey, plan or specification of any contemplated reclamation project under ORS 274.280. On con-  
21 sideration thereof, if the department finds it to be in the interest of the state, the department shall  
22 [*direct the Water Resources Director to cause such survey and plans and specifications to be made and*  
23 *prepared*] **make and prepare the survey, plan or specification.** Upon receipt thereof the depart-  
24 ment may proceed under the plan to the extent and in such manner as [*it*] **the department** consid-  
25 ers advisable.

26 **SECTION 780.** ORS 274.404 is amended to read:

27 274.404. (1) On or before July 1, 1996, the State Land Board shall adopt by rule a procedure that  
28 is consistent with ORS 274.400 to 274.412 by which the board and the [*Department of State Lands*]  
29 **Oregon Department of Natural Resources** shall make a final administrative determination as to  
30 whether a waterway or part of a waterway is navigable, and if so, the extent of the interest claimed  
31 by the State of Oregon in the navigable portion of the waterway.

32 (2) The rules adopted under subsection (1) of this section shall incorporate the following proce-  
33 dures that the board and the department shall follow:

34 (a) The board may direct the department to make a determination of navigability if there is  
35 sufficient economic justification or if there is a broad and substantial public interest. If the board  
36 so directs, the department shall conduct a study to make the determination.

37 (b) The department shall provide prompt public notice to affected property owners that the de-  
38 partment is beginning the study.

39 (c) Upon completion of a study directed under paragraph (a) of this subsection, the department  
40 shall prepare and submit to the board a draft report setting forth the department's findings and  
41 conclusions as to whether the waterway or part of the waterway under study is navigable and, if  
42 so, the extent of the State of Oregon's interest in the waterway or part of the waterway.

43 (d) The department shall provide appropriate prior public notice to affected property owners and  
44 other interested parties concerning the draft report. The notice shall provide an opportunity for a  
45 public hearing in the area of the affected waterway and an opportunity for the public to submit

1 written comments on the draft report and to submit testimony or other evidence concerning the  
2 navigability of the affected waterway or part of the waterway or the State of Oregon's interest in  
3 the waterway or part of the waterway.

4 (e) Following the public hearing, the board may adopt the draft report submitted by the de-  
5 partment if substantial evidence in the record supports the report's findings and conclusions, or the  
6 board may refer the report to the department for further action as determined by the board.

7 **SECTION 781.** ORS 274.450 is amended to read:

8 274.450. The [*Department of State Lands*] **Oregon Department of Natural Resources** may ac-  
9 quire by purchase, gift, condemnation or otherwise, any riparian rights which may, by any court of  
10 competent jurisdiction, be held to be owned by or vested in any upland or riparian owner on any  
11 meandered lakes, and may institute such suits or actions as may be necessary in such condemnation  
12 proceedings.

13 **SECTION 782.** ORS 274.460 is amended to read:

14 274.460. All persons qualified to become entrymen and to secure land patents under the home-  
15 stead laws of the United States and who prior to January 1, 1921, in good faith settled upon lands  
16 within the meander lines of lakes returned as navigable by the United States surveys and who, on  
17 January 1, 1921, by reason of settlement, cultivation and improvements on any such lands would be  
18 entitled to patent from the United States if such lands were open or subject to homestead entry are  
19 given a preference right to purchase from the State of Oregon such lands so settled upon by them,  
20 not exceeding 160 acres for any one person, upon such terms and at such prices and within such  
21 times as shall be fixed by the [*Department of State Lands*] **Oregon Department of Natural Re-**  
22 **sources.** However, owners of the upland bordering upon such ordinary high water mark have a  
23 preference right to purchase, at the best price bid, state lands described in ORS 274.430 and riparian  
24 to their lands, and not exceeding 160 acres, in addition to the lands granted them by ORS 274.430  
25 and 274.440.

26 **SECTION 783.** ORS 274.470 is amended to read:

27 274.470. (1) Any person who in good faith settled upon lands within the meander lines of any  
28 meandered lake and who, on January 1, 1921, actually resided thereon, who maintained residence  
29 thereon for at least five years immediately prior to such date, and who complied with the require-  
30 ments of settlement, residence, cultivation and improvement, specified for homestead entrymen under  
31 the homestead laws of the United States, and which would be sufficient to acquire title by patent  
32 if such lands were subject to homestead entry by qualified entrymen, upon proof of such facts to the  
33 satisfaction of the [*Department of State Lands*] **Oregon Department of Natural Resources:**

34 (a) Is entitled to a deed from the state, conveying and granting such lands not exceeding 160  
35 acres without cost; and

36 (b) Has a preferential right to purchase from the State of Oregon 160 acres of additional lands,  
37 chiefly valuable for agricultural purposes.

38 (2) Any person who did not reside on any lands described in subsection (1) of this section for  
39 five years immediately prior to January 1, 1921, but who purchased the improvement or possessory  
40 rights or claims of a prior occupant, and whose residence and possession when tacked to that of  
41 such prior occupant extended for a period of not less than five years immediately prior to such date,  
42 shall have a preferential right to purchase such lands, not exceeding 160 acres, the price of which  
43 shall be fixed without reference to the value of the improvements thereon.

44 **SECTION 784.** ORS 274.490 is amended to read:

45 274.490. Settlers within the meander line of any meandered lake have the first preferential right,

1 and the [*Department of State Lands*] **Oregon Department of Natural Resources** shall, [*so*] as far  
2 as practicable, work out the various preferential rights by securing to each, all the lands which  
3 would be most advantageously used by such several persons. In case of conflict, the department shall  
4 give the parties a reasonable time in which to agree, and if [*they*] **the parties** cannot agree, the  
5 department shall decide the matter and make conveyances as [*it*] **the department** considers equi-  
6 table, and its decision in the matter [*shall be*] **is final**. The department shall fix the time within  
7 which such preferential rights shall be exercised.

8 **SECTION 785.** ORS 274.500 is amended to read:

9 274.500. (1) All of the lands referred to in ORS 274.470 and 274.480 granted or conveyed by the  
10 state, shall be granted and conveyed in a reasonably compact area, to be determined by the [*De-*  
11 *partment of State Lands*] **Oregon Department of Natural Resources**.

12 (2) All sales of such state lands shall be at prices fixed by the department, and no more than  
13 320 acres shall be sold or conveyed to any one person.

14 **SECTION 786.** ORS 274.510 is amended to read:

15 274.510. (1) If the federal government claims title or interest in any lands referred to in ORS  
16 274.470 or 274.480 the same shall not be conveyed or otherwise disposed of, or preferential right  
17 therein accrue until such claim is settled. The [*Department of State Lands*] **Oregon Department of**  
18 **Natural Resources** may enter into such agreements with the federal government affecting such  
19 lands as it deems best in the interest of the public, and make such deeds and conveyances to the  
20 United States in consideration of the issuance of such patents by the United States to the State of  
21 Oregon of such lands within the meander lines of any such lakes as the department and the federal  
22 government agree.

23 (2) Nothing in this section is a recognition of any title or interest in the United States within  
24 the meander lines of any meandered lake to any lands or waters of any such lake prior to the exe-  
25 cution and delivery of a deed or conveyance from the State of Oregon as provided for in this section.

26 (3) In carrying out such agreements the department may utilize the proceeds from the sale of  
27 such lands in which title or interest is claimed by the federal government. This section does not  
28 authorize the department or any other state agency to enter into any agreement which will divest  
29 any person of any water rights acquired under the laws of this state or otherwise.

30 **SECTION 787.** ORS 274.525 is amended to read:

31 274.525. (1) Any city of the State of Oregon bordering on a navigable stream may dredge out  
32 and use material from submersible and submerged lands of the stream, owned by the State of Oregon  
33 and in front of such city, for the purpose of filling in or reclaiming the submersible lands within such  
34 city, under the rules of the [*Department of State Lands*] **Oregon Department of Natural**  
35 **Resources**. The consent of the appropriate agency of the United States Government shall be first  
36 obtained by such city.

37 (2) Any contractor who has entered into a contract with any such city to fill in or reclaim any  
38 of its submersible lands may dredge and use such material in the same manner as may be done by  
39 such city.

40 **SECTION 788.** ORS 274.530 is amended to read:

41 274.530. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may,  
42 after notice of competitive bidding, and following such competitive bidding, lease or license  
43 submersible and submerged lands of navigable streams owned by the State of Oregon for the purpose  
44 of removing material therefrom. Competitive bid requirements may be waived for leases of less than  
45 one year's duration. No lease shall be made for a lump sum but only on a basis of the price per cubic



1 yard or ton for the material removed.

2 (2) The department may prescribe by rule the manner in which the volume in cubic yards or the  
3 weight in tons for the material removed shall be determined.

4 (3) Notwithstanding subsections (1) and (2) of this section, the department may enter into a li-  
5 cense for the removal of material from submersible and submerged lands of navigable streams owned  
6 by the State of Oregon based on a competitive market rate that reflects fair market value.

7 (4) The department shall, prior to any competitive bidding notice, establish prebid qualifications  
8 that include but are not limited to the following:

9 (a) The minimum yardage amount of material that must be removed for each year for which the  
10 lease is valid.

11 (b) Evidence that all bidders have an established market, as provided by each bidder.

12 **SECTION 789.** ORS 274.550 is amended to read:

13 274.550. (1) A person may remove material from submersible and submerged lands owned by the  
14 State of Oregon without payment of royalties to the [*Department of State Lands*] **Oregon Depart-**  
15 **ment of Natural Resources** if the material is:

16 (a) Removed for channel or harbor improvement or flood control;

17 (b) Used for filling, diking or reclaiming land owned by the state or any political subdivision as  
18 defined in ORS 271.005 and located not more than two miles from the bank of the stream;

19 (c) Used for the creation, maintenance or enhancement of fish or wildlife habitat;

20 (d) Used for the maintenance of public beaches; or

21 (e) Contaminated with hazardous material, as defined in ORS 466.605, provided that the person  
22 gives the department written notice of the removal at least 30 days prior to disposal.

23 (2) A person does not have to pay royalties to the state for the following uses of material, if the  
24 person provides at least 30 days' written notice to the department of the intended use:

25 (a) The filling of any property up to an elevation of one foot above the line of ordinary high  
26 water of a waterway by a state agency or political subdivision, as defined in ORS 271.005.

27 (b) The material is used solely for a public purpose by a political subdivision, as defined in ORS  
28 271.005.

29 (3) A person may not remove any material from the place it was first deposited or use the ma-  
30 terial as an article of commerce without providing, prior to the removal of the material, written  
31 notification to the department and payment of any royalties for the material as determined by the  
32 department.

33 (4) In addition to the purposes enumerated in subsection (1) of this section, any person may take  
34 material for the exclusive use of the person to the extent of not more than 50 cubic yards or the  
35 equivalent weight in tons in any one year. However, before taking the material, the person shall  
36 first notify the department.

37 (5) Upon the removal of material from submersible or submerged lands not exempt from the  
38 payment of royalties, royalties in an amount established by the department must be paid to the de-  
39 partment.

40 (6) For purposes of this section:

41 (a) "Article of commerce" means any material, other than material used for upland disposal or  
42 contaminated material put to beneficial use, that is bought, sold or exchanged in any manner for  
43 goods or services and that otherwise would have to be acquired from alternative sources.

44 (b) "Reclaiming land" means raising the elevation of a portion of land within a 100-year  
45 floodplain to not more than one foot of elevation higher than the highest elevation of the 100-year

1 floodplain, or protecting land otherwise in the 100-year floodplain by the construction of dikes or  
2 other flood control improvements.

3 **SECTION 790.** ORS 274.560 is amended to read:

4 274.560. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
5 enter into contract of lease for purposes of ORS 274.525 to 274.590 with such stipulations protecting  
6 the interest of the state as the department may require, and may require a bond with a surety  
7 company authorized to transact a surety business in this state, as surety, or other form of security,  
8 to be given by the lessee for performance of such stipulations, and providing for forfeiture for non-  
9 payment or failure to operate under the contract. No contract shall be entered into giving any  
10 person an option of leasing or purchasing the property of the State of Oregon. The lessee in all such  
11 contracts shall report monthly to the department the amount of material taken under the contract  
12 and pay to the department the amount of royalty thereon provided in the contract.

13 (2) The department shall adopt rules to establish criteria to determine when security is required.

14 **SECTION 791.** ORS 274.590 is amended to read:

15 274.590. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall co-  
16 operate with the proper authorities of the State of Washington in contracting for, receiving and  
17 collecting royalties or other revenues for the taking of material from the submersible and submerged  
18 lands of the Columbia River and enter into such agreements as may be advisable or necessary with  
19 such officers of the State of Washington for the division of such royalties.

20 **SECTION 792.** ORS 274.610 is amended to read:

21 274.610. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
22 not enter into contracts for governmental or private development or exploration for hard minerals  
23 on state-owned submersible and submerged lands within the territorial sea and navigable bays that  
24 are subject to the jurisdiction of the department.

25 (2) Nothing in this section shall be considered to prohibit scientific research conducted by or  
26 on behalf of an academic institution or a government agency.

27 (3) As used in subsection (1) of this section, "hard minerals" includes but is not limited to na-  
28 tural deposits or mineral sources of gold, silver, copper, lead, iron, manganese, silica, chrome,  
29 platinum, tungsten and zirconium. "Hard minerals" does not include oil, gas or sulfur deposits sub-  
30 ject to ORS 274.705 to 274.860.

31 (4) As used in this section:

32 (a) "Exploration" means any activity the principal purpose of which is to define, characterize  
33 or evaluate hard mineral deposits for possible commercial development or production.

34 (b) "Scientific research" means any activity the principal purpose of which is to improve scien-  
35 tific or technical understanding of earth, ocean or atmospheric processes, hazards and resources and  
36 for which the data generated are nonproprietary or public.

37 **SECTION 793.** ORS 274.710 is amended to read:

38 274.710. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** has  
39 exclusive jurisdiction over all ungranted tidal submerged lands owned by this state, whether within  
40 or beyond the boundaries of this state, heretofore or hereafter acquired by this state:

41 (a) By quitclaim, cession, grant, contract or otherwise from the United States or any agent  
42 thereof; or

43 (b) By any other means.

44 (2) All jurisdiction and authority remaining in the state over tidal submerged lands as to which  
45 grants have been or may be made is vested in the department.

1 (3) Notwithstanding ORS 273.551, the department shall administer and control all tidal sub-  
2 merged lands described in subsections (1) and (2) of this section under its jurisdiction, and may lease  
3 such lands and submersible lands and dispose of oil, gas and sulfur under such lands and submersible  
4 lands in the manner prescribed by ORS 274.705 to 274.860. However, submerged and submersible  
5 lands lying more than 10 miles easterly of the 124th West Meridian shall be subject to leasing for  
6 oil, gas and sulfur under ORS 273.551, rather than under ORS 274.705 to 274.860.

7 (4) Notwithstanding any other provision of ORS 274.705 to 274.860, the department may not  
8 permit any interference other than temporary interference with the surface of the ocean shore, as  
9 defined in ORS 390.615. The department may, however:

10 (a) Grant easements underlying that part of the surface of the ocean shore owned by the state  
11 at such times and at such places as the department finds necessary to permit the extraction and  
12 transportation of oil, gas or sulfur from state, federal or private lands; and

13 (b) Issue oil and gas leases underlying the ocean shore under the same terms and conditions as  
14 provided in ORS 274.705 to 274.860.

15 **SECTION 794.** ORS 274.720 is amended to read:

16 274.720. ORS 274.705 to 274.860 shall not:

17 (1) Affect the power of the [*Department of State Lands*] **Oregon Department of Natural Re-**  
18 **sources** to lease mineral rights, including oil, gas and sulfur underlying state lands other than lands  
19 subject to ORS 274.705 to 274.860.

20 (2) Affect the power of the department to lease mineral rights, other than oil, gas and sulfur  
21 underlying lands subject to ORS 274.705 to 274.860.

22 (3) Affect any oil, gas and mineral lease issued before August 9, 1961, by any agency, board or  
23 commission of the State of Oregon.

24 (4) Deprive this state or any agency or instrumentality thereof of its jurisdiction over matters  
25 affecting the public health and safety, including but not limited to the control of air and water pol-  
26 lution.

27 **SECTION 795.** ORS 274.725 is amended to read:

28 274.725. (1) Any interests in lands, or lands in fee simple, acquired by the [*Department of State*  
29 *Lands*] **Oregon Department of Natural Resources** by purchase, donation, lease condemnation or  
30 otherwise, may be made available to any lessee of the state for the purposes contained in ORS  
31 274.705 to 274.860 and upon such terms as may be determined by the department.

32 (2) No permit or lease shall be granted to any person then in violation of any laws or rules  
33 applicable to ORS 274.705 to 274.860.

34 **SECTION 796.** ORS 274.735 is amended to read:

35 274.735. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** upon  
36 application by any person may permit geological, geophysical and seismic surveys, including the  
37 taking of cores and other samples for purposes related to exploration for oil, gas and sulfur on lands  
38 subject to ORS 274.705 to 274.860. However:

39 (a) Such permits shall be nonexclusive and shall not give any preferential rights to any oil, gas  
40 and sulfur lease.

41 (b) The department [*of State Lands in consultation with the State Department of Geology and*  
42 *Mineral Industries*] may grant permission for the taking of cores and other samples.

43 (c) [*After consultation with the State Fish and Wildlife Commission, the Department of State*  
44 *Lands*] **The department** shall include such rules and regulations in the permit as are necessary to  
45 protect the fish and wildlife resources.

1 (2) Each application under this section must contain at least the following information:

2 (a) A description of the areas where the applicant proposes to conduct a survey.

3 (b) The name and address of the applicant.

4 (c) Such other relevant information as the department [*of State Lands*] requires.

5 **SECTION 797.** ORS 274.740 is amended to read:

6 274.740. (1) Upon compliance of an applicant with ORS 274.735, the [*Department of State Lands*]  
7 **Oregon Department of Natural Resources** may issue to the applicant a permit to conduct a  
8 geological, geophysical and seismic survey, including the taking of cores and other samples, in areas  
9 of the lands subject to ORS 274.705 to 274.860 that are described on the permit. The department  
10 may prohibit such surveys on any area [*if, in consultation with the State Department of Geology and*  
11 *Mineral Industries, it*] **if the department** determines that a lease, if applied for, should not be  
12 granted as to such areas. The department [*of State Lands*] shall include in a permit conditions and  
13 payments proper to safeguard the interests of the state.

14 (2) Permits issued under this section may not exceed two years, and may be renewed for like  
15 periods upon application to the department and upon showing due compliance with applicable laws  
16 and regulations.

17 (3) The department shall require the permittee to provide the [*State Fish and Wildlife Commis-*  
18 *sion*] **department** with complete information with respect to the area or areas of proposed oper-  
19 ations, type of exploration and a schedule showing the period or periods during which such  
20 explorations will be conducted. Such information shall be treated as confidential unless released by  
21 the permittee.

22 **SECTION 798.** ORS 274.745 is amended to read:

23 274.745. (1) Records of drilling conducted by a permittee under ORS 274.740 shall be filed by the  
24 permittee with the [*State Department of Geology and Mineral Industries*] **Oregon Department of**  
25 **Natural Resources** as prescribed by ORS 520.095.

26 (2) The department [*of State Lands*] may require, as a condition to the issuance of any lease  
27 under ORS 274.705 to 274.860, that the lessee make available to the department [*of State Lands, or*  
28 *the State Department of Geology and Mineral Industries, upon request,*] all factual and physical ex-  
29 ploration results, logs and records resulting from the operations under the lease.

30 **SECTION 799.** ORS 274.755 is amended to read:

31 274.755. (1) Before granting any easement under ORS 274.705 to 274.860, and before offering  
32 lands for leasing under ORS 274.705 to 274.860, or whenever any person files a written application  
33 with the [*Department of State Lands*] **Oregon Department of Natural Resources** requesting that  
34 an easement be granted for such lands or that such lands be offered for leasing under ORS 274.705  
35 to 274.860, accompanying the same with the required fee, the department shall hold a public hearing  
36 as provided in this section.

37 (2) Before granting an easement or inviting bids on any lands subject to ORS 274.705 to 274.860,  
38 the department shall cause written notice describing the area under consideration and other perti-  
39 nent information to be transmitted to:

40 [(a) *State Geologist*;]

41 [(b)] (a) Director of Transportation;

42 [(c)] (b) Director of the Department of Environmental Quality;

43 [(d) *State Fish and Wildlife Director*;]

44 [(e)] (c) The applicant, if any, requesting the lease;

45 [(f)] (d) Prospective applicants or bidders, by publication thereof in two or more publications of

1 general circulation in the oil and gas industry; and

2 [(g)] (e) The public, by publication thereof once each week for not less than four weeks in a  
3 newspaper of general circulation throughout the State of Oregon, and in addition in a newspaper  
4 of general circulation in the county in which the lands lie or the county or counties contiguous to  
5 the area under consideration for bidding.

6 (3) The notice shall set forth the place of hearing and shall set its time at not earlier than the  
7 20th day after date of the last newspaper publication.

8 (4) Notwithstanding ORS 183.635, hearings under this section may be conducted by an adminis-  
9 trative law judge assigned from the Office of Administrative Hearings established under ORS 183.605  
10 or may be conducted by a hearing officer designated by the State Land Board. [*An officer or em-*  
11 *ployee of each interested state agency, board or commission named in subsection (2) of this section*]  
12 **The Director of Transportation or the Director of the Department of Environmental Quality**  
13 may question any witnesses appearing in the hearing, and any interested person may offer evidence  
14 and otherwise be heard.

15 **SECTION 800.** ORS 274.760 is amended to read:

16 274.760. After the public hearing the [*Department of State Lands*] **Oregon Department of Na-**  
17 **tural Resources** shall determine whether the granting of an easement or an invitation for bidding  
18 to lease the area under consideration would be in the public interest. In [*such*] **making its** deter-  
19 mination, the department shall consider whether an easement or a lease or leases of the area under  
20 consideration would:

21 (1) Be detrimental to the health, safety, or welfare of persons residing in, owning real property,  
22 or working in the neighborhood of such areas;

23 (2) Interfere with the residential or recreation areas to an extent that would render such areas  
24 unfit for recreational or residential uses or unfit for park purposes;

25 (3) Destroy, impair or interfere with the aesthetic and scenic values of the Oregon coast, or  
26 other affected area;

27 (4) Create any air, water or other pollution;

28 (5) Substantially endanger marine life or wildlife;

29 (6) Substantially interfere with commerce or navigation; and

30 (7) Protect state lands from drainage of oil and gas.

31 **SECTION 801.** ORS 274.765 is amended to read:

32 274.765. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
33 offer to lease lands subject to ORS 274.705 to 274.860 by publication of a notice of its intention to  
34 do so, once each week for not less than two weeks in two or more newspapers of general circulation  
35 in this state, one of which is published or has general circulation in the county in which the lands  
36 lie or county or counties contiguous thereto. The notice shall describe the lands so offered, and shall  
37 specify the rate of royalty, including the royalty for sulfur, and the rental, the manner in which bids  
38 may be filed with the department, the amount of the deposit that must accompany each bid, and the  
39 time and place for filing bids, which time shall not be earlier than the 30th day after the date of last  
40 publication of such notice. Further, the notice shall state that the lease will be awarded to the  
41 bidder offering the highest cash bonus, and that the form of lease, conditions for bidding and bid  
42 form may be obtained from the department upon request.

43 (2) Each bid shall be enclosed in a sealed envelope, shall be on the form provided by the de-  
44 partment and shall be accompanied by duplicate lease forms executed by the bidder, and by a cer-  
45 tified or cashier's check or checks payable to the State of Oregon in the amount fixed by the

1 department, which sum shall be deposited as evidence of good faith and except in the case of the  
 2 successful bidder shall be returned to the bidder. If the successful bidder fails to pay the balance  
 3 of the cash bonus bid and the annual rental for the first year not later than the 15th day after the  
 4 award of the lease, or fails to post any bond required by the lease or the rules in effect at the date  
 5 of the invitation for bids within the time prescribed, the amount of the deposit shall be forfeited to  
 6 the state.

7 (3) At the time and place specified in the notice the department shall publicly open the sealed  
 8 bids and shall award the lease for each parcel to the bidder who, in addition to complying with all  
 9 of the conditions for bidding, offers the highest cash bonus. The department may, however, reject  
 10 any or all bids for cause.

11 (4) Following the award of the lease, the payment by the successful bidder of the balance of the  
 12 cash bonus, the annual rental for the first year, and the fee specified in this section, and the posting  
 13 of any required bonds, the department shall execute the lease in duplicate on behalf of the state and  
 14 transmit one counterpart thereof to the lessee. The lease shall become effective as of the date of  
 15 such execution.

16 (5) The department shall prescribe a reasonable fee to cover the procedures under this section,  
 17 which shall be paid by the successful bidder.

18 **SECTION 802.** ORS 274.770 is amended to read:

19 274.770. In leasing lands subject to ORS 274.705 to 274.860, the [*Department of State Lands*]  
 20 **Oregon Department of Natural Resources** may not discriminate between bidders by requiring  
 21 drilling from:

22 (1) Upland or littoral drill sites;

23 (2) Sites on filled land, whether contiguous or noncontiguous to the littoral lands or uplands;  
 24 or

25 (3) Any pier, platform or other fixed or floating structure in, on or over lands subject to ORS  
 26 274.705 to 274.860, with respect to which this state or any other owner thereof has consented to use.

27 **SECTION 803.** ORS 274.780 is amended to read:

28 274.780. (1) The form of lease shall contain, in addition to other provisions deemed necessary  
 29 and desirable by the [*Department of State Lands, after consultation with the State Department of*  
 30 *Geology and Mineral Industries, the State Fish and Wildlife Commission and other interested agencies,*  
 31 *boards and commissions,]* **Oregon Department of Natural Resources**, the provisions of ORS  
 32 274.780 to 274.860.

33 (2) The form of a permit shall contain, in addition to other provisions deemed necessary and  
 34 desirable by the department [*of State Lands, after consultation with the State Department of Geology*  
 35 *and Mineral Industries, the State Fish and Wildlife Commission and other interested agencies, boards*  
 36 *and commissions]*, the provisions of ORS 274.785 (3).

37 (3) All leases and other instruments required in carrying out ORS 274.705 to 274.860 shall be  
 38 executed by the department [*of State Lands*]. All bonds, contracts and other instruments required  
 39 by ORS 274.705 to 274.860 for the protection of the interests of this state and political subdivisions,  
 40 persons and property therein shall be executed and delivered to the department.

41 **SECTION 804.** ORS 274.785 is amended to read:

42 274.785. (1) The lease shall grant the exclusive right to drill for and produce all oil, gas and  
 43 sulfur deposits in the leased land and be for a primary term of 10 years and for so long thereafter  
 44 as oil, gas or sulfur is produced in paying quantities from the leased land, or lessee is diligently  
 45 conducting producing, drilling, deepening, repairing, re-drilling or other necessary lease or well

1 maintenance operations on the leased land or is excused from conducting such operations under the  
2 terms of the lease.

3 (2) The maximum area which shall be included in any single lease to any person shall be 13,200  
4 acres.

5 (3) No permit, easement or lease, or any portions thereof shall be assignable without the prior  
6 written consent of the [*Department of State Lands*] **Oregon Department of Natural Resources**.

7 **SECTION 805.** ORS 274.790 is amended to read:

8 274.790. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
9 specify in the notice described by ORS 274.765 and in the lease the rate of royalty paid under such  
10 lease which royalty shall not be less than 12-1/2 percent of gross production, or the value thereof,  
11 produced and saved from the leased lands and not used by lessee for operations thereon or for in-  
12 jection therein. Such royalty shall, at the department's option, be paid in kind or in value, and be  
13 computed after an allowance for the actual cost of oil treatment or dehydration of not to exceed five  
14 cents per barrel of royalty oil so treated or dehydrated.

15 (2) The royalty for sulfur produced under ORS 274.705 to 274.860 shall not be less than \$1 per  
16 long ton.

17 (3) The State of Oregon shall have a lien upon all production for unpaid royalties.

18 **SECTION 806.** ORS 274.795 is amended to read:

19 274.795. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
20 specify a rental payable annually in advance of not less than 50 cents for each acre of land subject  
21 to the lease at the rental date. After production has been established, rent paid shall be deducted  
22 from any royalty due under the terms of a lease during the year for which such rent has been paid.

23 **SECTION 807.** ORS 274.805 is amended to read:

24 274.805. Unless otherwise determined by the [*Department of State Lands*] **Oregon Department**  
25 **of Natural Resources**, each well drilled pursuant to the terms of the lease may be drilled or slant  
26 drilled to and into the subsurface of the lands covered by the lease from upland or littoral drill sites  
27 owned or controlled by the state or owned by or available to the lessee, or from drill sites located  
28 upon any filled lands heretofore or hereafter filled, whether contiguous or noncontiguous to the  
29 littoral lands or uplands, or from any pier heretofore or hereafter constructed owned by or available  
30 to the lessee and available for such purpose, or from platforms or other fixed or floating structures  
31 in, on or over the lands covered by the lease or otherwise available to the lessee.

32 **SECTION 808.** ORS 274.810 is amended to read:

33 274.810. Subject to the lessee's right to surrender, the lessee shall commence operations for the  
34 drilling of a well within five years from date of the lease and commence production within three  
35 years of discovery of oil, gas or sulfur in paying quantities, unless the [*Department of State Lands*]  
36 **Oregon Department of Natural Resources** shall have, for cause, granted an extension of time for  
37 such act. In addition, the lease shall have such exploratory, drilling and producing requirements as  
38 the department [*of State Lands in consultation with the Department of Geology and Mineral*  
39 *Industries*] deems necessary to encourage the exercise of due diligence on the part of lessee.

40 **SECTION 809.** ORS 274.815 is amended to read:

41 274.815. If the lessee, as disclosed by information submitted with the bid of the lessee, proposes  
42 to drill one or more wells from filled land, whether contiguous or noncontiguous to the littoral lands  
43 or uplands, or from any pier or from platforms or other fixed or floating structures to be constructed  
44 for such purpose, and if permission from any federal or state agency is legally required in order to  
45 construct any such filled lands or structures, the lessee shall be allowed a reasonable time following

1 the execution of the lease within which to secure the necessary permission from such federal and  
2 state agencies as shall be legally required, and, upon the securing of such permission, a further  
3 reasonable time, determined with regard to the nature of the filled lands or structure or structures  
4 to be constructed within which to commence operations for the drilling of such well or wells, and  
5 if necessary, the drilling term provided for in ORS 274.810 shall be extended by the [*Department of*  
6 *State Lands*] **Oregon Department of Natural Resources** to the date to which the time to com-  
7 mence operations for the drilling of such well or wells has been extended.

8 **SECTION 810.** ORS 274.840 is amended to read:

9 274.840. In the event production on the leasehold shall cease at any time or from time to time,  
10 before or after the expiration of the primary term of the lease, the lease shall nevertheless continue  
11 in full force and effect if the lessee shall, within six months after the cessation of production or  
12 within such longer period of time as the [*Department of State Lands*] **Oregon Department of Na-**  
13 **tural Resources** may authorize, commence and thereafter prosecute with reasonable diligence  
14 drilling, deepening, repairing, redrilling or other operations for the restoration of production of oil,  
15 gas or sulfur from the leased lands.

16 **SECTION 811.** ORS 274.845 is amended to read:

17 274.845. The lessee may at any time file with the [*Department of State Lands*] **Oregon Depart-**  
18 **ment of Natural Resources** a written surrender of all rights under the lease or any portion thereof  
19 or any separate or distinct zone or geological horizon or any portion thereof. Such surrender shall  
20 be effective as of the date of its filing subject to the continuing obligation of the lessee to pay all  
21 rentals and royalties theretofore accrued and to place all wells on the lands or in the zones or ho-  
22 rizons surrendered in condition for suspension or abandonment in accordance with the applicable  
23 lease terms, regulations and law. Thereupon the lessee shall be released from all obligations under  
24 such lease with respect to the lands, zones or horizons surrendered, but no such surrender shall  
25 release such lessee from any liability for breach of any monetary obligation of the lease with respect  
26 to which such lessee is in default at the time of the filing of such surrender.

27 **SECTION 812.** ORS 274.850 is amended to read:

28 274.850. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall re-  
29 serve and may exercise the authority to cancel any lease upon which oil, gas or sulfur has not been  
30 discovered in paying quantities, upon failure of the lessee after 30 days' written notice and demand  
31 for performance to exercise due diligence and care in the prosecution of the prospecting or devel-  
32 opment work in accordance with the terms of the lease. After discovery of oil, gas or sulfur in  
33 paying quantities on lands subject to any lease, such lease may be forfeited and canceled only by  
34 appropriate judicial proceedings upon failure of the lessee after 90 days' written notice and demand  
35 for performance to comply with any of the provisions of the lease or of laws or regulations appli-  
36 cable thereto and in force at the date of the invitation for bids in pursuance of which the lease was  
37 awarded; provided, however, that in the event of any such cancellation, the lessee shall have the  
38 right to retain under such lease any and all drilling or producing wells as to which no default exists,  
39 together with a parcel of land surrounding each such well and such rights of way through the leased  
40 lands as may be reasonably necessary to enable such lessee to drill and operate such retained well  
41 or wells. In the event of the cancellation of any lease, the lessee shall have a reasonable time within  
42 which to remove all property, equipment and facilities owned or used by the lessee in connection  
43 with operations under the lease.

44 **SECTION 813.** ORS 274.855 is amended to read:

45 274.855. Upon any partial or total termination, surrender or forfeiture of its permit or lease, the



1 *[Department of State Lands]* **Oregon Department of Natural Resources** may require that the  
 2 permittee or lessee, within a reasonable time, restore that portion of the premises that is visible at  
 3 extreme low tide to substantially its original condition.

4 **SECTION 814.** ORS 274.860 is amended to read:

5 274.860. Under a lease entered into by the *[Department of State Lands]* **Oregon Department**  
 6 **of Natural Resources** pursuant to ORS 274.705 to 274.860, the fill constituting filled lands may be  
 7 retained in place or protected by bulkheads, seawalls, revetments or similar enclosures and may be  
 8 placed at any location approved by the department *[of State Lands, in consultation with the Depart-*  
 9 *ment of Geology and Mineral Industries, the State Fish and Wildlife Commission and other interested*  
 10 *agencies, boards and commissions]*.

11 **SECTION 815.** ORS 274.867 is amended to read:

12 274.867. (1) In accordance with applicable provisions of ORS chapter 183, the Director of the  
 13 *[Department of State Lands]* **Oregon Department of Natural Resources** may adopt rules for the  
 14 authorization of wave energy facilities or devices.

15 (2) Unless exempted under rules adopted by the director under this section, an owner or opera-  
 16 tor of a facility or device sited within Oregon's territorial sea, as defined in ORS 196.405, that con-  
 17 verts the kinetic energy of waves into electricity shall maintain cost estimates of the amount of  
 18 financial assurance that is necessary, and demonstrate evidence of financial assurance, for:

19 (a) The costs of closure and post-closure maintenance, excluding the removal of anchors that lie  
 20 beneath submerged lands in Oregon's territorial sea, of the facility or device; and

21 (b) Any corrective action required to be taken at the site of the facility or device.

22 (3) The financial assurance requirements established by subsection (2) of this section may be  
 23 satisfied by any one or a combination of the following:

24 (a) Insurance;

25 (b) Establishment of a trust fund;

26 (c) A surety bond;

27 (d) A letter of credit;

28 (e) Qualification as a self-insurer; or

29 (f) Any other method set forth in rules adopted by the director.

30 (4) In adopting rules to implement the provisions of this section, the director may specify policy  
 31 or other contractual terms, conditions or defenses necessary to establish evidence of financial as-  
 32 surance.

33 (5)(a) The owner or operator of a facility or device described in subsection (2) of this section  
 34 must provide the evidence of financial assurance required under this section for closure, post-closure  
 35 maintenance and corrective action at the time operation of the facility or device is authorized.

36 (b) By January 31 of each subsequent calendar year, the owner or operator of the facility or  
 37 device must update the information required under this subsection with the *[Department of State*  
 38 *Lands]* **Oregon Department of Natural Resources**.

39 (6) When financial assurance is required for corrective action at the site of a facility or device  
 40 described in subsection (2) of this section, the owner or operator shall provide evidence of financial  
 41 assurance before beginning corrective action.

42 (7) An owner or operator required to provide financial assurance under this section shall es-  
 43 tablish provisions satisfactory to the director for disposing of any excess moneys received or interest  
 44 earned on moneys received for financial assurance.

45 **SECTION 816.** ORS 274.885 is amended to read:

1       274.885. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** may  
2 lease submerged lands owned by the State of Oregon for the purpose of harvesting kelp and other  
3 seaweed [*after consultation with the State Fish and Wildlife Commission*].

4       (2) The lease may be for a term of not to exceed 50 years and shall provide for the payment to  
5 the State of Oregon of a sum to be fixed by the department for all kelp or other seaweed harvested  
6 under the lease, to be paid at the end of each year. Not more than 40 miles of coast line shall be  
7 leased to one person.

8       **SECTION 817.** ORS 274.890 is amended to read:

9       274.890. The first lease issued to an applicant under ORS 274.885 to 274.895 with respect to any  
10 submerged lands may allow the applicant six months in which to make a practical survey of the field  
11 which the applicant has leased, and another 12 months in which to erect a plant and commence  
12 operation. The lessee shall, within six months of the time of obtaining the lease, make or cause to  
13 be made a practical survey showing the amount and condition of kelp within the territory described  
14 in the lease, and shall file a copy of the survey with the Director of the [*Department of State*  
15 *Lands*] **Oregon Department of Natural Resources** within six months. Upon the failure of the  
16 lessee so to do, the lease shall be canceled by the [*Department of State Lands*] **Oregon Department**  
17 **of Natural Resources**.

18       **SECTION 818.** ORS 274.895 is amended to read:

19       274.895. Except in the case of a person harvesting or removing less than 2,000 pounds of kelp  
20 each year for the purposes of human consumption, no person shall harvest or remove any kelp or  
21 other seaweed from any submerged lands owned by the State of Oregon unless the person has first  
22 obtained a lease from the [*Department of State Lands*] **Oregon Department of Natural**  
23 **Resources**.

24       **SECTION 819.** ORS 274.915 is amended to read:

25       274.915. (1) Except as otherwise provided in ORS 274.905 to 274.940, the [*Department of State*  
26 *Lands*] **Oregon Department of Natural Resources** may sell, lease or trade submersible or sub-  
27 merged lands owned by the state in the same manner as provided for submersible lands in this  
28 chapter or ORS chapter 273.

29       (2) Except as otherwise provided in ORS 274.905 to 274.940, the department may sell, lease or  
30 trade new lands created upon submersible or submerged lands owned by the state in the same  
31 manner as provided for lands acquired as an investment for the Common School Fund in ORS  
32 274.085 or ORS chapter 273.

33       **SECTION 820.** ORS 274.925 is amended to read:

34       274.925. (1) Whenever the United States, while engaged in the promotion of navigation, creates  
35 new lands upon submersible or submerged lands owned by the state and the adjoining or opposite  
36 upland or riparian land on the same side of the body of water is owned by a public body, the public  
37 body has the right to purchase the new lands as provided in this section. The public body shall pay  
38 to the [*Department of State Lands*] **Oregon Department of Natural Resources** for the new lands  
39 a sum equal to the difference between the value of the tract, consisting of the new lands and the  
40 adjoining or opposite upland on the same side of the body of water, and the value of the adjoining  
41 or opposite upland before the creation of the new lands and an amount prescribed by the department  
42 to pay its administrative costs incurred with respect to the new lands. Such payment shall be made  
43 by the public body within one year after the date of the receipt by it of actual notice by the de-  
44 partment of the creation of the new lands, the sum equal to the difference between the value of the  
45 tract, consisting of the new lands and the adjoining or opposite upland on the same side of the body

1 of water, and the value of the adjoining or opposite upland before the creation of the new lands and  
2 the administrative costs incurred by the department with respect to new lands. If the public body  
3 fails to make payment for the new lands as provided in this subsection within one year after the  
4 date of such notice, the department may dispose of the new lands as provided in ORS 274.915.

5 (2) If a public body and the department cannot agree on the sum to be paid under subsection (1)  
6 of this section, the sum to be paid shall be determined by three appraisers, one appointed by the  
7 public body, one by the department, and the third by the first two, and their determination shall be  
8 final. The cost of the third appraiser shall be borne equally by the public body and the department.

9 **SECTION 821.** ORS 274.929 is amended to read:

10 274.929. (1) Whenever the United States, while engaged in the promotion of navigation, creates  
11 new lands upon submersible or submerged lands owned by the state and the adjoining or opposite  
12 upland or riparian land on the same side of the body of water is owned by other than a public body,  
13 the nonpublic riparian owner has the right to purchase the new lands as provided in this section.

14 (2) A nonpublic riparian owner entitled to purchase the new lands under subsection (1) of this  
15 section shall pay to the [*Department of State Lands*] **Oregon Department of Natural Resources**  
16 for the new lands a sum equal to the difference between the value of the tract, consisting of the new  
17 lands and the adjoining or opposite upland on the same side of the body of water, and the value of  
18 the adjoining or opposite upland before the creation of the new lands and an amount prescribed by  
19 the department to pay its administrative costs incurred with respect to the new lands. Such pay-  
20 ment shall be made by the nonpublic riparian owner within six months after the date of the receipt  
21 by the nonpublic riparian owner of actual official notice by the department of the creation of the  
22 new lands, the sum equal to the difference between the value of the tract, consisting of the new  
23 lands and the adjoining or opposite upland on the same side of the body of water, and the value of  
24 the adjoining or opposite upland before the creation of the new lands and administrative costs in-  
25 curred by the department with respect to the new lands. If the nonpublic riparian owner fails to  
26 make payment for the new lands as provided in this subsection, the department, after the expiration  
27 of the six-month period, may dispose of the new lands as provided in ORS 274.915.

28 (3) If a nonpublic riparian owner and the department cannot agree on the sum to be paid under  
29 subsection (2) of this section, the sum to be paid shall be determined by three appraisers, one ap-  
30 pointed by the nonpublic riparian owner, one by the department, and the third by the first two, and  
31 their determination shall be final. The cost of the third appraiser shall be borne equally by the  
32 nonpublic riparian owner and the department.

33 (4) Notwithstanding ORS 274.910 (2), this section applies only to new lands created on or after  
34 October 5, 1973.

35 **SECTION 822.** ORS 274.932 is amended to read:

36 274.932. (1) Whenever a public body, in accordance with ORS 274.920, creates new lands upon  
37 submersible or submerged lands owned by the state, the public body has the right to purchase the  
38 new lands as provided in this section. The public body shall pay to the [*Department of State Lands*]  
39 **Oregon Department of Natural Resources** for the new lands the value of the state-owned  
40 submersible or submerged lands upon which the new lands were created immediately prior to the  
41 creation of the new lands thereon and an amount prescribed by the department to pay its adminis-  
42 trative costs incurred with respect to the new lands. Such payment shall be made by the public body  
43 within one year after the date of the receipt by it of actual notice by the department of the creation  
44 of the new lands, the value of the state-owned submersible or submerged lands upon which the new  
45 lands were created and the administrative costs incurred by the department with respect to the new

1 lands. If the public body fails to make payment for the new lands as provided in this subsection  
2 within one year after the date of the notice by the department, the department may dispose of the  
3 new lands as provided in ORS 274.915.

4 (2) If a public body and the department cannot agree on the value of the state-owned  
5 submersible or submerged lands upon which the new lands were created under subsection (1) of this  
6 section, the value shall be determined by three appraisers, one appointed by the public body, one  
7 appointed by the department and the third appointed by the first two. The determination of the ap-  
8 praisers shall be final. The cost of the third appraiser shall be borne equally by the public body and  
9 the department.

10 **SECTION 823.** ORS 274.937 is amended to read:

11 274.937. (1) Whenever an individual, in accordance with ORS 274.920, creates new lands upon  
12 submersible or submerged lands owned by the state, such individual has the right to purchase the  
13 new lands as provided in this section. The individual shall pay to the [*Department of State Lands*]  
14 **Oregon Department of Natural Resources** for the new lands the value of the state-owned  
15 submersible or submerged lands upon which the new lands were created immediately prior to the  
16 creation of the new lands thereon and a reasonable portion of the private benefit realized from the  
17 creation of the new lands as an addition to the adjoining or opposite upland in front of which the  
18 new lands were created. The individual shall also pay to the department for the new lands the ad-  
19 ministrative costs incurred by the department with respect to the new lands. If the individual fails  
20 to make payment for the new lands as provided in this subsection within six months after the date  
21 of the notice by the department, the department may dispose of the new lands as provided in ORS  
22 274.915.

23 (2) If an individual and the department cannot agree on the sum to be paid for new lands under  
24 subsection (1) of this section, the sum to be paid shall be determined by three appraisers, one ap-  
25 pointed by the individual, one appointed by the department and the third appointed by the first two.  
26 The determination of the appraisers shall be final. The cost of the third appraiser shall be borne  
27 equally by the individual and the department.

28 **SECTION 824.** ORS 274.940 is amended to read:

29 274.940. Notwithstanding ORS 274.905, 274.915 to 274.925, 274.929, 274.932 and 274.937, the [*De-*  
30 *partment of State Lands*] **Oregon Department of Natural Resources** may reserve new lands from  
31 sale, transfer or lease where upon notice and hearing it determines that the public interest requires  
32 such lands to be preserved for recreation, conservation of fish and wildlife or the development of  
33 navigation facilities, but in case of such reservation the adjoining or opposite upland or riparian  
34 owner shall be allowed reasonable access across such reserved new lands to navigable water.

35 **SECTION 825.** ORS 274.963 is amended to read:

36 274.963. (1) The Legislative Assembly finds and declares that:

37 (a) Uncertainty exists as to the nature and extent of the state's interest in land formerly sub-  
38 merged or submersible lands within the bed and banks of navigable bodies of water in this state.

39 (b) Such uncertainty causes conflicts in the use and ownership of such land, endangers the  
40 rights and titles of landowners and restricts the development of the economic, scenic and recre-  
41 ational potential of such lands.

42 (c) Although the State Land Board and the [*Department of State Lands*] **Oregon Department**  
43 **of Natural Resources** are authorized by law to negotiate settlements with respect to the ownership  
44 of such lands, action by the State of Oregon to determine and assert its interests, if any, in such  
45 lands is necessary for a prompt and orderly resolution of such uncertainty.

1 (2) The Legislative Assembly finds therefore, that it is in the public interest to direct the [*State*  
2 *Land*] board and the department [*of State Lands*] to continue the study of the Willamette River and  
3 to conduct studies of the lands formerly submerged or submersible within other navigable bodies of  
4 water in this state and, at the conclusion of each such study, to resolve conflicting ownership claims  
5 between the state and private owners by asserting interests remaining or vested in the state in such  
6 lands.

7 **SECTION 826.** ORS 274.965 is amended to read:

8 274.965. (1) The State Land Board shall direct the [*Department of State Lands*] **Oregon De-**  
9 **partment of Natural Resources** to determine whether any interest remains or is vested in the  
10 State of Oregon with respect to land that was formerly submerged or submersible land within the  
11 bed and banks of a navigable body of water in this state.

12 (2) In directing a determination by the department under subsection (1) of this section, the board  
13 may designate a specifically described area of land within which the department shall make its de-  
14 termination.

15 (3) The board and the department shall conclude their study of lands formerly submerged or  
16 submersible within the Willamette River and carry out their duties under ORS 274.960 to 274.985  
17 with respect to such lands prior to July 1, 1979.

18 (4) The board and the department shall carry out their duties under ORS 274.960 to 274.985 with  
19 respect to lands formerly submerged or submersible within navigable bodies of water in this state,  
20 other than the Willamette River, prior to July 1, 1979.

21 **SECTION 827.** ORS 274.967 is amended to read:

22 274.967. (1) At the direction of the State Land Board pursuant to ORS 274.965, the [*Department*  
23 *of State Lands*] **Oregon Department of Natural Resources** shall conduct a study to determine:

24 (a) The location of any land that was formerly submerged or submersible within the bed and  
25 banks of a navigable body of water.

26 (b) Nature and extent of the interest, if any, that remains or is vested in the State of Oregon  
27 with respect to such land.

28 (2) Upon completion of its study of land required by the board pursuant to ORS 274.965, the  
29 department shall prepare a report of its findings under subsection (1) of this section with respect to  
30 such land. The department shall submit the report to the board.

31 (3) The department shall hold such public informational hearing or hearings as the board may  
32 direct, with appropriate notice to affected property owners.

33 **SECTION 828.** ORS 274.970 is amended to read:

34 274.970. (1) Upon receipt by the State Land Board of a report submitted by the [*Department of*  
35 *State Lands*] **Oregon Department of Natural Resources**, the board shall review the report of the  
36 department.

37 (2) If the board finds that the report is incomplete in any respect, it may refer the report back  
38 to the department for further study. In case of such referral the board may request additional in-  
39 formation and may request modification of the department's report.

40 (3) If a report is referred back to the department pursuant to subsection (2) of this section, the  
41 department shall compile the additional information, if any, that was requested and shall revise the  
42 report in compliance with the directions, if any, of the board.

43 (4) The board shall adopt a report of the department submitted pursuant to ORS 274.967 (2), if  
44 it finds the report to be complete and accurate.

45 **SECTION 829.** ORS 274.983 is amended to read:

1       274.983. (1) The State Land Board shall forward the original of each declaration made pursuant  
2 to ORS 274.975 (1) and the administrative record upon which such declaration was based to the  
3 Director of the [*Department of State Lands*] **Oregon Department of Natural Resources**.

4       (2) The director shall maintain each declaration in the permanent deed records of the State of  
5 Oregon and maintain all other materials submitted to the director with each such declaration in the  
6 files of the [*Department of State Lands*] **Oregon Department of Natural Resources**.

7       (3) A copy of a declaration or any part of the administrative record upon which the declaration  
8 is based, that is in the custody of the department pursuant to subsections (1) and (2) of this section,  
9 and that is certified by the director as a true and correct copy of the original thereof, shall be re-  
10 ceived into evidence by any court of this state with like force and effect as the original.

11       **SECTION 830.** ORS 274.992 is amended to read:

12       274.992. (1) Any person who violates any provision of ORS 274.040 or any rule, order or lease  
13 adopted or issued under ORS 274.040 shall be subject to a civil penalty in an amount to be deter-  
14 mined by the Director of the [*Department of State Lands*] **Oregon Department of Natural Re-**  
15 **sources** of not more than \$1,000 per day of violation.

16       (2) Civil penalties under this section shall be imposed in the manner provided in ORS 183.745.

17       (3) The provisions of this section are in addition to and not in lieu of any other penalty or  
18 sanction provided by law.

19       (4) Any civil penalty recovered under this section shall be deposited in the Common School Fund  
20 for use by the [*Department of State Lands*] **Oregon Department of Natural Resources** in admin-  
21 istration of ORS 274.040 and as otherwise required by law.

22       **SECTION 831.** ORS 274.994 is amended to read:

23       274.994. (1) The Director of the [*Department of State Lands*] **Oregon Department of Natural**  
24 **Resources** shall adopt by rule the amount of civil penalty that may be imposed for a particular vi-  
25 olation of ORS 274.040.

26       (2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the  
27 director shall consider the following factors:

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

30       (b) Any prior violations of statutes, rules, orders and leases pertaining to submerged and  
31 submersible lands.

32       (c) The impact of the violation on public interests in fishery, navigation and recreation.

33       (d) Any other factors determined by the director to be relevant and consistent with the policy  
34 of ORS 274.040.

35       (3) The penalty imposed under this section may be remitted or mitigated upon such terms and  
36 conditions as the director determines to be proper and consistent with the policy of ORS 274.040.  
37 Upon the request of the person incurring the penalty, the director shall consider evidence of the  
38 economic and financial condition of the person in determining whether a penalty shall be remitted  
39 or mitigated.

40       **SECTION 832.** ORS 276.412 is amended to read:

41       276.412. (1) Each month the Oregon Department of Administrative Services may bill state agen-  
42 cies to which quarters in any state building have been assigned an amount fixed by the department  
43 as rent for the preceding month for the quarters assigned to such agencies.

44       (2) Moneys so collected shall be deposited in the Oregon Department of Administrative Services  
45 Operating Fund.

1 (3) This section applies to quarters occupied by the [*Department of State Lands*] **Oregon De-**  
2 **partment of Natural Resources** and to quarters leased with option to purchase or under install-  
3 ment purchase agreement under ORS 276.429 (1).

4 **SECTION 833.** ORS 284.585 is amended to read:

5 284.585. In furtherance of the state economic development strategy developed under ORS  
6 284.570, the [*Department of State Lands*] **Oregon Department of Natural Resources** shall:

7 (1) Consistent with ORS 196.674, focus wetlands inventories on areas described in the state  
8 economic development strategy. The department may provide grants and technical assistance to lo-  
9 cal governments to conduct the inventories.

10 (2) Develop a site assessment methodology for rapidly determining the capacity of a site for  
11 economic development. The methodology shall address site-specific impediments to development and  
12 any costs associated with compliance with ORS 196.800 to 196.900.

13 **SECTION 834.** ORS 285A.615 is amended to read:

14 285A.615. (1) The Oregon Infrastructure Finance Authority shall provide managerial assistance  
15 and technical referral services to ports.

16 (2) The authority shall disseminate such research and technical information as is available to  
17 the authority.

18 (3) The authority shall work cooperatively with existing organizations and agencies that provide  
19 research and technical services, including, but not limited to:

20 (a) The [*Department of State Lands*] **Oregon Department of Natural Resources**;

21 (b) The State Marine Board; and

22 (c) The Sea Grant College and marine extension services at Oregon State University.

23 **SECTION 835.** ORS 287A.474 is amended to read:

24 287A.474. (1) The county fiscal officer shall prepare a report of all warrants and checks issued  
25 more than two years prior to July 1 of that year which have not been paid, pursuant to ORS 98.352.

26 (2) The lawful owner of any warrant or check included in any list referred to in subsection (1)  
27 of this section, not presented to the county treasurer for payment and not paid, thereafter may file  
28 a claim with the [*Department of State Lands*] **Oregon Department of Natural Resources** in the  
29 manner provided by ORS 98.392 and 98.396.

30 **SECTION 836.** ORS 293.450 is amended to read:

31 293.450. (1) Before October 1 of each year, the agency that maintains an account pursuant to  
32 ORS 293.445 shall prepare a report pursuant to ORS 98.352 of all checks or orders drawn by it that  
33 have been outstanding for a period of more than two years prior to July 1, and that have not been  
34 paid by the State Treasurer.

35 (2) The report shall not include checks or orders that have already been paid pursuant to  
36 indemnity bonds.

37 (3) The agency shall forward the report to the [*Department of State Lands*] **Oregon Department**  
38 **of Natural Resources** before November 1.

39 (4) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall not re-  
40 quire the Department of Revenue to remit funds being held by the Department of Revenue prior to  
41 January 1, 1994.

42 **SECTION 837.** ORS 293.455 is amended to read:

43 293.455. (1) After October 1, the State Treasurer may refuse payment of the unrepresented checks  
44 or orders included in the report referred to in ORS 293.450. In accordance with procedures devel-  
45 oped by the [*Department of State Lands*] **Oregon Department of Natural Resources** and approved

1 by the State Treasurer, the agency shall instruct the State Treasurer to do the following:

2 (a) Transfer and credit the amounts of the unrepresented checks or orders dedicated for general  
3 funding to the General Fund.

4 (b) Transfer all other funds to the department [*of State Lands*] for deposit in the Unclaimed  
5 Property Revolving Fund within the Common School Fund [*Account*].

6 (c) Transfer and credit the amounts of the unrepresented checks issued under ORS chapters 316  
7 and 317 to the department [*of State Lands*] for deposit in the Unclaimed Property Revolving Fund  
8 within the Common School Fund [*Account*].

9 (2) In each instance, the State Treasurer shall issue an official receipt for the amount so trans-  
10 ferred or credited.

11 (3) If the State Treasurer pays the owner of an unrepresented check or order included in the re-  
12 port referred to in ORS 293.450 before the funds are transferred to the department [*of State*  
13 *Lands*], this information shall be reported to the department [*of State Lands*].

14 **SECTION 838.** ORS 293.460 is amended to read:

15 293.460. The lawful owner of any check or order included in the report referred to in ORS  
16 293.450, not presented to the State Treasurer for payment and not paid, thereafter may file a claim  
17 with the [*Department of State Lands*] **Oregon Department of Natural Resources** in the manner  
18 provided by ORS 98.392 and 98.396.

19 **SECTION 839.** ORS 293.701 is amended to read:

20 293.701. As used in ORS 293.701 to 293.820, unless the context requires otherwise:

21 (1) "Council" means the Oregon Investment Council.

22 (2) "Investment funds" means:

23 (a) Public Employees Retirement Fund referred to in ORS 238.660;

24 (b) Industrial Accident Fund referred to in ORS 656.632;

25 (c) Consumer and Business Services Fund referred to in ORS 705.145;

26 (d) Employment Department Special Administrative Fund referred to in ORS 657.822;

27 (e) Insurance Fund referred to in ORS 278.425;

28 (f) Funds under the control and administration of the [*Department of State Lands*] **Oregon De-**  
29 **partment of Natural Resources pursuant to ORS 273.101;**

30 (g) Oregon Student Assistance Fund referred to in ORS 348.570;

31 (h) Moneys made available to the Commission for the Blind under ORS 346.270 and 346.540 or  
32 rules adopted thereunder;

33 (i) Forest Development Revenue Bond Fund referred to in ORS 530.147 and State Forestry  
34 General Obligation Bond Fund referred to in ORS 530.280;

35 (j) Oregon War Veterans' Fund referred to in ORS 407.495;

36 (k) Oregon War Veterans' Bond Sinking Account referred to in ORS 407.515;

37 (L) World War II Veterans' Compensation Fund;

38 (m) World War II Veterans' Bond Sinking Fund;

39 (n) Funds in the hands of the State Treasurer that are not required to meet current demands  
40 and that are invested in the Oregon Short Term Fund established under ORS 293.728 or in another  
41 commingled investment vehicle;

42 (o) State funds that are not subject to the control and administration of officers or bodies spe-  
43 cifically designated by law;

44 (p) Funds derived from the sale of state bonds;

45 (q) Social Security Revolving Account referred to in ORS 237.490;



1 (r) Oregon University System Fund established by ORS 351.506 and the Higher Education Do-  
2 nation Fund established by ORS 351.130;

3 (s) Local Government Employer Benefit Trust Fund referred to in ORS 657.513;

4 (t) Elderly and Disabled Special Transportation Fund established by ORS 391.800;

5 (u) Education Stability Fund established by ORS 348.696;

6 (v) Deferred Compensation Fund established under ORS 243.411; and

7 (w) Trust for Cultural Development Account established under ORS 359.405.

8 (3) "Investment officer" means the State Treasurer in the capacity as investment officer for the  
9 council.

10 **SECTION 840.** ORS 308.270 is amended to read:

11 308.270. The assessor of each county shall, immediately after January 1 of each year, obtain  
12 from the [*Department of State Lands*] **Oregon Department of Natural Resources**, from each other  
13 state agency holding title to real property and from the appropriate agency of the United States,  
14 lists of public lands sold, or contracted to be sold, and of final certificates issued for lands in the  
15 county of the assessor during the year ending at 1:00 a.m. of such January 1. The assessor shall  
16 place such lands upon the assessment roll. The department [*of State Lands*] and each other state  
17 agency holding title to real property shall certify to the assessor a list or lists of all public lands  
18 in the county sold by it, or contracted to be sold, during such year.

19 **SECTION 841.** ORS 311.804 is amended to read:

20 311.804. (1) If taxes are levied or assessed upon lands that are a portion of the assets of the  
21 Common School Fund while held under certificate or contract of sale and the certificate or contract  
22 is canceled by the [*Department of State Lands*] **Oregon Department of Natural Resources**, such  
23 taxes or assessments shall become void upon receipt of written notice from the Director of the  
24 [*Department of State Lands*] **Oregon Department of Natural Resources** of cancellation of the  
25 certificate or contract of sale. Officials having charge of the records of taxes and assessments on  
26 lands included in certificates or contracts of sale so canceled shall note on their records the word  
27 "invalidated," and the date of cancellation.

28 (2) This section does not apply to irrigation or drainage districts' tax liens if the irrigation or  
29 drainage districts were organized prior to the inception of the department's lien.

30 **SECTION 842.** ORS 314.840 is amended to read:

31 314.840. (1) The Department of Revenue may:

32 (a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230  
33 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, represen-  
34 tative or designee, with a copy of the taxpayer's income tax return filed with the department for  
35 any year, or with a copy of any report filed by the taxpayer in connection with the return, or with  
36 any other information the department considers necessary.

37 (b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

38 (c) Publish statistics so classified as to prevent the identification of income or any particulars  
39 contained in any report or return.

40 (d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social  
41 Security number, employer identification number or other taxpayer identification number to the ex-  
42 tent necessary in connection with collection activities or the processing and mailing of correspond-  
43 ence or of forms for any report, return or claim required in the administration of ORS 310.630 to  
44 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net in-  
45 come.

1 (2) The department also may disclose and give access to information described in ORS 314.835  
2 to:

3 (a) The Governor of the State of Oregon or the authorized representative of the Governor:

4 (A) With respect to an individual who is designated as being under consideration for appoint-  
5 ment or reappointment to an office or for employment in the office of the Governor. The information  
6 disclosed shall be confined to whether the individual:

7 (i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more  
8 than the three immediately preceding years for which the individual was required to file an Oregon  
9 individual income tax return.

10 (ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or  
11 otherwise respond to a deficiency notice within 30 days of its mailing.

12 (iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature  
13 of the penalty.

14 (iv) Has been or is under investigation for possible criminal offenses under the Oregon personal  
15 income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose  
16 of making the appointment, reappointment or decision to employ or not to employ the individual in  
17 the office of the Governor.

18 (B) For use by an officer or employee of the Oregon Department of Administrative Services duly  
19 authorized or employed to prepare revenue estimates, or a person contracting with the Oregon De-  
20 partment of Administrative Services to prepare revenue estimates, in the preparation of revenue  
21 estimates required for the Governor's budget under ORS 291.201 to 291.226, or required for sub-  
22 mission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee  
23 on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342, 291.348 and 291.445.  
24 The Department of Revenue shall disclose and give access to the information described in ORS  
25 314.835 for the purposes of this subparagraph only if:

26 (i) The request for information is made in writing, specifies the purposes for which the request  
27 is made and is signed by an authorized representative of the Oregon Department of Administrative  
28 Services. The form for request for information shall be prescribed by the Oregon Department of  
29 Administrative Services and approved by the Director of the Department of Revenue.

30 (ii) The officer, employee or person receiving the information does not remove from the premises  
31 of the Department of Revenue any materials that would reveal the identity of a personal or corpo-  
32 rate taxpayer.

33 (b) The Commissioner of Internal Revenue or authorized representative, for tax administration  
34 and compliance purposes only.

35 (c) For tax administration and compliance purposes, the proper officer or authorized represen-  
36 tative of any of the following entities that has or is governed by a provision of law that meets the  
37 requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

38 (A) A state;

39 (B) A city, county or other political subdivision of a state;

40 (C) The District of Columbia; or

41 (D) An association established exclusively to provide services to federal, state or local taxing  
42 authorities.

43 (d) The Multistate Tax Commission or its authorized representatives, for tax administration and  
44 compliance purposes only. The Multistate Tax Commission may make the information available to  
45 the Commissioner of Internal Revenue or the proper officer or authorized representative of any

1 governmental entity described in and meeting the qualifications of paragraph (c) of this subsection.

2 (e) The Attorney General, assistants and employees in the Department of Justice, or other legal  
3 representative of the State of Oregon, to the extent the department deems disclosure or access  
4 necessary for the performance of the duties of advising or representing the department pursuant to  
5 ORS 180.010 to 180.240 and the tax laws of this state.

6 (f) Employees of the State of Oregon, other than of the Department of Revenue or Department  
7 of Justice, to the extent the department deems disclosure or access necessary for such employees  
8 to perform their duties under contracts or agreements between the department and any other de-  
9 partment, agency or subdivision of the State of Oregon, in the department's administration of the  
10 tax laws.

11 (g) Other persons, partnerships, corporations and other legal entities, and their employees, to  
12 the extent the department deems disclosure or access necessary for the performance of such others'  
13 duties under contracts or agreements between the department and such legal entities, in the  
14 department's administration of the tax laws.

15 (h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS  
16 173.850. Such officer or representative shall not remove from the premises of the department any  
17 materials that would reveal the identity of any taxpayer or any other person.

18 (i) The Department of Consumer and Business Services, to the extent the department requires  
19 such information to determine whether it is appropriate to adjust those workers' compensation  
20 benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or  
21 earned income received by an individual.

22 (j) Any agency of the State of Oregon, or any person, or any officer or employee of such agency  
23 or person to whom disclosure or access is given by state law and not otherwise referred to in this  
24 section, including but not limited to the Secretary of State as Auditor of Public Accounts under  
25 section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to  
26 ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district  
27 attorney regarding cases for which they are providing support enforcement services under ORS  
28 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of  
29 Accountancy, pursuant to ORS 673.415.

30 (k) The Director of the Department of Consumer and Business Services to determine that a  
31 person complies with ORS chapter 656 and the Director of the Employment Department to determine  
32 that a person complies with ORS chapter 657, the following employer information:

33 (A) Identification numbers.

34 (B) Names and addresses.

35 (C) Inception date as employer.

36 (D) Nature of business.

37 (E) Entity changes.

38 (F) Date of last payroll.

39 (L) The Director of Human Services to determine that a person has the ability to pay for care  
40 that includes services provided by the Eastern Oregon Training Center or the Department of Human  
41 Services to collect any unpaid cost of care as provided by ORS chapter 179.

42 (m) The Director of the Oregon Health Authority to determine that a person has the ability to  
43 pay for care that includes services provided by the Blue Mountain Recovery Center or the Oregon  
44 State Hospital or the Oregon Health Authority to collect any unpaid cost of care as provided by  
45 ORS chapter 179.

1 (n) Employees of the Employment Department to the extent the Department of Revenue deems  
2 disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary  
3 to performance of their duties in administering the tax imposed by ORS chapter 657.

4 (o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and  
5 powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and  
6 standard industrial classification, if available.

7 (p) Employees of the [*Department of State Lands*] **Oregon Department of Natural Resources**  
8 for the purposes of identifying, locating and publishing lists of taxpayers entitled to unclaimed re-  
9 funds as required by the provisions of chapter 694, Oregon Laws 1993. The information shall be  
10 limited to the taxpayer's name, address and the refund amount.

11 (q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement  
12 agencies to assist in the investigation or prosecution of the following criminal activities:

13 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited  
14 to the stolen document, the name, address and taxpayer identification number of the payee, the  
15 amount of the check and the date printed on the check.

16 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department  
17 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information  
18 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-  
19 dress and taxpayer identification number of the payee, the amount of the check, the date printed  
20 on the check and the altered name and address.

21 (r) The United States Postal Inspection Service or a federal law enforcement agency, including  
22 but not limited to the United States Department of Justice, to assist in the investigation of the fol-  
23 lowing criminal activities:

24 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited  
25 to the stolen document, the name, address and taxpayer identification number of the payee, the  
26 amount of the check and the date printed on the check.

27 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department  
28 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information  
29 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-  
30 dress and taxpayer identification number of the payee, the amount of the check, the date printed  
31 on the check and the altered name and address.

32 (s) The United States Financial Management Service, for purposes of facilitating the reciprocal  
33 offsets described in ORS 305.612.

34 (t) A municipal corporation of this state for purposes of assisting the municipal corporation in  
35 the administration of a tax of the municipal corporation that is imposed on or measured by income,  
36 wages or net earnings from self-employment. Any disclosure under this paragraph may be made only  
37 pursuant to a written agreement between the Department of Revenue and the municipal corporation  
38 that ensures the confidentiality of the information disclosed.

39 (u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS  
40 314.843.

41 (3)(a) Each officer or employee of the department and each person described or referred to in  
42 subsection (2)(a), (e) to (k) or (n) to (q) of this section to whom disclosure or access to the tax in-  
43 formation is given under subsection (2) of this section or any other provision of state law, prior to  
44 beginning employment or the performance of duties involving such disclosure or access, shall be  
45 advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the vio-

1 lation of ORS 314.835, and shall as a condition of employment or performance of duties execute a  
 2 certificate for the department, in a form prescribed by the department, stating in substance that the  
 3 person has read these provisions of law, that the person has had them explained and that the person  
 4 is aware of the penalties for the violation of ORS 314.835.

5 (b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a  
 6 written agreement has been entered into between the Department of Revenue and the person de-  
 7 scribed in subsection (2)(r) of this section to whom disclosure or access to the tax information is  
 8 given, providing that:

9 (A) Any information described in ORS 314.835 that is received by the person pursuant to sub-  
 10 section (2)(r) of this section is confidential information that may not be disclosed, except to the ex-  
 11 tent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of  
 12 this section;

13 (B) The information shall be protected as confidential under applicable federal and state laws;  
 14 and

15 (C) The United States Postal Inspection Service or the federal law enforcement agency shall  
 16 give notice to the Department of Revenue of any request received under the federal Freedom of In-  
 17 formation Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

18 (4) The Department of Revenue may recover the costs of furnishing the information described  
 19 in subsection (2)(k) to (m) and (o) to (q) of this section from the respective agencies.

20 **SECTION 843.** ORS 324.340 is amended to read:

21 324.340. (1) The revenues derived from the tax imposed by this chapter including interest and  
 22 penalties, shall be deposited in a suspense account created pursuant to ORS 293.445. After payment  
 23 of refunds and the expenses of the Department of Revenue incurred in the administration of this  
 24 chapter, the remaining revenues shall be paid into the Common School Fund and are continuously  
 25 appropriated to the [*Department of State Lands*] **Oregon Department of Natural Resources** for the  
 26 purposes for which other moneys in the Common School Fund may be used.

27 (2) The amount of moneys necessary to pay refunds and expenses of the Department of Revenue  
 28 incurred in the administration of this chapter are continuously appropriated to the Department of  
 29 Revenue from the suspense account referred to in subsection (1) of this section.

30 **SECTION 844.** ORS 327.405 is amended to read:

31 327.405. The Common School Fund shall be composed of the proceeds from the sales of the 16th  
 32 and 36th sections of every township or of any lands selected in lieu thereof, all the moneys and clear  
 33 proceeds of all property that may accrue to the state by escheat or forfeiture, the proceeds of all  
 34 gifts, devises and bequests made by any person to the state for common school purposes, the pro-  
 35 ceeds of all property granted to the state when the purpose of such grant is not stated, all proceeds  
 36 of the sale of submerged and submersible lands as described in ORS 274.005, all proceeds of the sale  
 37 of the South Slough National Estuarine Research Reserve as described in ORS 273.553 in the event  
 38 such property is sold, and all proceeds of the sale of the 500,000 acres of land to which this state  
 39 is entitled by an Act of Congress approved September 4, 1841, and of all lands selected for capitol  
 40 building purposes under Act of Congress approved February 14, 1859. All such proceeds shall be-  
 41 come a part of the Common School Fund. Except as otherwise provided by law, the income from the  
 42 Common School Fund shall be applied exclusively to the support and maintenance of common  
 43 schools in each school district. All lawful claims for repayment of moneys under the provisions of  
 44 ORS 98.302 to 98.436 and 98.992, or out of escheated estates and for attorney fees and all other ex-  
 45 penses in any suit or proceeding relating to escheated estates shall be audited by the [*Department*

1 of *State Lands*] **Oregon Department of Natural Resources** and paid from the Common School  
2 Fund [*Account*].

3 **SECTION 845.** ORS 327.410 is amended to read:

4 327.410. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
5 transfer the balance of the Distributable Income Account of the Common School Fund established  
6 under ORS 273.105, after deductions authorized by law, to the Superintendent of Public Instruction  
7 semiannually, or more frequently if the State Land Board so orders. The superintendent shall im-  
8 mediately apportion the amount transferred among the counties in proportion to the number of  
9 children resident in each county between the ages of 4 and 20 as determined pursuant to ORS  
10 190.510 to 190.610. The superintendent shall distribute to each school district within a county a  
11 share of the county's apportionment that is based on the district's average daily membership that  
12 resides within the county.

13 **SECTION 846.** ORS 327.425 is amended to read:

14 327.425. (1) All moneys belonging to the Common School Fund and not required to meet current  
15 expenses shall be loaned by the [*Department of State Lands*] **Oregon Department of Natural Re-**  
16 **sources** at a rate of interest fixed by the department except as otherwise specified in ORS 348.050  
17 (3). The department may consult with and obtain the recommendation of the Oregon Investment  
18 Council in fixing the interest rate.

19 (2) Common School Fund moneys may be loaned in accordance with the repayment plan con-  
20 tained in ORS 327.440 and in ORS 348.050 (4), except that loans on property within the corporate  
21 limits of towns or cities shall be payable in not more than 15 years on the amortization plan.

22 (3) If at any time there is a Common School Fund surplus over and above all loans applied for,  
23 such portion of the surplus as the department deems proper may be invested as provided in ORS  
24 293.701 to 293.820. The department may require the State Treasurer to deposit any such surplus,  
25 until it is able to loan same, in qualified state depositories, upon the same terms and conditions as  
26 other public funds are deposited therein, in which event any interest received from any such state  
27 depository shall be credited to the fund on which such interest was earned.

28 (4) Except as provided in ORS 348.050 (3), the department may reduce the rate of interest to be  
29 paid upon outstanding loans from the Common School Fund and any trust fund placed in its charge,  
30 to correspond with the rate of interest to be paid upon new loans, but no reduction in rate of in-  
31 terest shall be made upon any of the loans until interest at the old rate has been paid in full to date  
32 of receipt of remittance at the office of the department.

33 **SECTION 847.** ORS 327.430 is amended to read:

34 327.430. (1) The principal and interest of all loans shall be paid in lawful money of the United  
35 States.

36 (2) Except for loans to students authorized by ORS 348.050, loans shall be secured by note  
37 specifying the fund from which the loan is made and mortgage to the [*Department of State Lands*]  
38 **Oregon Department of Natural Resources** on improved land within this state, or upon range or  
39 grazing land therein. Except as provided in ORS 273.815, the security for a secured loan shall be  
40 not less than twice the value of the amount loaned, and, except as otherwise provided in subsection  
41 (3) of this section, shall be of unexceptional title and free from all encumbrances. A secured loan  
42 may be secured by a deposit of obligations of the United States or of bonds or warrants of this state  
43 of a face value of not less than 25 percent in excess of such loans.

44 (3) The department is not prohibited by subsection (2) of this section from making a secured loan  
45 merely because the land securing the loan is:

1 (a) Situated in an irrigation district, taking into consideration the amount of bonded indebt-  
2 edness of the district as compared with the valuation of the real property of the district.

3 (b) Subject to a reservation of mineral rights.

4 (c) Subject to a lease of any kind.

5 (d) Subject to a statutory lien for public improvements.

6 (e) Subject to an easement.

7 **SECTION 848.** ORS 327.435 is amended to read:

8 327.435. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
9 adopt methods, rules and regulations for ascertaining the value of and state of the title of any lands  
10 proposed as security for any loan under the provisions of ORS 327.425 and 327.430. All expenses of  
11 ascertaining title shall be borne by the applicant. The department may establish fees to be paid by  
12 the applicant for the appraisal of any property offered as security.

13 **SECTION 849.** ORS 327.440 is amended to read:

14 327.440. Secured loans authorized by ORS 327.430 shall be repaid in semiannual, quarterly or  
15 monthly installments, as may mutually be agreed upon between the borrower and the [*Department*  
16 *of State Lands*] **Oregon Department of Natural Resources**, and the installments shall aggregate  
17 each year an amount equal to one year's interest on the original principal of the loan plus an ad-  
18 ditional two percent of the original principal sum, except as provided in ORS 327.425. Of the in-  
19 stallment so paid each year, the amount at the specified interest rate on the principal remaining  
20 unpaid shall be credited as interest and the balance credited to reduction of the loan principal.  
21 Borrowers from the fund shall have the right to make payments in excess of the amounts of such  
22 installments, and the further right at any time to pay off such loans in part or full with interest to  
23 payment dates.

24 **SECTION 850.** ORS 327.445 is amended to read:

25 327.445. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall have  
26 custody of all notes, bonds and other securities covering secured loans made by it from any fund.  
27 The department shall take proper measures for the prompt collection of interest due on all loans  
28 from any such fund and place it to the credit of the fund from which the loan was made, to be paid  
29 out as provided by law.

30 **SECTION 851.** ORS 327.450 is amended to read:

31 327.450. (1) The [*Department of State Lands*] **Oregon Department of Natural Resources** shall  
32 foreclose all mortgages taken to evidence loans from the Common School Fund or other funds  
33 whenever more than one year's interest on the loan is due and unpaid or whenever any mortgage  
34 becomes inadequate security for the money loaned. The department may foreclose its mortgage in  
35 the event of waste or any other impairment of the property upon which the loan was made. [*It*] **The**  
36 **department** may also foreclose for delinquency in payment of principal or interest installments or  
37 in payment of taxes on such property.

38 (2) The department may bid in the land in the name of the state at a price not to exceed the  
39 total amount of the state's claim or they may accept a deed or a release of the equity of redemption.  
40 Should it appear to the satisfaction of the department that the mortgagee cannot make the payment  
41 of interest and that foreclosure would work an injustice and that foreclosure is not then necessary  
42 to secure the fund from loss, the department may extend the time for paying such interest not ex-  
43 ceeding two years.

44 **SECTION 852.** ORS 327.455 is amended to read:

45 327.455. The Director of the [*Department of State Lands*] **Oregon Department of Natural Re-**

1 **sources** shall keep a correct record of all purchases on foreclosures under ORS 327.450 with a de-  
 2 scription of the lands so purchased or acquired, and a statement of the fund to which they belong.  
 3 Such lands shall be placed in the hands of the director and sold or leased under the direction of the  
 4 **Oregon Department of Natural Resources** on the best terms obtainable, and the proceeds, to the  
 5 amount of the principal of the loans, shall be paid into the fund from which the loans were made,  
 6 and the excess paid to the interest account of that fund.

7 **SECTION 853.** ORS 327.465 is amended to read:

8 327.465. Whenever the [*Department of State Lands*] **Oregon Department of Natural Resources**  
 9 receives a deed to the State of Oregon of lands covered by a mortgage given to secure a loan from  
 10 the Common School Fund in liquidation of the debt represented by the loan, the department shall  
 11 send a written notice of the transaction to the county court of the county in which such deeded  
 12 lands are situated. Upon the receipt of such notice, the county court shall cancel on the county tax  
 13 records unpaid taxes levied and assessed against such property in that county. This section does not  
 14 apply to tax liens of irrigation or drainage districts organized prior to the effective date of the lien  
 15 of the department.

16 **SECTION 854.** ORS 327.470 is amended to read:

17 327.470. (1) Excepting tax liens of irrigation or drainage districts organized before the effective  
 18 date of the [*Department of State Lands*] lien **of the Oregon Department of Natural Resources**,  
 19 whenever the State of Oregon acquires property or lands through foreclosure of a mortgage given  
 20 to secure a loan from the Common School Fund and the state has received the sheriff's deed made  
 21 as a result of such foreclosure proceedings and the period for redemption has expired, the county  
 22 court, or board of county commissioners, of the county in which such lands are situated shall cancel  
 23 on the county tax records all the unpaid taxes levied and assessed against the property.

24 (2) At the time the sheriff issues a certificate of sale in the foreclosure proceedings of any de-  
 25 partment mortgage, the sheriff shall serve a copy of the certificate upon the county judge, or the  
 26 chairperson of the board of county commissioners, of the county in which the foreclosure takes  
 27 place. The county shall have a 60-day period from the date of the sheriff's certificate in which to  
 28 redeem the land by paying the department the full amount of its investment in the land, including  
 29 principal and interest, foreclosure charges, abstracting expense, and any other necessary expense  
 30 incurred by the department in said foreclosure proceedings.

31 **SECTION 855.** ORS 327.475 is amended to read:

32 327.475. Whenever the [*Department of State Lands*] **Oregon Department of Natural Resources**  
 33 receives a deed as described in ORS 327.465, the county court of the county in which the lands are  
 34 situated may, within one year from the recorded date of such deed, acquire from the state the  
 35 property so conveyed by paying to the state the total amount of the state's investment in the prop-  
 36 erty.

37 **SECTION 856.** ORS 327.480 is amended to read:

38 327.480. (1) Where the judgment in a suit instituted by the State of Oregon to cancel and set  
 39 aside any deed of lands from the State of Oregon alleged to have been procured by fraud and in  
 40 violation of law grants relief to the State of Oregon which is conditioned on the payment of money,  
 41 the [*Department of State Lands*] **Oregon Department of Natural Resources** may pay from the  
 42 Common School Fund the sum necessary to comply with the conditions of the judgment.

43 (2) This section shall not be considered as a legislative interpretation relieving the defendants  
 44 in such suit from applying to the [*legislature*] **Legislative Assembly** for repayment of the purchase  
 45 price of such land, or that the State of Oregon is not entitled to an accounting from the purchaser,



1 the assignee, or successor in interest, for school or other lands obtained in violation of law, or that  
 2 the State of Oregon must repay the purchase price of such lands, with or without interest as a  
 3 condition of obtaining relief. This section is intended to prevent the loss to the State of Oregon of  
 4 lands obtained in violation of law, where the court imposes as a condition for granting relief the  
 5 payment of money.

6 **SECTION 857.** ORS 327.484 is amended to read:

7 327.484. Moneys may be withdrawn periodically from the General Fund by order of the [*De-*  
 8 *partment of State Lands*] **Oregon Department of Natural Resources** to be credited to the Common  
 9 School Fund to reimburse the Common School Fund for any loss which may result from the failure  
 10 of any student to repay the amounts loaned to the student under ORS 348.050 and annually on July  
 11 1 to pay to the Common School Fund any amount resulting from the failure of the total student  
 12 loans to earn at least four percent interest in the preceding fiscal year.

13 **SECTION 858.** ORS 348.050 is amended to read:

14 348.050. (1) Upon approval of the loan application of an eligible student by the Oregon Student  
 15 Assistance Commission, the [*Department of State Lands*] **Oregon Department of Natural Re-**  
 16 **sources** may loan an amount from the Common School Fund to the student in compliance with ORS  
 17 348.040 to 348.070. The loan shall be evidenced by a written obligation but no additional security  
 18 shall be required. Notwithstanding any provision in this section, the department may require  
 19 cosigners on the loans.

20 (2) Loans granted under ORS 348.040 to 348.070 to eligible students by the department shall:

21 (a) Not exceed \$1,000 in a single academic year to an undergraduate student.

22 (b) Not exceed \$4,000 in a single academic year to a graduate or professional student.

23 (c) Not exceed \$16,000 for all loans made to a student under ORS 348.040 to 348.070.

24 (3) Payment of interest shall be as follows:

25 (a) Medical and dental student borrowers at the Oregon Health and Science University and  
 26 veterinary student borrowers at Oregon State University shall be assessed at least six percent in-  
 27 terest per annum on the unpaid balance from the date of the note. Interest payments by these  
 28 borrowers shall be deferred until they cease to be enrolled. During the interest deferment period,  
 29 the Oregon Student Assistance Commission shall pay the department the negotiated rate of interest  
 30 on an annual basis. The borrower shall reimburse the Oregon Student Assistance Commission for  
 31 these interest payments as provided in subsection (4) of this section. These borrowers shall com-  
 32 mence direct payment of accruing interest to the department at the time they cease to be enrolled.

33 (b) All other borrowers are required to pay at least seven percent interest per annum on the  
 34 unpaid balance from the date of the loan as provided in subsection (4) of this section.

35 (c) The Oregon Student Assistance Commission shall pay annually to the department a maximum  
 36 of three percent per annum on the unpaid balance of all medical, dental and veterinary student  
 37 borrower loans. The rate of this special payment may vary annually and will be negotiated by the  
 38 Oregon Student Assistance Commission and the department.

39 (d) The interest rates to be charged the borrower for the school year as stated in paragraphs  
 40 (a) and (b) of this subsection shall be negotiated by the department and the Oregon Student Assis-  
 41 tance Commission.

42 (4)(a) Repayment of the principal and accruing and deferred interest on loans shall be com-  
 43 menced not later than 12 months after the student's graduation or other termination of the student's  
 44 education.

45 (b) Notwithstanding any other provision of this section, medical, dental and veterinary student

1 borrowers who enter approved post-graduate study programs shall commence repayment of the  
2 principal and the accruing and deferred interest on loans no later than 12 months following the  
3 completion of the post-graduate study program or 60 months, whichever is sooner.

4 (c) Repayment shall be completed in a maximum of 120 months from the time repayment is  
5 commenced. However, nothing in this section is intended to prevent repayment without penalty at  
6 an earlier date than provided in this section or to prohibit the department, with the consent of the  
7 Oregon Student Assistance Commission, from extending the repayment period to a date other than  
8 permitted by this subsection.

9 (5) Notwithstanding any other provision of this section, the department may loan an amount  
10 from the Common School Fund to a student under guaranteed programs authorized by the Higher  
11 Education Act of 1965, as amended, commonly known as the Guaranteed Student Loan Program and  
12 the Parent's Loans for Undergraduate Students Program. Neither the limitations on amounts set  
13 forth in subsection (2) of this section nor the subsidies authorized by subsection (3) of this section  
14 apply to such loans. ORS 327.484 does not apply to such loans.

15 **SECTION 859.** ORS 348.070 is amended to read:

16 348.070. To assist the Oregon Student Assistance Commission and the [*Department of State*  
17 *Lands*] **Oregon Department of Natural Resources** in determining the qualification of schools, the  
18 Superintendent of Public Instruction shall maintain a listing of career schools offering professional  
19 and technical training that meets the occupational needs of the student.

20 **SECTION 860.** ORS 348.090 is amended to read:

21 348.090. In addition to and not in lieu of student loans authorized pursuant to ORS 348.040 to  
22 348.070, the [*Department of State Lands*] **Oregon Department of Natural Resources** may make  
23 loans to students who are Oregon residents if the loans are guaranteed by a state agency. The  
24 terms, conditions and rates of interest of such loans may be determined by the department so as to  
25 take advantage of any federal statute providing for full or partial payment of interest on such loans.

26 **SECTION 861.** ORS 348.095 is amended to read:

27 348.095. From funds available therefor, the Oregon Student Assistance Commission shall reim-  
28 burse the [*Department of State Lands*] **Oregon Department of Natural Resources** for any loss re-  
29 sulting from default of a student loan under ORS 348.040 to 348.070. Funds appropriated under ORS  
30 348.050 to pay interest to the department on loans to medical, dental and veterinary students shall  
31 also be available to reimburse the department for any loss resulting from default of a student loan  
32 under ORS 348.040 to 348.070.

33 **SECTION 862.** ORS 352.520 is amended to read:

34 352.520. All moneys belonging to the account designated by ORS 352.510 shall be loaned by the  
35 [*Department of State Lands*] **Oregon Department of Natural Resources** in accordance with the  
36 provisions of ORS 327.425 to 327.455 governing loans from the Common School Fund.

37 **SECTION 863.** ORS 352.530 is amended to read:

38 352.530. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall pay  
39 the interest received on loans from the account designated by ORS 352.510 to the State Board of  
40 Higher Education semiannually.

41 **SECTION 864.** ORS 352.570 is amended to read:

42 352.570. All moneys belonging to the account designated by ORS 352.560 shall be loaned by the  
43 [*Department of State Lands*] **Oregon Department of Natural Resources** in accordance with ORS  
44 327.425 to 327.455, governing loans from the Common School Fund.

45 **SECTION 865.** ORS 352.580 is amended to read:

1 352.580. The [*Department of State Lands*] **Oregon Department of Natural Resources** shall pay  
2 the interest received on loans from the account designated by ORS 352.560 to the State Board of  
3 Higher Education semiannually.

4 **SECTION 866.** ORS 376.185 is amended to read:

5 376.185. (1) A way of necessity may not be established under ORS 376.150 to 376.200 across land  
6 owned by the state or a political subdivision of the state without the consent of the governing body  
7 of the political subdivision or of the appropriate agency of the state. The governing body of a poli-  
8 tical subdivision of this state and any agency of the state shall not unreasonably withhold consent  
9 required under this subsection.

10 (2) Whenever a way of necessity is sought over land owned by the state or a political subdivi-  
11 sion of the state, a copy of the petition for the way of necessity, of the county report and of the  
12 notice of hearing shall be forwarded by certified mail to:

13 (a) If the political subdivision owns the land, the governing body of the political subdivision.

14 (b) If the state owns the land, to the [*Department of State Lands*] **Oregon Department of Na-**  
15 **tural Resources** and to each agency of the state that has use or control of the land.

16 **SECTION 867.** ORS 376.620 is amended to read:

17 376.620. (1) When authorized by the [*Department of State Lands*] **Oregon Department of Na-**  
18 **tural Resources**, it is lawful for any person, firm or corporation to construct, maintain and operate  
19 a skyline, high lead logging line, ferry skyline or cable footbridge across any navigable river, bay,  
20 inlet or other navigable waters within the state, not inconsistent with any Act of Congress regu-  
21 lating the construction of bridges across navigable waters. The structures shall be so constructed  
22 as not to interfere unnecessarily with the navigation of such navigable waters.

23 (2) The [*Department of State Lands*] **department** may make and enforce such regulations and  
24 restrictions as [*it*] **the department** deems necessary to carry out the purposes of this section and  
25 may make reasonable charges for any services rendered in connection therewith.

26 **SECTION 868.** ORS 421.628, as amended by section 9, chapter 516, Oregon Laws 2001, section  
27 45, chapter 598, Oregon Laws 2003, and section 8, chapter 231, Oregon Laws 2009, is amended to  
28 read:

29 421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286 or any other  
30 provision of law, including but not limited to statutes, ordinances, regulations and charter pro-  
31 visions, and except for permit decisions delegated by the federal government to the [*Department of*  
32 *State Lands*] **Oregon Department of Natural Resources**, the decisions of the Corrections Facilities  
33 Siting Authority, if approved by the Governor, shall bind the state and all counties, cities and poli-  
34 tical subdivisions in this state as to the approval of the sites and the construction and operation  
35 of the proposed corrections facilities. Except for those statutes and rules for which permit decisions  
36 have been delegated by the federal government to the [*Department of State Lands*] **Oregon De-**  
37 **partment of Natural Resources**, all affected state agencies, counties, cities and political subdivi-  
38 sions shall issue the appropriate permits, licenses and certificates and enter into any  
39 intergovernmental agreements as necessary for construction and operation of the facilities, subject  
40 only to the conditions of the siting decisions.

41 (2) Each state or local governmental agency that issues a permit, license or certificate shall  
42 continue to exercise enforcement authority over the permit, license or certificate.

43 (3) Except as provided in subsections (4) to (16) of this section, nothing in ORS 421.611 to  
44 421.630 expands or alters the obligations of cities, counties and political subdivisions to pay for  
45 infrastructure improvements for the proposed corrections facilities.

1 (4) The Department of Corrections shall seek to obtain public services necessary for the con-  
2 struction and operation of corrections facilities from a public body providing such services. The  
3 department may not acquire or develop and furnish its own public services under this section that  
4 could be provided by a public body unless the department concludes that the state can achieve sig-  
5 nificant cost savings by doing so.

6 (5) Upon request of the Department of Corrections, a public body furnishing public services shall  
7 make public services available to the department that are either necessary for the construction and  
8 operation of a corrections facility or required by additions to or remodeling of a corrections facility  
9 sited or constructed under ORS 421.611 to 421.630 or any other law. All rates, terms and conditions  
10 of furnishing public services shall be just, fair and reasonable. A just, fair and reasonable rate shall  
11 assure the public body the recovery of the additional costs of providing and maintaining the re-  
12 quested service to the corrections facility, including, but not limited to, feasibility and design engi-  
13 neering costs, and reasonable capacity replacement, but may not exceed the public body's actual  
14 capital and operating expenses, including reasonable reserves charged to all ratepayers, for such  
15 service. The public body's rates, terms and conditions shall be conclusively deemed to be just, fair  
16 and reasonable if the department and public body so agree in writing.

17 (6) If the Department of Corrections and the public body cannot agree on the rates, terms and  
18 conditions of furnishing necessary public services to a corrections facility, either the department or  
19 the public body may deliver to the other a notice of request to mediate any disputed issues, includ-  
20 ing, but not limited to, whether the department can achieve significant cost savings to the state by  
21 acquiring or developing and furnishing its own public services. If either the department or the public  
22 body requests mediation, the other shall participate in good faith in such mediation. Unless other-  
23 wise agreed by the department and the public body, the mediation shall be concluded within 30 days  
24 of delivery of the notice of request to mediate.

25 (7) If the mediation fails to resolve the issues in dispute, or if mediation is not requested by ei-  
26 ther the Department of Corrections or the public body, the department and the public body may  
27 agree to submit any disputed matters to arbitration. The arbitration may be either binding or non-  
28 binding. If the department and the public body cannot agree on the selection of the arbitrator and  
29 the arbitration rules and procedure, upon motion directed to the Court of Appeals, the Chief Judge  
30 of the Court of Appeals shall select the arbitrator and decide the rules and procedure. The  
31 arbitrator's decision and award shall be guided by the standards set forth in this section. The deci-  
32 sion and award of the arbitrator shall be final and binding on the department and the public body  
33 only if they agree to enter into binding arbitration prior to the initiation of the arbitration. If the  
34 department and public body have agreed to binding arbitration of disputed issues, either the de-  
35 partment or the public body, if dissatisfied with the arbitrator's decision and award, may file ex-  
36 ceptions in the Court of Appeals within 21 days of the issuance of the decision and award.  
37 Exceptions shall be limited to the causes set forth in ORS 36.705 (1)(a) to (d), and to the grounds for  
38 modification or correction of an award under ORS 36.710. If any of the exceptions requires consid-  
39 eration of facts that do not appear on the face of the arbitrator's decision and award or is not  
40 stipulated to by the parties, the court may appoint a master to take evidence and make the neces-  
41 sary factual findings. The Court of Appeals' decision shall be final and not subject to further review.

42 (8) If the Department of Corrections and the public body have submitted disputed matters to  
43 nonbinding arbitration or if the department and public body have chosen not to submit disputed  
44 matters to arbitration, the department shall issue a preliminary order to the public body that either  
45 concludes that the state can achieve significant costs savings by acquiring or developing and fur-

1 nishing its own public services, or establishes the rates, terms and conditions upon which the public  
2 body shall make necessary public services available to the department for the corrections facility.  
3 The public body, no later than 15 days following the department's issuance of its preliminary order,  
4 may contest the preliminary order by filing a written notice to that effect with the department. The  
5 preliminary order shall become final, binding and conclusive if the public body fails to request a  
6 hearing within the time permitted in this section.

7 (9) If a hearing is requested, the department shall provide the public body with an opportunity  
8 to be heard and shall issue its final order upon conclusion of the hearing. The department shall es-  
9 tablish procedures to regulate and provide for the nature and extent of the proofs and evidence and  
10 the method of taking and furnishing the same in order to afford the public body a reasonable op-  
11 portunity for a fair hearing. The procedures shall ensure that the public body has a reasonable op-  
12 portunity to place in the record the information upon which the public body relies as a basis for its  
13 position. The department's order shall be guided by the standards set forth in this section.

14 (10) Proceedings for review of the department's final order shall be instituted when the affected  
15 public body files a petition with the Court of Appeals that meets the following requirements:

16 (a) The petition shall be filed within 21 days of issuance of the final order on which the petition  
17 is based.

18 (b) The petitioner shall serve a copy of the petition by registered or certified mail upon the  
19 Department of Corrections and the Attorney General.

20 (11) Within 30 days after service of the petition, the department shall transmit to the Court of  
21 Appeals the original or a certified copy of the entire record and any findings that may have been  
22 made.

23 (12) The Court of Appeals shall review the final order of the Department of Corrections. The  
24 Court of Appeals' decision shall be final and not subject to further review.

25 (13) Proceedings for review in the Court of Appeals under this section shall be given priority  
26 over all other matters before the Court of Appeals.

27 (14) The Department of Corrections or other state agency is not required to make payments to  
28 the public body for necessary public services to a corrections facility in excess of funds that are  
29 legally available for such purposes.

30 (15) This section does not require a public body to furnish public services to the Department  
31 of Corrections for a corrections facility in the event that the Legislative Assembly fails to make  
32 funds available in an amount sufficient to pay the state's share of costs of such services as deter-  
33 mined under this section.

34 (16) As used in this section, "public services" means off-site infrastructure, including, but not  
35 limited to, sewer and water systems and service, and road improvements.

36 **SECTION 869.** ORS 459.047, as amended by section 10, chapter 516, Oregon Laws 2001, is  
37 amended to read:

38 459.047. Upon request by a city or county responsible for implementing a department approved  
39 solid waste management plan which identifies a need for a landfill, and subject to policy direction  
40 by the Environmental Quality Commission, the Department of Environmental Quality shall:

41 (1) Assist the local government unit in the establishment of the landfill including assisting in  
42 planning, location, acquisition, development and operation of the site.

43 (2) Locate a site and issue a solid waste disposal permit under ORS 459.205 to 459.385 for a  
44 landfill within the boundaries of the requesting local government unit. Subject to the conditions set  
45 forth in the permit and except for permit decisions delegated by the federal government to the [De-

1 *partment of State Lands*] **Oregon Department of Natural Resources**, any permit for a landfill au-  
 2 thorized by the Environmental Quality Commission under this subsection shall bind the state and  
 3 all counties and cities and /department political subdivisions in this state as to the approval of the  
 4 site and the construction and operation of the proposed facility. Except for those statutes and rules  
 5 for which compliance decisions have been delegated by the federal government to the [*Department*  
 6 *of State Lands*] **Oregon Department of Natural Resources**, all affected state agencies, counties,  
 7 cities and political subdivisions shall issue the appropriate permits, licenses and certificates neces-  
 8 sary to construction and operation of the landfill, subject only to condition of the site certificate.  
 9 Each state or local government agency that issues a permit, license or certificate shall continue to  
 10 exercise enforcement authority over such permit, license or certificate.

11 **SECTION 870.** ORS 520.240 is amended to read:

12 520.240. (1) For the purpose of properly conserving the natural resources of any single oil or gas  
 13 pool or field, lessees under ORS 274.705 to 274.860 and their representatives may unite with each  
 14 other jointly or separately, or jointly or separately with others owning or operating lands not be-  
 15 longing to the state, in collectively adopting and operating under a cooperative or unit plan of de-  
 16 velopment or operation of the pool or field, whenever it is determined by the [*Department of State*  
 17 *Lands*] **Oregon Department of Natural Resources** to be necessary or advisable in the public in-  
 18 terest.

19 (2) The department [*of State Lands*] may, with the consent of the holders of the leases involved,  
 20 establish, alter, change and revoke any drilling and production requirements of such leases, and  
 21 make such regulations with reference to such leases, with like consent on the part of the lessees,  
 22 in connection with the institution and operation of any such cooperative or unit plan, as the de-  
 23 partment [*of State Lands*] deems necessary or proper to secure the proper protection of the interests  
 24 of the state.

25 **SECTION 871.** ORS 541.230 is amended to read:

26 541.230. No lands belonging to the state, within the areas to be irrigated from work constructed  
 27 or controlled by the United States or its authorized agents, shall be sold except in conformity with  
 28 the classification of farm units by the United States. The title of such land shall not pass from the  
 29 state until the applicant therefor has fully complied with the provisions of the laws of the United  
 30 States and the regulations thereunder concerning the acquisition of the right to use water from such  
 31 works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the  
 32 United States for any irrigation project, no application for the purchase of state lands within the  
 33 limits of such withdrawal shall be accepted, except under the conditions prescribed in this section.  
 34 Any state lands needed by the United States for irrigation works may, in the discretion of the [*De-*  
 35 *partment of State Lands*] **Oregon Department of Natural Resources**, be conveyed to it without  
 36 charge.

37 **SECTION 872.** ORS 566.320 is amended to read:

38 566.320. The [*Department of State Lands*] **Oregon Department of Natural Resources** hereby  
 39 is designated as the state agency of the State of Oregon to make application to and receive from the  
 40 Secretary of Agriculture of the United States, or any other proper federal official, pursuant and  
 41 subject to the provisions of Public Law 499, 81st Congress, approved May 3, 1950, the trust assets,  
 42 either funds or property, held by the United States as trustee in behalf of the Oregon Rural Reha-  
 43 bilitation Corporation.

44 **SECTION 873.** ORS 566.330 is amended to read:

45 566.330. The [*Department of State Lands*] **Oregon Department of Natural Resources** is au-

1 thorized to enter into agreements with the Secretary of Agriculture of the United States pursuant  
 2 to section 2(f), Public Law 499, 81st Congress, upon such terms and conditions and for such periods  
 3 of time as may be mutually agreeable, authorizing the secretary to accept, administer, expend and  
 4 use in the State of Oregon all or any part of such trust assets for carrying out the purposes of Titles  
 5 I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of  
 6 Title IV thereof, as now or hereafter amended, and to do all things necessary to effectuate and carry  
 7 out the purposes of such agreements.

8 **SECTION 874.** ORS 566.340 is amended to read:

9 566.340. Notwithstanding any other provisions of law, the funds and proceeds of the trust assets  
 10 that are not authorized to be administered by the Secretary of Agriculture of the United States  
 11 under the provisions of ORS 566.330 shall be received by the [*Department of State Lands*] **Oregon**  
 12 **Department of Natural Resources** and by it deposited in the State Treasury in an account, sepa-  
 13 rate and distinct from the General Fund. Interest earned by the account shall be credited to the  
 14 account. Moneys in the account are continuously appropriated to the Housing and Community Ser-  
 15 vices Department and may be expended or obligated by the Housing and Community Services De-  
 16 partment for the purposes of ORS 566.330 or for farmworker housing permissible under the charter  
 17 of the now dissolved Oregon Rural Rehabilitation Corporation.

18 **SECTION 875.** ORS 566.360 is amended to read:

19 566.360. The United States and the Secretary of Agriculture of the United States shall be held  
 20 free from liability by virtue of the transfer of the assets to the [*Department of State Lands*] **Oregon**  
 21 **Department of Natural Resources** pursuant to ORS 566.310 to 566.360.

22 **SECTION 876.** ORS 652.405 is amended to read:

23 652.405. (1) The Commissioner of the Bureau of Labor and Industries shall attempt for a period  
 24 of not less than seven years to make payment of wages collected under ORS 652.310 to 652.414 to  
 25 the person entitled thereto.

26 (2) Wages collected by the commissioner under ORS 652.310 to 652.414 and remaining unclaimed  
 27 for a period of more than seven years from the date of collection shall, within 30 days after June  
 28 30 of each year, be forfeited to the state and shall be paid by the commissioner to the [*Department*  
 29 *of State Lands*] **Oregon Department of Natural Resources** for the benefit of the Common School  
 30 Fund of this state. The department shall issue a receipt for the money to the commissioner. The  
 31 person entitled to the wages or the person's heirs or personal representatives may reclaim the wages  
 32 paid into the Common School Fund pursuant to this section within the time and in the manner  
 33 provided for estates which have escheated to the state.

34 **SECTION 877.** ORS 652.710 is amended to read:

35 652.710. (1) All moneys collected by an employer from employees or retained from their wages  
 36 for the purpose of providing for or furnishing to such employees medical and surgical attention,  
 37 hospital care, X-rays, ambulance, nursing or any related service or care contingent upon sickness  
 38 or injury pursuant to a contract are trust funds and shall be placed and kept in separate accounts  
 39 by the employer and shall promptly be paid over to the contractor. Such funds shall in no event  
 40 become a part of the assets of the employer.

41 (2) If the employer fails to place and keep such funds in separate accounts and pay them over  
 42 to the contractor or if the funds become commingled with the funds of the employer and the em-  
 43 ployer becomes bankrupt, insolvent or goes through voluntary or involuntary liquidation, or if a  
 44 receiver is appointed to operate or liquidate the affairs of the employer, the funds not paid to the  
 45 contractor shall be entitled to the same preference as given to claims of the State Accident Insur-

1 ance Fund Corporation, as provided in ORS 656.562.

2 (3) On and after July 1, 1992, when an employer that is a group health insurance policyholder  
 3 subject to the provisions of ORS 743.560 receives notice that the group health insurance policy is  
 4 terminated by the insurer and the employer does not replace coverage with any other group health  
 5 insurance policy, the employer shall notify all employees who were covered under the terminated  
 6 group policy. The employer's notification to the employees shall:

7 (a) Explain the employee's rights regarding continuation or conversion of coverage under state  
 8 and federal law; and

9 (b) Be delivered to each employee in person or to the employee's home address as recorded in  
 10 the employer's records not later than 10 working days after the receipt of notice from the insurer  
 11 pursuant to ORS 743.560 (3) to (5).

12 (4) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor  
 13 and Industries may assess a civil penalty not to exceed \$1,000 for each violation of subsection (1)  
 14 or (3) of this section.

15 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

16 (6) All sums collected as penalties pursuant to this section shall be first applied toward re-  
 17 imbursement of the costs incurred in determining the violations, conducting hearings under this  
 18 section and assessing and collecting such penalties. The remainder, if any, of the sums collected as  
 19 penalties pursuant to this section shall be paid over by the commissioner to the [*Department of State*  
 20 *Lands*] **Oregon Department of Natural Resources** for the benefit of the Common School Fund of  
 21 this state. The department shall issue a receipt for the money to the commissioner.

22 (7) The Commissioner of the Bureau of Labor and Industries may adopt rules reasonably neces-  
 23 sary for the administration of this section.

24 **SECTION 878.** ORS 653.256 is amended to read:

25 653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau  
 26 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who  
 27 willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 or any rule adopted  
 28 thereunder.

29 (2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty  
 30 not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted  
 31 thereunder.

32 (3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS  
 33 183.745.

34 (4)(a) All sums collected as penalties under this section shall be first applied toward reimburse-  
 35 ment of costs incurred in determining the violations, conducting hearings under this section and  
 36 addressing and collecting the penalties.

37 (b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section  
 38 shall be paid over by the commissioner to the [*Department of State Lands*] **Oregon Department of**  
 39 **Natural Resources** for the benefit of the Common School Fund of this state. The department shall  
 40 issue a receipt for the money to the commissioner.

41 (c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section  
 42 shall be paid over by the commissioner to the Department of Human Services for the benefit of the  
 43 Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the  
 44 moneys to the commissioner.

45 **SECTION 879.** ORS 653.370 is amended to read:



1       653.370. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau  
2 of Labor and Industries may impose upon any person who violates ORS 653.305 to 653.370 or any  
3 rule adopted by the Wage and Hour Commission thereunder, a civil penalty not to exceed \$1,000 for  
4 each violation.

5       (2) Notwithstanding ORS 183.482, any petition for review of an order imposing a civil penalty  
6 under this section must be filed within 30 days following the date the order upon which the petition  
7 is based is served.

8       (3) Except as otherwise provided in this section, civil penalties under this section shall be im-  
9 posed as provided in ORS 183.745.

10       (4) All sums collected as penalties pursuant to this section shall be first applied toward re-  
11 imbursement of the costs incurred in determining the violations, conducting hearings under this  
12 section and assessing and collecting such penalties. The remainder, if any, of the sums collected as  
13 penalties pursuant to this section shall be paid over by the commissioner to the [*Department of State*  
14 *Lands*] **Oregon Department of Natural Resources** for the benefit of the Common School Fund of  
15 this state. The department shall issue a receipt for the money to the commissioner.

16       (5)(a) Notwithstanding subsection (1) of this section, the commissioner may not impose a civil  
17 penalty pursuant to this section upon any person who provides evidence satisfactory to the com-  
18 missioner that:

19       (A) The person has paid a civil penalty to the United States Department of Labor for violation  
20 of the child labor provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

21       (B) The civil penalty involved the same factual circumstances at issue before the commissioner.

22       (b) Notwithstanding subsection (1) of this section, the commissioner shall refund any civil pen-  
23 alty previously imposed on and collected from any person pursuant to this section if the person  
24 provides evidence satisfactory to the commissioner that:

25       (A) The person has paid a civil penalty to the United States Department of Labor for violation  
26 of the child labor provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

27       (B) The civil penalty involved the same factual circumstances underlying the commissioner's  
28 imposition of a civil penalty.

29       **SECTION 880.** ORS 659A.855 is amended to read:

30       659A.855. (1)(a) If the Commissioner of the Bureau of Labor and Industries files a complaint  
31 under ORS 659A.825 alleging an unlawful practice other than an unlawful employment practice, and  
32 the commissioner finds that the respondent engaged in the unlawful practice, the commissioner may,  
33 in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each  
34 respondent found to have committed the unlawful practice.

35       (b) Civil penalties under this subsection may not exceed \$1,000 for each violation.

36       (2)(a) Notwithstanding subsection (1)(b) of this section, if a complaint is filed under ORS  
37 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimi-  
38 nation under federal housing law and the commissioner finds that a respondent has engaged in an  
39 unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the  
40 commissioner may assess against the respondent, in addition to any other relief available, a civil  
41 penalty:

42       (A) In an amount not exceeding \$11,000;

43       (B) Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$27,500  
44 if the respondent has been adjudged to have engaged in one other discriminatory housing practice  
45 during the five-year period ending on the date of the filing of the formal charges leading to the

1 hearing; or

2 (C) Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$55,000  
3 if the respondent has been adjudged to have engaged in two or more discriminatory housing prac-  
4 tices during the seven-year period ending on the date of the filing of the formal charges leading to  
5 the hearing.

6 (b) If acts constituting the discriminatory housing practice that is the object of the hearing were  
7 committed by the same individual who has been previously adjudged to have committed acts con-  
8 stituting a discriminatory housing practice, the civil penalties listed in paragraph (a)(B) and (C) of  
9 this subsection may be imposed regardless of the period of time between the previous discriminatory  
10 housing practice and the discriminatory housing practice that is the object of this hearing.

11 (3) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

12 (4) All sums collected as civil penalties under this section must first be applied toward re-  
13 imbursement of the costs incurred in determining the violations, conducting hearings and assessing  
14 and collecting the penalty. The remainder, if any, shall be paid over by the commissioner to the  
15 [*Department of State Lands*] **Oregon Department of Natural Resources** for the benefit of the  
16 Common School Fund. The department shall issue a receipt for the money to the commissioner.

17 **SECTION 881.** ORS 708A.430 is amended to read:

18 708A.430. (1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or  
19 less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit  
20 as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased  
21 depositor:

22 (a) To the surviving spouse on demand of the surviving spouse at any time after the death of  
23 the depositor;

24 (b) If there is no surviving spouse, to the Oregon Health Authority, on demand of the authority  
25 no less than 46 days and no more than 75 days from the death of the depositor when there is a  
26 preferred claim arising under ORS 416.350;

27 (c) If there is no surviving spouse or authority claim, to the Department of Human Services, on  
28 demand of the department no less than 46 days and no more than 75 days from the death of the  
29 depositor when there is a preferred claim arising under ORS 411.708 or 411.795;

30 (d) If there is no surviving spouse and no authority or department claim, to the depositor's  
31 surviving children 18 years of age or older;

32 (e) If there is no surviving spouse, authority claim, department claim or surviving child 18 years  
33 of age or older, to the depositor's surviving parents; or

34 (f) If there is no surviving spouse, authority claim, department claim, surviving child 18 years  
35 of age or older or surviving parent, to the depositor's surviving brothers and sisters 18 years of age  
36 or older.

37 (2) The affidavit shall:

38 (a) State where and when the depositor died;

39 (b) State that the total deposits of the deceased depositor in all financial institutions in Oregon  
40 do not exceed \$25,000;

41 (c) Show the relationship of the affiant to the deceased depositor; and

42 (d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of  
43 the deceased depositor out of the deposit to the full extent of the deposit if necessary, in the order  
44 of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who  
45 are entitled to those moneys by law.

1 (3) In the event the depositor died intestate without known heirs, an estate administrator of the  
 2 [*Department of State Lands*] **Oregon Department of Natural Resources** appointed under ORS  
 3 113.235 shall be the affiant and shall receive the moneys as escheat property.

4 (4) The financial institution shall determine the relationship of the affiant to the deceased  
 5 depositor. However, payment of the moneys in good faith to the affiant discharges and releases the  
 6 transferor from any liability or responsibility for the transfer in the same manner and with the same  
 7 effect as if the property had been transferred, delivered or paid to a personal representative of the  
 8 estate of the deceased depositor.

9 (5) A probate proceeding is not necessary to establish the right of the surviving spouse, au-  
 10 thority, department, surviving child, surviving parent, surviving brothers and sisters or an estate  
 11 administrator of the [*Department of State Lands*] **Oregon Department of Natural Resources** to  
 12 withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in  
 13 an estate where a withdrawal of deposits was made under this section, the person withdrawing the  
 14 deposits shall account for them to the personal representative.

15 (6) When a financial institution transfers moneys under subsection (1) of this section, the  
 16 transferor may require the transferee to furnish the transferor a written indemnity agreement,  
 17 indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

18 (7) This section is subject to the rights of other parties in the account under ORS 708A.455 to  
 19 708A.515.

20 **SECTION 882.** ORS 708A.655 is amended to read:

21 708A.655. (1) This section applies to the safe deposit box of any person who is the sole lessee  
 22 or last surviving lessee of the box and who has died.

23 (2) Upon being furnished with a certified copy of the decedent's death certificate or other evi-  
 24 dence of death satisfactory to the Oregon operating institution, the Oregon operating institution  
 25 within which the box is located shall cause or permit the box to be opened and the contents of the  
 26 box examined at the request of an individual who furnishes an affidavit stating:

27 (a) That the individual believes the box may contain the will of the decedent, a trust instrument  
 28 creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death,  
 29 documents pertaining to the disposition of the remains of the decedent, documents pertaining to  
 30 property of the estate of the decedent or property of the estate of the decedent; and

31 (b) That the individual is an interested person as defined in this section and wishes to open the  
 32 box to conduct a will search or trust instrument search, obtain documents relating to the disposition  
 33 of the decedent's remains or inventory the contents of the box.

34 (3) For the purpose of this section, "interested person" means any of the following:

35 (a) A person named as personal representative of the decedent in a purported will of the  
 36 decedent;

37 (b) The surviving spouse or any heir of the decedent;

38 (c) A person who was serving as the court-appointed guardian or conservator of the decedent  
 39 or as trustee for the decedent immediately prior to the decedent's death;

40 (d) A person named as successor trustee in a purported trust instrument creating a trust of  
 41 which the decedent was a trustor or a trustee at the time of the decedent's death;

42 (e) A person designated by the decedent in a writing that is acceptable to the Oregon operating  
 43 institution and is filed with it prior to the decedent's death;

44 (f) A person who immediately prior to the death of the decedent had the right of access to the  
 45 box as an agent of the decedent under a durable power of attorney; or

1 (g) If there are no heirs of the decedent, an estate administrator of the [*Department of State*  
2 *Lands*] **Oregon Department of Natural Resources** appointed under ORS 113.235.

3 (4) If the box is opened for the purpose of conducting a will search, the Oregon operating in-  
4 stitution shall remove any document that appears to be a will, make a true and correct copy of it  
5 and deliver the original will to a person designated in the will to serve as the decedent's personal  
6 representative, or if no such person is designated or the Oregon operating institution cannot, despite  
7 reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall  
8 retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of  
9 the will shall be retained in the box. At the request of the interested person, a copy of the will,  
10 together with copies of any documents pertaining to the disposition of the remains of the decedent,  
11 may be given to the interested person.

12 (5) If the box is opened for the purpose of conducting a trust instrument search, the Oregon  
13 operating institution shall remove any document that appears to be a trust instrument creating a  
14 trust of which the decedent was a trustor or trustee at the time of the decedent's death, make a true  
15 and correct copy of it and deliver the original trust instrument to a person designated in the trust  
16 instrument to serve as the successor trustee on the death of the decedent. If no such person is  
17 designated or the Oregon operating institution cannot, despite reasonable efforts, determine the  
18 whereabouts of such person, the Oregon operating institution shall retain the trust instrument. A  
19 copy of the trust instrument shall be retained in the box. At the request of any interested person,  
20 a copy of the trust instrument may be given to the interested person.

21 (6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of  
22 the decedent's remains, the Oregon operating institution shall comply with subsection (4) of this  
23 section with respect to any will of the decedent found in the box, and may in its discretion either:

24 (a) Make and retain in the box a copy of any documents pertaining to the disposition of the  
25 remains of the decedent and tender the original documents to the interested person; or

26 (b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent  
27 to the interested person and retain the original documents in the box.

28 (7) If the box is opened for the purpose of making an inventory of its contents, the Oregon op-  
29 erating institution shall comply with subsection (4) or (5) of this section with respect to any will or  
30 trust instrument of the decedent that is found in the box, and shall cause the inventory to be made.  
31 The inventory shall be attested to by a representative of the Oregon operating institution and may  
32 be attested to by the interested person, if the interested person is present when the inventory is  
33 made. The Oregon operating institution shall retain the original inventory in the box, and shall  
34 furnish a copy of the inventory to the interested person upon request.

35 (8) The Oregon operating institution may presume the truth of any statement contained in the  
36 affidavit required to be furnished under this section, and when acting in reliance upon such an af-  
37 fidavit, the Oregon operating institution is discharged as if it had dealt with the personal represen-  
38 tative of the decedent. The Oregon operating institution is not responsible for the adequacy of the  
39 description of any property included in an inventory of the contents of a box, or for the conversion  
40 of the property in connection with actions performed under this section, except for conversion by  
41 intentional acts of the Oregon operating institution or its employees, directors, officers or agents.  
42 If the Oregon operating institution is not satisfied that the requirements of this section have been  
43 satisfied, the Oregon operating institution may decline to open the box.

44 (9) If the interested person does not furnish the key needed to open the box, and the Oregon  
45 operating institution must incur expense in gaining entry to the box, the Oregon operating institu-

1 tion may require that the interested person pay the expense of opening the box.

2 (10) Any examination of the contents of a box under this section shall be conducted in the  
3 presence of at least one employee of the Oregon operating institution.

4 **SECTION 883.** ORS 711.225 is amended to read:

5 711.225. (1) All deposits that remain unclaimed after six months from the date of the written  
6 notice mentioned in ORS 711.220 (3), shall be reported and transferred by the Oregon stock bank to  
7 the [*Department of State Lands*] **Oregon Department of Natural Resources** as unclaimed property  
8 under ORS 98.302 to 98.436 and 98.992.

9 (2) A copy of the report of unclaimed deposits filed with the department [*of State Lands*] shall  
10 be filed with the Director of the Department of Consumer and Business Services.

11 **SECTION 884.** ORS 711.230 is amended to read:

12 711.230. (1) Claims of all persons, other than depositors, against the institution shall be pre-  
13 sented in writing to the institution within one year after the date of first publication provided for  
14 in ORS 711.220, unless barred by an earlier period of limitation. Claims arising out of the expense  
15 of liquidation may be filed at any time prior to the closing of the liquidation.

16 (2) The board of directors shall, within 30 days after the presentment of a claim, allow or reject  
17 the claim, in whole or in part, noting the same in their minutes. The board shall notify the claimants  
18 in writing of its action, either by personal service or by mail. Any claim rejected or disallowed is  
19 barred unless action to adjudicate the claim is commenced within 60 days after the date of service  
20 or mailing of notice of disallowance or rejection.

21 (3) The board of directors may extend the time within which to receive claims and continue the  
22 liquidation after the expiration of the time allowed in this section for the filing of claims. Any new  
23 claims filed after the time shall be allowed and paid or rejected in the same manner as provided for  
24 other claims. If the liquidation is continued, the transfer of unclaimed deposits to the [*Department*  
25 *of State Lands*] **Oregon Department of Natural Resources** may be delayed to such time as desig-  
26 nated by the Director of the Department of Consumer and Business Services.

27 **SECTION 885.** ORS 711.235 is amended to read:

28 711.235. (1) After the expiration of the time provided in ORS 711.230 for the filing of claims or  
29 if the board of directors has extended the time of liquidation then after the time set by them and  
30 after payment of unclaimed deposits to the [*Department of State Lands*] **Oregon Department of**  
31 **Natural Resources**, the board of directors shall make a complete report of the liquidation to the  
32 Director of the Department of Consumer and Business Services and shall certify to the director that  
33 all claims have been paid or finally determined.

34 (2) Any claims received and approved after the report has been filed with the director shall be  
35 paid if the remaining assets are sufficient.

36 (3) When the report has been approved by the director the board of directors may proceed to  
37 liquidate the remaining assets and distribute them to the stockholders or other persons entitled to  
38 receive them according to their respective rights and interests without further report to the direc-  
39 tor.

40 **SECTION 886.** ORS 711.590 is amended to read:

41 711.590. (1) Two years after the date of the final order closing the liquidation of an institution,  
42 the Director of the Department of Consumer and Business Services may withdraw any unclaimed  
43 deposits or balances remaining to the credit of dividend accounts, representing the aggregate of  
44 undelivered checks or unpaid dividend funds in the possession of the Department of Consumer and  
45 Business Services, and pay the funds to the [*Department of State Lands*] **Oregon Department of**

1 **Natural Resources** as unclaimed property to be disposed of as provided in ORS 98.302 to 98.436  
2 and 98.992.

3 (2) The interest earned on the dividend accounts while they remain in the possession of the di-  
4 rector shall be paid to the State Treasurer to be credited to the Consumer and Business Services  
5 Fund and the owner, the heirs or personal representative of the owner have no claim to the interest.

6 **SECTION 887.** ORS 716.905 is amended to read:

7 716.905. (1) Acting under ORS 716.900 the directors shall direct the mailing of a written notice  
8 of their intention to close the Oregon nonstock bank to the last-known address of all depositors and  
9 other creditors.

10 (2) All deposits and amounts reserved for creditors that remain unclaimed after six months from  
11 the date of the written notice required under subsection (1) of this section shall be reported and  
12 transferred by the directors to the [*Department of State Lands*] **Oregon Department of Natural**  
13 **Resources** as unclaimed property under ORS 98.302 to 98.436 and 98.992.

14 (3) A copy of the report of unclaimed deposits and amounts reserved for creditors filed with the  
15 department [*of State Lands*] shall be filed with the Director of the Department of Consumer and  
16 Business Services.

17 **SECTION 888.** ORS 716.910 is amended to read:

18 716.910. After the directors of an Oregon nonstock bank have filed their report and deposited  
19 the unclaimed funds with the [*Department of State Lands*] **Oregon Department of Natural Re-**  
20 **sources** as required under ORS 716.905, the directors shall report their proceedings to the Director  
21 of the Department of Consumer and Business Services. Upon filing the report and the petition of the  
22 directors with the Director of the Department of Consumer and Business Services, the director shall  
23 order the charter surrendered, the directors discharged from liability accruing after the order, and  
24 the existence of the Oregon nonstock bank terminated.

25 **SECTION 889.** ORS 723.466 is amended to read:

26 723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the de-  
27 ceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person  
28 claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

29 (a) To the surviving spouse on demand of the surviving spouse at any time after the death of  
30 the member;

31 (b) If there is no surviving spouse, to the Oregon Health Authority, on demand of the authority  
32 no less than 46 days and no more than 75 days from the death of the member when there is a pre-  
33 ferred claim arising under ORS 416.350;

34 (c) If there is no surviving spouse or authority claim, to the Department of Human Services, on  
35 demand of the department no less than 46 days and no more than 75 days from the death of the  
36 member when there is a preferred claim arising under ORS 411.708 or 411.795;

37 (d) If there is no surviving spouse and no authority or department claim, to the member's sur-  
38 viving children 18 years of age or older;

39 (e) If there is no surviving spouse, authority claim, department claim or surviving child 18 years  
40 of age or older, to the member's surviving parents; or

41 (f) If there is no surviving spouse, authority claim, department claim, surviving child 18 years  
42 of age or older or surviving parent, to the member's surviving brothers and sisters 18 years of age  
43 or older.

44 (2) The affidavit shall:

45 (a) State where and when the member died;

1 (b) State that the total deposits of the deceased member in all financial institutions in this state  
2 do not exceed \$25,000;

3 (c) Show the relationship of the affiant to the deceased member; and

4 (d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of  
5 the deceased member out of the deposit, to the full extent of the deposit if necessary, in the order  
6 of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who  
7 are entitled to those moneys by law.

8 (3) In the event the member died intestate without known heirs, an estate administrator of the  
9 [Department of State Lands] **Oregon Department of Natural Resources** appointed under ORS  
10 113.235 shall be the affiant and shall receive the moneys as escheat property.

11 (4) The credit union shall determine the relationship of the affiant to the deceased member.  
12 However, payment of the moneys in good faith to the affiant discharges and releases the transferor  
13 from any liability or responsibility for the transfer in the same manner and with the same effect as  
14 if the property had been transferred, delivered or paid to a personal representative of the estate of  
15 the deceased member.

16 (5) A probate proceeding is not necessary to establish the right of the surviving spouse, au-  
17 thority, Department of Human Services, surviving children, surviving parents, surviving brothers  
18 and sisters or an estate administrator of the [Department of State Lands] **Oregon Department of**  
19 **Natural Resources** to withdraw the deposits upon the filing of the affidavit. If a personal repre-  
20 sentative is appointed in an estate where a withdrawal of deposits was made under this section, the  
21 person withdrawing the deposits shall account for them to the personal representative.

22 (6) When a credit union transfers moneys under subsection (1) of this section, the transferor may  
23 require the transferee to furnish the transferor with a written indemnity agreement, indemnifying  
24 the transferor against loss for moneys paid to the extent of the amount of the deposit.

25 (7) This section is subject to the rights of other parties to the account under ORS 723.474 to  
26 723.498.

27 **SECTION 890.** ORS 723.844 is amended to read:

28 723.844. (1) This section applies to the safe deposit box of any person who is the sole lessee or  
29 last surviving lessee of the box and who has died.

30 (2) Upon being furnished with a certified copy of the decedent's death certificate or other evi-  
31 dence of death satisfactory to the credit union, the credit union within which the box is located  
32 shall cause or permit the box to be opened and the contents of the box examined at the request of  
33 an individual who furnishes an affidavit stating:

34 (a) That the individual believes the box may contain the will of the decedent, a trust instrument  
35 creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death,  
36 documents pertaining to the disposition of the remains of the decedent, documents pertaining to  
37 property of the estate of the decedent or property of the estate of the decedent; and

38 (b) That the individual is an interested person as defined in this section and wishes to open the  
39 box to conduct a will search or trust instrument search, obtain documents relating to the disposition  
40 of the decedent's remains or inventory the contents of the box.

41 (3) For the purpose of this section, "interested person" means any of the following:

42 (a) A person named as personal representative of the decedent in a purported will of the  
43 decedent;

44 (b) The surviving spouse or any heir of the decedent;

45 (c) A person who was serving as the court-appointed guardian or conservator of the decedent

1 or as trustee for the decedent immediately prior to the decedent's death;

2 (d) A person named as successor trustee in a purported trust instrument creating a trust of  
3 which the decedent was a trustor or a trustee at the time of the decedent's death;

4 (e) A person designated by the decedent in a writing that is acceptable to the credit union and  
5 is filed with it prior to the decedent's death;

6 (f) A person who immediately prior to the death of the decedent had the right of access to the  
7 box as an agent of the decedent under a durable power of attorney; or

8 (g) If there are no heirs of the decedent, an estate administrator of the [*Department of State*  
9 *Lands*] **Oregon Department of Natural Resources** appointed under ORS 113.235.

10 (4) If the box is opened for the purpose of conducting a will search, the credit union shall re-  
11 move any document that appears to be a will, make a true and correct copy of it and deliver the  
12 original will to a person designated in the will to serve as the decedent's personal representative,  
13 or if no such person is designated or the credit union cannot, despite reasonable efforts, determine  
14 the whereabouts of such person, the credit union shall retain the will or deliver it to a court having  
15 jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the  
16 request of the interested person, a copy of the will, together with copies of any documents pertain-  
17 ing to the disposition of the remains of the decedent, may be given to the interested person.

18 (5) If the box is opened for the purpose of conducting a trust instrument search, the credit union  
19 shall remove any document that appears to be a trust instrument creating a trust of which the  
20 decedent was a trustor or trustee at the time of the decedent's death, make a true and correct copy  
21 of it and deliver the original trust instrument to a person designated in the trust instrument to serve  
22 as the successor trustee on the death of the decedent. If no such person is designated or the credit  
23 union cannot, despite reasonable efforts, determine the whereabouts of such person, the credit union  
24 shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the  
25 request of any interested person, a copy of the trust instrument may be given to the interested  
26 person.

27 (6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of  
28 the decedent's remains, the credit union shall comply with subsection (4) of this section with respect  
29 to any will of the decedent found in the box, and may in its discretion either:

30 (a) Make and retain in the box a copy of any documents pertaining to the disposition of the  
31 remains of the decedent and tender the original documents to the interested person; or

32 (b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent  
33 to the interested person and retain the original documents in the box.

34 (7) If the box is opened for the purpose of making an inventory of its contents, the credit union  
35 shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument  
36 of the decedent that is found in the box, and shall cause the inventory to be made. The inventory  
37 shall be attested to by a representative of the credit union and may be attested to by the interested  
38 person, if the interested person is present when the inventory is made. The credit union shall retain  
39 the original inventory in the box, and shall furnish a copy of the inventory to the interested person  
40 upon request.

41 (8) The credit union may presume the truth of any statement contained in the affidavit required  
42 to be furnished under this section, and when acting in reliance upon such an affidavit, the credit  
43 union is discharged as if it had dealt with the personal representative of the decedent. The credit  
44 union is not responsible for the adequacy of the description of any property included in an inventory  
45 of the contents of a box, or for the conversion of the property in connection with actions performed



1 under this section, except for conversion by intentional acts of the credit union or its employees,  
2 directors, officers or agents. If the credit union is not satisfied that the requirements of this section  
3 have been satisfied, the credit union may decline to open the box.

4 (9) If the interested person does not furnish the key needed to open the box, and the credit union  
5 must incur expense in gaining entry to the box, the credit union may require that the interested  
6 person pay the expense of opening the box.

7 (10) Any examination of the contents of a box under this section shall be conducted in the  
8 presence of at least one employee of the credit union.

9 **SECTION 891.** ORS 725.910 is amended to read:

10 725.910. (1) The Director of the Department of Consumer and Business Services may assess  
11 against any person who violates any provision of this chapter, or any rule or final order of the di-  
12 rector under this chapter, a civil penalty in an amount determined by the director of not more than  
13 \$2,500. In addition, if a licensee commits such a violation, the director may revoke the license of the  
14 licensee.

15 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

16 (3) Except as provided in subsection (4) of this section, all moneys collected under this section  
17 shall be paid to the State Treasurer and credited as provided in ORS 705.145.

18 (4) In addition to any other penalty provided by law, the director may assess against any person  
19 who lends money without the license required under this chapter a civil penalty in an amount equal  
20 to the interest received that exceeds nine percent per annum. The director shall pay all moneys  
21 collected under this subsection to the [*Department of State Lands*] **Oregon Department of Natural**  
22 **Resources** for the benefit of the Common School Fund.

23 **SECTION 892.** ORS 777.095 is amended to read:

24 777.095. Any agreement between the Port of Astoria, individually or in conjunction with another  
25 port, pursuant to ORS 777.090, and the State Land Board shall specify a division between the parties  
26 of all net revenues accruing from the management of the deepwater port facility at Tongue Point.  
27 The State Land Board's share of the net revenues shall be transferred to the [*Department of State*  
28 *Lands*] **Oregon Department of Natural Resources** and credited to the Common School Fund.

29 **SECTION 893.** ORS 777.100 is amended to read:

30 777.100. Annually, the directors of any agreeing ports and the Director of the [*Department of*  
31 *State Lands*] **Oregon Department of Natural Resources** shall report to appropriate legislative  
32 committees the nature of all agreements made under ORS 777.090 and accomplishments thereunder.

33 **SECTION 894.** ORS 777.347 is amended to read:

34 777.347. The [*Department of State Lands*] **Oregon Department of Natural Resources** is au-  
35 thorized to consent to annexation with respect to any land owned by the State of Oregon, under the  
36 jurisdiction of the department, which is located in the territory proposed to be annexed.

37 **SECTION 895.** ORS 783.400 is amended to read:

38 783.400. (1) As used in this section:

39 (a) "Dry dock" means a graving dock or a floating dry dock.

40 (b) "Floating dry dock" means a vessel or structure that can be flooded to allow a ship to be  
41 floated in and drained to allow the ship to come to rest on a dry platform.

42 (c) "Fouling communities" means the matrix consisting of:

43 (A) Native or nonnative species attached to the hull of a ship including, but not limited to,  
44 barnacles, bivalves, bryozoans, tunicates and seaweeds; and

45 (B) Native or nonnative mobile species such as crustaceans, sea stars and worms that may be

1 unattached to the hull, but that inhabit a fouling community or inhabit protected recesses and  
2 crevices in the hull, such as sea chests.

3 (d) "Fouling organisms" means native or nonnative species that attach to the hull of a ship in-  
4 cluding, but not limited to, sessile bottom-dwelling invertebrates, algae and microorganisms such as  
5 bacteria and diatoms.

6 (e) "Graving dock" means a paved excavation in the ground that can be flooded to allow a ship  
7 to be floated in and drained to allow that ship to come to rest on a dry platform.

8 (f) "Hazardous materials" includes, but is not limited to, asbestos, polychlorinated biphenyls, oil,  
9 fuel, bilge and ballast water, paint and lead.

10 (g) "Ocean shore" has the meaning given that term in ORS 390.605.

11 (h) "Ship" means a vessel that weighs in excess of 200 gross tons and operates upon navigable  
12 waterways.

13 (i) "Shipbreaking" means the process of dismantling a ship for scrap or disposal.

14 (j) "Shipwreck" means a ship that has been stranded or destroyed by being driven ashore or  
15 onto the rocks or the shoal.

16 (k) "Waters of this state" has the meaning given that term in ORS 196.800.

17 (2) In the State of Oregon, a person:

18 (a) May perform shipbreaking activities only in a dry dock.

19 (b) May not perform shipbreaking activities in a manner that allows hazardous materials, fouling  
20 communities or fouling organisms that are in or on the ship to enter the waters of this state or the  
21 ocean shore.

22 (3) Notwithstanding subsection (2) of this section, a person may in the waters of this state:

23 (a) Dismantle for removal a ship that has been shipwrecked if the [*Department of State Lands*]  
24 **Oregon Department of Natural Resources** determines, in consultation with others as the depart-  
25 ment finds appropriate including, but not limited to, other state agencies, the United States Coast  
26 Guard and the shipowner, that it is physically impracticable to move the shipwreck to a dry dock.

27 (b) Partially dismantle a ship as may be required in the process of ship repair.

28 (4) Subsection (2) of this section does not apply to the shipbreaking of a flat-bottomed barge that  
29 is not self-propelled and that operates in the waters of this state.

30 (5) This section does not relieve a person from compliance with other state or local laws that  
31 apply to shipbreaking, shipwrecks or ship repair including, but not limited to, laws relating to haz-  
32 ardous materials, fouling communities or fouling organisms.

33 **SECTION 896.** ORS 830.909 is amended to read:

34 830.909. (1) A person commits the offense of abandoning a boat, floating home or boathouse if  
35 the person leaves a boat, floating home or boathouse on the waters of this state or upon any public  
36 or private property except with the permission of the property owner, or at an established or at-  
37 tended moorage or in any area leased for occupation by the [*Department of State Lands*] **Oregon**  
38 **Department of Natural Resources** under ORS chapter 274.

39 (2) The owner of the boat, floating home or boathouse as shown by the records of the State  
40 Marine Board shall be considered responsible for the abandonment of the boat, floating home or  
41 boathouse in the manner prohibited by this section and shall be liable for the cost of removal,  
42 cleanup and disposition of the abandoned boat, floating home or boathouse.

43 (3) A boat, floating home or boathouse abandoned in violation of this section is subject to the  
44 provisions for removal of an abandoned boat, floating home or boathouse under ORS 830.912 and  
45 830.914 and to being sold or disposed of as provided under ORS 98.245.

1 **SECTION 897.** Section 2, chapter 45, Oregon Laws 1989, is amended to read:

2 **Sec. 2.** (1) Notwithstanding any other provision of ORS [541.605 to 541.685] **196.800 to 196.900:**

3 (a) As used in ORS [541.605 to 541.685] **196.800 to 196.900**, “fill” means the deposit by artificial  
4 means of material in any waters of this state.

5 (b) In the manner provided by ORS [541.640] **196.850**, the Director **of the Oregon Department**  
6 **of Natural Resources** may provide a general exception from the application of ORS [541.605 to  
7 541.685] **196.800 to 196.900** for fills that involve less than 50 cubic yards of material and will not  
8 result in substantial harm to the water resources of this state.

9 (2) This section does not become operative until the federal Environmental Protection Agency  
10 grants authority to the [Department of State Lands] **Oregon Department of Natural Resources** to  
11 administer permits for the discharge of dredged or fill material under section 404 of the Federal  
12 Water Pollution Control Act (P.L. 92-500, as amended).

13 **SECTION 898.** Section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter  
14 11, Oregon Laws 2009, is amended to read:

15 **Sec. 11.** The amendments to ORS 196.800, 196.810, 196.850, 196.895, 196.905, 196.990, 390.835,  
16 421.628 and 459.047 by sections 1 to 10, chapter 516, Oregon Laws 2001, and the repeal of section  
17 2, chapter 45, Oregon Laws 1989, by section 13, chapter 516, Oregon Laws 2001, become operative  
18 on January 2 of the even-numbered year following the date the United States Environmental Pro-  
19 tection Agency grants authority by letter to the [Department of State Lands] **Oregon Department**  
20 **of Natural Resources** to administer permits for the discharge of dredge or fill materials under  
21 section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended) and the Legislative  
22 Assembly approves the grant of authority.

23 **SECTION 899.** Section 12, chapter 516, Oregon Laws 2001, is amended to read:

24 **Sec. 12.** (1) The [Department of State Lands] **Oregon Department of Natural Resources** may  
25 take any action necessary to prepare to fully implement the provisions of [this 2001 Act] **chapter**  
26 **516, Oregon Laws 2001**, prior to the operative date of this 2001 Act.

27 (2) The department shall periodically report to the appropriate committee of the Legislative  
28 Assembly on the status of its effort to assume authority to administer permits for the discharge of  
29 dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500,  
30 as amended).

31 (3) After the Legislative Assembly approves the grant of authority, the department shall notify  
32 the Legislative Assembly prior to the transfer of authority from the United States Environmental  
33 Protection Agency.

34 **SECTION 900.** Section 14, chapter 516, Oregon Laws 2001, is amended:

35 **Sec. 14.** If, after assuming authority to administer permits for the discharge of dredge or fill  
36 materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended),  
37 the [Department of State Lands] **Oregon Department of Natural Resources** seeks to relinquish the  
38 authority granted to the department by the federal government, the department shall, in compliance  
39 with ORS 171.130 and at least two years prior to the anticipated date for relinquishing the authority,  
40 submit to the Legislative Assembly a proposed legislative measure designed to implement a state  
41 permitting program for the dredging and filling of materials in the waters of this state.

42 **SECTION 901.** Section 28, chapter 23, Oregon Laws 2010, is amended to read:

43 **Sec. 28.** (1) The Director of the Department of Consumer and Business Services may assess a  
44 civil penalty of not more than \$2,500 against a person who violates a provision of sections 1 to 28,  
45 **chapter 23, Oregon Laws 2010**, [of this 2010 Act] or a rule the director adopted or final order the

1 director issued under sections 1 to 28, **chapter 23, Oregon Laws 2010** [of this 2010 Act]. The di-  
 2 rector, in addition to imposing a penalty under this subsection for the violation, may revoke the  
 3 licensee's license.

4 (2) A civil penalty under this section must be imposed as provided in ORS 183.745.

5 (3) Except as provided in subsection (4) of this section, moneys collected under this section must  
 6 be paid to the State Treasurer and credited as provided in ORS 705.145.

7 (4) In addition to any other penalty provided by law, the director may assess against a person  
 8 who makes a payday loan or title loan in violation of section 3, **chapter 23, Oregon Laws 2010**,  
 9 [of this 2010 Act] a civil penalty in an amount equal to the interest the person receives that exceeds  
 10 nine percent per annum. The director shall pay all moneys collected under this subsection to the  
 11 [Department of State Lands] **Oregon Department of Natural Resources** for the benefit of the  
 12 Common School Fund.

13  
 14 **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

15  
 16 **(Abolishment and Transfer of**  
 17 **Duties, Functions and Powers)**

18  
 19 **SECTION 902.** (1) **The Department of Land Conservation and Development and the Land**  
 20 **Conservation and Development Commission are abolished. On the operative date of this sec-**  
 21 **tion, the tenure of office of the members of the Land Conservation and Development Com-**  
 22 **mission and of the Director of the Department of Land Conservation and Development**  
 23 **ceases.**

24 (2)(a) **All the duties, functions and powers of the Department of Land Conservation and**  
 25 **Development are imposed upon, transferred to and vested in the Oregon Department of Na-**  
 26 **tural Resources.**

27 (b) **Where the law imposed the duty or function upon or vested the power in the Director**  
 28 **of the Department of Land Conservation and Development, the duty, function or power is**  
 29 **imposed upon, transferred to or vested in the Director of the Oregon Department of Natural**  
 30 **Resources.**

31 (c) **Where the law imposed the duty or function upon or vested the power in the Land**  
 32 **Conservation and Development Commission, the duty, function or power is imposed upon,**  
 33 **transferred to and vested in the Oregon Natural Resources Commission.**

34  
 35 **(Transfer of Records, Property and Employees)**

36  
 37 **SECTION 903.** (1) **The Director of the Department of Land Conservation and Development**  
 38 **and the Land Conservation and Development Commission shall:**

39 (a) **Deliver to the Oregon Department of Natural Resources all records and property**  
 40 **within the jurisdiction of the director or the commission that relate to the duties, functions**  
 41 **and powers transferred by section 902 of this 2011 Act; and**

42 (b) **Transfer to the Oregon Department of Natural Resources those employees engaged**  
 43 **primarily in the exercise of the duties, functions and powers transferred by section 902 of**  
 44 **this 2011 Act.**

45 (2) **The Director of the Oregon Department of Natural Resources and the Oregon Natural**

1 Resources Commission shall take possession of the records and property, and shall take  
 2 charge of the employees and employ them in the exercise of the duties, functions and powers  
 3 transferred by section 902 of this 2011 Act, without reduction of compensation but subject  
 4 to change or termination of employment or compensation as provided by law.

5 (3) The Governor shall resolve any dispute between the Department of Land Conservation  
 6 and Development and the Oregon Department of Natural Resources, or the Land Conserva-  
 7 tion and Development Commission and the Oregon Natural Resources Commission, relating  
 8 to transfers of records, property and employees under this section, and the Governor's de-  
 9 cision is final.

10  
 11 (Transfer of Unexpended Revenues)

12  
 13 SECTION 904. (1) The unexpended balances of amounts authorized to be expended by the  
 14 Department of Land Conservation and Development for the biennium beginning July 1, 2011,  
 15 from revenues dedicated, continuously appropriated, appropriated or otherwise made avail-  
 16 able for the purpose of administering and enforcing the duties, functions and powers trans-  
 17 ferred by section 902 of this 2011 Act are transferred to and are available for expenditure by  
 18 the Oregon Department of Natural Resources for the biennium beginning July 1, 2011, for the  
 19 purpose of administering and enforcing the duties, functions and powers transferred by sec-  
 20 tion 902 of this 2011 Act.

21 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
 22 expenditures by the Department of Land Conservation and Development remain applicable  
 23 to expenditures by the Oregon Department of Natural Resources under this section.

24 (3) The unexpended balances of amounts authorized to be expended by the Land Conser-  
 25 vation and Development Commission for the biennium beginning July 1, 2011, from revenues  
 26 dedicated, continuously appropriated, appropriated or otherwise made available for the pur-  
 27 pose of administering and enforcing the duties, functions and powers transferred by section  
 28 902 of this 2011 Act are transferred to and are available for expenditure by the Oregon Na-  
 29 tural Resources Commission for the biennium beginning July 1, 2011, for the purpose of ad-  
 30 ministering and enforcing the duties, functions and powers transferred by section 902 of this  
 31 2011 Act.

32 (4) The expenditure classifications, if any, established by Acts authorizing or limiting  
 33 expenditures by the Land Conservation and Development Commission remain applicable to  
 34 expenditures by the Oregon Natural Resources Commission under this section.

35  
 36 (Action, Proceeding and Prosecution)

37  
 38 SECTION 905. The transfer of duties, functions and powers to the Oregon Department  
 39 of Natural Resources by section 902 of this 2011 Act does not affect any action, proceeding  
 40 or prosecution involving or with respect to such duties, functions and powers begun before  
 41 and pending at the time of the transfer, except that:

42 (1) The Oregon Department of Natural Resources is substituted for the Department of  
 43 Land Conservation and Development where the Department of Land Conservation and De-  
 44 velopment is involved in the action, proceeding or prosecution; or

45 (2) The Oregon Natural Resources Commission is substituted for the Land Conservation

1 and Development Commission where the Land Conservation and Development Commission  
 2 is involved in the action, proceeding or prosecution.

3  
 4 (Liability, Duty and Obligation)

5  
 6 **SECTION 906.** (1) Nothing in sections 902 to 908 of this 2011 Act, the amendments to  
 7 statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257,  
 8 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS  
 9 197.030, 197.035, 197.075, 197.085 or 197.095 by section 2161 of this 2011 Act relieves a person  
 10 of a liability, duty or obligation accruing under or with respect to the duties, functions and  
 11 powers transferred by section 902 of this 2011 Act. The Oregon Department of Natural Re-  
 12 sources may undertake the collection or enforcement of any such liability, duty or obligation.

13 (2) The rights and obligations of the Department of Land Conservation and Development,  
 14 or of the Land Conservation and Development Commission, legally incurred under contracts,  
 15 leases and business transactions executed, entered into or begun before the operative date  
 16 of section 902 of this 2011 Act are transferred to the Oregon Department of Natural Re-  
 17 sources or the Oregon Natural Resources Commission. For the purpose of succession to  
 18 these rights and obligations:

19 (a) The Oregon Department of Natural Resources is a continuation of the Department  
 20 of Land Conservation and Development where the right or obligation was incurred by the  
 21 Department of Land Conservation and Development; or

22 (b) The Oregon Natural Resources Commission is a continuation of the Land Conserva-  
 23 tion and Development Commission where the right or obligation was incurred by the Land  
 24 Conservation and Development Commission.

25  
 26 (Rules)

27  
 28 **SECTION 907.** (1) Notwithstanding the transfer of duties, functions and powers by section  
 29 902 of this 2011 Act, the rules of the Department of Land Conservation and Development, or  
 30 of the Land Conservation and Development Commission, in effect on the operative date of  
 31 section 902 of this 2011 Act continue in effect until superseded or repealed by rules of the  
 32 Oregon Department of Natural Resources or the Oregon Natural Resources Commission.

33 (2) References in rules of the Department of Land Conservation and Development to the  
 34 Department of Land Conservation and Development, or to an officer or employee of the De-  
 35 partment of Land Conservation and Development, are considered to be references to the  
 36 Oregon Department of Natural Resources or to an officer or employee of the Oregon De-  
 37 partment of Natural Resources.

38 (3) References in rules of the Land Conservation and Development Commission to the  
 39 Land Conservation and Development Commission, or to an officer or employee of the Land  
 40 Conservation and Development Commission, are considered to be references to the Oregon  
 41 Natural Resources Commission or to an officer or employee of the Oregon Natural Resources  
 42 Commission.

43  
 44 (References)

1       **SECTION 908.** (1) Whenever, in any uncodified law or resolution of the Legislative As-  
 2       sembly or in any rule, document, record or proceeding authorized by the Legislative Assem-  
 3       bly, reference is made to the Department of Land Conservation and Development, or to an  
 4       officer or employee of the Department of Land Conservation and Development, the reference  
 5       is considered to be a reference to the Oregon Department of Natural Resources or to an of-  
 6       ficer or employee of the Oregon Department of Natural Resources.

7       (2) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any  
 8       rule, document, record or proceeding authorized by the Legislative Assembly, reference is  
 9       made to the Land Conservation and Development Commission, or to an officer or employee  
 10      of the Land Conservation and Development Commission, the reference is considered to be a  
 11      reference to the Oregon Natural Resources Commission or to an officer or employee of the  
 12      Oregon Natural Resources Commission.

13  
 14   (Agency Name Change)

15  
 16       **SECTION 909.** (1) For the purpose of harmonizing and clarifying statutory law, the Leg-  
 17       islative Counsel may substitute for words designating the “Department of Land Conservation  
 18       and Development,” wherever they occur in statutory law, words designating the “Oregon  
 19       Department of Natural Resources.”

20      (2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel  
 21      may substitute for words designating the “Director of the Department of Land Conservation  
 22      and Development,” wherever they occur in statutory law, words designating the “Director  
 23      of the Oregon Department of Natural Resources.”

24  
 25   (Account Name Change)

26  
 27       **SECTION 910.** For the purpose of harmonizing and clarifying statutory law, the Legisla-  
 28       tive Counsel may substitute for words designating the “Land Conservation and Development  
 29       Account,” wherever they occur in statutory law, words designating the “Oregon Natural  
 30       Resources Fund.”

31  
 32   (Commission Name Change)

33  
 34       **SECTION 911.** For the purpose of harmonizing and clarifying statutory law, the Legisla-  
 35       tive Counsel may substitute for words designating the “Land Conservation and Development  
 36       Commission,” wherever they occur in statutory law, words designating the “Oregon Natural  
 37       Resources Commission.”

38  
 39   (Conforming Amendments)

40  
 41       **SECTION 912.** ORS 94.538, as amended by section 2, chapter 5, Oregon Laws 2010, is amended  
 42       to read:

43      94.538. (1) One or more governmental units may establish a transferable development credit  
 44      system, including a process for allowing transfer of development interests from a sending area  
 45      within the jurisdiction of one governmental unit to a receiving area within the jurisdiction of an-

1 other governmental unit.

2 (2) If the transferable development credit system allows transfer of development interests be-  
 3 tween the jurisdictions of different governmental units, the process must be described in an inter-  
 4 governmental agreement under ORS 190.003 to 190.130 entered into by the governmental units with  
 5 land use jurisdiction over the sending and receiving areas and, for purposes of administration of the  
 6 process, the [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
 7 **Resources**. The intergovernmental agreement may contain provisions for sharing between govern-  
 8 mental units of the prospective ad valorem tax revenues derived from new development in the re-  
 9 ceiving area authorized under the system.

10 (3) A transferable development credit system must provide for:

11 (a) The record owner of a lot, parcel or tract in a sending area to voluntarily sever and sell  
 12 development interests of the lot, parcel or tract for use in a receiving area;

13 (b) A potential developer of land in a receiving area to purchase transferable development  
 14 credits that allow a higher intensity use or development of the land, including development bonuses  
 15 or other incentives not otherwise allowed, through changes to the planning and zoning or waivers  
 16 of density, height or bulk limitations in the receiving area;

17 (c) The governmental units administering the system to determine the type, extent and intensity  
 18 of uses or development allowed in the receiving area, based on the transferable development credits  
 19 generated from severed and sold development interests; and

20 (d) The holder of a recorded instrument encumbering a lot, parcel or tract from which the re-  
 21 cord owner proposes to sever development interests for transfer to be given prior written notice of  
 22 the proposed transaction and to approve or disapprove the transaction.

23 (4) A transferable development credit system must offer:

24 (a) Incentives for a record owner of resource land to voluntarily prohibit or limit development  
 25 on the resource land and to sell or transfer forgone development to lands within receiving areas.

26 (b) Benefits to landowners by providing monetary compensation for limiting development in  
 27 sending areas.

28 (c) Benefits to developers by allowing increased development and development incentives in re-  
 29 ceiving areas.

30 (5) The governmental units administering a transferable development credit system must:

31 (a) Designate sending areas that are chosen to achieve the requirements set forth in this section  
 32 and the objectives set forth in ORS 94.534.

33 (b) Designate receiving areas that are chosen to achieve the requirements set forth in this sec-  
 34 tion and the objectives set forth in ORS 94.534.

35 (c) Provide development bonuses and incentives to stimulate the demand for the purchase and  
 36 sale of transferable development credits.

37 (d) Require that the record owner of development interests transferred as development credits  
 38 from a sending area to a receiving area cause to be recorded, in the deed records of the county in  
 39 which the sending area is located, a conservation easement that:

40 (A) Limits development of the lot, parcel or tract from which the interests are severed consist-  
 41 ent with the transfer; and

42 (B) Names an entity, approved by the governmental units administering the system, as the  
 43 holder of the conservation easement.

44 (e) Maintain records of:

45 (A) The lots, parcels and tracts from which development interests have been severed;



1 (B) The lots, parcels and tracts to which transferable development credits have been transferred;  
2 and

3 (C) The allowable level of use or development for each lot, parcel or tract after a transfer of  
4 development credits.

5 (f) Provide periodic summary reports of activities of the system to the [*department*] **Oregon**  
6 **Department of Natural Resources.**

7 (6) A receiving area must be composed of land that is within an urban growth boundary or,  
8 subject to subsection (7) of this section, within an urban reserve established under ORS 195.137 to  
9 195.145 and that is:

10 (a) Appropriate and suitable for development.

11 (b) Not subject to limitations designed to protect natural resources, scenic and historic areas,  
12 open spaces or other resources protected under the statewide land use planning goals.

13 (c) Not within an area identified as a priority area for protection in the "Oregon Conservation  
14 Strategy" adopted by the State Fish and Wildlife Commission and published by the State Department  
15 of Fish and Wildlife in September of 2006.

16 (d) Not within a "Conservation Opportunity Area" identified in the "Oregon Conservation  
17 Strategy" adopted by the State Fish and Wildlife Commission and published by the State Department  
18 of Fish and Wildlife in September of 2006.

19 (7) Land within an urban reserve:

20 (a) May be the site of a receiving area only if:

21 (A) The receiving area is likely to be brought within an urban growth boundary at the next  
22 periodic review under ORS 197.628 to 197.650 or legislative review under ORS 197.626; and

23 (B) Development pursuant to the transferable development credits is allowed only after the re-  
24 ceiving area is brought within an urban growth boundary.

25 (b) That is selected for use as a receiving area may be designated for priority inclusion in the  
26 urban growth boundary, when the urban growth boundary is amended, if the land qualifies under the  
27 boundary location factors in a goal relating to urbanization.

28 (8) The governing body of a governmental unit administering a transferable development credit  
29 system may, directly or indirectly through a contract with a nonprofit corporation, establish a  
30 transferable development credit bank to facilitate:

31 (a) Buying severable development interests from lots, parcels or tracts of resource land in a  
32 sending area.

33 (b) Selling transferable development credits to potential developers of lots, parcels or tracts in  
34 a receiving area.

35 (c) Entering into agreements or contracts and performing acts necessary, convenient or desira-  
36 ble to achieve the requirements set forth in this section and the objectives set forth in ORS 94.534.

37 (d) Managing funds available for the purchase and sale of transferable development credits.

38 (e) Authorizing and monitoring expenditures associated with the system.

39 (f) Maintaining records of the transactions, including dates, purchase amounts and locations of  
40 severed development interests and development pursuant to transferred development credits, that  
41 are sufficient to manage and evaluate the effectiveness of the system.

42 (g) Providing periodic summary reports of activities of the system to the governing body of a  
43 governmental unit administering the system.

44 (h) Obtaining appraisals of development interests and transferable development credits as nec-  
45 essary and pricing transferable development credits for purchase or sale.

1 (i) Serving as a clearinghouse and information source for buyers and sellers of transferable de-  
2 velopment credits.

3 (j) Accepting donations of transferable development credits.

4 (k) Soliciting and receiving grant funds for the implementation of this section and ORS 94.536.

5 (9) A holder of a conservation easement shall hold, monitor and enforce the conservation ease-  
6 ment to ensure that lands in sending areas do not retain development credits transferred under this  
7 section and ORS 94.536.

8 **SECTION 913.** ORS 183.530 is amended to read:

9 183.530. A housing cost impact statement shall be prepared upon the proposal for adoption or  
10 repeal of any rule or any amendment to an existing rule by:

11 (1) The State Housing Council;

12 (2) A building codes division of the Department of Consumer and Business Services or any board  
13 associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

14 [*(3) The Land Conservation and Development Commission;*]

15 **(3) Oregon Natural Resources Commission;**

16 (4) The Environmental Quality Commission;

17 (5) The Construction Contractors Board;

18 (6) The Occupational Safety and Health Division of the Department of Consumer and Business  
19 Services; or

20 (7) The State Department of Energy.

21 **SECTION 914.** ORS 183.635 is amended to read:

22 183.635. (1) Except as provided in this section, all agencies must use administrative law judges  
23 assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct con-  
24 tested case hearings, without regard to whether those hearings are subject to the procedural re-  
25 quirements for contested case hearings.

26 (2) The following agencies need not use administrative law judges assigned from the office:

27 (a) Attorney General.

28 (b) Boards of stewards appointed by the Oregon Racing Commission.

29 (c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

30 (d) Department of Corrections.

31 (e) Department of Education, State Board of Education and Superintendent of Public Instruction.

32 (f) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C.  
33 722(c) and disability determination cases under 42 U.S.C. 405.

34 (g) Department of Revenue.

35 (h) Department of State Police.

36 (i) Employment Appeals Board.

37 (j) Employment Relations Board.

38 (k) Energy Facility Siting Council.

39 (L) Fair Dismissal Appeals Board.

40 (m) Governor.

41 [*(n) Land Conservation and Development Commission.*]

42 [*(o) Land Use Board of Appeals.*]

43 [*(p)*] (n) Local government boundary commissions created pursuant to ORS 199.430.

44 [*(q)*] (o) Oregon University System and institutions of higher education listed in ORS 352.002.

45 [*(r)*] (p) Oregon Youth Authority.

- 1        [(s)] (q) Psychiatric Security Review Board.
- 2        [(t)] (r) Public Utility Commission.
- 3        [(u)] (s) State Accident Insurance Fund Corporation.
- 4        [(v)] (t) State Apprenticeship and Training Council.
- 5        [(w)] (u) State Board of Parole and Post-Prison Supervision.
- 6        [(x)] (v) State Land Board.
- 7        [(y)] (w) State Treasurer.
- 8        [(z)] (x) Wage and Hour Commission.

9        (3) The Workers' Compensation Board is exempt from using administrative law judges assigned  
 10 from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except  
 11 as specifically provided in this subsection, the Department of Consumer and Business Services must  
 12 use administrative law judges assigned from the office only for contested cases arising out of the  
 13 department's powers and duties under:

- 14        (a) ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59;
- 15        (b) ORS chapter 455;
- 16        (c) ORS chapter 674;
- 17        (d) ORS chapters 706 to 716;
- 18        (e) ORS chapter 717;
- 19        (f) ORS chapters 723, 725 and 726; and
- 20        (g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

21        **(4) The Oregon Department of Natural Resources is exempt from using administrative**  
 22 **law judges assigned from the office for hearings that are held pursuant to ORS chapters 195,**  
 23 **196 and 197 and related to the adoption of goals and guidelines, land use decisions, limited**  
 24 **land use decisions, expedited land divisions and appeals to land use decisions and limited land**  
 25 **use decisions.**

26        [(4)] (5) Notwithstanding any other provision of law, in any proceeding in which an agency is  
 27 required to use an administrative law judge assigned from the office, an officer or employee of the  
 28 agency may not conduct the hearing on behalf of the agency.

29        [(5)] (6) Notwithstanding any other provision of ORS 183.605 to 183.690, an agency is not re-  
 30 quired to use an administrative law judge assigned from the office if:

- 31        (a) Federal law requires that a different administrative law judge or hearing officer be used; or
- 32        (b) Use of an administrative law judge from the office could result in a loss of federal funds.

33        [(6)] (7) Notwithstanding any other provision of this section, the Department of Environmental  
 34 Quality must use administrative law judges assigned from the office only for contested case hearings  
 35 conducted under the provisions of ORS 183.413 to 183.470.

36        **SECTION 915.** ORS 195.020 is amended to read:

37        195.020. (1) Special districts shall exercise their planning duties, powers and responsibilities and  
 38 take actions that are authorized by law with respect to programs affecting land use, including a city  
 39 or special district boundary change as defined in ORS 197.175 (1), in accordance with goals approved  
 40 pursuant to ORS chapters 195, 196 and 197.

41        (2) A county assigned coordinative functions under ORS 195.025 (1), or the Metropolitan Service  
 42 District, which is assigned coordinative functions for Multnomah, Washington and Clackamas coun-  
 43 ties by ORS 195.025 (1), shall enter into a cooperative agreement with each special district that  
 44 provides an urban service within the boundaries of the county or the metropolitan district. A county  
 45 or the Metropolitan Service District may enter into a cooperative agreement with any other special

1 district operating within the boundaries of the county or the metropolitan district.

2 (3) The appropriate city and county and, if within the boundaries of the Metropolitan Service  
3 District, the Metropolitan Service District, shall enter into a cooperative agreement with each spe-  
4 cial district that provides an urban service within an urban growth boundary. The appropriate city  
5 and county, and the Metropolitan Service District, may enter into a cooperative agreement with any  
6 other special district operating within an urban growth boundary.

7 (4) The agreements described in subsection (2) of this section shall conform to the requirements  
8 of paragraphs (a) to (d), (f) and (g) of this subsection. The agreements described in subsection (3) of  
9 this section shall:

10 (a) Describe how the city or county will involve the special district in comprehensive planning,  
11 including plan amendments, periodic review and amendments to land use regulations;

12 (b) Describe the responsibilities of the special district in comprehensive planning, including plan  
13 amendments, periodic review and amendments to land use regulations regarding provision of urban  
14 services;

15 (c) Establish the role and responsibilities of each party to the agreement with respect to city  
16 or county approval of new development;

17 (d) Establish the role and responsibilities of the city or county with respect to district interests  
18 including, where applicable, water sources, capital facilities and real property, including rights of  
19 way and easements;

20 (e) Specify the units of local government which shall be parties to an urban service agreement  
21 under ORS 195.065;

22 (f) If a Metropolitan Service District is a party to the agreement, describe how the Metropolitan  
23 Service District will involve the special district in the exercise of the Metropolitan Service District's  
24 regional planning responsibilities; and

25 (g) Contain such other provisions as the [*Land Conservation and Development Commission*]  
26 **Oregon Natural Resources Commission** may require by rule.

27 (5) Agreements required under subsections (2) and (3) of this section are subject to review by  
28 the commission. The commission may provide by rule for periodic submission and review of cooper-  
29 ative agreements to insure that they are consistent with acknowledged comprehensive plans.

30 **SECTION 916.** ORS 195.025 is amended to read:

31 195.025. (1) In addition to the responsibilities stated in ORS 197.175, each county, through its  
32 governing body, shall be responsible for coordinating all planning activities affecting land uses  
33 within the county, including planning activities of the county, cities, special districts and state  
34 agencies, to assure an integrated comprehensive plan for the entire area of the county. In addition  
35 to being subject to the provisions of ORS chapters 195, 196 and 197 with respect to city or special  
36 district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan  
37 Service District shall be considered the county review, advisory and coordinative body for  
38 Multnomah, Clackamas and Washington Counties for the areas within that district.

39 (2) For the purposes of carrying out ORS chapters 195, 196 and 197, counties may voluntarily  
40 join together with adjacent counties as authorized in ORS 190.003 to 190.620.

41 (3) Whenever counties and cities representing 51 percent of the population in their area petition  
42 the [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission** for  
43 an election in their area to form a regional planning agency to exercise the authority of the counties  
44 under subsection (1) of this section in the area, the commission shall review the petition. If [*it*] **the**  
45 **commission** finds that the area described in the petition forms a reasonable planning unit, [*it*] **the**

1 **commission** shall call an election in the area on a date specified in ORS 203.085, to form a regional  
 2 planning agency. The election shall be conducted in the manner provided in ORS chapter 255. The  
 3 county clerk shall be considered the elections officer and the commission shall be considered the  
 4 district elections authority. The agency shall be considered established if the majority of votes favor  
 5 the establishment.

6 (4) If a voluntary association of local governments adopts a resolution ratified by each partic-  
 7 ipating county and a majority of the participating cities therein which authorizes the association to  
 8 perform the review, advisory and coordination functions assigned to the counties under subsection  
 9 (1) of this section, the association may perform such duties.

10 **SECTION 917.** ORS 195.034 is amended to read:

11 195.034. (1) If the coordinating body under ORS 195.025 (1) has adopted, within 10 years before  
 12 a city initiates an evaluation or amendment of the city's urban growth boundary, a population  
 13 forecast as required by ORS 195.036 that no longer provides a 20-year forecast for an urban area,  
 14 a city may propose a revised 20-year forecast for its urban area by extending the coordinating body's  
 15 current urban area forecast to a 20-year period using the same growth trend for the urban area  
 16 assumed in the coordinating body's current adopted forecast.

17 (2) If the coordinating body has not adopted a forecast as required by ORS 195.036 or if the  
 18 current forecast was adopted more than 10 years before the city initiates an evaluation or amend-  
 19 ment of the city's urban growth boundary, a city may propose a 20-year forecast for its urban area  
 20 by:

21 (a) Basing the proposed forecast on the population forecast prepared by the Office of Economic  
 22 Analysis for the county for a 20-year period that commences when the city initiates the evaluation  
 23 or amendment of the city's urban growth boundary; and

24 (b) Assuming that the urban area's share for the forecasted county population determined in  
 25 paragraph (a) of this subsection will be the same as the urban area's current share of the county  
 26 population based on the most recent certified population estimates from Portland State University  
 27 and the most recent data for the urban area published by the United States Census Bureau.

28 (3)(a) If the coordinating body does not take action on the city's proposed forecast for the urban  
 29 area under subsection (1) or (2) of this section within six months after the city's written request for  
 30 adoption of the forecast, the city may adopt the extended forecast if:

31 (A) The city provides notice to the other local governments in the county; and

32 (B) The city includes the adopted forecast in the comprehensive plan, or a document included  
 33 in the plan by reference, in compliance with the applicable requirements of ORS 197.610 to 197.650.

34 (b) If the extended forecast is adopted under paragraph (a) of this subsection consistent with the  
 35 requirements of subsection (1) or (2) of this section:

36 (A) The forecast is deemed to satisfy the requirements of a statewide land use planning goal  
 37 relating to urbanization to establish a coordinated 20-year population forecast for the urban area;  
 38 and

39 (B) The city may rely on the population forecast as an appropriate basis upon which the city  
 40 and county may conduct the evaluation or amendment of the city's urban growth boundary.

41 (4) The process for establishing a population forecast provided in this section is in addition to  
 42 and not in lieu of a process established by goal and rule of the [*Land Conservation and Development*  
 43 *Commission*] **Oregon Natural Resources Commission**.

44 **SECTION 918.** ORS 195.040 is amended to read:

45 195.040. Upon the expiration of one year after the date of the approval of the goals and guide-

1 lines and annually thereafter, each county governing body, upon request of the [*Land Conservation*  
2 *and Development Commission*] **Oregon Natural Resources Commission**, shall report to the com-  
3 mission on the status of comprehensive plans within each county. Each report shall include:

4 (1) Copies of comprehensive plans reviewed by the county governing body and copies of land  
5 use regulations applied to areas of critical state concern within the county.

6 (2) For those areas or jurisdictions within the county without comprehensive plans, a statement  
7 and review of the progress made toward compliance with the goals.

8 **SECTION 919.** ORS 195.085 is amended to read:

9 195.085. (1) No later than the first periodic review that begins after November 4, 1993, local  
10 governments and special districts shall demonstrate compliance with ORS 195.020 and 195.065.

11 (2) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
12 **mission** may adjust the deadline for compliance under this section when cities and counties that  
13 are parties to an agreement under ORS 195.020 and 195.065 are scheduled for periodic review at  
14 different times.

15 (3) Local governments and special districts that are parties to an agreement in effect on No-  
16 vember 4, 1993, which provides for the future provision of an urban service shall demonstrate com-  
17 pliance with ORS 195.065 no later than the date such agreement expires or the second periodic  
18 review that begins after November 4, 1993, whichever comes first.

19 **SECTION 920.** ORS 195.120 is amended to read:

20 195.120. (1) The Legislative Assembly finds that Oregon's parks are special places and the pro-  
21 tection of parks for the use and enjoyment of present and future generations is a matter of statewide  
22 concern.

23 (2) The [*Land Conservation and Development Commission, in cooperation with the State Parks and*  
24 *Recreation Commission and representatives of local government,*] **Oregon Natural Resources Com-**  
25 **mission** shall adopt rules and land use planning goal amendments as necessary to provide for:

26 (a) Allowable uses in state and local parks that have adopted master plans;

27 (b) Local government planning necessary to implement state park master plans; and

28 (c) Coordination and dispute resolution among state and local agencies regarding planning and  
29 activities in state parks.

30 (3) Rules and goal amendments adopted under subsection (2) of this section shall provide for the  
31 following uses in state parks:

32 (a) Campgrounds, day use areas and supporting infrastructure, amenities and accessory visitor  
33 service facilities designed to meet the needs of park visitors;

34 (b) Recreational trails and boating facilities;

35 (c) Facilities supporting resource-interpretive and educational activities for park visitors;

36 (d) Park maintenance workshops, staff support facilities and administrative offices;

37 (e) Uses that directly support resource-based outdoor recreation; and

38 (f) Other park uses adopted by the [*Land Conservation and Development*] commission.

39 (4) A local government shall not be required to adopt an exception under ORS 197.732 from a  
40 land use planning goal protecting agriculture or forestry resources to authorize a use identified by  
41 rule of the [*Land Conservation and Development*] commission under this section in a state or local  
42 park.

43 (5) A local government shall comply with the provisions of ORS 215.296 for all uses and activ-  
44 ities proposed in or adjacent to an exclusive farm use zone described in the state or local master  
45 plan as adopted by the local government and made a part of its comprehensive plan and land use

1 regulation.

2 **SECTION 921.** ORS 195.141 is amended to read:

3 195.141. (1) A county and a metropolitan service district established under ORS chapter 268 may  
4 enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652  
5 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS  
6 195.145 (1)(b).

7 (2) Land designated as a rural reserve:

8 (a) Must be outside an urban growth boundary.

9 (b) May not be designated as an urban reserve during the urban reserve planning period de-  
10 scribed in ORS 195.145 (4).

11 (c) May not be included within an urban growth boundary during the period of time described  
12 in paragraph (b) of this subsection.

13 (3) When designating a rural reserve under this section to provide long-term protection to the  
14 agricultural industry, a county and a metropolitan service district shall base the designation on  
15 consideration of factors including, but not limited to, whether land proposed for designation as a  
16 rural reserve:

17 (a) Is situated in an area that is otherwise potentially subject to urbanization during the period  
18 described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary  
19 and to properties with fair market values that significantly exceed agricultural values;

20 (b) Is capable of sustaining long-term agricultural operations;

21 (c) Has suitable soils and available water where needed to sustain long-term agricultural oper-  
22 ations; and

23 (d) Is suitable to sustain long-term agricultural operations, taking into account:

24 (A) The existence of a large block of agricultural or other resource land with a concentration  
25 or cluster of farms;

26 (B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses  
27 and the existence of buffers between agricultural operations and nonfarm uses;

28 (C) The agricultural land use pattern, including parcelization, tenure and ownership patterns;  
29 and

30 (D) The sufficiency of agricultural infrastructure in the area.

31 (4) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
32 **mission** shall, after consultation with the State Department of Agriculture, adopt by goal or by rule  
33 a process and criteria for designating rural reserves pursuant to this section.

34 **SECTION 922.** ORS 195.145 is amended to read:

35 195.145. (1) To ensure that the supply of land available for urbanization is maintained:

36 (a) Local governments may cooperatively designate lands outside urban growth boundaries as  
37 urban reserves subject to ORS 197.610 to 197.625.

38 (b) Alternatively, a metropolitan service district established under ORS chapter 268 and a  
39 county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652  
40 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph  
41 are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.

42 (2)(a) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
43 **mission** may require a local government to designate an urban reserve pursuant to subsection (1)(a)  
44 of this section during [*its*] **the local government's** periodic review in accordance with the condi-  
45 tions for periodic review under ORS 197.628.

1 (b) Notwithstanding paragraph (a) of this subsection, the commission may require a local gov-  
 2 ernment to designate an urban reserve pursuant to subsection (1)(a) of this section outside of *[its]*  
 3 **the local government's** periodic review if:

4 (A) The local government is located inside a Primary Metropolitan Statistical Area or a Met-  
 5 ropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and

6 (B) The local government has been required to designate an urban reserve by rule prior to No-  
 7 vember 4, 1993.

8 (3) In carrying out subsections (1) and (2) of this section:

9 (a) Within an urban reserve, neither the commission nor any local government shall prohibit the  
 10 siting on a legal parcel of a single family dwelling that would otherwise have been allowed under  
 11 law existing prior to designation as an urban reserve.

12 (b) The commission shall provide to local governments a list of options, rather than prescribing  
 13 a single planning technique, to ensure the efficient transition from rural to urban use in urban re-  
 14 serves.

15 (4) Urban reserves designated by a metropolitan service district and a county pursuant to sub-  
 16 section (1)(b) of this section must be planned to accommodate population and employment growth for  
 17 at least 20 years, and not more than 30 years, after the 20-year period for which the district has  
 18 demonstrated a buildable land supply in the most recent inventory, determination and analysis per-  
 19 formed under ORS 197.296.

20 (5) A district and a county shall base the designation of urban reserves under subsection (1)(b)  
 21 of this section upon consideration of factors including, but not limited to, whether land proposed for  
 22 designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

23 (a) Can be developed at urban densities in a way that makes efficient use of existing and future  
 24 public infrastructure investments;

25 (b) Includes sufficient development capacity to support a healthy urban economy;

26 (c) Can be served by public schools and other urban-level public facilities and services efficiently  
 27 and cost-effectively by appropriate and financially capable service providers;

28 (d) Can be designed to be walkable and served by a well-connected system of streets by appro-  
 29 priate service providers;

30 (e) Can be designed to preserve and enhance natural ecological systems; and

31 (f) Includes sufficient land suitable for a range of housing types.

32 (6) The commission shall adopt by goal or by rule a process and criteria for designating urban  
 33 reserves pursuant to subsection (1)(b) of this section.

34 **SECTION 923.** ORS 195.225 is amended to read:

35 195.225. (1) In areas subject to the jurisdiction of a local government boundary commission, the  
 36 boundary commission shall conduct an advisory review of an annexation plan for conformity with  
 37 annexation plan requirements set forth in ORS 195.220, 199.462 and the rules of procedure of the  
 38 *[Land Conservation and Development Commission]* **Oregon Natural Resources Commission.**

39 (2) If a boundary commission finds that an annexation plan does not comply with ORS 195.220,  
 40 199.462 or the procedural rules of the **Oregon Natural Resources** Commission, the boundary com-  
 41 mission, by order, shall disapprove the annexation plan and return the plan to the governing body  
 42 of the city or district. The order of the boundary commission that disapproves an annexation plan  
 43 shall describe with particularity the provisions of the annexation plan that do not comply with ORS  
 44 195.220, 199.462 or the procedural rules of the **Oregon Natural Resources** Commission and shall  
 45 specifically indicate the reasons for noncompliance.



1 (3) The governing body of the city or district, upon receiving an order of the boundary com-  
 2 mission that disapproves an annexation plan, may amend the plan and resubmit the amended plan  
 3 to the boundary commission.

4 (4) After a boundary commission reviews an annexation plan, the annexation plan shall be sub-  
 5 mitted to the electors of the city or district and affected territory as provided in ORS 195.205.

6 (5) Notwithstanding ORS chapter 199, annexations provided for in an annexation plan approved  
 7 by the electors of a city or district and affected territory do not require the approval of a local  
 8 government boundary commission.

9 (6) A city or district shall submit an annexation plan approved by the electors and a copy of the  
 10 resolution, ordinance, order or proclamation proclaiming an annexation under an approved  
 11 annexation plan to the local government boundary commission filing with the Secretary of State,  
 12 Department of Revenue, assessor and county clerk of each county in which the affected territory is  
 13 located.

14 **SECTION 924.** ORS 195.260 is amended to read:

15 195.260. (1) In order to reduce the risk of serious bodily injury or death resulting from rapidly  
 16 moving landslides, a local government:

17 (a) Shall exercise all available authority to protect the public during emergencies, consistent  
 18 with ORS 401.032.

19 (b) May require a geotechnical report and, if a report is required, shall provide for a coordinated  
 20 review of the geotechnical report by the [*State Department of Geology and Mineral Industries or the*  
 21 *State Forestry Department, as appropriate,*] **Oregon Department of Natural Resources** before is-  
 22 suing a building permit for a site in a further review area.

23 (c) Except those structures exempt from building codes under ORS 455.310 and 455.315, shall  
 24 amend its land use regulations, or adopt new land use regulations, to regulate the siting of dwellings  
 25 and other structures designed for human occupancy, including those being restored under ORS  
 26 215.130 (6), in further review areas where there is evidence of substantial risk for rapidly moving  
 27 landslides. All final decisions under this paragraph and paragraph (b) of this subsection are the re-  
 28 sponsibility of the local government with jurisdiction over the site. A local government may not  
 29 delegate such final decisions to any state agency.

30 (d) May deny a request to issue a building permit if a geotechnical report discloses that the  
 31 entire parcel is subject to a rapidly moving landslide or that the subject lot or parcel does not  
 32 contain sufficient buildable area that is not subject to a rapidly moving landslide.

33 (e) Shall maintain a record, available to the public, of properties for which a geotechnical report  
 34 has been prepared within the jurisdiction of the local government.

35 (2) A landowner allowed a building permit under subsection (1)(c) of this section shall sign a  
 36 statement that shall:

37 (a) Be recorded with the county clerk of the county in which the property is located, in which  
 38 the landowner acknowledges that the landowner may not in the future bring any action against an  
 39 adjacent landowner about the effects of rapidly moving landslides on or adjacent to the landowner's  
 40 property; and

41 (b) Record in the deed records for the county where the lot or parcel is located a nonrevocable  
 42 deed restriction that the landowner signs and acknowledges, that contains a legal description com-  
 43 plying with ORS 93.600 and that prohibits any present or future owner of the property from bringing  
 44 any action against an adjacent landowner about the effects of rapidly moving landslides on or ad-  
 45 jacent to the property.

1 (3) Restrictions on forest practices adopted under ORS 527.710 (10) do not apply to risk situ-  
 2 ations arising solely from the construction of a building designed for human occupancy in a further  
 3 review area on or after October 23, 1999.

4 (4) The following state agencies shall implement the following specific responsibilities to reduce  
 5 the risk of serious bodily injury or death resulting from rapidly moving landslides:

6 (a) The [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
 7 **Resources** shall:

8 (A) Identify and map further review areas selected in cooperation with local governments and  
 9 [*in coordination with the State Forestry Department, and*] provide technical assistance to local gov-  
 10 ernments to facilitate the use and application of this information pursuant to subsection (1)(b) of this  
 11 section; [*and*]

12 (B) Provide public education regarding landslide hazards[.];

13 [(b)] (C) [*The State Forestry Department shall*] Regulate forest operations to reduce the risk of  
 14 serious bodily injury or death from rapidly moving landslides directly related to forest operations,  
 15 and assist local governments in the siting review of permanent dwellings on and adjacent to  
 16 forestlands in further review areas pursuant to subsection (1)(b) of this section[.]; **and**

17 [(c)] (D) [*The Land Conservation and Development Commission may*] Take steps under its existing  
 18 authority to assist local governments to appropriately apply the requirements of subsection (1)(c)  
 19 of this section.

20 [(d)] (b) The Department of Transportation shall provide warnings to motorists during periods  
 21 determined to be of highest risk of rapidly moving landslides along areas on state highways with a  
 22 history of being most vulnerable to rapidly moving landslides.

23 [(e)] (c) The Office of Emergency Management shall coordinate state resources for rapid and  
 24 effective response to landslide-related emergencies.

25 (5) Notwithstanding any other provision of law, any state or local agency adopting rules related  
 26 to the risk of serious bodily injury or death from rapidly moving landslides shall do so only in con-  
 27 formance with the policies and provisions of ORS 195.250 to 195.260.

28 (6) No state or local agency may adopt or enact any rule or ordinance for the purpose of re-  
 29 ducing risk of serious bodily injury or death from rapidly moving landslides that limits the use of  
 30 land that is in addition to land identified as a further review area by the [*State Department of*  
 31 *Geology and Mineral Industries or the State Forestry Department*] **Oregon Department of Natural**  
 32 **Resources** pursuant to subsection (4) of this section.

33 (7) Except as provided in ORS 527.710 or in Oregon's ocean and coastal land use planning goals,  
 34 no state agency may adopt criteria regulating activities for the purpose of reducing risk of serious  
 35 bodily injury or death from rapidly moving landslides on lands subject to the provisions of ORS  
 36 195.250 to 195.260 that are more restrictive than the criteria adopted by a local government pursu-  
 37 ant to subsection (1)(c) of this section.

38 **SECTION 925.** ORS 195.300 is amended to read:

39 195.300. As used in this section and ORS 195.301 and 195.305 to 195.336 and sections 5 to 11,  
 40 chapter 424, Oregon Laws 2007, and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009:

41 (1) "Acquisition date" means the date described in ORS 195.328.

42 (2) "Claim" means a written demand for compensation filed under:

43 (a) ORS 195.305, as in effect immediately before December 6, 2007; or

44 (b) ORS 195.305 and 195.310 to 195.314, as in effect on and after December 6, 2007.

45 (3) "Enacted" means enacted, adopted or amended.

- 1 (4) "Fair market value" means the value of property as determined under ORS 195.332.
- 2 (5) "Farming practice" has the meaning given that term in ORS 30.930.
- 3 (6) "Federal law" means:
- 4 (a) A statute, regulation, order, decree or policy enacted by a federal entity or by a state entity
- 5 acting under authority delegated by the federal government;
- 6 (b) A requirement contained in a plan or rule enacted by a compact entity; or
- 7 (c) A requirement contained in a permit issued by a federal or state agency pursuant to a federal
- 8 statute or regulation.
- 9 (7) "File" means to submit a document to a public entity.
- 10 (8) "Forest practice" has the meaning given that term in ORS 527.620.
- 11 (9) "Ground water restricted area" means an area designated as a critical ground water area
- 12 or as a ground water limited area by the Water Resources Department or Water Resources Com-
- 13 mission before December 6, 2007.
- 14 (10) "High-value farmland" means:
- 15 (a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone
- 16 or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are
- 17 December 6, 2007.
- 18 (b) Land west of U.S. Highway 101 that is composed predominantly of the following soils in Class
- 19 III or IV or composed predominantly of a combination of the soils described in ORS 215.710 (1) and
- 20 the following soils:
- 21 (A) Subclassification IIIw, specifically Ettersburg Silt Loam and Croftland Silty Clay Loam;
- 22 (B) Subclassification IIIe, specifically Klooqueth Silty Clay Loam and Winchuck Silt Loam; and
- 23 (C) Subclassification IVw, specifically Huffling Silty Clay Loam.
- 24 (c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June
- 25 28, 2007, is:
- 26 (A) Within the place of use for a permit, certificate or decree for the use of water for irrigation
- 27 issued by the [*Water Resources Department*] **Oregon Department of Natural Resources**;
- 28 (B) Within the boundaries of a district, as defined in ORS 540.505; or
- 29 (C) Within the boundaries of a diking district formed under ORS chapter 551.
- 30 (d) Land that contains not less than five acres planted in wine grapes.
- 31 (e) Land that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000
- 32 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero
- 33 and 15 percent, and that is located within:
- 34 (A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;
- 35 (B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89; or
- 36 (C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90.
- 37 (f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean
- 38 sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent,
- 39 and that is located within:
- 40 (A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178 that is
- 41 within the State of Oregon;
- 42 (B) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;
- 43 (C) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74 that is
- 44 within the State of Oregon;
- 45 (D) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91 that

1 is within the State of Oregon; or

2 (E) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that  
3 is within the State of Oregon.

4 (11) "High-value forestland" means land:

5 (a) That is in a forest zone or a mixed farm and forest zone, that is located in western Oregon  
6 and composed predominantly of soils capable of producing more than 120 cubic feet per acre per  
7 year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of com-  
8 mercial tree species; or

9 (b) That is in a forest zone or a mixed farm and forest zone, that is located in eastern Oregon  
10 and composed predominantly of soils capable of producing more than 85 cubic feet per acre per year  
11 of wood fiber and that is capable of producing more than 4,000 cubic feet per year of commercial  
12 tree species.

13 (12) "Home site approval" means approval of the subdivision or partition of property or approval  
14 of the establishment of a dwelling on property.

15 (13) "Just compensation" means:

16 (a) Relief under sections 5 to 11, chapter 424, Oregon Laws 2007, and sections 2 to 9 and 17,  
17 chapter 855, Oregon Laws 2009, for land use regulations enacted on or before January 1, 2007; and

18 (b) Relief under ORS 195.310 to 195.314 for land use regulations enacted after January 1, 2007.

19 (14) "Land use regulation" means:

20 (a) A statute that establishes a minimum lot or parcel size;

21 (b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter  
22 215 that restricts the residential use of private real property;

23 (c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that  
24 restricts the residential use of private real property zoned for residential use;

25 (d) A provision of a county comprehensive plan, zoning ordinance or land division ordinance that  
26 restricts the residential use of private real property;

27 (e) A provision, enacted or adopted on or after January 1, 2010, of:

28 (A) The Oregon Forest Practices Act;

29 (B) An administrative rule of the [*State Board of Forestry*] **Oregon Natural Resources Com-**  
30 **mission pursuant to ORS chapter 477, 526, 527 or 530;** or

31 (C) Any other law enacted, or rule adopted, solely for the purpose of regulating a forest prac-  
32 tice;

33 (f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State  
34 Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;

35 (g) An administrative rule or goal of the [*Land Conservation and Development Commission*]  
36 **Oregon Natural Resources Commission adopted pursuant to ORS chapter 195, 196 or 197;** or

37 (h) A provision of a Metro functional plan that restricts the residential use of private real  
38 property.

39 (15) "Lawfully established unit of land" has the meaning given that term in ORS 92.010.

40 (16) "Lot" has the meaning given that term in ORS 92.010.

41 (17) "Measure 37 permit" means a final decision by Metro, a city or a county to authorize the  
42 development, subdivision or partition or other use of property pursuant to a waiver.

43 (18) "Owner" means:

44 (a) The owner of fee title to the property as shown in the deed records of the county where the  
45 property is located;

1 (b) The purchaser under a land sale contract, if there is a recorded land sale contract in force  
2 for the property; or

3 (c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust,  
4 except that when the trust becomes irrevocable only the trustee is the owner.

5 (19) "Parcel" has the meaning given that term in ORS 92.010.

6 (20) "Property" means the private real property described in a claim and contiguous private real  
7 property that is owned by the same owner, whether or not the contiguous property is described in  
8 another claim, and that is not property owned by the federal government, an Indian tribe or a public  
9 body, as defined in ORS 192.410.

10 (21) "Protection of public health and safety" means a law, rule, ordinance, order, policy, permit  
11 or other governmental authorization that restricts a use of property in order to reduce the risk or  
12 consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural  
13 or human disaster or threat to persons or property including, but not limited to, building and fire  
14 codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control  
15 regulations.

16 (22) "Public entity" means the state, Metro, a county or a city.

17 (23) "Urban growth boundary" has the meaning given that term in ORS 195.060.

18 (24) "Waive" or "waiver" means an action or decision of a public entity to modify, remove or  
19 not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11,  
20 chapter 424, Oregon Laws 2007, and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009, or ORS  
21 195.305, as in effect immediately before December 6, 2007, to allow the owner to use property for a  
22 use permitted when the owner acquired the property.

23 (25) "Zoned for residential use" means zoning that has as its primary purpose single-family res-  
24 idential use.

25 **SECTION 926.** ORS 195.312 is amended to read:

26 195.312. (1) A person filing a claim under ORS 195.310 shall file the claim in the manner pro-  
27 vided by this section. If the property for which the claim is filed has more than one owner, the claim  
28 must be signed by all the owners or the claim must include a signed statement of consent from each  
29 owner. Except as provided in subsection (2) of this section, only one claim for each property may  
30 be filed for each land use regulation.

31 (2) For a claim based on a land use regulation described in ORS 195.300 (14)(e), an owner:

32 (a) May file a claim only for property that is a lawfully established unit of land;

33 (b) May file separate claims for different lawfully established units of land at the same or dif-  
34 ferent times based on the same land use regulation; and

35 (c) May not file multiple claims for the same lawfully established unit of land based on the same  
36 land use regulation.

37 (3) A claim filed under ORS 195.310 must be filed with the public entity that enacted the land  
38 use regulation that is the basis for the claim.

39 (4) Metro, cities, counties and the [*Department of Land Conservation and Development*] **Oregon**  
40 **Department of Natural Resources** may impose a fee for the review of a claim filed under ORS  
41 195.310 in an amount not to exceed the actual and reasonable cost of reviewing the claim.

42 (5) A person must file a claim under ORS 195.310 within five years after the date the land use  
43 regulation was enacted.

44 (6) A public entity that receives a claim filed under ORS 195.310 must issue a final determi-  
45 nation on the claim within 180 days after the date the claim is complete, as described in subsection

1 (10) of this section.

2 (7) If a claim under ORS 195.310 is filed with state government, as defined in ORS 174.111, the  
3 claim must be filed with the department. If the claim is filed with Metro, a city or a county, the  
4 claim must be filed with the chief administrative office of the public entity, or with an individual  
5 designated by ordinance, resolution or order of the public entity.

6 (8) A claim filed under ORS 195.310 must be in writing and must include:

7 (a) The name and address of each owner;

8 (b) The address, if any, and tax lot number, township, range and section of the property;

9 (c) Evidence of the acquisition date of the claimant, including the instrument conveying the  
10 property to the claimant and a report from a title company identifying the person in which title is  
11 vested and the claimant's acquisition date and describing exceptions and encumbrances to title that  
12 are of record;

13 (d) A citation to the land use regulation that the claimant believes is restricting the claimant's  
14 desired use of the property that is adequate to allow the public entity to identify the specific land  
15 use regulation that is the basis for the claim;

16 (e) A description of the specific use of the property that the claimant desires to carry out but  
17 cannot because of the land use regulation; and

18 (f) An appraisal of the property that complies with ORS 195.310 (2) or, for a claim based on a  
19 land use regulation described in ORS 195.300 (14)(e), an appraisal that complies with ORS 195.310  
20 (4)(b).

21 (9) A claim filed under ORS 195.310 must include the fee, if any, imposed by the public entity  
22 with which the claim is filed pursuant to subsection (4) of this section.

23 (10) The public entity shall review a claim filed under ORS 195.310 to determine whether the  
24 claim complies with the requirements of ORS 195.310 to 195.314. If the claim is incomplete, the  
25 public entity shall notify the claimant in writing of the information or fee that is missing within 60  
26 days after receiving the claim and allow the claimant to submit the missing information or fee. The  
27 claim is complete when the public entity receives any fee required by subsection (9) of this section  
28 and:

29 (a) The missing information;

30 (b) Part of the missing information and written notice from the claimant that the remainder of  
31 the missing information will not be provided; or

32 (c) Written notice from the claimant that none of the missing information will be provided.

33 (11) If a public entity does not notify a claimant within 60 days after a claim is filed under ORS  
34 195.310 that information or the fee is missing from the claim, the claim is deemed complete when  
35 filed.

36 (12) A claim filed under ORS 195.310 is deemed withdrawn if the public entity gives notice to  
37 the claimant under subsection (10) of this section and the claimant does not comply with the re-  
38 quirements of subsection (10) of this section.

39 **SECTION 927.** ORS 195.314 is amended to read:

40 195.314. (1) A public entity that receives a complete claim as described in ORS 195.312 shall  
41 provide notice of the claim at least 30 days before a public hearing on the claim or, if there will  
42 not be a public hearing, at least 30 days before the deadline for submission of written comments, to:

43 (a) All owners identified in the claim;

44 (b) All persons described in ORS 197.763 (2);

45 (c) The *[Department of Land Conservation and Development]* **Oregon Department of Natural**

1 **Resources**, unless the claim was filed with the department;

2 (d) Metro, if the property is located within the urban growth boundary of Metro;

3 (e) The county in which the property is located, unless the claim was filed with the county; and

4 (f) The city, if the property is located within the urban growth boundary or adopted urban  
5 planning area of the city.

6 (2) The notice required under subsection (1) of this section must describe the claim and state:

7 (a) Whether a public hearing will be held on the claim, the date, time and location of the hear-  
8 ing, if any, and the final date for submission of written evidence and arguments relating to the claim;

9 (b) That judicial review of the final determination of a public entity on the claim is limited to  
10 the written evidence and arguments submitted to the public entity; and

11 (c) That judicial review is available only for issues that are raised with sufficient specificity to  
12 afford the public entity an opportunity to respond.

13 (3) Except as provided in subsection (4) of this section, written evidence and arguments in pro-  
14 ceedings on the claim must be submitted to the public entity not later than:

15 (a) The close of the final public hearing on the claim; or

16 (b) If a public hearing is not held, the date that is specified by the public entity in the notice  
17 required under subsection (1) of this section.

18 (4) The claimant may request additional time to submit written evidence and arguments in re-  
19 sponse to testimony or submittals. The request must be made before the close of testimony or the  
20 deadline for submission of written evidence and arguments.

21 (5) A public entity shall make the record on review of a claim, including any staff reports,  
22 available to the public before the close of the record as described in subsections (3) and (4) of this  
23 section.

24 (6) A public entity shall mail a copy of the final determination to the claimant and to any person  
25 who submitted written evidence or arguments before the close of the record. The public entity shall  
26 forward to the county, and the county shall record, a memorandum of the final determination in the  
27 deed records of the county in which the property is located.

28 **SECTION 928.** ORS 195.316 is amended to read:

29 195.316. In addition to any other notice required by law, a county must give notice of a Measure  
30 37 permit for property located entirely outside an urban growth boundary to:

31 (1) The county assessor for the county in which the property is located;

32 (2) A district or municipality that supplies water for domestic, municipal or irrigation uses and  
33 has a place of use or well located within one-half mile of the property; and

34 [(3) *The Department of Land Conservation and Development, the State Department of Agriculture,*  
35 *the Water Resources Department and the State Forestry Department.*]

36 **(3) The State Department of Agriculture and the Oregon Department of Natural Re-**  
37 **sources.**

38 **SECTION 929.** ORS 195.326 is amended to read:

39 195.326. An appraiser certified under ORS 674.310 or a person registered under ORS chapter 308  
40 may carry out the appraisals required by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424,  
41 Oregon Laws 2007, and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009. The [*Department of*  
42 *Land Conservation and Development*] **Oregon Department of Natural Resources** is authorized to  
43 retain persons to review the appraisals.

44 **SECTION 930.** ORS 195.336 is amended to read:

45 195.336. (1) The Compensation and Conservation Fund is established in the State Treasury, sep-

1 arate and distinct from the General Fund. Interest earned on moneys in the Compensation and  
 2 Conservation Fund shall be credited to the fund. The fund consists of moneys received by the [*De-*  
 3 *partment of Land Conservation and Development*] **Oregon Department of Natural Resources** under  
 4 ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and sections 2 to 9,  
 5 17 and 18, chapter 855, Oregon Laws 2009, and other moneys available to the department for the  
 6 purpose described in subsection (2) of this section.

7 (2) Moneys in the fund are continuously appropriated to the department for the purpose of  
 8 paying expenses incurred to review claims under ORS 195.305 to 195.336 and sections 5 to 11,  
 9 chapter 424, Oregon Laws 2007, and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009, and for  
 10 the purpose of paying the expenses of the Compensation and Conservation Ombudsman appointed  
 11 under ORS 195.320.

12 **SECTION 931.** ORS 196.107 is amended to read:

13 196.107. (1) The Legislative Assembly[, *considering the recommendations of the Land Conservation*  
 14 *and Development Commission,*] finds that the management plan adopted pursuant to the Columbia  
 15 River Gorge National Scenic Area Act achieves on balance the purposes of the statewide planning  
 16 goals adopted pursuant to ORS 197.230.

17 (2) Land use decisions subject to review under ORS 197.835 for compliance with the goals for  
 18 those portions of Multnomah, Hood River and Wasco Counties within the Columbia River Gorge  
 19 National Scenic Area, except land within urban area boundaries, are exempt from the requirements  
 20 of ORS 197.610 to 197.625. This exemption becomes effective in a county when that county or the  
 21 Columbia River Gorge Commission adopts and implements ordinances that are approved pursuant  
 22 to sections 7(b) and 8(h) to 8(k) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

23 (3) The Director of the [*Department of Land Conservation and Development may petition the Land*  
 24 *Conservation and Development Commission to decertify the management plan at any time. If the Land*  
 25 *Conservation and Development Commission receives a petition from the director, the Land Conservation*  
 26 *and Development Commission*] **Oregon Department of Natural Resources may petition the**  
 27 **Oregon Natural Resources Commission to decertify the management plan at any time. If the**  
 28 **Oregon Natural Resources Commission receives a petition from the director, the commission**  
 29 shall decertify the management plan within 120 days[, *if it*] **if the commission** determines that any  
 30 part of the management plan does not achieve on balance the purposes of the statewide planning  
 31 goals adopted pursuant to ORS 197.230.

32 **SECTION 932.** ORS 196.115 is amended to read:

33 196.115. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission  
 34 shall be subject to review solely as provided in this section, except as otherwise provided by the  
 35 Columbia River Gorge National Scenic Area Act, P.L. 99-663.

36 (2)(a) A final action or order by the commission in a review or appeal of any action of the  
 37 commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area  
 38 Act, or a final action or order by the commission in a review or appeal of any action of a county  
 39 pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall  
 40 be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided  
 41 in subsections (3) and (4) of this section and ORS 183.482.

42 (b) On a petition for judicial review under paragraph (a) of this subsection the Court of Appeals  
 43 also shall review the action of the county that is the subject of the commission's order, if requested  
 44 in the petition.

45 (c) The Court of Appeals shall issue a final order on review under this subsection within the



1 time limits provided by ORS 197.855.

2 (d) In lieu of judicial review under paragraphs (a) and (b) of this subsection, a county action  
3 may be appealed to the [*Land Use Board of Appeals*] **Oregon Department of Natural Resources**  
4 under ORS 197.805 to 197.855. A notice of intent to appeal the county's action shall be filed not later  
5 than 21 days after the commission's order on the county action becomes final.

6 (e) Notwithstanding ORS 197.835, the scope of review in an appeal pursuant to paragraph (d)  
7 of this subsection shall not include any issue relating to interpretation or implementation of the  
8 Columbia River Gorge National Scenic Area Act, P.L. 99-663, and any issue related to such inter-  
9 pretation or implementation shall be waived by the filing of an appeal under paragraph (d) of this  
10 subsection.

11 (f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the  
12 Columbia River Gorge National Scenic Area Act, P.L. 99-663, the [*Land Use Board of Appeals*]  
13 **Oregon Department of Natural Resources** shall not review land use decisions within the general  
14 management area or special management area for compliance with the statewide planning goals. The  
15 limitation of this paragraph shall not apply if the [*Land Conservation and Development Commission*]  
16 **Oregon Natural Resources Commission** decertifies the management plan pursuant to ORS 196.107.

17 (3)(a) If a petition for judicial review of [*a commission order*] **an order of the Columbia River**  
18 **Gorge Commission** is filed pursuant to subsection (2)(a) of this section, the procedures to be fol-  
19 lowed by the parties, the commission and the court, and the court's review, shall be in accordance  
20 with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490 and 183.497, except as this section or  
21 the Columbia River Gorge National Scenic Area Act, P.L. 99-663, otherwise provides.

22 (b) Notwithstanding any provision of ORS 183.482:

23 (A) The commission shall transmit the original record or the certified copy of the entire record  
24 within 21 days after service of a petition for judicial review is served on the commission; and

25 (B) The parties shall file briefs with the court within the times allowed by rules of the court.

26 (c) The court may affirm, reverse or remand the order. If the court finds that the agency has  
27 erroneously interpreted a provision of law and that a correct interpretation compels a particular  
28 action, the court shall:

29 (A) Set aside or modify the order; or

30 (B) Remand the case to the agency for further action under a correct interpretation of the pro-  
31 vision of law.

32 (d) The court shall remand the order to the agency if the court finds the agency's exercise of  
33 discretion to be:

34 (A) Outside the range of discretion delegated to the agency by law;

35 (B) Inconsistent with an agency rule, an officially stated agency position or a prior agency  
36 practice, unless the inconsistency is explained by the agency; or

37 (C) Otherwise in violation of a constitutional or statutory provision.

38 (e) The court shall set aside or remand the order if the court finds that the order is not sup-  
39 ported by substantial evidence in the whole record.

40 (f) Notwithstanding any other provision of this section, in any case where review of a county  
41 action as well as a commission order is sought pursuant to subsection (2)(a) and (b) of this section,  
42 the court shall accept any findings of fact by the commission which the court finds to be supported  
43 by substantial evidence in the whole record, and such findings by the commission shall prevail over  
44 any findings by the county concerning the same or substantially the same facts.

45 (4)(a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic

1 Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this  
 2 section, the procedures to be followed by the parties, the county and the court, and the court's re-  
 3 view, shall be in accordance with those provisions governing review of county land use decisions  
 4 by the [*Land Use Board of Appeals*] **Oregon Department of Natural Resources** set forth in ORS  
 5 197.830 (2) to (8), (10), (15) and (16) and 197.835 (2) to (10), (12) and (13). As used in this section,  
 6 [*board as used in the enumerated provisions shall mean "court" and the term*] "notice of intent to  
 7 appeal" in ORS 197.830 (10) shall refer to the petition described in subsection (2) of this section.

8 (b) In addition to the other requirements of service under this section, the petitioner shall serve  
 9 the petition upon the persons and bodies described in ORS 197.830 (9), as a prerequisite to judicial  
 10 review of the county action.

11 (c) In accordance with subsection (3)(b)(B) of this section, a party to a review of both a com-  
 12 mission order and a county action shall file only one brief with the court, which shall address both  
 13 the commission order and the county action.

14 (d) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. Subject  
 15 to subsection (3)(f) of this section, the court shall be bound by any finding of fact of the county for  
 16 which there is substantial evidence in the whole record. The court may appoint a master and follow  
 17 the procedures of ORS 183.482 (7) in connection with matters that the [*board*] **department** may take  
 18 evidence for under ORS 197.835 (2).

19 (5) Approval of county land use ordinances by the commission pursuant to section 7 of the  
 20 Columbia River Gorge National Scenic Area Act, P.L. 99-663, may be reviewed by the Court of Ap-  
 21 peals as provided in ORS 183.482.

22 (6) Notwithstanding ORS 183.484, any proceeding filed in circuit court by or against the com-  
 23 mission shall be filed with the circuit court for the county in which the commission has a principal  
 24 business office or in which the land involved in the proceeding is located.

25 **SECTION 933.** ORS 196.575 is amended to read:

26 196.575. (1) The [*Department of Land Conservation and Development*] **Oregon Department of**  
 27 **Natural Resources** is authorized to participate on behalf of the State of Oregon with the States  
 28 of Washington, California, Alaska and Hawaii in a joint liaison program with the Center for Ocean  
 29 Analysis and Prediction of the National Oceanic and Atmospheric Administration.

30 (2) The objective of the program is to assist the states in taking maximum advantage of the  
 31 oceanographic data, products and services available from the federal government through the Center  
 32 for Ocean Analysis and Prediction.

33 (3) The department [*of Land Conservation and Development*] shall integrate data obtained  
 34 through the liaison program for use by other state agencies and maximize the use of the State Ser-  
 35 vice Center for Geographic Information Systems.

36 **SECTION 934.** ORS 197.015 is amended to read:

37 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

38 (1) "Acknowledgment" means [*a commission order*] **an order of the Oregon Natural Resources**  
 39 **Commission** that certifies that a comprehensive plan and land use regulations, land use regulation  
 40 or plan or regulation amendment complies with the goals or certifies that Metro land use planning  
 41 goals and objectives, Metro regional framework plan, amendments to Metro planning goals and ob-  
 42 jectives or amendments to the Metro regional framework plan comply with the goals.

43 [(2) "*Board*" means the *Land Use Board of Appeals*.]

44 [(3)] (2) "Carport" means a stationary structure consisting of a roof with its supports and not  
 45 more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor ve-

1 hicle.

2 [(4) "Commission" means the Land Conservation and Development Commission.]

3 [(5)] (3) "Comprehensive plan" means a generalized, coordinated land use map and policy state-  
4 ment of the governing body of a local government that interrelates all functional and natural sys-  
5 tems and activities relating to the use of lands, including but not limited to sewer and water  
6 systems, transportation systems, educational facilities, recreational facilities, and natural resources  
7 and air and water quality management programs. "Comprehensive" means all-inclusive, both in  
8 terms of the geographic area covered and functional and natural activities and systems occurring  
9 in the area covered by the plan. "General nature" means a summary of policies and proposals in  
10 broad categories and does not necessarily indicate specific locations of any area, activity or use. A  
11 plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies  
12 and the [citizens] **residents** of Oregon have been considered and accommodated as much as possible.  
13 "Land" includes water, both surface and subsurface, and the air.

14 [(6) "Department" means the Department of Land Conservation and Development.]

15 [(7) "Director" means the Director of the Department of Land Conservation and Development.]

16 [(8)] (4) "Goals" means the mandatory statewide land use planning standards adopted by the  
17 **Oregon Natural Resources** Commission pursuant to ORS chapters 195, 196 and 197.

18 [(9)] (5) "Guidelines" means suggested approaches designed to aid cities and counties in prepa-  
19 ration, adoption and implementation of comprehensive plans in compliance with goals and to aid  
20 state agencies and special districts in the preparation, adoption and implementation of plans, pro-  
21 grams and regulations in compliance with goals. Guidelines shall be advisory and shall not limit  
22 state agencies, cities, counties and special districts to a single approach.

23 [(10)] (6) "Land use decision":

24 (a) Includes:

25 (A) A final decision or determination made by a local government or special district that con-  
26 cerns the adoption, amendment or application of:

27 (i) The goals;

28 (ii) A comprehensive plan provision;

29 (iii) A land use regulation; or

30 (iv) A new land use regulation;

31 (B) A final decision or determination of a state agency other than the **Oregon Natural Re-**  
32 **sources** Commission with respect to which the agency is required to apply the goals; or

33 (C) A decision of a county planning commission made under ORS 433.763;

34 (b) Does not include a decision of a local government:

35 (A) That is made under land use standards that do not require interpretation or the exercise  
36 of policy or legal judgment;

37 (B) That approves or denies a building permit issued under clear and objective land use stan-  
38 dards;

39 (C) That is a limited land use decision;

40 (D) That determines final engineering design, construction, operation, maintenance, repair or  
41 preservation of a transportation facility that is otherwise authorized by and consistent with the  
42 comprehensive plan and land use regulations;

43 (E) That is an expedited land division as described in ORS 197.360;

44 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal  
45 of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal

1 under ORS 480.410 to 480.460;

2 (G) That approves or denies approval of a final subdivision or partition plat or that determines  
3 whether a final subdivision or partition plat substantially conforms to the tentative subdivision or  
4 partition plan; or

5 (H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the ac-  
6 knowledged comprehensive plan and land use regulations implementing the plan, if:

7 (i) The local government has already made a land use decision authorizing a use or activity that  
8 encompasses the proposed state agency action;

9 (ii) The use or activity that would be authorized, funded or undertaken by the proposed state  
10 agency action is allowed without review under the acknowledged comprehensive plan and land use  
11 regulations implementing the plan; or

12 (iii) The use or activity that would be authorized, funded or undertaken by the proposed state  
13 agency action requires a future land use review under the acknowledged comprehensive plan and  
14 land use regulations implementing the plan;

15 (c) Does not include a decision by a school district to close a school;

16 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or  
17 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120  
18 hours in any three-month period; and

19 (e) Does not include:

20 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

21 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after  
22 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or

23 (C) A state agency action subject to ORS 197.180 (1), if:

24 (i) The local government with land use jurisdiction over a use or activity that would be au-  
25 thorized, funded or undertaken by the state agency as a result of the state agency action has already  
26 made a land use decision approving the use or activity; or

27 (ii) A use or activity that would be authorized, funded or undertaken by the state agency as a  
28 result of the state agency action is allowed without review under the acknowledged comprehensive  
29 plan and land use regulations implementing the plan.

30 [(11)] (7) "Land use regulation" means any local government zoning ordinance, land division  
31 ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards  
32 for implementing a comprehensive plan.

33 [(12)] (8) "Limited land use decision":

34 (a) Means a final decision or determination made by a local government pertaining to a site  
35 within an urban growth boundary that concerns:

36 (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS  
37 92.040 (1).

38 (B) The approval or denial of an application based on discretionary standards designed to reg-  
39 ulate the physical characteristics of a use permitted outright, including but not limited to site re-  
40 view and design review.

41 (b) Does not mean a final decision made by a local government pertaining to a site within an  
42 urban growth boundary that concerns approval or denial of a final subdivision or partition plat or  
43 that determines whether a final subdivision or partition plat substantially conforms to the tentative  
44 subdivision or partition plan.

45 [(13)] (9) "Local government" means any city, county or metropolitan service district formed

1 under ORS chapter 268 or an association of local governments performing land use planning func-  
2 tions under ORS 195.025.

3 [(14)] (10) "Metro" means a metropolitan service district organized under ORS chapter 268.

4 [(15)] (11) "Metro planning goals and objectives" means the land use goals and objectives that  
5 a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not  
6 constitute a comprehensive plan.

7 [(16)] (12) "Metro regional framework plan" means the regional framework plan required by the  
8 1992 Metro Charter or its separate components. Neither the regional framework plan nor its indi-  
9 vidual components constitute a comprehensive plan.

10 [(17)] (13) "New land use regulation" means a land use regulation other than an amendment to  
11 an acknowledged land use regulation adopted by a local government that already has a compre-  
12 hensive plan and land regulations acknowledged under ORS 197.251.

13 [(18)] (14) "Person" means any individual, partnership, corporation, association, governmental  
14 subdivision or agency or public or private organization of any kind. The [*Land Conservation and*  
15 *Development Commission*] **Oregon Natural Resources Commission**, or its designee, is considered  
16 a person for purposes of appeal under ORS chapters 195 and 197.

17 [(19)] (15) "Special district" means any unit of local government, other than a city, county,  
18 metropolitan service district formed under ORS chapter 268 or an association of local governments  
19 performing land use planning functions under ORS 195.025, authorized and regulated by statute and  
20 includes but is not limited to water control districts, domestic water associations and water coop-  
21 eratives, irrigation districts, port districts, regional air quality control authorities, fire districts,  
22 school districts, hospital districts, mass transit districts and sanitary districts.

23 [(20)] (16) "Urban unincorporated community" means an area designated in a county's ac-  
24 knowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

25 [(21)] (17) "Voluntary association of local governments" means a regional planning agency in  
26 this state officially designated by the Governor pursuant to the federal Office of Management and  
27 Budget Circular A-95 as a regional clearinghouse.

28 [(22)] (18) "Wetlands" means those areas that are inundated or saturated by surface or ground  
29 water at a frequency and duration that are sufficient to support, and that under normal circum-  
30 stances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

31 **SECTION 935.** ORS 197.040 is amended to read:

32 197.040. [(1) *The Land Conservation and Development Commission shall:*]

33 [(a) *Direct the performance by the Director of the Department of Land Conservation and Develop-*  
34 *ment and the director's staff of their functions under ORS chapters 195, 196 and 197.*]

35 (1) **For purposes related to the administration of the laws of this state that pertain to**  
36 **land use decisions, limited land use decisions, expedited land divisions and other land use**  
37 **laws and regulations, the Oregon Natural Resources Commission shall:**

38 (a) **Assist the Director of the Oregon Department of Natural Resources and the**  
39 **director's staff in achieving the director's duties, powers and functions under ORS chapters**  
40 **195, 196 and 197.**

41 (b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers neces-  
42 sary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section,  
43 in designing its administrative requirements, the commission shall:

44 (A) Allow for the diverse administrative and planning capabilities of local governments;

45 (B) Consider the variation in conditions and needs in different regions of the state and encour-

1 age regional approaches to resolving land use problems;

2 (C) Assess what economic and property interests will be, or are likely to be, affected by the  
3 proposed rule;

4 (D) Assess the likely degree of economic impact on identified property and economic interests;  
5 and

6 (E) Assess whether alternative actions are available that would achieve the underlying lawful  
7 governmental objective and would have a lesser economic impact.

8 (c)(A) Adopt by rule in accordance with ORS chapter 183 or by goal under ORS chapters 195,  
9 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters  
10 195, 196 and 197.

11 (B) Adopt by rule in accordance with ORS chapter 183 any procedures necessary to carry out  
12 ORS 215.402 (4)(b) and 227.160 (2)(b).

13 (C) Review decisions of the [*Land Use Board of Appeals*] **Oregon Department of Natural Re-**  
14 **sources issued under ORS 197.830 to 197.845**, and land use decisions of the Court of Appeals and  
15 the Supreme Court, within 120 days of the date the decisions are issued to determine if goal or rule  
16 amendments are necessary.

17 (d) Cooperate with the appropriate agencies of the United States, this state and its political  
18 subdivisions, any other state, any interstate agency, any person or groups of persons with respect  
19 to land conservation and development.

20 (e) Appoint advisory committees to aid it in carrying out ORS chapters 195, 196 and 197 and  
21 provide technical and other assistance, as it considers necessary, to each such committee.

22 (2) Pursuant to ORS chapters 195, 196 and 197, the commission shall:

23 (a) Adopt, amend and revise goals consistent with regional, county and city concerns;

24 (b) Prepare, collect, provide or cause to be prepared, collected or provided land use inventories;

25 (c) Prepare statewide planning guidelines;

26 (d) Review comprehensive plans for compliance with goals;

27 (e) Coordinate planning efforts of state agencies to assure compliance with goals and compat-  
28 ibility with city and county comprehensive plans;

29 (f) Insure widespread citizen involvement and input in all phases of the process;

30 (g) Review and recommend to the Legislative Assembly the designation of areas of critical state  
31 concern;

32 (h) Report periodically to the Legislative Assembly and to the committee;

33 (i) Review the land use planning responsibilities and authorities given to the state, regions,  
34 counties and cities, review the resources available to each level of government and make recom-  
35 mendations to the Legislative Assembly to improve the administration of the statewide land use  
36 program; and

37 (j) Perform other duties required by law.

38 (3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an  
39 assessment for each lot or parcel that could be affected by the proposed rule.

40 **SECTION 936.** ORS 197.045 is amended to read:

41 197.045. [*The Land Conservation and Development Commission may:*] **For purposes related to**  
42 **the administration of the laws of this state that pertain to land use decisions, limited land**  
43 **use decisions, expedited land divisions and other land use laws and regulations, the Oregon**  
44 **Natural Resources Commission may:**

45 (1) Apply for and receive moneys from the federal government and from this state or any of its

1 agencies or departments.

2 (2) Contract with any public agency for the performance of services or the exchange of em-  
 3 ployees or services by one to the other necessary in carrying out ORS chapters 195, 196 and 197.

4 (3) Contract for the services of and consultation with professional persons or organizations, not  
 5 otherwise available through federal, state and local governmental agencies, in carrying out its duties  
 6 under ORS chapters 195, 196 and 197.

7 (4) Perform other functions required to carry out ORS chapters 195, 196 and 197.

8 (5) Assist in development and preparation of model land use regulations to guide state agencies,  
 9 cities, counties and special districts in implementing goals.

10 (6) Notwithstanding any other provision of law, review comprehensive plan and land use regu-  
 11 lations related to the identification and designation of high-value farmland pursuant to chapter 792,  
 12 Oregon Laws 1993, under procedures set forth in ORS 197.251.

13 **SECTION 937.** ORS 197.047 is amended to read:

14 197.047. (1) As used in this section, "owner" means the owner of the title to real property or the  
 15 contract purchaser of real property, of record as shown on the last available complete tax assess-  
 16 ment roll.

17 (2) At least 90 days prior to the final public hearing on a proposed new or amended adminis-  
 18 trative rule of the [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
 19 **Commission** described in subsection (10) of this section, the [*Department of Land Conservation and*  
 20 *Development*] **Oregon Department of Natural Resources** shall cause the notice set forth in sub-  
 21 section (3) of this section to be mailed to every affected local government that exercises land use  
 22 planning authority under ORS 197.175.

23 (3) The notice required in subsection (2) of this section must:

24 (a) Contain substantially the following language in boldfaced type across the top of the face  
 25 page extending from the left margin to the right margin:

---

26  
 27  
 28 This is to notify you that the [*Land Conservation and Development Commission*] **Oregon Natural**  
 29 **Resources Commission** has proposed a new or amended administrative rule that, if adopted, may  
 30 affect the permissible uses of properties in your jurisdiction.

---

31  
 32  
 33 (b) Contain substantially the following language in the body of the notice:

---

34  
 35  
 36 On (date of public hearing), the [*Land Conservation and Development Commission*] **Oregon Na-**  
 37 **tural Resources Commission** will hold a public hearing regarding adoption of proposed (new or  
 38 amended) rule (number). Adoption of the rule may change the zoning classification of properties in  
 39 your jurisdiction or may limit or prohibit land uses previously allowed on properties in your juris-  
 40 diction.

41 Rule (number) is available for inspection at the [*Department of Land Conservation and Develop-*  
 42 *ment*] **Oregon Department of Natural Resources** located at (address). A copy of the proposed rule  
 43 (number) also is available for purchase at a cost of \$\_\_\_\_\_.

44 For additional information, contact the [*Department of Land Conservation and Development*]  
 45 **Oregon Department of Natural Resources** at (telephone number).

1 \_\_\_\_\_  
 2  
 3 (4) A local government that receives notice under subsection (2) of this section shall cause the  
 4 notice set forth in subsection (5) of this section to be mailed to every owner of real property that  
 5 will be rezoned as a result of the proposed rule. Notice to an owner under this subsection must be  
 6 mailed at least 45 days prior to the final public hearing on the proposed rule.

7 (5) The notice required in subsection (4) of this section must:

8 (a) Contain substantially the following language in boldfaced type across the top of the face  
 9 page extending from the left margin to the right margin:  
 10 \_\_\_\_\_

11  
 12 This is to notify you that the [*Land Conservation and Development Commission*] **Oregon Natural**  
 13 **Resources Commission** has proposed a new or amended administrative rule that, if adopted, may  
 14 affect the permissible uses of your property and other properties.  
 15 \_\_\_\_\_

16  
 17 (b) Contain substantially the following language in the body of the notice:  
 18 \_\_\_\_\_

19  
 20 On (date of public hearing), the [*Land Conservation and Development Commission*] **Oregon Na-**  
 21 **tural Resources Commission** will hold a public hearing regarding adoption of proposed (new or  
 22 amended) rule (number). Adoption of the rule may affect the permissible uses of your property, and  
 23 other properties in the affected zone, and may change the value of your property.

24 Rule (number) is available for inspection at the [*Department of Land Conservation and Develop-*  
 25 *ment*] **Oregon Department of Natural Resources** located at (address). A copy of the proposed rule  
 26 (number) also is available for purchase at a cost of \$\_\_\_\_\_.  
 27

28 For additional information, contact the [*Department of Land Conservation and Development*]  
 29 **Oregon Department of Natural Resources** at (telephone number).  
 30 \_\_\_\_\_

31 (6) At least 90 days prior to the effective date of a new or amended statute or administrative  
 32 rule described in subsection (10) of this section, the department shall cause the notice set forth in  
 33 subsection (7) of this section to be mailed to every affected local government that exercises land use  
 34 planning authority under ORS 197.175 unless the statute or rule is effective within 90 days of  
 35 enactment or adoption, in which case the department shall cause the notice to be mailed not later  
 36 than 30 days after the statute or rule is effective.

37 (7) The notice required in subsection (6) of this section must:

38 (a) Contain substantially the following language in boldfaced type across the top of the face  
 39 page extending from the left margin to the right margin:  
 40 \_\_\_\_\_

41  
 42 (Check on the appropriate line:)

43 \_\_\_\_\_ This is to notify you that the [*Land Conservation and Development Commission*] **Oregon**  
 44 **Natural Resources Commission** has adopted an administrative rule that may affect the permissible  
 45 uses of properties in your jurisdiction; or



1 \_\_\_\_\_ This is to notify you that the Legislative Assembly has enacted a land use planning  
2 statute that may affect the permissible uses of properties in your jurisdiction.

3 \_\_\_\_\_  
4  
5 (b) Contain substantially the following language in the body of the notice:  
6 \_\_\_\_\_

7  
8 (Check on the appropriate line:)

9 \_\_\_\_\_ On (date of rule adoption), the [*Land Conservation and Development Commission*]  
10 **Oregon Natural Resources Commission** adopted administrative rule (number). The commission  
11 has determined that this rule may change the zoning classification of properties in your jurisdiction  
12 or may limit or prohibit land uses previously allowed on properties in your jurisdiction.

13 Rule (number) is available for inspection at the [*Department of Land Conservation and Develop-*  
14 *ment*] **Oregon Department of Natural Resources** located at (address). A copy of the rule (number)  
15 also is available for purchase at a cost of \$\_\_\_\_\_.

16 For additional information, contact the [*Department of Land Conservation and Development*]  
17 **Oregon Department of Natural Resources** at (telephone number); or

18 \_\_\_\_\_ On (date of enactment) the Legislative Assembly enacted (House/Senate bill number).  
19 The [*Department of Land Conservation and Development*] **Oregon Department of Natural Re-**  
20 **sources** has determined that enactment of (House/Senate bill number) may change the zoning clas-  
21 sification of properties in your jurisdiction or may limit or prohibit land uses previously allowed on  
22 properties in your jurisdiction.

23 A copy of (House/Senate bill number) is available for inspection at the [*Department of Land*  
24 *Conservation and Development*] **Oregon Department of Natural Resources** located at (address). A  
25 copy of (House/Senate bill number) also is available for purchase at a cost of \$\_\_\_\_\_.

26 For additional information, contact the [*Department of Land Conservation and Development*]  
27 **Oregon Department of Natural Resources** at (telephone number).  
28 \_\_\_\_\_

29  
30 (8) A local government that receives notice under subsection (6) of this section shall cause a  
31 copy of the notice set forth in subsection (9) of this section to be mailed to every owner of real  
32 property that will be rezoned as a result of adoption of the rule or enactment of the statute, unless  
33 notification was provided pursuant to subsection (4) of this section. The local government shall mail  
34 the notice to an owner under this subsection at least 45 days prior to the effective date of the rule  
35 or statute unless the statute or rule is effective within 90 days of enactment or adoption, in which  
36 case the local government shall mail the notice to an owner under this subsection not later than  
37 30 days after the local government receives notice under subsection (6) of this section.

38 (9) The notice required in subsection (8) of this section must:

39 (a) Contain substantially the following language in boldfaced type across the top of the face  
40 page extending from the left margin to the right margin:  
41 \_\_\_\_\_

42  
43 (Check on the appropriate line:)

44 \_\_\_\_\_ This is to notify you that the [*Land Conservation and Development Commission*] **Oregon**  
45 **Natural Resources Commission** has adopted an administrative rule that may affect the permissible

1 uses of your property and other properties; or

2 \_\_\_\_\_ This is to notify you that the Legislative Assembly has enacted a land use planning  
 3 statute that may affect the permissible uses of your property and other properties.

4 \_\_\_\_\_  
 5  
 6 (b) Contain substantially the following language in the body of the notice:  
 7 \_\_\_\_\_

8  
 9 (Check on the appropriate line:)

10 \_\_\_\_\_ On (date of rule adoption), the [*Land Conservation and Development Commission*]  
 11 **Oregon Natural Resources Commission** adopted administrative rule (number). The rule may affect  
 12 the permissible uses of your property, and other properties in the affected zone, and may change the  
 13 value of your property.

14 Rule (number) is available for inspection at the [*Department of Land Conservation and Develop-*  
 15 *ment*] **Oregon Department of Natural Resources** located at (address). A copy of the rule (number)  
 16 also is available for purchase at a cost of \$\_\_\_\_\_.

17 For additional information, contact the [*Department of Land Conservation and Development*]  
 18 **Oregon Department of Natural Resources** at (telephone number); or

19 \_\_\_\_\_ On (date of enactment) the Legislative Assembly enacted (House/Senate bill number).  
 20 The [*Department of Land Conservation and Development*] **Oregon Department of Natural Re-**  
 21 **sources** has determined that enactment of (House/Senate bill number) may affect the permissible  
 22 uses of your property, and other properties in the affected zone, and may change the value of your  
 23 property.

24 A copy of (House/Senate bill number) is available for inspection at the [*Department of Land*  
 25 *Conservation and Development*] **Oregon Department of Natural Resources** located at (address). A  
 26 copy of (House/Senate bill number) also is available for purchase at a cost of \$\_\_\_\_\_.

27 For additional information, contact the [*Department of Land Conservation and Development*]  
 28 **Oregon Department of Natural Resources** at (telephone number).

29 \_\_\_\_\_  
 30  
 31 (10) The provisions of this section apply to all statutes and administrative rules of the [*Land*  
 32 *Conservation and Development Commission*] **commission** that limit or prohibit otherwise permissible  
 33 land uses or cause a local government to rezone property. For purposes of this section, property is  
 34 rezoned when the statute or administrative rule causes a local government to:

- 35 (a) Change the base zoning classification of the property; or
- 36 (b) Adopt or amend an ordinance in a manner that limits or prohibits land uses previously al-  
 37 lowed in the affected zone.

38 (11) The [*Department of Land Conservation and Development*] **department** shall reimburse the  
 39 local government for:

40 (a) The actual costs incurred responding to questions from the public related to a proposed new  
 41 or amended administrative rule of the [*Land Conservation and Development*] commission and to no-  
 42 tice of the proposed rule; and

43 (b) All usual and reasonable costs of providing the notices required under subsection (4) or (8)  
 44 of this section.

45 **SECTION 938.** ORS 197.050 is amended to read:

1 197.050. Except as provided in ORS 196.150 and 196.155, if an interstate land conservation and  
 2 development planning agency is created by an interstate agreement or compact entered into by this  
 3 state, the [*Land Conservation and Development Commission*] **Oregon Natural Resources Commis-**  
 4 **sion** shall perform the functions of this state with respect to the agreement or compact. If the  
 5 functions of the interstate planning agency duplicate any of the functions of the commission under  
 6 ORS 195.020 to 195.040, ORS chapter 197 and ORS 469.350, the commission may:

7 (1) Negotiate with the interstate agency in defining the areas of responsibility of the commission  
 8 and the interstate planning agency; and

9 (2) Cooperate with the interstate planning agency in the performance of its functions.

10 **SECTION 939.** ORS 197.060 is amended to read:

11 197.060. (1) Prior to the end of each even-numbered year, the [*Department of Land Conservation*  
 12 *and Development*] **Oregon Department of Natural Resources** shall prepare a written report for  
 13 submission to the Legislative Assembly of the State of Oregon describing activities and accom-  
 14 plishments of the department, [*Land Conservation and Development Commission*] **the Oregon Na-**  
 15 **tural Resources Commission**, state agencies, local governments and special districts in carrying  
 16 out ORS chapters 195, 196 and 197.

17 (2) A draft of the report required by subsection (1) of this section shall be submitted to the ap-  
 18 propriate legislative committee at least 60 days prior to submission of the report to the Legislative  
 19 Assembly. Comments of the committee shall be incorporated into the final report.

20 (3) Goals and guidelines adopted by the commission shall be included in the report to the Leg-  
 21 islative Assembly submitted under subsection (1) of this section.

22 (4) The department shall include in its biennial report:

23 (a) A description of its activities implementing ORS 197.631; and

24 (b) An accounting of new statutory, land use planning goal and rule requirements and local  
 25 government compliance with the new requirements pursuant to ORS 197.646.

26 **SECTION 940.** ORS 197.065 is amended to read:

27 197.065. (1) Prior to each legislative session, the [*Land Conservation and Development Commis-*  
 28 *sion*] **Oregon Natural Resources Commission** shall submit to the appropriate legislative commit-  
 29 tee a written report analyzing applications approved and denied for:

30 (a) New and replacement dwellings under:

31 (A) ORS 215.213 (1)(d) and (f), (2)(a) and (b), (3) and (4), 215.283 (1)(d) and (e), 215.284 and 215.705;  
 32 and

33 (B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

34 (b) Divisions of land under:

35 (A) ORS 215.263 (2), (4) and (5); and

36 (B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

37 (c) Dwellings and land divisions approved for marginal lands under:

38 (A) ORS 215.317 or 215.327; and

39 (B) Any land zoned for forest use under any statewide planning goal that relates to forestland;  
 40 and

41 (d) Such other matters pertaining to protection of agricultural or forest land as the commission  
 42 deems appropriate.

43 (2) The governing body of each county shall provide the [*Department of Land Conservation and*  
 44 *Development*] **Oregon Department of Natural Resources** with a report of its actions involving  
 45 those dwellings, land divisions and land designations upon which the commission must report to the

1 appropriate legislative committee under subsection (1) of this section. The department shall estab-  
 2 lish, after consultation with county governing bodies, an annual reporting period and may establish  
 3 a schedule for receiving county reports at intervals within the reporting period. The report shall  
 4 be on a standard form with a standardized explanation adopted by the commission and shall be eli-  
 5 gible for grants by the commission. The report shall include the findings for each action except  
 6 actions involving:

7 (a) Dwellings authorized by ORS 215.213 (1)(d) or 215.283 (1)(d); or

8 (b) Land divisions authorized by ORS 215.263 (2) creating parcels as large as or larger than a  
 9 minimum size established by the commission under ORS 215.780.

10 (3) The governing body of each county shall, upon request by the department, provide the de-  
 11 partment with other information necessary to carry out subsection (1) of this section.

12 **SECTION 941.** ORS 197.070 is amended to read:

13 197.070. The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
 14 **Commission** shall keep on file and available for public inspection the assessments prepared pursu-  
 15 ant to ORS 197.040 and 197.230.

16 **SECTION 942.** ORS 197.090, as amended by section 8, chapter 8, Oregon Laws 2010, and section  
 17 10, chapter 107, Oregon Laws 2010, is amended to read:

18 197.090. [*(1) Subject to policies adopted by the Land Conservation and Development Commission,*  
 19 *the Director of the Department of Land Conservation and Development shall:*]

20 [*(a) Be the administrative head of the Department of Land Conservation and Development.*]

21 **(1) For purposes related to the administration of the laws of this state that pertain to**  
 22 **land use decisions, limited land use decisions, expedited land divisions and other land use**  
 23 **laws and regulations, the Director of the Oregon Department of Natural Resources shall:**

24 [*(b)*] **(a)** Coordinate the activities of the [*department*] **Oregon Department of Natural Re-**  
 25 **sources** in its land conservation and development functions with such functions of federal agencies,  
 26 other state agencies, local governments and special districts.

27 [*(c) Appoint, reappoint, assign and reassign all subordinate officers and employees of the depart-*  
 28 *ment, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law.*]

29 [*(d)*] **(b)** Represent this state before any agency of this state, any other state or the United  
 30 States with respect to land conservation and development within this state.

31 (2)(a) Subject to local government requirements and the provisions of ORS 197.830 to 197.845,  
 32 the director may participate in and seek review of:

33 (A) A land use decision, expedited land division or limited land use decision involving the goals  
 34 or involving an acknowledged comprehensive plan and land use regulations implementing the plan;  
 35 or

36 (B) Any other matter within the statutory authority of the department or **the Oregon Natural**  
 37 **Resources Commission** under ORS chapters 195, 196 and 197.

38 (b) The director shall report to the commission on each case in which the department partic-  
 39 ipates **under this section** and on the positions taken by the director in each case.

40 (c) If a meeting of the commission is scheduled prior to the close of the period for seeking re-  
 41 view of a land use decision, expedited land division or limited land use decision, the director shall  
 42 obtain formal approval from the commission prior to seeking review of the decision. However, if the  
 43 land use decision, expedited land division or limited land use decision becomes final less than 15  
 44 days before a meeting of the commission, the director shall proceed as provided in paragraph (d) of  
 45 this subsection. If the director requests approval from the commission, the applicant and the affected

1 local government shall be notified in writing that the director is seeking commission approval. The  
 2 director, the applicant and the affected local government shall be given reasonable time to address  
 3 the commission regarding the director's request for approval to seek review. The parties shall limit  
 4 their testimony to the factors established under subsection (3) of this section. No other testimony  
 5 shall be taken by the commission.

6 (d) If a meeting of the commission is not scheduled prior to the close of the period for seeking  
 7 review of a land use decision, expedited land division or limited land use decision, at the next  
 8 commission meeting the director shall report to the commission on each case for which the depart-  
 9 ment has sought review. The director shall request formal approval to proceed with each appeal.  
 10 The applicant and the affected local government shall be notified of the commission meeting in  
 11 writing by the director. The director, the applicant and the affected local government shall be given  
 12 reasonable time to address the commission regarding the director's request for approval to proceed  
 13 with the appeal. The parties shall limit their testimony to the factors established under subsection  
 14 (3) of this section. No other testimony shall be taken by the commission. If the commission does not  
 15 formally approve an appeal, the director shall file a motion with the appropriate tribunal to dismiss  
 16 the appeal.

17 (e) A decision by the commission under this subsection is not subject to appeal.

18 (f) For purposes of this subsection, "applicant" means a person seeking approval of a permit, as  
 19 defined in ORS 215.402 or 227.160, expedited land division or limited land use decision.

20 (3) The commission by rule shall adopt a set of factors for the commission to consider when  
 21 determining whether to appeal or intervene in the appeal of a land use decision, expedited land di-  
 22 vision or limited land use decision that involves the application of the goals, acknowledged com-  
 23 prehensive plan, land use regulation or other matter within the authority of the department or  
 24 commission under ORS chapters 195, 196 and 197.

25 (4) The director may intervene in an appeal of a land use decision, expedited land division or  
 26 limited land use decision brought by another person in the manner provided for an appeal by the  
 27 director under subsection (2)(c) and (d) of this section.

28 **SECTION 943.** ORS 197.158 is amended to read:

29 197.158. (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
 30 **Commission**, in cooperation with the Oregon Law Commission and other public or private entities,  
 31 may, as resources are available, appoint a work group to conduct a policy-neutral review and audit  
 32 of ORS chapters 195, 196, 197, 215 and 227, the statewide land use planning goals and the rules of  
 33 the **Oregon Natural Resources** Commission implementing the goals.

34 (2) The **Oregon Natural Resources** Commission shall sequence any review based on its judg-  
 35 ment as to which aspects of the statewide land use program are most in need of updating.

36 (3) A review undertaken under this section should, but does not have to, include appropriate  
 37 involvement of local government, professional land use planning, private legal and other represen-  
 38 tatives.

39 (4) Recommendations should, but do not have to, address major policies and key procedures that  
 40 are most appropriate for enactment by law and what policies and procedures are most appropriate  
 41 for adoption by statewide land use planning goals or rules to allow for greater variation between  
 42 regions of the state over time and to reduce complexity.

43 **SECTION 944.** ORS 197.160 is amended to read:

44 197.160. (1) To assure widespread citizen involvement in all phases of the planning process:

45 (a) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**

1 **mission** shall appoint a State Citizen Involvement Advisory Committee, broadly representative of  
 2 geographic areas of the state and of interests relating to land uses and land use decisions, to de-  
 3 velop a program for the commission that promotes and enhances public participation in the adoption  
 4 and amendment of the goals and guidelines.

5 (b) Each city and county governing body shall submit to the commission, on a periodic basis  
 6 established by commission rule, a program for citizen involvement in preparing, adopting and  
 7 amending comprehensive plans and land use regulations within the respective city and county. Such  
 8 program shall at least contain provision for a citizen advisory committee or committees broadly  
 9 representative of geographic areas and of interests relating to land uses and land use decisions.

10 (c) The State Citizen Involvement Advisory Committee appointed under paragraph (a) of this  
 11 subsection shall review the proposed programs submitted by each city and county and report to the  
 12 commission whether or not the proposed program adequately provides for public involvement in the  
 13 planning process, and, if it does not so provide, in what respects it is inadequate.

14 (2) The State Citizen Involvement Advisory Committee is limited to an advisory role to the  
 15 commission. It has no express or implied authority over any local government or state agency.

16 **SECTION 945.** ORS 197.165 is amended to read:

17 197.165. For the purpose of promoting mutual understanding and cooperation between the [*Land*  
 18 *Conservation and Development Commission*] **Oregon Natural Resources Commission** and local  
 19 government in the implementation of ORS chapters 195, 196 and 197 and the goals, the commission  
 20 shall appoint a Local Officials Advisory Committee. The committee shall be comprised of persons  
 21 serving as city or county elected officials and its membership shall reflect the city, county and ge-  
 22 ographic diversity of the state. The committee shall advise and assist the commission on its policies  
 23 and programs affecting local governments.

24 **SECTION 946.** ORS 197.173 is amended to read:

25 197.173. The Legislative Assembly finds and declares that:

26 (1) Improving coordination and consistency between the duties and actions of state agencies that  
 27 affect land use and the duties and actions of local governments under comprehensive plans and land  
 28 use regulations is required to ensure that the actions of state agencies complement both state and  
 29 local land use planning objectives.

30 (2) Improved coordination is necessary to streamline state and local permitting procedures.

31 (3) The [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
 32 **Resources** has not engaged in a formal and concerted effort to update state agency land use coor-  
 33 dination programs since 1989, and that state agency rules, plans and programs affecting land use  
 34 and local government comprehensive plans and land use regulations have changed substantially  
 35 since that time.

36 (4) Rules of the [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
 37 **Commission** regarding state agency land use coordination and state permit compliance and com-  
 38 patibility should be:

39 (a) Reviewed to eliminate unclear or conflicting provisions and to ensure that local land use  
 40 decisions authorizing a use generally precede state agency decisions on permits for the use or for  
 41 aspects of the use; and

42 (b) Updated regularly to maintain a high level of coordination between state agencies and local  
 43 governments in reviewing authorizations for a use of property.

44 **SECTION 947.** ORS 197.175 is amended to read:

45 197.175. (1) Cities and counties shall exercise their planning and zoning responsibilities, includ-

ing, but not limited to, a city or special district boundary change which shall mean the annexation of unincorporated territory by a city, the incorporation of a new city and the formation or change of organization of or annexation to any special district authorized by ORS 198.705 to 198.955, 199.410 to 199.534 or 451.010 to 451.620, in accordance with ORS chapters 195, 196 and 197 and the goals approved under ORS chapters 195, 196 and 197. The [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission** shall adopt rules clarifying how the goals apply to the incorporation of a new city. Notwithstanding the provisions of section 15, chapter 827, Oregon Laws 1983, the rules shall take effect upon adoption by the commission. The applicability of rules promulgated under this section to the incorporation of cities prior to August 9, 1983, shall be determined under the laws of this state.

(2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:

(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;

(b) Enact land use regulations to implement their comprehensive plans;

(c) If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;

(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and

(e) Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment.

(3) Notwithstanding subsection (1) of this section, the commission shall not initiate by its own action any annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 or formation of and annexation of territory to any district authorized by ORS 198.510 to 198.915 or 451.010 to 451.620.

**SECTION 948.** ORS 197.178 is amended to read:

197.178. A local government with a comprehensive plan or functional plan identified in ORS 197.296 (1) shall compile and report annually to the [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources** the following information for all permit applications received under ORS 227.175:

(1) The number of applications received for residential development, including the residential density proposed in the application and the maximum allowed residential density for the subject zone;

(2) The number of applications approved, including the approved density; and

(3) The date each application was received and the date it was approved or denied.

**SECTION 949.** ORS 197.180 is amended to read:

197.180. (1) Except as provided in ORS 197.277 or subsection (2) of this section or unless expressly exempted by another statute from any of the requirements of this section, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

(a) In compliance with the goals, rules implementing the goals and rules implementing this section; and

(b) In a manner compatible with acknowledged comprehensive plans and land use regulations.

(2) State agencies need not comply with subsection (1)(b) of this section if a state agency rule,

1 plan or program relating to land use was not in effect when the comprehensive plan provision or  
 2 land use regulation with which the action would be incompatible was acknowledged and the agency  
 3 has demonstrated that:

4 (a) The state agency rule, plan or program is mandated by state statute or federal law;

5 (b) The state agency rule, plan or program is consistent with the goals;

6 (c) The state agency rule, plan or program has objectives that cannot be achieved in a manner  
 7 compatible with the acknowledged comprehensive plan and land use regulations; and

8 (d) The agency has complied with its certified state agency coordination program.

9 (3) Unless federal or state law requires otherwise, the **Oregon Natural Resources** Commission,  
 10 by rule, may specify the sequence of a local government land use decision and a state agency action  
 11 concerning the same, similar or related uses or activities.

12 (4) Upon request by the [*Land Conservation and Development Commission, each state agency shall*  
 13 *submit to the Department of Land Conservation and Development*] **commission, each state agency**  
 14 **shall submit to the Oregon Department of Natural Resources** the following information:

15 (a) Agency rules and summaries of state agency plans and programs affecting land use;

16 (b) A program for coordination pursuant to ORS 197.040 (2)(e);

17 (c) A program for coordination pursuant to ORS 197.090 [(1)(b)] **(1)(a)**; and

18 (d) A program for cooperation with and technical assistance to local governments.

19 (5) Within 90 days of receipt, the Director of the [*Department of Land Conservation and Devel-*  
 20 *opment*] **Oregon Department of Natural Resources** shall review the information submitted pursu-  
 21 ant to subsection (4) of this section and shall notify each state agency if the director believes the  
 22 state agency rules, plans or programs submitted are insufficient to ensure compliance with goals and  
 23 compatibility with acknowledged comprehensive plans and land use regulations.

24 (6) Within 90 days of receipt of notification specified in subsection (5) of this section, the state  
 25 agency may revise the state agency rules, plans or programs and resubmit them to the director.

26 (7) The director shall make findings under subsections (5) and (6) of this section as to whether  
 27 the state agency rules, plans or programs are sufficient to ensure compliance with the goals and  
 28 compatibility with acknowledged city and county comprehensive plans and land use regulations and  
 29 shall forward the rules and summaries of state agency plans or programs to the commission for its  
 30 action. The commission shall either certify the state agency rules, plans or programs as compliant  
 31 with the goals and compatible with the acknowledged comprehensive plans and land use regulations  
 32 of affected local governments or shall determine the same to be insufficient.

33 (8) The department shall report, to the appropriate committee of the House and the Senate and  
 34 to the subcommittee of the Joint Ways and Means Committee that considers the state agency  
 35 budget, any agency that has failed to meet the requirements of subsection (7) of this section.

36 (9) Any state agency that has failed to meet the requirements of subsection (7) of this section  
 37 shall report the reasons therefor to the appropriate committee of the House and the Senate and to  
 38 the subcommittee of the Joint Ways and Means Committee that considers the agency budget.

39 (10) Until rules and state agency plans and programs are certified as compliant with the goals  
 40 and compatible with the acknowledged comprehensive plans and land use regulations of affected  
 41 local governments, the state agency shall make findings when adopting or amending its rules and  
 42 state agency plans and programs as to the applicability and application of the goals or acknowl-  
 43 edged comprehensive plans, as appropriate.

44 (11) The commission shall adopt rules establishing procedures to ensure that state agency per-  
 45 mits affecting land use are issued in compliance with the goals and compatible with acknowledged



1 comprehensive plans and land use regulations, as required by subsection (1) of this section. The  
 2 rules must prescribe the circumstances in which state agencies may rely upon a determination of  
 3 compliance with the goals or compatibility with the acknowledged comprehensive plan.

4 (12) A state agency required to have a land use coordination program shall participate in a local  
 5 government land use hearing, except a hearing under ORS 197.610 to 197.625, only in a manner that  
 6 is consistent with the coordination program, unless the agency participated in the local  
 7 government's periodic review pursuant to ORS 197.633 and raised the issue that is the basis for  
 8 participation in the land use hearing.

9 (13) State agency rules, plans or programs affecting land use are not compatible with an ac-  
 10 knowledged comprehensive plan if the state agency takes or approves an action that is not allowed  
 11 under the acknowledged comprehensive plan. However, a state agency may apply statutes and rules  
 12 to deny, condition or further restrict an action of the state agency or of any applicant before the  
 13 state agency if the state agency applies those statutes and rules to the uses planned for in the ac-  
 14 knowledged comprehensive plan.

15 (14) In cooperation with local governments and state agencies whose rules, plans or programs  
 16 affect land use, the department periodically shall:

17 (a) Identify aspects of coordination related to uses that require the issuance of multiple permits  
 18 from state agencies and local governments.

19 (b) Update and improve rules regulating the effectiveness and efficiency of state agency coordi-  
 20 nation programs.

21 (15) This section does not apply to rules, plans, programs, decisions, determinations or activities  
 22 carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

23 **SECTION 950.** ORS 197.225 is amended to read:

24 197.225. The [*Department of Land Conservation and Development shall prepare and the Land*  
 25 *Conservation and Development Commission*] **Oregon Department of Natural Resources shall pre-**  
 26 **pare and the Oregon Natural Resources Commission** shall adopt goals and guidelines for use by  
 27 state agencies, local governments and special districts in preparing, adopting, amending and imple-  
 28 menting existing and future comprehensive plans.

29 **SECTION 951.** ORS 197.230 is amended to read:

30 197.230. (1) In preparing, adopting and amending goals and guidelines, the [*Department of Land*  
 31 *Conservation and Development and the Land Conservation and Development Commission*] **Oregon**  
 32 **Department of Natural Resources and the Oregon Natural Resources Commission** shall:

33 (a) Assess:

34 (A) What economic and property interests will be, or are likely to be, affected by the proposed  
 35 goal or guideline;

36 (B) The likely degree of economic impact on identified property and economic interests; and

37 (C) Whether alternative actions are available that would achieve the underlying lawful govern-  
 38 mental objective and would have a lesser economic impact.

39 (b) Consider the existing comprehensive plans of local governments and the plans and programs  
 40 affecting land use of state agencies and special districts in order to preserve functional and local  
 41 aspects of land conservation and development.

42 (c) Give consideration to the following areas and activities:

43 (A) Lands adjacent to freeway interchanges;

44 (B) Estuarine areas;

45 (C) Tide, marsh and wetland areas;

- 1 (D) Lakes and lakeshore areas;
- 2 (E) Wilderness, recreational and outstanding scenic areas;
- 3 (F) Beaches, dunes, coastal headlands and related areas;
- 4 (G) Wild and scenic rivers and related lands;
- 5 (H) Floodplains and areas of geologic hazard;
- 6 (I) Unique wildlife habitats; and
- 7 (J) Agricultural land.

8 (d) Make a finding of statewide need for the adoption of any new goal or the amendment of any  
9 existing goal.

10 (e) Design goals to allow a reasonable degree of flexibility in the application of goals by state  
11 agencies, cities, counties and special districts.

12 (2) Goals shall not be land management regulations for specified geographic areas established  
13 through designation of an area of critical state concern under ORS 197.405.

14 (3) The requirements of subsection (1)(a) of this section shall not be interpreted as requiring an  
15 assessment for each lot or parcel that could be affected by the proposed rule.

16 (4) The commission may exempt cities with a population less than 10,000, or those areas of a  
17 county inside an urban growth boundary that contain a population less than 10,000, from all or any  
18 part of land use planning goals, guidelines and administrative rules that relate to transportation  
19 planning.

20 **SECTION 952.** ORS 197.235 is amended to read:

21 197.235. (1) In preparing the goals and guidelines, the [*Department of Land Conservation and*  
22 *Development*] **Oregon Department of Natural Resources** shall:

23 (a) Hold at least 10 public hearings throughout the state, causing notice of the time, place and  
24 purpose of each hearing to be published in a newspaper of general circulation within the area where  
25 the hearing is to be conducted not later than 30 days prior to the date of the hearing. At least two  
26 public hearings must be held in each congressional district.

27 (b) Implement any other provision for public involvement developed by the State Citizen In-  
28 volvement Advisory Committee under ORS 197.160 (1) and approved by the [*Land Conservation and*  
29 *Development Commission*] **Oregon Natural Resources Commission**.

30 (2) Upon completion of the preparation of the proposed goals and guidelines, or amendments to  
31 those goals and guidelines, the department shall submit them to the commission, the Local Officials  
32 Advisory Committee, the State Citizen Involvement Advisory Committee and the appropriate legis-  
33 lative committee for review.

34 (3) The commission shall consider the comments of the Local Officials Advisory Committee, the  
35 State Citizen Involvement Advisory Committee and the legislative committee before the adoption  
36 and amendment of the goals and guidelines.

37 (4) Notwithstanding subsection (1)(a) of this section, when a legislative enactment or an initi-  
38 ative measure is inconsistent with the adopted goals and guidelines or directs the commission to  
39 make a specific change to the adopted goals and guidelines, the commission may amend the goals  
40 and guidelines after only one public hearing, at a location determined by the commission, if the  
41 proposed amendment:

42 (a) Is necessary to conform the goals and guidelines to the legislative enactment or the initiative  
43 measure; and

44 (b) Makes no change other than the conforming changes unless the change corrects an obvious  
45 scrivener's error.

1        **SECTION 953.** ORS 197.240 is amended to read:

2        197.240. Upon receipt of the proposed goals and guidelines prepared and submitted to it by the  
3        [*Department of Land Conservation and Development, the Land Conservation and Development Com-*  
4        *mission*] **Oregon Department of Natural Resources, the Oregon Natural Resources Commis-**  
5        **sion** shall:

6        (1) Hold at least one public hearing on the proposed goals and guidelines. The commission shall  
7        cause notice of the time, place and purpose of the hearings and the place where copies of the pro-  
8        posed goals and guidelines are available before the hearings with the cost thereof to be published  
9        in a newspaper of general circulation in the state not later than 30 days prior to the date of the  
10       hearing. The department shall supply a copy of its proposed goals and guidelines to the Governor,  
11       the appropriate legislative committee, affected state agencies and special districts and to each local  
12       government without charge. The department shall provide copies of such proposed goals and guide-  
13       lines to other public agencies or persons upon request and payment of the cost of preparing the  
14       copies of the materials requested.

15       (2) Consider the recommendations and comments received from the public hearings conducted  
16       under subsection (1) of this section, make any amendments to the proposed goals and guidelines that  
17       [*it*] **the commission** considers necessary and approve the proposed goals and guidelines as they may  
18       be amended by the commission.

19       **SECTION 954.** ORS 197.245 is amended to read:

20       197.245. The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
21       **Commission** may periodically amend the initial goals and guidelines adopted under ORS 197.240 and  
22       adopt new goals and guidelines. The adoption of amendments to or of new goals shall be done in the  
23       manner provided in ORS 197.235 and 197.240 and shall specify with particularity those goal pro-  
24       visions that are applicable to land use decisions, expedited land divisions and limited land use de-  
25       cisions before plan revision. The commission shall establish the effective date for application of a  
26       new or amended goal. Absent a compelling reason, the commission shall not require a comprehensive  
27       plan, new or amended land use regulation, land use decision, expedited land division or limited land  
28       use decision to be consistent with a new or amended goal until one year after the date of adoption.

29       **SECTION 955.** ORS 197.250 is amended to read:

30       197.250. Except as otherwise provided in ORS 197.245, all comprehensive plans and land use  
31       regulations adopted by a local government to carry out those comprehensive plans and all plans,  
32       programs, rules or regulations affecting land use adopted by a state agency or special district shall  
33       be in compliance with the goals within one year after the date those goals are approved by the  
34       [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission.**

35       **SECTION 956.** ORS 197.251 is amended to read:

36       197.251. (1) Upon the request of a local government, the [*Land Conservation and Development*  
37       *Commission*] **Oregon Natural Resources Commission** shall by order grant, deny or continue ac-  
38       knowledgment of compliance of comprehensive plan and land use regulations with the goals. A  
39       commission order granting, denying or continuing acknowledgment shall be entered within 90 days  
40       of the date of the request by the local government unless the commission finds that due to exten-  
41       uating circumstances a period of time greater than 90 days is required.

42       (2) In accordance with rules of the commission, the Director of the [*Department of Land Con-*  
43       *servation and Development*] **Oregon Department of Natural Resources** shall prepare a report for  
44       the commission stating whether the comprehensive plan and land use regulations for which ac-  
45       knowledgment is sought are in compliance with the goals. The rules of the commission shall:

1 (a) Provide a reasonable opportunity for persons to prepare and to submit to the director written  
2 comments and objections to the acknowledgment request; and

3 (b) Authorize the director to investigate and in the report to resolve issues raised in the com-  
4 ments and objections or by the director's own review of the comprehensive plan and land use reg-  
5 ulations.

6 (3) Upon completion of the report and before the commission meeting at which the director's  
7 report is to be considered, the director shall afford the local government and persons who submitted  
8 written comments or objections a reasonable opportunity to file written exceptions to the report.

9 (4) The commission's review of the acknowledgment request shall be confined to the record of  
10 proceedings before the local government, any comments, objections and exceptions filed under sub-  
11 sections (2) and (3) of this section and the report of the director. Upon its consideration of an ac-  
12 knowledgment request, the commission may entertain oral argument from the director and from  
13 persons who filed written comments, objections or exceptions. However, the commission shall not  
14 allow additional evidence or testimony that could have been presented to the local government or  
15 to the director but was not.

16 (5) A commission order granting, denying or continuing acknowledgment shall include a clear  
17 statement of findings which sets forth the basis for the approval, denial or continuance of acknowl-  
18 edgment. The findings shall:

19 (a) Identify the goals applicable to the comprehensive plan and land use regulations; and

20 (b) Include a clear statement of findings in support of the determinations of compliance and  
21 noncompliance.

22 (6) A commission order granting acknowledgment shall be limited to an identifiable geographic  
23 area described in the order if:

24 (a) Only the identified geographic area is the subject of the acknowledgment request; or

25 (b) Specific geographic areas do not comply with the applicable goals, and the goal requirements  
26 are not technical or minor in nature.

27 (7) The commission may issue a limited acknowledgment order when a previously issued ac-  
28 knowledgment order is reversed or remanded by the Court of Appeals or the Oregon Supreme Court.  
29 Such a limited acknowledgment order may deny or continue acknowledgment of that part of the  
30 comprehensive plan or land use regulations that the court found not in compliance or not consistent  
31 with the goals and grant acknowledgment of all other parts of the comprehensive plan and land use  
32 regulations.

33 (8) A limited acknowledgment order shall be considered an acknowledgment for all purposes and  
34 shall be a final order for purposes of judicial review with respect to the acknowledged geographic  
35 area. A limited order may be adopted in conjunction with a continuance or denial order.

36 (9) The director shall notify the Real Estate Agency, the local government and all persons who  
37 filed comments or objections with the director of any grant, denial or continuance of acknowledg-  
38 ment.

39 (10) The commission may grant a planning extension, which shall be a grant of additional time  
40 for a local government to comply with the goals in accordance with a compliance schedule. A com-  
41 pliance schedule shall be a listing of the tasks which the local government must complete in order  
42 to bring its comprehensive plan, land use regulations, land use decisions and limited land use deci-  
43 sions into initial compliance with the goals, including a generalized time schedule showing when the  
44 tasks are estimated to be completed and when a comprehensive plan or land use regulations which  
45 comply with the goals are estimated to be adopted. In developing a compliance schedule, the com-

1 mission shall consider the population, geographic area, resources and capabilities of the city or  
2 county.

3 (11) As used in this section:

4 (a) "Continuance" means a commission order that:

5 (A) Certifies that all or part of a comprehensive plan, land use regulations or both a compre-  
6 hensive plan and land use regulations do not comply with one or more goals;

7 (B) Specifies amendments or other action that must be completed within a specified time period  
8 for acknowledgment to occur; and

9 (C) Is a final order for purposes of judicial review of the comprehensive plan, land use regu-  
10 lations or both the comprehensive plan and land use regulations as to the parts found consistent or  
11 in compliance with the goals.

12 (b) "Denial" means a commission order that:

13 (A) Certifies that a comprehensive plan, land use regulations or both a comprehensive plan and  
14 land use regulations do not comply with one or more goals;

15 (B) Specifies amendments or other action that must be completed for acknowledgment to occur;  
16 and

17 (C) Is used when the amendments or other changes required in the comprehensive plan, land use  
18 regulations or both the comprehensive plan and land use regulations affect many goals and are  
19 likely to take a substantial period of time to complete.

20 **SECTION 957.** ORS 197.253 is amended to read:

21 197.253. Notwithstanding the provisions of ORS 197.251 (2)(a), a person may not submit written  
22 comments and objections to the acknowledgment request of any city or county that submits its plan  
23 or regulations to the [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
24 **Commission** for acknowledgment for the first time after August 9, 1983, unless the person partic-  
25 ipated either orally or in writing in the local government proceedings leading to the adoption of the  
26 plan and regulations.

27 **SECTION 958.** ORS 197.254 is amended to read:

28 197.254. (1) A state agency shall be barred after the date set for submission of programs by the  
29 [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission** as  
30 provided in ORS 197.180 (4), from contesting a request for acknowledgment submitted by a local  
31 government under ORS 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the com-  
32 mission finds that:

33 (a) The state agency has not complied with ORS 197.180; or

34 (b) The state agency has not coordinated its plans, programs or rules affecting land use with the  
35 comprehensive plan or land use regulations of the city or county pursuant to a coordination program  
36 approved by the commission under ORS 197.180.

37 (2) A state agency shall be barred from seeking a commission order under ORS 197.644 requiring  
38 amendment of a local government comprehensive plan or land use regulation in order to comply with  
39 the agency's plan or program unless the agency has first requested the amendment from the local  
40 government and has had its request denied.

41 (3) A special district shall be barred from contesting a request for initial compliance acknowl-  
42 edgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS  
43 197.620 (1) or (2), if the county or Metropolitan Service District assigned coordinative functions  
44 under ORS 195.025 (1) finds that:

45 (a) The special district has not entered into a cooperative agreement under ORS 195.020; or

1 (b) The special district has not coordinated its plans, programs or regulations affecting land use  
2 with the comprehensive plan or land use regulations of the local government pursuant to its coop-  
3 erative agreement made under ORS 195.020.

4 (4) A special district shall be barred from seeking a commission order under ORS 197.644 re-  
5 quiring amendment of a local government comprehensive plan or land use regulation in order to  
6 comply with the special district's plan or program unless the special district has first requested the  
7 amendment from the local government and has had its request denied.

8 **SECTION 959.** ORS 197.265 is amended to read:

9 197.265. (1) As used in this section, "action" includes but is not limited to a proceeding under  
10 ORS 197.830 to 197.845.

11 (2) If any action is brought against a local government challenging any comprehensive plan, land  
12 use regulation or other action of the local government which was adopted or taken for the primary  
13 purpose of complying with the goals approved under ORS 197.240 and which does in fact comply  
14 with the goals, then the [*Land Conservation and Development Commission*] **Oregon Natural Re-**  
15 **sources Commission** shall pay reasonable attorney fees and court costs incurred by such local  
16 government in the action or suit including any appeal, to the extent funds have been specifically  
17 appropriated to the commission therefor.

18 **SECTION 960.** ORS 197.270 is amended to read:

19 197.270. Within six months following completion of the periodic review process, the affected lo-  
20 cal government shall file three complete and accurate copies of its comprehensive plan and land use  
21 regulations with the [*Department of Land Conservation and Development*] **Oregon Department of**  
22 **Natural Resources**. This document can be either a new printing or an up-to-date compilation of the  
23 required materials.

24 **SECTION 961.** ORS 197.274 is amended to read:

25 197.274. (1) The Metro regional framework plan, its separate components and amendments to the  
26 regional framework plan or to its separate components are subject to review:

27 (a) For compliance with land use planning statutes, statewide land use planning goals and ad-  
28 ministrative rules corresponding to the statutes and goals, in the same manner as a comprehensive  
29 plan for purposes of:

30 (A) Acknowledgment of compliance with the goals under ORS 197.251; and

31 (B) Post-acknowledgment procedures under ORS 197.610 to 197.650; and

32 (b) As a land use decision under ORS 197.805 to 197.855 and 197.860.

33 (2) With the prior consent of the [*Land Conservation and Development Commission, Metro may*  
34 *submit to the Department of Land Conservation and Development*] **Oregon Natural Resources**  
35 **Commission, Metro may submit to the Oregon Department of Natural Resources** an amend-  
36 ment to the Metro regional framework plan or to a component of the regional framework plan in  
37 the manner provided for periodic review under ORS 197.628 to 197.650, if the amendment implements  
38 a program to meet the requirements of a land use planning statute, a statewide land use planning  
39 goal or an administrative rule corresponding to a statute or goal.

40 **SECTION 962.** ORS 197.277 is amended to read:

41 197.277. (1) The goals and rules established in ORS chapters 195, 196 and 197 do not apply to  
42 programs, rules, procedures, decisions, determinations or activities carried out under the Oregon  
43 Forest Practices Act administered under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

44 (2) No goal or rule shall be adopted, construed or administered in a manner to require or allow  
45 local governments to take any action prohibited by ORS 527.722.

1 (3) The *[Land Conservation and Development Commission]* **Oregon Natural Resources Com-**  
 2 **mission** shall amend goals and rules as necessary to implement ORS 197.180, 197.277, 197.825,  
 3 215.050, 477.090, 477.440, 477.455, 477.460, *[526.009, 526.016,]* 526.156, 527.620, 527.630, 527.660,  
 4 527.670, 527.683 to 527.687, 527.715, 527.990 and 527.992.

5 **SECTION 963.** ORS 197.283 is amended to read:

6 197.283. (1) The *[Land Conservation and Development Commission]* **Oregon Natural Resources**  
 7 **Commission** shall take actions *[it]* **the commission** considers necessary to *[assure]* **ensure** that  
 8 city and county comprehensive plans and land use regulations and state agency coordination pro-  
 9 grams are consistent with the goal set forth in ORS 468B.155.

10 (2) The commission shall direct the *[Department of Land Conservation and Development]* **Oregon**  
 11 **Department of Natural Resources** to take actions the department considers appropriate to  
 12 *[assure]* **ensure** that any information contained in a city or county comprehensive plan that pertains  
 13 to the ground water resource of Oregon shall be forwarded to the centralized repository established  
 14 under ORS 468B.167.

15 **SECTION 964.** ORS 197.296 is amended to read:

16 197.296. (1)(a) The provisions of this section apply to metropolitan service district regional  
 17 framework plans and local government comprehensive plans for lands within the urban growth  
 18 boundary of a city that is located outside of a metropolitan service district and has a population of  
 19 25,000 or more.

20 (b) The *[Land Conservation and Development Commission]* **Oregon Natural Resources Com-**  
 21 **mission** may establish a set of factors under which additional cities are subject to the provisions  
 22 of this section. In establishing the set of factors required under this paragraph, the commission shall  
 23 consider the size of the city, the rate of population growth of the city or the proximity of the city  
 24 to another city with a population of 25,000 or more or to a metropolitan service district.

25 (2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of  
 26 the comprehensive plan or regional plan that concerns the urban growth boundary and requires the  
 27 application of a statewide planning goal relating to buildable lands for residential use, a local gov-  
 28 ernment shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable  
 29 lands within the urban growth boundary established pursuant to statewide planning goals to ac-  
 30 commodate estimated housing needs for 20 years. The 20-year period shall commence on the date  
 31 initially scheduled for completion of the periodic or legislative review.

32 (3) In performing the duties under subsection (2) of this section, a local government shall:

33 (a) Inventory the supply of buildable lands within the urban growth boundary and determine the  
 34 housing capacity of the buildable lands; and

35 (b) Conduct an analysis of housing need by type and density range, in accordance with ORS  
 36 197.303 and statewide planning goals and rules relating to housing, to determine the number of units  
 37 and amount of land needed for each needed housing type for the next 20 years.

38 (4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable  
 39 lands" includes:

40 (A) Vacant lands planned or zoned for residential use;

41 (B) Partially vacant lands planned or zoned for residential use;

42 (C) Lands that may be used for a mix of residential and employment uses under the existing  
 43 planning or zoning; and

44 (D) Lands that may be used for residential infill or redevelopment.

45 (b) For the purpose of the inventory and determination of housing capacity described in sub-

1 section (3)(a) of this section, the local government must demonstrate consideration of:

2 (A) The extent that residential development is prohibited or restricted by local regulation and  
3 ordinance, state law and rule or federal statute and regulation;

4 (B) A written long term contract or easement for radio, telecommunications or electrical facili-  
5 ties, if the written contract or easement is provided to the local government; and

6 (C) The presence of a single family dwelling or other structure on a lot or parcel.

7 (c) Except for land that may be used for residential infill or redevelopment, a local government  
8 shall create a map or document that may be used to verify and identify specific lots or parcels that  
9 have been determined to be buildable lands.

10 (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of  
11 housing capacity and need pursuant to subsection (3) of this section must be based on data relating  
12 to land within the urban growth boundary that has been collected since the last periodic review or  
13 five years, whichever is greater. The data shall include:

14 (A) The number, density and average mix of housing types of urban residential development that  
15 have actually occurred;

16 (B) Trends in density and average mix of housing types of urban residential development;

17 (C) Demographic and population trends;

18 (D) Economic trends and cycles; and

19 (E) The number, density and average mix of housing types that have occurred on the buildable  
20 lands described in subsection (4)(a) of this section.

21 (b) A local government shall make the determination described in paragraph (a) of this sub-  
22 section using a shorter time period than the time period described in paragraph (a) of this subsection  
23 if the local government finds that the shorter time period will provide more accurate and reliable  
24 data related to housing capacity and need. The shorter time period may not be less than three years.

25 (c) A local government shall use data from a wider geographic area or use a time period for  
26 economic cycles and trends longer than the time period described in paragraph (a) of this subsection  
27 if the analysis of a wider geographic area or the use of a longer time period will provide more ac-  
28 curate, complete and reliable data relating to trends affecting housing need than an analysis per-  
29 formed pursuant to paragraph (a) of this subsection. The local government must clearly describe the  
30 geographic area, time frame and source of data used in a determination performed under this para-  
31 graph.

32 (6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than  
33 the housing capacity determined pursuant to subsection (3)(a) of this section, the local government  
34 shall take one or more of the following actions to accommodate the additional housing need:

35 (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate  
36 housing needs for the next 20 years. As part of this process, the local government shall consider the  
37 effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include  
38 sufficient land reasonably necessary to accommodate the siting of new public school facilities. The  
39 need and inclusion of lands for new public school facilities shall be a coordinated process between  
40 the affected public school districts and the local government that has the authority to approve the  
41 urban growth boundary;

42 (b) Amend its comprehensive plan, regional plan, functional plan or land use regulations to in-  
43 clude new measures that demonstrably increase the likelihood that residential development will oc-  
44 cur at densities sufficient to accommodate housing needs for the next 20 years without expansion  
45 of the urban growth boundary. A local government or metropolitan service district that takes this



1 action shall monitor and record the level of development activity and development density by hous-  
2 ing type following the date of the adoption of the new measures; or

3 (c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

4 (7) Using the analysis conducted under subsection (3)(b) of this section, the local government  
5 shall determine the overall average density and overall mix of housing types at which residential  
6 development of needed housing types must occur in order to meet housing needs over the next 20  
7 years. If that density is greater than the actual density of development determined under subsection  
8 (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined  
9 under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall  
10 adopt measures that demonstrably increase the likelihood that residential development will occur  
11 at the housing types and density and at the mix of housing types required to meet housing needs  
12 over the next 20 years.

13 (8)(a) A local government outside a metropolitan service district that takes any actions under  
14 subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use  
15 regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to  
16 197.314.

17 (b) The local government shall determine the density and mix of housing types anticipated as a  
18 result of actions taken under subsections (6) and (7) of this section and monitor and record the ac-  
19 tual density and mix of housing types achieved. The local government shall compare actual and  
20 anticipated density and mix. The local government shall submit its comparison to the commission  
21 at the next periodic review or at the next legislative review of its urban growth boundary, which-  
22 ever comes first.

23 (9) In establishing that actions and measures adopted under subsections (6) or (7) of this section  
24 demonstrably increase the likelihood of higher density residential development, the local government  
25 shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the  
26 housing types identified under subsection (3) of this section and is zoned at density ranges that are  
27 likely to be achieved by the housing market using the analysis in subsection (3) of this section.  
28 Actions or measures, or both, may include but are not limited to:

29 (a) Increases in the permitted density on existing residential land;

30 (b) Financial incentives for higher density housing;

31 (c) Provisions permitting additional density beyond that generally allowed in the zoning district  
32 in exchange for amenities and features provided by the developer;

33 (d) Removal or easing of approval standards or procedures;

34 (e) Minimum density ranges;

35 (f) Redevelopment and infill strategies;

36 (g) Authorization of housing types not previously allowed by the plan or regulations;

37 (h) Adoption of an average residential density standard; and

38 (i) Rezoning or redesignation of nonresidential land.

39 **SECTION 965.** ORS 197.299 is amended to read:

40 197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the  
41 inventory, determination and analysis required under ORS 197.296 (3) not later than five years after  
42 completion of the previous inventory, determination and analysis.

43 (2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296  
44 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3)  
45 within one year of completing the analysis.

1 (b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) neces-  
 2 sary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two  
 3 years of completing the analysis.

4 (c) The metropolitan service district shall take action under ORS 197.296 (6)(b), within one year  
 5 after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land  
 6 within the urban growth boundary to accommodate the estimated housing needs for 20 years from  
 7 the time the actions are completed. The metropolitan service district shall consider and adopt new  
 8 measures that the governing body deems appropriate under ORS 197.296 (6)(b).

9 (3) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
 10 **mission** may grant an extension to the time limits of subsection (2) of this section if the Director  
 11 of the [*Department of Land Conservation and Development*] **Oregon Department of Natural Re-**  
 12 **sources** determines that the metropolitan service district has provided good cause for failing to  
 13 meet the time limits.

14 (4)(a) The metropolitan service district shall establish a process to expand the urban growth  
 15 boundary to accommodate a need for land for a public school that cannot reasonably be accommo-  
 16 dated within the existing urban growth boundary. The metropolitan service district shall design the  
 17 process to:

18 (A) Accommodate a need that must be accommodated between periodic analyses of urban growth  
 19 boundary capacity required by subsection (1) of this section; and

20 (B) Provide for a final decision on a proposal to expand the urban growth boundary within four  
 21 months after submission of a complete application by a large school district as defined in ORS  
 22 195.110.

23 (b) At the request of a large school district, the metropolitan service district shall assist the  
 24 large school district to identify school sites required by the school facility planning process de-  
 25 scribed in ORS 195.110. A need for a public school is a specific type of identified land need under  
 26 ORS 197.298 (3).

27 **SECTION 966.** ORS 197.301 is amended to read:

28 197.301. (1) A metropolitan service district organized under ORS chapter 268 shall compile and  
 29 report to the [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
 30 **Resources** on performance measures as described in this section at least once every two years. The  
 31 information shall be reported in a manner prescribed by the department.

32 (2) Performance measures subject to subsection (1) of this section shall be adopted by a metro-  
 33 politan service district and shall include but are not limited to measures that analyze the following:

34 (a) The rate of conversion of vacant land to improved land;

35 (b) The density and price ranges of residential development, including both single family and  
 36 multifamily residential units;

37 (c) The level of job creation within individual cities and the urban areas of a county inside the  
 38 metropolitan service district;

39 (d) The number of residential units added to small sites assumed to be developed in the metro-  
 40 politan service district's inventory of available lands but which can be further developed, and the  
 41 conversion of existing spaces into more compact units with or without the demolition of existing  
 42 buildings;

43 (e) The amount of environmentally sensitive land that is protected and the amount of environ-  
 44 mentally sensitive land that is developed;

45 (f) The sales price of vacant land;

- 1 (g) Residential vacancy rates;
- 2 (h) Public access to open spaces; and
- 3 (i) Transportation measures including mobility, accessibility and air quality indicators.

4 **SECTION 967.** ORS 197.302 is amended to read:

5 197.302. (1) After gathering and compiling information on the performance measures as described  
6 in ORS 197.301 but prior to submitting the information to the [*Department of Land Conservation and*  
7 *Development,*] **Oregon Department of Natural Resources**, a metropolitan service district shall  
8 determine if actions taken under ORS 197.296 (6) have established the buildable land supply and  
9 housing densities necessary to accommodate estimated housing needs determined under ORS 197.296  
10 (3). If the metropolitan service district determines that the actions undertaken will not accommodate  
11 estimated need, the district shall develop a corrective action plan, including a schedule for imple-  
12 mentation. The district shall submit the plan to the department along with the report on perform-  
13 ance measures required under ORS 197.301. Corrective action under this section may include  
14 amendment of the urban growth boundary, comprehensive plan, regional framework plan, functional  
15 plan or land use regulations as described in ORS 197.296.

16 (2) Within two years of submitting a corrective action plan to the department, the metropolitan  
17 service district shall demonstrate by reference to the performance measures described in ORS  
18 197.301 that implementation of the plan has resulted in the buildable land supply and housing den-  
19 sity within the urban growth boundary necessary to accommodate the estimated housing needs for  
20 each housing type as determined under ORS 197.296 (3).

21 (3) The failure of the metropolitan service district to demonstrate the buildable land supply and  
22 housing density necessary to accommodate housing needs as required under this section and ORS  
23 197.296 may be the basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

24 **SECTION 968.** ORS 197.319 is amended to read:

25 197.319. (1) Before a person may request adoption of an enforcement order under ORS 197.320,  
26 the person shall:

- 27 (a) Present the reasons, in writing, for such an order to the affected local government; and
- 28 (b) Request:

29 (A) Revisions to the local comprehensive plan, land use regulations, special district cooperative  
30 or urban service agreement or decision-making process which is the basis for the order; or

31 (B) That an action be taken regarding the local comprehensive plan, land use regulations, spe-  
32 cial district agreement or decision-making process that is the basis for the order.

33 (2)(a) The local government or special district shall issue a written response to the request  
34 within 60 days of the date the request is mailed to the local government or special district.

35 (b) The requestor and the local government or special district may enter into mediation to re-  
36 solve issues in the request. The [*Department of Land Conservation and Development*] **Oregon De-**  
37 **partment of Natural Resources** shall provide mediation services when jointly requested by the  
38 local government or special district and the requestor.

39 (c) If the local government or special district does not act in a manner which the requestor  
40 believes is adequate to address the issues raised in the request within the time period provided in  
41 paragraph (a) of this subsection, a petition may be presented to the [*Land Conservation and Devel-*  
42 *opment Commission*] **Oregon Natural Resources Commission** under ORS 197.324.

43 (3) A metropolitan service district may request an enforcement order under ORS 197.320 (12)  
44 without first complying with subsections (1) and (2) of this section.

45 **SECTION 969.** ORS 197.320 is amended to read:

1 197.320. The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
 2 **Commission** shall issue an order requiring a local government, state agency or special district to  
 3 take action necessary to bring its comprehensive plan, land use regulation, limited land use deci-  
 4 sions or other land use decisions into compliance with the goals, acknowledged comprehensive plan  
 5 provisions or land use regulations if the commission has good cause to believe:

6 (1) A comprehensive plan or land use regulation adopted by a local government not on a com-  
 7 pliance schedule is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for  
 8 such compliance;

9 (2) A plan, program, rule or regulation affecting land use adopted by a state agency or special  
 10 district is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such  
 11 compliance;

12 (3) A local government is not making satisfactory progress toward performance of its compliance  
 13 schedule;

14 (4) A state agency is not making satisfactory progress in carrying out its coordination agree-  
 15 ment or the requirements of ORS 197.180;

16 (5) A local government has no comprehensive plan or land use regulation and is not on a com-  
 17 pliance schedule directed to developing the plan or regulation;

18 (6) A local government has engaged in a pattern or practice of decision making that violates  
 19 an acknowledged comprehensive plan or land use regulation. In making its determination under this  
 20 subsection, the commission shall determine whether there is evidence in the record to support the  
 21 decisions made. The commission shall not judge the issue solely upon adequacy of the findings in  
 22 support of the decisions;

23 (7) A local government has failed to comply with a commission order entered under ORS 197.644;

24 (8) A special district has engaged in a pattern or practice of decision-making that violates an  
 25 acknowledged comprehensive plan or cooperative agreement adopted pursuant to ORS 197.020;

26 (9) A special district is not making satisfactory progress toward performance of its obligations  
 27 under ORS chapters 195 and 197;

28 (10) A local government is applying approval standards, special conditions on approval of spe-  
 29 cific development proposals or procedures for approval that do not comply with ORS 197.307 (6); or

30 (11) A local government is not making satisfactory progress toward meeting its obligations un-  
 31 der ORS 195.065.

32 (12) A local government within the jurisdiction of a metropolitan service district has failed to  
 33 make changes to the comprehensive plan or land use regulations to comply with the regional  
 34 framework plan of the district or has engaged in a pattern or practice of decision-making that vio-  
 35 lates a requirement of the regional framework plan.

36 **SECTION 970.** ORS 197.324 is amended to read:

37 197.324. (1) On its own motion, the [*Land Conservation and Development Commission*] **Oregon**  
 38 **Natural Resources Commission** may initiate a proceeding to carry out the provisions of ORS  
 39 197.320. If the commission proceeds on its own motion, it shall proceed as set forth in ORS 197.328.

40 (2)(a) After a person meets the requirements of ORS 197.319, the person may file a petition to  
 41 request that the commission consider the matter. Filing occurs upon mailing the petition to the  
 42 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**.

43 (b) The commission shall determine if there is good cause to proceed on the petition.

44 (c) If the commission determines that there is not good cause to proceed on the petition, the  
 45 commission shall issue a final order dismissing the petition, stating the reasons therefor.

1 (d) If the commission determines that there is good cause to proceed on the petition, the com-  
2 mission shall proceed as set forth in ORS 197.328.

3 (3) Following initiation of a proceeding under subsection (1) of this section or a determination  
4 by the commission that there is good cause to proceed on a petition under subsection (2) of this  
5 section, the affected local government shall include the following disclosure in any subsequent no-  
6 tice of a land use decision that could be affected by the enforcement order:

7 \_\_\_\_\_  
8  
9  
10 NOTICE: THE [OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION]  
11 OREGON NATURAL RESOURCES COMMISSION HAS FOUND GOOD CAUSE FOR AN  
12 ENFORCEMENT PROCEEDING AGAINST \_\_\_\_\_ (Name of local government). AN  
13 ENFORCEMENT ORDER MAY BE EVENTUALLY ADOPTED THAT COULD LIMIT, PROHIBIT  
14 OR REQUIRE APPLICATION OF SPECIFIED CRITERIA TO ANY ACTION AUTHORIZED BY  
15 THIS DECISION BUT NOT APPLIED FOR UNTIL AFTER ADOPTION OF THE ENFORCEMENT  
16 ORDER. FUTURE APPLICATIONS FOR BUILDING PERMITS OR ANY TIME EXTENSIONS MAY  
17 BE AFFECTED.

18 \_\_\_\_\_  
19  
20 **SECTION 971.** ORS 197.328 is amended to read:

21 197.328. If a proceeding is initiated under ORS 197.324, the following procedures apply:

22 (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
23 **mission** shall hold a hearing to consider the petition or shall appoint a hearings officer to consider  
24 the petition under the provisions of ORS chapter 183 applicable to contested cases, except as oth-  
25 erwise provided in this section.

26 (2) The commission or hearings officer shall schedule a hearing within 45 days of receipt of the  
27 petition.

28 (3) If the commission appoints a hearings officer, the hearings officer shall prepare a proposed  
29 order, including recommended findings and conclusions of law. The proposed order shall be served  
30 on the [*Department of Land Conservation and Development*] **Oregon Department of Natural Re-**  
31 **sources** and all parties to the hearing within 30 days of the date the record closed.

32 (4) If the commission appoints a hearings officer, the commission review of the proposed order  
33 shall be limited to the record of proceedings before the hearings officer. In its review of a proposed  
34 order, the commission shall not receive new evidence but shall hear arguments as to the proposed  
35 order and any exceptions. Any exception to the proposed order shall be filed with the commission  
36 no later than 15 days following issuance of the proposed order.

37 (5) The commission shall adopt a final order relative to a petition no later than 120 days from  
38 the date the petition was filed.

39 **SECTION 972.** ORS 197.335 is amended to read:

40 197.335. (1) An order issued under ORS 197.328 and the copy of the order mailed to the local  
41 government, state agency or special district shall set forth:

42 (a) The nature of the noncompliance, including, but not limited to, the contents of the compre-  
43 hensive plan or land use regulation, if any, of a local government that do not comply with the goals  
44 or the contents of a plan, program or regulation affecting land use adopted by a state agency or  
45 special district that do not comply with the goals. In the case of a pattern or practice of decision-

1 making which violates the goals, comprehensive plan or land use regulations, the order shall specify  
2 the decision-making which constitutes the pattern or practice, including specific provisions the  
3 [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission** be-  
4 lieves are being misapplied;

5 (b) The specific lands, if any, within a local government for which the existing plan or land use  
6 regulation, if any, does not comply with the goals; and

7 (c) The corrective action decided upon by the commission, including the specific requirements,  
8 with which the local government, state agency or special district must comply. In the case of a  
9 pattern or practice of decision-making that violates an acknowledged comprehensive plan or land  
10 use regulation, the commission may require revisions to the comprehensive plan, land use regu-  
11 lations or local procedures which the commission believes are necessary to correct the pattern or  
12 practice. Notwithstanding the provisions of this section, except as provided in subsection (3)(c) of  
13 this section, an enforcement order does not affect:

14 (A) Land use applications filed with a local government prior to the date of adoption of the  
15 enforcement order unless specifically identified by the order;

16 (B) Land use approvals issued by a local government prior to the date of adoption of the  
17 enforcement order; or

18 (C) The time limit for exercising land use approvals issued by a local government prior to the  
19 date of adoption of the enforcement order.

20 (2) Judicial review of a final order of the commission shall be governed by the provisions of ORS  
21 chapter 183 applicable to contested cases except as otherwise stated in this section. The  
22 commission's final order shall include a clear statement of findings which set forth the basis for the  
23 order. Where a petition to review the order has been filed in the Court of Appeals, the commission  
24 shall transmit to the court the entire administrative record of the proceeding under review.  
25 Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate  
26 court, before it may stay an order of the commission, shall give due consideration to the public in-  
27 terest in the continued enforcement of the commission's order and may consider testimony or affi-  
28 davits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order.  
29 The court shall reverse, modify or remand the order only if it finds:

30 (a) The order to be unlawful in substance or procedure, but error in procedure shall not be  
31 cause for reversal, modification or remand unless the court shall find that substantial rights of any  
32 party were prejudiced thereby;

33 (b) The order to be unconstitutional;

34 (c) The order is invalid because it exceeds the statutory authority of the agency; or

35 (d) The order is not supported by substantial evidence in the whole record.

36 (3)(a) If the commission finds that in the interim period during which a local government, state  
37 agency or special district would be bringing itself into compliance with the commission's order un-  
38 der ORS 197.320 or subsection (2) of this section it would be contrary to the public interest in the  
39 conservation or sound development of land to allow the continuation of some or all categories of  
40 land use decisions or limited land use decisions, it shall, as part of its order, limit, prohibit or re-  
41 quire the approval by the local government of applications for subdivisions, partitions, building  
42 permits, limited land use decisions or land use decisions until the plan, land use regulation or sub-  
43 sequent land use decisions and limited land use decisions are brought into compliance. The com-  
44 mission may issue an order that requires review of local decisions by a hearings officer or the  
45 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**

1 before the local decision becomes final.

2 (b) Any requirement under this subsection may be imposed only if the commission finds that the  
3 activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and  
4 that the requirement is necessary to correct the violation.

5 (c) The limitations on enforcement orders under subsection (1)(c)(B) of this section shall not be  
6 interpreted to affect the commission's authority to limit, prohibit or require application of specified  
7 criteria to subsequent land use decisions involving land use approvals issued by a local government  
8 prior to the date of adoption of the enforcement order.

9 (4) As part of its order under ORS 197.320 or subsection (2) of this section, the commission may  
10 withhold grant funds from the local government to which the order is directed. As part of an order  
11 issued under this section, the commission may notify the officer responsible for disbursing state-  
12 shared revenues to withhold that portion of state-shared revenues to which the local government is  
13 entitled under ORS 221.770, 323.455, 366.762 and 366.800 and ORS chapter 471 which represents the  
14 amount of state planning grant moneys previously provided the local government by the commission.  
15 The officer responsible for disbursing state-shared revenues shall withhold state-shared revenues as  
16 outlined in this section and shall release funds to the local government or department when notified  
17 to so do by the commission or its designee. The commission may retain a portion of the withheld  
18 revenues to cover costs of providing services incurred under the order, including use of a hearings  
19 officer or staff resources to monitor land use decisions and limited land use decisions or conduct  
20 hearings. The remainder of the funds withheld under this provision shall be released to the local  
21 government upon completion of requirements of the commission order.

22 (5)(a) As part of its order under this section, the commission may notify the officer responsible  
23 for disbursing funds from any grant or loan made by a state agency to withhold such funds from a  
24 special district to which the order is directed. The officer responsible for disbursing funds shall  
25 withhold funds as outlined in this section and shall release funds to the special district or depart-  
26 ment when notified to do so by the commission.

27 (b) The commission may retain a portion of the funds withheld to cover costs of providing ser-  
28 vices incurred under the order, including use of a hearings officer or staff resources to monitor land  
29 use decisions and limited land use decisions or conduct hearings. The remainder of the funds with-  
30 held under this provision shall be released to the special district upon completion of the require-  
31 ments of the commission order.

32 (6) The commission may institute actions or proceedings for legal or equitable remedies in the  
33 Circuit Court for Marion County or in the circuit court for the county to which the commission's  
34 order is directed or within which all or a portion of the applicable city is located to enforce com-  
35 pliance with the provisions of any order issued under this section or to restrain violations thereof.  
36 Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing  
37 and order on an alleged violation.

38 **SECTION 972a.** ORS 197.340 is amended to read:

39 197.340. (1) [*The Land Conservation and Development Commission, the Department of Land Con-*  
40 *servation and Development*] **The Oregon Natural Resources Commission, the Oregon Depart-**  
41 **ment of Natural Resources**, other state agencies and local governments shall give the goals equal  
42 weight in any matter in which the goals are required to be applied.

43 (2) The commission and the department shall consider and recognize regional diversity and dif-  
44 ferences in regional needs when making or reviewing a land use decision or otherwise applying the  
45 goals.

1       **SECTION 972b.** ORS 197.350 is amended to read:

2       197.350. (1) A party appealing a land use decision or limited land use decision made by a local  
3 government to the [*board or Land Conservation and Development Commission*] **Oregon Department**  
4 **of Natural Resources or the Oregon Natural Resources Commission** has the burden of persua-  
5 sion.

6       (2) A local government that claims an exception to a goal adopted by the commission has the  
7 burden of persuasion.

8       (3) There shall be no burden of proof in administrative proceedings under ORS chapters 195, 196  
9 and 197.

10       **SECTION 973.** ORS 197.390 is amended to read:

11       197.390. (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
12 **Commission** shall study and compile a list of all activities affecting land use planning which occur  
13 on federal land and which the state may regulate or control in any degree.

14       (2) No activity listed by the commission pursuant to subsection (1) of this section which the  
15 state may regulate or control which occurs upon federal land shall be undertaken without a permit  
16 issued under ORS 197.395.

17       (3) Any person or agency acting in violation of subsection (2) of this section may be enjoined  
18 in civil proceedings brought in the name of the State of Oregon.

19       **SECTION 974.** ORS 197.395 is amended to read:

20       197.395. (1) Any person or public agency desiring to initiate an activity which the state may  
21 regulate or control and which occurs upon federal land shall apply to the local government in which  
22 the activity will take place for a permit. The application shall contain an explanation of the activity  
23 to be initiated, the plans for the activity and any other information required by the local government  
24 as prescribed by rule of the [*Land Conservation and Development Commission*] **Oregon Natural**  
25 **Resources Commission**.

26       (2) If the local government finds after review of the application that the proposed activity com-  
27 plies with goals and the comprehensive plans of the local government affected by the activity, it  
28 shall approve the application and issue a permit for the activity to the person or public agency ap-  
29 plying for the permit. If the governing body does not approve or disapprove the permit within 60  
30 days of receipt of the application, the application shall be considered approved.

31       (3) The local government may prescribe and include in the permit any conditions or restrictions  
32 that it considers necessary to assure that the activity complies with the goals and the comprehen-  
33 sive plans of the local governments affected by the activity.

34       (4) Actions pursuant to this section are subject to review under ORS 197.830 to 197.845.

35       **SECTION 975.** ORS 197.405 is amended to read:

36       197.405. (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
37 **Commission** may recommend to appropriate legislative committees the designation of areas of  
38 critical state concern. Each such recommendation:

39       (a) Shall specify the reasons for the implementation of additional state regulations for the de-  
40 scribed geographic area;

41       (b) Shall include a brief summary of the existing programs and regulations of state and local  
42 agencies applicable to the area;

43       (c) May include a management plan for the area indicating the programs and regulations of state  
44 and local agencies, if any, unaffected by the proposed state regulations for the area;

45       (d) May establish permissible use limitations for all or part of the area;



1 (e) Shall locate a boundary describing the area; and

2 (f) May designate permissible use standards for all or part of the lands within the area or es-  
3 tablish standards for issuance or denial of designated state or local permits regulating specified uses  
4 of lands in the area, or both.

5 (2) The commission may act under subsection (1) of this section on its own motion or upon the  
6 recommendation of a state agency or a local government. If the commission receives a recommen-  
7 dation from a state agency or a local government and finds the proposed area to be unsuitable for  
8 designation, it shall notify the state agency or the local government of its decision and its reasons  
9 for that decision.

10 (3) Immediately following its decision to favorably recommend to the Legislative Assembly the  
11 designation of an area of critical state concern, the commission shall submit the proposed desig-  
12 nation accompanied by the supporting materials described in subsection (1) of this section to the  
13 appropriate legislative committees for review.

14 (4) No proposed designation under subsection (1) of this section shall take effect unless it has  
15 first been submitted to appropriate legislative committees under subsection (3) of this section and  
16 has been approved by the Legislative Assembly. The Legislative Assembly may adopt, amend or re-  
17 ject the proposed designation.

18 **SECTION 976.** ORS 197.416 is amended to read:

19 197.416. (1) As used in this section, "Metolius Area of Critical State Concern" means the areas  
20 identified as Area 1 and Area 2 in the management plan recommended by the [*Land Conservation*  
21 *and Development Commission*] **Oregon Natural Resources Commission**.

22 (2) Pursuant to ORS 197.405 (4), the Legislative Assembly hereby approves the recommendation  
23 of the commission, submitted to the Legislative Assembly on April 2, 2009, that the Metolius Area  
24 of Critical State Concern be designated an area of critical state concern.

25 (3) The Legislative Assembly approves the management plan included in the commission's rec-  
26 ommendation pursuant to ORS 197.405 (1)(c) and directs the commission to adopt the management  
27 plan, by rule, without change except that:

28 (a) The management plan must require:

29 (A) The commission to give notice of proposed amendments to the management plan to the  
30 governing bodies of Jefferson County and of the Confederated Tribes of the Warm Springs Indian  
31 Reservation; and

32 (B) If either governing body files a written objection to the proposed amendments, the commis-  
33 sion to adopt the proposed amendments only if the commission finds by clear and convincing evi-  
34 dence that the proposed amendments meet the requirements of subsection (5) of this section.

35 (b) The management plan must limit development of a small-scale recreation community within  
36 township 13 south, range 10 east, sections 20, 21, 28 and 29 in Jefferson County so that all units  
37 must be sited within up to 25 clusters that may be connected only by a road system. The commission  
38 may not enforce, and shall modify, a contrary provision in the management plan.

39 (c) Descriptions in the management plan of annual average water use must refer to annual av-  
40 erage consumptive water use. The commission may not enforce, and shall modify, a contrary pro-  
41 vision in the management plan.

42 (4) Except as otherwise provided in this section, the commission may amend the management  
43 plan only as provided in the management plan and only pursuant to applicable rulemaking proce-  
44 dures.

45 (5) In addition to limitations on development that are contained in the management plan, new

1 development allowed by amendment of the management plan, except development allowed by the  
2 administrative amendments required by subsection (3) of this section, may not result in:

- 3 (a) Negative impact on the Metolius River, its springs or its tributaries;
  - 4 (b) Negative impact on fish resources in the Metolius Area of Critical State Concern; or
  - 5 (c) Negative impact on the wildlife resources in the Metolius Area of Critical State Concern.
- 6 (6) A county may not approve siting a destination resort in the Metolius Area of Critical State  
7 Concern.

8 **SECTION 977.** ORS 197.430 is amended to read:

9 197.430. If the county governing body or the [*Land Conservation and Development Commission*]  
10 **Oregon Natural Resources Commission** determines the existence of an alleged violation under  
11 ORS 197.410, it may:

12 (1) Investigate, hold hearings, enter orders and take action that it deems appropriate under ORS  
13 chapters 195, 196 and 197, as soon as possible.

14 (2) For the purpose of investigating conditions relating to the violation, through its members or  
15 its duly authorized representatives, enter at reasonable times upon any private or public property.

16 (3) Conduct public hearings.

17 (4) Publish its findings and recommendations as they are formulated relative to the violation.

18 (5) Give notice of any order relating to a particular violation of the state regulations for the  
19 area involved or a particular violation of ORS chapters 195, 196 and 197 by mailing notice to the  
20 person or public body conducting or proposing to conduct the project affected in the manner pro-  
21 vided by ORS chapter 183.

22 **SECTION 978.** ORS 197.445 is amended to read:

23 197.445. A destination resort is a self-contained development that provides for visitor-oriented  
24 accommodations and developed recreational facilities in a setting with high natural amenities. To  
25 qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a  
26 proposed development must meet the following standards:

27 (1) The resort must be located on a site of 160 acres or more except within two miles of the  
28 ocean shoreline where the site shall be 40 acres or more.

29 (2) At least 50 percent of the site must be dedicated to permanent open space, excluding streets  
30 and parking areas.

31 (3) At least \$7 million must be spent on improvements for on-site developed recreational facili-  
32 ties and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and  
33 roads. Not less than one-third of this amount must be spent on developed recreational facilities.

34 (4) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100  
35 persons and 150 separate rentable units for overnight lodging shall be provided. However, the  
36 rentable overnight lodging units may be phased in as follows:

37 (a) On lands not described in paragraph (b) of this subsection:

38 (A) A total of 150 units of overnight lodging must be provided.

39 (B) At least 75 units of overnight lodging, not including any individually owned homes, lots or  
40 units, must be constructed or guaranteed through surety bonding or equivalent financial assurance  
41 prior to the closure of sale of individual lots or units.

42 (C) The remaining overnight lodging units must be provided as individually owned lots or units  
43 subject to deed restrictions that limit their use to use as overnight lodging units. The deed re-  
44 strictions may be rescinded when the resort has constructed 150 units of permanent overnight  
45 lodging as required by this subsection.

1 (D) The number of units approved for residential sale may not be more than two units for each  
2 unit of permanent overnight lodging provided under this paragraph.

3 (E) The development approval must provide for the construction of other required overnight  
4 lodging units within five years of the initial lot sales.

5 (b) On lands in eastern Oregon, as defined in ORS 321.805:

6 (A) A total of 150 units of overnight lodging must be provided.

7 (B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of  
8 individual lots or units.

9 (C) At least 50 of the remaining 100 required overnight lodging units must be constructed or  
10 guaranteed through surety bonding or equivalent financial assurance within five years of the initial  
11 lot sales.

12 (D) The remaining required overnight lodging units must be constructed or guaranteed through  
13 surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

14 (E) The number of units approved for residential sale may not be more than 2-1/2 units for each  
15 unit of permanent overnight lodging provided under this paragraph.

16 (F) If the developer of a resort guarantees the overnight lodging units required under subpara-  
17 graphs (C) and (D) of this paragraph through surety bonding or other equivalent financial assurance,  
18 the overnight lodging units must be constructed within four years of the date of execution of the  
19 surety bond or other equivalent financial assurance.

20 (5) Commercial uses allowed are limited to types and levels of use necessary to meet the needs  
21 of visitors to the development. Industrial uses of any kind are not permitted.

22 (6) In lieu of the standards in subsections (1), (3) and (4) of this section, the standards set forth  
23 in subsection (7) of this section apply to a destination resort:

24 (a) On land that is not defined as agricultural or forest land under any statewide planning goal;

25 (b) On land where there has been an exception to any statewide planning goal on agricultural  
26 lands, forestlands, public facilities and services and urbanization; or

27 (c) On such secondary lands as the [*Land Conservation and Development Commission*] **Oregon**  
28 **Natural Resources Commission** deems appropriate.

29 (7) The following standards apply to the provisions of subsection (6) of this section:

30 (a) The resort must be located on a site of 20 acres or more.

31 (b) At least \$2 million must be spent on improvements for on-site developed recreational facili-  
32 ties and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and  
33 roads. Not less than one-third of this amount must be spent on developed recreational facilities.

34 (c) At least 25 units, but not more than 75 units, of overnight lodging must be provided.

35 (d) Restaurant and meeting room with at least one seat for each unit of overnight lodging must  
36 be provided.

37 (e) Residential uses must be limited to those necessary for the staff and management of the re-  
38 sort.

39 (f) The governing body of the county or its designee has reviewed the resort proposed under this  
40 subsection and has determined that the primary purpose of the resort is to provide lodging and other  
41 services oriented to a recreational resource which can only reasonably be enjoyed in a rural area.  
42 Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing  
43 stream.

44 (g) The resort must be constructed and located so that it is not designed to attract highway  
45 traffic. Resorts may not use any manner of outdoor advertising signing except:

1 (A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

2 (B) On-site identification and directional signs.

3 (8) Spending required under subsections (3) and (7) of this section is stated in 1993 dollars. The  
4 spending required shall be adjusted to the year in which calculations are made in accordance with  
5 the United States Consumer Price Index.

6 (9) When making a land use decision authorizing construction of a destination resort in eastern  
7 Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require  
8 the resort developer to provide an annual accounting to document compliance with the overnight  
9 lodging standards of this section. The annual accounting requirement commences one year after the  
10 initial lot or unit sales. The annual accounting must contain:

11 (a) Documentation showing that the resort contains a minimum of 150 permanent units of over-  
12 night lodging or, during the phase-in period, documentation showing the resort is not yet required  
13 to have constructed 150 units of overnight lodging.

14 (b) Documentation showing that the resort meets the lodging ratio described in subsection (4)  
15 of this section.

16 (c) For a resort counting individually owned units as qualified overnight lodging units, the  
17 number of weeks that each overnight lodging unit is available for rental to the general public as  
18 described in ORS 197.435.

19 **SECTION 979.** ORS 197.520 is amended to read:

20 197.520. (1) No city, county or special district may adopt a moratorium on construction or land  
21 development unless it first:

22 (a) Provides written notice to the [*Department of Land Conservation and Development*] **Oregon**  
23 **Department of Natural Resources** at least 45 days prior to the final public hearing to be held to  
24 consider the adoption of the moratorium;

25 (b) Makes written findings justifying the need for the moratorium in the manner provided for in  
26 this section; and

27 (c) Holds a public hearing on the adoption of the moratorium and the findings which support the  
28 moratorium.

29 (2) For urban or urbanizable land, a moratorium may be justified by demonstration of a need to  
30 prevent a shortage of public facilities which would otherwise occur during the effective period of  
31 the moratorium. Such a demonstration shall be based upon reasonably available information, and  
32 shall include, but need not be limited to, findings:

33 (a) Showing the extent of need beyond the estimated capacity of existing public facilities ex-  
34 pected to result from new land development, including identification of any public facilities currently  
35 operating beyond capacity, and the portion of such capacity already committed to development;

36 (b) That the moratorium is reasonably limited to those areas of the city, county or special dis-  
37 trict where a shortage of key public facilities would otherwise occur; and

38 (c) That the housing and economic development needs of the area affected have been accommo-  
39 dated as much as possible in any program for allocating any remaining public facility capacity.

40 (3) A moratorium not based on a shortage of public facilities under subsection (2) of this section  
41 may be justified only by a demonstration of compelling need. Such a demonstration shall be based  
42 upon reasonably available information and shall include, but need not be limited to, findings:

43 (a) For urban or urbanizable land:

44 (A) That application of existing development ordinances or regulations and other applicable law  
45 is inadequate to prevent irrevocable public harm from development in affected geographical areas;

1 (B) That the moratorium is sufficiently limited to ensure that a needed supply of affected hous-  
2 ing types and the supply of commercial and industrial facilities within or in proximity to the city,  
3 county or special district are not unreasonably restricted by the adoption of the moratorium;

4 (C) Stating the reasons alternative methods of achieving the objectives of the moratorium are  
5 unsatisfactory;

6 (D) That the city, county or special district has determined that the public harm which would  
7 be caused by failure to impose a moratorium outweighs the adverse effects on other affected local  
8 governments, including shifts in demand for housing or economic development, public facilities and  
9 services and buildable lands, and the overall impact of the moratorium on population distribution;  
10 and

11 (E) That the city, county or special district proposing the moratorium has determined that suf-  
12 ficient resources are available to complete the development of needed interim or permanent changes  
13 in plans, regulations or procedures within the period of effectiveness of the moratorium.

14 (b) For rural land:

15 (A) That application of existing development ordinances or regulations and other applicable law  
16 is inadequate to prevent irrevocable public harm from development in affected geographical areas;

17 (B) Stating the reasons alternative methods of achieving the objectives of the moratorium are  
18 unsatisfactory;

19 (C) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected  
20 geographical areas are not unreasonably restricted by the adoption of the moratorium; and

21 (D) That the city, county or special district proposing the moratorium has developed a work plan  
22 and time schedule for achieving the objectives of the moratorium.

23 (4) No moratorium adopted under subsection (3)(a) of this section shall be effective for a period  
24 longer than 120 days, but such a moratorium may be extended provided the city, county or special  
25 district adopting the moratorium holds a public hearing on the proposed extension and adopts writ-  
26 ten findings that:

27 (a) Verify the problem giving rise to the need for a moratorium still exists;

28 (b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to  
29 the moratorium; and

30 (c) Set a specific duration for the renewal of the moratorium. No extension may be for a period  
31 longer than six months.

32 (5) Any city, county or special district considering an extension of a moratorium shall give the  
33 department at least 14 days' notice of the time and date of the public hearing on the extension.

34 **SECTION 980.** ORS 197.530 is amended to read:

35 197.530. (1) A city, county or special district that adopts a moratorium on construction or land  
36 development in conformity with ORS 197.520 (1) and (2) shall within 60 days after the effective date  
37 of the moratorium adopt a program to correct the problem creating the moratorium. The program  
38 shall be presented at a public hearing. The city, county or special district shall give at least 14 days'  
39 advance notice to the [*Department of Land Conservation and Development*] **Oregon Department of**  
40 **Natural Resources** of the time and date of the public hearing.

41 (2) No moratorium adopted under ORS 197.520 (2) shall be effective for a period longer than six  
42 months from the date on which the corrective program is adopted, but such a moratorium may be  
43 extended provided the city, county or special district adopting the moratorium holds a public hear-  
44 ing on the proposed extension and adopts written findings that:

45 (a) Verify that the problem giving rise to the moratorium still exists;

1 (b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to  
2 the moratorium; and

3 (c) Set a specific duration for the renewal of the moratorium.

4 (3) No single extension under subsection (2) of this section may be for a period longer than six  
5 months, and no moratorium shall be extended more than three times.

6 (4) Any city, county or special district considering an extension of a moratorium shall give the  
7 department at least 14 days' notice of the time and date of the public hearing on the extension.

8 **SECTION 981.** ORS 197.610 is amended to read:

9 197.610. (1) A proposal to amend a local government acknowledged comprehensive plan or land  
10 use regulation or to adopt a new land use regulation shall be forwarded to the Director of the  
11 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**  
12 at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall con-  
13 tain the text and any supplemental information that the local government believes is necessary to  
14 inform the director as to the effect of the proposal. The notice shall include the date set for the first  
15 evidentiary hearing. The director shall notify persons who have requested notice that the proposal  
16 is pending.

17 (2) When a local government determines that the goals do not apply to a particular proposed  
18 amendment or new regulation, notice under subsection (1) of this section is not required. In addition,  
19 a local government may submit an amendment or new regulation with less than 45 days' notice if  
20 the local government determines that there are emergency circumstances requiring expedited re-  
21 view. In both cases:

22 (a) The amendment or new regulation shall be submitted after adoption as provided in ORS  
23 197.615 (1) and (2); and

24 (b) Notwithstanding the requirements of ORS 197.830 (2), the director or any other person may  
25 appeal the decision to the [*board*] **Oregon Department of Natural Resources** under ORS 197.830  
26 to 197.845.

27 (3) When the [*Department of Land Conservation and Development*] **department** participates in a  
28 local government proceeding, at least 15 days before the final hearing on the proposed amendment  
29 to the comprehensive plan or land use regulation or the new land use regulation, the department  
30 shall notify the local government of:

31 (a) Any concerns the department has concerning the proposal; and

32 (b) Advisory recommendations on actions the department considers necessary to address the  
33 concerns, including, but not limited to, suggested corrections to achieve compliance with the goals.

34 (4) The director shall report to the [*Land Conservation and Development Commission*] **Oregon**  
35 **Natural Resources Commission** on whether the director:

36 (a) Believes the local government's proposal violates the goals; and

37 (b) Is participating in the local government proceeding.

38 **SECTION 982.** ORS 197.615 is amended to read:

39 197.615. (1) A local government that amends an acknowledged comprehensive plan or land use  
40 regulation or adopts a new land use regulation shall mail or otherwise submit to the Director of the  
41 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources** a  
42 copy of the adopted text of the comprehensive plan provision or land use regulation together with  
43 the findings adopted by the local government. The text and findings must be mailed or otherwise  
44 submitted not later than five working days after the final decision by the governing body. If the  
45 proposed amendment or new regulation that the director received under ORS 197.610 has been sub-

1 stantially amended, the local government shall specify the changes that have been made in the no-  
2 tice provided to the director. If the text and findings are mailed, they shall include a signed  
3 statement by the person mailing them indicating the date of deposit in the mail.

4 (2)(a) On the same day that the text and findings are mailed or delivered, the local government  
5 also shall mail or otherwise submit notice to persons who:

6 (A) Participated in the proceedings leading to the adoption of the amendment to the compre-  
7 hensive plan or land use regulation or the new land use regulation; and

8 (B) Requested of the local government in writing that they be given such notice.

9 (b) The notice required by this subsection shall:

10 (A) Describe briefly the action taken by the local government;

11 (B) State the date of the decision;

12 (C) If delivered by mail, include a certificate of mailing containing a statement signed by the  
13 person mailing it indicating the date the notice was deposited in the mail;

14 (D) List the place where and the time when the amendment to the acknowledged comprehensive  
15 plan or land use regulation or the new land use regulation, and findings, may be reviewed; and

16 (E) Explain the requirements for appealing the action of the local government under ORS  
17 197.830 to 197.845.

18 (3) Not later than five working days after receipt of an amendment to an acknowledged com-  
19 prehensive plan or land use regulation or a new land use regulation submitted under subsection (1)  
20 of this section, the director shall notify by mail or other submission any persons who have requested  
21 notification. The notice shall:

22 (a) Explain the requirements for appealing the action of the local government under ORS 197.830  
23 to 197.845; and

24 (b) List the locations where the comprehensive plan or land use regulation amendment or new  
25 land use regulation may be reviewed.

26 **SECTION 983.** ORS 197.620 is amended to read:

27 197.620. (1) Notwithstanding the requirements of ORS 197.830 (2), persons who participated ei-  
28 ther orally or in writing in the local government proceedings leading to the adoption of an amend-  
29 ment to an acknowledged comprehensive plan or land use regulation or a new land use regulation  
30 may appeal the decision to the [*Land Use Board of Appeals*] **Oregon Department of Natural Re-**  
31 **sources** under ORS 197.830 to 197.845. A decision to not adopt a legislative amendment or a new  
32 land use regulation is not appealable except where the amendment is necessary to address the re-  
33 quirements of a new or amended goal, rule or statute.

34 (2) Notwithstanding the requirements of ORS 197.830 (2), the Director of the [*Department of*  
35 *Land Conservation and Development*] **Oregon Department of Natural Resources** or any other  
36 person may file an appeal of the local government's decision under ORS 197.830 to 197.845, if an  
37 amendment to an acknowledged comprehensive plan or land use regulation or a new land use reg-  
38 ulation differs from the proposal submitted under ORS 197.610 to such a degree that the notice un-  
39 der ORS 197.610 did not reasonably describe the nature of the local government final action.

40 **SECTION 984.** ORS 197.625 is amended to read:

41 197.625. (1) If a notice of intent to appeal is not filed within the 21-day period set out in ORS  
42 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the  
43 new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.  
44 An amendment to an acknowledged comprehensive plan or land use regulation is not considered  
45 acknowledged unless the notices required under ORS 197.610 and 197.615 have been submitted to the

1 Director of the [*Department of Land Conservation and Development*] **Oregon Department of Na-**  
 2 **tural Resources** and:

3 (a) The 21-day appeal period has expired; or

4 (b) If an appeal is timely filed, the [*board*] **Oregon Department of Natural Resources** affirms  
 5 the decision or the appellate courts affirm the decision.

6 (2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use  
 7 regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the  
 8 amendment or new regulation shall be considered acknowledged upon the date the appellate decision  
 9 becomes final.

10 (3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land  
 11 use regulation or an amendment to a comprehensive plan or land use regulation is effective at the  
 12 time specified by local government charter or ordinance and is applicable to land use decisions,  
 13 expedited land divisions and limited land use decisions if the amendment was adopted in substantial  
 14 compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.

15 (b) Any approval of a land use decision, expedited land division or limited land use decision  
 16 subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall in-  
 17 clude findings of compliance with those land use goals applicable to the amendment.

18 (c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land  
 19 use regulation shall not be relied upon to justify retention of improvements so permitted if the  
 20 comprehensive plan provision or land use regulation does not gain acknowledgment.

21 (d) The provisions of this subsection apply to applications for land use decisions, expedited land  
 22 divisions and limited land use decisions submitted after February 17, 1993, and to comprehensive  
 23 plan and land use regulation amendments adopted:

24 (A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and  
 25 197.636;

26 (B) After June 1, 1991, to meet the requirements of ORS 197.646; and

27 (C) After November 4, 1993.

28 (4) The director shall issue certification of the acknowledgment upon receipt of an affidavit from  
 29 the [*board*] **department** stating either:

30 (a) That no appeal was filed within the 21 days allowed under ORS 197.830 (9); or

31 (b) The date the appellate decision affirming the adoption of the amendment or new regulation  
 32 became final.

33 (5) The [*board*] **department** shall issue an affidavit for the purposes of subsection (4) of this  
 34 section within five days of receiving a valid request from the local government.

35 (6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent  
 36 the [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission**  
 37 from entering an order pursuant to ORS 197.633, 197.636 or 197.644 to require a local government  
 38 to respond to the standards of ORS 197.628.

39 **SECTION 985.** ORS 197.626 is amended to read:

40 197.626. A metropolitan service district that amends its urban growth boundary to include more  
 41 than 100 acres, or that amends the district's regional framework plan or land use regulations im-  
 42 plementing the plan to establish urban reserves designated under ORS 195.145 (1)(b), a city with a  
 43 population of 2,500 or more within its urban growth boundary that amends the urban growth  
 44 boundary to include more than 50 acres or that designates urban reserve under ORS 195.145, or a  
 45 county that amends the county's comprehensive plan or land use regulations implementing the plan



1 to establish rural reserves designated under ORS 195.141, shall submit the amendment or designation  
2 to the [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission**  
3 in the manner provided for periodic review under ORS 197.628 to 197.650.

4 **SECTION 986.** ORS 197.628 is amended to read:

5 197.628. (1) It is the policy of the State of Oregon to require the periodic review of comprehen-  
6 sive plans and land use regulations in order to respond to changes in local, regional and state condi-  
7 tions to ensure that the plans and regulations remain in compliance with the statewide planning  
8 goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate  
9 provision for economic development, needed housing, transportation, public facilities and services  
10 and urbanization.

11 (2) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
12 **mission** shall concentrate periodic review assistance to local governments on achieving compliance  
13 with those statewide land use planning laws and goals that address economic development, needed  
14 housing, transportation, public facilities and services and urbanization.

15 (3) The following conditions indicate the need for periodic review of comprehensive plans and  
16 land use regulations:

17 (a) There has been a substantial change in circumstances including but not limited to the con-  
18 ditions, findings or assumptions upon which the comprehensive plan or land use regulations were  
19 based, so that the comprehensive plan or land use regulations do not comply with the statewide  
20 planning goals relating to economic development, needed housing, transportation, public facilities  
21 and services and urbanization;

22 (b) Decisions implementing acknowledged comprehensive plan and land use regulations are in-  
23 consistent with the goals relating to economic development, needed housing, transportation, public  
24 facilities and services and urbanization;

25 (c) There are issues of regional or statewide significance, intergovernmental coordination or  
26 state agency plans or programs affecting land use which must be addressed in order to bring com-  
27 prehensive plans and land use regulations into compliance with the goals relating to economic de-  
28 velopment, needed housing, transportation, public facilities and services and urbanization; or

29 (d) The local government, commission or [*Department of Land Conservation and Development*]  
30 **Oregon Department of Natural Resources** determines that the existing comprehensive plan and  
31 land use regulations are not achieving the statewide planning goals relating to economic develop-  
32 ment, needed housing, transportation, public facilities and services and urbanization.

33 **SECTION 987.** ORS 197.629 is amended to read:

34 197.629. (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
35 **Commission** shall establish and maintain a schedule for periodic review of comprehensive plans and  
36 land use regulations. Except as necessary to coordinate approved periodic review work programs  
37 and to account for special circumstances that from time to time arise, the schedule shall reflect the  
38 following timelines:

39 (a) A city with a population of more than 2,500 within a metropolitan planning organization or  
40 a metropolitan service district shall conduct periodic review every seven years after completion of  
41 the previous periodic review; and

42 (b) A city with a population of 10,000 or more inside its urban growth boundary that is not  
43 within a metropolitan planning organization shall conduct periodic review every 10 years after  
44 completion of the previous periodic review.

45 (2) A county with a portion of its population within the urban growth boundary of a city subject

1 to periodic review under this section shall conduct periodic review for that portion of the county  
2 according to the schedule and work program set for the city.

3 (3) Notwithstanding subsection (2) of this section, if the schedule set for the county is specific  
4 as to that portion of the county within the urban growth boundary of a city subject to periodic re-  
5 view under this section, the county shall conduct periodic review for that portion of the county  
6 according to the schedule and work program set for the county.

7 (4) If the [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
8 **mission** pays the costs of a local government that is not subject to subsection (1) of this section to  
9 perform new work programs and work tasks, the commission may require the local government to  
10 complete periodic review when the local government has not completed periodic review within the  
11 previous five years if:

12 (a) A city has been growing faster than the annual population growth rate of the state for five  
13 consecutive years;

14 (b) A major transportation project on the Statewide Transportation Improvement Program that  
15 is approved for funding by the Oregon Transportation Commission is likely to:

16 (A) Have a significant impact on a city or an urban unincorporated community; or

17 (B) Be significantly affected by growth and development in a city or an urban unincorporated  
18 community;

19 (c) A major facility, including a prison, is sited or funded by a state agency; or

20 (d) Approval by the city or county of a facility for a major employer will increase employment  
21 opportunities and significantly affect the capacity of housing and public facilities in the city or ur-  
22 ban unincorporated community.

23 (5) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
24 **mission** may schedule periodic review for a local government earlier than provided in subsection  
25 (1) of this section if necessary to ensure that all local governments in a region whose land use de-  
26 cisions would significantly affect other local governments in the region are conducting periodic re-  
27 view concurrently, but not sooner than five years after completion of the previous periodic review.

28 (6) A city or county that is not required to complete periodic review under subsection (1) of this  
29 section may request periodic review by the **Oregon Natural Resources** Commission.

30 (7) As used in this section, “metropolitan planning organization” means an organization located  
31 wholly within the State of Oregon and designated by the Governor to coordinate transportation  
32 planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c).

33 **SECTION 988.** ORS 197.631 is amended to read:

34 197.631. In order to use state and local periodic review resources most efficiently and effectively  
35 and to concentrate periodic review on adequate provision of economic development, needed housing,  
36 transportation, public facilities and services and urbanization, the [*Land Conservation and Develop-*  
37 *ment Commission*] **Oregon Natural Resources Commission** shall adopt, amend or repeal the  
38 statewide land use planning goals, guidelines and corresponding rules as necessary to facilitate pe-  
39 riodic review and to provide for compliance by local governments with those goals not described in  
40 ORS 197.628 (2) through the post-acknowledgment procedures of ORS 197.610 to 197.625.

41 **SECTION 989.** ORS 197.633 is amended to read:

42 197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation  
43 of the existing comprehensive plan, land use regulations and citizen involvement program and, if  
44 necessary, the development of a work program to make needed changes to the comprehensive plan  
45 or land use regulations. Phase two is the completion of work tasks outlined in the work program.

1 (2) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
 2 **mission** shall adopt rules for conducting periodic review. The rules shall provide a process for:

3 (a) Initiating periodic review;

4 (b) Citizen participation;

5 (c) The participation of state agencies;

6 (d) The preparation, review and approval of an evaluation of a comprehensive plan and land use  
 7 regulations;

8 (e) Review of a work program; and

9 (f) Review of completed work tasks.

10 (3) A decision by the Director of the [*Department of Land Conservation and Development*]  
 11 **Oregon Department of Natural Resources** to approve a work program, that no work program is  
 12 necessary or that no further work is necessary is final and not subject to appeal.

13 (4) The director:

14 (a) Shall take action on a work task not later than 120 days after the local government submits  
 15 the work task for review unless the local government waives the 120-day deadline or the commission  
 16 grants the director an extension. If the director does not take action within the time period required  
 17 by this subsection, the work task is deemed approved. The **Oregon Department of Natural Re-**  
 18 **sources** shall provide a letter to the local government certifying that the work task is approved  
 19 unless an interested party has filed a timely objection to the work task consistent with administra-  
 20 tive rules for conducting periodic review. If a timely objection is filed, the director shall refer the  
 21 work task to the commission.

22 (b) May approve or remand a work task or refer the work task to the commission for a decision.  
 23 A decision by the director to approve or remand a work task may be appealed to the commission.

24 (5) Except as provided in this subsection, the commission shall take action on the appeal or re-  
 25 ferral within 90 days of the appeal or referral. Action by the commission in response to an appeal  
 26 from a decision of the director is a final order subject to judicial review in the manner provided in  
 27 ORS 197.650. The commission may extend the time for taking action on the appeal or referral if the  
 28 commission finds that:

29 (a) The appeal or referral is appropriate for mediation;

30 (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable  
 31 for the commission to give adequate consideration to the issues within the 90-day limit; or

32 (c) The parties to the appeal and the commission agree to an extension, not to exceed an addi-  
 33 tional 90 days.

34 (6) The commission and a local government shall attempt to complete periodic review within  
 35 three years after approval of a work program. In order to promote the timely completion of periodic  
 36 review, the commission shall establish a system of incentives to encourage local government com-  
 37 pliance with timelines in periodic review work programs.

38 **SECTION 990.** ORS 197.636 is amended to read:

39 197.636. (1) Upon good cause shown by a local government, the Director of the [*Department of*  
 40 *Land Conservation and Development*] **Oregon Department of Natural Resources** may allow the  
 41 local government an extension of time for submitting a work program or completing a work task.  
 42 A decision by the director to grant or deny an extension may be referred to the [*Land Conservation*  
 43 *and Development Commission by the director. The Department of Land Conservation and*  
 44 *Development*] **Oregon Natural Resources Commission by the director. The Oregon Department**  
 45 **of Natural Resources** or the commission shall not extend the deadline for submitting a work pro-

1 gram more than once nor for more than 90 days, and shall not extend the deadline for a work task  
2 more than once nor for more than one year.

3 (2) If a local government fails to submit a work program or to complete a work task by the  
4 deadline set by the director or the commission, including any extension that has been granted, the  
5 director shall schedule a hearing before the commission. The commission shall issue an order im-  
6 posing one or more of the following sanctions until the work program or the work task receives final  
7 approval by the director or the commission:

8 (a) Require the local government to apply those portions of the goals and rules to land use de-  
9 cisions as specified in the order. Sanctions may be imposed under this paragraph only when neces-  
10 sary to resolve a specific deficiency identified in the order.

11 (b) Forfeiture of all or a portion of the grant money received to conduct the review, develop the  
12 work program or complete the work task.

13 (c) Completion of the work program or work task by the department. The commission may re-  
14 quire the local government to pay the cost for completion of work performed by the department,  
15 following the withholding process set forth in ORS 197.335 (4).

16 (d) Application of such interim measures as the commission deems necessary to ensure compli-  
17 ance with the statewide planning goals.

18 (3) If the department receives a work program or work task completed in response to a com-  
19 mission order issued under subsection (2) of this section, the director shall evaluate and issue a  
20 decision on the work program or work task within 90 days.

21 (4) Commission action pursuant to subsection (1) or (2) of this section is a final order subject  
22 to judicial review in the manner provided in ORS 197.650.

23 **SECTION 991.** ORS 197.637 is amended to read:

24 197.637. (1) Upon request of the [*Department of Land Conservation and Development*] **Oregon**  
25 **Department of Natural Resources**, the Housing and Community Services Department shall review  
26 the inventory and analysis of housing, and measures taken to address the housing need, required  
27 of certain local governments under ORS 197.296. The review shall address the likely effect of  
28 measures developed by a local government under ORS 197.296 (6) or (7) on the adequacy of the  
29 supply of buildable land and opportunities to satisfy needs identified under ORS 197.296 (3).

30 (2) The [*Land Conservation and Development Commission and the Director of the Department of*  
31 *Land Conservation and Development*] **Director of the Oregon Department of Natural Resources**  
32 **and the Oregon Natural Resources Commission** shall consider the review and any recommen-  
33 dations of the Housing and Community Services Department when determining whether a local  
34 government has complied with the statewide land use planning goals and the requirements of ORS  
35 197.296.

36 **SECTION 992.** ORS 197.638 is amended to read:

37 197.638. (1) Upon request of the [*Department of Land Conservation and Development*] **Oregon**  
38 **Department of Natural Resources**, the Oregon Business Development Department shall review the  
39 inventory and analysis of industrial and commercial land, and measures taken to address the land  
40 needs, required of certain local governments under ORS 197.712. The review shall address the likely  
41 effect of measures developed by a local government on the adequacy of the supply of sites and op-  
42 portunities to satisfy needs identified under ORS 197.712.

43 (2) The [*Land Conservation and Development Commission and the Director of the Department of*  
44 *Land Conservation and Development*] **Director of the Oregon Department of Natural Resources**  
45 **and the Oregon Natural Resources Commission** shall consider the review and any recommen-

1 datations of the Oregon Business Development Department when determining whether a local gov-  
 2 ernment has complied with the statewide land use planning goals and the requirements of ORS  
 3 197.712.

4 **SECTION 993.** ORS 197.639 is amended to read:

5 197.639. (1) In addition to coordination between state agencies and local government established  
 6 in certified state agency coordination programs, the [*Department of Land Conservation and Develop-*  
 7 *ment*] **Oregon Department of Natural Resources** may establish one or more state assistance teams  
 8 made up of representatives of various agencies and local governments, utilize the Economic  
 9 Revitalization Team established under ORS 284.555 or institute an alternative process for coordi-  
 10 nating agency participation in the periodic review of comprehensive plans.

11 (2) The Economic Revitalization Team may work with a city to create a voluntary comprehen-  
 12 sive plan review that focuses on the unique vision of the city, instead of conducting a standard pe-  
 13 riodic review, if the team identifies a city that the team determines can benefit from a customized  
 14 voluntary comprehensive plan review.

15 (3) The department may develop model ordinance provisions to assist local governments in the  
 16 periodic review plan update process and in complying with new statutory requirements or new land  
 17 use planning goal or rule requirements adopted by the [*Land Conservation and Development Com-*  
 18 *mission*] **Oregon Natural Resources Commission** outside the periodic review process.

19 (4) A local government may arrange with the department for the provision of periodic review  
 20 planning services and those services may be paid with grant program funds.

21 (5) The commission shall establish an advisory committee composed, at a minimum, of repre-  
 22 sentatives from the League of Oregon Cities, the Association of Oregon Counties, metropolitan ser-  
 23 vice districts, the Special Districts Association of Oregon, land use planning public interest groups  
 24 and developer interest groups. The advisory committee shall advise the commission and the depart-  
 25 ment on the allocation of grants and technical assistance funding from General Fund sources and  
 26 other issues assigned by the commission.

27 **SECTION 994.** ORS 197.644 is amended to read:

28 197.644. (1) The [*Land Conservation and Development Commission may direct or, upon request of*  
 29 *the local government, the Director of the Department of Land Conservation and Development*] **Oregon**  
 30 **Natural Resources Commission may direct or, upon request of the local government, the**  
 31 **Director of the Oregon Department of Natural Resources** may authorize a local government to  
 32 modify an approved work program when:

33 (a) Issues of regional or statewide significance arising out of another local government's periodic  
 34 review require an enhanced level of coordination;

35 (b) Issues of goal compliance are raised as a result of completion of a work program task re-  
 36 sulting in a need to undertake further review or revisions;

37 (c) Issues relating to the organization of the work program, coordination with affected agencies  
 38 or persons, or orderly implementation of work tasks result in a need for further review or revision;

39 or

40 (d) Issues relating to needed housing, employment, transportation or public facilities and ser-  
 41 vices were omitted from the work program but must be addressed in order to ensure compliance  
 42 with the statewide planning goals.

43 (2) The commission shall have exclusive jurisdiction for review of the evaluation, work program  
 44 and completed work program tasks as set forth in ORS 197.628 to 197.650. The commission shall  
 45 adopt rules governing standing, the provision of notice, conduct of hearings, adoption of stays, ex-

1 tension of time periods and other matters related to the administration of ORS 197.180, 197.245,  
2 197.254, 197.295, 197.320, 197.620, 197.625, 197.628 to 197.650, 197.712, 197.747, 197.840, 215.416,  
3 227.175 and 466.385.

4 (3)(a) Commission action pursuant to subsection (1) or (2) of this section is a final order subject  
5 to judicial review in the manner provided in ORS 197.650.

6 (b) Action by the director pursuant to subsection (1) of this section may be appealed to the  
7 commission pursuant to rules adopted by the commission. Commission action under this paragraph  
8 is a final order subject to judicial review in the manner provided in ORS 197.650.

9 **SECTION 995.** ORS 197.646 is amended to read:

10 197.646. (1) A local government shall amend its acknowledged comprehensive plan, regional  
11 framework plan and land use regulations implementing either plan by a self-initiated post-  
12 acknowledgment process under ORS 197.610 to 197.625 to comply with:

13 (a) A new statutory requirement; or

14 (b) A new land use planning goal or rule requirement adopted by the [*Land Conservation and*  
15 *Development Commission*] **Oregon Natural Resources Commission**.

16 (2) Periodic review is not the implementation process for new statutory, land use planning goal  
17 or rule requirements.

18 (3)(a) The [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
19 **Resources** shall notify local governments when a new statutory requirement or a new land use  
20 planning goal or rule requirement adopted by the commission requires changes to an acknowledged  
21 comprehensive plan, a regional framework plan and land use regulations implementing either plan.

22 (b) The commission shall establish, by rule, the time period within which an acknowledged  
23 comprehensive plan, a regional framework plan and land use regulations implementing either plan  
24 must be in compliance with:

25 (A) A new statutory requirement, if the legislation does not specify a time period for compliance;  
26 and

27 (B) A new land use planning goal or rule requirement adopted by the commission.

28 (4) When a local government does not adopt amendments to a comprehensive plan, a regional  
29 framework plan and land use regulations implementing either plan as required by subsection (1) of  
30 this section, the new statutory, land use planning goal or rule requirements apply directly to the  
31 local government's land use decisions. The failure to adopt amendments to a comprehensive plan, a  
32 regional framework plan and land use regulations implementing either plan required by subsection  
33 (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

34 **SECTION 996.** ORS 197.649 is amended to read:

35 197.649. The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
36 **Commission** may establish by rule fees to cover the cost of notice given to persons by the Director  
37 of the [*Department of Land Conservation and Development*] **Oregon Department of Natural Re-**  
38 **sources** under ORS 197.610 (1) and 197.615 (3).

39 **SECTION 997.** ORS 197.650 is amended to read:

40 197.650. (1) [*A Land Conservation and Development Commission*] **An Oregon Natural Resources**  
41 **Commission** order may be appealed to the Court of Appeals in the manner provided in ORS 183.482  
42 by the following persons:

43 (a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings  
44 under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS  
45 197.251 or 197.633, 197.636 or 197.644;

1 (b) Persons who submitted comments or objections pursuant to procedures adopted by the com-  
2 mission for certification of state agency coordination programs and are appealing a certification is-  
3 sued under ORS 197.180 (7);

4 (c) Persons who petitioned the commission for an order under ORS 197.324 and whose petition  
5 was dismissed;

6 (d) Persons who submitted comments or objections pursuant to ORS 197.659 and 215.788 to  
7 215.794 or proceedings under ORS 197.659 and 215.788 to 215.794 and are appealing a commission  
8 order issued under ORS 197.659 and 215.788 to 215.794;

9 (e) Persons who submitted comments or objections pursuant to ORS 197.652 to 197.658 and  
10 197.659 or proceedings under ORS 197.652 to 197.658 and 197.659 and are appealing a commission  
11 order issued under ORS 197.652 to 197.658 and 197.659; or

12 (f) Persons who submitted oral or written testimony in a proceeding before the commission  
13 pursuant to ORS 215.780.

14 (2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state  
15 the nature of the order petitioner desires reviewed and whether the petitioner submitted comments  
16 or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636, 197.644 or 197.659.

17 (3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition  
18 shall be served by registered or certified mail upon the [*Department of Land Conservation and De-*  
19 *velopment*] **Oregon Department of Natural Resources**, the local government and all persons who  
20 filed comments or objections.

21 **SECTION 998.** ORS 197.651 is amended to read:

22 197.651. (1) Notwithstanding ORS 197.650, [*a Land Conservation and Development Commission*]  
23 **an Oregon Natural Resources Commission** order concerning the designation of urban reserves  
24 under ORS 195.145 (1)(b) or rural reserves under ORS 195.141 may be appealed to the Court of Ap-  
25 peals by the persons described in ORS 197.650.

26 (2) Judicial review of orders described in subsection (1) of this section is as provided in this  
27 section.

28 (3) Jurisdiction for judicial review is conferred upon the Court of Appeals. A proceeding for ju-  
29 dicial review may be instituted by filing a petition in the Court of Appeals. The petition must be  
30 filed within 21 days after the date the commission delivered or mailed the order upon which the  
31 petition is based.

32 (4) The filing of the petition, as set forth in subsection (3) of this section, and service of a peti-  
33 tion on the persons who submitted oral or written testimony in the proceeding before the commis-  
34 sion are jurisdictional and may not be waived or extended.

35 (5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies  
36 of the petition must be served by registered or certified mail upon the commission and the persons  
37 who submitted oral or written testimony in the proceeding before the commission.

38 (6) Within 21 days after service of the petition, the commission shall transmit to the Court of  
39 Appeals the original or a certified copy of the entire record of the proceeding under review. How-  
40 ever, by stipulation of the parties to the review proceeding, the record may be shortened. The Court  
41 of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the addi-  
42 tional costs. The Court of Appeals may require or permit subsequent corrections or additions to the  
43 record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost  
44 of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the  
45 costs to a party that files a frivolous petition for judicial review.

1 (7) Petitions and briefs must be filed within time periods and in a manner established by the  
2 Court of Appeals by rule.

3 (8) The Court of Appeals shall:

4 (a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court  
5 of Appeals determines that the ends of justice served by holding oral argument on a later day out-  
6 weigh the best interests of the public and the parties. However, the Court of Appeals may not hold  
7 oral argument more than 49 days after the date of transmittal of the record because of general  
8 congestion of the court calendar or lack of diligent preparation or attention to the case by a member  
9 of the court or a party.

10 (b) Set forth in writing and provide to the parties a determination to hear oral argument more  
11 than 49 days from the date the record is transmitted, together with the reasons for the determi-  
12 nation. The Court of Appeals shall schedule oral argument as soon as is practicable.

13 (c) Consider, in making a determination under paragraph (b) of this subsection:

14 (A) Whether the case is so unusual or complex, due to the number of parties or the existence  
15 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief  
16 the case and for the Court of Appeals to prepare for oral argument; and

17 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-  
18 riage of justice.

19 (9) The court:

20 (a) Shall limit judicial review of an order reviewed under this section to the record.

21 (b) May not substitute its judgment for that of the [*Land Conservation and Development Com-*  
22 *mission*] **Oregon Natural Resources Commission** as to an issue of fact.

23 (10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section.  
24 The Court of Appeals shall reverse or remand the order only if the court finds the order is:

25 (a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal  
26 or remand unless the Court of Appeals determines that substantial rights of the petitioner were  
27 prejudiced.

28 (b) Unconstitutional.

29 (c) Not supported by substantial evidence in the whole record as to facts found by the commis-  
30 sion.

31 (11) The Court of Appeals shall issue a final order on the petition for judicial review with the  
32 greatest possible expediency.

33 (12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court,  
34 the commission shall respond to the court's appellate judgment within 30 days.

35 **SECTION 999.** ORS 197.652 is amended to read:

36 197.652. (1) At the request of a county and at least one other local government in a region, the  
37 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**,  
38 other state agencies, as defined in ORS 171.133, metropolitan planning organizations, special dis-  
39 tricts and advisory committees on transportation may participate with the local governments in a  
40 collaborative regional problem-solving process.

41 (2) If requested to participate, the department shall assist the county with the process and en-  
42 courage regional efforts to resolve land use planning problems using the authorities described in  
43 ORS 197.652 to 197.658.

44 (3) The county, in cooperation with the other local governments, shall identify the land use  
45 planning problems to be addressed and the participants whose actions are necessary to resolve the



1 land use planning problems.

2 (4) The county shall submit a proposed work scope and a proposed list of participants as a  
3 proposal to the [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
4 **Commission** for review. The commission shall review:

5 (a) The proposed work scope to determine whether it can reasonably be completed within the  
6 time allowed;

7 (b) The proposed participant list to determine whether it includes, at a minimum, all local gov-  
8 ernments that will need to amend a comprehensive plan provision or a land use regulation, or adopt  
9 a new provision or regulation, in order to resolve the land use planning problems identified in the  
10 work scope; and

11 (c) The proposed work scope and the proposed participant list for consistency.

12 (5) A county may initiate amendments of a comprehensive plan or land use regulation under  
13 ORS 197.652 to 197.658 only if the commission approves the work scope, the list of participants and  
14 a schedule for completion of the process. The schedule for completion of the process may:

15 (a) Not exceed three years except as provided in paragraph (b) of this subsection.

16 (b) Be extended by the commission for up to one year for good cause shown.

17 (6) The decision of a county to submit a proposal under this section, and the decision of the  
18 commission to approve a proposal, are not final actions subject to judicial review.

19 (7) If the commission approves a proposal under this section, the county must periodically report  
20 on the progress in carrying out the proposal, as specified by the commission.

21 (8) For purposes of ORS 197.654 and 197.656, the participants in a collaborative regional  
22 problem-solving process include all participants on the list of participants approved by the commis-  
23 sion unless the commission subsequently approves the addition or removal of a participant.

24 **SECTION 1000.** ORS 197.654 is amended to read:

25 197.654. (1) After the [*Land Conservation and Development Commission*] **Oregon Natural Re-**  
26 **sources Commission** approves a proposal for regional problem-solving under ORS 197.652, the  
27 participants shall develop proposed actions to resolve the problems identified in the work scope. The  
28 participants must agree to:

29 (a) Regional goals that describe how the region intends to resolve each regional problem de-  
30 scribed in the work scope;

31 (b) Actions necessary to achieve the regional goals, including changes to comprehensive plans  
32 or land use regulations;

33 (c) Measurable indicators of performance and a system for monitoring progress toward  
34 achievement of the regional goals;

35 (d) Incentives and disincentives to encourage successful implementation of the actions to  
36 achieve the regional goals;

37 (e) If the regional goals involve the management of an urban growth boundary, actions to co-  
38 ordinate the planning and provision of water, sewer and transportation facilities in the region; and

39 (f) A process for correction of actions if monitoring indicates that the actions are not achieving  
40 the regional goals.

41 (2) A decision by a participant to enter into a regional problem-solving agreement under ORS  
42 197.652 to 197.658 is not a final land use decision. However, a regional problem-solving agreement  
43 is not final and binding until:

44 (a) All local governments that are participants have adopted the provisions of the comprehensive  
45 plans or land use regulations contemplated in the agreement; and

1 (b) The commission has approved the comprehensive plan provisions and land use regulations  
2 as provided under ORS 197.656.

3 (3) Changes to provisions of comprehensive plans and land use regulations adopted to implement  
4 a regional problem-solving agreement take effect 60 days after the commission notifies all partic-  
5 ipants that the commission has approved all of the changes.

6 **SECTION 1001.** ORS 197.656 is amended to read:

7 197.656. (1) After the adoption of changes to comprehensive plans and land use regulations to  
8 implement a regional problem-solving agreement under ORS 197.652 to 197.658, the local govern-  
9 ments that are participants shall submit the changes to the [*Land Conservation and Development*  
10 *Commission*] **Oregon Natural Resources Commission** for review in the manner set forth in this  
11 section.

12 (2) Following the procedures set forth in this subsection, the commission may approve changes  
13 to comprehensive plans and land use regulations that do not fully comply with the statewide land  
14 use planning goals, without taking an exception under ORS 197.732, upon a determination that the  
15 changes:

16 (a) Conform, on the whole, with the purposes of the goals, and any failure to meet individual  
17 goal requirements is technical or minor in nature;

18 (b) Are needed to achieve the regional goals specified by the participants; and

19 (c) In combination with other actions agreed upon by the participants, are reasonably likely to  
20 achieve the regional goals.

21 (3) The commission:

22 (a) Shall review changes to the comprehensive plans or land use regulations adopted by a local  
23 government to implement a regional problem-solving agreement under ORS 197.652 to 197.658 pur-  
24 suant to the procedures set forth in this section and ORS 197.659.

25 (b) Has exclusive jurisdiction for review of changes to comprehensive plans or land use regu-  
26 lations adopted by a local government to implement a regional problem-solving agreement under  
27 ORS 197.652 to 197.658.

28 (4) A participant in the regional problem-solving process or a person who participated in the  
29 proceedings leading to the adoption of changes to the comprehensive plans or land use regulations  
30 may not raise an issue on review before the commission that was not raised in the local proceedings  
31 for adoption of the changes to the plans or regulations.

32 (5) If the commission disapproves changes to the comprehensive plans or land use regulations  
33 adopted by a local government to implement a regional problem-solving agreement under ORS  
34 197.652 to 197.658, the commission shall issue a written statement describing the reasons for the  
35 disapproval and suggesting alternative methods for accomplishing the goals on a timely basis.

36 (6) If, in order to resolve regional land use problems, the participants in a collaborative regional  
37 problem-solving process decide to devote agricultural land or forestland, as defined in the statewide  
38 planning goals, to uses not authorized by those goals, the participants shall choose land that is not  
39 part of the region's commercial agricultural or forestland base, or take an exception to those goals  
40 pursuant to ORS 197.732. To identify land that is not part of the region's commercial agricultural  
41 or forestland base, the participants shall consider the recommendation of a committee of persons  
42 appointed by the affected county, with expertise in appropriate fields, including but not limited to  
43 farmers, ranchers, foresters and soils scientists and representatives of the State Department of  
44 Agriculture[, *the State Forestry Department and the Department of Land Conservation and Develop-*  
45 *ment*] **and the Oregon Department of Natural Resources.**

1 (7) The Governor may require all appropriate state agencies to participate in the collaborative  
2 regional problem-solving process.

3 (8) The commission may adopt rules to establish additional procedural and substantive require-  
4 ments for review of changes to comprehensive plans and land use regulations adopted by local  
5 governments to implement a regional problem-solving agreement under ORS 197.652 to 197.658.

6 **SECTION 1002.** ORS 197.658 is amended to read:

7 197.658. In addition to the provisions of ORS 197.644, the [*Land Conservation and Development*  
8 *Commission*] **Oregon Natural Resources Commission** may modify an approved work program when  
9 a local government has agreed to participate in a collaborative regional problem-solving process  
10 pursuant to ORS 197.654 and 197.656.

11 **SECTION 1003.** ORS 197.659 is amended to read:

12 197.659. (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
13 **Commission** shall grant, deny or remand approval of proposed changes to a comprehensive plan or  
14 land use regulations adopted pursuant to ORS 197.652 to 197.658 or 215.788 to 215.794 within 120  
15 days after the date that the local government submits the proposed changes.

16 (2) The [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
17 **Resources** shall prepare a report stating whether the proposed changes comply with applicable  
18 statutes, goals and commission rules. The department shall provide a reasonable opportunity for  
19 persons to prepare and submit written comments or objections to the report; however a person may  
20 not:

21 (a) Submit written comments or objections to the report unless the person participated orally  
22 or in writing in the local government proceedings leading to the adoption of the proposed changes.

23 (b) Produce new evidence.

24 (3) After reviewing the proposed changes, the report and any written comments and objections  
25 to the report, the commission shall prepare a proposed final order. The commission shall afford the  
26 local government and persons who submitted written comments or objections to the report a rea-  
27 sonable opportunity to file written exceptions to the proposed final order. If timely exceptions are  
28 not filed, the proposed order becomes final.

29 (4) The commission's review under this section is confined to the record of proceedings before  
30 the local government, the report of the department and any comments, objections and exceptions  
31 filed under subsection (2) or (3) of this section and the proposed final order of the commission, in-  
32 cluding any responses to exceptions. The commission may entertain oral argument from the depart-  
33 ment and from persons who filed exceptions, and may consider new issues raised by its review. The  
34 commission may not allow additional evidence, argument or testimony that could have been pre-  
35 sented to the local government but was not presented.

36 (5) A commission order granting, denying or remanding proposed changes must include a clear  
37 statement of findings that sets forth the basis for the approval, denial or remand, including:

38 (a) Identifying the statutes, goals and rules applicable to the proposed changes; and

39 (b) Supporting the determinations of compliance and noncompliance.

40 (6) A commission order granting approval may be limited to an identified geographic area de-  
41 scribed in the order if:

42 (a) The identified geographic area is the only area that is the subject of the proposed changes;  
43 or

44 (b) Specific geographic areas do not comply with the applicable statutes, goals or rules, and the  
45 requirements are not technical or minor in nature.

1 (7) The commission may issue a limited approval order if a previously issued approval order is  
2 reversed or remanded by an appellate court. The limited approval order may deny approval of that  
3 part of the comprehensive plan or land use regulations that the court found not in compliance with  
4 the applicable statutes, goals or rules and grant approval of other parts of the proposed changes.

5 (8) A limited approval order is an approval for all purposes and is a final order for purposes of  
6 judicial review with respect to the approved geographic area. A limited order may be adopted in  
7 conjunction with a remand.

8 **SECTION 1004.** ORS 197.712 is amended to read:

9 197.712. (1) In addition to the findings and policies set forth in ORS 197.005, 197.010 and 215.243,  
10 the Legislative Assembly finds and declares that, in carrying out statewide comprehensive land use  
11 planning, the provision of adequate opportunities for a variety of economic activities throughout the  
12 state is vital to the health, welfare and prosperity of all the people of the state.

13 (2) By the adoption of new goals or rules, or the application, interpretation or amendment of  
14 existing goals or rules, the [*Land Conservation and Development Commission*] **Oregon Natural Re-**  
15 **sources Commission** shall implement all of the following:

16 (a) Comprehensive plans shall include an analysis of the community's economic patterns,  
17 potentialities, strengths and deficiencies as they relate to state and national trends.

18 (b) Comprehensive plans shall contain policies concerning the economic development opportu-  
19 nities in the community.

20 (c) Comprehensive plans and land use regulations shall provide for at least an adequate supply  
21 of sites of suitable sizes, types, locations and service levels for industrial and commercial uses con-  
22 sistent with plan policies.

23 (d) Comprehensive plans and land use regulations shall provide for compatible uses on or near  
24 sites zoned for specific industrial and commercial uses.

25 (e) A city or county shall develop and adopt a public facility plan for areas within an urban  
26 growth boundary containing a population greater than 2,500 persons. The public facility plan shall  
27 include rough cost estimates for public projects needed to provide sewer, water and transportation  
28 for the land uses contemplated in the comprehensive plan and land use regulations. Project timing  
29 and financing provisions of public facility plans shall not be considered land use decisions.

30 (f) In accordance with ORS 197.180, state agencies that provide funding for transportation, water  
31 supply, sewage and solid waste facilities shall identify in their coordination programs how they will  
32 coordinate that funding with other state agencies and with the public facility plans of cities and  
33 counties. In addition, state agencies that issue permits affecting land use shall identify in their co-  
34 ordination programs how they will coordinate permit issuance with other state agencies and cities  
35 and counties.

36 (g) Local governments shall provide:

37 (A) Reasonable opportunities to satisfy local and rural needs for residential and industrial de-  
38 velopment and other economic activities on appropriate lands outside urban growth boundaries, in  
39 a manner consistent with conservation of the state's agricultural and forest land base; and

40 (B) Reasonable opportunities for urban residential, commercial and industrial needs over time  
41 through changes to urban growth boundaries.

42 (3) A comprehensive plan and land use regulations shall be in compliance with this section by  
43 the first periodic review of that plan and regulations.

44 **SECTION 1005.** ORS 197.717 is amended to read:

45 197.717. (1) State agencies shall provide technical assistance to local governments in:

1 (a) Planning and zoning land adequate in amount, size, topography, transportation access and  
 2 surrounding land use and public facilities for the special needs of various industrial and commercial  
 3 uses;

4 (b) Developing public facility plans; and

5 (c) Streamlining local permit procedures.

6 (2) The Oregon Business Development Department shall provide a local government with “state  
 7 and national trend” information to assist in compliance with ORS 197.712 (2)(a).

8 (3) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
 9 **mission** shall develop model ordinances to assist local governments in streamlining local permit  
 10 procedures.

11 (4) The [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
 12 **Resources** and the Oregon Business Development Department shall establish a joint program to  
 13 assist rural communities with economic and community development services. The assistance shall  
 14 include, but not be limited to, grants, loans, model ordinances and technical assistance. The purposes  
 15 of the assistance are to remove obstacles to economic and community development and to facilitate  
 16 that development. The departments shall give priority to communities with high rates of unemploy-  
 17 ment.

18 **SECTION 1006.** ORS 197.732 is amended to read:

19 197.732. (1) As used in this section:

20 (a) “Compatible” is not intended as an absolute term meaning no interference or adverse impacts  
 21 of any type with adjacent uses.

22 (b) “Exception” means a comprehensive plan provision, including an amendment to an acknowl-  
 23 edged comprehensive plan, that:

24 (A) Is applicable to specific properties or situations and does not establish a planning or zoning  
 25 policy of general applicability;

26 (B) Does not comply with some or all goal requirements applicable to the subject properties or  
 27 situations; and

28 (C) Complies with standards under subsection (2) of this section.

29 (2) A local government may adopt an exception to a goal if:

30 (a) The land subject to the exception is physically developed to the extent that it is no longer  
 31 available for uses allowed by the applicable goal;

32 (b) The land subject to the exception is irrevocably committed as described by [*Land Conserva-*  
 33 *tion and Development Commission*] **Oregon Natural Resources Commission** rule to uses not al-  
 34 lowed by the applicable goal because existing adjacent uses and other relevant factors make uses  
 35 allowed by the applicable goal impracticable; or

36 (c) The following standards are met:

37 (A) Reasons justify why the state policy embodied in the applicable goals should not apply;

38 (B) Areas that do not require a new exception cannot reasonably accommodate the use;

39 (C) The long term environmental, economic, social and energy consequences resulting from the  
 40 use at the proposed site with measures designed to reduce adverse impacts are not significantly  
 41 more adverse than would typically result from the same proposal being located in areas requiring  
 42 a goal exception other than the proposed site; and

43 (D) The proposed uses are compatible with other adjacent uses or will be so rendered through  
 44 measures designed to reduce adverse impacts.

45 (3) The commission shall adopt rules establishing:

1 (a) That an exception may be adopted to allow a use authorized by a statewide planning goal  
2 that cannot comply with the approval standards for that type of use;

3 (b) Under what circumstances particular reasons may or may not be used to justify an exception  
4 under subsection (2)(c)(A) of this section; and

5 (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2)  
6 of this section.

7 (4) A local government approving or denying a proposed exception shall set forth findings of fact  
8 and a statement of reasons that demonstrate that the standards of subsection (2) of this section have  
9 or have not been met.

10 (5) Each notice of a public hearing on a proposed exception shall specifically note that a goal  
11 exception is proposed and shall summarize the issues in an understandable manner.

12 (6) Upon review of a decision approving or denying an exception:

13 (a) The [*Land Use Board of Appeals*] **Oregon Department of Natural Resources** or the com-  
14 mission shall be bound by any finding of fact for which there is substantial evidence in the record  
15 of the local government proceedings resulting in approval or denial of the exception;

16 (b) The [*board*] **department** upon petition, or the commission, shall determine whether the local  
17 government's findings and reasons demonstrate that the standards of subsection (2) of this section  
18 have or have not been met; and

19 (c) The [*board*] **department** or commission shall adopt a clear statement of reasons that sets  
20 forth the basis for the determination that the standards of subsection (2) of this section have or have  
21 not been met.

22 (7) The commission shall by rule establish the standards required to justify an exception to the  
23 definition of "needed housing" authorized by ORS 197.303 (3).

24 (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement  
25 Part) on or before August 9, 1983, continues to be valid and is not subject to this section.

26 **SECTION 1007.** ORS 197.736 is amended to read:

27 197.736. The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
28 **Commission** shall amend goals, in accordance with ORS 197.240 and 197.245, and amend and adopt  
29 rules and guidelines, as necessary, to implement the provisions of this section and ORS 197.340 and  
30 197.732.

31 **SECTION 1007a.** ORS 197.747 is amended to read:

32 197.747. For the purposes of acknowledgment under ORS 197.251, [*board*] review under ORS  
33 197.805 to 197.855, review of a proposed regional problem-solving agreement under ORS 197.652 to  
34 197.658 or periodic review under ORS 197.628 to 197.650, "compliance with the goals" means the  
35 comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any  
36 failure to meet individual goal requirements is technical or minor in nature.

37 **SECTION 1008.** ORS 197.763 is amended to read:

38 197.763. The following procedures shall govern the conduct of quasi-judicial land use hearings  
39 conducted before a local governing body, planning commission, hearings body or hearings officer on  
40 application for a land use decision and shall be incorporated into the comprehensive plan and land  
41 use regulations:

42 (1) An issue which may be the basis for an appeal to the [*Land Use Board of Appeals*] **Oregon**  
43 **Department of Natural Resources** shall be raised not later than the close of the record at or  
44 following the final evidentiary hearing on the proposal before the local government. Such issues  
45 shall be raised and accompanied by statements or evidence sufficient to afford the governing body,

1 planning commission, hearings body or hearings officer, and the parties an adequate opportunity to  
2 respond to each issue.

3 (2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to  
4 owners of record of property on the most recent property tax assessment roll where such property  
5 is located:

6 (A) Within 100 feet of the property which is the subject of the notice where the subject property  
7 is wholly or in part within an urban growth boundary;

8 (B) Within 250 feet of the property which is the subject of the notice where the subject property  
9 is outside an urban growth boundary and not within a farm or forest zone; or

10 (C) Within 500 feet of the property which is the subject of the notice where the subject property  
11 is within a farm or forest zone.

12 (b) Notice shall also be provided to any neighborhood or community organization recognized by  
13 the governing body and whose boundaries include the site.

14 (c) At the discretion of the applicant, the local government also shall provide notice to the  
15 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**.

16 (3) The notice provided by the jurisdiction shall:

17 (a) Explain the nature of the application and the proposed use or uses which could be author-  
18 ized;

19 (b) List the applicable criteria from the ordinance and the plan that apply to the application at  
20 issue;

21 (c) Set forth the street address or other easily understood geographical reference to the subject  
22 property;

23 (d) State the date, time and location of the hearing;

24 (e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to  
25 provide statements or evidence sufficient to afford the decision maker an opportunity to respond to  
26 the issue precludes appeal to the [*board*] **department** based on that issue;

27 (f) Be mailed at least:

28 (A) Twenty days before the evidentiary hearing; or

29 (B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

30 (g) Include the name of a local government representative to contact and the telephone number  
31 where additional information may be obtained;

32 (h) State that a copy of the application, all documents and evidence submitted by or on behalf  
33 of the applicant and applicable criteria are available for inspection at no cost and will be provided  
34 at reasonable cost;

35 (i) State that a copy of the staff report will be available for inspection at no cost at least seven  
36 days prior to the hearing and will be provided at reasonable cost; and

37 (j) Include a general explanation of the requirements for submission of testimony and the pro-  
38 cedure for conduct of hearings.

39 (4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local  
40 government and be made available to the public.

41 (b) Any staff report used at the hearing shall be available at least seven days prior to the  
42 hearing. If additional documents or evidence are provided by any party, the local government may  
43 allow a continuance or leave the record open to allow the parties a reasonable opportunity to re-  
44 spond. Any continuance or extension of the record requested by an applicant shall result in a cor-  
45 responding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

1 (5) At the commencement of a hearing under a comprehensive plan or land use regulation, a  
2 statement shall be made to those in attendance that:

3 (a) Lists the applicable substantive criteria;

4 (b) States that testimony, arguments and evidence must be directed toward the criteria described  
5 in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the  
6 person believes to apply to the decision; and

7 (c) States that failure to raise an issue accompanied by statements or evidence sufficient to af-  
8 ford the decision maker and the parties an opportunity to respond to the issue precludes appeal to  
9 the [board] **department** based on that issue.

10 (6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an  
11 opportunity to present additional evidence, arguments or testimony regarding the application. The  
12 local hearings authority shall grant such request by continuing the public hearing pursuant to par-  
13 agraph (b) of this subsection or leaving the record open for additional written evidence, arguments  
14 or testimony pursuant to paragraph (c) of this subsection.

15 (b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time  
16 and place certain at least seven days from the date of the initial evidentiary hearing. An opportu-  
17 nity shall be provided at the continued hearing for persons to present and rebut new evidence, ar-  
18 guments or testimony. If new written evidence is submitted at the continued hearing, any person  
19 may request, prior to the conclusion of the continued hearing, that the record be left open for at  
20 least seven days to submit additional written evidence, arguments or testimony for the purpose of  
21 responding to the new written evidence.

22 (c) If the hearings authority leaves the record open for additional written evidence, arguments  
23 or testimony, the record shall be left open for at least seven days. Any participant may file a written  
24 request with the local government for an opportunity to respond to new evidence submitted during  
25 the period the record was left open. If such a request is filed, the hearings authority shall reopen  
26 the record pursuant to subsection (7) of this section.

27 (d) A continuance or extension granted pursuant to this section shall be subject to the limita-  
28 tions of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is  
29 requested or agreed to by the applicant.

30 (e) Unless waived by the applicant, the local government shall allow the applicant at least seven  
31 days after the record is closed to all other parties to submit final written arguments in support of  
32 the application. The applicant's final submittal shall be considered part of the record, but shall not  
33 include any new evidence. This seven-day period shall not be subject to the limitations of ORS  
34 215.427 or 227.178 and ORS 215.429 or 227.179.

35 (7) When a local governing body, planning commission, hearings body or hearings officer reopens  
36 a record to admit new evidence, arguments or testimony, any person may raise new issues which  
37 relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the  
38 matter at issue.

39 (8) The failure of the property owner to receive notice as provided in this section shall not in-  
40 validate such proceedings if the local government can demonstrate by affidavit that such notice was  
41 given. The notice provisions of this section shall not restrict the giving of notice by other means,  
42 including posting, newspaper publication, radio and television.

43 (9) For purposes of this section:

44 (a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal  
45 standards or policy believed relevant by the proponent to a decision. "Argument" does not include



1 facts.

2 (b) "Evidence" means facts, documents, data or other information offered to demonstrate com-  
3 pliance or noncompliance with the standards believed by the proponent to be relevant to the deci-  
4 sion.

5 **SECTION 1009.** ORS 197.768 is amended to read:

6 197.768. (1) As used in this section, "special district" has the meaning given that term in ORS  
7 197.505.

8 (2)(a) A local government or special district may adopt a public facilities strategy if the public  
9 facilities strategy:

10 (A)(i) Is acknowledged under ORS 197.251; or

11 (ii) Is approved by the [*Land Conservation and Development Commission*] **Oregon Natural Re-**  
12 **sources Commission** under ORS 197.628 to 197.650; and

13 (B) Meets the requirements of this section.

14 (b) If a special district seeks to implement a public facilities strategy, that special district is  
15 considered a local government for the purposes of ORS 197.251 and 197.628 to 197.650.

16 (3) A local government or special district may adopt a public facilities strategy only if the local  
17 government or special district:

18 (a) Makes written findings justifying the need for the public facilities strategy;

19 (b) Holds a public hearing on the adoption of a public facilities strategy and the findings that  
20 support the adoption of the public facilities strategy; and

21 (c) Provides written notice to the [*Department of Land Conservation and Development*] **Oregon**  
22 **Department of Natural Resources** at least 45 days prior to the final public hearing that is held  
23 to consider the adoption of the public facilities strategy.

24 (4) At a minimum, the findings under subsection (3) of this section must demonstrate that:

25 (a) There is a rapid increase in the rate or intensity of land development in a specific geographic  
26 area that was unanticipated at the time the original planning for that area was adopted or there  
27 has been a natural disaster or other catastrophic event in a specific geographic area;

28 (b) The total land development expected within the specific geographic area will exceed the  
29 planned or existing capacity of public facilities; and

30 (c) The public facilities strategy is structured to ensure that the necessary supply of housing  
31 and commercial and industrial facilities that will be impacted within the relevant geographic area  
32 is not unreasonably restricted by the adoption of the public facilities strategy.

33 (5) A public facilities strategy shall include a clear, objective and detailed description of actions  
34 and practices a local government or special district may engage in to control the time and sequence  
35 of development approvals in response to the identified deficiencies in public facilities.

36 (6) A public facilities strategy shall be effective for no more than 24 months after the date on  
37 which it is adopted, but may be extended, subject to subsection (7) of this section, provided the local  
38 government or special district adopting the public facilities strategy holds a public hearing on the  
39 proposed extension and adopts written findings that:

40 (a) Verify that the problem giving rise to the need for a public facilities strategy still exists;

41 (b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to  
42 the need for a public facilities strategy; and

43 (c) Set a specific duration for the extension of the public facilities strategy.

44 (7)(a) A local government or special district considering an extension of a public facilities  
45 strategy shall give the department notice at least 14 days prior to the date of the public hearing

1 on the extension.

2 (b) A single extension may not exceed one year, and a public facilities strategy may not be ex-  
3 tended more than three times.

4 **SECTION 1010.** ORS 197.840 is amended to read:

5 197.840. (1) The following periods of delay shall be excluded from the 77-day period within which  
6 the [board] **Oregon Department of Natural Resources** must make a final decision on a petition  
7 under ORS 197.830 (14):

8 (a) Any period of delay up to 120 days resulting from the [board's] **department's** deferring all  
9 or part of its consideration of a petition for review of a land use decision or limited land use deci-  
10 sion that allegedly violates the goals if the decision has been:

11 (A) Submitted for acknowledgment under ORS 197.251; or

12 (B) Submitted to the [Department of Land Conservation and Development] **department** as part  
13 of a periodic review work program task pursuant to ORS 197.628 to 197.650 and not yet acknowl-  
14 edged.

15 (b) Any period of delay resulting from a motion, including but not limited to, a motion disputing  
16 the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities  
17 not shown in the record.

18 (c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

19 (d) Any reasonable period of delay resulting from a continuance granted by [a member of the  
20 board on the member's] **an officer of the department on the department's** own motion or at the  
21 request of one of the parties, if the member granted the continuance on the basis of findings that  
22 the ends of justice served by granting the continuance outweigh the best interest of the public and  
23 the parties in having a decision within 77 days.

24 (2) No period of delay resulting from a continuance granted by the [board] **department** under  
25 subsection (1)(d) of this section shall be excludable under this section unless the [board] **department**  
26 sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice  
27 served by granting the continuance outweigh the best interests of the public and the other parties  
28 in a decision within the 77 days. The factors the [board] **department** shall consider in determining  
29 whether to grant a continuance under subsection (1)(d) of this section in any case are as follows:

30 (a) Whether the failure to grant a continuance in the proceeding would be likely to make a  
31 continuation of the proceeding impossible or result in a miscarriage of justice; or

32 (b) Whether the case is so unusual or so complex, due to the number of parties or the existence  
33 of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the  
34 issues within the 77-day time limit.

35 (3) No continuance under subsection (1)(d) of this section shall be granted because of general  
36 congestion of the [board] **department** calendar or lack of diligent preparation or attention to the  
37 case by any member of the [board] **department** or any party.

38 (4) The [board] **department** may defer all or part of its consideration of a land use decision or  
39 limited land use decision described in subsection (1)(a) of this section until the [Land Conservation  
40 and Development Commission] **Oregon Natural Resources Commission** has disposed of the ac-  
41 knowledgment proceeding described in subsection (1)(a) of this section. If the [board] **department**  
42 deferred all or part of its consideration of a decision under this subsection, the [board] **department**  
43 may grant a stay of the comprehensive plan provision, land use regulation, limited land use decision  
44 or land use decision under ORS 197.845.

45 **SECTION 1011.** ORS 215.209 is amended to read:

1       215.209. The *[Department of Land Conservation and Development]* **Oregon Department of Na-**  
2 **tural Resources** shall develop, in conjunction with local governments and other state agencies, a  
3 computerized database that is capable of producing county-wide maps that show the diversity of  
4 Oregon's rural lands. The database shall include, at a minimum, information on soil classifications,  
5 forest capabilities, irrigated lands, croplands, actual farm use, and plan and zone designations. To  
6 create the database, the department shall use the most current soils information from the United  
7 States Natural Resources Conservation Service, or its successor agency, and may use any other re-  
8 lated information that is readily available.

9       **SECTION 1012.** ORS 215.213 is amended to read:

10       215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991  
11 Edition), the following uses may be established in any area zoned for exclusive farm use:

12       (a) Churches and cemeteries in conjunction with churches.

13       (b) The propagation or harvesting of a forest product.

14       (c) Utility facilities necessary for public service, including wetland waste treatment systems but  
15 not including commercial facilities for the purpose of generating electrical power for public use by  
16 sale or transmission towers over 200 feet in height. A utility facility necessary for public service  
17 may be established as provided in ORS 215.275.

18       (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the  
19 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,  
20 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm  
21 operator does or will require the assistance of the relative in the management of the farm use and  
22 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.  
23 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS  
24 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or  
25 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-  
26 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure  
27 shall operate as a partition of the homesite to create a new parcel.

28       (e) Nonresidential buildings customarily provided in conjunction with farm use.

29       (f) Primary or accessory dwellings customarily provided in conjunction with farm use. For a  
30 primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-  
31 tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowl-  
32 edged under ORS 197.251.

33       (g) Operations for the exploration for and production of geothermal resources as defined by ORS  
34 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
35 compressors, separators and other customary production equipment for an individual well adjacent  
36 to the wellhead. Any activities or construction relating to such operations shall not be a basis for  
37 an exception under ORS 197.732 (2)(a) or (b).

38       (h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or  
39 construction relating to such operations shall not be a basis for an exception under ORS 197.732  
40 (2)(a) or (b).

41       (i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an  
42 existing building, in conjunction with an existing dwelling as a temporary use for the term of a  
43 hardship suffered by the existing resident or a relative of the resident. Within three months of the  
44 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-  
45 ished or, in the case of an existing building, the building shall be removed, demolished or returned

1 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-  
2 view of the hardship claimed under this paragraph. A temporary residence approved under this  
3 paragraph is not eligible for replacement under paragraph (q) of this subsection.

4 (j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

5 (k) Reconstruction or modification of public roads and highways, including the placement of  
6 utility facilities overhead and in the subsurface of public roads and highways along the public right  
7 of way, but not including the addition of travel lanes, where no removal or displacement of buildings  
8 would occur, or no new land parcels result.

9 (L) Temporary public road and highway detours that will be abandoned and restored to original  
10 condition or use at such time as no longer needed.

11 (m) Minor betterment of existing public road and highway related facilities, such as maintenance  
12 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous  
13 public-owned property utilized to support the operation and maintenance of public roads and high-  
14 ways.

15 (n) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has  
16 been listed in a county inventory as historic property as defined in ORS 358.480.

17 (o) Creation, restoration or enhancement of wetlands.

18 (p) A winery, as described in ORS 215.452.

19 (q) Alteration, restoration or replacement of a lawfully established dwelling that:

20 (A) Has intact exterior walls and roof structure;

21 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to  
22 a sanitary waste disposal system;

23 (C) Has interior wiring for interior lights;

24 (D) Has a heating system; and

25 (E) In the case of replacement:

26 (i) Is removed, demolished or converted to an allowable nonresidential use within three months  
27 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of  
28 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable  
29 siting standards. However, the standards shall not be applied in a manner that prohibits the siting  
30 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned  
31 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the  
32 deed records for the county where the property is located a deed restriction prohibiting the siting  
33 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless  
34 a statement of release is placed in the deed records for the county. The release shall be signed by  
35 the county or its designee and state that the provisions of this paragraph regarding replacement  
36 dwellings have changed to allow the siting of another dwelling. The county planning director or the  
37 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting  
38 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions  
39 and release statements filed under this paragraph; and

40 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-  
41 ished within three months after the deferred replacement permit is issued. A deferred replacement  
42 permit allows construction of the replacement dwelling at any time. If, however, the established  
43 dwelling is not removed or demolished within three months after the deferred replacement permit  
44 is issued, the permit becomes void. The replacement dwelling must comply with applicable building  
45 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to

1 siting at the time of construction. A deferred replacement permit may not be transferred, by sale  
2 or otherwise, except by the applicant to the spouse or a child of the applicant.

3 (r) Farm stands if:

4 (A) The structures are designed and used for the sale of farm crops or livestock grown on the  
5 farm operation, or grown on the farm operation and other farm operations in the local agricultural  
6 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm  
7 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-  
8 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;  
9 and

10 (B) The farm stand does not include structures designed for occupancy as a residence or for  
11 activity other than the sale of farm crops or livestock and does not include structures for banquets,  
12 public gatherings or public entertainment.

13 (s) An armed forces reserve center, if the center is within one-half mile of a community college.  
14 For purposes of this paragraph, "armed forces reserve center" includes an armory or National  
15 Guard support facility.

16 (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as  
17 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor  
18 area or placed on a permanent foundation unless the building or facility preexisted the use approved  
19 under this paragraph. The site shall not include an aggregate surface or hard surface area unless  
20 the surface preexisted the use approved under this paragraph. An owner of property used for the  
21 purpose authorized in this paragraph may charge a person operating the use on the property rent  
22 for the property. An operator may charge users of the property a fee that does not exceed the  
23 operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model  
24 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is  
25 used or intended to be used for flight and is controlled by radio, lines or design by a person on the  
26 ground.

27 (u) A facility for the processing of farm crops, or the production of biofuel as defined in ORS  
28 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops  
29 processed at the facility. The building established for the processing facility shall not exceed 10,000  
30 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm  
31 use or devote more than 10,000 square feet to the processing activities within another building  
32 supporting farm uses. A processing facility shall comply with all applicable siting standards but the  
33 standards shall not be applied in a manner that prohibits the siting of the processing facility.

34 (v) Fire service facilities providing rural fire protection services.

35 (w) Irrigation canals, delivery lines and those structures and accessory operational facilities  
36 associated with a district as defined in ORS 540.505.

37 (x) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-  
38 cilities or structures that end at the point where the utility service is received by the customer and  
39 that are located on one or more of the following:

40 (A) A public right of way;

41 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-  
42 jacent property owners has been obtained; or

43 (C) The property to be served by the utility.

44 (y) Subject to the issuance of a license, permit or other approval by the Department of Envi-  
45 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with

1 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application  
2 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,  
3 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an  
4 exclusive farm use zone under this chapter.

5 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),  
6 the following uses may be established in any area zoned for exclusive farm use subject to ORS  
7 215.296:

8 (a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest  
9 product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm op-  
10 eration or woodlot:

11 (A) Consists of 20 or more acres; and

12 (B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in  
13 annual gross income from the crops, livestock or forest products to be raised on the farm operation  
14 or woodlot.

15 (b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest  
16 product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than re-  
17 quired under paragraph (a) of this subsection, if the lot or parcel:

18 (A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar  
19 years out of the three calendar years before the year in which the application for the dwelling was  
20 made or is planted in perennials capable of producing upon harvest an average of at least \$20,000  
21 in annual gross farm income; or

22 (B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross an-  
23 nual income.

24 (c) Commercial activities that are in conjunction with farm use, including the processing of farm  
25 crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(u) of this section.

26 (d) Operations conducted for:

27 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas  
28 as defined by ORS 520.005, not otherwise permitted under subsection (1)(g) of this section;

29 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-  
30 sources subject to ORS 215.298;

31 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

32 (D) Processing of other mineral resources and other subsurface resources.

33 (e) Community centers owned by a governmental agency or a nonprofit community organization  
34 and operated primarily by and for residents of the local rural community, hunting and fishing pre-  
35 serves, public and private parks, playgrounds and campgrounds. Subject to the approval of the  
36 county governing body or its designee, a private campground may provide yurts for overnight  
37 camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include  
38 a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation.  
39 Upon request of a county governing body, the [*Land Conservation and Development Commission*]  
40 **Oregon Natural Resources Commission** may provide by rule for an increase in the number of  
41 yurts allowed on all or a portion of the campgrounds in a county if the commission determines that  
42 the increase will comply with the standards described in ORS 215.296 (1). A public park or  
43 campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt"  
44 means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage  
45 disposal hookup or internal cooking appliance.

1 (f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

2 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

3 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-  
4 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-  
5 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional  
6 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-  
7 erations. No aircraft may be based on a personal-use airport other than those owned or controlled  
8 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be  
9 granted through waiver action by the Oregon Department of Aviation in specific instances. A  
10 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-  
11 ject to any applicable rules of the Oregon Department of Aviation.

12 (i) A facility for the primary processing of forest products, provided that such facility is found  
13 to not seriously interfere with accepted farming practices and is compatible with farm uses de-  
14 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is  
15 renewable. These facilities are intended to be only portable or temporary in nature. The primary  
16 processing of a forest product, as used in this section, means the use of a portable chipper or stud  
17 mill or other similar methods of initial treatment of a forest product in order to enable its shipment  
18 to market. Forest products, as used in this section, means timber grown upon a parcel of land or  
19 contiguous land where the primary processing facility is located.

20 (j) A site for the disposal of solid waste approved by the governing body of a city or county or  
21 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-  
22 mental Quality together with equipment, facilities or buildings necessary for its operation.

23 (k) Dog kennels.

24 (L) Residential homes as defined in ORS 197.660, in existing dwellings.

25 (m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not  
26 under the jurisdiction of the [*State Fish and Wildlife Commission or insect species. Insect species shall*  
27 *not include any species under quarantine*] **Oregon Department of Natural Resources or insect**  
28 **species that are not quarantined** by the State Department of Agriculture or the United States  
29 Department of Agriculture. The county shall provide notice of all applications under this paragraph  
30 to the State Department of Agriculture. Notice shall be provided in accordance with the county's  
31 land use regulations but shall be mailed at least 20 calendar days prior to any administrative deci-  
32 sion or initial public hearing on the application.

33 (n) Home occupations as provided in ORS 215.448.

34 (o) Transmission towers over 200 feet in height.

35 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way  
36 but not resulting in the creation of new land parcels.

37 (q) Reconstruction or modification of public roads and highways involving the removal or dis-  
38 placement of buildings but not resulting in the creation of new land parcels.

39 (r) Improvement of public road and highway related facilities such as maintenance yards, weigh  
40 stations and rest areas, where additional property or right of way is required but not resulting in  
41 the creation of new land parcels.

42 (s) A destination resort that is approved consistent with the requirements of any statewide  
43 planning goal relating to the siting of a destination resort.

44 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-  
45 dences.

1 (u) A living history museum related to resource based activities owned and operated by a gov-  
2 ernmental agency or a local historical society, together with limited commercial activities and fa-  
3 cilities that are directly related to the use and enjoyment of the museum and located within  
4 authentic buildings of the depicted historic period or the museum administration building, if areas  
5 other than an exclusive farm use zone cannot accommodate the museum and related activities or if  
6 the museum administration buildings and parking lot are located within one quarter mile of the  
7 metropolitan urban growth boundary. As used in this paragraph:

8 (A) "Living history museum" means a facility designed to depict and interpret everyday life and  
9 culture of some specific historic period using authentic buildings, tools, equipment and people to  
10 simulate past activities and events; and

11 (B) "Local historical society" means the local historical society, recognized as such by the  
12 county governing body and organized under ORS chapter 65.

13 (v) Operations for the extraction and bottling of water.

14 (w) An aerial fireworks display business that has been in continuous operation at its current  
15 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's  
16 permit to sell or provide fireworks.

17 (x) A landscape contracting business, as defined in ORS 671.520, or a business providing land-  
18 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction  
19 with the growing and marketing of nursery stock on the land that constitutes farm use.

20 (y) Public or private schools for kindergarten through grade 12, including all buildings essential  
21 to the operation of a school, primarily for residents of the rural area in which the school is located.

22 (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),  
23 a single-family residential dwelling not provided in conjunction with farm use may be established  
24 on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by  
25 the Agricultural Capability Classification System in use by the United States Department of Agri-  
26 culture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval  
27 of the governing body or its designee in any area zoned for exclusive farm use upon written findings  
28 showing all of the following:

29 (a) The dwelling or activities associated with the dwelling will not force a significant change in  
30 or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

31 (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and  
32 livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location  
33 and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size  
34 or location if it can reasonably be put to farm use in conjunction with other land.

35 (c) Complies with such other conditions as the governing body or its designee considers neces-  
36 sary.

37 (4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),  
38 one single-family dwelling, not provided in conjunction with farm use, may be established in any  
39 area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that  
40 is not larger than three acres upon written findings showing:

41 (a) The dwelling or activities associated with the dwelling will not force a significant change in  
42 or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

43 (b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a  
44 [geological] **geologic** hazard area, the dwelling complies with conditions imposed by local ordinances  
45 relating specifically to the Willamette River Greenway, floodplains or [geological] **geologic** hazard



1 areas, whichever is applicable; and

2 (c) The dwelling complies with other conditions considered necessary by the governing body or  
3 its designee.

4 (5) Upon receipt of an application for a permit under subsection (4) of this section, the governing  
5 body shall notify:

6 (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be es-  
7 tablished; and

8 (b) Persons who have requested notice of such applications and who have paid a reasonable fee  
9 imposed by the county to cover the cost of such notice.

10 (6) The notice required in subsection (5) of this section shall specify that persons have 15 days  
11 following the date of postmark of the notice to file a written objection on the grounds only that the  
12 dwelling or activities associated with it would force a significant change in or significantly increase  
13 the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is re-  
14 ceived, the governing body or its designee shall approve or disapprove the application. If an ob-  
15 jection is received, the governing body shall set the matter for hearing in the manner prescribed in  
16 ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required  
17 by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of  
18 this section.

19 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,  
20 1948, and July 1, 1983. For the purposes of this section:

21 (a) Only one lot or parcel exists if:

22 (A) A lot or parcel described in this section is contiguous to one or more lots or parcels de-  
23 scribed in this section; and

24 (B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels  
25 or lots and parcels by the same person, spouses or a single partnership or business entity, separately  
26 or in tenancy in common.

27 (b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including  
28 but not limited to, lots, parcels or lots and parcels separated only by a public road.

29 (8) A person who sells or otherwise transfers real property in an exclusive farm use zone may  
30 retain a life estate in a dwelling on that property and in a tract of land under and around the  
31 dwelling.

32 (9) No final approval of a nonfarm use under this section shall be given unless any additional  
33 taxes imposed upon the change in use have been paid.

34 (10) Roads, highways and other transportation facilities and improvements not allowed under  
35 subsections (1) and (2) of this section may be established, subject to the approval of the governing  
36 body or its designee, in areas zoned for exclusive farm use subject to:

37 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable  
38 goal with which the facility or improvement does not comply; or

39 (b) ORS 215.296 for those uses identified by rule of the [*Land Conservation and Development*  
40 *Commission*] **Oregon Natural Resources Commission** as provided in section 3, chapter 529,  
41 Oregon Laws 1993.

42 **SECTION 1013.** ORS 215.263 is amended to read:

43 215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting  
44 in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the  
45 governing body or its designee of the county in which the land is situated. The governing body of

1 a county by ordinance shall require such prior review and approval for such divisions of land within  
2 exclusive farm use zones established within the county.

3 (2) The governing body of a county or its designee may approve a proposed division of land to  
4 create parcels for farm use as defined in ORS 215.203 if it finds:

5 (a) That the proposed division of land is appropriate for the continuation of the existing com-  
6 mercial agricultural enterprise within the area; or

7 (b) The parcels created by the proposed division are not smaller than the minimum size estab-  
8 lished under ORS 215.780.

9 (3) The governing body of a county or its designee may approve a proposed division of land in  
10 an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283  
11 (2) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for  
12 the use. The governing body may establish other criteria as it considers necessary.

13 (4) In western Oregon, as defined in ORS 321.257, but not in the Willamette Valley, as defined  
14 in ORS 215.010, the governing body of a county or its designee:

15 (a) May approve a division of land in an exclusive farm use zone to create up to two new parcels  
16 smaller than the minimum size established under ORS 215.780, each to contain a dwelling not pro-  
17 vided in conjunction with farm use if:

18 (A) The nonfarm dwellings have been approved under ORS 215.213 (3) or 215.284 (2) or (3);

19 (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully  
20 created prior to July 1, 2001;

21 (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with  
22 the minimum size established under ORS 215.780;

23 (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings  
24 complies with the minimum size established under ORS 215.780; and

25 (E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm  
26 crops and livestock or merchantable tree species considering the terrain, adverse soil or land con-  
27 ditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be con-  
28 sidered unsuitable based solely on size or location if the parcel can reasonably be put to farm or  
29 forest use in conjunction with other land.

30 (b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into  
31 two parcels, each to contain one dwelling not provided in conjunction with farm use if:

32 (A) The nonfarm dwellings have been approved under ORS 215.284 (2) or (3);

33 (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully  
34 created prior to July 1, 2001;

35 (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or  
36 smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

37 (D) The parcels for the nonfarm dwellings are:

38 (i) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber;  
39 and

40 (ii) Composed of at least 90 percent Class VI through VIII soils;

41 (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation;  
42 and

43 (F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm  
44 crops and livestock or merchantable tree species considering the terrain, adverse soil or land con-  
45 ditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be con-

1 sidered unsuitable based solely on size or location if the parcel can reasonably be put to farm or  
2 forest use in conjunction with other land.

3 (5) In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:

4 (a) May approve a division of land in an exclusive farm use zone to create up to two new parcels  
5 smaller than the minimum size established under ORS 215.780, each to contain a dwelling not pro-  
6 vided in conjunction with farm use if:

7 (A) The nonfarm dwellings have been approved under ORS 215.284 (7);

8 (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully  
9 created prior to July 1, 2001;

10 (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with  
11 the minimum size established under ORS 215.780;

12 (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings  
13 complies with the minimum size established under ORS 215.780; and

14 (E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm  
15 crops and livestock or merchantable tree species considering the terrain, adverse soil or land con-  
16 ditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be con-  
17 sidered unsuitable based solely on size or location if the parcel can reasonably be put to farm or  
18 forest use in conjunction with other land.

19 (b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into  
20 two parcels, each to contain one dwelling not provided in conjunction with farm use if:

21 (A) The nonfarm dwellings have been approved under ORS 215.284 (7);

22 (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully  
23 created prior to July 1, 2001;

24 (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or  
25 smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

26 (D) The parcels for the nonfarm dwellings are:

27 (i) Not capable of producing more than at least 20 cubic feet per acre per year of wood fiber;  
28 and

29 (ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90  
30 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage  
31 for grazing livestock. The [*Land Conservation and Development Commission*] **Oregon Natural Re-**  
32 **sources Commission**, in cooperation with the State Department of Agriculture and other interested  
33 persons, may establish by rule objective criteria for identifying units of land that are not capable  
34 of producing adequate herbaceous forage for grazing livestock. In developing the criteria, the com-  
35 mission shall use the latest information from the United States Natural Resources Conservation  
36 Service and consider costs required to utilize grazing lands that differ in acreage and productivity  
37 level;

38 (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation;  
39 and

40 (F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm  
41 crops and livestock or merchantable tree species considering the terrain, adverse soil or land con-  
42 ditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be con-  
43 sidered unsuitable based solely on size or location if the parcel can reasonably be put to farm or  
44 forest use in conjunction with other land.

45 (6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within

1 the boundaries designated for a farm use zone at the time the zone is established.

2 (7) This section does not apply to divisions of land resulting from lien foreclosures or divisions  
3 of land resulting from foreclosure of recorded contracts for the sale of real property.

4 (8) The governing body of a county may not approve any proposed division of a lot or parcel  
5 described in ORS 215.213 (1)(d) or (i), 215.283 (1)(d) or (2)(L) or 215.284 (1), or a proposed division  
6 that separates a processing facility from the farm operation specified in ORS 215.213 (1)(u) or 215.283  
7 (1)(r).

8 (9) The governing body of a county may approve a proposed division of land in an exclusive farm  
9 use zone to create a parcel with an existing dwelling to be used:

10 (a) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved  
11 under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7); and

12 (b) For historic property that meets the requirements of ORS 215.213 (1)(n) and 215.283 (1)(L).

13 (10)(a) Notwithstanding ORS 215.780, the governing body of a county or its designee may ap-  
14 prove a proposed division of land provided:

15 (A) The land division is for the purpose of allowing a provider of public parks or open space,  
16 or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels;  
17 and

18 (B) A parcel created by the land division that contains a dwelling is large enough to support  
19 continued residential use of the parcel.

20 (b) A parcel created pursuant to this subsection that does not contain a dwelling:

21 (A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

22 (B) May not be considered in approving or denying an application for siting any other dwelling;

23 (C) May not be considered in approving a redesignation or rezoning of forestlands except for a  
24 redesignation or rezoning to allow a public park, open space or other natural resource use; and

25 (D) May not be smaller than 25 acres unless the purpose of the land division is:

26 (i) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a  
27 wildlife habitat protection plan; or

28 (ii) To allow a transaction in which at least one party is a public park or open space provider,  
29 or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000  
30 acres of open space or park property.

31 (11) The governing body of a county or its designee may approve a division of land smaller than  
32 the minimum lot or parcel size described in ORS 215.780 (1) and (2) in an exclusive farm use zone  
33 provided:

34 (a) The division is for the purpose of establishing a church, including cemeteries in conjunction  
35 with the church;

36 (b) The church has been approved under ORS 215.213 (1) or 215.283 (1);

37 (c) The newly created lot or parcel is not larger than five acres; and

38 (d) The remaining lot or parcel, not including the church, meets the minimum lot or parcel size  
39 described in ORS 215.780 (1) and (2) either by itself or after it is consolidated with another lot or  
40 parcel.

41 (12) The governing body of a county may not approve a division of land for nonfarm use under  
42 subsection (3), (4), (5), (9), (10) or (11) of this section unless any additional tax imposed for the  
43 change in use has been paid.

44 (13) Parcels used or to be used for training or stabling facilities may not be considered appro-  
45 priate to maintain the existing commercial agricultural enterprise in an area where other types of

1 agriculture occur.

2 **SECTION 1014.** ORS 215.275 is amended to read:

3 215.275. (1) A utility facility established under ORS 215.213 (1)(c) or 215.283 (1)(c) is necessary  
4 for public service if the facility must be sited in an exclusive farm use zone in order to provide the  
5 service.

6 (2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS  
7 215.213 (1)(c) or 215.283 (1)(c) must show that reasonable alternatives have been considered and that  
8 the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

9 (a) Technical and engineering feasibility;

10 (b) The proposed facility is locationally dependent. A utility facility is locationally dependent if  
11 it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reason-  
12 ably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

13 (c) Lack of available urban and nonresource lands;

14 (d) Availability of existing rights of way;

15 (e) Public health and safety; and

16 (f) Other requirements of state or federal agencies.

17 (3) Costs associated with any of the factors listed in subsection (2) of this section may be con-  
18 sidered, but cost alone may not be the only consideration in determining that a utility facility is  
19 necessary for public service. Land costs shall not be included when considering alternative locations  
20 for substantially similar utility facilities. The [*Land Conservation and Development Commission*]  
21 **Oregon Natural Resources Commission** shall determine by rule how land costs may be considered  
22 when evaluating the siting of utility facilities that are not substantially similar.

23 (4) The owner of a utility facility approved under ORS 215.213 (1)(c) or 215.283 (1)(c) shall be  
24 responsible for restoring, as nearly as possible, to its former condition any agricultural land and  
25 associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair  
26 or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility fa-  
27 cility from requiring a bond or other security from a contractor or otherwise imposing on a con-  
28 tractor the responsibility for restoration.

29 (5) The governing body of the county or its designee shall impose clear and objective conditions  
30 on an application for utility facility siting under ORS 215.213 (1)(c) or 215.283 (1)(c) to mitigate and  
31 minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in  
32 order to prevent a significant change in accepted farm practices or a significant increase in the cost  
33 of farm practices on the surrounding farmlands.

34 (6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas  
35 pipelines and associated facilities authorized by and subject to regulation by the Federal Energy  
36 Regulatory Commission.

37 **SECTION 1015.** ORS 215.278 is amended to read:

38 215.278. (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
39 **Commission** shall revise administrative rules regarding dwellings customarily provided in conjunc-  
40 tion with farm use to allow, under ORS 215.213 and 215.283, the establishment of accessory dwellings  
41 needed to provide opportunities for farmworker housing for individuals primarily engaged in farm  
42 use whose assistance in the management of the farm is or will be required by the farm operator on  
43 the farm unit.

44 (2) As used in this section, "farm unit" means the contiguous and noncontiguous tracts in com-  
45 mon ownership used by the farm operator for farm use as defined in ORS 215.203.

1       **SECTION 1016.** ORS 215.282 is amended to read:

2       215.282. The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
3 **Commission** shall consider the findings of ORS 215.281 and adopt rules that provide standards for  
4 the review of a primary or accessory dwelling customarily provided in conjunction with a commer-  
5 cial dairy farm. Notwithstanding any other administrative rule establishing a gross farm income  
6 standard, the rules adopted under this section shall allow the siting of a dwelling on a commercial  
7 dairy farm prior to the dairy earning any gross farm income.

8       **SECTION 1017.** ORS 215.283 is amended to read:

9       215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

10      (a) Churches and cemeteries in conjunction with churches.

11      (b) The propagation or harvesting of a forest product.

12      (c) Utility facilities necessary for public service, including wetland waste treatment systems but  
13 not including commercial facilities for the purpose of generating electrical power for public use by  
14 sale or transmission towers over 200 feet in height. A utility facility necessary for public service  
15 may be established as provided in ORS 215.275.

16      (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the  
17 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,  
18 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm  
19 operator does or will require the assistance of the relative in the management of the farm use and  
20 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.  
21 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS  
22 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or  
23 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-  
24 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure  
25 shall operate as a partition of the homesite to create a new parcel.

26      (e) Primary or accessory dwellings and other buildings customarily provided in conjunction with  
27 farm use.

28      (f) Operations for the exploration for and production of geothermal resources as defined by ORS  
29 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
30 compressors, separators and other customary production equipment for an individual well adjacent  
31 to the wellhead. Any activities or construction relating to such operations shall not be a basis for  
32 an exception under ORS 197.732 (2)(a) or (b).

33      (g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or  
34 construction relating to such operations shall not be a basis for an exception under ORS 197.732  
35 (2)(a) or (b).

36      (h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

37      (i) Reconstruction or modification of public roads and highways, including the placement of  
38 utility facilities overhead and in the subsurface of public roads and highways along the public right  
39 of way, but not including the addition of travel lanes, where no removal or displacement of buildings  
40 would occur, or no new land parcels result.

41      (j) Temporary public road and highway detours that will be abandoned and restored to original  
42 condition or use at such time as no longer needed.

43      (k) Minor betterment of existing public road and highway related facilities such as maintenance  
44 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous  
45 public-owned property utilized to support the operation and maintenance of public roads and high-

1 ways.

2 (L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has  
3 been listed in a county inventory as historic property as defined in ORS 358.480.

4 (m) Creation, restoration or enhancement of wetlands.

5 (n) A winery, as described in ORS 215.452.

6 (o) Farm stands if:

7 (A) The structures are designed and used for the sale of farm crops or livestock grown on the  
8 farm operation, or grown on the farm operation and other farm operations in the local agricultural  
9 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm  
10 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-  
11 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;  
12 and

13 (B) The farm stand does not include structures designed for occupancy as a residence or for  
14 activity other than the sale of farm crops or livestock and does not include structures for banquets,  
15 public gatherings or public entertainment.

16 (p) Alteration, restoration or replacement of a lawfully established dwelling that:

17 (A) Has intact exterior walls and roof structure;

18 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to  
19 a sanitary waste disposal system;

20 (C) Has interior wiring for interior lights;

21 (D) Has a heating system; and

22 (E) In the case of replacement:

23 (i) Is removed, demolished or converted to an allowable nonresidential use within three months  
24 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of  
25 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable  
26 siting standards. However, the standards shall not be applied in a manner that prohibits the siting  
27 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned  
28 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the  
29 deed records for the county where the property is located a deed restriction prohibiting the siting  
30 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless  
31 a statement of release is placed in the deed records for the county. The release shall be signed by  
32 the county or its designee and state that the provisions of this paragraph regarding replacement  
33 dwellings have changed to allow the siting of another dwelling. The county planning director or the  
34 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting  
35 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions  
36 and release statements filed under this paragraph; and

37 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-  
38 ished within three months after the deferred replacement permit is issued. A deferred replacement  
39 permit allows construction of the replacement dwelling at any time. If, however, the established  
40 dwelling is not removed or demolished within three months after the deferred replacement permit  
41 is issued, the permit becomes void. The replacement dwelling must comply with applicable building  
42 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to  
43 siting at the time of construction. A deferred replacement permit may not be transferred, by sale  
44 or otherwise, except by the applicant to the spouse or a child of the applicant.

45 (q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as

1 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor  
2 area or placed on a permanent foundation unless the building or facility preexisted the use approved  
3 under this paragraph. The site shall not include an aggregate surface or hard surface area unless  
4 the surface preexisted the use approved under this paragraph. An owner of property used for the  
5 purpose authorized in this paragraph may charge a person operating the use on the property rent  
6 for the property. An operator may charge users of the property a fee that does not exceed the  
7 operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model  
8 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is  
9 used or intended to be used for flight and is controlled by radio, lines or design by a person on the  
10 ground.

11 (r) A facility for the processing of farm crops, or the production of biofuel as defined in ORS  
12 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops  
13 processed at the facility. The building established for the processing facility shall not exceed 10,000  
14 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm  
15 use or devote more than 10,000 square feet to the processing activities within another building  
16 supporting farm uses. A processing facility shall comply with all applicable siting standards but the  
17 standards shall not be applied in a manner that prohibits the siting of the processing facility.

18 (s) Fire service facilities providing rural fire protection services.

19 (t) Irrigation canals, delivery lines and those structures and accessory operational facilities as-  
20 sociated with a district as defined in ORS 540.505.

21 (u) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-  
22 cilities or structures that end at the point where the utility service is received by the customer and  
23 that are located on one or more of the following:

24 (A) A public right of way;

25 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-  
26 jacent property owners has been obtained; or

27 (C) The property to be served by the utility.

28 (v) Subject to the issuance of a license, permit or other approval by the Department of Envi-  
29 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with  
30 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application  
31 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,  
32 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an  
33 exclusive farm use zone under this chapter.

34 (w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to  
35 provide rural law enforcement services primarily in rural areas, including parole and post-prison  
36 supervision, but not including a correctional facility as defined under ORS 162.135.

37 (2) The following nonfarm uses may be established, subject to the approval of the governing body  
38 or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

39 (a) Commercial activities that are in conjunction with farm use, including the processing of farm  
40 crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(r) of this section.

41 (b) Operations conducted for:

42 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas  
43 as defined by ORS 520.005 not otherwise permitted under subsection (1)(f) of this section;

44 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-  
45 sources subject to ORS 215.298;



1 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

2 (D) Processing of other mineral resources and other subsurface resources.

3 (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the  
4 approval of the county governing body or its designee, a private campground may provide yurts for  
5 overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller,  
6 may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent  
7 foundation. Upon request of a county governing body, the [*Land Conservation and Development*  
8 *Commission*] **Oregon Natural Resources Commission** may provide by rule for an increase in the  
9 number of yurts allowed on all or a portion of the campgrounds in a county if the commission de-  
10 termines that the increase will comply with the standards described in ORS 215.296 (1). As used in  
11 this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with  
12 no plumbing, sewage disposal hookup or internal cooking appliance.

13 (d) Parks and playgrounds. A public park may be established consistent with the provisions of  
14 ORS 195.120.

15 (e) Community centers owned by a governmental agency or a nonprofit community organization  
16 and operated primarily by and for residents of the local rural community. A community center au-  
17 thorized under this paragraph may provide services to veterans, including but not limited to emer-  
18 gency and transitional shelter, preparation and service of meals, vocational and educational  
19 counseling and referral to local, state or federal agencies providing medical, mental health, disability  
20 income replacement and substance abuse services, only in a facility that is in existence on January  
21 1, 2006. The services may not include direct delivery of medical, mental health, disability income  
22 replacement or substance abuse services.

23 (f) Golf courses on land determined not to be high-value farmland, as defined in ORS 195.300.

24 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

25 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-  
26 tenance and service facilities. A personal-use airport, as used in this section, means an airstrip re-  
27 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional  
28 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-  
29 erations. No aircraft may be based on a personal-use airport other than those owned or controlled  
30 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be  
31 granted through waiver action by the Oregon Department of Aviation in specific instances. A  
32 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-  
33 ject to any applicable rules of the Oregon Department of Aviation.

34 (i) Home occupations as provided in ORS 215.448.

35 (j) A facility for the primary processing of forest products, provided that such facility is found  
36 to not seriously interfere with accepted farming practices and is compatible with farm uses de-  
37 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is  
38 renewable. These facilities are intended to be only portable or temporary in nature. The primary  
39 processing of a forest product, as used in this section, means the use of a portable chipper or stud  
40 mill or other similar methods of initial treatment of a forest product in order to enable its shipment  
41 to market. Forest products, as used in this section, means timber grown upon a parcel of land or  
42 contiguous land where the primary processing facility is located.

43 (k) A site for the disposal of solid waste approved by the governing body of a city or county or  
44 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-  
45 mental Quality together with equipment, facilities or buildings necessary for its operation.

1 (L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an  
2 existing building, in conjunction with an existing dwelling as a temporary use for the term of a  
3 hardship suffered by the existing resident or a relative of the resident. Within three months of the  
4 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-  
5 ished or, in the case of an existing building, the building shall be removed, demolished or returned  
6 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-  
7 view of the hardship claimed under this paragraph. A temporary residence approved under this  
8 paragraph is not eligible for replacement under subsection (1)(p) of this section.

9 (m) Transmission towers over 200 feet in height.

10 (n) Dog kennels.

11 (o) Residential homes as defined in ORS 197.660, in existing dwellings.

12 (p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not  
13 under the jurisdiction of the [*State Fish and Wildlife Commission or insect species. Insect species shall*  
14 *not include any species under quarantine by the State Department of Agriculture*] **Oregon Depart-**  
15 **ment of Natural Resources or insect species that are not quarantined by the State Depart-**  
16 **ment of Agriculture** or the United States Department of Agriculture. The county shall provide  
17 notice of all applications under this paragraph to the State Department of Agriculture. Notice shall  
18 be provided in accordance with the county's land use regulations but shall be mailed at least 20  
19 calendar days prior to any administrative decision or initial public hearing on the application.

20 (q) Construction of additional passing and travel lanes requiring the acquisition of right of way  
21 but not resulting in the creation of new land parcels.

22 (r) Reconstruction or modification of public roads and highways involving the removal or dis-  
23 placement of buildings but not resulting in the creation of new land parcels.

24 (s) Improvement of public road and highway related facilities, such as maintenance yards, weigh  
25 stations and rest areas, where additional property or right of way is required but not resulting in  
26 the creation of new land parcels.

27 (t) A destination resort that is approved consistent with the requirements of any statewide  
28 planning goal relating to the siting of a destination resort.

29 (u) Room and board arrangements for a maximum of five unrelated persons in existing resi-  
30 dences.

31 (v) Operations for the extraction and bottling of water.

32 (w) Expansion of existing county fairgrounds and activities directly relating to county  
33 fairgrounds governed by county fair boards established pursuant to ORS 565.210.

34 (x) A living history museum related to resource based activities owned and operated by a gov-  
35 ernmental agency or a local historical society, together with limited commercial activities and fa-  
36 cilities that are directly related to the use and enjoyment of the museum and located within  
37 authentic buildings of the depicted historic period or the museum administration building, if areas  
38 other than an exclusive farm use zone cannot accommodate the museum and related activities or if  
39 the museum administration buildings and parking lot are located within one quarter mile of an ur-  
40 ban growth boundary. As used in this paragraph:

41 (A) "Living history museum" means a facility designed to depict and interpret everyday life and  
42 culture of some specific historic period using authentic buildings, tools, equipment and people to  
43 simulate past activities and events; and

44 (B) "Local historical society" means the local historical society recognized by the county gov-  
45 erning body and organized under ORS chapter 65.

1 (y) An aerial fireworks display business that has been in continuous operation at its current  
2 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's  
3 permit to sell or provide fireworks.

4 (z) A landscape contracting business, as defined in ORS 671.520, or a business providing land-  
5 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction  
6 with the growing and marketing of nursery stock on the land that constitutes farm use.

7 (aa) Public or private schools for kindergarten through grade 12, including all buildings essential  
8 to the operation of a school, primarily for residents of the rural area in which the school is located.

9 (3) Roads, highways and other transportation facilities and improvements not allowed under  
10 subsections (1) and (2) of this section may be established, subject to the approval of the governing  
11 body or its designee, in areas zoned for exclusive farm use subject to:

12 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable  
13 goal with which the facility or improvement does not comply; or

14 (b) ORS 215.296 for those uses identified by rule of the [*Land Conservation and Development*  
15 *Commission*] **Oregon Natural Resources Commission** as provided in section 3, chapter 529,  
16 Oregon Laws 1993.

17 **SECTION 1018.** ORS 215.304 is amended to read:

18 215.304. (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
19 **Commission** shall not adopt or implement any rule to identify or designate small-scale farmland or  
20 secondary land.

21 (2) Amendments required to conform rules to the provisions of subsection (1) of this section and  
22 ORS 215.700 to 215.780 shall be adopted by March 1, 1994.

23 (3) Any portion of a rule inconsistent with the provisions of ORS 197.247 (1991 Edition), 215.213,  
24 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) or 215.700  
25 to 215.780 on March 1, 1994:

26 (a) Shall not be implemented or enforced; and

27 (b) Has no legal effect.

28 **SECTION 1019.** ORS 215.416 is amended to read:

29 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,  
30 an owner of land may apply in writing to such persons as the governing body designates, for a  
31 permit, in the manner prescribed by the governing body. The governing body shall establish fees  
32 charged for processing permits at an amount no more than the actual or average cost of providing  
33 that service.

34 (2) The governing body shall establish a consolidated procedure by which an applicant may ap-  
35 ply at one time for all permits or zone changes needed for a development project. The consolidated  
36 procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated proce-  
37 dure shall be available for use at the option of the applicant no later than the time of the first pe-  
38 riodic review of the comprehensive plan and land use regulations.

39 (3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least  
40 one public hearing on the application.

41 (4) The application shall not be approved if the proposed use of land is found to be in conflict  
42 with the comprehensive plan of the county and other applicable land use regulation or ordinance  
43 provisions. The approval may include such conditions as are authorized by statute or county legis-  
44 lation.

45 (5) Hearings under this section shall be held only after notice to the applicant and also notice

1 to other persons as otherwise provided by law and shall otherwise be conducted in conformance  
2 with the provisions of ORS 197.763.

3 (6) Notice of a public hearing on an application submitted under this section shall be provided  
4 to the owner of an airport defined by the Oregon Department of Aviation as a “public use airport”  
5 if:

6 (a) The name and address of the airport owner has been provided by the Oregon Department  
7 of Aviation to the county planning authority; and

8 (b) The property subject to the land use hearing is:

9 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon  
10 Department of Aviation to be a “visual airport”; or

11 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon  
12 Department of Aviation to be an “instrument airport.”

13 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing  
14 need not be provided as set forth in subsection (6) of this section if the zoning permit would only  
15 allow a structure less than 35 feet in height and the property is located outside the runway “ap-  
16 proach surface” as defined by the Oregon Department of Aviation.

17 (8)(a) Approval or denial of a permit application shall be based on standards and criteria which  
18 shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county  
19 and which shall relate approval or denial of a permit application to the zoning ordinance and com-  
20 prehensive plan for the area in which the proposed use of land would occur and to the zoning or-  
21 dinance and comprehensive plan for the county as a whole.

22 (b) When an ordinance establishing approval standards is required under ORS 197.307 to provide  
23 only clear and objective standards, the standards must be clear and objective on the face of the  
24 ordinance.

25 (9) Approval or denial of a permit or expedited land division shall be based upon and accompa-  
26 nied by a brief statement that explains the criteria and standards considered relevant to the deci-  
27 sion, states the facts relied upon in rendering the decision and explains the justification for the  
28 decision based on the criteria, standards and facts set forth.

29 (10) Written notice of the approval or denial shall be given to all parties to the proceeding.

30 (11)(a)(A) The hearings officer or such other person as the governing body designates may ap-  
31 prove or deny an application for a permit without a hearing if the hearings officer or other desig-  
32 nated person gives notice of the decision and provides an opportunity for any person who is  
33 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,  
34 to file an appeal.

35 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)  
36 of this subsection.

37 (C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall  
38 describe the nature of the decision. In addition, the notice shall state that any person who is ad-  
39 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-  
40 section may appeal the decision by filing a written appeal in the manner and within the time period  
41 provided in the county’s land use regulations. A county may not establish an appeal period that is  
42 less than 12 days from the date the written notice of decision required by this subsection was  
43 mailed. The notice shall state that the decision will not become final until the period for filing a  
44 local appeal has expired. The notice also shall state that a person who is mailed written notice of  
45 the decision cannot appeal the decision directly to the [*Land Use Board of Appeals*] **Oregon De-**

1 **partment of Natural Resources** under ORS 197.830.

2 (D) An appeal from a hearings officer's decision made without hearing under this subsection  
3 shall be to the planning commission or governing body of the county. An appeal from such other  
4 person as the governing body designates shall be to a hearings officer, the planning commission or  
5 the governing body. In either case, the appeal shall be to a de novo hearing.

6 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial  
7 evidentiary hearing required under ORS 197.763 as the basis for an appeal to the [*Land Use Board*  
8 *of Appeals*] **department**. At the de novo hearing:

9 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-  
10 ments and evidence as they would have had in a hearing under subsection (3) of this section before  
11 the decision;

12 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised  
13 in a notice of appeal; and

14 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are  
15 accepted at the hearing.

16 (b) If a local government provides only a notice of the opportunity to request a hearing, the  
17 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing  
18 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,  
19 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the  
20 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made  
21 by neighborhood or community organizations recognized by the governing body and whose bounda-  
22 ries include the site.

23 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-  
24 plicant and to the owners of record of property on the most recent property tax assessment roll  
25 where such property is located:

26 (i) Within 100 feet of the property that is the subject of the notice when the subject property  
27 is wholly or in part within an urban growth boundary;

28 (ii) Within 250 feet of the property that is the subject of the notice when the subject property  
29 is outside an urban growth boundary and not within a farm or forest zone; or

30 (iii) Within 750 feet of the property that is the subject of the notice when the subject property  
31 is within a farm or forest zone.

32 (B) Notice shall also be provided to any neighborhood or community organization recognized by  
33 the governing body and whose boundaries include the site.

34 (C) At the discretion of the applicant, the local government also shall provide notice to the  
35 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**.

36 (12) A decision described in ORS 215.402 (4)(b) shall:

37 (a) Be entered in a registry available to the public setting forth:

38 (A) The street address or other easily understood geographic reference to the subject property;

39 (B) The date of the decision; and

40 (C) A description of the decision made.

41 (b) Be subject to the jurisdiction of the [*Land Use Board of Appeals*] **department** in the same  
42 manner as a limited land use decision **is subject to the jurisdiction of the department under**  
43 **ORS 197.830 to 197.845**.

44 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

45 (13) At the option of the applicant, the local government shall provide notice of the decision

1 described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal  
2 to the [board] **department** shall be filed within 21 days of the decision. The notice shall include an  
3 explanation of appeal rights.

4 (14) Notwithstanding the requirements of this section, a limited land use decision shall be sub-  
5 ject to the requirements set forth in ORS 197.195 and 197.828.

6 **SECTION 1020.** ORS 215.427 is amended to read:

7 215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an  
8 urban growth boundary and applications for mineral aggregate extraction, the governing body of a  
9 county or its designee shall take final action on an application for a permit, limited land use deci-  
10 sion or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the  
11 application is deemed complete. The governing body of a county or its designee shall take final  
12 action on all other applications for a permit, limited land use decision or zone change, including  
13 resolution of all appeals under ORS 215.422, within 150 days after the application is deemed com-  
14 plete, except as provided in subsections (3), (5) and (10) of this section.

15 (2) If an application for a permit, limited land use decision or zone change is incomplete, the  
16 governing body or its designee shall notify the applicant in writing of exactly what information is  
17 missing within 30 days of receipt of the application and allow the applicant to submit the missing  
18 information. The application shall be deemed complete for the purpose of subsection (1) of this sec-  
19 tion upon receipt by the governing body or its designee of:

20 (a) All of the missing information;

21 (b) Some of the missing information and written notice from the applicant that no other infor-  
22 mation will be provided; or

23 (c) Written notice from the applicant that none of the missing information will be provided.

24 (3)(a) If the application was complete when first submitted or the applicant submits additional  
25 information, as described in subsection (2) of this section, within 180 days of the date the application  
26 was first submitted and the county has a comprehensive plan and land use regulations acknowledged  
27 under ORS 197.251, approval or denial of the application shall be based upon the standards and  
28 criteria that were applicable at the time the application was first submitted.

29 (b) If the application is for industrial or traded sector development of a site identified under  
30 section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,  
31 approval or denial of the application must be based upon the standards and criteria that were ap-  
32 plicable at the time the application was first submitted, provided the application complies with  
33 paragraph (a) of this subsection.

34 (4) On the 181st day after first being submitted, the application is void if the applicant has been  
35 notified of the missing information as required under subsection (2) of this section and has not sub-  
36 mitted:

37 (a) All of the missing information;

38 (b) Some of the missing information and written notice that no other information will be pro-  
39 vided; or

40 (c) Written notice that none of the missing information will be provided.

41 (5) The period set in subsection (1) of this section may be extended for a specified period of time  
42 at the written request of the applicant. The total of all extensions, except as provided in subsection  
43 (10) of this section for mediation, may not exceed 215 days.

44 (6) The period set in subsection (1) of this section applies:

45 (a) Only to decisions wholly within the authority and control of the governing body of the

1 county; and

2 (b) Unless the parties have agreed to mediation as described in subsection (10) of this section  
3 or ORS 197.319 (2)(b).

4 (7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section  
5 does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or  
6 adoption of a new land use regulation that was forwarded to the Director of the [*Department of Land*  
7 *Conservation and Development*] **Oregon Department of Natural Resources** under ORS 197.610 (1).

8 (8) Except when an applicant requests an extension under subsection (5) of this section, if the  
9 governing body of the county or its designee does not take final action on an application for a  
10 permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after  
11 the application is deemed complete, the county shall refund to the applicant either the unexpended  
12 portion of any application fees or deposits previously paid or 50 percent of the total amount of such  
13 fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees  
14 incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible  
15 for the costs of providing sufficient additional information to address relevant issues identified in  
16 the consideration of the application.

17 (9) A county may not compel an applicant to waive the period set in subsection (1) of this sec-  
18 tion or to waive the provisions of subsection (8) of this section or ORS 215.429 as a condition for  
19 taking any action on an application for a permit, limited land use decision or zone change except  
20 when such applications are filed concurrently and considered jointly with a plan amendment.

21 (10) The periods set forth in subsection (1) of this section and the period set forth in subsection  
22 (5) of this section may be extended by up to 90 additional days, if the applicant and the county agree  
23 that a dispute concerning the application will be mediated.

24 **SECTION 1021.** ORS 215.435 is amended to read:

25 215.435. (1) Pursuant to a final order of the [*Land Use Board of Appeals*] **Oregon Department**  
26 **of Natural Resources** under ORS 197.830 remanding a decision to a county, the governing body of  
27 the county or its designee shall take final action on an application for a permit, limited land use  
28 decision or zone change within 90 days of the effective date of the final order issued by the  
29 [*board*] **department**. For purposes of this subsection, the effective date of the final order is the last  
30 day for filing a petition for judicial review of a final order of the [*board*] **department** under ORS  
31 197.850 (3). If judicial review of a final order of the [*board*] **department** is sought under ORS  
32 197.830, the 90-day period established under this subsection shall not begin until final resolution of  
33 the judicial review.

34 (2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period estab-  
35 lished under subsection (1) of this section shall not begin until the applicant requests in writing that  
36 the county proceed with the application on remand.

37 (b) The 90-day period may be extended for a reasonable period of time at the request of the  
38 applicant.

39 (3) The 90-day period established under subsection (1) of this section applies only to decisions  
40 wholly within the authority and control of the governing body of the county.

41 (4) Subsection (1) of this section does not apply to a remand proceeding concerning an amend-  
42 ment to an acknowledged comprehensive plan or land use regulation or the adoption of a new land  
43 use regulation that was forwarded to the Director of the [*Department of Land Conservation and*  
44 *Development*] **Oregon Department of Natural Resources** under ORS 197.610.

45 **SECTION 1022.** ORS 215.457 is amended to read:

1 215.457. A person may establish a youth camp on land zoned for forest use or mixed farm and  
2 forest use, consistent with rules adopted by the [*Land Conservation and Development Commission*]  
3 **Oregon Natural Resources Commission** under section 3, chapter 586, Oregon Laws 1999.

4 **SECTION 1023.** ORS 215.459 is amended to read:

5 215.459. (1)(a) Subject to the approval of the county governing body or its designee, a private  
6 campground may be established in an area zoned for forest use or mixed farm and forest use. Subject  
7 to the approval of the county governing body or its designee, the campground may provide yurts for  
8 overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller,  
9 may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent  
10 foundation.

11 (b) A public park or campground may be established as provided in ORS 195.120 in an area  
12 zoned for forest use or mixed farm and forest use.

13 (2) Upon request of a county governing body, the [*Land Conservation and Development Commis-*  
14 *sion*] **Oregon Natural Resources Commission** may provide by rule for an increase in the number  
15 of yurts allowed on all or a portion of the campgrounds in a county if the commission determines  
16 that the increase will comply with the standards described in ORS 215.296 (1).

17 (3) As used in this section, “yurt” means a round, domed shelter of cloth or canvas on a  
18 collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

19 **SECTION 1024.** ORS 215.503 is amended to read:

20 215.503. (1) As used in this section, “owner” means the owner of the title to real property or the  
21 contract purchaser of real property, of record as shown on the last available complete tax assess-  
22 ment roll.

23 (2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by  
24 the governing body of a county shall be by ordinance.

25 (3) Except as provided in subsection (6) of this section and in addition to the notice required  
26 by ORS 215.060, at least 20 days but not more than 40 days before the date of the first hearing on  
27 an ordinance that proposes to amend an existing comprehensive plan or any element thereof or to  
28 adopt a new comprehensive plan, the governing body of a county shall cause a written individual  
29 notice of land use change to be mailed to each owner whose property would have to be rezoned in  
30 order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

31 (4) In addition to the notice required by ORS 215.223 (1), at least 20 days but not more than 40  
32 days before the date of the first hearing on an ordinance that proposes to rezone property, the  
33 governing body of a county shall cause a written individual notice of land use change to be mailed  
34 to the owner of each lot or parcel of property that the ordinance proposes to rezone.

35 (5) An additional individual notice of land use change required by subsection (3) or (4) of this  
36 section shall be approved by the governing body of the county and shall describe in detail how the  
37 proposed ordinance would affect the use of the property. The notice shall:

38 (a) Contain substantially the following language in boldfaced type across the top of the face  
39 page extending from the left margin to the right margin:

40  
41  
42 This is to notify you that (governing body of the county) has proposed a land use regulation that  
43 may affect the permissible uses of your property and other properties.  
44  
45



1 (b) Contain substantially the following language in the body of the notice:  
2 \_\_\_\_\_  
3

4 On (date of public hearing), (governing body) will hold a public hearing regarding the adoption  
5 of Ordinance Number \_\_\_\_\_. The (governing body) has determined that adoption of this ordinance  
6 may affect the permissible uses of your property, and other properties in the affected zone, and may  
7 change the value of your property.

8 Ordinance Number \_\_\_\_\_ is available for inspection at the \_\_\_\_\_ County Courthouse lo-  
9 cated at \_\_\_\_\_. A copy of Ordinance Number \_\_\_\_\_ also is available for purchase at a  
10 cost of \_\_\_\_\_.

11 For additional information concerning Ordinance Number \_\_\_\_\_, you may call the (governing  
12 body) Planning Department at \_\_\_\_\_-\_\_\_\_\_.  
13 \_\_\_\_\_  
14

15 (6) At least 30 days prior to the adoption or amendment of a comprehensive plan or land use  
16 regulation by the governing body of a county pursuant to a requirement of periodic review of the  
17 comprehensive plan under ORS 197.628, 197.633 and 197.636, the governing body of the county shall  
18 cause a written individual notice of the land use change to be mailed to the owner of each lot or  
19 parcel that will be rezoned as a result of the adoption or enactment. The notice shall describe in  
20 detail how the ordinance or plan amendment may affect the use of the property. The notice also  
21 shall:

22 (a) Contain substantially the following language in boldfaced type across the top of the face  
23 page extending from the left margin to the right margin:  
24 \_\_\_\_\_  
25

26 This is to notify you that (governing body of the county) has proposed a land use that may affect  
27 the permissible uses of your property and other properties.  
28 \_\_\_\_\_  
29

30 (b) Contain substantially the following language in the body of the notice:  
31 \_\_\_\_\_  
32

33 As a result of an order of the [*Land Conservation and Development Commission*] **Oregon Na-**  
34 **tural Resources Commission**, (governing body) has proposed Ordinance Number \_\_\_\_\_. (Gov-  
35 erning Body) has determined that the adoption of this ordinance may affect the permissible uses of  
36 your property, and other properties in the affected zone, and may change the value of your property.

37 Ordinance Number \_\_\_\_\_ will become effective on (date).

38 Ordinance Number \_\_\_\_\_ is available for inspection at the \_\_\_\_\_ County Courthouse located  
39 at \_\_\_\_\_. A copy of Ordinance Number \_\_\_\_\_ also is available for purchase at a cost of  
40 \_\_\_\_\_.

41 For additional information concerning Ordinance Number \_\_\_\_\_, you may call the (governing  
42 body) Planning Department at \_\_\_\_\_-\_\_\_\_\_.  
43 \_\_\_\_\_  
44

45 (7) Notice provided under this section may be included with the tax statement required under

1 ORS 311.250.

2 (8) Notwithstanding subsection (7) of this section, the governing body of a county may provide  
 3 notice of a hearing at any time provided notice is mailed by first class mail or bulk mail to all  
 4 persons for whom notice is required under subsections (3) and (4) of this section.

5 (9) For purposes of this section, property is rezoned when the governing body of the county:

6 (a) Changes the base zoning classification of the property; or

7 (b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously  
 8 allowed in the affected zone.

9 (10) The provisions of this section do not apply to legislative acts of the governing body of the  
 10 county resulting from action of the Legislative Assembly or the [*Land Conservation and Development*  
 11 *Commission*] **Oregon Natural Resources Commission** for which notice is provided under ORS  
 12 197.047, or resulting from an order of a court of competent jurisdiction.

13 (11) The governing body of the county is not required to provide more than one notice under  
 14 this section to a person who owns more than one lot or parcel affected by a change to the local  
 15 comprehensive plan or land use regulation.

16 (12) The [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
 17 **Resources** shall reimburse the governing body of a county for all usual and reasonable costs in-  
 18 curred to provide notice required under subsection (6) of this section.

19 **SECTION 1025.** ORS 215.740 is amended to read:

20 215.740. (1) If a dwelling is not allowed under ORS 215.720 (1), a dwelling may be allowed on  
 21 land zoned for forest use under a goal protecting forestland if it complies with other provisions of  
 22 law and is sited on a tract:

23 (a) In eastern Oregon of at least 240 contiguous acres except as provided in subsection (3) of  
 24 this section; or

25 (b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of  
 26 this section.

27 (2) For purposes of subsection (1) of this section, a tract shall not be considered to consist of  
 28 less than 240 acres or 160 acres because it is crossed by a public road or a waterway.

29 (3)(a) An owner of tracts that are not contiguous but are in the same county or adjacent coun-  
 30 ties and zoned for forest use may add together the acreage of two or more tracts to total 320 acres  
 31 or more in eastern Oregon or 200 acres or more in western Oregon to qualify for a dwelling under  
 32 subsection (1) of this section.

33 (b) If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this subsection,  
 34 the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records for the  
 35 tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall preclude all future rights  
 36 to construct a dwelling on the tracts or to use the tracts to total acreage for future siting of  
 37 dwellings for present and any future owners unless the tract is no longer subject to protection under  
 38 goals for agricultural lands or forestlands.

39 (c) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
 40 **mission** shall adopt rules that prescribe the language of the deed restriction, the procedures for  
 41 recording, the procedures under which counties shall keep records of lots or parcels used to create  
 42 the total, the mechanisms for providing notice to subsequent purchasers of the limitations under  
 43 paragraph (b) of this subsection and other rules to implement this section.

44 **SECTION 1026.** ORS 215.780 is amended to read:

45 215.780. (1) Except as provided in subsection (2) of this section, the following minimum lot or

1 parcel sizes apply to all counties:

- 2 (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;
- 3 (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and
- 4 (c) For land designated forestland, at least 80 acres.

5 (2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1)  
6 of this section in any of the following circumstances:

7 (a) By demonstrating to the [*Land Conservation and Development Commission*] **Oregon Natural**  
8 **Resources Commission** that it can do so while continuing to meet the requirements of ORS 215.243  
9 and 527.630 and the land use planning goals adopted under ORS 197.230.

10 (b) To allow the establishment of a parcel for a dwelling on land zoned for forest use or mixed  
11 farm and forest use, subject to the following requirements:

12 (A) The parcel established shall not be larger than five acres, except as necessary to recognize  
13 physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

14 (B) The dwelling existed prior to June 1, 1995;

15 (C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division stan-  
16 dards of the zone; or

17 (ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and  
18 together the parcels meet the minimum land division standards of the zone; and

19 (D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless sub-  
20 sequently authorized by law or goal.

21 (c) In addition to the requirements of paragraph (b) of this subsection, if the land is zoned for  
22 mixed farm and forest use the following requirements apply:

23 (A) The minimum tract eligible under paragraph (b) of this subsection is 40 acres.

24 (B) The tract shall be predominantly in forest use and that portion in forest use qualified for  
25 special assessment under a program under ORS chapter 321.

26 (C) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and  
27 215.283 that are not allowed on forestland.

28 (d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that  
29 results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this  
30 section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

31 (A) Shall not be eligible for siting of a new dwelling;

32 (B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

33 (C) Shall not, as a result of the land division, be used to justify redesignation or rezoning of  
34 resource lands;

35 (D) Shall not result in a parcel of less than 35 acres, except:

36 (i) Where the purpose of the land division is to facilitate an exchange of lands involving a gov-  
37 ernmental agency; or

38 (ii) Where the purpose of the land division is to allow transactions in which at least one par-  
39 ticipant is a person with a cumulative ownership of at least 2,000 acres of forestland; and

40 (E) If associated with the creation of a parcel where a dwelling is involved, shall not result in  
41 a parcel less than the minimum lot or parcel size of the zone.

42 (e) To allow a division of a lot or parcel zoned for forest use or mixed farm and forest use under  
43 a statewide planning goal protecting forestland if:

44 (A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

45 (B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 (1)(q)

1 or 215.283 (1)(p);

2 (C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two  
3 and five acres in size;

4 (D) At least one dwelling is located on each lot or parcel created under this paragraph; and

5 (E) The landowner of a lot or parcel created under this paragraph provides evidence that a re-  
6 striction prohibiting the landowner and the landowner's successors in interest from further dividing  
7 the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel  
8 is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of  
9 release is signed by the county planning director of the county in which the lot or parcel is located  
10 indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have  
11 been changed so that the lot or parcel is no longer subject to statewide planning goals protecting  
12 forestland or unless the land division is subsequently authorized by law or by a change in a state-  
13 wide planning goal for land zoned for forest use or mixed farm and forest use.

14 (f) To allow a proposed division of land in a forest zone or a mixed farm and forest zone as  
15 provided in ORS 215.783.

16 (3) A county planning director shall maintain a record of lots and parcels that do not qualify for  
17 division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record  
18 shall be readily available to the public.

19 (4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing  
20 dwelling on the lot or parcel was approved under:

21 (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that  
22 required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

23 (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest  
24 use zone under a statewide planning goal protecting forestland.

25 (5) A county with a minimum lot or parcel size acknowledged by the commission pursuant to  
26 ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under  
27 ORS 197.628 to 197.650 that is smaller than those prescribed in subsection (1) of this section need  
28 not comply with subsection (2) of this section.

29 (6)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this section shall  
30 provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been  
31 recorded with the county clerk of the county where the property is located. An applicant for the  
32 creation of a parcel pursuant to subsection (2)(d) of this section shall provide evidence that a re-  
33 striction on the newly created parcel has been recorded with the county clerk of the county where  
34 the property is located. The restriction shall allow no dwellings unless authorized by law or goal  
35 on land zoned for forest use except as permitted under subsection (2) of this section.

36 (b) A restriction imposed under this subsection shall be irrevocable unless a statement of release  
37 is signed by the county planning director of the county where the property is located indicating that  
38 the comprehensive plan or land use regulations applicable to the property have been changed in  
39 such a manner that the parcel is no longer subject to statewide planning goals pertaining to agri-  
40 cultural land or forestland.

41 (c) The county planning director shall maintain a record of parcels that do not qualify for the  
42 siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily  
43 available to the public.

44 (7) A landowner allowed a land division under subsection (2) of this section shall sign a state-  
45 ment that shall be recorded with the county clerk of the county in which the property is located,

1 declaring that the landowner and the landowner's successors in interest will not in the future com-  
 2 plain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

3 **SECTION 1027.** ORS 215.788 is amended to read:

4 215.788. (1) For the purposes of correcting mapping errors made in the acknowledgment process  
 5 and updating the designation of farmlands and forestlands for land use planning, a county may  
 6 conduct a legislative review of lands in the county to determine whether the lands planned and  
 7 zoned for farm use, forest use or mixed farm and forest use are consistent with the definitions of  
 8 "agricultural lands" or "forest lands" in goals relating to agricultural lands or forestlands.

9 (2) A county may undertake the reacknowledgment process authorized by this section only if the  
 10 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**  
 11 approves a work plan, from the county, describing the expected scope of reacknowledgment. The  
 12 department may condition approval of a work plan for reacknowledgment under this section to re-  
 13 flect the resources needed to complete the review required by ORS 197.659 and 215.794. The work  
 14 plan of the county and the approval of the department are not final orders for purposes of review.

15 (3) A county that undertakes the reacknowledgment process authorized by this section shall  
 16 provide an opportunity for all lands planned for farm use, forest use or mixed farm and forest use  
 17 and all lands subject to an exception under ORS 197.732 to a goal relating to agricultural lands or  
 18 forestlands to be included in the review.

19 (4) A county must plan and zone land reviewed under this section:

20 (a) For farm use if the land meets the definition of "agricultural land" in a goal relating to ag-  
 21 ricultural lands;

22 (b) For forest use if the land meets the definition of "forest land" used for comprehensive plan  
 23 amendments in the goal relating to forestlands;

24 (c) For mixed farm and forest use if the land meets both definitions;

25 (d) For nonresource use, consistent with ORS 215.794, if the land does not meet either definition;

26 or

27 (e) For a use other than farm use or forest use as provided in a goal relating to land use plan-  
 28 ning process and policy framework and subject to an exception to the appropriate goals under ORS  
 29 197.732 (2).

30 (5) A county may consider the current land use pattern on adjacent and nearby lands in deter-  
 31 mining whether land meets the appropriate definition.

32 **SECTION 1028.** ORS 215.794 is amended to read:

33 215.794. (1) A county shall submit decisions on planning and rezoning designations under ORS  
 34 215.788 to 215.794 to the [*Department of Land Conservation and Development*] **Oregon Department**  
 35 **of Natural Resources** for review pursuant to the procedures set forth in this section and ORS  
 36 197.659. **The department shall coordinate with the State Department of Agriculture in re-**  
 37 **viewing decisions on planning and rezoning designations for lands planned for farm use or**  
 38 **mixed farm and forest use.**

39 [(2) *The department shall coordinate with:*]

40 [(a) *The State Department of Agriculture in reviewing decisions on planning and rezoning desig-*  
 41 *nations for lands planned for farm use or mixed farm and forest use.*]

42 [(b) *The State Forestry Department in reviewing decisions on planning and rezoning designations*  
 43 *for lands planned for forest use or mixed farm and forest use.*]

44 [(3)] (2) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
 45 **Commission** has exclusive jurisdiction for review of a county's decision made under ORS 215.788

1 to 215.794.

2 [(4)] (3) A person who participated in the proceedings leading to the county's decisions under  
3 ORS 215.788 to 215.794 may not raise an issue on review before the commission that was not raised  
4 in the local proceedings.

5 [(5)] (4) The commission may adopt rules implementing ORS 215.788 to 215.794.

6 **SECTION 1029.** ORS 223.317 is amended to read:

7 223.317. (1) Notwithstanding any other law, a local government may apportion a final assessment  
8 levied by it against a single tract or parcel of real property among all the parcels formed from a  
9 subsequent partition or other division of that tract or parcel, if the subsequent partition or division  
10 is in accordance with ORS 92.010 to 92.192 and is consistent with all applicable comprehensive plans  
11 as acknowledged by the [*Land Conservation and Development Commission*] **Oregon Natural Re-**  
12 **sources Commission** under ORS 197.251. The proportionate distribution of a final assessment au-  
13 thorized under this subsection may be made whenever the final assessment remains wholly or  
14 partially unpaid, and full payment or an installment payment is not due.

15 (2) A local government shall apportion a final assessment under this section when requested to  
16 do so by any owner, mortgagee or lienholder of a parcel of real property that was formed from the  
17 partition or other division of the larger tract of real property against which the final assessment  
18 was originally levied. When the deed, mortgage or other instrument evidencing the applicant's  
19 ownership or other interest in the parcel has not been recorded by the county clerk of the county  
20 in which the parcel is situated, the local government shall not apportion the final assessment unless  
21 the applicant files a true copy of that deed, mortgage or instrument with the local government.

22 (3) Apportionment of a final assessment under this section shall be done in accordance with an  
23 order or resolution of the governing body of the local government. The order or resolution shall  
24 describe each parcel of real property affected by the apportionment, the amount of the final assess-  
25 ment levied against each parcel, the owner of each parcel and such additional information as is re-  
26 quired to keep a permanent and complete record of the final assessments and the payments thereon.  
27 A copy of the order or resolution shall be filed with the recorder required to maintain the lien  
28 docket for the local government, who shall make any necessary changes or entries in the lien docket  
29 for the local government.

30 **SECTION 1030.** ORS 227.175 is amended to read:

31 227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the  
32 hearings officer, or such other person as the city council designates, for a permit or zone change,  
33 upon such forms and in such a manner as the city council prescribes. The governing body shall es-  
34 tablish fees charged for processing permits at an amount no more than the actual or average cost  
35 of providing that service.

36 (2) The governing body of the city shall establish a consolidated procedure by which an appli-  
37 cant may apply at one time for all permits or zone changes needed for a development project. The  
38 consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consol-  
39 idated procedure shall be available for use at the option of the applicant no later than the time of  
40 the first periodic review of the comprehensive plan and land use regulations.

41 (3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least  
42 one public hearing on the application.

43 (4) The application shall not be approved unless the proposed development of land would be in  
44 compliance with the comprehensive plan for the city and other applicable land use regulation or  
45 ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215

1 or any city legislation.

2 (5) Hearings under this section may be held only after notice to the applicant and other inter-  
3 ested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

4 (6) Notice of a public hearing on a zone use application shall be provided to the owner of an  
5 airport, defined by the Oregon Department of Aviation as a “public use airport” if:

6 (a) The name and address of the airport owner has been provided by the Oregon Department  
7 of Aviation to the city planning authority; and

8 (b) The property subject to the zone use hearing is:

9 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon  
10 Department of Aviation to be a “visual airport”; or

11 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon  
12 Department of Aviation to be an “instrument airport.”

13 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing  
14 need only be provided as set forth in subsection (6) of this section if the permit or zone change  
15 would only allow a structure less than 35 feet in height and the property is located outside of the  
16 runway “approach surface” as defined by the Oregon Department of Aviation.

17 (8) If an application would change the zone of property that includes all or part of a mobile  
18 home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give  
19 written notice by first class mail to each existing mailing address for tenants of the mobile home  
20 or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first  
21 hearing on the application. The governing body may require an applicant for such a zone change to  
22 pay the costs of such notice.

23 (9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not  
24 invalidate any zone change.

25 (10)(a)(A) The hearings officer or such other person as the governing body designates may ap-  
26 prove or deny an application for a permit without a hearing if the hearings officer or other desig-  
27 nated person gives notice of the decision and provides an opportunity for any person who is  
28 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,  
29 to file an appeal.

30 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)  
31 of this subsection.

32 (C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall  
33 describe the nature of the decision. In addition, the notice shall state that any person who is ad-  
34 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-  
35 section may appeal the decision by filing a written appeal in the manner and within the time period  
36 provided in the city’s land use regulations. A city may not establish an appeal period that is less  
37 than 12 days from the date the written notice of decision required by this subsection was mailed.  
38 The notice shall state that the decision will not become final until the period for filing a local appeal  
39 has expired. The notice also shall state that a person who is mailed written notice of the decision  
40 cannot appeal the decision directly to the *[Land Use Board of Appeals]* **Oregon Department of**  
41 **Natural Resources** under ORS 197.830.

42 (D) An appeal from a hearings officer’s decision made without hearing under this subsection  
43 shall be to the planning commission or governing body of the city. An appeal from such other person  
44 as the governing body designates shall be to a hearings officer, the planning commission or the  
45 governing body. In either case, the appeal shall be to a de novo hearing.

1 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial  
2 evidentiary hearing required under ORS 197.763 as the basis for an appeal to the [*Land Use Board*  
3 *of Appeals*] **Oregon Department of Natural Resources**. At the de novo hearing:

4 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-  
5 ments and evidence as they would have had in a hearing under subsection (3) of this section before  
6 the decision;

7 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised  
8 in a notice of appeal; and

9 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are  
10 accepted at the hearing.

11 (b) If a local government provides only a notice of the opportunity to request a hearing, the  
12 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing  
13 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,  
14 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the  
15 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made  
16 by neighborhood or community organizations recognized by the governing body and whose bounda-  
17 ries include the site.

18 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-  
19 plicant and to the owners of record of property on the most recent property tax assessment roll  
20 where such property is located:

21 (i) Within 100 feet of the property that is the subject of the notice when the subject property  
22 is wholly or in part within an urban growth boundary;

23 (ii) Within 250 feet of the property that is the subject of the notice when the subject property  
24 is outside an urban growth boundary and not within a farm or forest zone; or

25 (iii) Within 750 feet of the property that is the subject of the notice when the subject property  
26 is within a farm or forest zone.

27 (B) Notice shall also be provided to any neighborhood or community organization recognized by  
28 the governing body and whose boundaries include the site.

29 (C) At the discretion of the applicant, the local government also shall provide notice to the  
30 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**.

31 (11) A decision described in ORS 227.160 (2)(b) shall:

32 (a) Be entered in a registry available to the public setting forth:

33 (A) The street address or other easily understood geographic reference to the subject property;

34 (B) The date of the decision; and

35 (C) A description of the decision made.

36 (b) Be subject to the jurisdiction of the [*Land Use Board of Appeals*] **Oregon Department of**  
37 **Natural Resources under ORS 197.830 to 197.845** in the same manner as a limited land use deci-  
38 sion.

39 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

40 (12) At the option of the applicant, the local government shall provide notice of the decision  
41 described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal  
42 to the [*board*] **Oregon Department of Natural Resources** shall be filed within 21 days of the de-  
43 cision. The notice shall include an explanation of appeal rights.

44 (13) Notwithstanding other requirements of this section, limited land use decisions shall be  
45 subject to the requirements set forth in ORS 197.195 and 197.828.



1       **SECTION 1031.** ORS 227.178 is amended to read:

2       227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body  
3 of a city or its designee shall take final action on an application for a permit, limited land use de-  
4 cision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after  
5 the application is deemed complete.

6       (2) If an application for a permit, limited land use decision or zone change is incomplete, the  
7 governing body or its designee shall notify the applicant in writing of exactly what information is  
8 missing within 30 days of receipt of the application and allow the applicant to submit the missing  
9 information. The application shall be deemed complete for the purpose of subsection (1) of this sec-  
10 tion upon receipt by the governing body or its designee of:

11       (a) All of the missing information;

12       (b) Some of the missing information and written notice from the applicant that no other infor-  
13 mation will be provided; or

14       (c) Written notice from the applicant that none of the missing information will be provided.

15       (3)(a) If the application was complete when first submitted or the applicant submits the re-  
16 quested additional information within 180 days of the date the application was first submitted and  
17 the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, ap-  
18 proval or denial of the application shall be based upon the standards and criteria that were appli-  
19 cable at the time the application was first submitted.

20       (b) If the application is for industrial or traded sector development of a site identified under  
21 section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,  
22 approval or denial of the application must be based upon the standards and criteria that were ap-  
23 plicable at the time the application was first submitted, provided the application complies with  
24 paragraph (a) of this subsection.

25       (4) On the 181st day after first being submitted, the application is void if the applicant has been  
26 notified of the missing information as required under subsection (2) of this section and has not sub-  
27 mitted:

28       (a) All of the missing information;

29       (b) Some of the missing information and written notice that no other information will be pro-  
30 vided; or

31       (c) Written notice that none of the missing information will be provided.

32       (5) The 120-day period set in subsection (1) of this section may be extended for a specified period  
33 of time at the written request of the applicant. The total of all extensions, except as provided in  
34 subsection (11) of this section for mediation, may not exceed 245 days.

35       (6) The 120-day period set in subsection (1) of this section applies:

36       (a) Only to decisions wholly within the authority and control of the governing body of the city;  
37 and

38       (b) Unless the parties have agreed to mediation as described in subsection (11) of this section  
39 or ORS 197.319 (2)(b).

40       (7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this  
41 section does not apply to an amendment to an acknowledged comprehensive plan or land use regu-  
42 lation or adoption of a new land use regulation that was forwarded to the Director of the [*Depart-*  
43 *ment of Land Conservation and Development*] **Oregon Department of Natural Resources** under  
44 ORS 197.610 (1).

45       (8) Except when an applicant requests an extension under subsection (5) of this section, if the

1 governing body of the city or its designee does not take final action on an application for a permit,  
2 limited land use decision or zone change within 120 days after the application is deemed complete,  
3 the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, ei-  
4 ther the unexpended portion of any application fees or deposits previously paid or 50 percent of the  
5 total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional  
6 governmental fees incurred subsequent to the payment of such fees or deposits. However, the ap-  
7 plicant is responsible for the costs of providing sufficient additional information to address relevant  
8 issues identified in the consideration of the application.

9 (9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

10 (A) Submit a written request for payment, either by mail or in person, to the city or its designee;

11 or

12 (B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall  
13 award an amount owed under this section in its final order on the petition.

14 (b) Within seven calendar days of receiving a request for a refund, the city or its designee shall  
15 determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made  
16 to the applicant within 30 calendar days of receiving the request. Any amount due and not paid  
17 within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of  
18 one percent per month, or a portion thereof.

19 (c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the  
20 city or its designee receives the refund request, the applicant may file an action for recovery of the  
21 unpaid refund. In an action brought by a person under this paragraph, the court shall award to a  
22 prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and  
23 costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable  
24 attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

25 (10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this  
26 section or to waive the provisions of subsection (8) of this section or ORS 227.179 as a condition for  
27 taking any action on an application for a permit, limited land use decision or zone change except  
28 when such applications are filed concurrently and considered jointly with a plan amendment.

29 (11) The period set forth in subsection (1) of this section and the period set forth in subsection  
30 (5) of this section may be extended by up to 90 additional days, if the applicant and the city agree  
31 that a dispute concerning the application will be mediated.

32 **SECTION 1032.** ORS 227.181 is amended to read:

33 227.181. (1) Pursuant to a final order of the [*Land Use Board of Appeals*] **Oregon Department**  
34 **of Natural Resources** under ORS 197.830 remanding a decision to a city, the governing body of the  
35 city or its designee shall take final action on an application for a permit, limited land use decision  
36 or zone change within 90 days of the effective date of the final order issued by the [*board*] **depart-**  
37 **ment**. For purposes of this subsection, the effective date of the final order is the last day for filing  
38 a petition for judicial review of a final order of the [*board*] **department** under ORS 197.850 (3). If  
39 judicial review of a final order of the [*board*] **department** is sought under ORS 197.830, the 90-day  
40 period established under this subsection shall not begin until final resolution of the judicial review.

41 (2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period estab-  
42 lished under subsection (1) of this section shall not begin until the applicant requests in writing that  
43 the city proceed with the application on remand.

44 (b) The 90-day period may be extended for a reasonable period of time at the request of the  
45 applicant.

1 (3) The 90-day period established under subsection (1) of this section applies only to decisions  
2 wholly within the authority and control of the governing body of the city.

3 (4) Subsection (1) of this section does not apply to a remand proceeding concerning an amend-  
4 ment to an acknowledged comprehensive plan or land use regulation or the adoption of a new land  
5 use regulation that was forwarded to the Director of the [*Department of Land Conservation and*  
6 *Development*] **Oregon Department of Natural Resources** under ORS 197.610.

7 **SECTION 1033.** ORS 227.186 is amended to read:

8 227.186. (1) As used in this section, "owner" means the owner of the title to real property or the  
9 contract purchaser of real property, of record as shown on the last available complete tax assess-  
10 ment roll.

11 (2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by  
12 a city shall be by ordinance.

13 (3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40  
14 days before the date of the first hearing on an ordinance that proposes to amend an existing com-  
15 prehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause  
16 a written individual notice of a land use change to be mailed to each owner whose property would  
17 have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance  
18 becomes effective.

19 (4) At least 20 days but not more than 40 days before the date of the first hearing on an ordi-  
20 nance that proposes to rezone property, a city shall cause a written individual notice of a land use  
21 change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to  
22 rezone.

23 (5) An additional individual notice of land use change required by subsection (3) or (4) of this  
24 section shall be approved by the city and shall describe in detail how the proposed ordinance would  
25 affect the use of the property. The notice shall:

26 (a) Contain substantially the following language in boldfaced type across the top of the face  
27 page extending from the left margin to the right margin:

28 \_\_\_\_\_  
29  
30 This is to notify you that (city) has proposed a land use regulation that may affect the permis-  
31 sible uses of your property and other properties.  
32 \_\_\_\_\_

33  
34 (b) Contain substantially the following language in the body of the notice:  
35 \_\_\_\_\_

36  
37 On (date of public hearing), (city) will hold a public hearing regarding the adoption of Ordinance  
38 Number \_\_\_\_\_. The (city) has determined that adoption of this ordinance may affect the permis-  
39 sible uses of your property, and other properties in the affected zone, and may change the value of  
40 your property.

41 Ordinance Number \_\_\_\_\_ is available for inspection at the \_\_\_\_\_ City Hall located at  
42 \_\_\_\_\_. A copy of Ordinance Number \_\_\_\_\_ also is available for purchase at a cost of  
43 \_\_\_\_\_.

44 For additional information concerning Ordinance Number \_\_\_\_\_, you may call the (city)  
45 Planning Department at \_\_\_\_\_.

1 \_\_\_\_\_  
2  
3 (6) At least 30 days prior to the adoption or amendment of a comprehensive plan or land use  
4 regulation by a city pursuant to a requirement of periodic review of the comprehensive plan under  
5 ORS 197.628, 197.633 and 197.636, the city shall cause a written individual notice of the land use  
6 change to be mailed to the owner of each lot or parcel that will be rezoned as a result of the  
7 adoption or enactment. The notice shall describe in detail how the ordinance or plan amendment  
8 may affect the use of the property. The notice also shall:

9 (a) Contain substantially the following language in boldfaced type across the top of the face  
10 page extending from the left margin to the right margin:  
11 \_\_\_\_\_

12  
13 This is to notify you that (city) has proposed a land use regulation that may affect the permis-  
14 sible uses of your property and other properties.  
15 \_\_\_\_\_

16  
17 (b) Contain substantially the following language in the body of the notice:  
18 \_\_\_\_\_

19  
20 As a result of an order of the [*Land Conservation and Development Commission*] **Oregon Na-**  
21 **tural Resources Commission**, (city) has proposed Ordinance Number \_\_\_\_\_. (City) has deter-  
22 mined that the adoption of this ordinance may affect the permissible uses of your property, and  
23 other properties in the affected zone, and may change the value of your property.

24 Ordinance Number \_\_\_\_\_ will become effective on (date).

25 Ordinance Number \_\_\_\_\_ is available for inspection at the \_\_\_\_\_ City Hall located at  
26 \_\_\_\_\_. A copy of Ordinance Number \_\_\_\_\_ also is available for purchase at a cost of  
27 \_\_\_\_\_.

28 For additional information concerning Ordinance Number \_\_\_\_\_, you may call the (city)  
29 Planning Department at \_\_\_\_\_-\_\_\_\_\_.  
30 \_\_\_\_\_

31  
32 (7) Notice provided under this section may be included with the tax statement required under  
33 ORS 311.250.

34 (8) Notwithstanding subsection (7) of this section, a city may provide notice of a hearing at any  
35 time provided notice is mailed by first class mail or bulk mail to all persons for whom notice is re-  
36 quired under subsections (3) and (4) of this section.

37 (9) For purposes of this section, property is rezoned when the city:

38 (a) Changes the base zoning classification of the property; or

39 (b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously  
40 allowed in the affected zone.

41 (10) The provisions of this section do not apply to legislative acts of the governing body of the  
42 city resulting from action of the Legislative Assembly or the [*Land Conservation and Development*  
43 *Commission*] **Oregon Natural Resources Commission** for which notice is provided under ORS  
44 197.047 or resulting from an order of a court of competent jurisdiction.

45 (11) The governing body of the city is not required to provide more than one notice under this

1 section to a person who owns more than one lot or parcel affected by a change to the local com-  
2 prehensive plan or land use regulation.

3 (12) The *[Department of Land Conservation and Development]* **Oregon Department of Natural**  
4 **Resources** shall reimburse a city for all usual and reasonable costs incurred to provide notice re-  
5 quired under subsection (6) of this section.

6 **SECTION 1034.** ORS 284.577 is amended to read:

7 284.577. In furtherance of the state economic development strategy developed under ORS  
8 284.570, the *[Land Conservation and Development Commission]* **Oregon Natural Resources Com-**  
9 **mission** shall:

10 (1) Provide local governments with basic and advanced methods for identifying, analyzing and  
11 providing for industrial, commercial and retail development sites.

12 (2) Develop and provide guidebooks and other appropriate materials to assist local governments  
13 in identifying and analyzing potential industrial, commercial and retail development sites.

14 (3) Provide local governments with technical assistance to assist in completing the identification  
15 and analysis and in amending comprehensive plans and land use regulations based on the identifi-  
16 cation and analysis.

17 (4) Provide grants to local governments in a manner that furthers the implementation of the  
18 state economic development strategy.

19 (5) Adopt, amend or repeal administrative rules and procedures as necessary to ensure that the  
20 following actions can be accomplished in a timely manner:

21 (a) Expansion of urban growth boundaries where necessary to accommodate industrial or traded  
22 sector development;

23 (b) Review of amendments to comprehensive plans and land use regulations and periodic review  
24 of comprehensive plans and land use regulations; and

25 (c) Focus the resources of the *[Department of Land Conservation and Development]* **Oregon De-**  
26 **partment of Natural Resources** on issues related to land supply within urban growth boundaries  
27 and transportation and public facilities necessary to stimulate economic growth.

28 **SECTION 1035.** ORS 285C.500, as amended by section 1, chapter 595, Oregon Laws 2005, is  
29 amended to read:

30 285C.500. As used in ORS 285C.500 to 285C.506:

31 (1) "Business firm" has the meaning given that term in ORS 285C.050.

32 (2) "County per capita personal income" means the per capita personal income level published  
33 by the Bureau of Economic Analysis of the United States Department of Commerce for a county.

34 (3) "County unemployment rate" means the most recently available unemployment rate for the  
35 county, as determined by the Employment Department.

36 (4) "Facility" means the land, real property improvements and personal property that are used  
37 by a business firm to conduct business operations, and that are the subject of an application for  
38 preliminary certification under ORS 285C.503 or annual certification under ORS 285C.506.

39 (5) "Qualified location" means any area that is:

40 (a) Zoned for industrial use or is within the urban growth boundary of a city that has 15,000 or  
41 fewer residents; and

42 (b) Located in a county that, during either of the two years preceding the date an application  
43 for preliminary certification is filed under ORS 285C.503, had both:

44 (A) A county unemployment rate that was in the top half of county unemployment rates in this  
45 state; and

1 (B) A county per capita personal income that was in the bottom half of county per capita per-  
2 sonal incomes in this state.

3 (6) “Urban growth boundary” means an urban growth boundary contained in a city or county  
4 comprehensive plan that has been acknowledged by the [*Land Conservation and Development Com-  
5 mission*] **Oregon Natural Resources Commission** pursuant to ORS 197.251 or an urban growth  
6 boundary that has been adopted by a metropolitan service district under ORS 268.390 (3).

7 **SECTION 1036.** ORS 308A.065 is amended to read:

8 308A.065. (1) Upon written request of the county assessor or county governing body, the county  
9 counsel shall review the zoning ordinances of the county that purport to establish exclusive farm  
10 use zones to determine if any zone mentioned in the ordinance is not an exclusive farm use zone.  
11 If the county counsel is in doubt as to whether a zone is an exclusive farm use zone, the county  
12 counsel shall request the assistance of the Department of Revenue under ORS 305.110. The county  
13 counsel shall promptly notify the county assessor and county governing body by letter of the  
14 findings of the county counsel.

15 (2) If the assessor discovers any land that has been granted farm use special assessment under  
16 ORS 308A.062 that is not qualified for such assessment because the zone is not an exclusive farm  
17 use zone, the assessor shall immediately notify the county governing body of this fact.

18 (3) Within six months from the date the county governing body receives notice from the assessor  
19 or from the [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-  
20 mission** that a farm use zone is not an exclusive farm use zone, the county governing body shall  
21 qualify the zone as an exclusive farm use zone within the meaning of ORS 308A.062. The assessor  
22 shall continue to assess the land at the special assessment provided in ORS 308A.107 until the  
23 county governing body qualifies the zone or the land is disqualified under ORS 308A.113.

24 (4) Subsections (1) to (3) of this section shall provide the exclusive procedure for correcting the  
25 erroneous granting of farm use special assessment as exclusive farm use zone farmland when the  
26 zone does not meet the definition of an exclusive farm use zone under ORS 308A.053.

27 **SECTION 1037.** ORS 308A.700 is amended to read:

28 308A.700. As used in ORS 308A.700 to 308A.733:

29 (1) “Disqualification” includes the removal of forestland designation under ORS 321.359, 321.712,  
30 321.716 or 321.842.

31 (2) “Urban growth boundary” means an urban growth boundary contained in a city or county  
32 comprehensive plan that has been acknowledged by the [*Land Conservation and Development Com-  
33 mission*] **Oregon Natural Resources Commission** pursuant to ORS 197.251 or an urban growth  
34 boundary that has been adopted by a metropolitan service district under ORS 268.390 (3).

35 **SECTION 1038.** ORS 358.575 is amended to read:

36 358.575. (1) The voting members of the Oregon Heritage Commission shall be composed of rep-  
37 resentatives of heritage interests, including Indian tribes with federal recognition, that reflect the  
38 cultural and geographic diversity of this state as well as the heritage interests reflected in commu-  
39 nity institutions, libraries, museums, architecture, archaeology and historic preservation.

40 (2) The ex officio members of the commission shall be designees of the following:

41 [*(a) The Department of Land Conservation and Development;*]

42 (a) **Oregon Department of Natural Resources;**

43 (b) The Trustees of the State Library;

44 (c) The State Board of Higher Education;

45 (d) The Oregon Business Development Department;

- 1 (e) The Department of Education;
- 2 (f) The Executive Director of the Oregon Historical Society;
- 3 (g) The State Archivist; and
- 4 (h) The State Historic Preservation Officer.

5 **SECTION 1039.** ORS 367.850 is amended to read:

6 367.850. (1) Subject to the limitations in subsection (2) of this section, if a local government is  
7 unable to meet the funding requirements of the transportation planning rule adopted by the [*Land*  
8 *Conservation and Development Commission*] **Oregon Natural Resources Commission**, the local  
9 government may:

10 (a) Apply for an extension of time to meet the requirements;

11 (b) Submit a plan to the Oregon Transportation Commission and the Department of Transpor-  
12 tation proposing alternative methods of funding that will meet the standards adopted by the Oregon  
13 Transportation Commission; or

14 (c) Apply to the Department of Transportation:

15 (A) To adjust various traffic performance measures during an interim period prior to completion  
16 of construction of the development in question for a period of no more than 20 years; or

17 (B) To allow various types of traffic performance measures other than a volume to capacity ra-  
18 tio.

19 (2) The Oregon Transportation Commission may not approve more than four applications for  
20 extension or alternative plans in each Department of Transportation region in a calendar year. For  
21 purposes of this subsection, the regions are as follows:

22 (a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington  
23 Counties.

24 (b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and  
25 Yamhill Counties.

26 (c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties.

27 (d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco  
28 and Wheeler Counties.

29 (e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and  
30 Wallowa Counties.

31 (3) The Oregon Transportation Commission shall adopt rules for the administration of this sec-  
32 tion. In adopting rules, the **Oregon Transportation** Commission may not define under what cir-  
33 cumstances a local government is considered to be able to meet the funding requirements of the  
34 transportation planning rule adopted by the [*Land Conservation and Development Commission*]  
35 **Oregon Natural Resources Commission**.

36 **SECTION 1040.** ORS 383.017 is amended to read:

37 383.017. (1) The Department of Transportation may award any contract, franchise, license or  
38 agreement related to a tollway project, other than a concession for the provision of goods or ser-  
39 vices at a rest area, under a competitive process or by private negotiation with one or more entities,  
40 or by any combination of competition and negotiation without regard to any other laws concerning  
41 the procurement of goods or services for projects of the state.

42 (2) When using a competitive process for the award of a tollway project contract, the depart-  
43 ment shall consider the following factors in addition to the proposer's estimate of cost:

44 (a) The quality of the design, if applicable, submitted by a proposer. In considering the quality  
45 of the design of a tollway project, the department shall take into consideration:

1 (A) The structural integrity of the design, including the probable effect of the design on the fu-  
2 ture costs of maintenance of the tollway;

3 (B) The aesthetic qualities of the design, including such factors as the width of lane separators,  
4 landscaping and sound walls;

5 (C) The traffic capacity of the design;

6 (D) The aspects of the design that affect safety, such as the lane width, the quality of lane  
7 markers and separators, the shape and positioning of ramps and curves and the changes in elevation;  
8 and

9 (E) The ease with which traffic will be able to pass through the toll collection facilities.

10 (b) The extent to which small businesses will be involved in the tollway project. The department  
11 shall encourage participation by small businesses to the maximum extent the department determines  
12 is practicable. As used in this paragraph, "small business" means an independent business with  
13 fewer than 20 employees and with average annual gross receipts over the last three years not ex-  
14 ceeding \$1 million for construction firms and \$300,000 for nonconstruction firms. "Small business"  
15 does not include a subsidiary or parent company belonging to a group of firms that are owned and  
16 controlled by the same individuals and that have average aggregate annual gross receipts in excess  
17 of \$1 million for construction firms or \$300,000 for nonconstruction firms over the last three years.

18 (c) The financial stability of the proposer and the ability of the proposer to provide funding for  
19 the tollway project and surety for its performance and financial obligations with respect to the  
20 tollway project.

21 (d) The experience of the proposer and its subcontractors in building and operating projects  
22 such as the tollway project.

23 (e) The terms of the financial arrangement proposed or accepted by the proposer with respect  
24 to franchise fees, license fees, lease payments or operating expenses and the proposer's required rate  
25 of return from its operation or maintenance of the tollway.

26 (3)(a) The department may adopt rules and procedures for the award of franchises, licenses,  
27 leases or other concessions for rest areas without regard to any other laws concerning the pro-  
28 curement of goods or services for projects of the state. All such franchises, licenses, leases or other  
29 concessions shall require the franchisee, licensee, lessee or concessionaire, as applicable, to main-  
30 tain the subject premises in accordance with all applicable state and federal health and safety  
31 standards, to maintain one or more policies of casualty and property insurance and adequate  
32 workers' compensation insurance, and to pay and discharge all taxes, utilities, fees and other  
33 charges or claims that are levied, assessed or charged against the premises or concession or that  
34 may become a lien upon the premises. The rules shall encourage participation by small businesses  
35 to the maximum extent the department determines is practicable. The department may grant any  
36 small business a 10 percent or greater bid advantage in any bidding process for a concession.

37 (b) As used in this subsection, "small business" means an independent business with fewer than  
38 20 employees and with average annual gross receipts over the last three years not exceeding  
39 \$300,000. "Small business" does not include a subsidiary or parent company belonging to a group  
40 of firms that are owned and controlled by the same individuals and that have average aggregate  
41 annual gross receipts in excess of \$300,000 over the last three years. "Small business" also does not  
42 include a franchise of any business that has average aggregate annual gross receipts in excess of  
43 \$300,000 over the last three years.

44 (4) Notwithstanding any other provision of this section, the department may use any method for  
45 the award of any contract, franchise, license or agreement that is necessary to comply with the re-



1 requirements of any grant or other funding source.

2 (5) If public funds are involved in the project, construction of a tollway project shall be subject  
3 to the prevailing wage requirements of ORS 279C.800 to 279C.870.

4 (6) For purposes of complying with applicable state and local land use laws, including statewide  
5 planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196, 197, 198, 199, 215,  
6 221, 222 and 227, and any requirement imposed by the [*Land Conservation and Development Com-*  
7 *mission*] **Oregon Natural Resources Commission**, a tollway project shall be treated as a project  
8 of the department and not as a project of any other person or entity.

9 (7) Tollways, and any related facilities that would normally be purchased, constructed or in-  
10 stalled by the department if the tollway were a conventional highway that was constructed and op-  
11 erated by the department, shall be exempt from ad valorem property taxation.

12 (8) Tollways are considered state highways for purposes of law enforcement and application of  
13 the Oregon Vehicle Code.

14 **SECTION 1041.** ORS 456.571 is amended to read:

15 456.571. (1) The State Housing Council shall, with the advice of the Director of the Housing and  
16 Community Services Department, develop policies to aid in stimulating and increasing the supply  
17 of housing for persons and families of lower income.

18 (2) The council shall make special effort to respond to both private and public actions that may  
19 raise the cost of the housing supply in the open market, as the open market is the source of housing  
20 for the preponderance of lower income households.

21 (3) The council is responsible for studying and commenting upon, and advising, the department,  
22 Governor, Legislative Assembly, other state agencies and local governments concerning local, state  
23 and federal legislation or rules that affect the cost and supply of housing, both before and after the  
24 legislation and rules are enacted. For purposes of this subsection, "legislation or rules that affect  
25 the cost and supply of housing" includes but is not limited to legislation or rules that would:

26 (a) Provide financing for the construction or rehabilitation of housing;

27 (b) Subsidize new or existing housing costs for lower income households by income support, tax  
28 credit, or support service methods;

29 (c) Regulate the division of land;

30 (d) Regulate the use of land;

31 (e) Regulate building construction standards;

32 (f) Regulate fees and charges for inspection services, permits, or professional services related  
33 to housing;

34 (g) Encourage alternatives that increase housing choices;

35 (h) Create or avert overlapping jurisdictional functions and the concomitant increased costs that  
36 are reflected in housing prices;

37 (i) Create or avoid conflicting state and federal regulations that deprive lower income house-  
38 holds of assistance; and

39 (j) Help or hinder compliance with the housing goals established by the [*Land Conservation and*  
40 *Development Commission*] **Oregon Natural Resources Commission** under ORS 197.240.

41 (4) The council, with the approval of the Governor, may initiate legal proceedings in the name  
42 of the council to further the council's purposes under this section.

43 (5) The council shall exercise the responsibilities and powers of the council in a manner that  
44 expedites the acquisition, construction, improvement or rehabilitation of housing.

45 **SECTION 1042.** ORS 456.585 is amended to read:

1 456.585. The Housing and Community Services Department shall serve as the primary state  
 2 agency for farmworker housing information. The department shall perform the following duties re-  
 3 lated to farmworker housing information:

4 (1) Develop an information center for farmworker housing financing information. The department  
 5 shall consult with private organizations and the Farmworker Housing Facilitation Team established  
 6 pursuant to subsection (3) of this section in developing and operating the information center. The  
 7 information center shall include provision for access by the Internet.

8 (2) To the extent practicable, simplify the application process for funding farmworker housing  
 9 projects.

10 (3) Establish a Farmworker Housing Facilitation Team to provide an ongoing discussion forum  
 11 for state and local government agencies that are involved with farmworker housing. Team members  
 12 shall include the Housing and Community Services Department, the Occupational Safety and Health  
 13 Division, the State Department of Agriculture, the [*Department of Land Conservation and Develop-*  
 14 *ment*] **Oregon Department of Natural Resources**, the Employment Department and the Oregon  
 15 State University Extension Service. The Housing and Community Services Department shall also  
 16 invite Rural Development and the Farm Service Agency of the United States Department of Agri-  
 17 culture, the United States Department of Labor, local planning agencies and other interested per-  
 18 sons to be members of the team.

19 (4) Ensure that homeowner assistance programs engage in outreach efforts to contact  
 20 farmworkers.

21 (5) Promote the establishment and use of individual development accounts by farmworkers and  
 22 others.

23 (6) Use a statewide map of crop diversity to determine housing needs, and facilitate the devel-  
 24 opment of farmworker housing in appropriate locations.

25 (7) Look at creative ways to provide housing, including but not limited to time-share housing,  
 26 cooperative housing, mobile and portable housing and modular housing.

27 (8) Work with private businesses, state agencies and nonprofit organizations to maximize the  
 28 development of farmworker housing.

29 (9) To the extent practicable, refer housing-based conflicts to dispute resolution processes.

30 **SECTION 1043.** ORS 458.710 is amended to read:

31 458.710. (1) There is created a Community Development Incentive Advisory Board consisting of  
 32 the following members:

33 (a) The Director of the Oregon Business Development Department;

34 (b) The Director of the Department of Environmental Quality;

35 (c) The Director of the Housing and Community Services Department;

36 (d) The Director of the [*Department of Land Conservation and Development*] **Oregon Depart-**  
 37 **ment of Natural Resources;**

38 (e) The Director of Transportation;

39 (f) One representative from each of the following industries:

40 (A) Commercial real estate development;

41 (B) Residential real estate development; and

42 (C) Banking;

43 (g) One representative from each of the following:

44 (A) Community development organizations;

45 (B) Economic development organizations;

- 1 (C) Downtown development organizations;  
 2 (D) The Association of Oregon Counties; and  
 3 (E) The League of Oregon Cities; and

4 (h) One person not otherwise qualified under this subsection who possesses a demonstrated in-  
 5 terest in community development.

6 (2) Advisory board members described in subsection (1)(a) to (e) of this section shall serve as  
 7 ex officio members. An ex officio member may delegate board membership duties to an employee of  
 8 the member's department.

9 (3) The Governor shall appoint the members described under subsection (1)(f), (g) and (h) of this  
 10 section. The appointments shall be for a four-year term. Appointed members serve at the pleasure  
 11 of the Governor.

12 (4) All members of the advisory board are entitled to compensation as provided under ORS  
 13 292.495 for actual and necessary travel expenses incurred in the performance of board duties. In  
 14 addition, the members of the board representing industries or organizations are entitled to compen-  
 15 sation as provided under ORS 292.495.

16 **SECTION 1044.** ORS 466.385 is amended to read:

17 466.385. (1) By the first periodic review after development of model language under subsection  
 18 (2) of this section, the governing body of a city or county shall amend its comprehensive plan and  
 19 land use regulations as provided in ORS 197.610 to 197.650 to establish and implement policies re-  
 20 garding potentially hazardous environmental conditions on sites listed under ORS 466.365. The land  
 21 use regulations shall provide that:

22 (a) The city or county shall not approve any proposed use of a disposal site for which the city  
 23 or county has received notice under ORS 466.370 until the Department of Environmental Quality  
 24 has been notified and provided the city or county with comments on the proposed use; and

25 (b) Within 120 days of receipt of an environmental hazard notice from the Department of Envi-  
 26 ronmental Quality, the city or county shall amend its zoning maps to identify the disposal site.

27 (2) The Department of Environmental Quality and the [*Department of Land Conservation and*  
 28 *Development*] **Oregon Department of Natural Resources** shall:

29 (a) Develop model language for comprehensive plans and land use regulations for use by cities  
 30 and counties in complying with this section; and

31 (b) Provide technical assistance to cities and counties in complying with ORS 466.360 to 466.385.

32 (3) The Department of Environmental Quality may appeal to the [*Land Use Board of Appeals*]  
 33 **Oregon Department of Natural Resources in the manner prescribed by ORS 197.830 to 197.845**  
 34 any final land use decision or limited land use decision made by a city or county regarding any  
 35 proposed use of a disposal site that has been identified under its comprehensive plan and land use  
 36 regulations pursuant to this section.

37 **SECTION 1045.** ORS 468A.363 is amended to read:

38 468A.363. The Legislative Assembly declares the purpose of ORS 468A.363, 468A.365, 468A.400  
 39 and 815.300 is to:

40 (1) Insure that the health of [*citizens*] **residents** in the Portland area is not threatened by re-  
 41 curring air pollution conditions.

42 (2) Provide necessary authority to the Environmental Quality Commission to implement one of  
 43 the critical elements of the air quality maintenance strategy for the Portland area related to im-  
 44 provements in the motor vehicle inspection program.

45 (3) Insure that the Department of Environmental Quality is able to submit an approvable air

1 quality maintenance plan for the Portland area through the year 2006 to the Environmental Pro-  
 2 tection Agency as soon as possible so that area can again be designated as an attainment area and  
 3 impediments to industrial growth imposed in the Clean Air Act can be removed.

4 (4) Direct the Environmental Quality Commission to use existing authority to incorporate the  
 5 following programs for emission reduction credits into the air quality maintenance plan for the  
 6 Portland area:

7 (a) California or United States Environmental Protection Agency emission standards for new  
 8 lawn and garden equipment sold in the Portland area.

9 (b) Transportation-efficient land use requirements of the transportation planning rule adopted  
 10 by the [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
 11 **Commission**.

12 (c) Improvements in the vehicle inspection program as authorized in ORS 468A.350 to 468A.400,  
 13 including emission reduction from on-road vehicles resulting from enhanced testing, elimination of  
 14 exemptions for 1974 and later model year vehicles, and expansion of inspection program boundaries.

15 (d) An employer trip reduction program that provides an emission reduction from on-road vehi-  
 16 cles.

17 (e) A parking ratio program that limits the construction of new parking spaces for employment,  
 18 retail and commercial locations.

19 (f) Emission reductions resulting from any new federal motor vehicle fuel tax.

20 (g) State and federal alternative fuel vehicles fleet programs that result in emission reductions.

21 (h) Installation of maximum achievable control technology by major sources of hazardous air  
 22 pollutants as required by the federal Clean Air Act, as amended, resulting in emission reductions.

23 (i) As a safety margin, or as a substitute in whole or in part for other elements of the plan,  
 24 emission reductions resulting from any new state gasoline tax or for any new vehicle registration  
 25 fee that allows use of revenue for air quality improvement purposes.

26 **SECTION 1046.** ORS 469.320 is amended to read:

27 469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be  
 28 constructed or expanded unless a site certificate has been issued for the site thereof in the manner  
 29 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be  
 30 constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563,  
 31 469.590 to 469.619, 469.930 and 469.992.

32 (2) A site certificate is not required for:

33 (a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had  
 34 operable electric generating equipment for a modification that uses the same fuel type and increases  
 35 electric generating capacity, if:

36 (A) The site is not enlarged; and

37 (B) The ability of the energy facility to use fuel for electricity production under peak steady  
 38 state operating conditions is not more than 200 million Btu per hour greater than it was on August  
 39 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy  
 40 resource plan that has been acknowledged by the Public Utility Commission of Oregon.

41 (b) Construction or expansion of any interstate natural gas pipeline or associated underground  
 42 natural gas storage facility authorized by and subject to the continuing regulation of the Federal  
 43 Energy Regulatory Commission or successor agency.

44 (c) An energy facility, except coal and nuclear power plants, if the energy facility:

45 (A) Sequentially produces electrical energy and useful thermal energy from the same fuel source;

1 and

2 (B) Under average annual operating conditions, has a nominal electric generating capacity:

3 (i) Of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater  
4 than 6,000 Btu per kilowatt hour;

5 (ii) Of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater  
6 than 5,500 Btu per kilowatt hour; or

7 (iii) Specified by the Energy Facility Siting Council by rule based on the council's determination  
8 relating to emissions of the energy facility.

9 (d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site cer-  
10 tificate has been issued by the State of Oregon, of radioactive waste from the plant.

11 (e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary  
12 fuel used on site for the production of heat or electricity, if the output of the primary fuel is less  
13 than six billion Btu of heat a day.

14 (f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

15 (A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oil seeds, waste  
16 vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

17 (B) Has received local land use approval under the applicable acknowledged comprehensive plan  
18 and land use regulations of the affected local government and the facility complies with any state-  
19 wide planning goals or rules of the [*Land Conservation and Development Commission*] **Oregon Na-  
20 tural Resources Commission** that are directly applicable to the facility;

21 (C) Requires no new electric transmission lines or gas or petroleum product pipelines that would  
22 require a site certificate under subsection (1) of this section;

23 (D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling  
24 facility located within one mile of the facility or is transported from the facility by rail or barge;  
25 and

26 (E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for con-  
27 version energy.

28 (g) A standby generation facility, if the facility complies with all of the following:

29 (A) The facility has received local land use approval under the applicable acknowledged com-  
30 prehensive plan and land use regulations of the affected local government and the facility complies  
31 with all statewide planning goals and applicable rules of the [*Land Conservation and Development  
32 Commission*] **Oregon Natural Resources Commission**;

33 (B) The standby generators have been approved by the Department of Environmental Quality  
34 as having complied with all applicable air and water quality requirements. For an applicant that  
35 proposes to provide the physical facilities for the installation of standby generators, the requirement  
36 of this subparagraph may be met by agreeing to require such a term in the lease contract for the  
37 facility; and

38 (C) The standby generators are electrically incapable of being interconnected to the trans-  
39 mission grid. For an applicant that proposes to provide the physical facilities for the installation of  
40 standby generators, the requirement of this subparagraph may be met by agreeing to require such  
41 a term in the lease contract for the facility.

42 (3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable  
43 to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,  
44 the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in  
45 subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power

1 heat rate value for the best available, commercially viable thermal power plant technology at the  
2 time of the revision.

3 (4) Any person who proposes to construct or enlarge an energy facility and who claims an ex-  
4 emption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site  
5 certificate shall request the Energy Facility Siting Council to determine whether the proposed fa-  
6 cility qualifies for the claimed exemption. The council shall make its determination within 60 days  
7 after the request for exemption is filed. An appeal from the council's determination on a request for  
8 exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court  
9 shall be the same as a review by a circuit court under ORS 183.484. The record on review by the  
10 Supreme Court shall be the record established in the council proceeding on the exemption.

11 (5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be re-  
12 quired for:

13 (a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if  
14 such related or supporting facilities are addressed in and are subject to a site certificate for another  
15 energy facility;

16 (b) Expansion within the site or within the energy generation area of a facility for which a site  
17 certificate has been issued, if the existing site certificate has been amended to authorize expansion;  
18 or

19 (c) Expansion, either within the site or outside the site, of an existing council certified surface  
20 facility related to an underground gas storage reservoir, if the existing site certificate is amended  
21 to authorize expansion.

22 (6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of  
23 this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this  
24 section, the electric generating facility shall cease to operate one year after the substantial loss of  
25 the steam host unless an application for a site certificate has been filed in accordance with the  
26 provisions of ORS 469.300 to 469.563.

27 (7) As used in this section:

28 (a) "Standby generation facility" means an electric power generating facility, including standby  
29 generators and the physical structures necessary to install and connect standby generators, that  
30 provides temporary electric power in the event of a power outage and that is electrically incapable  
31 of being interconnected with the transmission grid.

32 (b) "Total energy output" means the sum of useful thermal energy output and useful electrical  
33 energy output.

34 (c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial  
35 or commercial process, heating or cooling application.

36 (8) Notwithstanding the definition of "energy facility" in ORS 469.300 (11)(a)(J), an electric  
37 power generating plant with an average electric generating capacity of less than 35 megawatts  
38 produced from wind energy at a single energy facility or within a single energy generation area may  
39 elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to  
40 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be  
41 final upon submission of an application for a site certificate.

42 **NOTE:** Section 1047 was deleted. Subsequent sections were not renumbered.

43 **SECTION 1048.** ORS 469.501 is amended to read:

44 469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction,  
45 operation and retirement of facilities. The standards may address but need not be limited to the

1 following subjects:

2 (a) The organizational, managerial and technical expertise of the applicant to construct and  
3 operate the proposed facility.

4 (b) Seismic hazards.

5 (c) Areas designated for protection by the state or federal government, including but not limited  
6 to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

7 (d) The financial ability and qualifications of the applicant.

8 (e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threat-  
9 ened and endangered fish, wildlife or plant species.

10 (f) Impacts of the facility on historic, cultural or archaeological resources listed on, or deter-  
11 mined by the State Historic Preservation Officer to be eligible for listing on, the National Register  
12 of Historic Places or the Oregon State Register of Historic Properties.

13 (g) Protection of public health and safety, including necessary safety devices and procedures.

14 (h) The accumulation, storage, disposal and transportation of nuclear waste.

15 (i) Impacts of the facility on recreation, scenic and aesthetic values.

16 (j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

17 (k) Ability of the communities in the affected area to provide sewers and sewage treatment,  
18 water, storm water drainage, solid waste management, housing, traffic safety, police and fire pro-  
19 tection, health care and schools.

20 (L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the  
21 state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans  
22 when adopting a need standard or in determining whether an applicable need standard has been met.  
23 The council shall not adopt a standard requiring a showing of need or cost-effectiveness for gener-  
24 ating facilities as defined in ORS 469.503.

25 (m) Compliance with the statewide planning goals adopted by the [*Land Conservation and De-*  
26 *velopment Commission*] **Oregon Natural Resources Commission** as specified by ORS 469.503.

27 (n) Soil protection.

28 (o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate  
29 change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard  
30 as provided for by ORS 469.503 (2).

31 (2) The council may adopt exemptions from any need standard adopted under subsection (1)(L)  
32 of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010  
33 and 469.310.

34 (3) The council may issue a site certificate for a facility that does not meet one or more of the  
35 standards adopted under subsection (1) of this section if the council determines that the overall  
36 public benefits of the facility outweigh the damage to the resources protected by the standards the  
37 facility does not meet.

38 (4) Notwithstanding subsection (1) of this section, the council may not impose any standard de-  
39 veloped under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for  
40 an energy facility producing power from wind, solar or geothermal energy. However, the council  
41 may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b),  
42 (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

43 **SECTION 1049.** ORS 469.503 is amended to read:

44 469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine  
45 that the preponderance of the evidence on the record supports the following conclusions:

1 (1) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or  
2 the overall public benefits of the facility outweigh the damage to the resources protected by the  
3 standards the facility does not meet.

4 (2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any  
5 applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base  
6 load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other  
7 fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule  
8 pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the  
9 means by which an applicant may comply with the applicable standard.

10 (a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed  
11 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon  
12 dioxide emissions and net electric power output measured on a new and clean basis.  
13 Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions stand-  
14 ard for base load gas plants if the council finds that the most efficient stand-alone combined cycle,  
15 combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operat-  
16 ing in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating  
17 value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council  
18 shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such  
19 energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17  
20 percent below this rate.

21 (b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled  
22 power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting  
23 or amending such carbon dioxide emissions standards, the council shall consider and balance at  
24 least the following principles, the findings on which shall be contained in the rulemaking record:

25 (A) Promote facility fuel efficiency;

26 (B) Promote efficiency in the resource mix;

27 (C) Reduce net carbon dioxide emissions;

28 (D) Promote cogeneration that reduces net carbon dioxide emissions;

29 (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding  
30 carbon dioxide emissions;

31 (F) Minimize transaction costs;

32 (G) Include an alternative process that separates decisions on the form and implementation of  
33 offsets from the final decision on granting a site certificate;

34 (H) Allow either the applicant or third parties to implement offsets;

35 (I) Be attainable and economically achievable for various types of power plants;

36 (J) Promote public participation in the selection and review of offsets;

37 (K) Promote prompt implementation of offset projects;

38 (L) Provide for monitoring and evaluation of the performance of offsets; and

39 (M) Promote reliability of the regional electric system.

40 (c) The council shall determine whether the applicable carbon dioxide emissions standard is met  
41 by first determining the gross carbon dioxide emissions that are reasonably likely to result from the  
42 operation of the proposed energy facility. Such determination shall be based on the proposed design  
43 of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted  
44 carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions  
45 reduction necessary to meet the applicable standard, the applicant may elect to use any of subpar-



1 agragraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the  
2 amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's  
3 offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide  
4 emissions standard. If the council or a court on judicial review concludes that the applicant has  
5 not demonstrated compliance with the applicable carbon dioxide emissions standard under subpara-  
6 graphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed  
7 to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or  
8 a court shall find compliance based on such agreement.

9 (A) The facility will sequentially produce electrical and thermal energy from the same fuel  
10 source, and the thermal energy will be used to displace another source of carbon dioxide emissions  
11 that would have otherwise continued to occur, in which case the council shall adopt site certificate  
12 conditions ensuring that the carbon dioxide emissions reduction will be achieved.

13 (B) The applicant or a third party will implement particular offsets, in which case the council  
14 may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall  
15 not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide  
16 emissions be achieved. The council shall determine the quantity of carbon dioxide emissions re-  
17 duction that is reasonably likely to result from each of the proposed offsets based on the criteria in  
18 sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall  
19 not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide  
20 emissions reduction in another regulatory setting. In addition, the fact that an applicant or other  
21 parties involved with an offset may derive benefits from the offset other than the reduction of car-  
22 bon dioxide emissions is not, by itself, a basis for withholding credit for an offset.

23 (i) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction  
24 will be achieved by the offset;

25 (ii) The ability of the council to determine the actual quantity of carbon dioxide emissions re-  
26 duction resulting from the offset, taking into consideration any proposed measurement, monitoring  
27 and evaluation of mitigation measure performance; and

28 (iii) The extent to which the reduction of carbon dioxide emissions would occur in the absence  
29 of the offsets.

30 (C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to  
31 produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide  
32 emissions standard, in which case the funds shall be used as specified in paragraph (d) of this sub-  
33 section. Unless modified by the council as provided below, the payment of 57 cents shall be deemed  
34 to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the  
35 offset funds using the monetary offset rate and the level of emissions reduction required to meet the  
36 applicable standard. If a site certificate is approved based on this subparagraph, the council may  
37 not adjust the amount of such offset funds based on the actual performance of offsets. After three  
38 years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of  
39 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based  
40 on empirical evidence of the cost of carbon dioxide offsets and the council's finding that the stand-  
41 ard will be economically achievable with the modified rate for natural gas-fired power plants. Fol-  
42 lowing the initial three-year period, the council may increase or decrease the monetary offset rate  
43 no more than 50 percent in any two-year period.

44 (D) Any other means that the council adopts by rule for demonstrating compliance with any  
45 applicable carbon dioxide emissions standard.

1 (d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or  
2 in part under paragraph (c)(C) of this subsection the applicant shall identify the qualified organiza-  
3 tion. The applicant may identify an organization that has applied for, but has not received, an ex-  
4 emption from federal income taxation, but the council may not find that the organization is a  
5 qualified organization unless the organization is exempt from federal taxation under section 501(c)(3)  
6 of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate  
7 holder shall provide a bond or comparable security in a form reasonably acceptable to the council  
8 to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this  
9 paragraph. Such security shall be provided by the date specified in the site certificate, which shall  
10 be no later than the commencement of construction of the facility. The site certificate shall require  
11 that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the  
12 council finds that no qualified organization exists, in which case the site certificate shall require  
13 that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

14 (A) The site certificate holder shall disburse the offset funds and any other funds required by  
15 sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

16 (i) When the site certificate holder receives written notice from the qualified organization cer-  
17 tifying that the qualified organization is contractually obligated to pay any funds to implement off-  
18 sets using the offset funds, the site certificate holder shall make the requested amount available to  
19 the qualified organization unless the total of the amount requested and any amounts previously re-  
20 quested exceeds the offset funds, in which case only the remaining amount of the offset funds shall  
21 be made available. The qualified organization shall use at least 80 percent of the offset funds for  
22 contracts to implement offsets. The qualified organization may use up to 20 percent of the offset  
23 funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

24 (ii) At the request of the qualified organization and in addition to the offset funds, the site cer-  
25 tificate holder shall pay the qualified organization an amount equal to 10 percent of the first  
26 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount  
27 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount  
28 compensates the qualified organization for its costs of selecting offsets and contracting for the im-  
29 plementation of offsets.

30 (iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this sub-  
31 paragraph shall have no obligation with regard to offsets, the offset funds or the funds required by  
32 sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization  
33 the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this  
34 subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified  
35 organization be a basis for revocation of the site certificate or any other enforcement action by the  
36 council with respect to the site certificate holder.

37 (B) If the council finds there is no qualified organization, the site certificate holder shall select  
38 one or more offsets to be implemented pursuant to criteria established by the council. The site cer-  
39 tificate holder shall give written notice of its selections to the council and to any person requesting  
40 notice. On petition by the State Department of Energy, or by any person adversely affected or  
41 aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the  
42 council may review such selection. The petition must be received by the council within 30 days of  
43 the date the notice of selection is placed in the United States mail, with first-class postage prepaid.  
44 The council shall approve the site certificate holder's selection unless it finds that the selection is  
45 not consistent with criteria established by the council. The site certificate holder shall contract to

1 implement the selected offsets within 18 months after commencing construction of the facility unless  
2 good cause is shown requiring additional time. The contracts shall obligate the expenditure of at  
3 least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the  
4 offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement  
5 the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set  
6 forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular  
7 types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not  
8 require the site certificate holder to select particular offsets, and shall allow the site certificate  
9 holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other  
10 provision of this section, the site certificate holder's financial liability for implementation, monitor-  
11 ing, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount  
12 of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct  
13 by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a  
14 basis for revocation of the site certificate or any other enforcement action by the council with re-  
15 spect to the site certificate holder.

16 (C) Every qualified organization that has received funds under this paragraph shall, at five-year  
17 intervals beginning on the date of receipt of such funds, provide the council with the information  
18 the council requests about the qualified organization's performance. The council shall evaluate the  
19 information requested and, based on such information, shall make any recommendations to the  
20 Legislative Assembly that the council deems appropriate.

21 (e) As used in this subsection:

22 (A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output  
23 as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60  
24 percent humidity.

25 (B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for  
26 periods during which an alternative fuel may be used and when such alternative fuel use shall not  
27 exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and  
28 where the applicant requests and the council adopts no condition in the site certificate for the  
29 generating facility that would limit hours of operation other than restrictions on the use of alter-  
30 native fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year  
31 life for the plants for purposes of determining gross carbon dioxide emissions.

32 (C) "Fossil-fueled power plant" means a generating facility that produces electric power from  
33 natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

34 (D) "Generating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(A),  
35 (B) and (D).

36 (E) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the pro-  
37 posed energy facility measured on a new and clean basis.

38 (F) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy  
39 facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of  
40 cogeneration or offsets.

41 (G) "New and clean basis" means the average carbon dioxide emissions rate per hour and net  
42 electric power output of the energy facility, without degradation, as determined by a 100-hour test  
43 at full power completed during the first 12 months of commercial operation of the energy facility,  
44 with the results adjusted for the average annual site condition for temperature, barometric pressure  
45 and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide

1 per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of  
2 distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate  
3 of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by  
4 rule set carbon dioxide emissions rates for other fuels.

5 (H) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300  
6 (11)(a)(C) and (E) to (I).

7 (I) "Offset" means an action that will be implemented by the applicant, a third party or through  
8 the qualified organization to avoid, sequester or displace emissions of carbon dioxide.

9 (J) "Offset funds" means the amount of funds determined by the council to satisfy the applicable  
10 carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

11 (K) "Qualified organization" means an entity that:

12 (i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as  
13 amended and in effect on December 31, 1996;

14 (ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do  
15 business in the State of Oregon;

16 (iii) Has in effect articles of incorporation that require that offset funds received pursuant to  
17 this section are used for offsets that will result in the direct reduction, elimination, sequestration  
18 or avoidance of carbon dioxide emissions, that require that decisions on the use of such funds are  
19 made by a body composed of seven voting members of which three are appointed by the council,  
20 three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental  
21 nonprofit organization named by the body, and one is appointed by the applicants for site certificates  
22 that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that  
23 require nonvoting membership on the decision-making body for holders of site certificates that have  
24 provided funds not yet disbursed under paragraph (d)(A) of this subsection;

25 (iv) Has made available on an annual basis, beginning after the first year of operation, a signed  
26 opinion of an independent certified public accountant stating that the qualified organization's use  
27 of funds pursuant to this statute conforms with generally accepted accounting procedures except  
28 that the qualified organization shall have one year to conform with generally accepted accounting  
29 principles in the event of a nonconforming audit;

30 (v) Has to the extent applicable, except for good cause, entered into contracts obligating at least  
31 60 percent of the offset funds to implement offsets within two years after the commencement of  
32 construction of the facility; and

33 (vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this  
34 subsection.

35 (3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and  
36 rules for which the decision on compliance has been delegated by the federal government to a state  
37 agency other than the council, the facility complies with all other Oregon statutes and administra-  
38 tive rules identified in the project order, as amended, as applicable to the issuance of a site certif-  
39 icate for the proposed facility. If compliance with applicable Oregon statutes and administrative  
40 rules, other than those involving federally delegated programs, would result in conflicting conditions  
41 in the site certificate, the council may resolve the conflict consistent with the public interest. A  
42 resolution may not result in the waiver of any applicable state statute.

43 (4) The facility complies with the statewide planning goals adopted by the [*Land Conservation*  
44 *and Development Commission*] **Oregon Natural Resources Commission pursuant to ORS**  
45 **197.230.**

1       **SECTION 1050.** ORS 469.504 is amended to read:

2       469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals  
3 under ORS 469.503 (4) if:

4       (a) The facility has received local land use approval under the acknowledged comprehensive  
5 plan and land use regulations of the affected local government; or

6       (b) The Energy Facility Siting Council determines that:

7       (A) The facility complies with:

8       (i) Applicable substantive criteria from the affected local government's acknowledged compre-  
9 hensive plan and land use regulations that are required by *[the]* statewide planning goals **adopted**  
10 **by the Oregon Natural Resources Commission pursuant to ORS 197.230** and **that are** in effect  
11 on the date the application is submitted[, *and with any Land Conservation and Development Com-*  
12 *mission administrative rules and goals and any land use statutes that apply directly to the facility*  
13 *under ORS 197.646*]; **and**

14       (ii) **Any rules or goals adopted by the commission or land use laws that apply directly to**  
15 **the facility under ORS 197.646;**

16       (B) For an energy facility or a related or supporting facility that must be evaluated against the  
17 applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility  
18 does not comply with one or more of the applicable substantive criteria but does otherwise comply  
19 with the applicable statewide planning goals, or that an exception to any applicable statewide  
20 planning goal is justified under subsection (2) of this section; or

21       (C) For a facility that the council elects to evaluate against the statewide planning goals pur-  
22 suant to subsection (5) of this section, that the proposed facility complies with the applicable state-  
23 wide planning goals or that an exception to any applicable statewide planning goal is justified under  
24 subsection (2) of this section.

25       (2) The council may find goal compliance for a facility that does not otherwise comply with one  
26 or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding  
27 the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process  
28 or any rules of the *[Land Conservation and Development]* commission pertaining to an exception  
29 process goal, the council may take an exception to a goal if the council finds:

30       (a) The land subject to the exception is physically developed to the extent that the land is no  
31 longer available for uses allowed by the applicable goal;

32       (b) The land subject to the exception is irrevocably committed as described by the rules of the  
33 *[Land Conservation and Development]* commission to uses not allowed by the applicable goal because  
34 existing adjacent uses and other relevant factors make uses allowed by the applicable goal imprac-  
35 ticable; or

36       (c) The following standards are met:

37       (A) Reasons justify why the state policy embodied in the applicable goal should not apply;

38       (B) The significant environmental, economic, social and energy consequences anticipated as a  
39 result of the proposed facility have been identified and adverse impacts will be mitigated in ac-  
40 cordance with rules of the council applicable to the siting of the proposed facility; and

41       (C) The proposed facility is compatible with other adjacent uses or will be made compatible  
42 through measures designed to reduce adverse impacts.

43       (3) If compliance with applicable substantive local criteria and applicable statutes and state  
44 administrative rules would result in conflicting conditions in the site certificate or amended site  
45 certificate, the council shall resolve the conflict consistent with the public interest. A resolution

1 may not result in a waiver of any applicable state statute.

2 (4) An applicant for a site certificate shall elect whether to demonstrate compliance with the  
3 statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the  
4 election on or before the date specified by the council by rule.

5 (5) Upon request by the State Department of Energy, the special advisory group established  
6 under ORS 469.480 shall recommend to the council, within the time stated in the request, the ap-  
7 plicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group  
8 does not recommend applicable substantive criteria within the time established in the department's  
9 request, the council may either determine and apply the applicable substantive criteria under sub-  
10 section (1)(b) of this section or determine compliance with the statewide planning goals under sub-  
11 section (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable  
12 substantive criteria for an energy facility described in ORS 469.300 or a related or supporting fa-  
13 cility that does not pass through more than one local government jurisdiction or more than three  
14 zones in any one jurisdiction, the council shall apply the criteria recommended by the special advi-  
15 sory group. If the special advisory group recommends applicable substantive criteria for an energy  
16 facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or supporting facility that passes  
17 through more than one jurisdiction or more than three zones in any one jurisdiction, the council  
18 shall review the recommended criteria and determine whether to evaluate the proposed facility  
19 against the applicable substantive criteria recommended by the special advisory group, against the  
20 statewide planning goals or against a combination of the applicable substantive criteria and state-  
21 wide planning goals. In making its determination, the council shall consult with the special advisory  
22 group and shall consider:

23 (a) The number of jurisdictions and zones in question;

24 (b) The degree to which the applicable substantive criteria reflect local government consider-  
25 ation of energy facilities in the planning process; and

26 (c) The level of consistency of the applicable substantive criteria from the various zones and  
27 jurisdictions.

28 (6) The council is not subject to ORS 197.180 and a state agency may not require an applicant  
29 for a site certificate to comply with any rules or programs adopted under ORS 197.180.

30 (7) On or before its next periodic review, each affected local government shall amend its com-  
31 prehensive plan and land use regulations as necessary to reflect the decision of the council per-  
32 taining to a site certificate or amended site certificate.

33 (8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local  
34 government's land use approval of a proposed facility under subsection (1)(a) of this section and the  
35 special advisory group's recommendation of applicable substantive criteria under subsection (5) of  
36 this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant  
37 elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply  
38 only to proposed projects for which the land use approval of the local government occurs after the  
39 date a notice of intent or an application for expedited processing is submitted to the State Depart-  
40 ment of Energy.

41 (9) The State Department of Energy, in cooperation with other state agencies, shall provide, to  
42 the extent possible, technical assistance and information about the siting process to local govern-  
43 ments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

44 **SECTION 1051.** ORS 835.114 is amended to read:

45 835.114. Except as required under ORS 197.180, the Oregon Department of Aviation may not

1 adopt any rules intended primarily to implement ORS chapter 197, 215 or 227. The department shall  
2 comply with the land use planning goals and guidelines adopted under ORS 197.225 and rules  
3 adopted under ORS 197.040. The department may make recommendations to the [*Department of Land*  
4 *Conservation and Development*] **Oregon Department of Natural Resources** regarding land use is-  
5 sues.

6 **SECTION 1052.** ORS 836.608 is amended to read:

7 836.608. (1) The continued operation and vitality of airports registered, licensed or otherwise  
8 recognized by the Department of Transportation on December 31, 1994, is a matter of state concern.

9 (2) A local government shall recognize in its planning documents the location of private-use  
10 airports and privately owned public-use airports not listed under ORS 836.610 (3) if the airport was  
11 the base for three or more aircraft, as shown in the records of the Department of Transportation,  
12 on December 31, 1994. Local planning documents shall establish a boundary showing areas in air-  
13 port ownership, or subject to long-term lease, that are developed or committed to airport uses de-  
14 scribed in ORS 836.616 (2). Areas committed to airport uses shall include those areas identified by  
15 the airport owner that the local government determines can be reasonably expected to be devoted  
16 to airport uses allowed under ORS 836.616 (2).

17 (3)(a) A local government shall not impose limitations on the continued operation of uses de-  
18 scribed in ORS 836.616 (2) that existed at any time during 1996 at an airport described in subsection  
19 (2) of this section. A local government shall allow for the growth of uses described in ORS 836.616  
20 (2) that existed at any time during 1996 at an airport described in subsection (2) of this section. A  
21 local government shall not impose additional limitations on a use approved by the local government  
22 prior to January 1, 1997, for an airport described in subsection (2) of this section. Notwithstanding  
23 subsection (4) of this section, the construction of additional hangars or tie-downs by the owner of  
24 an airport described in subsection (2) of this section, basing additional aircraft and increases in  
25 flight activity shall be permitted at an airport described in subsection (2) of this section.

26 (b) A local government may authorize the establishment of a new use described in ORS 836.616  
27 (2) at an airport described in subsection (2) of this section following a public hearing on the use.  
28 The hearing shall be for the purpose of establishing compliance with adopted clear and objective  
29 standards relating to the compatibility and adequacy of public facilities and services as provided  
30 under subsection (5) of this section. Standards and requirements as adopted by the local government  
31 shall further the policy of ORS 836.600 to the maximum extent practicable.

32 (4) Growth of an existing use on an airport as described in subsection (3)(a) of this section that  
33 requires a building permit shall be allowed as an administrative decision without public hearing  
34 unless the growth:

35 (a) Cannot be supported by existing public facilities and services and transportation systems  
36 authorized by applicable statewide land use planning goals;

37 (b) Forces a significant change or significantly increases the costs of conducting existing uses  
38 on surrounding lands; or

39 (c) Exceeds the standards of ORS 215.296 (1) if the airport is adjacent to land zoned for exclusive  
40 farm use.

41 (5) A local government shall authorize a new use described in subsection (3)(b) of this section  
42 provided the use:

43 (a) Is or will be supported by adequate types and levels of public facilities and services and  
44 transportation systems authorized by applicable statewide land use planning goals;

45 (b) Does not seriously interfere with existing land uses in areas surrounding the airport; and

1 (c) The local government reviews the use under the standards described in ORS 215.296 if the  
2 airport is adjacent to land zoned for exclusive farm use.

3 (6) An applicant for a new use under subsection (5) of this section may demonstrate that the  
4 standards for approval will be satisfied through the imposition of conditions. Any conditions imposed  
5 shall be clear and objective.

6 (7) A local government may adopt standards and requirements for the establishment of new  
7 airports, the expansion of existing airports and the regulation of uses and activities at airports  
8 serving as the base for two or fewer aircraft on December 31, 1994, as shown in the records of the  
9 Department of Transportation. The standards and requirements shall comply with applicable state-  
10 wide land use planning laws.

11 (8) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
12 **mission** shall adopt rules regulating the height of structures to protect approach corridors at air-  
13 ports described in subsection (2) of this section and at publicly owned airports that are the base for  
14 two or fewer aircraft.

15 **SECTION 1053.** ORS 836.610 is amended to read:

16 836.610. (1) Local governments shall amend their comprehensive plan and land use regulations  
17 consistent with the rules for airports adopted by the [*Land Conservation and Development Commis-*  
18 *sion*] **Oregon Natural Resources Commission** under ORS 836.616 and 836.619. Airports subject to  
19 the rules shall include:

20 (a) Publicly owned airports registered, licensed or otherwise recognized by the Department of  
21 Transportation on or before December 31, 1994, that in 1994 were the base for three or more air-  
22 craft; and

23 (b) Privately owned public-use airports specifically identified in administrative rules of the  
24 Oregon Department of Aviation that:

25 (A) Provide important links in air traffic in this state;

26 (B) Provide essential safety or emergency services; or

27 (C) Are of economic importance to the county where the airport is located.

28 (2)(a) Local governments shall amend their comprehensive plan and land use regulations as re-  
29 quired under subsection (1) of this section not later than the first periodic review, as described in  
30 ORS 197.628 to 197.650, conducted after the date of the adoption of a list of airports by the Oregon  
31 Department of Aviation under subsection (3) of this section.

32 (b) A state agency or other person may provide funding to a local government to accomplish the  
33 planning requirements of this section earlier than otherwise required under this subsection.

34 (3) The Oregon Department of Aviation by rule shall adopt a list of airports described in sub-  
35 section (1) of this section. The rules shall be reviewed and updated periodically to add or remove  
36 airports from the list. An airport may be removed from the list only upon request of the airport  
37 owner or upon closure of the airport for a period of more than three years.

38 **SECTION 1054.** ORS 836.616 is amended to read:

39 836.616. (1) Following consultation with the Oregon Department of Aviation, the [*Land Conser-*  
40 *vation and Development Commission*] **Oregon Natural Resources Commission** shall adopt rules for  
41 uses and activities allowed within the boundaries of airports identified in ORS 836.610 (1) and air-  
42 ports described in ORS 836.608 (2).

43 (2) Within airport boundaries established pursuant to commission rules, local government land  
44 use regulations shall authorize the following uses and activities:

45 (a) Customary and usual aviation-related activities including but not limited to takeoffs,



1 landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base  
2 operator facilities and other activities incidental to the normal operation of an airport;

3 (b) Emergency medical flight services;

4 (c) Law enforcement and firefighting activities;

5 (d) Flight instruction;

6 (e) Aircraft service, maintenance and training;

7 (f) Crop dusting and other agricultural activities;

8 (g) Air passenger and air freight services at levels consistent with the classification and needs  
9 identified in the State Aviation System Plan;

10 (h) Aircraft rental;

11 (i) Aircraft sales and sale of aviation equipment and supplies; and

12 (j) Aviation recreational and sporting activities.

13 (3) All land uses and activities permitted within airport boundaries, other than the uses and  
14 activities established under subsection (2) of this section, shall comply with applicable land use laws  
15 and regulations. A local government may authorize commercial, industrial and other uses in addition  
16 to those listed in subsection (2) of this section within an airport boundary where such uses are  
17 consistent with applicable provisions of the acknowledged comprehensive plan, statewide land use  
18 planning goals and commission rules and where the uses do not create a safety hazard or limit ap-  
19 proved airport uses.

20 (4) The provisions of this section do not apply to airports with an existing or approved control  
21 tower on June 5, 1995.

22 **SECTION 1055.** ORS 836.619 is amended to read:

23 836.619. Following consultation with the Oregon Department of Aviation, the [*Land Conservation*  
24 *and Development Commission*] **Oregon Natural Resources Commission** shall adopt rules estab-  
25 lishing compatibility and safety standards for uses of land near airports identified in ORS 836.610  
26 (1).

27 **SECTION 1056.** ORS 836.623 is amended to read:

28 836.623. (1) A local government may adopt land use compatibility and safety requirements that  
29 are more stringent than the minimum required by [*Land Conservation and Development*  
30 *Commission*] **Oregon Natural Resources Commission** rules for issues other than water  
31 impoundments where such regulations are within its authority. Local government action regarding  
32 new water impoundments shall comply with subsection (2) of this section. If a local government re-  
33 ceives information in a hearing on a land use application alleging that public safety requires a  
34 higher level of protection than the minimum established in commission rules and if the information  
35 is supported by evidence, the governing body shall consider the information and adopt findings ex-  
36 plaining the bases for any decision regarding the need for more stringent requirements. Land use  
37 requirements regarding safety and compatibility shall consider the effects of mitigation measures or  
38 conditions that could reduce safety risks and incompatibility.

39 (2) The following requirements and conditions shall apply to safety risks associated with poten-  
40 tial bird strike hazards resulting from new water impoundments proposed in close proximity to an  
41 airport identified under ORS 836.610 (1):

42 (a) No new water impoundments of one-quarter acre or larger shall be allowed:

43 (A) Within an approach corridor and within 5,000 feet from the end of a runway; or

44 (B) On land owned by the airport or airport sponsor where the land is necessary for airport  
45 operations;

1 (b) A local government may adopt regulations that limit the establishment of new water  
2 impoundments of one-quarter acre or larger for areas outside an approach corridor and within 5,000  
3 feet of a runway only where the local government adopts findings of fact, supported by substantial  
4 evidence in the whole record, that the impoundments are likely to result in a significant increase  
5 in hazardous movements of birds feeding, watering or roosting in areas across the runways or ap-  
6 proach corridors. The local government shall consider the effects of mitigation measures or condi-  
7 tions that could reduce safety risks and incompatibility;

8 (c) A local government may adopt regulations that limit the establishment of new water  
9 impoundments of one-quarter acre or larger between 5,000 feet and 10,000 feet of a runway outside  
10 an approach corridor and between 5,000 feet and 40,000 feet within an approach corridor for an  
11 airport with an instrument approach only where the local government adopts findings of fact, sup-  
12 ported by substantial evidence in the whole record, that the impoundments are likely to result in a  
13 significant increase in hazardous movements of birds feeding, watering or roosting in areas across  
14 the runways or approach corridors. The local government shall consider the effects of mitigation  
15 measures or conditions that could reduce safety risks and incompatibility;

16 (d) If a local government receives information and supporting evidence in the hearing process  
17 that alleges a significant increase in hazardous movements of birds feeding, watering or roosting in  
18 areas across the runways or approach corridors, the local government shall consider the information  
19 and evidence and adopt findings as required by paragraphs (b) and (c) of this subsection explaining  
20 the bases for any decision regarding the need to limit the establishment of new water impoundments  
21 of one-quarter acre or larger; and

22 (e) Notwithstanding the requirements of paragraphs (a) to (c) of this subsection, wetlands miti-  
23 gation required for projects located within the areas identified in paragraphs (a) to (c) of this sub-  
24 section shall be authorized where it is not practicable to provide off-site mitigation.

25 (3) A local government that receives information under subsection (2)(d) of this section shall  
26 forward the information to the Federal Aviation Administration for review and comment prior to  
27 any final action by the local government to impose a compatibility or safety standard more stringent  
28 than required by rule of the [*Land Conservation and Development Commission*] **Oregon Natural**  
29 **Resources Commission**.

30 (4) Subsection (2) of this section does not apply to a storm water management basin established  
31 by an airport identified under ORS 836.610 (1) or agricultural water impoundments in which the  
32 water is used directly for growing crops such as cranberries or rice.

33 (5) Subsection (2)(a) to (c) of this section does not apply to seaplane landing areas.

34 (6) As used in this section, "significant" means a level of increased flight activity by birds across  
35 approach corridors and runways that is more than incidental or occasional, considering the existing  
36 ambient levels of flight activity by birds in the vicinity.

37 **SECTION 1057.** ORS 836.630 is amended to read:

38 836.630. (1) Nothing in ORS 836.600 to 836.625 shall be interpreted to allow the siting of a new  
39 airport except as provided in ORS chapters 197 and 215 and in conformance with all applicable land  
40 use regulations and ordinances.

41 (2) The Oregon Department of Aviation shall propose and the [*Land Conservation and Develop-*  
42 *ment Commission*] **Oregon Natural Resources Commission** shall adopt rules under ORS 836.616  
43 and 836.619 that are no more restrictive than the commission determines necessary to effect the  
44 policy established in ORS 836.600.

45 (3) The provisions of ORS 836.600 to 836.630 and any rules established hereunder shall be lib-

1 erally construed to further the policy established in ORS 836.600.

2 **SECTION 1058.** ORS 836.642 is amended to read:

3 836.642. (1) The Oregon Department of Aviation shall establish a pilot program at up to six rural  
4 airports to encourage development of through the fence operations designed to promote economic  
5 development by creating family wage jobs, by increasing local tax bases and by increasing financial  
6 support for rural airports. To the extent practicable, the airport sponsor of a pilot site shall use  
7 public-private partnerships that incorporate:

8 (a) Innovative and creative technologies for increasing airport usability and safety;

9 (b) Innovative and creative performance of aviation services to make the services more com-  
10 petitive and useful for the public;

11 (c) Development of the pilot site as a setting for customary and usual aviation-related activities  
12 to develop and thrive, in concert with the goals of the Oregon Business Development Department;  
13 and

14 (d) Shared responsibility for:

15 (A) Establishing and meeting the fiscal needs of the pilot site;

16 (B) Maintaining safety of operations; and

17 (C) Maintaining positive community relations and compatibility with existing uses.

18 (2) The pilot program shall operate at:

19 (a) The Aurora State Airport; and

20 (b) Not more than five additional rural airports that volunteer to participate and are selected  
21 by the Oregon Department of Aviation with the concurrence of the county in which each rural air-  
22 port is located.

23 (3) The Oregon Department of Aviation, by rule, shall provide standards and guidelines for  
24 through the fence operations that:

25 (a) Ensure that the operations provide financial support to the pilot sites in compliance with  
26 Federal Aviation Administration regulations;

27 (b) Require submission, review, approval and, as appropriate, revision of a facility site plan for  
28 each through the fence operation so that the real property covered by the site plan can be incor-  
29 porated into the airport boundary and coordinated with the other aspects of the airport master plan;

30 (c) Ensure that the operations are conducted according to a written contract between the com-  
31 mercial or industrial user of property within the airport boundary and the airport sponsor;

32 (d) Ensure that pilot sites continue to operate in a safe manner and to fulfill their roles in  
33 Oregon's emergency response system;

34 (e) Preserve investments in pilot sites and the level of service provided by pilot sites;

35 (f) Facilitate orderly management of pilot sites;

36 (g) Provide equitable and uniform treatment of airport tenants and users at pilot sites;

37 (h) Advance economic development through qualified customary and usual aviation-related ac-  
38 tivities within the airport boundaries of pilot sites;

39 (i) Encourage well-ordered economic development within the airport boundaries of the pilot  
40 sites;

41 (j) Facilitate and foster good relations with the communities surrounding the pilot sites;

42 (k) Enable conformity with approved airport master plans;

43 (L) Make pilot sites available for public use on reasonable terms; and

44 (m) Assist pilot sites in developing financial self-sufficiency through the use of innovative fund-  
45 ing and economic development programs.

1 (4) The [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
 2 **Resources**, the county and a city, if any, within whose jurisdiction a pilot site is located shall co-  
 3 ordinate with the Oregon Department of Aviation to ensure that the applicable comprehensive plans  
 4 and land use regulations, including airport zoning classifications pursuant to ORS 836.600 to 836.630,  
 5 facilitate through the fence operations and support the development or expansion of the pilot site  
 6 consistent with applicable statewide land use planning requirements.

7 (5) The Oregon Business Development Department shall assist the pilot sites to:

8 (a) Identify, qualify for and apply for funding from appropriate grant and loan programs; and

9 (b) Develop innovative short-term and long-term funding opportunities.

10 (6) To the extent practicable, the airport sponsors shall utilize innovative airport infrastructure  
 11 and operations funding to support the pilot sites including, but not limited to:

12 (a) Airport districts as provided in ORS chapter 838;

13 (b) Economic development programs administered by the Oregon Business Development Depart-  
 14 ment;

15 (c) Tax increment financing to provide funding for airport-related infrastructure;

16 (d) United States Department of Agriculture Rural Development grants or low-interest loans;  
 17 and

18 (e) Programs, including funding for short line railroads under ORS 367.067, designed to facilitate  
 19 development of intermodal transportation projects.

20 **SECTION 1059.** Section 6, chapter 424, Oregon Laws 2007, as amended by section 11, chapter  
 21 855, Oregon Laws 2009, is amended to read:

22 **Sec. 6.** (1)(a) A claimant that filed a claim under ORS 195.305 on or before June 28, 2007, is  
 23 eligible for three home site approvals on the property if the requirements of this section and:

24 (A) Sections 8 and 11, chapter 424, Oregon Laws 2007, are met;

25 (B) Section 2, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,  
 26 Oregon Laws 2007, are met;

27 (C) Section 3, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,  
 28 Oregon Laws 2007, are met;

29 (D) Section 4, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,  
 30 Oregon Laws 2007, are met;

31 (E) Section 5, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,  
 32 Oregon Laws 2007, are met; or

33 (F) Section 5a, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,  
 34 Oregon Laws 2007, are met.

35 (b) The procedure for obtaining home site approvals under this section is set forth in section  
 36 8, chapter 424, Oregon Laws 2007, or, for sections 2 to 5a, **chapter 855, Oregon Laws 2009** [*of this*  
 37 *2009 Act*], is established pursuant to section 6, **chapter 855, Oregon Laws 2009** [*of this 2009 Act*].

38 (2) The number of lots, parcels or dwellings that may be approved for property under this sec-  
 39 tion may not exceed the lesser of:

40 (a) The number of lots, parcels or dwellings described in a waiver issued by the state before  
 41 December 6, 2007, or, if a waiver was not issued, the number of lots, parcels or dwellings described  
 42 in the claim filed with the state; or

43 (b) Three, except that if there are existing dwellings on the property or the property contains  
 44 more than one lot or parcel, the number of lots, parcels or dwellings that may be established is re-  
 45 duced so that the combined number of lots, parcels or dwellings, including existing lots, parcels or

1 dwellings located on or contained within the property, does not exceed three.

2 (3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief  
3 under this section may establish at least one additional lot, parcel or dwelling on the property. In  
4 addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before  
5 December 6, 2007, or, if a waiver was not issued, the number of lots, parcels or dwellings described  
6 in the claim filed with the state is more than three, the claimant may amend the claim to reduce  
7 the number to no more than three by filing notice of the amendment with the form required by  
8 section 8, chapter 424, Oregon Laws 2007, or, for sections 2 to 5a, **chapter 855, Oregon Laws 2009**  
9 *[of this 2009 Act]*, in the manner established pursuant to section 6, **chapter 855, Oregon Laws 2009**  
10 *[of this 2009 Act]*.

11 (4) If a claim was for a use other than a subdivision or partition of property, or other than ap-  
12 proval for establishing a dwelling on the property, the claimant may amend the claim to seek one  
13 or more home site approvals under this section. A person amending a claim under this subsection  
14 may not make a claim under section 7, chapter 424, Oregon Laws 2007.

15 (5) If multiple claims were filed for the same property, the number of lots, parcels or dwellings  
16 that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels  
17 or dwellings in the most recent waiver issued by the state before December 6, 2007, or, if a waiver  
18 was not issued, the most recent claim filed with the state, but not more than three in any case.

19 (6) To qualify for a home site approval under this section, the claimant must have filed a claim  
20 for the property with both the state and the county in which the property is located. In addition,  
21 regardless of whether a waiver was issued by the state or the county before December 6, 2007, to  
22 qualify for a home site approval under this section the claimant must establish that:

23 (a) The claimant is an owner of the property;

24 (b) All owners of the property have consented in writing to the claim;

25 (c) The property is located entirely outside any urban growth boundary and entirely outside the  
26 boundaries of any city;

27 (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

28 (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation  
29 described in ORS 195.305 (3); and

30 (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least  
31 the number of lots, parcels or dwellings on the property that are authorized under this section.

32 (7) If the claim was filed after December 4, 2006, to issue a home site approval under this sec-  
33 tion, the *[Department of Land Conservation and Development]* **Oregon Department of Natural Re-**  
34 **sources** must verify that the claim was filed in compliance with the applicable rules of the *[Land*  
35 *Conservation and Development Commission]* **Oregon Natural Resources Commission** and the  
36 Oregon Department of Administrative Services.

37 (8) Except as provided in section 11, chapter 424, Oregon Laws 2007, if the *[Department of Land*  
38 *Conservation and Development]* **Oregon Department of Natural Resources** has issued a final order  
39 with a specific number of home site approvals for a property under this section, the claimant may  
40 seek other governmental authorizations required by law for the partition or subdivision of the  
41 property or for the development of any dwelling authorized, and a land use regulation enacted by  
42 the state or county that has the effect of prohibiting the partition or subdivision, or the dwelling,  
43 does not apply to the review of those authorizations.

44 **SECTION 1060.** Section 7, chapter 424, Oregon Laws 2007, as amended by section 12, chapter  
45 855, Oregon Laws 2009, is amended to read:

1       **Sec. 7.** (1) A claimant that filed a claim under ORS 195.305 on or before June 28, 2007, for  
2 property that is not high-value farmland or high-value forestland and that is not in a ground water  
3 restricted area is eligible for four to 10 home site approvals for the property if the requirements of  
4 this section and sections 8 and 11, chapter 424, Oregon Laws 2007, are met. The procedure for ob-  
5 taining home site approvals under this section is set forth in section 8, chapter 424, Oregon Laws  
6 2007.

7       (2) The number of lots, parcels or dwellings that may be established on the property under this  
8 section may not exceed the lesser of:

9       (a) The number of lots, parcels or dwellings described in a waiver issued by the state before  
10 December 6, 2007, or, if a waiver was not issued, the number of lots, parcels or dwellings described  
11 in the claim filed with the state;

12       (b) Ten, except that if there are existing dwellings on the property or the property contains  
13 more than one lot or parcel, the number of lots, parcels or dwellings that may be established is re-  
14 duced, so that the combined number of lots, parcels or dwellings, including existing lots, parcels or  
15 dwellings located on or contained within the property, does not exceed 10; or

16       (c) The number of home site approvals with a total value that represents just compensation for  
17 the reduction in fair market value caused by the enactment of one or more land use regulations that  
18 were the basis for the claim, as set forth in subsection (6) of this section.

19       (3) If the number of lots, parcels or dwellings described in a waiver issued by the state before  
20 December 6, 2007, or, if a waiver was not issued, the number of lots, parcels or dwellings described  
21 in the claim filed with the state is more than 10, the claimant may amend the claim to reduce the  
22 number to no more than 10 by filing notice of the amendment with the form required by section 8,  
23 chapter 424, Oregon Laws 2007.

24       (4) If multiple claims were filed for the same property, the number of lots, parcels or dwellings  
25 that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels  
26 or dwellings in the most recent waiver issued by the state before December 6, 2007, or, if a waiver  
27 was not issued, the most recent claim filed with the state, but not more than 10 in any case.

28       (5) To qualify for a home site approval under this section, the claimant must have filed a claim  
29 for the property with both the state and the county in which the property is located. In addition,  
30 regardless of whether a waiver was issued by the state or the county before December 6, 2007, to  
31 qualify for a home site approval under this section, the claimant must establish that:

32       (a) The claimant is an owner of the property;

33       (b) All owners of the property have consented in writing to the claim;

34       (c) The property is located entirely outside any urban growth boundary and entirely outside the  
35 boundaries of any city;

36       (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

37       (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation  
38 described in ORS 195.305 (3);

39       (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least  
40 the number of lots, parcels and dwellings on the property that are authorized under this section; and

41       (g) The enactment of one or more land use regulations, other than land use regulations de-  
42 scribed in ORS 195.305 (3), that are the basis for the claim caused a reduction in the fair market  
43 value of the property that is equal to or greater than the fair market value of the home site ap-  
44 provals that may be established on the property under subsection (2) of this section, with the re-  
45 duction in fair market value measured as set forth in subsection (6) of this section.

1 (6) The reduction in the fair market value of the property caused by the enactment of one or  
2 more land use regulations that were the basis for the claim is equal to the decrease, if any, in the  
3 fair market value of the property from the date that is one year before the enactment of the land  
4 use regulation to the date that is one year after the enactment, plus interest. If the claim is based  
5 on the enactment of more than one land use regulation enacted on different dates, the reduction in  
6 the fair market value of the property caused by each regulation shall be determined separately and  
7 the values added together to calculate the total reduction in fair market value. The reduction in fair  
8 market value shall be adjusted by any ad valorem property taxes not paid as a result of any special  
9 assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754  
10 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any  
11 recapture of potential additional tax liability that the claimant has paid or will pay for the property  
12 if the property is disqualified from special assessment under ORS 308A.703. Interest shall be com-  
13 puted under this subsection using the average interest rate for a one-year United States Government  
14 Treasury Bill on December 31 of each year of the period between the date the land use regulation  
15 was enacted and the date the claim was filed, compounded annually on January 1 of each year of  
16 the period.

17 (7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal  
18 showing the fair market value of the property one year before the enactment of the land use regu-  
19 lation that was the basis for the claim and the fair market value of the property one year after the  
20 enactment. The appraisal also must show the fair market value of each home site approval to which  
21 the claimant is entitled under subsection (2) of this section, along with evidence of any ad valorem  
22 property taxes not paid, any severance taxes paid and any recapture of additional tax liability that  
23 the claimant has paid or will pay for the property if the property is disqualified from special as-  
24 sessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the  
25 cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair  
26 market value under subsection (6) of this section. The appraisal must:

27 (a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS  
28 chapter 308;

29 (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the  
30 Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

31 (c) Expressly determine the highest and best use of the property at the time the land use regu-  
32 lation was enacted.

33 (8) Relief may not be granted under this section if the highest and best use of the property was  
34 not residential use at the time the land use regulation was enacted.

35 (9) If the claim was filed after December 4, 2006, to issue a home site approval under this sec-  
36 tion, the [*Department of Land Conservation and Development*] **Oregon Department of Natural Re-**  
37 **sources** must verify that the claim was filed in compliance with the applicable rules of the [*Land*  
38 *Conservation and Development Commission*] **Oregon Natural Resources Commission** and the  
39 Oregon Department of Administrative Services.

40 (10) Except as provided in section 11, chapter 424, Oregon Laws 2007, if the [*Department of Land*  
41 *Conservation and Development*] **Oregon Department of Natural Resources** has issued a final order  
42 with a specific number of home site approvals for the property under this section, the claimant may  
43 seek other governmental authorizations required by law for the subdivision or partition of the  
44 property or for the development of any dwelling authorized, and a land use regulation enacted by  
45 the state or county that has the effect of prohibiting the subdivision or partition, or the dwelling,

1 does not apply to the review of those authorizations.

2 **SECTION 1061.** Section 8, chapter 424, Oregon Laws 2007, as amended by section 13, chapter  
3 855, Oregon Laws 2009, is amended to read:

4 **Sec. 8.** (1) No later than 120 days after December 6, 2007, the [*Department of Land Conservation*  
5 *and Development*] **Oregon Department of Natural Resources** shall send notice to all the following  
6 claimants that filed a claim for property outside an urban growth boundary:

7 (a) A claimant whose claim was denied by the state before December 6, 2007, but who may be  
8 become eligible for just compensation because of ORS 195.328 (2) or any other provision of ORS  
9 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, **and sections 2 to 9 and**  
10 **17, chapter 855, Oregon Laws 2009;**

11 (b) A claimant whose claim was approved by the state before December 6, 2007; and

12 (c) A claimant whose claim has not been approved or denied by the state before December 6,  
13 2007.

14 (2) The notice required by subsection (1) of this section must:

15 (a) Explain the claimant's options if the claimant wishes to subdivide, partition or establish a  
16 dwelling on the property under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon  
17 Laws 2007, **and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009;**

18 (b) Identify any information that the claimant must file; and

19 (c) Provide a form for the claimant's use.

20 (3) A claimant must choose whether to proceed under section 6 or 7, chapter 424, Oregon Laws  
21 2007, by filing the form provided by the department within 120 days after the date the department  
22 mails the notice and form required under subsection (1) of this section. In addition, the claimant  
23 must file any information required in the notice. If the claimant fails to file the form within 120 days  
24 after the date the department mails the notice, the claimant is not entitled to relief under section  
25 6 or 7, chapter 424, Oregon Laws 2007.

26 (4) The department shall review the claims in the order in which the department receives the  
27 forms required under subsection (3) of this section. In addition to reviewing the claim, the depart-  
28 ment shall review the department's record on the claim, the form required under subsection (3) of  
29 this section, any new material from the claimant and any other information required by ORS 195.305  
30 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, **and sections 2 to 9 and 17,**  
31 **chapter 855, Oregon Laws 2009,** to ensure that the requirements of this section and section 6 or  
32 7, chapter 424, Oregon Laws 2007, are met. The department shall provide a copy of the material  
33 submitted by the claimant to the county where the property is located and consider written com-  
34 ments from the county that are timely filed with the department. If the department determines that  
35 the only land use regulations that restrict the claimant's use of the property are regulations that  
36 were enacted by the county, the department shall transfer the claim to the county where the prop-  
37 erty is located and the claim shall be processed by the county in the same manner as prescribed by  
38 this section for the processing of claims by the department. The county must consider any written  
39 comments from the department that are timely filed with the county.

40 (5) If the claimant elects to obtain relief under section 7, chapter 424, Oregon Laws 2007, the  
41 claimant must file an appraisal that establishes the reduction in the fair market value of the prop-  
42 erty as required by section 7 (6), chapter 424, Oregon Laws 2007. The actual and reasonable cost  
43 of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to  
44 the calculation of the reduction in fair market value under section 7 (6), chapter 424, Oregon Laws  
45 2007. The appraisal must be filed with the department or, if the claim is being processed by the



1 county, with the county within 180 days after the date the claimant files the election to obtain relief  
2 under section 7, chapter 424, Oregon Laws 2007. A claimant that elects to obtain relief under section  
3 7, chapter 424, Oregon Laws 2007, may change that election to obtain relief under section 6, chapter  
4 424, Oregon Laws 2007, but only if the claimant provides written notice of the change on or before  
5 the date the appraisal is filed. If a county is processing the claim, the county may impose a fee for  
6 the review of a claim under section 7, chapter 424, Oregon Laws 2007, in an amount that does not  
7 exceed the actual and reasonable cost of the review.

8 (6) The department or the county shall review claims as quickly as possible, consistent with  
9 careful review of the claim. The department shall report to the Joint Legislative Audit Committee  
10 on or before March 31, 2008, concerning the department's progress and the counties' progress in  
11 completing review of claims under sections 6 and 7, chapter 424, Oregon Laws 2007.

12 (7) The department's final order and a county's final decision on a claim under section 6 or 7,  
13 chapter 424, Oregon Laws 2007, must either deny the claim or approve the claim. If the order or  
14 decision approves the claim, the order or decision must state the number of home site approvals  
15 issued for the property and may contain other terms that are necessary to ensure that the use of  
16 the property is lawful.

17 **SECTION 1062.** Section 10, chapter 424, Oregon Laws 2007, is amended to read:

18 **Sec. 10.** (1) If Metro, a city or a county issued a waiver before [*the effective date of this 2007*  
19 *Act*] **December 6, 2007**, for property located, in whole or in part, within an urban growth boundary,  
20 the public entity that issued the waiver must review the claim, the record on the claim and the  
21 waiver to determine whether the claimant is entitled to relief under section 9, **chapter 424, Oregon**  
22 **Laws 2007** [*of this 2007 Act*]. If the public entity that issued the waiver lacks information needed  
23 to determine whether the claimant is entitled to relief, the public entity shall issue a written request  
24 to the claimant for the required information. The claimant must file the required information within  
25 90 days after receiving the request. If the claimant does not file the information, the public entity  
26 shall review the claim based on the information that is available. The public entity shall complete  
27 a tentative review no later than 240 days after [*the effective date of this 2007 Act*] **December 6,**  
28 **2007.** The public entity shall provide written notice to the claimant, the [*Department of Land Con-*  
29 *servation and Development*] **Oregon Department of Natural Resources** and any other person en-  
30 titled to notice of the tentative determination as to whether the claimant qualifies for relief under  
31 section 9, **chapter 424, Oregon Laws 2007,** [*of this 2007 Act*] and, if so, the specific number of  
32 single-family dwellings that the public entity proposes to authorize. The notice must state that the  
33 recipient has 15 days to submit evidence or arguments in response to the tentative determination,  
34 after which the public entity shall make a final determination. A public entity shall make the final  
35 determination under this subsection within 300 days after [*the effective date of this 2007 Act*] **De-**  
36 **cember 6, 2007.**

37 (2) If Metro, a city or a county has not made a final decision before [*the effective date of this 2007*  
38 *Act*] **December 6, 2007**, on a claim filed for property located, in whole or in part, within an urban  
39 growth boundary, the public entity with which the claim was filed shall send notice to the claimant  
40 within 90 days after [*the effective date of this 2007 Act*] **December 6, 2007.** The notice must:

41 (a) Explain that the claimant is entitled to seek relief under section 9, **chapter 424, Oregon**  
42 **Laws 2007** [*of this 2007 Act*];

43 (b) Identify the information that the claimant must file; and

44 (c) Provide a form for the claimant's use.

45 (3) Within 120 days after the date the public entity mails notice under subsection (2) of this

1 section, a claimant must notify the public entity if the claimant intends to continue the claim and  
 2 must file the information required in the notice. If the claimant fails to file the notice and required  
 3 information with the public entity within 120 days after the date the public entity mails the notice,  
 4 the claimant is not entitled to relief under section 9, **chapter 424, Oregon Laws 2007** [of this 2007  
 5 Act].

6 (4) A public entity that receives a notice from a claimant under subsection (3) of this section  
 7 shall review the claim, the record on the claim, the notice received from the claimant and the in-  
 8 formation required under subsection (3) of this section to determine whether the claim demonstrates  
 9 that the requirements of section 9, **chapter 424, Oregon Laws 2007**, [of this 2007 Act] are satisfied.  
 10 The public entity shall complete a tentative review no later than 120 days after receipt of the notice  
 11 from the claimant and shall provide written notice to the claimant, the department and any other  
 12 person entitled to notice of the tentative determination as to whether the claimant qualifies for re-  
 13 lief under section 9, **chapter 424, Oregon Laws 2007**, [of this 2007 Act] and, if so, the specific  
 14 number of single-family dwellings that the public entity proposes to authorize. The notice must state  
 15 that the recipient has 15 days to submit evidence or arguments in response to the tentative deter-  
 16 mination, after which the public entity shall make a final determination. A public entity shall make  
 17 the final determination under this subsection within 180 days after receipt of the notice from the  
 18 claimant.

19 (5) If a claimant filed a claim that is subject to this section after December 4, 2006, the claim  
 20 must have included a copy of a final land use decision by the city or county with land use juris-  
 21 diction over the property that denied an application by the claimant for the residential use described  
 22 in the claim. If the claim was filed after December 4, 2006, and did not include a final land use de-  
 23 cision denying the residential use described in the claim, the claimant is not entitled to relief under  
 24 section 9, **chapter 424, Oregon Laws 2007** [of this 2007 Act].

25 **SECTION 1063.** Section 2, chapter 855, Oregon Laws 2009, is amended to read:

26 **Sec. 2.** (1) Subject to section 7, **chapter 855, Oregon Laws 2009**, [of this 2009 Act] and sub-  
 27 sections (2) and (3) of this section, a claimant that filed a timely election under section 8, chapter  
 28 424, Oregon Laws 2007, to pursue compensation as described in section 5 (3), chapter 424, Oregon  
 29 Laws 2007, is eligible to pursue relief under this section and section 6, chapter 424, Oregon Laws  
 30 2007.

31 (2) A claimant is not eligible to pursue relief under this section if the claimant has been deter-  
 32 mined to have a common law vested right as described in section 5 (3), chapter 424, Oregon Laws  
 33 2007, in a final judgment, or final order, that is not subject to further appeal.

34 (3) A claimant must elect to pursue relief under this section on or before December 31, 2009, in  
 35 the manner prescribed pursuant to section 6, **chapter 855, Oregon Laws 2009** [of this 2009 Act].

36 (4) The [Department of Land Conservation and Development] **Oregon Department of Natural**  
 37 **Resources** shall review claims under this section using the procedures established pursuant to  
 38 section 6, **chapter 855, Oregon Laws 2009** [of this 2009 Act].

39 **SECTION 1064.** Section 3, chapter 855, Oregon Laws 2009, is amended to read:

40 **Sec. 3.** (1) Notwithstanding the requirement in section 5, chapter 424, Oregon Laws 2007, that  
 41 a claim under ORS 195.305 be filed before June 28, 2007, and notwithstanding the requirement in  
 42 sections 6 (7) and 7 (9), chapter 424, Oregon Laws 2007, that a claim comply with applicable rules  
 43 of the [Land Conservation and Development Commission] **Oregon Natural Resources Commission**,  
 44 a claimant is eligible to pursue relief under this section and section 6, chapter 424, Oregon Laws  
 45 2007, if the claimant satisfies the requirements of subsection (2) of this section and either:

1 (a) Filed a valid claim for just compensation under ORS 195.305 with the appropriate county on  
 2 or before December 4, 2006, and with the state on or after December 4, 2006, and before December  
 3 6, 2007; or

4 (b) Submitted a land use application before June 28, 2007, that was a prerequisite to filing a  
 5 valid claim for just compensation on or after December 4, 2006, and filed the claim with the state  
 6 before December 6, 2007.

7 (2) A claimant described in subsection (1) of this section is eligible to pursue relief under this  
 8 section and section 6, chapter 424, Oregon Laws 2007, if the claimant:

9 (a) Did not receive notice and an opportunity to file an election under section 8 (3), chapter 424,  
 10 Oregon Laws 2007, and the claimant makes an election to pursue relief under this section on or  
 11 before December 31, 2009, in the manner prescribed pursuant to section 6, **chapter 855, Oregon  
 12 Laws 2009** [of this 2009 Act];

13 (b) Received notice and made a timely election under section 8 (3), chapter 424, Oregon Laws  
 14 2007, to pursue relief under section 7, chapter 424, Oregon Laws 2007, but received a preliminary  
 15 decision of denial from the [Department of Land Conservation and Development] **Oregon Department  
 16 of Natural Resources** before the claimant could submit an appraisal; or

17 (c) Received notice and made a timely election under section 8 (3), chapter 424, Oregon Laws  
 18 2007, to pursue relief under section 6, chapter 424, Oregon Laws, 2007.

19 (3) The department [of Land Conservation and Development] shall review claims under this sec-  
 20 tion using the procedures established pursuant to section 6, **chapter 855, Oregon Laws 2009** [of this  
 21 2009 Act].

22 **SECTION 1065.** Section 4, chapter 855, Oregon Laws 2009, is amended to read:

23 **Sec. 4.** (1) Notwithstanding the requirement in sections 5 (1) and 6 (6), chapter 424, Oregon  
 24 Laws 2007, that the property be located entirely outside any urban growth boundary and entirely  
 25 outside the boundaries of any city, a claimant is eligible to pursue relief under this section if:

26 (a) A majority, but not all, of the property described in the claim is outside an urban growth  
 27 boundary; and

28 (b) The claimant filed a valid claim with the state for just compensation under ORS 195.305.

29 (2) A claimant described in subsection (1) of this section is eligible to pursue relief under this  
 30 section and section 6, chapter 424, Oregon Laws 2007.

31 (3) The [Department of Land Conservation and Development] **Oregon Department of Natural  
 32 Resources** shall review claims under this section using the procedures established pursuant to  
 33 section 6, **chapter 855, Oregon Laws 2009** [of this 2009 Act].

34 **SECTION 1066.** Section 5, chapter 855, Oregon Laws 2009, is amended to read:

35 **Sec. 5.** (1) Notwithstanding the requirement in section 6 (6), chapter 424, Oregon Laws 2007,  
 36 that the claimant must have filed a claim for the property with the state and with the county in  
 37 which the property is located, a claimant is eligible to pursue relief under this section if the claim-  
 38 ant filed a claim only with the state and the claimant made a timely election under section 8 (3),  
 39 chapter 424, Oregon Laws 2007, to pursue relief under sections 5 to 11, chapter 424, Oregon Laws  
 40 2007, **and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009.**

41 (2) A claimant described in subsection (1) of this section is eligible to pursue relief under this  
 42 section and section 6, chapter 424, Oregon Laws 2007.

43 (3) The [Department of Land Conservation and Development] **Oregon Department of Natural  
 44 Resources** shall review claims under this section using the procedures established pursuant to  
 45 section 6, **chapter 855, Oregon Laws 2009** [of this 2009 Act].

1       **SECTION 1067.** Section 6, chapter 855, Oregon Laws 2009, is amended to read:

2       **Sec. 6.** (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
3 **Commission** shall adopt rules establishing the procedures for processing eligible claims under  
4 sections 2 to 5a, **chapter 855, Oregon Laws 2009** [*of this 2009 Act*].

5       (2) The [*Department of Land Conservation and Development*] **Oregon Department of Natural**  
6 **Resources** shall issue a final order on or before December 31, 2010, for claims reviewed under  
7 sections 2 to 5a, **chapter 855, Oregon Laws 2009** [*of this 2009 Act*].

8       **SECTION 1068.** Section 8, chapter 855, Oregon Laws 2009, is amended to read:

9       **Sec. 8.** The [*Department of Land Conservation and Development*] **Oregon Department of Na-**  
10 **tural Resources** shall issue a final order on or before June 30, 2010, for claims reviewed under  
11 section 6 or 7, chapter 424, Oregon Laws 2007, as those sections were in effect on January 1, 2009.

12       **SECTION 1069.** Section 9, chapter 855, Oregon Laws 2009, is amended to read:

13       **Sec. 9.** Notwithstanding the requirement of section 8 (4), chapter 424, Oregon Laws 2007, that  
14 the [*Department of Land Conservation and Development*] **Oregon Department of Natural Re-**  
15 **sources** review claims in the order received, upon a recommendation of the Compensation and  
16 Conservation Ombudsman appointed under ORS 195.320 that a hardship exists, made in the dis-  
17 cretion of the ombudsman, the Director of the [*Department of Land Conservation and Development*]  
18 **Oregon Department of Natural Resources** may, in the discretion of the director, advance up to  
19 100 claims for priority processing in cases of demonstrated hardship.

20       **SECTION 1070.** Section 17, chapter 855, Oregon Laws 2009, is amended to read:

21       **Sec. 17.** (1) The [*Department of Land Conservation and Development*] **Oregon Department of**  
22 **Natural Resources** shall investigate:

23       (a) The number of claimants that filed claims only with a county under ORS 195.305, as in effect  
24 immediately before December 6, 2007; and

25       (b) Why the claimants described in paragraph (a) of this subsection filed claims only with the  
26 county.

27       (2) If requested to do so by the department, a county shall provide the department with a list  
28 of the claims described in subsection (1) of this section and copies of the claims.

29       (3) The department shall investigate:

30       (a) The number of claims that were filed under section 7, chapter 424, Oregon Laws 2007, in  
31 which the claimant failed to file an appraisal or to make an election to seek relief under section 6,  
32 chapter 424, Oregon Laws 2007; and

33       (b) Why the claimants described in paragraph (a) of this subsection failed to file an appraisal  
34 or to make an election to seek relief under section 6, chapter 424, Oregon Laws 2007.

35       (4) The department shall report its findings to an appropriate interim committee of the Legisla-  
36 tive Assembly on or before December 31, 2009.

37       **SECTION 1071.** Section 18, chapter 855, Oregon Laws 2009, is amended to read:

38       **Sec. 18.** (1) The [*Department of Land Conservation and Development*] **Oregon Department of**  
39 **Natural Resources** shall charge a fee of \$175 for each claim that:

40       (a) Becomes eligible for relief under sections 2 to 5a, **chapter 855, Oregon Laws 2009**, [*of this*  
41 *2009 Act*] or section 8, chapter 424, Oregon Laws 2007; and

42       (b) The department processes.

43       (2) Moneys collected from fees charged under subsection (1) of this section shall be deposited  
44 in the Compensation and Conservation Fund.

45       (3) If a claimant fails to pay the fee charged under subsection (1) of this section, the department

1 may withhold issuance of a final order approving relief that would otherwise be due the claimant.

2 (4) If the department fails to issue a final order on a claim by the date specified in section 6,  
3 **chapter 855, Oregon Laws 2009** [of this 2009 Act], the department shall refund the fee paid under  
4 subsection (1) of this section.

5 **SECTION 1072.** Section 20, chapter 855, Oregon Laws 2009, is amended to read:

6 **Sec. 20.** (1) Notwithstanding the requirement of section 8 (4), chapter 424, Oregon Laws 2007,  
7 that the [*Department of Land Conservation and Development*] **Oregon Department of Natural Re-**  
8 **sources** review claims in the order received, upon a recommendation of the Compensation and  
9 Conservation Ombudsman appointed under ORS 195.320 that a hardship exists, made in the dis-  
10 cretion of the ombudsman, the Director of the [*Department of Land Conservation and Development*]  
11 **Oregon Department of Natural Resources** may, in the discretion of the director, advance up to  
12 100 claims for priority processing in cases of demonstrated hardship.

13 (2) For purposes of this section, demonstrated hardship includes, but is not limited to:

14 (a) Threatened loss of ownership of the property;

15 (b) A contractual obligation to sell the property, entered into before November 6, 2007;

16 (c) Prolonged illness or medical expenses that threaten the financial status of the property  
17 owner;

18 (d) Threatened expiration of permits granted to carry out development on the property; and

19 (e) A situation in which a claimant cannot continue to occupy an existing dwelling on the  
20 property and wants to occupy a new dwelling on the property.

21 **SECTION 1073.** Section 21, chapter 855, Oregon Laws 2009, is amended to read:

22 **Sec. 21.** (1) For claims under section 6 or 7, chapter 424, Oregon Laws 2007, the [*Department*  
23 *of Land Conservation and Development*] **Oregon Department of Natural Resources** shall confer  
24 with the county in which the claim was filed and utilize the county's record on the claim.

25 (2) The department may rely on a decision by a county under Ballot Measure 37 (2004), or on  
26 one or more prior land use decisions by a county, in determining whether to authorize a land divi-  
27 sion or dwelling under the standards of section 6 or 7, chapter 424, Oregon Laws 2007.

28 **SECTION 1073a.** Section 4, chapter 504, Oregon Laws 2009, is amended to read:

29 **Sec. 4.** The [*Department of Land Conservation and Development*] **Oregon Department of Na-**  
30 **tural Resources** shall make a report, in the manner described in ORS 192.245, to the Seventy-  
31 seventh Legislative Assembly:

32 (1) Evaluating the transferable development credit systems that have been established under  
33 [*sections 2 and 3 of this 2009 Act*] **ORS 94.536 and 94.538**; and

34 (2) Recommending whether the program should be continued, modified, expanded or terminated.

35 **SECTION 1074.** Section 37, chapter 865, Oregon Laws 2009, is amended to read:

36 **Sec. 37.** (1) As used in this section:

37 (a) "Comprehensive plan" has the meaning given that term in ORS 197.015.

38 (b) "Land use regulation" has the meaning given that term in ORS 197.015.

39 (c) "Metropolitan service district" means a metropolitan service district established under ORS  
40 chapter 268.

41 (2)(a) Except as provided in subsection (5) of this section, on or before January 1, 2012, a met-  
42 ropolitan service district, in accordance with rules adopted under subsection (6) of this section, shall  
43 develop two or more alternative land use and transportation scenarios that accommodate planned  
44 population and employment growth while achieving a reduction in greenhouse gas emissions from  
45 motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.

1 (b) A metropolitan service district, in accordance with rules adopted under subsection (8) of this  
2 section, shall select, after public review and comment on the scenarios and in consultation with local  
3 governments within the jurisdiction of the metropolitan service district, one scenario described  
4 in paragraph (a) of this subsection as a part of its planning responsibilities under ORS 268.390.

5 (3) Except as provided in subsection (5) of this section, a local government within the jurisdiction  
6 of the metropolitan service district shall amend its comprehensive plan and land use regulations  
7 implementing the plan to be consistent with the scenario adopted by a metropolitan service district  
8 in a manner provided by rules adopted under subsection (8) of this section.

9 (4)(a) The Department of Transportation and the [*Department of Land Conservation and Development*]  
10 **Oregon Department of Natural Resources** shall provide technical assistance and guidance  
11 for the land use and transportation scenarios and local planning described in subsections (2)  
12 and (3) of this section.

13 (b) The Department of Transportation and the [*Department of Land Conservation and Development*]  
14 **Oregon Department of Natural Resources** shall provide grant support to each government  
15 entity required to carry out the provisions of subsections (2) and (3) of this section in amounts sufficient  
16 to fully reimburse the entities for any costs incurred in carrying out the provisions of subsections  
17 (2) and (3) of this section.

18 (c) The Department of Transportation and the [*Department of Land Conservation and Development*]  
19 **Oregon Department of Natural Resources** shall provide funds for rulemaking, technical  
20 assistance and grants under this section from available funds.

21 (5) A metropolitan service district and local governments within the jurisdiction of the district  
22 are not required to comply with subsections (2) and (3) of this section unless the district and local  
23 governments receive sufficient funds for reimbursement of costs in carrying out the provisions of  
24 subsections (2) and (3) of this section.

25 (6) On or before June 1, 2011, the [*Land Conservation and Development Commission*] **Oregon**  
26 **Natural Resources Commission**, in consultation with the Oregon Transportation Commission, shall  
27 adopt rules for metropolitan service districts. The rules must identify each district's needed reduction  
28 by 2035 in those greenhouse gas emissions caused by motor vehicles with a gross vehicle  
29 weight rating of 10,000 pounds or less, based upon the goals stated in ORS 468A.205 and taking into  
30 consideration the reductions in vehicle emissions that are likely to result by 2035 from the use of  
31 improved vehicle technologies and fuels. On or before March 1, 2011, the Department of Transportation,  
32 the Department of Environmental Quality and the State Department of Energy shall provide  
33 the [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission**  
34 with the information or projections necessary to determine the proposed greenhouse gas emissions  
35 reduction goals for 2035.

36 (7) In order to carry out the responsibilities described in subsection (6) of this section:

37 (a) The Department of Transportation shall provide the Department of Environmental Quality  
38 and the State Department of Energy with an estimate of the vehicle miles traveled in the metropolitan  
39 service district in 1990 by motor vehicles with a gross vehicle weight rating of 10,000 pounds  
40 or less, based on available records;

41 (b) The Department of Transportation shall provide the Department of Environmental Quality  
42 and the State Department of Energy with an estimate of the rate at which new vehicles will replace  
43 existing vehicles among the vehicles described in paragraph (a) of this subsection;

44 (c) The Department of Environmental Quality and the State Department of Energy shall estimate  
45 the greenhouse gas emissions for 1990 for each metropolitan service district resulting from the

1 travel by motor vehicles described in paragraph (a) of this subsection, using available records of the  
2 average emissions per mile emitted by motor vehicles in 1990 and the estimates provided by the  
3 Department of Transportation under paragraph (a) of this subsection;

4 (d) The Department of Environmental Quality and the State Department of Energy shall esti-  
5 mate the predicted average greenhouse gas emissions by motor vehicles described in paragraph (a)  
6 of this subsection predicted to comprise the motor vehicles on the highways in 2035 based on the  
7 predicted rate of replacement of the vehicles as described in paragraph (b) of this subsection and  
8 based on available reasonable estimates provided by public or private entities of the improvements  
9 in vehicle technologies that will be available for use by 2035;

10 (e) The Department of Environmental Quality and the State Department of Energy shall recom-  
11 mend to the [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
12 **mission** a percentage by which the emissions from motor vehicles described in paragraph (a) of this  
13 subsection should be reduced below their estimated 1990 emission levels by 2035 in order to achieve  
14 a reduction in emissions from the vehicles as part of the overall achievement of total carbon re-  
15 duction set for 2050 by ORS 468A.205 and shall explain their reasons for any recommendations other  
16 than the midpoint between the 2020 and the 2050 emission reduction targets established by ORS  
17 468A.205;

18 (f) The Department of Environmental Quality and the State Department of Energy shall calcu-  
19 late the estimated miles of travel by motor vehicles described by paragraph (a) of this subsection  
20 predicted to be traveled and that may be accommodated in 2035 in each metropolitan service district  
21 based on the estimates performed under paragraphs (a) to (d) of this subsection and the recommen-  
22 dation required by paragraph (e) of this subsection;

23 (g) The Department of Transportation, the Department of Environmental Quality and the State  
24 Department of Energy shall recommend to the [*Land Conservation and Development Commission*]  
25 **Oregon Natural Resources Commission** modeling tools or other methods by which a metropolitan  
26 service district may adjust the district's recommended target number of miles of travel described in  
27 paragraph (f) of this subsection to account for additional greenhouse gas emissions resulting from  
28 increased traffic congestion or reductions in such emissions resulting from measures that reduce  
29 traffic congestion; and

30 (h) On or before March 1, 2011, the Department of Transportation, the Department of Environ-  
31 mental Quality and the State Department of Energy shall submit the information required by para-  
32 graphs (a) to (g) of this subsection to the [*Land Conservation and Development Commission*] **Oregon**  
33 **Natural Resources Commission**, including but not limited to citations to sources relied on and  
34 calculations made.

35 (8) On or before January 1, 2013, the [*Land Conservation and Development Commission*] **Oregon**  
36 **Natural Resources Commission**, in consultation with the Oregon Transportation Commission, shall  
37 adopt rules that establish a process for cooperatively selecting a land use and transportation sce-  
38 nario for each metropolitan service district to achieve the greenhouse gas emissions reductions  
39 identified in the rules adopted pursuant to subsection (6) of this section and a process for the  
40 adoption of regional or local plans to implement the scenario. The rules shall:

41 (a) Identify minimum planning standards for achieving reductions in greenhouse gas emissions  
42 through comprehensive plans and transportation system plans;

43 (b) Identify planning assumptions and approaches to meet minimum planning standards identified  
44 in paragraph (a) of this subsection that ensure the [*Department of Land Conservation and Develop-*  
45 *ment*] **Oregon Department of Natural Resources** can approve the changes to the regional frame-

1 work plan, comprehensive plans and land use regulations implementing the comprehensive plans;

2 (c) Establish a cycle for initial adoption and updating of the transportation and land use sce-  
3 nario required by this section, including planning periods beyond 2035, relating the cycle to periodic  
4 review under ORS 197.628 to 197.650 and to urban growth boundary planning under ORS 197.296 or  
5 197.298; and

6 (d) Ensure that local standards and criteria for land uses and for land development and trans-  
7 portation plans that implement the scenarios selected under subsection (2)(b) of this section:

8 (A) Are contained in the amendments to regional framework plans, functional plans, compre-  
9 hensive plans and land use regulations required by subsections (3) of this section; and

10 (B) Do not have the effect of preventing, discouraging or delaying the implementation of the  
11 scenarios, except as necessary to protect the public health and safety.

12 (9) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
13 **mission** may extend the deadline for adoption of the rules required under subsection (6) of this  
14 section for up to 90 days if the commission determines that the extension will not delay a metro-  
15 politan service district's completion of land use and transportation scenarios as described in sub-  
16 section (2) of this section.

17 **SECTION 1075.** Section 38, chapter 865, Oregon Laws 2009, is amended to read:

18 **Sec. 38.** (1) As used in this section, "metropolitan service district" means a metropolitan service  
19 district established under ORS chapter 268.

20 (2) On or before February 1, 2012, the [*Department of Land Conservation and Development*]  
21 **Oregon Department of Natural Resources** and the Department of Transportation shall report to  
22 the House and Senate interim committees related to transportation on progress toward implementing  
23 the land use and transportation scenario described in section 37, **chapter 865, Oregon Laws 2009**  
24 [*of this 2009 Act*]. The report must include:

25 (a) The scenarios of a metropolitan service district that are described in section 37 (2), **chapter**  
26 **865, Oregon Laws 2009** [*of this 2009 Act*]; and

27 (b) The rules adopted pursuant to section 37 (6), **chapter 865, Oregon Laws 2009** [*of this 2009*  
28 *Act*].

29 (3) On or before February 1, 2014, the [*Land Conservation and Development Commission*] **Oregon**  
30 **Natural Resources Commission** and the Department of Transportation shall report to the House  
31 and Senate interim committees related to transportation on progress toward implementing the land  
32 use and transportation scenario described in section 37, **chapter 865, Oregon Laws 2009** [*of this*  
33 *2009 Act*]. The report must include:

34 (a) The rules adopted pursuant to section 37 (8), **chapter 865, Oregon Laws 2009** [*of this 2009*  
35 *Act*];

36 (b) A description of the completed planning and work remaining to be completed; and

37 (c) Recommendations as to how the planning requirements of section 37, **chapter 865, Oregon**  
38 **Laws 2009**, [*of this 2009 Act*] should be extended to metropolitan planning organizations serving  
39 areas with populations of more than 200,000 or to cities located outside the boundaries of metro-  
40 politan planning organizations that have significant levels of commuting trips to destinations within  
41 the boundaries of a metropolitan planning organization.

42 **SECTION 1076.** Section 38a, chapter 865, Oregon Laws 2009, is amended to read:

43 **Sec. 38a.** (1) As used in this section, "metropolitan planning organization" has the meaning  
44 given that term in ORS 197.629.

45 (2) Except as provided in subsection (6) of this section, on or before July 1, 2013, with the as-



1 sistance of the Department of Transportation and a metropolitan service district, a metropolitan  
2 planning organization that serves Eugene and Springfield shall develop modeling and other capabil-  
3 ities needed to perform the planning functions described in subsections (3) and (4) of this section.

4 (3)(a) Except as provided in subsection (6) of this section, on or after January 1, 2013, a metro-  
5 politan planning organization that serves Eugene and Springfield, shall develop two or more alter-  
6 native land use and transportation scenarios that accommodate planned population and employment  
7 growth while achieving a reduction in greenhouse gas emissions from motor vehicles with a gross  
8 vehicle weight rating of 10,000 pounds or less.

9 (b) When developing the land use and transportation scenarios described in subsection (a) of this  
10 section, the metropolitan planning organization shall take into account the amount of greenhouse  
11 emissions, caused by motor vehicles with a gross vehicle weight rating of 10,000 pounds or less, that  
12 need to be reduced in 2035 in order to meet the goals stated in ORS 468A.205. The metropolitan  
13 planning organization shall take into consideration the reductions in vehicle emissions that are  
14 likely to result by 2035 from the use of improved vehicle technologies and fuels.

15 (4) The local governments within the boundaries of a metropolitan planning organization that  
16 serves Eugene and Springfield shall cooperatively select, after public review and comment on the  
17 scenarios within the boundaries of the metropolitan planning organization, one scenario described  
18 in subsection (3) of this section.

19 (5)(a) The Department of Transportation and the [*Department of Land Conservation and Devel-*  
20 *opment*] **Oregon Department of Natural Resources** shall provide technical assistance, grant sup-  
21 port and guidance for the land use and transportation scenarios and local planning described in  
22 subsections (3) and (4) of this section.

23 (b) Metro, with grant assistance provided by the Department of Transportation, shall make its  
24 land use modeling capabilities available to metropolitan planning organizations that lack similar  
25 capabilities.

26 (c) The Department of Transportation shall provide funds for rulemaking, technical assistance  
27 and grants under this section from available funds.

28 (6) A metropolitan planning organization that serves Eugene and Springfield, and local govern-  
29 ments within the jurisdiction of the organization, are not required to comply with subsections (2)  
30 and (3) of this section unless the organization and local governments receive sufficient funds for  
31 reimbursement of costs in carrying out the provisions of subsections (2) and (3) of this section.

32 (7) A metropolitan planning organization that serves Eugene and Springfield shall report:

33 (a) On or before February 1, 2014, to the House and Senate interim committees related to  
34 transportation. The report shall include recommendations for a cooperative process of rulemaking  
35 and enforcement of the rules.

36 (b) To the Seventy-eighth Legislative Assembly, the manner provided in ORS 192.245, on the  
37 implications of implementing the land use and transportation scenario selected under paragraph (a)  
38 of this subsection by amendments to the local government's comprehensive plan and land use regu-  
39 lations.

40 **SECTION 1077.** Section 2, chapter 8, Oregon Laws 2010, is amended to read:

41 **Sec. 2.** For purposes of section 6 (6)(f), chapter 424, Oregon Laws 2007, if a claimant acquired  
42 property on or after January 25, 1975, and before the date the comprehensive plan for the county  
43 in which the property is located was first acknowledged by the [*Land Conservation and Development*  
44 *Commission*] **Oregon Natural Resources Commission** to comply with the statewide land use  
45 planning goals, the claimant is deemed to have been lawfully permitted to establish one or more

1 home sites, as follows:

2 (1) For property that was subsequently designated in the first acknowledged comprehensive plan  
3 as land subject to a goal related to agricultural lands or a goal related to forestlands and that was  
4 not zoned, was subject to a zone without a fixed minimum acreage standard or was subject to a zone  
5 with a fixed minimum acreage standard that would have allowed at least the number of home sites  
6 that would result under the application of this subsection:

7 (a) If the property contains less than 20 acres, the claimant is deemed to have been lawfully  
8 permitted to establish one home site on the property.

9 (b) If the property contains at least 20 acres and less than 40 acres, the claimant is deemed to  
10 have been lawfully permitted to establish up to two home sites on the property.

11 (c) If the property contains 40 acres or more, the claimant is deemed to have been lawfully  
12 permitted to establish up to three home sites on the property.

13 (2) For property that was subsequently designated in the first acknowledged comprehensive plan  
14 as land subject to a goal related to agricultural lands or a goal related to forestlands and that was  
15 subject to a zone with a fixed minimum acreage standard that would not have allowed at least the  
16 number of home sites that would result under the application of subsection (1) of this section, the  
17 claimant is deemed to have been lawfully permitted to establish up to three home sites on the  
18 property, consistent with the fixed minimum acreage standard in the zone on the date the claimant  
19 acquired the property.

20 (3) For property that was subsequently designated in the first acknowledged comprehensive plan  
21 as land for rural residential development:

22 (a) If the property was not zoned or was zoned to allow residential development at a density  
23 equal to or greater than one dwelling per two acres, the claimant is deemed to have been lawfully  
24 permitted to establish up to three home sites with a minimum acreage standard of two acres.

25 (b) If the property was zoned for residential development at a density of less than one dwelling  
26 per two acres, the claimant is deemed to have been lawfully permitted to establish up to three home  
27 sites, consistent with the density of residential development allowed in the zone on the date the  
28 claimant acquired the property.

29 (4) Notwithstanding subsections (1) and (2) of this section, if the record of the claim includes a  
30 county evaluation and determination of the compliance or noncompliance of the requested residen-  
31 tial use with the applicable statewide land use planning goals, the [*Department of Land Conservation*  
32 *and Development*] **Oregon Department of Natural Resources** may defer to that analysis.

33 **SECTION 1078.** Section 4, chapter 8, Oregon Laws 2010, is amended to read:

34 **Sec. 4.** For purposes of section 6 (6)(f), chapter 424, Oregon Laws 2007, if, on or after the date  
35 the comprehensive plan for the county in which the property is located was first acknowledged by  
36 the [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission** to  
37 comply with the statewide land use planning goals, the property was subject to a resource zone  
38 without a fixed minimum acreage standard, the fixed minimum acreage standard is deemed to have  
39 been 40 acres for purposes of determining the number of home sites that a claimant would have been  
40 lawfully permitted to establish unless the record of the claim establishes that the claimant was  
41 lawfully permitted to establish a home site on a lot or parcel of a different acreage.

42 **SECTION 1079.** Section 6, chapter 8, Oregon Laws 2010, is amended to read:

43 **Sec. 6.** (1) Notwithstanding the requirement in section 6 (6), chapter 424, Oregon Laws 2007,  
44 that a claimant must have filed a claim with both the state and the county in which the property  
45 is located, the claimant is eligible for the approval of a maximum of one dwelling under section 6,

1 chapter 424, Oregon Laws 2007, and, unless the property includes a vacant lot or parcel for the  
 2 dwelling, the claimant also is eligible for approval of a maximum of one lot or parcel on which the  
 3 dwelling must be established if the claimant:

4 (a) Filed, and did not withdraw, a valid claim with a county under ORS 195.305 before December  
 5 6, 2007; and

6 (b) Did not file a claim with the state.

7 (2) Counties shall provide certified copies of the claims described in this section on or before  
 8 June 30, 2010, to the [*Department of Land Conservation and Development*] **Oregon Department of**  
 9 **Natural Resources** for review.

10 (3) After receiving claims from counties as required under subsection (2) of this section, the  
 11 department shall notify the claimants that may be eligible for relief under this section.

12 (4) Section 6 (1) to (3), chapter 424, Oregon Laws 2007, does not apply to claims described in this  
 13 section.

14 (5) For purposes of this section, if the claimant filed a claim with a county on or after November  
 15 1, 2006, and died after filing the claim, a person that acquired the property by devise or by operation  
 16 of law may prosecute the claim.

17 **SECTION 1080.** Section 7, chapter 8, Oregon Laws 2010, is amended to read:

18 **Sec. 7.** (1) The [*Department of Land Conservation and Development*] **Oregon Department of**  
 19 **Natural Resources** shall issue a final order for each claim reviewed under section 5 or 6, **chapter**  
 20 **8, Oregon Laws 2010**, [*of this 2010 Act*] on or before June 30, 2011.

21 (2) The department shall charge a fee of \$2,500 for processing a claim that becomes eligible for  
 22 review under section 5 or 6, **chapter 8, Oregon Laws 2010** [*of this 2010 Act*].

23 (3) Moneys collected from the fee required by this section must be deposited in the Compen-  
 24 sation and Conservation Fund established by ORS 195.336.

25 (4) If a claimant does not pay the fee required by this section on or before a date established  
 26 by rule of the department, the department may close the claim without further review of or action  
 27 on the claim.

28 (5) If the department does not issue a final order on a claim by the date specified in subsection  
 29 (1) of this section, the department shall refund the fee paid pursuant to this section.

30 (6) The department may adopt rules for the processing of claims under section 5 or 6, **chapter**  
 31 **8, Oregon Laws 2010** [*of this 2010 Act*].

32 **SECTION 1081.** Section 1, chapter 44, Oregon Laws 2010, is amended to read:

33 **Sec. 1.** (1) If a person concludes that more detailed soils information than that contained in the  
 34 Internet soil survey of soil data and information produced by the National Cooperative Soil Survey  
 35 operated by the Natural Resources Conservation Service of the United States Department of Agri-  
 36 culture would assist a county to make a better determination of whether land qualifies as agricul-  
 37 tural land, the person must request that the [*Department of Land Conservation and Development*]  
 38 **Oregon Department of Natural Resources** arrange for an assessment of the capability of the land  
 39 by a professional soil classifier who is:

40 (a) Certified by and in good standing with the Soil Science Society of America; and

41 (b) Chosen by the person.

42 (2) A soils assessment produced under this section is not a public record, as defined in ORS  
 43 192.410, unless the person requesting the assessment utilizes the assessment in a land use proceed-  
 44 ing. If the person decides to utilize a soils assessment produced under this section in a land use  
 45 proceeding, the person shall inform the [*Department of Land Conservation and Development*] **Oregon**

1 **Department of Natural Resources** and consent to the release by the department of certified copies  
 2 of all assessments produced under this section regarding the land to the local government conduct-  
 3 ing the land use proceeding. The department:

4 (a) Shall review soils assessments prepared under this section.

5 (b) May not disclose a soils assessment prior to its utilization in a land use proceeding as de-  
 6 scribed in this subsection without written consent of the person paying the fee for the assessment.

7 (c) Shall release to the local government conducting a land use proceeding all soils assessments  
 8 produced under this section regarding land to which the land use proceeding applies.

9 (3) Before arranging for a soils assessment under this section, the department shall charge and  
 10 collect from the person requesting the assessment a fee in an amount intended to meet the costs of  
 11 the department to assess the soils and administer this section.

12 (4) The department shall deposit fees collected under this section in the Soils Assessment Fund  
 13 established under section 2, **chapter 44, Oregon Laws 2010** [*of this 2010 Act*].

14 (5) This section authorizes a person to obtain additional information for use in the determination  
 15 of whether land qualifies as agricultural land, but this section does not otherwise affect the process  
 16 by which a county determines whether land qualifies as agricultural land.

17 **SECTION 1082.** Section 2, chapter 44, Oregon Laws 2010, is amended to read:

18 **Sec. 2.** The Soils Assessment Fund is established in the State Treasury, separate and distinct  
 19 from the General Fund. Interest earned by the Soils Assessment Fund shall be credited to the fund.  
 20 Moneys in the fund are continuously appropriated to the [*Department of Land Conservation and*  
 21 *Development*] **Oregon Department of Natural Resources** to meet the costs of the department to  
 22 assess soils under and to administer section 1, **chapter 44, Oregon Laws 2010** [*of this 2010 Act*].

23 **SECTION 1083.** Section 2, chapter 68, Oregon Laws 2010, is amended to read:

24 **Sec. 2.** (1) The [*Department of Land Conservation and Development*] **Oregon Department of**  
 25 **Natural Resources** shall cause a study to be conducted on how to best develop commercially viable  
 26 marine renewable energy resources in this state. The study may include, but is not limited to, the  
 27 following subjects:

28 (a) The overall needs, opportunities and constraints regarding development of marine renewable  
 29 energy resources.

30 (b) The potential economic impacts on other ocean industries and coastal communities caused  
 31 by development of marine renewable energy resources.

32 (c) Environmental conditions and limitations affecting the development of marine renewable en-  
 33 ergy resources.

34 (d) Relevant state and federal regulatory structures affecting the development of marine  
 35 renewable energy resources.

36 (e) Public and private financial and investment needs of marine renewable energy resource  
 37 production.

38 (f) Capacity of and constraints on local coastal utilities to use marine renewable energy in their  
 39 service areas.

40 (g) Trends and opportunities in energy conversion technologies.

41 (h) Operational considerations and opportunities for marine renewable energy.

42 (i) Research needs and opportunities.

43 (j) Opportunities for funding, including state tax credits, feed-in tariffs, incentives and other  
 44 available sources of research and development funds.

45 (2) The department shall invite participation by and consultation with other state agencies, in-

1 cluding Oregon State University, other federal agencies and appropriate stakeholders, in the devel-  
2 opment of the scope and content of the study.

3 (3) The department shall coordinate review of the study with a committee organized by the de-  
4 partment that has experience with providing policy guidance and direction for marine renewable  
5 energy resources in the territorial sea. The committee shall review the recommendations and results  
6 of the study and forward appropriate recommendations, with any recommended modifications from  
7 the committee, to the Seventy-sixth Legislative Assembly.

8 **SECTION 1084.** Section 3, chapter 68, Oregon Laws 2010, is amended to read:

9 **Sec. 3.** The Marine Renewable Energy Resources Study Fund is established in the State Treas-  
10 ury, separate and distinct from the General Fund. The Marine Renewable Energy Resources Study  
11 Fund shall consist of contributions of moneys from any source, public or private. Interest earned by  
12 the Marine Renewable Energy Resources Study Fund shall be credited to the fund. Moneys in the  
13 fund are continuously appropriated to the [*Department of Land Conservation and Development*]  
14 **Oregon Department of Natural Resources** for the purposes of section 2, **chapter 68, Oregon**  
15 **Laws 2010** [*of this 2010 Act*]. No moneys from the General Fund or from federal funds appropriated  
16 or otherwise obligated to support other department programs may be deposited into the Marine  
17 Renewable Energy Resources Study Fund. The department may accept assistance from any source,  
18 public or private, and may agree to conditions placed on the moneys not inconsistent with the pro-  
19 visions of section 2, **chapter 68, Oregon Laws 2010** [*of this 2010 Act*].

20 **SECTION 1085.** Section 5, chapter 84, Oregon Laws 2010, is amended to read:

21 **Sec. 5.** A county shall amend its land use regulations to conform to the requirements of sections  
22 2, 3 and 4, **chapter 84, Oregon Laws 2010** [*of this 2010 Act*]. Notwithstanding contrary provisions  
23 of state law or a county charter relating to public hearings on amendments to an ordinance, a  
24 county may adopt amendments to its land use regulations required by this section without holding  
25 a public hearing and without adopting findings if:

26 (1) The county has given notice to the [*Department of Land Conservation and Development*]  
27 **Oregon Department of Natural Resources** of the proposed amendments in the manner provided  
28 by ORS 197.610; and

29 (2) The department has confirmed in writing that the only effect of the proposed amendments is  
30 to conform the county's land use regulations to the requirements of sections 2, 3 and 4, **chapter**  
31 **84, Oregon Laws 2010** [*of this 2010 Act*].

32 **SECTION 1086.** Section 3, chapter 85, Oregon Laws 2010, is amended to read:

33 **Sec. 3.** (1) The Department of Transportation and the [*Department of Land Conservation and*  
34 *Development*] **Oregon Department of Natural Resources**, after consultation with and in cooper-  
35 ation with metropolitan planning organizations, other state agencies, local governments and  
36 stakeholders, shall establish guidelines for developing and evaluating alternative land use and  
37 transportation scenarios that may reduce greenhouse gas emissions. The guidelines must, at a  
38 minimum:

39 (a) Establish a process for developing alternative land use and transportation scenarios;

40 (b) Take into account the full range of actions local governments may take concerning land use  
41 and transportation planning;

42 (c) Allow sufficient flexibility for different local governments to meet the needs of their indi-  
43 vidual communities;

44 (d) Provide for coordination between state agencies and local governments;

45 (e) Encourage local innovation to reduce greenhouse gas emissions; and

1 (f) Provide examples of alternative land use and transportation scenarios.

2 (2) The Department of Transportation and the [*Department of Land Conservation and Develop-*  
3 *ment*] **Oregon Department of Natural Resources** shall actively solicit public review and comment  
4 in the development of the guidelines.

5 **SECTION 1087.** Section 4, chapter 85, Oregon Laws 2010, is amended to read:

6 **Sec. 4.** (1) The Department of Transportation and the [*Department of Land Conservation and*  
7 *Development*] **Oregon Department of Natural Resources**, after consultation with and in cooper-  
8 ation with metropolitan planning organizations, local governments and other stakeholders, shall es-  
9 tablish a toolkit to assist local governments in developing and executing actions and programs to  
10 reduce greenhouse gas emissions from motor vehicles with a gross vehicle weight rating of 10,000  
11 pounds or less.

12 (2) A toolkit shall include, but is not limited to, the following material:

13 (a) Information about actions and programs local governments can implement on the local and  
14 regional level to reduce greenhouse gas emissions;

15 (b) Information about the potential effectiveness of the actions and programs in reducing  
16 greenhouse gas emissions;

17 (c) Information about the cost-effectiveness of the actions and programs;

18 (d) Estimates of the time required to implement the actions and programs;

19 (e) Guidelines for best management practices for analyzing and executing the actions and pro-  
20 grams;

21 (f) Modeling and analysis tools that metropolitan planning organizations and local governments  
22 may use to assess greenhouse gas emissions reduction benefits from actions affecting land use and  
23 transportation; and

24 (g) Educational tools that metropolitan planning organizations and local governments may use  
25 to inform the public about greenhouse gas emissions reduction targets and strategies.

26 (3) The Department of Transportation and the [*Department of Land Conservation and Develop-*  
27 *ment*] **Oregon Department of Natural Resources** shall actively solicit public review and comment  
28 in the development of the toolkit.

29 **SECTION 1088.** Section 5, chapter 85, Oregon Laws 2010, is amended to read:

30 **Sec. 5.** (1) Except as provided in subsection (3) of this section, on or before June 1, 2011, the  
31 [*Land Conservation and Development Commission*] **Oregon Natural Resources Commission**, after  
32 consultation with and in cooperation with the Oregon Transportation Commission, local govern-  
33 ments and metropolitan planning organizations, shall adopt rules identifying a reduction target for  
34 greenhouse gas emissions caused by motor vehicles with a gross vehicle weight rating of 10,000  
35 pounds or less to be met by each region served by a metropolitan planning organization. The rules  
36 must reflect the greenhouse gas emissions reduction goals set forth in ORS 468A.205 and must take  
37 into consideration the reductions in vehicle emissions that are likely to result by 2035 from the use  
38 of improved vehicle technologies and fuels. The rules must also take into consideration methods of  
39 equitably allocating reductions among the metropolitan areas given differences in population growth  
40 rates. On or before March 1, 2011, the Department of Transportation, the Department of Environ-  
41 mental Quality and the State Department of Energy shall provide the [*Land Conservation and De-*  
42 *velopment Commission*] **Oregon Natural Resources Commission** with the information or  
43 projections necessary to determine the proposed greenhouse gas emissions reduction target for 2035.

44 (2) In order for the [*Land Conservation and Development Commission*] **Oregon Natural Re-**  
45 **sources Commission** to adopt rules pursuant to subsection (1) of this section:

1 (a) The Department of Transportation shall provide the Department of Environmental Quality  
2 and the State Department of Energy with an estimate of the vehicle miles traveled within the  
3 boundaries of each metropolitan planning organization in 1990 by motor vehicles with a gross vehi-  
4 cle weight rating of 10,000 pounds or less, based on available records.

5 (b) The Department of Transportation shall provide the Department of Environmental Quality  
6 and the State Department of Energy with an estimate of the rate at which new vehicles will replace  
7 existing vehicles among the vehicles described in paragraph (a) of this subsection.

8 (c) The Department of Environmental Quality and the State Department of Energy shall estimate  
9 the greenhouse gas emissions for 1990 for each region served by a metropolitan planning organiza-  
10 tion resulting from the travel by motor vehicles described in paragraph (a) of this subsection, using  
11 available records of the average emissions per mile emitted by the motor vehicles in 1990 and the  
12 estimates provided by the Department of Transportation under paragraph (a) of this subsection.

13 (d) The Department of Environmental Quality and the State Department of Energy shall esti-  
14 mate the average greenhouse gas emissions in 2035 emitted by motor vehicles described in para-  
15 graph (a) of this subsection. The estimate must take into account the motor vehicles that the  
16 Department of Transportation predicts will have replaced existing vehicles as described in para-  
17 graph (b) of this subsection. The estimate must be based on available reasonable data provided by  
18 public or private entities concerning the improvements in vehicle technologies that will be available  
19 for use by 2035.

20 (e) The Department of Environmental Quality and the State Department of Energy shall recom-  
21 mend to the [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
22 **mission** a percentage by which the emissions from motor vehicles described in paragraph (a) of this  
23 subsection need to be reduced below their 1990 emission levels by 2035 in order to achieve the re-  
24 duction in emissions from vehicles necessary to achieve the total greenhouse gas emissions re-  
25 duction goals set for 2050 by ORS 468A.205.

26 (f) The Department of Environmental Quality and the State Department of Energy shall calcu-  
27 late the estimated miles of travel by motor vehicles described in paragraph (a) of this subsection  
28 that may be accommodated in 2035 by each region served by a metropolitan planning organization  
29 based on the estimates performed under paragraphs (a) to (d) of this subsection and the recommen-  
30 dation required by paragraph (e) of this subsection.

31 (g) The Department of Transportation, the Department of Environmental Quality and the State  
32 Department of Energy shall recommend to the [*Land Conservation and Development Commission*]  
33 **Oregon Natural Resources Commission** modeling tools or other methods that each region served  
34 by a metropolitan planning organization may use to adjust its recommended number of miles of  
35 travel as described in paragraph (f) of this subsection, to account for additional greenhouse gas  
36 emissions resulting from increased traffic congestion or reductions in emissions resulting from  
37 measures that reduce traffic congestion.

38 (h) On or before March 1, 2011, the Department of Transportation, the Department of Environ-  
39 mental Quality and the State Department of Energy shall submit the information required by para-  
40 graphs (a) to (g) of this subsection to the [*Land Conservation and Development Commission*] **Oregon**  
41 **Natural Resources Commission**, including but not limited to citations to sources relied on and  
42 calculations made.

43 (3) Subsection (1) of this section does not apply to the region served by the metropolitan plan-  
44 ning organization that serves Portland.

45 **SECTION 1089.** Section 6, chapter 85, Oregon Laws 2010, is amended to read:

1 **Sec. 6.** The Department of Transportation and the [*Department of Land Conservation and De-*  
 2 *velopment*] **Oregon Department of Natural Resources**, after consultation with and in cooperation  
 3 with other state agencies and the Oregon University System, shall:

4 (1) Educate the public about the need to reduce greenhouse gas emissions from motor vehicles  
 5 with a gross vehicle weight rating of 10,000 pounds or less; and

6 (2) Educate the public about the costs and benefits of reducing greenhouse gas emissions.

7 **SECTION 1090.** Section 9, chapter 85, Oregon Laws 2010, is amended to read:

8 **Sec. 9.** The Department of Transportation and the [*Department of Land Conservation and De-*  
 9 *velopment*] **Oregon Department of Natural Resources** shall make a joint report to the Seventy-  
 10 seventh Legislative Assembly, in the manner provided in ORS 192.245, regarding:

11 (1) The progress made in developing:

12 (a) The statewide transportation strategy on greenhouse gas emissions adopted by the Oregon  
 13 Transportation Commission pursuant to section 2, **chapter 85, Oregon Laws 2010** [*of this 2010*  
 14 *Act*];

15 (b) The guidelines established by the Department of Transportation and the [*Department of Land*  
 16 *Conservation and Development*] **Oregon Department of Natural Resources** pursuant to section 3,  
 17 **chapter 85, Oregon Laws 2010** [*of this 2010 Act*]; and

18 (c) The toolkit established by the Department of Transportation and the [*Department of Land*  
 19 *Conservation and Development*] **Oregon Department of Natural Resources** pursuant to section 4,  
 20 **chapter 85, Oregon Laws 2010** [*of this 2010 Act*].

21 (2) Recommendations on how to meet the greenhouse gas emissions reduction targets identified  
 22 in section 5, **chapter 85, Oregon Laws 2010** [*of this 2010 Act*].

23 (3) Whether additional actions or a different framework is necessary to carry out the greenhouse  
 24 gas emissions reduction goals set forth in ORS 468A.205.

## 25 LAND USE BOARD OF APPEALS

### 26 (Abolishment and Transfer of 27 Duties, Functions and Powers)

28 **SECTION 1091.** (1) The Land Use Board of Appeals is abolished. On the operative date  
 29 of this section, the tenure of office of the members of the Land Use Board of Appeals ceases.

30 (2) All the duties, functions and powers of the Land Use Board of Appeals are imposed  
 31 upon, transferred to and vested in the Oregon Department of Natural Resources.

### 32 (Transfer of Records, Property and Employees)

33 **SECTION 1092.** (1) The board chairperson of the Land Use Board of Appeals shall:

34 (a) Deliver to the Oregon Department of Natural Resources all records and property  
 35 within the jurisdiction of the board chairperson that relate to the duties, functions and  
 36 powers transferred by section 1091 of this 2011 Act; and

37 (b) Transfer to the Oregon Department of Natural Resources those employees engaged  
 38 primarily in the exercise of the duties, functions and powers transferred by section 1091 of  
 39 this 2011 Act.

40 (2) The Director of the Oregon Department of Natural Resources shall take possession  
 41



1 of the records and property, and shall take charge of the employees and employ them in the  
 2 exercise of the duties, functions and powers transferred by section 1091 of this 2011 Act,  
 3 without reduction of compensation but subject to change or termination of employment or  
 4 compensation as provided by law.

5 (3) The Governor shall resolve any dispute between the Land Use Board of Appeals and  
 6 the Oregon Department of Natural Resources relating to transfers of records, property and  
 7 employees under this section, and the Governor's decision is final.

8  
 9 (Transfer of Unexpended Revenues)

10  
 11 **SECTION 1093.** (1) The unexpended balances of amounts authorized to be expended by the  
 12 Land Use Board of Appeals for the biennium beginning July 1, 2011, from revenues dedicated,  
 13 continuously appropriated, appropriated or otherwise made available for the purpose of ad-  
 14 ministering and enforcing the duties, functions and powers transferred by section 1091 of this  
 15 2011 Act are transferred to and are available for expenditure by the Oregon Department of  
 16 Natural Resources for the biennium beginning July 1, 2011, for the purpose of administering  
 17 and enforcing the duties, functions and powers transferred by section 1091 of this 2011 Act.

18 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
 19 expenditures by the Land Use Board of Appeals remain applicable to expenditures by the  
 20 Oregon Department of Natural Resources under this section.

21  
 22 (Action, Proceeding and Prosecution)

23  
 24 **SECTION 1094.** The transfer of duties, functions and powers to the Oregon Department  
 25 of Natural Resources by section 1091 of this 2011 Act does not affect any action, proceeding  
 26 or prosecution involving or with respect to such duties, functions and powers begun before  
 27 and pending at the time of the transfer, except that the Oregon Department of Natural Re-  
 28 sources is substituted for the Land Use Board of Appeals in the action, proceeding or pros-  
 29 ecution.

30  
 31 (Liability, Duty and Obligation)

32  
 33 **SECTION 1095.** (1) Nothing in sections 1091 to 1097 of this 2011 Act, the amendments to  
 34 statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257,  
 35 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS  
 36 197.810, 197.815 or 197.832 by section 2161 of this 2011 Act relieves a person of a liability, duty  
 37 or obligation accruing under or with respect to the duties, functions and powers transferred  
 38 by section 1091 of this 2011 Act. The Oregon Department of Natural Resources may under-  
 39 take the collection or enforcement of any such liability, duty or obligation.

40 (2) The rights and obligations of the Land Use Board of Appeals legally incurred under  
 41 contracts, leases and business transactions executed, entered into or begun before the op-  
 42 erative date of section 1091 of this 2011 Act are transferred to the Oregon Department of  
 43 Natural Resources. For the purpose of succession to these rights and obligations, the Oregon  
 44 Department of Natural Resources is a continuation of the Land Use Board of Appeals and  
 45 not a new authority.

## (Rules)

**SECTION 1096.** Notwithstanding the transfer of duties, functions and powers by section 1091 of this 2011 Act, the rules of the Land Use Board of Appeals in effect on the operative date of section 1091 of this 2011 Act continue in effect until superseded or repealed by rules of the Oregon Department of Natural Resources. References in rules of the Land Use Board of Appeals to the Land Use Board of Appeals, or to an officer or employee of the Land Use Board of Appeals, are considered to be references to the Oregon Department of Natural Resources or to an officer or employee of the Oregon Department of Natural Resources.

## (References)

**SECTION 1097.** Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the Land Use Board of Appeals, or to an officer or employee of the Land Use Board of Appeals, the reference is considered to be a reference to the Oregon Department of Natural Resources or to an officer or employee of the Oregon Department of Natural Resources.

## (Agency Name Change)

**SECTION 1098.** For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Land Use Board of Appeals” or its officers, wherever they occur in statutory law, words designating the “Oregon Department of Natural Resources” or its officers.

## (Account Name Change)

**SECTION 1098a.** For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Board Publications Account” wherever they occur in statutory law, words designating the “Oregon Natural Resources Fund.”

## (Conforming Amendments)

**SECTION 1099.** ORS 34.102 is amended to read:

34.102. (1) As used in this section, “municipal corporation” means a county, city, district or other municipal corporation or public corporation organized for a public purpose, including a cooperative body formed between municipal corporations.

(2) Except for a proceeding resulting in a land use decision or limited land use decision as defined in ORS 197.015, for which review is provided in ORS 197.830 to 197.845, or an expedited land division as described in ORS 197.360, for which review is provided in ORS 197.375 (8), the decisions of the governing body of a municipal corporation acting in a judicial or quasi-judicial capacity and made in the transaction of municipal corporation business shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

1 (3) A petition for writ of review filed in the circuit court and requesting review of a land use  
 2 decision or limited land use decision as defined in ORS 197.015 of a municipal corporation shall be  
 3 transferred to the [*Land Use Board of Appeals*] **Oregon Department of Natural Resources** and  
 4 treated as a notice of intent to appeal **the decision under ORS 197.830 to 197.845** if the petition  
 5 was filed within the time allowed for filing a notice of intent to appeal pursuant to ORS 197.830. If  
 6 the petition was not filed within the time allowed by ORS 197.830, the court shall dismiss the peti-  
 7 tion.

8 (4) A notice of intent to appeal filed with the [*Land Use Board of Appeals*] **department** pursuant  
 9 to ORS 197.830 and requesting review of a decision of a municipal corporation made in the trans-  
 10 action of municipal corporation business that is not reviewable as a land use decision or limited land  
 11 use decision as defined in ORS 197.015 shall be transferred to the circuit court and treated as a  
 12 petition for writ of review. If the notice was not filed with the [*board*] **department** within the time  
 13 allowed for filing a petition for writ of review pursuant to ORS 34.010 to 34.100, the court shall  
 14 dismiss the petition.

15 (5) In any case in which the [*Land Use Board of Appeals*] **department** or circuit court to which  
 16 a petition or notice is transferred under subsection (3) or (4) of this section disputes whether it has  
 17 authority to review the decision with which the petition or notice is concerned, the [*board*] **de-**  
 18 **partment** or court before which the matter is pending shall refer the question of whether the  
 19 [*board*] **department** or court has authority to review to the Court of Appeals, which shall decide  
 20 the question in a summary manner.

21 **SECTION 1100.** ORS 197.195 is amended to read:

22 197.195. (1) A "limited land use decision" shall be consistent with applicable provisions of city  
 23 or county comprehensive plans and land use regulations. Such a decision may include conditions  
 24 authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all  
 25 comprehensive plan standards applicable to limited land use decisions into their land use regu-  
 26 lations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards  
 27 into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS  
 28 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into  
 29 its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision  
 30 by the city or county or on appeal from that decision.

31 (2) A limited land use decision is not subject to the requirements of ORS 197.763.

32 (3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this  
 33 subsection.

34 (a) In making a limited land use decision, the local government shall follow the applicable pro-  
 35 cedures contained within its acknowledged comprehensive plan and land use regulations and other  
 36 applicable legal requirements.

37 (b) For limited land use decisions, the local government shall provide written notice to owners  
 38 of property within 100 feet of the entire contiguous site for which the application is made. The list  
 39 shall be compiled from the most recent property tax assessment roll. For purposes of review, this  
 40 requirement shall be deemed met when the local government can provide an affidavit or other cer-  
 41 tification that such notice was given. Notice shall also be provided to any neighborhood or commu-  
 42 nity organization recognized by the governing body and whose boundaries include the site.

43 (c) The notice and procedures used by local government shall:

44 (A) Provide a 14-day period for submission of written comments prior to the decision;

45 (B) State that issues which may provide the basis for an appeal to the [*Land Use Board of Ap-*

1 *peals*] **Oregon Department of Natural Resources** shall be raised in writing prior to the expiration  
 2 of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker  
 3 to respond to the issue;

4 (C) List, by commonly used citation, the applicable criteria for the decision;

5 (D) Set forth the street address or other easily understood geographical reference to the subject  
 6 property;

7 (E) State the place, date and time that comments are due;

8 (F) State that copies of all evidence relied upon by the applicant are available for review, and  
 9 that copies can be obtained at cost;

10 (G) Include the name and phone number of a local government contact person;

11 (H) Provide notice of the decision to the applicant and any person who submits comments under  
 12 subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal  
 13 rights; and

14 (I) Briefly summarize the local decision making process for the limited land use decision being  
 15 made.

16 (4) Approval or denial of a limited land use decision shall be based upon and accompanied by  
 17 a brief statement that explains the criteria and standards considered relevant to the decision, states  
 18 the facts relied upon in rendering the decision and explains the justification for the decision based  
 19 on the criteria, standards and facts set forth.

20 (5) A local government may provide for a hearing before the local government on appeal of a  
 21 limited land use decision under this section. The hearing may be limited to the record developed  
 22 pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction  
 23 of additional testimony or evidence. A hearing on appeal that allows the introduction of additional  
 24 testimony or evidence shall comply with the requirements of ORS 197.763. Written notice of the  
 25 decision rendered on appeal shall be given to all parties who appeared, either orally or in writing,  
 26 before the hearing. The notice of decision shall include an explanation of the rights of each party  
 27 to appeal the decision.

28 **SECTION 1101.** ORS 197.375 is amended to read:

29 197.375. (1) An appeal of a decision made under ORS 197.360 and 197.365 shall be made as fol-  
 30 lows:

31 (a) An appeal must be filed with the local government within 14 days of mailing of the notice  
 32 of the decision under ORS 197.365 (4), and shall be accompanied by a \$300 deposit for costs.

33 (b) A decision may be appealed by:

34 (A) The applicant; or

35 (B) Any person or organization who files written comments in the time period established under  
 36 ORS 197.365.

37 (c) An appeal shall be based solely on allegations:

38 (A) Of violation of the substantive provisions of the applicable land use regulations;

39 (B) Of unconstitutionality of the decision;

40 (C) That the application is not eligible for review under ORS 197.360 to 197.380 and should be  
 41 reviewed as a land use decision or limited land use decision; or

42 (D) That the parties' substantive rights have been substantially prejudiced by an error in pro-  
 43 cedure by the local government.

44 (2) The local government shall appoint a referee to decide the appeal of a decision made under  
 45 ORS 197.360 and 197.365. The referee shall not be an employee or official of the local government.

1 However, a local government that has designated a hearings officer under ORS 215.406 or 227.165  
2 may designate the hearings officer as the referee for appeals of a decision made under ORS 197.360  
3 and 197.365.

4 (3) Within seven days of being appointed to decide the appeal, the referee shall notify the ap-  
5 plicant, the local government, the appellant if other than the applicant, any person or organization  
6 entitled to notice under ORS 197.365 (2) that provided written comments to the local government  
7 and all providers of public facilities and services entitled to notice under ORS 197.365 (2) and advise  
8 them of the manner in which they may participate in the appeal. A person or organization that  
9 provided written comments to the local government but did not file an appeal under subsection (1)  
10 of this section may participate only with respect to the issues raised in the written comments sub-  
11 mitted by that person or organization. The referee may use any procedure for decision-making con-  
12 sistent with the interests of the parties to ensure a fair opportunity to present information and  
13 argument. The referee shall provide the local government an opportunity to explain its decision, but  
14 is not limited to reviewing the local government decision and may consider information not pre-  
15 sented to the local government.

16 (4)(a) The referee shall apply the substantive requirements of the local government's land use  
17 regulations and ORS 197.360. If the referee determines that the application does not qualify as an  
18 expedited land division as described in ORS 197.360, the referee shall remand the application for  
19 consideration as a land use decision or limited land use decision. In all other cases, the referee shall  
20 seek to identify means by which the application can satisfy the applicable requirements.

21 (b) The referee may not reduce the density of the land division application. The referee shall  
22 make a written decision approving or denying the application or approving it with conditions de-  
23 signed to ensure that the application satisfies the land use regulations, within 42 days of the filing  
24 of an appeal. The referee may not remand the application to the local government for any reason  
25 other than as set forth in this subsection.

26 (5) Unless the governing body of the local government finds exigent circumstances, a referee  
27 who fails to issue a written decision within 42 days of the filing of an appeal shall receive no com-  
28 pensation for service as referee in the appeal.

29 (6) Notwithstanding any other provision of law, the referee shall order the local government to  
30 refund the deposit for costs to an appellant who materially improves his or her position from the  
31 decision of the local government. The referee shall assess the cost of the appeal in excess of the  
32 deposit for costs, up to a maximum of \$500, including the deposit paid under subsection (1) of this  
33 section, against an appellant who does not materially improve his or her position from the decision  
34 of the local government. The local government shall pay the portion of the costs of the appeal not  
35 assessed against the appellant. The costs of the appeal include the compensation paid the referee  
36 and costs incurred by the local government, but not the costs of other parties.

37 *[(7) The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects*  
38 *of decisions or actions made under ORS 197.360 to 197.380.]*

39 **(7) The procedures by which the Oregon Department of Natural Resources appeals land**  
40 **use decisions and limited land use decisions under ORS 197.830 to 197.845 do not apply to**  
41 **decisions or to aspects of decisions or actions made under ORS 197.360 to 197.380.**

42 (8) Any party to a proceeding before a referee under this section may seek judicial review of  
43 the referee's decision in the manner provided for review of final orders of the [*Land Use Board of*  
44 *Appeals*] **department** under ORS 197.850 and 197.855. The Court of Appeals shall review decisions  
45 of the referee in the same manner as provided for review of final orders of the [*Land Use Board of*

1 *Appeals*] **department** in those statutes. However, notwithstanding ORS 197.850 (9) or any other  
2 provision of law, the court shall reverse or remand the decision only if the court finds:

3 (a) That the decision does not concern an expedited land division as described in ORS 197.360  
4 and the appellant raised this issue in proceedings before the referee;

5 (b) That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d), or a basis  
6 for modification or correction of an award as described in ORS 36.710; or

7 (c) That the decision is unconstitutional.

8 **SECTION 1102.** ORS 197.540 is amended to read:

9 197.540. (1) In the manner provided in ORS 197.830 to 197.845, the [*Land Use Board of*  
10 *Appeals*] **Oregon Department of Natural Resources** shall review upon petition by a county, city  
11 or special district governing body or state agency or a person or group of persons whose interests  
12 are substantially affected, any moratorium on construction or land development or a corrective  
13 program alleged to have been adopted in violation of the provisions of ORS 197.505 to 197.540.

14 (2) If the [*board*] **department** determines that a moratorium or corrective program was not  
15 adopted in compliance with the provisions of ORS 197.505 to 197.540, the [*board*] **department** shall  
16 issue an order invalidating the moratorium.

17 (3) All review proceedings conducted by the [*Land Use Board of Appeals*] **department** under  
18 subsection (1) of this section shall be based on the administrative record, if any, that is the subject  
19 of the review proceeding. The [*board*] **department** shall not substitute its judgment for a finding  
20 solely of fact for which there is substantial evidence in the whole record.

21 (4) Notwithstanding any provision of ORS chapters 195, 196 and 197 to the contrary, the sole  
22 standard of review of a moratorium on construction or land development or a corrective program  
23 is under the provisions of this section, and such a moratorium shall not be reviewed for compliance  
24 with the statewide planning goals adopted under ORS chapters 195, 196 and 197.

25 (5) The review of a moratorium on construction or land development under subsection (1) of this  
26 section shall be the sole authority for review of such a moratorium, and there shall be no authority  
27 for review in the circuit courts of this state.

28 **SECTION 1103.** ORS 197.796 is amended to read:

29 197.796. (1) An applicant for a land use decision, limited land use decision or expedited land di-  
30 vision or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed  
31 under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance  
32 by an applicant for a land use decision, limited land use decision, expedited land division or permit  
33 under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does  
34 not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condi-  
35 tion may include but is not limited to paying a fee, performing an act or providing satisfactory evi-  
36 dence of arrangements to pay the fee or to ensure compliance with the condition.

37 (2) Any action for damages under this section shall be filed in the circuit court of the county  
38 in which the application was submitted within 180 days of the date of the decision.

39 (3)(a) A challenge filed pursuant to this section may not be dismissed on the basis that the ap-  
40 plicant did not request a variance to the condition of approval or any other available form of re-  
41 consideration of the challenged condition. However, an applicant shall comply with ORS 197.763 (1)  
42 prior to appealing to the [*Land Use Board of Appeals*] **Oregon Department of Natural Resources**  
43 or bringing an action for damages in circuit court and must exhaust all local appeals provided in  
44 the local comprehensive plan and land use regulations before proceeding under this section.

45 (b) In addition to the requirements of ORS 197.763 (5), at the commencement of the initial public

1 hearing, a statement shall be made to the applicant that the failure of the applicant to raise con-  
 2 stitutional or other issues relating to proposed conditions of approval with sufficient specificity to  
 3 allow the local government or its designee to respond to the issue precludes an action for damages  
 4 in circuit court.

5 (c) An applicant is not required to raise an issue under this subsection unless the condition of  
 6 approval is stated with sufficient specificity to enable the applicant to respond to the condition prior  
 7 to the close of the final local hearing.

8 (4) In any challenge to a condition of approval that is subject to the Takings Clause of the Fifth  
 9 Amendment to the United States Constitution, the local government shall have the burden of dem-  
 10 onstrating compliance with the constitutional requirements for imposing the condition.

11 (5) In a proceeding in circuit court under this section, the court shall award costs and reason-  
 12 able attorney fees to a prevailing party. Notwithstanding ORS 197.830 (15), in a proceeding before  
 13 the [*Land Use Board of Appeals*] **department** under this section, the [*board*] **department** shall  
 14 award costs and reasonable attorney fees to a prevailing party.

15 (6) This section applies to appeals by the applicant of a condition of approval and claims filed  
 16 in state court seeking damages for the unlawful imposition of conditions of approval in a land use  
 17 decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178.

18 **SECTION 1104.** ORS 197.820 is amended to read:

19 197.820. (1) The [*Land Use Board of Appeals*] **Oregon Department of Natural Resources** shall  
 20 conduct review proceedings upon petitions filed in the manner prescribed in ORS 197.830.

21 [(2) *In conducting review proceedings the members of the board may sit together or separately as*  
 22 *the board chairperson shall decide.*]

23 [(3) *The board chairperson shall apportion the business of the board among the members of the*  
 24 *board. Each member shall have the power to hear and issue orders on petitions filed with the board*  
 25 *and on all issues arising under those petitions.*]

26 [(4) *The board shall adopt rules governing:*]

27 [(a) *The conduct of review proceedings brought before it under ORS 197.830 to 197.845.*]

28 [(b) *The transfer of a matter to the board by the Director of the Department of Land Conservation*  
 29 *and Development under ORS 197.825 (2)(c).*]

30 **(2) The Director of the Oregon Department of Natural Resources shall adopt rules gov-**  
 31 **erning the conduct of review proceedings brought before the department under ORS 197.830**  
 32 **to 197.845.**

33 **(3) The director shall appoint no less than three officers to review land use decisions and**  
 34 **limited land use decisions under ORS 197.830 to 197.845. The director may not participate in**  
 35 **the review of such decisions.**

36 **SECTION 1105.** ORS 197.825 is amended to read:

37 197.825. (1) Except as provided in [*ORS 197.320 and*] subsections (2) and (3) of this section, the  
 38 [*Land Use Board of Appeals*] **Oregon Department of Natural Resources** shall have exclusive ju-  
 39 risdiction to review any land use decision or limited land use decision of a local government, special  
 40 district or a state agency in the manner provided in ORS 197.830 to 197.845.

41 (2) The jurisdiction of the [*board*] **department**:

42 (a) Is limited to those cases in which the petitioner has exhausted all remedies available by right  
 43 before petitioning the [*board*] **department** for review;

44 (b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Ap-  
 45 peals;

(c) Does not include a local government decision that is:

(A) Submitted to the department [*of Land Conservation and Development*] for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government decision submitted to the department for acknowledgment, unless the Director of the [*Department of Land Conservation and Development, in the director's sole discretion, transfers the matter to the board*] **Oregon Department of Natural Resources determines that the procedures of ORS 197.830 to 197.845 are more appropriate for the acknowledgment;** or

(B) Subject to the review authority of the department under ORS 197.430, 197.445, 197.450 or 197.455 or a matter related to a local government decision subject to the review authority of the department under ORS 197.430, 197.445, 197.450 or 197.455;

(d) Does not include those land use decisions of a state agency over which the Court of Appeals has jurisdiction for initial judicial review under ORS 183.400, 183.482 or other statutory provisions;

(e) Does not include any rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992;

(f) Is subject to ORS 196.115 for any county land use decision that may be reviewed by the Columbia River Gorge Commission pursuant to sections 10(c) or 15(a)(2) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663; and

(g) Does not include review of expedited land divisions under ORS 197.360.

(3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain jurisdiction:

(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015 [(10)(b)] **(6)(b)** or proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations; and

(b) To enforce orders of the [*board*] **department** in appropriate proceedings brought by the [*board*] **department** or a party to the [*board*] **department** proceeding resulting in the order.

**SECTION 1106.** ORS 197.828 is amended to read:

197.828. (1) The [*Land Use Board of Appeals*] **Oregon Department of Natural Resources** shall either reverse, remand or affirm a limited land use decision on review.

(2) The [*board*] **department** shall reverse or remand a limited land use decision if:

(a) The decision is not supported by substantial evidence in the record. The existence of evidence in the record supporting a different decision shall not be grounds for reversal or remand if there is evidence in the record to support the final decision;

(b) The decision does not comply with applicable provisions of the land use regulations;

(c) The decision is:

(A) Outside the scope of authority of the decision maker; or

(B) Unconstitutional; or

(d) The local government committed a procedural error which prejudiced the substantial rights of the petitioner.

**SECTION 1107.** ORS 197.829 is amended to read:

197.829. (1) The [*Land Use Board of Appeals*] **Oregon Department of Natural Resources** shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the [*board*] **department** determines that the local government's interpretation:

(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan



1 or land use regulation; or

2 (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision  
3 or land use regulation implements.

4 (2) If a local government fails to interpret a provision of its comprehensive plan or land use  
5 regulations, or if such interpretation is inadequate for review, the [board] **department** may make  
6 its own determination of whether the local government decision is correct.

7 **SECTION 1108.** ORS 197.830 is amended to read:

8 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to  
9 197.845 shall be commenced by filing a notice of intent to appeal with the [*Land Use Board of Ap-*  
10 *peals*] **Oregon Department of Natural Resources**.

11 (2) Except as provided in ORS 197.620 (1) and (2), a person may petition the [board] **department**  
12 for review of a land use decision or limited land use decision if the person:

13 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;  
14 and

15 (b) Appeared before the local government, special district or state agency orally or in writing.

16 (3) If a local government makes a land use decision without providing a hearing, except as  
17 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision  
18 that is different from the proposal described in the notice of hearing to such a degree that the notice  
19 of the proposed action did not reasonably describe the local government's final actions, a person  
20 adversely affected by the decision may appeal the decision to the [board] **department** under this  
21 section:

22 (a) Within 21 days of actual notice where notice is required; or

23 (b) Within 21 days of the date a person knew or should have known of the decision where no  
24 notice is required.

25 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416  
26 (11) or 227.175 (10):

27 (a) A person who was not provided mailed notice of the decision as required under ORS 215.416  
28 (11)(c) or 227.175 (10)(c) may appeal the decision to the [board] **department** under this section  
29 within 21 days of receiving actual notice of the decision.

30 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who  
31 is adversely affected or aggrieved by the decision may appeal the decision to the [board] **depart-**  
32 **ment** under this section within 21 days after the expiration of the period for filing a local appeal  
33 of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

34 (c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416  
35 (11) or 227.175 (10) may appeal the decision to the [board] **department** under this section within 21  
36 days of receiving actual notice of the nature of the decision, if the mailed notice of the decision did  
37 not reasonably describe the nature of the decision.

38 (d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice  
39 of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the  
40 decision to the [board] **department** under this section.

41 (5) If a local government makes a limited land use decision which is different from the proposal  
42 described in the notice to such a degree that the notice of the proposed action did not reasonably  
43 describe the local government's final actions, a person adversely affected by the decision may appeal  
44 the decision to the [board] **department** under this section:

45 (a) Within 21 days of actual notice where notice is required; or

1 (b) Within 21 days of the date a person knew or should have known of the decision where no  
2 notice is required.

3 (6)(a) Except as provided in paragraph (b) of this subsection, the appeal periods described in  
4 subsections (3), (4) and (5) of this section shall not exceed three years after the date of the decision.

5 (b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763  
6 is required but has not been provided, the provisions of paragraph (a) of this subsection do not ap-  
7 ply.

8 (7)(a) Within 21 days after a notice of intent to appeal has been filed with the [board] **depart-**  
9 **ment** under subsection (1) of this section, any person described in paragraph (b) of this subsection  
10 may intervene in and be made a party to the review proceeding by filing a motion to intervene and  
11 by paying a filing fee of \$100.

12 (b) Persons who may intervene in and be made a party to the review proceedings, as set forth  
13 in subsection (1) of this section, are:

14 (A) The applicant who initiated the action before the local government, special district or state  
15 agency; or

16 (B) Persons who appeared before the local government, special district or state agency, orally  
17 or in writing.

18 (c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this  
19 subsection shall result in denial of a motion to intervene.

20 (8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party  
21 to the proceeding, it may file a brief with the [board] **department** as if it were a party. The brief  
22 shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee  
23 of \$100.

24 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed  
25 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of  
26 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to  
27 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is  
28 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a  
29 certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective.  
30 Copies of the notice of intent to appeal shall be served upon the local government, special district  
31 or state agency and the applicant of record, if any, in the local government, special district or state  
32 agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule  
33 of the [board] **department** and shall be accompanied by a filing fee of \$200 and a deposit for costs  
34 to be established by the [board] **department**. If a petition for review is not filed with the [board]  
35 **department** as required in subsections (10) and (11) of this section, the filing fee and deposit shall  
36 be awarded to the local government, special district or state agency as cost of preparation of the  
37 record.

38 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-  
39 cial district or state agency shall transmit to the [board] **department** the original or a certified  
40 copy of the entire record of the proceeding under review. By stipulation of all parties to the review  
41 proceeding the record may be shortened. The [board] **department** may require or permit subsequent  
42 corrections to the record; however, the [board] **department** shall issue an order on a motion ob-  
43 jecting to the record within 60 days of receiving the motion.

44 (b) Within 10 days after service of a notice of intent to appeal, the [board] **department** shall  
45 provide notice to the petitioner and the respondent of their option to enter into mediation pursuant

1 to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days  
2 after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by  
3 a statement that mediation information or assistance may be obtained from the department [*of Land*  
4 *Conservation and Development*].

5 (11) A petition for review of the land use decision or limited land use decision and supporting  
6 brief shall be filed with the [*board*] **department** as required by the [*board*] **department** under sub-  
7 section (13) of this section.

8 (12) The petition shall include a copy of the decision sought to be reviewed and shall state:

9 (a) The facts that establish that the petitioner has standing.

10 (b) The date of the decision.

11 (c) The issues the petitioner seeks to have reviewed.

12 (13)(a) The [*board*] **department** shall adopt rules establishing deadlines for filing petitions and  
13 briefs and for oral argument.

14 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing  
15 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the  
16 respondent's brief, the local government or state agency may withdraw its decision for purposes of  
17 reconsideration. If a local government or state agency withdraws an order for purposes of recon-  
18 sideration, it shall, within such time as the [*board*] **department** may allow, affirm, modify or reverse  
19 its decision. If the petitioner is dissatisfied with the local government or agency action after with-  
20 drawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review  
21 shall proceed upon the revised order. An amended notice of intent shall not be required if the local  
22 government or state agency, on reconsideration, affirms the order or modifies the order with only  
23 minor changes.

24 (14) The [*board*] **department** shall issue a final order within 77 days after the date of trans-  
25 mittal of the record. If the order is not issued within 77 days the applicant may apply in Marion  
26 County or the circuit court of the county where the application was filed for a writ of mandamus  
27 to compel the [*board*] **department** to issue a final order.

28 (15)(a) Upon entry of its final order the [*board*] **department** may, in its discretion, award costs  
29 to the prevailing party including the cost of preparation of the record if the prevailing party is the  
30 local government, special district or state agency whose decision is under review. The deposit re-  
31 quired by subsection (9) of this section shall be applied to any costs charged against the petitioner.

32 (b) The [*board*] **department** shall also award reasonable attorney fees and expenses to the pre-  
33 vailing party against any other party who the [*board*] **department** finds presented a position with-  
34 out probable cause to believe the position was well-founded in law or on factually supported  
35 information.

36 (16) Orders issued under this section may be enforced in appropriate judicial proceedings.

37 (17)(a) The [*board*] **department** shall provide for the publication of its orders that are of general  
38 public interest in the form it deems best adapted for public convenience. The publications shall  
39 constitute the official reports of the [*board*] **department**.

40 (b) Any moneys collected or received from sales [*by the board shall be paid into the Board*  
41 *Publications Account established by ORS 197.832*] **of publications by the department shall be de-**  
42 **posited in the Oregon Natural Resources Fund. Moneys deposited in the fund under this**  
43 **subsection are continuously appropriated to the department for paying expenses incurred by**  
44 **the department under this subsection.**

45 (18) Except for any sums collected for publication of [*board*] **department** opinions, all fees col-

1 lected by the [board] **department** under this section that are not awarded as costs shall be [paid  
2 over to the State Treasurer to be credited to the General Fund] **deposited in the Oregon Natural  
3 Resources Fund. Moneys deposited in the fund under this subsection are continuously ap-  
4 propriated to the department for the purpose of paying expenses incurred under ORS 197.830  
5 to 197.845.**

6 **SECTION 1109.** ORS 197.831 is amended to read:

7 197.831. In a proceeding before the [Land Use Board of Appeals] **Oregon Department of Na-  
8 tural Resources** or on judicial review from an order of the [board] **department** that involves an  
9 ordinance required to contain clear and objective approval standards for a permit under ORS  
10 197.307 and 227.175, the local government imposing the provisions of the ordinance shall demon-  
11 strate that the approval standards are capable of being imposed only in a clear and objective man-  
12 ner.

13 **SECTION 1110.** ORS 197.835 is amended to read:

14 197.835. (1) The [Land Use Board of Appeals] **Oregon Department of Natural Resources** shall  
15 review the land use decision or limited land use decision and prepare a final order affirming, re-  
16 versing or remanding the land use decision or limited land use decision. The [board] **department**  
17 shall adopt rules defining the circumstances in which [it] **the department** will reverse rather than  
18 remand a land use decision or limited land use decision that is not affirmed.

19 (2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

20 (b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte  
21 contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities  
22 not shown in the record that, if proved, would warrant reversal or remand, the [board] **department**  
23 may take evidence and make findings of fact on those allegations. The [board] **department** shall be  
24 bound by any finding of fact of the local government, special district or state agency for which there  
25 is substantial evidence in the whole record.

26 (3) Issues shall be limited to those raised by any participant before the local hearings body as  
27 provided by ORS 197.195 or 197.763, whichever is applicable.

28 (4) A petitioner may raise new issues to the [board] **department** if:

29 (a) The local government failed to list the applicable criteria for a decision under ORS 197.195  
30 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable crite-  
31 ria that were omitted from the notice. However, the [board] **department** may refuse to allow new  
32 issues to be raised if it finds that the issue could have been raised before the local government; or

33 (b) The local government made a land use decision or limited land use decision which is different  
34 from the proposal described in the notice to such a degree that the notice of the proposed action  
35 did not reasonably describe the local government's final action.

36 (5) The [board] **department** shall reverse or remand a land use decision not subject to an ac-  
37 knowledged comprehensive plan and land use regulations if the decision does not comply with the  
38 goals. The [board] **department** shall reverse or remand a land use decision or limited land use de-  
39 cision subject to an acknowledged comprehensive plan or land use regulation if the decision does  
40 not comply with the goals and the [Land Conservation and Development Commission] **Oregon Na-  
41 tural Resources Commission** has issued an order under ORS 197.320 or adopted a new or amended  
42 goal under ORS 197.245 requiring the local government to apply the goals to the type of decision  
43 being challenged.

44 (6) The [board] **department** shall reverse or remand an amendment to a comprehensive plan if  
45 the amendment is not in compliance with the goals.

1 (7) The *[board]* **department** shall reverse or remand an amendment to a land use regulation or  
2 the adoption of a new land use regulation if:

3 (a) The regulation is not in compliance with the comprehensive plan; or

4 (b) The comprehensive plan does not contain specific policies or other provisions which provide  
5 the basis for the regulation, and the regulation is not in compliance with the statewide planning  
6 goals.

7 (8) The *[board]* **department** shall reverse or remand a decision involving the application of a  
8 plan or land use regulation provision if the decision is not in compliance with applicable provisions  
9 of the comprehensive plan or land use regulations.

10 (9) In addition to the review under subsections (1) to (8) of this section, the *[board]* **department**  
11 shall reverse or remand the land use decision under review if the *[board]* **department** finds:

12 (a) The local government or special district:

13 (A) Exceeded its jurisdiction;

14 (B) Failed to follow the procedures applicable to the matter before it in a manner that preju-  
15 diced the substantial rights of the petitioner;

16 (C) Made a decision not supported by substantial evidence in the whole record;

17 (D) Improperly construed the applicable law; or

18 (E) Made an unconstitutional decision; or

19 (b) The state agency made a decision that violated the goals.

20 (10)(a) The *[board]* **department** shall reverse a local government decision and order the local  
21 government to grant approval of an application for development denied by the local government if  
22 the *[board]* **department** finds:

23 (A) Based on the evidence in the record, that the local government decision is outside the range  
24 of discretion allowed the local government under its comprehensive plan and implementing ordi-  
25 nances; or

26 (B) That the local government's action was for the purpose of avoiding the requirements of ORS  
27 215.427 or 227.178.

28 (b) If the *[board]* **department** does reverse the decision and orders the local government to  
29 grant approval of the application, the *[board]* **department** shall award attorney fees to the applicant  
30 and against the local government.

31 (11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent  
32 possible consistent with the time requirements of ORS 197.830 (14), the *[board]* **department** shall  
33 decide all issues presented to it when reversing or remanding a land use decision described in sub-  
34 sections (2) to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

35 (b) Whenever the findings are defective because of failure to recite adequate facts or legal  
36 conclusions or failure to adequately identify the standards or their relation to the facts, but the  
37 parties identify relevant evidence in the record which clearly supports the decision or a part of the  
38 decision, the *[board]* **department** shall affirm the decision or the part of the decision supported by  
39 the record and remand the remainder to the local government, with direction indicating appropriate  
40 remedial action.

41 (12) The *[board]* **department** may reverse or remand a land use decision under review due to  
42 ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making  
43 body, only if the member of the decision-making body did not comply with ORS 215.422 (3) or 227.180  
44 (3), whichever is applicable.

45 (13) Subsection (12) of this section does not apply to reverse or remand of a land use decision

1 due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

2 (14) The [board] **department** shall reverse or remand a land use decision or limited land use  
3 decision which violates a commission order issued under ORS 197.328.

4 (15) In cases in which a local government provides a quasi-judicial land use hearing on a limited  
5 land use decision, the requirements of subsections (12) and (13) of this section apply.

6 (16) The [board] **department** may decide cases before it by means of memorandum decisions and  
7 shall prepare full opinions only in such cases as it deems proper.

8 **SECTION 1110a.** ORS 197.845 is amended to read:

9 197.845. (1) Upon application of the petitioner, the [board] **Oregon Department of Natural**  
10 **Resources** may grant a stay of a land use decision or limited land use decision under review if the  
11 petitioner demonstrates:

12 (a) A colorable claim of error in the land use decision or limited land use decision under review;  
13 and

14 (b) That the petitioner will suffer irreparable injury if the stay is not granted.

15 (2) If the [board] **department** grants a stay of a quasi-judicial land use decision or limited land  
16 use decision approving a specific development of land, it shall require the petitioner requesting the  
17 stay to give an undertaking in the amount of \$5,000. The undertaking shall be in addition to the  
18 filing fee and deposit for costs required under ORS 197.830 (9). The [board] **department** may impose  
19 other reasonable conditions such as requiring the petitioner to file all documents necessary to bring  
20 the matter to issue within specified reasonable periods of time.

21 (3) If the [board] **department** affirms a quasi-judicial land use decision or limited land use de-  
22 cision for which a stay was granted under subsections (1) and (2) of this section, the [board] **de-**  
23 **partment** shall award reasonable attorney fees and actual damages resulting from the stay to the  
24 person who requested the land use decision or limited land use decision from the local government,  
25 special district or state agency, against the person requesting the stay in an amount not to exceed  
26 the amount of the undertaking.

27 (4) The [board] **department** shall limit the effect of a stay of a legislative land use decision to  
28 the geographic area or to particular provisions of the legislative decision for which the petitioner  
29 has demonstrated a colorable claim of error and irreparable injury under subsection (1) of this sec-  
30 tion. The [board] **department** may impose reasonable conditions on a stay of a legislative decision,  
31 such as the giving of a bond or other undertaking or a requirement that the petitioner file all doc-  
32 uments necessary to bring the matter to issue within a specified reasonable time period.

33 **SECTION 1111.** ORS 197.850 is amended to read:

34 197.850. (1) Any party to a proceeding before the [*Land Use Board of Appeals*] **Oregon De-**  
35 **partment of Natural Resources** under ORS 197.830 to 197.845 may seek judicial review of a final  
36 order issued in those proceedings.

37 (2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued  
38 under ORS 197.830 to 197.845 is solely as provided in this section.

39 (3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred  
40 upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the  
41 Court of Appeals. The petition must be filed within 21 days following the date the [board] **depart-**  
42 **ment** delivered or mailed the order upon which the petition is based.

43 (b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a peti-  
44 tion on all persons identified in the petition as adverse parties of record in the [board] **department**  
45 proceeding is jurisdictional and may not be waived or extended.

1 (4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the  
2 petition must be served by first class, registered or certified mail on the [board] **department** and  
3 all other parties of record in the [board] **department** proceeding.

4 (5) Within seven days after service of the petition, the [board] **department** shall transmit to the  
5 court the original or a certified copy of the entire record of the proceeding under review, but, by  
6 stipulation of all parties to the review proceeding, the record may be shortened. The court may tax  
7 a party that unreasonably refuses to stipulate to limit the record for the additional costs. The court  
8 may require or permit subsequent corrections or additions to the record when deemed desirable.  
9 Except as specifically provided in this subsection, the court may not tax the cost of the record to  
10 the petitioner or any intervening party. However, the court may tax such costs and the cost of  
11 transcription of record to a party filing a frivolous petition for judicial review.

12 (6) Petitions and briefs must be filed within time periods and in a manner established by the  
13 Court of Appeals by rule.

14 (7)(a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

15 (b) The court may hear oral argument more than 49 days from the date of transmittal of the  
16 record provided the court determines that the ends of justice served by holding oral argument on  
17 a later day outweigh the best interests of the public and the parties. The court shall not hold oral  
18 argument more than 49 days from the date of transmittal of the record because of general congestion  
19 of the court calendar or lack of diligent preparation or attention to the case by any member of the  
20 court or any party.

21 (c) The court shall set forth in writing a determination to hear oral argument more than 49 days  
22 from the date the record is transmitted, together with the reasons for its determination, and shall  
23 provide a copy to the parties. The court shall schedule oral argument as soon as practicable there-  
24 after.

25 (d) In making a determination under paragraph (b) of this subsection, the court shall consider:

26 (A) Whether the case is so unusual or complex, due to the number of parties or the existence  
27 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief  
28 the case and for the court to prepare for oral argument; and

29 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-  
30 riage of justice.

31 (8) Judicial review of an order issued under ORS 197.830 to 197.845 shall be confined to the re-  
32 cord. The court shall not substitute its judgment for that of the [board] **department** as to any issue  
33 of fact.

34 (9) The court may affirm, reverse or remand the order. The court shall reverse or remand the  
35 order only if it finds:

36 (a) The order to be unlawful in substance or procedure, but error in procedure is not cause for  
37 reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced  
38 thereby;

39 (b) The order to be unconstitutional; or

40 (c) The order is not supported by substantial evidence in the whole record as to facts found by  
41 the [board] **department** under ORS 197.835 (2).

42 (10) The Court of Appeals shall issue a final order on the petition for judicial review with the  
43 greatest possible expediency.

44 (11) If the order of the [board] **department** is remanded by the Court of Appeals or the Supreme  
45 Court, the [board] **department** shall respond to the court's appellate judgment within 30 days.

1 (12) A party must file with the [board] **department** an undertaking with one or more sureties  
 2 insuring that the party will pay all costs, disbursements and attorney fees awarded against the party  
 3 by the Court of Appeals if:

4 (a) The party appealed a decision of the [board] **department** to the Court of Appeals; and

5 (b) In making the decision being appealed to the Court of Appeals, the [board] **department**  
 6 awarded attorney fees and expenses against that party under ORS 197.830 (15)(b).

7 (13) Upon entry of its final order, the court shall award attorney fees and expenses to a party  
 8 who prevails on a claim that an approval condition imposed by a local government on an application  
 9 for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article I,  
 10 Oregon Constitution, or the Fifth Amendment to the United States Constitution.

11 (14) The undertaking required in subsection (12) of this section must be filed with the [board]  
 12 **department** and served on the opposing parties within 10 days after the date the petition was filed  
 13 with the Court of Appeals.

14 **SECTION 1111a.** ORS 197.860 is amended to read:

15 197.860. All parties to an appeal may at any time prior to a final decision by the Court of Ap-  
 16 peals under ORS 197.855 stipulate that the appeal proceeding be stayed for any period of time  
 17 agreeable to the parties and the [board] **Oregon Department of Natural Resources** or court to  
 18 allow the parties to enter mediation. Following mediation, the [board] **department** or the court may,  
 19 at the request of the parties, dismiss the appeal or remand the decision to the [board] **department**  
 20 or the local government with specific instructions for entry of a final decision on remand. If the  
 21 parties fail to agree to a stipulation for remand or dismissal through mediation within the time the  
 22 appeal is stayed, the appeal shall proceed with such reasonable extension of appeal deadlines as the  
 23 [board] **department** or Court of Appeals considers appropriate.

24 **SECTION 1112.** ORS 221.034 is amended to read:

25 221.034. (1) As used in this section:

26 (a) "Neighboring city" means a city that has any part of its territory situated within three miles  
 27 of the area proposed to be incorporated.

28 (b) "Rural unincorporated community" means a settlement with a boundary identified in an ac-  
 29 knowledged comprehensive plan of a county and that:

30 (A) Is made up primarily of lands subject to an exception to statewide planning goals related to  
 31 agricultural lands or forestlands;

32 (B) Either was identified in the acknowledged comprehensive plan of a county as a "rural com-  
 33 munity," "service center," "rural center," "resort community" or similar term before October 28,  
 34 1994, or is listed in the Department of Land Conservation and Development's "Survey of Oregon  
 35 Unincorporated Communities" (January 30, 1997);

36 (C) Lies outside the urban growth boundary of a city or a metropolitan service district; and

37 (D) Is not incorporated as a city.

38 (c) "Urban reserve" has the meaning given that term in ORS 195.137.

39 (d) "Urban services" has the meaning given that term in ORS 195.065.

40 (2) When any of the area proposed to be incorporated as a city lies within an urbanized area,  
 41 but outside the urban growth boundary of a city or a metropolitan service district:

42 (a) The area proposed to be incorporated must also be located entirely within a designated rural  
 43 unincorporated community and contiguous lands subject to an exception to statewide planning goals  
 44 related to agricultural lands or forestlands.

45 (b) The petition required by ORS 221.031 must be accompanied by an affidavit, signed by a chief



1 petitioner, stating that:

2 (A) Ten percent of the electors registered within the area proposed for incorporation favor the  
3 incorporation; and

4 (B) The chief petitioners have engaged the neighboring cities in discussions concerning the ef-  
5 fects of the proposed incorporation, including discussions specifically relating to how those cities  
6 and the proposed city will allow for expansion of urban growth boundaries and, where applicable,  
7 for creation or expansion of urban reserves.

8 (c) The economic feasibility statement required by ORS 221.035 must:

9 (A) Indicate that the proposed city must plan for and provide urban services in a cost-effective  
10 manner at the minimum level adequate to meet current needs and projected growth;

11 (B) Contain a proposed permanent rate limit for operating taxes to provide revenues for urban  
12 services; and

13 (C) Indicate that the proposed city must plan for residential development at or above the same  
14 urban density planned for an existing city, within the county, that has a similar geographic area  
15 within the existing city's urban growth boundary or, for a proposed city within three miles of  
16 Metro's boundary, a minimum urban residential density in accordance with a statewide planning  
17 goal and rules pertaining to needed housing for cities within Metro's urban growth boundary.

18 (d) If the proposed city will be required to complete a public facility plan and a transportation  
19 systems plan, the proposed city must demonstrate the ability to provide urban services to meet  
20 current needs and projected growth. The proposed city may meet this requirement, in whole or in  
21 part, by establishing an agreement in principle with a city or a district, as defined in ORS 195.060,  
22 to provide the urban services.

23 (3) If the governing body of a neighboring city determines that the proposed incorporation ad-  
24 versely affects that city, the governing body may ask the county court with which the petition for  
25 incorporation was filed to reject the petition and terminate the incorporation proceedings. The ob-  
26 jections by the city to the incorporation shall be heard and considered by the county court at a  
27 public hearing held under ORS 221.040.

28 (4) If, at the hearing held under ORS 221.040, the county court finds that any of the require-  
29 ments of subsection (2) of this section are not met or that the proposed incorporation will adversely  
30 affect a neighboring city, the county court shall provide by order for the termination of the incor-  
31 poration proceedings. The order shall contain the findings of the county court relating to the pro-  
32 posed incorporation and the reasons for terminating the incorporation proceedings.

33 (5) In the manner provided in ORS 197.830 to 197.845, the [*Land Use Board of Appeals*] **Oregon**  
34 **Department of Natural Resources** shall review, upon the petition of a party to the incorporation  
35 proceedings, the order of the county court under subsection (4) of this section.

36  
37 **STATE DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES**

38  
39 **(Abolishment and Transfer of**  
40 **Duties, Functions and Powers)**

41  
42 **SECTION 1113. (1) The State Department of Geology and Mineral Industries is abolished.**  
43 **On the operative date of this section, the tenure of office of the governing board of the State**  
44 **Department of Geology and Mineral Industries and of the State Geologist ceases.**

45 **(2) All the duties, functions and powers of the State Department of Geology and Mineral**

1 Industries are imposed upon, transferred to and vested in the Oregon Department of Natural  
2 Resources.

3  
4 (Transfer of Records, Property and Employees)

5  
6 **SECTION 1114.** (1) The governing board of the State Department of Geology and Mineral  
7 Industries and the State Geologist shall:

8 (a) Deliver to the Oregon Department of Natural Resources all records and property  
9 within the jurisdiction of the governing board or the State Geologist that relate to the duties,  
10 functions and powers transferred by section 1113 of this 2011 Act; and

11 (b) Transfer to the Oregon Department of Natural Resources those employees engaged  
12 primarily in the exercise of the duties, functions and powers transferred by section 1113 of  
13 this 2011 Act.

14 (2) The Director of the Oregon Department of Natural Resources shall take possession  
15 of the records and property, and shall take charge of the employees and employ them in the  
16 exercise of the duties, functions and powers transferred by section 1113 of this 2011 Act,  
17 without reduction of compensation but subject to change or termination of employment or  
18 compensation as provided by law.

19 (3) The Governor shall resolve any dispute between the State Department of Geology and  
20 Mineral Industries and the Oregon Department of Natural Resources, or the State Geologist  
21 and the Oregon Department of Natural Resources, relating to transfers of records, property  
22 and employees under this section, and the Governor's decision is final.

23  
24 (Transfer of Unexpended Revenues)

25  
26 **SECTION 1115.** (1) The unexpended balances of amounts authorized to be expended by the  
27 State Department of Geology and Mineral Industries for the biennium beginning July 1, 2011,  
28 from revenues dedicated, continuously appropriated, appropriated or otherwise made avail-  
29 able for the purpose of administering and enforcing the duties, functions and powers trans-  
30 ferred by section 1113 of this 2011 Act are transferred to and are available for expenditure  
31 by the Oregon Department of Natural Resources for the biennium beginning July 1, 2011, for  
32 the purpose of administering and enforcing the duties, functions and powers transferred by  
33 section 1113 of this 2011 Act.

34 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
35 expenditures by the State Department of Geology and Mineral Industries remain applicable  
36 to expenditures by the Oregon Department of Natural Resources under this section.

37  
38 (Action, Proceeding and Prosecution)

39  
40 **SECTION 1116.** The transfer of duties, functions and powers to the Oregon Department  
41 of Natural Resources by section 1113 of this 2011 Act does not affect any action, proceeding  
42 or prosecution involving or with respect to such duties, functions and powers begun before  
43 and pending at the time of the transfer, except that the Oregon Department of Natural Re-  
44 sources is substituted for the State Department of Geology and Mineral Industries in the  
45 action, proceeding or prosecution.

## (Liability, Duty and Obligation)

**SECTION 1117.** (1) Nothing in sections 1113 to 1119 of this 2011 Act, the amendments to statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257, 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS 516.020, 516.080, 516.090, 516.120, 516.130, 516.133, 517.735 or 522.275 by section 2161 of this 2011 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 1113 of this 2011 Act. The Oregon Department of Natural Resources may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the State Department of Geology and Mineral Industries legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 1113 of this 2011 Act are transferred to the Oregon Department of Natural Resources. For the purpose of succession to these rights and obligations, the Oregon Department of Natural Resources is a continuation of the State Department of Geology and Mineral Industries and not a new authority.

## (Rules)

**SECTION 1118.** (1) Notwithstanding the transfer of duties, functions and powers by section 1113 of this 2011 Act, the rules of the State Department of Geology and Mineral Industries in effect on the operative date of section 1113 of this 2011 Act continue in effect until superseded or repealed by rules of the Oregon Department of Natural Resources.

(2) References in rules of the State Department of Geology and Mineral Industries to the State Department of Geology and Mineral Industries, or to an officer or employee of the State Department of Geology and Mineral Industries, are considered to be references to the Oregon Department of Natural Resources or to an officer or employee of the Oregon Department of Natural Resources.

## (References)

**SECTION 1119.** Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the State Department of Geology and Mineral Industries, or to an officer or employee of the State Department of Geology and Mineral Industries, the reference is considered to be a reference to the Oregon Department of Natural Resources or to an officer or employee of the Oregon Department of Natural Resources.

## (Agency Name Change)

**SECTION 1120.** (1) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the "State Department of Geology and Mineral Industries," wherever they occur in statutory law, words designating the "Oregon Department of Natural Resources."

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel

1 **may substitute for words designating the “State Geologist,” wherever they occur in statutory**  
 2 **law, words designating the “Director of the Oregon Department of Natural Resources.”**

3  
 4 (Account Name Change)

5  
 6 **SECTION 1121.** For the purpose of harmonizing and clarifying statutory law, the Legis-  
 7 **lative Counsel may substitute for words designating the “Geology and Mineral Industries**  
 8 **Account,” wherever they occur in statutory law, words designating the “Oregon Natural**  
 9 **Resources Fund.”**

10  
 11 (Conforming Amendments)

12  
 13 **SECTION 1122.** ORS 274.800 is amended to read:

14 274.800. Sufficient bonding requirements, as determined by the [*Department of Geology and*  
 15 *Mineral Industries*] **Oregon Department of Natural Resources**, shall be specified to secure to the  
 16 State of Oregon performance and the faithful compliance by the lessee with the terms of the lease,  
 17 and further to secure adjacent landowners and the public generally as to all proper claims for  
 18 damages arising from operations thereunder.

19 **SECTION 1123.** ORS 455.446 is amended to read:

20 455.446. (1)(a) New essential facilities described in ORS 455.447 (1)(a)(A), (B) and (G) and new  
 21 special occupancy structures described in ORS 455.447 (1)(e)(B), (C) and (E) may not be constructed  
 22 in the tsunami inundation zone established under paragraph (c) of this subsection. The provisions  
 23 of this paragraph apply to buildings with a capacity greater than 50 individuals for every public,  
 24 private or parochial school through secondary level and child care centers.

25 (b) The [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
 26 **Resources** shall establish the parameters of the area of expected tsunami inundation based on sci-  
 27 entific evidence that may include geologic field data and tsunami modeling.

28 (c) The [*governing board of the State Department of Geology and Mineral Industries*] **Director**  
 29 **of the Oregon Department of Natural Resources**, by rule, shall determine the tsunami inundation  
 30 zone based on the parameters established by the department. The [*board*] **director** shall adopt the  
 31 zone as determined by the department under paragraph (b) of this subsection except as modified by  
 32 the [*board*] **director** under paragraph (d) of this subsection.

33 (d) The [*board*] **director** may grant exceptions to restrictions in the tsunami inundation zone  
 34 established under paragraph (c) of this subsection after public hearing and a determination by the  
 35 [*board*] **director** that the applicant has demonstrated that the safety of building occupants will be  
 36 ensured to the maximum reasonable extent:

- 37 (A) By addressing the relative risks within the zone.
- 38 (B) By balancing competing interests and other considerations.
- 39 (C) By considering mitigative construction strategies.
- 40 (D) By considering mitigative terrain modification.

41 (e) The provisions of paragraph (a) of this subsection do not apply:

- 42 (A) To fire or police stations where there is a need for strategic location; and
- 43 (B) To public schools if there is a need for the school to be within the boundaries of a school  
 44 district and fulfilling that need cannot otherwise be accomplished.

45 (f) All materials supporting an application for an exception to the tsunami inundation zone are

1 public records under ORS 192.005 to 192.170 and must be retained in the library of the department  
2 for periods of time determined by *[its governing board]* **the director**.

3 (g) The applicant for an exception to the tsunami inundation zone established under paragraph  
4 (c) of this subsection shall pay any costs for department review of the application and the costs, if  
5 any, of the approval process.

6 (2) The definitions in ORS 455.447 apply to this section.

7 (3) The provisions of this section do not apply to water-dependent and water-related facilities,  
8 including but not limited to docks, wharves, piers and marinas.

9 (4) Decisions made under this section are not land use decisions under ORS 197.015 *[(10)]* **(6)**.

10 **SECTION 1124.** ORS 455.447 is amended to read:

11 455.447. (1) As used in this section, unless the context requires otherwise:

12 (a) "Essential facility" means:

13 (A) Hospitals and other medical facilities having surgery and emergency treatment areas;

14 (B) Fire and police stations;

15 (C) Tanks or other structures containing, housing or supporting water or fire-suppression mate-  
16 rials or equipment required for the protection of essential or hazardous facilities or special occu-  
17 pancy structures;

18 (D) Emergency vehicle shelters and garages;

19 (E) Structures and equipment in emergency-preparedness centers;

20 (F) Standby power generating equipment for essential facilities; and

21 (G) Structures and equipment in government communication centers and other facilities required  
22 for emergency response.

23 (b) "Hazardous facility" means structures housing, supporting or containing sufficient quantities  
24 of toxic or explosive substances to be of danger to the safety of the public if released.

25 (c) "Major structure" means a building over six stories in height with an aggregate floor area  
26 of 60,000 square feet or more, every building over 10 stories in height and parking structures as  
27 determined by Department of Consumer and Business Services rule.

28 (d) "Seismic hazard" means a geologic condition that is a potential danger to life and property  
29 that includes but is not limited to earthquake, landslide, liquefaction, tsunami inundation, fault dis-  
30 placement, and subsidence.

31 (e) "Special occupancy structure" means:

32 (A) Covered structures whose primary occupancy is public assembly with a capacity greater  
33 than 300 persons;

34 (B) Buildings with a capacity greater than 250 individuals for every public, private or parochial  
35 school through secondary level or child care centers;

36 (C) Buildings for colleges or adult education schools with a capacity greater than 500 persons;

37 (D) Medical facilities with 50 or more resident, incapacitated patients not included in subpara-  
38 graphs (A) to (C) of this paragraph;

39 (E) Jails and detention facilities; and

40 (F) All structures and occupancies with a capacity greater than 5,000 persons.

41 (2) The Department of Consumer and Business Services shall consult with the Seismic Safety  
42 Policy Advisory Commission and the *[State Department of Geology and Mineral Industries]* **Oregon**  
43 **Department of Natural Resources** prior to adopting rules. Thereafter, the Department of Con-  
44 sumer and Business Services may adopt rules as set forth in ORS 183.325 to 183.410 to amend the  
45 state building code to:

1 (a) Require new building sites for essential facilities, hazardous facilities, major structures and  
 2 special occupancy structures to be evaluated on a site specific basis for vulnerability to seismic  
 3 geologic hazards.

4 (b) Require a program for the installation of strong motions accelerographs in or near selected  
 5 major buildings.

6 (c) Provide for the review of geologic and engineering reports for seismic design of new  
 7 buildings of large size, high occupancy or critical use.

8 (d) Provide for filing of noninterpretive seismic data from site evaluation in a manner accessible  
 9 to the public.

10 (3) For the purpose of defraying the cost of applying the regulations in subsection (2) of this  
 11 section, there is hereby imposed a surcharge in the amount of one percent of the total fees collected  
 12 under the structural and mechanical specialty codes for essential facilities, hazardous facilities,  
 13 major structures and special occupancy structures, which fees shall be retained by the jurisdiction  
 14 enforcing the particular specialty code as provided in ORS 455.150 or enforcing a building inspection  
 15 program under ORS 455.148.

16 (4) Developers of new essential facilities, hazardous facilities and major structures described in  
 17 subsection (1)(a)(E), (b) and (c) of this section and new special occupancy structures described in  
 18 subsection (1)(e)(A), (D) and (F) of this section that are located in an identified tsunami inundation  
 19 zone shall consult with the [*State Department of Geology and Mineral Industries*] **Oregon Depart-**  
 20 **ment of Natural Resources** for assistance in determining the impact of possible tsunamis on the  
 21 proposed development and for assistance in preparing methods to mitigate risk at the site of a po-  
 22 tential tsunami. Consultation shall take place prior to submittal of design plans to the building of-  
 23 ficial for final approval.

24 **SECTION 1125.** ORS 516.010 is amended to read:

25 516.010. As used in this chapter:

26 [(1) "*Board*" means the governing board of the State Department of Geology and Mineral Indus-  
 27 tries established pursuant to ORS 516.080.]

28 [(2) "*Department*" means the State Department of Geology and Mineral Industries established  
 29 pursuant to ORS 516.020.]

30 [(3)] (1) "Mine" includes all mineral-bearing properties of whatever kind and character, whether  
 31 underground, quarry, pit, well, spring or other source from which any mineral substance is obtained.

32 [(4)] (2) "Mineral" includes any and all mineral products, metallic and nonmetallic, solid, liquid  
 33 or gaseous, and mineral waters of all kinds.

34 [(5)] (3) "Mineral industries" includes all enterprises engaged in developing and exploiting the  
 35 natural substances of the earth.

36 [(6)] (4) "Geologic hazard" means a geologic condition that is a potential danger to life and  
 37 property which includes but is not limited to earthquake, landslide, flooding, erosion, expansive soil,  
 38 fault displacement, volcanic eruption and subsidence.

39 [(7)] (5) "Geology" means the study of the earth, and in particular the study of the origin, his-  
 40 tory and topographic form of rocks, ores and minerals, either under the ground or upon the surface,  
 41 and their alteration by surface agencies, such as wind, water, ice and other agencies, and the eco-  
 42 nomics of their use.

43 **SECTION 1126.** ORS 516.030 is amended to read:

44 516.030. [*The State Department of Geology and Mineral Industries shall:*] **For purposes related**  
 45 **to the regulation of this state's mines, mineral industries and geologic hazards, the Oregon**

1 **Department of Natural Resources shall:**

2 (1) Initiate and conduct studies and surveys of the geological and mineral resources of the state  
3 and their commercial utility.

4 (2) Conduct as a continuing project a geological survey of Oregon, including quadrangle geologic  
5 mapping, either as a department undertaking or jointly with federal or other agencies.

6 (3) Initiate, carry out or administer studies and programs that will, in cooperation with univer-  
7 sities, federal, state and local government agencies, reduce the loss of life and property by under-  
8 standing and mitigating geologic hazards. These studies and programs may include but need not be  
9 limited to:

10 (a) Statewide hazard assessment, including identification and mapping of geologic hazards, esti-  
11 mation of their potential consequences and likelihood of occurrence and monitoring and assessment  
12 of potentially hazardous geologic activity;

13 (b) Studies of paleoseismicity including but not limited to providing evidence of whether pre-  
14 historic subduction zone and crustal earthquakes have occurred in Oregon;

15 (c) Operation of a state seismic network in cooperation with universities or federal agencies or  
16 both through the strategic placement of instrumentation to monitor earthquake activity as it occurs;  
17 and

18 (d) Operation of a state geodetic network through the monitoring and periodic survey of markers  
19 in order to detect modern deformation of the earth's crust and the subsequent buildup of stress.

20 (4) Consider and study kindred scientific and economic questions in the field of geology and  
21 mining that are deemed of value to the people of Oregon.

22 (5) Cooperate with federal or other agencies for the performance of work in Oregon deemed of  
23 value to the state and of advantage to its people, under rules, terms and conditions to be arranged  
24 between the *[governing board of the State Department of Geology and Mineral Industries]* **Director**  
25 **of the Oregon Department of Natural Resources** and such agencies. But in no case shall the cost  
26 to the department be in excess of the amount appropriated therefor, and the results of any joint  
27 undertakings shall be made available without restrictions to this department.

28 (6) Serve as a bureau of information and advisory services concerning geologic resources and  
29 hazards, including maintenance of a library, a public education program and a geologic database;  
30 review of functions; expert advice to federal, state and local government agencies; and operation of  
31 a clearinghouse for post-hazard event earth science investigations. The department shall provide  
32 technical assistance to local governments on aggregate mining and reclamation during preparation  
33 and amendment of comprehensive plans and land use regulations.

34 (7) Serve as a bureau of information concerning Oregon mineral resources, mineral industries  
35 and geology, conduct a mineral survey of the state, and catalog each and every mineral occurrence  
36 and deposit, metallic and nonmetallic, together with its location, production, method of working,  
37 name of owner or agent, and other detailed information capable of being tabulated and published in  
38 composite form for the use, guidance and benefit of the mineral industry of the state and of the  
39 people in general and deemed necessary in compiling mineral statistics of the state.

40 **(8) Publish and distribute information concerning mineral resources, mineral industries,**  
41 **geology, geological resources and hazards, all notes, charts and maps created by the depart-**  
42 **ment during the department's geological investigations and any scientific, economic and**  
43 **tourism information related to geology and mineral industries.**

44 *[(8)]* (9) Collect a library of literature describing the geology and mineral deposits, metallic and  
45 nonmetallic, of Oregon.

1        [(9)] (10) Make qualitative examinations of rocks, mineral samples and specimens.

2        [(10)] (11) Study minerals and ores, additional uses for the state's minerals, and explore the  
3 possibilities for using improved treatment, processes, mining methods and reclamation techniques for  
4 regulated mines and abandoned mined lands.

5        [(11)] (12) Establish in the department or in cooperation with universities and other organiza-  
6 tions a repository for drill cores and samples considered by the department to be of long term use  
7 in developing information.

8        **SECTION 1127.** ORS 516.035 is amended to read:

9        516.035. [*The State Department of Geology and Mineral Industries may:*] **For purposes related**  
10 **to the regulation of this state's mines, mineral industries and geologic hazards, the Oregon**  
11 **Department of Natural Resources may:**

12        (1) Make or have made qualitative and quantitative determinations of ores and minerals that  
13 are submitted for such purpose and that are from within the State of Oregon. The department shall  
14 mail to the sender of such ores or minerals the results of such determination as soon as practicable  
15 after making such determination. Such services shall be performed by the department at the request  
16 of a member of the general public at a reasonable charge.

17        (2) Perform geological surveys or analyses at the request of any state agency if department  
18 funding allows undertaking such surveys or analyses and may make reasonable charges for these  
19 services.

20        (3) Collect and exhibit specimens, samples and photographs, models and drawings of appliances  
21 in the mines, mills and metallurgical plants of Oregon.

22        (4) Enter into contracts or agreements with the federal government or any agency thereof,  
23 pursuant to which the department shall operate or act as the agent of the federal government in the  
24 operation of a mineral assay service or similar analytical service, the cost of which is to be reim-  
25 bursed by the federal government.

26        (5) Establish, equip and operate a geochemical laboratory which may:

27        (a) Make geochemical determinations at the request of any department, institution or other  
28 agency of the state, without any charge in excess of the actual cost thereof.

29        (b) Make other geochemical determinations at a reasonable charge in excess of the actual cost  
30 thereof.

31        **SECTION 1128.** ORS 516.070 is amended to read:

32        516.070. [(1) *There is established in the General Fund of the State Treasury an account to be*  
33 *known as the Geology and Mineral Industries Account. All moneys received by the State Department*  
34 *of Geology and Mineral Industries shall be paid over to the State Treasurer and by the State Treasurer*  
35 *deposited in the General Fund to the credit of the account. All moneys within the account are contin-*  
36 *uously appropriated for the use of the department in carrying out its lawful functions.*]

37        [(2)] (1) The Federal Locatable Mineral Royalties Subaccount is established within the [*Geology*  
38 *and Mineral Industries Account. Notwithstanding subsection (1) of this section,*] **Oregon Natural**  
39 **Resources Fund.** All moneys received from the federal government by the State of Oregon as the  
40 state's distributive share of the amounts collected for royalties for locatable minerals shall be  
41 credited to the subaccount. All moneys in the Federal Locatable Mineral Royalties Subaccount are  
42 continuously appropriated to the [*State Department of Geology and Mineral Industries*] **Oregon De-**  
43 **partment of Natural Resources** to conduct investigations of new mineral resources and to carry  
44 out the provisions of ORS 517.840 (1)(f).

45        [(3)] (2) The State Treasurer may invest and reinvest the moneys in the Federal Locatable



1 Mineral Royalties Subaccount as provided in ORS 293.701 to 293.820. Interest from the moneys de-  
2 posited in the subaccount and earnings from investment of the moneys in the subaccount shall be  
3 credited to the subaccount.

4 [(4)] (3) The Mined Land Regulation and Reclamation Program Subaccount is established within  
5 the [*Geology and Mineral Industries Account*] **Oregon Natural Resources Fund**. Notwithstanding  
6 subsection (1) of this section, all moneys received by the [*State Department of Geology and Mineral*  
7 *Industries*] **department** from fees assessed pursuant to ORS 517.800 shall be credited to the subac-  
8 count. All moneys in the subaccount are continuously appropriated to the department for the pur-  
9 pose of administering ORS 517.702 to 517.951.

10 **SECTION 1129.** ORS 516.100 is amended to read:

11 516.100. (1) The [*State Department of Geology and Mineral Industries*] **Oregon Department of**  
12 **Natural Resources** shall have prepared, printed and published reports, pamphlets, charts and maps,  
13 embracing the matters addressed in ORS 516.030 and ORS chapters 517, 520 and 522. All maps,  
14 charts, special bulletins and other publications shall be for public distribution, but the department  
15 may make a reasonable charge to cover publication and distribution costs.

16 (2)(a) When a report embodies results of surveys or studies of economic importance, no infor-  
17 mation of any kind concerning the contents of such report shall be given out prior to publication,  
18 if such prior information could place the recipient in a preferential position as regards its use.

19 (b) Notwithstanding the provisions of paragraph (a) of this subsection, if an investigation of a  
20 mineral property or geologic hazard within the state is made by an employee of the department at  
21 the request of either the owner or a person in control of such property, results of the investigation  
22 shall be conveyed to the owner or person in control prior to the publication of a report of such re-  
23 sults. After they have been conveyed to the owner or person, the results shall be open to public  
24 inspection prior to their publication.

25 **SECTION 1130.** ORS 516.135 is amended to read:

26 516.135. (1) In carrying out its duties related to mineral resources, mineral industries and  
27 geology, the [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
28 **Resources** shall act in a manner that is consistent with the goal set forth in ORS 468B.155.

29 (2) In order to assist in the development of a statewide repository of information about Oregon's  
30 ground water resource, the department shall provide any information, acquired by the department  
31 in carrying out its statutory duties, that is related to ground water quality to the centralized re-  
32 pository established pursuant to ORS 468B.167.

33 **SECTION 1131.** ORS 517.705 is amended to read:

34 517.705. (1) Any person engaging in onshore exploration that disturbs more than one surface  
35 acre or involves drilling to greater than 50 feet shall obtain an exploration permit. Prior to receiv-  
36 ing an exploration permit, an applicant shall submit a permit application on a form provided by the  
37 [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural Resources**.  
38 Information required shall include the information necessary to assess impacts of the proposed ex-  
39 ploration, including but not limited to:

40 (a) The name and address of the surface owner and mineral owner.

41 (b) The names and addresses of the persons conducting the exploration.

42 (c) The name and address of any designated agent.

43 (d) A brief description of the exploration activities, including but not limited to:

44 (A) The amount of road to be constructed;

45 (B) The number, depth and location of proposed drill holes;

1 (C) The number, depth and location of proposed monitoring wells; and

2 (D) The number, length, width and depth of exploration trenches.

3 (e) Provisions for the reclamation of surface disturbance caused by exploration activities.

4 (f) Exploration drill hole or monitoring well abandonment procedures, including but not limited  
5 to:

6 (A) The capping of all holes;

7 (B) The plugging of any hole producing surface flow; and

8 (C) Appropriate sealing for any holes which have encountered aquifers.

9 (g) A map with the location of the proposed exploration and delineation of exploration bounda-  
10 ries.

11 (2) Any production records, mineral assessments or trade secrets submitted as part of the ap-  
12 plication under subsection (1) of this section shall be confidential.

13 **SECTION 1132.** ORS 517.710 is amended to read:

14 517.710. (1) A fee[,] not to exceed \$400 shall accompany the application described in ORS  
15 517.705. The [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
16 **Resources** may renew the permit annually on the anniversary date of the issuance of the permit,  
17 provided the person conducting the exploration is not in violation of any provision of ORS 517.702  
18 to 517.755, 517.790, 517.810, 517.910 and 517.920 and pays a renewal fee not to exceed \$300.

19 (2) A permit shall be subject to suspension and revocation as provided by ORS 517.702 to  
20 517.755, 517.790, 517.810, 517.910 and 517.920.

21 **SECTION 1133.** ORS 517.725 is amended to read:

22 517.725. (1) The [*State Department of Geology and Mineral Industries*] **Oregon Department of**  
23 **Natural Resources** may inspect the exploration site prior to initiation of exploration to review the  
24 existing environmental conditions, assess impacts of the proposed exploration and establish the  
25 amount of financial assurance required.

26 (2) The department may inspect lands not later than 60 days following notification by the person  
27 conducting the exploration that reclamation is complete. If the department determines that the rec-  
28 lamation complies with the approved reclamation plan, including establishment of vegetation, the  
29 department may release the bond or other security required by ORS 517.810 within 60 days of that  
30 determination.

31 (3) The department is authorized to inspect any ongoing exploration site in order to establish  
32 compliance with ORS 517.702 to 517.755, 517.790, 517.810, 517.910 and 517.920.

33 **SECTION 1134.** ORS 517.730 is amended to read:

34 517.730. (1) [*The State Department of Geology and Mineral Industries shall consult with the Water*  
35 *Resources Department on the development of rules covering*] **In accordance with ORS chapter 183,**  
36 **the Oregon Department of Natural Resources shall adopt rules that govern** drill hole or  
37 monitoring well abandonment procedures, including procedures for the abandonment of holes and  
38 wells for which no exploration permit is required in ORS 517.705.

39 (2) Nothing in ORS 517.702 to 517.755, 517.790, 517.810, 517.910 and 517.920 prohibits the con-  
40 version of exploration drill holes or monitoring wells to water wells, provided that the conversion  
41 conforms to the standards and rules of the [*Water Resources*] department.

42 **SECTION 1135.** ORS 517.740 is amended to read:

43 517.740. [*In consultation with the Environmental Quality Commission, Water Resources Commis-*  
44 *sion and the State Land Board, the State Department of Geology and Mineral Industries governing*  
45 *board*] **After consulting with the Environmental Quality Commission and the State Land**

1 **Board, the Director of the Oregon Department of Natural Resources** shall adopt rules to carry  
2 out the provisions of ORS 517.702 to 517.755, 517.790, 517.810, 517.910 and 517.920.

3 **SECTION 1136.** ORS 517.750 is amended to read:

4 517.750. As used in ORS 517.702 to 517.989, unless the context requires otherwise:

5 [(1) “Board” means the governing board of the State Department of Geology and Mineral Indus-  
6 tries.]

7 [(2)] (1) “Completion” means termination of surface mining activities including reclamation of  
8 the surface-mined land in accordance with the approved reclamation plan and operating permit.

9 [(3) “Department” means the State Department of Geology and Mineral Industries.]

10 [(4)] (2) “Exploration” means all activities conducted on or beneath the surface of the earth for  
11 the purpose of determining presence, location, extent, grade or economic viability of a deposit.  
12 “Exploration” does not include prospecting or chemical processing of minerals.

13 [(5)] (3) “Explorer” means, notwithstanding the provisions of ORS 517.810 (2), any individual,  
14 public or private corporation, political subdivision, agency, board or department of this state, any  
15 municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that  
16 is engaged in exploration.

17 [(6)] (4) “Landowner” means:

18 (a) The person possessing fee title to the natural mineral deposit being surface mined or ex-  
19 plored; and

20 (b) The owner of an equitable interest in land that is subject to a deed of trust.

21 [(7)] (5) “Minerals” includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid  
22 material or substance excavated for commercial, industrial or construction use from natural deposits  
23 situated within or upon lands in this state.

24 [(8)] (6) “Operator” means any individual, public or private corporation, political subdivision,  
25 agency, board or department of this state, any municipality, partnership, association, firm, trust,  
26 estate or any other legal entity whatsoever that is engaged in surface mining operations.

27 [(9)] (7) “Overburden” means the soil, rock and similar materials that lie above natural deposits  
28 of minerals.

29 [(10)] (8) “Person” means any person, any federal agency or any public body, as defined in ORS  
30 174.109.

31 [(11)] (9) “Processing” includes, but is not limited to, crushing, washing, milling and screening  
32 as well as the batching and blending of mineral aggregate into asphalt and portland cement concrete  
33 located within the operating permit area.

34 [(12)] (10) “Reclamation” means the employment in a surface mining operation or exploration  
35 of procedures reasonably designed to:

36 (a) Minimize, as much as practicable, the adverse effects of the surface mining operation or ex-  
37 ploration on land, air and water resources; and

38 (b) Provide for the rehabilitation of surface resources adversely affected by the surface mining  
39 operations or exploration through the rehabilitation of plant cover, soil stability and water re-  
40 sources and through other measures that contribute to the subsequent beneficial use of the explored,  
41 mined or reclaimed lands.

42 [(13)] (11) “Reclamation plan” means a written proposal, submitted to the department as re-  
43 quired by ORS 517.702 to 517.989 and subsequently approved by the **Oregon Department of Natural**  
44 **Resources** as provided in ORS 517.702 to 517.989, for the reclamation of the land area adversely  
45 affected by a surface mining operation or exploration and including, but not limited to the following

1 information:

2 (a) Proposed measures to be undertaken by the operator in protecting the natural resources of  
3 adjacent lands.

4 (b) Proposed measures for the rehabilitation of the explored or surface-mined lands and the  
5 procedures to be applied.

6 (c) The procedures to be applied in the surface mining operation or exploration to control the  
7 discharge of contaminants and the disposal of surface mining refuse.

8 (d) The procedures to be applied in the surface mining operation or exploration in the rehabili-  
9 tation of affected stream channels and stream banks to a condition minimizing erosion,  
10 sedimentation and other factors of pollution.

11 (e) The map required by ORS 517.790 (1)(e) and such other maps and supporting documents as  
12 may be requested by the department.

13 (f) A proposed time schedule for the completion of reclamation operations.

14 (g) Requirements of the exploration permit.

15 [(14)] (12) "Surface impacts of underground mining" means all waste materials produced by  
16 underground mining and placed upon the surface including, but not limited to, waste dumps, mill  
17 tailings, washing plant fines and all surface subsidence related to underground mining.

18 [(15)] (13)(a) "Surface mining" includes all or any part of the process of mining minerals by the  
19 removal of overburden and the extraction of natural mineral deposits thereby exposed by any  
20 method by which more than 5,000 cubic yards of minerals are extracted or by which at least one  
21 acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining  
22 operations, auger mining operations, processing, surface impacts of underground mining, production  
23 of surface mining refuse and the construction of adjacent or off-site borrow pits (except those con-  
24 structed for use as access roads).

25 (b) "Surface mining" does not include:

26 (A) Excavations of sand, gravel, clay, rock or other similar materials conducted by the land-  
27 owner or tenant for the primary purpose of construction, reconstruction or maintenance of access  
28 roads on the same parcel or on an adjacent parcel that is under the same ownership as the parcel  
29 that is being excavated;

30 (B) Excavation or grading operations, reasonably necessary for farming;

31 (C) Nonsurface effects of underground mining;

32 (D) Removal of rock, gravel, sand, silt or other similar substances removed from the beds or  
33 banks of any waters of this state pursuant to a permit issued under ORS 196.800 to 196.900; or

34 (E) Excavations or reprocessing of aggregate material, or grading operations, within the high-  
35 way right of way reasonably necessary for the construction, reconstruction or maintenance of a  
36 highway as defined in ORS 801.305.

37 [(16)] (14) "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vege-  
38 tation and other materials resulting from or displaced by surface mining operations within the op-  
39 erating permit area, including all waste materials deposited in or upon lands within the operating  
40 permit area.

41 [(17)] (15) "Underground mining" means all human-made excavations below the surface of the  
42 ground through shafts or adits for the purpose of exploring for, developing or producing valuable  
43 minerals.

44 **SECTION 1136a.** ORS 517.755 is amended to read:

45 517.755. Notwithstanding the yard and acre limitations of ORS 517.750 [(15)] (13), as soon as any

1 mining operation begun after July 1, 1975, affects more than five acres of land the provisions of ORS  
2 517.702 to 517.989 apply to the mining operation.

3 **SECTION 1137.** ORS 517.770 is amended to read:

4 517.770. (1) The following mining operations are exempt from the reclamation requirements set  
5 forth in ORS 517.702 to 517.989:

6 (a) Lands within the surfaces and contours of surface mines in existence on July 1, 1972, or  
7 vertical extensions of those surfaces and contours, provided that the [*State Department of Geology*  
8 *and Mineral Industries*] **Oregon Department of Natural Resources** issued a certificate of ex-  
9 emption to the mining operation on or before October 31, 2000.

10 (b) Lands within the surfaces and contours of surface mines in existence on July 1, 1972, or  
11 vertical extensions of those surfaces and contours, provided that:

12 (A) The surface mining operations at the site were allowed under a comparable certificate of  
13 exemption that was issued by a county and current on the date of repeal of a county zoning law or  
14 ordinance described in ORS 517.780 (1); and

15 (B) The landowner or operator applies for and receives a certificate of exemption from the de-  
16 partment. An application for a certificate of exemption must be filed with the department within 90  
17 days after the date the county's repeal of a zoning law or ordinance becomes effective. If the de-  
18 partment does not approve or disapprove the application within 90 days after the date the applica-  
19 tion is filed with the department, the application will be deemed to be approved.

20 (c) Lands within the surfaces and contours of surface mining operations that are owned or op-  
21 erated by a person that, on July 1, 1972, was a party to a surface mining contract that was valid  
22 on January 1, 1971, provided that the department issued a certificate of exemption to the mining  
23 operation on or before September 20, 1985.

24 (2) A certificate of exemption terminates if the landowner or operator does not renew the cer-  
25 tificate annually.

26 **SECTION 1138.** ORS 517.775 is amended to read:

27 517.775. Notwithstanding the provisions of ORS 517.770:

28 (1) Any landowner or operator conducting surface mining on July 1, 1972, shall pay the permit  
29 fee as provided in ORS 517.800; and

30 (2) The [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
31 **Resources** shall require the landowner or operator to complete erosion stabilization upon com-  
32 pletion of mining at a mining operation exempt from reclamation under ORS 517.770.

33 **SECTION 1139.** ORS 517.780 is amended to read:

34 517.780. (1)(a) The provisions of ORS 517.702 to 517.989 and the rules and regulations adopted  
35 thereunder do not supersede any county zoning laws or ordinances in effect on July 1, 1972. How-  
36 ever, if the county zoning laws or ordinances are repealed on or after July 1, 1972, the provisions  
37 of ORS 517.702 to 517.989 and the rules and regulations adopted thereunder are controlling. The  
38 [*governing board of the State Department of Geology and Mineral Industries*] **Director of the Oregon**  
39 **Department of Natural Resources** may adopt rules and regulations with respect to matters cov-  
40 ered by county zoning laws and ordinances in effect on July 1, 1972.

41 (b) If the county zoning laws or ordinances specified in paragraph (a) of this subsection are re-  
42 pealed by a county:

43 (A) The **Oregon Department of Natural Resources** may allow a surface mining operation that  
44 previously operated under a valid county operating permit and reclamation plan to continue to op-  
45 erate for a period not to exceed one year if the landowner or operator applies for an operating

1 permit under ORS 517.790 within 60 days after the date the county's repeal of the zoning laws or  
2 ordinances becomes effective, pays all applicable fees to the department and submits a bond or se-  
3 curity to the department as required by ORS 517.810. Pending issuance of an operating permit and  
4 approval of a reclamation plan by the department, the county permit is deemed to remain in effect  
5 and is enforceable by the department.

6 (B) The department, in issuing a permit and approving a reclamation plan for a surface mining  
7 operation that previously operated under a valid county operating permit as described in paragraph  
8 (a) of this subsection, may incorporate any provisions from the county operating permit into the  
9 permit issued by the department and the reclamation plan approved by the department if the de-  
10 partment determines that the provisions provide adequate protection of the public health, safety and  
11 welfare and the environment.

12 (C) The department may issue a certificate of exemption from reclamation requirements as de-  
13 scribed in ORS 517.770 (1)(b).

14 (2) City or county operated surface mining operations that sell less than 5,000 cubic yards of  
15 minerals within a period of 12 consecutive calendar months are exempt from the state mining permit  
16 requirements of ORS 517.702 to 517.989 if the city or county adopts an ordinance that includes a  
17 general reclamation scheme establishing the means and methods of achieving reclamation for city  
18 or county operated surface mining sites exempted from the state permit requirements by this sub-  
19 section.

20 **SECTION 1140.** ORS 517.790 is amended to read:

21 517.790. (1) A landowner or operator may not allow or engage in surface mining on land not  
22 surface mined on July 1, 1972, without holding a valid operating permit from the [*State Department*  
23 *of Geology and Mineral Industries*] **Oregon Department of Natural Resources** for the surface  
24 mining operation. A separate permit is required for each separate surface mining operation. A per-  
25 son seeking an operating permit from the department shall submit an application on a form provided  
26 by the department that contains the following information:

27 (a) The name and address of the landowner and the operator and the names and addresses of  
28 any persons designated by them as their agents for the service of process.

29 (b) The materials for which the operation is to be conducted.

30 (c) The type of surface mining to be employed in the operation.

31 (d) The proposed date for the initiation of the operation.

32 (e) The size and legal description of the lands that will be affected by the operation, and, if more  
33 than 10 acres of land will be affected by the operation and if the department determines that the  
34 conditions warrant it, a map of the lands to be surface mined that includes the boundaries of the  
35 affected lands, topographic details of the lands, the location and names of all streams, roads, rail-  
36 roads, utility facilities, wells, irrigation ditches, ponds, stockpiles, buffers, setbacks and excavation  
37 boundaries within or adjacent to the lands, the location of all proposed access roads to be protected  
38 or constructed in conducting the operation and the names and addresses of the owners of all surface  
39 and mineral interests of the lands included within the surface mining area.

40 (f) If practicable, a plan for visual screening by vegetation or otherwise that will be established  
41 and maintained on the lands within the operation for the purpose of screening the operation from  
42 the view of persons using adjacent public highways, public parks and residential areas.

43 (g) The type of monitoring well abandonment procedures.

44 (h) A proposed reclamation plan that is acceptable to and approved by the department.

45 (i) Any other information that the department considers pertinent in its review of the applica-

1 tion.

2 (2) The department may waive the requirement for preparation and approval of a reclamation  
3 plan if:

4 (a) The operation is conducted as part of the on-site construction of a building, public works  
5 project or other physical improvement of the subject property;

6 (b) The operation is reasonably necessary for such construction; and

7 (c) The proposed improvements are authorized by the local jurisdiction with land use authority.

8 (3) The department may not issue an operating permit to an operator other than the owner or  
9 owners of the surface and mineral interests of the lands included within the surface mining area  
10 unless the operator:

11 (a) Has written approval from the owner or owners of all surface and mineral interests of the  
12 lands included within the surface mining area; and

13 (b) Maintains a legal interest in the lands that is sufficient to ensure that the operator has the  
14 authority to operate and reclaim the lands as provided in the operating permit and reclamation plan.

15 (4) The department may refuse to issue an operating permit to a person who has not, in the  
16 determination of the department, substantially complied with the conditions of an operating permit  
17 or reclamation plan, the provisions of this chapter or the rules adopted by the department to carry  
18 out the purposes of this chapter.

19 **SECTION 1141.** ORS 517.795 is amended to read:

20 517.795. (1) The [*State Department of Geology and Mineral Industries*] **Oregon Department of**  
21 **Natural Resources** shall consult with other state agencies as necessary to ensure that rules de-  
22 veloped by the department and those agencies regarding exploration or monitoring well require-  
23 ments for sites described under ORS 517.790 do not conflict.

24 (2) The department and any other state agencies imposing requirements for exploration or  
25 monitoring wells for sites described under ORS 517.790 may enter into agreements for the depart-  
26 ment to act on behalf of the agencies in informing the landowner or operator of the requirements  
27 and overseeing enforcement of the requirements.

28 **SECTION 1142.** ORS 517.800 is amended to read:

29 517.800. (1)(a) Except for an application for a chemical process mining operation submitted under  
30 ORS 517.952 to 517.989, each applicant for an operating permit under ORS 517.702 to 517.989 shall  
31 pay to the [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
32 **Resources** a fee established by the [*State Geologist*] **Director of the Oregon Department of Na-**  
33 **tural Resources** in an amount not to exceed \$1,260.

34 (b) If an application for a new permit or an amendment to an existing permit requires extraor-  
35 dinary department resources because of concerns about slope stability or proximity to waters of the  
36 state or other environmentally sensitive areas, the applicant shall pay to the department an addi-  
37 tional fee in an amount determined by the [*State Geologist*] **director** to be adequate to cover the  
38 additional costs for staff and other related expenses. The [*State Geologist*] **director** shall consult  
39 with the applicant when determining the amount of the fee.

40 (2) Annually, each holder of an operating permit shall pay to the department a base fee of \$635,  
41 plus \$0.0075 per ton of aggregate or mineral ore extracted during the previous 12-month period.

42 (3) If a reclamation plan is changed, the operator may be assessed for staff time and other re-  
43 lated costs an amount not to exceed \$1,260 in addition to the annual renewal fee.

44 (4) If, at operator request, the department responds to requests for information required by a  
45 local government in making a land use planning decision on behalf of the operator for a specific site,

1 the [State Geologist] **director** may require the operator to pay the department a fee for staff time  
 2 and related costs. The department shall notify the operator in advance of the estimated costs of  
 3 providing the information, and the actual amount assessed shall not exceed the estimate provided  
 4 by the department.

5 (5) The [State Geologist] **director** may require the operator of a site to pay to the department  
 6 a special inspection fee in an amount not to exceed \$200 for an inspection conducted under the  
 7 following circumstances:

8 (a) Investigation of surface mining operations conducted without the operating permit required  
 9 under ORS 517.790; or

10 (b) Investigation of surface mining operations conducted outside the area authorized in an op-  
 11 erating permit.

12 (6) Upon request of an applicant or operator, the department shall provide an itemized list and  
 13 documentation of expenses used to determine a fee under subsection (1)(b), (3) or (4) of this section.

14 (7) Notwithstanding the per ton fee established in subsection (2) of this section, the [governing  
 15 board of the department] **Director of the Oregon Department of Natural Resources** may lower  
 16 to zero or raise the per ton fee up to \$0.0085 if necessary to provide financial certainty to the de-  
 17 partment or to reflect actual expenses of the department in administering ORS 517.702 to 517.951.  
 18 If the per ton fee established in subsection (2) of this section is raised by the [governing board] **di-**  
 19 **rector**, the additional amount of money collected by the department shall be deposited in the Mined  
 20 Land Regulation and Reclamation Program Subaccount within the [Geology and Mineral Industries  
 21 Account] **Oregon Natural Resources Fund**.

22 (8) The [governing board of the State Department of Geology and Mineral Industries] **director**:

23 (a) Shall adopt by rule a procedure for the administrative review of the determinations of fees  
 24 under this section.

25 (b) Shall adopt rules establishing the payment date for annual fees required under this section.

26 (c) May adopt rules establishing a late fee of up to five percent of the unpaid amount of an  
 27 annual fee owed under this section if the annual fee is more than 60 days past due.

28 **SECTION 1143.** ORS 517.810 is amended to read:

29 517.810. (1) Before issuing or reissuing an operating permit for any surface mining operation or  
 30 issuing or reissuing an exploration permit for any exploration activity, the [State Department of  
 31 Geology and Mineral Industries] **Oregon Department of Natural Resources** shall require that the  
 32 applicant for the permit file with it a bond or security acceptable to the department in a sum to be  
 33 determined by the department but in an amount not to exceed the total cost for reclamation if the  
 34 department were to perform the reclamation. [The decision of the department may be appealed to the  
 35 governing board of the State Department of Geology and Mineral Industries as provided in ORS  
 36 chapter 183.] The bond or security shall be conditioned upon the faithful performance of the recla-  
 37 mation plan and of the other requirements of ORS 517.702 to 517.989 and the rules adopted there-  
 38 under.

39 (2) Nothing in this section shall apply to any public body, as defined in ORS 174.109.

40 (3) In lieu of the bond or other security required of the applicant in subsection (1) of this sec-  
 41 tion, the department may accept a similar security from the landowner, equal to the estimated cost  
 42 of reclamation as determined by the department in consultation with the operator or explorer. [The  
 43 decision of the department may be appealed to the governing board as provided in ORS chapter 183.]

44 (4) In lieu of the bond required by subsection (1) of this section, the department may accept a  
 45 blanket bond covering two or more surface mining sites or exploration projects operated by a single



1 company, owned by a single landowner or operated by all members of an established trade associ-  
 2 ation, in an amount, established by the department, not to exceed the amount of the bonds that  
 3 would be required for separate sites.

4 (5) The *[governing board]* **Director of the Oregon Department of Natural Resources** shall  
 5 identify by rule the procedures for the determination of the amount of the bond or other security  
 6 required of an applicant for an operating permit or exploration permit. The rules:

7 (a) Shall provide an opportunity for participation by the applicant as part of the procedures; and

8 (b) May allow for the amount of the bond to be calculated and adjusted based upon the total  
 9 area expected to be in a disturbed condition in the following year as a result of the surface mining  
 10 or exploration operation.

11 **SECTION 1144.** ORS 517.815 is amended to read:

12 517.815. (1) The *[State Department of Geology and Mineral Industries]* **Oregon Department of**  
 13 **Natural Resources** may establish and administer a program that provides for the pooling of recla-  
 14 mation bonds to assist:

15 (a) An operator in complying with the reclamation bond requirements of ORS 517.810;

16 (b) A person engaging in small mining operations or small exploration projects on federally  
 17 managed lands to comply with financial guarantee requirements imposed by the Federal Land Policy  
 18 and Management Act of 1976 (P.L. 94-579) or regulations adopted to implement the Act under 43  
 19 U.S.C. 1740; or

20 (c) A person engaging in any form of mining or exploration to comply with bonding requirements  
 21 imposed pursuant to county ordinance.

22 (2) The program must:

23 (a) Be designed to reduce the financial burden of obtaining a reclamation bond for mining or  
 24 exploration.

25 (b) Require each person participating in the program to:

26 (A) Pay an amount into the pool each year that is actuarially determined to enable the program  
 27 to be self-sustaining and pay for the costs of the department in administering the program;

28 (B) Execute an agreement, on a form provided by the department, to indemnify the pool for any  
 29 claims made against the reclamation bond; and

30 (C) Provide security approved by the *[State Geologist, if the State Geologist]* **Director of the**  
 31 **Oregon Department of Natural Resources if the director** considers security necessary to ensure  
 32 against the possible forfeiture of the reclamation bond.

33 (c) Use the moneys in the pool to cover the bonded liability of persons participating in the  
 34 program.

35 (d) Provide a limit on the total bonded liability of any person that may be covered under the  
 36 program.

37 (e) Provide conditions for the release or forfeiture of bonds.

38 (f) Provide that a person that participates in the program has obtained security acceptable to  
 39 the department as required by ORS 517.810.

40 (3) The department may adopt rules relating to the development and administration of the pro-  
 41 gram established under this section.

42 **SECTION 1145.** ORS 517.820 is amended to read:

43 517.820. (1) Upon good cause shown, the *[State Department of Geology and Mineral Industries]*  
 44 **Oregon Department of Natural Resources** may grant reasonable extensions of time for the com-  
 45 pletion by the landowner or operator and the submission to the department of a proposed reclama-

1 tion plan required by ORS 517.790. Each reclamation plan submitted to the department must provide  
2 that all reclamation activities shall be completed within three years after the termination of mineral  
3 extraction from the surface mining operation conducted within each separate area for which an  
4 operating permit is requested. Each such reclamation plan shall be approved by the department if  
5 it adequately provides for the reclamation of surface-mined lands.

6 (2) The department, prior to approving a proposed reclamation plan, shall consult with all other  
7 interested state agencies and appropriate local planning authorities.

8 **SECTION 1146.** ORS 517.830 is amended to read:

9 517.830. (1) Upon receipt of an application for an operating permit, the [*State Department of*  
10 *Geology and Mineral Industries*] **Oregon Department of Natural Resources** shall inspect the op-  
11 erating site described in the application. Within 90 days after the date that the application and the  
12 required permit fee are received, the department shall issue the operating permit applied for or, if  
13 it considers the application incomplete, return the application to the applicant for correction of the  
14 deficiencies indicated by the department.

15 (2) Failure by the department to act upon the reclamation plan submitted with an application  
16 for an operating permit within the 90-day period referred to in subsection (1) of this section is not  
17 a denial by the department of the operating permit applied for. The department, pending final ap-  
18 proval of a reclamation plan, may issue a provisional permit subject to reasonable limitations that  
19 may be prescribed by the department and conditioned upon the applicant's compliance with the bond  
20 and security requirements established by ORS 517.810.

21 (3)(a) Notwithstanding subsections (1) and (2) of this section, if an application involves an ag-  
22 gregate site that requires a permit issued pursuant to ORS 215.427 or 227.178, and if the local ju-  
23 risdiction requests that the application not be decided until the local jurisdiction has taken final  
24 action, the department shall make a final decision on the operating permit and reclamation plan no  
25 later than 165 days after the date a complete land use application is submitted to the local juris-  
26 diction, unless the applicant agrees to allow additional time under ORS 215.427, 215.429, 227.178 or  
27 227.179. If a plan amendment is required as part of issuance of a permit, the provisions of paragraph  
28 (b) of this subsection apply. The department may not approve an operating permit and reclamation  
29 plan if the land use application is denied.

30 (b) Notwithstanding subsections (1) and (2) of this section, if an application involves an aggre-  
31 gate site that requires amendment to a comprehensive plan, as defined in ORS 197.015, and if the  
32 local jurisdiction requests that the application not be decided until the local jurisdiction has taken  
33 final action on the plan amendment, the department may not make a final decision on the operating  
34 permit and reclamation plan until the local jurisdiction has taken final action on the plan amend-  
35 ment. The department shall make its final decision within 45 days of the date that the local juris-  
36 diction has taken final action on the plan amendment. The department may not approve an operating  
37 permit and reclamation plan if the plan amendment is denied.

38 (4) Conditions and requirements imposed on an operating permit and reclamation plan, and  
39 modifications thereto, issued subsequent to issuance of a local jurisdiction permit shall be compat-  
40 ible with the requirements and conditions of the local government permit, unless more stringent  
41 requirements are necessary to comply with the provisions of ORS 517.750 to 517.901.

42 (5) If a local jurisdiction does not request that the department delay a decision on an operating  
43 permit and reclamation plan as provided in subsection (3) of this section, the department shall:

44 (a) Give the local jurisdiction the opportunity to review and comment on the application; and

45 (b) Notify the local jurisdiction of the decision and requirements and conditions imposed by the

1 department.

2 (6) If the department refuses to approve a submitted reclamation plan, it shall notify the appli-  
3 cant, in writing, of its reasons for the refusal to approve the reclamation plan, including additional  
4 requirements as may be prescribed by the department for inclusion in the reclamation plan. Within  
5 60 days after the receipt of the notice, the applicant shall comply with the additional requirements  
6 prescribed by the department for the reclamation plan or file with the department a notice of appeal  
7 from the decision of the department with respect to the reclamation plan. If a notice of appeal is  
8 filed with the department by the applicant, the department may issue a provisional permit to the  
9 applicant.

10 (7) If an application is submitted as part of the consolidated application process under ORS  
11 517.952 to 517.989, review of the application and approval or denial of the application shall be in  
12 accordance with ORS 517.952 to 517.989. However, the review and approval or denial shall take into  
13 consideration all policy considerations for issuing a permit under ORS 517.702 to 517.989.

14 **SECTION 1147.** ORS 517.831 is amended to read:

15 517.831. (1) Except as provided in subsection (2) of this section, the [*State Department of Geology*  
16 *and Mineral Industries*] **Oregon Department of Natural Resources** may not modify an operating  
17 permit or reclamation plan without the consent of the operator.

18 (2) The department may modify an operating permit or reclamation plan without the consent of  
19 the operator if, because of changed conditions at the permitted site or because of information oth-  
20 erwise not available to the department at the time of permit issuance or reclamation plan estab-  
21 lishment, the department finds, by substantial evidence, that a modification is justified due to the  
22 potential for:

23 (a) Substantial harm to off-site property;

24 (b) Harm to threatened or endangered species; or

25 (c) Channel changes or unstable pit walls.

26 (3) Modification of an operating permit or reclamation plan without the consent of the operator  
27 must be limited to the areas or matters affected by the changed conditions or new information.

28 (4) If the department modifies an operating permit or reclamation plan without the consent of  
29 the operator, the department must provide the operator with an opportunity for alternative dispute  
30 resolution in the manner provided in ORS 183.502.

31 **SECTION 1148.** ORS 517.832 is amended to read:

32 517.832. (1) Notwithstanding ORS 517.810 and 517.830, the [*State Department of Geology and*  
33 *Mineral Industries*] **Oregon Department of Natural Resources** may issue an emergency operating  
34 permit if:

35 (a) A natural disaster, including but not limited to a flood or an earthquake, or the effects of a  
36 natural disaster threaten significant damage to property or to natural resources; and

37 (b) A surface mining operation is necessary to abate the threat.

38 (2) The [*governing board of the department*] **Director of the Oregon Department of Natural**  
39 **Resources** shall adopt rules governing the issuance of emergency operating permits. The rules shall  
40 include provisions:

41 (a) Ensuring that emergency operating permits are not issued over the objection of affected  
42 federal agencies or public bodies, as defined in ORS 174.109;

43 (b) Specifying the terms of an emergency operating permit;

44 (c) Establishing procedures for converting an emergency operating permit to a standard oper-  
45 ating permit; and

1 (d) Establishing procedures for payment of fees under ORS 517.800.

2 **SECTION 1149.** ORS 517.833 is amended to read:

3 517.833. (1) A person who by sale, assignment, lease or other means has succeeded in interest  
4 to an uncompleted surface mining operation may request that the [*State Department of Geology and*  
5 *Mineral Industries*] **Oregon Department of Natural Resources** release the existing operator from  
6 any reclamation obligations and transfer the operating permit to the successor. The department  
7 shall transfer the operating permit, unless:

8 (a) The successor does not agree to full assumption of the reclamation requirements in the op-  
9 erating permit and reclamation plan;

10 (b) The successor fails to provide a bond or security as required by ORS 517.810;

11 (c) More than one person has a claim to the property or operating permit and there is a dispute  
12 between the claimants that presents a justiciable controversy; or

13 (d) The successor, as the operator of another permitted site in this state, has failed to substan-  
14 tially comply with the conditions of an operating permit or reclamation plan, the provisions of ORS  
15 517.702 to 517.989 or the rules adopted by the department to carry out the purposes of ORS 517.702  
16 to 517.989.

17 (2) The [*governing board of the State Department of Geology and Mineral Industries*] **Director**  
18 **of the Oregon Department of Natural Resources** may adopt rules relating to the responsibilities  
19 and duties of a person requesting a transfer of an operating permit under this section.

20 **SECTION 1150.** ORS 517.834 is amended to read:

21 517.834. (1) Notwithstanding ORS 517.810 and 517.830, the [*State Department of Geology and*  
22 *Mineral Industries*] **Oregon Department of Natural Resources** may issue a temporary operating  
23 permit to a person if:

24 (a) After consultation, the local jurisdiction with land use authority over the permitted site does  
25 not raise substantive objections to the issuance of the permit;

26 (b) All interested state agencies approve of the permit issuance; and

27 (c) There is no objection from persons owning property adjacent to the permitted site.

28 (2) A temporary operating permit issued under this section is subject to reasonable limitations  
29 that may be prescribed by the department.

30 (3) Within 30 days after issuing the temporary operating permit, the operator shall:

31 (a) Comply with the bond and security requirements established by ORS 517.810;

32 (b) Pay any applicable fee pursuant to ORS 517.800; and

33 (c) Submit a reclamation plan to the department.

34 (4) The [*governing board of the department*] **Director of the Oregon Department of Natural**  
35 **Resources** shall adopt rules governing the issuance of temporary operating permits. The rules shall  
36 include provisions:

37 (a) Ensuring opportunities for notice and comment by federal agencies;

38 (b) Specifying the terms of a temporary operating permit; and

39 (c) Establishing procedures for converting a temporary operating permit to a standard operating  
40 permit.

41 **SECTION 1151.** ORS 517.835 is amended to read:

42 517.835. (1) Notwithstanding ORS 517.831, the [*State Department of Geology and Mineral Indus-*  
43 *tries*] **Oregon Department of Natural Resources** may require conditions on any new or existing  
44 surface mining operating permit or reclamation plan sufficient to prevent or mitigate off-site impacts  
45 to ground water resources from the removal of water from surface mining operations. The depart-

1 ment may include ground water monitoring as one of the conditions.

2 (2) The department shall [*consult with the operator and the Water Resources Department in as-*  
3 *sessing*] **assess** off-site impacts and in developing prevention or mitigation measures prior to im-  
4 posing any conditions on an operating permit or reclamation plan pursuant to this section.

5 **SECTION 1152.** ORS 517.836 is amended to read:

6 517.836. (1)(a) The [*governing board of the State Department of Geology and Mineral Industries*]  
7 **Director of the Oregon Department of Natural Resources** may adopt rules requiring the sur-  
8 veying or marking of surface mining operations.

9 (b) The rules may include, but are not limited to, requirements for maps or diagrams showing  
10 areas excavated or approved for excavation, setbacks or buffers established by the operating permit  
11 and the location of buildings, wells, ponds, haul roads, stockpiles, bodies of water and floodways.

12 (c) The rules may require that information required under this subsection be updated if the  
13 mining operations are subject to:

14 (A) A notice of violation under ORS 517.860;

15 (B) A suspension order under ORS 517.880; or

16 (C) A significant modification of the operating permit or reclamation plan under ORS 517.831.

17 (d) The rules may exempt mining operations from survey or marking requirements based on the  
18 size or location of the operations or on the distance of the operations from ground and surface wa-  
19 ters.

20 (e) The rules must allow for reasonable compliance schedules for existing mining operations.

21 (2) The [*governing board*] **director** may adopt rules requiring surface mining operators to collect  
22 and report information relating to amount and nature of materials excavated or processed at a  
23 surface mining operation and the impacts of mining operations on ground or surface water.

24 **SECTION 1153.** ORS 517.837 is amended to read:

25 517.837. A person holding an operating permit issued pursuant to ORS 517.830 shall, no later  
26 than March 31 of each year, file an annual report with the [*State Department of Geology and Mineral*  
27 *Industries. The governing board of the department*] **Oregon Department of Natural Resources. The**  
28 **Director of the Oregon Department of Natural Resources** shall adopt rules describing the in-  
29 formation relating to the permit and operations under the permit that must be included in the an-  
30 nual report.

31 **SECTION 1154.** ORS 517.840 is amended to read:

32 517.840. (1) The [*governing board of the State Department of Geology and Mineral Industries*]  
33 **Director of the Oregon Department of Natural Resources** shall administer and enforce the  
34 provisions of ORS 517.702 to 517.989 and:

35 (a) May conduct or cause to be conducted investigations, research, experiments and demon-  
36 strations and may collect and disseminate information related to surface mining and the reclamation  
37 of surface-mined lands.

38 (b) May cooperate with other governmental and private agencies of this state or of other states  
39 and with agencies of the federal government, including the reimbursement for any services provided  
40 by such agencies to the [*State Department of Geology and Mineral Industries*] **Oregon Department**  
41 **of Natural Resources** at its request.

42 (c) May apply for, accept and expend public and private funds made available for the reclama-  
43 tion of lands affected by surface mining in accordance with the purposes of ORS 517.702 to 517.989.

44 (d) May, in accordance with the applicable provisions of ORS chapter 183, adopt rules to carry  
45 out the provisions of ORS 517.702 to 517.989.

1 (e) Shall establish by rule a program to encourage voluntary reclamation practices that exceed  
 2 the normal reclamation standards to provide maximum enhancement and benefits from mined lands.  
 3 The program shall include incentives and other actions that will encourage voluntary reclamation  
 4 practices.

5 (f) May receive and manage abandoned mined land funds received for abandoned mined land  
 6 reclamation from the federal government.

7 (2) In consultation with the Department of Environmental Quality, *[the board]* **the director** shall  
 8 identify those naturally occurring hazardous or toxic metals and minerals that, if present in suffi-  
 9 cient concentrations at a surface mining site, subject the operator to the increased bond or security  
 10 requirements of ORS 517.950. The metals and minerals shall include, but need not be limited to,  
 11 arsenic, mercury, lead, uranium and asbestos.

12 **SECTION 1155.** ORS 517.850 is amended to read:

13 517.850. At such reasonable times as the *[State Department of Geology and Mineral Industries]*  
 14 **Oregon Department of Natural Resources** may elect, the department, after reasonable advance  
 15 notice has been given to the operator, may cause the permitted site to be inspected to determine if  
 16 the operator has complied with the operating permit, reclamation plan, this chapter and the rules  
 17 of the department.

18 **SECTION 1156.** ORS 517.860 is amended to read:

19 517.860. (1) If, from inspections conducted pursuant to ORS 517.850 or from any other source,  
 20 the *[State Department of Geology and Mineral Industries]* **Oregon Department of Natural Re-**  
 21 **sources** determines that the operator has not complied with or is not complying with the operating  
 22 permit, the reclamation plan, the provisions of this chapter or the rules of the department, the de-  
 23 partment may issue either or both of the following to the operator:

24 (a) Written notice of the violation. The notice shall specifically outline the deficiencies.

25 (b) A compliance order. The order may specify a date by which the operator shall rectify any  
 26 deficiencies. The department may extend the period if delays occasioned for causes beyond the  
 27 operator's control necessitate more time, but only when the operator is, in the opinion of the de-  
 28 partment, making a reasonable effort to comply with the order.

29 (2) The department may recover against the bond or alternative form of financial security and  
 30 reclaim the area affected by surface mining if the department determines that an operator:

31 (a) Has failed to comply with a department order issued under subsection (1) of this section;

32 (b) Fails to complete reclamation in conformance with the reclamation plan on any segment of  
 33 the permitted site or fails to complete reclamation in a timely manner; or

34 (c) Fails to maintain an operating permit and pay all fees required under ORS 517.800.

35 (3) If the department makes a claim on the bond or security filed pursuant to ORS 517.810, the  
 36 surety on the bond or holder of the other security shall pay to the department the amount of the  
 37 bond or other security required. The department may reclaim the surface-mined land in a manner  
 38 determined by the department, including by public or private contractor. If the amount is not paid  
 39 within 30 days, the Attorney General, upon request of the department, shall institute proceedings  
 40 to recover the amount.

41 (4) If the landowner has given security as provided in ORS 517.810 (3) and the operator is in  
 42 default as specified in subsection (2) of this section, the landowner shall be held responsible for  
 43 complying with the reclamation plan of the operator. The department shall furnish written notice  
 44 of the default to the landowner and require the landowner to complete the reclamation as specified  
 45 in the operator's reclamation plan acceptable to the department. If the landowner has not com-

1 menced action to rectify the deficiencies within 30 days after receiving notice, or if the landowner  
 2 fails to diligently pursue reclamation in conformance with the plan, the department may demand  
 3 payment of the amount of the bond or other security from the surety or other holder and otherwise  
 4 proceed as provided in subsections (2) and (3) of this section.

5 (5) The department, in performing reclamation of surface-mined land, shall pursue a goal for  
 6 reclamation designed to:

- 7 (a) Remove hazards;
- 8 (b) Protect from drainage problems and from pollution;
- 9 (c) Meet local land use requirements for reclamation; and
- 10 (d) Comply with all federal and state laws.

11 (6) The department may delay, for a reasonable time not to exceed one year, all or part of any  
 12 reclamation activities if the department determines that it is likely that:

- 13 (a) Marketable mineral reserves exist at the permitted site; and
- 14 (b) A new operator will seek an operating permit for the site and assume all reclamation re-  
 15 sponsibilities.

16 **SECTION 1157.** ORS 517.862 is amended to read:

17 517.862. (1) Except as provided in subsection (2) of this section, the [*State Department of Geology*  
 18 *and Mineral Industries*] **Oregon Department of Natural Resources** may not revoke, terminate or  
 19 refuse to renew an operating permit if marketable reserves exist at the permitted site and if there  
 20 is a significant potential for continued mining opportunities given reasonably foreseeable economic  
 21 conditions.

22 (2) The department may revoke, terminate or refuse to renew an operating permit if the opera-  
 23 tor:

- 24 (a) Requests termination, provided that all reclamation requirements in the operating permit and  
 25 reclamation plan have been satisfied;
- 26 (b) Fails to pay a fee as required by ORS 517.800 within 60 days of the due date;
- 27 (c) Fails to provide or maintain a bond or security as required by ORS 517.810;
- 28 (d) Fails to comply with an order issued under ORS 517.860; or
- 29 (e) Fails to comply with a suspension order issued under ORS 517.880.

30 (3) If an operating permit is revoked, terminated or not renewed, the operator may not perform  
 31 any actions at the permitted site, except that the operator may, after receiving written approval  
 32 from the department:

33 (a) Perform actions at the permitted site that are necessary to comply with reclamation re-  
 34 quirements in the operating permit or reclamation plan, including but not limited to removal of  
 35 mining-related stockpiles;

36 (b) Excavate materials at the permitted site that are necessary for reclamation; and

37 (c) Remove any excavated materials from buffers, setbacks or other areas not approved for dis-  
 38 turbance and restore the areas to the approximate pre-mining contours with materials approved by  
 39 the department.

40 (4) The department, in lieu of or in addition to revoking, terminating or refusing to renew an  
 41 operating permit for the reasons specified in subsection (2) of this section, may recover against the  
 42 bond or security filed pursuant to ORS 517.810 and reclaim the area affected by surface mining.

43 **SECTION 1158.** ORS 517.865 is amended to read:

44 517.865. (1) If an operator fails to faithfully perform the reclamation required by the reclamation  
 45 plan and if the bond or security required by ORS 517.810 is not sufficient to compensate the [*State*

1 *Department of Geology and Mineral Industries*] **Oregon Department of Natural Resources** for all  
2 reasonably necessary costs and expenses incurred by it in reclaiming the surface-mined land, the  
3 amount due shall be a lien in favor of the department upon all property, whether real or personal,  
4 belonging to the operator. However, for any operator that is first issued a permit after June 30,  
5 1989, the lien shall not exceed \$2,500 for each site plus \$1,500 per acre.

6 (2) The lien shall attach upon the filing of a notice of claim of lien with the county clerk of the  
7 county in which the property is located. The notice of lien claim shall contain a true statement of  
8 the demand, the insufficiency of the bond or security to compensate the department and the failure  
9 of the operator to perform the reclamation required.

10 (3) The lien created by this section is prior to all other liens and encumbrances, except that the  
11 lien shall have equal priority with tax liens.

12 (4) The lien created by this section may be foreclosed by a suit in the circuit court in the  
13 manner provided by law for the foreclosure of other liens on real or personal property.

14 **SECTION 1159.** ORS 517.870 is amended to read:

15 517.870. Upon request of the operator, and when in the judgment of the [*State Department of*  
16 *Geology and Mineral Industries*] **Oregon Department of Natural Resources** the reclamation has  
17 been completed in accordance with the reclamation plan, the operator shall be notified that the  
18 work has been found to be satisfactorily performed and is acceptable and the bond or security of the  
19 operator shall be adjusted accordingly.

20 **SECTION 1160.** ORS 517.880 is amended to read:

21 517.880. (1) When the [*State Department of Geology and Mineral Industries*] **Oregon Department**  
22 **of Natural Resources** finds that an operator is conducting a surface mining operation for which  
23 an operating permit is required by ORS 517.702 to 517.989 or by rules adopted by the department,  
24 but has not been issued by the department, the department may issue an order to the operator to  
25 suspend the operation until an operating permit has been issued by the department for the surface  
26 mining operation or until the department is assured that the operator will comply with the re-  
27 quirement to obtain a permit.

28 (2) The department may issue an order to an operator to suspend operations if the operator has  
29 not complied with or is not complying with the operating permit, reclamation plan, this chapter or  
30 rules of the department. Failure to comply includes, but is not limited to, disturbing land within the  
31 permit boundary that has not been approved by the department for excavation, placement of debris  
32 or removal of vegetation.

33 (3) If the operator fails or refuses to comply with a suspension order, the Attorney General, at  
34 the request of the department, shall initiate any necessary legal proceeding to enjoin the surface  
35 mining operation and to provide for completion of the reclamation of the lands affected by the op-  
36 eration, including the restoration of buffers, setbacks or other areas not approved for disturbance.

37 **SECTION 1161.** ORS 517.890 is amended to read:

38 517.890. Any final determinations made by the [*State Department of Geology and Mineral Indus-*  
39 *tries*] **Oregon Department of Natural Resources** in carrying out the provisions of ORS 517.702 to  
40 517.989 and the rules and regulations adopted thereunder may be reviewed in the manner provided  
41 by the applicable provisions of ORS chapter 183.

42 **SECTION 1162.** ORS 517.901 is amended to read:

43 517.901. Any production records, mineral assessments and trade secrets submitted by a mine  
44 operator or landowner to the [*State Department of Geology and Mineral Industries*] **Oregon De-**  
45 **partment of Natural Resources** shall be confidential.



1       **SECTION 1162a.** ORS 517.910 is amended to read:

2       517.910. For the purposes of ORS 517.910 to 517.989:

3       (1) Notwithstanding ORS 517.750 [(12)] (10), “reclamation” means the employment in a surface  
4 mining operation of procedures reasonably designed to minimize as much as practicable the dis-  
5 ruption from the surface mining operation or surface mining processing operation, including cyanide  
6 leaching or any other chemical leaching processing at a processing site removed from the mining  
7 site and to provide for the rehabilitation of any such surface resources through the use of plant  
8 cover, soil stability techniques, and through the use of measures to protect the surface and subsur-  
9 face water resources, including but not limited to domestic water use and agricultural water use,  
10 and other measures appropriate to the subsequent beneficial use of any land or water resource af-  
11 fected by a surface mining or processing operation.

12       (2) “Nonaggregate minerals” means coal and metal-bearing ores, including but not limited to  
13 ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome,  
14 copper or mercury.

15       **SECTION 1163.** ORS 517.915 is amended to read:

16       517.915. (1) In addition to any other provision of law, the [*State Department of Geology and*  
17 *Mineral Industries*] **Oregon Department of Natural Resources** shall not issue an operating permit  
18 until:

19       (a) The department has received a reclamation plan that contains but is not limited to:

20       (A) A description of the proposed mining operation;

21       (B) A description of what is to be mined;

22       (C) The present use of the land, the planned subsequent beneficial use of the land and a list of  
23 plant species to be established;

24       (D) The measures that will adequately conserve the quantity and quality of the affected aquifers;

25       (E) A description of any toxic or radioactive materials known to be present in the ore, spoil,  
26 tailings, overburden or any other material involved in the mining operation and their approximate  
27 concentrations;

28       (F) A description of how the materials described in subparagraph (E) of this paragraph will be  
29 handled during mining and reclamation;

30       (G) Environmental baseline information as may be required by the department; and

31       (H) The name and address of the landowner, the owner of the surface estate, the operator and  
32 any parent corporations of the operator.

33       (b) The department has received a performance bond as it may require.

34       (c) The department finds that reclamation is possible and that the reclamation plan as approved  
35 will achieve the reclamation of affected lands.

36       (2) The reclamation plan, minus proprietary information, is a public document.

37       (3) If the department finds that reclamation cannot be accomplished, it shall not issue an oper-  
38 ating permit.

39       (4) The department shall obtain, whenever possible, a list of plant species suitable for reseeding  
40 in the area pursuant to a reclamation plan and comments on the feasibility of permanent revege-  
41 tation from the soil and water conservation district in which the mined land is situated.

42       (5) The department shall consult with the soil and water conservation district in which the  
43 mined land is situated regarding the feasibility of reclamation, with particular attention to possible  
44 impacts on ground water aquifers.

45       **SECTION 1164.** ORS 517.920 is amended to read:

1 517.920. (1) Each application for an operating permit under ORS 517.910 to 517.989 or explora-  
2 tion permit under this section and ORS 517.702 to 517.755, 517.790, 517.810 and 517.910 shall be ac-  
3 companied by a fee sufficient to cover the costs of the [*State Department of Geology and Mineral*  
4 *Industries*] **Oregon Department of Natural Resources** in processing the application and monitor-  
5 ing compliance as determined by the department.

6 (2) If the application is for a chemical process mine, the application shall be accompanied by  
7 an additional fee at each stage of the process sufficient to cover the costs of the department in  
8 maintaining a regulatory permit program that allows for the extraction and processing of metals.

9 **SECTION 1165.** ORS 517.925 is amended to read:

10 517.925. The [*State Department of Geology and Mineral Industries*] **Oregon Department of Na-**  
11 **tural Resources** shall have 120 days to act upon a completed permit application.

12 **SECTION 1166.** ORS 517.930 is amended to read:

13 517.930. (1) Notwithstanding ORS 517.850, if the [*State Department of Geology and Mineral In-*  
14 *dustries*] **Oregon Department of Natural Resources** has reason to believe that the provisions of  
15 an operating permit are being violated or that a surface mining operation is being conducted with-  
16 out a valid operating permit, it may inspect such surface mining areas without prior notice.

17 (2) In addition to the department's authority to inspect under ORS 517.850 and subsection (1)  
18 of this section, for a chemical process mine operating under a permit issued under ORS 517.952 to  
19 517.989, a cooperating agency also may inspect the mining operation to assure that the operator is  
20 complying with conditions imposed on the operating permit by the cooperating agency under ORS  
21 517.982 (2).

22 **SECTION 1167.** ORS 517.940 is amended to read:

23 517.940. Notwithstanding ORS 517.860, for the purposes of ORS 517.910 to 517.989 the expendi-  
24 ture by the [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
25 **Resources** for reclamation not completed by the operator shall not exceed \$10,000 per acre.

26 **SECTION 1168.** ORS 517.950 is amended to read:

27 517.950. (1) Notwithstanding ORS 517.810, for the purposes of ORS 517.905 to 517.951 the bond  
28 or security deposit required shall not exceed \$10,000 per acre of land to be surface mined under the  
29 terms of the operating permit.

30 (2) The [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
31 **Resources** may increase the amount of the bond or security required under subsection (1) of this  
32 section to an amount not to exceed the lower of actual cost of reclamation or \$100,000 per acre of  
33 land to be mined under the terms of the operating permit if the operating permit applies to ex-  
34 traction, processing or beneficiation techniques the result of which:

35 (a) Will increase the concentration of naturally occurring hazardous or toxic metals and min-  
36 erals identified by the [*governing board of the State Department of Geology and Mineral Industries*]  
37 **Director of the Oregon Department of Natural Resources** under ORS 517.840 to a significantly  
38 higher level than that occurring naturally within the permitted site; and

39 (b) Is reasonably likely to present a threat to public health, safety or the environment.

40 (3) The increased bond or security deposit under subsection (2) of this section may be required  
41 only when the department determines that a threat to surface or subsurface waters is reasonably  
42 likely to exist as a result of the permitted activity.

43 **SECTION 1169.** ORS 517.952 is amended to read:

44 517.952. As used in ORS 517.702 to 517.989:

45 (1) "Affected agency" includes permitting agencies, cooperating agencies and commenting agen-

1 cies.

2 (2) "Baseline data" means information gathered to characterize the natural and cultural envi-  
3 ronments of a mining operation site before a mining operation begins.

4 (3) "Chemical process mine" means a mining and processing operation for metal-bearing ores  
5 that uses chemicals to dissolve metals from ore.

6 (4) "Commenting agency" means any agency that makes recommendations to the [*State Depart-*  
7 *ment of Geology and Mineral Industries*] **Oregon Department of Natural Resources** or to a per-  
8 mitting agency regarding permit conditions or whether to approve or deny a permit under the  
9 consolidated application process established under ORS 517.952 to 517.989.

10 (5) "Consolidated application" means the single application required under ORS 517.971.

11 (6) "Cooperating agency" means an agency that has statutory responsibility related to a chemi-  
12 cal process mine but that does not issue a permit for the mining operation.

13 (7) "Environmental evaluation" means an analysis prepared under ORS 517.979 to address spe-  
14 cific impacts of the chemical process mine operation to allow affected agencies to develop permit  
15 conditions.

16 (8) "Mitigation" means the reduction of adverse effects of a proposed chemical process mining  
17 operation by considering, in the following order:

18 (a) Avoiding the impact altogether by not taking a certain action or parts of an action;

19 (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

20 (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

21 (d) Reducing or eliminating the impact over time by preservation and maintenance operations  
22 during the life of the action by monitoring and taking appropriate corrective measures; or

23 (e) Compensating for the impact by replacing or providing comparable substitute resources or  
24 environments.

25 (9) "Permitting agency" means an agency that has a separate permitting authority for a pro-  
26 posed chemical process mine.

27 (10) "Person" means any individual, partnership, corporation, association, public interest organ-  
28 ization, the State of Oregon or any political subdivision, board, agency or commission of the State  
29 of Oregon.

30 (11) "Project coordinating committee" means the interagency governmental committee estab-  
31 lished in accordance with ORS 517.965.

32 (12) "Technical review team" means the interagency group established in accordance with ORS  
33 517.967.

34 **SECTION 1170.** ORS 517.956 is amended to read:

35 517.956. Any chemical process mining operation in Oregon shall comply with the following  
36 standards:

37 (1) Chemical process mining, including extraction, processing and reclamation, shall be under-  
38 taken in a manner that minimizes environmental damage through the use of the best available,  
39 practicable and necessary technology to ensure compliance with environmental standards.

40 (2) [*Protection measures for fish and wildlife shall be consistent with policies of the State Depart-*  
41 *ment of Fish and Wildlife, including*] **To protect fish and wildlife habitat, the Oregon Depart-**  
42 **ment of Natural Resources, in accordance with ORS chapter 183, shall adopt rules that**  
43 **incorporate the following:**

44 (a) Protective measures to maintain an objective of zero wildlife mortality. All chemical pro-  
45 cessing solutions and associated waste water shall be covered or contained to preclude access by

1 wildlife or maintained in a condition that is not harmful to wildlife.

2 (b) On-site and off-site mitigation [*ensuring*] **measures to ensure** that there is no overall net  
3 loss of habitat value.

4 (c) **Measures to ensure** no loss of existing critical habitat of any state or federally listed  
5 threatened or endangered species.

6 (d) **A plan for reporting** fish and wildlife mortality [*shall be reported in accordance with a*  
7 *monitoring and reporting plan approved by the State Department of Fish and Wildlife*] **rates**.

8 (e) [*The State Department of Fish and Wildlife shall establish by rule standards for review of a*  
9 *proposed chemical process mining operation for the purpose of developing conditions for fish and*  
10 *wildlife habitat protection that satisfy the terms of this section for inclusion in a consolidated permit*  
11 *by the State Department of Geology and Mineral Industries.*] **Rules for reviewing the effects of a**  
12 **proposed chemical process mining operation on fish and wildlife habitat.**

13 (3) Surface reclamation of a chemical process mine site shall:

14 (a) Ensure protection of human health and safety, as well as that of livestock, fish and wildlife;

15 (b) Ensure environmental protection;

16 (c) Require certification [*to the operator, by the State Department of Fish and Wildlife and the*  
17 *State Department of Agriculture,*] **by the Oregon Department of Natural Resources and the State**  
18 **Department of Agriculture** that a self-sustaining ecosystem, comparable to undamaged ecosystems  
19 in the area, has been established in satisfaction of the operator’s habitat restoration obligations; and

20 (d) Include backfilling or partial backfilling as determined on a case-by-case basis by the [*State*  
21 *Department of Geology and Mineral Industries*] **Oregon Department of Natural Resources** when  
22 necessary to achieve reclamation objectives that cannot be achieved through other mitigation ac-  
23 tivities.

24 **SECTION 1171.** ORS 517.957 is amended to read:

25 517.957. The [*State Department of Geology and Mineral Industries*] **Oregon Department of Na-**  
26 **tural Resources** shall coordinate the activities of the affected agencies related to the consolidated  
27 application process established under ORS 517.952 to 517.989.

28 **SECTION 1172.** ORS 517.959 is amended to read:

29 517.959. (1) Whenever required in ORS 517.952 to 517.989, public notice shall include information  
30 sufficient to inform the public of the proposed activity or event and shall include:

31 (a) Notification to all permitting and cooperating agencies.

32 (b) Notice by mail to each owner of property located within one-half mile of the perimeter of the  
33 proposed site of the mining operation. As used in this paragraph, “owner” means the owner of the  
34 title to real property or the contract purchaser of real property of record as shown on the last  
35 available complete tax assessment roll.

36 (c) Notice by mail to persons on the master list.

37 (d) Notice by mail to mineral claimants for claims located within one-half mile of the proposed  
38 chemical process mining operation or as otherwise required by rule of a permitting or cooperating  
39 agency.

40 (e) Notice by publication in a newspaper of general circulation in the state and in a local  
41 newspaper of general circulation in the county or counties in which the proposed chemical process  
42 mining operation is located. Notice by publication shall be given at least once each week for two  
43 weeks immediately preceding the action.

44 (2) The notice provided pursuant to this section shall satisfy any notice requirement of an indi-  
45 vidual permitting or cooperating agency related to a permit included in the consolidated application

1 process established under ORS 517.952 to 517.989.

2 (3) As used in this section, “master list” means a consolidated list of all interested parties  
3 compiled by the [*State Department of Geology and Mineral Industries*] **Oregon Department of Na-**  
4 **tural Resources** and each permitting and cooperating agency and maintained by the department.  
5 Any person may request in writing that the [*State Department of Geology and Mineral Industries*]  
6 **department** add the person’s name to the agency master list. The [*State Department of Geology and*  
7 *Mineral Industries*] **department** may establish a procedure for establishing and maintaining an  
8 agency master list, and the [*governing board of the department*] **Director of the Oregon Depart-**  
9 **ment of Natural Resources** may establish a fee to be paid by a person requesting to be added to  
10 the master list. The fee shall be sufficient to defray the department’s costs of mailing notices to  
11 persons on the master list and maintaining the master list.

12 **SECTION 1173.** ORS 517.961 is amended to read:

13 517.961. A prospective applicant for a permit to operate a chemical process mining operation  
14 shall file with the [*State Department of Geology and Mineral Industries*] **Oregon Department of**  
15 **Natural Resources** a notice of intent to submit an application and post copies of the notice along  
16 the perimeter of the location of the proposed operation. The posting shall be sufficient to inform the  
17 public of the intended action and a legal description of the proposed mining operation location and  
18 shall comply with requirements adopted by rule by the [*governing board of the department*] **Director**  
19 **of the Oregon Department of Natural Resources.**

20 **SECTION 1174.** ORS 517.963 is amended to read:

21 517.963. Upon receipt of a notice of intent under ORS 517.961, the [*State Department of Geology*  
22 *and Mineral Industries*] **Oregon Department of Natural Resources** shall:

23 (1) Provide notice as required under ORS 517.959. The notice shall be sufficient to inform the  
24 public of the nature, size and location of the proposed chemical process mining operation.

25 (2) Activate a project coordinating committee for the proposed mining operation and coordinate  
26 the participation of federal agencies, affected agencies, local government agencies and the prospec-  
27 tive applicant in the activities of the project coordinating committee.

28 (3) Activate a technical review team for the proposed mining operation.

29 (4) Identify to the prospective applicant all permitting and cooperating agencies that will be  
30 participating in the consolidated application process.

31 **SECTION 1175.** ORS 517.965 is amended to read:

32 517.965. A project coordinating committee shall be composed of representatives from the [*State*  
33 *Department of Geology and Mineral Industries*] **Oregon Department of Natural Resources**, all  
34 permitting and cooperating agencies, local government agencies and affected federal agencies. Each  
35 permitting and cooperating agency shall designate an appropriate staff member to the committee.  
36 The project coordinating committee shall share information and coordinate county, state and federal  
37 permitting requirements in order to avoid contradictory requirements, facilitate the exchange of  
38 ideas, optimize communication and avoid duplicative effort. If a chemical process mine is proposed  
39 on federal land, the project coordinating committee shall work with the affected federal agency in  
40 accordance with a memorandum of agreement established by the department and the federal agency  
41 to facilitate the state and federal application process and to coordinate the two processes to the  
42 fullest extent possible. In carrying out its responsibilities, the project coordinating committee shall  
43 include opportunities for public participation.

44 **SECTION 1176.** ORS 517.967 is amended to read:

45 517.967. (1) A technical review team shall be composed of representatives from the [*State De-*

1 *partment of Geology and Mineral Industries*] **Oregon Department of Natural Resources** and each  
 2 permitting agency and cooperating agency. The technical review team shall:

3 (a) Establish methodology guidelines to be followed in the collection of baseline data;

4 (b) Coordinate with the applicant the use of baseline data collection methodologies as approved  
 5 by the permitting and cooperating agencies; and

6 (c) Determine whether the chemical process mining operation as proposed in the consolidated  
 7 application complies with the standards established in ORS 517.956 and any other applicable re-  
 8 quirements for a permit listed under ORS 517.971.

9 (2) Each permitting agency and cooperating agency shall designate an appropriate staff member  
 10 to serve on the technical review team.

11 **SECTION 1177.** ORS 517.969 is amended to read:

12 517.969. (1) Upon receipt of notice from a prospective applicant that the prospective applicant  
 13 is ready to begin collecting baseline data, the [*State Department of Geology and Mineral Industries*]  
 14 **Oregon Department of Natural Resources** shall:

15 (a) Provide notice in accordance with ORS 517.959 that the prospective applicant intends to  
 16 begin baseline data collection and the location where additional background information may be  
 17 obtained or reviewed.

18 (b) Within 30 days after receiving the notice from the applicant, conduct two public information  
 19 meetings. One public meeting shall be conducted in the population center closest to the site of the  
 20 proposed mining operation and one public meeting shall be conducted in a major population center  
 21 for the state, as determined by [*State Department of Geology and Mineral Industries*] **the depart-**  
 22 **ment.**

23 (c) Receive written comments from the public and affected agencies for 45 days after receiving  
 24 notice under this subsection.

25 (2) The purpose of the public informational meetings and public comment period under sub-  
 26 section (1) of this section shall be to:

27 (a) Identify the issues raised by the proposed chemical process mining operation;

28 (b) Receive information from the public that the [*State Department of Geology and Mineral In-*  
 29 *dustries*] **department** and the permitting and cooperating agencies may need to know in order to  
 30 evaluate the application; and

31 (c) Determine the data that should be collected during the baseline data collection phase of the  
 32 consolidated application process to address the issues identified.

33 (3) Upon receipt of notice under subsection (1) of this section, the technical review team acti-  
 34 vated under ORS 517.963 shall determine the specific methodologies to be applied by the applicant  
 35 in collecting baseline data.

36 (4) The applicant shall collect data according to the methodology established by the permitting  
 37 and cooperating agencies through the technical review team. The data collected shall be verified  
 38 by the appropriate agency in accordance with procedures adopted by the agency.

39 **SECTION 1178.** ORS 517.971 is amended to read:

40 517.971. Each applicant for a permit to operate a chemical process mining operation shall submit  
 41 a consolidated application to the [*State Department of Geology and Mineral Industries*] **Oregon De-**  
 42 **partment of Natural Resources.** The department and the permitting and cooperating agencies  
 43 shall not begin deliberating on whether to issue a permit until the department receives an applica-  
 44 tion fee and a complete consolidated application that includes but is not limited to:

45 (1) Name and location of the proposed facility.

1 (2) Name, mailing address and phone number of the applicant and a registered agent for the  
2 applicant.

3 (3) The legal structure of the applicant as filed in the business registry with the Secretary of  
4 State and the legal residence of the applicant.

5 (4) Mineral and surface ownership status of the proposed facility.

6 (5) Baseline data, including but not limited to environmental, socioeconomic, historical,  
7 archaeological conditions, land use designations and special use designations in the area of the state  
8 in which the proposed chemical process mining operation is located.

9 (6) Appropriate maps, aerial photos, cross sections, plans and documentation.

10 (7) A proposed:

11 (a) Mine plan;

12 (b) Processing plan;

13 (c) Water budget;

14 (d) Fish and wildlife protection and mitigation plan;

15 (e) Operational monitoring and reporting plan;

16 (f) Reclamation and closure plan;

17 (g) Plan for controlling water runoff and run on;

18 (h) Operating plan;

19 (i) Solid and hazardous waste management plan;

20 (j) Plan for transporting and storing toxic chemicals;

21 (k) Employee training plan as required by agency rule;

22 (L) Seasonal or short term closure plan;

23 (m) Spill prevention and credible accident contingency plan;

24 (n) Post-closure monitoring and reporting plan; and

25 (o) Identification of special natural areas, including but not limited to areas designated as areas  
26 of critical environmental concern, research natural areas, outstanding natural areas and areas des-  
27 ignated by the Oregon Natural Areas Plan, as defined in state rules and federal regulations.

28 (8) All information required by the permitting agencies to determine whether to issue or deny  
29 the following permits as applicable to the proposed operation:

30 (a) Surface mining operating permits required under ORS 517.790 and 517.915;

31 (b) Fill and removal permits required under ORS 196.600 to 196.905;

32 (c) Permits to appropriate surface water or ground water under ORS 537.130 and 537.615, to  
33 store water under ORS 537.400 and impoundment structure approval under ORS 540.350 to 540.390;

34 (d) National Pollutant Discharge Elimination System permit under ORS 468B.050;

35 (e) Water pollution control facility permit under ORS 468B.050;

36 (f) Air contaminant discharge permit under ORS 468A.040 to 468A.060;

37 (g) Solid waste disposal permit under ORS 459.205;

38 (h) Permit for use of power driven machinery on forestland under ORS 477.625;

39 (i) Permit for placing explosives or harmful substances in waters of the state under ORS 509.140;

40 (j) Hazardous waste storage permit under ORS 466.005 to 466.385;

41 (k) Local land use permits; and

42 (L) Any other state permit required for the proposed chemical process mining operation.

43 (9) All other information required by the department, a permitting agency, a cooperating agency  
44 or the technical review team.

45 **SECTION 1179.** ORS 517.973 is amended to read:

1 517.973. (1) In addition to any permit fee required by any other permitting agency, each consol-  
2 idated application under ORS 517.971 shall be accompanied by an initial fee established by the [*State*  
3 *Geologist*] **Director of the Oregon Department of Natural Resources** in an amount not to exceed  
4 \$606.

5 (2)(a) Annually on the anniversary date of the issuance of each such operating permit, each  
6 holder of an operating permit shall pay to the [*State Department of Geology and Mineral Industries*]  
7 **Oregon Department of Natural Resources** a fee established by the [*State Geologist*] **director** in  
8 an amount not less than \$456.

9 (b) In addition to the fee prescribed in paragraph (a) of this subsection, the department may  
10 charge an additional amount not to exceed \$200 for inspections made at sites:

11 (A) Where surface mining was conducted without the permit required by ORS 517.790;

12 (B) Where surface mining has been abandoned; or

13 (C) Where surface mining was conducted in an area not described in the surface mining permit.

14 (3) Subject to the provisions of subsection (5) of this section, the applicant shall pay all expenses  
15 incurred by the department and the permitting and cooperating agencies related to the consolidated  
16 application process under ORS 517.952 to 517.989. These expenses may include legal expenses, ex-  
17 penses incurred in processing and evaluating the consolidated application, issuing a permit or final  
18 order and expenses of hiring a third party contractor under ORS 517.979 and 517.980.

19 (4) Every applicant submitting a consolidated application under ORS 517.952 to 517.989 shall  
20 submit the fee required under subsection (1) of this section to the department at the same time as  
21 the consolidated application is filed under ORS 517.971. To the extent possible, the full cost of the  
22 process set forth in ORS 517.952 to 517.989 shall be paid from the application fee paid under this  
23 section. However, if such costs exceed the fee, the applicant shall pay any excess costs shown in  
24 an itemized statement prepared by the department. In no event shall the department and permitting  
25 and cooperating agencies incur evaluation expenses in excess of 110 percent of the fee initially paid  
26 unless the department provides prior notification to the applicant and a detailed projected budget  
27 the department believes necessary to complete the process or a portion of the process under ORS  
28 517.952 to 517.989. If the costs are less than the fee paid, the excess shall be refunded to the appli-  
29 cant.

30 (5) All expenses incurred by the department and the permitting and cooperating agencies under  
31 ORS 517.952 to 517.989 that are charged to or allocated to the fee paid by an applicant shall be  
32 necessary, just and reasonable. Upon request, the department shall provide a detailed justification  
33 for all charges to the applicant.

34 **SECTION 1180.** ORS 517.975 is amended to read:

35 517.975. Upon receipt of a completed consolidated application, the [*State Department of Geology*  
36 *and Mineral Industries*] **Oregon Department of Natural Resources** shall:

37 (1) Provide copies of the application to each affected local government, permitting agency, co-  
38 operating agency or federal agency.

39 (2) Provide notice of the receipt of the consolidated application in accordance with ORS 517.959.  
40 The notice shall include information about the opportunity for submitting written comments on the  
41 application and about the public hearing conducted as required under ORS 517.977.

42 **SECTION 1181.** ORS 517.977 is amended to read:

43 517.977. (1) When all members of the technical review team concur that the permitting agencies  
44 and the cooperating agencies are ready to begin preparing draft permits, the [*State Department of*  
45 *Geology and Mineral Industries*] **Oregon Department of Natural Resources** shall conduct a public



1 hearing and accept written comments on whether the information contained in the consolidated ap-  
 2 plication is complete and sufficient to allow the permitting agencies to determine whether to issue  
 3 a permit. The date and location of the public hearing and the period allowed for written comment  
 4 shall be established by the department. Notice of the public hearing and comment period shall be  
 5 given in accordance with ORS 517.959.

6 (2) At the conclusion of the public hearing and comment period under subsection (1) of this  
 7 section and within 90 days after the [*State Department of Geology and Mineral Industries*] **depart-**  
 8 **ment** receives a consolidated application for a chemical process mining operation, the department,  
 9 in conjunction with all permitting and cooperating agencies, shall make a determination of whether  
 10 the application is complete. On the basis of the determination the department shall either:

11 (a) If the permitting and cooperating agencies determine that the consolidated application is  
 12 complete, issue a notice to proceed with the permitting process and the preparation of draft permits;  
 13 or

14 (b) If the permitting and cooperating agencies determine that additional information is neces-  
 15 sary, notify the applicant of the additional information that is required.

16 (3) If the permitting and cooperating agencies do not require the applicant to provide additional  
 17 information as suggested at the public hearing or comment period under subsection (1) of this sec-  
 18 tion, the agencies shall prepare a written response explaining why the additional information is not  
 19 being requested from the applicant.

20 (4) Upon receipt of any additional information requested, the [*State Department of Geology and*  
 21 *Mineral Industries*] **department** shall accept public comments related to the additional information  
 22 for a period of two weeks. Except as provided in ORS 517.978, the department shall not conduct  
 23 additional public hearings.

24 **SECTION 1182.** ORS 517.978 is amended to read:

25 517.978. (1) After the [*State Department of Geology and Mineral Industries*] **Oregon Department**  
 26 **of Natural Resources** issues a notice to proceed, the consolidated application shall be considered  
 27 complete unless:

28 (a) New information is available that could not have been presented at the time of the com-  
 29 pleteness hearing; or

30 (b) Additional information is necessary to allow the permitting or cooperating agencies to make  
 31 a determination regarding whether to issue or deny a permit or to issue the permit with conditions  
 32 attached.

33 (2) The permitting and cooperating agencies may continue to review an application while in the  
 34 process of requesting additional information. However, the department shall conduct an additional  
 35 public hearing under ORS 517.977 if the agencies determine that additional information is significant  
 36 to the issuance or denial of a permit.

37 **SECTION 1183.** ORS 517.979 is amended to read:

38 517.979. (1) The [*State Department of Geology and Mineral Industries*] **Oregon Department of**  
 39 **Natural Resources** shall direct staff or shall hire a third party contractor to:

40 (a) Prepare an environmental evaluation;

41 (b) Review baseline data submitted by the applicant; and

42 (c) Review application material if a permitting agency or a cooperating agency lacks the ex-  
 43 pertise.

44 (2) The applicant shall pay costs of hiring a third party contractor. If the applicant shows cause  
 45 why a particular third party contractor should not be allowed to perform a function under sub-

1 section (1) of this section, the department shall hire an alternate contractor.

2 (3) The contents of the environmental evaluation under subsection (1) of this section shall in-  
3 clude:

4 (a) An analysis of the reasonably foreseeable impacts of an activity including catastrophic con-  
5 sequences even if the probability of occurrence is low, if the analysis is supported by credible sci-  
6 entific evidence, is not based on pure conjecture and is within the rule of reason.

7 (b) An assessment of the total cumulative impact on the environment that results from the in-  
8 cremental impact of an action when added with other past, present and reasonably foreseeable fu-  
9 ture actions, regardless of the agency or persons that undertake the other action, or whether the  
10 actions are on private, state or federal land. To the extent possible, the department shall enter into  
11 a memorandum of agreement with federal agencies to insure that information required by the state  
12 in evaluating the cumulative impact of a proposed chemical process mine may be used by the ap-  
13 plicant to satisfy federal requirements for such an assessment.

14 (c) A review and analysis of alternatives analyzed by the applicant or a contractor hired by the  
15 applicant that:

16 (A) Rigorously explores and objectively evaluates all reasonable alternatives and briefly dis-  
17 cusses alternatives that were eliminated and the reasons the alternatives were eliminated;

18 (B) Treats each alternative, including the proposed action, in detail so that the permitting  
19 agencies, cooperating agencies and the public may evaluate the comparative merits of the alterna-  
20 tives; and

21 (C) Identifies all alternatives within the authority of each permitting or cooperating agency.

22 (4) Upon completion of the environmental evaluation, the [*State Department of Geology and*  
23 *Mineral Industries*] **department** shall provide notice in accordance with ORS 517.959. The notice  
24 shall state that the environmental evaluation is complete and that the persons may respond with  
25 written comments for a period of two weeks after the notice is given.

26 **SECTION 1184.** ORS 517.980 is amended to read:

27 517.980. Concurrent with the development of the environmental evaluation, the [*State Depart-*  
28 *ment of Geology and Mineral Industries*] **Oregon Department of Natural Resources** shall direct  
29 staff or hire a third party contractor to prepare a socioeconomic impact analysis for the use of the  
30 applicant, local government and affected agencies.

31 **SECTION 1185.** ORS 517.981 is amended to read:

32 517.981. (1) Within 225 days after receiving the completed consolidated application and the en-  
33 vironmental evaluation conducted under ORS 517.979, each permitting agency shall provide its draft  
34 permit and permit conditions or its denial document to the [*State Department of Geology and Mineral*  
35 *Industries*] **Oregon Department of Natural Resources**. If a permitting agency includes in its draft  
36 permit a condition that is inconsistent with the environmental evaluation conducted pursuant to  
37 ORS 517.979, the agency shall include with its draft permit a written explanation of the condition  
38 setting forth the findings of the agency that support the condition. The [*State Department of Geology*  
39 *and Mineral Industries*] **department** shall [*assure*] **ensure** that the conditions imposed on the per-  
40 mits by the cooperating agencies do not conflict. If the department finds a conflict exists, the tech-  
41 nical review team shall resolve the conflict.

42 (2) Within 15 days after receiving all draft permits and the completion of its draft operating  
43 permit, the [*State Department of Geology and Mineral Industries*] **department** shall issue notice of  
44 an opportunity for public comment and a consolidated public hearing on all draft permits. The public  
45 hearing shall occur not sooner than 45 days after the department issues the notice. The notice shall

1 be issued in accordance with ORS 517.959.

2 **SECTION 1186.** ORS 517.982 is amended to read:

3 517.982. (1) Based on information received at the consolidated public hearing, from persons  
4 submitting written comments, commenting agencies and the review of the affected agencies, each  
5 permitting agency shall, within 45 days after the consolidated public hearing under ORS 517.981 or  
6 within the time period required by any applicable federal law, whichever is sooner, approve, deny  
7 or modify the agency's permit with conditions necessary to assure that the chemical process mining  
8 operation allowed under a permit complies with the standards and requirements applicable to the  
9 permit.

10 (2) Each cooperating agency shall develop permit conditions within the expertise and authority  
11 of the cooperating agency and submit the permit conditions to the [*State Department of Geology and*  
12 *Mineral Industries*] **Oregon Department of Natural Resources** to be included as conditions on the  
13 department's permit. The department shall not issue a permit until each cooperating agency has  
14 submitted a written concurrence with the terms and conditions of the permit as such pertain to the  
15 statutory responsibility of each cooperating agency.

16 (3) Upon completion of the permits, the department shall issue a notice in accordance with ORS  
17 517.959 to notify interested persons that the final permits are issued.

18 **SECTION 1187.** ORS 517.983 is amended to read:

19 517.983. (1) The applicant or any person who appeared before a permitting agency at the con-  
20 solidated public hearing under ORS 517.981, either orally or in writing, regarding a permit granted  
21 or denied by the permitting agency may file with the [*State Geologist*] **Director of the Oregon**  
22 **Department of Natural Resources** a written request for a consolidated contested case hearing.  
23 The request shall be filed within 30 days after the date the permit was granted or denied.

24 (2) Upon receipt of a request under subsection (1) of this section, the [*State Department of*  
25 *Geology and Mineral Industries*] **Oregon Department of Natural Resources** shall schedule a con-  
26 solidated contested case hearing which shall be held not less than 60 days or more than 75 days  
27 after the notice of permit issuance under ORS 517.982. The hearing shall be conducted in accordance  
28 with the provisions applicable to contested case proceedings under ORS chapter 183. Any permit  
29 granted by a permitting agency shall be suspended until completion of the administrative hearings  
30 process.

31 (3) Hearings under this section shall be conducted by an administrative law judge assigned from  
32 the Office of Administrative Hearings established under ORS 183.605.

33 (4) The administrative law judge shall prepare a proposed order for each contested permit. A  
34 party may file written exceptions to the proposed order with the permitting agency. If the permitting  
35 agency determines that additional information may be included in the record, the agency shall re-  
36 mand the order to the appropriate administrative law judge for further consideration. After receiv-  
37 ing exceptions and hearing argument on the exceptions, the governing body or person within the  
38 permitting agency responsible for making a final decision on a permit may adopt the proposed order  
39 or issue a new order.

40 (5) Jurisdiction for judicial review of a permitting agency's issuance or denial of a permit is  
41 conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in  
42 the Supreme Court. The petition shall be filed within 60 days following the date the permit is issued  
43 or denied. If the permit with prescribed conditions is approved, the filing of the petition for review  
44 shall stay the permit during the pendency of judicial review for a period of up to six months from  
45 the date the petition for review is filed. The Supreme Court may extend the stay beyond the six-

1 month period upon written request and a showing by the petitioner that the activities under the  
 2 permit could result in irreparable harm to the site. Except as otherwise provided in this subsection,  
 3 the review by the Supreme Court shall be as provided in ORS 183.482. The Supreme Court shall give  
 4 priority on its docket to such a petition for review.

5 (6) When only the applicant files a petition for judicial review, the six-month stay imposed under  
 6 subsection (5) of this section may be removed by the permitting agency upon written request within  
 7 60 days after the filing of the petition and a showing by the applicant to support a finding by the  
 8 permitting agency that proceeding with any or all activities under the permit will not result in  
 9 irreparable harm to the site. In making such findings the permitting agency may require an addi-  
 10 tional bond or alternative security to be filed with the [*State Department of Geology and Mineral*  
 11 *Industries*] **department** as provided in ORS 517.987. The bond shall be in an amount the permitting  
 12 agency determines necessary to assure complete restoration of the site if the petitioner elects not  
 13 to complete the project following judicial review. Agency denial of the request to remove the stay  
 14 is subject to review by the Supreme Court under such rules as the Supreme Court may establish.

15 **SECTION 1188.** ORS 517.984 is amended to read:

16 517.984. (1) The operator, the [*State Department of Geology and Mineral Industries*] **Oregon**  
 17 **Department of Natural Resources**, any other permitting agency or a cooperating agency may re-  
 18 quest modification of a permit issued under the process established under ORS 517.952 to 517.989.

19 (2) If a permitting agency is requested to make a permit modification that the permitting agency  
 20 or a cooperating agency finds is a significant permit modification under the provisions of ORS  
 21 517.952 to 517.989, the agency shall notify the [*State Department of Geology and Mineral Industries*]  
 22 **department**. The department shall coordinate the organization of a project coordinating committee.  
 23 The project coordinating committee shall review the proposed modification and determine those  
 24 portions of ORS 517.952 to 517.989 with which the applicant must comply. The decision of the project  
 25 review committee shall be:

26 (a) Limited to those portions of the chemical process mine operation to be modified; and

27 (b) Consistent with public participation as set forth in ORS 517.952 to 517.989.

28 **SECTION 1189.** ORS 517.985 is amended to read:

29 517.985. In accordance with applicable provisions of ORS chapter 183, the [*governing board of*  
 30 *the State Department of Geology and Mineral Industries*] **Director of the Oregon Department of**  
 31 **Natural Resources** shall adopt rules necessary to implement the provisions of ORS 517.952 to  
 32 517.989. The rules shall include but need not be limited to:

33 (1) The information required to be submitted in a notice of intent;

34 (2) The fee that the [*department*] **Oregon Department of Natural Resources** may collect from  
 35 a person requesting inclusion on the master list under ORS 517.959; and

36 (3) The form and content of the consolidated application.

37 **SECTION 1190.** ORS 517.986 is amended to read:

38 517.986. Notwithstanding any other provision of law, the [*State Department of Geology and Min-*  
 39 *eral Industries*] **Oregon Department of Natural Resources** and any other permitting agency shall  
 40 take final action to issue or deny a permit subject to the consolidated application process set forth  
 41 in ORS 517.952 to 517.989 within one year after issuance of a notice to proceed under ORS 517.977.  
 42 However, with the concurrence of the applicant, the processing of the application may be suspended  
 43 for a period of time to allow the applicant to resolve issues having a bearing on, or necessary to  
 44 any permitting agency's decision or the department's decision on whether to issue or deny a permit.

45 **SECTION 1191.** ORS 517.987 is amended to read:

1       517.987. (1) At the time of submitting a consolidated application under ORS 517.971, the appli-  
2 cant shall estimate the total cost of reclamation consistent with the standards imposed under ORS  
3 517.702 to 517.989. Using the reclamation estimate and a credible accident analysis as a guide, the  
4 [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural Resources**  
5 shall make an initial determination as to the amount of the reclamation bond necessary to protect  
6 human health and the environment. The department shall distribute a bond proposal to all permit-  
7 ting and cooperating agencies. The amount of the bond that the department may require to cover  
8 the actual cost of reclamation shall not be limited.

9       (2) The reclamation bond or alternative security acceptable to the department shall be posted  
10 before the start of mining operations. The bond shall be issued by a bonding company licensed to  
11 operate in Oregon. A mining operation may not satisfy the requirements for a bond through self-  
12 insurance.

13       (3) The department shall assess annually the overall cost of reclamation. If changes in the op-  
14 eration or modifications to a permit cause the cost of reclamation to exceed the amount of the  
15 reclamation bond currently held by the state, the operator shall post an additional bond for the  
16 difference. All reclamation calculations shall be approved by the department. Incremental surety  
17 increases shall be provided for, with the level of surety being consistent with the degree and forms  
18 of surface disturbance anticipated within a time period specified by the department. When the actual  
19 surface area to be disturbed approaches the level expected by the department, the operator shall  
20 notify the department sufficiently in advance of reaching the acreage limit specified to allow for a  
21 review of surety requirements and posting of additional surety by the operator prior to exceeding  
22 the acreage limit set by the department.

23       (4) If reclamation costs will exceed the posted bond and the operator does not increase the bond  
24 amount, the department and other permitting agencies shall suspend all permits until the operator  
25 posts the additional bond security.

26       (5) The department may seek a lien against the assets of the operator to cover the cost of rec-  
27 lamation if the bond posted is insufficient. The amount of the lien shall be the amount of the costs  
28 incurred by the department to complete reclamation. All current operating permits of the operator  
29 shall be suspended and the department shall deny immediately all pending applications of the oper-  
30 ator to conduct mining operations.

31       (6)(a) The operator shall submit to the department a written request for the release of its rec-  
32 lamation bond. If the operator has conducted concurrent reclamation, the operator shall submit an  
33 application for bond reduction which estimates the percentage of reclamation done to date and the  
34 corresponding percentage of reclamation funds that the operator believes should be returned. A  
35 bond release or reduction request shall state in unambiguous terms all measures taken to reclaim  
36 the site and any problem or potential problems that may inhibit reclamation in accordance with  
37 permit requirements.

38       (b) The department shall distribute the request to each permitting or cooperating agency, to  
39 members of the public who participated in the consolidated application under ORS 517.952 to  
40 517.989, and to any person who requests notification. In addition, the department shall publish a  
41 notice as provided in ORS 517.959 announcing receipt of a request for bond release or bond re-  
42 duction.

43       (c) No sooner than 60 days after distributing the request and providing notice of the receipt of  
44 the request, the department shall conduct an informal public hearing to determine whether to allow  
45 the bond release or bond reduction.

1 (7) The department may require security or an annuity for post-reclamation monitoring and care  
 2 to be paid before the final bond release. The security or annuity shall be sufficient to cover long-  
 3 term site care and monitoring needs. The department shall determine the amount of the proposed  
 4 security or annuity and distribute a proposal to all permitting and cooperating agencies.

5 **SECTION 1192.** ORS 517.988 is amended to read:

6 517.988. [(1)] The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
 7 **sources** shall develop conditions for the protection of fish and wildlife resources that shall be in-  
 8 cluded in any permit issued [*by the State Department of Geology and Mineral Industries*] under the  
 9 process established under ORS 517.952 to 517.989.

10 [(2) *The State Department of Fish and Wildlife shall have the right of ingress and egress to and*  
 11 *from a chemical process mine operating under a permit that includes conditions imposed pursuant to*  
 12 *subsection (1) of this section, doing no unnecessary injury to the property of the mine operator, to de-*  
 13 *termine whether the operator is complying with such conditions. If the State Department of Fish and*  
 14 *Wildlife determines that a violation has occurred, the State Department of Fish and Wildlife shall in-*  
 15 *form the State Department of Geology and Mineral Industries of the violation and the State Department*  
 16 *of Geology and Mineral Industries shall cooperate with the State Department of Fish and Wildlife to*  
 17 *take appropriate enforcement action.*]

18 [(3) *As used in this section "chemical process mine" has the meaning given in ORS 517.952.*]

19 **SECTION 1193.** ORS 517.989 is amended to read:

20 517.989. (1) Except as provided in subsections (2) and (3) of this section, the [*State Department*  
 21 *of Geology and Mineral Industries*] **Oregon Department of Natural Resources** and all permitting  
 22 and commenting agencies shall review and take action on a consolidated application in accordance  
 23 with statutes and rules in effect at the time the notice of intent to submit an application is filed  
 24 under ORS 517.961.

25 (2) Subsection (1) of this section shall not apply to a consolidated application if:

26 (a) An applicant is responsible for unreasonable delays in the processing of the application or  
 27 fails to make a good faith effort to comply with all requirements for issuance of the permit;

28 (b) Application of a statute or rule is required under federal law or is a requirement for the  
 29 state to maintain approval of or delegation of administration of a federal program; or

30 (c) The department, or a permitting agency or commenting agency, finds that application of a  
 31 rule is necessary to protect the public from a serious threat to human health or safety.

32 (3) Subsection (1) of this section shall not apply to rules adopted by the Environmental Quality  
 33 Commission on or before January 1, 1995.

34 **SECTION 1194.** ORS 517.990 is amended to read:

35 517.990. (1) A person who conducts a surface mining operation without a valid operating permit  
 36 as required by ORS 517.750 to 517.901 commits a Class A violation.

37 (2) Subject to ORS 153.022, violation of any provision of ORS 517.750 to 517.901, or any rules  
 38 promulgated pursuant thereto, or of any conditions of an operating permit is a Class A violation.

39 (3) Subject to ORS 153.022, violation of ORS 517.910 to 517.951, or any rules promulgated pur-  
 40 suant thereto, or of any conditions of an operating permit for a nonaggregate surface mining oper-  
 41 ation is punishable, upon conviction, by a fine of not more than \$10,000.

42 (4) Notwithstanding any other provision of the law, a person who conducts a nonaggregate  
 43 surface mining operation without a valid operating permit as required by ORS 517.910 to 517.951  
 44 shall be punished, upon conviction, by a fine of not more than \$10,000.

45 (5) A person commits a violation subject to a fine of not more than \$10,000 if the person know-

1 ingly or recklessly causes substantial harm to human health or the environment while:

2 (a) Conducting a surface mining operation without a valid operating permit as required by ORS  
3 517.750 to 517.901 or 517.905 to 517.951; or

4 (b) Violating an operating permit, a reclamation plan, a provision of this chapter or any rule  
5 adopted by the [*State Department of Geology and Mineral Industries*] **Oregon Department of Na-**  
6 **tural Resources** to carry out the provisions of this chapter.

7 (6) For purposes of this section, “substantial harm to human health or the environment” means:

8 (a) Physical injury, as defined in ORS 161.015, or risk of serious physical injury, as defined in  
9 ORS 161.015, to humans; or

10 (b) Substantial damage to wildlife, plants, aquatic and marine life, habitat or stream buffers.

11 **SECTION 1195.** ORS 517.992 is amended to read:

12 517.992. (1) In addition to any other sanction authorized by law, the [*governing board of the State*  
13 *Department of Geology and Mineral Industries*] **Director of the Oregon Department of Natural**  
14 **Resources** may impose a civil penalty of not less than \$200 per day and not more than \$50,000 per  
15 day for any violation of ORS 517.702 to 517.989 related to a chemical process mine, of any rules  
16 adopted under those provisions related to a chemical process mine, of any orders issued under those  
17 provisions related to a chemical process mine or of any conditions of a permit issued under those  
18 provisions related to a chemical process mine. A penalty may be imposed under this section without  
19 regard to whether the violation occurs on property covered by a permit issued under ORS 517.702  
20 to 517.989.

21 (2)(a) In addition to any other sanction authorized by law, and subject to the limitations of  
22 paragraph (b) of this subsection, the [*governing board of the State Department of Geology and Mineral*  
23 *Industries*] **director** may impose a civil penalty of not more than \$10,000 per day for any violation  
24 of ORS 517.702 to 517.740, 517.750 to 517.901 and 517.905 to 517.951 not related to a chemical process  
25 mine, of any rules adopted under those provisions not related to a chemical process mine, of any  
26 orders issued under those provisions not related to a chemical process mine or of any conditions  
27 of a permit issued under those provisions not related to a chemical process mine.

28 (b) A penalty may be imposed under this subsection only if a landowner or operator fails to  
29 complete erosion stabilization as required by ORS 517.775 or [*board*] rules adopted **by the director**  
30 to implement that section, if the operator has failed to comply with an order issued under ORS  
31 517.860 or 517.880, if the operation is being conducted in violation of conditions imposed on an op-  
32 erating permit or reclamation plan pursuant to ORS 517.835 or if the operation is being conducted:

33 (A) Without a permit;

34 (B) Outside the permit boundary; or

35 (C) Outside a permit condition regarding boundaries, setbacks, buffers or the placement of sur-  
36 face mining refuse.

37 (3) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

38 (4) Failure to pay a civil penalty that has become final under this section shall be grounds for  
39 revocation of any permit issued under ORS 517.702 to 517.989 to the person against whom the pen-  
40 alty has been assessed.

41 (5) Any civil penalty received by the State Treasurer under this section shall be deposited in the  
42 [*General Fund to the credit of the Geology and Mineral Industries Account and is continuously ap-*  
43 *propriated to the State Department of Geology and Mineral Industries*] **Oregon Natural Resources**  
44 **Fund. Moneys deposited in the fund under this subsection are continuously appropriated to**  
45 **the Oregon Department of Natural Resources** to the extent necessary for the administration and

1 enforcement of the laws, rules and orders under which the penalty was assessed.

2 (6) A reclamation fund shall be established into which funds not used as described in subsection  
3 (5) of this section shall be deposited. This money shall be used by the [*State Department of Geology*  
4 *and Mineral Industries*] **department** for the purpose of the reclamation of abandoned mine and drill  
5 sites.

6 (7) When a single incident violates statutes, rules, [*board*] orders **of the director** or permit  
7 conditions administered by more than one agency, the department shall coordinate with the other  
8 agencies having civil penalty authority before imposing a civil penalty.

9 (8) In implementing this section, the department shall adopt rules that provide civil penalties  
10 that are commensurate with the severity of violations.

11 (9) A civil penalty may be imposed against the board of directors and high managerial agents  
12 of a corporation if those persons engage in, authorize, solicit, request, command or knowingly tol-  
13 erate the conduct for which the penalty is to be imposed. As used in this subsection, “agent” and  
14 “high managerial agent” have the meanings given those terms in ORS 161.170.

15 **SECTION 1195a.** ORS 520.005 is amended to read:

16 520.005. As used in this chapter, unless the context requires otherwise:

17 (1) “Condensate” means liquid hydrocarbons that were originally in the gaseous phase in the  
18 reservoir.

19 (2) “Field” means the general area underlaid by one or more pools.

20 (3) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in subsection  
21 (5) of this section, including condensate originally in the gaseous phase in the reservoir.

22 (4) “Information hole” means a hole drilled for information purposes only, including but not  
23 limited to core holes, stratigraphic holes or other test holes.

24 (5) “Oil” means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are  
25 produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons  
26 that were originally in a gaseous phase in the reservoir.

27 (6) “Person” means any natural person, partnership, corporation, association, receiver, guardian,  
28 fiduciary, administrator, representative of any kind, or the State of Oregon and any public body as  
29 defined in ORS 174.109.

30 (7) “Pool” means an underground reservoir containing a common accumulation of oil and natural  
31 gas. A zone of a structure that is completely separated from any other zone in the same structure  
32 is a pool.

33 (8) “Owner” means a person who has the right to drill into and to produce from any pool and  
34 to appropriate the oil or gas produced therefrom either for others, for the person or for the person  
35 and others.

36 (9) “Protect correlative rights” means that the action or regulation by the [*board*] **Director of**  
37 **the Oregon Department of Natural Resources** affords a reasonable opportunity to each person  
38 entitled thereto to recover or receive the oil or gas in the tract or tracts of the person or the  
39 equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary  
40 expense to recover or receive such oil or gas or its equivalent.

41 (10) “Seismic program” means the collection of seismic exploration data through a continuous  
42 field operation.

43 (11) “Sidetrack” means to reenter a well from the well’s surface location with drilling equipment  
44 for the purpose of deviating from the existing well bore to achieve production from an alternate zone  
45 or bottom hole location, or to remedy an engineering problem encountered in the existing well bore.



1 (12) "Unit area" means one or more pools or parts thereof under unit operation pursuant to ORS  
2 520.260 to 520.330 and 520.230 (2).

3 (13) "Underground reservoir" means any subsurface sand, strata, formation, aquifer, cavern or  
4 void whether natural or artificially created, suitable for the injection and storage of natural gas  
5 therein and the withdrawal of natural gas therefrom, but excluding a pool.

6 (14) "Underground storage" means the process of injecting and storing natural gas within and  
7 withdrawing natural gas from an underground reservoir.

8 (15) "Waste of oil or gas" means:

9 (a) The inefficient, excessive or improper use or dissipation of reservoir energy of any pool, or  
10 the locating, spacing, drilling, equipping, operating or producing of any oil well or gas well in a  
11 manner that results or may result in reducing the quantity of oil or gas ultimately recoverable from  
12 any pool; or

13 (b) The inefficient storing of oil and the locating, spacing, drilling, equipping, operating or  
14 producing of oil wells or gas wells in a manner that causes or may cause unnecessary or excessive  
15 surface loss or destruction of oil or gas.

16 (16)(a) "Well" means a well drilled for the purpose of producing or storing oil or gas or other  
17 gaseous substances, reservoir pressure maintenance, disposal of produced fluids, and injection of  
18 water as part of a water flood.

19 (b) "Well" includes a well drilled in search of a new or undiscovered pool, or with the intent  
20 of extending the limits of a developed pool.

21 (c) "Well" does not include an information hole or a hole drilled as part of a seismic program.

22 **SECTION 1196.** ORS 520.017 is amended to read:

23 520.017. (1) The following fees are established under this chapter:

24 (a) The application fee for a permit to drill a well, \$2,000.

25 (b) The fee for a request to extend the period for completion of drilling, \$500.

26 (c) The fee to modify operations at a well, \$1,500.

27 (d) The fee to sidetrack a well, \$500.

28 (e) The fee to plug and abandon a well, \$1,000.

29 (f) The annual renewal fee for operation and maintenance of a well, \$1,500 the first renewal year  
30 and \$500 for each subsequent year.

31 (g) The application fee for a permit to drill an information hole is to be determined by the [*State*  
32 *Department of Geology and Mineral Industries*] **Oregon Department of Natural Resources** based  
33 on the estimated cost of review and approval, and the number and location of holes to be drilled.  
34 The fee may not exceed \$1,000 per information hole.

35 (h) The fee for approval of a seismic program shall be determined by the department based on  
36 the estimated cost of review and approval, but may not exceed \$1,000.

37 (2) The [*governing board of the State Department of Geology and Mineral Industries*] **Director**  
38 **of the Oregon Department of Natural Resources** by rule may specify a schedule of fees for costs  
39 incurred by the department for activities related to field designation for purposes of this section.

40 (3) All moneys received by the [*State Department of Geology and Mineral Industries*] **department**  
41 under this section shall be [*paid into the State Treasury and deposited in the General Fund to the*  
42 *credit of the Geology and Mineral Industries Account established in ORS 516.070.*] **deposited in the**  
43 **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection are**  
44 **continuously appropriated to the department for the purpose of carrying out the duties,**  
45 **functions and powers of the department as prescribed by section 1 (8) of this 2011 Act.**

1        **SECTION 1197.** ORS 520.025 is amended to read:

2        520.025. (1) A person may not drill or use a well without first obtaining a permit from the [*State*  
3 *Department of Geology and Mineral Industries*] **Oregon Department of Natural Resources** and  
4 posting any bond that may be required pursuant to ORS 520.095 (1). Drilling must be completed  
5 within one year from the date the permit is issued unless an extension is granted under subsection  
6 (2) of this section. When drilling has been completed, the well must be maintained under a permit  
7 until it is properly plugged and the site is reclaimed.

8        (2) An unused permit may be extended by the department for a reasonable period upon receipt  
9 of a written request from the permittee before the expiration date of the permit. The request shall  
10 be accompanied by a nonrefundable fee established under ORS 520.017.

11        (3) A permittee maintaining or operating a well shall provide the department with an annual  
12 report on a form provided by the department. Subject to the determinations in subsection (4) of this  
13 section, a permittee shall renew the permit for a well by paying the fee established under ORS  
14 520.017.

15        (4)(a) If upon receipt of the application the department determines that the method and equip-  
16 ment to be used by the applicant in drilling or operating the well comply with applicable laws and  
17 rules, the department shall issue the permit.

18        (b) The department may refuse to issue, refuse to renew or revoke a permit issued pursuant to  
19 this section if the department determines that methods or equipment to be used or being used in  
20 drilling or operating the well do not comply with applicable laws or rules, or that the well will not  
21 be operated and maintained or is not being operated or maintained in compliance with the permit  
22 and applicable laws or rules.

23        **SECTION 1198.** ORS 520.027 is amended to read:

24        520.027. (1) A person may not drill an information hole or a hole drilled as part of a seismic  
25 program without first applying for approval from the [*State Department of Geology and Mineral In-*  
26 *dustries*] **Oregon Department of Natural Resources** and paying the fee established in ORS  
27 520.017. The application must be submitted on a form provided by the department and must include  
28 all information requested by the department.

29        (2) A person issued an approval under this section shall comply with all terms of the  
30 department's approval and any other applicable law or rule. The department may not require the  
31 person receiving approval under this section to provide information from seismic programs. The de-  
32 partment may require the submittal of information from information holes, but the information is a  
33 trade secret under ORS 192.501 and is not subject to public disclosure under ORS 192.410 to 192.505.

34        **SECTION 1199.** ORS 520.045 is amended to read:

35        520.045. The [*State Department of Geology and Mineral Industries*] **Oregon Department of Na-**  
36 **tural Resources** may determine whether waste of oil or gas over which it has jurisdiction exists  
37 or is imminent. In the exercise of such power the department may:

38        (1) Collect data.

39        (2) Make investigations and inspections.

40        (3) Examine properties, leases, papers, books and records, including drilling records and logs.

41        (4) Examine, check, test and gauge oil and gas wells and tanks.

42        (5) Hold hearings.

43        (6) Provide for the keeping of records and the making of reports.

44        (7) Take such action as may be reasonably necessary to enforce this chapter.

45        **SECTION 1200.** ORS 520.055 is amended to read:

1 520.055. (1) The *[governing board of the State Department of Geology and Mineral Industries]*  
2 **Director of the Oregon Department of Natural Resources** has jurisdiction and authority over  
3 all persons and property, including tidal submerged and submersible lands of this state under ORS  
4 274.705 to 274.860, necessary to enforce effectively this chapter and all other laws relating to the  
5 conservation of oil and gas.

6 (2) In addition to and not in lieu of any other powers granted under this chapter, the *[board]*  
7 **director** may adopt rules and issue orders necessary to regulate geological, geophysical and seismic  
8 surveys on, and operations to remove sulfur from, the tidal submerged and submersible lands of this  
9 state under ORS 274.705 to 274.860.

10 **SECTION 1201.** ORS 520.095 is amended to read:

11 520.095. *[The governing board of the State Department of Geology and Mineral Industries may*  
12 *adopt rules and issue orders, and the department may issue orders, as may be necessary in the proper*  
13 *administration and enforcement of this chapter,]* **The Director of the Oregon Department of Na-**  
14 **tural Resources may adopt rules and issue orders to administer and enforce this chapter,**  
15 including but not limited to rules and orders for the following purposes:

16 (1) To require the drilling, casing and plugging of wells to be done in such a manner as to pre-  
17 vent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into  
18 oil or gas strata; to prevent the pollution of fresh water supplies by oil, gas or salt water; and to  
19 require reasonable bond conditioned upon compliance with applicable laws and rules and upon the  
20 performance of the duty to plug each dry or abandoned well.

21 (2) To compel the filing of logs from wells, including electrical logs, if any are taken, drilling  
22 records, typical drill cuttings or cores, if cores are taken, with the *[office of the State Geologist]*  
23 **Oregon Department of Natural Resources.**

24 (3) To prevent wells from being drilled, operated and produced in such a manner as to cause  
25 injury to neighboring leases or property.

26 (4) To prevent the drowning by water of any stratum or part thereof capable of producing oil  
27 or gas in paying quantities, and to prevent the premature and irregular encroachment of water that  
28 reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

29 (5) To require the operation of wells with efficient gas-oil ratios, and to fix ratios.

30 (6) To prevent blowouts, caving and seepage in the same sense that conditions indicated by such  
31 terms are generally understood in the oil and gas business.

32 (7) To prevent fires.

33 (8) To identify the ownership of all oil and gas wells, producing leases, tanks, plants, structures  
34 and all storage equipment and facilities.

35 (9) To regulate the stimulation and chemical treatment of wells.

36 (10) To regulate secondary recovery methods, including the introduction of gas, air, water or  
37 other substance into producing formations.

38 (11) To require the filing currently of information as to the volume of oil and gas, or either of  
39 them, produced and saved from the respective properties.

40 (12) To require the protection of ground water.

41 (13) To require the disposal of salt water and oil field waste so as not to damage land or prop-  
42 erty unnecessarily.

43 (14) To require that wells drilled for oil or gas be logged adequately enough to identify the  
44 geologic formations penetrated by the wells.

45 (15) To regulate the underground storage of natural gas and the drilling and operation of any

1 wells required therefor.

2 (16) To require the mitigation of off-site impacts of drilling and to require reclamation for sub-  
3 sequent beneficial use of drill sites and adjacent areas adversely affected by drilling or use of the  
4 well and the filling of sumps.

5 (17) To require performance bonds or other forms of financial security for compliance with the  
6 requirements of this chapter and rules adopted or orders issued under this chapter.

7 (18) To regulate exploratory wells, including stratigraphic wells and seismic program test wells,  
8 subject to the limitations in ORS 520.027.

9 (19) To regulate geological, geophysical and seismic surveys on, and operations to remove oil,  
10 gas and sulfur from, the tidal submerged and submersible lands of this state under ORS 274.705 to  
11 274.860.

12 **SECTION 1202.** ORS 520.097 is amended to read:

13 520.097. (1) For a period of two years from the date of abandonment or completion of a well, all  
14 well logs and records and well reports submitted to the [*State Department of Geology and Mineral*  
15 *Industries*] **Oregon Department of Natural Resources** are trade secrets under ORS 192.501 and  
16 are not subject to public disclosure under ORS 192.410 to 192.505, and all drill cuttings and cores  
17 may not be disclosed to the public unless such protection is waived by the permittee or disclosure  
18 is required by a court order.

19 (2) The department may extend the period under subsection (1) of this section up to an addi-  
20 tional five years on the request of the permittee or the permittee's successor in interest.

21 **SECTION 1203.** ORS 520.125 is amended to read:

22 520.125. (1) The [*governing board of the State Department of Geology and Mineral Industries*]  
23 **Director of the Oregon Department of Natural Resources** may summon witnesses, administer  
24 oaths and require the production of records, books and documents for examination at any hearing  
25 or investigation conducted before the [*board*] **director for purposes related to the administration**  
26 **and enforcement of this chapter.**

27 (2) In case of failure or refusal on the part of any person to comply with the subpoena issued  
28 by the [*board*] **director** or in the case of the refusal of any witness to testify as to any matter re-  
29 garding which the witness may lawfully be interrogated it shall be the duty of the circuit court of  
30 any county or any judge thereof, upon application of the [*board*] **director**, to issue an order to show  
31 cause why such person should not be held for contempt as in the case of disobedience of the re-  
32 quirements of a subpoena issued from such court or a refusal to testify therein.

33 (3) The [*board*] **director** may, in any matter before the [*board*] **director**, cause the depositions  
34 of witnesses residing within or without the state to be taken in the manner prescribed by law for  
35 like depositions in civil suits in the circuit courts of this state.

36 **SECTION 1204.** ORS 520.145 is amended to read:

37 520.145. Any person adversely affected by any rule adopted by the [*governing board of the State*  
38 *Department of Geology and Mineral Industries under this chapter or any order issued by the board*  
39 *or the State Department of Geology and Mineral Industries*] **Oregon Department of Natural Re-**  
40 **sources or the Director of the Oregon Department of Natural Resources** under this chapter  
41 may obtain judicial review thereof pursuant to ORS chapter 183.

42 **SECTION 1205.** ORS 520.175 is amended to read:

43 520.175. (1) Whenever it appears that any person is violating or threatening to violate any pro-  
44 vision of this chapter or any rule adopted or order issued under this chapter, the [*governing board*  
45 *of the State Department of Geology and Mineral Industries*] **Director of the Oregon Department**

1 **of Natural Resources** may bring an action against such person in the circuit court of any county  
 2 where the violation occurs or is threatened, to restrain such person from continuing such violation.  
 3 In any such action, the court shall have jurisdiction to grant to the *[board]* **director**, without bond  
 4 or other undertaking, such temporary restraining orders or final prohibitory and mandatory injunc-  
 5 tions as the facts may warrant, including any such orders restraining the movement or disposition  
 6 of oil or gas.

7 (2) If the *[board]* **director** fails to bring an action to enjoin a violation or threatened violation  
 8 of any provision of this chapter or any rule adopted or order issued under this chapter, within 60  
 9 days after receipt of a written request to do so by any person who is or will be adversely affected  
 10 by such violation, then the person making such request may bring an action to restrain such vio-  
 11 lation or threatened violation in any court in which the *[board]* **director** might have brought such  
 12 action. The *[board]* **director** shall be made a party defendant in such action in addition to the per-  
 13 son or persons bringing the action and the action shall proceed and injunctive relief may be granted  
 14 without bond in the same manner as if the action had been brought by the *[board]* **director**.

15 **SECTION 1206.** ORS 520.210 is amended to read:

16 520.210. (1) When necessary to prevent waste of oil or gas, to avoid the drilling of unnecessary  
 17 wells or to protect correlative rights, the *[governing board of the State Department of Geology and*  
 18 *Mineral Industries]* **Director of the Oregon Department of Natural Resources** shall establish  
 19 spacing units for a pool or field. Spacing units when established shall be of uniform size and shape  
 20 for the entire pool or field, except that when found to be necessary for any of the above purposes  
 21 the *[board]* **director** is authorized to divide any pool or field into zones and establish spacing units  
 22 for each zone, which units may differ in size and shape from those established in any other zone.  
 23 The *[board]* **director** may not establish spacing units for injection wells, withdrawal wells or moni-  
 24 toring wells drilled for the purpose of storing gas or other gaseous substances, or wells drilled for  
 25 the underground disposal of fluids.

26 (2) The size and shape of spacing units shall be such as will result in efficient and economical  
 27 development of the pool or field as a whole and the size thereof may not be smaller than the maxi-  
 28 mum area that can be efficiently drained by one well.

29 (3) An order establishing spacing units for a pool or field shall specify the size and shape of each  
 30 unit and the location of each permitted well thereon in accordance with a reasonably uniform  
 31 spacing plan. If an owner finds that a well drilled at the prescribed location would not produce in  
 32 paying quantities or that surface conditions would substantially add to the burden or hazard of  
 33 drilling such well, then the owner may apply to the *[department]* **Oregon Department of Natural**  
 34 **Resources** for permission to drill a well at a location other than that prescribed by such spacing  
 35 order. The department shall notify adjacent mineral owners of such application and any such owner  
 36 may request a hearing by the *[board]* **director** to consider the application. If no request for a  
 37 hearing is made in writing within 20 days, the department may issue an order approving the drilling  
 38 site. Any order by the *[board]* **director** or department under this section shall include in the order  
 39 suitable provisions to prevent the production from the spacing unit of more than its just and equi-  
 40 table share of the oil and gas in the pool.

41 (4) An order establishing spacing units for a pool or field shall cover all lands determined or  
 42 believed to be underlain by such pool or field and may be modified by the *[board]* **director** from time  
 43 to time to include additional areas determined to be underlain by such pool or field. When necessary  
 44 to prevent waste of oil or gas, to protect correlative rights or to provide for more efficient drainage,  
 45 an order establishing spacing units in a pool or field may be modified by the *[board]* **director** to

1 increase the size of spacing units for future wells in a pool or field or any zone thereof or to permit  
2 the drilling of additional wells on a reasonably uniform plan in such pool, field or zone.

3 **SECTION 1207.** ORS 520.220 is amended to read:

4 520.220. (1) When two or more separately owned tracts are embraced within a spacing unit or  
5 when there are separately owned interests in all or a part of such spacing unit, then the interested  
6 persons may integrate their tracts or interests for the development and operation of the spacing  
7 unit.

8 (2) In the absence of voluntary integration, the [*governing board of the State Department of*  
9 *Geology and Mineral Industries*] **Director of the Oregon Department of Natural Resources**, upon  
10 the application of any interested person, shall make an order integrating all tracts or interests in  
11 the spacing unit for the development and operation thereof and for the sharing of production  
12 therefrom. The [*board*] **director**, as a part of the order establishing one or more spacing units, may  
13 prescribe the terms and conditions upon which the royalty interests in the units shall, in the ab-  
14 sence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent  
15 order integrating royalty interests. Each such integration order shall be upon terms and conditions  
16 that are just and reasonable.

17 **SECTION 1208.** ORS 520.230 is amended to read:

18 520.230. (1) An agreement for the unit or cooperative development and operation of a field or  
19 pool in connection with the conduct of repressuring or pressure maintenance operations, cycling or  
20 recycling operations, including the extraction and separation of liquid hydrocarbons from natural  
21 gas in connection therewith, or any other method of operation, including water floods, is authorized  
22 and may be performed and shall not be held or construed to violate ORS 59.005 to 59.451, 59.710 to  
23 59.830, 59.991 and 59.995 or any of the statutes of this state relative to trusts, monopolies or con-  
24 tracts and combinations in restraint of trade, if such agreement is approved by the [*governing board*  
25 *of the State Department of Geology and Mineral Industries*] **Director of the Oregon Department**  
26 **of Natural Resources** as being in the public interest, for the protection of correlative rights and  
27 reasonably necessary to increase ultimate recovery or prevent waste of oil or gas. The failure to  
28 submit such an agreement to the [*board*] **director** for approval does not, for that reason, imply or  
29 constitute evidence that the agreement or operations conducted pursuant thereto violate ORS 59.005  
30 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any statute of this state now or hereafter in effect  
31 relating to trusts and monopolies.

32 (2) An agreement for the unit or cooperative development or operation of a field, pool or part  
33 thereof may be submitted to the [*board*] **director** for approval as being in the public interest or  
34 reasonably necessary to prevent waste or protect correlative rights. Approval by the [*board*] **di-**  
35 **rector** constitutes a complete defense to any proceeding charging violation of ORS 59.005 to 59.451,  
36 59.710 to 59.830, 59.991 and 59.995 or of any statute of this state now or hereafter in effect relating  
37 to trusts and monopolies on account thereof or on account of operations conducted pursuant thereto.  
38 The failure to submit such an agreement to the [*board*] **director** for approval does not, for that  
39 reason, imply or constitute evidence that the agreement or operations conducted pursuant thereto  
40 violate ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any statute of this state now or  
41 hereafter in effect relating to trusts and monopolies.

42 **SECTION 1209.** ORS 520.260 is amended to read:

43 520.260. (1) The [*governing board of the State Department of Geology and Mineral Industries*]  
44 **Director of the Oregon Department of Natural Resources** upon [*its*] **the director's** own motion  
45 may, and upon the application of any interested person shall, hold a hearing to consider the need

1 for the operation as a unit of one or more pools or parts thereof in a field.

2 (2) The *[board]* **director** shall make an order providing for the unit operation of a pool or part  
3 thereof if *[it]* **the director** finds that:

4 (a) Unit operation is reasonably necessary to effectively carry on pressure control, pressure  
5 maintenance or repressuring operations, cycling operations, water flooding operations, injection op-  
6 erations, or any combination thereof, or any other method of recovery designed to substantially in-  
7 crease the ultimate recovery of oil from the pool or pools; and

8 (b) The value of the estimated additional recovery of oil or gas exceeds the estimated additional  
9 cost incident to conducting unit operations.

10 **SECTION 1210.** ORS 520.280 is amended to read:

11 520.280. (1) The allocation described in ORS 520.270 (3) shall be in accord with the agreement,  
12 if any, of the interested parties. If there is no such agreement, the *[governing board of the State*  
13 *Department of Geology and Mineral Industries]* **Director of the Oregon Department of Natural**  
14 **Resources** shall determine the relative value, from evidence introduced at the hearing, of the sep-  
15 arately owned tracts in the unit area, exclusive of physical equipment, for development of oil and  
16 gas by unit operations. The production allocated to each tract shall be the proportion that the rel-  
17 ative value of each tract so determined bears to the relative value of all tracts in the unit area.

18 (2) That portion of the unit production allocated to any tract, and the proceeds from the sale  
19 thereof, are the property and income of the several persons to whom, or to whose credit, they are  
20 allocated or payable under the order providing for unit operations.

21 **SECTION 1211.** ORS 520.290 is amended to read:

22 520.290. (1) No order of the *[governing board of the State Department of Geology and Mineral*  
23 *Industries]* **Director of the Oregon Department of Natural Resources** providing for unit oper-  
24 ations is effective until:

25 (a) The plan for unit operations prescribed by the *[board]* **director** under ORS 520.270 has been  
26 approved in writing by (A) those owners who, under the *[board's]* **director's** order, will be required  
27 to pay at least 75 percent of the costs of the unit operation, and (B) those persons who, at the time  
28 of the order of the *[board]* **director**, owned of record legal title to 75 percent of royalty and over-  
29 riding royalty payable with respect to oil and gas produced from the pool or part thereof over the  
30 entire unit area; and

31 (b) The *[board]* **director** has made a finding, either in the order providing for unit operations  
32 or in a supplemental order, that the plan for unit operations has been so approved.

33 (2) If the plan for unit operations has not been approved pursuant to subsection (1) of this sec-  
34 tion at the time the order providing for unit operations is made, the *[board]* **director** shall upon  
35 application and notice hold such supplemental hearings as are required to determine if and when the  
36 plan for unit operations has been approved. If the persons owning the percentage of interest in the  
37 unit area required by subsection (1) of this section do not approve the plan for unit operations  
38 within a period of six months after the date on which the order providing for unit operations is  
39 made, the order is ineffective and shall be revoked by the *[board]* **director** unless the *[board]* **di-**  
40 **rector**, for good cause shown, extends the time for approval.

41 **SECTION 1212.** ORS 520.300 is amended to read:

42 520.300. An order providing for unit operations may be amended by an order made by the *[gov-*  
43 *erning board of the State Department of Geology and Mineral Industries]* **Director of the Oregon**  
44 **Department of Natural Resources** in the same manner and subject to the same conditions as an  
45 original order providing for unit operations. However:

1 (1) If the amendment affects only the rights and interests of the owners, the approval of the  
2 amendment by the royalty owners is not required.

3 (2) The order of amendment may not change the percentage for the allocation of:

4 (a) Oil and gas as established for any separately owned tract by the original order, except with  
5 the consent of all persons owning oil and gas rights in the tract; or

6 (b) Cost as established for any separately owned tract by the original order, except with the  
7 consent of all owners in the tract.

8 **SECTION 1213.** ORS 520.310 is amended to read:

9 520.310. (1) The [*governing board of the State Department of Geology and Mineral Industries*]  
10 **Director of the Oregon Department of Natural Resources** by order may provide for the unit  
11 operation of a pool or pools or parts thereof that embrace a unit area established by a previous  
12 order of the [*board*] **director**. The order, in providing for the allocation of unit production, shall first  
13 treat as a single tract the unit area previously established, and the portion of the unit production  
14 so allocated thereto shall then be allocated among the separately owned tracts included in the pre-  
15 viously established unit area in the same proportions as those specified in the previous order.

16 (2) An order may provide for unit operations on less than the whole of a pool where the unit  
17 area is of such size and shape as may reasonably be required for that purpose, and the conduct  
18 thereof will have no adverse effect upon other portions of the pool.

19 **SECTION 1214.** ORS 520.330 is amended to read:

20 520.330. All operations, including but not limited to the commencement, drilling or operation of  
21 a well, upon any portion of the unit area, are considered for all purposes the conduct of such op-  
22 erations upon each separately owned tract in the unit area by the several owners thereof. The  
23 portion of the unit production allocated to a separately owned tract in a unit area, when produced,  
24 is considered for all purposes to have been actually produced from that tract by a well drilled  
25 thereon. Operations conducted pursuant to an order of the [*governing board of the State Department*  
26 *of Geology and Mineral Industries*] **Director of the Oregon Department of Natural Resources**  
27 providing for unit operations constitute a fulfillment of all the express or implied obligations of each  
28 lease or contract covering lands in the unit area to the extent that compliance with such obligations  
29 cannot be had because of the order of the [*board*] **director**.

30 **SECTION 1215.** ORS 520.350 is amended to read:

31 520.350. (1) All natural gas in an underground reservoir utilized for underground storage,  
32 whether acquired by eminent domain or otherwise, shall at all times be the property of the natural  
33 gas company utilizing said underground storage, its heirs, successors, or assigns. In no event shall  
34 such gas be subject to the rights of the owner of the surface of the land under which said under-  
35 ground reservoir lies or of the owner of any mineral interest therein or of any person other than  
36 said natural gas company, its heirs, successors and assigns to release, produce, take, reduce to  
37 possessions, or otherwise interfere with or exercise any control thereof.

38 (2) Any right of condemnation granted for the purposes of ORS 520.340, 772.610 to 772.625 and  
39 this section shall be without prejudice to the rights of the owner of the condemned lands or of the  
40 rights and interest therein to drill or bore through the underground reservoir in such a manner as  
41 shall protect the underground reservoir against pollution and against the escape of natural gas in  
42 a manner which complies with the orders and rules of the [*State Department of Geology and Mineral*  
43 *Industries*] **Oregon Department of Natural Resources**. Such condemnation shall be without prej-  
44 udice to the owners of such lands or other rights or interests therein as to all other uses thereof.  
45 The additional costs of complying with rules or orders to protect the underground shall be paid by



1 the condemnor.

2 **SECTION 1216.** ORS 520.991 is amended to read:

3 520.991. Subject to ORS 153.022, violation of any provision of this chapter, any rule adopted by  
4 the *[governing board of the State Department of Geology and Mineral Industries]* **Director of the**  
5 **Oregon Department of Natural Resources** under this chapter or any order issued by the *[board*  
6 *or the State Department of Geology and Mineral Industries]* **director** under this chapter is punishable,  
7 upon conviction, by a fine not exceeding \$2,500 or imprisonment in the county jail for a term not  
8 exceeding six months, or both.

9 **SECTION 1217.** ORS 522.005 is amended to read:

10 522.005. As used in this chapter, unless the context requires otherwise:

11 [(1) “Board” means the governing board of the State Department of Geology and Mineral Indus-  
12 tries.]

13 [(2)] (1) “By-product” means any mineral or minerals, exclusive of helium or of oil, hydrocarbon  
14 gas or other hydrocarbon substances, that are found in solution or in association with geothermal  
15 resources and that have a value of less than 75 percent of the value of the geothermal resource or  
16 are not, because of quantity, quality, or technical difficulties in extraction and production, of suffi-  
17 cient value to warrant extraction and production by themselves.

18 [(3)] (2) “Completed geothermal well” means a well producing geothermal resources for which  
19 the operator has received *[the department’s]* written assurance **from the Oregon Department of**  
20 **Natural Resources** that the manner of drilling of and producing geothermal resources from the well  
21 are satisfactory.

22 [(4)] (3) “Cooperative agreement” means an agreement or plan of development and operation for  
23 the production or utilization of geothermal resources in which separate ownership units independ-  
24 ently operate without allocation of production.

25 [(5)] (4) “Correlative rights” means the right of each owner in a geothermal area to obtain that  
26 owner’s just and equitable share of the underlying geothermal resource, or an economic equivalent  
27 of that share of the resource, produced in a manner and in an amount that does not injure the res-  
28 ervoir to the detriment of others.

29 [(6) “Department” means the State Department of Geology and Mineral Industries.]

30 [(7)] (5) “Drilling” includes drilling, redrilling and deepening of a geothermal well.

31 [(8)] (6) “Enhanced recovery” means the increased recovery from a reservoir achieved by arti-  
32 ficial means or by the application of energy extrinsic to the reservoir. The artificial means include,  
33 but are not limited to, reinjection of hot brine, fluid or water into a reservoir.

34 [(9)] (7) “Geothermal area” means any parcel of land that is, or reasonably appears to be,  
35 underlaid by geothermal resources.

36 [(10)] (8) “Geothermal reinjection well” means any well or converted well constructed to dispose  
37 of geothermal fluids derived from geothermal resources into an underground reservoir.

38 [(11)] (9) “Geothermal resources” means the natural heat of the earth, the energy, in whatever  
39 form, below the surface of the earth present in, resulting from, or created by, or that may be ex-  
40 tracted from, the natural heat, and all minerals in solution or other products obtained from naturally  
41 heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the  
42 earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including,  
43 specifically:

- 44 (a) All products of geothermal processes, including indigenous steam, hot water and hot brines;  
45 (b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids

1 artificially introduced into geothermal formations;

2 (c) Heat or other associated energy found in geothermal formations; and

3 (d) Any by-product derived from them.

4 [(12)] (10) "Geothermal well" includes any excavation made for producing geothermal resources  
5 and any geothermal reinjection well.

6 [(13)] (11) "Land" means both surface and mineral rights.

7 [(14)] (12) "Operator" means the person:

8 (a) Who possesses the legal right to drill a geothermal well;

9 (b) Who has obtained a drilling permit pursuant to ORS 522.135; or

10 (c) Who possesses the legal right to operate a completed geothermal well or who has been  
11 granted the authority to operate the well by that person.

12 [(15)] (13) "Prospect well" includes any well drilled as a geophysical test well, seismic shot hole,  
13 mineral exploration drilling, core drilling or temperature gradient test well and drilled in prospect-  
14 ing for geothermal resources. "Prospect well" does not include a geothermal well.

15 [(16)] (14) "Reservoir" means an aquifer or combination of aquifers or zones containing a com-  
16 mon geothermal or ground water resource. "Reservoir" includes, but is not limited to, a hot dry rock  
17 conductive system.

18 [(17)] (15) "Royalty interest" means a right or interest in geothermal resources produced from  
19 land or in the proceeds of the first sale of those resources.

20 [(18)] (16) "Unit agreement" means an agreement or plan of development and operation devel-  
21 oped under the provisions of ORS 273.775, 308A.050 to 308A.128, 522.015, 522.405 to 522.545, 522.815  
22 and 522.990 and this section for the production or use of geothermal resources in separately owned  
23 interests as a single consolidated unit and that provides for the allocation of costs and benefits.

24 [(19)] (17) "Unit area" means the area described in a unit agreement that constitutes the land  
25 subject to development under the agreement.

26 [(20)] (18) "Unit operator" means the person designated in the unit agreement to manage and  
27 conduct the operation involving unitized land.

28 [(21)] (19) "Unit production" means all geothermal resources produced from a unit area from the  
29 effective date of a unit agreement approved by the [board] **Director of the Oregon Department**  
30 **of Natural Resources** under ORS 522.405.

31 [(22)] (20) "Waste" means:

32 (a) Any physical waste, including, but not limited to, underground waste resulting from the in-  
33 efficient, excessive or improper use or dissipation of reservoir energy or resulting from the location,  
34 spacing, drilling, equipping, operation or production of a geothermal resource well in such a manner  
35 that reduces or tends to reduce the ultimate economic recovery of the geothermal resources within  
36 a reservoir; and

37 (b) Surface waste resulting from the inefficient storage of geothermal resources and the location,  
38 spacing, drilling, equipping, operation or production of a geothermal resource well in such a manner  
39 that causes or tends to cause the unnecessary or excessive surface loss or destruction of geothermal  
40 resources released from a reservoir.

41 [(23)] (21) "Working interest" means an interest in geothermal resources or in land containing  
42 geothermal resources that is held under a lease, operating agreement, fee title or otherwise and  
43 under which, except as otherwise provided in a unit or cooperative agreement, the owner of the  
44 interest has the right to explore for, develop, produce or utilize the resources. "Working interest"  
45 does not include a right delegated to a unit operator as such by a unit agreement.

1        **SECTION 1218.** ORS 522.015 is amended to read:

2        522.015. (1) The Legislative Assembly hereby finds and declares that:

3        (a) The people of the State of Oregon have a direct and primary interest in the development of  
4 geothermal resources situated in this state.

5        (b) The State of Oregon, through the [*State Department of Geology and Mineral Industries*]  
6 **Oregon Department of Natural Resources**, shall control the drilling, redrilling and deepening of  
7 wells for the discovery and production of geothermal resources so that such wells will be con-  
8 structed, operated, maintained, plugged and decommissioned in the manner necessary to safeguard  
9 the life, health, property and welfare of the people of this state, to safeguard the air, water and  
10 other natural resources of this state, and to encourage the maximum economic recovery of  
11 geothermal resources therefrom.

12        (2) It is the policy of the Legislative Assembly that this chapter be administered:

13        (a) To prevent damage to and waste of geothermal resources;

14        (b) To prevent interference with or damage to waters used or to be used for beneficial purposes  
15 that may result from improper drilling, operation, maintenance, plugging or decommissioning of  
16 geothermal or prospect wells;

17        (c) To supervise the drilling, operation, maintenance, plugging and decommissioning of  
18 geothermal or prospect wells in a manner permitting the operator to utilize all methods known to  
19 the industry for the purpose of increasing the ultimate economic recovery of geothermal resources,  
20 that are suitable, and consistent with protection of the air, water and other natural resources of the  
21 state; and

22        (d) To provide for the development, management and production of geothermal resources in a  
23 manner that minimizes state involvement, enhances resource recovery, prevents waste, maximizes  
24 economic development and protects correlative rights of the resource owners.

25        **SECTION 1219.** ORS 522.019 is amended to read:

26        522.019. (1)(a) In order to accomplish the policy of ORS 522.015 all geothermal fluids derived  
27 from geothermal resources shall be reinjected into the same reservoir from which withdrawn unless  
28 it is determined by the [*State Department of Geology and Mineral Industries*] **Oregon Department**  
29 **of Natural Resources** that these policies and the public interest require other disposal of the fluids.

30        (b) Subject to the determination in paragraph (a) of this subsection, injection into other reser-  
31 voirs or disposal by other means may be allowed by the department in specific instances where it  
32 is shown that such action is consistent with the policies cited in this section. Disposal by other  
33 means may include any secondary use of geothermal fluid after the primary use of such fluid for  
34 electrical power generation or for other direct application of the heat or other associated energy  
35 contained in such fluids or for by-product extraction. Secondary uses may include, but shall not be  
36 limited to, use of condensate resulting from electrical power plant operations for plant-cooling pur-  
37 poses, or use of such geothermal fluid for agricultural, commercial or industrial purposes.

38        (2) The [*State Department of Geology and Mineral Industries*] **department** shall adopt rules  
39 governing the disposal by reinjection or other means of geothermal fluids derived from geothermal  
40 resources from wells of 250 or more degrees Fahrenheit bottom hole temperature or wells 2,000 or  
41 more feet deep. The rules shall include standards whereby contamination may be determined, con-  
42 struction standards for reinjection wells, testing procedures for identifying aquifers, standards and  
43 procedures for determining whether adjacent aquifers are being degraded by the reinjection process,  
44 guidelines for conservation of the resource, criteria for evaluating reservoirs or zones for  
45 geothermal fluid disposal and requirements for prior approval of all geothermal fluid reinjection

1 proposals.

2 (3) In addition to the permit required by ORS 522.115, an operator of a geothermal well must  
 3 obtain a water quality permit from the Department of Environmental Quality under ORS 468B.050  
 4 or under rules authorized by ORS 468B.195 before injection of any fluid, except well drilling fluids.  
 5 Nothing in this chapter limits the authority of the Department of Environmental Quality to regulate  
 6 the subsurface injection of fluids pursuant to ORS 468B.195, 468B.196 and 468B.197.

7 **SECTION 1220.** ORS 522.025 is amended to read:

8 522.025. (1) The provisions of this chapter relating to the location and drilling of any well for  
 9 the production of geothermal resources do not apply to any wells producing geothermal resources  
 10 on July 1, 1975, or wells, other than prospect wells, where:

11 (a) The geothermal fluids produced are of less than 250 degrees Fahrenheit bottom hole tem-  
 12 perature; or

13 (b) Such fluids have been appropriated pursuant to ORS 537.505 to 537.795 and 537.992.

14 (2) The provisions of this chapter relating to regulation of production of geothermal resources  
 15 from a geothermal reservoir apply only to wells with a bottom hole temperature of at least 250 de-  
 16 grees Fahrenheit.

17 (3) If the bottom hole temperature of a well that was initially at least 250 degrees Fahrenheit  
 18 falls below 250 degrees Fahrenheit, the [*State Geologist and the Water Resources Director*] **Director**  
 19 **of the Oregon Department of Natural Resources**, after consulting with the well owner, shall  
 20 determine the agency with regulatory responsibility for that specific well. This determination shall  
 21 be documented in writing and shall supersede a determination made under subsection (1) or (2) of  
 22 this section. This chapter does not limit the authority of the [*Water Resources Department*] **Oregon**  
 23 **Department of Natural Resources** to regulate the appropriation of water pursuant to ORS 537.505  
 24 to 537.795 and 537.992.

25 **SECTION 1221.** ORS 522.045 is amended to read:

26 522.045. Any well drilled under authority of this chapter from which usable geothermal re-  
 27 sources cannot be derived, or the owner or operator has no intention of deriving usable geothermal  
 28 resources, and that is not expected to provide information useful to the development of geothermal  
 29 resources shall be plugged and decommissioned as provided in this chapter or, upon the operator's  
 30 written application to the [*State Department of Geology and Mineral Industries and with the concur-*  
 31 *rence and approval of the Water Resources Director, jurisdiction over the well may be transferred to*  
 32 *the Water Resources Director and, in such case*] **Oregon Department of Natural Resources and**  
 33 **the approval of the Director of the Oregon Department of Natural Resources**, the well shall  
 34 no longer be subject to the provisions of this chapter but shall be subject to any applicable laws  
 35 and rules relating to wells drilled for appropriation and use of ground waters. [*If an application is*  
 36 *made to transfer jurisdiction, a copy of all logs, records, histories and descriptions shall be provided*  
 37 *to the Water Resources Director by the applicant.*]

38 **SECTION 1222.** ORS 522.055 is amended to read:

39 522.055. (1) No person shall engage in drilling a prospect well without first obtaining a permit  
 40 issued under the authority of the [*State Department of Geology and Mineral Industries*] **Oregon De-**  
 41 **partment of Natural Resources** and without complying with the conditions of such permit.

42 (2) An application to drill prospect wells shall contain such information as the department may  
 43 require, including but not limited to a plugging and decommissioning plan, and shall be accompanied  
 44 by a nonrefundable fee in the amount determined by the department to be the estimated cost of re-  
 45 view of the proposed prospect wells. Each application may include up to five prospect wells in a

1 given project area. The amount of the fee may not exceed \$1,000 per five prospect wells. A permit  
 2 to drill remains valid until it is revoked or modified by the department based on new information  
 3 or changed conditions.

4 (3) The permittee shall provide an annual nonrefundable fee of \$500 on or before the anniversary  
 5 of the issuance date of each active permit.

6 (4) A request by a permittee to transfer a permit issued under this section shall be accompanied  
 7 by a nonrefundable fee of \$500.

8 (5) All moneys received by the department under this section shall be *[paid into the State*  
 9 *Treasury and deposited in the General Fund to the credit of the Geology and Mineral Industries Ac-*  
 10 *count established by ORS 516.070.]* **deposited in the Oregon Natural Resources Fund. Moneys**  
 11 **deposited in the fund under this subsection are continuously appropriated to the department**  
 12 **for the purpose of carrying out the duties, functions and powers of the department as pre-**  
 13 **scribed by section 1 (8) of this 2011 Act.**

14 **SECTION 1223.** ORS 522.065 is amended to read:

15 522.065. (1) Upon receipt of a complete application to drill prospect wells, the *[State Department*  
 16 *of Geology and Mineral Industries shall circulate copies of the application to the Water Resources*  
 17 *Department, the Department of Environmental Quality, the Department of Land Conservation and De-*  
 18 *velopment and the Department of State Lands. The State Department of Geology and Mineral Indus-*  
 19 *tries may circulate copies]* **Oregon Department of Natural Resources shall transmit a copy of**  
 20 **the application to the Department of Environmental Quality. The Oregon Department of**  
 21 **Natural Resources may circulate copies of the application** to other public agencies that may  
 22 have an interest in the permit application.

23 (2) Any public agency receiving a copy of the application as provided in subsection (1) of this  
 24 section may suggest conditions under which a permit should be granted. A public agency shall sub-  
 25 mit any suggested conditions to the *[State Department of Geology and Mineral Industries]* **Oregon**  
 26 **Department of Natural Resources** within 45 days of the public agency's receipt of the copy of the  
 27 application. The department shall consider any suggested conditions that a public agency submits  
 28 to the department within the 45-day period.

29 (3) A permit issued under this section is subject to such conditions as the **Oregon** Department  
 30 **of Natural Resources** may impose. Included among the conditions shall be provision for the proper  
 31 and safe plugging and decommissioning of each prospect well. Subject to ORS 522.075, the depart-  
 32 ment shall issue or deny the permit by a written order within 60 days after receipt of a complete  
 33 application unless the department determines that a longer period is necessary to respond to com-  
 34 ments or new information or for other good cause.

35 **SECTION 1224.** ORS 522.075 is amended to read:

36 522.075. (1)(a) The *[State Department of Geology and Mineral Industries]* **Oregon Department**  
 37 **of Natural Resources** may not issue a permit for a prospect well until the applicant has provided  
 38 a bond or alternative form of financial security as specified in rules adopted by the *[governing board*  
 39 *of the State Department of Geology and Mineral Industries]* **Director of the Oregon Department**  
 40 **of Natural Resources.**

41 (b) The amount of the bond or alternative form of financial security may not be less than \$10,000  
 42 for each prospect well or not less than \$50,000 for all prospect wells to be drilled.

43 (2) The bond or alternative form of financial security must be conditioned upon compliance with  
 44 the requirements of this chapter and rules adopted and orders issued pursuant to this chapter and  
 45 must secure the state against all losses, charges and expenses, including court costs and attorney

1 fees, incurred by the state in obtaining such compliance.

2 (3) With the consent of the department, any bond or acceptable alternative form of financial  
3 security submitted pursuant to this section may be terminated or canceled. However, the department  
4 may not consent to the termination or cancellation of any bond or security until each prospect well  
5 covered by such bond or security has been properly and safely plugged and decommissioned pursu-  
6 ant to the plan required by the permit or until another bond or security for each well has been  
7 submitted and approved by the department.

8 **SECTION 1225.** ORS 522.080 is amended to read:

9 522.080. In addition to any other liability imposed by law, the operator of a prospect well shall  
10 be liable to any person or public agency that sustains damages from failure of the operator to  
11 comply with:

12 (1) A condition in a permit requiring the operator to provide for the protection of ground water  
13 in the area affected by the well; or

14 (2) Any rules of the [*governing board of the State Department of Geology and Mineral*  
15 *Industries*] **Director of the Oregon Department of Natural Resources** establishing standards for  
16 blowout prevention, equipment and casing design and removal, and any other procedures necessary  
17 to shut out detrimental substances from strata containing ground or surface water usable for bene-  
18 ficial purposes.

19 **SECTION 1226.** ORS 522.085 is amended to read:

20 522.085. Upon completion of all drilling and testing undertaken pursuant to an application to  
21 drill prospect wells, the applicant shall file with the [*State Department of Geology and Mineral In-*  
22 *dustries*] **Oregon Department of Natural Resources** a report certifying the completion of the  
23 plugging and decommissioning plan required by the permit.

24 **SECTION 1227.** ORS 522.115 is amended to read:

25 522.115. (1) No person shall engage in the drilling or operating of any geothermal well without  
26 first obtaining a permit issued under the authority of the [*State Department of Geology and Mineral*  
27 *Industries*] **Oregon Department of Natural Resources**, and without complying with the conditions  
28 of such permit.

29 (2) An application for a permit shall contain:

30 (a) The location and elevation of the floor of the proposed derrick.

31 (b) The number or other designation approved by the department by which the well shall be  
32 known.

33 (c) The applicant's estimate of the depths to be drilled.

34 (d) The nature and character of the geothermal resource sought.

35 (e) A reclamation plan for the well pad.

36 (f) Such other information as the [*governing board of the State Department of Geology and Min-*  
37 *eral Industries*] **Director of the Oregon Department of Natural Resources** by rule may require.

38 (3) An application for a permit shall be accompanied by a nonrefundable fee of \$2,000.

39 (4) The permittee shall provide an annual nonrefundable renewal fee on or before the anniver-  
40 sary of the issuance date of each active permit as follows:

41 (a) \$1,500 for the first renewal year.

42 (b) \$500 for each subsequent renewal year.

43 (5) A request by a permittee to modify a permit shall be accompanied by a nonrefundable fee  
44 not to exceed \$1,500.

45 (6) A request by a permittee to transfer a permit issued under this section shall be accompanied

1 by a nonrefundable fee of \$500.

2 (7) A request by a permittee to plug and decommission a geothermal well shall be accompanied  
3 by a nonrefundable fee of \$1,000.

4 (8) All moneys received by the department under this section shall be *[paid into the State*  
5 *Treasury and deposited in the General Fund to the credit of the Geology and Mineral Industries Ac-*  
6 *count established by ORS 516.070.] deposited in the Oregon Natural Resources Fund. Moneys*  
7 **deposited in the fund under this subsection are continuously appropriated to the department**  
8 **for the purpose of carrying out the duties, functions and powers of the department as pre-**  
9 **scribed by section 1 (8) of this 2011 Act.**

10 **SECTION 1228.** ORS 522.125 is amended to read:

11 522.125. (1) Upon receipt of a complete application for a permit to drill or operate a geothermal  
12 well, the *[State Department of Geology and Mineral Industries shall circulate copies of the application*  
13 *to the Water Resources Department, the State Department of Fish and Wildlife, the Department of*  
14 *Environmental Quality, the State Parks and Recreation Department, the Department of Land Conser-*  
15 *vation and Development, the State Department of Energy, the Department of State Lands]* **Oregon**  
16 **Department of Natural Resources shall transmit copies of the application to the Department**  
17 **of Environmental Quality, the State Department of Energy** and the governing body of the  
18 county and the geothermal heating district in which the well will be located. The *[State Department*  
19 *of Geology and Mineral Industries]* **Oregon Department of Natural Resources** may circulate  
20 copies to other public agencies that have an interest in the application.

21 (2) Any public agency receiving a copy of the application as provided in subsection (1) of this  
22 section may suggest conditions under which a permit should be granted. A public agency shall sub-  
23 mit any suggested conditions to the *[State Department of Geology and Mineral Industries]* **Oregon**  
24 **Department of Natural Resources** within 45 days of the public agency's receipt of the copy of the  
25 application. The department shall consider any suggested conditions that a public agency submits  
26 to the department within the 45-day period.

27 **SECTION 1229.** ORS 522.135 is amended to read:

28 522.135. (1) Within 60 days after receipt of a complete application for a permit to drill or operate  
29 a geothermal well, the *[State Department of Geology and Mineral Industries]* **Oregon Department**  
30 **of Natural Resources** shall by order issue or deny the permit unless the department determines  
31 that a longer period is necessary to respond to comments or new information or for other good  
32 cause.

33 (2) Except as provided in ORS 522.145, the department shall issue the permit if, after receipt of  
34 comments from the agencies referred to in ORS 522.125, the department determines that issuance  
35 of the permit would be consistent with the provisions of this chapter and ORS chapters 468A, 468B  
36 and 537, any rule adopted under this chapter by the *[governing board of the State Department of*  
37 *Geology and Mineral Industries, any rule adopted by the Water Resources Commission under ORS*  
38 *chapter 537 and any rule adopted under ORS chapter 468 or 468B by the Environmental Quality*  
39 *Commission]* **Director of the Oregon Department of Natural Resources, ORS chapter 537 by**  
40 **the Oregon Natural Resources Commission or ORS chapter 468 or 468B by the Environmental**  
41 **Quality Commission.**

42 (3) If the department issues a permit pursuant to this section, the department shall impose such  
43 conditions as the department considers necessary to carry out the provisions of this chapter and  
44 ORS chapters 468A, 468B and 537, *any rule adopted under this chapter by the governing board of the*  
45 *department, any rule adopted by the Water Resources Commission under ORS chapter 537 and any*

1 rule adopted under ORS chapter 468 or 468B by the Environmental Quality Commission] or any rule  
 2 adopted under this chapter or ORS chapter 468, 468B or 537. The department shall include in  
 3 the permit a statement that issuance of the permit does not relieve any person from any obligation  
 4 to comply with ORS 468B.035, 468B.050, 468B.195, 537.090 or 537.535 or any other applicable state  
 5 or federal environmental laws.

6 (4) The [State Geologist] **Director of the Oregon Department of Natural Resources** shall in-  
 7 corporate into the permit requirements:

8 (a) Any conditions [made by the Water Resources Director] necessary to comply with the pur-  
 9 poses set forth in ORS 537.525; and

10 (b) Any conditions made by the Department of Environmental Quality necessary to comply with  
 11 the purposes set forth in ORS 468A.010 and 468B.015.

12 (5) Drilling, redrilling or deepening must begin within one year after the date of permit issuance  
 13 or the permit shall expire. However, the [State Department of Geology and Mineral Industries]  
 14 **Oregon Department of Natural Resources** may extend the unused permit for a reasonable period  
 15 not to exceed one year beyond the initial one-year period upon receipt of a written request from the  
 16 permittee before the expiration date of the permit. The request shall be accompanied by the  
 17 nonrefundable fee specified in ORS 522.115.

18 **SECTION 1230.** ORS 522.145 is amended to read:

19 522.145. (1)(a) The [State Department of Geology and Mineral Industries] **Oregon Department**  
 20 **of Natural Resources** may not issue a permit for a geothermal well until the applicant has provided  
 21 a bond or alternative form of financial security as specified in rules adopted by the [governing board  
 22 of the State Department of Geology and Mineral Industries] **Director of the Oregon Department**  
 23 **of Natural Resources**.

24 (b) The amount of the bond or alternative form of financial security may not be less than \$25,000  
 25 for each well or not less than \$150,000 for all wells to be drilled.

26 (2) The bond or alternative form of financial security must be conditioned upon compliance with  
 27 the requirements of this chapter and rules adopted and orders issued pursuant to this chapter and  
 28 must secure the state against all losses, charges and expenses, including court costs and attorney  
 29 fees, incurred by the state in obtaining such compliance.

30 (3) With the consent of the department, any bond or acceptable alternative form of financial  
 31 security submitted pursuant to this section may be terminated or canceled. However, the department  
 32 may not consent to the termination or cancellation of any bond or security until each geothermal  
 33 well covered by such bond or security has been properly and safely plugged and decommissioned  
 34 pursuant to the plan required by the permit or until another bond or security for each well has been  
 35 submitted and approved by the department.

36 **SECTION 1231.** ORS 522.155 is amended to read:

37 522.155. In addition to any other liability imposed by law, the operator of a geothermal well  
 38 shall be liable to any person or public agency that sustains damages from failure of the operator to  
 39 comply with:

40 (1) A condition in a permit requiring the operator to provide for the protection of ground water  
 41 in the area affected by the well; or

42 (2) Any rules of the [governing board of the State Department of Geology and Mineral  
 43 Industries] **Director of the Oregon Department of Natural Resources** establishing standards for  
 44 blowout prevention, equipment and casing design and removal, and any other procedures necessary  
 45 to shut out detrimental substances from strata containing ground or surface water usable for bene-



1 ficial purposes.

2 **SECTION 1232.** ORS 522.175 is amended to read:

3 522.175. (1) No person shall abandon a geothermal well without first plugging and decommis-  
4 sioning the well in conformance with a plugging and decommissioning plan approved by the [*State*  
5 *Department of Geology and Mineral Industries*] **Oregon Department of Natural Resources** and  
6 complying with the provisions of ORS 522.245.

7 (2) The [*governing board of the department*] **Director of the Oregon Department of Natural**  
8 **Resources** shall adopt rules designed to:

9 (a) Protect underground and surface water usable for beneficial purposes from pollution result-  
10 ing from infiltration or addition of any detrimental substance;

11 (b) Prevent the escape of all fluids to the surface;

12 (c) Close the surface aperture of the well; and

13 (d) Remove all surface equipment except that necessary to maintain permanent closure of the  
14 well.

15 **SECTION 1233.** ORS 522.195 is amended to read:

16 522.195. Except as excluded by rule adopted by the [*governing board of the State Department of*  
17 *Geology and Mineral Industries*] **Director of the Oregon Department of Natural Resources**, the  
18 operator of any completed geothermal well shall file with the [*department*] **Oregon Department of**  
19 **Natural Resources** a monthly statement of the geothermal resources production from such well  
20 during the preceding calendar month.

21 **SECTION 1234.** ORS 522.205 is amended to read:

22 522.205. (1) Except as excluded from the provisions of this section by rule of the [*governing*  
23 *board of the State Department of Geology and Mineral Industries*] **Director of the Oregon Depart-**  
24 **ment of Natural Resources**, any prospective operator of a geothermal well shall notify the [*de-*  
25 *partment*] **Oregon Department of Natural Resources** in such form as the department may direct  
26 of the purchase, assignment, transfer, conveyance or exchange of the well within 45 days of the  
27 purchase and shall accompany such notice with an application for transfer of the permit for the  
28 particular well. The application must include the transfer fee specified in ORS 522.115.

29 (2) Any buyer of land on which a geothermal well is located shall notify the department of the  
30 purchase, assignment, transfer, conveyance or exchange of the land upon which such well is situated  
31 within 45 days of such purchase.

32 **SECTION 1235.** ORS 522.215 is amended to read:

33 522.215. (1) No operator shall suspend drilling or operation of a geothermal well without ob-  
34 taining permission from the [*State Department of Geology and Mineral Industries*] **Oregon Depart-**  
35 **ment of Natural Resources**.

36 (2) The department may authorize an operator to suspend for a specific period operations or  
37 remove equipment from an uncompleted geothermal well upon such terms as the department may  
38 specify, upon written application of the operator and an affidavit showing good cause therefor.

39 (3) Within a period of six months from the ending date specified for such suspension, the oper-  
40 ator may make written application for an extension of suspension and file it with an affidavit  
41 showing good cause for such an extension. Upon a finding that the extension is merited, the [*gov-*  
42 *erning board of the department*] **Director of the Oregon Department of Natural Resources** may  
43 extend the suspension for an additional specific period.

44 (4) If, after suspension, operations are not resumed by the operator within six months from the  
45 ending date specified for the suspension or extension thereof, an intention to abandon and unlawful

1 abandonment shall be presumed.

2 (5) Whenever an operator whose operations have been suspended fails to comply with such terms  
3 as the department may specify in its authorization, the geothermal well shall be presumed unlawfully  
4 abandoned. A well shall also be deemed unlawfully abandoned, if, without notice to the department,  
5 any drilling or producing equipment is removed.

6 (6) An unlawful abandonment shall be declared by order of the [board] **director**, and written  
7 notice thereof shall be mailed by registered mail or by certified mail with return receipt both to  
8 such operator at the last-known post-office address of the operator, to the registered agent of the  
9 operator, if any, and to the operator's sureties.

10 (7) After declaration of unlawful abandonment, the [board] **director** may proceed against the  
11 operator and the surety of the operator as provided for in ORS 522.145 and may bring suit pursuant  
12 to ORS 522.810 or take any other enforcement or recovery action authorized by law.

13 **SECTION 1236.** ORS 522.225 is amended to read:

14 522.225. (1) Before commencing any operation to discontinue the use of a geothermal well, the  
15 operator shall give notice to the [State Department of Geology and Mineral Industries] **Oregon De-**  
16 **partment of Natural Resources** of the intention to plug and decommission the well and the date  
17 upon which the work will begin.

18 (2) Such notice shall be given at least 24 hours before the commencement of plugging and de-  
19 commissioning operations and shall indicate:

20 (a) The condition of the well;

21 (b) The proposed method of the plugging and decommissioning operation; and

22 (c) Any additional information that may be required by the department.

23 **SECTION 1237.** ORS 522.245 is amended to read:

24 522.245. (1) A representative of the [State Department of Geology and Mineral Industries] **Oregon**  
25 **Department of Natural Resources** may be present during any operation to plug and decommission  
26 a geothermal well. If the representative determines that the plugging and decommissioning is satis-  
27 factory, the representative shall approve the plugging and decommissioning of the well.

28 (2) Within 45 days after the completion of the plugging and decommissioning of any geothermal  
29 well, the operator of the well shall make a written report of all work done. Within 45 days after the  
30 receipt of the report, the department shall furnish the operator with a written final approval of the  
31 plugging and decommissioning or a written disapproval setting forth the conditions upon which the  
32 disapproval is based.

33 (3) Failure to plug and decommission in accordance with the approved method, failure to submit  
34 to the department any notice or report required by this chapter or failure to furnish the department  
35 with any required information shall constitute sufficient grounds for disapproval of the plugging and  
36 decommissioning and shall constitute unlawful abandonment of the well.

37 (4) When the department has issued a written disapproval of the plugging and decommissioning,  
38 the [governing board of the department] **Director of the Oregon Department of Natural Re-**  
39 **sources** may proceed against the operator and the surety of the operator as provided for in ORS  
40 522.145 and may bring suit pursuant to ORS 522.810 or take any other enforcement or recovery  
41 action authorized by law.

42 **SECTION 1238.** ORS 522.255 is amended to read:

43 522.255. If interference between an existing geothermal well permitted under this chapter and  
44 an existing water appropriation permitted under ORS chapter 537 is found by [either the State  
45 Geologist or the Water Resources Director, the State Geologist and the Water Resources Director shall

1 *work cooperatively to*] **the Director of the Oregon Department of Natural Resources, the di-**  
 2 **rector shall** resolve the conflict and develop a cooperative management program for the area. In  
 3 determining what action should be taken, *[they]* **the director** shall consider the following goals:

4 (1) Achieving the most beneficial use of the water and heat resources;

5 (2) Allowing all existing users of the resources to continue to use those resources to the great-  
 6 est extent possible; and

7 (3) Insuring that the public interest in efficient use of water and heat resources is protected.

8 **SECTION 1239.** ORS 522.305 is amended to read:

9 522.305. (1) In accordance with the applicable provisions of ORS chapter 183, the *[governing*  
 10 *board of the State Department of Geology and Mineral Industries]* **Director of the Oregon Depart-**  
 11 **ment of Natural Resources** may adopt rules necessary to implement the provisions of this chapter.  
 12 This authority includes, but is not limited to, rules relating to:

13 (a) Establishing procedures for the issuance, modification, transfer, denial, suspension and re-  
 14 vocation of permits;

15 (b) Establishing procedures for enforcing permit conditions, for enforcing the requirements of  
 16 this chapter and for enforcing rules adopted to implement the provisions of this chapter; and

17 (c) Establishing civil penalties for violations of this chapter, for violations of rules adopted to  
 18 implement the provisions of this chapter and for violations of permits and orders issued pursuant to  
 19 this chapter.

20 (2) Any final determination made by the *[State Department of Geology and Mineral Industries]*  
 21 **Oregon Department of Natural Resources** in carrying out the provisions of this chapter or in  
 22 rules adopted thereunder may be reviewed in the manner provided by the applicable provisions of  
 23 ORS chapter 183.

24 **SECTION 1240.** ORS 522.315 is amended to read:

25 522.315. Whenever the *[State Department of Geology and Mineral Industries]* **Oregon Depart-**  
 26 **ment of Natural Resources** gives any written direction concerning any geothermal well and the  
 27 operator requests in writing that a final order for purposes of ORS chapter 183 be made, the de-  
 28 partment shall, within 15 days after receipt of the notice, deliver such final written order to the  
 29 operator.

30 **SECTION 1241.** ORS 522.325 is amended to read:

31 522.325. (1) The operator of any geothermal well shall within 15 days from the date of the ser-  
 32 vice of any order, either comply with the order or file with the *[State Department of Geology and*  
 33 *Mineral Industries]* **Oregon Department of Natural Resources** a written statement that the order  
 34 is not acceptable, and the reasons therefor, and the statement shall constitute an appeal from such  
 35 order to the *[governing board of the department]* **Director of the Oregon Department of Natural**  
 36 **Resources.**

37 (2) Any final written order of the *[board]* **director** may be appealed in the manner provided in  
 38 ORS chapter 183 for appeals from final orders in contested cases.

39 **SECTION 1242.** ORS 522.355 is amended to read:

40 522.355. (1) The operator of any geothermal well shall keep, or cause to be kept, a careful and  
 41 accurate log, core record and history of the drilling of the well.

42 (2) The log referred to in subsection (1) of this section shall show the character and depth of  
 43 each formation encountered in the drilling of the well; the amount, size and weight of casing used;  
 44 and the location, depth and temperature of water-bearing strata, including the temperature, chemical  
 45 composition and other chemical and physical characteristics of fluid encountered from time to time,

1 so far as determined.

2 (3) The core record referred to in subsection (1) of this section shall show the depth, character  
3 and fluid content of cores obtained, so far as determined from the study and analysis thereof.

4 (4) The history referred to in subsection (1) of this section shall show the location and amount  
5 of sidetracked casings, tools or other material; the depth and quantity of cement in cement plugs;  
6 the shots of dynamite or other explosives used; the results of production and other tests during  
7 drilling operations; and completion data.

8 (5) The log referred to in subsections (1) and (2) of this section shall be kept in the local office  
9 of the operator and, together with the tour reports of the operator, shall be subject, during business  
10 hours, to inspection by the [*governing board of the State Department of Geology and Mineral Indus-*  
11 *tries, or the department*] **Director of the Oregon Department of Natural Resources or an au-**  
12 **thorized representative of the director.**

13 (6) The operator of any geothermal well shall, in addition to furnishing the log, records, and  
14 tests required by this section, collect representative drill cuttings. The operator shall additionally,  
15 in the event cores are taken, collect representative core samples. The drill cuttings and core sam-  
16 ples shall be filed with the [*department*] **Oregon Department of Natural Resources** promptly upon  
17 completion or upon its written request, and upon plugging and decommissioning or upon suspension  
18 of operations for a period of at least six months.

19 **SECTION 1243.** ORS 522.365 is amended to read:

20 522.365. (1) Each operator of any geothermal well or the designated agent of the operator shall  
21 file with the [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
22 **Resources** a copy of the log, history and core record, or any portion thereof, promptly upon com-  
23 pletion, or upon the written request of the department at any time after the commencement of the  
24 work of drilling any geothermal well, and upon plugging and decommissioning or upon suspension  
25 of operations for a period of at least six months.

26 (2) For a period of four years after the receipt of any log, history, core record, or any portion  
27 thereof, such record shall be exempt from disclosure as a trade secret pursuant to ORS 192.501 un-  
28 less the operator gives approval to release the data.

29 **SECTION 1244.** ORS 522.405 is amended to read:

30 522.405. (1) When two or more separately owned tracts of land are within an area under which  
31 a reservoir is located or reasonably believed to be located, or when there are separately owned in-  
32 terests in all or part of such an area, the [*governing board of the State Department of Geology and*  
33 *Mineral Industries, upon its*] **Director of the Oregon Department of Natural Resources upon the**  
34 **director's** own motion may, or upon the application of an interested person or state or local gov-  
35 ernmental governing body, special district or agency[,] shall, review the need for unitization of the  
36 area. The [*board*] **director** by rule or order may require the development of a unit agreement for  
37 the geothermal resource area if it finds:

38 (a) Unitized management, operation and development of the geothermal resources in a reservoir  
39 is necessary to increase the ultimate recovery of the resources;

40 (b) The application of unitized methods of operation will prevent waste and aid efficient pro-  
41 duction and utilization of the resource; or

42 (c) Unitization and the unitized method of operation are in the public interest and reasonably  
43 necessary to protect the correlative rights of owners.

44 (2) When the [*board*] **director** requires the development of a unit agreement under this section,  
45 [*it*] **the director** shall encourage the development of a voluntary agreement between the affected

1 parties. In the absence of a voluntary agreement, the [board] **director** shall [itself] develop or cause  
2 to be developed a unit agreement that satisfies the provisions of ORS 273.775, 308A.050 to 308A.128,  
3 522.005, 522.015, 522.405 to 522.545, 522.815 and 522.990. In adopting a rule or entering an order for  
4 a unit agreement, the [board] **director** shall consider any plant dedicated area agreement in effect  
5 and shall not contravene or interfere with that agreement unless [it] **the director** finds that a term  
6 or condition of that agreement violates the policies stated in ORS 522.015. The [board] **director**  
7 shall require the development of the resource in accordance with a proposed unit agreement if [it]  
8 **the director** finds that the agreement conforms with the provisions of ORS 273.775, 308A.050 to  
9 308A.128, 522.005, 522.015, 522.405 to 522.545, 522.815 and 522.990.

10 (3) The development of a unit agreement under subsections (1) and (2) of this section shall be  
11 conducted as a rulemaking proceeding in accordance with ORS chapter 183 unless an interested  
12 party requests that it be conducted as a contested case in accordance with ORS chapter 183. In ei-  
13 ther event, notice shall be given in accordance with the applicable provisions of ORS chapter 183.

14 (4) As used in this section, “plant dedicated area agreement” means a contractual relationship  
15 in geothermal energy development between a geothermal resource owner and a customer which  
16 makes a specific surface area and related resource base available exclusively to that customer.

17 **SECTION 1244a.** ORS 522.415 is amended to read:

18 522.415. A voluntary [or board-sponsored] unit agreement, or a unit agreement sponsored by  
19 **the Director of the Oregon Department of Natural Resources, that is** developed in response  
20 to a rule adopted or an order issued under ORS 522.405 shall provide a unit operation plan that  
21 includes:

22 (1) A description of the geothermal reservoir and the overlaying land to be operated as a unit.

23 (2) A statement of the nature of the operations contemplated.

24 (3) A provision for credits and charges to be made in the adjustment among the owners in a unit  
25 area for their respective investments in geothermal wells, prospect wells, machinery, materials and  
26 equipment used in the unit operation.

27 (4) The division of interest or a formula for apportionment of unit production among the sepa-  
28 rately owned tracts within the unit area which reasonably permits a person or state or local gov-  
29 erning body, special district or agency otherwise entitled to share in or benefit by production from  
30 a tract to receive an equitable and reasonable share of the unit production or other benefit. An  
31 equitable and reasonable share of unit production is measured by the proportion the value of the  
32 separately owned tract for geothermal resources recovery bears to the value of the unit for that  
33 purpose, taking acreage into account.

34 (5) Provisions which state how the costs will be paid, how unit production is to be measured and  
35 when, how and by whom unit production is to be allocated. The provision shall provide that unit  
36 production due to an owner who does not pay that owner’s share of the cost of unit operation or  
37 that owner’s interest may be sold and the proceeds applied to the cost.

38 (6) A provision, if necessary, for making financing available to any person or state or local  
39 governing body, special district or agency that wishes to obtain financing. The provision shall allow  
40 a reasonable interest charge for the service payable out of that respective share of production.

41 (7) A provision for the supervision and conduct of the unit operation. Each person or state or  
42 local governing body, special district or agency shall have a vote on the provision with a weight  
43 corresponding to the percentage of the cost of unit operation chargeable against that respective  
44 interest.

45 (8) The time when the unit operation shall begin and the manner and circumstances under which

1 the unit operation shall terminate.

2 (9) Provisions, if necessary, for the protection of preexisting water users within the unit area  
3 and for administration of future water development from the reservoir covered by the unit agree-  
4 ment.

5 **SECTION 1245.** ORS 522.425 is amended to read:

6 522.425. Any rule or order of the [*governing board of the State Department of Geology and Min-*  
7 *eral Industries*] **Director of the Oregon Department of Natural Resources** providing for the unit  
8 operation of a geothermal resource area may include provisions for:

9 (1) Division of a reservoir into zones;

10 (2) Establishment of spacing units, including a description of their location, size and shape;

11 (3) The integration of separately owned tracts or interests within a spacing unit, the develop-  
12 ment and operation of the spacing unit and the sharing of production;

13 (4) The protection of existing and future beneficial uses of water;

14 (5) Maintenance of the renewability of geothermal resources and any other natural resources;  
15 and

16 (6) Any additional provisions the [*board*] **director** considers necessary for carrying out the  
17 provisions of this chapter or for protection of the public health, safety and welfare.

18 **SECTION 1246.** ORS 522.435 is amended to read:

19 522.435. Any rule adopted or order entered under ORS 522.405 shall supersede any right or  
20 privilege previously granted by the [*governing board of the State Department of Geology and Mineral*  
21 *Industries*] **Director of the Oregon Department of Natural Resources** to the same person or  
22 state or local governing body, special district or agency with respect to the reservoir.

23 **SECTION 1247.** ORS 522.445 is amended to read:

24 522.445. (1) No rule or order of the [*governing board of the State Department of Geology and*  
25 *Mineral Industries which*] **Director of the Oregon Department of Natural Resources that** cre-  
26 ates a unit and prescribes a unitization plan and no applicable unit agreement shall be effective  
27 unless the plan of unit operation required by the [*board*] **director** under ORS 522.405 has been ap-  
28 proved in writing by:

29 (a) The operators who will be required to pay under the [*board's*] **director's** rule or order at  
30 least 75 percent of the unit operation costs; and

31 (b) The persons or state or local governing body, special district or agency that, at the time of  
32 the [*board*] **director's** rule or order, own record legal title to 75 percent of the royalties payable  
33 with respect to the geothermal resource produced from the unit area.

34 (2) If the royalty owners who own the required percentage interest in the unit area and the  
35 operators have not approved the unitization plan within six months of the date on which the rule  
36 or order creating the unit is adopted or entered, that rule or order shall become ineffective and shall  
37 be considered to have been repealed or revoked by the [*board*] **director**.

38 **SECTION 1248.** ORS 522.455 is amended to read:

39 522.455. (1) Any person or state or local governing body, special district or agency with an in-  
40 terest in geothermal resources within an area to be designated as a unit that is adversely affected  
41 by any rule or order of the [*governing board of the State Department of Geology and Mineral Indus-*  
42 *tries*] **Director of the Oregon Department of Natural Resources** may apply to the [*board*] **di-**  
43 **rector** for a rehearing within 30 days after the adoption of the rule or entry of the order. The  
44 [*board*] **director** shall decide within 45 days after the filing date of the rule or order whether to  
45 grant a rehearing. If granted, the rehearing shall be held without undue delay. Failure to act within

1 the 45-day period constitutes approval of the rehearing request.

2 (2) Any person or state or local governing body, special district or agency that holds a working  
3 interest in geothermal resources in a designated or proposed unit area that is adversely affected by  
4 any rule promulgated or order entered by the [board] **director** may obtain judicial review of the rule  
5 or order pursuant to ORS chapter 183.

6 **SECTION 1249.** ORS 522.465 is amended to read:

7 522.465. As part of a proposed rule or order designating a unit area and approving a unitization  
8 plan or as part of a unit agreement, the working interest owners under the agreement, within the  
9 time specified by the [*governing board of the State Department of Geology and Mineral Industries*]  
10 **Director of the Oregon Department of Natural Resources**, shall appoint the unit operator. If  
11 the working interest owners do not make the appointment within the specified time, the [board] **di-**  
12 **rector** shall appoint the unit operator.

13 **SECTION 1250.** ORS 522.475 is amended to read:

14 522.475. (1) Any disagreement with respect to the unit operation between persons or between  
15 persons and state or local governing bodies, special districts or agencies owning any interest in the  
16 geothermal resources in a unit area, or between persons or state and local governing bodies, special  
17 districts or agencies owning an interest in geothermal resources in a unit area and a unit operator,  
18 including a dispute over replacement of a unit operator, may be submitted to the [*governing board*  
19 *of the State Department of Geology and Mineral Industries*] **Director of the Oregon Department**  
20 **of Natural Resources** for its review and decision.

21 (2) The [board] **director's** decision under this section may be appealed to the Court of Appeals.  
22 The appeal must be filed within 60 days of the date of the [board's] **director's** decision.

23 **SECTION 1250a.** ORS 522.495 is amended to read:

24 522.495. Any operation on any portion of the unit area, including, but not limited to, the drilling  
25 or operation of a well, is considered for all purposes the conduct of the same operation on the whole  
26 unit area. The portion of unit production allocated to a separately owned tract in a unit area is  
27 considered for all purposes to actually have been produced from a well drilled upon that tract. An  
28 operation conducted pursuant to a [board] rule adopted or **an** order issued **by the Director of the**  
29 **Oregon Department of Natural Resources** under ORS 522.405 constitutes a fulfillment of all ex-  
30 press or implied obligations under each lease or contract covering lands in the unit area.

31 **SECTION 1250b.** ORS 522.505 is amended to read:

32 522.505. (1) The operation of a geothermal well in a unit area by anyone other than by a person  
33 or state or local governing body, special district or agency acting under the unit's authority shall  
34 be unlawful. That operation is prohibited from the effective date of the [board] rule or order **of the**  
35 **Director of the Oregon Department of Natural Resources** creating the unit and prescribing the  
36 unitization plan or the unit agreement, except in the manner and to the extent provided in the  
37 unitization plan or agreement.

38 (2) The provisions of ORS 273.775, 308A.050 to 308A.128, 522.005, 522.015, 522.405 to 522.545,  
39 522.815 and 522.990 shall not affect the ability of a ground water user to exercise a water right that  
40 existed before the initiation of a unit agreement.

41 **SECTION 1250c.** ORS 522.515 is amended to read:

42 522.515. (1) A unit agreement or unitization plan under a [board] rule adopted or **an** order issued  
43 **by the Director of the Oregon Department of Natural Resources** pursuant to ORS 522.405 shall  
44 not be held or construed to violate ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any  
45 state statute relating to trusts, monopolies or contracts and combinations in restraint of trade if the

1 [board] **director** has made a finding that the agreement is in the public interest for the protection  
 2 of correlative rights and is necessary to enhance recovery of geothermal resources or to prevent  
 3 waste.

4 (2) Any voluntary unit agreement or plan for unitization between owners, holders of working  
 5 interests and holders of royalty interests for the exploration, development and operation of a unit  
 6 area shall not be held or construed to violate ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and  
 7 59.995 or any state statute relating to trusts, monopolies or contracts and combinations in restraint  
 8 of trade if the agreement is approved by the [board] **director** as being in the public interest for the  
 9 protection of correlative rights and necessary to enhance recovery of geothermal resources or to  
 10 prevent waste.

11 (3) A voluntary agreement may be submitted to the [board] **director** for approval as being in the  
 12 public interest for the protection of correlative rights and necessary to enhance recovery of  
 13 geothermal resources or to prevent waste. [Board] **The director's** approval constitutes a complete  
 14 defense to any proceeding charging violation of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and  
 15 59.995 or of any state statute relating to trusts or monopolies on account of operations conducted  
 16 pursuant to the agreement.

17 (4) The failure to submit a voluntary agreement for [board] approval **by the director** does not  
 18 constitute evidence that the agreement or operation violates ORS 59.005 to 59.451, 59.710 to 59.830,  
 19 59.991 and 59.995 or any state statute relating to trusts or monopolies.

20 **SECTION 1250d.** ORS 522.525 is amended to read:

21 522.525. [Board] **The authority of the Director of the Oregon Department of Natural Re-**  
 22 **sources** applies to all private, municipal, state and federal land in the state [which] **that** is subject  
 23 to the state's regulatory authority. When land subject to federal jurisdiction is committed to a unit  
 24 agreement or cooperative agreement, the [board] **director** may suspend the operation of this chapter  
 25 or any provision of this chapter if:

26 (1) The unit operation is regulated by the United States; and

27 (2) The unit agreement prevents waste and encourages maximum economic development of the  
 28 resource.

29 **SECTION 1251.** ORS 522.535 is amended to read:

30 522.535. (1) The [governing board of the State Department of Geology and Mineral Industries]  
 31 **Director of the Oregon Department of Natural Resources** shall establish reasonable fees by rule  
 32 pursuant to ORS chapter 183 for the purpose of the development and administration of a unit  
 33 agreement to be paid by all persons or state or local governing bodies, special districts or agencies  
 34 with a royalty interest in that unitized development. The fee schedule shall recognize the reduced  
 35 workload involved in review of a voluntary unit agreement that complies with this chapter.

36 (2) When a person or state or local governing body, special district or agency with a royalty  
 37 interest fails to pay a fee imposed by the [board] **director** under ORS 522.545 or this section, the  
 38 [board] **director** may require that the fee be paid from the proceeds of the sale of the unit pro-  
 39 duction attributable to that interest.

40 **SECTION 1252.** ORS 522.545 is amended to read:

41 522.545. The [governing board of the State Department of Geology and Mineral Industries] **Di-**  
 42 **rector of the Oregon Department of Natural Resources** may make, in compliance with ORS  
 43 chapter 183, rules and orders for the following purposes:

44 (1) To review and enforce voluntary unit agreements governing production of geothermal re-  
 45 sources in a manner that is consistent with the provisions of this chapter.



1 (2) To provide application forms and procedures to enable a person to request the [board] **di-**  
 2 **rector** to initiate a unit agreement.

3 (3) To develop and enforce, when necessary, unit agreements satisfying the requirements of this  
 4 chapter.

5 (4) To settle disagreements between the parties to a unit agreement over unit operation.

6 (5) To change the boundaries of a unit area.

7 (6) To prevent the drilling and operation of geothermal wells and the production of geothermal  
 8 resources in a manner that causes injury to neighboring leaseholds or property.

9 (7) To levy fees on any operator, person, state or local governing body, special district or agency  
 10 that holds a royalty interest in a unit area to cover reasonable costs associated with the develop-  
 11 ment and administration of a unit agreement.

12 **SECTION 1253.** ORS 522.810 is amended to read:

13 522.810. Whenever it appears that any person is violating or threatening to violate any provision  
 14 of this chapter or any rule or order of the [*governing board of the State Department of Geology and*  
 15 *Mineral Industries*] **Director of the Oregon Department of Natural Resources** made thereunder,  
 16 or is threatening to or committing waste, the [board] **director** may bring suit against such person  
 17 in the circuit court of any county where the violation or waste occurs or is threatened, to restrain  
 18 such person from continuing such violation or waste. In any such suit, the court shall have juris-  
 19 diction to grant to the [board] **director**, without bond or other undertaking, such temporary re-  
 20 straining orders or final prohibitory and mandatory injunctions as the facts may warrant, including  
 21 any such orders restraining the movement, disposition or waste of geothermal resources.

22 **SECTION 1254.** ORS 522.815 is amended to read:

23 522.815. (1) In accordance with the rulemaking provisions of ORS chapter 183, the [*governing*  
 24 *board of the State Department of Geology and Mineral Industries*] **Director of the Oregon Depart-**  
 25 **ment of Natural Resources** may adopt rules necessary to conserve geothermal resources or other  
 26 natural resources, or to protect the environment, the correlative rights of any person having an  
 27 ownership interest in the affected land or resource, or beneficial uses of water, or to accomplish the  
 28 efficient and economical development of a geothermal reservoir. The rules shall include a de-  
 29 scription of the geothermal reservoir and the overlying land and may also include provisions for the  
 30 following:

31 (a) Division of a geothermal reservoir into zones;

32 (b) Establishment of spacing units including a description of the location, size and shape of such  
 33 spacing units;

34 (c) The integration of separately owned tracts or interests within a spacing unit for the devel-  
 35 opment and operation of the spacing unit and the sharing of production therefrom;

36 (d) The protection of existing and future beneficial uses of water;

37 (e) Maintaining the renewability of geothermal resources and any other natural resources; and

38 (f) Any additional provisions the [board] **director** deems necessary for carrying out the pro-  
 39 visions of this chapter or for protecting the public health, safety and welfare.

40 (2) Any rule adopted under this section may in the [board's] **director's** discretion supersede any  
 41 right or privilege previously granted by or previously entered by the [board] **director** with respect  
 42 to such reservoir and may be amended in accordance with the rulemaking provisions of ORS chapter  
 43 183 as appears necessary to the [board] **director** to further the policy stated in ORS 522.015.

44 (3) Any proceeding under this section shall be conducted as a rulemaking proceeding in ac-  
 45 cordance with ORS chapter 183 unless an interested party requests that it be conducted as a con-

1 tested case in accordance with ORS chapter 183. In either event, notice shall be given in accordance  
2 with the requirements of ORS chapter 183. Notice shall always be given to the following persons:

3 (a) Any operator who has a drilling permit issued pursuant to ORS 522.135 or has a legal right  
4 to operate a completed geothermal well in the geothermal reservoir; and

5 (b) Any person who has an ownership interest in the geothermal reservoir.

6 **SECTION 1255.** ORS 522.910 is amended to read:

7 522.910. No person shall knowingly aid or abet any other person in the violation of any pro-  
8 vision of this chapter or of any rule or order of the [*governing board of the State Department of*  
9 *Geology and Mineral Industries*] **Director of the Oregon Department of Natural Resources** made  
10 thereunder.

11 **SECTION 1256.** ORS 522.990 is amended to read:

12 522.990. Subject to ORS 153.022, violation of any provision of this chapter or of any rule or order  
13 of the [*governing board of the State Department of Geology and Mineral Industries*] **Director of the**  
14 **Oregon Department of Natural Resources** made thereunder, excluding ORS 522.405 to 522.545  
15 and any rule promulgated thereunder, is punishable, upon conviction, by a fine of not more than  
16 \$2,500 or by imprisonment in the county jail for not more than six months, or both.

17 **SECTION 1257.** ORS 672.615 is amended to read:

18 672.615. (1) The State Board of Geologist Examiners shall operate as a semi-independent state  
19 agency subject to ORS 182.456 to 182.472 for the purpose of carrying out ORS 672.505 to 672.705.  
20 The board shall consist of four geologists and one public member, appointed by the Governor.

21 (2) Each member of the board shall be a citizen of the United States, and shall have been a  
22 resident of this state for one year preceding appointment. Each of the [*appointed*] geologist members  
23 of the board **appointed by the Governor** shall be a geologist registered under ORS 672.505 to  
24 672.705. The [*State Geologist shall be an ex officio member of the board*] **Director of the Oregon**  
25 **Department of Natural Resources shall choose a qualified individual to serve on the board**  
26 **as a representative of the Oregon Department of Natural Resources.** Insofar as possible the  
27 board shall be composed of members having diverse geological specialties including at least one  
28 engineering geologist.

29 (3) Members of the board **appointed by the Governor** shall hold office until the expiration of  
30 the term for which they were appointed and until their successors have been appointed and quali-  
31 fied. On the expiration of the term of any member **appointed by the Governor**, the successor of the  
32 member shall be appointed in like manner for a term of three years.

33 (4) No person **appointed by the Governor** shall serve as a member of the board for more than  
34 two consecutive three-year terms.

35 (5) The Governor may remove any member of the board **appointed by the Governor** for mis-  
36 conduct, incompetency, neglect of duty or other sufficient cause. Vacancies in the membership of the  
37 board shall be filled for the unexpired term by appointment as provided for in this section.

38 (6) The board shall hold at least two regular meetings each year.

39 (7) The board may fix qualifications of and appoint an administrator who shall not be a member  
40 of the board. The board shall fix the compensation of the administrator, who shall be in the un-  
41 classified service.

42 (8) The board shall have the authority to appoint committees as required or as considered ad-  
43 visable to perform such duties as the board may direct. Such committees shall be composed of reg-  
44 istered geologists. Membership on all such committees is at the pleasure of the board.

45

## WATER RESOURCES DEPARTMENT

(Abolishment and Transfer of  
Duties, Functions and Powers)

**SECTION 1258.** (1) The Water Resources Department and the Water Resources Commission are abolished. On the operative date of this section, the tenure of office of the Water Resources Director and the members of the Water Resources Commission ceases.

(2)(a) All the duties, functions and powers of the Water Resources Department are imposed upon, transferred to and vested in the Oregon Department of Natural Resources.

(b) Where the law imposed the duty or function upon or vested the power in the Water Resources Director, the duty, function or power is imposed upon, transferred to or vested in the Director of the Oregon Department of Natural Resources.

(c) Where the law imposed the duty or function upon or vested the power in the Water Resources Commission, the duty, function or power is imposed upon, transferred to and vested in the Oregon Natural Resources Commission.

## (Transfer of Records, Property and Employees)

**SECTION 1259.** (1) The Water Resources Director and the Water Resources Commission shall:

(a) Deliver to the Oregon Department of Natural Resources all records and property within the jurisdiction of the director or the commission that relate to the duties, functions and powers transferred by section 1258 of this 2011 Act; and

(b) Transfer to the Oregon Department of Natural Resources those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 1258 of this 2011 Act.

(2) The Director of the Oregon Department of Natural Resources and the Oregon Natural Resources Commission shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 1258 of this 2011 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The Governor shall resolve any dispute between the Water Resources Department and the Oregon Department of Natural Resources, or the Water Resources Commission and the Oregon Natural Resources Commission, relating to transfers of records, property and employees under this section, and the Governor's decision is final.

## (Transfer of Unexpended Revenues)

**SECTION 1260.** (1) The unexpended balances of amounts authorized to be expended by the Water Resources Department for the biennium beginning July 1, 2011, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 1258 of this 2011 Act are transferred to and are available for expenditure by the Oregon Department of Natural Resources for the biennium beginning July 1, 2011, for the purpose of ad-

1 ministering and enforcing the duties, functions and powers transferred by section 1258 of this  
2 2011 Act.

3 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
4 expenditures by the Water Resources Department remain applicable to expenditures by the  
5 Oregon Department of Natural Resources under this section.

6 (3) The unexpended balances of amounts authorized to be expended by the Water Re-  
7 sources Commission for the biennium beginning July 1, 2011, from revenues dedicated, con-  
8 tinuously appropriated, appropriated or otherwise made available for the purpose of  
9 administering and enforcing the duties, functions and powers transferred by section 1258 of  
10 this 2011 Act are transferred to and are available for expenditure by the Oregon Natural  
11 Resources Commission for the biennium beginning July 1, 2011, for the purpose of adminis-  
12 tering and enforcing the duties, functions and powers transferred by section 1258 of this 2011  
13 Act.

14 (4) The expenditure classifications, if any, established by Acts authorizing or limiting  
15 expenditures by the Water Resources Commission remain applicable to expenditures by the  
16 Oregon Natural Resources Commission under this section.

17  
18 (Action, Proceeding and Prosecution)

19  
20 **SECTION 1261.** The transfer of duties, functions and powers to the Oregon Department  
21 of Natural Resources by section 1258 of this 2011 Act does not affect any action, proceeding  
22 or prosecution involving or with respect to such duties, functions and powers begun before  
23 and pending at the time of the transfer, except that:

24 (1) The Oregon Department of Natural Resources is substituted for the Water Resources  
25 Department where the Water Resources Department is involved in the action, proceeding  
26 or prosecution; or

27 (2) The Oregon Natural Resources Commission is substituted for the Water Resources  
28 Commission where the Water Resources Commission is involved in the action, proceeding  
29 or prosecution.

30  
31 (Liability, Duty and Obligation)

32  
33 **SECTION 1262.** (1) Nothing in sections 1258 to 1265 of this 2011 Act, the amendments to  
34 statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257,  
35 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS  
36 536.022, 536.025, 536.026, 536.027, 536.032, 536.037, 536.039, 537.249 or 537.895 by section 2161 of  
37 this 2011 Act relieves a person of a liability, duty or obligation accruing under or with respect  
38 to the duties, functions and powers transferred by section 1258 of this 2011 Act. The Oregon  
39 Department of Natural Resources may undertake the collection or enforcement of any such  
40 liability, duty or obligation.

41 (2) The rights and obligations of the Water Resources Department, or of the Water Re-  
42 sources Commission, legally incurred under contracts, leases and business transactions exe-  
43 cuted, entered into or begun before the operative date of section 1258 of this 2011 Act are  
44 transferred to the Oregon Department of Natural Resources or the Oregon Natural Re-  
45 sources Commission. For the purpose of succession to these rights and obligations:

1 (a) The Oregon Department of Natural Resources is a continuation of the Water Re-  
 2 sources Department where the right or obligation was incurred by the Water Resources  
 3 Department; or

4 (b) The Oregon Department of Natural Resources is a continuation of the Water Re-  
 5 sources Commission where the right or obligation was incurred by the Water Resources  
 6 Commission.

7  
 8 (Rules)

9  
 10 **SECTION 1263.** (1) Notwithstanding the transfer of duties, functions and powers by sec-  
 11 tion 1258 of this 2011 Act, the rules of the Water Resources Department, or of the Water  
 12 Resources Commission, in effect on the operative date of section 1258 of this 2011 Act con-  
 13 tinue in effect until superseded or repealed by rules of the Oregon Department of Natural  
 14 Resources or the Oregon Natural Resources Commission.

15 (2) References in rules of the Water Resources Department to the Water Resources De-  
 16 partment, or to an officer or employee of the Water Resources Department, are considered  
 17 to be references to the Oregon Department of Natural Resources or to an officer or employee  
 18 of the Oregon Department of Natural Resources.

19 (3) References in rules of the Water Resources Commission to the Water Resources  
 20 Commission, or to an officer or employee of the Water Resources Commission, are consid-  
 21 ered to be references to the Oregon Natural Resources Commission or to an officer or em-  
 22 ployee of the Oregon Natural Resources Commission.

23  
 24 (References)

25  
 26 **SECTION 1264.** (1) Whenever, in any uncodified law or resolution of the Legislative As-  
 27 sembly or in any rule, document, record or proceeding authorized by the Legislative Assem-  
 28 bly, reference is made to the Water Resources Department, or to an officer or employee of  
 29 the Water Resources Department, the reference is considered to be a reference to the  
 30 Oregon Department of Natural Resources or to an officer or employee of the Oregon De-  
 31 partment of Natural Resources.

32 (2) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any  
 33 rule, document, record or proceeding authorized by the Legislative Assembly, reference is  
 34 made to the Water Resources Commission, or to an officer or employee of the Water Re-  
 35 sources Commission, the reference is considered to be a reference to the Oregon Natural  
 36 Resources Commission or to an officer or employee of the Oregon Natural Resources Com-  
 37 mission.

38  
 39 (Compacts)

40  
 41 **SECTION 1265.** (1) For purposes related to the administration of the Oregon-California  
 42 Goose Lake Interstate Compact, the Director of the Oregon Department of Natural Re-  
 43 sources is the successor in interest to the Water Resources Director, and the amendments  
 44 to ORS 542.520 by section 1626 of this 2011 Act do not affect a person's rights under Article  
 45 III of the Oregon-California Goose Lake Interstate Compact.

1 (2) For purposes related to the administration of the Klamath River Basin Compact, the  
 2 Oregon Department of Natural Resources is the Water Resources Commission of Oregon's  
 3 successor in interest and the amendments to ORS 542.620 by section 1627 of this 2011 Act  
 4 do not change the State of Oregon's responsibilities under Article IX of the Klamath River  
 5 Basin Compact.

6  
 7 (Agency Name Change)

8  
 9 **SECTION 1266.** (1) For the purpose of harmonizing and clarifying statutory law, the  
 10 Legislative Counsel may substitute for words designating the "Water Resources  
 11 Department," wherever they occur in statutory law, words designating the "Oregon Depart-  
 12 ment of Natural Resources."

13 (2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel  
 14 may substitute for words designating the "Water Resources Director," wherever they occur  
 15 in statutory law, words designating the "Director of the Oregon Department of Natural Re-  
 16 sources."

17  
 18 (Fund Name Changes)

19  
 20 **SECTION 1267.** For the purpose of harmonizing and clarifying statutory law, the Legis-  
 21 lative Counsel may substitute for words designating the "Water Resources Department Wa-  
 22 ter Right Operating Fund" and "Water Resources Department Hydroelectric Fund,"  
 23 wherever they occur in statutory law, words designating the "Oregon Natural Resources  
 24 Fund."

25  
 26 (Commission Name Change)

27  
 28 **SECTION 1268.** For the purpose of harmonizing and clarifying statutory law, the Legis-  
 29 lative Counsel may substitute for words designating the "Water Resources Commission,"  
 30 wherever they occur in statutory law, words designating the "Oregon Natural Resources  
 31 Commission."

32  
 33 (Conforming Amendments)

34  
 35 **SECTION 1269.** ORS 225.300 is amended to read:

36 225.300. Any filing made by any city upon the unappropriated waters of this state for use in the  
 37 future development of a hydroelectric plant by such city shall be reserved to such city and shall not  
 38 be subject to appropriation by any other person, municipality or corporation unless it is judicially  
 39 determined that the filing exceeds the reasonable present and future requirements of such city. In  
 40 that event the surplus or excess may, by judgment of a court of competent jurisdiction, be released  
 41 and discharged from the filing. Proceedings in court for the determination of whether or not the  
 42 filing by any city exceeds its reasonable present and future requirements may be instituted by the  
 43 State of Oregon, by the [Water Resources Commission] **Oregon Natural Resources Commission** in  
 44 the name of and for the State of Oregon, or by any other applicant for the right to use the waters  
 45 involved.

**SECTION 1270.** ORS 261.330 is amended to read:

261.330. Any filing made by any people’s utility district upon the unappropriated waters of this state for use in the future development of a hydroelectric plant by the district shall be reserved to the district and shall not be subject to appropriation by any other person, city or corporation, unless it is judicially determined that such filing exceeds the reasonable present and future requirements of the district, in which event the surplus or excess may be by judgment of a court of competent jurisdiction released and discharged from such filing. Proceedings in court for the determination of whether or not the filing by any utility district exceeds its reasonable present and future requirements may be instituted by the State of Oregon, by the [*Water Resources Commission*] **Oregon Natural Resources Commission** in the name of and for the State of Oregon[,] or by any other applicant for the right to the use of the waters involved.

**SECTION 1270a.** ORS 285B.560 is amended to read:

285B.560. As used in ORS 285B.560 to 285B.599:

(1) “Direct project management costs” means new expenses incurred by a municipality solely to support, plan for and manage an infrastructure project, funded in whole or in part through financial assistance under ORS 285B.560 to 285B.599, during the planning and construction phases of the project.

(2) “Fund” means the Water Fund.

(3) “Municipality” has the meaning given that term in ORS 285B.410.

(4) “Safe drinking water project” means a project for constructing or improving a drinking water system or a water development project, as defined in ORS 541.700 [(6)(a), (b) and (d) to (f)] **(4)(a), (b) and (d) to (f)**, that is owned and operated by a municipality.

(5) “Waste water system improvement project” means a project for constructing or improving a system for waste water collection or treatment, including storm drainage systems.

(6) “Water project” means a safe drinking water project or a waste water system improvement project.

**SECTION 1271.** ORS 285B.563 is amended to read:

285B.563. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Water Fund. Interest earned by the Water Fund shall be credited to the fund. All moneys in the Water Fund are continuously appropriated to the Oregon Business Development Department for the Oregon Infrastructure Finance Authority for the purposes described in ORS 285B.560 to 285B.599, including the direct project management costs.

(2)(a) Moneys in the Water Fund may be obligated to water projects.

(b) Moneys shall be used primarily to make loans to municipalities. The authority may make a loan only if:

(A) The municipality applying for the loan certifies to the **Oregon Business Development Department** that adequate funds will be available to repay the loan; and

(B) The authority determines that the amount of the loan applied for is based on a reasonable and prudent expectation of the municipality’s ability to repay the loan.

(c) The authority may award a grant if a loan is not feasible due to:

(A) Financial hardship to the municipality, as determined by the authority, based on consideration of anticipated water service charges or anticipated waste water service charges, the per capita income of the municipality and any other factors as the department by rule may establish; and

(B) Special circumstances of the water project.

(d) The authority may also award grants from the fund to:

- 1 (A) Identify and implement sustainable technologies and practices;  
2 (B) Build asset management capacity for municipalities;  
3 (C) Plan for strategic initiatives that focus on the regionalization of water systems; or  
4 (D) Provide third party technical assistance to communities in the development of water systems  
5 that include asset management components.
- 6 (e) The authority may determine the amount of grant or loan funding on a case-by-case basis.
- 7 (3) The moneys in the fund may also be used to assist the authority in selling revenue bonds  
8 on behalf of municipalities in order to carry out the purposes of ORS 285B.560 to 285B.599.
- 9 (4) Moneys in the Water Fund may be invested as provided by ORS 293.701 to 293.820. The  
10 earnings from the investments and other program income shall be credited to the Water Fund.
- 11 (5) The Water Fund shall consist of:
- 12 (a) Moneys appropriated to the fund by the Legislative Assembly.
- 13 (b) Moneys transferred to the fund by the authority from the Special Public Works Fund created  
14 by ORS 285B.455.
- 15 (c) Moneys transferred to the Water Fund by the [*Water Resources Commission*] **Oregon Na-**  
16 **tural Resources Commission** from the Water Development Fund created by Article XI-I(1) of the  
17 Oregon Constitution.
- 18 (d) Moneys from any federal, state or other grants.
- 19 (e) Proceeds of revenue bonds issued under ORS 285B.575.
- 20 (f) Earnings on the Water Fund.
- 21 (6) The authority shall administer the fund.
- 22 (7) The [*department*] **Oregon Business Development Department** shall adopt rules and policies  
23 for the administration of the fund. The [*department*] **Oregon Business Development Department**  
24 shall coordinate its rulemaking regarding safe drinking water projects with the [*Water Resources*  
25 *Department*] **Oregon Department of Natural Resources** and the Oregon Health Authority. The  
26 rules adopted under this subsection for safe drinking water projects shall:
- 27 (a) Require the installation of meters on all new active service connections from any distribution  
28 lines funded with moneys from the fund or from the proceeds of revenue bonds issued under ORS  
29 285B.572 to 285B.578.
- 30 (b) Require a plan, to be adopted by a municipality receiving financial assistance from the fund,  
31 for installation of meters on all service connections throughout the drinking water system not later  
32 than two years after the completion of a safe drinking water project.
- 33 (8)(a) The Oregon Infrastructure Finance Authority shall manage the Water Fund and any  
34 expenditures from accounts in the fund and transfers between accounts so that the fund provides a  
35 continuing source of financing consistent with ORS 285B.413.
- 36 (b) If necessary to ensure repayment of bonds issued under ORS 285B.560 to 285B.599, the au-  
37 thority may reduce the value of the fund when the authority:
- 38 (A) Finds that without a reduction in fund value, bonds secured by the fund are likely to be in  
39 default; and
- 40 (B) Imposes a moratorium on grants until the requirements of paragraph (a) of this subsection  
41 are satisfied.
- 42 (9)(a) The authority may charge administrative costs to the fund, but not to moneys segregated  
43 in the account created by subsection (11) of this section, to pay for administrative costs incurred  
44 by the authority.
- 45 (b) To the extent permitted by federal law, administrative costs of the authority may be paid



1 from bond proceeds.

2 (10) The authority may establish other accounts within the Water Fund for the payment of water  
3 projects costs, reserves, debt service payments, credit enhancements, costs of issuing revenue bonds,  
4 administrative costs and operating expenses or any other purpose necessary to carry out ORS  
5 285B.560 to 285B.599.

6 (11) There is created within the Water Fund a separate and distinct account for the proceeds  
7 from the sale of water development general obligation bonds issued for safe drinking water projects  
8 and credited to the special account under this section. Any investment earnings thereon shall be  
9 segregated in and continuously appropriated to a special, separately accounted for subaccount of  
10 this account. Moneys credited to this account shall be maintained separate and distinct from moneys  
11 credited to subaccounts created under subsection (10) of this section. Notwithstanding ORS  
12 285B.566 or subsection (4) of this section, all repayments of moneys loaned from the account created  
13 by this subsection, including interest on the moneys, shall be credited to the Water Development  
14 Administration and Bond Sinking Fund created by ORS 541.830.

15 (12) As used in this section, "administrative costs" include the authority's direct and indirect  
16 costs for investigating and processing an application, developing a contract, monitoring the use of  
17 funds by a municipality, investigating and resolving a budget discrepancy, closing a project and  
18 providing financial and other assistance to a municipality.

19 **SECTION 1272.** ORS 390.010 is amended to read:

20 390.010. The Legislative Assembly recognizes and declares:

21 (1) It is desirable that all Oregonians of present and future generations and visitors who are  
22 lawfully present within the boundaries of this state be assured adequate outdoor recreation re-  
23 sources. It is desirable that all levels of government and private interests take prompt and coordi-  
24 nated action to the extent practicable without diminishing or affecting their respective powers and  
25 functions to conserve, develop, and utilize such resources for the benefit and enjoyment of all the  
26 people.

27 (2) The economy and well-being of the people are in large part dependent upon proper utilization  
28 of the state's outdoor recreation resources for the physical, spiritual, cultural, scientific and other  
29 benefits which such resources afford.

30 (3) It is in the public interest to increase outdoor recreation opportunities commensurate with  
31 the growth in need through necessary and appropriate actions, including, but not limited to, the  
32 following:

33 (a) Protection of existing and needed open spaces for appreciation, use and enjoyment of  
34 Oregon's scenic landscape.

35 (b) Provision of adequate land for outdoor recreation.

36 (c) Preservation and restoration for public enjoyment and education of structures, objects, fa-  
37 cilities and resources which are examples of Oregon history, archaeology and natural science.

38 (d) Development of a system of scenic roads to enhance recreational travel and sightseeing.

39 (e) Encouragement of outdoor activities such as festivals, fairs, and events relating to music,  
40 dance, drama, art and sports.

41 (f) Expansion of facilities for camping, picnicking and lodging in or near recreational areas and  
42 along routes of travel.

43 (g) Provision of tourist hospitality centers, which may include informational services, sanitary  
44 facilities, camping and picnicking areas at points near major highway entrances into the state.

45 (h) Provision of trails for horseback riding, hiking, bicycling and motorized trail vehicle riding.

1 (i) Development of waterways, land and water facilities for recreational boating, hunting and  
2 fishing.

3 (j) Development of all recreation potentials of the several river basins, compatible with programs  
4 of water use enunciated by the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
5 **mission.**

6 (k) Provision for access to public lands and waters having recreational values.

7 (L) Encouragement of the development of winter sports facilities.

8 (m) Encouragement of programs for recreational enjoyment of mineral resources.

9 (4) It is in the public interest that all efforts be made through research, education and enforce-  
10 ment to the end that Oregon's outdoor recreation resources will be used under the highest standards  
11 of conduct.

12 (5) It shall be the policy of the State of Oregon to supply those outdoor recreation areas, facil-  
13 ities and opportunities which are clearly the responsibility of the state in meeting growing needs;  
14 and to encourage all agencies of government, voluntary and commercial organizations, citizen re-  
15 creation groups and others to work cooperatively and in a coordinated manner to assist in meeting  
16 total recreation needs through exercise of their appropriate responsibilities.

17 **SECTION 1273.** ORS 431.120 is amended to read:

18 431.120. The Oregon Health Authority shall:

19 (1) Enforce state health policies and rules.

20 (2) Have the custody of all books, papers, documents and other property belonging to the State  
21 Health Commission, which may be deposited in the authority's office.

22 (3) Give any instructions that may be necessary, and forward them to the various local public  
23 health administrators throughout the state.

24 (4) Routinely conduct epidemiological investigations for each case of sudden infant death syn-  
25 drome including, but not limited to, the identification of risk factors such as birth weight, maternal  
26 age, prenatal care, history of apnea and socioeconomic characteristics. The authority may conduct  
27 the investigations through local health departments only upon adoption by rule of a uniform  
28 epidemiological data collection method.

29 (5) Adopt rules related to loans and grants awarded under ORS 285B.560 to 285B.599 or 541.700  
30 to 541.855 for the improvement of drinking water systems for the purpose of maintaining compliance  
31 with applicable state and federal drinking water quality standards. In adopting rules under this  
32 subsection, the authority shall coordinate the authority's rulemaking process with the [*Water Re-*  
33 *sources Department*] **Oregon Department of Natural Resources** and the Oregon Business Devel-  
34 opment Department in order to ensure that rules adopted under this subsection are consistent with  
35 rules adopted under ORS 285B.563 and 541.845.

36 (6) Control health care capital expenditures by administering the state certificate of need pro-  
37 gram pursuant to ORS 442.325 to 442.344.

38 **SECTION 1274.** ORS 450.695 is amended to read:

39 450.695. (1) A water authority may acquire water rights from any local government as defined  
40 in ORS 174.116. Upon request by the authority if the water right acquired was for municipal use,  
41 the [*Water Resources Commission*] **Oregon Natural Resources Commission** shall issue a new water  
42 right certificate to the water authority preserving the previously established priority of water rights.

43 (2) In accordance with ORS 540.520 and 540.530, a water authority may change the points of  
44 diversion of water or move the water intake sources as specified in the water right permits or cer-  
45 tificates of those local governments as defined in ORS 174.116 that were merged into the authority.

1       **SECTION 1275.** ORS 450.700 is amended to read:

2       450.700. (1) A water authority may acquire water rights from any city or any district, as defined  
3 in ORS 543.655. Upon request by the authority, the [*Water Resources Commission*] **Oregon Natural**  
4 **Resources Commission** shall issue a new water right certificate to the water authority preserving  
5 the previously established priority of water rights.

6       (2) Upon compliance with ORS 540.520 and 540.530, a water authority may change the points  
7 of diversion of water or move the water intake sources as specified in the water right permits of  
8 those districts that were merged into the authority. Upon the filing of notice of such changes with  
9 the [*Water Resources Department*] **Oregon Department of Natural Resources**, the changes shall  
10 not impair any water right previously vested in those districts.

11       **SECTION 1276.** ORS 468B.040 is amended to read:

12       468B.040. (1) The Director of the Department of Environmental Quality shall approve or deny  
13 certification of any federally licensed or permitted activity related to hydroelectric power develop-  
14 ment, under section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. In  
15 making a decision as to whether to approve or deny such certification, the director shall:

16       (a) Solicit and consider the comments of all affected state agencies relative to adverse impacts  
17 on water quality caused by the project, according to sections 301, 302, 303, 306 and 307 of the Fed-  
18 eral Water Pollution Control Act, P.L. 92-500, as amended.

19       (b) Approve or deny a certification only after making findings that the approval or denial is  
20 consistent with:

21       (A) Rules adopted by the Environmental Quality Commission on water quality;

22       (B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act,  
23 P.L. 92-500, as amended;

24       (C) Except as provided in subsection (2) of this section, standards established in ORS 543.017  
25 and rules adopted by the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
26 implementing such standards; and

27       (D) Except as provided in subsection (2) of this section, standards of other state and local  
28 agencies that are consistent with the standards of ORS 543.017 and that the director determines are  
29 other appropriate requirements of state law according to section 401 of the Federal Water Pollution  
30 Control Act, P.L. 92-500, as amended.

31       (2) If the proposed certification is for the reauthorization of a federally licensed project, as de-  
32 fined in ORS 543A.005, or for a project that is subject to federal relicensing but that operates under  
33 a water right that does not expire, the director shall not determine consistency under subsection  
34 (1)(b)(C) and (D) of this section, but shall determine whether the approval or denial is consistent  
35 with the rules and provisions referred to in subsection (1)(b)(A) and (B) of this section, standards  
36 established in ORS 543A.025 (2) to (4), rules adopted by the [*Water Resources Commission*] **Oregon**  
37 **Natural Resources Commission** implementing such standards and rules of other state and local  
38 agencies that are consistent with the standards of ORS 543A.025 (2) to (4) and that the director  
39 determines are other appropriate requirements of state law according to section 401 of the Federal  
40 Water Pollution Control Act, P.L. 92-500, as amended.

41       (3) If the proposed certification is for the reauthorization of a federally licensed project, as de-  
42 fined in ORS 543A.005, or for a project that is subject to federal relicensing but that operates under  
43 a water right that does not expire, the director shall act in accordance with the recommendation  
44 of the Hydroelectric Application Review Team, except as provided in ORS 543A.110. If the proposed  
45 certification is for a project that is subject to federal relicensing but that operates under a water

1 right that does not expire, and the Hydroelectric Application Review Team develops a unified state  
2 position under ORS 543A.400 (4)(b), the director shall act in accordance with the recommendation  
3 of the Hydroelectric Application Review Team, except as provided in ORS 543A.110.

4 **SECTION 1277.** ORS 468B.045 is amended to read:

5 468B.045. Within 60 days after the Department of Environmental Quality receives notice that  
6 any federal agency is considering a permit or license application related to a change to a hydro-  
7 electric project or proposed hydroelectric project that was previously certified by the Director of  
8 the Department of Environmental Quality according to section 401 of the Federal Water Pollution  
9 Control Act P.L. 92-500, as amended:

10 (1) The director shall:

11 (a) Solicit and consider the comments of all affected state agencies relative to adverse impacts  
12 on water quality caused by changes in the project, according to sections 301, 302, 303, 306 and 307  
13 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

14 (b) Approve or deny a certification of the proposed change after making findings that the ap-  
15 proval or denial is consistent with:

16 (A) Rules adopted by the Environmental Quality Commission on water quality;

17 (B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act,  
18 P.L. 92-500, as amended;

19 (C) Except as provided in subsection (2) of this section, standards established in ORS 543.017  
20 and rules adopted by the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
21 implementing such standards; and

22 (D) Except as provided in subsection (2) of this section, standards of other state and local  
23 agencies that are consistent with the standards of ORS 543.017 and that the director determines are  
24 other appropriate requirements of state law according to section 401 of the Federal Water Pollution  
25 Control Act, P.L. 92-500, as amended.

26 (2) If the proposed certification is for a change to a federally licensed project, as defined in ORS  
27 543A.005, that has been reauthorized under ORS 543A.060 to 543A.300, or for a change to a project  
28 that is subject to federal relicensing but that operates under a water right that does not expire, the  
29 director shall not determine consistency under subsection (1)(b)(C) and (D) of this section, but shall  
30 determine consistency with the rules and provisions referred to in subsection (1)(b)(A) and (B) of this  
31 section, standards established in ORS 543A.025 (2) to (4), rules adopted by the [*Water Resources*  
32 *Commission*] **Oregon Natural Resources Commission** implementing such standards and rules of  
33 other state and local agencies that are consistent with the standards of ORS 543A.025 (2) to (4) and  
34 that the director determines are other appropriate requirements of state law according to section  
35 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

36 (3) On the basis of the evaluation and determination under subsections (1) and (2) of this section,  
37 the director shall notify the appropriate federal agency that:

38 (a) The proposed change to the project is approved; or

39 (b) There is no longer reasonable assurance that the project as changed complies with the ap-  
40 plicable provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, because of  
41 changes in the proposed project since the director issued the construction license or permit certifi-  
42 cation.

43 **SECTION 1278.** ORS 468B.048 is amended to read:

44 468B.048. (1) The Environmental Quality Commission by rule may establish standards of quality  
45 and purity for the waters of the state in accordance with the public policy set forth in ORS

1 468B.015. In establishing such standards, the commission shall consider the following factors:

2 (a) The extent, if any, to which floating solids may be permitted in the water;

3 (b) The extent, if any, to which suspended solids, settleable solids, colloids or a combination of  
4 solids with other substances suspended in water may be permitted;

5 (c) The extent, if any, to which organisms of the coliform group, and other bacteriological  
6 organisms or virus may be permitted in the waters;

7 (d) The extent of the oxygen demand which may be permitted in the receiving waters;

8 (e) The minimum dissolved oxygen content of the waters that shall be maintained;

9 (f) The limits of other physical, chemical, biological or radiological properties that may be nec-  
10 essary for preserving the quality and purity of the waters of the state;

11 (g) The extent to which any substance must be excluded from the waters for the protection and  
12 preservation of public health; and

13 (h) The value of stability and the public's right to rely upon standards as adopted for a reason-  
14 able period of time to permit institutions, municipalities, commerce, industries and others to plan,  
15 schedule, finance and operate improvements in an orderly and practical manner.

16 (2) Standards established under this section shall be consistent with policies and programs for  
17 the use and control of water resources of the state adopted by the [*Water Resources Commission*]  
18 **Oregon Natural Resources Commission** under ORS 536.220 to 536.540.

19 (3) Subject to the approval of the Department of Environmental Quality, any person responsible  
20 for complying with the standards of water quality or purity established under this section shall de-  
21 termine the means, methods, processes, equipment and operation to meet the standards.

22 **SECTION 1279.** ORS 468B.190 is amended to read:

23 468B.190. (1) In cooperation with the [*Water Resources Department*] **Oregon Department of**  
24 **Natural Resources**, the Department of Environmental Quality and the Oregon State University  
25 Agricultural Experiment Station shall conduct an ongoing statewide monitoring and assessment  
26 program of the quality of the ground water resource of this state. The program shall be designed  
27 to identify:

28 (a) Areas of the state that are especially vulnerable to ground water contamination;

29 (b) Long-term trends in ground water quality;

30 (c) Ambient quality of the ground water resource of Oregon; and

31 (d) Any emerging ground water quality problems.

32 (2) The Oregon State University Agricultural Experiment Station shall forward copies of all in-  
33 formation acquired from the statewide monitoring and assessment program conducted under this  
34 section to the Department of Environmental Quality for inclusion in the central repository of in-  
35 formation about Oregon's ground water resource established pursuant to ORS 468B.167.

36 **SECTION 1280.** ORS 469.470 is amended to read:

37 469.470. The Energy Facility Siting Council shall:

38 (1) Conduct and prepare, independently or in cooperation with others, studies, investigations,  
39 research and programs relating to all aspects of site selection.

40 (2) In accordance with the applicable provisions of ORS chapter 183, and subject to the pro-  
41 visions of ORS 469.501 (3), adopt standards and rules to perform the functions vested by law in the  
42 council including the adoption of standards and rules for the siting of energy facilities pursuant to  
43 ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS  
44 469.010 and 469.310.

45 (3) Encourage voluntary cooperation by the people, municipalities, counties, industries, agricul-

1 ture, and other pursuits, in performing the functions vested by law in the council.

2 (4) Advise, consult, and cooperate with other agencies of the state, political subdivisions, in-  
3 dustries, other states, the federal government and affected groups, in furtherance of the purposes  
4 of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

5 (5) Consult with the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
6 on the need for power and other areas within the expertise of the council when the [*Water*  
7 *Resources*] commission is determining whether to allocate water for hydroelectric development.

8 (6) Perform such other and further acts as may be necessary, proper or desirable to carry out  
9 effectively the duties, powers and responsibilities of the council described in ORS 469.300 to 469.563,  
10 469.590 to 469.619, 469.930 and 469.992.

11 **SECTION 1281.** ORS 469.571 is amended to read:

12 469.571. There is created an Oregon Hanford Cleanup Board that shall consist of the following  
13 members:

14 (1) The Director of the State Department of Energy or designee;

15 (2) The [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**  
16 or designee;

17 (3) A representative of the Governor;

18 (4) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

19 (5) Ten members of the public, appointed by the Governor, one of whom shall be a representative  
20 of a local emergency response organization in eastern Oregon and one of whom shall serve as  
21 chairperson; and

22 (6) Three members of the Senate, appointed by the President of the Senate, and three members  
23 of the House of Representatives, appointed by the Speaker of the House of Representatives who shall  
24 serve as advisory members without vote.

25 **SECTION 1282.** ORS 536.007 is amended to read:

26 536.007. As used in ORS 196.600 to 196.905, 541.010 to 541.320 and 541.430 to 541.545, 541.700 to  
27 541.990 and ORS chapters 536 to 540, 542 and 543:

28 (1) "Commission" means the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
29 **mission.**

30 (2) "Department" means the [*Water Resources Department*] **Oregon Department of Natural**  
31 **Resources.**

32 (3) "Director" means the [*Water Resources Director*] **Director of the Oregon Department of**  
33 **Natural Resources.**

34 (4) "Existing right" or "vested right" or words of similar import include an inchoate right to the  
35 use of water to the fullest extent that the right is recognized, defined or declared by the commission,  
36 the director or any court within this state.

37 (5) "Order" has the meaning given in ORS 183.310.

38 (6) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock  
39 companies, public and municipal corporations, political subdivisions, the state and any agencies  
40 thereof, and the federal government and any agencies thereof.

41 (7) "Public corporation" includes any city, county or district organized for public purposes.

42 (8) "Rule" has the meaning given in ORS 183.310.

43 (9) "State agency" includes any office, board, commission or department of a state government.

44 (10) "State water resources policy" means the water resources policy provided for in ORS  
45 536.295 to 536.350 and 537.505 to 537.534.

1 (11) "Undetermined vested right" means a water right claimed under ORS 539.010 as having  
 2 vested or as having been initiated before February 24, 1909, that has not been determined in an  
 3 adjudication proceeding under ORS chapter 539 nor is evidenced by a permit or certificate issued  
 4 under the Water Rights Act.

5 (12) "Waters of this state" means any surface or ground waters located within or without this  
 6 state and over which this state has sole or concurrent jurisdiction.

7 (13) "Water resources of this state" means waters of this state and the following auxiliary lands  
 8 whose usage directly affects the development and control of the waters of this state:

9 (a) Potential reservoir sites.

10 (b) Floodplain areas forming the predictable channels of floodwater drainage of rivers and  
 11 streams.

12 **SECTION 1283.** ORS 536.009 is amended to read:

13 536.009. [(1) *There is established in the State Treasury the Water Resources Department Water*  
 14 *Right Operating Fund, separate and distinct from the General Fund, to provide for the payment of the*  
 15 *program and administrative expenses of the Water Resources Commission and the Water Resources*  
 16 *Department in carrying out the provisions of ORS chapters 536, 537, 540 and 541. Interest earned by*  
 17 *the fund shall be credited to the fund.*]

18 [(2) *The fund shall consist of:*]

19 [(a) *All moneys received under ORS 536.050 and 537.747.*]

20 [(b) *All moneys received on behalf of the fund by gift, grant or appropriation from whatever*  
 21 *source.*]

22 [(3) *All moneys in the fund are continuously appropriated to the Water Resources Department for*  
 23 *payment of expenses as described in this section.*] **All moneys received under ORS 536.050 and**  
 24 **537.747 shall be deposited in the Oregon Natural Resources Fund. All moneys deposited in the**  
 25 **fund under this section are continuously appropriated to the Oregon Department of Natural**  
 26 **Resources for the purpose of carrying out the provisions of ORS chapters 536, 537, 540 and**  
 27 **541.**

28 **SECTION 1284.** ORS 536.015 is amended to read:

29 536.015. (1) [*The Water Resources Department Hydroelectric Fund is established separate and*  
 30 *distinct from the General Fund of the State Treasury. Except as provided in subsections (4) to (6) of*  
 31 *this section, of the moneys in the Water Resources Department Hydroelectric Fund:*] **All fees received**  
 32 **by the Oregon Department of Natural Resources for hydroelectric projects under ORS**  
 33 **536.050, 543.078 to 543.092, 543.210, 543.280, 543.300, 543.710, 543A.405 and 543A.415 shall be de-**  
 34 **posited in the Oregon Natural Resources Fund.**

35 [(a)] (2) A portion equal to 67 percent of the total moneys received each year **under subsection**  
 36 **(1) of this section** shall be transferred to the **Oregon Fish and Wildlife Hydroelectric Fund**  
 37 [*created*] **established** under ORS 496.835.[;]

38 [(b)] (3) A portion equal to 10.3 percent of the total moneys received each year **under sub-**  
 39 **section (1) of this section** shall be transferred to an account of the Department of Environmental  
 40 Quality to be used to review applications for certification of hydroelectric projects under ORS  
 41 468B.040 and 468B.045.[; and]

42 [(c)] (4) All of the remaining moneys received each year **under subsection (1) of this section**  
 43 are continuously appropriated to the [*Water Resources Commission and the Water Resources De-*  
 44 *partment*] **Oregon Natural Resources Commission and the Oregon Department of Natural Re-**  
 45 **sources** to provide for the payment of the administrative expenses of the commission and the

1 department in carrying out their responsibilities related to the issuance of permits, licenses or water  
2 right certificates for hydroelectric projects.

3 [(2) *The following shall be deposited into the State Treasury and credited to the Water Resources*  
4 *Department Hydroelectric Fund.*]

5 [(a) *Fees received by the Water Resources Department for hydroelectric projects under ORS*  
6 *536.050, 543.078 to 543.092, 543.210, 543.280, 543.300, 543.710, 543A.405 and 543A.415; and*]

7 [(b) *All moneys received on behalf of this account by gift, grant or appropriation from whatever*  
8 *source.*]

9 [(3) *All interest, if any, from moneys credited to the Water Resources Department Hydroelectric*  
10 *Fund shall be credited to the fund and shall inure to the benefit of the Water Resources Department*  
11 *Hydroelectric Fund.*]

12 [(4)] (5) Application fees received under ORS 543A.405 shall be disbursed to [*the various*] **par-**  
13 **ticipating** agencies in the amounts specified in the cost reimbursement agreement executed with  
14 each reauthorization applicant.

15 [(5)] (6) Four cents of each 28 cents paid as a reauthorization fee under ORS 543A.415 shall be  
16 paid to the Department of Environmental Quality.

17 [(6)] (7) Annual fees paid under ORS 543.078 shall be disbursed to state agencies pursuant to a  
18 memorandum of agreement developed by the Department of Environmental Quality[, *the State De-*  
19 *partment of Fish and Wildlife and the Water Resources Department*] **and the Oregon Department**  
20 **of Natural Resources.**

21 **SECTION 1285.** ORS 536.017 is amended to read:

22 536.017. The [*Water Resources Commission and the State Department of Fish and Wildlife shall*  
23 *maintain records of expenditures from the Water Resources Department Hydroelectric Fund*  
24 *established*] **Oregon Department of Natural Resources shall maintain records of expenditures**  
25 **made** under ORS 536.015. The records shall account for costs imposed against specific operating  
26 hydroelectric projects and against projects in the process of obtaining a state or federal hydroelec-  
27 tric permit, certificate or license.

28 **SECTION 1286.** ORS 536.021 is amended to read:

29 536.021. (1) The Water Measurement Cost Share Program Revolving Fund is established separate  
30 and distinct from the General Fund. All moneys in the Water Measurement Cost Share Program  
31 Revolving Fund are continuously appropriated to the [*Water Resources Department*] **Oregon De-**  
32 **partment of Natural Resources** for the purposes described in this section.

33 (2) The fund established in this section consists of moneys appropriated by the Legislative As-  
34 sembly and moneys gifted, bequested, donated or granted from any person for the purpose of in-  
35 stallling, substantially repairing or replacing streamflow gauges, measuring devices or headgates  
36 with measuring devices.

37 (3) The department may use the moneys in the fund to contribute up to 75 percent of the moneys  
38 needed to install, substantially repair or replace a streamflow gauge, measuring device or headgate  
39 with a measuring device on authorized diversions on the waters of this state where the gauge,  
40 measuring device or headgate will be used to protect in-stream flow or to monitor water rights and  
41 streamflow.

42 (4) The department may receive funds from, and may enter into agreements or contracts with,  
43 any person for the purpose of implementing the Water Measurement Cost Share Program Revolving  
44 Fund.

45 (5) The department shall prioritize the expenditure of moneys from the fund for streamflow



1 gauges, measuring devices and headgates with measuring devices in the following descending order:

2 (a) Installation.

3 (b) Replacement.

4 (c) Substantial repair.

5 **SECTION 1287.** ORS 536.028 is amended to read:

6 536.028. In accordance with applicable provisions of ORS chapter 183, the [*Water Resources*  
7 *Commission*] **Oregon Natural Resources Commission** may adopt rules necessary to administer the  
8 provisions of ORS 390.835 pertaining to the issuance of a water right within or above a scenic  
9 waterway.

10 **SECTION 1288.** ORS 536.031 is amended to read:

11 536.031. (1) Except as provided in subsection (2) of this section, [*the Water Resources*  
12 *Department*] **for rules adopted pursuant to the water laws of this state, the Oregon Depart-**  
13 **ment of Natural Resources** may apply only those rules of the department that are in effect as of  
14 the date that a completed application is made for a permit in deciding whether to approve, deny or  
15 impose conditions on the permit.

16 (2) This section does not affect the application of any rule of the department that:

17 (a) Is required by federal law;

18 (b) Is required by any agreement between the state and a federal agency;

19 (c) The applicant voluntarily agrees to make applicable to the application; or

20 (d) Is necessary to protect public health and safety.

21 **SECTION 1289.** ORS 536.040 is amended to read:

22 536.040. (1) The records of the [*Water Resources Department*] **Oregon Department of Natural**  
23 **Resources that relate to the water resources of this state** are public records and shall remain  
24 on file in the department and be open to the inspection of the public at all times during business  
25 hours. The records shall show in full all maps, profiles, and engineering data relating to the use of  
26 water, and certified copies thereof shall be admissible as evidence in all cases where the original  
27 would be admissible as evidence.

28 (2) Whenever a record is required to be filed or maintained in the [*Water Resources*] department,  
29 the record may be handwritten, typewritten, printed or a photostated or photographic copy and any  
30 means of recording the information is acceptable, including but not limited to papers, maps, mag-  
31 netic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other  
32 preservation of the document or the information contained in the document.

33 (3) Notwithstanding any provision of subsection (2) of this section, the [*Water Resources*] de-  
34 partment shall maintain a paper copy of each final water use permit, certificate, [*order of the Water*  
35 *Resources Commission or Water Resources Director, decree or*] certificate of registration **or order**  
36 **of the Director of the Oregon Department of Natural Resources or Oregon Natural Re-**  
37 **sources Commission that pertains to the water resources of this state.** The copies shall be  
38 retained in a secure location in the department.

39 **SECTION 1290.** ORS 536.050 is amended to read:

40 536.050. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** may  
41 collect the following fees in advance:

42 (a) For examining an application for a permit:

43 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-  
44 droelectric project:

45 (i) A base fee of \$700 for an appropriation of water through a single use, point of diversion or

- 1 point of appropriation;
- 2 (ii) \$250 for the first second-foot or fraction thereof appropriated under the permit;
- 3 (iii) \$250 for each additional second-foot or fraction thereof appropriated under the permit;
- 4 (iv) \$250 for each additional use, point of diversion or point of appropriation included in the
- 5 application;
- 6 (v) If appropriating stored water, \$25 for the first acre-foot or fraction thereof up to 20 acre-feet,
- 7 plus \$1 for each additional acre-foot or fraction thereof; and
- 8 (vi) If appropriating ground water, in addition to any other fees, \$300 for each application filed.
- 9 (B) To store water under ORS 537.400 or 537.534 (4):
- 10 (i) A base fee of \$700;
- 11 (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
- 12 acre-foot or fraction thereof; and
- 13 (iii) \$100 for each additional storage location.
- 14 (C) To exclusively appropriate stored water:
- 15 (i) A base fee of \$400; and
- 16 (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
- 17 acre-foot or fraction thereof.
- 18 (b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store
- 19 water:
- 20 (A) A base fee of \$400 for recording the permit; and
- 21 (B) An additional fee of \$500 if the permit is issued pursuant to a final order that contains
- 22 provisions requested by the applicant for mitigating impacts to the proposed water source.
- 23 (c) For filing and recording the assignment or partial assignment of a water right application,
- 24 permit or license under ORS 537.220 or 537.635, \$75.
- 25 (d) For copying records in the department, \$2 for the first page and 50 cents for each additional
- 26 page.
- 27 (e) For certifying copies, documents, records or maps, \$10 for each certificate.
- 28 (f) For a blueprint copy of any map or drawing, the actual cost of the work.
- 29 (g) For a computer-generated map, the actual cost of the work.
- 30 (h) For examining an application for approval of a change to an existing water right or permit:
- 31 (A) A base fee of \$900 for a change to a single water right or permit;
- 32 (B) \$700 for each additional type of change requested;
- 33 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
- 34 540.533, \$250 for each second-foot or fraction thereof requested beyond the first second-foot;
- 35 (D) \$400 for each additional water right or permit included in the application; and
- 36 (E) An additional fee of \$300 per application, if the application is for an additional point of ap-
- 37 propriation, a change in a point of appropriation or a change from surface water to ground water
- 38 or for substitution as described in ORS 540.524.
- 39 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
- 40 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
- 41 point of diversion to allow for the appropriation of ground water or a change of a primary right to
- 42 a supplemental right under ORS 540.570, a base fee of \$600 for the first water right or permit, plus
- 43 \$200 for each additional water right or permit included in the application and:
- 44 (A) For nonirrigation uses, \$150 for each second-foot or fraction thereof requested beyond the
- 45 first second-foot; or

1 (B) For irrigation uses, \$2 per acre of land irrigated or, if the application and required map are  
2 submitted to the department in a department-approved digital format, 50 cents per acre of land ir-  
3 rigated.

4 (j) For submitting a protest to the department:

5 (A) \$600 if the protest is by a nonapplicant; and

6 (B) \$300 if the protest is by an applicant.

7 (k) For filing an application for extension of time within which irrigation or other works shall  
8 be completed or a water right perfected, \$500.

9 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the  
10 [*Water Resources Commission*] **Oregon Natural Resources Commission**.

11 (m) For filing, examining and certifying a petition under ORS 541.329, \$300 plus 10 cents per  
12 acre of water involved in the application. For purposes of computing this fee, when any acreage  
13 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in  
14 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a  
15 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining  
16 and certifying the petition.

17 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$150.

18 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,  
19 \$350.

20 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order  
21 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to  
22 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$20.

23 (q) For examining an application to store water under ORS 537.409:

24 (A) A base fee of \$300; and

25 (B) \$25 for each acre-foot or fraction thereof.

26 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established  
27 by the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**  
28 under ORS 543A.410.

29 (s) For examining an application for a substitution made under ORS 540.524:

30 (A) A base fee of \$630 for the first well substitution; and

31 (B) A fee of \$300 for each additional well substitution.

32 (t) For examining an application for an allocation of conserved water under ORS 537.455 to  
33 537.500:

34 (A) A base fee of \$850 for the first water right that is part of the allocation; and

35 (B) An additional fee of \$300 for each water right that is part of the allocation beyond the first  
36 water right.

37 (u) For submitting a water management and conservation plan pursuant to rules of the com-  
38 mission:

39 (A) \$400, if the plan is submitted by an agricultural water supplier;

40 (B) \$800, if the plan is submitted by a municipal water supplier serving a population of 1,000 or  
41 fewer persons; or

42 (C) \$1,600, if the plan is submitted by a municipal water supplier serving a population of more  
43 than 1,000 persons.

44 (v) For examining a new application for an in-stream water right lease under ORS 537.348:

45 (A) \$400 for an application for a lease with four or more landowners or four or more water

1 rights; or

2 (B) \$250 for all other applications.

3 (w) For examining an application for an in-stream water right lease renewal, \$100.

4 (x) For submitting a claim of beneficial use under a permit having a priority date of July 9, 1987,

5 or later, \$150.

6 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS

7 537.260 to reinstate the permit, \$400.

8 (z) For submitting a request for a basin program exception under ORS 536.295, \$500.

9 (2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard

10 rating as determined by the department. The fees the department may charge the dam owner are:

11 (A) \$75 for a dam with a low hazard rating.

12 (B) \$150 for a dam with a significant hazard rating.

13 (C) \$500 for a dam with a high hazard rating.

14 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,

15 a late fee of \$100.

16 (b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-

17 partment may, after giving the dam owner notice by certified mail, place a lien on the real property

18 where the dam is located for the fees owed by the dam owner.

19 (3) Notwithstanding the fees established under subsection (1) of this section, the commission may

20 establish lower examination and permit fees by rule for:

21 (a) The right to appropriate water for a storage project of five acre-feet or less; or

22 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock

23 outside of a riparian area, as that term is defined in ORS 541.351.

24 (4)(a) The director may refund all or part of a fee paid to the department under this section if

25 the director determines that a refund of the fee is appropriate in the interests of fairness to the

26 public or necessary to correct an error of the department.

27 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this

28 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the

29 [Water Resources] commission establishes that all or part of a water right has not been canceled or

30 modified under ORS 540.610 to 540.650.

31 (5) The director may waive all or part of a fee for a change to a water right permit under ORS

32 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-

33 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

34 (a) Made pursuant to ORS 537.348; **or**

35 (b) Necessary to complete a project funded under ORS 541.375.[: or]

36 [(c) *Approved by the State Department of Fish and Wildlife as a change or allocation of conserved*

37 *water that will result in a net benefit to fish and wildlife habitat.*]

38 (6) Notwithstanding the fees established pursuant to this section, the commission may adopt by

39 rule reduced fees for persons submitting materials to the department in a digital format approved

40 by the department.

41 (7) All moneys received under this section, less any amounts refunded under subsection (4) of

42 this section, shall be deposited in the [Water Resources Department Water Right Operating Fund.]

43 **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection are**

44 **continuously appropriated to the Oregon Department of Natural Resources for purposes de-**

45 **scribed in ORS 536.015.**

1        [(8) Notwithstanding subsection (7) of this section, all fees received by the department for power  
 2 purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund  
 3 established by ORS 536.015.]

4        **SECTION 1291.** ORS 536.050, as amended by section 12, chapter 819, Oregon Laws 2009, is  
 5 amended to read:

6        536.050. (1) The [Water Resources Department] **Oregon Department of Natural Resources** may  
 7 collect the following fees in advance:

8        (a) For examining an application for a permit:

9        (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-  
 10 droelectric project:

11        (i) A base fee of \$500 for an appropriation of water through a single use, point of diversion or  
 12 point of appropriation;

13        (ii) \$200 for the first second-foot or fraction thereof appropriated under the permit;

14        (iii) \$100 for each additional second-foot or fraction thereof appropriated under the permit;

15        (iv) \$200 for each additional use, point of diversion or point of appropriation included in the  
 16 application; and

17        (v) If appropriating stored water, \$20 for the first acre-foot or fraction thereof up to 20 acre-feet,  
 18 plus \$1 for each additional acre-foot or fraction thereof.

19        (B) To store water under ORS 537.400 or 537.534 (4):

20        (i) A base fee of \$500; and

21        (ii) \$20 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional  
 22 acre-foot or fraction thereof.

23        (C) To exclusively appropriate stored water:

24        (i) A base fee of \$250; and

25        (ii) \$15 for the first acre-foot or fraction thereof up to 10 acre-feet, plus \$1 for each additional  
 26 acre-foot or fraction thereof.

27        (b) For recording a permit to appropriate or store water, \$300.

28        (c) For filing and recording the assignment or partial assignment of a water right application,  
 29 permit or license under ORS 537.220 or 537.635, \$50.

30        (d) For copying records in the department, \$2 for the first page and 50 cents for each additional  
 31 page.

32        (e) For certifying copies, documents, records or maps, \$10 for each certificate.

33        (f) For a blueprint copy of any map or drawing, the actual cost of the work.

34        (g) For a computer-generated map, the actual cost of the work.

35        (h) For examining an application for approval of a change to an existing water right or permit:

36        (A) A base fee of \$400 for a change to a single water right or permit;

37        (B) \$400 for each additional type of change requested;

38        (C) For a request for a change in place of use or type of use or for a water exchange under ORS  
 39 540.533, \$200 for each second-foot or fraction thereof requested beyond the first second-foot; and

40        (D) \$200 for each additional water right or permit included in the application.

41        (i) For examining an application for a temporary change in place of use under ORS 540.523, for  
 42 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the  
 43 point of diversion to allow for the appropriation of ground water or a change of a primary right to  
 44 a supplemental right under ORS 540.570, a base fee of \$200 for the first water right or permit, plus  
 45 \$50 for each additional water right or permit included in the application and:

1 (A) For nonirrigation uses, \$80 for each second-foot or fraction thereof requested beyond the  
2 first second-foot; or

3 (B) For irrigation uses, \$1 per acre of land irrigated or, if the application and required map are  
4 submitted to the department in a department-approved digital format, 25 cents per acre of land ir-  
5 rigated.

6 (j) For submitting a protest to the department, \$350.

7 (k) For filing an application for extension of time within which irrigation or other works shall  
8 be completed or a water right perfected, \$350.

9 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the  
10 [*Water Resources Commission*] **Oregon Natural Resources Commission**.

11 (m) For filing, examining and certifying a petition under ORS 541.329, \$250 plus 10 cents per  
12 acre of water involved in the application. For purposes of computing this fee, when any acreage  
13 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in  
14 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a  
15 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining  
16 and certifying the petition.

17 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$100.

18 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,  
19 \$250.

20 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order  
21 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to  
22 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$10.

23 (q) For examining an application to store water under ORS 537.409:

24 (A) A base fee of \$80; and

25 (B) \$20 for each acre-foot or fraction thereof.

26 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established  
27 by the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**  
28 under ORS 543A.410.

29 (s) For examining an application for a substitution made under ORS 540.524, \$280.

30 (t) For examining an application for an allocation of conserved water under ORS 537.455 to  
31 537.500, \$700.

32 (u) For submitting a water management and conservation plan pursuant to rules of the com-  
33 mission:

34 (A) \$250, if the plan is submitted by an agricultural water supplier;

35 (B) \$500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or  
36 fewer persons; or

37 (C) \$1,000, if the plan is submitted by a municipal water supplier serving a population of more  
38 than 1,000 persons.

39 (v) For examining a new application for an in-stream water right lease under ORS 537.348:

40 (A) \$200 for an application for a lease with four or more landowners or four or more water  
41 rights; or

42 (B) \$100 for all other applications.

43 (w) For examining an application for an in-stream water right lease renewal, \$50.

44 (2) Notwithstanding the fees established under subsection (1) of this section, the commission may  
45 establish lower examination and permit fees by rule for:

1 (a) The right to appropriate water for a storage project of five acre-feet or less; or

2 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock  
3 outside of a riparian area, as that term is defined in ORS 541.351.

4 (3)(a) The director may refund all or part of a fee paid to the department under this section if  
5 the director determines that a refund of the fee is appropriate in the interests of fairness to the  
6 public or necessary to correct an error of the department.

7 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this  
8 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the  
9 [Water Resources] commission establishes that all or part of a water right has not been canceled or  
10 modified under ORS 540.610 to 540.650.

11 (4) The director may waive all or part of a fee for a change to a water right permit under ORS  
12 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-  
13 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

14 (a) Made pursuant to ORS 537.348; **or**

15 (b) Necessary to complete a project funded under ORS 541.375.[: or]

16 [(c) *Approved by the State Department of Fish and Wildlife as a change or allocation of conserved*  
17 *water that will result in a net benefit to fish and wildlife habitat.*]

18 (5) Notwithstanding the fees established pursuant to this section, the commission may adopt by  
19 rule reduced fees for persons submitting materials to the department in a digital format approved  
20 by the department.

21 (6) All moneys received under this section, less any amounts refunded under subsection (3) of  
22 this section, shall be deposited in the [Water Resources Department Water Right Operating Fund.]  
23 **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection are**  
24 **continuously appropriated to the Oregon Department of Natural Resources for purposes de-**  
25 **scribed in ORS 536.015.**

26 [(7) *Notwithstanding subsection (6) of this section, all fees received by the department for power*  
27 *purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund*  
28 *established by ORS 536.015.*]

29 **SECTION 1292.** ORS 536.055 is amended to read:

30 536.055. (1) The [Water Resources Department] **Oregon Department of Natural Resources** may,  
31 with any person, enter into an agreement that sets fees to be paid to the department for the purpose  
32 of enabling the department to expedite or enhance the regulatory process [*to provide services vol-*  
33 *untarily requested under the agreement*] **of providing services related to the water resources of**  
34 **this state.** Pursuant to the agreement, the department may hire additional temporary staff members,  
35 contract for services or provide additional services to the person that are within the authority of  
36 the department to provide.

37 (2) Notwithstanding the fees established in ORS 536.050, as part of an agreement entered into  
38 under this section, the department may waive all or part of a fee imposed for a service.

39 (3) The department may not modify existing processing priorities or schedules or create pro-  
40 cessing priorities or schedules for a particular department-provided service in order to compel a  
41 person to enter into an agreement under this section. However, without violating this subsection,  
42 the department may modify its processing priorities or schedules based on the overall operating  
43 needs of the department.

44 (4) The department may not require that a person pay more for a service under an agreement  
45 entered into under this section than the cost to the department in providing the service to the per-

1 son.

2 (5) The department shall review the responsibilities of the department to identify services pro-  
3 vided by the department that are appropriate for the department to perform under the provisions  
4 of this section. Failure to identify responsibilities under this subsection does not prohibit the de-  
5 partment from entering into agreements under this section.

6 (6) Fees paid under this section shall be deposited in the State Treasury to the credit of the  
7 department. Such moneys are continuously appropriated to the department for the purpose of re-  
8 viewing department responsibilities to determine those services for which the authority provided in  
9 this section may be used and for fulfilling the individual agreements entered into pursuant to this  
10 section, including the processing and review of:

11 (a) Water right permit applications, permit extensions, permit amendments and final proof sur-  
12 veys;

13 (b) Water right exchanges and transfers; and

14 (c) Water management and conservation plans required by rule by the department.

15 **SECTION 1293.** ORS 536.075 is amended to read:

16 536.075. (1) Any party affected by a final order other than contested case [*issued by the Water*  
17 *Resources Commission or Water Resources Department*] **issued by the Oregon Natural Resources**  
18 **Commission or the Oregon Department of Natural Resources that relates to the adminis-**  
19 **tration of the water resources of this state** may appeal the order to the Circuit Court of Marion  
20 County or to the circuit court of the county in which all or part of the property affected by the  
21 order is situated. The review shall be conducted according to the provisions of ORS 183.484, 183.486,  
22 183.497 and 183.500. A final order other than contested case issued by the [*Water Resources Com-*  
23 *mission or the Water Resources Department*] **commission or department that relates to the ad-**  
24 **ministration of the water resources of this state** must state on the first page of the order that  
25 the order is a final order other than contested case, that the order is subject to judicial review  
26 under ORS 183.484 and that any petition for judicial review of the order must be filed within the  
27 time specified by ORS 183.484 (2). Any order other than contested case issued by the [*Water Re-*  
28 *sources Commission or by the Water Resources Department*] **commission or department that re-**  
29 **lates to the administration of the water resources of this state** that does not comply with the  
30 requirements of this section is not a final order.

31 (2) Any party affected by a final order in a contested case issued by the [*Water Resources*  
32 *Commission or the Water Resources Department*] **commission or department that relates to the**  
33 **administration of the water resources of this state** may appeal the order to the Court of Ap-  
34 peals.

35 (3) An appeal under subsection (2) of this section shall be conducted as provided in ORS 183.482  
36 except as specifically provided in subsections (4), (5) and (6) of this section.

37 (4) [*The petition*] **A petition challenging an order issued under subsections (1) or (2) of this**  
38 **section** shall state the facts showing how the petitioner is adversely affected by the order and the  
39 ground or grounds upon which the petitioner contends the order should be reversed or remanded.

40 (5) The filing of a petition **challenging an order issued under subsections (1) or (2) of this**  
41 **section** in either the circuit court or the Court of Appeals shall stay enforcement of the order of  
42 the commission or the department unless the commission or the department determines that sub-  
43 stantial public harm will result if the order is stayed. If the commission or the department denies  
44 the stay, the denial shall be in writing and shall specifically state the substantial public harm that  
45 will result from allowing the stay.



1 (6) The review by the Court of Appeals under subsection (2) of this section shall be on the entire  
2 record forwarded by the commission or department. The court may remand the case for further ev-  
3 idence taking, correction or other necessary action. The court may affirm, reverse, modify or sup-  
4 plement the order appealed from, and make such disposition of the case as the court determines to  
5 be appropriate.

6 (7) The provisions of this section shall not apply to any proceeding under ORS 537.670 to 537.695  
7 or ORS chapter 539.

8 (8) For the purposes of this section, “final order” and “contested case” have the meanings given  
9 those terms in ORS 183.310.

10 **SECTION 1294.** ORS 536.090 is amended to read:

11 536.090. (1) In carrying out the duties, functions and powers prescribed by law, the [*Water Re-*  
12 *sources Commission*] **Oregon Natural Resources Commission** shall appoint a ground water advi-  
13 sory committee to:

14 (a) Advise the commission on all matters relating to:

15 (A) Rules for the development, securing, use and protection of ground water; and

16 (B) Licensing of well constructors, including the examination of such persons for license.

17 (b) Review the proposed expenditure of all revenues generated under ORS 537.762 (5). At least  
18 once each year, and before the expenditure of such funds on new program activities, the [*Water*  
19 *Resources Department*] **Oregon Department of Natural Resources** and the ground water advisory  
20 committee shall develop jointly a proposed expenditure plan for concurrence by the [*Water Re-*  
21 *sources*] commission. The plan may be modified, if necessary, upon the joint recommendation of the  
22 department and the ground water advisory committee with concurrence by the commission.

23 (2) The committee shall consist of nine members who represent a range of interests or expertise.  
24 At least three of the members shall be individuals actively engaged in some aspect of the water  
25 supply or monitoring well drilling industry. Members shall serve for such terms as the commission  
26 may specify. The committee shall meet at least once every three months and at other times and  
27 places as the commission may specify.

28 (3) A member of the committee [*shall*] **may** not receive compensation, but at the discretion of  
29 the commission may be reimbursed for travel expenses incurred, subject to ORS 292.495.

30 **SECTION 1295.** ORS 536.220 is amended to read:

31 536.220. (1) The Legislative Assembly recognizes and declares that:

32 (a) The maintenance of the present level of the economic and general welfare of the people of  
33 this state and the future growth and development of this state for the increased economic and gen-  
34 eral welfare of the people thereof are in large part dependent upon a proper utilization and control  
35 of the water resources of this state, and such use and control is therefore a matter of greatest  
36 concern and highest priority.

37 (b) A proper utilization and control of the water resources of this state can be achieved only  
38 through a coordinated, integrated state water resources policy, through plans and programs for the  
39 development of such water resources and through other activities designed to encourage, promote  
40 and secure the maximum beneficial use and control of such water resources, all carried out by a  
41 single state agency.

42 (c) The economic and general welfare of the people of this state have been seriously impaired  
43 and are in danger of further impairment by the exercise of some single-purpose power or influence  
44 over the water resources of this state or portions thereof by each of a large number of public au-  
45 thorities, and by an equally large number of legislative declarations by statute of single-purpose

1 policies with regard to such water resources, resulting in friction and duplication of activity among  
2 such public authorities, in confusion as to what is primary and what is secondary beneficial use or  
3 control of such water resources and in a consequent failure to utilize and control such water re-  
4 sources for multiple purposes for the maximum beneficial use and control possible and necessary.

5 (2) The Legislative Assembly, therefore, finds that:

6 (a) It is in the interest of the public welfare that a coordinated, integrated state water resources  
7 policy be formulated and means provided for its enforcement, that plans and programs for the de-  
8 velopment and enlargement of the water resources of this state be devised and promoted and that  
9 other activities designed to encourage, promote and secure the maximum beneficial use and control  
10 of such water resources and the development of additional water supplies be carried out by a single  
11 state agency which, in carrying out its functions, shall give proper and adequate consideration to  
12 the multiple aspects of the beneficial use and control of such water resources with an impartiality  
13 of interest except that designed to best protect and promote the public welfare generally.

14 (b) The state water resources policy shall be consistent with the goal set forth in ORS 468B.155.

15 (3)(a) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall de-  
16 velop an integrated state water resources strategy to implement the state water resources policy  
17 specified in subsection (2) of this section. The department shall design the strategy to meet Oregon's  
18 in-stream and out-of-stream water needs.

19 (b) The [*Water Resources Department shall work in close cooperation with the Department of En-*  
20 *vironmental Quality and the State Department of Fish and Wildlife*] **Oregon Department of Natural**  
21 **Resources and the Department of Environmental Quality shall collaborate** to develop the in-  
22 tegrated state water resources strategy in consultation with other state, local and federal agencies,  
23 with other states, with Indian tribes, with stakeholders and with the public.

24 (c) The [*Water Resources Department, in close cooperation with the Department of Environmental*  
25 *Quality and the State Department of Fish and Wildlife,*] **Oregon Department of Natural Resources,**  
26 **in cooperation with the Department of Environmental Quality,** shall develop data on an ongo-  
27 ing basis to forecast Oregon's in-stream and out-of-stream water needs, including but not limited to  
28 in-stream, underground water, human consumption and water supply needs, for the purpose of de-  
29 veloping and updating the integrated state water resources strategy.

30 (d) The integrated water resources strategy shall describe the following:

31 (A) Oregon's in-stream and out-of-stream water needs, including but not limited to ecosystem  
32 services, water quality and water supply needs.

33 (B) Objectives of the strategy.

34 (C) Actions that are designed to achieve the objectives of the strategy.

35 (D) Plans related to the challenges presented by climate change.

36 (E) Provisions to ensure communication and partnership with key stakeholders.

37 (F) Specific functions and roles to be played by [*state agencies, including but not limited to the*  
38 *State Department of Agriculture, the State Forestry Department, the Department of Human Services,*  
39 *the Oregon Business Development Department, the Department of Land Conservation and Development,*  
40 *the Oregon Watershed Enhancement Board, the State Parks and Recreation Department, the Depart-*  
41 *ment of State Lands and other*] relevant state agencies, **including the State Department of Agri-**  
42 **culture, the Department of Human Services and the Oregon Business Development**  
43 **Department.**

44 (G) Public policy options and recommendations.

45 (H) Relevant strategy factors, including but not limited to population growth and land use

1 change.

2 (I) Recommendations of the [*Water Resources Department*] **Oregon Department of Natural**  
 3 **Resources** regarding the continuous monitoring of climate change effects on Oregon's water supply  
 4 and regarding water user actions that are necessary to address climate change.

5 (e)(A) The [*Water Resources Commission shall give the Environmental Quality Commission, the*  
 6 *State Department of Agriculture and the State Department of Fish and Wildlife*] **Oregon Natural**  
 7 **Resources Commission shall give the Environmental Quality Commission and the State De-**  
 8 **partment of Agriculture** notice of the integrated state water resources strategy prior to adoption  
 9 of the strategy. The strategy shall take effect upon adoption by the [*Water Resources Commission*]  
 10 **Oregon Natural Resources Commission.**

11 (B) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall review  
 12 and update the integrated state water resources strategy every five years. The [*Water Resources*  
 13 *Commission shall give notice to the Environmental Quality Commission, the State Department of Ag-*  
 14 *riculture and the State Department of Fish and Wildlife*] **Oregon Natural Resources Commission**  
 15 **shall give notice to the Environmental Quality Commission and the State Department of**  
 16 **Agriculture** prior to adopting any revisions of the strategy. Revisions of the strategy shall take  
 17 effect upon the [*Water Resources Commission's*] **Oregon Natural Resources Commission's**  
 18 adoption of the revised strategy by reference in rule.

19 (4) This section does not limit the authority granted the Environmental Quality Commission or  
 20 the Department of Environmental Quality under ORS chapter 468B.

21 **SECTION 1296.** ORS 536.235 is amended to read:

22 536.235. It is the policy of the State of Oregon that establishment of minimum perennial  
 23 streamflows is a high priority of the [*Water Resources Commission and the Water Resources Depart-*  
 24 *ment*] **Oregon Department of Natural Resources and the Oregon Natural Resources Commis-**  
 25 **sion.**

26 **SECTION 1297.** ORS 536.295 is amended to read:

27 536.295. (1) Notwithstanding any provision of ORS 536.300 or 536.340, the [*Water Resources*  
 28 *Commission may allow the Water Resources Department*] **Oregon Natural Resources Commission**  
 29 **may allow the Oregon Department of Natural Resources** to consider an application to appro-  
 30 priate water for a use not classified in the applicable basin program if the use:

- 31 (a) Will be of short duration during each year;  
 32 (b) Will be for a continuous period of no longer than five years;  
 33 (c) Is largely nonconsumptive in nature and not likely to be regulated for other water rights;  
 34 (d) Is necessary to ensure public health, welfare and safety;  
 35 (e) Is necessary to avoid extreme hardship;  
 36 (f) Will provide a public benefit such as riparian or watershed improvement; or  
 37 (g) Is of an unusual nature not likely to recur in the basin, and unlikely to have been within the  
 38 uses considered by the commission in classifying the uses presently allowed in the applicable basin  
 39 program including but not limited to:

- 40 (A) Exploratory thermal drilling;  
 41 (B) Heat exchange;  
 42 (C) Maintaining water levels in a sewage lagoon; or  
 43 (D) Facilitating the watering of livestock away from a river or stream.

44 (2) A permit granted on or before January 1, 1993, for a quasi-municipal use of water shall be  
 45 considered a permit for a classified use under ORS 536.340 if at the time the application was sub-

mitted or the permit was granted, the basin program identified municipal use as a classified use.

(3) The commission by rule may determine the specific uses permitted within a classified use.

(4) In making the determination under subsection (1) of this section, the commission shall evaluate whether the proposed use is consistent with the general policies established in the applicable basin program.

(5) The [*Water Resources*] department shall process and evaluate an application allowed by the commission under subsections (1) to (4) of this section in the same manner as any other water right application, including determining whether the proposed use would result in injury to an existing water right.

**SECTION 1298.** ORS 536.300 is amended to read:

536.300. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall proceed as rapidly as possible to study: existing water resources of this state; means and methods of conserving and augmenting such water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses, and all other related subjects, including drainage, reclamation, floodplains and reservoir sites.

(2) Based upon said studies and after an opportunity to be heard has been given to all other state agencies which may be concerned, the commission shall progressively formulate an integrated, coordinated program for the use and control of all the water resources of this state and issue statements thereof.

(3) The commission may adopt or amend a basin program only after holding at least one public hearing in the affected river basin. After the commission itself conducts one public hearing in the affected river basin, the commission may delegate to the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** the authority to conduct additional public hearings in the affected river basin.

**SECTION 1299.** ORS 536.310 is amended to read:

536.310. In formulating the water resources program under ORS 536.300 (2), the [*Water Resources Commission*] **Oregon Natural Resources Commission** shall take into consideration the purposes and declarations enumerated in ORS 536.220 and also the following additional declarations of policy:

(1) Existing rights, established duties of water, and relative priorities concerning the use of the waters of this state and the laws governing the same are to be protected and preserved subject to the principle that all of the waters within this state belong to the public for use by the people for beneficial purposes without waste;

(2) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the state as a whole;

(3) That adequate and safe supplies be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses;

(4) Multiple-purpose impoundment structures are to be preferred over single-purpose structures; upstream impoundments are to be preferred over downstream impoundments. The fishery resource of this state is an important economic and recreational asset. In the planning and construction of impoundment structures and milldams and other artificial obstructions, due regard shall be given to means and methods for its protection;

(5) Competitive exploitation of water resources of this state for single-purpose uses is to be discouraged when other feasible uses are in the general public interest;

1 (6) In considering the benefits to be derived from drainage, consideration shall also be given to  
2 possible harmful effects upon ground water supplies and protection of wildlife;

3 (7) The maintenance of minimum perennial streamflows sufficient to support aquatic life, to  
4 minimize pollution and to maintain recreation values shall be fostered and encouraged if existing  
5 rights and priorities under existing laws will permit;

6 (8) Watershed development policies shall be favored, whenever possible, for the preservation of  
7 balanced multiple uses, and project construction and planning with those ends in view shall be en-  
8 couraged;

9 (9) Due regard shall be given in the planning and development of water recreation facilities to  
10 safeguard against pollution;

11 (10) It is of paramount importance in all cooperative programs that the principle of the sover-  
12 eignty of this state over all the waters within the state be protected and preserved, and such coop-  
13 eration by the commission shall be designed so as to reinforce and strengthen state control;

14 (11) Local development of watershed conservation, when consistent with sound engineering and  
15 economic principles, is to be promoted and encouraged;

16 (12) When proposed uses of water are in mutually exclusive conflict or when available supplies  
17 of water are insufficient for all who desire to use them, preference shall be given to human con-  
18 sumption purposes over all other uses and for livestock consumption, over any other use, and  
19 thereafter other beneficial purposes in such order as may be in the public interest consistent with  
20 the principles of chapter 707, Oregon Laws 1955, under the existing circumstances; and

21 (13) Notwithstanding any other provision of this section, when available supplies of water are  
22 insufficient in the South Umpqua River to provide for both the needs of human consumption pursu-  
23 ant to a municipal water right and the maintenance of previously established minimum streamflows,  
24 preference shall be given to the municipal needs if the municipality adopts and enforces an ordi-  
25 nance restricting use of the water so obtained to direct human consumption uses.

26 **SECTION 1300.** ORS 536.315 is amended to read:

27 536.315. As part of the water resources policy statement authorized under ORS 536.300, the  
28 [*Water Resources Commission*] **Oregon Natural Resources Commission** may designate the exact  
29 land areas included within the auxiliary lands described in ORS 536.007.

30 **SECTION 1301.** ORS 536.320 is amended to read:

31 536.320. [*The Water Resources Commission shall*] **In the administration of the water re-**  
32 **sources of this state, the Oregon Natural Resources Commission does** not have power:

33 (1) To interfere with, supervise or control the internal affairs of any state agency or public  
34 corporation;

35 (2) To modify, set aside or alter any existing right to use water or the priority of such use es-  
36 tablished under existing laws; or

37 (3) To modify or amend any standard or policy as prescribed in ORS 536.310 nor to adopt any  
38 rule or regulation in conflict therewith.

39 **SECTION 1302.** ORS 536.330 is amended to read:

40 536.330. Chapter 707, Oregon Laws 1955, shall be construed by the [*Water Resources*  
41 *Commission*] **Oregon Natural Resources Commission** as supplemental to existing statutes and not  
42 in lieu thereof except to the extent that existing statutes are expressly amended or repealed by  
43 chapter 707, Oregon Laws 1955. ORS 536.220 to 536.540 and the authority of the [*Water Resources*  
44 *Department*] **Oregon Department of Natural Resources** thereunder shall include all laws now ex-  
45 isting or hereinafter enacted that relate to or affect the use and control of the water resources of

1 this state.

2 **SECTION 1303.** ORS 536.340 is amended to read:

3 536.340. (1) Subject at all times to existing rights and priorities to use waters of this state, the  
4 [*Water Resources Commission*] **Oregon Natural Resources Commission:**

5 (a) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify  
6 the lakes, streams, underground reservoirs or other sources of water supply in this state as to the  
7 highest and best use and quantities of use thereof for the future in aid of an integrated and balanced  
8 program for the benefit of the state as a whole. The commission may so classify and reclassify  
9 portions of any such sources of water supply separately. Classification or reclassification of sources  
10 of water supply as provided in this subsection has the effect of restricting the use and quantities  
11 of use thereof to the uses and quantities of uses specified in the classification or reclassification,  
12 and no other uses or quantities of uses except as approved by the commission under ORS 536.370  
13 to 536.390 or as accepted by the commission under ORS 536.295. Restrictions on use and quantities  
14 of use of a source of water supply resulting from a classification or reclassification under this sub-  
15 section shall apply to the use of all waters of this state affected by the classification or reclassi-  
16 fication, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or  
17 reclassification that imposes the restriction.

18 (b) Shall diligently enforce laws concerning cancellation, release and discharge of excessive  
19 unused claims to waters of this state to the end that such excessive and unused amounts may be  
20 made available for appropriation and beneficial use by the public.

21 (c) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the pref-  
22 erential uses named in ORS 536.310 (12), prescribe preferences for the future for particular uses and  
23 quantities of uses of the waters of any lake, stream or other source of water supply in this state in  
24 aid of the highest and best beneficial use and quantities of use thereof. In prescribing such prefer-  
25 ences the commission shall give effect and due regard to the natural characteristics of such sources  
26 of water supply, the adjacent topography, the economy of such sources of water supply, the economy  
27 of the affected area, seasonal requirements of various users of such waters, the type of proposed use  
28 as between consumptive and nonconsumptive uses and other pertinent data.

29 (2) In classifying or reclassifying a source of water supply or prescribing preferences for the  
30 future uses of a source of water supply under subsection (1) of this section, the commission shall:

31 (a) Comply with the requirements set forth in the [*Water Resources Department*] **Oregon De-**  
32 **partment of Natural Resources** coordination program developed pursuant to ORS 197.180; and

33 (b) Cause notice of the hearing held under ORS 536.300 (3) to be published in a newspaper of  
34 general circulation once each week for four successive weeks in each county:

35 (A) In which waters affected by the action of the commission under subsection (1) of this section  
36 are located; or

37 (B) That is located within the basin under consideration.

38 (3) Before beginning any action under subsection (2) of this section that would limit new ground  
39 water uses that are exempt under ORS 537.545 from the requirement to obtain a water right, the  
40 commission shall:

41 (a) Review the proposed action to determine whether the proposal is consistent with ORS  
42 537.780;

43 (b) Provide an opportunity for review by:

44 (A) Any member of the Legislative Assembly who represents a district where the proposed  
45 action would apply; and

1 (B) Any interim committee of the Legislative Assembly responsible for water-related issues; and

2 (c) Receive and consider a recommendation on the proposal from the ground water advisory  
3 committee appointed under ORS 536.090.

4 **SECTION 1304.** ORS 536.350 is amended to read:

5 536.350. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall de-  
6 liver a copy of each water resources statement referred to in ORS 536.300 (2) to each state agency  
7 or public corporation of this state which may be concerned with or which may carry on activities  
8 likely to affect the use or control of the water resources of this state. Each state agency or public  
9 corporation of this state which receives a copy of a water resources statement shall give to the  
10 commission a receipt for the water resources statement. A copy of any such statement duly certified  
11 by the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** to  
12 be a full, true and correct copy shall be received in evidence in any court in the state and if the  
13 certificate recites that a copy of the statement was delivered to a particular state agency or public  
14 corporation of this state, it shall be presumed that the same was actually delivered as stated in the  
15 certificate.

16 **SECTION 1305.** ORS 536.360 is amended to read:

17 536.360. In the exercise of any power, duty or privilege affecting the water resources of this  
18 state, every state agency or public corporation of this state shall give due regard to the statements  
19 of the [*Water Resources Commission*] **Oregon Natural Resources Commission** and shall conform  
20 thereto. No exercise of any such power, duty or privilege by any such state agency or public cor-  
21 poration which would tend to derogate from or interfere with the state water resources policy shall  
22 be lawful.

23 **SECTION 1306.** ORS 536.370 is amended to read:

24 536.370. (1) No exercise by any state agency or public corporation of this state which has re-  
25 ceived a copy of a state water resources statement as provided in ORS 536.350, of any power, duty  
26 or privilege, including the promulgating or undertaking of any order, rule, regulation, plan, program,  
27 policy, project or any other activity, which would in any way conflict with the state water resources  
28 policy as set forth in the statement, shall be effective or enforceable until approved by the [*Water*  
29 *Resources Commission*] **Oregon Natural Resources Commission** as provided in subsection (2) of  
30 this section.

31 (2) The exercise of any power, duty or privilege referred to in subsection (1) of this section shall  
32 be deemed approved by the commission if:

33 (a) The commission grants its approval as provided in ORS 536.390; or

34 (b) The commission does not notify the state agency or public corporation within 30 days after  
35 the filing of the notification as provided in ORS 536.380 (1) of the intention of the commission to  
36 review the proposed exercise of the power, duty or privilege; or

37 (c) The commission grants its approval as provided in ORS 536.380 (4).

38 **SECTION 1307.** ORS 536.380 is amended to read:

39 536.380. (1) Except as otherwise provided in ORS 536.390, whenever any state agency or public  
40 corporation of this state which has received a copy of a state water resources statement as provided  
41 in ORS 536.350, proposes to exercise any power, duty or privilege referred to in ORS 536.370 (1), it  
42 shall first file with the [*Water Resources Commission*] **Oregon Natural Resources Commission** a  
43 notification of the proposed exercise. The notification shall be in such form and shall contain a de-  
44 scription of the proposed exercise and such other information as the commission may require. The  
45 notification shall be a public record in the office of the commission.

1 (2) Within 30 days after the filing of the notification as provided in subsection (1) of this section,  
2 the commission shall notify the state agency or public corporation of the intention of the commission  
3 to review the proposed exercise of the power, duty or privilege, if:

4 (a) The commission, in its discretion, determines that a review should be undertaken; or

5 (b) A protest against the proposed exercise is filed with the commission within 25 days after the  
6 filing of the notification as provided in subsection (1) of this section by any person, state agency or  
7 public corporation of this state or agency of the federal government.

8 (3) The commission, in its discretion, may hold a public hearing on the proposed exercise of the  
9 power, duty or privilege. The commission shall determine the time and place of the public hearing,  
10 and shall give written notice thereof to the state agency or public corporation whose proposed ex-  
11 ercise of a power, duty or privilege is being reviewed and to each protestant under subsection (2)(b)  
12 of this section, if any, at least 10 days prior to the hearing. Notice of the hearing shall also be  
13 published in at least one issue each week for at least two consecutive weeks prior to the hearing  
14 in a newspaper of general circulation published in each county in which the proposed exercise of  
15 the power, duty or privilege is to take place or be effective.

16 (4) After the commission has notified the state agency or public corporation of the intention of  
17 the commission to review the proposed exercise of the power, duty or privilege as provided in sub-  
18 section (2) of this section, the commission shall undertake the review and proceed therewith with  
19 reasonable diligence. At the conclusion of the review the commission shall make a determination  
20 approving the proposed exercise, approving the proposed exercise subject to conditions specified in  
21 the determination or disapproving the proposed exercise. A copy of the determination by the com-  
22 mission shall be delivered to the state agency or public corporation whose proposed exercise of a  
23 power, duty or privilege was reviewed and to each protestant under subsection (2)(b) of this section,  
24 if any.

25 **SECTION 1308.** ORS 536.390 is amended to read:

26 536.390. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may enter  
27 into agreements or provide by orders, rules or regulations whereby it approves the exercise of any  
28 one or more of the powers, duties or privileges referred to in ORS 536.370 (1) by a state agency or  
29 public corporation of this state which has received a copy of a state water resources statement as  
30 provided in ORS 536.350, without the filing of the notification as provided in ORS 536.380 (1). Each  
31 agreement, order, rule or regulation shall specifically provide for the modification or revocation  
32 thereof at the discretion of the commission and upon reasonable notice to the state agency or public  
33 corporation, and may contain such other conditions, limitations or requirements as the commission,  
34 in its discretion, may require to insure the accomplishment of the purposes of the state water re-  
35 sources policy.

36 **SECTION 1309.** ORS 536.400 is amended to read:

37 536.400. (1) As used in subsection (2) of this section, "violation" means any exercise or attempt  
38 to exercise by any state agency or public corporation of this state which has received a copy of a  
39 state water resources statement as provided in ORS 536.350, of any power, duty or privilege which  
40 would in any way conflict with the state water resources statement, without the approval of the  
41 [*Water Resources Commission*] **Oregon Natural Resources Commission** as provided in ORS 536.370  
42 (2).

43 (2) The commission, may apply to the circuit court of the county in which a violation is alleged  
44 to exist for the restraining by appropriate process of the commission or continuation of a violation,  
45 or for the enforcement by appropriate process of compliance with ORS 536.370 to 536.390.



1       **SECTION 1310.** ORS 536.410 is amended to read:

2       536.410. (1) When the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
3 determines that it is necessary to insure compliance with the state water resources policy or that  
4 it is otherwise necessary in the public interest to conserve the water resources of this state for the  
5 maximum beneficial use and control thereof that any unappropriated waters of this state, including  
6 unappropriated waters released from storage or impoundment into the natural flow of a stream for  
7 specified purposes, be withdrawn from appropriation for all or any uses including exempt uses under  
8 ORS 537.545, the commission, on behalf of the state, may issue an order of withdrawal.

9       (2) Prior to the issuance of the order of withdrawal the commission shall hold a public hearing  
10 on the necessity for the withdrawal. Notice of the hearing shall be published in at least one issue  
11 each week for at least two consecutive weeks prior to the hearing in a newspaper of general cir-  
12 culation published in each county in which are located the waters proposed to be withdrawn.

13       (3) The order of withdrawal shall specify with particularity the waters withdrawn from appro-  
14 priation, the uses for which the waters are withdrawn, the reason for the withdrawal and the du-  
15 ration of the withdrawal. The commission may modify or revoke the order at any time.

16       (4) Copies of the order of withdrawal and notices of any modification or revocation of the order  
17 of withdrawal shall be filed in the [*Water Resources Department*] **Oregon Department of Natural**  
18 **Resources**.

19       (5) While the order of withdrawal is in effect, no application for a permit to appropriate the  
20 waters withdrawn for the uses specified in the order and no application for a preliminary permit or  
21 license involving appropriations of such waters shall be received for filing by the [*Water*  
22 *Resources*] commission.

23       **SECTION 1311.** ORS 536.420 is amended to read:

24       536.420. (1) The Governor shall designate the [*Water Resources Director or a member or members*  
25 *of the Water Resources Commission*] **Director of the Oregon Department of Natural Resources**  
26 **or a member or members of the Oregon Natural Resources Commission** to act on behalf of  
27 and to represent the state in formulating, entering into and carrying out any formal or informal  
28 compact or other agreement authorized by the Legislative Assembly concerning the use and control  
29 of the water resources of this state, between this state or any state agency or public corporation  
30 thereof and any other state, any state agency or public corporation thereof or the federal govern-  
31 ment or any agency thereof.

32       (2) The representative or representatives designated by the Governor under subsection (1) of this  
33 section shall make every effort practicable to ensure that the compact or other agreement, as for-  
34 mulated, entered into and carried out, is in harmony with the state water resources policy and  
35 otherwise with the public interest in encouraging, promoting and securing the maximum beneficial  
36 use and control of the water resources of this state.

37       (3) The commission in carrying out an investigation pertaining to water resources may cooper-  
38 ate with state agencies of California for the purpose of formulating, executing and submitting to the  
39 legislatures of Oregon and California for their approval, interstate compacts relative to the distrib-  
40 ution and use of the waters of Goose Lake and tributaries thereto. No compacts or agreements for-  
41 mulated as provided in this section are binding upon this state until they have been approved by the  
42 legislature of this state and the Congress of the United States.

43       (4) Any state agency or public corporation of this state required or permitted by law to formu-  
44 late, enter into or carry out any compact or other agreement referred to in subsection (1) of this  
45 section shall give timely and adequate notice to the commission before it undertakes any action

1 under such requirement or permission.

2 **SECTION 1312.** ORS 536.430 is amended to read:

3 536.430. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall de-  
4 vise plans and programs for the development of the water resources of this state in such a manner  
5 as to encourage, promote and secure the maximum beneficial use and control thereof.

6 **SECTION 1313.** ORS 536.440 is amended to read:

7 536.440. The [*Water Resources Commission*] **Oregon Natural Resources Commission**, by itself  
8 or in conjunction with any person, local voluntary committee or association, state agency or public  
9 corporation of this or any other state, any interstate agency or any agency of the federal govern-  
10 ment, may conduct such investigations, surveys or studies, including the holding of public hearings,  
11 relating to the water resources of this state as it deems necessary to facilitate and assist in [*carry-*  
12 *ing out its functions as provided by law*] **administering the water resources of this state.**

13 **SECTION 1314.** ORS 536.450 is amended to read:

14 536.450. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may make  
15 available technical advice and information for the purpose of assisting any person, local voluntary  
16 committee or association, state agency or public corporation of this state, any interstate agency or  
17 any agency of the federal government in the preparation, carrying into effect and properly sustain-  
18 ing any plan, program or project concerning the use or control of the water resources of this state  
19 in harmony with the state water resources policy or otherwise with the public interest in encour-  
20 aging, promoting and securing the maximum beneficial use and control of the water resources of this  
21 state.

22 **SECTION 1315.** ORS 536.460 is amended to read:

23 536.460. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may pre-  
24 pare and submit information or proposals and recommendations relating to the water resources of  
25 this state or the [*functions of the commission as provided by law*] **administration of the water re-**  
26 **sources of this state** to any person, local voluntary committee or association, state agency or  
27 public corporation of this or any other state, any interstate agency, any agency of the federal gov-  
28 ernment or any committee of the legislature of this or any other state or of the Congress of the  
29 United States.

30 **SECTION 1316.** ORS 536.470 is amended to read:

31 536.470. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may con-  
32 sult and cooperate with any state agency or public corporation of this or any other state, any  
33 interstate agency or any agency of the federal government for the purpose of promoting coordination  
34 between local, state, interstate and federal plans, programs and projects for the use or control of  
35 the water resources of this state or to facilitate and assist the commission in [*carrying out its func-*  
36 *tions as provided by law*] **administering the water resources of this state.**

37 **SECTION 1317.** ORS 536.480 is amended to read:

38 536.480. The [*Water Resources Commission*] **Oregon Natural Resources Commission**, insofar  
39 as **is** practicable, shall make available, free or at cost, to the public and to any state agency or  
40 public corporation of this or any other state, any interstate agency or any agency of the federal  
41 government, information concerning the water resources of this state or the [*functions of the com-*  
42 *mission as provided by law*] **administration of the water resources of this state**, including in-  
43 formation relating to the state water resources policy, to any plan or program devised by the  
44 commission for the development of the water resources of this state, to the results of any investi-  
45 gation, survey or study **of the water resources of this state** conducted by the commission and to

1 the results of any hearing **concerning the water resources of this state** held by the commission.

2 **SECTION 1318.** ORS 536.490 is amended to read:

3 536.490. The [*Water Resources Commission*] **Oregon Natural Resources Commission**, or any  
4 member thereof or any other person designated by the commission, may attend and participate in  
5 any public conference, meeting or hearing held within or without this state for the purpose of con-  
6 sidering water resources problems.

7 **SECTION 1319.** ORS 536.500 is amended to read:

8 536.500. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may ac-  
9 cept and expend moneys from any public or private source, including the federal government, made  
10 available for the purpose of encouraging, promoting and securing the maximum beneficial use and  
11 control of the water resources of this state or to facilitate and assist in [*carrying out its functions*  
12 *as provided by law*] **administering the water resources of this state**. All moneys received by the  
13 commission under this section shall be deposited in the State Treasury and, unless otherwise pre-  
14 scribed by the source from which such moneys were received, shall be kept in separate accounts in  
15 the General Fund designated according to the purposes for which the moneys were made available.  
16 Notwithstanding the provisions of ORS 291.238, all such moneys are continuously appropriated to  
17 the commission for the purposes for which they were made available and shall be expended in ac-  
18 cordance with the terms and conditions upon which they were made available.

19 **SECTION 1320.** ORS 536.520 is amended to read:

20 536.520. (1) In order to facilitate and assist in [*carrying out its functions as provided by law, the*  
21 *Water Resources Commission*] **administering the water resources of this state, the Oregon Na-**  
22 **tural Resources Commission** may:

23 (a) Call upon state agencies or public corporations of this state to furnish or make available to  
24 the commission information concerning the water resources of this state which such state agencies  
25 or public corporations have acquired or may acquire in the performance of their functions.

26 (b) Have access to the records, facilities or projects of state agencies or public corporations of  
27 this state, insofar as such records, facilities or projects may concern the water resources of this  
28 state or the functions of the commission with regard thereto.

29 (c) Otherwise utilize the services, records and other facilities of state agencies or public corpo-  
30 rations of this state to the maximum extent practicable.

31 (2) Upon request by the commission, all officers and employees of state agencies or public cor-  
32 porations of this state shall cooperate to the maximum extent practicable with the commission under  
33 subsection (1) of this section.

34 (3) Upon receipt and approval by the commission of approved claims therefor, any special or  
35 extraordinary expense incurred by any state agency or public corporation of this state in cooperat-  
36 ing with the commission under this section shall be paid by the commission.

37 **SECTION 1321.** ORS 536.540 is amended to read:

38 536.540. All voucher claims for indebtedness or expenses authorized and incurred by the [*Water*  
39 *Resources Commission in carrying out its functions as provided by law*] **Oregon Natural Resources**  
40 **Commission in administering the water resources of this state** shall be approved by the com-  
41 mission or as provided in ORS 293.330.

42 **SECTION 1322.** ORS 536.570 is amended to read:

43 536.570. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may de-  
44 posit with the State Treasurer for safekeeping all moneys and securities which may come into the  
45 commission's possession in connection with the reorganization, retirement or settlement of the

1 bonds, warrants or other evidences of indebtedness of any irrigation district within the state. When  
 2 so deposited the State Treasurer shall safely keep the same subject to **the** call of the [*Water Re-*  
 3 *sources*] commission.

4 **SECTION 1323.** ORS 536.595 is amended to read:

5 536.595. In discussions held with the United States Army Corps of Engineers over seasonal op-  
 6 erations of impoundments within the Willamette Basin reservoir system, including Detroit Lake, the  
 7 [*Water Resources Department*] **Oregon Department of Natural Resources** shall:

8 (1) Specify that the State of Oregon has determined that Detroit Lake is an important recre-  
 9 ational resource to the [*citizens*] **residents** of Oregon.

10 (2) Encourage the United States Army Corps of Engineers to place Detroit Lake as the highest  
 11 priority recreational use lake in the Willamette Basin reservoir system.

12 (3) If the United States Army Corps of Engineers indicates that recreational use of Detroit Lake  
 13 will not receive the highest priority, notify communities that may be detrimentally affected by such  
 14 a decision and hold public meetings within the affected communities.

15 **SECTION 1324.** ORS 536.700 is amended to read:

16 536.700. As used in ORS 536.700 to 536.780, "drainage basin" means one of the 18 Oregon  
 17 drainage basins identified [*by the Water Resources Department as shown on maps published by that*  
 18 *department*] **on maps published by the Water Resources Department and** dated January 1976.

19 **SECTION 1325.** ORS 536.720 is amended to read:

20 536.720. (1) Because municipal and other political subdivision boundaries do not conform with  
 21 the geographic boundaries of the 18 major drainage basins, or associated subbasins in the state, and  
 22 because problems caused by a severe continuing drought may exceed local ability to control, the  
 23 Legislative Assembly declares that water resource conservation in time of severe, continuing  
 24 drought requires the exercise of state authority.

25 (2)(a) After a declaration that a severe, continuing drought exists, or is likely to exist, the  
 26 Governor may order individual state agencies and political subdivisions within any drainage basin  
 27 or subbasin to implement, within a time certain following the declaration, a water conservation or  
 28 curtailment plan or both, approved under ORS 536.780.

29 (b) Each state agency and political subdivision ordered to implement a water conservation or  
 30 curtailment plan shall file with the [*Water Resources Commission*] **Oregon Natural Resources**  
 31 **Commission** such periodic reports regarding implementation of the plans as the commission or the  
 32 Governor may require.

33 (3) Orders provided for in subsection (2) of this section and curtailments, adjustments, allo-  
 34 cations and regulations ordered pursuant thereto shall be designed insofar as practicable not to  
 35 discriminate within any class of consumers.

36 (4) It is the intent of the Legislative Assembly that curtailments, adjustments, allocations and  
 37 regulations ordered pursuant to subsection (2) of this section be continued only so long as a decla-  
 38 ration by the Governor of the existence of severe, continuing drought is in effect.

39 (5) The Governor may direct individual state agencies and political subdivisions of this state to  
 40 seek enforcement of all orders and regulations issued pursuant to ORS 536.780 and subsection (2)  
 41 of this section.

42 **SECTION 1326.** ORS 536.730 is amended to read:

43 536.730. Except as provided in ORS 536.740 and 536.750, nothing in ORS 536.700 to 536.780 is  
 44 intended to permit the Governor or the [*Water Resources Commission*] **Oregon Natural Resources**  
 45 **Commission** to hinder the ability of any holder of a vested water right to obtain and use legally

1 assured benefits of that right.

2 **SECTION 1327.** ORS 536.750 is amended to read:

3 536.750. (1) Notwithstanding any provision of ORS chapters 536 to 543A, after a declaration that  
4 a severe, continuing drought exists, the [*Water Resources Commission*] **Oregon Natural Resources**  
5 **Commission** may:

6 (a) Issue without first conducting a hearing under ORS 537.170, a temporary permit for an  
7 emergency use of water;

8 (b) Allow a temporary change in use, place of use or point of diversion of water without com-  
9 plying with the notice and waiting requirements under ORS 540.520;

10 (c) Notwithstanding the priority of water rights, grant preference of use to rights for human  
11 consumption or stock watering use;

12 (d) Waive the notice requirements under ORS 537.753 and the report required under ORS  
13 537.762;

14 (e) Allow a temporary exchange of water without giving notice as required under ORS 540.535;  
15 and

16 (f) Utilize an expedited notice and waiting requirement established by rule for the substitution  
17 of a supplemental ground water right for a primary water right under drought conditions in place  
18 of the notice and waiting requirement provided in ORS 540.524.

19 (2) The commission by rule may establish procedures for carrying out the provisions of this  
20 section and a schedule of fees that must accompany a request under subsection (1) of this section.

21 **SECTION 1328.** ORS 536.770 is amended to read:

22 536.770. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** or a  
23 local government, public corporation or water right holder may purchase an option or enter an  
24 agreement to use an existing permit or water right during the time in which a severe, continuing  
25 drought is declared to exist.

26 (2) A local government, public corporation or water right holder proposing to purchase an op-  
27 tion or enter an agreement under this section shall submit to the commission an application ac-  
28 companied by the fee required under ORS 536.050 (1)(a).

29 (3) After approval of the application by the commission, the option or agreement user:

30 (a) Is not required to construct any diversion or appropriation facilities or works;

31 (b) May use the water acquired under the option or agreement on property or for a use different  
32 than allowed in the permit or water right transferred under the option or agreement, if the water  
33 is used to replace water not available to the local government, public corporation or water right  
34 holder because of the drought; and

35 (c) May begin use at any time after approval by the commission so long as the total use by the  
36 water right or permit holder and the option or agreement user is within the rate, volume and sea-  
37 sonal limits of the permit or water right.

38 **SECTION 1329.** ORS 536.780 is amended to read:

39 536.780. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission**, upon  
40 a finding that a severe or continuing drought is likely to occur, may order individual state agencies  
41 and political subdivisions within any drainage basin or subbasin to develop and file with the com-  
42 mission, within 30 days following the order, a water conservation or curtailment plan or both. The  
43 commission may allow the state agencies and political subdivisions more than 30 days following the  
44 order to file the plan depending on the urgency for the plan.

45 (2)(a) The water conservation plan shall specify efforts to be made:

1 (A) To reduce usage of water resources for nonessential public purposes;

2 (B) To undertake activities consistent with law designed to promote conservation, prevention  
3 of waste, salvage and reuse of water resources; and

4 (C) To establish programs consistent with law designed to promote conservation, prevention of  
5 waste, salvage and reuse of water resources.

6 (b) When a state agency or political subdivision files a water conservation plan with the [*Water*  
7 *Resources*] commission, the commission shall review the plan and approve it if the commission finds  
8 that the plan satisfactorily promotes uniformity in water conservation practices and the coordi-  
9 nation of usage regulation, taking into account local conditions.

10 (3)(a) The water curtailment plan, in order to provide water necessary for human and livestock  
11 consumption during a severe and continuing drought, shall specify efforts to be made:

12 (A) To curtail, adjust or allocate the supply of water resources for domestic, municipal and in-  
13 dustrial use; and

14 (B) To regulate the times and manner in which water resources are consumed.

15 (b) When a state agency or political subdivision files a water curtailment plan with the [*Water*  
16 *Resources*] commission, the commission shall review the plan and approve it if the commission finds  
17 that the plan satisfactorily promotes uniformity in water curtailment practices and the coordination  
18 of usage regulation, taking into account local conditions.

19 (4) If a state agency or political subdivision fails to file a water conservation or curtailment plan  
20 when so ordered, or if the commission does not approve a filed plan, the commission may develop  
21 appropriate plans.

22 **SECTION 1330.** ORS 536.900 is amended to read:

23 536.900. (1) In addition to any other liability or penalty provided by law, the [*Water Resources*  
24 *Commission*] **Oregon Natural Resources Commission** may impose a civil penalty on a person for  
25 any of the following:

26 (a) Violation of any of the terms or conditions of a permit, certificate or license issued under  
27 ORS chapters 536 to 543A.

28 (b) Violation of ORS 537.130 or 537.535.

29 (c) Violation of ORS 537.545 (5) or (6) or of a rule described in ORS 537.545 (8).

30 (d) Violation of any rule or order of the [*Water Resources*] commission that pertains to well  
31 maintenance.

32 (e) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440,  
33 540.570 (5), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

34 (2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130,  
35 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

36 (3) In the event the petitioner knowingly misrepresents the map and petition required in ORS  
37 541.329, the commission may assess a penalty of up to \$1,000 based upon guidelines to be established  
38 by the commission. In addition, the petition and map shall be amended to correct the error at the  
39 petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

40 (4) A civil penalty may not be imposed until the commission prescribes a reasonable time to  
41 eliminate the violation. The commission shall notify the violator of the time allowed to correct a  
42 violation within five days after the commission first becomes aware of the violation.

43 (5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the  
44 use of water under ORS 540.150 may not be considered a violation under subsection (1) of this sec-  
45 tion.

1       **SECTION 1331.** ORS 536.910 is amended to read:

2       536.910. After public hearing, the [*Water Resources Commission*] **Oregon Natural Resources**  
3 **Commission** by rule shall adopt a schedule establishing the civil penalty that may be imposed under  
4 ORS 536.900 and the time allowed to correct each violation. However, the civil penalty may not  
5 exceed \$5,000 for each violation.

6       **SECTION 1332.** ORS 536.915 is amended to read:

7       536.915. A civil penalty imposed under ORS 536.900 may be remitted or reduced upon such terms  
8 and conditions as the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
9 considers proper and consistent with the public health and safety and protection of the public in-  
10 terest in the waters of this state.

11       **SECTION 1333.** ORS 536.920 is amended to read:

12       536.920. In imposing a penalty pursuant to the schedule adopted pursuant to ORS 536.910, the  
13 [*Water Resources Commission*] **Oregon Natural Resources Commission** shall consider the follow-  
14 ing factors:

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

17       (2) Any prior violations of statutes, rules or orders pertaining to water use.

18       (3) The economic and financial conditions of the person incurring the penalty, including any fi-  
19 nancial gains resulting from the violation.

20       (4) The immediacy and extent to which the violation threatens other rights to the use of water  
21 or the public health or safety or the public interest in the waters of this state.

22       **SECTION 1334.** ORS 536.930 is amended to read:

23       536.930. Any owner or operator who fails without sufficient cause to take corrective action as  
24 required by an order [*of the Water Resources Commission*] **issued by the Oregon Natural Re-**  
25 **sources Commission in the administration of the water laws of this state** shall be liable for  
26 damages not to exceed the amount of all expenses incurred by the [*Water Resources Department*]  
27 **Oregon Department of Natural Resources** in carrying out the department's enforcement duties  
28 related to the corrective action.

29       **SECTION 1335.** ORS 536.935 is amended to read:

30       536.935. All penalties recovered under ORS 536.930 shall be [*paid into the State Treasury and*  
31 *credited to an account of the Water Resources Department*] **deposited in the Oregon Natural Re-**  
32 **sources Fund.** Such moneys are continuously appropriated to the [*department*] **Oregon Department**  
33 **of Natural Resources** to carry out the provisions of ORS chapters 536 to 543A.

34       **SECTION 1336.** ORS 537.040 is amended to read:

35       537.040. (1) In lieu of applying for a permit for a water right under ORS 537.130, a public agency  
36 having jurisdiction over roads or highways may register a water use for road and highway mainte-  
37 nance, construction and reconstruction purposes.

38       (2) A public agency applying to register a water use under subsection (1) of this section shall:

39       (a) Submit a completed application to register the water use;

40       (b) Pay a fee of \$300 to be deposited in the [*Water Resources Department Water Right Operating*  
41 *Fund*] **Oregon Natural Resources Fund;**

42       (c) Provide a map indicating the general locations of points of diversion;

43       (d) Identify the sources of surface water or ground water to be used;

44       (e) Specify the maximum amount of water to be used during a calendar year and during any  
45 24-hour period; and

1 (f) If the public agency is withdrawing water from a conveyance or storage facility that is a  
2 perfected or certificated water right:

3 (A) Identify the permit or certificate number of the conveyance or storage right; and

4 (B) Provide written authorization from the owner of the perfected or certificated water right  
5 that allows the public agency to use water from the conveyance or storage facility.

6 (3) A use of water registered under subsection (1) of this section shall continue until the public  
7 agency voluntarily withdraws the registration. However, the public agency shall submit an annual  
8 renewal statement accompanied by an annual fee of \$50 to be deposited in the [*Water Resources*  
9 *Department Water Right Operating Fund*] **Oregon Natural Resources Fund**. The annual renewal  
10 statement shall specify any change in the map, the sources of water to be used or maximum amount  
11 of water to be used.

12 (4) The use of water registered under subsection (1) of this section:

13 (a) Shall not have priority over any water right exercised under a permit, water right certificate,  
14 certificate of registration, order of the [*Water Resources Commission or the Water Resources*  
15 *Director*] **Director of the Oregon Department of Natural Resources or the Oregon Natural**  
16 **Resources Commission** and related court decrees;

17 (b) Shall be subordinate to all other future permitted or certificated rights; and

18 (c) Shall not exceed 50,000 gallons from a single source during any 24-hour period.

19 (5) The commission may require a public agency to cease withdrawal or diversion of water at  
20 any time the director has reason to believe the registered use is causing a significant adverse impact  
21 upon:

22 (a) The affected watershed;

23 (b) Any other water user entitled to use water under a permit issued under ORS 537.211 or  
24 537.625 or a certificate issued under ORS 537.250, 537.630 or 539.140; or

25 (c) An in-stream water right established under ORS 537.332 to 537.360.

26 (6) The commission may adopt rules to implement this section. The commission shall not require  
27 the map to be prepared by a water right examiner certified under ORS 537.798.

28 (7) As used in this section, "public agency" means the State of Oregon, any agency of the State  
29 of Oregon, a county, a special road district of a county, a city, town, incorporated municipality and  
30 any federal agency that has jurisdiction over a roadway in this state.

31 **SECTION 1337.** ORS 537.090 is amended to read:

32 537.090. (1) The provisions of this chapter relating to appropriation and water rights do not ap-  
33 ply to the production of fluid from a well with a bottom hole temperature of at least 250 degrees  
34 Fahrenheit.

35 (2) Production of fluids from a well with a bottom hole temperature of at least 250 degrees  
36 Fahrenheit shall be regulated as a geothermal resource under the applicable sections of ORS chap-  
37 ter 522.

38 (3) If the bottom hole temperature of a well that was initially less than 250 degrees Fahrenheit  
39 increases to at least 250 degrees Fahrenheit, the [*State Geologist and the Water Resources Commis-*  
40 *sion*] **Oregon Natural Resources Commission**, after consulting with the well owner, shall deter-  
41 mine the agency with regulatory responsibility for that specific well. This determination shall be  
42 documented in writing and shall supersede a determination made under subsection (2) of this section.

43 **SECTION 1338.** ORS 537.095 is amended to read:

44 537.095. If interference between an existing geothermal well permitted under ORS chapter 522  
45 and an existing water appropriation permitted under this chapter is found by [*either the State*



1 *Geologist or the Water Resources Commission, the State Geologist and the Water Resources Commis-*  
 2 *sion] the Oregon Natural Resources Commission, the commission* shall work cooperatively to  
 3 resolve the conflict and develop a cooperative management program for the area. In determining  
 4 what action should be taken, they shall consider the following goals:

5 (1) Achieving the most beneficial use of the water and heat resources;

6 (2) Allowing all existing users of the resources to continue to use those resources to the great-  
 7 est extent possible; and

8 (3) Insuring that the public interest in efficient use of water and heat resources is protected.

9 **SECTION 1339.** ORS 537.097 is amended to read:

10 537.097. (1) As the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
 11 updates its water right and permit records with current land ownership information from county  
 12 records or other sources, the commission shall request the person shown in those updated records  
 13 to verify that the person owns the land to which a water right or permit is appurtenant.

14 (2) Any person receiving a request under subsection (1) of this section shall return the verifi-  
 15 cation within 120 days.

16 (3) Except as provided in subsection (4) of this section, the commission shall request verification  
 17 from all persons shown in updated water right and permit records on or before July 1, 1992.

18 (4) If the commission considers verification unnecessary for any water right perfected, trans-  
 19 ferred or adjudicated after July 16, 1987, the commission need not request verification of that water  
 20 right or permit.

21 **SECTION 1340.** ORS 537.099 is amended to read:

22 537.099. (1) Except as provided in subsection (3) of this section, any governmental entity that  
 23 holds a water right shall submit an annual water use report to the [*Water Resources Department*]  
 24 **Oregon Department of Natural Resources**. The report shall include, but need not be limited to  
 25 the amount of water used by the governmental entity, the period of use and the categories of bene-  
 26 ficial use to which the water is applied.

27 (2) As used in this section, "governmental entity" includes any state or federal agency, local  
 28 government as defined in ORS 294.004, irrigation district formed under ORS chapter 545 and a water  
 29 control district formed under ORS chapter 553.

30 (3) A governmental entity that acquires land because of default in repayment of loans or other  
 31 debts owed to the state is not required to file an annual water use report under this section.

32 **SECTION 1341.** ORS 537.130 is amended to read:

33 537.130. (1) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800  
 34 or under the registration system set forth in ORS 537.132, any person intending to acquire the right  
 35 to the beneficial use of any of the surface waters of this state shall, before beginning construction,  
 36 enlargement or extension of any ditch, canal or other distributing or controlling works, or per-  
 37 forming any work in connection with the construction, or proposed appropriation, make an applica-  
 38 tion to the [*Water Resources Department*] **Oregon Department of Natural Resources** for a permit  
 39 to make the appropriation.

40 (2) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800 or under  
 41 the registration system set forth in ORS 537.132, a person may not use, store or divert any waters  
 42 until after the department issues a permit to appropriate the waters.

43 (3) The department may not issue a permit without notifying the owner, as identified in the ap-  
 44 plication, of any land to be crossed by the proposed ditch, canal or other work as set forth in the  
 45 application filed pursuant to ORS 537.140. The department shall provide the notice even if the ap-

1 plicant has obtained written authorization or an easement from the owner.

2 (4) If more than 25 persons are identified in the application as required under subsection (3) of  
 3 this section, the department may provide the notice required under subsection (3) of this section by  
 4 publishing notice of the application in a newspaper having general circulation in the area in which  
 5 the proposed ditch, canal or other work is located at least once each week for at least three suc-  
 6 cessive weeks. The cost of the publication shall be paid by the applicant in advance to the depart-  
 7 ment.

8 **SECTION 1342.** ORS 537.132 is amended to read:

9 537.132. (1) The provisions of ORS 537.130 requiring application for a permit to appropriate  
 10 water shall not apply to the use of reclaimed water, if:

11 (a) The use of reclaimed water is authorized by the national pollutant discharge elimination  
 12 system or water pollution control facilities permit issued pursuant to ORS 468B.050 or 468B.053;

13 (b) The Department of Environmental Quality, in reviewing an application for a permit pursuant  
 14 to ORS 468B.050 or 468B.053, has [*consulted with the State Department of Fish and Wildlife on the*  
 15 *impact to fish and wildlife to determine*] **determined, after consulting with the Oregon Depart-**  
 16 **ment of Natural Resources**, that the application of reclaimed water under ORS 537.130, 537.131,  
 17 537.132, 540.510 and 540.610 shall not have a significant negative impact on fish and wildlife; and

18 (c) The Department of Environmental Quality has determined the use of reclaimed water is in-  
 19 tended to improve the water quality of the receiving stream.

20 (2) Any person using or intending to use reclaimed water shall file with the [*Water Resources*  
 21 *Department*] **Oregon Department of Natural Resources** a reclaimed water registration form set-  
 22 ting forth the following:

23 (a) Name and mailing address of the registrant;

24 (b) The date the use of reclaimed water is initiated;

25 (c) Source of reclaimed water supply, including a description of the location of the reclaimed  
 26 water treatment facility and the name and mailing address of the owner and operator of the facility;

27 (d) Nature of the use of the reclaimed water;

28 (e) Amount of reclaimed water used or proposed to be used;

29 (f) Location and description of the ditch, canal, pipeline or any other conduction facility used  
 30 or to be used to transport the reclaimed water from the treatment facility to the place of use;

31 (g) A statement declaring the existence of a written contract or agreement to provide reclaimed  
 32 water including the name and address of the reclaimed water provider and the date and terms of  
 33 such contract or agreement;

34 (h) A description of the season of use and the place of use of the reclaimed water, and any re-  
 35 strictions applicable to the use of the reclaimed water; and

36 (i) If the reclaimed water is used in lieu of using water under an existing water right, the ap-  
 37 plication, permit and certificate number of such right, or if the right is granted pursuant to a decree  
 38 of circuit court, the volume and page number setting forth the right.

39 (3) If a municipality has discharged waste water into a natural watercourse for five or more  
 40 years, and the discharge represents more than 50 percent of the total average flow of the natural  
 41 watercourse and if such discharge would cease as a result of the use of reclaimed water in accord-  
 42 ance with the provisions of ORS 540.510 (3) and this section, the Director [*of the department*] **of the**  
 43 **Oregon Department of Natural Resources** shall notify any persons who, according to the de-  
 44 partment records, have a water right that may be affected by the cessation of the discharge by the  
 45 municipality.

1 (4) If a person holding an affected water right demonstrates to the department that the cessation  
2 of discharge by the municipality substantially impairs the ability to satisfy a water right, the person  
3 shall be entitled to a preference to the use of the reclaimed water. However, the delivery of the  
4 reclaimed water to the person claiming such preference shall be accomplished through a conveyance  
5 facility or channel other than a natural watercourse.

6 (5) If a municipality has a less expensive alternative for the disposal and distribution of the re-  
7 claimed water, the municipality shall not be obligated to incur expenses or cost beyond the expenses  
8 or costs of such alternative.

9 (6) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall adopt  
10 rules to implement the notice and preference provisions and impairment evaluation standards of this  
11 section.

12 **SECTION 1343.** ORS 537.135 is amended to read:

13 537.135. (1) The appropriation of water for the purpose of recharging ground water basins or  
14 reservoirs is declared to be for a beneficial purpose. Permits for such appropriation may be granted  
15 by the [*Water Resources Department*] **Oregon Department of Natural Resources** on application  
16 made therefor. Any such application shall substantially comply with ORS 537.140 and shall be sub-  
17 ject to the provisions of ORS 537.150 to 537.230, as are other applications and permits to appropriate  
18 water.

19 (2) Any person proposing to apply to a beneficial use the water stored artificially in any such  
20 ground water basin or reservoir shall file an application for permit, to be known as the secondary  
21 permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.230.  
22 The application shall refer to the artificially recharged ground water basin or reservoir as a supply  
23 of water and shall include the written consent of the holder of the recharge permit or certificate to  
24 appropriate the artificially recharged water.

25 (3) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall develop  
26 standards that an applicant must meet before the department approves a permit to appropriate water  
27 for the purpose of recharging ground water.

28 (4) Before issuing a permit for the purpose of recharging ground water, the department shall  
29 determine, under ORS 537.170, whether the proposed ground water recharge project would impair  
30 or be detrimental to the public interest.

31 (5) The department shall not issue a ground water recharge permit unless the supplying stream  
32 has a minimum perennial streamflow established for the protection of aquatic and fish life. The  
33 [*State Department of Fish and Wildlife*] **department** may waive this prerequisite if a minimum per-  
34 ennial streamflow for protection of aquatic and fish life is not required for the supplying stream.

35 **SECTION 1344.** ORS 537.139 is amended to read:

36 537.139. (1) The failure of an applicant to obtain written authorization, obtain an easement or  
37 acquire ownership of land if required as a condition to issuance of a permit under ORS 537.211 (2)  
38 shall be a ground for refusal to issue a permit.

39 (2) If an applicant makes a statement under ORS 537.140 (1)(a)(E) that falsely states that the  
40 applicant owns all lands crossed by a proposed ditch, canal or other work or that the applicant has  
41 obtained written authorization or an easement permitting access across such lands, any permit is-  
42 sued in response to the application shall be subject to cancellation.

43 (3) Nothing in ORS 537.130, 537.133, 537.139, 537.140, 537.250, 772.305 and 772.310 requires the  
44 [*Water Resources Department*] **Oregon Department of Natural Resources** to mediate or arbitrate  
45 a dispute between a permittee and a landowner with respect to the provisions of ORS 537.130,

1 537.133, 537.139, 537.140, 537.250, 772.305 and 772.310.

2 **SECTION 1345.** ORS 537.140 is amended to read:

3 537.140. (1)(a) Each application for a permit to appropriate water shall be made to the [*Water*  
4 *Resources Department*] **Oregon Department of Natural Resources** on a form prescribed by the  
5 department and shall set forth:

6 (A) The name and mailing address of the applicant;

7 (B) The source of water supply including the name and mailing address of any owner of the land  
8 upon which the source of the water supply is located;

9 (C) The nature and amount of the proposed use;

10 (D) The location and description of the proposed ditch, canal or other work, including the name  
11 and mailing address of the owner of any lands that are not owned by the applicant and that are  
12 crossed by the proposed ditch, canal or other work even if the applicant has obtained written au-  
13 thorization or an easement from the owner;

14 (E) A statement declaring whether the applicant has written authorization or an easement per-  
15 mitting access to nonowned land crossed by the proposed ditch, canal or other work;

16 (F) The time within which it is proposed to begin construction;

17 (G) The time required for completion of the construction;

18 (H) The time for the complete application of the water to the proposed use; and

19 (I) Any other information required in the application form that is necessary to evaluate the ap-  
20 plication as established by statute and rule.

21 (b) If for agricultural purposes, the application shall give the legal subdivisions of the land and  
22 the acreage to be irrigated, as near as may be.

23 (c) Except as provided in subsection (2) of this section, if for power purposes, the application  
24 shall give the nature of the works by means of which the power is to be developed, the head and  
25 amount of water to be utilized, and the uses to which the power is to be applied.

26 (d) If for construction of a reservoir, the application shall give the height of dam, the capacity  
27 of the reservoir, and the uses to be made of the impounded waters.

28 (e) If for municipal water supply, the application shall give the present population to be served,  
29 and, as near as may be, the future requirements of the city.

30 (f) If for mining purposes, the application shall give the nature of the mines to be served, and  
31 the methods of supplying and utilizing the water.

32 (2) Any person who has applied to the Federal Energy Regulatory Commission for a preliminary  
33 permit or an exemption from licensing shall, at the same time, apply to the [*Water Resources De-*  
34 *partment*] **Oregon Department of Natural Resources** for a permit to appropriate water for a hy-  
35 droelectric project. An applicant for a permit to appropriate water for a new hydroelectric project  
36 shall submit to the department a complete copy of any application for the project filed with the  
37 Federal Energy Regulatory Commission or other federal agency. If the copy of the federal applica-  
38 tion is filed with the department at the same time it is filed with the federal agency, at the  
39 department's discretion such copy may fulfill the requirements for an application under subsection  
40 (1) of this section.

41 (3) Each application shall be accompanied by any map or drawing and all other data concerning  
42 the proposed project and the applicant's ability and intention to construct the project, as may be  
43 prescribed by the [*Water Resources Commission*] **Oregon Natural Resources Commission**. The  
44 accompanying data shall be considered a part of the application.

45 (4) The map or drawing required to accompany the application shall be of sufficient quality and

1 scale to establish the location of the proposed point of diversion and the proposed place of use  
2 identified by tax lot, township, range, section and nearest quarter-quarter section along with a no-  
3 tation of the acreage of the proposed place of use, if appropriate. In addition, the department shall  
4 accept locational coordinate information, including latitude and longitude as established by a global  
5 positioning system. If the application is for a water right for a municipal use, the map need not  
6 identify the proposed place of use by tax lot.

7 (5) Each application for a permit to appropriate water shall be accompanied by the examination  
8 fee set forth in ORS 536.050 (1).

9 (6) If the proposed use of the water is for operation of a chemical process mine as defined in  
10 ORS 517.953, the applicant shall provide the information required under this section as part of the  
11 consolidated application under ORS 517.952 to 517.989.

12 (7) Notwithstanding any provision of ORS chapter 183, an application for a permit to appropriate  
13 water shall be processed in the manner set forth in ORS 537.120 to 537.360. Nothing in ORS chapter  
14 183 shall be construed to allow additional persons to participate in the process. To the extent that  
15 any provision in ORS chapter 183 conflicts with a provision set forth in ORS 537.120 to 537.360, the  
16 provisions in ORS 537.120 to 537.360 shall control.

17 **SECTION 1346.** ORS 537.141 is amended to read:

18 537.141. (1) The following water uses do not require an application under ORS 537.130 or  
19 537.615, a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

20 (a) Emergency fire-fighting uses;

21 (b) Nonemergency fire-fighting training, provided:

22 (A) The source of the water is existing storage and the use occurs with permission of the owner  
23 of the stored water; or

24 (B) If the source of water is other than existing storage, the use occurs with the prior written  
25 approval of the watermaster in the district where the training will take place and subject to any  
26 conditions the watermaster determines are necessary to prevent injury to existing water rights and  
27 to protect in-stream resources;

28 (c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed  
29 under an existing water right permit or certificate for the reservoir;

30 (d) Fish screens, fishways and fish by-pass structures, as exempted by rule of the [*Water Re-*  
31 *sources Commission*] **Oregon Natural Resources Commission**;

32 (e) Land management practices intended to save soil and improve water quality by temporarily  
33 impeding or changing the natural flow of diffuse surface water across agricultural lands when stor-  
34 age of public waters is not an intended purpose. Such practices include but are not limited to:

35 (A) Terraces;

36 (B) Dikes;

37 (C) Retention dams and other temporary impoundments; and

38 (D) Agronomic practices designed to improve water quality and control surface runoff to prevent  
39 erosion, such as ripping, pitting, rough tillage and cross slope farming;

40 (f) Livestock watering operations that comply with the requirements under subsections (2) and  
41 (3) of this section;

42 (g) Forest management activities that require the use of water in conjunction with mixing pes-  
43 ticides as defined in ORS 634.006, or in slash burning;

44 (h) The collection of precipitation water from an artificial impervious surface and the use of  
45 such water;

1 (i) Land application of ground water so long as the ground water:

2 (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625  
3 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water  
4 for confined animal feeding purposes;

5 (B) Is reused for irrigation purposes and the period of irrigation is a period during which the  
6 reused water has never been discharged to the waters of the state; and

7 (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the  
8 State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal  
9 system or ORS 468B.215 to operate a confined animal feeding operation; and

10 (j) Surface mining practices that result in the removal of water from a surface mine subject to  
11 an operating permit or reclamation plan approved by the [*State Department of Geology and Mineral*  
12 *Industries*] **Oregon Department of Natural Resources**, unless the water is used for a subsequent  
13 beneficial use.

14 (2) The use of surface water for livestock watering may be exempted under subsection (1) of this  
15 section if:

16 (a) The water is diverted from a stream or other surface water source to a trough or tank  
17 through an enclosed water delivery system;

18 (b) The delivery system either is equipped with an automatic shutoff or flow control mechanism  
19 or includes a means for returning water to the surface water source through an enclosed delivery  
20 system; and

21 (c) The operation is located on land from which the livestock would otherwise have legal access  
22 to both the use and source of the surface water source.

23 (3) If the diversion system described in subsection (2) of this section is located within or above  
24 a scenic waterway, the amount of water that may be used without a water right is limited to one-  
25 tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall prevent  
26 the [*Water Resources Commission*] **Oregon Natural Resources Commission** from approving an ap-  
27 plication for a water right permit for a delivery system not qualifying under subsection (2) of this  
28 section.

29 (4) The [*Water Resources Department*] **Oregon Department of Natural Resources**, in conjunc-  
30 tion with local soil and water conservation districts, the Oregon State University Extension  
31 Service[, *the State Department of Agriculture and the State Department of Fish and Wildlife*] **and the**  
32 **State Department of Agriculture** and any other organization interested in participating, shall  
33 develop and implement a voluntary educational program on livestock management techniques de-  
34 signed to keep livestock away from streams and riparian areas.

35 (5) To qualify for an exempt use under subsection (1)(g) of this section, the user shall:

36 (a) Submit notice of the proposed use, including the identification of the proposed water source,  
37 to the [*Water Resources Department and to the State Department of Fish and Wildlife*] **Oregon De-**  
38 **partment of Natural Resources** at the time notice is provided to other affected agencies pursuant  
39 to ORS 527.670; and

40 (b) Comply with any restrictions imposed by the department pertaining to sources of water that  
41 may not be used in conjunction with the proposed activity.

42 (6) Except for the use of water under subsection (1)(i) of this section, the [*Water Resources*  
43 *Commission*] **Oregon Natural Resources Commission** by rule may require any person or public  
44 agency diverting water as described in subsection (1) of this section to furnish information with re-  
45 gard to such water and the use thereof. For a use of water described in subsection (1)(i) of this

1 section, the Department of Environmental Quality or the State Department of Agriculture shall  
2 provide to the [*Water Resources Department*] **Oregon Department of Natural Resources** a copy  
3 of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground  
4 water for reuse. The permit shall provide the information regarding the place of use of such water  
5 and the nature of the beneficial reuse.

6 **SECTION 1347.** ORS 537.142 is amended to read:

7 537.142. (1) No water right certificate or permit is required for the use of the surface waters of  
8 this state if the water is to be used for a salmon and trout enhancement project certified by the  
9 [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** under ORS  
10 496.430 to 496.460.

11 (2) The use of water for a salmon and trout enhancement project under subsection (1) of this  
12 section is a beneficial use and such use shall be allowed on all the waters of this state, whether or  
13 not the project is located on waters of this state for which the use is restricted pursuant to any of  
14 the following:

15 (a) A scenic waterway designation under ORS 390.805 to 390.925.

16 (b) A statutory withdrawal from appropriation under ORS chapter 538.

17 (c) A program adopted by the [*Water Resources Commission*] **Oregon Natural Resources**  
18 **Commission** under ORS 536.300 to 536.400.

19 (d) An administrative withdrawal from appropriation by the [*Water Resources Director or the*  
20 *Water Resources Commission*] **Director of the Oregon Department of Natural Resources or the**  
21 **commission.**

22 (e) Any other statutory or administrative restriction on the use of the waters.

23 (3) If the use of the waters of this state under subsection (1) of this section conflicts with the  
24 use of water under a permit issued under ORS 537.240 or a use allowed under a water right certifi-  
25 cate issued under ORS 537.250, the use permitted under subsection (1) of this section shall be sub-  
26 ordinate.

27 **SECTION 1348.** ORS 537.143 is amended to read:

28 537.143. (1) Notwithstanding the provisions of ORS 537.130, the [*Water Resources Commission*]  
29 **Oregon Natural Resources Commission** may establish by rule a procedure to allow a person to  
30 obtain a limited license to use or store ground water not otherwise exempt under ORS 537.545, to  
31 use or store surface water, to use stored water or to use stored water for purposes for which the  
32 stored water is authorized and in accordance with a contract with a local, state or federal govern-  
33 ment after the person complies with the notice provisions set forth in ORS 537.144. Uses eligible for  
34 a limited license shall be for a short-term or fixed duration and may include but are not limited to  
35 road construction and maintenance, general construction and forestland or rangeland management.  
36 Except as provided in subsections (4) to (6) and (9) of this section, the use of water for a purpose  
37 specifically prohibited by a basin program or for irrigation is not eligible for a limited license.

38 (2) The use of water under a limited license under subsection (1) of this section shall not have  
39 priority over any water right exercised according to a permit or certificate and shall be subordinate  
40 to all other authorized uses that rely upon the same source. The [*Water Resources Department*]  
41 **Oregon Department of Natural Resources** may revoke the right to use of water acquired under  
42 a limited license pursuant to subsection (1) of this section at any time if the use causes injury to:

43 (a) Any other water right; or

44 (b) A minimum perennial streamflow.

45 (3) Except as provided in subsections (4), (5) and (11) of this section, the licensee shall give no-

1 tice to the [*Water Resources*] department at least 15 days in advance of using the water under the  
2 limited license and shall maintain a record of use. The record shall include but need not be limited  
3 to an estimate of the amount of water used, the period of use and the categories of beneficial use  
4 to which the water is applied. During the period of the limited license, the record of use shall be  
5 available for review by the department upon request.

6 (4) The [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**  
7 may issue a limited license in conjunction with an enforcement order to address an illegal water  
8 use, including irrigation use or a use specifically prohibited by a basin program. The director may  
9 issue a limited license for such a use upon a finding that:

10 (a) The person did not knowingly violate state laws regarding a water use permit;

11 (b) The immediate termination of the illegal use would cause serious and undue hardship to the  
12 water user that could be ameliorated by providing a period of time in which to achieve compliance  
13 with the law; and

14 (c) The continued use under a limited license outweighs the public benefits of termination, in-  
15 cluding deterrence of illegal uses and protection of the water source.

16 (5) An enforcement order issued under subsection (4) of this section shall specify an amount of  
17 time in which the person using water illegally shall bring such use into compliance. The duration  
18 of the limited license shall not exceed the duration of time allowed in the enforcement order to  
19 achieve compliance. A licensee using water under a limited license issued in conjunction with an  
20 enforcement order need not provide the department with advance notice of water use, but shall  
21 comply with the other requirements of this section.

22 (6) The director may issue a limited license for irrigation if the sole purpose of the use is:

23 (a) To provide water necessary to establish a crop for which no further irrigation will be re-  
24 quired after the crop is established;

25 (b) To mitigate the impacts of drought when additional water is needed beyond a prescribed ir-  
26 rigation season in order to avoid irreparable damage to the user's crop; or

27 (c) Under a limited license issued pursuant to subsection (9) of this section.

28 (7) Nothing in this section is intended to prohibit any person from obtaining a water right cer-  
29 tificate under ORS 537.250 or 537.630 for any use for which a limited license is obtained under this  
30 section.

31 (8) Except as provided in subsection (10) of this section, the department may not issue a limited  
32 license for the same use for more than five consecutive years.

33 (9) Notwithstanding any other provision of this section, if the use of water under the limited  
34 license is for the use of stored water consistent with the purposes for which the stored water is  
35 authorized and the use of water is authorized by a contract between the user and a local, state or  
36 federal government:

37 (a) The limited license may be issued for a period of up to one year; and

38 (b) The limited license shall be revoked if the contract between the user and the local, state or  
39 federal government is terminated for any reason.

40 (10) At the end of the one-year limited license period in subsection (9) of this section, the user  
41 may reapply for a limited license under ORS 537.144 provided that there is an authorized contract  
42 between the user and a local, state or federal government.

43 (11) The director may issue a limited license authorizing immediate use of water if the director  
44 finds that an emergency exists and the water is needed to protect the public health, safety and  
45 welfare. Notwithstanding subsection (8) of this section, the director may issue a limited license for



1 such a use for a period of 60 days.

2 **SECTION 1349.** ORS 537.144 is amended to read:

3 537.144. (1) Any person requesting the right to use water under a limited license under ORS  
4 537.143 shall notify the [*Water Resources Department*] **Oregon Department of Natural Resources**  
5 on a form provided by the department.

6 (2) If the request submitted under subsection (1) of this section is to use stored water for pur-  
7 poses for which the stored water is authorized and pursuant to a contract between the user and a  
8 local, state or federal government:

9 (a) The person also shall submit:

10 (A) A copy of the contract;

11 (B) A map indicating the point of diversion and the place of use; and

12 (C) Any other information required by the [*Water Resources Commission*] **Oregon Natural Re-**  
13 **sources Commission** that is necessary to evaluate the request as established by statute and the  
14 rules of the commission.

15 (b) Upon the filing of the request under this subsection, the department shall determine whether  
16 the request contains the information listed under paragraph (a) of this subsection and is complete  
17 and not defective, including the payment of any fee required by the commission. If the department  
18 determines that the request is incomplete or defective or that all fees have not been paid, the de-  
19 partment shall return all fees and the request. If the department determines that a request contains  
20 the information listed under paragraph (a) of this subsection and is complete and not defective, the  
21 department shall proceed with the review of the request and issuance of the limited license if the  
22 use complies with the requirements of ORS 537.143.

23 (3) The notification required under subsection (1) or (2) of this section shall be accompanied by  
24 the fee established by rule by the [*Water Resources*] commission.

25 (4) The department shall notify the person whether the department grants the limited license.

26 (5) A request for the right to use stored water under a limited license as described in subsection  
27 (2) of this section may be made concurrently with an application for a permit to appropriate water  
28 under ORS 537.140.

29 **SECTION 1350.** ORS 537.145 is amended to read:

30 537.145. (1) Whenever an application is made for a permit to appropriate water for hydroelectric  
31 purposes, the [*Water Resources Department*] **Oregon Department of Natural Resources** shall give  
32 written notice of the filing of the application to the owner of any land that is:

33 (a) Adjacent to any portion of the stream in which the quantity of water will be decreased by  
34 the project; or

35 (b) Adjacent to the site of the proposed hydroelectric project.

36 (2) The department shall also publish notice of the application once each week for at least four  
37 successive weeks and for such further time, if any, as the department shall determine, in a newspa-  
38 per of general circulation in each county in which the project covered by the application is located.

39 **SECTION 1351.** ORS 537.147 is amended to read:

40 537.147. (1) Notwithstanding the process for applying for a water right permit established in ORS  
41 537.150 to 537.230, a person may, pursuant to this section, apply to the [*Water Resources*  
42 *Department*] **Oregon Department of Natural Resources** for a water right permit to use stored  
43 water. A person applying under this section for a water right permit to use stored water shall sub-  
44 mit:

45 (a) A fee, in the amount required by ORS 536.050 for applications to appropriate stored water.

1 (b) A completed application for a secondary permit, in a form determined by the department,  
2 that contains the information required of applications under ORS 537.140 and 537.400 (1).

3 (c) Evidence that the proposed use of the stored water is one of the authorized uses under the  
4 water right permit, certificate or decree that allows the storage of water.

5 (2) If an applicant provides, to the satisfaction of the department, the fee and the information  
6 required by subsection (1) of this section, the department may, after public notice and a 30-day op-  
7 portunity to submit comments on the application, issue a water right permit upon determining that  
8 no public interest issues as identified in ORS 537.170 (8) have been raised through the comments  
9 submitted.

10 (3) If the department determines that public interest issues have been identified, then the de-  
11 partment shall treat the application under this section as an application under ORS 537.150 and  
12 perform the public interest review required by ORS 537.153 (2).

13 (4) At a minimum, a water right permit issued by the department for use of stored water under  
14 this section shall be conditioned to require:

15 (a) Fish screens and by-pass devices and fish passage as may be required by the [*State Depart-*  
16 *ment of Fish and Wildlife*] **department**; and

17 (b) A measuring device at each point of diversion authorized under the water right permit.

18 (5) Within 10 days of issuing a water right permit under this section, the department shall pro-  
19 vide notice of the permit issuance in the weekly notice published by the department and to persons  
20 who have submitted comments pursuant to subsection (2) of this section.

21 **SECTION 1352.** ORS 537.150 is amended to read:

22 537.150. (1) Within 15 days after receiving an application, the [*Water Resources Department*]  
23 **Oregon Department of Natural Resources** shall determine whether the application contains the  
24 information listed under ORS 537.140 (1) and is complete and not defective, including the payment  
25 of all fees required under ORS 537.140 (5). If the department determines that the application is in-  
26 complete or defective or that not all fees have been paid, the department shall return the fees paid  
27 and the application.

28 (2) Upon determining that an application contains the information listed under ORS 537.140 (1)  
29 and is complete and not defective, the department shall indorse on the application the date upon  
30 which the application was received at the department, which shall be the priority date for any water  
31 right issued in response to the application. All applications that comply with the provisions of law  
32 shall be recorded in a suitable book kept for that purpose.

33 (3) If an application is complete and not defective, the department shall determine whether the  
34 proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter  
35 538, the department shall reject the application and return all fees to the applicant with an expla-  
36 nation of the statutory prohibition.

37 (4) If the proposed use is not prohibited by ORS chapter 538, the department shall undertake  
38 an initial review of the application and make a preliminary determination of:

39 (a) Whether the proposed use is restricted or limited by statute or rule;

40 (b) The extent to which water is available from the proposed source during the times and in the  
41 amounts requested; and

42 (c) Any other issue the department identifies as a result of the initial review that may preclude  
43 approval of or restrict the proposed use.

44 (5) Upon completion of the initial review and no later than 30 days after determining an appli-  
45 cation to be complete and not defective as described in subsection (1) of this section, the department

1 shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the  
2 date of mailing within which to notify the department to stop processing the application or to pro-  
3 ceed with the application. If the applicant notifies the department to stop processing the application,  
4 the department shall return the application and all fees paid in excess of \$200. If the department  
5 receives no timely response from the applicant, the department shall proceed with the application.

6 (6) Within seven days after proceeding with the application under subsection (5) of this section,  
7 the department shall give public notice of the application in the weekly notice published by the de-  
8 partment. The notice shall include a request for comments on the application and information per-  
9 taining to how an interested person may obtain future notices about the application and a copy of  
10 the proposed final order.

11 (7) Within 30 days after the public notice under subsection (6) of this section, any person inter-  
12 ested in the application shall submit written comments to the department. Any person who asks to  
13 receive a copy of the department's proposed final order shall submit to the department the fee re-  
14 quired under ORS 536.050 (1).

15 **SECTION 1353.** ORS 537.150, as amended by section 13, chapter 819, Oregon Laws 2009, is  
16 amended to read:

17 537.150. (1) Within 15 days after receiving an application, the [*Water Resources Department*]  
18 **Oregon Department of Natural Resources** shall determine whether the application contains the  
19 information listed under ORS 537.140 (1) and is complete and not defective, including the payment  
20 of all fees required under ORS 537.140 (5). If the department determines that the application is in-  
21 complete or defective or that not all fees have been paid, the department shall return the fees paid  
22 and the application.

23 (2) Upon determining that an application contains the information listed under ORS 537.140 (1)  
24 and is complete and not defective, the department shall indorse on the application the date upon  
25 which the application was received at the department, which shall be the priority date for any water  
26 right issued in response to the application. All applications that comply with the provisions of law  
27 shall be recorded in a suitable book kept for that purpose.

28 (3) If an application is complete and not defective, the department shall determine whether the  
29 proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter  
30 538, the department shall reject the application and return all fees to the applicant with an expla-  
31 nation of the statutory prohibition.

32 (4) If the proposed use is not prohibited by ORS chapter 538, the department shall undertake  
33 an initial review of the application and make a preliminary determination of:

34 (a) Whether the proposed use is restricted or limited by statute or rule;

35 (b) The extent to which water is available from the proposed source during the times and in the  
36 amounts requested; and

37 (c) Any other issue the department identifies as a result of the initial review that may preclude  
38 approval of or restrict the proposed use.

39 (5) Upon completion of the initial review and no later than 30 days after determining an appli-  
40 cation to be complete and not defective as described in subsection (1) of this section, the department  
41 shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the  
42 date of mailing within which to notify the department to stop processing the application or to pro-  
43 ceed with the application. If the applicant notifies the department to stop processing the application,  
44 the department shall return the application and all fees paid in excess of \$150. If the department  
45 receives no timely response from the applicant, the department shall proceed with the application.

1 (6) Within seven days after proceeding with the application under subsection (5) of this section,  
 2 the department shall give public notice of the application in the weekly notice published by the de-  
 3 partment. The notice shall include a request for comments on the application and information per-  
 4 taining to how an interested person may obtain future notices about the application and a copy of  
 5 the proposed final order.

6 (7) Within 30 days after the public notice under subsection (6) of this section, any person inter-  
 7 ested in the application shall submit written comments to the department. Any person who asks to  
 8 receive a copy of the department's proposed final order shall submit to the department the fee re-  
 9 quired under ORS 536.050 (1).

10 **SECTION 1354.** ORS 537.153 is amended to read:

11 537.153. (1) Within 60 days after the [*Water Resources Department*] **Oregon Department of**  
 12 **Natural Resources** proceeds with the application under ORS 537.150 (5), the department shall  
 13 complete application review and issue a proposed final order approving or denying the application  
 14 or approving the application with modifications or conditions. The department may request the ap-  
 15 plicant to provide additional information needed to complete the review. If the department requests  
 16 additional information, the request shall be specific and shall be sent to the applicant by registered  
 17 mail. The department shall specify a date by which the information must be returned, which shall  
 18 be not less than 10 days after the department mails the request to the applicant. If the department  
 19 does not receive the information or a request for a time extension under ORS 537.175 by the date  
 20 specified in the request, the department may reject the application and may refund fees in accord-  
 21 ance with ORS 536.050 (4)(a). The time period specified by the department in a request for additional  
 22 information shall allow the department to comply with the 60-day time limit established by this  
 23 subsection.

24 (2) In reviewing the application under subsection (1) of this section, the department shall pre-  
 25 sume that a proposed use will not impair or be detrimental to the public interest if the proposed  
 26 use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or  
 27 given a preference under ORS 536.310 (12), if water is available, if the proposed use will not injure  
 28 other water rights and if the proposed use complies with rules of the [*Water Resources*  
 29 *Commission*] **Oregon Natural Resources Commission**. This shall be a rebuttable presumption and  
 30 may be overcome by a preponderance of evidence that either:

31 (a) One or more of the criteria for establishing the presumption are not satisfied; or

32 (b) The proposed use will impair or be detrimental to the public interest as demonstrated in  
 33 comments, in a protest under subsection (6) of this section or in a finding of the department that  
 34 shows:

35 (A) The specific public interest under ORS 537.170 (8) that would be impaired or detrimentally  
 36 affected; and

37 (B) Specifically how the identified public interest would be impaired or detrimentally affected.

38 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include  
 39 but need not be limited to:

40 (a) Confirmation or modification of the preliminary determinations made in the initial review;

41 (b) A brief statement that explains the criteria considered relevant to the decision, including the  
 42 applicable basin program and the compatibility of the proposed use with applicable land use plans;

43 (c) An assessment of water availability and the amount of water necessary for the proposed use;

44 (d) An assessment of whether the proposed use would result in injury to existing water rights;

45 (e) An assessment of whether the proposed use would impair or be detrimental to the public

1 interest as provided in ORS 537.170;

2 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-  
3 cation;

4 (g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental  
5 to the public interest has been established; and

6 (h) The date by which protests to the proposed final order must be received by the department.

7 (4) The department shall mail copies of the proposed final order to the applicant and to persons  
8 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also  
9 shall publish notice of the proposed final order by publication in the weekly notice published by the  
10 department.

11 (5) Any person who supports a proposed final order may request standing for purposes of par-  
12 ticipating in any contested case proceeding on the proposed final order or for judicial review of a  
13 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-  
14 lished under ORS 536.050 (1)(n).

15 (6) Any person may submit a protest against a proposed final order. A protest shall be in writing  
16 and shall include:

17 (a) The name, address and telephone number of the protestant;

18 (b) A description of the protestant's interest in the proposed final order and, if the protestant  
19 claims to represent the public interest, a precise statement of the public interest represented;

20 (c) A detailed description of how the action proposed in the proposed final order would impair  
21 or be detrimental to the protestant's interest;

22 (d) A detailed description of how the proposed final order is in error or deficient and how to  
23 correct the alleged error or deficiency;

24 (e) Any citation of legal authority supporting the protest, if known; and

25 (f) The protest fee required under ORS 536.050.

26 (7) Requests for standing and protests on the proposed final order shall be submitted within 45  
27 days after publication of the notice of the proposed final order in the weekly notice published by the  
28 department. Any person who asks to receive a copy of the department's final order shall submit to  
29 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
30 copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the  
31 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
32 536.050 (1)(n).

33 (8) Within 60 days after the close of the period for receiving protests, the [*Water Resources Di-*  
34 *rector*] **Director of the Oregon Department of Natural Resources** shall:

35 (a) Issue a final order as provided under ORS 537.170 (6); or

36 (b) Schedule a contested case hearing if a protest has been submitted and if:

37 (A) Upon review of the issues, the director finds that there are significant disputes related to  
38 the proposed use of water; or

39 (B) Within 30 days after the close of the period for submitting protests, the applicant requests  
40 a contested case hearing.

41 **SECTION 1355.** ORS 537.153, as amended by section 14, chapter 819, Oregon Laws 2009, is  
42 amended to read:

43 537.153. (1) Within 60 days after the [*Water Resources Department*] **Oregon Department of**  
44 **Natural Resources** proceeds with the application under ORS 537.150 (5), the department shall  
45 complete application review and issue a proposed final order approving or denying the application

1 or approving the application with modifications or conditions. The department may request the ap-  
2 plicant to provide additional information needed to complete the review. If the department requests  
3 additional information, the request shall be specific and shall be sent to the applicant by registered  
4 mail. The department shall specify a date by which the information must be returned, which shall  
5 be not less than 10 days after the department mails the request to the applicant. If the department  
6 does not receive the information or a request for a time extension under ORS 537.175 by the date  
7 specified in the request, the department may reject the application and may refund fees in accord-  
8 ance with ORS 536.050 (3)(a). The time period specified by the department in a request for additional  
9 information shall allow the department to comply with the 60-day time limit established by this  
10 subsection.

11 (2) In reviewing the application under subsection (1) of this section, the department shall pre-  
12 sume that a proposed use will not impair or be detrimental to the public interest if the proposed  
13 use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or  
14 given a preference under ORS 536.310 (12), if water is available, if the proposed use will not injure  
15 other water rights and if the proposed use complies with rules of the [*Water Resources*  
16 *Commission*] **Oregon Natural Resources Commission**. This shall be a rebuttable presumption and  
17 may be overcome by a preponderance of evidence that either:

18 (a) One or more of the criteria for establishing the presumption are not satisfied; or

19 (b) The proposed use will impair or be detrimental to the public interest as demonstrated in  
20 comments, in a protest under subsection (6) of this section or in a finding of the department that  
21 shows:

22 (A) The specific public interest under ORS 537.170 (8) that would be impaired or detrimentally  
23 affected; and

24 (B) Specifically how the identified public interest would be impaired or detrimentally affected.

25 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include  
26 but need not be limited to:

27 (a) Confirmation or modification of the preliminary determinations made in the initial review;

28 (b) A brief statement that explains the criteria considered relevant to the decision, including the  
29 applicable basin program and the compatibility of the proposed use with applicable land use plans;

30 (c) An assessment of water availability and the amount of water necessary for the proposed use;

31 (d) An assessment of whether the proposed use would result in injury to existing water rights;

32 (e) An assessment of whether the proposed use would impair or be detrimental to the public  
33 interest as provided in ORS 537.170;

34 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-  
35 cation;

36 (g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental  
37 to the public interest has been established; and

38 (h) The date by which protests to the proposed final order must be received by the department.

39 (4) The department shall mail copies of the proposed final order to the applicant and to persons  
40 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also  
41 shall publish notice of the proposed final order by publication in the weekly notice published by the  
42 department.

43 (5) Any person who supports a proposed final order may request standing for purposes of par-  
44 ticipating in any contested case proceeding on the proposed final order or for judicial review of a  
45 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-

1 lished under ORS 536.050 (1)(n).

2 (6) Any person may submit a protest against a proposed final order. A protest shall be in writing  
3 and shall include:

4 (a) The name, address and telephone number of the protestant;

5 (b) A description of the protestant's interest in the proposed final order and, if the protestant  
6 claims to represent the public interest, a precise statement of the public interest represented;

7 (c) A detailed description of how the action proposed in the proposed final order would impair  
8 or be detrimental to the protestant's interest;

9 (d) A detailed description of how the proposed final order is in error or deficient and how to  
10 correct the alleged error or deficiency;

11 (e) Any citation of legal authority supporting the protest, if known; and

12 (f) For persons other than the applicant, the protest fee required under ORS 536.050.

13 (7) Requests for standing and protests on the proposed final order shall be submitted within 45  
14 days after publication of the notice of the proposed final order in the weekly notice published by the  
15 department. Any person who asks to receive a copy of the department's final order shall submit to  
16 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
17 copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the  
18 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
19 536.050 (1)(n).

20 (8) Within 60 days after the close of the period for receiving protests, the [*Water Resources Di-*  
21 *rector*] **Director of the Oregon Department of Natural Resources** shall:

22 (a) Issue a final order as provided under ORS 537.170 (6); or

23 (b) Schedule a contested case hearing if a protest has been submitted and if:

24 (A) Upon review of the issues, the director finds that there are significant disputes related to  
25 the proposed use of water; or

26 (B) Within 30 days after the close of the period for submitting protests, the applicant requests  
27 a contested case hearing.

28 **SECTION 1356.** ORS 537.160 is amended to read:

29 537.160. (1) Subject to the provisions of subsections (2) and (3) of this section, and of ORS  
30 537.170 and 537.190, the [*Water Resources Department*] **Oregon Department of Natural Resources**  
31 shall approve all applications made in proper form which contemplate the application of water to a  
32 beneficial use, unless the proposed use conflicts with existing rights.

33 (2) The department may not approve an application for a permit to appropriate waste or seepage  
34 water, which is to be carried through an existing ditch or canal not owned wholly by the applicant  
35 until the applicant files with the department an agreement between the applicant and the owner of  
36 the ditch or canal, authorizing its use by the applicant to carry the water.

37 (3) The department shall reject every application for a permit to appropriate water to develop  
38 hydroelectric power if the department finds that the proposed project does not comply with the  
39 standards set forth in ORS 543.017 or rules adopted by the [*Water Resources Commission*] **Oregon**  
40 **Natural Resources Commission** under ORS 543.017.

41 **SECTION 1357.** ORS 537.170 is amended to read:

42 537.170. (1) Within 45 days after the [*Water Resources Director*] **Director of the Oregon De-**  
43 **partment of Natural Resources** schedules a contested case hearing under ORS 537.153 (8), the  
44 [*Water Resources Department*] **Oregon Department of Natural Resources** shall hold the contested  
45 case hearing. The issues to be considered in the contested case hearing shall be limited to issues

1 identified by the administrative law judge.

2 (2) Notwithstanding the provisions of ORS chapter 183 pertaining to contested case proceedings,  
3 the parties to any contested case hearing initiated under this section shall be limited to:

4 (a) The applicant;

5 (b) Any person who timely filed a protest; and

6 (c) Any person who timely filed a request for standing under ORS 537.153 (5) and who requests  
7 to intervene in the contested case hearing prior to the start of the proceeding.

8 (3) The contested case proceeding shall be conducted in accordance with the applicable pro-  
9 visions of ORS chapter 183 except:

10 (a) As provided in subsections (1) and (2) of this section; and

11 (b) An interlocutory appeal under ORS 183.480 (3) shall not be allowed.

12 (4) If applicable, an application to appropriate water for the generation of electricity submitted  
13 under ORS 537.140 shall be included in the consolidated review and hearings process under ORS  
14 543.255.

15 (5) Each person submitting a protest or a request for standing shall raise all reasonably  
16 ascertainable issues and submit all reasonably available arguments supporting the person's position  
17 by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or  
18 in a hearing or failure to provide sufficient specificity to afford the [*Water Resources*] department  
19 an opportunity to respond to the issue precludes judicial review based on that issue.

20 (6) If, after the contested case hearing or, if a hearing is not held, after the close of the period  
21 allowed to file a protest, the director determines that the proposed use does not comply with the  
22 standards set forth in ORS 543.017 or rules adopted by the [*Water Resources Commission*] **Oregon**  
23 **Natural Resources Commission** under ORS 543.017 or would otherwise impair or be detrimental  
24 to the public interest, the director shall issue a final order rejecting the application or modifying  
25 the proposed final order to conform to the public interest. If, after the contested case hearing or,  
26 if a hearing is not held, after the close of the period allowed to file a protest, the director deter-  
27 mines that the proposed use would not impair or be detrimental to the public interest, the director  
28 shall issue a final order approving the application or otherwise modifying the proposed final order.  
29 A final order may set forth any of the provisions or restrictions to be included in the permit con-  
30 cerning the use, control and management of the water to be appropriated for the project, including,  
31 but not limited to, a specification of reservoir operation and minimum releases to protect the public  
32 interest.

33 (7) If a contested case hearing is not held:

34 (a) Where the final order modifies the proposed final order, the applicant may request and the  
35 department shall schedule a contested case hearing as provided under subsection (3) of this section  
36 by submitting the information required for a protest under ORS 537.153 (6) within 14 days after the  
37 director issues the final order. However, the issues on which a contested case hearing may be re-  
38 quested and conducted under this paragraph shall be limited to issues based on the modifications  
39 to the proposed final order.

40 (b) Only the applicant or a protestant may appeal the provisions of the final order in the manner  
41 established in ORS chapter 183 for appeal of order other than contested cases.

42 (8) If the presumption of public interest under ORS 537.153 (2) is overcome, then before issuing  
43 a final order, the director or the commission, if applicable, shall make the final determination of  
44 whether the proposed use or the proposed use as modified in the proposed final order would impair  
45 or be detrimental to the public interest by considering:



1 (a) Conserving the highest use of the water for all purposes, including irrigation, domestic use,  
2 municipal water supply, power development, public recreation, protection of commercial and game  
3 fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any  
4 other beneficial use to which the water may be applied for which it may have a special value to the  
5 public.

6 (b) The maximum economic development of the waters involved.

7 (c) The control of the waters of this state for all beneficial purposes, including drainage, sani-  
8 tation and flood control.

9 (d) The amount of waters available for appropriation for beneficial use.

10 (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters  
11 involved.

12 (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this  
13 state, and the means necessary to protect such rights.

14 (g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to  
15 537.534.

16 (9) Upon issuing a final order, the director shall notify the applicant and each person who sub-  
17 mitted written comments or protests or otherwise requested notice of the final order and send a  
18 copy of the final order to any person who requested a copy and paid the fee required under ORS  
19 536.050 (1)(p).

20 **SECTION 1358.** ORS 537.173 is amended to read:

21 537.173. (1) Within 20 days after the [*Water Resources Director*] **Director of the Oregon De-**  
22 **partment of Natural Resources** issues a final order under ORS 537.170 after the conclusion of a  
23 contested case hearing, any party may file exceptions to the order with the [*Water Resources Com-*  
24 *mission*] **Oregon Natural Resources Commission**.

25 (2) The commission shall issue a modified order, if allowed, or deny the exceptions within 60  
26 days after the close of the exception period under subsection (1) of this section.

27 **SECTION 1359.** ORS 537.175 is amended to read:

28 537.175. (1) Except as provided in subsection (2) of this section, the [*Water Resources*  
29 *Department*] **Oregon Department of Natural Resources** shall issue a final order or schedule a  
30 contested case hearing on an application for a water right referred to in ORS 537.140 or 537.400  
31 within 180 days after the department proceeds with the application under ORS 537.150 (5).

32 (2) At the request of the applicant, the department may extend the 180-day period set forth in  
33 subsection (1) of this section for a reasonable period of time.

34 (3) If a contested case hearing is held, the department shall issue a final order:

35 (a) Within 270 days after scheduling the hearing for a contested case proceeding that involves  
36 three or more parties not including the department; and

37 (b) Within 180 days after scheduling the hearing for all other contested case proceedings.

38 (4) If the applicant does not request an extension under subsection (2) of this section and the  
39 department fails to issue a proposed final order or schedule a contested case hearing on an appli-  
40 cation for a water right within 180 days after the department proceeds with the application under  
41 ORS 537.150 (5), the applicant may apply in the Circuit Court for Marion County for a writ of  
42 mandamus to compel the department to issue a final order or schedule a contested case hearing on  
43 an application for a water right. If the application is for an out-of-stream use, the writ of mandamus  
44 shall compel the department to issue a water right permit, unless the department shows by affidavit  
45 that to issue a permit may result in harm to an existing water right holder.

1       **SECTION 1360.** ORS 537.190 is amended to read:

2       537.190. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** may  
3 approve an application for less water than applied for, or upon terms, limitations and conditions  
4 necessary for the protection of the public interest, including terms, limitations and conditions re-  
5 lating to the release of water from an impoundment or diversion structure necessary to prevent  
6 rapid fluctuation in the stream level below the structure which may create a hazard to life or  
7 property, if there exists substantial reason therefor. In any event the department shall not approve  
8 an application for more water than can be applied to a beneficial use.

9       (2) The department may approve an application for a municipal water supply to the exclusion  
10 of all subsequent appropriations, if the exigencies of the case demand.

11       (3) When conditions beyond the control of the owner or operator of an impoundment or diversion  
12 structure, to which terms, limitations and conditions made as provided in subsection (1) of this sec-  
13 tion relate, threaten the safety of the structure and the release of water from the structure contrary  
14 to such terms, limitations and conditions is or may be necessary to remove the threat:

15       (a) The terms, limitations and conditions shall not apply to such release of water.

16       (b) The owner, operator or person in immediate charge of the structure shall immediately notify  
17 the department by telegraph or telephone of the situation.

18       (c) The owner, operator or person in immediate charge of the structure shall immediately notify,  
19 to the best of the person's ability, those persons whose life or property may be threatened by the  
20 release of water.

21       **SECTION 1361.** ORS 537.211 is amended to read:

22       537.211. (1) The approval of an application referred to in ORS 537.140 or 537.400 shall be set  
23 forth in a water right permit issued by the [*Water Resources Department*] **Oregon Department of**  
24 **Natural Resources**. The permit shall specify the details of the authorized use and shall set forth  
25 any terms, limitations and conditions as the department considers appropriate including but not  
26 limited to any applicable condition required under ORS 537.289. A copy of the permit shall be filed  
27 as a public record in the department. The permit shall be mailed to the applicant, and upon receipt  
28 of the permit the permittee may proceed with the construction of the necessary works and may take  
29 all action required to apply the water to the designated beneficial use and to perfect the proposed  
30 appropriation.

31       (2) Except as provided in subsection (6) of this section, if an application under ORS 537.140 or  
32 537.400 indicates that the applicant does not have written authorization or an easement permitting  
33 access to nonowned land crossed by the proposed ditch, canal or other work, the department may  
34 issue a final order approving the application if the approval includes a condition requiring the ap-  
35 plicant to obtain such written authorization, or easement or ownership of such land and to provide  
36 the department with a copy of the written authorization, easement or evidence of ownership.

37       (3) If an application referred to in ORS 537.140 or 537.400 is rejected, the department shall enter  
38 a written order setting forth the reasons for the rejection. The applicant shall take no action to-  
39 wards construction of the works or use of the water. The department shall mail a copy of the order  
40 to the applicant.

41       (4) The holder of a water right permit may change the point of diversion, change the point of  
42 appropriation, change the point of diversion to allow the appropriation of ground water or use the  
43 water on land to which the right is not appurtenant if:

44       (a) The use of water on land to which the right is not appurtenant, the change of point of di-  
45 version or the change in point of appropriation does not result in injury to an existing water right;

1 (b) For a proposed change in the place of use of the water, the land on which the water is to  
2 be used is owned or controlled by the holder of the permit and is contiguous to the land to which  
3 the permit is appurtenant;

4 (c) All other terms of the permit remain the same, including but not limited to the beneficial  
5 use for which the water is used and the number of acres to which water is applied;

6 (d) Prior approval is obtained from the district if the water is transported or conveyed by an  
7 irrigation district organized under ORS chapter 545, a drainage district organized under ORS chap-  
8 ter 547, a water improvement district organized under ORS chapter 552, a water control district  
9 organized under ORS chapter 553 or a district improvement company or a corporation organized  
10 under ORS chapter 554;

11 (e) The holder of the permit provides written notice to the department at least 60 days before  
12 making any changes to the lands, point of diversion or point of appropriation described in the per-  
13 mit;

14 (f) The holder of the permit complies with the publication requirements of ORS 540.520 (5), if  
15 applicable;

16 (g) Diversion is provided with a proper fish screen, if [*requested by the State Department of Fish*  
17 *and Wildlife*] **deemed necessary by the department**; and

18 (h) For a request to transfer the point of diversion to allow the appropriation of ground water,  
19 the proposed change meets the standards set forth in ORS 540.531 (2) or (3).

20 (5) Notwithstanding the requirements of subsection (4)(b) of this section, the holder of a water  
21 right permit may change the place of use of all or any portion of water under the permit to land that  
22 is not contiguous to the land to which the permit is appurtenant if:

23 (a) The change to noncontiguous land is in furtherance of mitigation or conservation efforts  
24 undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered  
25 under ORS 496.171 to 496.192 or the federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544),  
26 as determined by the listing agency; and

27 (b) All other requirements of subsection (4) of this section are met.

28 (6) For an application made by or on behalf of a public corporation, the department may issue  
29 a permit approving the application without requiring the applicant to obtain prior written authori-  
30 zation or an easement permitting access to nonowned lands affected by the proposed project. How-  
31 ever, nothing in this subsection shall be construed to allow any person to trespass on the lands of  
32 another person.

33 (7) When the department receives notice under subsection (4)(e) of this section, the department  
34 shall publish the notice in the department's weekly public notice of water right applications.

35 (8) If the use of water under the permit is for operation of a chemical process mine as defined  
36 in ORS 517.953:

37 (a) Review of the application and approval or denial of the application shall be coordinated with  
38 the consolidated application process under ORS 517.952 to 517.989. However, such review and ap-  
39 proval or denial shall take into consideration all policy considerations for the appropriation of water  
40 as set forth in this chapter and ORS chapter 536.

41 (b) The permit may be issued for exploration under ORS 517.702 to 517.740, but the permit shall  
42 be conditioned on the applicant's compliance with the consolidated application process.

43 (c) The permit shall include a condition that additional conditions may be added to the use of  
44 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS  
45 540.520 and 540.530 to use for a chemical process mine operation.

1 (9) As used in this section, “contiguous” includes land separated from the land to which a water  
2 right is appurtenant by roads, utility corridors, irrigation ditches or publicly owned rights of way.

3 **SECTION 1362.** ORS 537.220 is amended to read:

4 537.220. (1) Any application, permit or license to appropriate water may be assigned, subject to  
5 the conditions of the application or permit, but no such assignment shall be binding, except upon the  
6 parties to the assignment, unless filed for record in the [*Water Resources Department*] **Oregon De-**  
7 **partment of Natural Resources.**

8 (2) An assignment of an application, permit or license to appropriate water filed for record with  
9 the [*Water Resources*] department shall identify the current record owners of all property described  
10 in the application, permit or license. The assignor shall furnish proof acceptable to the department  
11 that notice of the assignment has been given or attempted for each identified property owner not a  
12 party to the assignment.

13 **SECTION 1363.** ORS 537.230 is amended to read:

14 537.230. (1) Except for a holder of a permit for municipal use, the holder of a water right permit  
15 shall prosecute the construction of any proposed irrigation or other work with reasonable diligence  
16 and complete the construction within a reasonable time, as fixed in the permit by the [*Water Re-*  
17 *sources Department*] **Oregon Department of Natural Resources**, not to exceed five years from the  
18 date of approval.

19 (2) The holder of a permit for municipal use shall commence and complete the construction of  
20 any proposed works within 20 years from the date on which a permit for municipal use is issued  
21 under ORS 537.211. The construction must proceed with reasonable diligence and be completed  
22 within the time specified in the permit, not to exceed 20 years. However, the department may order  
23 and allow an extension of time to complete construction or to perfect a water right beyond the time  
24 specified in the permit under the following conditions:

25 (a) The holder shows good cause. In determining the extension, the department shall give due  
26 weight to the considerations described under ORS 539.010 (5) and to whether other governmental  
27 requirements relating to the project have significantly delayed completion of construction or per-  
28 fection of the right;

29 (b) The extension of time is conditioned to provide that the holder may divert water beyond the  
30 maximum rate diverted for beneficial use before the extension only upon approval by the department  
31 of a water management and conservation plan; and

32 (c) For the first extension issued after June 29, 2005, for a permit for municipal use issued before  
33 November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned  
34 to maintain, in the portions of waterways affected by water use under the permit, the persistence  
35 of fish species listed as sensitive, threatened or endangered under state or federal law. The de-  
36 partment shall base its finding on existing data [*and upon the advice of the State Department of Fish*  
37 *and Wildlife*]. An existing fish protection agreement between the permit holder and a state or federal  
38 agency that includes conditions to maintain the persistence of any listed fish species in the affected  
39 portion of the waterway is conclusive for purposes of the finding.

40 (3) Except as provided in ORS 537.240 and 537.248 and subsection (2) of this section, the [*Water*  
41 *Resources*] department, for good cause shown, shall order and allow an extension of time, including  
42 an extension beyond the five-year limit established in subsection (1) of this section within which ir-  
43 rigation or other works shall be completed or the right perfected. In determining the extension, the  
44 department shall give due weight to the considerations described under ORS 539.010 (5) and to  
45 whether other governmental requirements relating to the project have significantly delayed com-

1 pletion of construction or perfection of the right.

2 (4) Except as provided in subsection (5) of this section and ORS 537.409, upon completion of  
3 beneficial use as required under this section, the permittee shall hire a water right examiner certi-  
4 fied under ORS 537.798 to survey the appropriation. Within one year after application of water to  
5 a beneficial use or the beneficial use date allowed in the permit, the permittee shall submit a map  
6 of the survey as required by the [*Water Resources*] department, which shall accompany the request  
7 for a water right certificate submitted to the department under ORS 537.250. If any property de-  
8 scribed in the permit is not included in the request for a water right certificate, the permittee shall  
9 state the identity of the record owner of that property.

10 (5) The [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**  
11 may waive the requirement under subsection (4) of this section that a permittee hire a water right  
12 examiner certified under ORS 537.798 if:

13 (a) The permit is a supplemental water right that shares the same distribution system and same  
14 place of use as the primary water right; and

15 (b) The department determines that there is sufficient information in the records of the depart-  
16 ment to determine proof of beneficial use.

17 (6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS  
18 537.250 for a supplemental water right, the permittee shall have a facility capable of handling the  
19 full rate and duty of water requested from the supplemental source and be otherwise ready, willing  
20 and able to use the amount of water requested, up to the amount of water approved in the water  
21 right permit. To obtain a certificate for a supplemental water right, the permittee is not required  
22 to have actually used water from the supplemental source if:

23 (a) Water was available from the source of the primary water right and the primary water right  
24 was used pursuant to the terms of the primary water right; or

25 (b) The nonuse of water from the supplemental source occurred during a period of time within  
26 which the exercise of the supplemental water right permit was not necessary due to climatic con-  
27 ditions.

28 **SECTION 1364.** ORS 537.240 is amended to read:

29 537.240. (1) In any case where a permit from the Federal Energy Regulatory Commission is or  
30 shall be required in connection with the development of the applicant's proposed project, the appli-  
31 cant shall make application for the necessary federal permit or license within six months, or, if the  
32 applicant is a municipal corporation, within 10 years, from the date of filing application for appro-  
33 priation of water with the [*Water Resources Department*] **Oregon Department of Natural Re-**  
34 **sources.**

35 (2) Upon failure of the applicant to file with the department, within 30 days after the expiration  
36 of the period above prescribed, satisfactory proof that application for the federal permit or license  
37 has been duly made, the application to appropriate water shall be terminated and become void.

38 (3) Where the application for the necessary permit or license from the Federal Energy Regula-  
39 tory Commission is finally rejected or disallowed, or if after being granted, the permit or license is  
40 revoked or forfeited because of failure to begin or carry on the construction work when and as re-  
41 quired by the permit or license, then the department shall, upon the filing in the [*Water Resources*]  
42 department of satisfactory proof of such fact, revoke and cancel any permit issued by the department  
43 for appropriation of water for use in the project for which the federal permit or license was re-  
44 quired.

45 (4) In case of any permit issued for the appropriation of water for the utilization of which a

1 permit or license from the Federal Energy Regulatory Commission is necessary, the time to be al-  
2 lowed for the beginning and completion of construction under the permit from the department shall  
3 be made to conform to the time fixed for such beginning and completion in the permit or license,  
4 and in any extension thereof, issued for the project by the Federal Energy Regulatory Commission.

5 **SECTION 1365.** ORS 537.248 is amended to read:

6 537.248. (1) When the [*Water Resources Department*] **Oregon Department of Natural Re-**  
7 **sources** issues a reservoir permit for a new storage project to a county, municipality or district, the  
8 department shall include in the permit a date, not more than 10 years after the date the permit is  
9 issued, to begin and complete construction of diversion or storage works and to perfect the water  
10 right. An application for a reservoir permit under this section shall be subject to the provisions of  
11 ORS 537.140 to 537.211, except that the applicant need not submit engineering plans and specifica-  
12 tions before the permit is issued. However, the applicant may not begin construction of the reservoir  
13 until the department approves the engineering plans and specifications.

14 (2) By order, the [*Water Resources Director*] **Director of the Oregon Department of Natural**  
15 **Resources** may extend the date for beginning and completing construction and for completing per-  
16 fection of the use if the applicant shows reasonable diligence and good cause. An extension allowed  
17 under this subsection shall not exceed 10 years, but the applicant may request additional extensions.

18 (3) As used in this section, "district" includes the entities set forth in ORS 198.010 and 198.180.

19 **SECTION 1366.** ORS 537.250 is amended to read:

20 537.250. (1) After the [*Water Resources Department*] **Oregon Department of Natural Resources**  
21 has received a request for issuance of a water right certificate accompanied by the survey required  
22 under ORS 537.230 (4) that shows, to the satisfaction of the department, that an appropriation has  
23 been perfected in accordance with the provisions of the Water Rights Act, the department shall is-  
24 sue to the applicant a certificate of the same character as that described in ORS 539.140. The cer-  
25 tificate shall be recorded and transmitted to the applicant as provided in that section.

26 (2) When issuing a water right certificate under subsection (1) of this section in the name of a  
27 district as defined in ORS 540.505, or in the name of a government agency for a district, the de-  
28 partment may issue the water right certificate for land not described in the permit in accordance  
29 with ORS 537.252.

30 (3) Rights to the use of water acquired under the provisions of the Water Rights Act, as set  
31 forth in a certificate issued under subsection (1) of this section, shall continue in the owner thereof  
32 so long as the water shall be applied to a beneficial use under and in accordance with the terms  
33 of the certificate, subject only to loss:

34 (a) By nonuse as specified and provided in ORS 540.610; or

35 (b) As provided in ORS 537.297.

36 **SECTION 1367.** ORS 537.252 is amended to read:

37 537.252. (1) When issuing a water right certificate under ORS 537.250 to a district, or to a gov-  
38 ernment agency for a district, the [*Water Resources Department*] **Oregon Department of Natural**  
39 **Resources** may issue the water right certificate for land not described in the permit if:

40 (a) Water furnished by the district under the permit has been applied beneficially to the land;

41 (b) The land not described in the permit that is proposed to be included in the certificate is in-  
42 cluded within the legally established boundaries of the district and is subject to the charges, as-  
43 sessments and liens of the district;

44 (c) The certificate does not authorize a greater rate, duty or acreage than is authorized by the  
45 terms of the permit, and all other conditions of the permit are satisfied;

1 (d) The inclusion of land not described in the permit will not result in injury to other existing  
2 water rights or in enlargement of the right authorized under the permit; and

3 (e) The impact to the water source of including land not described in the permit will not differ  
4 significantly from the impact expected at the time the permit was issued for the lands described in  
5 the permit.

6 (2) If a district proposes to use water on lands not described in the permit, the [*Water*  
7 *Resources*] department may issue a certificate that includes such additional lands if all of the con-  
8 ditions of subsection (1) of this section are satisfied and if, no later than 60 days before the district  
9 actually applies the water to the lands not described in the permit, the district provides written  
10 notice to the department. The notice shall include a copy of the original permit map modified to  
11 show the lands to be added and lands to be removed from the description of the place of use of the  
12 water. Upon receipt of the notice from the district, the department shall provide public notice of the  
13 proposed change by means of publication in the department's weekly notice and by publication once  
14 each week for three successive weeks in a newspaper having general circulation in the county or  
15 counties in which the affected lands are located. The cost of publication shall be paid by the district.

16 (3) If a district has issued an order of inclusion or exclusion, the boundaries of the irrigation  
17 district shall be deemed to have been legally changed in the absence of approval of the Secretary  
18 of the Interior.

19 (4) As used in this section:

20 (a) "District" has the meaning given in ORS 540.505.

21 (b) "Legally established boundaries" means the boundaries of a district as established at the  
22 time of creation of the district and as the boundaries may have changed after creation of the district  
23 by an inclusion, exclusion or merger proceeding according to state law.

24 **SECTION 1368.** ORS 537.260 is amended to read:

25 537.260. (1) Except as provided under subsection (4) of this section for a permit issued to a  
26 municipality, whenever the time within which any appropriation under a permit should have been  
27 perfected has expired and the owner of the permit fails or refuses within three months thereafter  
28 to submit to the [*Water Resources Department*] **Oregon Department of Natural Resources** proof  
29 of completion of the appropriation as required by ORS 537.230 and 537.250, the department may,  
30 after 60 days' notice by registered mail or by certified mail with return receipt, order the cancella-  
31 tion of the permit. The cancellation shall have the same force and effect as cancellation of a permit  
32 in the proceedings provided for in ORS 537.410 to 537.450.

33 (2) The department may determine the extent to which an appropriation has been perfected un-  
34 der any permit at the time of submission of final proof provided for in ORS 537.250, and shall limit  
35 the certificate provided for in that section to a description of such appropriation as has been actu-  
36 ally perfected to the extent that the water applied for has been actually applied to the beneficial  
37 use contemplated in the permit.

38 (3) Any person owning an application, permit or water right certificate subsequent in priority  
39 may jointly or severally contest before the department the issuance of the water right certificate  
40 at any time before it has issued, and after the time has expired for the completion of the appropri-  
41 ation under the permit, or within three months after issuance of the certificate. The contest shall  
42 be brought upon application made, and hearing shall be had in the same manner and after notice  
43 as provided in ORS 537.420 for proceedings for cancellation of permits. The department, in a final  
44 order, may cancel the permit or determine the extent to which the appropriation claimed thereunder  
45 has been perfected, and issue a water right certificate accordingly, or if a certificate has been is-

1 sued, in the case of a contest within three months after its issuance, the department may cancel the  
 2 water right certificate, or affirm its issuance, and if the water right certificate in such case is can-  
 3 celed, the permit upon which it is based shall also be canceled.

4 (4) A municipality may partially perfect not less than 25 percent of the water authorized by its  
 5 permit without loss of priority or cancellation of the municipality's permit under this section. If a  
 6 municipality defers perfection of its water right under this section, the department shall issue a  
 7 certificate under ORS 537.250 only for the amount perfected. Upon perfection of the deferred  
 8 amount, the municipality shall request a water right certificate for the remaining portion of the  
 9 water applied for in the original permit application. As used in this section, "municipality" includes  
 10 a city, a port formed under ORS 777.005 to 777.725 and 777.915 to 777.953, a domestic water supply  
 11 district formed under ORS chapter 264 or a water authority formed under ORS chapter 450.

12 **SECTION 1369.** ORS 537.283 is amended to read:

13 537.283. (1) Notwithstanding any other provision of ORS 537.140 to 537.350, in accordance with  
 14 the applicable provisions of ORS chapter 183, the [*Water Resources Commission*] **Oregon Natural**  
 15 **Resources Commission** shall by rule establish a procedure for processing applications to appro-  
 16 priate water for hydroelectric power under ORS 537.140 to 537.320.

17 (2) Rules adopted under subsection (1) of this section:

18 (a) To the extent possible, shall be consistent with the process established for other applications  
 19 to appropriate water for other beneficial uses under ORS 537.140 to 537.252.

20 (b) Shall not supersede any provision pertaining to hydroelectric power established under this  
 21 chapter or ORS chapter 543, to the extent such provisions are applicable to applications to appro-  
 22 priate water for hydroelectric power purposes.

23 (c) Need not comply with the mandatory time limits or notice provisions established under ORS  
 24 537.140 to 537.350 if such provisions are incompatible with the substantive requirements applicable  
 25 to applications to appropriate water for hydroelectric power purposes.

26 **SECTION 1370.** ORS 537.285 is amended to read:

27 537.285. A municipal applicant may contract with a private person for the purpose of generating  
 28 hydroelectric power. The municipal applicant shall retain sufficient benefit and interest in, and  
 29 control of a joint project as necessary for the project to be considered a municipal project. A mu-  
 30 nicipal applicant and a private person developing a joint project under this chapter must comply  
 31 with the rules adopted by the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
 32 **mission** under ORS 537.287.

33 **SECTION 1371.** ORS 537.287 is amended to read:

34 537.287. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall es-  
 35 tablish rules necessary to carry out the provisions of ORS 537.285. The rules shall include the  
 36 amount of control over and interest in a joint project a municipal applicant must retain in order to  
 37 receive the benefit of the municipal preference and proceed under the municipal application process  
 38 set forth in this chapter.

39 **SECTION 1372.** ORS 537.289 is amended to read:

40 537.289. (1) Whenever the [*Water Resources Department*] **Oregon Department of Natural Re-**  
 41 **sources** issues a permit under ORS 537.211 allowing a municipal corporation or district, as defined  
 42 in ORS 543.655, to appropriate water for the purpose of generating hydroelectric power, the de-  
 43 partment shall impose the following conditions on the permit, in addition to any other term, limita-  
 44 tion or condition imposed under ORS 537.211:

45 (a) That the permit may not be assigned to any nonmunicipal entity so as to result in a loss of



1 ownership of the permit by a municipal corporation or district.

2 (b) That the holder of the permit must remain qualified as a municipal applicant under ORS  
3 537.285 and 537.287. If the municipal corporation or district proposes to generate hydroelectric  
4 power jointly with a nonmunicipal entity, that any proposed changes in the agreement between the  
5 municipal corporation and the nonmunicipal entity must be reviewed by the department to determine  
6 whether the permittee remains qualified as a municipal applicant.

7 (2) If the department determines that a permittee no longer qualifies as a municipal applicant,  
8 the department shall notify the permittee and any nonmunicipal entity developing a project with the  
9 permittee that the parties have 90 days to amend their joint relationship to continue qualifying as  
10 a municipal corporation or district.

11 **SECTION 1373.** ORS 537.292 is amended to read:

12 537.292. (1) Whenever the [*Water Resources Commission*] **Oregon Natural Resources Commis-**  
13 **sion** issues a certificate under ORS 537.250 granting a municipal corporation or district as defined  
14 in ORS 543.655 the right to appropriate water for the purpose of generating hydroelectric power, the  
15 commission shall impose the following conditions on the certificate, in addition to any other term,  
16 limitation or condition imposed under ORS 537.250:

17 (a) That the water right may not be assigned to any nonmunicipal entity so as to result in a loss  
18 of ownership of the certificate by the municipal corporation or district.

19 (b) That the holder of the water right certificate must remain qualified as a municipal applicant  
20 under ORS 537.285 and 537.287. If the municipal corporation or district is generating the hydro-  
21 electric power jointly with a nonmunicipal entity, that any proposed changes in the agreement be-  
22 tween the municipal corporation and the nonmunicipal entity must be reviewed by the [*Water*  
23 *Resources*] commission to determine whether or not the owner of the certificate remains qualified  
24 as a municipal applicant.

25 (2) If the commission determines that an owner of a certificate no longer qualifies as a municipal  
26 applicant, the commission shall notify the owner of the certificate and any nonmunicipal entity de-  
27 veloping or operating the project jointly with the owner that the parties have 90 days to amend  
28 their joint agreement in a manner that allows the parties to continue to qualify as a municipal  
29 corporation or district.

30 **SECTION 1374.** ORS 537.295 is amended to read:

31 537.295. (1) If the holder of a permit to appropriate water for hydroelectric purposes under this  
32 chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the  
33 holder continues to qualify as a municipal applicant, or if the holder of the permit has assigned  
34 ownership of the permit to an entity other than a municipal corporation or district, the [*Water Re-*  
35 *sources Commission*] **Oregon Natural Resources Commission** shall initiate proceedings to cancel  
36 the permit.

37 (2) A proceeding to cancel a permit under subsection (1) of this section shall be conducted ac-  
38 cording to the provisions under ORS chapter 183 for a contested case hearing.

39 **SECTION 1375.** ORS 537.297 is amended to read:

40 537.297. (1) If the owner of a certificate to appropriate water for hydroelectric purposes under  
41 this chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the  
42 owner continues to qualify as a municipal applicant, or if the holder of the certificate has assigned  
43 ownership of the certificate to an entity other than a municipal corporation or district, the [*Water*  
44 *Resources Commission*] **Oregon Natural Resources Commission** shall initiate proceedings to can-  
45 cel the certificate.

1 (2) A proceeding to cancel a certificate under subsection (1) of this section shall be conducted  
2 according to the provisions under ORS chapter 183 for a contested case hearing.

3 **SECTION 1376.** ORS 537.299 is amended to read:

4 537.299. (1) If the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
5 cancels a permit or certificate under ORS 537.295 or 537.297, the municipal applicant may apply for  
6 a permit to appropriate water for hydroelectric purposes under this chapter, or the private devel-  
7 oper may apply for a hydroelectric license under ORS chapter 543. However, the parties may not  
8 jointly apply for a permit to appropriate water for hydroelectric purposes pursuant to ORS 537.285.

9 (2) When a permit or certificate is canceled under ORS 537.295 or 537.297, the cancellation order  
10 may include such conditions and requirements as the commission deems necessary for the public  
11 safety and welfare, including but not limited to:

12 (a) Delay of the effective date of cancellation until such time as another entity is authorized to  
13 operate the facility under this chapter or ORS chapter 543; or

14 (b) Provision for operation of the facility during the period between cancellation and issuance  
15 of a new permit, certificate or license.

16 **SECTION 1377.** ORS 537.310 is amended to read:

17 537.310. (1) Any corporation organized for the construction, maintenance or operation of any  
18 railway may acquire, hold and appropriate to its use for railway purposes any waters within the  
19 state. The appropriation may be accomplished by the procedure provided by ORS 537.130 and 537.140  
20 to 537.252. A railway corporation may acquire by purchase, gift or devise, or by condemnation as  
21 provided in subsection (2) of this section, any water rights owned by any person and the rights of  
22 other persons affected by change of place or character of use of the water rights. Upon acquisition  
23 of the water rights by the corporation the right shall be severed from the land of the grantor and  
24 simultaneously transferred and become appurtenant to the operating property of the railway corpo-  
25 ration, without losing the priority of the water right as originally established.

26 (2) Any such corporation may condemn and appropriate for railway operating purposes the  
27 rights of any private appropriator of waters within the state. The right of condemnation shall be  
28 exercised in the same manner as other property is condemned and appropriated for railway pur-  
29 poses; provided, that no water right so condemned shall exceed two cubic feet per second.

30 (3) Upon satisfactory proof of the acquisition of water rights by any such corporation through  
31 purchase, gift, devise or condemnation, the [*Water Resources Commission*] **Oregon Natural Re-**  
32 **sources Commission** shall issue to the corporation a certificate of the same character as that de-  
33 scribed in ORS 539.140, which shall be recorded and transmitted to the corporation, as provided in  
34 that section. All certificates of water rights issued before May 29, 1925, by the Board of Control or  
35 the Water Resources Director to any such corporation shall be sufficient in law to convey to the  
36 corporation the water rights described in the certificates, and such certificates shall be received in  
37 evidence in all courts in this state.

38 **SECTION 1378.** ORS 537.330 is amended to read:

39 537.330. (1) In any transaction for the conveyance of real estate that includes a water right, the  
40 seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the  
41 purchaser in writing whether any permit, transfer approval order or certificate evidencing the water  
42 right is available and that the seller will deliver any permit, transfer approval order or certificate  
43 to the purchaser at closing, if the permit, transfer approval order or certificate is available.

44 (2) Upon closing and delivery of the instrument of conveyance in a real estate transaction in-  
45 volving the transfer of a water right, the seller shall also deliver to the purchaser evidence of any

1 permit, transfer approval order or certificate of water rights if the permit, transfer approval order  
2 or certificate is available.

3 (3) The failure of a seller to comply with the provisions of this section does not invalidate an  
4 instrument of conveyance executed in the transaction.

5 (4) This section does not apply to any transaction for the conveyance of real estate that includes  
6 a water right when the permit, transfer approval order or certificate evidencing the water right is  
7 held in the name of a district or corporation formed pursuant to ORS chapter 545, 547, 552, 553 or  
8 554.

9 (5) As used in this section:

10 (a) "Certificate" means a certificate or registration issued under ORS 537.250 (1), 537.585,  
11 539.140 or 539.240.

12 (b) "Permit" means a permit issued under ORS 537.211, 537.240 or 537.625.

13 (c) "Transfer approval order" means an order of the [*Water Resources Commission*] **Oregon**  
14 **Natural Resources Commission** issued under ORS 540.530.

15 **SECTION 1379.** ORS 537.332 is amended to read:

16 537.332. As used in ORS 537.332 to 537.360:

17 (1) "In-stream" means within the natural stream channel or lake bed or place where water na-  
18 turally flows or occurs.

19 (2) "In-stream flow" means the minimum quantity of water necessary to support the public use  
20 requested by an agency.

21 (3) "In-stream water right" means a water right held in trust by the [*Water Resources Depart-*  
22 *ment*] **Oregon Department of Natural Resources** for the benefit of the people of the State of  
23 Oregon to maintain water in-stream for public use. An in-stream water right does not require a di-  
24 version or any other means of physical control over the water.

25 (4) "Public benefit" means a benefit that accrues to the public at large rather than to a person,  
26 a small group of persons or to a private enterprise.

27 (5) "Public use" includes but is not limited to:

28 (a) Recreation;

29 (b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and  
30 wildlife habitat and any other ecological values;

31 (c) Pollution abatement; or

32 (d) Navigation.

33 **SECTION 1380.** ORS 537.336 is amended to read:

34 537.336. [(1) *The State Department of Fish and Wildlife may request the Water Resources Com-*  
35 *mission to issue water right certificates for in-stream water rights on the waters of this state in which*  
36 *there are public uses relating to the conservation, maintenance and enhancement of aquatic and fish*  
37 *life, wildlife and fish and wildlife habitat. The request shall be for the quantity of water necessary to*  
38 *support those public uses as recommended by the State Department of Fish and Wildlife.*]

39 **(1) The Oregon Natural Resources Commission may issue water right certificates for in-**  
40 **stream water rights on the waters of this state in which there are public uses relating to:**

41 **(a) The conservation, maintenance and enhancement of wildlife, aquatic and fish life and**  
42 **wildlife and fish habitat; and**

43 **(b) Recreation and scenic attraction.**

44 (2) The Department of Environmental Quality may request the [*Water Resources*] commission to  
45 issue water right certificates for in-stream water rights on the waters of this state to protect and

1 maintain water quality standards established by the Environmental Quality Commission under ORS  
 2 468B.048. The request shall be for the quantity of water necessary for pollution abatement as re-  
 3 commended by the department [*of Environmental Quality*].

4 [(3) *The State Parks and Recreation Department may request the Water Resources Commission to*  
 5 *issue water right certificates for in-stream water rights on the waters of this state in which there are*  
 6 *public uses relating to recreation and scenic attraction. The request shall be for the quantity of water*  
 7 *necessary to support those public uses as recommended by the State Parks and Recreation*  
 8 *Department.*]

9 [(4) (3) Any request for an in-stream water right to be supplied from stored water shall refer  
 10 to the reservoir for a supply of water and shall show by documentary evidence that an agreement  
 11 has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to  
 12 impound enough water for the purposes set forth in the request.

13 **SECTION 1381.** ORS 537.338 is amended to read:

14 537.338. The [*Water Resources Commission*] **Oregon Natural Resources Commission** by rule  
 15 shall establish standards, criteria and procedures by which a [*state agency included under ORS*  
 16 *537.336*] **person** may request an in-stream water right to be issued under ORS 537.336.

17 **SECTION 1382.** ORS 537.341 is amended to read:

18 537.341. Subject to the provisions of ORS 537.343, the [*Water Resources Commission*] **Oregon**  
 19 **Department of Natural Resources** shall issue a certificate for an in-stream water right. The in-  
 20 stream water right shall date from the filing of the application with the [*commission*] **department**.  
 21 The certificate shall be in the name of the [*Water Resources*] department as trustee for the people  
 22 of the State of Oregon and shall be issued by the [*commission*] **department** according to the pro-  
 23 cedures established under ORS 537.338. The [*commission*] **department** shall forward a copy of each  
 24 certificate issued under this section to the [*state agency*] **person** requesting the in-stream water  
 25 right. A certificate for an in-stream water right supplied by stored water shall refer to the reservoir  
 26 described in the request filed under ORS 537.336.

27 **SECTION 1383.** ORS 537.343 is amended to read:

28 537.343. (1) A proposed final order issued under ORS 537.170 (6) for an in-stream water right  
 29 certificate may include any condition the [*Water Resources Director*] **Director of the Oregon De-**  
 30 **partment of Natural Resources** considers necessary, but which is consistent with the intent of  
 31 ORS 537.332 to 537.360. The proposed final order may:

- 32 (a) Approve the in-stream water right for the quantity of water requested;
- 33 (b) Approve the requested in-stream water right for a lesser quantity of water; or
- 34 (c) Reject the requested in-stream water right.

35 (2) If the director reduces or rejects the in-stream water right as requested, or conditions the  
 36 in-stream water right, the director shall include a statement of findings that sets forth the basis for  
 37 the reduction, rejection or conditions. The director shall be the final authority in determining the  
 38 level of in-stream flow necessary to protect the public use.

39 (3) After the director issues a final order approving an in-stream water right, the [*Water Re-*  
 40 *sources Department*] **Oregon Department of Natural Resources** shall issue a certificate for an  
 41 in-stream water right according to the provisions of ORS 537.341.

42 **SECTION 1384.** ORS 537.346 is amended to read:

43 537.346. (1) All minimum perennial streamflows established on any waters of this state before  
 44 June 25, 1988, shall be converted to in-stream water rights after the [*Water Resources Commission*]  
 45 **Oregon Natural Resources Commission** reviews the streamflows and the [*Water Resources De-*

1 *partment]* **Oregon Department of Natural Resources** issues a certificate for an in-stream water  
2 right in accordance with ORS 537.343 with the same priority date as the minimum perennial  
3 streamflow.

4 (2) The priority date for that portion of an in-stream water right that uses the stored water  
5 component of a minimum perennial streamflow in the Willamette Basin shall be the date the com-  
6 mission or its predecessor adopted the minimum perennial streamflow containing the stored water  
7 component.

8 (3) Notwithstanding the priority date established under subsection (2) of this section, until the  
9 state enters into a contract that meets the criteria set forth in subsection (4) of this section with  
10 the owner of the storage facility to release the stored water for the purpose of satisfying the in-  
11 stream water right, for that portion of an in-stream water right in the Willamette Basin converted  
12 from the stored water component of a minimum perennial streamflow, the department:

13 (a) May not require the release of the stored water; and

14 (b) Shall not regulate the use of water to provide water for the portion of the in-stream water  
15 right using stored water.

16 (4) A contract for the release of stored water to satisfy an in-stream water right shall:

17 (a) Include as parties to the contract the State of Oregon and the owner of the storage facility;

18 (b) Specifically allow the state to obtain the release of stored water to satisfy an in-stream water  
19 right; and

20 (c) Identify a method to determine the specific quantity of water released from storage to satisfy  
21 the stored water component of the in-stream water right.

22 (5) If the federal government does not release water to satisfy a stored water component of an  
23 in-stream water right pursuant to a contract that satisfies the criteria set forth in subsection (4) of  
24 this section, the department may not regulate the use of water by other water right holders to sat-  
25 isfy the stored water component of an in-stream water right or take any other action that impairs  
26 the rights of any person under a valid contract for the use of the stored water.

27 **SECTION 1385.** ORS 537.348 is amended to read:

28 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or  
29 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.  
30 Any water right converted to an in-stream water right under this section shall retain the priority  
31 date of the water right purchased, leased or received as a gift. At the request of the person the  
32 [*Water Resources Commission*] **Oregon Natural Resources Commission** shall issue a new certif-  
33 icate for the in-stream water right showing the original priority date of the purchased, gifted or  
34 leased water right. A person who transfers a water right by purchase, lease or gift under this sub-  
35 section shall comply with the requirements for the transfer of a water right under ORS 540.505 to  
36 540.585.

37 (2) Any person who has an existing water right may lease all or a portion of the existing water  
38 right for use as an in-stream water right for a specified period without the loss of the original pri-  
39 ority date. During the term of such lease, the use of the water right as an in-stream water right  
40 shall be considered a beneficial use.

41 (3) A lease of all or a portion of an existing water right for use as an in-stream water right  
42 under subsection (2) of this section may allow the split use of the water between the existing water  
43 right and the in-stream right during the same water or calendar year provided:

44 (a) The uses are not concurrent; and

45 (b) The holders of the water rights measure and report to the [*Water Resources Department*]

1 **Oregon Department of Natural Resources** the use of the existing water right and the in-stream  
2 water right.

3 **SECTION 1386.** ORS 537.348, as amended by section 2, chapter 205, Oregon Laws 2001, is  
4 amended to read:

5 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or  
6 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.  
7 Any water right converted to an in-stream water right under this section shall retain the priority  
8 date of the water right purchased, leased or received as a gift. At the request of the person the  
9 [*Water Resources Commission*] **Oregon Natural Resources Commission** shall issue a new certifi-  
10 cate for the in-stream water right showing the original priority date of the purchased, gifted or  
11 leased water right. A person who transfers a water right by purchase, lease or gift under this sub-  
12 section shall comply with the requirements for the transfer of a water right under ORS 540.505 to  
13 540.585.

14 (2) Any person who has an existing water right may lease all or a portion of the existing water  
15 right for use as an in-stream water right for a specified period without the loss of the original pri-  
16 ority date. During the term of such lease, the use of the water right as an in-stream water right  
17 shall be considered a beneficial use.

18 **SECTION 1387.** ORS 537.349 is amended to read:

19 537.349. Except as provided in ORS 537.343, the [*Water Resources Department*] **Oregon Depart-**  
20 **ment of Natural Resources** shall process a request received under ORS 537.336 for a certificate  
21 for an in-stream water right in accordance with the provisions for obtaining a permit to appropriate  
22 water under ORS 537.140 to 537.252.

23 **SECTION 1388.** ORS 537.350 is amended to read:

24 537.350. (1) After the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
25 issues a certificate for an in-stream water right under ORS 537.341 to 537.348, the in-stream water  
26 right shall have the same legal status as any other water right for which a certificate has been is-  
27 sued.

28 (2) An in-stream water right is not subject to cancellation under ORS 537.260 or 537.410 to  
29 537.450 but an in-stream water right may be canceled under ORS 540.610 to 540.650.

30 **SECTION 1389.** ORS 537.352 is amended to read:

31 537.352. Notwithstanding any provision of ORS 537.332 to 537.343 and 537.350, the right to the  
32 use of the waters of this state for a project for multipurpose storage or municipal uses or by a mu-  
33 nicipal applicant, as defined in ORS 537.282, for a hydroelectric project, shall take precedence over  
34 an in-stream water right when the [*Water Resources Department*] **Oregon Department of Natural**  
35 **Resources** conducts a review of the proposed project in accordance with ORS 537.170. The preced-  
36 ence given under this section shall not apply if the in-stream water right was established pursuant  
37 to ORS 537.346 or 537.348.

38 **SECTION 1390.** ORS 537.356 is amended to read:

39 537.356. (1) Any local government, local watershed council or state agency or any other indi-  
40 vidual cooperating jointly with a local government, local watershed council or state agency may  
41 request the [*Water Resources Commission*] **Oregon Natural Resources Commission** to reserve un-  
42 appropriated water for multipurpose storage for future economic development.

43 (2) A request under subsection (1) of this section shall be in writing on a form provided by the  
44 [*Water Resources Department*] **Oregon Department of Natural Resources**. Before deciding whether  
45 to approve the request and initiate a rulemaking process, the commission shall request comments

1 from any local government or watershed council within the geographic area or basin affected by the  
 2 request. The comment period shall be closed not later than 120 days after the request is submitted.

3 (3) The priority date for any reservation established under this section shall be the date on  
 4 which the commission takes action to initiate the rulemaking process.

5 **SECTION 1391.** ORS 537.358 is amended to read:

6 537.358. (1) In adopting a rule under ORS 537.356 to reserve unappropriated water for multi-  
 7 purpose storage for future economic development, the [*Water Resources Commission*] **Oregon Na-  
 8 tural Resources Commission** shall include a public interest review that takes into consideration  
 9 the factors described under ORS 537.170.

10 (2) A person requesting use of the reserved water for new storage shall submit a water right  
 11 application and comply with the procedure set forth in ORS 537.140 to 537.252, except that the pri-  
 12 ority date for a storage right approved for use of reserved water shall be the date of the reservation.  
 13 The commission by rule may describe a process for ensuring that the proposed use is consistent with  
 14 the requirements of the rule establishing the reservation.

15 **SECTION 1392.** ORS 537.360 is amended to read:

16 537.360. If an application is pending under this chapter for a water right permit to use water for  
 17 hydroelectric purposes or under ORS 543.010 to 543.610 for a hydroelectric permit or license at the  
 18 time the [*Water Resources Commission*] **Oregon Natural Resources Commission** receives an ap-  
 19 plication for an in-stream water right under ORS 537.336 for the same stream or reach of the stream,  
 20 the commission shall not take any action on the application for an in-stream water right until the  
 21 commission issues a final order approving or denying the pending hydroelectric application.

22 **SECTION 1393.** ORS 537.385 is amended to read:

23 537.385. (1) Notwithstanding any condition or limitation of a water right permit issued under  
 24 ORS 537.211 or 537.625 or a water right certificate issued under ORS 537.250, 537.630 or 539.140,  
 25 upon receipt of a request by the State Department of Agriculture, the [*Water Resources  
 26 Commission*] **Oregon Natural Resources Commission** may, by rule, extend the irrigation season  
 27 of a subbasin beyond the period established by adjudication, by rule or by condition imposed on a  
 28 permit or certificate, if the commission finds:

29 (a) Water is available during the period of the extended irrigation season;

30 (b) Water use during the extended season would not impair in-stream flows that are necessary  
 31 to protect aquatic resources; and

32 (c) Water diversion and use during the period of the extended season would not impair the  
 33 achievement or maintenance of water quality standards as established for the water source by the  
 34 Department of Environmental Quality.

35 (2) If the source of water identified in the request is stored water and water is available from  
 36 the storage source during the period of the extended irrigation season, the commission may extend  
 37 the irrigation season as requested without making the findings required by subsection (1) of this  
 38 section. However, use of water during the extended period shall be limited to the stored water.

39 (3) In order to ensure that use of water during an extended irrigation season does not injure  
 40 existing and future water rights, use of water during the extended period of the irrigation season  
 41 shall be subordinated to all existing and future water rights.

42 (4) Use of water during the extended irrigation season shall comply with all conditions and  
 43 limitations of the permit or certificate, including the rate, duty and place of use of the right.

44 (5) Use of water shall be regulated among irrigators for whom the season has been extended  
 45 during the extended irrigation season according to the priority date of the permit or certificate.

1       **SECTION 1394.** ORS 537.400 is amended to read:

2       537.400. (1) All applications for reservoir permits shall be subject to the provisions of ORS  
3 537.130, 537.140, 537.142 and 537.145 to 537.240, except that an enumeration of any lands proposed  
4 to be irrigated under the Water Rights Act shall not be required in the primary permit. But the  
5 party proposing to apply to a beneficial use the water stored in any such reservoir shall file an  
6 application for permit, to be known as the secondary permit, in compliance with the provisions of  
7 ORS 537.130, 537.140, 537.142 and 537.145 to 537.240. The application shall refer to the reservoir for  
8 a supply of water and shall show by documentary evidence that an agreement has been entered into  
9 with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water  
10 for the purposes set forth in the application, that the applicant has provided notice of the applica-  
11 tion to the operator of the reservoir and, if applicable, that an agreement has been entered into with  
12 the entity delivering the stored water. When beneficial use has been completed and perfected under  
13 the secondary permit, the [*Water Resources Department*] **Oregon Department of Natural Re-**  
14 **sources** shall take the proof of the water user under the permit. The final certificate of appropri-  
15 ation shall refer to both the ditch described in the secondary permit and the reservoir described in  
16 the primary permit.

17       (2) Whenever application is made for permit to store water in a reservoir or pond for any ben-  
18 efiticial use which does not contemplate future diversion of the stored water except by livestock  
19 drinking from stock water ponds, the extent of utilization thereof may be included in the reservoir  
20 permit and no secondary permit shall be required. However, in cases where water from a stream is  
21 required to maintain a reservoir or pond by replacing evaporation and seepage losses, or is required  
22 to maintain suitable fresh water conditions for the proposed use and to prevent stagnation, the ap-  
23 plicant for permit to store water in such reservoir or pond shall also file an application for permit  
24 to appropriate the waters of the stream.

25       (3) An application submitted to construct a reservoir storing less than 9.2 acre-feet of water or  
26 with a dam less than 10 feet in height need not be accompanied by a map prepared by a water right  
27 examiner certified under ORS 537.798 as required by ORS 537.140 (4). The map submitted with the  
28 application shall comply with standards established by the [*Water Resources Commission*] **Oregon**  
29 **Natural Resources Commission**. The survey required under ORS 537.230 shall be prepared by a  
30 water right examiner certified under ORS 537.798 and shall be submitted to the department before  
31 the department issues the water right certificate.

32       (4) If a dam safety review is required under ORS 540.350, the department may issue a final order  
33 approving an application on the basis of preliminary plans, specifications and supporting information  
34 if the approval includes a condition requiring the commission's approval of final plans, specifications  
35 and supporting information under ORS 540.350 before the permit is issued.

36       (5) Notwithstanding the provisions of ORS 537.211 (2), the department may approve an applica-  
37 tion for a reservoir permit for which a dam safety review is required under ORS 540.350 and issue  
38 a permit, subject to the condition that before the reservoir may be filled, the permittee shall submit  
39 to the department evidence that the permittee owns, or has written authorization or an easement  
40 permitting access to, all lands to be inundated by the reservoir.

41       **SECTION 1395.** ORS 537.405 is amended to read:

42       537.405. [(1)] Reservoirs in existence on or before January 1, 1995, that store less than 9.2  
43 acre-feet of water or with a dam or impoundment structure less than 10 feet in height[, *are found*  
44 *to be a beneficial use of the water resources of this state. Except as provided in subsection (4) of this*  
45 *section, such reservoirs*] are exempt from regulation by the [*Water Resources Commission and the*



1 *Water Resources Department*] **Oregon Department of Natural Resources and the Oregon Natural**  
 2 **Resources Commission** and are not required to obtain a permit or certificate under ORS 537.140  
 3 to 537.252.

4 [(2)(a) *On or before January 31, 1997, an owner of a reservoir constructed before January 1, 1995,*  
 5 *shall provide written notification to the department of the existence of the exempt reservoir. The written*  
 6 *notification shall include the quantity of water stored by the reservoir, the source of the water used to*  
 7 *fill the reservoir and a map or drawing of sufficient quality and scale to establish the general location*  
 8 *of the reservoir by tax lot, township, range and section and to the nearest quarter-quarter section.]*

9 [(b) *Any person who submitted a notice of exemption for a reservoir under ORS 537.141 and*  
 10 *qualified for the exemption shall be allowed an exemption.]*

11 [(3) *Within 90 days after receiving written notification under subsection (2) of this section, the de-*  
 12 *partment shall provide notice of the exemption in the manner the department determines to be the most*  
 13 *appropriate.]*

14 [(4) *Detailed, legally obtained information demonstrating that a specific reservoir exempt under*  
 15 *subsection (1) of this section should not be exempt shall be submitted in writing to the department on*  
 16 *or before August 1, 1997:]*

17 [(a) *By the State Department of Fish and Wildlife if the reservoir should not be exempt because the*  
 18 *existing reservoir, including any impoundment structure, poses a significant detrimental impact to ex-*  
 19 *isting fishery resources; or]*

20 [(b) *By any person if the existing reservoir should not be exempt because the existing reservoir,*  
 21 *including the storage or use of the water, results in injury to an existing water right.]*

22 [(5) *Within 180 days after the department receives information under subsection (4) of this section,*  
 23 *the Water Resources Director shall determine whether the reservoir results in injury to an existing*  
 24 *water right or poses a significant detrimental impact to existing fishery resources. The determination*  
 25 *of injury to an existing water right or impact to existing fishery resources shall be based on verifiable*  
 26 *evidence.]*

27 [(6) *If the director determines that an existing reservoir does not injure an existing water right or*  
 28 *pose a significant detrimental impact to existing fishery resources, the reservoir shall be exempt under*  
 29 *subsection (1) of this section.]*

30 [(7) *If the director determines that an existing reservoir results in injury to an existing water right*  
 31 *or poses a significant detrimental impact to existing fishery resources, the director shall require the*  
 32 *owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact*  
 33 *to the existing fishery resources.]*

34 [(8) *If the director fails to act under subsection (6) or (7) of this section within 180 days after re-*  
 35 *ceiving the information under subsection (4) of this section, the reservoir shall be considered exempt.]*

36 [(9) *Nothing in this section shall be construed to allow any owner of a reservoir exempt under this*  
 37 *section to increase the quantity of water stored in or diverted from such reservoir on or before January*  
 38 *1, 1995.]*

39 **SECTION 1396.** ORS 537.407 is amended to read:

40 537.407. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
 41 issue a water right certificate to any person who submitted an application for a reservoir under  
 42 section 4, chapter 595, Oregon Laws 1993.

43 [(2) *Within 90 days after issuing a certificate under subsection (1) of this section, the department*  
 44 *shall provide notice of the certificate in the manner the department determines to be the most appro-*  
 45 *priate.]*

1       [(3) Detailed, legally obtained information demonstrating that a specific reservoir granted a certifi-  
2       cate under subsection (1) of this section should not be certificated shall be submitted in writing to the  
3       department on or before August 1, 1997:]

4       [(a) By the State Department of Fish and Wildlife if the reservoir should not be exempt because the  
5       existing reservoir, including any impoundment structure, poses a significant detrimental impact to ex-  
6       isting fishery resources; or]

7       [(b) By any person if the existing reservoir should not be exempt because the existing reservoir,  
8       including the storage or use of the water, results in injury to an existing water right.]

9       [(4) Within 180 days after the department receives information under subsection (3) of this section,  
10       the Water Resources Director shall determine whether the reservoir results in injury to an existing  
11       water right or poses a significant detrimental impact to existing fishery resources. The determination  
12       of injury to an existing water right or impact to existing fishery resources shall be based on verifiable  
13       evidence.]

14       [(5) If the director determines that an existing reservoir does not injure an existing water right or  
15       pose a significant detrimental impact to existing fishery resources, the certificate for the reservoir shall  
16       continue with the same terms and conditions included with the certificate under subsection (1) of this  
17       section.]

18       [(6) If the director determines that an existing reservoir results in injury to an existing water right  
19       or poses a significant detrimental impact to existing fishery resources, the director shall require the  
20       owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact  
21       to the existing fishery resources.]

22       [(7) If the director fails to act under subsection (5) or (6) of this section within 180 days after re-  
23       ceiving the information under subsection (3) of this section, the certificate shall continue with the same  
24       terms and conditions included with the certificate.]

25       [(8) Nothing in this section shall be construed to allow any owner of a reservoir certificated under  
26       this section to increase the quantity of water stored in or diverted from such reservoir on or before  
27       January 1, 1995.]

28       [(9)] (2) Any person who submitted an application for a reservoir under section 4, chapter 595,  
29       Oregon Laws 1993, may submit a written request to the department to convert the application to a  
30       notice of exemption under ORS 537.405. Upon receipt of a request under this subsection, the de-  
31       partment shall refund all fees and convert the application to a notice of exemption.

32       **SECTION 1397.** ORS 537.409 is amended to read:

33       537.409. (1) In lieu of the process set forth in ORS 537.140 to 537.211 for applying for a water  
34       right permit, an owner of a reservoir may submit an application to the [Water Resources  
35       Department] **Oregon Department of Natural Resources** to issue a water right permit under ORS  
36       537.211 or a certificate under ORS 537.250 according to the process set forth in this section if the  
37       reservoir:

38       (a) Has a storage capacity of less than 9.2 acre-feet or a dam or impoundment structure less  
39       than 10 feet in height;

40       (b) Does not injure any existing water right;

41       (c) Does not pose a significant detrimental impact to existing fishery resources as determined  
42       [on the basis of information submitted by the State Department of Fish and Wildlife] **by the depart-**  
43       **ment;** and

44       (d) Is not prohibited under ORS 390.835.

45       (2) An application for a water right permit for a reservoir under subsection (1) of this section

1 shall provide sufficient information to demonstrate compliance with the criteria set forth in sub-  
2 section (1) of this section. The application shall:

3 (a) Include the quantity of water to be stored by the reservoir, a map indicating the location  
4 of the reservoir and the source of the water used to fill the reservoir; and

5 (b) Be accompanied by the fee established in ORS 536.050 (1)(q).

6 (3) The map required under subsection (2) of this section need not be prepared by a water right  
7 examiner certified under ORS 537.798. The map submitted with the application shall comply with  
8 standards established by the [*Water Resources Commission*] **Oregon Natural Resources Commis-**  
9 **sion.**

10 (4) Within 60 days after receiving an application under subsection (1) of this section, the [*Water*  
11 *Resources*] department shall provide public notice of the application in the manner the department  
12 determines to be the most appropriate.

13 (5) Within 60 days after the department provides public notice under subsection (4) of this sec-  
14 tion, any person may submit detailed, legally obtained information in writing, requesting the de-  
15 partment to deny the application for a permit on the basis that the reservoir:

16 (a) Would result in injury to an existing water right; or

17 (b) Would pose a significant detrimental impact to existing fishery resources.

18 (6) In accordance with rules established by the [*Water Resources*] commission for an expedited  
19 public interest review process for applications submitted under this section or in response to a re-  
20 quest under subsection (5) of this section, the department shall conduct a public interest review of  
21 the reservoir application. The review shall be limited to issues pertaining to:

22 (a) Water availability;

23 (b) Potential detrimental impact to existing fishery resources; and

24 (c) Potential injury to existing water rights.

25 (7) Within 180 days after the department receives an application for a permit under subsection  
26 (1) of this section, the department shall issue a final order granting or denying the permit or  
27 granting the permit with conditions.

28 (8) If the department issues an order under subsection (7) of this section denying the permit, the  
29 applicant may request a contested case hearing, which shall be conducted in accordance with ap-  
30 plicable provisions of ORS chapter 183.

31 (9) If the department does not find injury or impact under subsection (6) of this section and the  
32 department issues a final order under subsection (7) of this section allowing the issuance of a permit,  
33 the order shall be subject to judicial review of orders in other than contested cases as provided in  
34 ORS chapter 183.

35 (10) Notwithstanding the requirement for a survey under ORS 537.230 (4), a survey of the ap-  
36 propriation is not required for a reservoir that has a storage capacity of less than 9.2 acre-feet of  
37 water. For a reservoir qualifying under this subsection, a permittee shall submit to the department  
38 a claim of beneficial use within one year after the date of completion of construction. A claim of  
39 beneficial use for a reservoir qualifying under this subsection shall require only a written affidavit  
40 signed by the permittee that includes the following:

41 (a) The dimensions of the reservoir.

42 (b) The maximum capacity of the reservoir in acre-feet.

43 (c) A map identifying the location of the reservoir. The map shall comply with standards estab-  
44 lished by the [*Water Resources*] commission. The map required under this subsection need not be  
45 prepared by a water right examiner certified under ORS 537.798.

1 (11) Any person applying for a secondary permit for the use of stored water from a reservoir  
2 qualifying under subsection (10) of this section shall submit a survey prepared by a water right ex-  
3 aminer certified under ORS 537.798. The survey required under this subsection shall apply to the  
4 storage reservoir and to the secondary use of the water in the reservoir.

5 **SECTION 1398.** ORS 537.410 is amended to read:

6 537.410. (1) Whenever the owner of a permit to appropriate the public waters of Oregon fails to  
7 commence actual construction work within the time required by law, or having commenced con-  
8 struction work as required by law, fails or neglects to prosecute the construction work with rea-  
9 sonable diligence, or fails to complete the construction work within the time required by law, or as  
10 fixed in the permit, or within such further time as may be allowed under ORS 537.230, or having  
11 completed construction work, fails or neglects to apply the water to beneficial use within the time  
12 fixed in the permit, the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
13 may cancel the permit on the records in the [*Water Resources Department*] **Oregon Department**  
14 **of Natural Resources** as provided in ORS 537.410 to 537.450.

15 (2) However, permits issued by the commission to irrigation districts for reclamation purposes  
16 under the irrigation district laws of this state, to municipal corporations for municipal uses or pur-  
17 poses or to public utilities complying with subsection (3) of this section for an energy facility  
18 granted a site certificate by the Energy Facility Siting Council, are not subject to cancellation under  
19 the provisions of ORS 537.410 to 537.450.

20 (3) For a public utility to qualify under subsection (2) of this section:

21 (a) The energy facility of the public utility must not be a facility required to be licensed under  
22 ORS chapter 543; and

23 (b) The public utility must supply information every two years that demonstrates to the satis-  
24 faction of the commission that the conditions in the site certificate issued by the Energy Facility  
25 Siting Council contemplate the future use of the remaining portion of the water applied for in the  
26 original permit application.

27 **SECTION 1399.** ORS 537.420 is amended to read:

28 537.420. Whenever a permit holder fails to comply with the laws of the state and the require-  
29 ments of the permit as to the commencement of work with due diligence, completion of the work  
30 of construction or the application of the water for a beneficial use, and the permit is subject to  
31 cancellation as provided in ORS 537.410 to 537.450, the [*Water Resources Commission*] **Oregon Na-**  
32 **tural Resources Commission** shall, not less than 30 nor more than 60 days prior to the hearing  
33 provided for in ORS 537.445, notify each person who, according to [*Water Resources Department*] **the**  
34 **records of the Oregon Department of Natural Resources**, is the holder of a water right permit  
35 or certificate whose right may be injured by the proposed cancellation. The notice shall require the  
36 holder of the permit to appear before the commission at the time and place designated in the notice,  
37 and show cause why the permit described in the notice should not be canceled for the reasons  
38 therein specified. The notice shall contain a brief statement of the grounds for cancellation and shall  
39 be served in accordance with ORS 183.415.

40 **SECTION 1400.** ORS 537.440 is amended to read:

41 537.440. If the decision of the [*Water Resources Commission*] **Oregon Natural Resources**  
42 **Commission** requires the cancellation of a permit, then the commission shall at once cancel, or  
43 have canceled, the permit. Thereafter the permit shall be of no further force or effect, and shall not  
44 be recognized or admitted as evidence of any right or interest in or to the waters covered by it in  
45 any proceeding in the courts or before other tribunals of the state. Permits having subsequent pri-

1 ority shall upon such cancellation have priority in the order of the filing of the applications upon  
 2 which subsequent permits are based, as if the canceled permit, or the application upon which it was  
 3 based, had never existed.

4 **SECTION 1401.** ORS 537.445 is amended to read:

5 537.445. (1) If the [*Water Resources Commission*] **Oregon Natural Resources Commission** pro-  
 6 poses to cancel a permit or appropriation under ORS 537.410 to 537.450, opportunity for hearing  
 7 shall be accorded as provided in ORS chapter 183.

8 (2) If a petition for review of an order canceling a permit or appropriation is filed under ORS  
 9 536.075, the commission shall not cancel the permit or appropriation under ORS 537.440 until the  
 10 petitioner's right of review is exhausted and the order is finally approved.

11 **SECTION 1402.** ORS 537.450 is amended to read:

12 537.450. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may by  
 13 rule provide that the owners of permits shall submit or furnish proofs of commencement of work,  
 14 prosecution of work with due diligence, completion of work, and of the application of water to a  
 15 beneficial use under the permits. Failure to comply with the commission's rules in respect to the  
 16 proofs shall be considered prima facie evidence of failure to commence work, prosecute work with  
 17 due diligence, complete work, or apply water to the beneficial use contemplated by the permit in  
 18 proceedings under ORS 537.410 to 537.440 for the cancellation of permits.

19 **SECTION 1403.** ORS 537.465 is amended to read:

20 537.465. (1) Any person or group of persons holding a water use subject to transfer as defined  
 21 in ORS 540.505 may submit an application to the [*Water Resources Commission*] **Oregon Natural**  
 22 **Resources Commission** for approval of an allocation of conserved water for a measure that:

23 (a) The person or group of persons intends to implement; or

24 (b) Was implemented by the person or group of persons within five years prior to the submission  
 25 of the application.

26 (2) An application submitted under subsection (1)(a) of this section shall include:

27 (a) A description of the proposed measures;

28 (b) A description of the existing diversion facilities and an estimate of the amount of water that  
 29 can be diverted at the facilities;

30 (c) The amount of water that will be needed to supply existing rights after implementation of  
 31 the conservation measures;

32 (d) The amount of conserved water expected from implementation of the conservation measures;

33 (e) The proposed allocation and use of the conserved water if different from the allocation  
 34 specified in ORS 537.470;

35 (f) The intended use of any water allocated to the applicant;

36 (g) The applicant's choice of priority date for the conserved water; and

37 (h) Any other information the commission considers necessary to evaluate the effectiveness of  
 38 the proposal.

39 (3) An application under subsection (1)(b) of this section shall include:

40 (a) A description of the measure as implemented and the date on which the measure was im-  
 41 plemented;

42 (b) A description of the diversion facilities before the conservation measure was implemented  
 43 and the amount of water that was diverted at the facilities before the conservation measure was  
 44 implemented;

45 (c) The amount of water needed to supply existing rights after implementation of the conserva-

1 tion measure;

2 (d) The amount of water conserved by implementing the conservation measure;

3 (e) The proposed allocation and use of the conserved water if different from the allocation  
4 specified in ORS 537.470;

5 (f) The intended use of any water allocated to the applicant;

6 (g) The applicant's choice of priority date for the conserved water;

7 (h) Evidence that the measure was implemented within five years prior to the date of filing the  
8 application; and

9 (i) Any other information the commission considers necessary to evaluate the application.

10 (4) If a person proposes conservation measures within the boundaries of an irrigation district  
11 organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at  
12 the time the person submits the application, the person also must submit evidence that the district  
13 has approved the conservation application.

14 **SECTION 1404.** ORS 537.470 is amended to read:

15 537.470. (1) Upon receipt of an application for allocation of conserved water under ORS 537.465,  
16 the [*Water Resources Commission*] **Oregon Natural Resources Commission** shall give notice of  
17 receipt of the application in accordance with ORS 540.520 (5).

18 (2) The commission shall allocate conserved water as provided in subsection (3) of this section  
19 and approve modifications of water rights as provided in subsection (6) of this section. The com-  
20 mission may not allocate conserved water pursuant to an application under ORS 537.465 if the ap-  
21 plication is filed more than five years after the conservation measure was implemented.

22 (3) After determining the quantity of conserved water, if any, required to mitigate the effects  
23 on other water rights, the commission shall allocate 25 percent of the remaining conserved water  
24 to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the  
25 state or more than 25 percent of the funds used to finance the conservation measures comes from  
26 federal or state public sources. If more than 25 percent of the funds used to finance the conservation  
27 measures comes from federal or state public sources and is not subject to repayment, the commission  
28 shall allocate to the state a percentage equal to the percentage of public funds used to finance the  
29 conservation measures and allocate to the applicant a percentage equal to the percentage of other  
30 funds used to finance the conservation measures. If the commission determines that the water allo-  
31 cated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332  
32 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the  
33 state is not necessary to support in-stream flow purposes, it shall revert to the public for appropri-  
34 ation by the next user in priority. In no event, however, shall the applicant receive less than 25  
35 percent of the remaining conserved water unless the applicant proposes a higher allocation to the  
36 state.

37 (4) The commission shall notify the applicant and any other person requesting notice, of the  
38 action the commission intends to take under subsection (3) of this section. Any person objecting to  
39 the proposed allocation may file a protest requesting a contested case hearing before the commis-  
40 sion.

41 (5) The modification of water rights under an allocation of conserved water may not require a  
42 separate request for transfer under ORS 540.520.

43 (6) After the commission completes the allocation of conserved water under subsection (3) of this  
44 section, the commission shall issue orders for proposed new certificates covering the changes in the  
45 original water rights. Once the conservation project is completed, separate new certificates pre-

1 serving the previously established priority of rights shall be issued to cover the unaffected portion  
2 of the water rights and separate new certificates indicating the priority of rights as set forth in ORS  
3 537.485 shall be issued to cover the right to the use of the allocated water.

4 **SECTION 1405.** ORS 537.480 is amended to read:

5 537.480. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
6 adopt rules and standards necessary to carry out the provisions of ORS 537.455 to 537.500. The rules  
7 may include formulas or other criteria for evaluating the effects of allocation of water on existing  
8 rights and for determining whether, and to what extent, mitigation shall be required.

9 **SECTION 1406.** ORS 537.485 is amended to read:

10 537.485. (1) Notwithstanding any other provision of ORS chapter 536, 537, 538, 539, 540, 541, 542  
11 or 543, the priority of any right to the use of conserved water, including an in-stream water right,  
12 under an application submitted and approved by the [*Water Resources Commission*] **Oregon Natural**  
13 **Resources Commission** under ORS 537.465 and 537.470 shall be either the same as or one minute  
14 after the priority of the water right held by the person implementing the conservation measures.

15 (2) A person who implements a conservation measure may choose the priority of the water right  
16 for the conserved water in accordance with subsection (1) of this section. However, the priority date  
17 chosen must be the same for the portion of water allocated to the applicant and the portion of water  
18 allocated to the state.

19 **SECTION 1407.** ORS 537.525 is amended to read:

20 537.525. The Legislative Assembly recognizes, declares and finds that the right to reasonable  
21 control of all water within this state from all sources of water supply belongs to the public, and that  
22 in order to insure the preservation of the public welfare, safety and health it is necessary that:

23 (1) Provision be made for the final determination of relative rights to appropriate ground water  
24 everywhere within this state and of other matters with regard thereto through a system of regis-  
25 tration, permits and adjudication.

26 (2) Rights to appropriate ground water and priority thereof be acknowledged and protected, ex-  
27 cept when, under certain conditions, the public welfare, safety and health require otherwise.

28 (3) Beneficial use without waste, within the capacity of available sources, be the basis, measure  
29 and extent of the right to appropriate ground water.

30 (4) All claims to rights to appropriate ground water be made a matter of public record.

31 (5) Adequate and safe supplies of ground water for human consumption be assured, while con-  
32 serving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recre-  
33 ational and other beneficial uses.

34 (6) The location, extent, capacity, quality and other characteristics of particular sources of  
35 ground water be determined.

36 (7) Reasonably stable ground water levels be determined and maintained.

37 (8) Depletion of ground water supplies below economic levels, impairment of natural quality of  
38 ground water by pollution and wasteful practices in connection with ground water be prevented or  
39 controlled within practicable limits.

40 (9) Whenever wasteful use of ground water, impairment of or interference with existing rights  
41 to appropriate surface water, declining ground water levels, alteration of ground water temperatures  
42 that may adversely affect priorities or impair the long-term stability of the thermal properties of the  
43 ground water, interference among wells, thermal interference among wells, overdrawn of ground  
44 water supplies or pollution of ground water exists or impends, controlled use of the ground water  
45 concerned be authorized and imposed under voluntary joint action by the [*Water Resources Com-*

1 *mission*] **Oregon Natural Resources Commission** and the ground water users concerned whenever  
 2 possible, but by the commission under the police power of the state except as specified in ORS  
 3 537.796, when such voluntary joint action is not taken or is ineffective.

4 (10) Location, construction, depth, capacity, yield and other characteristics of and matters in  
 5 connection with wells be controlled in accordance with the purposes set forth in this section.

6 (11) All activities in the state that affect the quality or quantity of ground water shall be con-  
 7 sistent with the goal set forth in ORS 468B.155.

8 **SECTION 1408.** ORS 537.532 is amended to read:

9 537.532. (1) Notwithstanding any other provision of law, the injection into aquifers of water that  
 10 complies with drinking water standards established by the Oregon Health Authority under ORS  
 11 448.273 under an aquifer storage and recovery limited license or permit:

12 (a) Shall not be considered a waste, contaminant or pollutant;

13 (b) Shall be exempt from the requirement to obtain a discharge permit under ORS 468B.050 or  
 14 468B.053 or a concentration limit variance from the Department of Environmental Quality;

15 (c) Shall comply with all other applicable local, state or federal laws; and

16 (d) May be located within or outside an urban growth boundary in conformance with land use  
 17 laws.

18 (2) In order to continue to protect the high quality of Oregon's aquifers for present and future  
 19 uses, the Legislative Assembly recognizes the need to minimize concentrations of constituents in the  
 20 injection source water that are not naturally present in the aquifer. Each aquifer storage and re-  
 21 covery limited license or permit shall include conditions to minimize, to the extent technically fea-  
 22 sible, practical and cost-effective, the concentration of constituents in the injection source water  
 23 that are not naturally present in the aquifer. In no case may an aquifer storage and recovery limited  
 24 license or permit establish concentration limits for water to be injected in excess of the standards  
 25 established by the authority under ORS 448.273 or the maximum measurable levels established by  
 26 the Environmental Quality Commission under ORS 468B.165, whichever are more stringent.

27 (3) Except as otherwise provided, if the injection source water contains constituents regulated  
 28 under ORS 448.273 or 468B.165 that are detected at greater than 50 percent of the established levels,  
 29 the aquifer storage and recovery limited license or permit may require the permittee to employ, or  
 30 continue the employment of, technically feasible, practical and cost-effective methods to minimize  
 31 concentrations of such constituents in the injection source water. Constituents that have a second-  
 32 ary maximum contaminant level or constituents that are associated with disinfection of the water  
 33 may be injected into the aquifer up to the standards established under ORS 448.273.

34 (4) The [*Water Resources Department*] **Oregon Department of Natural Resources** may, based  
 35 upon valid scientific data, further limit certain constituents in the injection source water if the de-  
 36 partment finds the constituents will interfere with or pose a threat to the maintenance of the water  
 37 resources of the state for present or future beneficial uses.

38 **SECTION 1409.** ORS 537.534 is amended to read:

39 537.534. (1) In accordance with this section, the [*Water Resources Commission*] **Oregon Natural**  
 40 **Resources Commission** shall establish rules for the permitting and administration of aquifer stor-  
 41 age and recovery projects. The rules shall establish the [*Water Resources Department*] **Oregon De-**  
 42 **partment of Natural Resources** as the sole permitting agency for the projects, but the Department  
 43 of Environmental Quality and the Oregon Health Authority may comment on permits for a project  
 44 and recommend conditions to be included on the permit. When necessary, the applicant also shall  
 45 obtain land use and development approval from a local government.



1 (2) Notwithstanding the provisions of ORS 537.130, the [Water Resources] commission shall es-  
2 tablish by rule a procedure to allow a person to obtain a limited license to store and use water in-  
3 jected into an underground aquifer for aquifer storage and recovery testing purposes for a short  
4 term or fixed duration after the person complies with the notice provision set forth in ORS 537.144.  
5 The rules shall provide a 30-day public comment period before issuance of a limited license. The  
6 [Water Resources Department] **Oregon Department of Natural Resources** may attach conditions  
7 to the limited license regarding monitoring, sampling and rates of recovery up to 100 percent of the  
8 injection quantity. Aquifer storage and recovery under a limited license may be conditioned by the  
9 [Water Resources] department to protect existing ground water rights that rely upon the receiving  
10 aquifer and the injection source water. The [Water Resources] department may revoke or modify the  
11 limited license to use the stored water acquired under a limited license if that use causes injury to  
12 any other water right or to a minimum perennial streamflow. The [Water Resources Director] **Di-**  
13 **rector of the Oregon Department of Natural Resources** may issue a limited license for aquifer  
14 storage and recovery purposes for a term of not more than five years. The license may be renewed  
15 if the applicant demonstrates further testing is necessary.

16 (3) To obtain a limited license for aquifer storage and recovery, the applicant shall provide to  
17 the [Water Resources Department] **Oregon Department of Natural Resources**:

18 (a) Well construction information;

19 (b) Test results of the quality of the injection source water;

20 (c) Test results of the quality of the receiving aquifer water;

21 (d) The proposed injected water storage time, recovery rates and recovery schedule;

22 (e) Preliminary hydrogeologic information including a description of the aquifer, estimated flow  
23 direction and rate of movement, allocation of surface water, springs or wells within the area affected  
24 by aquifer storage and recovery wells;

25 (f) The fee established by rule by the commission pursuant to ORS 536.050 (1)(L); and

26 (g) Any other information required by rule of the commission.

27 (4) Only after completion of a test program under a limited license issued under subsection (3)  
28 of this section may the applicant apply for a permanent aquifer storage and recovery permit. Each  
29 application for an aquifer storage and recovery permit shall be accompanied by the fee set forth in  
30 ORS 536.050 for examination of an application for a permit to store water. The [Water Resources  
31 Department] **Oregon Department of Natural Resources** shall be the sole permitting agency for the  
32 project and may place conditions on the permit consistent with rules adopted by the commission,  
33 but the Department of Environmental Quality and the Oregon Health Authority may review, com-  
34 ment on and recommend conditions to be included on the permit. When necessary, the applicant  
35 shall obtain land use and development approval from a local government. Where existing water  
36 rights for the injection source water have been issued, the [Water Resources Department] **Oregon**  
37 **Department of Natural Resources** shall receive comments from interested parties or agencies, but  
38 the public interest review standards shall apply only to the matters raised by the aquifer storage  
39 and recovery permit application in the same manner as any new water right application, not to the  
40 underlying water rights. If new water rights for injection source water and aquifer storage and  
41 recovery are necessary, then the public interest review standards shall apply to the new permit  
42 application in the same manner as any new water right application. The [Water Resources] director  
43 may refer policy matters to the commission for decision.

44 (5) The commission shall adopt rules consistent with this section to implement an aquifer stor-  
45 age and recovery program. The rules shall include:

1 (a) Requirements for reporting and monitoring the aquifer storage and recovery project aquifer  
2 impacts and for constituents reasonably expected to be found in the injection source water.

3 (b) Provisions that allow any person operating an aquifer storage and recovery project under a  
4 permit, upon approval by the [*Water Resources Department*] **Oregon Department of Natural Re-  
5 sources**, to recover up to 100 percent of the water stored in the aquifer storage facility if valid  
6 scientific data gathered during operations under the limited license or permit demonstrate that the  
7 injected source water is not lost through migration or other means and that ground water otherwise  
8 present in the aquifer has not been irretrievably lost as a result of aquifer storage or retrieval. The  
9 [*Water Resources*] department may place such other conditions on withdrawal of stored water nec-  
10 essary to protect the public health and environment, including conditions allowing reconsideration  
11 of the permit to comply with ORS 537.532.

12 (c) The procedure for allowing the Department of Environmental Quality and the Oregon Health  
13 Authority to comment on and recommend permit conditions.

14 (6) The use of water under a permit as injection source water for an aquifer storage and re-  
15 covery project up to the limits allowed in subsection (5)(b) of this section shall not affect the priority  
16 date of the water right permit or otherwise affect the right evidenced by the permit.

17 (7) The holder of a permit for aquifer storage and recovery shall apply for a transfer or change  
18 of use if the use of recovered water is different from that which is allowed in the source water  
19 permit or certificate.

20 **SECTION 1410.** ORS 537.535 is amended to read:

21 537.535. (1) No person or public agency shall use or attempt to use any ground water, construct  
22 or attempt to construct any well or other means of developing and securing ground water or operate  
23 or permit the operation of any well owned or controlled by such person or public agency except  
24 upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule adopted  
25 by the [*Water Resources Commission*] **Oregon Natural Resources Commission** under ORS 537.505  
26 to 537.795 and 537.992.

27 (2) Except for those uses exempted under ORS 537.545, the use of ground water for any purpose,  
28 without a permit issued under ORS 537.625 or registration under ORS 537.605, is an unlawful ap-  
29 propriation of ground water.

30 **SECTION 1411.** ORS 537.545 is amended to read:

31 537.545. (1) No registration, certificate of registration, application for a permit, permit, certif-  
32 icate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is  
33 required for the use of ground water for:

34 (a) Stockwatering purposes;

35 (b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

36 (c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located  
37 within a critical ground water area established pursuant to ORS 537.730 to 537.740;

38 (d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

39 (e) Down-hole heat exchange purposes;

40 (f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day;

41 or

42 (g) Land application, so long as the ground water:

43 (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625  
44 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water  
45 for confined animal feeding purposes;

1 (B) Is reused for irrigation purposes and the period of irrigation is a period during which the  
2 reused water has never been discharged to the waters of the state; and

3 (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the  
4 State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal  
5 system or ORS 468B.215 to operate a confined animal feeding operation.

6 (2) A ground water use for a purpose that is exempt under subsection (1) of this section, to the  
7 extent that the use is beneficial, constitutes a right to appropriate ground water equal to that es-  
8 tablished by a ground water right certificate issued under ORS 537.700.

9 (3) Except for the use of water under subsection (1)(g) of this section, the [*Water Resources*  
10 *Commission*] **Oregon Natural Resources Commission** by rule may require any person or public  
11 agency using ground water for any such purpose to furnish information with regard to such ground  
12 water and the use thereof. For a use of water described in subsection (1)(g) of this section, the  
13 Department of Environmental Quality or the State Department of Agriculture shall provide to the  
14 [*Water Resources Department*] **Oregon Department of Natural Resources** a copy of the permit is-  
15 sued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse.  
16 The permit shall provide the information regarding the place of use of such water and the nature  
17 of the beneficial reuse.

18 (4) If it is necessary for the [*Water Resources Department*] **Oregon Department of Natural**  
19 **Resources** to regulate the use or distribution of ground water, including uses for purposes that are  
20 exempt under subsection (1) of this section, the department shall use as a priority date for the ex-  
21 empt uses the date indicated in the log for the well filed with the department under ORS 537.765  
22 or other documentation provided by the well owner showing when water use began.

23 (5) The owner of land on which a well is drilled to allow ground water use for a purpose that  
24 is exempt under subsection (1) of this section shall provide the [*Water Resources Department*]  
25 **Oregon Department of Natural Resources** with a map showing the exact location of the well on  
26 the tax lot. The landowner shall provide a map required by this subsection to the department no  
27 later than 30 days after the well is completed. The map must be prepared in accordance with stan-  
28 dards established by the department.

29 (6) The owner of land on which a well described in subsection (5) of this section is located shall  
30 file the exempt ground water use with the [*Water Resources Department*] **Oregon Department of**  
31 **Natural Resources** for recording. The filing must be accompanied by the fee described in sub-  
32 section (7) of this section. The filing must be received by the department no later than 30 days after  
33 the well is completed.

34 (7) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall collect  
35 a fee of \$300 for recording an exempt ground water use under subsection (6) of this section. Moneys  
36 from fees collected under this subsection shall be deposited to the credit of the [*Water Resources*  
37 *Department Water Right Operating Fund*] **Oregon Natural Resources Fund**. Notwithstanding ORS  
38 536.009, moneys deposited to the fund under this subsection shall be used for the purposes of eval-  
39 uating ground water supplies, conducting ground water studies, carrying out ground water moni-  
40 toring, processing ground water data and the administration and enforcement of this subsection and  
41 subsections (3), (5), (6) and (8) of this section.

42 (8) The [*Water Resources*] commission shall adopt rules to implement, administer and enforce  
43 subsections (5) to (7) of this section.

44 **SECTION 1412.** ORS 537.595 is amended to read:

45 537.595. Except as otherwise provided in ORS 537.545 or 537.575 or 537.585 and subject to de-

1 termination under ORS 537.670 to 537.695, when any person or public agency on August 3, 1955, is  
2 lawfully engaged in good faith in such construction, alteration or extension of a well for the appli-  
3 cation of ground water to beneficial use, the right to appropriate such ground water, upon com-  
4 pletion of such construction, alteration or extension and application of the ground water to  
5 beneficial use within a reasonable time fixed by the [*Water Resources Commission*] **Oregon Natural**  
6 **Resources Commission**, when registered under ORS 537.605 and 537.610, is recognized to the ex-  
7 tent of the beneficial use of the ground water.

8 **SECTION 1413.** ORS 537.605 is amended to read:

9 537.605. (1) Any person or public agency claiming any right to appropriate ground water under  
10 ORS 537.585 or 537.595, except for any purpose exempt under ORS 537.545, is entitled to receive  
11 from the [*Water Resources Commission*] **Oregon Natural Resources Commission** within three  
12 years after August 3, 1955, a certificate of registration as evidence of a right to appropriate ground  
13 water as provided in ORS 537.585 or 537.595. Failure of such person or public agency to file a reg-  
14 istration statement within such period creates a presumption that any such claim has been aban-  
15 doned.

16 (2) Upon receipt of a request for registration by any person or public agency referred to in  
17 subsection (1) of this section within the period specified, the commission shall provide such person  
18 or public agency with a separate registration statement for each well, which shall be completed and  
19 returned to the commission.

20 (3) Each registration statement shall be in a form prescribed by the commission, shall be under  
21 oath and shall contain:

22 (a) The name and post-office address of the registrant.

23 (b) The nature of the use by the registrant of the ground water upon which the claim of the  
24 registrant is based.

25 (c) The dates when the ground water was or will be first applied to beneficial use and the dates  
26 when construction of the well was begun and completed.

27 (d) The amount of ground water claimed.

28 (e) If the ground water is used or is to be used for irrigation purposes, a description of the lands  
29 irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre  
30 legal subdivision, the dates of reclamation of each such legal subdivision and the date when the  
31 ground water was or will be completely applied.

32 (f) The depth to the water table.

33 (g) The location of the well with reference to government survey corners or monuments or  
34 corners of recorded plats.

35 (h) The depth, diameter and type of the well, and the kind and amount of the casing.

36 (i) The capacity of the well and well pump in gallons per minute, and the horsepower of the well  
37 pump motor.

38 (j) If the ground water is artesian or other ground water not requiring pumping, the rate of flow  
39 in gallons in such manner as the commission may prescribe.

40 (k) The amount of ground water pumped or otherwise taken from the well each year.

41 (L) A copy of the log of the completed well, if such log is available.

42 (m) If the ground water supply is supplemental to an existing water supply, identification of any  
43 application for a permit, permit, certification or adjudicated right to appropriate water made or held  
44 by the registrant.

45 (n) Such other information as the commission considers necessary.

1 (4) Each registration statement shall be accompanied by maps, drawings and other data as the  
2 commission considers necessary.

3 (5) The commission may require that any registration statement be supplemented after any well  
4 is fully completed by a statement containing such additional information as the commission consid-  
5 ers necessary.

6 (6) Any person or public agency who failed to file a registration statement within the period set  
7 forth in subsection (1) of this section may file within one year after May 29, 1961, a petition with  
8 the commission requesting that the person be given an opportunity to rebut the presumption that  
9 the person has abandoned the claim. Upon the filing of such a petition the commission may schedule  
10 a hearing to take testimony and evidence on the date of well construction and the use of ground  
11 water or the commission may accept sworn statements in writing in support of such petition. No  
12 petition shall be denied without a public hearing. If it appears after hearing or from such sworn  
13 statements, that the person or public agency has a use of ground water that would be subject to  
14 determination under ORS 537.670 to 537.695 as defined in ORS 537.585 and 537.595, the commission  
15 shall issue an order authorizing the petitioner to file a registration statement as described under  
16 subsection (3) of this section. Upon receipt of the completed registration statement the commission  
17 shall issue to the registrant a certificate of registration, as provided in ORS 537.610.

18 **SECTION 1414.** ORS 537.610 is amended to read:

19 537.610. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
20 accept all registration statements referred to in ORS 537.605 completed and returned to the com-  
21 mission in proper form, endorse on the registration statement the date of the return and record each  
22 statement. Upon recording the statement, the commission shall issue to the registrant a certificate  
23 as evidence that the registration is completed.

24 (2) The issuance of the certificate of registration serves as prima facie evidence that the regis-  
25 trant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent  
26 and in the manner disclosed in the recorded registration statement and in the certificate of regis-  
27 tration.

28 (3) A certificate of registration issued under this section may not be construed as a final de-  
29 termination of any matter stated in the certificate of registration. The right of the registrant to  
30 appropriate ground water under a certificate of registration is subject to determination under ORS  
31 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right cer-  
32 tificate issued. A right to appropriate ground water under a certificate of registration has a tenta-  
33 tive priority from the date when the construction of the well was begun.

34 (4) The commission shall adopt by rule the process and standards by which the commission will  
35 recognize changes in the place of use, type of use or point of appropriation for claims to appropriate  
36 ground water registered under this section. The commission shall adopt fees not to exceed \$1,125 for  
37 actions taken to modify a certificate of registration.

38 **SECTION 1415.** ORS 537.610, as amended by section 15, chapter 819, Oregon Laws 2009, is  
39 amended to read:

40 537.610. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
41 accept all registration statements referred to in ORS 537.605 completed and returned to the com-  
42 mission in proper form, endorse on the registration statement the date of the return and record each  
43 statement. Upon recording the statement, the commission shall issue to the registrant a certificate  
44 as evidence that the registration is completed.

45 (2) The issuance of the certificate of registration serves as prima facie evidence that the regis-

1 trant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent  
2 and in the manner disclosed in the recorded registration statement and in the certificate of regis-  
3 tration.

4 (3) A certificate of registration issued under this section may not be construed as a final de-  
5 termination of any matter stated in the certificate of registration. The right of the registrant to  
6 appropriate ground water under a certificate of registration is subject to determination under ORS  
7 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right cer-  
8 tificate issued. A right to appropriate ground water under a certificate of registration has a tenta-  
9 tive priority from the date when the construction of the well was begun.

10 (4) The commission shall adopt by rule the process and standards by which the commission will  
11 recognize changes in the place of use, type of use or point of appropriation for claims to appropriate  
12 ground water registered under this section. The commission shall adopt fees not to exceed \$500 for  
13 actions taken to modify a certificate of registration.

14 **SECTION 1416.** ORS 537.615 is amended to read:

15 537.615. (1) Any person or public agency intending to acquire a wholly new right to appropriate  
16 ground water or to enlarge upon any existing right to appropriate ground water, except for any  
17 purpose exempt under ORS 537.545, shall apply to the [*Water Resources Department*] **Oregon De-**  
18 **partment of Natural Resources** for and be issued a permit before withdrawing or using the ground  
19 water.

20 (2) The application for a permit shall be in a form prescribed by the department and shall con-  
21 tain:

22 (a) The name and post-office address of the applicant.

23 (b) The nature of the use by the applicant of the ground water for which the application is made.

24 (c) The dates of the beginning and completion of the construction of any well or other means  
25 of developing and securing the ground water.

26 (d) The date when the ground water will be completely applied to the proposed beneficial use.

27 (e) The amount of ground water claimed.

28 (f) If the ground water is to be used for irrigation purposes, a description of the lands to be ir-  
29 rigated, giving the number of acres to be irrigated in each 40-acre legal subdivision.

30 (g) The depth to the water table, if known.

31 (h) The location of each well with reference to government survey corners or monuments or  
32 corners of recorded plats.

33 (i) The proposed depth, diameter and type of each well, and the kind and amount of the casing.

34 (j) The estimated capacity of each well and each well pump in gallons per minute, and the  
35 horsepower of each well pump motor.

36 (k) If the ground water is artesian or other ground water not requiring pumping, the rate of flow  
37 in gallons in such manner as the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
38 **mission** may prescribe.

39 (L) If the ground water supply is supplemental to an existing water supply, identification of any  
40 application for a permit, permit, certificate or adjudicated right to appropriate water made or held  
41 by the applicant.

42 (m) Any other information as the department considers necessary to evaluate the application.

43 (3) Each application for a permit shall be accompanied by any maps and drawings the depart-  
44 ment considers necessary.

45 (4) The map or drawing required to accompany the application shall be of sufficient quality and

1 scale to establish the location of the proposed point of diversion and the proposed place of use  
2 identified by tax lot, township, range, section and nearest quarter-quarter section along with a no-  
3 tation of the acreage of the proposed place of use, if appropriate. In addition, the department shall  
4 accept locational coordinate information, including latitude and longitude as established by a global  
5 positioning system. If the application is for a water right for a municipal use, the map need not  
6 identify the proposed place of use by tax lot.

7 (5) Each application for a permit to appropriate water shall be accompanied by the examination  
8 fee set forth in ORS 536.050 (1).

9 (6) If the proposed use of the water is for the operation of a chemical process mine as defined  
10 in ORS 517.953, the applicant shall provide the information required under this section as part of  
11 the consolidated application under ORS 517.952 to 517.989.

12 (7) Notwithstanding any provision of ORS chapter 183, an application for a permit to appropriate  
13 ground water shall be processed in the manner set forth in ORS 537.505 to 537.795. Nothing in ORS  
14 chapter 183 shall be construed to allow additional persons to participate in the process. To the ex-  
15 tent that any provision in ORS chapter 183 conflicts with a provision set forth in ORS 537.505 to  
16 537.795, the provisions in ORS 537.505 to 537.795 shall control.

17 **SECTION 1417.** ORS 537.620 is amended to read:

18 537.620. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
19 accept all applications for permits submitted under ORS 537.615 in proper form.

20 (2) Within 15 days after receiving the application, the department shall determine whether the  
21 application contains the information listed under ORS 537.615 (2) and is complete and not defective,  
22 including the payment of all fees required under ORS 537.615 (5). If the department determines that  
23 the application is incomplete or defective or that not all fees have been paid, the department shall  
24 return the fees paid and the application to the applicant to remedy the defect. If an application is  
25 complete and not defective, the department shall indorse on the application the date upon which the  
26 application was received at the department, which shall be the priority date for any water right is-  
27 sued in response to the application.

28 (3) Upon determining that an application is complete and not defective, the department shall  
29 determine whether the proposed use is prohibited by statute. If the proposed use is prohibited by  
30 statute, the department shall reject the application and return all fees to the applicant with an ex-  
31 planation of the statutory prohibition.

32 (4) If the proposed use is not prohibited by statute, the department shall undertake an initial  
33 review of the application and make a preliminary determination of:

34 (a) Whether the proposed use is restricted or limited by statute or rule or because the proposed  
35 use is located within a designated critical ground water area;

36 (b) The extent to which water is available from the proposed source during the times and in the  
37 amounts requested; and

38 (c) Any other issue the department identifies as a result of the initial review that may preclude  
39 approval of or restrict the proposed use.

40 (5) Upon completion of the initial review and no later than 30 days after determining an appli-  
41 cation to be complete and not defective as described in subsection (2) of this section, the department  
42 shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the  
43 date of mailing within which to notify the department to stop processing the application or to pro-  
44 ceed with the application. If the applicant notifies the department to stop processing the application,  
45 the department shall return the application and all fees paid in excess of \$200. If the department

1 receives no timely response from the applicant, the department shall proceed with the application.

2 (6) Within seven days after proceeding with the application under subsection (5) of this section,  
3 the department shall give public notice of the application in the weekly notice published by the de-  
4 partment. The notice shall include a request for comments on the application and information per-  
5 taining to how an interested person may obtain future notices about the application and a copy of  
6 the proposed final order.

7 (7) Within 30 days after the public notice under subsection (6) of this section, any person inter-  
8 ested in the application shall submit written comments to the department. Any person who asks to  
9 receive a copy of the department's proposed final order shall submit to the department the fee re-  
10 quired under ORS 536.050 (1)(p).

11 **SECTION 1418.** ORS 537.620, as amended by section 16, chapter 819, Oregon Laws 2009, is  
12 amended to read:

13 537.620. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
14 accept all applications for permits submitted under ORS 537.615 in proper form.

15 (2) Within 15 days after receiving the application, the department shall determine whether the  
16 application contains the information listed under ORS 537.615 (2) and is complete and not defective,  
17 including the payment of all fees required under ORS 537.615 (5). If the department determines that  
18 the application is incomplete or defective or that not all fees have been paid, the department shall  
19 return the fees paid and the application to the applicant to remedy the defect. If an application is  
20 complete and not defective, the department shall indorse on the application the date upon which the  
21 application was received at the department, which shall be the priority date for any water right is-  
22 sued in response to the application.

23 (3) Upon determining that an application is complete and not defective, the department shall  
24 determine whether the proposed use is prohibited by statute. If the proposed use is prohibited by  
25 statute, the department shall reject the application and return all fees to the applicant with an ex-  
26 planation of the statutory prohibition.

27 (4) If the proposed use is not prohibited by statute, the department shall undertake an initial  
28 review of the application and make a preliminary determination of:

29 (a) Whether the proposed use is restricted or limited by statute or rule or because the proposed  
30 use is located within a designated critical ground water area;

31 (b) The extent to which water is available from the proposed source during the times and in the  
32 amounts requested; and

33 (c) Any other issue the department identifies as a result of the initial review that may preclude  
34 approval of or restrict the proposed use.

35 (5) Upon completion of the initial review and no later than 30 days after determining an appli-  
36 cation to be complete and not defective as described in subsection (2) of this section, the department  
37 shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the  
38 date of mailing within which to notify the department to stop processing the application or to pro-  
39 ceed with the application. If the applicant notifies the department to stop processing the application,  
40 the department shall return the application and all fees paid in excess of \$150. If the department  
41 receives no timely response from the applicant, the department shall proceed with the application.

42 (6) Within seven days after proceeding with the application under subsection (5) of this section,  
43 the department shall give public notice of the application in the weekly notice published by the de-  
44 partment. The notice shall include a request for comments on the application and information per-  
45 taining to how an interested person may obtain future notices about the application and a copy of



1 the proposed final order.

2 (7) Within 30 days after the public notice under subsection (6) of this section, any person inter-  
 3 ested in the application shall submit written comments to the department. Any person who asks to  
 4 receive a copy of the department's proposed final order shall submit to the department the fee re-  
 5 quired under ORS 536.050 (1)(p).

6 **SECTION 1419.** ORS 537.621 is amended to read:

7 537.621. (1) Within 60 days after the [*Water Resources Department*] **Oregon Department of**  
 8 **Natural Resources** proceeds with the application under ORS 537.620 (5), the department shall  
 9 complete application review and issue a proposed final order approving or denying the application  
 10 or approving the application with modifications or conditions. The department may request the ap-  
 11 plicant to provide additional information needed to complete the review. If the department requests  
 12 additional information, the request shall be specific and shall be sent to the applicant by registered  
 13 mail. The department shall specify a date by which the information must be returned, which shall  
 14 be not less than 10 days after the department mails the request to the applicant. If the department  
 15 does not receive the information or a request for a time extension under ORS 537.627 by the date  
 16 specified in the request, the department may reject the application and may refund fees in accord-  
 17 ance with ORS 536.050 (4)(a). The time period specified by the department in a request for additional  
 18 information shall allow the department to comply with the 60-day time limit established by this  
 19 subsection.

20 (2) In reviewing the application under subsection (1) of this section, the department shall de-  
 21 termine whether the proposed use will ensure the preservation of the public welfare, safety and  
 22 health as described in ORS 537.525. The department shall presume that a proposed use will ensure  
 23 the preservation of the public welfare, safety and health if the proposed use is allowed in the ap-  
 24 plicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under  
 25 ORS 536.310 (12), if water is available, if the proposed use will not injure other water rights and if  
 26 the proposed use complies with rules of the [*Water Resources Commission*] **Oregon Natural Re-**  
 27 **sources Commission**. This shall be a rebuttable presumption and may be overcome by a prepon-  
 28 derance of evidence that either:

29 (a) One or more of the criteria for establishing the presumption are not satisfied; or

30 (b) The proposed use would not ensure the preservation of the public welfare, safety and health  
 31 as demonstrated in comments, in a protest under subsection (7) of this section or in a finding of the  
 32 department that shows:

33 (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would  
 34 be impaired or detrimentally affected; and

35 (B) Specifically how the identified aspect of the public welfare, safety and health under ORS  
 36 537.525 would be impaired or be adversely affected.

37 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include  
 38 but need not be limited to:

39 (a) Confirmation or modification of the preliminary determinations made in the initial review;

40 (b) A brief statement that explains the criteria considered relevant to the decision, including the  
 41 applicable basin program and the compatibility of the proposed use with applicable land use plans;

42 (c) An assessment of water availability and the amount of water necessary for the proposed use;

43 (d) An assessment of whether the proposed use would result in injury to existing water rights;

44 (e) An assessment of whether the proposed use would ensure the preservation of the public  
 45 welfare, safety and health as described in ORS 537.525;

1 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-  
2 cation;

3 (g) Whether the rebuttable presumption under subsection (2) of this section has been established;

4 (h) The date by which protests to the proposed final order must be received by the department;  
5 and

6 (i) The flow rate and duty of water allowed.

7 (4) In establishing the flow rate and duty of water allowed, the department may consider a  
8 general basin-wide standard, but first shall evaluate information submitted by the applicant to dem-  
9 onstrate the need for a flow rate and duty higher than the general standard. If the applicant pro-  
10 vides such information, the department shall authorize the requested rate and duty except upon  
11 specific findings related to the application to support a determination that a lesser amount is  
12 needed. If the applicant does not provide information to demonstrate the need for a flow rate and  
13 duty higher than the general basin-wide standard, the department may apply the general standards  
14 without specific findings related to the application.

15 (5) The department shall mail copies of the proposed final order to the applicant and to persons  
16 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also  
17 shall publish notice of the proposed final order by publication in the weekly notice published by the  
18 department.

19 (6) Any person who supports a proposed final order may request standing for purposes of par-  
20 ticipating in any contested case proceeding on the proposed final order or for judicial review of a  
21 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-  
22 lished under ORS 536.050 (1)(n).

23 (7) Any person may submit a protest against a proposed final order. A protest shall be in writing  
24 and shall include:

25 (a) The name, address and telephone number of the protestant;

26 (b) A description of the protestant's interest in the proposed final order, and if the protestant  
27 claims to represent the public interest, a precise statement of the public interest represented;

28 (c) A detailed description of how the action proposed in the proposed final order would impair  
29 or be detrimental to the protestant's interest;

30 (d) A detailed description of how the proposed final order is in error or deficient and how to  
31 correct the alleged error or deficiency;

32 (e) Any citation of legal authority supporting the protest, if known; and

33 (f) The protest fee required under ORS 536.050.

34 (8) Requests for standing and protests on the proposed final order shall be submitted within 45  
35 days after publication of the notice of the proposed final order in the weekly notice published by the  
36 department. Any person who asks to receive a copy of the department's final order shall submit to  
37 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
38 copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the  
39 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
40 536.050 (1)(n).

41 (9) Within 60 days after the close of the period for receiving protests, the [*Water Resources Di-*  
42 *rector*] **Director of the Oregon Department of Natural Resources** shall:

43 (a) Issue a final order as provided under ORS 537.625 (1); or

44 (b) Schedule a contested case hearing if a protest has been submitted and if:

45 (A) Upon review of the issues, the director finds that there are significant disputes related to

1 the proposed use of water; or

2 (B) Within 30 days after the close of the period for submitting protests, the applicant requests  
3 a contested case hearing.

4 **SECTION 1420.** ORS 537.621, as amended by section 17, chapter 819, Oregon Laws 2009, is  
5 amended to read:

6 537.621. (1) Within 60 days after the [*Water Resources Department*] **Oregon Department of**  
7 **Natural Resources** proceeds with the application under ORS 537.620 (5), the department shall  
8 complete application review and issue a proposed final order approving or denying the application  
9 or approving the application with modifications or conditions. The department may request the ap-  
10 plicant to provide additional information needed to complete the review. If the department requests  
11 additional information, the request shall be specific and shall be sent to the applicant by registered  
12 mail. The department shall specify a date by which the information must be returned, which shall  
13 be not less than 10 days after the department mails the request to the applicant. If the department  
14 does not receive the information or a request for a time extension under ORS 537.627 by the date  
15 specified in the request, the department may reject the application and may refund fees in accord-  
16 ance with ORS 536.050 (3)(a). The time period specified by the department in a request for additional  
17 information shall allow the department to comply with the 60-day time limit established by this  
18 subsection.

19 (2) In reviewing the application under subsection (1) of this section, the department shall de-  
20 termine whether the proposed use will ensure the preservation of the public welfare, safety and  
21 health as described in ORS 537.525. The department shall presume that a proposed use will ensure  
22 the preservation of the public welfare, safety and health if the proposed use is allowed in the ap-  
23 plicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under  
24 ORS 536.310 (12), if water is available, if the proposed use will not injure other water rights and if  
25 the proposed use complies with rules of the [*Water Resources Commission*] **Oregon Natural Re-**  
26 **sources Commission**. This shall be a rebuttable presumption and may be overcome by a prepon-  
27 derance of evidence that either:

28 (a) One or more of the criteria for establishing the presumption are not satisfied; or

29 (b) The proposed use would not ensure the preservation of the public welfare, safety and health  
30 as demonstrated in comments, in a protest under subsection (7) of this section or in a finding of the  
31 department that shows:

32 (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would  
33 be impaired or detrimentally affected; and

34 (B) Specifically how the identified aspect of the public welfare, safety and health under ORS  
35 537.525 would be impaired or be adversely affected.

36 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include  
37 but need not be limited to:

38 (a) Confirmation or modification of the preliminary determinations made in the initial review;

39 (b) A brief statement that explains the criteria considered relevant to the decision, including the  
40 applicable basin program and the compatibility of the proposed use with applicable land use plans;

41 (c) An assessment of water availability and the amount of water necessary for the proposed use;

42 (d) An assessment of whether the proposed use would result in injury to existing water rights;

43 (e) An assessment of whether the proposed use would ensure the preservation of the public  
44 welfare, safety and health as described in ORS 537.525;

45 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-

1 cation;

2 (g) Whether the rebuttable presumption under subsection (2) of this section has been established;

3 (h) The date by which protests to the proposed final order must be received by the department;  
4 and

5 (i) The flow rate and duty of water allowed.

6 (4) In establishing the flow rate and duty of water allowed, the department may consider a  
7 general basin-wide standard, but first shall evaluate information submitted by the applicant to dem-  
8 onstrate the need for a flow rate and duty higher than the general standard. If the applicant pro-  
9 vides such information, the department shall authorize the requested rate and duty except upon  
10 specific findings related to the application to support a determination that a lesser amount is  
11 needed. If the applicant does not provide information to demonstrate the need for a flow rate and  
12 duty higher than the general basin-wide standard, the department may apply the general standards  
13 without specific findings related to the application.

14 (5) The department shall mail copies of the proposed final order to the applicant and to persons  
15 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also  
16 shall publish notice of the proposed final order by publication in the weekly notice published by the  
17 department.

18 (6) Any person who supports a proposed final order may request standing for purposes of par-  
19 ticipating in any contested case proceeding on the proposed final order or for judicial review of a  
20 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-  
21 lished under ORS 536.050 (1)(n).

22 (7) Any person may submit a protest against a proposed final order. A protest shall be in writing  
23 and shall include:

24 (a) The name, address and telephone number of the protestant;

25 (b) A description of the protestant's interest in the proposed final order, and if the protestant  
26 claims to represent the public interest, a precise statement of the public interest represented;

27 (c) A detailed description of how the action proposed in the proposed final order would impair  
28 or be detrimental to the protestant's interest;

29 (d) A detailed description of how the proposed final order is in error or deficient and how to  
30 correct the alleged error or deficiency;

31 (e) Any citation of legal authority supporting the protest, if known; and

32 (f) For persons other than the applicant, the protest fee required under ORS 536.050.

33 (8) Requests for standing and protests on the proposed final order shall be submitted within 45  
34 days after publication of the notice of the proposed final order in the weekly notice published by the  
35 department. Any person who asks to receive a copy of the department's final order shall submit to  
36 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
37 copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the  
38 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
39 536.050 (1)(n).

40 (9) Within 60 days after the close of the period for receiving protests, the [*Water Resources Di-*  
41 *rector*] **Director of the Oregon Department of Natural Resources** shall:

42 (a) Issue a final order as provided under ORS 537.625 (1); or

43 (b) Schedule a contested case hearing if a protest has been submitted and if:

44 (A) Upon review of the issues, the director finds that there are significant disputes related to  
45 the proposed use of water; or

1 (B) Within 30 days after the close of the period for submitting protests, the applicant requests  
2 a contested case hearing.

3 **SECTION 1421.** ORS 537.622 is amended to read:

4 537.622. (1) Within 45 days after the [*Water Resources Director*] **Director of the Oregon De-**  
5 **partment of Natural Resources** schedules a contested case hearing under ORS 537.621 (9), the  
6 [*Water Resources Department*] **Oregon Department of Natural Resources** shall hold the contested  
7 case hearing. The issues to be considered in the contested case hearing shall be limited to issues  
8 identified by the administrative law judge.

9 (2) Notwithstanding the provisions of ORS chapter 183 pertaining to contested case proceedings,  
10 the parties to any contested case hearing initiated under this section shall be limited to:

11 (a) The applicant;

12 (b) Any person who timely filed a protest; and

13 (c) Any person who timely filed a request for standing under ORS 537.621 (6) and who requests  
14 to intervene in the contested case hearing prior to the start of the proceeding.

15 (3) The contested case proceeding shall be conducted in accordance with the applicable pro-  
16 visions of ORS chapter 183 except:

17 (a) As provided in subsections (1) and (2) of this section; and

18 (b) An interlocutory appeal under ORS 183.480 (3) shall not be allowed.

19 (4) Each person submitting a protest or a request for standing shall raise all reasonably  
20 ascertainable issues and submit all reasonably available arguments supporting the person's position  
21 by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or  
22 in a hearing or failure to provide sufficient specificity to afford the [*Water Resources*] department  
23 an opportunity to respond to the issue precludes judicial review based on that issue.

24 **SECTION 1422.** ORS 537.625 is amended to read:

25 537.625. (1) If, after the contested case hearing or, if a hearing is not held, after the close of the  
26 period allowed to file a protest, the [*Water Resources Director*] **Director of the Oregon Depart-**  
27 **ment of Natural Resources** determines that the proposed use does not ensure the preservation of  
28 the public welfare, safety and health as described in ORS 537.525, the director shall issue a final  
29 order rejecting the application or modifying the proposed final order as necessary to ensure the  
30 preservation of the public welfare, safety and health as described in ORS 537.525. If, after the con-  
31 tested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest,  
32 the director determines that the proposed use would ensure the preservation of the public welfare,  
33 safety and health as described in ORS 537.525, the director shall issue a final order approving the  
34 application or otherwise modifying the proposed final order. A final order may set forth any of the  
35 provisions or restrictions to be included in the permit concerning the use, control and management  
36 of the water to be appropriated for the project.

37 (2) If a contested case hearing is not held:

38 (a) Where the final order modifies the proposed final order, the applicant may request and the  
39 [*Water Resources Department*] **Oregon Department of Natural Resources** shall schedule a con-  
40 tested case hearing as provided under ORS 537.622 (3) by submitting the information required for a  
41 protest under ORS 537.621 (7) within 14 days after the director issues the final order. However, the  
42 issues on which a contested case hearing may be requested and conducted under this paragraph  
43 shall be limited to issues based on the modifications to the proposed final order.

44 (b) Only the applicant or a protestant may appeal the provisions of the final order in the manner  
45 established in ORS chapter 183 for appeal of order other than contested cases.

1 (3) If the presumption of public welfare, safety and health under ORS 537.621 (2) is overcome,  
 2 then before issuing a final order, the director or the [*Water Resources Commission*] **Oregon Natural**  
 3 **Resources Commission**, if applicable, shall make the final determination of whether the proposed  
 4 use or the proposed use as modified in the proposed final order would preserve the public welfare,  
 5 safety and health as described in ORS 537.525 by considering:

6 (a) The conservation of the highest use of the water for all purposes, including irrigation, do-  
 7 mestic use, municipal water supply, power development, public recreation, protection of commercial  
 8 and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic at-  
 9 traction or any other beneficial use to which the water may be applied for which it may have a  
 10 special value to the public.

11 (b) The maximum economic development of the waters involved.

12 (c) The control of the waters of this state for all beneficial purposes, including drainage, sani-  
 13 tation and flood control.

14 (d) The amount of waters available for appropriation for beneficial use.

15 (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters  
 16 involved.

17 (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this  
 18 state, and the means necessary to protect such rights.

19 (g) The state water resources policy.

20 (4) Upon issuing a final order, the [*Water Resources*] department shall notify the applicant and  
 21 each person who submitted written comments or protests or otherwise requested notice of the final  
 22 order and send a copy of the final order to any person who requested a copy and paid the fee re-  
 23 quired under ORS 536.050 (1)(p).

24 (5) A right to appropriate ground water under a permit has a priority from the date when the  
 25 application was filed with the department.

26 (6) If the use of water under the permit is for operation of a chemical process mine as defined  
 27 in ORS 517.952:

28 (a) Review of the application and approval or denial of the application shall be coordinated with  
 29 the consolidated application process under ORS 517.952 to 517.989. However, such review and ap-  
 30 proval or denial shall take into consideration all policy considerations for the appropriation of water  
 31 as set forth in this chapter and ORS chapter 536.

32 (b) The permit may be issued for exploration under ORS 517.702 to 517.740, but the permit shall  
 33 be conditioned on the applicant's compliance with the consolidated application process.

34 (c) The permit shall include a condition that additional conditions may be added to the use of  
 35 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS  
 36 540.520 and 540.530 to use for a chemical process mine operation.

37 **SECTION 1423.** ORS 537.626 is amended to read:

38 537.626. (1) Within 20 days after the [*Water Resources Director*] **Director of the Oregon De-**  
 39 **partment of Natural Resources** issues a final order under ORS 537.625 after the conclusion of a  
 40 contested case hearing, any party may file with the [*Water Resources Commission*] **Oregon Natural**  
 41 **Resources Commission** exceptions to the order.

42 (2) The commission shall issue a modified order, if allowed, or deny the exceptions within 60  
 43 days after close of the exception period under subsection (1) of this section.

44 **SECTION 1424.** ORS 537.627 is amended to read:

45 537.627. (1) Except as provided in subsection (2) of this section, the [*Water Resources*

1 *Department]* **Oregon Department of Natural Resources** shall issue a final order or schedule a  
 2 contested case hearing on an application for a water right referred to in ORS 537.615 within 180  
 3 days after the department proceeds with the application under ORS 537.620 (5).

4 (2) At the request of the applicant, the department may extend the 180-day period set forth in  
 5 subsection (1) of this section for a reasonable period of time.

6 (3) If the applicant does not request an extension under subsection (2) of this section and the  
 7 department fails to issue a proposed final order or schedule a contested case hearing on an appli-  
 8 cation for a water right within 180 days after the department proceeds with the application under  
 9 ORS 537.620 (5), the applicant may apply in the Circuit Court for Marion County for a writ of  
 10 mandamus to compel the department to issue a final order or schedule a contested case hearing on  
 11 an application for a water right. The writ of mandamus shall compel the department to issue a water  
 12 right permit, unless the department shows by affidavit that to issue a permit may result in harm to  
 13 an existing water right holder.

14 **SECTION 1425.** ORS 537.628 is amended to read:

15 537.628. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** may  
 16 approve an application for less ground water than applied for or upon terms, conditions and limita-  
 17 tions necessary for the protection of the public welfare, safety and health. In any event the depart-  
 18 ment shall not approve the application for more ground water than is applied for or than can be  
 19 applied to a beneficial use. No application shall be approved when the same will deprive those  
 20 having prior rights of appropriation for a beneficial use of the amount of water to which they are  
 21 lawfully entitled.

22 (2) If a contested case hearing is held, the department shall issue a final order:

23 (a) Within 270 days after scheduling the hearing for a contested case proceeding that involves  
 24 three or more parties not including the department; and

25 (b) Within 180 days after scheduling the hearing for all other contested case proceedings.

26 **SECTION 1426.** ORS 537.629 is amended to read:

27 537.629. (1) When an application discloses the probability of wasteful use or undue interference  
 28 with existing wells or that any proposed use or well will impair or substantially interfere with ex-  
 29 isting rights to appropriate surface water by others, or that any proposed use or well will impair  
 30 or substantially interfere with existing rights to appropriate ground water for the beneficial use of  
 31 the water for its thermal characteristics, the [*Water Resources Department*] **Oregon Department**  
 32 **of Natural Resources** may impose conditions or limitations in the permit to prevent the same or  
 33 reject the same after hearing, or, in the department's discretion, request the [*Water Resources*  
 34 *Commission*] **Oregon Natural Resources Commission** to initiate a rulemaking proceeding to de-  
 35 clare the affected area a critical ground water area under ORS 537.730 to 537.740.

36 (2)(a) When an application discloses the probability that a proposed use or well will impair or  
 37 interfere with the ability to extract heat from a well with a bottom hole temperature of at least 250  
 38 degrees Fahrenheit, the department may:

39 (A) Approve the permit;

40 (B) Impose conditions or limitations in the permit to prevent the probable interference or  
 41 impairment;

42 (C) After a hearing under ORS 537.622, reject the application; or

43 (D) Request the commission to initiate a rulemaking proceeding to declare the affected area a  
 44 critical ground water area under ORS 537.730 to 537.740.

45 (b) In deciding whether to issue, deny or condition a permit under this subsection, the depart-

1 ment shall consider any orders or permits applicable to the ground water reservoir issued by the  
 2 [State Geologist or the governing board of the State Department of Geology and Mineral Industries]  
 3 **Director of the Oregon Department of Natural Resources or the department** under ORS  
 4 chapter 522.

5 **SECTION 1427.** ORS 537.630 is amended to read:

6 537.630. (1) Except for the holder of a permit for municipal use, the holder of a permit issued  
 7 pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and  
 8 securing the ground water with reasonable diligence and complete the construction within a rea-  
 9 sonable time fixed in the permit by the [*Water Resources Department*] **Oregon Department of Na-**  
 10 **tural Resources**, not to exceed five years after the date of approval of the application. However,  
 11 the department, for good cause shown, shall order and allow an extension of time, including an ex-  
 12 tension beyond the five-year period, for the completion of the well or other means of developing and  
 13 securing the ground water or for complete application of water to beneficial use. In determining the  
 14 extension, the department shall give due weight to the considerations described under ORS 539.010  
 15 (5) and to whether other governmental requirements relating to the project have significantly de-  
 16 layed completion of construction or perfection of the right.

17 (2) The holder of a permit for municipal use shall commence and complete the construction of  
 18 any proposed works within 20 years from the date on which the permit for municipal use is issued  
 19 under ORS 537.625. The construction must proceed with reasonable diligence and be completed  
 20 within the time specified in the permit, not to exceed 20 years. However, the department may order  
 21 and allow an extension of time to complete construction or to perfect a water right beyond the time  
 22 specified in the permit under the following conditions:

23 (a) The holder shows good cause. In determining the extension, the department shall give due  
 24 weight to the considerations described under ORS 539.010 (5) and to whether other governmental  
 25 requirements relating to the project have significantly delayed completion of construction or per-  
 26 fection of the right;

27 (b) The extension of time is conditioned to provide that the holder may divert water beyond the  
 28 maximum rate diverted for beneficial use before the extension only upon approval by the department  
 29 of a water management and conservation plan; and

30 (c) For the first extension issued after June 29, 2005, for a permit for municipal use issued before  
 31 November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned  
 32 to maintain, in the portions of waterways affected by water use under the permit, the persistence  
 33 of fish species listed as sensitive, threatened or endangered under state or federal law. The de-  
 34 partment shall base its finding on existing data [*and upon the advice of the State Department of Fish*  
 35 *and Wildlife*]. An existing fish protection agreement between the permit holder and a state or federal  
 36 agency that includes conditions to maintain the persistence of any listed fish species in the affected  
 37 portion of the waterway is conclusive for purposes of the finding.

38 (3) If the construction of any well or other means of developing and securing the ground water  
 39 is completed after the date of approval of the application for a permit under ORS 537.625, within  
 40 30 days after the completion, or if the construction is completed before the date of approval, within  
 41 30 days after the date of approval, the permit holder shall file a certificate of completion with the  
 42 [*Water Resources*] department, disclosing:

43 (a) The depth to the water table;

44 (b) The depth, diameter and type of each well, and the kind and amount of the casing;

45 (c) The capacity of the well pump in gallons per minute and the drawdown thereof;



1 (d) The identity of the record owner of any property that was described in the application for  
2 a permit under ORS 537.625 but is not included in the certificate of completion; and

3 (e) Any other information the department considers necessary.

4 (4) Upon completion of beneficial use necessary to secure the ground water as required under  
5 this section, the permit holder shall hire a water right examiner certified under ORS 537.798 to  
6 survey the appropriation. Within one year after applying the water to beneficial use or the beneficial  
7 use date allowed in the permit, the permit holder shall submit the survey as required by the [*Water*  
8 *Resources*] department to the department along with the certificate of completion required under  
9 subsection (3) of this section. If any property described in the permit is not included in the request  
10 for a water right certificate, the permittee shall state the identity of the record owner of that  
11 property.

12 (5) After the department has received a certificate of completion and a copy of the survey as  
13 required by subsections (3) and (4) of this section that show, to the satisfaction of the department,  
14 that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to  
15 537.795 and 537.992, the department shall issue a ground water right certificate of the same char-  
16 acter as that described in ORS 537.700. The certificate shall be recorded and transmitted to the  
17 applicant as provided in ORS 537.700.

18 (6) The procedure for cancellation of a permit shall be as provided in ORS 537.260.

19 (7) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under sub-  
20 section (5) of this section for a supplemental water right, the permittee shall have a facility capable  
21 of handling the full rate and duty of water requested from the supplemental source and be otherwise  
22 ready, willing and able to use the amount of water requested, up to the amount of water approved  
23 in the water right permit. To obtain a certificate for a supplemental water right, the permittee is  
24 not required to have actually used water from the supplemental source if:

25 (a) Water was available from the source of the primary water right and the primary water right  
26 was used pursuant to the terms of the primary water right; or

27 (b) The nonuse of water from the supplemental source occurred during a period of time within  
28 which the exercise of the supplemental water right permit was not necessary due to climatic con-  
29 ditions.

30 **SECTION 1428.** ORS 537.635 is amended to read:

31 537.635. (1) Any certificate of registration issued under ORS 537.610 or permit issued under ORS  
32 537.625 may be assigned, subject to the conditions of the certificate of registration or permit, but  
33 no such assignment shall be binding, except upon the parties to the assignment, unless filed for re-  
34 cord in the [*Water Resources Department*] **Oregon Department of Natural Resources.**

35 (2) An assignment of an application filed under ORS 537.615 or a permit issued under ORS  
36 537.625 and filed for record with the [*Water Resources*] department shall identify the current record  
37 owners of all property described in the application or permit. The assignor shall furnish proof ac-  
38 ceptable to the department that notice of the assignment has been given or attempted for each  
39 identified property owner not a party to the assignment.

40 **SECTION 1429.** ORS 537.665 is amended to read:

41 537.665. (1) Upon its own motion, or upon the request of another state agency or local govern-  
42 ment, the [*Water Resources Commission*] **Oregon Natural Resources Commission**, within the limi-  
43 tations of available resources, shall proceed as rapidly as possible to identify and define tentatively  
44 the location, extent, depth and other characteristics of each ground water reservoir in this state,  
45 and shall assign to each a distinctive name or number or both as a means of identification. The

1 commission may make any investigation and gather all data and information essential to a proper  
2 understanding of the characteristics of each ground water reservoir and the relative rights to ap-  
3 propriate ground water from each ground water reservoir.

4 (2) In identifying the characteristics of each ground water reservoir under subsection (1) of this  
5 section, the commission shall coordinate its activities with activities of the Department of Environ-  
6 mental Quality under ORS 468B.185 in order that the final characterization may include an assess-  
7 ment of both ground water quality and ground water quantity.

8 (3) Before the commission makes a final determination of boundaries and depth of any ground  
9 water reservoir, the [*Water Resources Director*] **Director of the Oregon Department of Natural**  
10 **Resources** shall proceed to make a final determination of the rights to appropriate the ground wa-  
11 ter of the ground water reservoir under ORS 537.670 to 537.695.

12 (4) The commission shall forward copies of all information acquired from an assessment con-  
13 ducted under this section to the central repository of information about Oregon's ground water re-  
14 source established pursuant to ORS 468B.167.

15 **SECTION 1430.** ORS 537.670 is amended to read:

16 537.670. (1) The [*Water Resources Director*] **Director of the Oregon Department of Natural**  
17 **Resources** upon the motion of the director or, in the discretion of the director, upon receipt of a  
18 petition therefor by any one or more appropriators of ground water from such ground water reser-  
19 voir, may proceed to make a final determination of the rights to appropriate the ground water of  
20 any ground water reservoir in this state.

21 (2) The director shall prepare a notice of intent to begin a determination referred to in sub-  
22 section (1) of this section. The notice shall set forth a place and time when the director or the au-  
23 thorized assistant of the director shall begin the taking of testimony as to the rights of the various  
24 claimants to appropriate the ground water of the ground water reservoir and as to the boundaries  
25 and depth thereof. A copy of the notice shall be delivered to each person or public agency known  
26 to the director from an examination of the records in the [*Water Resources Department*] **Oregon**  
27 **Department of Natural Resources** to be a claimant to a right to appropriate ground water of the  
28 ground water reservoir or any surface water within the area in which the ground water reservoir  
29 is located. The notice shall also be published in at least one issue each week for at least two con-  
30 secutive weeks in a newspaper of general circulation published in each county in which the ground  
31 water reservoir or any part thereof is located. If the ground water reservoir is located in whole or  
32 in part within the limits of any city, the notice shall be published in at least one issue each week  
33 for at least two consecutive weeks in a newspaper of general circulation published in the city, if  
34 any, and copies of the notice shall be delivered to the mayor or chairperson of the governing body  
35 of the city. Copies of the notice shall be delivered and the last publication date of published notices  
36 shall be at least 30 days prior to the taking of any testimony.

37 (3) The director shall enclose with each copy of the notice referred to in subsection (2) of this  
38 section delivered to each person or public agency known to be a claimant to a right to appropriate  
39 ground water of the ground water reservoir a blank form on which such claimant shall present in  
40 writing all the particulars necessary for determination of the right of the claimant as may be pre-  
41 scribed by the director. The director may require each claimant to certify to the statements of the  
42 claimant under oath, and the director or the authorized assistant of the director may administer  
43 such oaths.

44 **SECTION 1431.** ORS 537.675 is amended to read:

45 537.675. (1) Whenever the [*Water Resources Director*] **Director of the Oregon Department of**

1 **Natural Resources** has reason to believe that two or more ground water reservoirs overlie one  
2 another wholly or in part, the director may proceed to a final determination of the rights to appro-  
3 priate the ground water of each of such ground water reservoirs in the same proceeding under ORS  
4 537.670 to 537.695.

5 (2) The director may include in a determination proceeding under ORS 537.670 to 537.695 a de-  
6 termination of a critical ground water area under ORS 537.730 to 537.740.

7 **SECTION 1432.** ORS 537.685 is amended to read:

8 537.685. As soon as practicable after compilation of the evidence obtained in proceedings under  
9 ORS 537.665 to 537.680, the [*Water Resources Director*] **Director of the Oregon Department of**  
10 **Natural Resources** shall make [*and cause to be entered of record in the Water Resources*  
11 *Department*] **and record** findings of fact and an order of determination, determining and establishing  
12 the several rights to appropriate the ground water of the ground water reservoir. The findings of  
13 fact and order of determination shall also include:

14 (1) The boundaries and depth of each ground water reservoir.

15 (2) The lowest permissible water level in each ground water reservoir.

16 (3) The location, extent, quality and other pertinent characteristics of the ground water supply.

17 (4) The serviceable methods of withdrawal of the ground water from each ground water reser-  
18 voir.

19 (5) Rules for controlling the use of the ground water from each ground water reservoir.

20 (6) Such general or special rules or restrictions with respect to the construction, operation and  
21 protection of wells and the withdrawal of ground water thereby as in the judgment of the director  
22 the public welfare, health and safety may require.

23 (7) The name and post-office address of each claimant.

24 (8) The nature of the use of the ground water allowed for each well, together with the maximum  
25 permissible use of the ground water, the place of use of the ground water and the date of priority  
26 of each use.

27 (9) If the ground water is used or is to be used for irrigation purposes, a description of the lands  
28 irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre  
29 legal subdivision.

30 (10) The location of each well with reference to government survey corners or monuments or  
31 corners of recorded plats.

32 (11) The depth, diameter and type of each well, the kind and amount of the casing, the capacity  
33 of each well in gallons per minute and such other information concerning each well as in the opinion  
34 of the director may be pertinent.

35 **SECTION 1433.** ORS 537.690 is amended to read:

36 537.690. The evidence relied upon by the [*Water Resources Director*] **Director of the Oregon**  
37 **Department of Natural Resources** in the entry of the findings of fact and order of determination  
38 under ORS 537.685, together with a copy of such findings and order, shall be certified to by the di-  
39 rector and filed with the clerk of the circuit court wherein the determination is to be heard, which  
40 shall be the circuit court of any county in which the ground water reservoir or any part thereof is  
41 located. A certified copy of the findings of fact and the order of determination shall also be filed  
42 with the county clerk of every other county in which the ground water reservoir or any part thereof  
43 is located. Thereafter, proceedings shall be had as nearly as possible in the same manner as pro-  
44 vided in ORS 539.130 (2), (3) and (4), 539.150, 539.160, 539.170, 539.180, 539.190 and 539.210 for the  
45 final adjudication of the relative rights of the various claimants to the waters of any surface stream.

1        **SECTION 1434.** ORS 537.695 is amended to read:

2        537.695. The determination of the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** under ORS 537.685, as confirmed or modified by the circuit court or  
3        Supreme Court, shall be a conclusive adjudication as to all claimants of rights to appropriate the  
4        ground water of each ground water reservoir included within the order of determination.  
5

6        **SECTION 1435.** ORS 537.700 is amended to read:

7        537.700. Upon the final determination under ORS 537.670 to 537.695 of the rights to appropriate  
8        the ground water of any ground water reservoir, the [*Water Resources Director*] **Director of the**  
9        **Oregon Department of Natural Resources** shall issue to each person or public agency represented in the determination proceedings and who is determined to have such a right a ground water  
10       right certificate, setting forth the name and post-office address of the owner of the right; the priority  
11       of the date, extent and purpose of the right; and, if the ground water is for irrigation purposes, a  
12       description of the legal subdivisions of land to which the ground water is appurtenant.  
13

14       **SECTION 1436.** ORS 537.720 is amended to read:

15       537.720. Whenever, after notice to and opportunity to be heard by such holder, the [*Water Resources Commission*] **Oregon Natural Resources Commission** finds that the holder of any permit  
16       or certificate of registration issued under ORS 537.505 to 537.795 and 537.992 is willfully violating  
17       any provision of the permit or certificate of registration or any provision of ORS 537.505 to 537.795  
18       and 537.992, the commission may cancel or suspend the permit or certificate of registration or impose conditions on the future use thereof to prevent such violation.  
19  
20

21       **SECTION 1437.** ORS 537.730 is amended to read:

22       537.730. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** by rule  
23       may designate an area of the state a critical ground water area if:

24       (a) Ground water levels in the area in question are declining or have declined excessively;

25       (b) The [*Water Resources Department*] **Oregon Department of Natural Resources** finds a pattern of substantial interference between wells within the area in question;  
26

27       (c) The department finds a pattern of interference or potential interference between wells of  
28       ground water claimants or appropriators within the area in question with the production of  
29       geothermal resources from an area regulated under ORS chapter 522;

30       (d) The department finds a pattern of substantial interference between wells within the area in  
31       question and:

32       (A) An appropriator of surface water whose water right has an earlier priority date; or

33       (B) A restriction imposed on surface water appropriation or a minimum perennial streamflow  
34       that has an effective date earlier than the priority date of the ground water appropriation;

35       (e) The available ground water supply in the area in question is being or is about to be over-  
36       drawn;

37       (f) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety; or

38       (g) Ground water temperatures in the area in question are expected to be, are being or have  
39       been substantially altered except as specified in ORS 537.796.

40       (2) The proceeding to designate a critical ground water area shall be conducted according to the  
41       provisions under ORS chapter 183 applicable to the adoption of rules by an agency, except that a  
42       hearing on a critical ground water declaration shall occur at least 60 days after notice has been  
43       given.  
44

45       (3) In addition to the notice requirements under ORS 183.335, the department shall give notice

1 by regular mail to:

2 (a) The owners of record of all ground water registrations, permits and certificates for water  
3 use within the affected area; and

4 (b) Each water well constructor licensed under ORS 537.747.

5 (4) If the department satisfies the notice requirements under ORS 183.335 and subsection (3) of  
6 this section, a person shall not contest a critical ground water area designation on grounds of fail-  
7 ure to receive notice by regular mail.

8 **SECTION 1438.** ORS 537.735 is amended to read:

9 537.735. (1) A rule adopted by the [*Water Resources Commission*] **Oregon Natural Resources**  
10 **Commission** under ORS 537.730 shall:

11 (a) Define the boundaries of the critical ground water area and shall indicate which of the  
12 ground water reservoirs located either in whole or in part within the area in question are included  
13 within the critical ground water area. Any number of ground water reservoirs which either wholly  
14 or partially overlie one another may be included within the same critical ground water area.

15 (b) Contain a provision requiring a periodic review of conditions in the critical ground water  
16 area. The review shall be in sufficient detail to evaluate the continuing need for the critical ground  
17 water area designation and shall occur no less frequently than once every 10 years.

18 (2) In adopting the rule, the commission shall consider any orders or permits applicable to the  
19 reservoir issued by the [*governing board or State Geologist of the State Department of Geology and*  
20 *Mineral Industries*] **Director of the Oregon Department of Natural Resources** under ORS chap-  
21 ter 522.

22 (3) A rule by the commission under subsection (1) of this section may include any one or more  
23 of the following corrective control provisions:

24 (a) A provision closing the critical ground water area to any further appropriation of ground  
25 water, in which event the commission shall thereafter refuse to accept any application for a permit  
26 to appropriate ground water located within such critical area.

27 (b) A provision determining the permissible total withdrawal of ground water in the critical area  
28 each day, month or year.

29 (c) The disposition of any application for a water right permit for the use of water in the area  
30 that is pending at the time the commission initiates the rulemaking process or that is received  
31 during the rulemaking process.

32 (d) Any one or more provisions making such additional requirements as are necessary to protect  
33 the public welfare, health and safety in accordance with the intent, purposes and requirements of  
34 ORS 537.505 to 537.795 and 537.992.

35 (e) A provision closing all or part of the critical ground water area to further appropriation of  
36 ground water for its thermal characteristics.

37 (f) A provision determining the permissible change in thermal characteristics of ground water  
38 in all or part of the critical ground water area each day, month or year. Insofar as may be reason-  
39 ably done, the [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
40 **sources** shall apportion the permissible total temperature impact among those appropriators whose  
41 exercise of valid rights in the critical area affect the thermal characteristics of the ground water,  
42 in accordance with the relative dates of priority of such rights.

43 **SECTION 1439.** ORS 537.740 is amended to read:

44 537.740. In addition to any applicable requirements under ORS chapter 183, the [*Water Resources*  
45 *Commission*] **Oregon Natural Resources Commission** shall file a copy of any rules designating a

1 critical ground water area under ORS 537.730 to 537.740 with the county clerk of each county within  
2 which any part of the critical ground water area lies, and the county clerk shall record the desig-  
3 nation in the deed records of the county.

4 **SECTION 1440.** ORS 537.742 is amended to read:

5 537.742. (1) Any time after the [*Water Resources Commission*] **Oregon Natural Resources**  
6 **Commission** adopts a rule under ORS 537.730 designating a critical ground water area, the com-  
7 mission may initiate a contested case proceeding to limit the use of ground water in the area if the  
8 commission has reason to believe that any of the qualifying criteria of ORS 537.730 (1) exists.

9 (2) Upon the conclusion of a contested case proceeding initiated under subsection (1) of this  
10 section and upon finding that the problems that resulted in the designation of a critical ground  
11 water area under ORS 537.730 can be resolved by implementing one or more of the corrective con-  
12 trol provisions of this section, the commission shall issue a final order establishing any one or more  
13 of the following corrective control provisions:

14 (a) A provision apportioning the permissible total withdrawal as established by rule under ORS  
15 537.730, among the appropriators holding valid rights to ground water in the critical area in ac-  
16 cordance with the relative dates of priority of such rights.

17 (b) A provision according preference, without reference to relative priorities, to withdrawals of  
18 ground water in the critical area for residential and livestock watering purposes first. Thereafter,  
19 the commission may authorize withdrawals of ground water in the critical area for other beneficial  
20 purposes, including agricultural, industrial, municipal other than residential, and recreational pur-  
21 poses, in such order as the commission considers advisable under the circumstances, so long as such  
22 withdrawal will not materially affect a properly designed and operating well with prior rights that  
23 penetrates the aquifer.

24 (c) A provision reducing the permissible withdrawal of ground water by any one or more  
25 appropriators or wells in the critical area.

26 (d) Where two or more wells in the critical area are used by the same appropriator, a provision  
27 adjusting the total permissible withdrawal of ground water by such appropriator, or a provision  
28 forbidding the use of one or more of such wells completely.

29 (e) A provision requiring the abatement, in whole or part, or the sealing of any well in the  
30 critical area responsible for the admission of polluting materials into the ground water supply or  
31 responsible for the progressive impairment of the quality of the ground water supply by dispersing  
32 polluting materials that have entered the ground water supply previously.

33 (f) A provision requiring and specifying a system of rotation of use of ground water in the crit-  
34 ical area.

35 (3) The commission shall conduct the proceeding under this section according to the provisions  
36 of ORS chapter 183 applicable to contested case proceedings.

37 **SECTION 1441.** ORS 537.745 is amended to read:

38 537.745. (1) In the administration of ORS 537.505 to 537.795 and 537.992, the [*Water Resources*]  
39 **Commission** may encourage, promote and recognize vol-  
40 untary agreements among ground water users from the same ground water reservoir. When the  
41 commission finds that any such agreement, executed in writing and filed with the commission, is  
42 consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992, and in  
43 particular ORS 537.525, 537.730 to 537.740 and 537.780, the commission shall approve the agreement.  
44 Thereafter the agreement, until terminated as provided in this subsection, shall control in lieu of a  
45 formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992. Any agreement

1 approved by the commission may be terminated by the lapse of time as provided in the agreement,  
 2 by consent of the parties to the agreement or by order of the commission if the commission finds,  
 3 after investigation and a public hearing upon adequate notice, that the agreement is not being sub-  
 4 stantially complied with by the parties thereto or that changed conditions have made the contin-  
 5 uance of the agreement a detriment to the public welfare, safety and health or contrary in any  
 6 particular to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

7 (2) When any irrigation district, drainage district, other district organized for public purposes  
 8 or other public corporation or political subdivision of this state is authorized by law to enter into  
 9 agreements of the kind referred to in subsection (1) of this section, the commission may approve  
 10 such agreements as provided in subsection (1) of this section. Any such agreement approved by the  
 11 commission shall have the same effect and shall be subject to termination in the same manner and  
 12 for the same reasons set forth in subsection (1) of this section.

13 **SECTION 1442.** ORS 537.746 is amended to read:

14 537.746. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may  
 15 by rule establish a system of credits that may be used to offset the potential interference with hy-  
 16 draulically connected surface waters caused by ground water withdrawals within the Deschutes  
 17 River Basin to account for projects performed in the basin that make water available for mitigation.

18 (2) A person proposing a project that makes water available for mitigation may apply to the  
 19 [*Water Resources Department*] **Oregon Department of Natural Resources** for approval of the  
 20 project and a preliminary finding as to the amount of mitigation credits available, based on the  
 21 amount of water made available by the project. Projects approved by the department shall comply  
 22 with all other applicable provisions of law, including relevant portions of ORS 390.835, and may not  
 23 result in injury to existing water rights.

24 (3)(a) The amount of mitigation credits awarded for a completed project, or any completed phase  
 25 of the project, shall be equal to the amount of water made available by the project as determined  
 26 and approved by the department.

27 (b) A final award of mitigation credits by the department shall be made upon completion of the  
 28 approved project by the applicant and verification by the department that the project is complete.  
 29 The department may provide for a partial award of mitigation credits to correspond with completion  
 30 of approved phases of project implementation.

31 (c) Mitigation credits shall remain valid until exercised by the holder.

32 (4) The commission may by rule provide for the recognition or establishment of mitigation banks  
 33 to facilitate transactions among the holders of mitigation credits and persons who desire to acquire  
 34 mitigation credits. The mitigation credits may be assigned by the person creating the project to  
 35 another person or a mitigation bank.

36 (5) The [*Water Resources*] department shall prepare [an annual report on the implementation and  
 37 management of the system of mitigation credits established by subsections (1) to (4) of this section.

38 **SECTION 1443.** ORS 537.747 is amended to read:

39 537.747. (1) No person shall advertise services to construct, alter, abandon or convert wells, of-  
 40 fer to enter or enter into a contract with another person or public agency to construct, alter,  
 41 abandon or convert a well for such other person, cause any well construction, alteration, abandon-  
 42 ment or conversion to be performed under such a contract or operate well drilling machinery with-  
 43 out possessing a water well constructor's license therefor in good standing issued by the [*Water*  
 44 *Resources Department*] **Oregon Department of Natural Resources**. The department shall adopt a  
 45 single water well constructor's license that may specify the type of well, type of well alteration or

1 construction or type of well drilling machine operation for which the water well constructor is  
2 qualified.

3 (2) Notwithstanding subsection (1) of this section, a person may operate a well drilling machine  
4 without a water well constructor's license if supervised by one who possesses such a license.

5 (3) A person shall be qualified to receive a water well constructor's license if the person:

6 (a) Is at least 18 years of age.

7 (b) Has passed a written examination conducted by the department to determine fitness to op-  
8 erate as a water well constructor.

9 (c) Has paid a license fee and an examination fee according to the fee schedule set forth under  
10 subsection (6) of this section.

11 (d) Has one year or more experience in the operation of well drilling machinery.

12 (4) Upon fulfillment of all the requirements set out in subsection (3) of this section, the depart-  
13 ment shall issue the applicant a water well constructor's license in a form prescribed by the de-  
14 partment. The license may be issued for a period of two years.

15 (5) A water well constructor's license shall expire on June 30 or on such date as may be speci-  
16 fied by department rule. A person may renew a license by submitting an application and the appro-  
17 priate fees any time before the license expires but not later than one year after the license expires.  
18 A person who renews a license within the 12 months after the license expires may either pay a  
19 penalty fee set forth under subsection (6)(d) of this section or requalify for a water well  
20 constructor's license in accordance with subsection (3) of this section. If a person fails to renew a  
21 license within 12 months after expiration, the person must comply with the requirements of sub-  
22 section (3) of this section for a new water well constructor's license.

23 (6) The department shall collect in advance the following fees:

24 (a) An examination fee of \$20.

25 (b) A license fee of \$150.

26 (c) A renewal fee of \$150.

27 (d) Unless a person requalifies for a water well constructor's license in accordance with sub-  
28 section (3) of this section, a water well constructor shall pay a renewal fee of \$250 if the license is  
29 renewed within 12 months after expiration.

30 (e) If a person requalifies for a water well constructor's license under subsection (3) of this  
31 section, the person shall pay the renewal fee established under paragraph (c) of this subsection.

32 (7) The department may revoke, suspend or refuse to renew any water well constructor's license  
33 when it appears to the satisfaction of the department, after notice and opportunity to be heard by  
34 the licensee, that the licensee has failed to comply with the provisions of ORS 537.505 to 537.795  
35 and 537.992 applicable to such licensee or any order or rule adopted thereunder applicable to such  
36 licensee, or has made a material misstatement of fact on an application for a license or well log or  
37 established a pattern of conduct that willfully or negligently violates any provision of ORS 537.505  
38 to 537.795 and 537.992, or any rule adopted pursuant thereto, applicable to such licensee.

39 (8) The provisions of subsection (3) of this section requiring one year or more experience in the  
40 operation of well drilling machinery do not apply to any person who, on July 1, 1981, holds the li-  
41 cense required by this section and who continues thereafter to maintain the license in good stand-  
42 ing.

43 (9) The fees collected under subsection (6) of this section shall be paid into the [*Water Resources*  
44 *Department Water Right Operating Fund*] **Oregon Natural Resources Fund**. Such moneys are con-  
45 tinuously appropriated to the [*Water Resources*] department to pay the department's expenses in



1 administering and enforcing the water well constructor's licensing program.

2 **SECTION 1444.** ORS 537.750 is amended to read:

3 537.750. (1) The written examination required under ORS 537.747 (3)(b) shall be prepared to test  
4 the applicant's knowledge and understanding of the following subjects:

5 (a) Laws of the state pertaining to the appropriation and use of ground water, the licensing re-  
6 quirements of ORS 537.747 to 537.765, the construction of wells and the preparation and filing of  
7 well logs.

8 (b) Rules of the [*Water Resources Commission*] **Oregon Natural Resources Commission** per-  
9 taining to the appropriation and use of ground water, the construction of wells and the preparation  
10 and filing of well logs.

11 (c) Basic information on ground water geology, the occurrence and movement of ground water,  
12 and the design, construction and development of wells.

13 (d) Types, uses and maintenance of drilling tools and equipment, drilling problems and corrective  
14 procedures, repair of faulty wells, sealing of wells and safety rules and practices.

15 (2) Examinations shall be given during the months of January, April, July and October. The  
16 date, time and place of the examination are to be established by the commission. The examination  
17 shall be given only to those applicants who have met the requirement set out in ORS 537.747 (3)(a)  
18 and have paid the \$20 examination fee. An applicant who fails to pass the examination by not at-  
19 taining a grade of 70 or better may retake the examination after three months and the payment of  
20 another \$20 examination fee.

21 **SECTION 1445.** ORS 537.753 is amended to read:

22 537.753. (1) Any person who contracts or offers services to contract to construct, alter, abandon  
23 or convert wells shall have in effect a surety bond or an irrevocable letter of credit issued by an  
24 insured institution, as defined in ORS 706.008, running to the State of Oregon in the sum of \$10,000,  
25 ensuring that in the construction, alteration, abandonment or conversion of wells, the principal shall  
26 comply with all the provisions of ORS 537.505 to 537.795 and 537.992 that are applicable to such  
27 construction, alteration, abandonment or conversion and to the rules and standards of well con-  
28 struction, alteration, abandonment and conversion that have been prescribed by the [*Water Re-*  
29 *sources Commission*] **Oregon Natural Resources Commission**. The bond or letter of credit shall  
30 be filed with the [*Water Resources*] commission.

31 (2) The [*Water Resources*] commission or any person injured by failure of a water well  
32 constructor to comply with the provisions of the bond or letter of credit has a right of action on the  
33 bond or letter of credit in the name of the injured person. However, the aggregate liability of the  
34 surety or letter of credit issuer to all such persons may not exceed the sum of the bond or letter  
35 of credit.

36 (3) A proceeding against the bond or letter of credit under subsection (2) of this section may  
37 not be commenced unless the commission notifies the water well constructor of the alleged violation  
38 within three years after the date the water well report is filed with the commission.

39 (4) If a well is to be constructed, altered, abandoned or converted by a person on property  
40 owned by that person, by means of a well drilling machine, the person shall obtain a permit from  
41 the commission before beginning work. Application for the permit shall be in the form prescribed  
42 by the commission and must be accompanied by a fee of \$25. At the time the permit is obtained, the  
43 applicant also shall file with the commission a bond or an irrevocable letter of credit issued by an  
44 insured institution as defined in ORS 706.008 running to the State of Oregon in the sum of \$5,000,  
45 ensuring that in the construction, alteration, abandonment or conversion of the well the landowner

1 shall comply with all the provisions of ORS 537.505 to 537.795 and 537.992 that are applicable to the  
 2 construction, alteration, abandonment or conversion of wells and to the rules and standards of well  
 3 construction, alteration, abandonment and conversion that have been prescribed by the commission.  
 4 Before the person who constructs, alters, abandons or converts a well referred to in this subsection  
 5 seals the well, the person must give 10 days' written notice of the construction, alteration, aban-  
 6 donment or conversion to the commission. After expiration of the notice period, the well may be  
 7 sealed even if the commission has not caused the well to be inspected.

8 **SECTION 1446.** ORS 537.762 is amended to read:

9 537.762. (1) Each person required to possess a license under ORS 537.747 who has entered into  
 10 a contract to construct, alter, abandon or convert a well or cause a well to be constructed, altered,  
 11 abandoned or converted shall, before beginning work on the well, make a report to the [*Water Re-*  
 12 *sources Commission*] **Oregon Natural Resources Commission** containing:

13 (a) The name and post-office address of the owner of the well.

14 (b) The approximate location of the well.

15 (c) The proposed depth and diameter of the well.

16 (d) The proposed purpose or use of the ground water from the well.

17 (2) The commission shall furnish a convenient means for submitting the reports referred to in  
 18 subsection (1) of this section to each person who possesses a license under ORS 537.747.

19 (3) A separate report shall be furnished under subsection (1) of this section for each well that  
 20 is constructed, altered, abandoned or converted.

21 (4) The report furnished under subsection (1) of this section shall be confidential and maintained  
 22 as such for one year or until the well log required under ORS 537.765 is received by the commission,  
 23 whichever is earlier. Nothing in this subsection prohibits the commission from using the report for  
 24 enforcement actions during the period the report is considered confidential.

25 (5) Each report form submitted under subsection (1) of this section for the construction of a new  
 26 well, deepening of an existing well, or conversion of a well shall be accompanied by a fee of \$225.  
 27 Notwithstanding the fee established pursuant to this subsection, the commission may adopt by rule  
 28 a reduced fee for persons submitting materials to the [*Water Resources Department*] **Oregon De-**  
 29 **partment of Natural Resources** in a digital format approved by the department.

30 (6) The moneys paid to the commission under subsection (5) of this section shall be paid into the  
 31 [*Water Resources Department Operating Fund*] **Oregon Natural Resources Fund**. All interest, if  
 32 any, from moneys received under subsection (5) of this section shall inure to the benefit of the  
 33 [*Water Resources*] department. Such moneys and interest earned on such moneys are continuously  
 34 appropriated to the department to be used to pay the costs of the department to employ personnel  
 35 to inspect wells and well construction.

36 **SECTION 1447.** ORS 537.763 is amended to read:

37 537.763. [(1) *There is established in the State Treasury the Water Resources Department Operating*  
 38 *Fund to provide for the payment of the administrative expenses of the Water Resources Commission in*  
 39 *carrying out the provisions of ORS 537.762.*]

40 [(2) *The Water Resources Department Operating Fund shall consist of:*]

41 [(a) *Fees received pursuant to ORS 537.762.*]

42 [(b) *All moneys received on behalf of the fund by gift, grant or appropriation, from whatever*  
 43 *source.*]

44 [(3) *The Water Resources Department Operating Fund shall be separate and distinct from the*  
 45 *General Fund. All interest, if any, shall inure to the benefit of the Water Resources Department Oper-*

1 *ating Fund.]*

2 [(4)] In expending moneys in the [*Water Resources Department Operating Fund*] **Oregon Natural**  
3 **Resources Fund** received from fees pursuant to ORS 537.762, the biennial limitations on expen-  
4 ditures of the [*Water Resources Department*] **Oregon Department of Natural Resources** shall be:

5 [(a)] (1) No more than five percent for well inspection administrative support;

6 [(b)] (2) No more than 20 percent for well inspection technical and information services; and

7 [(c)] (3) No less than 75 percent for well inspection field investigation and enforcement.

8 **SECTION 1448.** ORS 537.765 is amended to read:

9 537.765. (1) The business or activity of constructing new wells or altering, abandoning or con-  
10 verting existing wells is declared to be a business or activity affecting the public welfare, health and  
11 safety. In order to enable the state to protect the welfare, health and safety of its [*citizens*] **resi-**  
12 **dents**, any person licensed under ORS 537.747, or any person or public agency constructing, alter-  
13 ing, abandoning or converting a well, shall keep a log of each well constructed, altered, abandoned  
14 or converted and shall furnish a certified copy of the log to the [*Water Resources Commission*]  
15 **Oregon Natural Resources Commission** within 30 days after the completion of the construction,  
16 alteration, abandonment or conversion.

17 (2) The commission shall provide acknowledgment to the constructor of receipt of a well log  
18 submitted under subsection (1) of this section within 120 days of receipt.

19 (3) Each log required under subsection (1) of this section shall be in a form prescribed by the  
20 commission and shall show:

21 (a) The name and post-office address of the owner of the well and the person or public agency  
22 performing or causing the performance of the work of constructing, altering, abandoning or con-  
23 verting the well.

24 (b) The location of the well by county tax lot number, township, range and section, and to the  
25 nearest quarter-quarter section or latitude and longitude as established by a global positioning sys-  
26 tem, or with reference to government survey corners or monuments or corners of recorded plats.

27 (c) The dates of commencement and completion of the work of constructing, altering, abandoning  
28 or converting the well.

29 (d) The depth, diameter and type of the well.

30 (e) The kind and amount of the casing and where placed in the well, including the number and  
31 location of perforations or screens.

32 (f) The flow in cubic feet per second or gallons per minute of a flowing well, and the shut-in  
33 pressure in pounds per square inch.

34 (g) The static water level with reference to the land surface, and the drawdown with respect to  
35 the amount of water pumped per minute, when a pump test is made.

36 (h) The kind and nature of the material in each stratum penetrated, with at least one entry for  
37 each change of formation, and the thickness of aquifers.

38 (i) The temperature of the ground water encountered and other characteristics of the ground  
39 water in detail as required by the commission.

40 (4) If required by the commission, the person, public agency or licensee referred to in subsection  
41 (1) of this section shall furnish to the commission samples of the ground water and of each change  
42 of formation in containers furnished and transportation expense paid by the commission.

43 **SECTION 1449.** ORS 537.769 is amended to read:

44 537.769. The Legislative Assembly finds that ground water protection is a matter of statewide  
45 concern. No ordinance, order or regulation shall be adopted by a local government to regulate the

1 inspection of wells, construction of wells or water well constructors subject to regulation by the  
 2 [*Water Resources Commission or the Water Resources Department*] **Oregon Department of Natural**  
 3 **Resources or the Oregon Natural Resources Commission** under ORS 537.747 to 537.795 and  
 4 537.992.

5 **SECTION 1450.** ORS 537.772 is amended to read:

6 537.772. (1) The owner or operator of any well, except wells used for purposes listed in ORS  
 7 537.545, shall conduct a pump test at least once every 10 years and report the results of that test  
 8 to the [*Water Resources Commission*] **Oregon Natural Resources Commission**. The owner or op-  
 9 erator may conduct the test in conjunction with normal pump service and testing or at any time  
 10 more convenient to the owner or operator of the well.

11 (2) The owner or operator shall report the results of the pump test on a form provided by the  
 12 commission. The form shall include but need not be limited to the duration of the test, rate of  
 13 pumping, total water level decrease and time required for 90 percent recovery of water level.

14 (3) The commission may establish by rule criteria for waiver of the pump test requirement.

15 **SECTION 1451.** ORS 537.775 is amended to read:

16 537.775. (1) Whenever the [*Water Resources Commission*] **Oregon Natural Resources Commis-**  
 17 **sion** finds that any well, including any well exempt under ORS 537.545, is by the nature of its con-  
 18 struction, operation or otherwise causing wasteful use of ground water, is unduly interfering with  
 19 other wells or surface water supply, is a threat to health, is polluting ground water or surface water  
 20 supplies, is causing substantial alteration of ground water temperatures or is causing substantial  
 21 thermal interference with other wells contrary to ORS 537.505 to 537.795 and 537.992, the commis-  
 22 sion may order discontinuance of the use of the well, impose conditions upon the use of such well  
 23 to such extent as may be necessary to remedy the defect or order permanent abandonment of the  
 24 well according to specifications of the commission.

25 (2) In the absence of a determination of a critical ground water area, any order issued under this  
 26 section imposing conditions upon interfering wells shall provide to each party all water to which the  
 27 party is entitled, in accordance with the date of priority of the water right.

28 (3) A landowner who replaces an old well by drilling a new well shall permanently abandon the  
 29 old well if the old well is within a setback as defined in well construction rules adopted by the  
 30 commission. Permanent abandonment of a well located within a setback shall occur within one year  
 31 after the function of the well is replaced or within one year after the water right, if applicable, is  
 32 transferred to the new well, whichever is later.

33 **SECTION 1452.** ORS 537.777 is amended to read:

34 537.777. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
 35 regulate or cause to be regulated the controlling works of wells and distribute ground water to se-  
 36 cure compliance or equal and fair distribution if the commission finds that:

37 (a) Any person or public agency is using or attempting to use any ground water or is operating  
 38 or permitting the operation of any well owned or controlled by such person or public agency except  
 39 upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule of the  
 40 commission under ORS 537.505 to 537.795 and 537.992; or

41 (b) It is necessary in order to secure the equal and fair distribution of ground water in accord-  
 42 ance with the rights of the various ground water users.

43 (2) The regulation of controlling works and distribution of ground water under subsection (1)  
 44 of this section shall be as nearly as possible in the same manner as provided in ORS 540.010 to  
 45 540.130.

1       **SECTION 1453.** ORS 537.780 is amended to read:

2       537.780. (1) In the administration of ORS 537.505 to 537.795 and 537.992, the [*Water Resources*  
3       *Commission*] **Oregon Natural Resources Commission** may:

4       (a) Require that all flowing wells be capped or equipped with valves so that the flow of ground  
5       water may be completely stopped when the ground water is not actually being applied to a beneficial  
6       use.

7       (b) Enforce:

8       (A) General standards for the construction and maintenance of wells and their casings, fittings,  
9       valves, pumps and back-siphoning prevention devices; and

10       (B) Special standards for the construction and maintenance of particular wells and their casings,  
11       fittings, valves and pumps.

12       (c)(A) Adopt by rule and enforce when necessary to protect the ground water resource, stan-  
13       dards for the construction, maintenance, abandonment or use of any hole through which ground  
14       water may be contaminated; or

15       (B) Enter into an agreement with, or advise, other state agencies that are responsible for holes  
16       other than wells through which ground water may be contaminated in order to protect the ground  
17       water resource from contamination.

18       (d) Enforce uniform standards for the scientific measurement of water levels and of ground wa-  
19       ter flowing or withdrawn from wells.

20       (e) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS  
21       537.545, casings, fittings, valves, pipes, pumps, measuring devices and back-siphoning prevention de-  
22       vices.

23       (f) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795 and 537.992, and  
24       appear and become a party to any action, suit or proceeding in any court or before any adminis-  
25       trative body when it appears to the satisfaction of the commission that the determination of the  
26       action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

27       (g) Call upon and receive advice and assistance from the Environmental Quality Commission or  
28       any other public agency or any person, and enter into cooperative agreements with a public agency  
29       or person.

30       (h) Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 and  
31       537.992 including but not limited to rules governing:

32       (A) The form and content of registration statements, certificates of registration, applications for  
33       permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps,  
34       drawings, logs and licenses;

35       (B) Procedure in hearings held by the **Oregon Natural Resources** Commission; and

36       (C) The circumstances under which the helpers of persons operating well drilling machinery may  
37       be exempt from the requirement of direct supervision by a licensed water well constructor.

38       (i) In accordance with applicable law regarding search and seizure, apply to any court of com-  
39       petent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747  
40       or 537.753.

41       (2) Notwithstanding any provision of subsection (1) of this section, in administering the pro-  
42       visions of ORS 537.505 to 537.795 and 537.992, the **Oregon Natural Resources** Commission may not:

43       (a) Adopt any rule restricting ground water use in an area unless the rule is [*based on sub-*  
44       *stantial evidence in the record of the Water Resources Department to justify the imposition of re-*  
45       *strictions*] **supported by substantial evidence that the rule is necessary.**

1 (b) Make any determination that a ground water use will impair, substantially interfere or un-  
 2 duly interfere with a surface water source unless the determination is based on substantial evidence.  
 3 Such evidence may include reports or studies prepared with relation to the specific use or may be  
 4 based on the application of generally accepted hydrogeological principles to the specific use.

5 (3) At least once every three years, the **Oregon Natural Resources** Commission shall review  
 6 any rule adopted under subsection (2) of this section that restricts ground water use in an area. The  
 7 review process shall include public notice and an opportunity to comment on the rule.

8 **SECTION 1454.** ORS 537.783 is amended to read:

9 537.783. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
 10 adopt rules [*which*] **that** govern the disposal by reinjection or other means of geothermal fluids de-  
 11 rived from:

12 (a) Geothermal or hot water wells less than 2,000 feet deep producing fluids of less than 250  
 13 degrees Fahrenheit bottom hole temperature; or

14 (b) Geothermal or hot water wells less than 2,000 feet deep producing fluids that have been ap-  
 15 propriated pursuant to ORS 537.505 to 537.795 and 537.992.

16 (2) The rules adopted under subsection (1) of this section shall include standards whereby con-  
 17 tamination may be determined, construction standards for reinjection wells, testing procedures for  
 18 identifying aquifers, standards and procedures for determining whether adjacent aquifers are being  
 19 degraded by the reinjection process, guidelines for conservation of the resource, criteria for evalu-  
 20 ating reservoirs or zones for geothermal fluid disposal and requirements for prior approval of all  
 21 geothermal fluid reinjection proposals.

22 (3) A water pollution control facilities permit shall be obtained from the Department of Envi-  
 23 ronmental Quality under ORS 468B.050 before reinjection is commenced. The Department of Envi-  
 24 ronmental Quality may, by agreement with the [*Water Resources*] commission, waive this  
 25 requirement [*for reinjection into the reservoir from which the fluid came where*] **if** adequate standards  
 26 and tests have been adopted to insure the fluid and its residues are uncontaminated.

27 **SECTION 1455.** ORS 537.785 is amended to read:

28 537.785. (1) In the administration of ORS 537.505 to 537.795 and 537.992, the [*Water Resources*  
 29 *Commission*] **Oregon Natural Resources Commission** shall collect in advance, the fees set forth  
 30 in ORS 539.081 for any service similar to any of those referred to in ORS 539.081.

31 (2) All fees collected by the commission under subsection (1) of this section shall be paid into  
 32 the General Fund of the State Treasury.

33 **SECTION 1456.** ORS 537.787 is amended to read:

34 537.787. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission**, upon  
 35 the commission's own initiative, or upon complaint alleging violation of any provision of ORS  
 36 537.505 to 537.795 and 537.992, or any rule adopted pursuant thereto, may investigate to determine  
 37 whether a violation has occurred. If the investigation indicates that a violation has occurred, the  
 38 commission shall notify the persons responsible for the violation, including:

39 (a) Any well constructor involved; and

40 (b) The landowner, if the violation involves construction, alteration, operation, abandonment or  
 41 conversion of a well.

42 (2) If, after notice and opportunity for hearing under ORS chapter 183 the commission deter-  
 43 mines that one or more violations have occurred, the commission may:

44 (a) Provide additional time for remedy of the violation if the commission has reason to believe  
 45 adequate repair or other remedy will be carried out within the specified period.

1 (b) If one or more persons responsible for the violation hold a water well constructor's license,  
2 suspend, revoke or refuse to renew the license.

3 (c) Assess a civil penalty under ORS 537.992, on the well constructor or other responsible party,  
4 including the landowner if the landowner was involved in the well construction.

5 (d) If an involved constructor or landowner has a surety bond required by ORS 537.753 (1) or  
6 (4) in effect, make demand on the bond in an amount not to exceed the cost of remedying the vio-  
7 lation.

8 (e) Impose any reasonable condition on the water well constructor's license to insure compliance  
9 with applicable laws and provide protection to the ground water of the State of Oregon. Such action  
10 shall be conducted as a contested case proceeding according to the applicable provisions of ORS  
11 chapter 183.

12 (f) Any other action authorized by law.

13 (3) The commission may terminate proceedings against a person if:

14 (a) The landowner does not permit the person involved in proceedings to be present at any in-  
15 spection made by the commission; or

16 (b) The commission determines that the person involved in proceedings is capable of complying  
17 with recommendations made by the commission, but the landowner does not permit the person to  
18 comply with the recommendations.

19 **SECTION 1457.** ORS 537.789 is amended to read:

20 537.789. (1) The well identification number provided by the [*Water Resources Department*]  
21 **Oregon Department of Natural Resources** when the reporting requirement of ORS 537.762 is  
22 satisfied shall be recorded on the well by a person licensed under ORS 537.747 within 30 days after  
23 the associated well work is completed.

24 (2) If a well does not have an identification number recorded on it at the time the property upon  
25 which the well is located is transferred, the owner of the property shall record on the well the  
26 identification number obtained from the [*Water Resources*] department under ORS 537.791 within 30  
27 days.

28 (3) The identification number on the well shall be clearly visible to a person looking for the  
29 number and shall meet minimum standards as recommended by the ground water advisory committee  
30 appointed under ORS 536.090 and adopted by the [*Water Resources Commission*] **Oregon Natural**  
31 **Resources Commission**.

32 **SECTION 1458.** ORS 537.791 is amended to read:

33 537.791. (1) A landowner may apply to the [*Water Resources Department*] **Oregon Department**  
34 **of Natural Resources** for a number to identify a well on the landowner's property.

35 (2) The [*Water Resources*] department shall issue a number to identify a well that has not re-  
36 ceived a number through the reporting process required for wells under ORS 537.762 within 10 days  
37 after receipt of the application.

38 **SECTION 1459.** ORS 537.796 is amended to read:

39 537.796. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
40 adopt by rule an initial temperature below which low temperature geothermal appropriations shall  
41 not be protected from thermal interference caused by ground water appropriations for other pur-  
42 poses.

43 **SECTION 1460.** ORS 537.797 is amended to read:

44 537.797. The [*Water Resources Commission*] **Oregon Natural Resources Commission** by rule  
45 shall establish criteria for the certification of registered, professional land surveyors and engineers

1 and geologists practicing as defined in ORS 672.005 and 672.505, respectively, to conduct surveys to  
 2 determine whether a permittee has completed all work necessary to perfect an appropriation of  
 3 water under ORS 537.230, 537.630 and 540.530.

4 **SECTION 1461.** ORS 537.798 is amended to read:

5 537.798. (1) In accordance with criteria established by the [*Water Resources Commission*] **Oregon**  
 6 **Natural Resources Commission**, the State Board of Examiners for Engineering and Land Survey-  
 7 ing shall:

8 (a) Conduct examinations for certification of registered, professional land surveyors, engineers  
 9 and geologists to conduct surveys to determine whether or not a permittee has completed all work  
 10 necessary to perfect an appropriation of water under ORS 537.230, 537.630 and 540.530.

11 (b) Issue certificates to any land surveyor, engineer or geologist qualifying for certification un-  
 12 der paragraph (a) of this subsection.

13 (c) Collect fees for the examination and certification of water right examiners under this sub-  
 14 section.

15 (2) In accordance with the provisions of ORS chapter 183 relating to contested cases, the State  
 16 Board of Examiners for Engineering and Land Surveying may revoke, suspend or modify certificates  
 17 issued under subsection (1) of this section.

18 (3) The State Board of Examiners for Engineering and Land Surveying shall establish fees for  
 19 the examination, certification and renewal of certification of water right examiners. The fees shall  
 20 be based upon the expenses of the board in conducting a program to certify water right examiners  
 21 and the expenses of the [*Water Resources Department*] **Oregon Department of Natural Resources**  
 22 in providing for examination of water right appropriations by water right examiners.

23 (4) The board shall pay into the State Treasury all moneys received as fees under subsection (1)  
 24 of this section. The State Treasurer shall credit such money to the State Board of Examiners for  
 25 Engineering and Land Surveying. The moneys are continuously appropriated to the board to be used  
 26 by the board in conjunction with the [*Water Resources*] department for any expenses incurred by the  
 27 board and, if approved by the Governor, any expenses incurred by the [*Water Resources*] department  
 28 in the certification, examination and review of activities of water right examiners.

29 **SECTION 1462.** ORS 537.799 is amended to read:

30 537.799. Any person who has applied for or received a permit or a transfer to appropriate water  
 31 under ORS 537.211, 537.625 or 540.530 on or before July 9, 1987, shall notify the [*Water Resources*  
 32 *Department*] **Oregon Department of Natural Resources** that the work has been completed and  
 33 either:

34 (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original  
 35 to be submitted as required by the [*Water Resources*] department, for issuance of a water right cer-  
 36 tificate; or

37 (2) Continue to appropriate water under the water right permit or transfer issued under ORS  
 38 537.211, 537.625 or 540.530 until the [*Water Resources*] department conducts a survey and the [*com-*  
 39 *mission*] **department** issues a water right certificate under ORS 537.250 or 537.625.

40 **SECTION 1463.** ORS 537.805 is amended to read:

41 537.805. Notwithstanding any other provision of ORS 537.801 to 537.809, an application governed  
 42 by ORS 537.803 shall be processed as follows:

43 (1) Upon determination that the application is acceptable, the [*Water Resources Commission*]  
 44 **Oregon Natural Resources Commission** shall conduct a comprehensive review of the application,  
 45 at the applicant's expense.



1 (2) When the comprehensive review is complete, the commission shall issue a preliminary anal-  
 2 ysis of the application that addresses the factors under ORS 537.803 and any other information the  
 3 commission considers relevant. The preliminary analysis, or a reasonable summary, shall be pub-  
 4 lished at the applicant's expense for three consecutive weeks in a newspaper of general circulation  
 5 in the basin of origin of the proposed appropriation, diversion or impoundment.

6 (3) Following publication, the commission shall conduct a public hearing at the applicant's ex-  
 7 pense, in the basin of origin. The hearing shall be for comment on the factors analyzed under ORS  
 8 537.803 and standards that otherwise apply to the proposed appropriation or transfer.

9 (4) After considering the application, the information generated during the comprehensive re-  
 10 view of the application, all comments received at the hearing and written comments received within  
 11 20 days after the date of the public hearing, the commission shall:

12 (a) If the application requires legislative approval under ORS 537.810, submit a report to the  
 13 Legislative Assembly that addresses all factors analyzed under ORS 537.803 and recommends  
 14 whether to approve or deny the application for use of water outside the basin of origin; or

15 (b) If the application does not require legislative approval under ORS 537.810, approve or deny  
 16 the application in accordance with the procedures and standards that otherwise govern the appli-  
 17 cation, giving due consideration to factors set forth in ORS 537.803.

18 **SECTION 1464.** ORS 537.809 is amended to read:

19 537.809. Before approving or recommending approval of an application subject to ORS 537.803,  
 20 the [*Water Resources Commission*] **Oregon Natural Resources Commission** shall reserve an  
 21 amount of water adequate for future needs in the basin of origin, including an amount sufficient to  
 22 protect public uses, and subordinate the out-of-basin use to that reservation.

23 **SECTION 1465.** ORS 537.835 is amended to read:

24 537.835. (1) Pursuant to the provisions of ORS 537.810, consent is hereby given to the City of  
 25 Walla Walla, a municipal corporation of the State of Washington, to appropriate, impound and divert  
 26 certain waters from Mill Creek, a tributary of the Walla Walla River, located in Township 6 North,  
 27 Range 38, E.W.M., Umatilla County, Oregon, for the beneficial use of both the State of Oregon and  
 28 within the City of Walla Walla, State of Washington, subject to the following terms and conditions:

29 (a) The City of Walla Walla shall pay the entire cost of constructing and maintaining this  
 30 project; and

31 (b) The City of Walla Walla shall employ only residents and inhabitants of the State of Oregon  
 32 in the construction and maintenance of the project.

33 (2) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may from time  
 34 to time direct that a designated portion of the impounded waters shall be held in the State of Oregon  
 35 for fire protection, for use by Oregon residents, for wildlife habitat needs, and to maintain proper  
 36 streamflow during the summer months.

37 (3) Prior to commencing construction, the City of Walla Walla shall make application for such  
 38 appropriation, impoundment and diversion to the [*Water Resources*] commission and such appropri-  
 39 ation, impoundment and diversion shall be allowed upon such additional terms, conditions, reserva-  
 40 tions, restrictions and provisions, including minimum streamflow, as the [*Water Resources*]  
 41 commission shall impose for the protection and benefit of the State of Oregon.

42 **SECTION 1466.** ORS 537.840 is amended to read:

43 537.840. Upon receiving legislative permission to appropriate waters under ORS 537.801 to  
 44 537.860, the permittee, upon filing in the [*Water Resources Department a certified copy of the Act,*  
 45 *certified to*] **Oregon Department of Natural Resources a copy of the Act that has been certified**

1 by the Secretary of State, may proceed to obtain an appropriation of waters in the manner provided  
2 by the laws of this state for the appropriation of waters for beneficial use, subject to all existing  
3 rights and valid prior appropriations and subject to the terms, conditions, exceptions, reservations,  
4 restrictions and provisions of such legislative consent.

5 **SECTION 1467.** ORS 537.855 is amended to read:

6 537.855. (1) Pursuant to the provisions of ORS 537.810, consent is hereby given to any domestic  
7 water supply district formed under ORS chapter 264 to permit the diversion of water for use on  
8 property a portion of which is within a state adjoining Oregon, subject to the following conditions:

9 (a) The majority of the property is within Oregon.

10 (b) The property is developed with economic benefit to Oregon as well as to the adjoining state,  
11 in the judgment of the domestic water supply district.

12 (c) The costs of the diversion are borne by the developer or owner of the property.

13 (d) The developer employs only residents of Oregon in the construction necessary for the di-  
14 version of water.

15 (2) The diversion of water under this section shall be subject to additional terms, conditions,  
16 reservations, restrictions and provisions as the [*Water Resources Commission*] **Oregon Natural Re-  
17 sources Commission** shall impose for the protection and benefit of the State of Oregon.

18 **SECTION 1468.** ORS 537.880 is amended to read:

19 537.880. (1) The activity of drilling geotechnical holes is declared to be an activity affecting the  
20 public welfare, health and safety. In order to enable this state to protect the welfare, health and  
21 safety of its [*citizens*] **residents**, any person that drills a geotechnical hole shall keep a log of each  
22 geotechnical hole that is drilled and submit a report to the [*Water Resources Commission*] **Oregon  
23 Natural Resources Commission** within 30 days after the completion of the drilling.

24 (2) This section applies to geotechnical holes that are:

25 (a) Greater than 18 feet deep;

26 (b) Within 50 feet of a water supply or a monitoring well;

27 (c) Used to determine water quality and open less than 72 hours; or

28 (d) Drilled in an area known or reasonably suspected to be contaminated.

29 **SECTION 1469.** ORS 537.885 is amended to read:

30 537.885. The person responsible for the drilling of a geotechnical hole for which a report is re-  
31 quired under ORS 537.880 must have:

32 (1) A current monitoring well constructor's license as specified in rules adopted by the [*Water  
33 Resources Commission*] **Oregon Natural Resources Commission**;

34 (2) A current water supply well constructor's license as specified in rules adopted by the com-  
35 mission;

36 (3) A current certificate of registration as a geologist issued under ORS 672.505 to 672.705; or

37 (4) A current certificate of registration as an engineer issued under ORS 672.002 to 672.325.

38 **SECTION 1470.** ORS 537.890 is amended to read:

39 537.890. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may  
40 prescribe by rule the form, contents, filing deadline and other requirements for the report required  
41 under ORS 537.880.

42 (2)(a) Except as provided in paragraph (b) of this subsection, each report required to be sub-  
43 mitted under ORS 537.880 must be accompanied by a recording fee of \$25.

44 (b) If more than one geotechnical hole is drilled within seven days at the same project site, each  
45 report for each geotechnical hole drilled after the first geotechnical hole must be accompanied by

1 a recording fee of \$10.

2 (3) Fees collected under this section shall be deposited to the [*Water Resources Department*  
3 *Geotechnical Fund*] **Oregon Natural Resources Fund. Moneys deposited in the fund under this**  
4 **subsection are continuously appropriated to the Oregon Department of Natural Resources**  
5 **for the administration of duties, functions and powers related to geotechnical holes.**

6 **SECTION 1471.** ORS 537.992 is amended to read:

7 537.992. (1) In addition to any other remedy provided by law, the [*Water Resources*  
8 *Commission*] **Oregon Natural Resources Commission** may impose a civil penalty against any per-  
9 son who, in the construction of a well, violates any provision of ORS 537.747 to 537.795 and 537.992,  
10 or any rule promulgated pursuant thereto. A civil penalty shall be in an amount determined by the  
11 commission in accordance with the rules adopted under subsection (2) of this section. However, the  
12 commission shall not impose a civil penalty under this section if the commission, by exercising other  
13 authority granted under ORS 537.505 to 537.795 and 537.992, causes the person to comply with the  
14 provisions of ORS 537.747 to 537.795 and 537.992 or rules adopted thereunder.

15 (2) The commission shall adopt by rule a schedule of penalties for violation of ORS 537.747 to  
16 537.795 and 537.992, not to exceed \$1,000 for each occurrence defined in the rules as a major vio-  
17 lation, and not to exceed \$250 for each occurrence defined in the rules as a minor violation. Under  
18 no circumstances may a penalty for a violation of ORS 537.762 or 537.765 exceed \$250.

19 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

20 (4) All amounts recovered under this section shall be deposited in the General Fund.

21 **SECTION 1472.** ORS 538.010 is amended to read:

22 538.010. (1) The waters of Ditch Creek which were diverted to and became a part of the waters  
23 of Willow Creek, under the provisions of chapter 324, Oregon Laws 1939, are subject to the same  
24 rights of use and appropriation as the original waters of Willow Creek.

25 (2) The right of the county court of Morrow County to divert and store the waters of Ditch  
26 Creek[, *acquired under the certificate issued by the Water Resources Director licensing such diversion*  
27 *and storage,*] shall date from the time the application to divert and store such waters was filed. The  
28 waters shall be used for the purposes, in the manner and under the conditions set forth in the cer-  
29 tificate, for such time as the use is for the public interest. If the waters are not used under the li-  
30 cense for a five-year period, the license shall expire.

31 **SECTION 1473.** ORS 538.125 is amended to read:

32 538.125. All appropriations made under the provisions of section 2, chapter 480, Oregon Laws  
33 1965, shall become vested when completed as provided by ORS 537.250. Any person having obtained  
34 a vested water right prior to April 19, 1967, under the provisions of section 2, chapter 480, Oregon  
35 Laws 1965, may apply to the [*Water Resources Commission*] **Oregon Natural Resources Commis-**  
36 **sion** for an increase of vested water rights, as provided by ORS chapter 537.

37 **SECTION 1474.** ORS 538.410 is amended to read:

38 538.410. All rights to the waters of the lakes, rivers and streams of this state acquired before  
39 February 24, 1909, for the purposes of municipal water supply are confirmed, and no rights acquired  
40 under the Water Rights Act (as defined in ORS 537.010) shall impair the rights of any municipal  
41 corporation to waters taken before February 24, 1909. The [*Water Resources Commission*] **Oregon**  
42 **Natural Resources Commission** shall reject, or grant subject to municipal use, all applications  
43 where, in the commission's judgment, the appropriation of the waters applied for impairs a municipal  
44 water supply. Municipal corporations of the state[, *on request of the Water Resources Commission,*]  
45 shall furnish a statement of the amount and source of the municipal water supply, with probable

1 increase or extension of the same, **when the commission requests a statement.**

2 **SECTION 1475.** ORS 538.450 is amended to read:

3 538.450. (1) Subject to water rights existing on March 8, 1941, there is granted to the City of  
4 Pendleton, Umatilla County, and its water commission, the exclusive right to use for public or mu-  
5 nicipal purposes or use, or for the general use and benefit of people within or without the city, all  
6 waters of the north fork of the Umatilla River, the springs at the head which form the stream, and  
7 its tributaries to the confluence of the north fork with the main stream of the Umatilla River in the  
8 northwest quarter of section 22, township 3 north of range 37 east of the Willamette Meridian,  
9 which north fork is a tributary of the Umatilla River situated in Umatilla County.

10 (2) The City of Pendleton, its water commission, any of the city's agents, agencies and officers,  
11 and others on its behalf, may appropriate all such waters for these purposes and uses for the benefit  
12 and use of the city, as above set forth, either by the city in its own name, or by any of its agents,  
13 agencies or officers or by any other persons on its behalf.

14 (3) No person shall appropriate or be granted a permit to the use of any of such waters, except  
15 as provided in this section. But the City of Pendleton may, under this grant, divert such waters from  
16 their watershed and convey them to the city and elsewhere for use by it for public or municipal  
17 purposes or use or for the general use and benefit of people within or without the city. All of such  
18 waters are withdrawn from future appropriation, except for use and benefit of the city as set forth  
19 in this section.

20 (4) The point of diversion of a water right granted under this section may be exercised at the  
21 main stem of the Umatilla River situated in Umatilla County to a point not below the westerly city  
22 limit of the City of Pendleton.

23 (5) Prior to exercising the right granted under this section, the City of Pendleton shall submit  
24 to the [*Water Resources Department*] **Oregon Department of Natural Resources** a notice of intent  
25 to exercise the right. The notice of intent shall be made on a form prescribed by the department and  
26 shall set forth:

27 (a) The name and mailing address of the applicant;

28 (b) The source of the water supply including the name and mailing address of any owner of the  
29 land upon which the source of the water supply is located;

30 (c) The nature and the amount of the proposed use;

31 (d) The time within which construction of the right is proposed to begin;

32 (e) The time required to complete construction of the right;

33 (f) The time required for the complete application of the water to the proposed beneficial use;

34 (g) The point of diversion of the exercise of the right; and

35 (h) Any other information required by the department that is necessary to understand the nature  
36 of the proposed project.

37 (6) Prior to submitting a notice of intent pursuant to subsection (5) of this section, the City of  
38 Pendleton shall hold a public meeting in the water basin in which the right is located to discuss the  
39 proposed project and receive comments from the public.

40 (7) Within 14 days after receiving a notice of intent submitted pursuant to subsection (5) of this  
41 section, the department shall, in the weekly notice published by the department, give public notice  
42 of the submission of the notice of intent.

43 (8) The Confederated Tribes of the Umatilla Indian Reservation and the City of Pendleton have  
44 entered into an agreement addressing the development and use of the City of Pendleton's water  
45 rights in the Umatilla River and the impact on tribal interests from such development. The agree-

1 ment includes implementation of the minimum streamflow in the main stem of the Umatilla River  
2 resulting from the exercise by the City of Pendleton of its surface water right of the north fork of  
3 the Umatilla River under this section. The City of Pendleton shall exercise such right consistent  
4 with the agreement or successor agreements between the City of Pendleton and the tribes provided  
5 in this subsection. In no event will the City of Pendleton exercise the right granted under this sec-  
6 tion so as to reduce streamflows in the Umatilla River to be less than state in-stream water rights  
7 for the Umatilla River existing as of January 1, 2002.

8 **SECTION 1476.** ORS 539.005 is amended to read:

9 539.005. (1) The Legislative Assembly declares that it is the purpose of this chapter to set forth  
10 the procedures for carrying out a general stream adjudication in Oregon.

11 (2) In accordance with the applicable provisions of ORS chapter 183, the [*Water Resources Di-*  
12 *rector*] **Director of the Oregon Department of Natural Resources** shall adopt rules necessary to  
13 carry out the provisions of this chapter.

14 **SECTION 1477.** ORS 539.010 is amended to read:

15 539.010. (1) Actual application of water to beneficial use prior to February 24, 1909, by or under  
16 authority of any riparian proprietor or the predecessors in interest of the riparian proprietor, shall  
17 be deemed to create in the riparian proprietor a vested right to the extent of the actual application  
18 to beneficial use; provided, such use has not been abandoned for a continuous period of two years.

19 (2) Where any riparian proprietor, or any person under authority of any riparian proprietor or  
20 the predecessor in interest of the riparian proprietor, was, on February 24, 1909, engaged in good  
21 faith in the construction of works for the application of water to a beneficial use, the right to take  
22 and use such water shall be deemed vested in the riparian proprietor; provided, that the works were  
23 completed and the water devoted to a beneficial use within a reasonable time after February 24,  
24 1909. The [*Water Resources Director*] **Director of the Oregon Department of Natural**  
25 **Resources**, in the manner provided in subsection (5) of this section, may determine the time within  
26 which the water shall be devoted to a beneficial use. The right to water shall be limited to the  
27 quantity actually applied to a beneficial use within the time so fixed by the director.

28 (3) Nothing contained in the Water Rights Act (as defined in ORS 537.010) shall affect relative  
29 priorities to the use of water among parties to any decree of the courts rendered in causes deter-  
30 mined or pending prior to February 24, 1909.

31 (4) The right of any person to take and use water shall not be impaired or affected by any  
32 provisions of the Water Rights Act (as defined in ORS 537.010) where appropriations were initiated  
33 prior to February 24, 1909, and such appropriators, their heirs, successors or assigns did, in good  
34 faith and in compliance with the laws then existing, commence the construction of works for the  
35 application of the water so appropriated to a beneficial use, and thereafter prosecuted such work  
36 diligently and continuously to completion. However, all such rights shall be adjudicated in the  
37 manner provided in this chapter.

38 (5) The director shall, for good cause shown upon the application of any appropriator or user  
39 of water under an appropriation of water made prior to February 24, 1909, or in the cases mentioned  
40 in subsections (2) and (4) of this section, where actual construction work was commenced prior to  
41 that time or within the time provided in law then existing, prescribe the time within which the full  
42 amount of the water appropriated shall be applied to a beneficial use. In determining said time the  
43 director shall grant a reasonable time after the construction of the works or canal or ditch used for  
44 the diversion of the water, and in doing so, the director shall take into consideration the cost of the  
45 appropriation and application of the water to a beneficial purpose, the good faith of the

1 appropriator, the market for water or power to be supplied, the present demands therefor, and the  
2 income or use that may be required to provide fair and reasonable returns upon the investment. For  
3 good cause shown the director may extend the time.

4 (6) Where appropriations of water attempted before February 24, 1909, were undertaken in good  
5 faith, and the work of construction or improvement thereunder was in good faith commenced and  
6 diligently prosecuted, such appropriations shall not be set aside or voided in proceedings under this  
7 chapter because of any irregularity or insufficiency of the notice by law, or in the manner of post-  
8 ing, recording or publication thereof.

9 (7) In any proceeding to adjudicate water rights under this chapter, the [*Water Resources De-*  
10 *partment*] **Oregon Department of Natural Resources** may adjudicate federal reserved rights for  
11 the water necessary to fulfill the primary purpose of the reservation or any federal water right not  
12 acquired under ORS chapter 537 or ORS 540.510 to 540.530.

13 (8) All rights granted or declared by the Water Rights Act (as defined in ORS 537.010) shall be  
14 adjudicated and determined in the manner and by the tribunals provided therein. The Water Rights  
15 Act shall not be held to bestow upon any person any riparian rights where no such rights existed  
16 prior to February 24, 1909.

17 **SECTION 1478.** ORS 539.015 is amended to read:

18 539.015. Each claimant or owner who files a statement and proof of claim form or a registration  
19 statement shall be required to certify to the statements of the claimant or owner under oath. The  
20 [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** or the  
21 authorized assistant of the director may administer such oaths, which shall be done without charge,  
22 as also shall be the furnishing of blank forms for the statement.

23 **SECTION 1479.** ORS 539.021 is amended to read:

24 539.021. (1) The [*Water Resources Director*] **Director of the Oregon Department of Natural**  
25 **Resources** upon the motion of the director or, in the discretion of the director, upon receipt of a  
26 petition from one or more appropriators of surface water from any natural watercourse in this state  
27 shall make a determination of the relative rights of the various claimants to the waters of that  
28 watercourse.

29 (2) If an action is brought in the circuit court for determination of rights to the use of water,  
30 the case may, in the discretion of the court, be transferred to the director for determination as  
31 provided in this chapter.

32 **SECTION 1480.** ORS 539.030 is amended to read:

33 539.030. The [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
34 **sources** shall prepare a notice, setting forth the date when the director or the assistant of the di-  
35 rector will begin such investigation as may be necessary for a proper determination of the relative  
36 rights of the various claimants to the use of the waters of the stream. The notice shall be published  
37 in two issues of one or more newspapers having general circulation in the counties in which the  
38 stream is situated, the last publication of the notice to be at least 10 days prior to the date set in  
39 the notice for the beginning of the investigation by the director or the assistant of the director.

40 **SECTION 1481.** ORS 539.040 is amended to read:

41 539.040. (1) As soon as practicable after the examination and measurements are completed, as  
42 described in ORS 539.120, the [*Water Resources Director*] **Director of the Oregon Department of**  
43 **Natural Resources** shall prepare a notice setting forth a place and time certain when the director  
44 or the authorized assistant of the director shall begin taking testimony as to the rights of the vari-  
45 ous claimants to the use of the waters of the stream or its tributaries. The notice shall be published

1 in two issues of one or more newspapers having general circulation in the counties in which the  
 2 stream is situated, the last publication of the notice to be at least 30 days prior to the beginning  
 3 of taking testimony by the director or the authorized assistant of the director.

4 (2) The director shall also send by registered mail or by certified mail with return receipt to  
 5 each claimant or owner who filed with the director a registration statement as provided in ORS  
 6 539.240 and to the Attorney General of the United States or the designated representative of the  
 7 Attorney General of the United States, on behalf of the United States and its agencies and as trustee  
 8 for the Indian tribes, a notice similar to that provided in subsection (1) of this section setting forth  
 9 the date when the director or the authorized assistant of the director will take testimony as to the  
 10 rights to the use of the water of the stream. The notice must be mailed at least 30 days prior to the  
 11 date set therein for taking testimony.

12 (3)(a) For purposes of the Klamath Basin adjudication, the [*Water Resources Department*] **Oregon**  
 13 **Department of Natural Resources** will provide notice, substantially like that specified in sub-  
 14 section (2) of this section, to claimants or owners who desire to claim a water right under this  
 15 chapter, or to contest the claims of others, and have so notified the director. The notice shall be  
 16 accompanied by a blank form on which the claimant or owner shall present in writing all of the  
 17 particulars necessary for determination of the right of the claimant or owner to contest the claims  
 18 of others or to the use of the waters of a stream to which the claimant or owner lays claim. That  
 19 form shall require substantially the same information required in a registration statement, as pro-  
 20 vided in ORS 539.240 (2), except that the map need not be prepared by a certified water rights ex-  
 21 aminer, as required by ORS 539.240 (2)(d).

22 (b) In the already adjudicated areas of the Klamath Basin, the notice provided to holders of  
 23 permitted or certificated surface water rights acquired under ORS chapter 537 will specify that they  
 24 may contest the statement and proof of claims of others made under this chapter, but only in the  
 25 unadjudicated areas of the Klamath Basin.

26 **SECTION 1482.** ORS 539.070 is amended to read:

27 539.070. Upon the date named in the notice for taking testimony, the [*Water Resources*  
 28 *Director*] **Director of the Oregon Department of Natural Resources** or the authorized assistant  
 29 of the director shall begin taking testimony and shall continue until completed. But the director may  
 30 adjourn the taking of testimony from time to time and from place to place, to suit the convenience  
 31 of those interested.

32 **SECTION 1483.** ORS 539.081 is amended to read:

33 539.081. (1) At the time the owner or registrant submits a registration statement under ORS  
 34 539.240 or, if a registration statement is not filed, when a statement and proof of claim is filed pur-  
 35 suant to notice by the [*Water Resources Director*] **Director of the Oregon Department of Natural**  
 36 **Resources** under ORS 539.030, the owner or registrant shall pay a fee as follows:

37 (a) If for irrigation use, \$2 for each acre of irrigated lands up to 100 acres and \$1 for each acre  
 38 in excess of 100 acres. The minimum fee for any owner or registrant for irrigation use shall be \$30.

39 (b) If for power use, \$2 for each theoretical horsepower up to 100 horsepower, 50 cents for each  
 40 horsepower in excess of 100 up to 500 horsepower, 35 cents for each horsepower in excess of 500  
 41 horsepower up to 1,000 horsepower and 25 cents for each horsepower in excess of 1,000 horsepower,  
 42 as set forth in the proof. The minimum fee for any owner or registrant for power use shall be \$200.

43 (c) If for mining or any other use, \$200 for the first second-foot or fraction of the first second-  
 44 foot and \$50 for each additional second-foot.

45 (2) The fees under subsection (1) of this section shall not apply to any federally recognized In-

1 dian tribe, or to the United States acting as trustee for such a tribe, claiming, under ORS 539.010,  
2 an undetermined vested right to the use of surface water for any nonconsumptive and nondiverted  
3 in-stream use to satisfy tribal hunting, fishing or gathering rights.

4 (3) If the registration statement shows that the water right was initiated by making application  
5 for a permit under the provisions of ORS chapter 537, the owner or registrant shall be given credit  
6 for the money paid as examination and recording fees. A credit under this subsection shall be al-  
7 lowed only if the application under ORS chapter 537 was for a permit to appropriate water to be  
8 applied to the same parcel of land or for the same use as set forth in the registration statement.

9 (4) All fees paid under this section shall be deposited into the General Fund of the State  
10 Treasury and credited to an account of the [*Water Resources Department*] **Oregon Department of**  
11 **Natural Resources**. The fees shall be used to pay for the expenses of the department to:

12 (a) Register claims to undetermined vested rights or federal reserved rights under ORS 539.230  
13 and 539.240; and

14 (b) Determine claims filed or registered under ORS 539.230 and 539.240.

15 (5) No registration statement or statement and proof of claim shall be accepted for filing unless  
16 the registration statement or claim is accompanied by the fee in the amount set forth in this section.  
17 If the federal government is determined to be immune from the payment of such fees, the director  
18 may elect to accept a federal claim for filing without the accompanying fees.

19 **SECTION 1484.** ORS 539.090 is amended to read:

20 539.090. Upon the completion of the taking of testimony by the [*Water Resources Director*] **Di-**  
21 **rector of the Oregon Department of Natural Resources**, the director shall at once give notice  
22 by registered mail or by certified mail with return receipt to the various claimants and to any party  
23 who has notified the director that the party wishes to contest the claims of others, that all of the  
24 evidence will be open to inspection of the various claimants or owners. The notice shall specify the  
25 times when and the places where the evidence will be open to inspection, and the director shall keep  
26 the evidence open for inspection at the specified times and places. The earliest time for inspection  
27 shall be at least 10 days after mailing the notice; and, in the aggregate, the hours during which the  
28 director is to keep the evidence open to inspection shall at least equal 80 hours, counting only the  
29 hours between 8 a.m. and 5 p.m. during any day of the week except Sunday. The director shall also  
30 state in the notice the county in which the determination will be heard by the circuit court; pro-  
31 vided, that the cause shall be heard in the county in which the stream or some part thereof is sit-  
32 uated.

33 **SECTION 1485.** ORS 539.100 is amended to read:

34 539.100. Any person owning any irrigation works, or claiming any interest in the stream in-  
35 volved in the determination shall be a party to, and bound by, the adjudication. Any party who de-  
36 sires to contest any of the rights of the persons who have submitted their evidence to the [*Water*  
37 *Resources Director*] **Director of the Oregon Department of Natural Resources** as provided in  
38 ORS 539.021 to 539.090 shall, within 15 days after the expiration of the period fixed in the notice for  
39 public inspection, or within such extension of the period, not exceeding 20 days, as the director may  
40 allow, notify the director in writing, stating with reasonable certainty the grounds of the proposed  
41 contest, which statement shall be verified by the affidavit of the contestant, the agent or attorney  
42 of the contestant. A party not claiming an undetermined vested right under this chapter or not  
43 contesting the claim of another need not participate further in the proceeding, nor be served with  
44 further notices or documents regarding the adjudication. Upon the filing of a statement of contest,  
45 service thereof shall be made by the contestant upon the contestee by mailing a copy by registered



1 mail or by certified mail, return receipt requested, addressed to the contestee or to the authorized  
2 agent or attorney of the contestee at the post-office address of the contestee as stated in the state-  
3 ment and proof of claim of the contestee. Proof of service shall be made and filed with the [*Water*  
4 *Resources Department*] **Oregon Department of Natural Resources** by the contestant as soon as  
5 possible after serving the copy of statement of contest.

6 **SECTION 1486.** ORS 539.110 is amended to read:

7 539.110. The [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
8 **sources** shall fix the time and a convenient place for hearing the contest, and shall notify the  
9 contestant and the person whose rights are contested to appear before the director or the authorized  
10 assistant of the director at the designated time and place. The date of hearing shall not be less than  
11 30 nor more than 60 days from the date the notice is served on the parties. The notice may be  
12 served personally or by registered or certified mail, return receipt requested, addressed to the par-  
13 ties at their post-office addresses as stated in the statement and proof of claimant. The director may  
14 adjourn the hearing from time to time upon reasonable notice to all the parties interested; may issue  
15 subpoenas and compel the attendance of witnesses to testify, which subpoenas shall be served in the  
16 same manner as subpoenas issued out of the circuit court; may compel the witnesses so subpoenaed  
17 to testify and give evidence in the matter; and may order the taking of depositions and issue com-  
18 missions therefor in the same manner as depositions are taken in the circuit court. The witnesses  
19 shall receive fees as provided in ORS 44.415 (2), the costs to be taxed in the same manner as are  
20 costs in suits in equity. The evidence in the proceedings shall be confined to the subjects enumer-  
21 ated in the notice of contest. The burden of establishing the claim shall be upon the claimant whose  
22 claim is contested. The evidence may be taken by a duly appointed reporter.

23 **SECTION 1487.** ORS 539.120 is amended to read:

24 539.120. The [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
25 **sources**, or a qualified assistant, shall proceed at the time specified in the notice to the parties on  
26 the stream given as provided in ORS 539.030, to make an examination of the stream and the works  
27 diverting water therefrom used in connection with water rights subject to this chapter, for which  
28 a registration statement has been filed as provided in ORS 539.240. The examination shall include  
29 the measurement of the discharge of the stream and of the capacity of the various diversion and  
30 distribution works, and an examination and approximate measurement of the lands irrigated from  
31 the various diversion and distribution works. The director shall take such other steps and gather  
32 such other data and information as may be essential to the proper understanding of the relative  
33 rights of the parties interested. The observations and measurements shall be made a matter of re-  
34 cord in the [*Water Resources Department*] **Oregon Department of Natural Resources**. The de-  
35 partment shall make or have made a map or plat on a scale of not less than one inch to the mile,  
36 showing with substantial accuracy the course of the stream, the location of each diversion point and  
37 each ditch, canal, pipeline or other means of conveying the water to the place of use, and the lo-  
38 cation of lands irrigated, or in connection with which the water is otherwise used, within each legal  
39 subdivision.

40 **SECTION 1488.** ORS 539.130 is amended to read:

41 539.130. (1) As soon as practicable after the compilation of the data the [*Water Resources Di-*  
42 *rector*] **Director of the Oregon Department of Natural Resources** shall make and cause to be  
43 entered of record in the [*Water Resources Department*] **Oregon Department of Natural Resources**  
44 findings of fact and an order of determination determining and establishing the several rights to the  
45 waters of the stream. The original evidence gathered by the director, and certified copies of the

1 observations and measurements and maps of record, in connection with the determination, as pro-  
2 vided for by ORS 539.120, together with a copy of the order of determination and findings of fact  
3 of the director as they appear of record in the [*Water Resources*] department, shall be certified to  
4 by the director and filed with the clerk of the circuit court wherein the determination is to be heard.  
5 A certified copy of the order of determination and findings shall be filed with the county clerk of  
6 every other county in which the stream or any portion of a tributary is situated.

7 (2) Upon the filing of the evidence and order with the court the director shall procure an order  
8 from the court, or any judge thereof, fixing the time at which the determination shall be heard in  
9 the court, which hearing shall be at least 40 days subsequent to the date of the order. The clerk  
10 of the court shall, upon the making of the order, forthwith forward a certified copy to the depart-  
11 ment by registered mail or by certified mail with return receipt.

12 (3) The department shall immediately upon receipt thereof notify by registered mail or by cer-  
13 tified mail with return receipt each claimant or owner who has appeared in the proceeding of the  
14 time and place for hearing. Service of the notice shall be deemed complete upon depositing it in the  
15 post office as registered or certified mail, addressed to the claimant or owner at the post-office ad-  
16 dress of the claimant or owner, as set forth in the proof of the claimant or owner theretofore filed  
17 in the proceeding. Proof of service shall be made and filed with the circuit court by the department  
18 as soon as possible after mailing the notices.

19 (4) The determination of the department shall be in full force and effect from the date of its  
20 entry in the records of the department, unless and until its operation shall be stayed by a stay bond  
21 as provided by ORS 539.180.

22 **SECTION 1489.** ORS 539.140 is amended to read:

23 539.140. Upon the final determination of the rights to the waters of any stream, the [*Water Re-*  
24 *sources Department*] **Oregon Department of Natural Resources** shall issue to each person re-  
25 presented in the determination a certificate setting forth the name and post-office address of the  
26 owner of the right; the priority of the date, extent and purpose of the right, and if the water is for  
27 irrigation purposes, a description of the legal subdivisions of land to which the water is appurtenant.  
28 The original certificate shall be mailed to the owner and a record of the certificate maintained in  
29 the [*Water Resources*] department.

30 **SECTION 1490.** ORS 539.150 is amended to read:

31 539.150. (1) From and after the filing of the evidence and order of determination in the circuit  
32 court, the proceedings shall be like those in an action not triable by right to a jury, except that any  
33 proceedings, including the entry of a judgment, may be had in vacation with the same force and ef-  
34 fect as in term time. At any time prior to the hearing provided for in ORS 539.130, any party or  
35 parties jointly interested may file exceptions in writing to the findings and order of determination,  
36 or any part thereof, which exceptions shall state with reasonable certainty the grounds and shall  
37 specify the particular paragraphs or parts of the findings and order excepted to.

38 (2) A copy of the exceptions, verified by the exceptor or certified to by the attorney for the  
39 exceptor, shall be served upon each claimant who was an adverse party to any contest wherein the  
40 exceptor was a party in the proceedings, prior to the hearing. Service shall be made by the exceptor  
41 or the attorney for the exceptor upon each such adverse party in person, or upon the attorney if the  
42 adverse party has appeared by attorney, or upon the agent of the adverse party. If the adverse party  
43 is a nonresident of the county or state, the service may be made by mailing a copy to that party  
44 by registered mail or by certified mail with return receipt, addressed to the place of residence of  
45 that party, as set forth in the proof filed in the proceedings.

1 (3) If no exceptions are filed the court shall, on the day set for the hearing, enter a judgment  
2 affirming the determination of the [*Water Resources Director*] **Director of the Oregon Department**  
3 **of Natural Resources**. If exceptions are filed, upon the day set for the hearing the court shall fix  
4 a time, not less than 30 days thereafter, unless for good cause shown the time be extended by the  
5 court, when a hearing will be had upon the exceptions. All parties may be heard upon the consid-  
6 eration of the exceptions, and the director may appear on behalf of the state, either in person or  
7 by the Attorney General. The court may, if necessary, remand the case for further testimony, to be  
8 taken by the director or by a referee appointed by the court for that purpose. Upon completion of  
9 the testimony and its report to the director, the director may be required to make a further deter-  
10 mination.

11 (4) After final hearing the court shall enter a judgment affirming or modifying the order of the  
12 director as the court considers proper, and may assess such costs as it may consider just except that  
13 a judgment for costs may not be rendered against the United States. An appeal may be taken to the  
14 Court of Appeals from the judgment in the same manner and with the same effect as in other cases  
15 in equity, except that notice of appeal must be served and filed within 60 days from the entry of the  
16 judgment.

17 **SECTION 1491.** ORS 539.160 is amended to read:

18 539.160. The clerk of the circuit court, upon the entry of any decree by the circuit court or  
19 judge thereof, as provided by ORS 539.150, shall transmit a certified copy of the decree to the [*Water*  
20 *Resources Department*] **Oregon Department of Natural Resources**, where a record of the decree  
21 shall be maintained. The [*Water Resources Director*] **Director of the Oregon Department of Na-**  
22 **tural Resources** shall issue to the watermasters instructions in compliance with the decree, and in  
23 execution thereof.

24 **SECTION 1492.** ORS 539.170 is amended to read:

25 539.170. While the hearing of the order of the [*Water Resources Director*] **Director of the**  
26 **Oregon Department of Natural Resources** is pending in the circuit court, and until a certified  
27 copy of the judgment, order or decree of the court is transmitted to the director, the division of  
28 water from the stream involved in the appeal shall be made in accordance with the order of the  
29 director.

30 **SECTION 1493.** ORS 539.180 is amended to read:

31 539.180. At any time after the determination of the [*Water Resources Director*] **Director of the**  
32 **Oregon Department of Natural Resources** has been entered of record, the operation thereof may  
33 be stayed in whole or in part by any party by filing a bond or an irrevocable letter of credit issued  
34 by an insured institution as defined in ORS 706.008 in the circuit court wherein the determination  
35 is pending, in such amount as the judge may prescribe, conditioned that the party will pay all  
36 damages that may accrue by reason of the determination not being enforced. Upon the filing and  
37 approval of the bond or letter of credit, the clerk of the circuit court shall transmit to the [*Water*  
38 *Resources Department*] **Oregon Department of Natural Resources** a certified copy of the bond or  
39 letter of credit, which shall be recorded in the department records, and the department shall give  
40 notice thereof to the watermaster of the proper district.

41 **SECTION 1494.** ORS 539.190 is amended to read:

42 539.190. Within six months from the date of the decree of the circuit court determining the  
43 rights upon any stream, or if appealed, within six months from the date of the decree of the circuit  
44 court on the decision of the Supreme Court, the [*Water Resources Director*] **Director of the Oregon**  
45 **Department of Natural Resources** or any party interested may apply to the circuit court for a

1 rehearing upon grounds to be stated in the application. If in the discretion of the court the appli-  
2 cation states good grounds for the rehearing, the circuit court or judge shall make an order fixing  
3 a time and place when the application shall be heard. The clerk of the circuit court shall, at the  
4 expense of the petitioner, forthwith mail written notice of the application to the director and to  
5 every party interested, and state in the notice the time and place when the application will be heard.

6 **SECTION 1495.** ORS 539.200 is amended to read:

7 539.200. The determinations of the [*Water Resources Director*] **Director of the Oregon De-**  
8 **partment of Natural Resources**, as confirmed or modified as provided by this chapter in pro-  
9 ceedings, shall be conclusive as to all prior rights and the rights of all existing claimants upon the  
10 stream or other body of water lawfully embraced in the determination.

11 **SECTION 1496.** ORS 539.210 is amended to read:

12 539.210. Whenever proceedings are instituted for determination of rights to the use of any water,  
13 it shall be the duty of all claimants interested therein to appear and submit proof of their respective  
14 claims, at the time and in the manner required by law. Any claimant who fails to appear in the  
15 proceedings and submit proof of the claims of the claimant shall be barred and estopped from sub-  
16 sequently asserting any rights theretofore acquired upon the stream or other body of water em-  
17 braced in the proceedings, and shall be held to have forfeited all rights to the use of the water  
18 theretofore claimed by the claimant. Any person interested in the water of any stream upon whom  
19 no service of notice has been had of the pendency of proceedings for determination of the rights to  
20 the use of water of the stream, and who has had no actual knowledge or notice of the pendency of  
21 the proceedings may, at any time prior to the expiration of one year after entry of the determination  
22 of the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**, file  
23 a petition to intervene in the proceedings. The petition shall contain, among other things, all mat-  
24 ters required by this chapter of claimants who have been duly served with notice of the proceedings,  
25 and also a statement that the intervenor had no actual knowledge or notice of the pendency of the  
26 proceedings. Upon the filing of the petition in intervention, the petitioner shall be allowed to inter-  
27 vene upon such terms as may be equitable and thereafter shall have all rights vouchsafed by this  
28 chapter to claimants who have been duly served.

29 **SECTION 1497.** ORS 539.220 is amended to read:

30 539.220. Whenever the rights to the waters of any stream have been determined as provided in  
31 this chapter and it appears by the records of such determination that it had not been at one and the  
32 same proceeding, then the [*Water Resources Director*] **Director of the Oregon Department of**  
33 **Natural Resources** may open to public inspection all proofs or evidence of rights to the water, and  
34 the findings of the director in relation thereto, in the manner provided in ORS 539.090. Any person  
35 who then desires to contest the claims or rights of other persons, as set forth in the proofs or es-  
36 tablished by the director, shall proceed in the manner provided for in ORS 539.100 and 539.110;  
37 provided, that contests may not be entered into and shall not be maintained except between claim-  
38 ants who were not parties to the same adjudication proceedings in the original hearings.

39 **SECTION 1498.** ORS 539.230 is amended to read:

40 539.230. (1) In order to preserve information relating to claims to undetermined vested rights  
41 as described in ORS 539.010 and federal reserved rights, the [*Water Resources Director*] **Director**  
42 **of the Oregon Department of Natural Resources** shall prepare a general notice stating the need  
43 for any person, corporation or governmental agency claiming an undetermined vested right, federal  
44 reserved right or a right derived from such rights to file a registration statement as required under  
45 ORS 539.240. The notice shall outline the process for obtaining a blank registration statement and

1 shall describe the rights that may be claimed under this chapter.

2 (2) The notice required under subsection (1) of this section shall be published at least two times  
3 in one or more newspapers having general circulation in each county in which streams with poten-  
4 tially vested rights or reserved rights that have not been adjudicated under this chapter are located.

5 (3) In addition to the notice described under subsection (2) of this section, in any rural county  
6 in which there is not a newspaper having general circulation, the director shall use additional  
7 methods of providing notice of the requirement to file a registration statement. These methods may  
8 include but need not be limited to holding public meetings, inserting announcements in trade or or-  
9 ganization newsletters, public service announcements on local radio stations and informing the  
10 county extension agent of the requirement.

11 **SECTION 1499.** ORS 539.240 is amended to read:

12 539.240. (1) Any person, corporation or governmental agency claiming an undetermined vested  
13 right, federal reserved right or right derived from such rights to appropriate surface water under  
14 ORS 539.010 shall file in the office of the [*Water Resources Department*] **Oregon Department of**  
15 **Natural Resources**, on or before December 31, 1992, a registration statement of the claim.

16 (2) Upon request, the [*Water Resources Director*] **Director of the Oregon Department of Na-**  
17 **tural Resources** shall make available a blank registration statement required under subsection (1)  
18 of this section. The claimant shall complete the registration statement by providing the information  
19 necessary for determination of the claimed vested or reserved right. The registration statement shall  
20 include at least the following:

21 (a) The name and mailing address of the claimant.

22 (b) The claimed beneficial use of the water and the amount used.

23 (c) The stream from which the water is diverted.

24 (d) A map from a survey prepared by a water right examiner certified under ORS 537.798  
25 showing:

26 (A) The location of the point of diversion in reference to an established corner of the United  
27 States Public Lands Survey or, if within a platted and recorded subdivision, from an established lot  
28 corner of the subdivision.

29 (B) The location of the place of use by quarter-quarter section of the United States Public Lands  
30 Survey. If the use is for irrigation, the number of acres irrigated within each quarter-quarter section.

31 (e) The time of commencement of the claimed use of water.

32 (f) The times of beginning and completion of any division and distribution works used to appro-  
33 priate the claimed use of water and the water carrying capacity of such works, if known.

34 (g) The location of the place of use by quarter-quarter section of the United States Public Lands  
35 Survey. If the use is for irrigation, the number of acres irrigated within each quarter-quarter section  
36 during the first year of use and during each subsequent year until the full amount of claimed use  
37 was accomplished.

38 (h) The period of the year during which the claimed use of water is usually made.

39 (3) The failure of any person, corporation or governmental agency to file a registration state-  
40 ment for an undetermined vested right or federal reserved right shall create a rebuttable  
41 presumption that the claim has been abandoned.

42 (4) For good cause shown, any person who fails to file a registration statement within the period  
43 set forth in subsection (1) of this section may file within one year after December 31, 1992, a petition  
44 with the director requesting that the person be given an opportunity to rebut the presumption that  
45 the person has abandoned the claim. Upon the filing of such a petition, the director may schedule

1 a hearing to take testimony and evidence on the date the water was applied to beneficial use or the  
2 director may accept sworn statements in writing in support of such petition. The director shall not  
3 deny a petition without first holding a contested case hearing. If it appears after hearing or from  
4 such sworn statements that the person has a use of water that would be subject to registration un-  
5 der this chapter, the director shall issue an order authorizing the person to file a registration  
6 statement as described under subsection (1) of this section. A person who files a petition under this  
7 subsection shall submit with the petition a fee, the amount of which shall be one and one-half times  
8 the amount the person would have submitted under ORS 539.081 with a timely registration state-  
9 ment.

10 (5) The director shall accept for filing all registration statements described in subsections (1)  
11 and (4) of this section made in proper form when the statements are accompanied by the fees pre-  
12 scribed in ORS 539.081. The director shall indorse the date of receipt on each registration statement.

13 (6) The director shall examine each registration statement to insure that the statement is com-  
14 plete and in proper form. If the director determines the information required under subsection (2)  
15 of this section is complete and in proper form, the director shall:

16 (a) Enter the indorsed statement in the record of the department;

17 (b) Mail a copy of the indorsed statement to the person filing the registration statement; and

18 (c) Include the person or the properly designated assignee of the person in any further pro-  
19 ceeding to adjudicate the water rights represented by the indorsed registration statement.

20 (7) Upon entry of the indorsed statement in the department's records, the registrant is entitled  
21 to continue to appropriate the surface water and apply it to beneficial use to the extent and in the  
22 manner disclosed in the recorded registration statement. However, the registrant shall not be en-  
23 titled to the benefits of an existing water right of record under ORS 540.045.

24 (8) No registration statement recorded under this section shall be construed as a final determi-  
25 nation of any matter stated therein, nor shall the act of indorsement by the director constitute a  
26 determination of the validity of the matters contained in the registration statement. The right of the  
27 registrant to appropriate surface water under a recorded registration statement is subject to deter-  
28 mination under ORS 539.010 to 539.240, and is not final or conclusive until so determined. A right  
29 to appropriate surface water under a recorded registration statement has a tentative priority from  
30 the date claimed in the indorsed registration statement.

31 (9) Any indorsed registration statement may be assigned, subject to the conditions in the regis-  
32 tration statement, but no such assignment will be binding, except upon the parties to the assignment,  
33 unless filed with the department.

34 (10) Notwithstanding the filing deadline prescribed under subsection (1) of this section, and the  
35 late filing period allowed under subsection (4) of this section, if any person submitted, before De-  
36 cember 31, 1994, a registration statement or other similar documentation claiming a right to appro-  
37 priate surface water under ORS 539.010, the director shall examine the material submitted to  
38 determine if the documents filed would substantially comply with the requirements of subsection (2)  
39 of this section. If the director determines that the documents substantially comply with the surface  
40 water registration filing requirements of subsection (2) of this section, the director may accept the  
41 registration. If the director determines that the documents filed under this subsection are incomplete  
42 or if additional information is required to comply with subsection (2) of this section, or fees required  
43 under ORS 539.081 have not been submitted, the director shall notify the claimant of the deficiency,  
44 setting a date certain for submittal of the information or fees. The time for submittal of additional  
45 information or fees shall be not less than 30 days nor more than 180 days after the director notifies

1 the claimant of the deficiency. If the additional information or fees are not submitted on or before  
 2 the date certain, the registration statement shall be considered void and shall be returned to the  
 3 claimant.

4 (11) The director shall adopt by rule a process and standards for recognizing changes in the  
 5 place of use, type of use or point of diversion of water uses registered pursuant to this section.

6 **SECTION 1500.** ORS 539.310 is amended to read:

7 539.310. (1) The [*Water Resources Director*] **Director of the Oregon Department of Natural**  
 8 **Resources** may negotiate with representatives of any federally recognized Indian tribe that may  
 9 have a federal reserved water right claim in Oregon and representatives of the federal government  
 10 as trustee for the federally recognized Indian tribe to define the scope and attributes of rights to  
 11 water claimed by the federally recognized Indian tribe to satisfy tribal rights under treaty between  
 12 the United States and the tribes of Oregon. All negotiations in which the director participates under  
 13 this section shall be open to the public.

14 (2) During negotiations conducted under subsection (1) of this section, the director shall:

15 (a) Provide public notice of the negotiations;

16 (b) Allow for public input through the director; and

17 (c) Provide regular reports on the progress of the negotiations to interested members of the  
 18 public.

19 **SECTION 1501.** ORS 539.320 is amended to read:

20 539.320. When the [*Water Resources Director*] **Director of the Oregon Department of Natural**  
 21 **Resources** and the representatives of any federally recognized Indian tribe that may have a federal  
 22 reserved water right claim in Oregon and the federal government have completed an agreement, the  
 23 [*Water Resources*] director shall submit an original copy of the agreement to the appropriate court.  
 24 The copy shall be signed by the [*Water Resources*] director on behalf of the State of Oregon and by  
 25 authorized representatives of the Indian tribe and the federal government as trustee for the Indian  
 26 tribe.

27 **SECTION 1502.** ORS 539.330 is amended to read:

28 539.330. (1) Upon filing of the agreement with the appropriate court under ORS 539.320, the  
 29 [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** shall notify  
 30 owners of water right certificates or permits that may be affected by the agreement:

31 (a) That the agreement has been filed with the court; and

32 (b) Of the time and manner specified by the court for filing an exception to the agreement.

33 (2) Unless notice by registered mail is required by the court, the notice required under sub-  
 34 section (1) of this section may be given by:

35 (a) Publication; or

36 (b) Any other method the director considers necessary.

37 **SECTION 1503.** ORS 539.340 is amended to read:

38 539.340. (1) An agreement negotiated under ORS 539.310 to 539.330 shall not be effective unless  
 39 and until incorporated in a final court decree, after the court has provided an opportunity for an  
 40 owner of a water right certificate or permit that may be affected by the agreement or for a claimant  
 41 in an adjudication that may be affected by the agreement to submit an exception to the agreement.

42 (2) If the court does not sustain an exception, the court shall issue a final decree incorporating  
 43 the agreement as submitted without alteration.

44 (3) If the court sustains an exception to the agreement, the court shall remand the agreement  
 45 to the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** for

1 further negotiation according to the provisions of ORS 539.300 to 539.350, if desired by the parties  
2 to the agreement.

3 **SECTION 1504.** ORS 539.350 is amended to read:

4 539.350. Within 180 days after the court remands the agreement under ORS 539.340, the [*Water*  
5 *Resources Director*] **Director of the Oregon Department of Natural Resources** shall file with the  
6 court:

7 (1) An amended agreement complying with ORS 539.320, which shall be subject to the procedure  
8 specified by ORS 539.330;

9 (2) A motion to dismiss the proceedings, which shall be granted by the court; or

10 (3) A stipulated motion for a continuance for a period not to exceed 180 days, within which pe-  
11 riod the parties shall submit to the court an amended agreement, a motion to dismiss or a motion  
12 for further continuance.

13 **SECTION 1505.** ORS 540.010 is amended to read:

14 540.010. The [*Water Resources Commission*] **Oregon Department of Natural Resources** shall  
15 divide the state into water districts, which shall be so constituted as to secure the best protection  
16 to the claimants for water and the most economical supervision on the part of the state. Water  
17 districts shall not be created until necessary.

18 **SECTION 1506.** ORS 540.020 is amended to read:

19 540.020. (1) The [*Water Resources Director*] **Director of the Oregon Department of Natural**  
20 **Resources** shall appoint one watermaster for each water district. The watermaster shall hold office  
21 until removed by the director, and shall be subject to any applicable provision of the State Personnel  
22 Relations Law. The director shall fill all vacancies which occur in the office.

23 (2) The director, or any duly authorized assistant, shall have the powers and authority of a  
24 watermaster in the distribution of water in any water district.

25 **SECTION 1507.** ORS 540.030 is amended to read:

26 540.030. The [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
27 **sources** shall:

28 (1) Have general control over the watermasters **appointed under ORS 540.020.**

29 (2) Execute the laws relative to the distribution of water and perform other functions [*as may*  
30 *be*] assigned to the director **under this chapter.**

31 **SECTION 1508.** ORS 540.045 is amended to read:

32 540.045. (1) Each watermaster shall:

33 (a) Regulate the distribution of water among the various users of water from any natural surface  
34 or ground water supply in accordance with the users' existing water rights of record in the [*Water*  
35 *Resources Department*] **Oregon Department of Natural Resources.**

36 (b) Upon the request of the users, distribute water among the various users under any partner-  
37 ship ditch, pipeline or well or from any reservoir, in accordance with the users' existing water rights  
38 of record in the department.

39 (c) Divide the waters of the natural surface and ground water sources and other sources of  
40 water supply among the canals, ditches, pumps, pipelines and reservoirs taking water from the  
41 source for beneficial use, by regulating, adjusting and fastening the headgates, valves or other con-  
42 trol works at the several points of diversion of surface water or the several points of appropriation  
43 of ground water, according to the users' relative entitlements to water.

44 (d) Attach to the headgate, valve or other control works the watermaster regulates under par-  
45 agraph (c) of this subsection, a written notice dated and signed by the watermaster, setting forth



1 that the headgate, valve or other control works has been properly regulated and is wholly under the  
2 control of the watermaster.

3 (e) Perform any other duties the [*Water Resources Director*] **Director of the Oregon Depart-**  
4 **ment of Natural Resources** may require.

5 (2) When a watermaster must rely on a well log or other documentation to regulate the use or  
6 distribution of ground water, the regulation shall be in accordance with ORS 537.545 (4).

7 (3) For purposes of regulating the distribution or use of water, any stored water released in  
8 excess of the needs of water rights calling on that stored water shall be considered natural flow,  
9 unless the release is part of a water exchange under the control of, and approved by, the  
10 watermaster.

11 (4) As used in this section, "existing water rights of record" includes all completed permits,  
12 certificates, licenses and ground water registration statements filed under ORS 537.605 and related  
13 court decrees.

14 **SECTION 1509.** ORS 540.050 is amended to read:

15 540.050. The district attorney shall appear on behalf of the [*Water Resources Director*] **Director**  
16 **of the Oregon Department of Natural Resources** or any watermaster in any case which may  
17 arise in the pursuance of the official duties of the director or watermaster within the jurisdiction  
18 of the district attorney.

19 **SECTION 1510.** ORS 540.075 is amended to read:

20 540.075. (1) The county court or board of county commissioners of each county in which the  
21 water district of the watermaster is located shall furnish the watermaster a suitable office and office  
22 equipment.

23 (2) If a water district includes all or parts of two or more counties, the office of the watermaster  
24 for the water district shall be in the county designated by the [*Water Resources Director*] **Director**  
25 **of the Oregon Department of Natural Resources** and the county court or board of county com-  
26 missioners of that county shall provide a suitable office with necessary office equipment for the  
27 watermaster.

28 **SECTION 1511.** ORS 540.080 is amended to read:

29 540.080. (1) With the approval of the [*Water Resources Director*] **Director of the Oregon De-**  
30 **partment of Natural Resources**, a watermaster may employ assistants to aid in the discharge of  
31 the watermaster's duties. The assistants shall take the same oath as the watermaster and shall obey  
32 the watermaster's instructions. Compensation and actual and necessary traveling expenses of an  
33 assistant shall be paid by the county court or board of county commissioners upon certificates of  
34 the watermaster by an order made at a regular term when sitting for the transaction of county  
35 business. If no provision for such payment is made, the assistant's compensation and expenses shall  
36 be paid by the water users concerned, as provided in ORS 540.100 to 540.130.

37 (2) The term of service of an assistant watermaster may be terminated at any time by the di-  
38 rector or the watermaster.

39 **SECTION 1512.** ORS 540.130 is amended to read:

40 540.130. If no provision has been made for payment of the assistant watermaster or expenses as  
41 provided in ORS 540.080, before proceeding to make any distribution or division the [*Water Re-*  
42 *sources Director*] **Director of the Oregon Department of Natural Resources** may require the  
43 water users requesting the distribution or division to pay in advance the estimated compensation  
44 and expenses involved in the work. The director shall keep a true and full account of all moneys  
45 paid in advance under this section. Upon the expiration of the period for which the services are

1 required, the director shall refund to the water users any unexpended balance of the moneys paid  
2 in advance.

3 **SECTION 1513.** ORS 540.135 is amended to read:

4 540.135. Any moneys collected under ORS 540.100 to 540.130 and 540.220 shall be paid to the  
5 [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** and de-  
6 posited by the director in a revolving fund to be disbursed for the purpose for which it was col-  
7 lected.

8 **SECTION 1514.** ORS 540.145 is amended to read:

9 540.145. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may adopt  
10 rules to secure the equal and fair distribution of water in accordance with the rights of the various  
11 users. The rules shall apply to all water rights that have been established:

12 (1) By court decree;

13 (2) Under an order of the commission or the [*Water Resources Director*] **Director of the Oregon**  
14 **Department of Natural Resources** in proceedings for the determination of relative rights to the  
15 use of water; or

16 (3) Through permits to appropriate water or certificates of water rights issued by the commis-  
17 sion.

18 **SECTION 1515.** ORS 540.210 is amended to read:

19 540.210. (1) Whenever any water users from any ditch or reservoir, either among themselves or  
20 with the owner thereof, are unable to agree relative to the distribution or division of water through  
21 or from the ditch or reservoir, either the owner or any such water user may apply to the  
22 watermaster of the district in which the ditch or reservoir is located, by written notice, setting forth  
23 such facts, and asking the watermaster to take charge of the ditch or reservoir for the purpose of  
24 making a just division or distribution of water from it to the parties entitled to the use thereof.

25 (2) The watermaster shall then take exclusive charge of the ditch or reservoir, for the purpose  
26 of dividing or distributing the water therefrom in accordance with the respective and relative rights  
27 of the various users of water from the ditch or reservoir, and shall continue the work until the ne-  
28 cessity therefor shall cease to exist.

29 (3) The distribution and division of water shall be made according to the relative and respective  
30 rights of the various users from the ditch or reservoir, as determined by the [*Water Resources Di-*  
31 *rector*] **Director of the Oregon Department of Natural Resources**, by decree of the circuit court,  
32 or by written contract between all of the users filed with the watermaster.

33 (4) The circuit court having jurisdiction may request the watermaster of the district to take  
34 charge of any such ditch or reservoir, and to enforce any decree respecting such ditch or reservoir  
35 made under the jurisdiction of the court.

36 **SECTION 1516.** ORS 540.220 is amended to read:

37 540.220. (1) A watermaster may appoint an assistant to take charge of the ditch, pipeline or  
38 reservoir involved in a distribution or division of water under ORS 540.210. The assistant  
39 watermaster shall be paid by the water users from the ditch, pipeline or reservoir for the cost of the  
40 distribution. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may re-  
41 quire the water users to pay in advance the estimated compensation and expenses of the assistant  
42 involved in the distribution or division of the water.

43 (2) In the case of partnership ditches, pipelines or mutual irrigation corporations organized for  
44 the benefit of the members or stockholders, the expense of the assistant shall be paid by the water  
45 users in proportion to the area of land for which each water user is entitled to the use of water from

1 the ditch, pipeline or reservoir, so that each shall pay the same rate per acre.

2 (3) In the case of ditches, pipelines and reservoirs constructed and operated for sale or rental  
3 of water, the wages and expense of the assistant shall be paid by the owner of the ditch, pipeline  
4 or reservoir, unless otherwise provided in written contracts with water users using water from the  
5 ditches, pipelines and reservoirs involved in the distribution or division of water.

6 **SECTION 1517.** ORS 540.310 is amended to read:

7 540.310. (1) The owner of any ditch or canal shall maintain to the satisfaction of the [*Water*  
8 *Resources Commission*] **Oregon Natural Resources Commission** a substantial headgate at the  
9 point where the water is diverted. It shall be of such construction that it can be locked and kept  
10 closed by the watermaster.

11 (2) The owner shall construct and maintain, when required by the commission, suitable measur-  
12 ing devices at such points along the ditch as may be necessary to assist the watermaster in deter-  
13 mining the amount of water that is to be diverted into the ditch from the stream, or taken from it  
14 by the various users.

15 (3) When necessary for the protection of other water users, the commission may require flumes  
16 to be installed along the line of any ditch.

17 **SECTION 1518.** ORS 540.320 is amended to read:

18 540.320. If any owner of irrigation works refuses or neglects to construct and put in headgates,  
19 flumes or measuring devices, as required under ORS 540.310, after 10 days' notice, the watermaster  
20 may close the ditch, and it shall not be opened or any water diverted from the source of supply,  
21 under the penalties prescribed by law for the opening of headgates lawfully closed, until the re-  
22 quirements of the [*Water Resources Commission*] **Oregon Natural Resources Commission** as to  
23 such headgates, flumes or measuring devices have been complied with.

24 **SECTION 1519.** ORS 540.330 is amended to read:

25 540.330. (1) Any owner or manager of a reservoir, located across or upon the bed of a natural  
26 stream, shall construct and maintain, when required by the [*Water Resources Commission*] **Oregon**  
27 **Natural Resources Commission**, a measuring device below, and one above, the reservoir on each  
28 stream or source of supply discharging into the reservoir, to assist the watermaster in determining  
29 the amount of water to which appropriators are entitled and thereafter diverting it for their use.

30 (2) If any owner or manager of a reservoir located across the bed of a natural stream neglects  
31 or refuses to put in a measuring device after 10 days' notice by the commission, the watermaster  
32 may open the sluiceway or outlet of the reservoir, and it shall not be closed, under penalties of the  
33 law for changing or interfering with headgates, until the requirements of the commission as to such  
34 measuring devices are complied with.

35 **SECTION 1520.** ORS 540.340 is amended to read:

36 540.340. (1) Whenever it may be necessary for the protection of other water users, the [*Water*  
37 *Resources Commission*] **Oregon Natural Resources Commission** shall require every owner or  
38 manager of a reservoir or diversion dam, located across or upon the bed of a natural stream, to  
39 construct and maintain a suitable outlet in the reservoir or diversion dam which will allow the free  
40 passage of the natural flow of the stream. The commission shall determine what constitutes a suit-  
41 able outlet.

42 (2) If any owner or manager of a reservoir or diversion dam refuses or neglects to construct or  
43 put in such outlet in the reservoir or diversion dam after 10 days' notice by the commission, the  
44 commission may close the ditch carrying water from the reservoir or diversion dam and it shall not  
45 be opened or any water diverted from the reservoir or diversion dam, under the penalties prescribed

1 by law for the opening of headgates lawfully closed, until the requirements of the commission re-  
2 garding such outlet have been complied with.

3 **SECTION 1521.** ORS 540.350 is amended to read:

4 540.350. (1) No person, firm or private or municipal corporation shall construct any dam, dike,  
5 or other hydraulic structure or works, the failure of which the [*Water Resources Commission*]  
6 **Oregon Natural Resources Commission** finds would result in damage to life or property, unless  
7 the commission has made an examination of the site and of the plans and specifications and other  
8 features involved in the construction of such works, and has approved them in writing.

9 (2) When a person, firm or private or municipal corporation seeks the written approval of the  
10 [*Water Resources*] commission, of the site, plans, specifications and features for a dam more than 25  
11 feet high at a site where there is an average annual flow exceeding two cubic feet a second, that  
12 party must demonstrate that the dam includes measures that make it readily adaptable to power  
13 generation in a manner meeting statutory requirements for the safe passage of fish. These measures  
14 shall include the installation of a pressure conduit, penstock, drain or similar water diversion system  
15 at the time the dam is built.

16 (3) A person, firm or private or municipal corporation seeking approval for a dam described in  
17 subsection (2) of this section need not make the showing required by that subsection if that party  
18 demonstrates to the commission's satisfaction that:

19 (a) It is not likely the installation of hydroelectric generating facilities at the proposed site  
20 would be feasible anytime during the life of the proposed dam; or

21 (b) It would be more feasible to install hydroelectric facilities after construction of the proposed  
22 dam.

23 (4) The commission's approval of the site, plans and specifications, or other features involved in  
24 the construction, maintenance and operation of any hydraulic works whatsoever shall not relieve  
25 the owners of their legal responsibilities.

26 (5) The commission may make inspections of any hydraulic structure, the site thereof, and of the  
27 plans and specifications, and any other features involved in the construction, maintenance and op-  
28 eration of the works. If, as a result of the inspections, the commission considers any modifications  
29 necessary to insure the safety of the works with reference to possible damage to life or property,  
30 the commission shall notify the legal owners by registered mail or by certified mail with return re-  
31 ceipt, stating why the works are unsafe. The notice shall set forth the modifications necessary to  
32 insure the safety of the works in so far as it affects possible damage to life or property. The notice  
33 also shall set a hearing at a time and place as will give the owners a reasonable time to prepare  
34 for the hearing.

35 **SECTION 1522.** ORS 540.360 is amended to read:

36 540.360. After the hearing the [*Water Resources Commission*] **Oregon Natural Resources**  
37 **Commission** may issue a written order to the owners to make such modifications as the commission  
38 considers necessary to insure the safety of the works with reference to possible damage to life or  
39 property and shall fix the time within which work shall begin in good faith and the time for com-  
40 pletion. The owners, upon receipt of the order, shall make the modifications ordered within the time  
41 limit prescribed or shall initiate an appeal as above provided.

42 **SECTION 1523.** ORS 540.370 is amended to read:

43 540.370. (1) If the owners fail to make the modifications within the time limits set by the [*Water*]  
44 [*Resources Commission*] **Oregon Natural Resources Commission**, or to institute their appeal or to  
45 comply with the decree of the appellate court in case an appeal is taken, the commission shall issue

1 an order in writing to the owners directing that the gates be kept open, or an opening made in the  
2 dam if necessary, or that the structure shall not be used for the storage, restraint or conveyance  
3 of water until the modifications have been made.

4 (2) No owner shall refuse to comply with the orders of the commission or the decree of an ap-  
5 pellate court.

6 (3) In case of noncompliance, the commission shall direct the watermaster or other authorized  
7 assistant to carry out the orders, or the commission may file a copy of the commission's order with  
8 the Attorney General or with the district attorney of the county within which the works are located.  
9 The Attorney General or district attorney shall bring proceedings in the name of the state, in the  
10 circuit court of the county within which the works or any part thereof are situated, to abate the  
11 offending works. The court, after a full hearing on the matter, may declare the works a nuisance  
12 and order their removal, or order any repairs or alterations, and may enforce its orders in the  
13 manner provided by law.

14 **SECTION 1524.** ORS 540.380 is amended to read:

15 540.380. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may ac-  
16 cept the reports of consulting engineers, geologists or other specialists whom the owners of the  
17 works in question may have employed. But if, for any reason, the commission considers the reports  
18 insufficient, the commission may employ consulting engineers, geologists or other specialists [*outside*  
19 *the Water Resources Department*] **who are not employed by the Oregon Department of Natural**  
20 **Resources** to make special examinations and inspections and to prepare reports for the  
21 commission's guidance. The cost of such special examinations, inspections and reports shall be paid  
22 by the commission from any funds at the commission's disposal, or it may be divided by mutual  
23 agreement between the state and the owners.

24 **SECTION 1525.** ORS 540.390 is amended to read:

25 540.390. Should any person residing on or owning land in the neighborhood of any dam, dike or  
26 other hydraulic structure after completion, or in course of construction, apply to the [*Water Re-*  
27 *sources Commission*] **Oregon Natural Resources Commission** in writing desiring an inspection of  
28 the works, the commission may order an inspection, or the commission may make such order on the  
29 commission's own motion. Before doing so the commission may require the applicant for inspection  
30 to deposit a sum of money sufficient to pay the expenses of an inspection. If the application appears  
31 to the commission not to have been justified the commission may cause the whole or part of the  
32 expenses to be paid out of the deposit. If the application appears to have been justified, the com-  
33 mission may require the owner of the works to pay the whole or any part of the expenses of the  
34 inspection, and it shall constitute a valid lien against the works, which may be enforced in the same  
35 manner as provided for the enforcement of mechanic's liens.

36 **SECTION 1526.** ORS 540.410 is amended to read:

37 540.410. Whenever the owner, manager or lessee of a reservoir constructed under the provisions  
38 of the Water Rights Act, as defined in ORS 537.010, desires to use the bed of a stream, or other  
39 watercourse, to carry stored or impounded water from the reservoir to the consumer of the water,  
40 the owner, manager or lessee shall, in writing, notify the watermaster of the district in which the  
41 stored or impounded water from the reservoir is to be used, giving the date when it is proposed to  
42 discharge water from the reservoir, its volume, and the names of all persons and ditches entitled to  
43 its use. The watermaster shall then close, or so adjust the headgates of all ditches from the stream  
44 or watercourse, not entitled to the use of such stored water, as will enable those having the right  
45 to secure the volume to which they are entitled. The watermaster shall keep a true and just account

1 of the time spent in the discharge of the watermaster's duties as defined in this section, and the  
 2 [Water Resources Commission] **Oregon Natural Resources Commission** shall present a bill of  
 3 one-half the expense so incurred to the reservoir owner, manager or lessee. If the owner, manager  
 4 or lessee neglects for 30 days, after presentation of the bill of costs, to pay it, the costs shall be  
 5 made a charge upon the reservoir and the state shall have a preference lien therefor. Upon notice  
 6 from the commission, the Attorney General shall foreclose the lien and collect the amount due, as  
 7 provided in this section, in the same manner as other liens on real property are foreclosed.

8 **SECTION 1527.** ORS 540.435 is amended to read:

9 540.435. (1) In addition to any other authority of the [Water Resources Commission] **Oregon**  
 10 **Natural Resources Commission** to order installation of a measuring device, if the commission  
 11 finds accurate water use information necessary because of serious water management problems  
 12 created by ground water decline, unresolved user disputes or frequent water shortages, the com-  
 13 mission by rule may require a water right owner using any surface or ground water source within  
 14 the state to install a totalizing measuring device and to submit annually a water use report.

15 (2) Before the commission implements any requirements under subsection (1) of this section the  
 16 commission shall:

17 (a) Cause a hearing to be conducted in the affected area to determine whether a serious man-  
 18 agement problem exists; and

19 (b) Allow any affected person an opportunity to present alternative methods or devices that  
 20 could be used to provide the information necessary to manage the water resource or to alleviate the  
 21 water management problem.

22 (3) The watermaster may prohibit the diversion or use of water by anyone who has failed to  
 23 comply with a commission rule or order requiring installation of measuring devices or submission  
 24 of a water use report.

25 **SECTION 1528.** ORS 540.505 is amended to read:

26 540.505. As used in ORS 540.505 to 540.585:

27 (1) "District" means an irrigation district formed under ORS chapter 545, a drainage district  
 28 formed under ORS chapter 547, a water improvement district formed under ORS chapter 552, a wa-  
 29 ter control district formed under ORS chapter 553 or a corporation organized under ORS chapter  
 30 554.

31 (2) "Primary water right" means the water right designated by the [Water Resources  
 32 Commission] **Oregon Natural Resources Commission** as the principal water supply for the au-  
 33 thorized use, or if no designation has been made, the water right designated by the applicant as the  
 34 principal water supply for the authorized use.

35 (3) "Supplemental water right or permit" means an additional appropriation of water to make  
 36 up a deficiency in supply from an existing water right. A supplemental water right or permit is used  
 37 in conjunction with a primary water right.

38 (4) "Water use subject to transfer" means a water use established by:

39 (a) An adjudication under ORS chapter 539 as evidenced by a court decree;

40 (b) A water right certificate;

41 (c) A water use permit for which a request for issuance of a water right certificate under ORS  
 42 537.250 has been received and approved by the [Water Resources] commission under ORS 537.250;  
 43 or

44 (d) A transfer application for which an order approving the change has been issued under ORS  
 45 540.530 and for which proper proof of completion of the change has been filed with the [Water Re-

1 *sources*] commission.

2 **SECTION 1529.** ORS 540.510 is amended to read:

3 540.510. (1) Except as provided in subsections (2) to (8) of this section, all water used in this  
4 state for any purpose shall remain appurtenant to the premises upon which it is used and no change  
5 in use or place of use of any water for any purpose may be made without compliance with the pro-  
6 visions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may,  
7 upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use,  
8 the point of diversion or the use theretofore made of the water in all cases without losing priority  
9 of the right theretofore established. A district may change the place of use in the manner provided  
10 in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an ap-  
11 plication for change of the use or place of use for a primary water right is submitted in accordance  
12 with this section, the applicant also shall indicate whether the land described in the application has  
13 an appurtenant supplemental water right or permit. If the applicant also intends to transfer the  
14 supplemental water right or permit, the applicant also shall include the information required under  
15 ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the  
16 supplemental water right or permit in the transfer application, the [*Water Resources Department*]  
17 **Oregon Department of Natural Resources** shall notify the applicant that the supplemental water  
18 right or permit will be canceled before the department issues the order approving the transfer of the  
19 primary water right, unless within 30 days the applicant modifies the application to include the  
20 supplemental water right or permit or withdraws the application. The department may approve the  
21 transfer of the supplemental water right or permit in accordance with the provisions of ORS 540.520  
22 and 540.530. The department shall not approve the transfer of a supplemental water right or permit  
23 if the transfer would result in enlargement of the original water right or injury to an existing water  
24 right. If the department approves the transfer of the primary water right but does not approve the  
25 transfer of the supplemental water right or permit, the department shall notify the applicant of the  
26 department's intent to cancel that portion of the supplemental water right or permit described in the  
27 transfer application before the department issues the primary water right transfer order, unless the  
28 applicant withdraws the transfer application within 90 days.

29 (2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated  
30 by the [*Water Resources Commission*] **Oregon Natural Resources Commission** under ORS 537.470  
31 may be severed from the land and transferred or sold after notice to the commission as required  
32 under ORS 537.490.

33 (3)(a) Any water used under a permit or certificate issued to a municipality, or under rights  
34 conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132, may  
35 be applied to beneficial use on lands to which the right is not appurtenant if:

36 (A) The water is applied to lands which are acquired by annexation or through merger, consol-  
37 idation or formation of a water authority, so long as the rate and use of water allowed in the ori-  
38 ginal certificate is not exceeded;

39 (B) The use continues to be for municipal purposes and would not interfere with or impair prior  
40 vested water rights; or

41 (C) The use is authorized under a permit granted under ORS 468B.050 or 468B.053 and for which  
42 a reclaimed water registration form has been filed under ORS 537.132.

43 (b) As used in this subsection, "municipality" means a city, a port formed under ORS 777.005 to  
44 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter  
45 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

1 (4) Pursuant to the provisions of ORS 540.570 or 540.585, any water used under a permit or  
2 certificate issued to a district may be applied to beneficial use on lands within the district to which  
3 the right is not appurtenant.

4 (5) The relocation of a point of diversion as necessary to follow the movements of a naturally  
5 changing stream channel does not constitute a change in point of diversion for purposes of ORS  
6 540.520 if:

7 (a) The diversion point stays within 500 feet of the point of diversion on record with the [*Water*  
8 *Resources*] department;

9 (b) The change does not move the diversion point upstream or downstream beyond the diversion  
10 point of another appropriator; and

11 (c) **If necessary**, the diversion is provided with a proper fish screen[, *if requested by the State*  
12 *Department of Fish and Wildlife*].

13 (6) In the event that government action results in or creates a reasonable expectation of a  
14 change in the surface level of a surface water source that impairs or threatens to impair access to  
15 a point of diversion authorized by a water right permit, certificate or decree, the owner of the water  
16 right may change the point of diversion or add an additional point of diversion in accordance with  
17 the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530.  
18 Before changing the point of diversion, the water right owner shall provide written notice of the  
19 proposed change to the [*Water Resources*] department. Within 15 days after receipt of such notice,  
20 the department shall provide notice by publication in the department's public notice of water right  
21 applications. Within 60 days after the department receives notice from the owner, the [*Water Re-*  
22 *sources Director*] **Director of the Oregon Department of Natural Resources**, by order, shall ap-  
23 prove the change unless the director finds the changes will result in injury to other existing water  
24 rights. All other terms and conditions of the water right shall remain in effect.

25 (7) The sale or lease of the right to the use of conserved water under ORS 537.490 does not  
26 constitute a change of use or a change in the place of use of water for purposes of ORS 540.520.

27 (8) Ground water applied to an exempt use as set forth in ORS 537.141 or 537.545 may be sub-  
28 sequently applied to land for irrigation purposes under ORS 537.141 (1)(i) or 537.545 (1)(g) without  
29 application for a change in use or place of use under this section.

30 **SECTION 1530.** ORS 540.520 is amended to read:

31 540.520. (1) Except when the application is made under ORS 541.327 or when an application for  
32 a temporary transfer is made under ORS 540.523, whenever the holder of a water use subject to  
33 transfer for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires  
34 to change the place of use, the point of diversion, or the use made of the water, an application to  
35 make such change, as the case may be, shall be filed with the [*Water Resources Department*] **Oregon**  
36 **Department of Natural Resources**.

37 (2) The application required under subsection (1) of this section shall include:

38 (a) The name of the owner;

39 (b) The previous use of the water;

40 (c) A description of the premises upon which the water is used;

41 (d) A description of the premises upon which it is proposed to use the water;

42 (e) The use which is proposed to be made of the water;

43 (f) The reasons for making the proposed change; and

44 (g) Evidence that the water has been used over the past five years according to the terms and  
45 conditions of the owner's water right certificate or that the water right is not subject to forfeiture



1 under ORS 540.610.

2 (3) If the application required under subsection (1) of this section is necessary to allow a change  
3 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS  
4 541.375, or is approved by the [*State Department of Fish and Wildlife*] **department** as a change that  
5 will result in a net benefit to fish and wildlife habitat, the department, at the discretion of the  
6 [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**, may waive  
7 or assist the applicant in satisfying the requirements of subsection (2)(c) and (d) of this section. The  
8 assistance provided by the department may include, but need not be limited to, development of an  
9 application map.

10 (4) If the application is to change the point of diversion, the [*transfer shall include a condition*  
11 *that the holder of the water right provide a proper fish screen at the new point of diversion, if requested*  
12 *by the State Department of Fish and Wildlife*] **department shall determine whether to require the**  
13 **holder of the water right to provide a fish screen at the new point of diversion.**

14 (5) Upon the filing of the application the department shall give notice by publication in a  
15 newspaper having general circulation in the area in which the water rights are located, for a period  
16 of at least three weeks and not less than one publication each week. The notice shall include the  
17 date on which the last notice by publication will occur. The cost of the publication shall be paid  
18 by the applicant in advance to the department. In applications for only a change in place of use or  
19 for a change in the point of diversion of less than one-fourth mile, and where there are no inter-  
20 vening diversions between the old diversion of the applicant and the proposed new diversion, no  
21 newspaper notice need be published. The department shall include notice of such applications in the  
22 weekly notice published by the department.

23 (6) Within 30 days after the last publication of a newspaper notice of the proposed transfer or  
24 the mailing of the department's weekly notice, whichever is later, any person may file, jointly or  
25 severally, with the department, a protest against approval of the application.

26 (7) Whenever a timely protest is filed, or in the opinion of the [*Water Resources*] director a  
27 hearing is necessary to determine whether the proposed changes as described by the application  
28 would result in injury to existing water rights, the department shall hold a hearing on the matter.  
29 Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to  
30 contested cases, and shall be held in the area where the rights are located unless all parties and  
31 persons who filed a protest under this subsection stipulate otherwise.

32 (8) An application for a change of use under this section is not required if the beneficial use  
33 authorized by the water use subject to transfer is irrigation and the owner of the water right uses  
34 the water for incidental agricultural, stock watering and other uses related to irrigation use, so long  
35 as there is no increase in the rate, duty, total acreage benefited or season of use.

36 (9) A water right transfer under subsection (1) of this section is not required for a general in-  
37 dustrial use that was not included in a water right certificate issued for a specific industrial use if:

38 (a) The quantity of water used for the general industrial use is not greater than the rate allowed  
39 in the original water right and not greater than the quantity of water diverted to satisfy the au-  
40 thorized specific use under the original water right;

41 (b) The location where the water is to be used for general industrial use was owned by the  
42 holder of the original water right at the time the water right permit was issued; and

43 (c) The person who makes the change in water use provides the following information to the  
44 [*Water Resources*] department:

45 (A) The name and mailing address of the person using water under the water right;

1 (B) The water right certificate number;

2 (C) A description of the location of the industrial facility owned by the holder of the original  
3 water right at the time the water right permit was issued; and

4 (D) A description of the general industrial use to be made of the water after the change.

5 **SECTION 1531.** ORS 540.523 is amended to read:

6 540.523. (1) In accordance with the provisions of this section, any person who holds a water use  
7 subject to transfer may request that the [*Water Resources Department*] **Oregon Department of**  
8 **Natural Resources** approve the temporary transfer of place of use and, if necessary to convey  
9 water to the new temporary place of use, temporarily change the point of diversion or point of ap-  
10 propriation for a period not to exceed five years. An application for a temporary transfer shall:

11 (a) Be submitted in writing to the [*Water Resources*] department;

12 (b) Be accompanied by the appropriate fee for a change in the place of use as set forth in ORS  
13 536.050;

14 (c) Include the information required under ORS 540.520 (2); and

15 (d) Include any other information the [*Water Resources Commission*] **Oregon Natural Re-**  
16 **sources Commission** by rule may require.

17 (2) Notwithstanding the notice and waiting requirements under ORS 540.520, the department  
18 shall approve by order a request for a temporary transfer under this section if the department de-  
19 termines that the temporary transfer will not injure any existing water right.

20 (3) All uses of water for which a temporary transfer is allowed under this section shall revert  
21 automatically to the terms and conditions of the water use subject to transfer upon expiration of the  
22 temporary transfer period.

23 (4) The time during which water is used under an approved temporary transfer order does not  
24 apply toward a finding of forfeiture under ORS 540.610.

25 (5) The department may revoke a prior approval of the temporary transfer at any time if the  
26 department finds that the transfer is causing injury to any existing water right.

27 (6) Any map that may be required under subsection (1) of this section need not be prepared by  
28 a certified water right examiner.

29 (7) The lands from which the water right is removed during the period of a temporary transfer  
30 shall receive no water under the transferred water right.

31 (8) When an application for a temporary change of the place of use for a primary water right  
32 is submitted in accordance with this section, the applicant also shall indicate whether the land de-  
33 scribed in the application has an appurtenant supplemental water right or permit. If the applicant  
34 also intends to temporarily transfer the supplemental water right or permit, the applicant also shall  
35 include the information required under ORS 540.520 (2) for the supplemental water right or permit.  
36 If the applicant does not include the supplemental water right or permit in the temporary transfer  
37 application, the [*Water Resources*] department shall notify the applicant that the supplemental water  
38 right or permit will be canceled before the department issues the order approving the temporary  
39 transfer of the primary water right, unless within 30 days the applicant modifies the application to  
40 include the supplemental water right or permit or withdraws the application. The department may  
41 approve the temporary transfer of the supplemental water right or permit in accordance with the  
42 provisions of this section. The department may not approve the temporary transfer of a supplemental  
43 water right or permit if the temporary transfer would result in enlargement of the original water  
44 right or injury to an existing water right. If the department approves the temporary transfer of the  
45 primary water right but does not approve the temporary transfer of the supplemental water right

1 or permit, the department shall notify the applicant of the department's intent not to allow the  
2 temporary transfer of the supplemental water right or permit before the department issues the order  
3 for the temporary transfer of the primary water right. If the department does not allow the tempo-  
4 rary transfer of the supplemental right, the supplemental right shall remain appurtenant to the land  
5 described in the application, but may not be exercised until the primary right reverts to the original  
6 water use. If the primary water right does not revert soon enough to allow use of water under the  
7 supplemental right within five years, the supplemental right shall become subject to cancellation for  
8 nonuse under ORS 540.610.

9 (9) In issuing an order under subsection (2) of this section, the department shall include any  
10 condition necessary to protect other water rights.

11 **SECTION 1532.** ORS 540.524 is amended to read:

12 540.524. (1) Notwithstanding ORS 540.510 or 540.670, upon approval of an application submitted  
13 to the [*Water Resources Department*] **Oregon Department of Natural Resources**, the holder of  
14 both a primary water right originating from a surface water source and a supplemental water right  
15 permit or certificate originating from a ground water source may substitute the use of the supple-  
16 mental water right for the primary water right. A substitution may not be made under this sub-  
17 section if the use of the supplemental water right results in an enlargement or expansion of the  
18 primary water right. This subsection does not authorize a change in place of use, type of use, point  
19 of diversion or point of appropriation.

20 (2) An application required under subsection (1) of this section shall be submitted on forms  
21 provided by the department. The department may request additional information if necessary to  
22 assist with the injury evaluation. Each application shall be submitted with the fee described in ORS  
23 536.050 (1)(s).

24 (3) Upon receiving an application under subsection (1) of this section, the department shall  
25 provide notice, accept protests and conduct hearings on protests in the manner described in ORS  
26 540.520 (5), (6) and (7).

27 (4) The [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**  
28 shall issue an order approving or denying the substitution. If the proposed substitution will result  
29 in injury to other water rights, the director shall prohibit or condition the use to avoid or mitigate  
30 the injury. The director shall issue an order approving or denying the substitution within 90 days  
31 after the department receives an application under subsection (1) of this section.

32 (5) For the purpose of ORS 540.610, a substituted primary surface water right shall be treated  
33 as a supplemental water right, and a substituted supplemental ground water right shall be treated  
34 as a primary water right.

35 (6) A completed and approved substitution of a supplemental ground water right for a primary  
36 surface water right under this section may be terminated upon a request by the water right holder  
37 or by an order of the director if the director determines that the use of the ground water as the  
38 primary water right causes injury to other water rights. Upon termination, the substituted primary  
39 and supplemental water rights shall revert back to their original status.

40 **SECTION 1533.** ORS 540.525 is amended to read:

41 540.525. (1) Upon receipt of an application for a change in the point of diversion under ORS  
42 540.520, the [*Water Resources Department shall consult with the State Department of Fish and Wildlife*  
43 *to*] **Oregon Department of Natural Resources shall** determine whether the diversion is:

44 (a) Equipped with an appropriate fish screening or by-pass device; or

45 (b) Included on the priority list of screening projects established pursuant to section 8, chapter

1 933, Oregon Laws 1989.

2 (2) If the original point of diversion is included in the priority list of screening projects estab-  
 3 lished pursuant to section 8, chapter 933, Oregon Laws 1989, the department[, *after consulting with*  
 4 *the State Department of Fish and Wildlife,*] may require the installation of an appropriate fish  
 5 screening or by-pass device at the new point of diversion **if the department determines that the**  
 6 **installation of an appropriate fish screening or by-pass device is necessary to prevent fish**  
 7 **from leaving the body of water and entering the diversion.**

8 [(3) *When consulting with the State Department of Fish and Wildlife, The department shall deter-*  
 9 *mine whether the installation of an appropriate fish screening or by-pass device is necessary to prevent*  
 10 *fish from leaving the body of water and entering the diversion.*]

11 [(4)] (3) Any individual who is required to install a fish screening or by-pass device under this  
 12 section at a point of diversion may participate in the [*State Department of Fish and Wildlife's*]  
 13 **department's** cost-sharing program for the installation of screening or by-pass devices.

14 **SECTION 1534.** ORS 540.530 is amended to read:

15 540.530. (1)(a) If, after hearing or examination, the [*Water Resources Commission*] **Oregon Na-**  
 16 **tural Resources Commission** finds that a proposed change can be effected without injury to ex-  
 17 isting water rights, the commission shall make an order approving the transfer and fixing a time  
 18 limit within which the approved changes may be completed.

19 (b) If, after hearing or examination, the commission finds that a proposed change in point of  
 20 diversion cannot be effected without injury to existing water rights, upon receipt by the commission  
 21 of an affidavit consenting to the change from every holder of an affected water right, the commission  
 22 may make an order approving the transfer and fixing a time limit within which the approved  
 23 changes may be completed.

24 (c) If, after hearing or examination, the commission finds that a proposed change in point of  
 25 diversion cannot be effected without injury to an in-stream water right granted pursuant to a re-  
 26 quest under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1), the [*Water*  
 27 *Resources Department*] **Oregon Department of Natural Resources** may consent to the change only  
 28 [*upon a recommendation that the department do so from the agency that requested the in-stream water*  
 29 *right. The agency that requested the in-stream water right may recommend that the department consent*  
 30 *to the change only*] if the change will result in a net benefit to the resource consistent with the  
 31 purposes of the in-stream water right.

32 (d)(A) If an in-stream water right would be injured by a proposed change under paragraph (c)  
 33 of this subsection, the department shall obtain a recommendation from the agency that requested the  
 34 in-stream water right. If the recommendation of the agency is to consent to the change, the depart-  
 35 ment shall provide public notice of the recommendation and, consistent with state laws regarding  
 36 cooperation with Indian tribes in the development and implementation of state agency programs that  
 37 affect tribes or rights and privileges of tribes, the department shall consult with affected Indian  
 38 tribes.

39 (B) The recommendation of an agency under this paragraph must be in writing and, if the rec-  
 40 ommendation is to consent to the change, must describe the extent of the injury to the in-stream  
 41 water right, the effect on the resource and the net benefit that will occur as a result of the proposed  
 42 change. The recommendation may include any proposed conditions that are necessary to ensure that  
 43 the proposed change will be consistent with the recommendation.

44 (C) In determining whether a net benefit will result from the proposed change, the recommen-  
 45 dation of an agency must include an analysis of the cumulative impact of any previous changes un-

1 der paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

2 (D) A person may comment on the recommendation of an agency. The comment must be in  
3 writing and must be received by the department within 30 days after publication of notice under this  
4 paragraph. If a written comment received by the department requests a meeting on the proposed  
5 change, the department and the agency that requested the in-stream water right shall hold a joint  
6 public meeting within 90 days of the receipt of the comment requesting a meeting.

7 (e)(A) If, after review of public comments and consultation with the agency that requested the  
8 in-stream water right, the agency that requested the in-stream water right does not withdraw its  
9 recommendation to consent to the change, the department may approve the change consistent with  
10 the requirements of paragraphs (b) and (c) of this subsection.

11 (B) An order approving a change under paragraph (c) of this subsection shall include written  
12 findings on the extent of the injury to the in-stream water right, the effect on the resource and the  
13 net benefit that will occur as a result of the change. The order shall include any conditions neces-  
14 sary to ensure that the change will be consistent with the findings and ensure that the change will  
15 result in a continued net benefit to the resource consistent with the purposes of the in-stream water  
16 right.

17 (C) In determining whether a net benefit will result from the change, the order of the depart-  
18 ment must include an analysis of the cumulative impact of any previous changes approved under  
19 paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

20 (f) The time allowed by the commission for completion of an authorized change under paragraphs  
21 (a) to (e) of this subsection may not be used when computing a five-year period of nonuse under the  
22 provisions of ORS 540.610 (1).

23 (2)(a) If a certificate covering the water right has been previously issued, the commission shall  
24 cancel the previous certificate or, if for an irrigation district, the commission may modify the pre-  
25 vious certificate and, when proper proof of completion of the authorized changes has been filed with  
26 the commission, issue a new certificate or, if for an irrigation district, modify the previous certif-  
27 icate, preserving the previously established priority of rights and covering the authorized changes.  
28 If only a portion of the water right covered by the previous certificate is affected by the changes,  
29 a separate new certificate may be issued to cover the unaffected portion of the water right.

30 (b) If the change authorized under subsection (1) of this section is necessary to allow a change  
31 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS  
32 541.375, or is approved by the [*State Department of Fish and Wildlife*] **department** as a change that  
33 will result in a net benefit to fish and wildlife habitat, the [*Water Resources*] department, at the  
34 discretion of the [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
35 **sources**, may waive or assist the applicant in satisfying any of the proof of completion requirements  
36 of paragraph (a) of this subsection. The assistance provided by the department may include, but need  
37 not be limited to, development of a final proof survey map and claim of beneficial use.

38 (3) Upon receiving notification of the merger or consolidation of municipal water supply entities,  
39 or the formation of a water authority under ORS chapter 450, the commission shall cancel the pre-  
40 vious certificates of the entities replaced by the merger, consolidation or formation and issue a new  
41 certificate to the newly formed municipality or water authority. The new certificate shall preserve  
42 the previously established priority of rights of the replaced entities and shall allow beneficial use  
43 of the water on any lands acquired in the merger, consolidation or formation.

44 **SECTION 1535.** ORS 540.531 is amended to read:

45 540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a surface water use subject

1 to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground  
2 water if the proposed transfer complies with the requirements of subsection (2) or (3) of this section  
3 and with the requirements for a transfer in point of diversion specified in ORS 540.520 and 540.530.

4 (2) The [*Water Resources Department*] **Oregon Department of Natural Resources** may allow  
5 a transfer of the point of diversion under subsection (1) of this section if:

6 (a)(A) The new point of diversion appropriates ground water from an aquifer that is hydrau-  
7 lically connected to the authorized surface water source;

8 (B) The proposed change in point of diversion will not result in enlargement of the original  
9 water right or in injury to other water right holders;

10 (C) The use of the new point of diversion will affect the surface water source similarly to the  
11 authorized point of diversion specified in the water use subject to transfer; and

12 (D) The withdrawal of ground water at the new point of diversion is located within 500 feet of  
13 the surface water source and, when the surface water source is a stream, is also located within 1,000  
14 feet upstream or downstream of the original point of diversion as specified in the water use subject  
15 to transfer; or

16 (b) The new point of diversion is not located within the distance requirements set forth in par-  
17 agraph (a)(D) of this subsection, the holder of the water use subject to transfer submits to the de-  
18 partment evidence prepared by a licensed geologist that demonstrates that the use of the ground  
19 water at the new point of diversion will meet the criteria set forth in paragraph (a)(A) to (C) of this  
20 subsection.

21 (3) Notwithstanding subsection (2) of this section, the department shall allow a transfer of the  
22 point of diversion under subsection (1) of this section in the Deschutes basin ground water study  
23 area if:

24 (a) The new point of diversion appropriates ground water from an aquifer that is hydraulically  
25 connected to the authorized surface water source;

26 (b) The proposed change in the point of diversion will not result in enlargement of the original  
27 water right or in injury to other water right holders; and

28 (c) The use of the new point of diversion will affect the surface water source hydraulically  
29 connected to the authorized point of diversion specified in the water use subject to transfer. The  
30 department may not require that the use of the new point of diversion affect the surface water  
31 source similarly to the authorized point of diversion specified in the water use subject to transfer  
32 under this subsection.

33 (4) All applicable restrictions that existed at the original point of diversion shall apply at the  
34 new point of diversion allowed under this section.

35 (5) The new point of diversion shall retain the original date of priority. However, if within five  
36 years after approving the transfer, the department finds that the transfer results in substantial in-  
37 terference with existing ground water rights that would not have occurred in the absence of the  
38 transfer, the new point of diversion shall be subordinate to any existing right injured by the trans-  
39 ferred water right or permit.

40 (6)(a) The department shall approve an application to return to the last authorized surface water  
41 point of diversion if a holder of a water use subject to transfer submits an application to the de-  
42 partment within five years after the department approves a transfer under this section.

43 (b) The department shall approve an application to return to the last authorized surface water  
44 point of diversion after five years of the date the department allows a transfer under subsection (3)  
45 of this section if a holder of a water use subject to transfer submits an application to the depart-

1 ment, and the return will not result in injury to an existing water right.

2 (7) For transfers allowed under this section, the department shall require mitigation measures  
3 to prevent depletion from any surface water source not specified in the permit or certificated or  
4 decreed water right, except that the department may not require mitigation measures if the transfer  
5 complies with subsection (3) of this section.

6 (8) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall adopt  
7 rules that prescribe:

8 (a) The process for reviewing applications submitted under this section;

9 (b) The persons to whom the department shall provide notice of the receipt of an application  
10 submitted under this section; and

11 (c) The persons who may participate in the process of reviewing applications submitted under  
12 this section.

13 (9) As used in this section:

14 (a) “Deschutes basin ground water study area” means the part of the Deschutes River Basin that  
15 is designated by the [*Water Resources*] commission by rule.

16 (b) “Similarly” means that the use of ground water at the new point of diversion affects the  
17 surface water source specified in the permit or certificated or decreed water right and would result  
18 in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous  
19 pumping.

20 **SECTION 1536.** ORS 540.532 is amended to read:

21 540.532. (1) Notwithstanding ORS 537.797, 540.510, 540.520 and 540.530, an individual may re-  
22 quest a change in the point of diversion to reflect the historical use of water at a point of diversion  
23 other than that described in the water right certificate or decree if the individual complies with the  
24 provisions of subsection (2) of this section.

25 (2) An individual may request a change in the point of diversion under subsection (1) of this  
26 section if:

27 (a) The actual, current point of diversion has been in use for more than 10 years;

28 (b) The [*Water Resources Department*] **Oregon Department of Natural Resources** has received  
29 no claim of injury as a result of the use of water from the current point of diversion prior to the  
30 request for the change of diversion;

31 (c) The individual requesting the change provides written notice to any other affected water  
32 right holder, as identified by the [*Water Resources*] department, and the [*Water Resources*] depart-  
33 ment provides notice of the request in the department’s public notice of water right applications;  
34 and

35 (d) The individual provides a map of sufficient detail and clarity to identify the true point of  
36 diversion including but not limited to:

37 (A) The county tax lot number, township, range and section, and to the nearest quarter-quarter  
38 section or latitude and longitude as established by a global positioning system; and

39 (B) The locations of the point of diversion as specified in the water right certificate or decree  
40 and the actual, current point of diversion.

41 (3) Upon receipt of a request for a change in the point of diversion under subsection (1) of this  
42 section, the [*Water Resources Department shall consult with the State Department of Fish and Wildlife*  
43 *to*] **department shall** determine whether the historical point of diversion is:

44 (a) Equipped with an appropriate fish screening or by-pass device; or

45 (b) Included on the priority list of screening projects established pursuant to section 8, chapter

1 933, Oregon Laws 1989.

2 (4) If the historical point of diversion is included in the priority list of screening projects es-  
 3 tablished pursuant to section 8, chapter 933, Oregon Laws 1989, the [*Water Resources Department,*  
 4 *after consulting with the State Department of Fish and Wildlife,*] **department** may require the in-  
 5 stallation of an appropriate fish screening or by-pass device at the point of diversion **if the de-**  
 6 **partment determines that the installation of an appropriate fish screening or by-pass device**  
 7 **is necessary to prevent fish from leaving the body of water and entering the diversion.**

8 [(5) *When consulting with the State Department of Fish and Wildlife, the Water Resources De-*  
 9 *partment shall determine whether the installation of an appropriate fish screening or by-pass device is*  
 10 *necessary to prevent fish from leaving the body of water and entering the diversion.*]

11 [(6)] (5) Any individual who is required to install a fish screening or by-pass device under this  
 12 section at a point of diversion may participate in the [*State Department of Fish and Wildlife's*]  
 13 **department's** cost-sharing program for the installation of screening or by-pass devices.

14 **SECTION 1537.** ORS 540.533 is amended to read:

15 540.533. (1) Any person holding a water right established by court decree, a water right certif-  
 16 icate or a water right for which proof of beneficial use has been approved by the [*Water Resources*  
 17 *Director or Water Resources Commission*] **Director of the Oregon Department of Natural Re-**  
 18 **sources or the Oregon Natural Resources Commission** or any person applying for or holding a  
 19 permit issued under ORS 537.211 for use of water for an in-stream purpose may apply to the [*Water*  
 20 *Resources*] commission for permission to use stored, surface or ground water from another source  
 21 in exchange for supplying replacement water in an equal amount to satisfy prior appropriations from  
 22 the other source, if:

23 (a) The source of the person's appropriation is at times insufficient to fully satisfy the appro-  
 24 priation;

25 (b) Better conservation and use of the waters of the state can be accomplished; or

26 (c) The person can develop water for appropriation under the permit for use of water for an  
 27 in-stream purpose, but cannot economically convey the water to its point of use.

28 (2) A person may apply for an exchange under this section among any combination of surface,  
 29 storage or ground water rights.

30 (3) An application for exchange shall be accompanied by:

31 (a) Any map, plan or other information required by the commission; and

32 (b) The fee required under ORS 536.050.

33 **SECTION 1538.** ORS 540.535 is amended to read:

34 540.535. After receipt of an exchange application, the [*Water Resources Commission*] **Oregon**  
 35 **Natural Resources Commission** shall give notice of the application by publishing notice of the  
 36 application in a newspaper having general circulation in the area in which the water uses are lo-  
 37 cated at least once each week for at least three successive weeks. The cost of providing the notice  
 38 by publication shall be paid in advance by the applicant to the commission.

39 **SECTION 1539.** ORS 540.537 is amended to read:

40 540.537. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
 41 issue an order allowing an exchange unless the commission finds any of the following:

42 (a) The proposed exchange would adversely affect other appropriators.

43 (b) The proposed exchanges would be too difficult to administer.

44 (c) The proposed exchange would adversely affect the public interest as determined under ORS  
 45 537.170 (8).



1 (d) A sufficient quantity of water would not be available to replace the water to be used under  
2 the exchange. In determining whether replacement water will be equal to the water exchanged, the  
3 commission may consider relative consumptive uses and transmission losses.

4 (2) The commission may include any condition the commission considers necessary in an order  
5 allowing an exchange.

6 (3) The commission shall issue an order terminating the exchange:

7 (a) If water is not applied under the exchange within the time fixed by the commission in the  
8 order approving the exchange;

9 (b) Upon written request signed by all parties to the exchange;

10 (c) Upon finding that any other termination condition specified in the original order has oc-  
11 curred; or

12 (d) Upon attainment of a termination date specified in the original exchange order.

13 (4) For purposes of subsection (3) of this section, the time fixed for implementing the exchange  
14 shall include any extension granted by the commission for good cause shown.

15 **SECTION 1540.** ORS 540.541 is amended to read:

16 540.541. (1) Any water made available to a person under an exchange shall be delivered in ac-  
17 cordance with the order allowing the exchange. The use of water under an exchange is without  
18 prejudice to, but shall be considered use and enjoyment of, the permitted, certificated or decreed  
19 right held by that water user at the time the exchange was approved.

20 (2) The use of water under a permit may be perfected by application of exchange water to the  
21 use specified in that permit. Upon receipt of proof satisfactory to the [*Water Resources*  
22 *Commission*] **Oregon Natural Resources Commission** that water has been used under the ex-  
23 change for the purposes of and within the limitations of the permit, the commission shall issue a  
24 certificate of the same character as that described in ORS 539.140. The certificate shall incorporate  
25 the source, conditions and priority of the permit existing at the time the exchange was approved.

26 (3) If regulation by the watermaster is required, after implementation of the exchange, water  
27 shall be delivered in accordance with the terms and conditions of the order allowing the exchange.

28 **NOTE:** Section 1541 was deleted. Subsequent sections were not renumbered.

29 **SECTION 1542.** ORS 540.550 is amended to read:

30 540.550. All attempted transfers or sales, prior to March 6, 1931, to an irrigation district, of  
31 water rights which theretofore had been appurtenant to lands located in the district and which lands  
32 at the time of the attempted transfer or sale were owned by the county, shall be considered to be  
33 legal and binding, and the water rights which were appurtenant to such lands shall be considered  
34 to have become the property of the district to which attempted to be conveyed, but appurtenant only  
35 to lands within the boundaries of the district as they existed on March 6, 1931, if the irrigation  
36 district applied [*to the Water Resources Director*], within five years after March 6, 1931, under the  
37 provisions of section 47-712, Oregon Code 1930, as amended by chapter 102, Oregon Laws 1931, to  
38 have the water rights made appurtenant to other lands within the irrigation district. In that event,  
39 the county shall sell the lands without any water rights being appurtenant thereto. If the irrigation  
40 district failed within five years after March 6, 1931, to make such application, then title to the water  
41 rights shall be considered to have been forfeited.

42 **SECTION 1543.** ORS 540.560 is amended to read:

43 540.560. (1) If the [*Water Resources Commission*] **Oregon Natural Resources Commission**  
44 considers that a certificate of water right does not identify the lands to which the right is  
45 appurtenant with sufficient specificity for management, delivery or transfer of that right, the com-

1 mission may issue an order clarifying and refining the description of the land to which the water  
2 right is appurtenant.

3 (2) An order issued under this section may not reduce the rate, duty or number of acres stated  
4 in the certificate of water right. The sole purpose of an addendum to a water right certificate is to  
5 better define the location of acreage to which the water right is appurtenant, where the certificate  
6 states only that the use is limited to a number of acres within a larger tract.

7 (3) Any order issued under this section shall be served on the legal owner of the land to which  
8 the water right is appurtenant and on the occupant of the land, by certified mail, return receipt  
9 requested. If the owner or occupant files a written request for a hearing within 30 days after service  
10 of the order, the commission shall conduct a hearing of the matter under ORS 183.413 to 183.484.

11 (4) A final order under this section shall become an addendum to and shall be filed with the  
12 certificate of water right that the order clarifies. For all purposes, the final order shall constitute  
13 the description of the land to which the water right is appurtenant.

14 **SECTION 1544.** ORS 540.570 is amended to read:

15 540.570. (1) Provided that the proposed transfer complies with all of the provisions of this sub-  
16 section and will not result in injury to any existing water right, a district with a manager may, for  
17 one irrigation season, temporarily transfer the place of use of water appurtenant to any land within  
18 the legal boundaries of the district to an equal acreage elsewhere within the legal boundaries of that  
19 district or temporarily transfer the type of use identified in a right to store water. A temporary  
20 transfer of the place of use may occur if:

21 (a) The rate and duty, and the total number of acres to which water will be applied under the  
22 transfer, do not exceed existing limits on the water use subject to transfer;

23 (b) The type of use authorized under the water use subject to transfer remains the same; and

24 (c) The land from which the water use is being transferred does not receive any water under  
25 the right being transferred during the irrigation season in which the change is made.

26 (2) Provided that the proposed transfer complies with all the provisions of this subsection and  
27 will not result in injury to or enlargement of an existing water right, a district with a manager may,  
28 for one irrigation season, temporarily change the point of diversion or appropriation combined with  
29 a change in place of use, change the point of diversion in the event that an emergency prevents the  
30 district from diverting water from its authorized point of diversion, change the point of diversion to  
31 allow for the appropriation of ground water or change a primary right to a supplemental right if:

32 (a) The land on which the water is to be used is within the district's legal boundaries established  
33 pursuant to ORS chapter 545, 547, 552, 553 or 554;

34 (b) The other terms of the permit or certificate remain the same, including the beneficial use for  
35 which the water is used and the number of acres to which water is applied;

36 (c) The diversion is provided with a proper fish screen, if required by the [*Water Resources De-*  
37 *partment*] **Oregon Department of Natural Resources**; and

38 (d) For a proposal to transfer the point of diversion to allow for the appropriation of ground  
39 water, the proposed change meets the standards set forth in ORS 540.531 (2).

40 (3) When a district or an owner or an owner's agent within a district who is subject to the  
41 charges or assessments of the district wishes to use water on alternate acreage within the district,  
42 if the district has approved the owner's request, the district shall submit to the department a peti-  
43 tion seeking a temporary transfer under this section. The district shall submit the petition prior to  
44 making the proposed change. The petition may contain changes to one or more tax lots within the  
45 district and shall:

1 (a) Include the information required under ORS 540.574 (3);

2 (b) Be accompanied by a map in a form satisfactory to the department and certified by the dis-  
3 trict. If the water right is on a tract of land of five acres or less, the assessor's tax map with a  
4 notation of the acres of water right shall be sufficient for identification of the tract and place of  
5 use;

6 (c) Include a statement that a written authorization for the transfer from each landowner af-  
7 fected by the particular temporary transfer is on file with the district;

8 (d) Include any other information required by rules of the [*Water Resources Commission*] **Oregon**  
9 **Natural Resources Commission**; and

10 (e) Include a fee in the amount required under ORS 536.050 (1)(i).

11 (4) The district shall notify each affected landowner that the department may reject the transfer  
12 or may require mitigation to avoid injury to other water rights. Upon receipt of a completed petition  
13 under subsection (3) of this section, the department shall place a summary of the petition in the  
14 weekly notice published by the department. The department shall accept written public comments  
15 on the petition for 30 days following publication of the weekly notice. The department shall consider  
16 comments that pertain to the potential for injury to an existing water right or to the enlargement  
17 of the water use subject to transfer in determining whether to condition, reject or revoke a tempo-  
18 rary transfer.

19 (5) Use of water on lands from which the right is transferred and in the new temporary location  
20 during the same irrigation season or calendar year is prohibited and may subject the district and  
21 the landowner to civil penalties.

22 (6) The department may condition, reject or revoke a temporary transfer at any time to the ex-  
23 tent necessary to avoid injury if the department finds the transfer is causing injury to an existing  
24 water right.

25 (7) Upon expiration of the temporary transfer period, all uses of water for which a temporary  
26 transfer is allowed under this section shall revert automatically to the terms and conditions of the  
27 original water right permit, certificate or adjudication under ORS chapter 539 as evidenced by a  
28 court decree.

29 (8) The time during which water is used under an approved temporary transfer order does not  
30 apply toward a finding of forfeiture under ORS 540.610.

31 **SECTION 1545.** ORS 540.572 is amended to read:

32 540.572. (1) Upon compliance with this section and ORS 540.574 and 540.576, whenever land  
33 within the legal boundaries of a district is no longer irrigated or susceptible of irrigation, the dis-  
34 trict may apply the certificated water to which such land is entitled to other irrigable lands within  
35 the legal boundaries of the district if the district:

36 (a) Is managed by a full-time manager; and

37 (b) Is implementing a conservation plan approved by the [*Water Resources Commission*] **Oregon**  
38 **Natural Resources Commission**, and meets all other management responsibility criteria for dis-  
39 tricts and conservation and efficiency criteria required by the [*Water Resources*] commission.

40 (2) If a water user of a district has not made beneficial use of the water to which the user is  
41 entitled for a period of four successive years, the district shall advise the user and any security in-  
42 terest holder of record that if the user does not use the water for a fifth successive year, the district  
43 may petition the [*Water Resources*] commission for a transfer of the water right under ORS 540.574.

44 (3) When a district wishes to transfer the use of water under this section, the district shall  
45 provide notice of its intent to petition for a transfer to the user and any security interest holder

1 of record of the land whose right of record would be transferred. The notice shall be sent to the  
2 last-known address for the user with a return receipt requested.

3 (4) The notice required under subsection (3) of this section shall:

4 (a) Include:

5 (A) The number of acres for which the user is being charged or assessed;

6 (B) A general description or tax lot of the land to which the water is assigned;

7 (C) A description of the use; and

8 (D) A request for confirmation that the information in the notice is correct.

9 (b) Advise the user that:

10 (A) The district has determined that the user's land is no longer irrigated or susceptible of ir-  
11 rigation and that the district intends to petition the [*Water Resources*] commission for approval to  
12 transfer the user's water right to other lands in the district.

13 (B) If the user disagrees with the determination of the district that the user's land is no longer  
14 irrigated or susceptible of irrigation or if the user has some other objection to the proposed action  
15 of the district, the user shall so advise the district in writing within 30 days after the notice is  
16 mailed.

17 (C) The user shall advise the district in writing within the foregoing time period if the user  
18 believes the presumption of forfeiture under ORS 540.610 is rebuttable for a reason provided under  
19 ORS 540.610.

20 (5) If the district receives a written objection within 30 days after the mailing of the notice  
21 under subsection (3) of this section, the district manager shall attempt to resolve the matter with  
22 the user. If the user's objections cannot be resolved by the manager, a hearing shall be held before  
23 the board of directors who shall make a determination whether to proceed with the petition to the  
24 [*Water Resources*] commission.

25 (6) If no written objections are received by the district within 30 days after the mailing of the  
26 notice under subsection (3) of this section, or following resolution or hearing under subsection (5)  
27 of this section, the district may petition the [*Water Resources*] commission for approval of the  
28 transfer under ORS 540.574.

29 (7) As used in this section:

30 (a) "Irrigable land" means land that is currently under irrigation or susceptible of irrigation for  
31 agricultural, horticultural, viticultural or grazing purposes.

32 (b) "No longer irrigated or susceptible of irrigation" means:

33 (A) Land on which water for irrigation has not been applied for a period of five successive ir-  
34 rigation seasons; or

35 (B) Land that does not have reasonable access to the system of irrigation works of the district,  
36 or that cannot be irrigated from or that is not susceptible to or would not, by reason of being per-  
37 manently devoted to uses other than agricultural, horticultural, viticultural or grazing, be directly  
38 benefited by actual irrigation from the district.

39 (c) "Owned" or "controlled" means ownership in fee, purchase on a land sale contract, option  
40 to purchase or lease.

41 (d) "User" means an owner of land with an appurtenant water right who is subject to the  
42 charges or assessments of a district and from whose land the water right would be transferred by  
43 the petition and map filed under ORS 540.574 and an owner of land to which the water right would  
44 be transferred.

45 **SECTION 1546.** ORS 540.574 is amended to read:

1 540.574. (1) In accordance with the requirements of subsection (3) of this section, a district may  
2 petition the [*Water Resources Commission*] **Oregon Natural Resources Commission** for approval  
3 and acceptance of a district map indicating the transfer of the location and use of the water rights  
4 within the district or any part of the district. The map shall be in a form satisfactory to the com-  
5 mission and shall be certified by the district rather than a certified water right examiner. In no  
6 event shall the petition and map expand a water right of the district or its users beyond the total  
7 right of record for the district. If the district complies with the requirements of ORS 540.572 to  
8 540.580, and after the opportunity for hearing under ORS 540.578, the commission shall issue an order  
9 approving the transfer and proceed as provided in ORS 540.530 (1) and (2).

10 (2) If the commission denies the petition under subsection (1) of this section, the commission  
11 shall hold a hearing on the denial. Notice and conduct of the hearing shall be according to the  
12 provisions of ORS chapter 183 applicable to a contested case proceeding. The hearing shall be con-  
13 ducted in the area of the state where the right is located unless the parties and the persons who file  
14 the protest under this section stipulate otherwise.

15 (3) The petition required under subsection (1) of this section shall include:

16 (a) The name of the district and the certificate number of each water right contained in the  
17 petition.

18 (b) The names of all users within the district from whose lands water rights are to be trans-  
19 ferred.

20 (c) The names of all users within the district to whose lands water rights are to be transferred.

21 (d) A general description of the district boundaries.

22 (e) A general description of the users' land and the water right for each parcel from which and  
23 to which water rights are to be transferred. If the water right is on a tract of land of five acres or  
24 less, a notation of the acres of water right on the assessor's tax map shall be sufficient for iden-  
25 tification of the place of use and the extent of use.

26 (f) A description of the use that is proposed to be made of the water on each parcel.

27 (g) An affirmation by the petitioner that the map and petition are accurate to the best of the  
28 petitioner's knowledge.

29 (h) A statement by the petitioner that notice has been given as required under ORS 540.572 (2),  
30 and that the water right has not previously been forfeited under ORS 540.610 due to an earlier or  
31 longer period of nonuse.

32 **SECTION 1547.** ORS 540.576 is amended to read:

33 540.576. After filing a petition under ORS 540.572, the district shall send a copy of the petition  
34 and map and a notice to the users of the district whose right of record is to be transferred and who  
35 are to receive the transferred right. The copy of the petition and the notice shall be sent to the  
36 last-known address of the user with a return receipt requested. The notice accompanying the peti-  
37 tion shall advise the user that:

38 (1) Sixty days after the date of mailing of the notice, the [*Water Resources Commission*] **Oregon**  
39 **Natural Resources Commission** shall accept the petition and the water right shall be transferred  
40 unless a protest is filed or the petition does not meet the requirements of ORS 540.572 to 540.580;  
41 and

42 (2) The user has the right to protest the petition and transfer in the manner described in ORS  
43 540.578.

44 **SECTION 1548.** ORS 540.578 is amended to read:

45 540.578. (1) Any user may file with the [*Water Resources Commission*] **Oregon Natural Re-**

1 **sources Commission**, within 60 days after the date of mailing the notice under ORS 540.576, a  
 2 protest against approval of the petition, map and transfer. Whenever a timely protest is filed, or in  
 3 the opinion of the commission a hearing is necessary to determine whether the district has complied  
 4 with the requirements of ORS 540.572 to 540.580, or the proposed transfers described in the petition  
 5 would result in injury to existing water rights, the commission shall hold a hearing on the matter.  
 6 The hearing shall be conducted according to the provisions of ORS chapter 183 applicable to con-  
 7 tested case proceedings. The hearing shall be held in the area of the state where the rights are lo-  
 8 cated unless the parties and the persons who filed the protest under this section stipulate otherwise.

9 (2) If, after examination or hearing, the commission finds that the petition complies with the  
 10 requirements of ORS 540.572 to 540.580, and that the proposed changes described in the petition  
 11 would not result in injury to existing water rights, the commission shall issue an order approving  
 12 the transfer and proceed as provided in ORS 540.530 (1) and (2).

13 (3) A certificate issued under this section for the transferred water right shall have the  
 14 evidentiary effect provided for in ORS 537.270 unless the right to appropriate water described in the  
 15 certificate is forfeited after the certificate is issued.

16 **SECTION 1549.** ORS 540.580 is amended to read:

17 540.580. (1) In accordance with this section, a district may by petition request that the [*Water*  
 18 *Resources Department*] **Oregon Department of Natural Resources** approve the permanent transfer  
 19 of the place of use of water within a district as long as the proposed transfer complies with all of  
 20 the following:

21 (a) The rate, duty and total number of acres to which water is to be applied under the water  
 22 use subject to transfer are not exceeded;

23 (b) The use authorized under the water use subject to transfer remains the same;

24 (c) The change in place of use will not result in injury to any existing water right; and

25 (d) The land from which the water right is removed by the transfer shall receive no water under  
 26 the transferred right.

27 (2) A district may submit a petition for a permanent transfer prior to or subsequent to the  
 28 change in place of use, but no later than the end of the calendar year in which the change occurs.  
 29 The petition submitted by the district may include an unlimited number of transfers within the same  
 30 petition. A petition under this section shall:

31 (a) Include the information required under ORS 540.574 (3), except for the statement that a no-  
 32 tice under ORS 540.572 (2) has been given;

33 (b) Be accompanied by a map in a form satisfactory to the department and certified by the dis-  
 34 trict. If the water right is on a tract of land of five acres or less, the assessor's tax map with a  
 35 notation of the acres of water right shall be sufficient for identification of the tract and place of  
 36 use;

37 (c) Include a statement that each landowner affected by a permanent transfer has authorized the  
 38 transfer in a writing that is on file with the district;

39 (d) Include any other information required by rules of the [*Water Resources Commission*] **Oregon**  
 40 **Natural Resources Commission**; and

41 (e) Include the fee required under ORS 536.050 (1)(h) for a change in the place of use.

42 (3) If a district allows a change in the place of use of water before obtaining the approval of the  
 43 department, the district shall:

44 (a) Notify each affected landowner that the change is subject to the approval of the department  
 45 and that the department may reject the transfer or may require mitigation to avoid injury to other

1 water right holders; and

2 (b) Notify the department in advance of the change. The notice shall include:

3 (A) The name of the district and the certificate number of each water right that is the subject  
4 of the change;

5 (B) The names of the users within the district from whose lands and to whose lands water rights  
6 are to be transferred;

7 (C) A general description of the users' lands by township, range, quarter quarter section and tax  
8 lot number, and of the water right, for each parcel from which and to which water rights are to be  
9 transferred; and

10 (D) A description of the use that is proposed to be made of the water on each parcel.

11 (4) Upon receipt of the notice required under subsection (3)(b) of this section, the department  
12 shall provide public notice in the weekly notice published by the department.

13 (5) If a district allows a change in the place of use of water before obtaining approval of the  
14 department under this section, the department may direct the district to cease delivery of water or  
15 mitigate injury where the change in place of use is causing injury to an existing water right.

16 (6) Within 15 days after the filing of a petition under subsection (2) of this section, the depart-  
17 ment shall include notice of the petition in the weekly notice published by the department. Within  
18 30 days after the mailing of the department's weekly notice, any potentially affected holder of an  
19 existing water right may file, jointly or severally, with the department, a protest against approval  
20 of the petition.

21 (7) Subject to the provisions of subsection (8) of this section, whenever a timely protest is filed,  
22 or in the opinion of the [*Water Resources Director*] **Director of the Oregon Department of Na-  
23 tural Resources** a hearing is necessary to determine whether the proposed changes as described  
24 in the petition would result in injury to existing water rights, the department may hold a hearing  
25 on the petition. Notice and conduct of the hearing shall be according to the provisions of ORS  
26 chapter 183 pertaining to contested cases, shall be scheduled within 45 days after the filing of the  
27 petition, and shall be held in the area where the rights are located unless all parties and persons  
28 who filed a protest under this subsection stipulate otherwise.

29 (8) If a water user within the district files a protest claiming injury to a water right delivery  
30 by the district, no contested case hearing shall be required, but the district shall resolve the matter  
31 directly with the water user.

32 (9) After examination or hearing, the department shall issue an order approving the transfer if  
33 the proposed change can be effected without injury to existing water rights. If no hearing is sched-  
34 uled under subsection (7) of this section, the order of the department shall be issued within 90 days  
35 after the date of the filing of the petition. If the proposed change cannot be effected without injury  
36 to existing water rights, the department may condition approval, including requiring mitigation of  
37 the effects on other water rights, to the extent necessary to avoid injury. If a hearing is scheduled,  
38 the department shall issue a final order within 120 days after scheduling the hearing.

39 (10) Within 20 days after the director issues a final order under this section, the district or any  
40 protestant may file with the commission exceptions to the final order. The commission shall issue  
41 an order granting or denying the exceptions within 30 days after receiving the exceptions.

42 (11) If a certificate covering the water right has been previously issued, the department may  
43 amend the certificate or may cancel the certificate and issue a new certificate preserving the pre-  
44 viously established priority of rights and covering the authorized changes. If only a portion of the  
45 water right covered by the previous certificate is affected by the changes, a separate new certificate

1 may be issued to cover the unaffected portion of the water right. A certificate as amended or issued  
 2 under this section has the evidentiary effect provided for in ORS 537.270 as to the new lands except  
 3 when the right to appropriate water described in the certificate is abandoned after the certificate  
 4 is amended or issued.

5 (12) Notwithstanding the provisions of subsection (2) of this section, a petition filed on or before  
 6 December 31, 1996, may include all changes in place of use allowed by a district after July 1, 1992,  
 7 and before November 30, 1996.

8 **SECTION 1550.** ORS 540.585 is amended to read:

9 540.585. (1) In accordance with the provisions of this section, a person may request that the  
 10 [*Water Resources Department*] **Oregon Department of Natural Resources** approve the temporary  
 11 transfer of the place of use and type of use and temporarily change the point of diversion if neces-  
 12 sary to convey water to the new temporary place of use, of all or a portion of a water right, for a  
 13 period not to exceed 25 years if:

14 (a) The person holds a water use subject to transfer;

15 (b) The type of use specified in the original water use subject to transfer is irrigation;

16 (c) The person to whom the right is transferred is:

17 (A) Located within the Deschutes River Basin; and

18 (B) A city, a quasi-municipal corporation, a domestic water supply district formed under ORS  
 19 chapter 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS  
 20 chapter 450;

21 (d) The proposed use is municipal use; and

22 (e) The proposed temporary transfer will not result in injury to any existing water right.

23 (2) An application for a temporary transfer under this section shall:

24 (a) Be submitted in writing to the [*Water Resources*] department;

25 (b) Be accompanied by the appropriate fee for a change in the place of use and type of use as  
 26 set forth in ORS 536.050;

27 (c) Include the information required under ORS 540.520 (2); and

28 (d) Include any other information the [*Water Resources Commission*] **Oregon Natural Re-**  
 29 **sources Commission** by rule may require.

30 (3)(a) Any portion of the use of a water right that is not temporarily transferred under this  
 31 section may be used on the designated part of the lands described in the original water right permit,  
 32 certificate or adjudication under ORS chapter 539 as evidenced by a court decree, if the use does  
 33 not encompass more than the remaining portion of the lands, enlarge the water right or increase the  
 34 rate, duty, total acreage benefited or season of use.

35 (b) The [*Water Resources*] department shall designate the lands on which water may be applied  
 36 under this subsection and shall prescribe mapping, measurement and recording requirements under  
 37 this subsection.

38 (4) Upon expiration of a temporary transfer period, all uses of water for which a temporary  
 39 transfer is allowed under this section shall revert automatically to the terms and conditions of the  
 40 original water right permit, certificate or adjudication under ORS chapter 539 as evidenced by a  
 41 court decree.

42 (5) The time during which water is used under an approved temporary transfer order does not  
 43 apply toward a finding of forfeiture under ORS 540.610.

44 (6) The department may revoke a prior approval of a temporary transfer at any time if:

45 (a) The department finds that the transfer is causing injury to any existing water right; or



1 (b) The person fails to comply with the requirements prescribed by the department pursuant to  
2 subsection (3) of this section.

3 (7) The department shall provide notice, in the manner provided in ORS 540.520 (5), that the  
4 department received an application for a temporary transfer under this section.

5 (8) The department may:

6 (a) Prescribe the duration of the temporary transfer period allowed under this section, up to 25  
7 years;

8 (b) Impose conditions in the terms of the temporary transfer, including revocation of the transfer  
9 for noncompliance with applicable state, local or federal laws; and

10 (c) Determine the parties that may participate in the review of applications submitted under this  
11 section.

12 **SECTION 1551.** ORS 540.587 is amended to read:

13 540.587. The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
14 submit a report, in the manner provided in ORS 192.245, that shall include a summary of the features  
15 of the process employed by the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
16 **mission** to implement ORS 540.585. The report shall be submitted no later than January 31 of each  
17 year to the Legislative Assembly or to an interim committee related to natural resources, as ap-  
18 propriate.

19 **SECTION 1552.** ORS 540.610 is amended to read:

20 540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use  
21 of water in this state. Whenever the owner of a perfected and developed water right ceases or fails  
22 to use all or part of the water appropriated for a period of five successive years, the failure to use  
23 shall establish a rebuttable presumption of forfeiture of all or part of the water right.

24 (2) Upon a showing of failure to use beneficially for five successive years, the appropriator has  
25 the burden of rebutting the presumption of forfeiture by showing one or more of the following:

26 (a) The water right is for use of water, or rights of use, acquired by cities and towns in this  
27 state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

28 (b) A finding of forfeiture would impair the rights of such cities and towns to the use of water,  
29 whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature,  
30 or which may hereafter be acquired.

31 (c) The use of water, or rights of use, are appurtenant to property obtained by the Department  
32 of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period  
33 of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans'  
34 Affairs, even if during such time the water is not used for a period of more than five successive  
35 years.

36 (d) The use of water, or rights of use, under a water right, if the owner of the property to which  
37 the right is appurtenant is unable to use the water due to economic hardship as defined by rule by  
38 the [*Water Resources Commission*] **Oregon Natural Resources Commission**.

39 (e) The period of nonuse occurred during a period of time within which land was withdrawn  
40 from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814;  
41 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December  
42 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding un-  
43 der this section, the water right holder rebutting the presumption under this paragraph shall provide  
44 documentation that the water right holder's land was withdrawn from use under a federal reserve  
45 program.

1 (f) The end of the alleged period of nonuse occurred more than 15 years before the date upon  
2 which evidence of nonuse was submitted to the commission or the commission initiated cancellation  
3 proceedings under ORS 540.631, whichever occurs first.

4 (g) The owner of the property to which the water right was appurtenant is unable to use the  
5 water because the use of water under the right is discontinued under an order of the commission  
6 under ORS 537.775.

7 (h) The nonuse occurred during a period of time within which the water right holder was using  
8 reclaimed water in lieu of using water under an existing water right.

9 (i) The nonuse occurred during a period of time within which the water right holder was reusing  
10 water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using  
11 water under an existing water right.

12 (j) The owner or occupant of the property to which the water right is appurtenant was unable  
13 to make full beneficial use of the water because water was not available. A water right holder re-  
14 butting the presumption under this paragraph shall provide evidence that the water right holder  
15 was ready, willing and able to use the water had it been available.

16 (k) The holder of a water right is prohibited by law from using the water. If the prohibition is  
17 subject to remedial action that would allow the use of the water, the water right holder shall pro-  
18 vide evidence that the water right holder is conducting the remedial action with reasonable dili-  
19 gence.

20 (L) The nonuse occurred during a period of time within which the exercise of all or part of the  
21 water right was not necessary due to climatic conditions, so long as the water right holder had a  
22 facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able  
23 to use the entire amount of water allowed under the water right.

24 (m) The nonuse occurred during a period of time within which the water was included in a  
25 transfer application pending before the [*Water Resources Department*] **Oregon Department of Na-  
26 tural Resources.**

27 (n) The nonuse of a supplemental water right occurred during a period of time when the primary  
28 water right used in conjunction with that supplemental water right was leased as an in-stream water  
29 right pursuant to ORS 537.348.

30 (3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed  
31 water right uses less water to accomplish the beneficial use allowed by the right, the right is not  
32 subject to forfeiture so long as:

33 (a) The user has a facility capable of handling the entire rate and duty authorized under the  
34 right; and

35 (b) The user is otherwise ready, willing and able to make full use of the right.

36 (4) The right of all cities and towns in this state to acquire rights to the use of the water of  
37 natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all rea-  
38 sonable and usual municipal purposes, and for such future reasonable and usual municipal purposes  
39 as may reasonably be anticipated by reason of growth of population, or to secure sufficient water  
40 supply in cases of emergency, is expressly confirmed.

41 (5) After a water right is forfeited under subsection (1) of this section, the water that was the  
42 subject of use shall revert to the public and become again the subject of appropriation in the manner  
43 provided by law, subject to existing priorities.

44 **SECTION 1553.** ORS 540.621 is amended to read:

45 540.621. Whenever the owner of a perfected and developed water right certifies under oath to

1 the [*Water Resources Commission*] **Oregon Natural Resources Commission** that the water right  
2 has been abandoned by the owner and that the owner desires cancellation thereof, the commission  
3 shall enter an order canceling the water right. Effective upon the date of the entering of such order,  
4 the water which was the subject of use under the water right shall revert to the public and become  
5 again the subject of appropriation in the manner provided by law, subject to existing priorities.

6 **SECTION 1554.** ORS 540.631 is amended to read:

7 540.631. Whenever it appears to the satisfaction of the [*Water Resources Commission*] **Oregon**  
8 **Natural Resources Commission** upon the commission's own determination or upon evidence sub-  
9 mitted to the commission by any person that a perfected and developed water right has been for-  
10 feited as provided in ORS 540.610 (1), and would not be rebutted under ORS 540.610 (2), the  
11 commission shall initiate proceedings for the cancellation of such water right by causing written  
12 notice of such initiation of proceedings to be given by registered or certified mail, return receipt  
13 requested, to the legal owner of the lands to which the water right is appurtenant and to the oc-  
14 cupant of such lands. The notice to the legal owner shall be addressed to the legal owner at the  
15 owner's last address of record in the office of the county assessor of the county in which the lands  
16 are located. The notice shall contain a complete description of the water right and of the lands to  
17 which the water right is appurtenant. The notice shall state that the legal owner or the occupant  
18 has a period of 60 days from the date of the mailing of the notice within which to protest the pro-  
19 posed cancellation of the water right.

20 **SECTION 1555.** ORS 540.641 is amended to read:

21 540.641. (1) If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails  
22 to protest the proposed cancellation of the water right within the 60-day period prescribed in the  
23 notice, the [*Water Resources Commission*] **Oregon Natural Resources Commission** may enter an  
24 order canceling the water right.

25 (2) If the legal owner or the occupant receiving notice as provided in ORS 540.631 files a protest  
26 against the proposed cancellation of the water right with the commission within the 60-day period  
27 prescribed in the notice, the commission shall fix a time and place for a hearing on the protest. The  
28 commission shall cause written notice of the hearing to be given at least 10 days prior to the  
29 hearing to the person protesting the cancellation of the water right and to any other person who  
30 in the opinion of the commission is an interested party to the proceeding. The hearing shall be held  
31 by the commission and shall be conducted under the provisions of ORS chapter 183 pertaining to  
32 contested cases. After the hearing the commission shall enter an order canceling the water right,  
33 canceling in part or modifying the water right, or declaring that the water right shall not be can-  
34 celed or modified.

35 **SECTION 1556.** ORS 540.650 is amended to read:

36 540.650. If the order of the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
37 **mission** or the final decree on the appeal therefrom under ORS 540.641 cancels in part or modifies  
38 the water right, that portion of the water right not canceled or continued as modified shall be re-  
39 affirmed by a new water right certificate issued by the commission. Such certificate shall be of the  
40 same character as that described in ORS 539.140. The certificate shall be recorded and transmitted  
41 to the owner of the water right as provided in ORS 539.140.

42 **SECTION 1557.** ORS 540.660 is amended to read:

43 540.660. (1) If a watermaster has reason to believe that circumstances exist that prevent a water  
44 right from being exercised according to the terms and conditions of the water right certificate issued  
45 under ORS 537.250 or 539.140, such as the land to which the water right is appurtenant is covered

1 by an impermeable surface, or the diversion mechanism used to appropriate water under a water  
2 right is no longer operable, the watermaster shall file an affidavit with the [*Water Resources*  
3 *Director*] **Director of the Oregon Department of Natural Resources**. The affidavit shall state  
4 that to the best of the watermaster's knowledge, there is no physical way the water may be applied  
5 to a beneficial use in accordance with the terms and conditions of the water right certificate.

6 (2) If the watermaster files an affidavit under subsection (1) of this section each year for five  
7 consecutive years, the affidavits shall constitute prima facie evidence that the water has not been  
8 applied to a beneficial use for five years and the [*Water Resources Commission*] **Oregon Natural**  
9 **Resources Commission** shall initiate proceedings under ORS 540.631 to cancel the water right.

10 (3) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall provide  
11 notice of the affidavit filed with the [*Water Resources*] director under subsection (1) of this section.  
12 The department shall provide such notice in the following manner:

13 (a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the  
14 affidavit to each record owner.

15 (b) If there are more than 25 record owners, the department shall provide general notice by  
16 publication according to the procedures established in ORS 193.010 to 193.100.

17 (c) If the land is within the boundaries of an irrigation district, the department shall mail a copy  
18 of the affidavit to the irrigation district.

19 (4) As used in this section, "record owner" means the person shown as the owner of the land  
20 in the county deed records established under ORS chapter 93.

21 **SECTION 1558.** ORS 540.670 is amended to read:

22 540.670. (1) The cancellation of a primary water right for nonuse under ORS 540.641 shall not  
23 also cancel a supplemental water right unless the supplemental water right also has not been used  
24 beneficially for five or more years.

25 (2) If the [*Water Resources Commission*] **Oregon Natural Resources Commission** cancels a  
26 primary water right under ORS 540.641 the commission may issue a new water right certificate  
27 changing the supplemental water right to a primary right if the commission finds that the change  
28 would not result in injury to existing water rights.

29 (3) A supplemental right changed to a primary right under subsection (2) of this section shall  
30 retain the priority date of the supplemental right.

31 **SECTION 1559.** ORS 540.740 is amended to read:

32 540.740. Any person who may be injured by the action of any watermaster may appeal to the  
33 circuit court for an injunction. The injunction shall only be issued in case it can be shown at the  
34 hearing that the watermaster has failed to carry into effect the order of the [*Water Resources*  
35 *Commission*] **Oregon Natural Resources Commission** or decrees of the court determining the ex-  
36 isting rights to the use of water.

37 **SECTION 1560.** ORS 541.220 is amended to read:

38 541.220. In any stream system where construction is contemplated by the United States under  
39 the Act of Congress approved June 17, 1902, 32 Stat. 388 to 390, and known as the Reclamation Act,  
40 the [*Water Resources Commission*] **Oregon Natural Resources Commission** shall make a  
41 hydrographic survey of the stream system, and shall deliver an abstract thereof together with an  
42 abstract of all data necessary for the determination of all rights for the use of the waters of such  
43 system, to the Attorney General. The Attorney General, together with the district attorneys of the  
44 districts affected by the stream system shall, at the request of the Secretary of the Interior, enter  
45 suit on behalf of the State of Oregon, in the name of the state, for the determination of all rights

1 for the use of the water, and shall diligently prosecute the same to a final adjudication.

2 **SECTION 1561.** ORS 541.310 is amended to read:

3 541.310. In any suit wherein the state is a party, for determination of a right to the use of the  
4 waters of any stream system, all who claim the right to use the waters shall be made parties. When  
5 any such suit has been filed the court shall call upon the [*Water Resources Commission*] **Oregon**  
6 **Natural Resources Commission** to make or furnish a complete hydrographic survey of the stream  
7 system as provided in ORS 541.220, in order to obtain all data necessary to the determination of the  
8 rights involved. The disbursements made in litigating the rights involved in the suit shall be taxed  
9 by the court as in other equity suits.

10 **SECTION 1562.** ORS 541.320 is amended to read:

11 541.320. Upon the adjudication of the rights to the use of the water of a stream system, a cer-  
12 tified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the  
13 [*Water Resources Department*] **Oregon Department of Natural Resources**. The decree shall de-  
14 clare, as to the water right adjudged to each party, whether riparian or by appropriation, the extent,  
15 the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts  
16 of land to which it shall be appurtenant, together with such other conditions as may be necessary  
17 to define the right and its priority.

18 **SECTION 1563.** ORS 541.327 is amended to read:

19 541.327. (1) If a district fails or refuses to act under ORS 541.329 and 541.331, the owner of land  
20 with an appurtenant water right within a district and subject to assessment by the district may  
21 transfer the use or place of use of the water right on or before July 1, 1994, pursuant to ORS  
22 541.333. An owner transferring the use or place of use under this subsection shall comply with ORS  
23 536.050.

24 (2) If the owners of land within a quarter quarter of a section in a district agree as to the use  
25 and place of use of all water rights in the quarter quarter of the section subject to assessment by  
26 the district, the owners may jointly submit an application, without the fees required under ORS  
27 536.050, to the [*Water Resources Department*] **Oregon Department of Natural Resources** to con-  
28 form the department's records to the present usage within the quarter quarter of a section. The  
29 application must be filed in accordance with ORS 541.333 on or before July 1, 1994.

30 (3) The district or users within a district authorized to participate in the process described un-  
31 der ORS 541.325 to 541.333 shall be limited to those districts or users who have notified the de-  
32 partment on or before July 1, 1993, of their intention to submit a petition.

33 (4) Notwithstanding subsection (3) of this section, the Walla Walla River Irrigation District, or  
34 its successor district formed under ORS chapter 545 and created after July 1, 1994, may participate  
35 in the process described under ORS 541.325 to 541.333 if the district notifies the department on or  
36 before June 30, 2004.

37 **SECTION 1564.** ORS 541.329 is amended to read:

38 541.329. (1) Pursuant to the requirements of subsection (2) of this section, a district may petition  
39 the [*Water Resources Commission*] **Oregon Natural Resources Commission** for approval and ac-  
40 ceptance of a district map indicating the location and use of the water rights within the district or  
41 any part thereof. The petition and map shall be in a form satisfactory to the commission and shall  
42 be certified by the district rather than a certified water right examiner. For a district that notifies  
43 the [*Water Resources Department*] **Oregon Department of Natural Resources** under ORS 541.327  
44 (4), the map must be submitted in an electronic format meeting the standards set by the department.  
45 The petition and map may not expand a water right of the district or its users beyond the total right

1 of record of the district. If the district has met the requirements of ORS 541.325 to 541.331 and after  
2 the opportunity for hearing under ORS 541.331, the commission shall instruct the Director **of the**  
3 **Oregon Department of Natural Resources** to issue a new certificate to the district listing the  
4 requested locations and uses and retaining the original priority date. If the commission denies the  
5 petition, the commission shall hold a hearing on the denial. Notice and conduct of the hearing shall  
6 be under the provisions of ORS chapter 183 pertaining to contested cases. The hearing shall be  
7 conducted in the area where the right is located unless the parties and the persons who file the  
8 protest under this section stipulate otherwise.

9 (2) The petition required under subsection (1) of this section shall be submitted on or before July  
10 1, 1994, or before June 30, 2010, for a district notifying the department under ORS 541.327 (4), and  
11 shall include:

12 (a) The name of the district and the certificate number of each water right contained in the  
13 petition.

14 (b) The names of all users within the district whose lands are included in the petition.

15 (c) A general description of the district boundaries.

16 (d) A general description of the users' land and all water rights per each parcel affected by the  
17 petition and the map. If the water right is on a tract of land of five acres or less, a notation of the  
18 acres of water right on the assessor's tax map shall be sufficient for identification of the place of  
19 use and the extent of use.

20 (e) A description of the use which is proposed to be made of the water on each parcel.

21 (f) An affirmation by the petitioner that the map and petition are accurate to the best of the  
22 petitioner's knowledge.

23 (3) A petition submitted under this section shall contain no more acres of land than the least  
24 of the following:

25 (a) The number of acres assessed by the district as of July 1, 1989;

26 (b) The number of acres assessed by the district as of July 1, 1993; or

27 (c) If a district notifies the department under ORS 541.327 (4), the number of acres assessed by  
28 the district as of December 31, 2003.

29 (4) Before submitting a petition under subsection (2) of this section, the district shall send a  
30 notice to the user of every parcel whose right of record is to be altered, as evidenced by the  
31 district's records. This notice shall be sent to the last-known address for the user with a return re-  
32 ceipt requested. The notice shall include the number of acre-feet of water or its equivalent, for  
33 which the user is being assessed, a general description or tax lot of the land to which the water is  
34 assigned, a description of the use and a request for confirmation that the information in the notice  
35 is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map as  
36 described in subsections (1) and (2) of this section. Payment for water by the user or the user's  
37 predecessor for a period of five years before the petition shall create a rebuttable presumption that  
38 the number of acres billed and paid by the user or the user's predecessor is equal to the user's water  
39 right.

40 (5) Within 30 days after the commission issues a proposed order regarding the petition, the dis-  
41 trict shall send notice to the users of the district whose right of record is to be altered by the  
42 proposed order. This notice shall be sent to the last-known address of the user with a return receipt  
43 requested. The notice shall include the number of acres of land, or its equivalent, for which the user  
44 is being assessed, a general description or tax lot number of the land to which the water is assigned  
45 and a description of the use. In addition to the notice of the proposed order that the district sends

1 to the users, the district shall publish at the same time notice in a newspaper having general cir-  
2 culation in the area in which the water rights are located for a period of at least three weeks. Not  
3 less than one publication in each week shall be made. The notice shall state:

4 (a) The number of acres of water right that each parcel shall receive and the associated priority  
5 dates;

6 (b) That the proposed map and order are available for inspection at the office of the district  
7 during normal business hours for a period of 60 days from the date of first publication;

8 (c) That not less than 60 days after the date of first publication, the commission shall approve  
9 the petition and map and issue a final order unless a protest is filed or the petition does not meet  
10 the requirements of subsections (1) and (2) of this section; and

11 (d) That the user has the right to protest the proposed order and map as described in ORS  
12 541.331.

13 (6) If the commission returns a petition or map to a district for correction, the commission may  
14 prescribe a deadline for the petitioner to provide additional information or correct the petition or  
15 map. If the petitioner fails to meet the deadline prescribed by the commission, the commission may  
16 deny the petition.

17 **SECTION 1565.** ORS 541.331 is amended to read:

18 541.331. (1) Any user may file with the [*Water Resources Department*] **Oregon Department of**  
19 **Natural Resources**, within 60 days after the date of first publication, under ORS 541.329, a protest  
20 against a proposed order approving the petition. Whenever a timely protest is filed or in the opinion  
21 of the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** a  
22 hearing is necessary to determine whether the district has met the requirements of ORS 541.325 to  
23 541.333 or the proposed changes described in the proposed order would result in injury to existing  
24 water rights, the department shall hold a hearing on the matter. The hearing shall be conducted  
25 according to the provisions of ORS chapter 183 applicable to contested cases. The hearing shall be  
26 held in the area where the rights are located unless the parties and the persons who filed the pro-  
27 test under this section stipulate otherwise.

28 (2) If after examination or hearing, the department finds that the district has met the require-  
29 ments of ORS 541.325 to 541.331 and that the changes described in the proposed order would not  
30 result in injury to existing water rights, the department shall issue a final order approving the pe-  
31 tition and map as described in the proposed order. If a water right certificate for the water right  
32 has been issued previously, the department shall cancel the previous certificate and issue a new  
33 certificate that conforms to the final order and map and retains the original priority date.

34 (3) A certificate issued under this section shall have the evidentiary effect provided for in ORS  
35 537.270 except when the right to appropriate water described in the certificate is abandoned after  
36 the certificate is amended or issued.

37 (4) The department may approve for inclusion in a new certificate under ORS 541.329 and this  
38 section only land which, on July 1, 1993, or, if a district notifies the department under ORS 541.327  
39 (4), on December 31, 2003, is:

40 (a) Land within the legal boundaries of the district as those boundaries were originally de-  
41 scribed or as they may have been changed by legally prescribed inclusion or exclusion proceedings.

42 (b) Land for which inclusion in the district has been requested previously as prescribed by law.

43 (c) Land on which a previously perfected water right has been applied beneficially and for which  
44 the user has been charged or assessed by the district in at least one of the last five years and for  
45 which the user is currently being charged or assessed.

1        **SECTION 1566.** ORS 541.333 is amended to read:

2        541.333. (1) Whenever the owner of a water right for irrigation, domestic use, stock water stor-  
3 age or other use, for any reason desires to change the place of use, the point of diversion or the  
4 use made of the water under ORS 541.327, an application shall be filed with the [*Water Resources*  
5 *Department*] **Oregon Department of Natural Resources.**

6        (2) The application required under subsection (1) of this section shall include:

7        (a) The name of the owner;

8        (b) The previous use of the water;

9        (c) A description of the premises upon which the water is used;

10       (d) A description of the premises upon which it is proposed to use the water;

11       (e) The use which is proposed to be made of the water;

12       (f) The reasons for making the proposed change;

13       (g) If the application is made under ORS 541.327 (1), evidence that the water has been used  
14 within the past five years upon lands owned or controlled by the owner of the water right;

15       (h) In the event the application is made pursuant to ORS 541.327 (2), evidence that the water  
16 has been used within the past five years in the quarter quarter of a section; and

17       (i) The approval of the district in which the water right is located.

18       (3) The description of the premises or mapping required under ORS 541.329 (2) shall not require  
19 a map prepared by a certified water right examiner, but shall be in a form satisfactory to the [*Water*  
20 *Resources Commission*] **Oregon Natural Resources Commission.** If the water right is on a tract  
21 of land of five acres or less, the assessor's tax map with a notation of the acres of water right shall  
22 be sufficient for identification of the tract and place of use.

23       (4) A certificate issued under this section has the evidentiary effect provided for in ORS 537.270  
24 except when the right to appropriate water described in the certificate is abandoned after the cer-  
25 tificate is amended or issued.

26       **SECTION 1567.** ORS 541.510 is amended to read:

27       541.510. (1) Whenever it appears to the satisfaction of the [*Water Resources Commission*] **Oregon**  
28 **Natural Resources Commission** upon the commission's own determination or upon evidence sub-  
29 mitted by any person that the release of water from an impoundment or diversion structure con-  
30 structed before or after May 26, 1959, endangers or may endanger the public safety, the commission  
31 shall send a written notice to the owner or operator of the structure.

32       (2) The notice provided for in subsection (1) of this section shall state:

33       (a) That the release of water from the impoundment or diversion structure endangers or may  
34 endanger the public safety.

35       (b) That the owner or operator of the structure shall within a time to be set by the commission  
36 post notices downstream from the structure at places of public access to the stream to be designated  
37 by the commission warning the public that the stream level below the structure is subject to fluc-  
38 tuation.

39       **SECTION 1568.** ORS 541.515 is amended to read:

40       541.515. (1) Whenever it appears to the satisfaction of the [*Water Resources Commission*] **Oregon**  
41 **Natural Resources Commission**, upon the commission's own determination or upon evidence sub-  
42 mitted by any person that the present or proposed release of stored water from an impoundment or  
43 diversion structure, including any water power project, constructed before or after May 1, 1961,  
44 results in rapid increase in the stream level below the structure which creates or will create a  
45 hazard to human life or property, the commission shall cause written notice of such determination



1 to be mailed to the owner or operator of the structure.

2 (2) The notice provided for in subsection (1) of this section shall state:

3 (a) That the present or proposed release of stored water from the impoundment or diversion  
4 structure creates or may create an unreasonable hazard to human life or property.

5 (b) The manner in which such unreasonable hazard to human life or property is or may be cre-  
6 ated.

7 (c) The action which is required, in the opinion of the commission, to minimize such unreason-  
8 able hazard to human life or property.

9 (d) That the owner or operator of the impoundment or diversion structure, within 15 days after  
10 the mailing of the notice, may request in writing that the commission hold a hearing on such un-  
11 reasonable hazard or action required to minimize such unreasonable hazard, and that upon failure  
12 to request a hearing the commission shall make an order stating the terms, limitations and condi-  
13 tions of the action required to minimize such unreasonable hazard.

14 **SECTION 1569.** ORS 541.520 is amended to read:

15 541.520. If, within 15 days after the mailing of the notice provided for in ORS 541.515, the owner  
16 or operator of the impoundment or diversion structure fails to request in writing that the [*Water*  
17 *Resources Commission*] **Oregon Natural Resources Commission** hold a hearing, the commission  
18 shall make and file in the [*Water Resources Department*] **Oregon Department of Natural Re-**  
19 **sources** an order stating the terms, limitations and conditions relating to the release of water from  
20 the structure necessary to minimize unreasonable hazard to human life or property as set forth in  
21 the notice. The order shall become effective upon filing a copy in the [*Water Resources*] department.  
22 The commission shall cause a copy of the order to be mailed to the owner or operator of the  
23 structure. The order is not subject to appeal.

24 **SECTION 1570.** ORS 541.525 is amended to read:

25 541.525. (1) If, within 15 days after mailing of the notice provided for in ORS 541.515, the owner  
26 or operator of the impoundment or diversion structure requests in writing that the [*Water Resources*  
27 *Commission*] **Oregon Natural Resources Commission** hold a hearing, the commission shall hold a  
28 hearing in accordance with ORS chapter 183 on the hazard to human life or property which is or  
29 will be created by the rapid increase in the stream level below the structure resulting from the re-  
30 lease of water from the structure and the terms, limitations and conditions relating to such release  
31 of water necessary to minimize such unreasonable hazard.

32 (2) At least 10 days prior to the hearing the commission, in addition to the notice requirements  
33 of ORS chapter 183, shall cause a copy of the notice to be published in a newspaper of general cir-  
34 culation in each county in which the structure is located and in which unreasonable hazard to hu-  
35 man life or property is or may be created.

36 **SECTION 1571.** ORS 541.530 is amended to read:

37 541.530. After the hearing provided for in ORS 541.525, if the [*Water Resources Commission*]  
38 **Oregon Natural Resources Commission** determines that the release of stored water from the  
39 impoundment or diversion structure results or will result in rapid increase in the stream level below  
40 the structure and the increase creates or will create an unreasonable hazard to human life or  
41 property, the commission shall make and file in the offices of the [*Water Resources Department*]  
42 **Oregon Department of Natural Resources** an order stating the terms, limitations and conditions  
43 relating to the release of water from the structure necessary to minimize the unreasonable hazard.  
44 In determining what constitutes unreasonable hazard and what terms, limitations and conditions are  
45 necessary to minimize it, the commission shall consider the likelihood of harm to the public, recre-

1 ation benefits, power benefits, agriculture benefits, purpose of the structure, water flows, extent,  
2 nature and time of use by the public and all other material factors.

3 **SECTION 1572.** ORS 541.535 is amended to read:

4 541.535. An order of the [*Water Resources Commission*] **Oregon Natural Resources Commis-**  
5 **sion** under ORS 541.520 or 541.530 may require the owner or operator of an impoundment or diver-  
6 sion structure to install one or more automatic stream level recording devices satisfactory to the  
7 commission at one or more locations satisfactory to the commission. The cost of each such device  
8 and the installation and maintenance thereof shall be paid by the owner or operator of the structure.

9 **SECTION 1573.** ORS 541.540 is amended to read:

10 541.540. When conditions beyond the control of the owner or operator of an impoundment or  
11 diversion structure, to which an order of the [*Water Resources Commission*] **Oregon Natural Re-**  
12 **sources Commission**, made as provided in ORS 541.520 or 541.530, relates, threaten the safety of  
13 the structure, and the release of water from the structure contrary to the terms, limitations and  
14 conditions stated in the order is or may be necessary to remove such threat:

15 (1) The terms, limitations and conditions of the order shall not apply to such release of water.

16 (2) The owner, operator or person in immediate charge of the structure shall immediately notify  
17 the commission or the [*Water Resources Department*] **Oregon Department of Natural Resources**  
18 of the situation.

19 (3) The owner, operator or person in immediate charge of the structure shall immediately notify,  
20 to the best of the person's ability, those persons whose life or property may be threatened by such  
21 release of water.

22 **SECTION 1574.** ORS 541.545 is amended to read:

23 541.545. (1) No person shall fail to comply with an order of the [*Water Resources Commission*]  
24 **Oregon Natural Resources Commission** made as provided in ORS 541.520 or 541.530.

25 (2) The commission may enforce any order made as provided in ORS 541.520 or 541.530, and may  
26 prosecute proceedings to enjoin violations of subsection (1) of this section.

27 **SECTION 1575.** ORS 541.561 is amended to read:

28 541.561. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
29 establish a grant program to pay the qualifying costs of planning studies performed to evaluate the  
30 feasibility of developing a water conservation, reuse or storage project, as described in ORS 541.566.  
31 A grant under this section may be made to a local government as defined in ORS 174.116, to an  
32 Indian tribe as defined in ORS 391.802 or to a person.

33 (2) In lieu of grants, the department may pay the cost of providing direct services, including but  
34 not limited to technical planning services, for a planning study that is eligible for a grant under this  
35 section.

36 (3) A grant or the cost of direct services provided under this section may not exceed \$500,000  
37 per project. A grant or payment for direct services may be provided only if the amount of the grant  
38 or the cost of the direct services is matched by funding from another source that is not less than  
39 a dollar-for-dollar match of the amount or cost.

40 (4) Grants and the cost of direct services provided under this section must be paid for from  
41 moneys available in the Water Conservation, Reuse and Storage Investment Fund.

42 (5)(a) In evaluating above ground storage projects for awards of grants or payments for direct  
43 services under this section, the department shall give priority to projects that include provisions for  
44 using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish  
45 life or other ecological values.

1 (b) In evaluating all other eligible projects, the department shall give priority to projects iden-  
 2 tified by the department in a statewide water assessment and inventory for the award of grants or  
 3 provision of payment for direct services under this section.

4 **SECTION 1576.** ORS 541.576 is amended to read:

5 541.576. (1) The Water Conservation, Reuse and Storage Investment Fund is established in the  
 6 State Treasury, separate and distinct from the General Fund. Interest earned by the Water Conser-  
 7 vation, Reuse and Storage Investment Fund shall be credited to the General Fund. Moneys in the  
 8 Water Conservation, Reuse and Storage Investment Fund are continuously appropriated to the  
 9 [Water Resources Department] **Oregon Department of Natural Resources** to award grants and to  
 10 pay the cost of direct services provided under ORS 541.561.

11 (2) The Water Conservation, Reuse and Storage Investment Fund shall consist of:

12 (a) Moneys appropriated to the fund by the Legislative Assembly;

13 (b) Any moneys that may be transferred to the fund by the federal government, a state agency  
 14 or a local government; and

15 (c) Grant repayments, if any.

16 **SECTION 1577.** ORS 541.581 is amended to read:

17 541.581. The [Water Resources Commission] **Oregon Natural Resources Commission** shall  
 18 adopt rules necessary to administer ORS 541.561 to 541.581, including rules that:

19 (1) Establish reporting requirements for grants awarded under ORS 541.561;

20 (2) Provide for public comment before the award of grants and payment for direct services under  
 21 ORS 541.561; and

22 (3) Implement the priorities required by ORS 541.561.

23 **SECTION 1578.** ORS 541.606 is amended to read:

24 541.606. (1) The Water Investment Grant Fund is established in the State Treasury, separate and  
 25 distinct from the General Fund. Interest earned by the Water Investment Grant Fund shall be  
 26 credited to the Water Investment Grant Fund. Moneys in the Water Investment Grant Fund are  
 27 continuously appropriated to the [Water Resources Department] **Oregon Department of Natural**  
 28 **Resources** to fund grants under ORS 541.631 and to pay the administrative costs of the department  
 29 in operating a grant program under ORS 541.600 to 541.641 and sections 20, 25 and 26, chapter 907,  
 30 Oregon Laws 2009.

31 (2) The Water Investment Grant Fund consists of the following:

32 (a) Moneys appropriated to the fund by the Legislative Assembly.

33 (b) Any moneys that may be transferred to the fund by the federal government, a state agency  
 34 or a local government.

35 (c) Any bond proceeds authorized for deposit to the fund.

36 (d) Proceeds from grant application fees described in ORS 541.611.

37 (e) Gifts, grants or donations to the fund. Notwithstanding subsection (1) of this section, the  
 38 department may use moneys received under this paragraph according to any terms and conditions  
 39 of the gift, grant or donation.

40 (3)(a) Except as provided in paragraph (b) of this subsection, the department may make a grant  
 41 for a qualifying project from the fund to:

42 (A) An Indian tribe as defined in ORS 391.802;

43 (B) A person as defined in ORS 536.007; or

44 (C) A for-profit or nonprofit cooperative.

45 (b) The department may not issue a grant from the fund to a municipality or a provider of water

1 for municipal purposes.

2 **SECTION 1579.** ORS 541.611 is amended to read:

3 541.611. (1) Any person or entity described in ORS 541.606 may file an application with the  
4 [Water Resources Department] **Oregon Department of Natural Resources** for a grant from the  
5 Water Investment Grant Fund to enable the construction of a water development project located in  
6 the Columbia River Basin.

7 (2) An application filed under this section must be in a form prescribed by the [Water Resources  
8 Commission] **Oregon Natural Resources Commission** and include the following:

9 (a) A description of the nature and the primary and secondary purposes of the project.

10 (b) An analysis of the need for the project and for the water that the project is intended to de-  
11 liver.

12 (c) Identification and description of the project components sufficient to meet the conditions for  
13 project funding approval under ORS 541.631.

14 (d) A description of the economic feasibility of the project, including but not limited to:

15 (A) The costs of the project; and

16 (B) Information about the financial and other aspects of the operation and maintenance plans  
17 for the project.

18 (e) Suggestions for interim and long-term project performance benchmarks.

19 (f) An analysis of the project impacts including, but not limited to, the:

20 (A) Expected economic public benefits.

21 (B) Expected social and cultural public benefits.

22 (C) Expected net environmental public benefits.

23 (g) An evaluation of the potential impact on water quality, based upon water quality standards.

24 (h) Proof that the applicant has acquired at least a final order or limited license for necessary  
25 water permits from the department.

26 (i) Letters of support for the proposed water resource development project.

27 (j) If the project has not previously received state funding, a statement regarding whether other  
28 moneys are available or have been sought or received for the implementation of the project.

29 (k) Information sufficient to demonstrate that the amount of the requested funding will be  
30 matched by the funding from another source that is not less than a dollar-for-dollar match.

31 (L) Any other information required by the department.

32 (3) If the project will receive surface water impounded from a perennial stream, water diverted  
33 from a stream that supports sensitive, threatened or endangered fish, or more than 500 acre-feet of  
34 diverted surface water annually, in addition to the other information required under this section the  
35 application shall include the following completed studies:

36 (a) An analysis of by-pass, optimum peak, flushing and other ecological flows of the affected  
37 stream and of the impact of the project on those flows, that conforms to standards set by the de-  
38 partment [*in consultation with the State Department of Fish and Wildlife and other relevant*  
39 *agencies*];

40 (b) An independent comparative analysis of alternative means of supplying the water intended  
41 to be generated by the project, including but not limited to the costs and benefits of conservation,  
42 reuse and alternatives and the extent to which long-term water supply needs may be met using those  
43 alternatives; and

44 (c) Evaluation of the need for and feasibility of using project-derived water to augment in-stream  
45 flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.

1 (4) If the applicant is an agricultural water supplier, the applicant must have an approved ag-  
2 riculture water management and conservation plan, have submitted a completed agricultural water  
3 management and conservation plan to the [*Water Resources*] department for approval or be in the  
4 process of completing or updating a water management and conservation plan.

5 (5) The commission may establish fees for filing applications for a grant under this section.  
6 Moneys from the application fees established by the commission shall be deposited to the Water  
7 Investment Grant Fund.

8 (6) An analysis and evaluation conducted as part of a study performed pursuant to ORS 541.561  
9 to 541.581 and sections 5 and 6, chapter 13, Oregon Laws 2008, is deemed to satisfy the requirements  
10 of subsection (3) of this section.

11 **SECTION 1580.** ORS 541.616 is amended to read:

12 541.616. (1) If an application filed under ORS 541.611 or section 20, chapter 907, Oregon Laws  
13 2009, lacks any required information, the [*Water Resources Department*] **Oregon Department of**  
14 **Natural Resources** may reject the application or require the applicant to submit additional infor-  
15 mation.

16 (2) Upon receipt of a completed application filed under ORS 541.611 or section 20, chapter 907,  
17 Oregon Laws 2009, the [*department*] **Oregon Department of Natural Resources** shall provide  
18 public notice by posting the application on the department's website for a 60-day period prior to is-  
19 suing a loan or grant to the applicant.

20 (3) The [*department*] **Oregon Department of Natural Resources** shall provide for the receipt  
21 of public comment on the application during the 60-day period that the application is posted on the  
22 department website, as specified by the [*Water Resources Commission*] **Oregon Natural Resources**  
23 **Commission** by rule.

24 (4) The [*department*] **Oregon Department of Natural Resources** shall review the application  
25 information filed under ORS 541.611 or section 20, chapter 907, Oregon Laws 2009. The department  
26 shall commence the assessment no later than 60 days after receiving the application.

27 *[(5) The department shall assess each project in consultation with the State Department of Fish and*  
28 *Wildlife, the State Parks and Recreation Department, the Department of Environmental Quality and*  
29 *affected tribal governments, and with other interested parties as appropriate. If a project may affect*  
30 *agricultural use, the Water Resources Department shall also assess the project in consultation with the*  
31 *State Department of Agriculture.]*

32 **(5) The Oregon Department of Natural Resources shall assess each project in consulta-**  
33 **tion with the Department of Environmental Quality, affected tribal governments and, if ap-**  
34 **propriate, other interested parties. If a project may affect agricultural use, the Oregon**  
35 **Department of Natural Resources also shall assess the project in consultation with the State**  
36 **Department of Agriculture.**

37 (6) In assessing the net environmental public benefit of the project, the [*Water Resources De-*  
38 *partment*] **Oregon Department of Natural Resources** shall weigh the project's various environ-  
39 mental impacts on, and enhancements to, all of the forms of environmental benefit described in ORS  
40 541.600 (2).

41 **SECTION 1581.** ORS 541.616, as amended by section 42, chapter 907, Oregon Laws 2009, is  
42 amended to read:

43 541.616. (1) If an application filed under ORS 541.611 lacks any required information, the [*Water*  
44 *Resources Department*] **Oregon Department of Natural Resources** may reject the application or  
45 require the applicant to submit additional information.

1 (2) Upon receipt of a completed application filed under ORS 541.611, the [department] **Oregon**  
 2 **Department of Natural Resources** shall provide public notice by posting the application on the  
 3 department's website for a 60-day period prior to issuing a grant to the applicant.

4 (3) The [department] **Oregon Department of Natural Resources** shall provide for the receipt  
 5 of public comment on the application during the 60-day period that the application is posted on the  
 6 department website, as specified by the [Water Resources Commission] **Oregon Natural Resources**  
 7 **Commission** by rule.

8 (4) The [department] **Oregon Department of Natural Resources** shall review the application  
 9 information filed under ORS 541.611. The department shall commence the assessment no later than  
 10 60 days after receiving the application.

11 *[(5) The department shall assess each project in consultation with the State Department of Fish and*  
 12 *Wildlife, the State Parks and Recreation Department, the Department of Environmental Quality and*  
 13 *affected tribal governments, and with other interested parties as appropriate. If a project may affect*  
 14 *agricultural use, the Water Resources Department shall also assess the project in consultation with the*  
 15 *State Department of Agriculture.]*

16 **(5) The Oregon Department of Natural Resources shall assess each project in consulta-**  
 17 **tion with the Department of Environmental Quality, affected tribal governments and, if ap-**  
 18 **propriate, other interested parties. If a project may affect agricultural use, the Oregon**  
 19 **Department of Natural Resources also shall assess the project in consultation with the State**  
 20 **Department of Agriculture.**

21 (6) In assessing the net environmental public benefit of the project, the [Water Resources De-  
 22 partment] **Oregon Department of Natural Resources** shall weigh the project's various environ-  
 23 mental impacts on, and enhancements to, all of the forms of environmental benefit described in ORS  
 24 541.600 (2).

25 **SECTION 1582.** ORS 541.621 is amended to read:

26 541.621. (1) The [Water Resources Commission] **Oregon Natural Resources Commission** shall  
 27 adopt rules establishing guidelines for the [Water Resources Department's] review of applications **by**  
 28 **the Oregon Department of Natural Resources** for a grant filed under ORS 541.611 and for the  
 29 assessment of projects for which grants are sought. The guidelines shall include:

30 (a) Evaluation of the awarding of grants as a financial incentive to accomplish the goals of the  
 31 grant program;

32 (b) Consideration of the financial needs of applicants and other special circumstances; and

33 (c) Consideration of the economic public benefit, social and cultural public benefit and net en-  
 34 vironmental public benefit of the project.

35 (2) The guidelines shall give priority to projects that:

36 (a) Recharge aquifers in limited and critical ground water areas;

37 (b) Are designed to deliver the greatest net environmental public benefit;

38 (c) Include in-stream flow restoration components;

39 (d) Conserve water; or

40 (e) Are water storage projects that provide for stored water to be used for restoring or aug-  
 41 menting streamflows in a manner that conserves, maintains and enhances water quality, aquatic life,  
 42 fish life or other ecological values.

43 (3) The guidelines shall require that the department consider the following:

44 (a) Local support for the project;

45 (b) Oregon's in-stream and out-of-stream water needs as influenced by existing and anticipated

1 climate change;

2 (c) The project's potential to facilitate economic development;

3 (d) The projected impact of the project on public health matters relating to water; and

4 (e) Statewide water needs.

5 (4) The commission shall adopt rules for use by the [*Water Resources*] department in assessing  
6 the net environmental public benefits of a project under ORS 541.616. The commission must consult  
7 with, and provide a 60-day period for the receipt of comment from, [*the State Department of Fish and*  
8 *Wildlife, the State Parks and Recreation Department,*] the State Department of Agriculture and the  
9 Department of Environmental Quality before the commission adopts a rule described in this sub-  
10 section.

11 **SECTION 1583.** ORS 541.631 is amended to read:

12 541.631. (1) Subject to any additional qualifications or restrictions under ORS 541.616, 541.621  
13 or 541.636 or [*Water Resources Commission rules, the Water Resources Department*] **rules of the**  
14 **Oregon Natural Resources Commission, the Oregon Department of Natural Resources** may  
15 approve a grant application filed under ORS 541.611 if the department finds that:

16 (a) The plan for the construction of the proposed project complies with all applicable provisions  
17 related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams un-  
18 der ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

19 (b) Planned diversions of surface water include provision for fish screens and, if applicable,  
20 volitional fish passage;

21 (c) The use of surface water or ground water from the project will be measured and reported;

22 (d) The applicant or beneficiaries of water from the project measure and report, or have sched-  
23 uled and financed the measurement of, all existing water use at the point of diversion;

24 (e) There is a reasonable certainty that the project, considered in total, will deliver a measur-  
25 able net environmental public benefit; and

26 (f) To the extent applicable, the project complies with subsection (2) or (3) of this section.

27 (2) A water storage project must be designed:

28 (a) To provide for no more than 75 percent of new stored water in the aquifer or above-ground  
29 storage location of the project to be withdrawn for agricultural purposes and for not less than 25  
30 percent of the new water to be dedicated for the purpose of providing net environmental public  
31 benefits or in-stream benefits; and

32 (b) To the extent practicable, to return dedicated new stored water for stream augmentation at  
33 a time of year that the [*Water Resources Department, in consultation with the State Department of*  
34 *Fish and Wildlife and*] **department, in consultation with** relevant tribal governments, determines  
35 will provide the maximum net environmental public benefit or in-stream benefit.

36 (3) If more than 25 percent of the funding for a water storage project is from grants of state  
37 moneys and is not subject to repayment, the project must be designed to dedicate for the purpose  
38 of providing net environmental public benefit or in-stream benefit a percentage of the new stored  
39 water created by the project that equals or exceeds the percentage of funding for the project that  
40 is from grants of state moneys. The [*Water Resources*] department shall manage the dedicated in-  
41 crement of new stored water for net environmental public benefit or in-stream benefit.

42 (4) On or before the earlier of six years after the issuance of the ground water recharge permit  
43 or the date the water right certificate is issued, the department shall quantify and legally protect  
44 the increment of new water returned in stream from a project described in this section.

45 (5) The department shall require as a contractual condition for issuing the grant, and as a con-

1 dition of any new water permit or water right certificate, that the project be operated in a manner  
 2 that actually dedicates the percentage of new stored water for net environmental public benefit or  
 3 in-stream benefit that the project was designed to dedicate for those purposes.

4 (6) The department may require that a project protect peak and ecological flows to the extent  
 5 [*determined by the State Department of Fish and Wildlife to be*] **that the department determines**  
 6 **that such protection is** necessary.

7 (7) The commission, by rule, may allow the [*Water Resources*] department to waive any require-  
 8 ment of this section for the issuance of a grant, other than the requirement of a measurable net  
 9 environmental public benefit, if:

10 (a) The grant application requests less than \$20,000; or

11 (b) The project is a conservation, efficiency, restoration or reuse project that can be shown to  
 12 the satisfaction of the department to cause no harm to the source, any receiving stream, fish or  
 13 wildlife or existing water rights.

14 (8) This section and ORS 541.611, 541.616, 541.621, 541.636 and 541.641 do not limit the authority  
 15 granted the Environmental Quality Commission or the Department of Environmental Quality under  
 16 ORS chapter 468B.

17 **SECTION 1584.** ORS 541.631, as amended by section 30, chapter 907, Oregon Laws 2009, is  
 18 amended to read:

19 541.631. (1) Subject to any additional qualifications or restrictions under ORS 541.616, 541.621  
 20 or 541.636 or [*Water Resources Commission rules, the Water Resources Department*] **rules of the**  
 21 **Oregon Natural Resources Commission, the Oregon Department of Natural Resources** may  
 22 approve a grant application filed under ORS 541.611 if the department finds that:

23 (a) The plan for the construction of the proposed project complies with all applicable provisions  
 24 related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams un-  
 25 der ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

26 (b) Planned diversions of surface water include provision for fish screens and, if applicable,  
 27 volitional fish passage;

28 (c) The use of surface water or ground water from the project will be measured and reported;

29 (d) The applicant or beneficiaries of water from the project measure and report, or have sched-  
 30 uled and financed the measurement of, all existing water use at the point of diversion;

31 (e) There is a reasonable certainty that the project, considered in total, will deliver a measur-  
 32 able net environmental public benefit; and

33 (f) To the extent applicable, the project complies with subsection (2) or (3) of this section.

34 (2) A water storage project must be designed:

35 (a) To provide for no more than 75 percent of new stored water in the aquifer or above-ground  
 36 storage location of the project to be withdrawn for agricultural purposes and for not less than 25  
 37 percent of the new water to be dedicated for the purpose of providing net environmental public  
 38 benefits or in-stream benefits; and

39 (b) To the extent practicable, to return dedicated new stored water for stream augmentation at  
 40 a time of year that the [*Water Resources Department, in consultation with the State Department of*  
 41 *Fish and Wildlife and*] **department, in consultation with** relevant tribal governments, determines  
 42 will provide the maximum net environmental public benefit or in-stream benefit.

43 (3) If more than 25 percent of the funding for a water storage project is from grants of state  
 44 moneys and is not subject to repayment, the project must be designed to dedicate for the purpose  
 45 of providing net environmental public benefit or in-stream benefit a percentage of the new stored



1 water created by the project that equals or exceeds the percentage of funding for the project that  
 2 is from grants of state moneys. The [*Water Resources*] department shall manage the dedicated in-  
 3 crement of new stored water for net environmental public benefit or in-stream benefit.

4 (4) On or before the earlier of six years after the issuance of the ground water recharge permit  
 5 or the date the water right certificate is issued, the department shall quantify and legally protect  
 6 the increment of new water returned in stream from a project described in this section.

7 (5) The department shall require as a contractual condition for issuing the grant, and as a con-  
 8 dition of any new water permit or water right certificate, that if the project receives grants or loans  
 9 from state moneys other than a grant issued under this section, the project must be operated in a  
 10 manner that actually dedicates the percentage of new stored water for net environmental public  
 11 benefit or in-stream benefit that the project was designed to dedicate for those purposes.

12 (6) The department shall require that a project protect peak and ecological flows to the extent  
 13 [*determined by the State Department of Fish and Wildlife to be*] **that the department determines**  
 14 **that such protection is necessary.**

15 (7) The commission, by rule, may allow the [*Water Resources*] department to waive any require-  
 16 ment of this section for the issuance of a grant, other than the requirement of a measurable net  
 17 environmental public benefit, if:

18 (a) The grant application requests less than \$20,000; or

19 (b) The project is a conservation, efficiency, restoration or reuse project that can be shown to  
 20 the satisfaction of the department to cause no harm to the source, any receiving stream, fish or  
 21 wildlife or existing water rights.

22 (8) This section and ORS 541.611, 541.616, 541.621, 541.636 and 541.641 do not limit the authority  
 23 granted the Environmental Quality Commission or the Department of Environmental Quality under  
 24 ORS chapter 468B.

25 **SECTION 1585.** ORS 541.636 is amended to read:

26 541.636. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
 27 ensure that any necessary federal and state environmental impact approval processes have been  
 28 completed, and that agencies have issued any relevant approvals and permits, before the advance-  
 29 ment of any grant moneys for a project described in ORS 541.631. The department shall determine  
 30 the amount of a grant from the Water Investment Grant Fund on a case-by-case basis. The depart-  
 31 ment may not issue a grant under ORS 541.631 to provide assistance for operational or maintenance  
 32 expenses of a water development project other than project startup costs.

33 (2) The department may issue a grant from the fund only if the applicant agrees to periodic re-  
 34 view of the project, including but not limited to:

35 (a) Review of interim and long-term performance benchmarks set by the department; and

36 (b) Program and fiscal audits to ensure that performance benchmarks are achieved on project  
 37 development, project benefits and return on investment.

38 (3) The department may issue a grant from the fund only if the applicant agrees to report to the  
 39 department no later than two years after receiving the grant moneys regarding the progress of the  
 40 project and the economic public benefit, social and cultural public benefit and net environmental  
 41 public benefit realized from the project. The department shall provide copies of the applicant reports  
 42 received by the department during the biennium to an interim committee of the Legislative Assembly  
 43 dealing with natural resources.

44 (4) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may establish  
 45 reasonable fees for management, oversight or review services that the department provides for a

1 water development project. The fees shall be deposited to the Water Investment Grant Fund.

2 (5) For a project described in ORS 541.631 (2), the commission may require compliance with the  
3 conditions described in ORS 541.631 (2) as a condition of any new water permits issued for the  
4 project and may monitor operation of the project to ensure compliance.

5 **SECTION 1586.** ORS 541.641 is amended to read:

6 541.641. Notwithstanding ORS 541.631 and section 25, chapter 907, Oregon Laws 2009, the [*Water*  
7 *Resources Department*] **Oregon Department of Natural Resources** may issue a grant under ORS  
8 541.631 or a loan under section 25, chapter 907, Oregon Laws 2009, to an agricultural water supplier  
9 that fails to adequately demonstrate water measurement if:

10 (1) The water development project otherwise qualifies for that grant or loan as provided under  
11 ORS 541.631 or section 25, chapter 907, Oregon Laws 2009; and

12 (2) The department finds that:

13 (a) The applicant is seeking the grant or loan for the purpose of implementing water measure-  
14 ment and the department has approved an implementation plan to ensure that the water measure-  
15 ment requirement is met; or

16 (b) The applicant has secured funding from a source other than the state that will ensure im-  
17 plementation of water measurement.

18 **SECTION 1587.** ORS 541.641, as amended by section 43, chapter 907, Oregon Laws 2009, is  
19 amended to read:

20 541.641. Notwithstanding ORS 541.631, the [*Water Resources Department*] **Oregon Department**  
21 **of Natural Resources** may issue a grant under ORS 541.631 to an agricultural water supplier that  
22 fails to adequately demonstrate water measurement if:

23 (1) The water development project otherwise qualifies for that grant as provided under ORS  
24 541.631; and

25 (2) The department finds that:

26 (a) The applicant is seeking the grant for the purpose of implementing water measurement and  
27 the department has approved an implementation plan to ensure that the water measurement re-  
28 quirement is met; or

29 (b) The applicant has secured funding from a source other than the state that will ensure im-  
30 plementation of water measurement.

31 **SECTION 1588.** ORS 541.646 is amended to read:

32 541.646. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may adopt  
33 rules the commission considers reasonable for the administration and enforcement of ORS 541.600  
34 to 541.641 and sections 20, 25 and 26, chapter 907, Oregon Laws 2009.

35 **SECTION 1589.** ORS 541.700 is amended to read:

36 541.700. As used in ORS 541.700 to 541.855, unless the context requires otherwise:

37 [(1) "*Commission*" means the *Water Resources Commission appointed under ORS 536.022.*]

38 [(2)] (1) "*Construction*" means the construction, or improvement or rehabilitation, in whole or  
39 in part, of a water development project, including planning and engineering work, purchasing or  
40 refinancing directly related to such construction or improvement or rehabilitation, or any combina-  
41 tion of such construction or improvement or rehabilitation. As used in this subsection:

42 (a) "*Purchasing*" means the purchasing of materials, land or existing facilities necessary to  
43 complete a water development project.

44 (b) "*Refinancing*" includes refinancing existing debt of a water developer, as defined in sub-  
45 section [(7)(f) to (m) and (o)] **(5)(f) to (m) and (o)** of this section, in order to complete a water de-

1 velopment project or to provide adequate security for a water development loan, but does not  
2 include refinancing existing debt only to reduce interest rates or costs to the borrower or to pay  
3 off existing debt.

4 [(3) “Director” means the Water Resources Director appointed pursuant to ORS 536.032.]

5 [(4) (2) “Federal water development project” means any water development project that re-  
6 ceives funding from the federal government, or any agency or instrumentality of the United States.

7 [(5) (3)(a) “Secondary use” means:

8 (A) Any water-related recreational use.

9 (B) Any flood control use.

10 (C) Any power generation use.

11 (D) Any water supply system utilized as a domestic water system for the benefit of an individual  
12 residence related to the operation of the water development project.

13 (b) “Secondary use” does not include any use that is incompatible with a water development  
14 project.

15 [(6) (4) “Water development project” means:

16 (a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including  
17 structures for the application of water for agricultural harvest activities, dams, storage reservoirs,  
18 wells or well systems, pumping plants, pipelines, canals, ditches, revetments, water supply systems  
19 used for the purpose of agricultural temperature control and any other structure, facility and prop-  
20 erty necessary or convenient for supplying lands with water for irrigation purposes.

21 (b) An undertaking, in whole or in part, in this state for the purpose of drainage, including  
22 ditching, tiling, piping, channel improvement, pumping plants or other agronomically approved  
23 methods of land drainage that will increase soil versatility and productivity.

24 (c) An undertaking, in whole or in part, in this state for the purpose of providing water for  
25 municipal use, which may include safe drinking water for communities with population less than  
26 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facili-  
27 ties, pipelines, canals, ditches, revetments and all other structures and facilities necessary or con-  
28 venient for supplying water. An undertaking may provide water to two or more communities with  
29 a combined population of more than 30,000. An undertaking may be part of a project that provides  
30 water to a community with a population of more than 30,000, but loans of moneys from the Water  
31 Development Fund, including moneys in ORS 285B.563 (11) may be made only to communities served  
32 by the project that have a population of less than 30,000.

33 (d) An undertaking, in whole or in part, in this state for the purpose of fish protection, including  
34 fish screening or by-pass devices, fishways and all other structures and facilities necessary or con-  
35 venient for providing fish protection.

36 (e) An undertaking, in whole or in part, in this state for the purpose of enhancing watershed  
37 health or improving fish habitat, including methods and materials to restore, maintain and enhance  
38 water quality, streamflows and the biological, chemical and physical integrity of the riparian zones  
39 and associated uplands of the state’s rivers, lakes and estuaries systems [*and recommended by the*  
40 *Oregon Watershed Enhancement Board established under ORS 541.360*].

41 (f) Secondary uses in conjunction with projects described in paragraphs (a) to (e) of this sub-  
42 section.

43 [(7) (5) “Water developer” means:

44 (a) Any individual resident of this state;

45 (b) Any partnership for profit subject to the provisions of ORS chapter 67 or 70, whose principal

1 income is from farming in Oregon;

2 (c) Any corporation for profit subject to the provisions of ORS chapter 60, whose principal in-  
3 come is from farming in Oregon;

4 (d) Any nonprofit corporation subject to the provisions of ORS chapter 65, whose principal in-  
5 come is from farming in Oregon;

6 (e) Any cooperative subject to the provisions of ORS chapter 62, whose principal income is from  
7 farming in Oregon;

8 (f) Any irrigation district organized under or subject to ORS chapter 545;

9 (g) Any water improvement district organized under ORS chapter 552;

10 (h) Any water control district organized under ORS chapter 553;

11 (i) Any irrigation or drainage corporation organized under or subject to ORS chapter 554;

12 (j) Any drainage district organized under ORS chapter 547 or subject to all or part of ORS  
13 chapter 545;

14 (k) Any corporation, cooperative, company or other association formed prior to 1917 for the  
15 purpose of distributing water for irrigation purposes;

16 (L) Any port district organized under ORS 777.005 to 777.725, 777.915 to 777.953 and 777.990;

17 (m) Any city or county;

18 (n) Any organization formed for the purpose of distributing water for community water supply;  
19 or

20 (o) Any local soil and water conservation district organized under ORS 568.210 to 568.808 and  
21 568.900 to 568.933.

22 **SECTION 1590.** ORS 541.703 is amended to read:

23 541.703. Of the applications filed under ORS 541.705 for assistance in constructing a water de-  
24 velopment project for municipal use, the [*Water Resources Commission*] **Oregon Natural Resources**  
25 **Commission** shall give preference for approval to those projects required to be undertaken as a  
26 result of a proceeding under ORS 222.840 to 222.915 or 431.705 to 431.760 to alleviate conditions  
27 constituting a danger to public health.

28 **SECTION 1591.** ORS 541.705 is amended to read:

29 541.705. (1) Except as provided in section 20, chapter 907, Oregon Laws 2009, for a water de-  
30 velopment project in the Columbia River Basin, any water developer may file with the [*Water Re-*  
31 *sources Commission*] **Oregon Natural Resources Commission** an application to enable the  
32 construction of a water development project as provided in ORS 541.700 to 541.855. The application  
33 shall be filed in the manner, be in the form and contain or be accompanied by any information  
34 prescribed by the commission. The commission, in considering applications, shall encourage the  
35 largest number of users of the Water Development Fund and shall consider the impact on the family  
36 farm units of the state.

37 (2) In addition to other requirements prescribed by the commission, an application filed under  
38 subsection (1) of this section shall:

39 (a) Describe the nature and purposes of the proposed water development project, including the  
40 need for the project and reason why the project would be in the public interest.

41 (b) State whether any purposes other than improvement of a drinking water system, irrigation,  
42 drainage, fish protection, watershed enhancement or municipal use, but consistent therewith, will  
43 be served by the proposed water development project, and the nature of the other purposes, if any.

44 (c) Set forth or be accompanied by a feasibility study for the construction, operation and main-  
45 tenance of the proposed water development project, an estimate of the costs of construction and if

1 the project includes as a primary purpose irrigation or drainage, an evaluation of the agricultural  
2 potential of the land from any competent public agency.

3 (d) State whether any moneys other than those in the Water Development Fund are proposed  
4 to be used for the construction of the proposed water development project, and whether any other  
5 moneys are available or have been sought for the construction.

6 (e) Show that the applicant holds or can acquire all lands, other than public lands, and interests  
7 therein and water rights necessary for the construction, operation and maintenance of the proposed  
8 water development project.

9 (3) If the application is for a safe drinking water project, the applicant also shall demonstrate  
10 that:

11 (a) The applicant is a city, county, district, water authority or other political subdivision of the  
12 state or an organization operated on a not-for-profit basis that makes drinking water available to  
13 members of the general public;

14 (b) The primary use of the loan will be to improve a drinking water system for the purpose of  
15 complying with applicable state or federal drinking water quality regulations; and

16 (c) The applicant has:

17 (A) Developed a water system master plan; and

18 (B) Either has a coordination agreement in place as defined in ORS 195.020, 195.025 and 197.712  
19 or can demonstrate that options to find a coordinated solution to the system's drinking water prob-  
20 lems have been fully explored.

21 **SECTION 1592.** ORS 541.705, as amended by section 35, chapter 907, Oregon Laws 2009, is  
22 amended to read:

23 541.705. (1) Any water developer may file with the [*Water Resources Commission*] **Oregon Na-**  
24 **tural Resources Commission** an application to enable the construction of a water development  
25 project as provided in ORS 541.700 to 541.855. The application shall be filed in the manner, be in  
26 the form and contain or be accompanied by any information prescribed by the commission. The  
27 commission, in considering applications, shall encourage the largest number of users of the Water  
28 Development Fund and shall consider the impact on the family farm units of the state.

29 (2) In addition to other requirements prescribed by the commission, an application filed under  
30 subsection (1) of this section shall:

31 (a) Describe the nature and purposes of the proposed water development project, including the  
32 need for the project and reason why the project would be in the public interest.

33 (b) State whether any purposes other than improvement of a drinking water system, irrigation,  
34 drainage, fish protection, watershed enhancement or municipal use, but consistent therewith, will  
35 be served by the proposed water development project, and the nature of the other purposes, if any.

36 (c) Set forth or be accompanied by a feasibility study for the construction, operation and main-  
37 tenance of the proposed water development project, an estimate of the costs of construction and if  
38 the project includes as a primary purpose irrigation or drainage, an evaluation of the agricultural  
39 potential of the land from any competent public agency.

40 (d) State whether any moneys other than those in the Water Development Fund are proposed  
41 to be used for the construction of the proposed water development project, and whether any other  
42 moneys are available or have been sought for the construction.

43 (e) Show that the applicant holds or can acquire all lands, other than public lands, and interests  
44 therein and water rights necessary for the construction, operation and maintenance of the proposed  
45 water development project.

1 (3) If the application is for a safe drinking water project, the applicant also shall demonstrate  
2 that:

3 (a) The applicant is a city, county, district, water authority or other political subdivision of the  
4 state or an organization operated on a not-for-profit basis that makes drinking water available to  
5 members of the general public;

6 (b) The primary use of the loan will be to improve a drinking water system for the purpose of  
7 complying with applicable state or federal drinking water quality regulations; and

8 (c) The applicant has:

9 (A) Developed a water system master plan; and

10 (B) Either has a coordination agreement in place as defined in ORS 195.020, 195.025 and 197.712  
11 or can demonstrate that options to find a coordinated solution to the system's drinking water prob-  
12 lems have been fully explored.

13 **SECTION 1593.** ORS 541.710 is amended to read:

14 541.710. (1) Upon receipt of an application filed as provided in ORS 541.705, the [*Water Resources*  
15 *Commission*] **Oregon Natural Resources Commission** shall determine whether the feasibility study  
16 described in ORS 541.705 for the water development project set forth in or accompanying the ap-  
17 plication is satisfactory and if the commission determines that it is not satisfactory, the commission  
18 may:

19 (a) Reject the application;

20 (b) Require the applicant to submit additional information and revision of the feasibility study  
21 as may be necessary; or

22 (c) Make such revisions of the feasibility study as the commission considers necessary to make  
23 the plan satisfactory.

24 (2) Except as provided in subsection (3) of this section, for a loan application filed under ORS  
25 541.705 or section 20, chapter 907, Oregon Laws 2009, the commission shall charge and collect from  
26 the applicant at the time the application is filed an application fee equal to the lesser of 0.10 percent  
27 of the loan applied for or \$2,500. In addition, the commission may require the applicant to pay for  
28 costs that exceed the application fee if the [*Water Resources Director*] **Director of the Oregon**  
29 **Department of Natural Resources** determines that the costs are incurred solely in connection  
30 with processing the application. Before incurring the additional costs, the commission shall advise  
31 the applicant of the additional costs to be paid by the applicant. Moneys referred to in this sub-  
32 section shall be paid into the Water Development Administration and Bond Sinking Fund.

33 (3) The commission may establish a reduced application fee by rule for a water development  
34 project that is for fish protection or for watershed enhancement.

35 **SECTION 1594.** ORS 541.710, as amended by section 36, chapter 907, Oregon Laws 2009, is  
36 amended to read:

37 541.710. (1) Upon receipt of an application filed as provided in ORS 541.705, the [*Water Resources*  
38 *Commission*] **Oregon Natural Resources Commission** shall determine whether the feasibility study  
39 described in ORS 541.705 for the water development project set forth in or accompanying the ap-  
40 plication is satisfactory and if the commission determines that it is not satisfactory, the commission  
41 may:

42 (a) Reject the application;

43 (b) Require the applicant to submit additional information and revision of the feasibility study  
44 as may be necessary; or

45 (c) Make such revisions of the feasibility study as the commission considers necessary to make

1 the plan satisfactory.

2 (2) Except as provided in subsection (3) of this section, the commission shall charge and collect  
 3 from the applicant at the time the application is filed an application fee equal to the lesser of 0.10  
 4 percent of the loan applied for or \$2,500. In addition, the commission may require the applicant to  
 5 pay for costs that exceed the application fee if the [*Water Resources Director*] **Director of the**  
 6 **Oregon Department of Natural Resources** determines that the costs are incurred solely in con-  
 7 nection with processing the application. Before incurring the additional costs, the commission shall  
 8 advise the applicant of the additional costs to be paid by the applicant. Moneys referred to in this  
 9 subsection shall be paid into the Water Development Administration and Bond Sinking Fund.

10 (3) The commission may establish a reduced application fee by rule for a water development  
 11 project that is for fish protection or for watershed enhancement.

12 **SECTION 1595.** ORS 541.720 is amended to read:

13 541.720. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may  
 14 approve the financing for the construction of a water development project described in an applica-  
 15 tion filed under ORS 541.705, or subject to section 25, chapter 907, Oregon Laws 2009, in an appli-  
 16 cation filed under section 20, chapter 907, Oregon Laws 2009, using moneys in the Water  
 17 Development Fund secured by a first lien or by other good and sufficient collateral in the manner  
 18 provided in ORS 541.740 if, after investigation, the commission finds that:

19 (a) The proposed water development project is feasible and a reasonable risk from practical and  
 20 economic standpoints;

21 (b) The plan for the construction, operation and maintenance of the proposed water development  
 22 project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the  
 23 agricultural potential is confirmed;

24 (c) The plan for construction and operation will provide multipurpose facilities, to the extent  
 25 practicable;

26 (d) The applicant is a qualified, credit-worthy and responsible water developer that meets the  
 27 standards established by commission rule and is willing and able to enter into a contract with the  
 28 commission for construction and repayment as provided in ORS 541.730;

29 (e) Moneys in the Water Development Fund are or will be available for the construction of the  
 30 proposed water development project;

31 (f) There is a need for the proposed water development project, the proposed project is in the  
 32 public interest and the applicant's financial resources are adequate to provide the working capital  
 33 needed to operate and maintain the project; and

34 (g) The construction cost associated with any secondary use does not exceed the construction  
 35 cost of the primary use of the water development project.

36 (2) ORS 541.700 to 541.855 do not limit the authority granted the Environmental Quality Com-  
 37 mission or the Department of Environmental Quality under ORS chapter 468B.

38 **SECTION 1596.** ORS 541.720, as amended by section 37, chapter 907, Oregon Laws 2009, is  
 39 amended to read:

40 541.720. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may  
 41 approve the financing for the construction of a water development project described in an applica-  
 42 tion filed under ORS 541.705, using moneys in the Water Development Fund secured by a first lien  
 43 or by other good and sufficient collateral in the manner provided in ORS 541.740 if, after investi-  
 44 gation, the commission finds that:

45 (a) The proposed water development project is feasible and a reasonable risk from practical and

1 economic standpoints;

2 (b) The plan for the construction, operation and maintenance of the proposed water development  
3 project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the  
4 agricultural potential is confirmed;

5 (c) The plan for construction and operation will provide multipurpose facilities, to the extent  
6 practicable;

7 (d) The applicant is a qualified, credit-worthy and responsible water developer that meets the  
8 standards established by commission rule and is willing and able to enter into a contract with the  
9 commission for construction and repayment as provided in ORS 541.730;

10 (e) Moneys in the Water Development Fund are or will be available for the construction of the  
11 proposed water development project;

12 (f) There is a need for the proposed water development project, the proposed project is in the  
13 public interest and the applicant's financial resources are adequate to provide the working capital  
14 needed to operate and maintain the project; and

15 (g) The construction cost associated with any secondary use does not exceed the construction  
16 cost of the primary use of the water development project.

17 (2) ORS 541.700 to 541.855 do not limit the authority granted the Environmental Quality Com-  
18 mission or the Department of Environmental Quality under ORS chapter 468B.

19 **SECTION 1597.** ORS 541.725 is amended to read:

20 541.725. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
21 adopt rules establishing standards for borrowers obtaining loans issued from the Water Development  
22 Fund. The commission shall design the standards to ensure that all loans have a high probability  
23 of repayment and that all loans are adequately secured in the event of a default. The commission  
24 shall solicit comments from the Oregon Department of Administrative Services and the State  
25 Treasurer when designing the standards. The standards may include, but need not be limited to,  
26 standards that give preference to entities with ad valorem taxing authority.

27 **SECTION 1598.** ORS 541.730 is amended to read:

28 541.730. (1) If the [*Water Resources Commission*] **Oregon Natural Resources Commission** ap-  
29 proves the financing for the construction of a water development project, the commission, on behalf  
30 of the state, and the applicant may enter into a loan contract, secured by a first lien or by other  
31 good and sufficient collateral in the manner provided in ORS 541.740. The loan contract shall set  
32 forth, among other matters:

33 (a) That the commission, on behalf of the state, must approve the arrangements made by the  
34 applicant for the construction, operation and maintenance of the water development project, using  
35 moneys in the Water Development Fund for the construction.

36 (b) A plan for the repayment of moneys borrowed from the Water Development Fund and inter-  
37 est on those moneys as described in subsection (3) of this section.

38 (c) Provisions satisfactory to the commission for field engineering and inspection, the commis-  
39 sion to be the final judge of completion of the contract.

40 (d) That the liability of the state under the contract is contingent upon the availability of mon-  
41 eys in the Water Development Fund for use in the construction, operation and maintenance of the  
42 water development project.

43 (e) Such further provisions as the commission considers necessary to ensure expenditure of the  
44 funds for the purposes set forth in the approved application.

45 (f) That the commission may institute an appropriate action or suit to prevent use of the facili-



1 ties of a water development project financed by the Water Development Fund by any person who  
 2 is delinquent in the repayment of any moneys due the Water Development Administration and Bond  
 3 Sinking Fund.

4 (g) That a loan for a water development project is assignable or transferable to a third party  
 5 only with the prior approval of the commission.

6 (2) The commission may approve a loan assignment or transfer only if the commission finds that  
 7 the assignee or transferee qualifies as a water developer as defined in ORS 541.700 [(7)] (5) and the  
 8 assignment or transfer does not have serious adverse effect upon the family farm unit structure in  
 9 this state.

10 (3) The commission, in consultation with the State Treasurer, shall set the interest rate in an  
 11 amount the commission determines to be sufficient to cover, to the extent practicable:

12 (a) The interest rate to be paid to bondholders on the underlying bonds;

13 (b) The administrative expenses incurred by the commission, the [*Water Resources Department*]  
 14 **Oregon Department of Natural Resources** and the State Treasurer in connection with the loan  
 15 program;

16 (c) All bond-related costs;

17 (d) The establishment of Water Development Administration and Bond Sinking Fund reserves;  
 18 and

19 (e) An amount to be deposited to the Water Development Fund for the purpose of increasing the  
 20 amount available for loans from that fund.

21 (4) In addition to any other fee or charge, the commission may charge a loan processing fee, not  
 22 to exceed one percent of the loan amount.

23 (5) The repayment plan:

24 (a) Shall provide for commencement of repayment by the water developer of moneys used for  
 25 project construction and interest on those moneys not later than two years after the date of the loan  
 26 contract or at such other time as the commission may provide.

27 (b) May provide for reasonable extension of the time for making any repayment in emergency  
 28 or hardship circumstances, if approved by the commission.

29 (c) Shall provide for such evidence of debt assurance of and security for repayment by the ap-  
 30 plicant as are considered necessary or proper by the commission.

31 (d) Shall set forth a schedule of payments and the period of loan. The period of the loan may  
 32 not exceed the usable life of the constructed project, or 30 years from the date of the first payment  
 33 due under the financial plan, whichever is less.

34 (e) Shall set forth the manner of determining when loan payments are delinquent.

35 (f) Shall include repayment of interest that accrues during any period of delay in repayment  
 36 authorized by paragraph (a) of this subsection, and may require payments of varying amounts for  
 37 collection of that accrued interest.

38 (g) May include provisions in addition to the provisions described in paragraphs (a) to (f) of this  
 39 subsection.

40 **SECTION 1599.** ORS 541.735 is amended to read:

41 541.735. If the [*Water Resources Commission*] **Oregon Natural Resources Commission** ap-  
 42 proves a loan for a water development project or federal water development project, the State  
 43 Treasurer shall pay moneys for such project from the Water Development Fund in accordance with  
 44 the terms of the loan contract, as prescribed by the commission.

45 **SECTION 1600.** ORS 541.740 is amended to read:

1       541.740. (1)(a) Except as provided in paragraph (b) of this subsection, when a loan is made to a  
2 water developer other than a water developer described in ORS 541.700 [(7)(a), (b), (c) or (d)] **(5)(a),**  
3 **(b), (c) or (d)** for the construction of a water development project under ORS 541.700 to 541.855,  
4 the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created  
5 by this subsection attaches to the real property held in fee simple of the water developer or to the  
6 user charges, including interest, owed to or received by the water developer. The lien created by  
7 this subsection does not attach to a leasehold. At the discretion of the [*Water Resources*  
8 *Commission*] **Oregon Natural Resources Commission**, the lien may attach to all real property,  
9 whether owned by the water developer or other persons, which is served by the water development  
10 project or which is served by a water source enhanced or restored by the water development  
11 project.

12       (b) Except for tax liens, the lien created by this section is prior and superior to all other liens  
13 or encumbrances upon the affected real property or user charges, without regard to the date on  
14 which the other liens or encumbrances attached to the real property or user charges. The commis-  
15 sion, in consultation with the State Treasurer, may accept other good and sufficient collateral to  
16 secure a loan instead of, or in addition to, a lien.

17       (c) The existence or foreclosure of the lien created by this subsection shall not cause the ac-  
18 celeration of payment of user charges or other payments on affected real property. Such payments  
19 shall continue to be made as they become due.

20       (2) Except as provided in this subsection, when a loan is made under ORS 541.700 to 541.855 to  
21 a water developer described in ORS 541.700 [(7)(a), (b), (c) or (d)] **(5)(a), (b), (c) or (d)**, the loan shall  
22 be secured by a mortgage or security agreement in the full amount of the loan. The mortgage or  
23 security agreement shall be a first lien upon such real property of the water developer as the com-  
24 mission shall require for adequate security. The commission, in consultation with the State Treas-  
25 urer, may accept other good and sufficient collateral to secure a loan instead of, or in addition to,  
26 a lien.

27       (3) When a lien created by subsection (1) of this section is foreclosed, a person whose real  
28 property is subject to the lien solely because that real property is irrigated or drained by reason  
29 of a water development project or because the real property is served by a water source improved  
30 by a water development project for watershed enhancement, shall only have that portion of real  
31 property subjected to foreclosure that represents that person's pro rata share of the indebtedness.

32       (4) When a loan is made to a water developer under ORS 541.700 to 541.855, the commission  
33 shall file notice of the loan with the recording officer of each county in which is situated real  
34 property of the water developer or real property to which the lien created by subsection (1) or (2)  
35 of this section may attach. The notice shall contain a description of the real property of the water  
36 developer, a description of any other real property that will be served by the water development  
37 project and to which the lien is to attach, the amount of the loan and a statement that the State  
38 of Oregon has a lien against such real property as provided in subsection (1) or (2) of this section.

39       (5) Upon payment of all amounts loaned to a water developer pursuant to ORS 541.700 to  
40 541.855, the commission shall file with each recording officer referred to in subsection (4) of this  
41 section a satisfaction notice that indicates repayment of the loan.

42       (6) The commission may cause to be instituted appropriate proceedings to foreclose liens for  
43 delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses incurred  
44 in foreclosing, into the Water Development Administration and Bond Sinking Fund. In a foreclosure  
45 proceeding, the commission may bid on property offered for sale in the proceeding and may acquire

1 title to the property on behalf of the state.

2 (7) The commission may take any action, make any disbursement, hold any funds or institute any  
3 action or proceeding necessary to protect the state's interest.

4 (8) Notwithstanding ORS 293.240, the commission may compromise, release, discharge, waive,  
5 cancel or settle a claim against a water developer if such action:

6 (a) Is consistent with the purposes of ORS 541.700 to 541.855;

7 (b) Does not impair the ability to pay the administrative expenses of the commission or the ob-  
8 ligations of any bonds outstanding; and

9 (c) Is, under the circumstances, the means most likely to preserve the claim or to recover the  
10 greatest part of the amount claimed.

11 (9) The commission, by rule, may set out procedures to be used when a water developer is un-  
12 able to make required loan payments because of illness, injury, death, involuntary job loss or eco-  
13 nomic stress due to factors beyond individual control. The rules shall be effective to the extent  
14 permitted by the terms of the contracts associated with affected loans. The rules:

15 (a) May provide for a temporary reduction of loan payment;

16 (b) May provide for any other solution jointly agreed to by the water developer and the com-  
17 mission;

18 (c) Shall provide for repayment of the amount of any loan payments reduced under the rules in  
19 accordance with terms and conditions agreed upon by the borrower and the commission; and

20 (d) Shall require the commission to consider the effect of any payment reduction or delay on the  
21 solvency of the program as a whole, on estimates of the most probable financial position of the  
22 program in the future and on other borrowers in the program.

23 (10)(a) Upon application by a water developer, the commission may grant a partial release of  
24 security when the commission determines that granting the requested release will not jeopardize the  
25 water development loan program's security position.

26 (b) The remaining property must qualify as security for the loan balance under the applicable  
27 law.

28 (c) Notwithstanding compliance with paragraph (b) of this subsection, the commission may re-  
29 quire that the loan balance be reduced as consideration for granting the requested release.

30 **SECTION 1601.** ORS 541.741 is amended to read:

31 541.741. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall not  
32 attempt to recover interest amounts credited or paid before January 1, 1986, to any water developer  
33 who borrowed moneys under ORS 541.700 to 541.855 and shall adjust the borrower's account balance  
34 as necessary to reflect those credits as lawful payments on the borrower's contractual obligations  
35 to the state.

36 **SECTION 1602.** ORS 541.745 is amended to read:

37 541.745. If a water developer fails to comply with a contract entered into with the [*Water Re-*  
38 *sources Commission*] **Oregon Natural Resources Commission** for construction and repayment as  
39 provided in ORS 541.730, the commission, in addition to remedies provided in ORS 541.740, may seek  
40 other appropriate legal remedies to secure the loan and may contract with any other water devel-  
41 oper as provided in ORS 541.730 for continuance of construction and for repayment of moneys from  
42 the Water Development Fund used to continue construction and interest on the moneys.

43 **SECTION 1603.** ORS 541.750 is amended to read:

44 541.750. Any water developer that enters into a contract with the [*Water Resources*  
45 *Commission*] **Oregon Natural Resources Commission** for construction and repayment as provided

1 in ORS 541.730 or 541.745 may obtain moneys for repayment to the Water Development Adminis-  
2 tration and Bond Sinking Fund under the contract in the same manner as other moneys are obtained  
3 for other authorized purposes. The commission may also provide by contract or otherwise, for the  
4 construction, operation and maintenance of a water development project until the project is assumed  
5 by such new water developer. Moneys in the Water Development Fund may be used for such con-  
6 struction, operation and maintenance, and if so used, shall be repaid to the Water Development  
7 Administration and Bond Sinking Fund by the contracting water developer.

8 **SECTION 1604.** ORS 541.765 is amended to read:

9 541.765. In addition to those uses of moneys in the Water Development Fund otherwise provided  
10 in ORS 541.700 to 541.855 or section 25, chapter 907, Oregon Laws 2009, the [*Water Resources*  
11 *Commission*] **Oregon Natural Resources Commission** may authorize loans of such moneys to those  
12 persons to whom approval has been granted by the federal government or any agency or  
13 instrumentality of the United States for the funding and construction of federal water development  
14 projects. Any such person shall apply for a loan to the commission, in such form as the commission  
15 prescribes, and shall furnish such proof of federal approval for funding and construction as the  
16 commission considers appropriate.

17 **SECTION 1605.** ORS 541.765, as amended by section 38, chapter 907, Oregon Laws 2009, is  
18 amended to read:

19 541.765. In addition to those uses of moneys in the Water Development Fund otherwise provided  
20 in ORS 541.700 to 541.855, the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
21 **mission** may authorize loans of such moneys to those persons to whom approval has been granted  
22 by the federal government or any agency or instrumentality of the United States for the funding and  
23 construction of federal water development projects. Any such person shall apply for a loan to the  
24 commission, in such form as the commission prescribes, and shall furnish such proof of federal ap-  
25 proval for funding and construction as the commission considers appropriate.

26 **SECTION 1606.** ORS 541.770 is amended to read:

27 541.770. If the [*Water Resources Commission*] **Oregon Natural Resources Commission** ap-  
28 proves an application for the loan of moneys authorized by ORS 541.765, the commission shall enter  
29 into a loan contract with the borrower that provides, among other matters:

30 (1) That the loan be secured by a first lien or by other good and sufficient collateral in the same  
31 manner as provided in ORS 541.740.

32 (2) That the loan bear interest at the same rate of interest as provided in ORS 541.730.

33 (3) That the loan becomes due and payable to the Water Development Administration and Bond  
34 Sinking Fund not later than 60 days after the date that federal funds for the acquisition of ease-  
35 ments and rights of way for the project are paid to the borrower or 30 years from the date of the  
36 loan, whichever is earlier.

37 (4) Such provisions as the commission considers necessary to ensure expenditure of the moneys  
38 loaned for the purposes provided in ORS 541.765.

39 (5) That the commission may cause to be instituted appropriate proceedings to foreclose liens  
40 for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses in  
41 foreclosing, into the Water Development Administration and Bond Sinking Fund.

42 **SECTION 1607.** ORS 541.780 is amended to read:

43 541.780. In order to provide funds for the purposes specified in Article XI-I (1) of the Oregon  
44 Constitution, the [*Water Resources Commission*] **Oregon Natural Resources Commission** may re-  
45 quest the State Treasurer to issue bonds in accordance with the provisions of ORS chapter 286A.

1        **SECTION 1608.** ORS 541.830 is amended to read:

2        541.830. (1) There hereby is created the Water Development Administration and Bond Sinking  
3 Fund, separate and distinct from the General Fund, to provide for payment of:

4        (a) Administrative expenses of the [*Water Resources Commission and the Water Resources De-*  
5 *partment*] **Oregon Department of Natural Resources and the Oregon Natural Resources Com-**  
6 **mission** in processing applications, investigating proposed water development projects and federal  
7 water development projects under ORS 541.700 to 541.855 and servicing and collecting outstanding  
8 loans made under ORS 541.700 to 541.855 or section 25, chapter 907, Oregon Laws 2009, if the ex-  
9 pense is not paid directly by the applicant, including principal and interest due on bonds outstand-  
10 ing. These administrative expenses also may include all costs associated with the issuance of bonds  
11 and the funding of any credit enhancements or reserves determined to be necessary or advantageous  
12 in connection with the bonds.

13        (b) Administrative expenses of the State Treasurer in carrying out the duties, functions and  
14 powers imposed upon the State Treasurer by ORS 541.700 to 541.855.

15        (c) Principal and interest of all bonds issued pursuant to the provisions of ORS 541.780 to  
16 541.815.

17        (2) The fund created by subsection (1) of this section shall consist of:

18        (a) Application fees and additional processing costs paid under ORS 541.710 and loan processing  
19 fees under ORS 541.730.

20        (b) Repayments of moneys loaned to water developers from the Water Development Fund, in-  
21 cluding interest on such moneys.

22        (c) Repayments of moneys loaned for the acquisition of easements and rights of way for federal  
23 water development projects, including interest on such moneys.

24        (d) Such moneys as may be appropriated to the fund by the Legislative Assembly, including ap-  
25 propriations dedicated to the partial payment for or repayment of projects affording public benefits.

26        (e) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

27        (f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitu-  
28 tion, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

29        (g) Interest earned on cash balances invested by the State Treasurer.

30        (h) Any revenues received by the commission under the provisions of ORS 541.745.

31        (i) Moneys transferred from the Water Development Fund.

32        (3) The moneys referred to in subsection (2) of this section are continuously appropriated to the  
33 commission for the purposes provided in subsection (1) of this section.

34        (4) The commission, with the approval of the Governor, may identify those projects financed  
35 under the provisions of ORS 541.700 to 541.855 or section 25, chapter 907, Oregon Laws 2009, that  
36 offer significant public benefit, and recommend to the Legislative Assembly funding of those projects  
37 in proportion to the public benefits offered.

38        (5) The commission, with the approval of the State Treasurer, may transfer moneys from the  
39 fund created under subsection (1) of this section to the Water Development Fund if:

40        (a) A cash flow projection shows that the transfer will not have any negative impact on the  
41 commission's ability to pay bond principal, interest and administration costs;

42        (b) The transfer will not create the need for issuance of any bonds; and

43        (c) The transfer, together with loans outstanding from prior transfers and not refinanced by  
44 funds derived directly from a bond sale, does not exceed \$1.

45        (6) The transfer amount authorized by subsection (5) of this section may be increased by the

1 Emergency Board.

2 **SECTION 1609.** ORS 541.830, as amended by section 40, chapter 907, Oregon Laws 2009, is  
3 amended to read:

4 541.830. (1) There hereby is created the Water Development Administration and Bond Sinking  
5 Fund, separate and distinct from the General Fund, to provide for payment of:

6 (a) Administrative expenses of the [*Water Resources Commission and the Water Resources De-*  
7 *partment*] **Oregon Department of Natural Resources and the Oregon Natural Resources Com-**  
8 **mission** in processing applications, investigating proposed water development projects and federal  
9 water development projects under ORS 541.700 to 541.855 and servicing and collecting outstanding  
10 loans made under ORS 541.700 to 541.855, if the expense is not paid directly by the applicant, in-  
11 cluding principal and interest due on bonds outstanding. These administrative expenses also may  
12 include all costs associated with the issuance of bonds and the funding of any credit enhancements  
13 or reserves determined to be necessary or advantageous in connection with the bonds.

14 (b) Administrative expenses of the State Treasurer in carrying out the duties, functions and  
15 powers imposed upon the State Treasurer by ORS 541.700 to 541.855.

16 (c) Principal and interest of all bonds issued pursuant to the provisions of ORS 541.780 to  
17 541.815.

18 (2) The fund created by subsection (1) of this section shall consist of:

19 (a) Application fees and additional processing costs paid under ORS 541.710 and loan processing  
20 fees under ORS 541.730.

21 (b) Repayments of moneys loaned to water developers from the Water Development Fund, in-  
22 cluding interest on such moneys.

23 (c) Repayments of moneys loaned for the acquisition of easements and rights of way for federal  
24 water development projects, including interest on such moneys.

25 (d) Such moneys as may be appropriated to the fund by the Legislative Assembly, including ap-  
26 propriations dedicated to the partial payment for or repayment of projects affording public benefits.

27 (e) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

28 (f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitu-  
29 tion, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

30 (g) Interest earned on cash balances invested by the State Treasurer.

31 (h) Any revenues received by the commission under the provisions of ORS 541.745.

32 (i) Moneys transferred from the Water Development Fund.

33 (3) The moneys referred to in subsection (2) of this section are continuously appropriated to the  
34 commission for the purposes provided in subsection (1) of this section.

35 (4) The commission, with the approval of the Governor, may identify those projects financed  
36 under the provisions of ORS 541.700 to 541.855 that offer significant public benefit, and recommend  
37 to the Legislative Assembly funding of those projects in proportion to the public benefits offered.

38 (5) The commission, with the approval of the State Treasurer, may transfer moneys from the  
39 fund created under subsection (1) of this section to the Water Development Fund if:

40 (a) A cash flow projection shows that the transfer will not have any negative impact on the  
41 commission's ability to pay bond principal, interest and administration costs;

42 (b) The transfer will not create the need for issuance of any bonds; and

43 (c) The transfer, together with loans outstanding from prior transfers and not refinanced by  
44 funds derived directly from a bond sale, does not exceed \$1.

45 (6) The transfer amount authorized by subsection (5) of this section may be increased by the

1 Emergency Board.

2 **SECTION 1610.** ORS 541.835 is amended to read:

3 541.835. All moneys in the Water Development Fund created by Article XI-I (1), Oregon Consti-  
4 tution, hereby are [*appropriated continuously to the Water Resources Commission*] **continuously ap-**  
5 **propriated to the Oregon Natural Resources Commission** and shall be used for the purposes  
6 provided in ORS 541.700 to 541.855. Moneys expended from the fund may include those expended  
7 or to be expended for engineering, legal fees and acquisition of water rights and property required  
8 for rights of way or facility locations. Interest earned by the fund shall be credited to the fund.

9 **SECTION 1611.** ORS 541.840 is amended to read:

10 541.840. (1) If there are insufficient funds in the Water Development Administration and Bond  
11 Sinking Fund to make the payments referred to in ORS 541.830 (1), the [*Water Resources*  
12 *Commission*] **Oregon Natural Resources Commission** may request the funds necessary for such  
13 payments from the Legislative Assembly within the budget authorized by the Legislative Assembly  
14 or as that budget may be modified by the Emergency Board.

15 (2) When the commission determines that moneys in sufficient amount are available in the Water  
16 Development Administration and Bond Sinking Fund, the commission shall reimburse the General  
17 Fund without interest, in an amount equal to the amount allocated by the Legislative Assembly or  
18 the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the  
19 General Fund under this subsection shall not be considered a budget item on which a limitation is  
20 otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized  
21 to be expended from continually appropriated moneys.

22 **SECTION 1612.** ORS 541.845 is amended to read:

23 541.845. (1) In accordance with the applicable provisions of ORS chapter 183, the [*Water Re-*  
24 *sources Commission*] **Oregon Natural Resources Commission** may adopt rules necessary to carry  
25 out ORS 541.700 to 541.855.

26 (2) In adopting rules establishing guidelines or criteria for awarding loans or grants for drinking  
27 water projects, the commission shall [*coordinate the Water Resources Department's rulemaking pro-*  
28 *cess with*] **consult with** the Oregon Business Development Department and the Oregon Health Au-  
29 thority in order to ensure that rules adopted under this subsection are consistent with rules adopted  
30 under ORS 285B.563 and 431.120. The rules adopted under this subsection shall:

31 (a) Require the installation of meters on all new active service connections from any municipal  
32 drinking water distribution lines funded under ORS 285B.560 to 285B.599, 431.120, 541.700, 541.705,  
33 541.765, 541.830 and 541.845; and

34 (b) Require a plan, to be adopted by the municipality, for installation of meters on all service  
35 connections throughout the drinking water system.

36 (3) As used in this section, "service connection" does not include fire hydrants, fire sprinkler  
37 system connections, line blow-offs and drains, standby emergency interties, valve controlled drinking  
38 fountains and other similar intermittently used connections.

39 **SECTION 1613.** ORS 541.850 is amended to read:

40 541.850. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may ac-  
41 cept gifts of money or other property from any source, given for the purposes of ORS 541.700 and  
42 541.705 to 541.770 or section 25, chapter 907, Oregon Laws 2009. Money so received shall be paid  
43 into the Water Development Fund. Money or other property so received shall be used for the pur-  
44 poses for which received.

45 **SECTION 1614.** ORS 541.850, as amended by section 41, chapter 907, Oregon Laws 2009, is

1 amended to read:

2 541.850. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may ac-  
3 cept gifts of money or other property from any source, given for the purposes of ORS 541.700 and  
4 541.705 to 541.770. Money so received shall be paid into the Water Development Fund. Money or  
5 other property so received shall be used for the purposes for which received.

6 **SECTION 1615.** ORS 541.855 is amended to read:

7 541.855. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
8 make available to the Legislative Assembly and the Governor a biennial report of the transactions  
9 of the Water Development Fund and the Water Development Administration and Bond Sinking Fund  
10 in such detail as will accurately indicate the transactions and the condition of the funds.

11 **SECTION 1616.** ORS 541.875 is amended to read:

12 541.875. (1) No person shall construct, operate or maintain, and no officer or agency of this state  
13 shall issue any permit for the construction, operation or maintenance of, any dam or hydroelectric  
14 facility on:

15 (a) That portion of the North Umpqua River between Soda Springs Dam and the confluence of  
16 the North Umpqua River and South Umpqua River; or

17 (b) The main stem Umpqua River from the confluence of the North Umpqua River and the South  
18 Umpqua River to the ocean.

19 (2) Nothing in this section applies to the repair, structural repair, maintenance or improvement  
20 of any dam constructed on the North Umpqua River prior to November 1, 1981, with the approval  
21 of the [*Water Resources Commission and the State Department of Fish and Wildlife*] **Oregon Natural**  
22 **Resources Commission or the Oregon Department of Natural Resources.** The commission and  
23 the [*State Department of Fish and Wildlife*] **department** shall not unreasonably withhold or delay  
24 such approval, but may withhold approval for reasonable cause, including but not limited to a sub-  
25 stantiated finding that the repairs, structural repairs, maintenance or improvements:

26 (a) Fail to comply with applicable safety rules or regulations;

27 (b) Raise the height of the dam; or

28 (c) Diminish the current ability of anadromous fish to travel past the dam.

29 (3) No person shall appropriate and no officer or agency of this state shall issue or approve any  
30 license, permit or certificate for the use of water for hydroelectric generation at a dam at the lo-  
31 cation referred to in subsection (1) of this section.

32 **SECTION 1617.** ORS 542.010 is amended to read:

33 542.010. In order that the natural resources of Oregon in land, water and power may be utilized  
34 to the highest advantage of the people, complete cooperation between the state and federal author-  
35 ities in controlling, investigating and developing these resources in the interest of the people of the  
36 state is essential. Therefore, the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
37 **mission** may, on behalf of this state, enter into a contract or agreement with any federal department  
38 or bureau having jurisdiction in such matters for the execution of such surveys and investigations  
39 and the preparation of such plans, specifications and estimates or other data by cooperation between  
40 the state and the federal department or bureau as will, in the judgment of the [*Water Resources*]  
41 commission, approved by the Governor, be best suited to accomplish the purposes of ORS 542.010  
42 to 542.050. However, in no case shall the proportion of expense to be borne by this state exceed  
43 the proportion to be borne by the other party to the contract or agreement.

44 **SECTION 1618.** ORS 542.030 is amended to read:

45 542.030. As soon as practicable after the completion of the surveys and investigations, the [*Wa-*



1 *ter Resources Commission*] **Oregon Natural Resources Commission** shall prepare or have prepared  
 2 a report setting forth the plans, specifications and estimated cost of construction, maintenance and  
 3 operation of the projects, together with any other information tending to show their feasibility, and  
 4 may in the discretion of the commission have the report printed in pamphlet form and distributed  
 5 to those interested. Copies of completed maps, plans, specifications, estimates and reports secured  
 6 or prepared in connection with any such investigation shall be kept on file in the [*Water Resources*  
 7 *Department*] **Oregon Department of Natural Resources** at all times, and open for public inspection  
 8 during business hours.

9 **SECTION 1619.** ORS 542.040 is amended to read:

10 542.040. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission**, on  
 11 behalf of the state, shall withdraw and withhold from appropriation any unappropriated water which  
 12 may be required for any project under investigation or to be investigated under the provisions of  
 13 ORS 542.010 to 542.050. If the project is found to be feasible, the commission shall withhold the same  
 14 from appropriation until the money expended in the investigation of the project is repaid to the co-  
 15 operating parties in proportion to the amount contributed by each unless funds for construction are  
 16 provided by one or both of the cooperating parties, in which case the commission shall issue a per-  
 17 mit without requiring such repayment. No permit to appropriate water which may be in conflict with  
 18 any such project under investigation shall be approved by the commission, nor shall any assignment  
 19 of plans and information or any part thereof be made except upon consideration and order by the  
 20 commission after full hearing of all interested parties.

21 (2) Any moneys returned to the commission under the provisions of this section shall promptly  
 22 be turned over to the State Treasurer and credited to the General Fund in the State Treasury.

23 **SECTION 1620.** ORS 542.050 is amended to read:

24 542.050. As the purposes of ORS 542.010 to 542.050 are to secure the most immediate, as well  
 25 as the most beneficial, ultimate use of the available waters for any certain project, the [*Water Re-*  
 26 *sources Commission*] **Oregon Natural Resources Commission**, as occasion may require, may grant  
 27 permits and arrange the details so that minor portions of the project may be segregated and con-  
 28 structed at any time. However, the segregation and development of such minor parts shall not in-  
 29 terfere to any serious extent with the handling or completion of the balance of the project.

30 **SECTION 1621.** ORS 542.060 is amended to read:

31 542.060. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall es-  
 32 tablish gauging stations at suitable points on the various streams of the state to determine the daily  
 33 and seasonal fluctuations in the flow of the water; shall make surveys and profiles to determine the  
 34 fall of stream suitable for power development; and shall prepare topographic maps of the territory  
 35 adjacent to the private streams of the state, so that the availability of water for power, irrigation  
 36 or other beneficial uses may be determined and made known to the public. All such maps and in-  
 37 formation shall be made a matter of record in the [*Water Resources Department*] **Oregon Depart-**  
 38 **ment of Natural Resources** and the commission shall publish a summary of all such information  
 39 in the most practical and economical manner for presentation to the public. The commission shall  
 40 enter into such agreements and contracts as will insure that the surveys and investigations are  
 41 carried on in the most economical manner, and that the maps and data are made available to the  
 42 use of the public as quickly as possible.

43 **SECTION 1622.** ORS 542.075 is amended to read:

44 542.075. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission**, with  
 45 the approval of the Governor, may identify proposed or existing water projects which offer signif-

1 icant public benefit, and recommend to the Legislative Assembly funding of those projects in pro-  
 2 portion to the public benefits offered by an existing project, or expected to be obtained from a  
 3 proposed project.

4 (2) In order to be eligible for funding under subsection (1) of this section, the [*Water*  
 5 *Resources*] commission must identify an existing project within five years after the project first be-  
 6 comes operable.

7 **SECTION 1623.** ORS 542.080 is amended to read:

8 542.080. On behalf of this state, the [*Water Resources Commission*] **Oregon Natural Resources**  
 9 **Commission** may cooperate with the Federal Energy Regulatory Commission, the United States  
 10 Geological Survey, the United States Reclamation Service, or any other federal agency or commis-  
 11 sion engaged in similar work, and may enter into contracts or agreements whenever it appears de-  
 12 sirable or advantageous to the state.

13 **SECTION 1624.** ORS 542.100 is amended to read:

14 542.100. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may ac-  
 15 cept and expend moneys from any public or private source, including the federal government, made  
 16 available for the purpose of conducting hydrologic investigations of Oregon water resources and to  
 17 assist in carrying out the commission’s functions as provided by law. All moneys received by the  
 18 commission under this section shall be kept in separate accounts designated according to the pur-  
 19 poses for which such moneys were received. The commission shall keep a true and full account of  
 20 receipts and disbursements under this section.

21 **SECTION 1625.** ORS 542.110 is amended to read:

22 542.110. (1) It hereby is declared that public interest, welfare, convenience and necessity require  
 23 the construction of a system of works in accordance with the general comprehensive plan for flood  
 24 control, navigation and other purposes in the Willamette River Basin, as set forth in House Docu-  
 25 ment 544, Seventy-fifth Congress, third session, and the Act of the Seventy-fifth Congress approved  
 26 June 28, 1938, 52 Stat. 1222, authorizing the construction of certain public works, including the  
 27 Willamette River Basin Project.

28 (2) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may act for the  
 29 state in all matters necessary or advisable in the promotion, construction and maintenance of the  
 30 Willamette River Basin Project.

31 **SECTION 1626.** ORS 542.520 is amended to read:

32 542.520. The provisions of the Oregon-California Goose Lake Interstate Compact are as follows:  
 33

34  
 35 ARTICLE I

36 PURPOSES

37 The major purposes of this compact are:

38 A. To facilitate and promote the orderly, integrated and comprehensive development, use, con-  
 39 servation and control of the water resources of Goose Lake Basin.

40 B. To further intergovernmental cooperation and comity and to remove the causes of present  
 41 and future controversies by (1) providing for continued development of the water resources of Goose  
 42 Lake Basin by the States of California and Oregon, and (2) prohibiting the export of water from  
 43 Goose Lake Basin without consent of the legislatures of California and Oregon.

44 ARTICLE II

45 DEFINITION OF TERMS

1 As used in this compact:

2 A. "Goose Lake Basin" shall mean the drainage area of Goose Lake within the States of  
3 California and Oregon and all closed basins included in the Goose Lake drainage basin as delineated  
4 on the official map of the Goose Lake Basin which is attached to and made a part of this compact.

5 B. "Person" shall mean the States of Oregon and California, any individual and any other entity,  
6 public or private.

7 C. "Water," "waters" or "water resources" shall mean any water appearing on the surface of  
8 the ground in streams, lakes, or otherwise, and any water beneath the land surface or beneath the  
9 bed of any stream, lake, reservoir or other body of surface water within the boundaries of Goose  
10 Lake Basin.

11 ARTICLE III

12 DISTRIBUTION AND USE OF WATER

13 A. There are hereby recognized vested rights to the use of waters originating in Goose Lake  
14 Basin existing as of the effective date of this compact and established under the laws of California  
15 and Oregon.

16 B. Except as provided in this Article, this compact shall not be construed as affecting or inter-  
17 fering with appropriation under the laws of California and Oregon of unappropriated waters of  
18 Goose Lake Basin for use within the basin.

19 C. Export of water from Goose Lake Basin for use outside the basin without prior consent of  
20 both state legislatures is prohibited.

21 D. Each state hereby grants the right for a person to construct and operate facilities for the  
22 measurement, diversion, storage and conveyance of water from the Goose Lake Basin in one state  
23 for use within the basin in the other state, providing the right to such use is secured by appropri-  
24 ation under the general laws administered by the [*Water Resources Director*] **Director of the**  
25 **Oregon Department of Natural Resources** of the State of Oregon or the Water Rights Board of  
26 California and the laws of the state from which the water is to be taken shall control.

27 E. Should any facilities be constructed in one state to implement use of water in the other state,  
28 the construction, operation, repairs and replacement of such facilities shall be subject to the laws  
29 of the state in which the facilities are constructed.

30 ARTICLE IV

31 ADMINISTRATION

32 No commission or administrative body is necessary to administer this compact.

33 ARTICLE V

34 TERMINATION

35 This compact may be terminated at any time by consent of the legislatures of California and  
36 Oregon and upon such termination all rights then established hereunder shall continue unimpaired.

37 ARTICLE VI

38 GENERAL PROVISIONS

39 Nothing in this compact shall be construed to limit, or prevent any state from instituting or  
40 maintaining any action or proceeding, legal or equitable, in any court having jurisdiction thereof for  
41 the protection of any right under this compact or the enforcement of any of its provisions.

42 ARTICLE VII

43 RATIFICATION

44 A. This compact shall become operative when ratified by the legislatures of California and  
45 Oregon and consented to by the Congress of the United States.

1 B. This compact shall remain in full force and effect until amended in the same manner as is  
 2 required for it to be ratified to become operative or until terminated.

3 C. A copy of any proposed amendments to or termination of this compact shall be filed with the  
 4 Board of Supervisors of Modoc County, California, and the County Court of Lake County, Oregon,  
 5 at least 30 days prior to any legislative consideration by the legislatures of the States of California  
 6 and Oregon.

7 ARTICLE VIII

8 FEDERAL RIGHTS

9 Nothing in this compact shall be deemed:

10 A. To impair or affect the existing rights or powers of the United States of America, its agen-  
 11 cies, or instrumentalities, in and to the use of the waters of the Goose Lake Basin nor its capacity  
 12 to acquire rights in and to the use of said waters.

13 B. To subject any property of the United States of America, its agencies or instrumentalities to  
 14 taxation by any state or subdivision thereof, nor to create an obligation on the part of the United  
 15 States of America, its agencies or instrumentalities by reason of the acquisition, construction or  
 16 operation of any property or works of whatsoever kind, to make any payments to any state or pol-  
 17 itical subdivision thereof, state agency, municipality or entity, whatsoever in reimbursement for the  
 18 loss of taxes.

19 C. To subject any property of the United States of America, its agencies or instrumentalities,  
 20 to the laws of any state to any extent other than the extent to which these laws would apply with-  
 21 out regard to the compact.

---

22  
 23  
 24 **SECTION 1627.** ORS 542.620 is amended to read:

25 542.620. The provisions of the Klamath River Basin Compact are as follows:  
 26

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27  
 28 ARTICLE I

29 PURPOSES

30 The major purposes of this compact are, with respect to the water resources of the Klamath  
 31 River Basin:

32 A. To facilitate and promote the orderly, integrated and comprehensive development, use, con-  
 33 servation and control thereof for various purposes, including, among others: The use of water for  
 34 domestic purposes; the development of lands by irrigation and other means; the protection and en-  
 35 hancement of fish, wildlife and recreational resources; the use of water for industrial purposes and  
 36 hydroelectric power production; and the use and control of water for navigation and flood pre-  
 37 vention.

38 B. To further intergovernmental cooperation and comity with respect to these resources and  
 39 programs for their use and development and to remove causes of present and future controversies  
 40 by providing (1) for equitable distribution and use of water among the two states and the Federal  
 41 Government, (2) for preferential rights to the use of water after the effective date of this compact  
 42 for the anticipated ultimate requirements for domestic and irrigation purposes in the Upper Klamath  
 43 River Basin in Oregon and California, and (3) for prescribed relationships between beneficial uses  
 44 of water as a practicable means of accomplishing such distribution and use.

45 ARTICLE II

## 1 DEFINITION OF TERMS

2 As used in this compact:

3 A. "Klamath River Basin" shall mean the drainage area of the Klamath River and all its  
4 tributaries within the States of California and Oregon and all closed basins included in the Upper  
5 Klamath River Basin.

6 B. "Upper Klamath River Basin" shall mean the drainage area of the Klamath River and all its  
7 tributaries upstream from the boundary between the States of California and Oregon and the closed  
8 basins of Butte Valley, Red Rock Valley, Lost River Valley, Swan Lake Valley and Crater Lake, as  
9 delineated on the official map of the Upper Klamath River Basin approved on September 6, 1956,  
10 by the commissions negotiating this compact and filed with the Secretaries of State of the two states  
11 and the General Services Administration of the United States, which map is incorporated by refer-  
12 ence and made a part hereof.

13 C. "Commission" shall mean the Klamath River Compact Commission as created by Article IX  
14 of this compact.

15 D. "Klamath Project" of the Bureau of Reclamation of the Department of the Interior of the  
16 United States shall mean that area as delineated by appropriate legend on the official map incor-  
17 porated by reference under subdivision B of this Article.

18 E. "Person" shall mean any individual or any other entity, public or private, including either  
19 state, but excluding the United States.

20 F. "Keno" shall mean a point on the Klamath River at the present needle dam, or any substitute  
21 control dam constructed in section 36, township 39 south, range 7 east, Willamette Base and  
22 Meridian.

23 G. "Water" or "waters" shall mean waters appearing on the surface of the ground in streams,  
24 lakes or otherwise, regardless of whether such waters at any time were or will become ground wa-  
25 ter, but shall not include water extracted from underground sources until after such water is used  
26 and becomes surface return flow or waste water.

27 H. "Domestic use" shall mean the use of water for human sustenance, sanitation and comfort;  
28 for municipal purposes; for livestock watering; for irrigation of family gardens; and for other like  
29 purposes.

30 I. "Industrial use" shall mean the use of water in manufacturing operations.

31 J. "Irrigation use" shall mean the use of water for production of agricultural crops, including  
32 grain grown for feeding wildfowl.

## 33 ARTICLE III

## 34 DISTRIBUTION AND USE OF WATER

35 A. There are hereby recognized vested rights to the use of waters originating in the Upper  
36 Klamath River Basin validly established and subsisting as of the effective date of this compact under  
37 the laws of the state in which the use or diversion is made, including rights to the use of waters for  
38 domestic and irrigation uses within the Klamath Project. There are also hereby recognized rights  
39 to the use of all waters reasonably required for domestic and irrigation uses which may hereafter  
40 be made within the Klamath Project.

41 B. Subject to the rights described in subdivision A of this Article and excepting the uses of  
42 water set forth in subdivision E of Article XI, rights to the use of unappropriated waters originating  
43 within the Upper Klamath River Basin for any beneficial use in the Upper Klamath River Basin, by  
44 direct diversion or by storage for later use, may be acquired by any person after the effective date  
45 of this compact by appropriation under the laws of the state where the use is to be made, as modi-

1    fied by the following provisions of this subdivision B and subdivision C of this Article, and may not  
2    be acquired in any other way:

3        1. In granting permits to appropriate waters under this subdivision B, as among conflicting ap-  
4    plications to appropriate when there is insufficient water to satisfy all such applications, each state  
5    shall give preference to applications for a higher use over applications for a lower use in accordance  
6    with the following order of uses:

- 7        (a) Domestic use,
- 8        (b) Irrigation use,
- 9        (c) Recreational use, including use for fish and wildlife,
- 10       (d) Industrial use,
- 11       (e) Generation of hydroelectric power,
- 12       (f) Such other uses as are recognized under the laws of the state involved.

13  
14    These uses are referred to in this compact as uses (a), (b), (c), (d), (e) and (f), respectively. Except  
15    as to the superiority of rights to the use of water for use (a) or (b) over the rights to the use of  
16    water for use (c), (d), (e) or (f), as governed by subdivision C of this Article, upon a permit being  
17    granted and a right becoming vested and perfected by use, priority in right to the use of water shall  
18    be governed by priority in time within the entire Upper Klamath River Basin regardless of state  
19    boundaries. The date of priority of any right to the use of water appropriated for the purposes above  
20    enumerated shall be the date of the filing of the application therefor, but such priority shall be de-  
21    pendent on commencement and completion of construction of the necessary works and application  
22    of the water to beneficial use with due diligence and within the times specified under the laws of  
23    the state where the use is to be made. Each state shall promptly provide the commission and the  
24    appropriate official of the other state with complete information as to such applications and as to  
25    all actions taken thereon.

26        2. Conditions on the use of water under this subdivision B in Oregon shall be:

27        (a) That there shall be no diversion of waters from the Upper Klamath River Basin, but this  
28    limitation shall not apply to out-of-basin diversions of waters originating within the drainage area  
29    of Fourmile Lake.

30        (b) That water diverted from Upper Klamath Lake and the Klamath River and its tributaries  
31    upstream from Keno, Oregon, for use in Oregon and not consumed therein and appearing as surface  
32    return flow and waste water within the Upper Klamath River Basin shall be returned to the  
33    Klamath River or its tributaries above Keno, Oregon.

34        3. Conditions on the use of water under this subdivision B in California shall be:

35        (a) That the waters diverted from the Klamath River within the Upper Klamath River Basin for  
36    use in California shall not be taken outside the Upper Klamath River Basin.

37        (b) That substantially all of the return flows and waste water finally resulting from such diver-  
38    sions and use appearing as surface waters in the Upper Klamath River Basin shall be made to drain  
39    so as to be eventually returned to the Klamath River upstream from Keno, Oregon.

40        C. 1. All rights, acquired by appropriation after the effective date of this compact, to use waters  
41    originating within the Upper Klamath River Basin for use (a) or (b) in the Upper Klamath River  
42    Basin in either state shall be superior to any rights, acquired after the effective date of this com-  
43    pact, to use such waters (i) for any purpose outside the Klamath River Basin by diversion in  
44    California or (ii) for use (c), (d), (e) or (f) anywhere in the Klamath River Basin. Such superior rights  
45    shall exist regardless of their priority in time and may be exercised with respect to inferior rights

1 without the payment of compensation. But such superior rights to use water for use (b) in California  
2 shall be limited to the quantity of water necessary to irrigate 100,000 acres of land, and in Oregon  
3 shall be limited to the quantity of water necessary to irrigate 200,000 acres of land.

4 2. The provisions of paragraph 1 of this subdivision C shall not prohibit the acquisition and ex-  
5 ercise after the effective date of this compact of rights to store waters originating within the Upper  
6 Klamath River Basin and to make later use of such stored water for any purpose, as long as the  
7 storing of waters for such later use, while being effected, does not interfere with the direct diversion  
8 or storage of such waters for use (a) or (b) in the Upper Klamath River Basin.

#### 9 ARTICLE IV

#### 10 HYDROELECTRIC POWER

11 It shall be the objective of each state, in the formulation and the execution and the granting  
12 of authority for the formulation and execution of plans for the distribution and use of the water of  
13 the Klamath River Basin, to provide for the most efficient use of available power head and its eco-  
14 nomic integration with the distribution of water for other beneficial uses in order to secure the most  
15 economical distribution and use of water and lowest power rates which may be reasonable for irri-  
16 gation and drainage pumping, including pumping from wells.

#### 17 ARTICLE V

#### 18 INTERSTATE DIVERSION AND STORAGE RIGHTS; MEASURING DEVICES

19 A. Each state hereby grants for the benefit of the other and its designees the right to construct  
20 and operate facilities for the measurement, diversion, storage and conveyance of water from the  
21 Upper Klamath River Basin in one state for use in the other insofar as the exercise of such right  
22 may be necessary to effectuate and comply with the terms of this compact. The location of such  
23 facilities shall be subject to approval by the commission.

24 B. Each state or its designee, exercising within the jurisdiction of the other a right granted  
25 under subdivision A of this Article, shall make provision for the establishment, operation and  
26 maintenance of permanent gaging stations at such points on streams or reservoir or conveyance  
27 facilities as may be required by the commission for the purpose of ascertaining and recording the  
28 volume of diversions by the streams or facilities involved. Said stations shall be equipped with  
29 suitable devices for determining the flow of water at all times. All information obtained from such  
30 stations shall be compiled in accordance with the standards of the United States Geological Survey,  
31 shall be filed with the commission, and shall be available to the public.

#### 32 ARTICLE VI

#### 33 ACQUISITION OF PROPERTY FOR STORAGE AND DIVERSION; IN LIEU TAXES

34 A. Subject to approval of the commission, either state shall have the right (1) to acquire such  
35 property rights in the other state as are necessary for the diversion, storage, conveyance, measure-  
36 ment and use of water in conformity with this compact, by donation or purchase, or (2) to elect to  
37 have the other state acquire such property rights for it by purchase or through the exercise of the  
38 power of eminent domain. A state making the latter election shall make a written request therefor  
39 and the other state shall expeditiously acquire said property rights either by purchase at a price  
40 satisfactory to the requesting state, or, if such purchase cannot be made, then through the exercise  
41 of its power of eminent domain, and shall convey said property rights to the requesting state or its  
42 designee. All costs of such acquisition shall be paid by the requesting state. Neither state shall have  
43 any greater power to acquire property rights for the other state through the exercise of the power  
44 of eminent domain than it would have under its laws to acquire the same property rights for itself.

45 B. Should any diversion, storage or conveyance facilities be constructed or acquired in either

1 state for the benefit of the other state, as herein provided, the construction, repair, replacement,  
2 maintenance and operation of such facilities shall be subject to the laws of the state in which the  
3 facilities are located, except that the proper officials of that state shall permit the storage, release  
4 and conveyance of any water to which the other state is entitled under this compact.

5 C. Either state having property rights other than water rights in the other state acquired as  
6 provided in this Article shall pay to each political subdivision of the state in which such property  
7 rights are located, each and every year during which such rights are held, a sum of money equiv-  
8 alent to the average annual amount of taxes assessed against those rights during the 10 years pre-  
9 ceding the acquisition of such rights in reimbursement for the loss of taxes to such political  
10 subdivisions of the state. Payments so made to a political subdivision shall be in lieu of any and  
11 all taxes by that subdivision on the property rights for which the payments are made.

## 12 ARTICLE VII

### 13 POLLUTION CONTROL

14 A. The states recognize that the growth of population and the economy of the Upper Klamath  
15 River Basin can result in pollution of the waters of the Upper Klamath River Basin constituting a  
16 menace to the health and welfare of, and occasioning economic loss to, people living or having in-  
17 terests in the Klamath River Basin. The states recognize further that protection of the beneficial  
18 uses of the waters of the Klamath River Basin requires cooperative action of the two states in pol-  
19 lution abatement and control.

20 B. To aid in such pollution abatement and control, the commission shall have the duty and  
21 power:

22 1. To cooperate with the states or agencies thereof or other entities and with the United States  
23 for the purpose of promoting effective laws and the adoption of effective regulations for abatement  
24 and control of pollution of the waters of the Klamath River Basin, and from time to time to recom-  
25 mend to the governments reasonable minimum standards for the quality of such waters.

26 2. To disseminate to the public by any and all appropriate means information respecting pol-  
27 lution abatement and control in the waters of the Klamath River Basin and on the harmful and  
28 uneconomic results of such pollution.

29 C. Each state shall have the primary obligation to take appropriate action under its own laws  
30 to abate and control interstate pollution, which is defined as the deterioration of the quality of the  
31 waters of the Upper Klamath River Basin within the boundaries of such state which materially and  
32 adversely affects beneficial uses of waters of the Klamath River Basin in the other state. Upon  
33 complaint to the commission by the state water pollution control agency of one state that interstate  
34 pollution originating in the other state is not being prevented or abated, the procedure shall be as  
35 follows:

36 1. The commission shall make an investigation and hold a conference on the alleged interstate  
37 pollution with the water pollution control agencies of the two states, after which the commission  
38 shall recommend appropriate corrective action.

39 2. If appropriate corrective action is not taken within a reasonable time, the commission shall  
40 call a hearing, giving reasonable notice in writing thereof to the water pollution control agencies  
41 of the two states and to the person or persons which it is believed are causing the alleged interstate  
42 pollution. Such hearing shall be held in accordance with rules and regulations of the commission,  
43 which shall conform as nearly as practicable with the laws of the two states governing administra-  
44 tive hearings. At the conclusion of such hearing, the commission shall make a finding as to whether  
45 interstate pollution exists, and if so, shall issue to any person or persons which the commission finds



1 are causing such interstate pollution an order or orders for correction thereof.

2 3. It shall be the duty of the person against whom any such order is issued to comply therewith.  
 3 Any court of general jurisdiction of the state where such discharge is occurring or the United States  
 4 District Court for the district where the discharge is occurring shall have jurisdiction, on petition  
 5 of the commission for enforcement of such order, to compel action by mandamus, injunction, specific  
 6 performance, or any other appropriate remedy, or on petition of the person against whom the order  
 7 is issued to review any order. At the conclusion of such enforcement or review proceedings, the  
 8 court may enter such decree or judgment affirming, reversing, modifying, or remanding such order  
 9 as in its judgment is proper in the circumstances on the basis of the rules customarily applicable  
 10 in proceedings for court enforcement or review of administrative actions.

11 D. The water pollution control agencies of the two states shall, from time to time, make avail-  
 12 able to the commission all data relating to the quality of the waters of the Upper Klamath River  
 13 Basin which they possess as the result of studies, surveys and investigations thereof which they may  
 14 have made.

## 15 ARTICLE VIII

### 16 MISCELLANEOUS

17 A. Subject to vested rights as of the effective date of this compact, there shall be no diversion  
 18 of waters from the basin of Jenny Creek to the extent that such waters are required, as determined  
 19 by the commission, for use on land within the basin of Jenny Creek.

20 B. Each state shall exercise whatever administrative, judicial, legislative or police powers it has  
 21 that are required to provide any necessary reregulation or other control over the flow of the  
 22 Klamath River downstream from any hydroelectric power plant for protection of fish, human life or  
 23 property from damage caused by fluctuations resulting from the operation of such plant.

## 24 ARTICLE IX

### 25 ADMINISTRATION

26 A. 1. There is hereby created a commission to administer this compact. The commission shall  
 27 consist of three members. The representative of the State of California shall be the Department of  
 28 Water Resources. The representative of the State of Oregon shall be the [*Water Resources Commis-*  
 29 *sion of Oregon who shall serve as ex officio representative of the Water Resources Commission of*  
 30 *Oregon*] **Oregon Department of Natural Resources**. The President is requested to appoint a fed-  
 31 eral representative who shall be designated and shall serve as provided by the laws of the United  
 32 States.

33 2. The representative of each state shall be entitled to one vote in the commission. The repre-  
 34 sentative of the United States shall serve as chairman of the commission without vote. The com-  
 35 pensation and expenses of each representative shall be fixed and paid by the government which he  
 36 represents. Any action by the commission shall be effective only if it be agreed to by both voting  
 37 members.

38 3. The commission shall meet to establish its formal organization within 60 days after the ef-  
 39 fective date of this compact, such meeting to be at the call of the Governors of the two states. The  
 40 commission shall then adopt its initial set of rules and regulations governing the management of its  
 41 internal affairs providing for, among other things, the calling and holding of meetings, the adoption  
 42 of a seal, and the authority and duties of the chairman and executive director. The commission shall  
 43 establish its office within the Upper Klamath River Basin.

44 4. The commission shall appoint an executive director, who shall also act as secretary, to serve  
 45 at the pleasure of the commission and at such compensation, under such terms and conditions and

1 performing such duties as it may fix. The executive director shall be the custodian of the records  
2 of the commission with authority to affix the commission's official seal, and to attest to and certify  
3 such records or copies thereof. The commission, without regard to the provisions of the civil service  
4 laws of either state, may appoint and discharge such consulting, clerical and other personnel as may  
5 be necessary for the performance of the commission's functions, may define their duties, and may fix  
6 and pay their compensation. The commission may require the executive director and any of its em-  
7 ployees to post official bonds, and the cost thereof shall be paid by the commission.

8 5. All records, files and documents of the commission shall be open for public inspection at its  
9 office during established office hours.

10 6. No member, officer or employee of the commission shall be liable for injury or damage re-  
11 sulting from (a) action taken by such member, officer or employee in good faith and without malice  
12 under the apparent authority of this compact, even though such action is later judicially determined  
13 to be unauthorized, or (b) the negligent or wrongful act or omission of any other person, employed  
14 by the commission and serving under such officer, member or employee, unless such member, officer  
15 or employee either failed to exercise due care in the selection, appointment or supervision of such  
16 other person, or failed to take all available action to suspend or discharge such other person after  
17 knowledge or notice that such other person was inefficient or incompetent to perform the work for  
18 which he was employed. No suit may be instituted against a member, officer or employee of the  
19 commission for damages alleged to have resulted from the negligent or wrongful act or omission of  
20 such member, officer or employee or a subordinate thereof occurring during the performance of his  
21 official duties unless, within 90 days after occurrence of the incident, a verified claim for damages  
22 is presented in writing and filed with such member, officer or employee and with the commission.  
23 In the event of a suit for damages against any member, officer or employee of the commission on  
24 account of any act or omission in the performance of his or his subordinates' official duties, the  
25 commission shall arrange for the defense of such suit and may pay all expenses therefor on behalf  
26 of such member, officer or employee. The commission may at its expense insure its members, officers  
27 and employees against liability resulting from their acts or omissions in the performance of their  
28 official duties. Nothing in this paragraph shall be construed as imposing any liability upon any  
29 member, officer or employee of the commission that he would otherwise not have.

30 7. The commission may incur obligations and pay expenses which are necessary for the per-  
31 formance of its functions. But it shall not pledge the credit of any government except by and with  
32 the authority of the legislative body thereof given pursuant to and in keeping with the constitution  
33 of such government, nor shall the commission incur any obligations prior to the availability of funds  
34 adequate to meet them.

35 8. The commission may:

36 (a) Borrow, accept or contract for the services of personnel from any government or agency  
37 thereof, from any intergovernmental agency, or from any other entity.

38 (b) Accept for any of its purposes and functions under this compact any and all donations, gifts,  
39 grants of money, equipment, supplies, materials and services from any government or agency thereof  
40 or intergovernmental agency or from any other entity.

41 (c) Acquire, hold and dispose of real and personal property as may be necessary in the per-  
42 formance of its functions.

43 (d) Make such studies, surveys and investigations as are necessary in carrying out the pro-  
44 visions of this compact.

45 9. All meetings of the commission for the consideration of and action on any matters coming

1 before the commission, except matters involving the management of internal affairs of the commis-  
2 sion and its staff, shall be open to the public. Matters coming within the exception of this paragraph  
3 may be considered and acted upon by the commission in executive sessions under such rules and  
4 regulations as may be established therefor.

5 10. In the case of the failure of the two voting members of the commission to agree on any  
6 matter relating to the administration of this compact as provided in paragraph 2 of this subdivision  
7 A, the representative from each state shall appoint one person and the two appointed persons shall  
8 appoint a third person. The three appointees shall sit as an arbitration forum. The terms of ap-  
9 pointment and the compensation of the members of the arbitration forum shall be fixed by the  
10 commission. Matters on which the two voting members of the commission have failed to agree shall  
11 be decided by a majority vote of the members of the arbitration forum. Each state obligates itself  
12 to abide by the decision of the arbitration forum, subject, however, to the right of each state to have  
13 the decision reviewed by a court of competent jurisdiction.

14 11. The commission shall have the right of access, through its authorized representatives, to all  
15 properties in the Klamath River Basin whenever necessary for the purpose of administration of this  
16 compact. The commission may obtain a court order to enforce its right of access.

17 B. 1. The commission shall submit to the Governor or designated officer of each state a budget  
18 of its estimated expenditures for such period and at such times as may be required by the laws of  
19 that state for presentation to the legislature thereof. Each state pledges itself to appropriate and  
20 pay over to the commission one-half of the amount required to finance the commission's estimated  
21 expenditures as set forth in each of its budgets, and pledges further that concurrently with approval  
22 of this compact by its legislature the sum of not less than \$12,000 will be appropriated by it to be  
23 paid over to the commission at its first meeting for use in financing the commission's functions until  
24 the commission can prepare its first budget and receive its first appropriation thereunder from the  
25 states.

26 2. The commission shall keep accurate accounts of all receipts and disbursements, which shall  
27 be audited yearly by a certified public accountant, and the report of the audit shall be made a part  
28 of its annual report. The accounts of the commission shall be open for public inspection during es-  
29 tablished office hours.

30 3. The commission shall make and transmit to the legislature and Governor of each state and  
31 to the President of the United States an annual report covering the finances and activities of the  
32 commission and embodying such plans, recommendations and findings as may have been adopted by  
33 the commission.

34 C. 1. The commission shall have the power to adopt, and to amend or repeal, such rules and  
35 regulations to effectuate the purposes of this compact as in its judgment may be appropriate.

36 2. Except as to matters involving exclusively the management of the internal affairs of the  
37 commission and its staff or involving emergency matters, prior to the adoption, amendment or repeal  
38 of any rule or regulation the commission shall hold a hearing at which any interested person shall  
39 have the opportunity to present his views on the proposed action in writing, with or without the  
40 opportunity to present the same orally. The commission shall give adequate advance notice in a  
41 reasonable manner of the time, place and subject of such hearings.

42 3. Emergency rules and regulations may be adopted without a prior hearing, but in such case  
43 they may be effective for not longer than 90 days.

44 4. The commission shall publish its rules and regulations in convenient form.

45 ARTICLE X

## 1 STATUS OF INDIAN RIGHTS

2 A. Nothing in this compact shall be deemed:

3 1. To affect adversely the present rights of any individual Indian, tribe, band or community of  
4 Indians to the use of the waters of the Klamath River Basin for irrigation.

5 2. To deprive any individual Indian, tribe, band or community of Indians of any rights, privileges,  
6 or immunities afforded under federal treaty, agreement or statute.

7 3. To affect the obligations of the United States of America to the Indians, tribes, bands or  
8 communities of Indians, and their reservations.

9 4. To alter, amend or repeal any of the provisions of the Act of August 13, 1954, (68 Stat. 718)  
10 as it may be amended.

11 B. Lands within the Klamath Indian Reservation which are brought under irrigation after the  
12 effective date of this compact, whether before or after section 14 of said Act of August 13, 1954,  
13 becomes fully operative, shall be taken into account in determining whether the 200,000 acre limi-  
14 tation provided in paragraph 1 of subdivision C of Article III has been reached.

## 15 ARTICLE XI

## 16 FEDERAL RIGHTS

17 Nothing in this compact shall be deemed:

18 A. To impair or affect any rights, powers or jurisdiction of the United States, its agencies or  
19 those acting by or under its authority, in, over and to the waters of the Klamath River Basin, nor  
20 to impair or affect the capacity of the United States, its agencies or those acting by or under its  
21 authority in any manner whatsoever, except as otherwise provided by the federal legislation enacted  
22 for the implementation of this compact as specified in Article XIII.

23 B. To subject any property of the United States, its agencies or instrumentalities, to taxation  
24 by either state or any subdivision thereof, unless otherwise provided by Act of Congress.

25 C. To subject any works or property of the United States, its agencies, instrumentalities or those  
26 acting by or under its authority, used in connection with the control or use of waters which are the  
27 subject of this compact, to the laws of any state to an extent other than the extent to which those  
28 laws would apply without regard to this compact, except as otherwise provided by the federal leg-  
29 islation enacted for the implementation of this compact as specified in Article XIII.

30 D. To affect adversely the existing areas of Crater Lake National Park or Lava Beds National  
31 Monument, or to limit the operation of laws relating to the preservation thereof.

32 E. To apply to the use of water for the maintenance, on the scale at which such land and water  
33 areas are maintained as of the effective date of this compact, of officially designated waterfowl  
34 management areas, including water consumed by evaporation and transpiration on water surface  
35 areas and water used for irrigation or otherwise in the Upper Klamath River Basin; nor to affect  
36 the rights and obligations of the United States under any migratory bird treaty or the Migratory  
37 Bird Conservation Act (45 Stat. 1222), as amended to the effective date of this compact.

## 38 ARTICLE XII

## 39 GENERAL PROVISIONS

40 A. Each state and all persons using, claiming or in any manner asserting any right to the use  
41 of the waters of the Klamath River Basin under the authority of either state shall be subject to the  
42 terms of this compact.

43 B. Nothing in this compact shall be construed to limit or prevent either state from instituting  
44 or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction  
45 for the protection of any right under this compact or the enforcement of any of its provisions.

1 C. Should a court of competent jurisdiction hold any part of this compact to be contrary to the  
2 Constitution of either state or the United States, all other provisions shall continue in full force and  
3 effect, unless it is authoritatively and finally determined judicially that the remaining provisions  
4 cannot operate for the purposes, or substantially in the manner, intended by the states independ-  
5 ently of the portions declared unconstitutional or invalid.

6 D. Except as to matters requiring the exercise of discretion by the commission, the provisions  
7 of this compact shall be self-executing and shall by operation of law be conditions of the various  
8 state permits, licenses or other authorizations relating to the waters of the Klamath River Basin  
9 issued after the effective date of this compact.

10 E. The physical and other conditions peculiar to the Klamath River Basin constitute the basis  
11 for this compact, and neither of the states hereby, nor the Congress of the United States by its  
12 consent, considers that this compact establishes any general principle or precedent with respect to  
13 any other interstate stream.

#### 14 ARTICLE XIII

#### 15 RATIFICATION

16 A. This compact shall become effective when ratified by the legislature of each signatory state,  
17 and when consented to by an Act of Congress of the United States which will, in substance, meet  
18 the provisions hereinafter set forth in this Article.

19 B. The Act of Congress referred to in subdivision A of this Article shall provide that the United  
20 States or any agency thereof, and any entity acting under any license or other authority granted  
21 under the laws of the United States (referred to in this Article as “the United States”), in con-  
22 nection with developments undertaken after the effective date of this compact pursuant to laws of  
23 the United States, shall comply with the following requirements:

24 1. The United States shall recognize and be bound by the provisions of subdivision A of Article  
25 III.

26 2. The United States shall not, without payment of just compensation, impair any rights to the  
27 use of water for use (a) or (b) within the Upper Klamath River Basin by the exercise of any powers  
28 or rights to use or control water (i) for any purpose whatsoever outside the Klamath River Basin  
29 by diversions in California or (ii) for any purpose whatsoever within the Klamath River Basin other  
30 than use (a) or (b). But the exercise of powers and rights by the United States shall be limited under  
31 this paragraph 2 only as against rights to the use of water for use (a) or (b) within the Upper  
32 Klamath River Basin which are acquired as provided in subdivision B of Article III after the effec-  
33 tive date of this compact, but only to the extent that annual depletions in the flow of the Klamath  
34 River at Keno resulting from the exercise of such rights to use water for uses (a) and (b) do not  
35 exceed 340,000 acre-feet in any one calendar year.

36 3. The United States shall be subject to the limitation on diversions of waters from the basin  
37 of Jenny Creek as provided in subdivision A of Article VIII.

38 4. The United States shall be governed by all the limitations and provisions of paragraph 2 and  
39 subparagraph (a) of paragraph 3 of subdivision B of Article III.

40 5. The United States, with respect to any irrigation or reclamation development undertaken by  
41 the United States in the Upper Klamath River Basin in California, shall provide that substantially  
42 all of the return flows and waste water finally resulting from such diversions and use appearing as  
43 surface waters in the Upper Klamath River Basin shall be made to drain so as to be eventually re-  
44 turned to the Klamath River upstream from Keno, unless the Secretary of the Interior shall deter-  
45 mine that compliance with this requirement would render it less feasible than under an alternate

1 plan of development, in which event such return flows and waste waters shall be returned to the  
 2 Klamath River at a point above Copco Lake.

3 C. Upon enactment of the Act of Congress referred to in subdivision A of this Article and so  
 4 long as such Act shall be in effect, the United States, when exercising rights to use water pursuant  
 5 to state law, shall be entitled to all of the same privileges and benefits of this compact as any person  
 6 exercising similar rights.

7 D. Such Act of Congress shall not be construed as relieving the United States of any require-  
 8 ment of compliance with state law which may be provided by other federal statutes.

9 ARTICLE XIV

10 TERMINATION

11 This compact may be terminated at any time by legislative consent of both states, but despite  
 12 such termination, all rights then established hereunder or recognized hereby shall continue to be  
 13 recognized as valid by the states.

14  
 15  
 16 **SECTION 1628.** ORS 542.630 is amended to read:

17 542.630. The [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
 18 **sources** shall be the only representative of this state in administering the Klamath River Basin  
 19 Compact set forth in ORS 542.620. The director shall receive no additional compensation for services  
 20 as such representative, but, subject to any other applicable law regulating mileage and traveling and  
 21 other expenses for state officers, shall receive actual and necessary traveling and other expenses  
 22 incurred in the performance of official functions as such representative, to be paid in the same  
 23 manner and out of the same moneys as other similar expenses of the director are paid.

24 **SECTION 1629.** ORS 542.750 is amended to read:

25 542.750. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may  
 26 make surveys and investigations and prepare plans, specifications, estimates and other data, as in  
 27 the commission’s judgment can accomplish the purposes of the Watershed Protection and Flood  
 28 Prevention Act. As soon as practicable after completion the commission shall prepare, or have pre-  
 29 pared, a report setting forth the results of the surveys and investigations. All work performed by the  
 30 commission under this section shall be correlated with that performed by the United States Natural  
 31 Resources Conservation Service, or its successor agency, under the Watershed Protection and Flood  
 32 Prevention Act.

33 (2) The commission, on behalf of the State of Oregon, may enter into contracts or agreements  
 34 with any agencies of the United States Department of Agriculture for the execution of surveys and  
 35 investigations and the preparation of plans, specifications and estimates or other data to determine  
 36 costs and feasibility of reservoir or other works of improvement that may be constructed under the  
 37 provisions of the Watershed Protection and Flood Prevention Act, as amended.

38 (3) The intent of this section is to expedite the investigation and planning of works of improve-  
 39 ment that may be constructed under the Watershed Protection and Flood Prevention Act to reduce  
 40 the delay in time occurring between initiation of a project and beginning of construction.

41 **SECTION 1630.** ORS 543.010 is amended to read:

42 543.010. As used in ORS 543.010 to 543.610:

43 (1) “Actual original cost” includes the sum paid to the state at the time the application was  
 44 made for a preliminary permit; the sum paid or secured to be paid to the state by the applicant for  
 45 license at the time such application was made; such sums as may be paid to the United States or

1 any department thereof; and such sums as shall have been reasonably and prudently expended in  
2 preliminary investigations, explorations and organization expenses, as determined by the [*Water*  
3 *Resources Commission*] **Oregon Natural Resources Commission.**

4 (2) "Project" means a complete unit, improvement or development. It includes, among other  
5 things, power houses, water wheels, conduits or pipes, dams and appurtenant works and structures,  
6 storage, diverting or forebay reservoirs connected therewith, and primary lines transmitting power  
7 to the point of junction with a distributing system, or with any interconnected primary system,  
8 miscellaneous works and structures used in connection with the unit or any part thereof, rights of  
9 way, lands, flowage rights and all other properties, rights and structures necessary or appropriate  
10 in the use, operation and maintenance of any such unit.

11 **SECTION 1631.** ORS 543.015 is amended to read:

12 543.015. The Legislative Assembly declares that it is the policy of the State of Oregon:

13 (1) To protect the natural resources of this state from possible adverse impacts caused by the  
14 use of the waters of this state for the development of hydroelectric power.

15 (2) To permit siting of hydroelectric projects subject to strict standards established to protect  
16 the natural resources of Oregon.

17 (3) To require [*the Water Resources Commission, the Energy Facility Siting Council, the Depart-*  
18 *ment of Environmental Quality*] **the Oregon Natural Resources Commission, the Oregon De-**  
19 **partment of Natural Resources, the Department of Environmental Quality, the Energy**  
20 **Facility Siting Council** and other affected state agencies to participate to the fullest extent in any  
21 local, state or federal proceedings related to hydroelectric power development in order to protect  
22 the natural resources of Oregon.

23 **SECTION 1632.** ORS 543.017 is amended to read:

24 543.017. (1) In order to carry out the policy set forth in ORS 543.015, the following minimum  
25 standards shall apply to any action of the [*Water Resources Commission*] **Oregon Natural Re-**  
26 **sources Commission** relating to the development of hydroelectric power in Oregon:

27 (a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The commis-  
28 sion shall not approve activity that may result in mortality or injury to anadromous salmon and  
29 steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources  
30 except when an applicant proposes to modify an existing facility or project in such a manner that  
31 can be shown to restore, enhance or improve anadromous fish populations within that river system.

32 (b) Any activity related to hydroelectric development shall be consistent with the provisions of  
33 the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and  
34 enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest  
35 Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

36 (c) Except as provided in this paragraph, no activity may be approved that results in a net loss  
37 of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any  
38 of the above resources, the commission may allow mitigation if the commission finds the proposed  
39 mitigation in the project vicinity is acceptable. Proposed mitigation that may result in a wild game  
40 fish population, or the fishery the wild game fish population provides, being converted to a hatchery  
41 dependent resource is not acceptable mitigation. A water dependent recreational opportunity must  
42 be mitigated by another water dependent recreational opportunity. Mitigation of water dependent  
43 recreational opportunities that, in the judgment of the commission, are of statewide significance  
44 with a recreational opportunity that is readily available on other waters of this state is not ac-  
45 ceptable mitigation. In deciding whether mitigation is acceptable, the commission shall consult with

1 other local, state and federal agencies.

2 (d) Other natural resources in the project vicinity, including water quality, wildlife, scenic and  
3 aesthetic values, and historic, cultural and archaeological sites, shall be maintained or enhanced.  
4 No activity may be approved that, in the judgment of the commission after balancing gains and  
5 losses to all affected natural resources, may result in a net loss of natural resources. In determining  
6 whether the proposed activity may result in a net loss of natural resources, the commission may  
7 consider mitigation if the commission determines the proposed mitigation in the project vicinity is  
8 acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss  
9 standard. In determining whether mitigation is acceptable, the commission shall consult with ap-  
10 propriate state, federal and local agencies.

11 (e) In determining whether it is in the public interest to allocate water for a proposed hydro-  
12 electric development, the commission shall consider present and future power needs and shall make  
13 a finding on the need for the power. For a hydroelectric project with a nominal electric generating  
14 capacity of 25 megawatts or more, the [*Water Resources*] commission shall consider any recommen-  
15 dation by the Energy Facility Siting Council. The [*Energy Facility Siting*] council's recommendation  
16 shall be based solely on information contained in the hearing record of the [*Water Resources*] com-  
17 mission. The commission's order on the proposed hydroelectric development shall describe the [*En-  
18 ergy Facility Siting*] council's recommendations on the need for the power. If the commission's  
19 decision on the need for power is contrary to the [*Energy Facility Siting*] council's recommendation,  
20 the commission's order shall explain the commission's failure to follow the recommendation of the  
21 [*Energy Facility Siting*] council. The commission also shall consult with the [*Energy Facility  
22 Siting*] council on other matters within the expertise of the [*Energy Facility Siting*] council.

23 (2) The commission shall adopt all necessary rules to carry out the policy set forth in ORS  
24 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the  
25 absence of implementing rules, any action of the commission relating to hydroelectric development  
26 shall comply with the standards as set forth in this section.

27 (3) Nothing in this section limits the authority of any state agency to make recommendations  
28 regarding appropriate license conditions during the consideration of the issuance of a license or  
29 permit for an existing hydroelectric project.

30 **SECTION 1633.** ORS 543.050 is amended to read:

31 543.050. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may:

32 (1) Issue preliminary permits, as provided in ORS 543.210 to 543.250, to any person qualified to  
33 become a licensee.

34 (2) Issue licenses, as provided in ORS 543.260, to citizens of the United States, associations of  
35 citizens, or private corporations organized under the laws of the United States or any state of the  
36 United States, to appropriate, initiate, perfect, acquire and hold the right to the use of waters within  
37 the state, including waters over which the state has concurrent jurisdiction, and to construct, op-  
38 erate and maintain dams, reservoirs, power houses, conduits, transmission lines, and all other works  
39 and structures necessary or convenient for the use of the waters in the generation and utilization  
40 of electricity.

41 (3) Conduct investigations and collect information the commission considers necessary or useful  
42 for the purposes of ORS 543.010 to 543.610 and cooperate with the federal government and adjoining  
43 states concerning all such matters, particularly with reference to waters forming the boundary be-  
44 tween this state and another state.

45 (4) Prescribe the forms of all accounts, records and memoranda to be kept by licensees under



1 ORS 543.010 to 543.610.

2 (5) Examine at any time all accounts, books of account and documents and data related to the  
3 business of a licensee under ORS 543.010 to 543.610; and require a licensee to submit, whenever  
4 required by the commission, reports and statements under oath containing information as to assets,  
5 liabilities, capitalization, gross receipts, interest and dividend requirements, interest due and paid,  
6 amortization and other reserves, net investment, cost of any project constructed, maintained or op-  
7 erated, in whole or in part, cost of maintenance, operation, renewals, replacements, cost of pro-  
8 duction, transmission, distribution and sale of electricity, and other data as the commission may  
9 require.

10 (6) Perform all acts, exercise all powers and issue all orders which, in the judgment and dis-  
11 cretion of the commission, are necessary to effectuate the purposes of ORS 543.010 to 543.610.

12 **SECTION 1634.** ORS 543.055 is amended to read:

13 543.055. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** may  
14 hold hearings and take testimony orally, by deposition or in such other form as the commission  
15 considers satisfactory, either within or without this state. The [*Water Resources*] commission may  
16 require, by subpoena, the attendance of witnesses and the production of documentary evidence.

17 (2) An administrative law judge assigned from the Office of Administrative Hearings established  
18 under ORS 183.605, shall conduct any contested case hearing that the commission is required or  
19 permitted by law to hold. The administrative law judge has the same powers with respect to the  
20 conduct of the hearing as are granted by law to the commission, including the taking of testimony,  
21 the signing and issuance of subpoenas and the administering of oaths and affirmations to witnesses.  
22 The administrative law judge shall keep a record of the proceedings on the hearing and shall  
23 transmit such record to the commission.

24 (3) The commission may designate any person to take the testimony, affidavit or deposition of  
25 a witness. The person so designated may administer an oath or affirmation to any such witness and  
26 take the testimony thereof in accordance with such rules as the commission may prescribe.

27 (4) Witnesses appearing before the commission or any person designated by the commission to  
28 take testimony shall be paid the fees and mileage provided for witnesses in ORS 44.415 (2).

29 **SECTION 1635.** ORS 543.060 is amended to read:

30 543.060. The [*Water Resources Commission, the Water Resources Director or any employee of the*  
31 *Water Resources Department, at all reasonable times,*] **Director of the Oregon Department of Na-**  
32 **tural Resources, any employee of the Oregon Department of Natural Resources and the**  
33 **Oregon Natural Resources Commission** shall have free access to any project, addition or  
34 betterment during or after construction or acquisition, and to all maps, plans, profiles, estimates,  
35 engineers' reports, books, accounts, records and other data relating to the project.

36 **SECTION 1636.** ORS 543.078 is amended to read:

37 543.078. (1) On or before January 1 of each year, each holder shall pay to the State of Oregon  
38 an annual fee for each hydroelectric project that is subject to this section. The annual fee required  
39 by this section shall be based on the theoretical horsepower specified in the water right for each  
40 project.

41 (2) The amount of the annual fee required under subsection (1) of this section shall be deter-  
42 mined in the following manner:

43 (a) Subject to the schedule set forth in subsection (3) of this section, each holder shall pay an  
44 amount, in 1998 dollars, equal to \$0.405 per theoretical horsepower covered by the water right for  
45 the holder's hydroelectric project. The annual fee may be set forth in the water right or may be

1 established by order of the [*Water Resources Director*] **Director of the Oregon Department of**  
2 **Natural Resources** and shall be adjusted annually for inflation according to rules established by  
3 the [*Water Resources Commission*] **Oregon Natural Resources Commission**. The annual fee also  
4 may be adjusted through the periodic review process established in ORS 543.085.

5 (b) Each holder of a hydroelectric project that produces 123.5 theoretical horsepower or less  
6 shall pay an annual fee of \$50 for that project.

7 (3) The fee determined in subsection (2) of this section shall apply to a project on the January  
8 1 following the occurrence of an event enumerated as follows:

9 (a) A licensee or water right certificant shall begin to pay the annual fee after the final order  
10 for the reauthorized water right is issued under ORS 543A.130.

11 (b) Notwithstanding paragraph (a) of this subsection, if a licensee holds, on October 23, 1999,  
12 an original state hydroelectric license for which the original expiration date was or is more than  
13 five years after the expiration date of the original Federal Energy Regulatory Commission license  
14 for the project, the licensee shall begin payment of the annual fee established under this section  
15 after the expiration date of the original state hydroelectric license.

16 (c) A power claimant, or uncertificated claimant, licensed by the Federal Energy Regulatory  
17 Commission shall begin to pay the annual fee after the Federal Energy Regulatory Commission is-  
18 sues a new license. A power claimant or uncertificated claimant that received a new license from  
19 the Federal Energy Regulatory Commission within 10 years prior to October 23, 1999, shall begin  
20 to pay the annual fee on January 1, 2000.

21 (d) A power claimant, or uncertificated claimant, whose project is exempted from licensure by  
22 the Federal Energy Regulatory Commission or not licensed by the Federal Energy Regulatory  
23 Commission shall begin paying the annual fee under this section on January 1, 2008, for that project.

24 (4) No fee shall be assessed under ORS 543.710 for a project subject to an annual fee under this  
25 section.

26 **SECTION 1637.** ORS 543.080 is amended to read:

27 543.080. (1) In addition to the annual fee set forth in ORS 543.078, a holder may be required to  
28 pay project specific fees.

29 (2) Project specific fees are fees that compensate a state agency for the agency's reasonable and  
30 necessary oversight of a holder's implementation of the protection, mitigation and enhancement  
31 measures included in a water right for the project, a certificate issued pursuant to ORS 468B.040  
32 or 468B.045 or a Federal Energy Regulatory Commission license.

33 (3) Project specific fees shall be considered at the time of reauthorization or relicensing of a  
34 hydroelectric project and, if needed, shall be established before the proposed final order is issued  
35 under ORS 543A.115, and shall be included in the reauthorized water right or the certificate issued  
36 pursuant to ORS 468B.040 or 468B.045. In the case of power claims and uncertificated claims, project  
37 specific fees shall be considered at the time of relicensing and, if needed, shall be included in an  
38 order of the [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
39 **sources** amending the claim pursuant to ORS 543.092 or in a certificate issued for the project pur-  
40 suant to ORS 468B.040 or 468B.045.

41 (4) The need for, and amount of, a project specific fee shall be based upon the following factors:

42 (a) Experimental or unproven nature of the proposed mitigation;

43 (b) Significance of the resource affected;

44 (c) Need for ongoing agency involvement in reviewing the effectiveness of the proposed measure;

45 (d) Need for agency personnel to perform field work or research efforts; and

1 (e) Overall nature of the protection, mitigation or enhancement measures, including but not  
2 limited to consideration of whether the measure is simple, complex, closed-ended or adaptive and  
3 whether the measure is determined solely by the holder or by an agency or public committee.

4 (5) A project specific fee may not be assessed for:

5 (a) Work on projects other than the project for which the fee is established;

6 (b) Work that is paid for by the annual hydroelectric fee;

7 (c) Development of statewide hydroelectric policy;

8 (d) Coordination of statewide activities within an agency;

9 (e) Costs to the agency of Attorney General assistance associated with ongoing litigation; or

10 (f) Routine monitoring of compliance with nonadaptive management provisions of the water  
11 right, an uncertificated claim, a certificate issued pursuant to ORS 468B.040 or 468B.045 or a Fed-  
12 eral Energy Regulatory Commission license.

13 (6) A project specific fee shall be time-limited. One year before expiration of a project specific  
14 fee, the holder and any affected agency shall review the need, if any, to modify, extend or terminate  
15 the project specific fee. After such review, the agency shall propose a fee modification, extension  
16 or termination. Any dispute regarding the proposed fee action shall be referred to an independent  
17 fact finder selected by mutual agreement, whose costs shall be borne one-half by the holder and  
18 one-half by the agency. The fact finder shall review whether the proposed fee action is appropriate  
19 under and consistent with the criteria set forth in subsections (2), (4) and (5) of this section. The fact  
20 finder shall not review the substance of the protection, mitigation and enhancement measures con-  
21 tained in the water right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040  
22 or 468B.045 or the Federal Energy Regulatory Commission license. The fact finder shall forward its  
23 determination in writing to the holder and agency. Upon receipt and consideration of the fact  
24 finder's determination, the agency shall notify the holder whether the project specific fee is modified,  
25 extended or terminated. If the holder is dissatisfied with the fee action, the holder may request ad-  
26 ministrative or judicial review in accordance with statutes or rules applicable to a particular  
27 agency's fee action. The written determination of the fact finder shall be admissible in any such  
28 administrative or judicial hearing. Notwithstanding any other law, a presumption shall exist in fa-  
29 vor of the determination of the fact finder and the burden shall be on the party seeking a fee action  
30 contrary to the determination of the fact finder to demonstrate that a different fee action is justified  
31 under this section.

32 (7) Subject to subsections (2) to (5) of this section, the amount of a project specific fee shall be  
33 established based on an estimate of the cost to the agency of the labor, supplies and overhead ex-  
34 pended by the agency in providing reasonable and necessary oversight of a holder's implementation  
35 of the protection, mitigation and enhancement measures included in the water right, the uncertif-  
36 icated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy  
37 Regulatory Commission license. The estimate used to derive a project specific fee amount shall be  
38 determined by using increments of not more than 0.25 full-time equivalents.

39 (8) A project specific fee shall be payable after issuance of the final order pursuant to ORS  
40 543A.130, or in the case of power claimants and uncertificated claimants, after the issuance of either  
41 the director's order or a certificate issued for the project pursuant to ORS 468B.040 or 468B.045.  
42 A project specific fee shall be paid in increments that are reasonably related to the work to be  
43 performed and set forth in the final order, certificate issued pursuant to ORS 468B.040 or 468B.045  
44 or the director's order.

45 (9) Each agency receiving project specific fees shall, on a biennial basis, provide the holder

1 paying the fees with a summary of project specific expenditures.

2 **SECTION 1638.** ORS 543.082 is amended to read:

3 543.082. (1) At least 45 days before the fees required under ORS 543.078 or 543.080 become due,  
4 the [*Water Resources Department*] **Oregon Department of Natural Resources** shall issue invoices  
5 to the holder for each fee.

6 (2) If any holder fails to pay the fees required under ORS 543.078 or 543.080 within 15 days after  
7 the date specified in the invoice, the department shall notify the holder of the amount and nature  
8 of the overdue fee. Any such notice shall be sent to the holder by certified mail and shall include  
9 notification that the holder has 30 days from the date of the certified delivery of the notice to pay  
10 the overdue fee or the holder shall be subject to the late payment penalty provisions of subsection  
11 (3) of this section.

12 (3) Any fee that is not paid within 30 days of the date a holder receives certified delivery of the  
13 notice required under subsection (2) of this section shall be considered delinquent and shall be in-  
14 creased by 25 percent. In addition, the state shall have a preference lien for any such fee, together  
15 with interest at the rate of 10 percent per annum from the date of delinquency, upon the property  
16 of the holder used, or necessary for use, in the development of the water right, together with any  
17 improvements erected on the property for such development. Upon notice from the [*Water Resources*  
18 *Commission*] **Oregon Natural Resources Commission**, the Attorney General shall foreclose the  
19 lien and collect the amount due, as provided in this section, in the same manner as other liens on  
20 real property are foreclosed.

21 (4) The remedy set forth in subsection (3) of this section is in addition to any other remedy  
22 provided by law for the collection of moneys or for noncompliance with a condition of a water right  
23 order, uncertificated claim or certification under ORS 468B.040 or 468B.045.

24 **SECTION 1639.** ORS 543.085 is amended to read:

25 543.085. (1) The [*Water Resources Director*] **Director of the Oregon Department of Natural**  
26 **Resources** shall appoint a review panel to review the amount of the annual fee established under  
27 ORS 543.078 in 2003 and 2009 and every eight years thereafter. The review panel shall consist of  
28 at least one representative from the following and others at the director's discretion:

- 29 (a) The Department of Environmental Quality;
- 30 [(b) *The State Department of Fish and Wildlife*];
- 31 [(c)] (b) The Public Utility Commission;
- 32 [(d) *The Water Resources Department*];
- 33 [(e)] (c) Investor owned utilities;
- 34 [(f)] (d) Publicly owned utilities;
- 35 [(g)] (e) Municipalities;
- 36 [(h)] (f) Environmental organizations;
- 37 [(i)] (g) Agricultural organizations; and
- 38 [(j)] (h) Nonutility owners of hydroelectric projects.

39 (2) All holders paying annual fees under ORS 543.078 shall be notified by the [*Water Resources*  
40 *Department*] **Oregon Department of Natural Resources** at least 60 days in advance of the meeting  
41 of the review panel established in subsection (1) of this section, and provided the opportunity to  
42 submit comments to the panel.

43 (3) Any periodic review conducted under subsection (1) of this section shall evaluate each  
44 agency's hydroelectric program to determine if current staffing levels, activities and funding are  
45 appropriate to fulfill program objectives. There shall be a presumption that the fee should not

1 change. To overcome the presumption and alter the existing fee, the panel must find compelling  
2 reasons for alteration and must reach unanimous consent on the new fee. If the presumption is  
3 overcome, upon completion of the review process the director shall either adjust the annual fee as  
4 recommended by the panel or elect not to adjust the fee. Any change in the annual fee as a result  
5 of this section shall become effective on the January 1 following the director's action. The director  
6 shall notify all holders of any change in the annual fee and the effective date of such change.

7 **SECTION 1640.** ORS 543.088 is amended to read:

8 543.088. (1) Notwithstanding ORS 543A.405 and 543A.410, during each year of the interim period  
9 established in subsection (2) of this section, any licensee or water right certificant seeking reau-  
10 thorization of a state water right to operate a federally licensed hydroelectric project shall pay the  
11 greater of:

12 (a) The actual cost of the Hydroelectric Application Review Team's reauthorization activities for  
13 the year in question as established pursuant to ORS 543A.405 and 543A.410; or

14 (b) 12.5 cents per theoretical horsepower as specified in the water right for each project under  
15 consideration for reauthorization. This amount shall be calculated in 1998 dollars.

16 (2) For any project, the interim period referred to in subsection (1) of this section shall begin  
17 on the January 1 immediately following submission [to the *Water Resources Department*] of a pro-  
18 posed final order for reauthorization of the project **to the Oregon Department of Natural Re-**  
19 **sources** under ORS 543A.115 (2). For any project, the interim period referred to in subsection (1)  
20 of this section shall end on December 31 of the year the department issues a final order on reau-  
21 thorization of the project pursuant to ORS 543A.130.

22 (3) Notwithstanding ORS 543.090, during each year of the interim period established in sub-  
23 section (4) of this section, any power claimant or uncertificated claimant seeking to relicense a  
24 federally licensed hydroelectric project shall pay the greater of:

25 (a) The actual cost of the team's relicensing activities for the year in question as established  
26 pursuant to ORS 543.090; or

27 (b) 12.5 cents per theoretical horsepower as specified in the water right for each project under  
28 consideration for relicensing. This amount shall be calculated in 1998 dollars.

29 (4) For any project, the interim period referred to in subsection (3) of this section shall begin  
30 on the January 1 immediately following issuance of an annual license for the project by the Federal  
31 Energy Regulatory Commission. For any project, the interim period referred to in subsection (3) of  
32 this section shall end on December 31 of the year the Federal Energy Regulatory Commission issues  
33 a new license for the project.

34 (5) The [*Water Resources*] department shall reimburse a participating agency for costs incurred  
35 in the agency's review of a project during the year for which the fees are collected. Such costs shall  
36 not include expenses of other state agencies for which a fee is otherwise collected under state law.  
37 Any fees collected under subsection (1) or (3) of this section in excess of the team's actual cost of  
38 evaluation of the project for the year shall be distributed according to ORS 536.015.

39 (6) No fee shall be charged under this section unless the project is a federally licensed project.

40 (7) No fee shall be charged pursuant to subsection (1) of this section unless the Hydroelectric  
41 Application Review Team proposes to reauthorize the water right for the project in the proposed  
42 final order submitted to the [*Water Resources*] department under ORS 543A.115 (2).

43 (8) Water right certificants and licensees with water rights or licenses that expire more than  
44 five years after the original federal license for the project expires shall not begin paying fees as-  
45 sessed under this section until after the expiration date of the original state hydroelectric license

1 or water right.

2 **SECTION 1641.** ORS 543.090 is amended to read:

3 543.090. (1) Any project operating under a hydroelectric license issued by the Federal Energy  
4 Regulatory Commission and concurrently operating under the authority of a power claim or uncer-  
5 tificated claim shall pay all expenses related to the review and decision of a Hydroelectric Appli-  
6 cation Review Team established under ORS 543A.075 that:

7 (a) Are incurred by the team and any agency participating as part of the team in the federal  
8 relicensing process; and

9 (b) Are not otherwise covered by the reauthorization fee paid under ORS 543A.415.

10 (2) Not later than six years before the expiration of a hydroelectric license issued by the Federal  
11 Energy Regulatory Commission to any project operating concurrently under the authority of a  
12 power claim or uncertificated claim, the [*Water Resources Department*] **Oregon Department of**  
13 **Natural Resources** shall contact the holder to schedule a consultation meeting regarding expected  
14 fees to be incurred by the Hydroelectric Application Review Team.

15 (3) Relicensing fees shall be calculated and assessed according to the terms and conditions set  
16 forth in ORS 543A.405 and 543A.410 for application fees.

17 **SECTION 1642.** ORS 543.092 is amended to read:

18 543.092. (1) Upon the request of the holder and the approval of the [*Water Resources*  
19 *Department*] **Oregon Department of Natural Resources**, a hydroelectric water right or claim may  
20 be amended.

21 (2) The [*Water Resources*] department shall develop rules governing the process by which a hy-  
22 droelectric water right or claim may be amended. Any amendments under subsection (1) of this  
23 section shall:

24 (a) Be consistent with the final unified state position for the project;

25 (b) Be consistent with the requirements of ORS chapter 543A;

26 (c) Cause no injury to other water rights; and

27 (d) Allow for public participation in the amendment process.

28 (3) The [*Water Resources Director*] **Director of the Oregon Department of Natural Resources**  
29 may unilaterally amend a power claim or uncertificated claim in order to assess project specific fees  
30 under ORS 543.080.

31 **SECTION 1643.** ORS 543.150 is amended to read:

32 543.150. The provisions of ORS 543.010, 543.050, 543.210, 543.220, 543.250, 543.260 and 543.290 to  
33 543.610 shall not apply to cities, towns or other municipal corporations of this state, including utility  
34 districts organized under section 12, Article XI, Oregon Constitution, and legislation enacted there-  
35 under; saving, however, to such cities, towns and other municipal corporations the rights and pref-  
36 erences specified in ORS 543.260, 543.270 and 543.610. The [*Water Resources Commission*] **Oregon**  
37 **Natural Resources Commission** shall exercise the powers in relation to utility districts as may  
38 be conferred upon the commission by any legislation providing for the creation of such utility dis-  
39 tricts.

40 **SECTION 1644.** ORS 543.175 is amended to read:

41 543.175. (1) Except as provided in subsection (2) of this section, no person, state agency, local  
42 government, district or municipal corporation shall construct or maintain, and no officer or agency  
43 of the state shall issue any permit for the construction or maintenance of any hydroelectric facility  
44 or structure on that portion of the Upper Deschutes River situated within the city limits of the City  
45 of Bend except for a facility that meets all of the following criteria:

1 (a) The facility is located on an existing irrigation diversion facility or structure constructed  
2 by persons.

3 (b) The operation of the facility would not require any water in addition to water appropriated  
4 for irrigation purposes.

5 (c) Operation of the facility would be limited to the period of time during which water is di-  
6 verted for irrigation purposes and the diversion would not be extended for the purpose of hydro-  
7 electric power generation.

8 (2) Subsection (1) of this section shall not apply to the construction and maintenance of or the  
9 issuance of a permit for a hydroelectric facility or structure for which the hearing record is closed  
10 on or before the July 12, 1985, whether or not the record is later reopened by or at the direction  
11 of the [*Water Resources Commission*] **Oregon Natural Resources Commission** for any reason.

12 (3) As used in this section, "Upper Deschutes River" means that portion of the mainstem  
13 Deschutes River between the North Canal Dam at approximately river mile 165 and the head waters  
14 of the Deschutes River.

15 **SECTION 1645.** ORS 543.210 is amended to read:

16 543.210. (1) Any person who proposes to operate a hydroelectric project in Oregon shall apply  
17 for a state preliminary permit. Any person who applies to the Federal Energy Regulatory Commis-  
18 sion for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for  
19 a state preliminary permit. The [*Water Resources Commission*] **Oregon Natural Resources Com-**  
20 **mission** may issue a preliminary permit to any person possessing the qualifications of a licensee as  
21 specified in ORS 543.010 to 543.610.

22 (2) The application for a preliminary permit shall set forth:

23 (a) The name and post-office address of the applicant;

24 (b) The approximate site of any proposed dam or diversion;

25 (c) The amount of water in cubic feet per second;

26 (d) The theoretical horsepower; and

27 (e) Any other data the **Oregon Natural Resources** Commission may by rule require.

28 (3) Upon receipt of an application for a preliminary permit the **Oregon Natural Resources**  
29 Commission shall indorse on the application the date of receipt, and keep a record of the receipt  
30 of the application. The date so indorsed shall determine the priority of the use of water initiated  
31 under the provisions of ORS 543.010 to 543.610.

32 (4) At the time of filing application for preliminary permit the applicant shall pay to the state  
33 the portion of the total project fee required in ORS 543.280, to cover costs of recording, publishing  
34 notices and making investigations necessary to determine whether or not a preliminary permit  
35 should be granted.

36 **SECTION 1646.** ORS 543.220 is amended to read:

37 543.220. (1) Whenever an application is made for a preliminary permit and after said application  
38 has been referred to hearing, the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
39 **mission** shall give written notice of the filing of the application to:

40 (a) Any municipality or other person or corporation which, in the judgment of the commission,  
41 is likely to be interested in or affected by the proposed project; and

42 (b) The owner of any land that is:

43 (A) Adjacent to any portion of the stream in which the quantity of water will be decreased by  
44 the project; or

45 (B) Adjacent to the site of the proposed project.

1 (2) The commission shall also publish notice of the application once each week for at least four  
2 successive weeks and for such further time, if any, as the commission shall determine, in a news-  
3 paper of general circulation in each county in which the project covered by the application is lo-  
4 cated.

5 (3) No application for the appropriation or use of water for the development of 1,000 theoretical  
6 horsepower or more shall be granted until at least six months after the application for a preliminary  
7 permit has been filed.

8 **SECTION 1647.** ORS 543.225 is amended to read:

9 543.225. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
10 conduct a public hearing on any application or amended application for a preliminary permit or for  
11 a license for a major project of more than 100 theoretical horsepower and an application for pre-  
12 liminary permit or license for a minor project of less than 100 theoretical horsepower if the com-  
13 mission concludes it is in the public interest to do so.

14 (2) The commission shall give proper notice of the public hearing on an application under sub-  
15 section (1) of this section, to the applicant and to each protestant, if any. After the hearing, if the  
16 commission determines that the proposed project does not comply with the standards set forth in  
17 ORS 543.017 or rules adopted by the commission under ORS 543.017, or would otherwise impair or  
18 be detrimental to the public interest so far as the coordinated, integrated state water resources  
19 policy is concerned, it shall enter an order rejecting the application or requiring its modification to  
20 conform to the public interest, to the end that the highest public benefit may result from the pro-  
21 posed project. The order may set forth any or all of the provisions or restrictions to be included  
22 in a preliminary permit or license concerning the use, control and management of the water to be  
23 appropriated for the project, including, but not limited to, a specification of reservoir operation and  
24 minimum releases to protect the public interest.

25 (3) In determining whether the proposed project would impair or be detrimental to the public  
26 interest, the commission shall have due regard for:

27 (a) Conserving the highest use of the water for all purposes, including irrigation, domestic use,  
28 municipal water supply, power development, public recreation, protection of commercial and game  
29 fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any  
30 other beneficial use to which the water may be applied for which it may have a special value to the  
31 public.

32 (b) The maximum economic development of the waters involved.

33 (c) The control of the waters of this state for all beneficial purposes, including drainage, sani-  
34 tation and flood control.

35 (d) The amount of waters available for appropriation for beneficial use.

36 (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters  
37 involved.

38 (f) All vested and inchoate rights to the waters of this state or to the use thereof, and the means  
39 necessary to protect such rights.

40 (g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to  
41 537.534.

42 (4) After the entry of the order specified in subsection (2) of this section, the application for a  
43 preliminary permit or for a license shall be referred to the [*Water Resources Director*] **Director of**  
44 **the Oregon Department of Natural Resources** for further proceedings consistent with the  
45 commission's order.



1       **SECTION 1648.** ORS 543.230 is amended to read:

2       543.230. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall,  
3 by order or rule, provide for the time and manner of hearings upon applications. However, upon  
4 request by any person made within 30 days after the [*Water Resources Director*] **Director of the**  
5 **Oregon Department of Natural Resources** issues an order pertaining to cumulative impacts under  
6 ORS 543.255, the [*Water Resources*] commission shall conduct a contested case hearing in accord-  
7 ance with the applicable provisions of ORS chapter 183 and any rules adopted by the commission.

8       (2) Every application for the appropriation of water for the generation of electricity subject to  
9 the terms of ORS 543.010 to 543.610 shall be subject to protest or remonstrance on behalf of the  
10 public, or any district organized for public purposes, or any interested private person, on the ground  
11 that the proposed construction, development or improvement would damage or destroy the use or  
12 utility of the stream or other body of water involved for other beneficial purposes, including propa-  
13 gation of fish, scenic, aesthetic, recreational, park, highway or other beneficial use. All protests and  
14 remonstrances under this subsection must be filed with the commission within the time specified in  
15 the notice and must be in writing and verified by the parties protesting, and a certified copy thereof  
16 shall be served upon the applicant for the permit. However, in the discretion of the administrative  
17 law judge, at the time of the hearing any interested party may make an oral protest if there exists  
18 any good reason therefor, and the administrative law judge shall allow the applicant to be heard in  
19 opposition thereto. Every protest or remonstrance under this subsection which is not filed and  
20 served as required in this subsection shall be deemed waived.

21       **SECTION 1649.** ORS 543.250 is amended to read:

22       543.250. A preliminary permit may be issued for a period not exceeding a total of three years.  
23 It shall not be transferable except upon written approval of the [*Water Resources Commission*]  
24 **Oregon Natural Resources Commission**, and may be canceled by order of the commission at any  
25 time upon proof to the commission's satisfaction, after hearing, that the holder is not in good faith  
26 complying with the provisions of the permit. The holder of a preliminary permit which has not been  
27 canceled shall have priority of right to make application for a license covering the project for which  
28 the preliminary permit was issued, within the term of the permit or any lawful extension thereof.  
29 Except as otherwise specified in ORS 543.010 to 543.610, the commission may fix the terms and  
30 conditions of any preliminary permit issued thereunder, and each preliminary permit issued shall set  
31 forth all the terms and conditions. The commission may decline to grant any application for a pre-  
32 liminary permit.

33       **SECTION 1650.** ORS 543.255 is amended to read:

34       543.255. (1) Whenever the [*Water Resources Department*] **Oregon Department of Natural Re-**  
35 **sources** receives an application to appropriate water for a new hydroelectric project under ORS  
36 537.140 to 537.320 or for a hydroelectric permit or license under ORS 543.010 to 543.610, the de-  
37 partment shall determine whether the impacts of the project would be cumulative with:

38       (a) Impacts of other proposed hydroelectric projects for which an application is pending before  
39 the department; or

40       (b) Existing hydroelectric projects in the same river basin.

41       (2) If the department determines that there is no possibility that the hydroelectric projects pro-  
42 posed in pending applications or existing projects may have cumulative effects, the [*Water Resources*  
43 *Director*] **Director of the Oregon Department of Natural Resources** shall issue an order setting  
44 forth the department's determination that there are no cumulative effects and the department's de-  
45 cision that consolidated review is not required.

1 (3) If the department determines that pending applications or existing projects may have cumu-  
2 lative effects, the [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
3 conduct a consolidated review before approving any application in the affected river basin. A con-  
4 solidated review process shall be conducted as a contested case hearing under the applicable pro-  
5 visions of ORS chapter 183 and shall include a study of the individual and cumulative effects of  
6 proposed hydroelectric projects for which applications are pending before the department and ex-  
7 isting hydroelectric projects. In its final order on an application, the commission or the department  
8 shall include its findings on cumulative impacts. The findings of the commission or department under  
9 this section must be sufficient to support the department's decision to approve or deny an applica-  
10 tion.

11 (4) Any application for a project in the same river basin filed after the commission begins a  
12 consolidated review contested case hearing shall not be reviewed until the commission has issued  
13 final findings on cumulative effects for all projects included in the consolidated review proceeding.

14 (5) At the request of an applicant for a permit to appropriate water for a new hydroelectric  
15 project under ORS 537.140 to 537.320 or for a permit or license under ORS 543.010 to 543.610, the  
16 commission may immediately upon receiving such application begin the consolidated review pro-  
17 ceeding under subsection (3) of this section.

18 **SECTION 1651.** ORS 543.260 is amended to read:

19 543.260. (1) A license may be issued by the [*Water Resources Commission*] **Oregon Natural Re-**  
20 **sources Commission** to any qualified person for a period not exceeding 50 years. If the project is  
21 subject to regulation by the Federal Energy Regulatory Commission, the term shall be concurrent  
22 with and expire upon expiration of the federal license for the project. Each license shall be condi-  
23 tioned upon acceptance by the licensee of all the terms and conditions of ORS 543.010 to 543.610,  
24 and such further terms and conditions as the **Oregon Natural Resources** Commission may pre-  
25 scribe, not inconsistent with those sections. All such terms and conditions, and their acceptance by  
26 the licensee, shall be expressed in the license. A license may be terminated for the reasons and in  
27 the manner provided in ORS 543.010 to 543.610. The form of license containing all the terms and  
28 conditions may be set forth in the preliminary permit.

29 (2) The **Oregon Natural Resources** Commission may deny any application for a license if it  
30 appears that the applicant has failed to comply substantially with the terms and conditions of the  
31 preliminary permit or, notwithstanding the commission has issued a preliminary permit, if in the  
32 judgment of the commission the project is unfeasible or the public interest requires the denial  
33 thereof.

34 (3) A municipal corporation or people's utility district shall be given preference on any project  
35 in the issuance of a license, upon condition that the municipal corporation or people's utility district  
36 exercising such preference right shall be required to reimburse the holder of a preliminary permit  
37 for all reasonable actual expenditures made by the holder upon the project described or referred to  
38 therein.

39 **SECTION 1652.** ORS 543.265 is amended to read:

40 543.265. The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
41 impose as a condition to any water right permit to appropriate water for hydroelectric purposes  
42 granted under ORS 537.211 or any license granted under ORS 543.260 that the person operating the  
43 hydroelectric project shall, during the operational lifetime of the project, perform or allow the [*State*  
44 *Department of Fish and Wildlife*] **department** to perform, any tests or studies required by the de-  
45 partment to evaluate the effectiveness of measures for the protection of fish. The scope and cost of

1 these studies will be negotiated between the [*State Department of Fish and Wildlife*] **department** and  
2 the operator.

3 **SECTION 1653.** ORS 543.270 is amended to read:

4 543.270. In issuing preliminary permits, and in issuing licenses where no preliminary permit is  
5 held by an applicant for a license, preference shall be given to the application which appears to the  
6 [*Water Resources Commission*] **Oregon Natural Resources Commission** to be best adapted to  
7 conserve and utilize the water power involved. However, any application for the use of water made  
8 by any municipal corporation of this state under any law of the state, before a preliminary permit  
9 is issued, or before a license is issued when no preliminary permit upon the proposed project has  
10 been issued, shall always have preference.

11 **SECTION 1654.** ORS 543.280 is amended to read:

12 543.280. (1) Any person who applies to the Federal Energy Regulatory Commission for a pre-  
13 liminary permit to operate a hydroelectric project shall, at the same time, apply for a state prelim-  
14 inary permit. An applicant for a state preliminary permit for a new hydroelectric project shall  
15 submit to the [*Water Resources Commission*] **Oregon Natural Resources Commission** a complete  
16 copy of any application for the project filed with the Federal Energy Regulatory Commission or  
17 other federal agency. For preliminary permits, if the copy of the federal application is filed with the  
18 **Oregon Natural Resources Commission** at the same time it is filed with the federal agency, at the  
19 **Oregon Natural Resources Commission's** discretion, such copy may fulfill the requirements of ORS  
20 543.210, except for the fee requirement in ORS 543.210 (4).

21 (2) An applicant for a preliminary permit or license for a project or for a permit to appropriate  
22 water for power purposes shall pay to the state a project fee based on the capacity of the project  
23 to cover costs of recording, publishing notices, conducting the hearing required by ORS 543.225 and  
24 making investigations necessary to determine whether a permit should be granted.

25 (3) The amount of the total project fee required under subsection (2) of this section shall be:

26 (a) For a project of less than 100 theoretical horsepower, \$1,000.

27 (b) For any project of 100 theoretical horsepower or more, an amount equal to \$5,000 plus \$1,000  
28 per megawatt for each megawatt of capacity in excess of five megawatts, up to a maximum of  
29 \$100,000.

30 (4) Except for projects of less than 100 theoretical horsepower, the project fee required under  
31 subsection (2) of this section shall be payable in advance before each of four stages of project review  
32 as established by rule by the [*Water Resources Commission*] **Oregon Natural Resources Commis-**  
33 **sion**. The payment schedule shall not require the applicant to pay more than \$2,500 of the project  
34 fee at the first stage of project review or more than 50 percent of the total project fee in the first  
35 two stages of the project review. For a project of less than 100 theoretical horsepower, the applicant  
36 shall pay 50 percent of the fee at the time of filing the application for a preliminary permit or ap-  
37 plication for a permit to appropriate water for power purposes and the remaining 50 percent before  
38 the commission issues a license or a water right permit. A person may withdraw an application for  
39 a hydroelectric project after any stage of project review without further payment of fees under this  
40 section.

41 (5) In addition to the project fee required under subsection (2) of this section, any applicant for  
42 a project to be sited at a location where anadromous fish or threatened or endangered species are  
43 present shall pay a surcharge of 30 percent of the total project fee. The surcharge shall be collected  
44 in conjunction with the project fee at each stage of the project review.

45 (6) The **Oregon Natural Resources Commission** shall provide an applicant a statement itemiz-

1 ing the staff time, resources and costs expended to review the application at each project stage.  
2 The statement shall include the costs expended by the [*State Department of Fish and Wildlife and*  
3 *the Water Resources Department*] **Oregon Department of Natural Resources that are** specific to  
4 the project.

5 **SECTION 1655.** ORS 543.290 is amended to read:

6 543.290. The applicant for a license shall submit to and file with the [*Water Resources Commis-*  
7 *sion*] **Oregon Natural Resources Commission:**

8 (1) All maps, plans, specifications and cost estimates as may be required by the commission for  
9 a full understanding of the proposed project. The maps, plans and specifications, when approved by  
10 the commission, shall become a part of the license, if one is issued upon the application, and there-  
11 after no change shall be made in any such maps, plans and specifications until the proposed change  
12 has been approved by the commission. When a proposed change is approved by the commission, the  
13 changes shall become a part of the license.

14 (2) Any further statements and data as may be required by the commission concerning the pro-  
15 posed project, the market to be served, the financial responsibility of the applicant, the plan of fi-  
16 nancing and any other matters deemed material by the commission.

17 **SECTION 1656.** ORS 543.300 is amended to read:

18 543.300. Any license issued under ORS 543.010 to 543.610 shall take into consideration, and shall  
19 be on, the following conditions:

20 (1) That the proposed project shall be such as, in the judgment of the [*Water Resources Com-*  
21 *mission*] **Oregon Natural Resources Commission**, is well adapted to the development and utiliza-  
22 tion of the water power involved.

23 (2) That the licensee shall construct and build the project according to the maps, plans and  
24 specifications filed with and approved by the commission, and within the time fixed by the license  
25 or by any lawful extension thereof.

26 (3) The operations of the licensee so far as they affect the use, storage and discharge from  
27 storage of waters affected by the license, shall at all times be controlled by such reasonable rules  
28 as the commission may prescribe for the protection of life, health and property, and in the interest  
29 of the fullest practicable conservation and utilization of such waters for power purposes and for  
30 other beneficial public uses, including recreational purposes. The licensee shall release water from  
31 the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified  
32 period of time, as the commission may prescribe.

33 (4) That the licensee will maintain the project, and each part thereof, in good order and repair  
34 and in efficient operation, for the development and transmission of electricity to its reasonable ca-  
35 pacity; shall make all necessary renewals and replacements as required; and shall maintain and op-  
36 erate the project, and all parts thereof, conformably to the rules of the commission not inconsistent  
37 with ORS 543.010 to 543.610.

38 (5) That the licensee will pay to the state annually not more than \$1 for each horsepower cov-  
39 ered by the license. This sum shall constitute a first lien upon the project, which lien may be en-  
40 forced by suit in equity or other appropriate proceeding, or payment thereof may be enforced by the  
41 state in an action for debt. Payment of such license fees may be waived by the commission during  
42 all or any part of the period of construction. The fees need not be uniform throughout the entire  
43 period of the license, but may be for different amounts for different periods. The amount of the li-  
44 cense fees, within the minimum and maximum limits herein specified, shall be determined by the  
45 commission and expressed in the license.

1 (6) Other and further conditions not inconsistent with ORS 543.010 to 543.610 as the commission  
2 may require in the public interest.

3 (7) In issuing a license for a minor project of not more than 100 horsepower the commission may  
4 waive all or any of the conditions and requirements of ORS 543.010 to 543.610 except the period for  
5 which a license may be issued, and the annual charge as determined by the commission under sub-  
6 section (5) of this section. In issuing licenses for projects in excess of 100 horsepower for which the  
7 applicants are required to secure permits and licenses from the United States as a condition  
8 precedent to the construction of the projects, the commission may waive and modify such of the  
9 terms, conditions and requirements of ORS 543.010 to 543.610, except the period for which a license  
10 may be issued and the annual charge as determined by the commission under subsection (5) of this  
11 section, as the commission, by order, after full investigation and public hearing, shall find to make  
12 impracticable the construction of such projects. During the time that a licensee is not a public  
13 utility and does not sell electric energy, and does not sell bonds or other evidences of debt against  
14 the licensee's plant, the commission may waive the accounting and amortization requirements of  
15 ORS 543.010 to 543.610, even where the project involved exceeds 100 horsepower.

16 (8) Subsection (5) of this section does not apply to a water right reauthorized pursuant to ORS  
17 chapter 543A.

18 **SECTION 1657.** ORS 543.410 is amended to read:

19 543.410. (1) The licensee shall commence the construction of the project works within the time  
20 fixed in the license, which shall not be more than two years from the date thereof, shall thereafter  
21 in good faith and with due diligence prosecute such construction, and shall, within the time fixed  
22 in the license, complete and put into operation such part of the ultimate development as the [*Water*  
23 *Resources Commission*] **Oregon Natural Resources Commission** considers necessary to supply the  
24 reasonable needs of the then available market, and shall, from time to time thereafter construct such  
25 portion of the balance of the development as the commission directs, so as to supply adequately the  
26 reasonable market demands until development is completed.

27 (2) The period for commencement of construction may be extended once but not longer than two  
28 additional years, and the period for the completion of construction carried on in good faith and with  
29 reasonable diligence may be extended by the commission when not incompatible with the public in-  
30 terests.

31 (3) If the licensee does not commence actual construction of the project works or of any speci-  
32 fied part of the project works, within the time prescribed in the license or as extended by the com-  
33 mission, then, after due notice given, the license shall, as to the project works or part of the project  
34 works, be terminated upon written order of the commission.

35 **SECTION 1658.** ORS 543.420 is amended to read:

36 543.420. If construction of a project under license has been begun but has not been completed  
37 within the time prescribed in the license or in any lawful extension thereof, then the Attorney  
38 General, upon request of the [*Water Resources Commission*] **Oregon Natural Resources Commis-**  
39 **sion**, shall institute proceedings in the circuit court for the county in which some part of the project  
40 is situated, for termination of the rights of the licensee under the license, the sale of the property  
41 embraced in the project, and for such other relief as the case may demand. Any judgment or decree  
42 entered in the proceeding shall provide for distribution of the proceeds of the sale to the parties  
43 equitably entitled thereto. The purchaser at any such sale shall take the property subject to all the  
44 terms and conditions of the license under which construction was begun, except insofar as they may  
45 be modified by the commission.

1        **SECTION 1659.** ORS 543.430 is amended to read:

2        543.430. The Attorney General shall, upon request of the [*Water Resources Commission*] **Oregon**  
3 **Natural Resources Commission**, institute proceedings in the circuit court for the county in which  
4 any project, or the major part of a project is situated, after the project has been completed, for the  
5 purpose of revoking for violation of its terms any license issued under ORS 543.010 to 543.610, or  
6 for the purpose of correcting or remedying by injunction, mandamus or other appropriate writ or  
7 decree, any act by the licensee in violation of the terms of those sections, or of any rule or order  
8 of the commission. The court shall have jurisdiction of the proceedings and may issue and execute  
9 all necessary process to compel compliance with the terms of any license, the terms of ORS 543.010  
10 to 543.610, the lawful orders and rules of the commission. If a decree revoking a license is entered,  
11 the court may sell the whole, or any part, of a project under the license; wind up the business of  
12 the licensee conducted in connection with the project; distribute the proceeds to the parties  
13 equitably entitled thereto; and make and enforce such further orders and decrees as equity and  
14 justice may require. At any such sale the purchaser shall take the rights and privileges belonging  
15 to the licensee and shall perform all the duties of the licensee under the license. The remedies  
16 provided by this section are in addition to the remedies otherwise provided by ORS 543.010 to  
17 543.610.

18        **SECTION 1660.** ORS 543.440 is amended to read:

19        543.440. No voluntary transfer of any license or any rights under a license or of any property  
20 acquired, constructed or operated pursuant to license issued under ORS 543.010 to 543.610 shall be  
21 made without written approval of the [*Water Resources Commission*] **Oregon Natural Resources**  
22 **Commission**. Any successor or assignee of any licensee under any project acquired, constructed or  
23 operated by licensee, whether by voluntary transfer approved by the commission or sale upon fore-  
24 closure, execution or otherwise, shall be subject to all the terms and conditions of the license and  
25 of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee  
26 was the original licensee thereunder. Any mortgage, deed of trust, or other lien suffered or created  
27 upon any such project shall be subject and subordinate to all the terms and conditions of ORS  
28 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary  
29 or involuntary, to the state or any municipal corporation thereof, and upon such transfer the license  
30 shall terminate.

31        **SECTION 1661.** ORS 543.530 is amended to read:

32        543.530. (1) No licensee shall issue any share of corporate stock, or any bond, or other evidence  
33 of interest in or indebtedness of the licensee, or assume any obligation or liability as lessor, lessee,  
34 guarantor, indorser, surety or otherwise, in respect of the corporate shares, bonds or other evidence  
35 of indebtedness of any person in connection with the financing, acquisition, construction, mainte-  
36 nance or operation of any project, unless and until, and then only to the extent that, upon applica-  
37 tion by the licensee, and after investigation by the [*Water Resources Commission*] **Oregon Natural**  
38 **Resources Commission** of the purposes and uses of the proposed issue and the proceeds thereof,  
39 or of the proposed assumption of obligation or liability, the commission, by order, authorizes the  
40 issue or assumption. The commission shall make the order only if the commission finds that the issue  
41 or assumption:

42        (a) Is for some lawful object of the licensee, compatible with the public interest, and is necessary  
43 to, or appropriate for, the proper performance by the licensee of the terms and conditions of the li-  
44 cense and will not impair the licensee's ability to perform the terms and conditions; and

45        (b) Is reasonably necessary and appropriate for such purposes.

1 (2) The commission may grant or deny the application to authorize the issue or assumption, or  
2 grant the same in part and deny in part, and may modify the provisions of any previous order and  
3 prescribe such terms and conditions as the commission considers necessary or appropriate in the  
4 premises. Every such application shall be made in such form and contain such data as the commis-  
5 sion by rule may prescribe.

6 (3) No licensee or any director, officer, attorney or agent thereof shall knowingly assent to or  
7 concur in any issue or assumption contrary to the provisions of this section, or the orders of the  
8 commission made pursuant to this section or ORS 543.540.

9 **SECTION 1662.** ORS 543.540 is amended to read:

10 543.540. No bonds, notes or other obligations or securities or corporate stock shall be issued in  
11 connection with the financing, construction or acquisition of any project or part of a project, under  
12 a license issued pursuant to ORS 543.010 to 543.610, except for cash or property. If issued for  
13 property, the price or value at which the property is to be acquired by the licensee and made a part  
14 of any such project must be submitted to and approved by the [*Water Resources Commission*] **Oregon**  
15 **Natural Resources Commission** before it is purchased or acquired. All corporate shares issued in  
16 connection with any such project shall have a nominal or par value. All bonds, notes or other obli-  
17 gations or securities, and all shares of corporate stock issued or sold by any licensee in connection  
18 with the acquisition, construction or financing of any project, or part of a project, shall be issued  
19 or sold or used in the purchase or acquisition of property at the full face or nominal value thereof,  
20 unless the commission consents to and approves the sale for cash, or the use of cash in the purchase  
21 or acquisition of property at a discount from the face or nominal value of the property. Any discount  
22 so approved and consented to shall be considered a part of the cost of financing.

23 **SECTION 1663.** ORS 543.550 is amended to read:

24 543.550. No lien for labor, services, materials, machinery or equipment shall exist or be acquired  
25 or enforced upon any property acquired, constructed or made a part of any project under license  
26 issued pursuant to ORS 543.010 to 543.610. No property shall be put into or made part of any such  
27 project unless owned by the licensee free and clear of all liens and claims whatsoever, except a lien  
28 created by the licensee upon the whole property embraced in the project by mortgage or deed of  
29 trust, to the end that the entire property embraced in the project be kept and maintained as an in-  
30 divisible whole. The mortgage or deed of trust may include other property. Any voluntary sale or  
31 any sale upon a judgment of foreclosure, execution or otherwise, shall be of the whole property  
32 embraced in the project unless the [*Water Resources Commission*] **Oregon Natural Resources**  
33 **Commission**, by an order in writing, consents to and approves of a sale of a part of the property.  
34 If less than the whole of any property embraced in a project is sold with the consent and approval  
35 of the commission, the commission shall determine at the time of the sale the actual net investment  
36 in the part sold, as well as the actual net investment in the part remaining unsold.

37 **SECTION 1664.** ORS 543.560 is amended to read:

38 543.560. Before entering upon the work of construction or acquisition of any project, the  
39 licensee shall execute to the state a bond, with good and sufficient sureties or an irrevocable letter  
40 of credit issued by an insured institution, as defined in ORS 706.008, in either case, to be approved  
41 by the [*Water Resources Commission*] **Oregon Natural Resources Commission**, to the effect that  
42 the licensee shall promptly make payment to all persons supplying labor, services, material, ma-  
43 chinery or equipment for the prosecution of the work, and all amounts due the State Industrial Ac-  
44 cident Fund from the licensee. Any person supplying the licensee with any labor, services, material,  
45 machinery or equipment for prosecution of the work who has not been paid therefor within 60 days

1 after the same has been supplied, or when payment is due according to any special agreement, may,  
2 within one year after any payment has become due, bring an action against the licensee, and the  
3 sureties upon the bond, or the letter of credit issuer for payment of the amount due to the person,  
4 and prosecute the same to final judgment and execution. The action shall be brought in the name  
5 of the state upon the relation of the person to whom payment is due. The state, at the request of  
6 the State Accident Insurance Fund Corporation may prosecute an action to judgment and execution  
7 against the licensee and the sureties upon the bond or letter of credit for all sums due the State  
8 Industrial Accident Fund.

9 **SECTION 1665.** ORS 543.610 is amended to read:

10 543.610. (1) Upon not less than two years' notice in writing the state, or any municipality  
11 thereof, shall have the right at any time to take over and thereafter to maintain and operate any  
12 project constructed under a license pursuant to ORS 543.010 to 543.610, upon payment of just com-  
13 pensation, including such reasonable damages, if any, to valuable, serviceable and dependent prop-  
14 erty of the holder of the license, not taken over, as may be caused by the severance therefrom of  
15 the property taken, and shall assume all contracts entered into by the licensee which are required  
16 to have and do have the express approval of the [*Water Resources Commission*] **Oregon Natural**  
17 **Resources Commission**. If the sum to be paid cannot be agreed upon by the holder of the license  
18 and the municipality or the state, as the case may be, it shall be determined in a proceeding in eq-  
19 uity instituted by the state or municipality, as the case may be, in the circuit court of the county  
20 in which the major part of the project is located.

21 (2) There is also expressly reserved to the state, and any municipality thereof, the right to take  
22 over all or any part of any project by condemnation proceedings as may be provided by the laws  
23 of Oregon or the charter of any such municipality.

24 **SECTION 1666.** ORS 543.662 is amended to read:

25 543.662. A district may contract with a private person to enlarge or modify the district's water  
26 system for the purpose of generating hydroelectric power. The district shall retain sufficient benefit  
27 and interest in, and control of a joint project as necessary for the project to be considered a district  
28 project. A district and a private person developing a joint project under ORS 543.650 to 543.685  
29 must comply with the rules adopted by the [*Water Resources Commission*] **Oregon Natural Re-**  
30 **sources Commission** under ORS 543.664.

31 **SECTION 1667.** ORS 543.664 is amended to read:

32 543.664. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall es-  
33 tablish rules necessary to carry out the provisions of ORS 543.662. The rules shall include the  
34 amount of control over and interest in a joint project a district must retain in order to receive the  
35 benefit of the municipal preference and proceed under the municipal application process set forth  
36 in ORS chapter 537.

37 **SECTION 1668.** ORS 543.710 is amended to read:

38 543.710. Every claimant other than a licensee under ORS 543.010 to 543.610 shall on or before  
39 January 1 of each year pay to the state in advance an annual fee based upon the theoretical water  
40 horsepower claimed under each separate claim to water, graduated as follows: Thirty cents for each  
41 theoretical water horsepower or fraction thereof up to and including 50 and 28 cents for each the-  
42 oretical water horsepower or fraction thereof in excess of 50. However, upon filing the statement  
43 provided in ORS 543.720, the United States or the state, claiming the right to the use of water to  
44 any extent for the generation of power, or any other claimant to the right to use water for the  
45 generation of 10 theoretical water horsepower or less, shall be exempted from the payment of all



1 fees provided for in this section. Four cents of each 28 cents collected as an annual fee under this  
 2 section shall be deposited [*to the Water Resources Department Hydroelectric Fund and disbursed to*  
 3 *the Department of Environmental Quality.*] **in the Oregon Natural Resources Fund. Moneys de-**  
 4 **posited in the fund under this section are continuously appropriated to the Oregon Depart-**  
 5 **ment of Natural Resources for purposes described in ORS 536.015.**

6 **SECTION 1669.** ORS 543.720 is amended to read:

7 543.720. (1) The fees provided for in ORS 543.710 shall be paid to the [*Water Resources Com-*  
 8 *mission*] **Oregon Natural Resources Commission** in advance, and shall be accompanied by a  
 9 written statement showing the extent of the claim. The statement shall set forth the name and ad-  
 10 dress of the claimant; the name of the stream from which the water is appropriated or claimed for  
 11 power development; a description of the 40 acres, or smallest legal subdivision in which the point  
 12 of diversion and point of return are located; the date of the right as claimed; the maximum amount  
 13 of water claimed expressed in cubic feet per second of time; the total average fall utilized under  
 14 such claim; the manner of developing power; and the use to which the power is applied. If the reg-  
 15 ular flow is supplemented by water stored in a reservoir, the location of the reservoir, its capacity  
 16 in acre-feet and the stream from which it is filled and fed, should be given, also the date of the right  
 17 as claimed, for storage purposes.

18 (2) If any claimant fails or neglects to file the statement or to pay the fees within the time  
 19 specified, the fees due and payable shall be the amount specified in ORS 543.710 increased 25 per-  
 20 cent. The state shall have a preference lien for the fees due, together with interest at the rate of  
 21 10 percent per annum from date of delinquency, upon the property of the claimant used, or necessary  
 22 for use, in the development of the right or claim, together with any improvements erected on the  
 23 property for such development. Upon notice from the commission, the Attorney General shall fore-  
 24 close the lien and collect the amount due, as provided in this section, in the same manner as other  
 25 liens on real property are foreclosed.

26 (3) The filing of a claim to water in excess of the amount to which the claimant is legally enti-  
 27 tled shall not operate to vest in the claimant any right to the use of such excess water, nor shall  
 28 the payment of the annual license fee provided for in ORS 543.710 operate to vest in any claimant  
 29 any right to the use of such water beyond the amount to which claimant is legally entitled. The  
 30 filing of any such claim to water shall be conclusive evidence as to the abandonment by the claimant  
 31 of all rights to water for power purposes in excess of the claim as filed.

32 (4) The amount of theoretical water horsepower upon which fees shall be paid under the pro-  
 33 visions of ORS 543.710 and 543.720 shall be computed by multiplying the maximum amount of water  
 34 claimed, expressed in cubic feet per second, by the average total fall utilized, expressed in feet, and  
 35 dividing the product by 8.8.

36 **SECTION 1670.** ORS 543.730 is amended to read:

37 543.730. (1) Failure of any claimant for a period of five successive years ending after August 20,  
 38 1957, to file the written statement showing the extent of the claim as required by ORS 543.720, or  
 39 failure of any claimant for a period of five successive years ending after August 20, 1957, to pay the  
 40 annual license fee as required by ORS 543.710, shall be conclusive evidence of the abandonment by  
 41 the claimant of the claim and of all right to water for power purposes in connection with such claim.

42 (2) When a claim is abandoned under the provisions of subsection (1) of this section, or when-  
 43 ever a claimant has voluntarily authorized, in writing, the cancellation of a claim or the water right  
 44 in connection therewith, the [*Water Resources Commission*] **Oregon Natural Resources Commis-**  
 45 **sion** shall:

1 (a) Cancel the claim on the records of the [*Water Resources Department*] **Oregon Department**  
2 **of Natural Resources.**

3 (b) Cancel any permit to appropriate water or any water right certificate issued in connection  
4 with such claim.

5 **SECTION 1671.** ORS 543.765 is amended to read:

6 543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder of a water right may  
7 apply to the [*Water Resources Department*] **Oregon Department of Natural Resources** for a cer-  
8 tificate to use water for hydroelectric purposes within an artificial delivery system under the  
9 applicant's existing water right. If the proposed hydroelectric project qualifies for a Federal Energy  
10 Regulatory Commission exemption, the applicant may use the expedited application process under  
11 this section.

12 (2) An application, which shall be on a form provided by the department, for a hydroelectric  
13 certificate under this section must include:

14 (a) The certificate number, or decree reference if no confirming certificate has been issued, of  
15 the applicant's existing water right associated with the proposed hydroelectric project.

16 (b) A copy of a Federal Energy Regulatory Commission exemption application, if applicable.

17 (c) A proposed schedule of annual water use and an estimate of the maximum power generation  
18 of the proposed hydroelectric project.

19 (d) A statement by the applicant that the amount of water used by the proposed hydroelectric  
20 project will not exceed the amount authorized and used under the applicant's existing water right  
21 for beneficial use without waste.

22 (e) A statement that the applicant owns or otherwise controls the water conveyance system.

23 (f) An application processing fee of \$500. The department shall deposit fees collected under this  
24 section into the [*Water Resources Department Hydroelectric Fund established pursuant to ORS*  
25 *536.015.*] **Oregon Natural Resources Fund. Moneys deposited in the fund under this paragraph**  
26 **are continuously appropriated to the department for the purpose of carrying out the duties,**  
27 **functions and powers of the department as prescribed by section 1 (9) of this 2011 Act.**

28 (g) A map or drawing and all other data concerning the proposed hydroelectric project, as may  
29 be prescribed by the department. The map or drawing must be of sufficient quality and scale to es-  
30 tablish the location of the existing point of diversion and the proposed location of the hydroelectric  
31 facility.

32 (h) If the water to be used for the proposed hydroelectric project is delivered by a public entity  
33 other than the applicant for a certificate under this section, a statement from that entity that the  
34 entity will be able to deliver water as described in the application.

35 (i) Evidence that the water has been used over the past five years according to the terms and  
36 conditions of the applicant's existing water right described in paragraph (a) of this subsection.

37 (3) If an applicant provides the information required by subsection (2) of this section:

38 (a) The [*Water Resources*] department shall provide notice to [*both the State Department of Fish*  
39 *and Wildlife and*] the public[,] and provide a 30-day period for public comment.

40 (b) The [*Water Resources*] department may issue a final order and certificate to use water for  
41 hydroelectric purposes upon making a final determination that the proposed hydroelectric use does  
42 not impair, or is not detrimental to, the public interest in the manner provided in ORS 537.170 (8).

43 (4) If the [*Water Resources*] department determines that public interest issues have been identi-  
44 fied, the department shall issue a final order denying the application. The department shall also is-  
45 sue a final order denying the application if the department identifies issues related to the public

1 interest. If the applicant does not appeal the final order as provided in ORS chapter 183 and, within  
2 one year of the department's final order denying the applicant's application, files an application with  
3 the department for a preliminary permit to operate a hydroelectric project as provided in ORS  
4 537.130 and 543.210, the applicant shall receive a credit toward the applicant's application fees in  
5 the amount of \$500.

6 (5) At a minimum, a certificate issued under this section must contain the following conditions:

7 (a) Fish screens, by-pass devices and fish passages as required by the [*State Department of Fish*  
8 *and Wildlife*] **department**.

9 (b) That use of water be limited to periods when the applicant's existing water right is put to  
10 beneficial use without waste and that the amount used is not greater than the quantity of water  
11 diverted to satisfy the authorized specific use under the existing water right described in subsection  
12 (2)(a) of this section.

13 (c) That use of water be limited by rate, duty, season and any other limitations of the applicant's  
14 existing water right described in subsection (2)(a) of this section.

15 (d) That the applicant measure and report the quantity of water diverted.

16 (e) Any other conditions the [*Water Resources*] department deems necessary to protect the public  
17 interest.

18 (f) That the restrictions established in ORS 543.660 shall apply as conditions of use to a certif-  
19 icate issued under this section to a district as defined in ORS 543.655.

20 (g) That a certificate issued under this section shall be invalidated upon a change in the point  
21 of diversion of the existing water right described in subsection (2)(a) of this section.

22 (h) The [*Water Resources*] department shall conduct a review of certificates issued under this  
23 section and shall issue a final order and a superseding certificate that corresponds to any changes  
24 or adjustments made to the applicant's existing water right described in subsection (2)(a) of this  
25 section.

26 (i) That the right to use water under a certificate issued under this section is invalidated if the  
27 Federal Energy Regulatory Commission exemption related to the certificate is canceled or invali-  
28 dated.

29 (6) A certificate issued under this section may not have its own priority date. The department  
30 may not regulate for or against any certificate issued under this section based on the priority date  
31 of the certificate.

32 (7) A certificate issued under this section does not grant a right to divert water for hydroelec-  
33 tric purposes.

34 (8) A certificate issued under this section may not be included in the determination of injury to  
35 other water rights pursuant to ORS chapter 540.

36 (9) A certificate issued under this section is subject to review 50 years after the date of issuance  
37 and pursuant to the terms described in this section.

38 (10) Failure to fully develop and put to use a certificate issued under this section within five  
39 years of issuance invalidates the hydroelectric certificate.

40 (11) If a certificate under this section is issued, the certificate holder must pay fees consistent  
41 with the fees described in ORS 543.078. Failure to pay a required fee invalidates a certificate issued  
42 under this section.

43 (12) The department shall issue invoices for fees required under this section, and the state shall  
44 have a preference lien for delinquent fees, as provided in ORS 543.082.

45 (13) An applicant for a certificate issued under this section must provide evidence of a Federal

1 Energy Regulatory Commission exemption before a certificate can be issued, if applicable.

2 (14) Nothing in this section shall alter the preference of municipalities in ORS 543.260 (3) and  
3 543.270.

4 **SECTION 1672.** ORS 543.990 is amended to read:

5 543.990. (1) Violation of ORS 543.530 (3) is punishable, upon conviction, by a fine of not more  
6 than \$5,000, or by imprisonment for not more than one year, or both.

7 (2) Violation of [*any of the provisions of ORS 543.010 to 543.610, or any of the conditions made*  
8 *a part of any license issued under ORS 543.010 to 543.610, or any subpoena of the Water Resources*  
9 *Commission or of an administrative law judge or any person designated by the commission to take*  
10 *testimony, any lawful order or rule of the commission*] **ORS 543.010 to 543.610, a condition made a**  
11 **part of a license issued under ORS 543.010 to 543.610, an order or rule of the Director of the**  
12 **Oregon Department of Natural Resources or the Oregon Natural Resources Commission or**  
13 **a subpoena issued by the director, the commission, an administrative law judge or other**  
14 **person designated by the director or commission to take testimony** is a Class B misdemeanor.

15 (3) Any person who willfully and knowingly gives false testimony concerning a material matter  
16 in [*any*] a hearing before the **director**, commission, an administrative law judge or [*any person des-*  
17 *ignated by the commission*] **a person designated by the director or commission** to take testimony,  
18 or in [*any*] a deposition or affidavit to be used in a matter pending before the **director**, commission  
19 or administrative law judge, or **who** willfully and knowingly verifies a false statement or report filed  
20 with the **director or** commission, [*shall be*] **is** guilty of perjury and may be prosecuted and punished  
21 as otherwise provided by law for the prosecution and punishment of perjury.

22 **SECTION 1673.** ORS 543A.005 is amended to read:

23 543A.005. As used in ORS 543A.005 to 543A.415:

24 [(1) "*Commission*" means the Water Resources Commission.]

25 [(2) "*Department*" means the Water Resources Department.]

26 [(3) "*Director*" means the Water Resources Director.]

27 [(4)] (1) "Federally licensed project" means an existing project licensed under ORS 543.260 that  
28 is also licensed by and has been or will be reviewed by the Federal Energy Regulatory Commission  
29 under the Federal Power Act, as amended.

30 [(5)] (2) "Project" has the meaning given in ORS 543.010.

31 [(6)] (3) "State project" means an existing project for which the authority to operate is a time-  
32 limited water right for the use of water for hydroelectric purposes and that is not licensed by the  
33 Federal Energy Regulatory Commission. "State project" includes a project granted an exemption by  
34 the Federal Energy Regulatory Commission.

35 [(7)] (4) "Team" means a Hydroelectric Application Review Team established pursuant to ORS  
36 543A.035, 543A.075 or 543A.300.

37 [(8)] (5) "Water right" includes the use of water for hydroelectric purposes pursuant to a license  
38 issued under ORS 543.260.

39 **SECTION 1674.** ORS 543A.020 is amended to read:

40 543A.020. The Legislative Assembly declares that it is the policy of the State of Oregon:

41 (1) To reauthorize the use of water by existing projects provided that such projects meet the  
42 standards established in ORS 543A.025, are consistent with other applicable state laws and will not  
43 impair or be detrimental to the public interest.

44 (2) To recognize that existing projects have resulted in both benefits and costs to society, and  
45 that the opportunity exists on reauthorization to promote the public benefits while minimizing the

1 public costs.

2 (3) To maintain or enhance the natural resources of the state and to protect the natural re-  
3 sources of the state from adverse impacts caused by the continued existence of a project.

4 (4) To protect the health and safety of the residents of the state.

5 (5) To require the [*Water Resources Department*] **Oregon Department of Natural Resources**  
6 and other affected state agencies to conduct a coordinated review of projects seeking reauthori-  
7 zation in order to develop a unified state position in any local, state or federal proceedings related  
8 to the reauthorization of hydroelectric projects.

9 **SECTION 1675.** ORS 543A.025 is amended to read:

10 543A.025. (1) Following the process set forth in ORS 543A.005 to 543A.410, the [*Water Resources*  
11 *Director*] **Director of the Oregon Department of Natural Resources** shall issue a water right for  
12 continued operation of an existing hydroelectric project upon a finding that the proposed use will  
13 not impair or be detrimental to the public interest, considering:

14 (a) Conserving the highest use of the water for all purposes, including irrigation, domestic use,  
15 municipal water supply, power development, public recreation, protection of commercial and game  
16 fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any  
17 other beneficial use to which the water may be applied for which it may have a special value to the  
18 public.

19 (b) The maximum economic development of the waters involved.

20 (c) The control of the waters of this state for all beneficial purposes, including drainage, sani-  
21 tation and flood control.

22 (d) The amount of waters available for appropriation for beneficial use.

23 (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters  
24 involved.

25 (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this  
26 state, and the means necessary to protect such rights.

27 (g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to  
28 537.534.

29 (2) In determining whether the proposed use will impair or be detrimental to the public interest,  
30 the following minimum standards shall apply:

31 (a) For impacts to fish and wildlife resources attributable to the project, the [*Water Resources*  
32 *Department*] **Oregon Department of Natural Resources** shall require:

33 (A) Mitigation for:

34 (i) Adverse impacts that occur due to new construction or operational changes to the project;  
35 and

36 (ii) Ongoing adverse impacts existing at the time of reauthorization; and

37 (B) Appropriate measures to promote restoration and rehabilitation of fish and wildlife resources  
38 to support goals expressed in statute or in standards, plans, guidelines and policies adopted by [*rule*  
39 *by the State Fish and Wildlife Commission*] **the Oregon Natural Resources Commission by rule.**

40 (b) All conditions included in a water right certificate issued to reauthorize the use of water for  
41 hydroelectric purposes shall be consistent with any plan adopted by the Pacific Northwest Electric  
42 Power and Conservation Planning Council for the protection, mitigation and enhancement of the fish  
43 and wildlife resources of the region.

44 (c) The project shall comply with water quality standards adopted by the Environmental Quality  
45 Commission.

1 (d) The project shall not endanger the public health and safety. The project shall be operated  
2 in a manner that provides practical protection from vulnerability to seismic and geologic hazards.

3 (e) Wetland resources shall be protected, maintained or enhanced. The [*Water Resources*] de-  
4 partment shall impose conditions on reauthorization consistent with this paragraph after considering  
5 impacts to wetland resources associated with the project, including wetlands lost or created by  
6 construction and operation of the project, and mitigation proposed by the applicant. Reauthorization  
7 that results in a net loss to existing wetland resources shall not be approved.

8 (f) Other resources in the project vicinity including recreational opportunities, scenic and aes-  
9 thetic values, historic, cultural and archaeological sites, and botanical resources shall be protected,  
10 maintained or enhanced. The department shall impose conditions on reauthorization consistent with  
11 this paragraph after considering impacts to such resources associated with the project, including  
12 resources lost or created by construction and operation of the project, and mitigation proposed by  
13 the applicant. If the project results in a net loss to existing resources, reauthorization shall not be  
14 approved.

15 (3) In determining the mitigation, restoration and rehabilitation measures required under sub-  
16 section (2) of this section, the [*Water Resources*] department shall consider historic impacts, ongoing  
17 impacts and projected future impacts of the project and the existence and success of past mitigation  
18 measures associated with the project. Required mitigation, restoration and rehabilitation may in-  
19 clude measures to restore or replace the benefits of historic resource conditions in order to meet  
20 resource goals contained in standards, plans, guidelines and policies adopted by [*rule by the State*  
21 *Fish and Wildlife Commission*] **the Oregon Natural Resources Commission by rule** and in rules  
22 adopted by other state agencies with regulatory or advisory responsibility for the project.

23 (4) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall adopt all  
24 rules necessary to carry out the policy set forth in ORS 543A.020 and to implement the minimum  
25 standards set forth in subsection (2) of this section. In the absence of implementing rules, the de-  
26 partment may act on applications for reauthorization of a project subject to the standards set forth  
27 in this section.

28 (5) As used in this section, “mitigation” means addressing the adverse effects of a project pro-  
29 posed for reauthorization by considering, in the following order of priority:

30 (a) Avoiding the impact altogether by not taking a certain development action or parts of that  
31 action;

32 (b) Minimizing impacts by limiting the degree or magnitude of the development action and its  
33 implementation;

34 (c) Rectifying the impact by repairing or rehabilitating the affected environment;

35 (d) Reducing or eliminating the impact over time by preservation or maintenance operations  
36 during the life of the development action by monitoring and taking appropriate corrective measures;  
37 and

38 (e) Compensating for the impact by replacing or providing comparable substitute resources or  
39 environments.

40 **SECTION 1676.** ORS 543A.030 is amended to read:

41 543A.030. (1) Not later than three years before the expiration of a water right for a state  
42 project, the [*Water Resources Department*] **Oregon Department of Natural Resources** shall notify  
43 the project owner of the expiration of the water right and request that the owner advise the de-  
44 partment whether the owner intends to seek reauthorization of the water right for the state project.

45 (2) If the owner does not intend to seek reauthorization, the owner shall, within 90 days after

1 receiving notice under subsection (1) of this section, inform the department of the disposition of the  
2 state project.

3 (3) If the owner intends to seek reauthorization, the owner shall, within 90 days after receiving  
4 notice under subsection (1) of this section, submit to the department a notice of intent to file an  
5 application for reauthorization of the water right. The notice of intent shall:

6 (a) Include a statement of the applicant's intent to continue operation of the state project; and

7 (b) Describe the state project, including but not limited to the location and capacity of the state  
8 project and the identification of affected Indian tribes and local government entities.

9 (4) The department shall cause public notice to be given upon receipt of a notice of intent. The  
10 public notice shall include the date of expiration of the water right and a description of the state  
11 project.

12 (5) Only the project owner may apply to reauthorize the water right for a state project.

13 **SECTION 1677.** ORS 543A.035 is amended to read:

14 543A.035. (1) Within 60 days after submitting a notice of intent under ORS 543A.030, the appli-  
15 cant shall submit to the [*Water Resources Department*] **Oregon Department of Natural Resources**  
16 an application to reauthorize the water right for the state project on a form prescribed by the de-  
17 partment.

18 (2) The reauthorization application for a water right for the use of water for hydroelectric pur-  
19 poses shall set forth:

20 (a) The name and post-office address of the applicant;

21 (b) The location of the project by county and stream and, when appropriate, by city or nearby  
22 city;

23 (c) The amount of water in cubic feet per second;

24 (d) The theoretical water horsepower; and

25 (e) Any other information required in the application form.

26 (3) Upon receipt of a reauthorization application for the use of water for hydroelectric purposes,  
27 the [*Water Resources*] department shall convene the Hydroelectric Application Review Team for the  
28 state project. The team shall consist of representatives [*of the Water Resources Department, the De-*  
29 *partment of Environmental Quality and the State Department of Fish and Wildlife and may include a*  
30 *representative of*] **from the department who are knowledgeable about the water and fish and**  
31 **wildlife resources of this state, the Department of Environmental Quality and** any other state  
32 agency that has regulatory or advisory responsibility for the state project or a resource or hazard  
33 affected by the state project.

34 (4) Within seven days after receiving a reauthorization application under subsection (3) of this  
35 section, the [*department*] **Oregon Department of Natural Resources** shall notify any person who  
36 responded to the notice of intent and give public notice of the application in the weekly notice  
37 published by the department. The notice shall include a request for comments on the application and  
38 information pertaining to how an interested person may obtain future notices about the application  
39 and participate in the reauthorization process.

40 (5) Within 45 days after the public notice under subsection (4) of this section, any person inter-  
41 ested in the application shall request future notices about the state project and may submit written  
42 comments to the [*department*] **Oregon Department of Natural Resources.**

43 **SECTION 1678.** ORS 543A.040 is amended to read:

44 543A.040. (1) Within 60 days after the close of the period allowed for public comment under ORS  
45 543A.035, the Hydroelectric Application Review Team shall determine whether the reauthorization

1 application for the water right contains sufficient information to determine whether reauthorization  
2 of the state project will comply with ORS 543A.025.

3 (2) If the team decides that sufficient information is available to determine whether reauthori-  
4 zation of the water right for the state project will comply with ORS 543A.025, the team shall proceed  
5 with expedited processing of the reauthorization application. The team shall review the application  
6 and any public comments received on the application and prepare a draft proposed final order, in-  
7 cluding findings of fact and conclusions of law, for the water right. Upon completion of the draft  
8 proposed final order, the team shall give public notice of the draft proposed final order in the weekly  
9 notice published by the [*Water Resources Department*] **Oregon Department of Natural**  
10 **Resources**. The notice shall include a request for comments on the draft proposed final order.

11 (3) Within 60 days after the public notice under subsection (2) of this section, any person inter-  
12 ested in the draft proposed final order shall submit written comments to the team. A person who  
13 submits written comments under this subsection shall identify the provision of the draft proposed  
14 final order in question and specify why the person objects to or supports the provision. The team  
15 shall review the comments received and may revise the draft proposed final order. Unless the de-  
16 partment receives a request under subsection (4) of this section, the team shall submit a proposed  
17 final order to the department within 30 days after the close of the period for public comment on the  
18 draft proposed final order.

19 (4) If the draft proposed final order prepared by the team under subsection (2) of this section  
20 proposes to deny the application for reauthorization of the water right, the applicant may request  
21 the department to process the application in accordance with ORS 543A.045 to 543A.055. The ap-  
22 plicant shall submit a request under this subsection within the 60-day period allowed for public  
23 comment on the draft proposed final order.

24 (5) Unless the department receives a request under subsection (4) of this section, the department  
25 shall issue the proposed final order in accordance with the provisions of ORS 543A.120 to 543A.300.

26 (6) If the team determines that additional information is necessary to determine whether reau-  
27 thorization of the state project will comply with ORS 543A.025, the applicant shall comply with the  
28 process established in ORS 543A.045 to 543A.055 and 543A.120 to 543A.300.

29 **SECTION 1679.** ORS 543A.045 is amended to read:

30 543A.045. (1) If the Hydroelectric Application Review Team finds additional information is nec-  
31 essary to complete the reauthorization process, the applicant, in conjunction with the team, shall  
32 convene a public scoping meeting.

33 (2) The applicant shall be responsible for conducting the public scoping meeting. The team,  
34 federal agencies, federally recognized Indian tribes and members of the public shall be invited to  
35 participate. The purpose of the public scoping meeting shall be to allow an opportunity for the  
36 participants to review the information available and to:

37 (a) Discuss a proposed schedule for completion of the reauthorization process;

38 (b) Discuss studies and additional information that may be needed; and

39 (c) Identify other resources and other health and safety issues of the state that must be con-  
40 sidered in the reauthorization process.

41 (3) At the public scoping meeting, the team shall:

42 (a) Explain to the public the process for reauthorizing the state project; and

43 (b) Identify to the public the members of the team.

44 (4) Within 90 days after the public scoping meeting, the team shall publish notice of the avail-  
45 ability of the plan for completing the review process, including a time schedule. The plan shall be



1 developed by the [*Water Resources Department*] **Oregon Department of Natural Resources** in  
2 consultation with the applicant.

3 **SECTION 1680.** ORS 543A.055 is amended to read:

4 543A.055. (1) The Hydroelectric Application Review Team shall review the application report  
5 prepared under ORS 543A.050 and prepare a draft proposed final order approving or denying the  
6 reauthorization of the water right. The draft proposed final order shall include the findings required  
7 for a proposed final order under ORS 543A.120. Upon completion of the draft proposed final order,  
8 the [*Water Resources Department*] **Oregon Department of Natural Resources** shall give public  
9 notice of the draft proposed final order in the weekly notice published by the department. The notice  
10 shall include a request for comments on the draft proposed final order.

11 (2) Within 60 days after the public notice under subsection (1) of this section, any person inter-  
12 ested in the draft proposed final order shall submit written comments to the team.

13 (3) Within 30 days after the close of the period for public comment on the draft proposed final  
14 order, the team shall make any revisions necessary in response to comments received and submit a  
15 proposed final order to the department.

16 (4) The department shall complete the reauthorization process in accordance with the provisions  
17 of ORS 543A.120 to 543A.300.

18 **SECTION 1681.** ORS 543A.060 is amended to read:

19 543A.060. (1) For a federally licensed project, the [*Water Resources Department*] **Oregon De-**  
20 **partment of Natural Resources** and the Hydroelectric Application Review Team shall conduct the  
21 state reauthorization review, to the maximum extent feasible, in a manner that is consistent with  
22 and avoids duplication of federal agency review. Such coordination shall include, but need not be  
23 limited to:

24 (a) Whenever feasible, elimination of duplicative application, study and reporting requirements;

25 (b) Hydroelectric Application Review Team use of information generated and documents pre-  
26 pared for the federal agency review;

27 (c) Development with the federal agency and reliance on a joint record to address applicable  
28 state standards;

29 (d) Whenever feasible, joint hearings and issuance of a state water right decision in a time frame  
30 consistent with the federal agency review; and

31 (e) To the extent consistent with applicable state standards, establishment of conditions in any  
32 state hydroelectric water right that are consistent with the conditions established, or required to  
33 be incorporated into licensing, by the federal agency.

34 (2) In order to better coordinate with the review of the project by the Federal Energy Regula-  
35 tory Commission, the team may, at the request of an applicant, make changes to the process set  
36 forth in ORS 543A.060 to 543A.115, if the changes do not diminish opportunities for public input  
37 otherwise provided by ORS 543A.060 to 543A.115.

38 **SECTION 1682.** ORS 543A.065 is amended to read:

39 543A.065. (1) Notwithstanding the expiration date set forth in a water right for an existing  
40 federally licensed project, upon the request of the holder of the water right, the [*Water Resources*  
41 *Department*] **Oregon Department of Natural Resources** may:

42 (a) Extend the expiration date of the water right, for a period of up to 15 years, to correspond  
43 to the expiration date of the federal license for the project; or

44 (b) Process an application for reauthorization of the water right prior to the actual expiration  
45 date of the water right in order to correspond with the expiration of the federal license for the

1 project.

2 (2) For a project with a water right that expires more than 15 years before the expiration date  
3 of the federal license for the project, the Hydroelectric Application Review Team shall evaluate the  
4 project under the process and standards established in ORS 543A.005 to 543A.025 and 543A.060 to  
5 543A.410 for a state project. A reauthorized water right for such a project may be for a term con-  
6 current with the federal license.

7 **SECTION 1683.** ORS 543A.071 is amended to read:

8 543A.071. (1) Not later than six years before the expiration of any state or federal hydroelectric  
9 license or state authorized water right issued to a federally licensed project, the [*Water Resources*  
10 *Department*] **Oregon Department of Natural Resources** shall notify the holder of the date of ex-  
11 piration of the right or license and shall ask that the holder advise the department whether the  
12 holder intends to seek reauthorization or relicensing.

13 (2) If the holder does not intend to seek reauthorization, the holder shall inform the department  
14 within 90 days after receiving notice under subsection (1) of this section of the proposed disposition  
15 of the federally licensed project.

16 (3) If the holder intends to seek reauthorization, the holder shall inform the department within  
17 90 days after receiving notice under subsection (1) of this section whether the holder intends to seek  
18 reauthorization of the water right concurrently with the federal relicensing.

19 (4) A holder seeking relicensing and reauthorization concurrently:

20 (a) Shall not, by applying for reauthorization, under ORS 543A.075 and in the absence of agree-  
21 ment by the holder, be deemed to have accelerated the actual expiration date of the project's water  
22 right; and

23 (b) May, upon providing concurrent notification to the Federal Energy Regulatory Commission,  
24 withdraw and void its application for reauthorization at any time prior to issuance of the final water  
25 right certificate issued by the [*Water Resources Director*] **Director of the Oregon Department of**  
26 **Natural Resources** without prejudice to its right to reapply for reauthorization of its water right.

27 (5) Any water right issued by the [*Water Resources*] department pursuant to an application filed  
28 under this chapter shall become effective upon the issuance of the new water right. The existing  
29 water right shall be canceled immediately upon issuance of the new water right.

30 (6) A holder not electing to concurrently seek reauthorization but seeking relicensing shall no-  
31 tify the [*Water Resources*] department of its position and shall indicate in the notification its plans  
32 for the project and the project's state water right.

33 (7) In the absence of agreement by the holder to pay the application fees under ORS 543A.405,  
34 and notwithstanding the provisions of ORS 543A.015, the state is not required to develop and pro-  
35 vide a coordinated state position.

36 **SECTION 1684.** ORS 543A.075 is amended to read:

37 543A.075. (1) Each person operating an existing federally licensed project and intending to apply  
38 for reauthorization shall submit to the [*Water Resources Department*] **Oregon Department of Na-**  
39 **tural Resources** a notice of intent to file an application for reauthorization of the water right for  
40 the project. If the person intends to seek reauthorization concurrently with federal relicensing, the  
41 notice of intent shall be submitted at the same time the person provides the information to the de-  
42 partment under ORS 543A.071 (3). The notice of intent shall include:

43 (a) The name and post-office address of the applicant;

44 (b) The federal project number;

45 (c) The expiration date of the federal license and state water right for the project;

1 (d) An unequivocal statement of the applicant's intention to file an application for reauthori-  
2 zation of the state water right;

3 (e) The location of the project by county and stream and, when appropriate, by city or nearby  
4 city;

5 (f) The amount of water in cubic feet per second; and

6 (g) The project capacity.

7 (2) Upon receipt of a notice of intent under subsection (1) of this section, the department shall:

8 (a) Convene the Hydroelectric Application Review Team for the project. The team shall consist  
9 of representatives [of the *Water Resources Department, the Department of Environmental Quality and*  
10 *the State Department of Fish and Wildlife*] **from the department who are knowledgeable about**  
11 **the water and fish and wildlife resources of this state and from the Department of Environ-**  
12 **mental Quality** and may include a representative of any other agency that has regulatory or advi-  
13 sory responsibility for the project or a resource or hazard affected by the project.

14 (b) Provide public notice of the receipt of the notice of intent. The public notice shall provide  
15 the date of the public scoping meeting to be conducted under ORS 543A.085 and include a de-  
16 scription of the hydroelectric project, the location of the project, the expiration dates of the water  
17 right for the project and the Federal Energy Regulatory Commission license for the project, and  
18 information pertaining to how an interested person may obtain future notices about the application  
19 and participate in the reauthorization process.

20 (3) Any person who is authorized by the Federal Energy Regulatory Commission to apply for a  
21 license for a federally licensed project may apply to reauthorize a water right for the project. The  
22 team shall process such applications under the standards and process set forth in ORS 543A.060 to  
23 543A.300 for a federally licensed project. A nonowner applicant may obtain a water right with the  
24 priority date of the expiring water right only if the applicant submits a notice of intent within six  
25 months after the owner submits a preliminary application as described in ORS 543A.080, or within  
26 30 days after June 30, 1997, whichever is later.

27 **SECTION 1685.** ORS 543A.080 is amended to read:

28 543A.080. Within 30 days after an applicant provides a notice of intent under ORS 543A.075, the  
29 applicant shall provide to the [*Water Resources Department*] **Oregon Department of Natural Re-**  
30 **sources** a preliminary application, which shall be the first-stage consultation document of the Fed-  
31 eral Energy Regulatory Commission. The preliminary application shall include the following  
32 information:

33 (1) Detailed maps showing existing project boundaries, if any, proper land descriptions of the  
34 entire project area by township, range and section, and also showing the specific location of all  
35 existing and proposed project facilities, including but not limited to roads, transmission lines and  
36 other appurtenant facilities;

37 (2) A general engineering design of the existing project and any proposed changes, with a de-  
38 scription of any existing or proposed diversion of a stream through a canal or a penstock;

39 (3) A summary of the existing operational mode of the project and any proposed changes;

40 (4) Identification of the environment affected or to be affected, the significant resources and  
41 hazards present and the applicant's existing and proposed environmental protection, mitigation and  
42 enhancement plans, to the extent known at that time;

43 (5) Streamflow and water information;

44 (6) Detailed descriptions of any proposed studies and the proposed methodologies to be em-  
45 ployed; and

1 (7) Any other information required in the application form provided by the department.

2 **SECTION 1686.** ORS 543A.095 is amended to read:

3 543A.095. (1) Not later than one year before the applicant files a final application with the  
4 Federal Energy Regulatory Commission to reauthorize the federal license for the hydroelectric  
5 project, the applicant shall file with the Hydroelectric Application Review Team:

6 (a) A draft application for a water right for the project, which shall be the Federal Energy  
7 Regulatory Commission draft application; and

8 (b) Information regarding potential water quality impacts of the project.

9 (2) The applicant shall provide the team with copies of any agency and public comment submit-  
10 ted to the applicant in the Federal Energy Regulatory Commission proceedings or in the state re-  
11 authorization proceedings.

12 (3) The applicant shall include with the application required under subsection (1) of this section  
13 the final report on the studies conducted pursuant to ORS 543A.085.

14 (4) Upon receipt of the draft application, the team shall identify in writing to the applicant any  
15 informational and analytical deficiencies. Subject to any identified deficiencies, the team shall pre-  
16 pare a provisional state position on:

17 (a) Whether, and under what conditions, the [*Water Resources Department*] **Oregon Department**  
18 **of Natural Resources** should issue the water right;

19 (b) Whether the project would comply with ORS 468B.040 and water quality standards adopted  
20 by the Environmental Quality Commission, and what conditions might be appropriate under 33  
21 U.S.C. 1341(d); and

22 (c) Recommendations to the Federal Energy Regulatory Commission under 16 U.S.C. 803(j).

23 (5) Upon completion of the provisional state position, the team shall give public notice of the  
24 availability of the provisional state position. The notice shall allow 30 days for the public to com-  
25 ment on the provisional state position.

26 (6) Based on comments received during the 30-day public comment period allowed under sub-  
27 section (5) of this section, the team may revise the provisional state position. The team also shall  
28 resolve any conflict between agencies about the provisional state position.

29 (7) After considering agency and public comments, resolving interagency conflicts and making  
30 any necessary revisions, but no later than 160 days before the date by which the final application  
31 must be filed with the Federal Energy Regulatory Commission, the team shall provide the applicant  
32 with the provisional unified position of the state. However, the provisional unified position shall not  
33 constitute a final agency determination or action under any authority.

34 **SECTION 1687.** ORS 543A.115 is amended to read:

35 543A.115. (1) Upon receipt of the Department of Environmental Quality's water quality certif-  
36 ication decision, the Hydroelectric Application Review Team shall prepare a final unified state po-  
37 sition. The final unified state position shall take into consideration public comments received, shall  
38 be consistent with the Department of Environmental Quality's water quality certification decision  
39 and shall incorporate conditions attached to any certification by the Director of the Department of  
40 Environmental Quality pursuant to 33 U.S.C. 1341(d). The final unified state position also shall in-  
41 clude recommendations under 16 U.S.C. 803(j), any other conditions recommended for inclusion in  
42 the federal license for the project and any additional information requests to be addressed in the  
43 federal proceeding. The team also shall prepare a proposed final order on reauthorization of a water  
44 right for the project.

45 (2) The team shall provide the final unified state position to the applicant and to the Federal

1 Energy Regulatory Commission. The team shall submit the proposed final order on reauthorization  
2 of the water right to the [*Water Resources Department*] **Oregon Department of Natural**  
3 **Resources**. Upon receipt of the proposed final order, the department shall complete processing of  
4 the application for reauthorization of the water right in accordance with the provisions of ORS  
5 543A.120 to 543A.300.

6 (3) The team may submit to the Federal Energy Regulatory Commission and the applicant any  
7 proposed final unified state position, comments, recommendations, conditions or additional informa-  
8 tion requests, coordinated in accordance with this chapter, at any time necessary to satisfy a  
9 deadline established by the Federal Energy Regulatory Commission for such submission, even if the  
10 procedures set forth in this section for the development of a final unified state position have not  
11 been completed.

12 **SECTION 1688.** ORS 543A.120 is amended to read:

13 543A.120. (1) A proposed final order prepared by a Hydroelectric Application Review Team and  
14 submitted to the [*Water Resources Department*] **Oregon Department of Natural Resources** under  
15 ORS 543A.040, 543A.055 or 543A.105 shall be based on the application of the standards set forth in  
16 ORS 543A.025 and shall reflect the complete review of the water right application for compliance  
17 with applicable statutes and rules.

18 (2) The proposed final order shall cite findings of fact and conclusions of law and shall include  
19 but need not be limited to:

20 (a) Confirmation or modification of the preliminary determinations made in the initial review;

21 (b) A brief statement that explains the criteria considered relevant to the decision, including the  
22 applicable basin program, the compatibility of the proposed use with applicable land use plans and  
23 information set forth in the application report or final report on studies;

24 (c) An assessment of water availability and the amount of water necessary for the proposed use;

25 (d) An assessment of whether the proposed use would result in injury to existing water rights;

26 (e) An assessment of whether the proposed use would impair or be detrimental to the public  
27 interest as provided in ORS 543A.025;

28 (f) A draft certificate, including any proposed conditions, or a recommendation to deny the ap-  
29 plication; and

30 (g) The date by which protests to the proposed final order must be received by the department.

31 (3) The department shall mail copies of the proposed final order, as submitted by the team, to  
32 the applicant and to persons who have requested copies and paid the fee required under ORS 536.050  
33 (1)(p). The department also shall give public notice of the proposed final order in the weekly notice  
34 published by the department.

35 (4) Any person may request standing for purposes of participating in any contested case pro-  
36 ceeding on the proposed final order or for judicial review of a final order. A request for standing  
37 shall be in writing and shall be accompanied by the fee established under ORS 536.050 (1)(n).

38 (5) Any person may submit a protest against a proposed final order. A protest shall be in writing  
39 and shall include:

40 (a) The name, address and telephone number of the protestant;

41 (b) A description of the protestant's interest in the proposed final order and, if the protestant  
42 claims to represent the public interest, a precise statement of the public interest represented;

43 (c) A detailed description of how the action proposed in the proposed final order would impair  
44 or be detrimental to the protestant's interest;

45 (d) A detailed description of how the proposed final order is in error or deficient and how to

1 correct the alleged error or deficiency;

2 (e) Any citation of legal authority supporting the protest, if known; and

3 (f) For persons other than the applicant, the protest fee required under ORS 536.050 (1)(j).

4 (6) Requests for standing and protests on the proposed final order shall be submitted within 45  
5 days after publication of the notice of the proposed final order in the weekly notice published by the  
6 department. Any person who asks to receive a copy of the department's final order shall submit to  
7 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
8 copies and paid the required fee.

9 (7) The Hydroelectric Application Review Team shall review any protest received and provide  
10 to the [*Water Resources Director*] **Director of the Oregon Department of Natural Resources** a  
11 recommended response to any protest received.

12 (8) Within 120 days after the close of the period for receiving protests and after consultation  
13 with the Hydroelectric Application Review Team, the director shall:

14 (a) Issue a final order as provided under ORS 543A.130; or

15 (b) Schedule a contested case hearing if a protest has been submitted and if:

16 (A) Upon review of the issues, the director finds that there are significant disputes related to  
17 the proposed reauthorization of the project; or

18 (B) Within 30 days after the close of the period for submitting protests, the applicant requests  
19 a contested case hearing.

20 (9) At the request of the applicant, the department may extend the time periods set forth in  
21 subsection (8) of this section for a reasonable period of time.

22 (10) If the application is for reauthorization of a water right for a federally licensed project, the  
23 department may postpone the issuance of the final order until the Federal Energy Regulatory Com-  
24 mission license is issued.

25 **SECTION 1689.** ORS 543A.125 is amended to read:

26 543A.125. (1) Subject to the provisions of subsection (2) of this section and ORS 543A.130 and  
27 543A.140, the [*Water Resources Department*] **Oregon Department of Natural Resources** shall ap-  
28 prove all applications for reauthorization of a water right for the use of water for hydroelectric  
29 purposes made in proper form, unless the proposed reauthorization conflicts with existing rights.

30 (2) The department shall reject any application for a permit to appropriate water to develop  
31 hydroelectric power if the department finds that the proposed project does not comply with the  
32 standards set forth in ORS 543A.025 or rules adopted by the [*Water Resources Commission*] **Oregon**  
33 **Natural Resources Commission** under ORS 543A.025.

34 **SECTION 1690.** ORS 543A.130 is amended to read:

35 543A.130. (1) If a contested case hearing is conducted under ORS 543A.120, the issues to be  
36 considered in the contested case hearing shall be limited to issues identified by the administrative  
37 law judge.

38 (2) Notwithstanding the provisions of ORS chapter 183 pertaining to contested case proceedings,  
39 the parties to any contested case hearing initiated under this section shall be limited to:

40 (a) The applicant;

41 (b) Any person who timely filed a protest; and

42 (c) Any person who timely filed a request for standing under ORS 543A.120 and who requests  
43 to intervene in the contested case hearing prior to the start of the proceeding.

44 (3) The contested case proceeding shall be conducted in accordance with the applicable pro-  
45 visions of ORS chapter 183 except:

1 (a) As provided in subsections (1) and (2) of this section; and

2 (b) An interlocutory appeal under ORS 183.480 (3) shall not be allowed.

3 (4) Each person submitting a protest or a request for standing shall raise all reasonably  
4 ascertainable issues and submit all reasonably available arguments supporting the person's position  
5 by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or  
6 in a hearing or failure to provide sufficient specificity to afford the [*Water Resources Department*]  
7 **Oregon Department of Natural Resources** an opportunity to respond to the issue precludes judi-  
8 cial review based on that issue.

9 (5) If, after the contested case hearing or, if a hearing is not held, after the close of the period  
10 allowed to file a protest, the [*Water Resources Director*] **Director of the Oregon Department of**  
11 **Natural Resources** determines that the proposed reauthorization does not comply with the stan-  
12 dards set forth in ORS 543A.025 or rules adopted by the [*Water Resources Commission*] **Oregon**  
13 **Natural Resources Commission** under ORS 543A.025, the director shall issue a final order reject-  
14 ing the application or modifying the proposed final order to conform to the public interest. If, after  
15 the contested case hearing or, if a hearing is not held, after the close of the period allowed to file  
16 a protest, the director determines that the proposed reauthorization complies with ORS 543A.025,  
17 the director shall issue a final order approving the application for reauthorization or otherwise  
18 modifying the proposed final order. A final order may set forth any of the provisions or restrictions  
19 to be included in the certificate concerning the use, control and management of the water to be  
20 appropriated for the project, including but not limited to a specification of reservoir operation and  
21 minimum releases to protect the public interest.

22 (6) If a contested case hearing is not held:

23 (a) Where the final order modifies the proposed final order, the applicant may request and the  
24 department shall schedule a contested case hearing as provided under subsection (3) of this section  
25 by submitting the information required for a protest under ORS 543A.120 within 14 days after the  
26 director issues the final order. However, the issues on which a contested case hearing may be re-  
27 quested and conducted under this paragraph shall be limited to issues based on the modifications  
28 to the proposed final order.

29 (b) Only the applicant or a protestant may appeal the provisions of the final order in the manner  
30 established in ORS chapter 183 for appeal of orders other than contested cases.

31 (7) Before issuing a final order, the director or the **Oregon Natural Resources** Commission, if  
32 applicable, shall make the final determination of whether the proposed reauthorization or the pro-  
33 posed reauthorization as modified in the proposed final order complies with the standards set forth  
34 in ORS 543A.025.

35 (8) In a proceeding to reauthorize a water right for a federally licensed project, the final order  
36 may be different from the proposed final order based on:

37 (a) New information developed during the federal relicensing process pertaining to environ-  
38 mental impacts or assessments that reveals impacts not known at the time the proposed final order  
39 was issued;

40 (b) Significant changes in the final application to the Federal Energy Regulatory Commission;

41 (c) Conditions and restrictions in the Federal Energy Regulatory Commission license that are  
42 inconsistent with the water right as proposed in the proposed final order; or

43 (d) Protests received after the proposed final order is issued.

44 (9) Upon issuing a final order, the director shall notify the applicant and each person who sub-  
45 mitted written comments or protests or otherwise requested notice of the final order and send a

1 copy of the final order to any person who requested a copy and paid the fee required under ORS  
2 536.050 (1)(p).

3 **SECTION 1691.** ORS 543A.135 is amended to read:

4 543A.135. (1) Within 20 days after the [*Water Resources Director*] **Director of the Oregon De-**  
5 **partment of Natural Resources** issues a final order under ORS 543A.130 after the conclusion of  
6 a contested case hearing, any party may file exceptions to the order with the [*Water Resources*  
7 *Commission*] **Oregon Natural Resources Commission**.

8 (2) The commission shall issue a modified order, if the exceptions are allowed, or deny the ex-  
9 ceptions within 60 days after the close of the exception period under subsection (1) of this section.

10 **SECTION 1692.** ORS 543A.140 is amended to read:

11 543A.140. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources**  
12 may issue a water right to any applicant for reauthorization of a federally licensed project whose  
13 proposed water use complies with the standards set forth in ORS 543A.025. Every water right for  
14 a federally licensed project shall provide as a condition that the water right holder may not operate  
15 the federally licensed project unless the water right holder is authorized to operate the project by  
16 the Federal Energy Regulatory Commission.

17 (2) The department may approve an application for reauthorization for less water than applied  
18 for, or upon terms, limitations and conditions necessary for the protection of the public interest.

19 **SECTION 1693.** ORS 543A.145 is amended to read:

20 543A.145. Any water right for the use of water for hydroelectric purposes shall:

21 (1) Except as provided in ORS 543A.065 (2), be for a period of not more than 50 years;

22 (2) If for a federally licensed project, be for the period established in the new Federal Energy  
23 Regulatory Commission license;

24 (3) For the quantity of water authorized for use under the expiring water right for the project,  
25 retain the same priority date as the expiring water right for the project. For enlargement of the  
26 water right beyond the amount of water authorized in the expiring water right, the priority date for  
27 the additional amount shall be the date of filing a reauthorization application under ORS 543A.035,  
28 or a notice of intent under ORS 543A.075, whichever is applicable;

29 (4) If for a federally licensed project, include a provision allowing the [*Water Resources Depart-*  
30 *ment*] **Oregon Department of Natural Resources** to amend conditions or limitations on the water  
31 right after the Federal Energy Regulatory Commission issues the federal license for the project; and

32 (5) Include conditions allowing the department to reopen the certificate on a clear showing of  
33 a significant threat to the public health or safety or the environment that was not identified and  
34 addressed during the most recent project authorization proceeding, and that requires modification  
35 of the certificate.

36 **SECTION 1694.** ORS 543A.150 is amended to read:

37 543A.150. (1) The [*Water Resources Department*] **Oregon Department of Natural Resources**  
38 may extend the time limits set forth in ORS 543A.005 to 543A.145 and 543A.300 for a reasonable  
39 period of time if the time limits are incompatible with the substantive requirements applicable to  
40 applications to reauthorize a water right for the use of water for hydroelectric purposes.

41 (2) The expiration date of the water right for any project that begins the reauthorization process  
42 under ORS 543A.005 to 543A.415 before the expiration date shall be extended by the department if  
43 necessary to allow for completion of the reauthorization process.

44 **SECTION 1695.** ORS 543A.300 is amended to read:

45 543A.300. (1) If any person operating a hydroelectric project fails to advise the [*Water Resources*



1 *Department*] **Oregon Department of Natural Resources** within 60 days of the time established in  
 2 ORS 543A.030 or 543A.075, the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
 3 **mission** may order the decommissioning of the project.

4 (2) The [*Water Resources*] commission shall adopt by rule procedures for ordering a decommis-  
 5 sioning of a project and standards for conducting a decommissioning in a manner that ensures the  
 6 protection of the public health and safety and the environment. The rules shall include a provision  
 7 for establishing a Hydroelectric Application Review Team for the project to coordinate the activities  
 8 of all state agencies involved in the decommissioning process.

9 **SECTION 1696.** ORS 543A.305 is amended to read:

10 543A.305. (1) As used in this section:

11 (a) "Holder" has the meaning given that term in ORS 543.075.

12 (b) "In-stream water right" has the meaning given that term in ORS 537.332.

13 (c) "Reauthorize" has the meaning given that term in ORS 543.075.

14 (2) An in-stream water right shall be subject to the limitations of ORS 537.350 and shall be  
 15 maintained in perpetuity, in trust for the people of the State of Oregon. The priority date of the  
 16 in-stream water right shall be the same as that of the converted hydroelectric water right. The lo-  
 17 cation of the in-stream water right shall be the same as the point of diversion identified in the hy-  
 18 droelectric water right.

19 (3) Five years after the use of water under a hydroelectric water right ceases, or upon expira-  
 20 tion of a hydroelectric water right not otherwise extended or reauthorized, or at any time earlier  
 21 with the written consent of the holder of the hydroelectric water right, up to the full amount of the  
 22 water right associated with the hydroelectric project shall be converted to an in-stream water right,  
 23 upon a finding by the [*Water Resources Director*] **Director of the Oregon Department of Natural**  
 24 **Resources** that the conversion will not result in injury to other existing water rights. In making  
 25 the evaluation, the director shall consider the actual use of the hydroelectric project and the re-  
 26 sulting impacts on actual use by other existing water rights as of October 23, 1999. The director  
 27 may include mitigation measures as conditions of the in-stream water right to avoid injury and to  
 28 ensure the continuation of authorized water uses by other existing water rights.

29 (4) If the hydroelectric project is authorized by a pre-1909 unadjudicated claim of registration,  
 30 the determination of injury shall be based upon an evaluation of the actual use as measured during  
 31 the five years preceding the conversion action, and shall not constitute a determination under ORS  
 32 537.670 to 537.695 as to the underlying claim of registration of the pre-1909 use. Judicial review of  
 33 a final order relating to such a conversion shall be limited to review of the conversion action.

34 (5) This section shall not apply to projects on boundary waters that operate with water rights  
 35 issued by the State of Oregon and by any other state except upon the written request of the water  
 36 right holder.

37 (6) If hydroelectric production is not the sole beneficial use authorized by a water right, this  
 38 section shall apply only to conversion of that portion of the water right used exclusively for hy-  
 39 droelectric purposes.

40 (7) This section shall not apply if the holder, at any time prior to conversion under subsection  
 41 (3) of this section, transfers the hydroelectric water right under ORS 540.520 and 540.530, except  
 42 that if a time-limited hydroelectric water right is transferred under ORS 540.520 and 540.530, the  
 43 provisions of this section shall apply at the time of expiration of the time-limited water right.

44 **SECTION 1697.** ORS 543A.400 is amended to read:

45 543A.400. (1) The duties of a Hydroelectric Application Review Team shall be determined on the

1 basis of the operating authority of the project that the team is responsible for reviewing.

2 (2) A team responsible for reviewing a state project shall:

3 (a) Make an initial determination of whether the state project may proceed under an expedited  
4 reauthorization process under ORS 543A.040 and, if so, develop a proposed final order under ORS  
5 543A.040.

6 (b) If a state project does not qualify for the expedited process under ORS 543A.040:

7 (A) Convene a public scoping meeting under ORS 543A.045;

8 (B) Review the application report and prepare a draft proposed final order under ORS 543A.055;

9 (C) Revise the draft proposed final order and submit the proposed final order to the [*Water Re-*  
10 *sources Department*] **Oregon Department of Natural Resources** for further processing as set forth  
11 in ORS 543A.120 to 543A.300; and

12 (D) Review protests received and recommended responses to the protests as required under ORS  
13 543A.120.

14 (3) A team responsible for reviewing a federally licensed project shall:

15 (a) Represent the state in any federal proceeding to reauthorize the federal license for the  
16 project;

17 (b) Participate in the state process in accordance with ORS 543A.085, 543A.090, 543A.105,  
18 543A.110 and 543A.115;

19 (c) Recommend a state response to a request for certification for reauthorization of a federally  
20 licensed project under ORS 468B.040; and

21 (d) Develop a state position as required under 16 U.S.C. 803(j).

22 (4) The [*Water Resources*] department may also convene a team to:

23 (a) Coordinate the activities of all state agencies involved in decommissioning a project.

24 (b) Develop a unified state position for a project that is subject to federal relicensing but that  
25 operates under a water right that does not expire. The unified state position developed under this  
26 paragraph shall include the elements set forth in ORS 543A.105 except for the reauthorization of the  
27 state water right. In developing the unified state position under this paragraph the team shall  
28 participate to the fullest extent possible in all proceedings conducted pursuant to the Federal En-  
29 ergy Regulatory Commission relicensing process for the project.

30 **SECTION 1698.** ORS 543A.405 is amended to read:

31 543A.405. (1) Subject to the provisions of ORS 543A.410, any person submitting a notice of intent  
32 to seek reauthorization, a preliminary application or an application for reauthorization of a project  
33 under ORS 543A.030, 543A.035, 543A.075, 543A.080 or 543A.095 shall pay all expenses related to the  
34 review and decision of the Hydroelectric Application Review Team that are incurred by the team  
35 and any agency participating as part of the team, and that are not otherwise covered by the reau-  
36 thorization fee paid under ORS 543A.415.

37 (2) Every person submitting a notice of intent to seek reauthorization of a project shall submit  
38 the fee required under ORS 536.050 (1)(r) to the [*Water Resources Department*] **Oregon Department**  
39 **of Natural Resources** when the notice of intent is submitted.

40 (3) Before submitting an application to reauthorize a state project under ORS 543A.035, the ap-  
41 plicant shall request from the team an estimate of the costs expected to be incurred in processing  
42 the application. The team shall inform the applicant of that amount and require the applicant to  
43 make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost re-  
44 imbursement agreement shall provide for payment of 25 percent of the estimated costs when the  
45 applicant submits an application under ORS 543A.035.

1 (4) Before the close of public comment on study proposals developed by the applicant for a  
2 federally licensed project under ORS 543A.085, the team shall estimate the costs expected to be in-  
3 curred in evaluating the project. The team shall inform the applicant of that amount and require the  
4 applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The  
5 cost reimbursement agreement shall provide for a first payment of 25 percent of the estimated costs  
6 on a schedule established in the agreement.

7 (5) If costs of the team's evaluation of a project exceed the estimate in the cost reimbursement  
8 agreement, the applicant shall pay any excess costs shown in an itemized statement prepared by the  
9 team. In no event shall the team and its participating agencies incur evaluation expenses in excess  
10 of 110 percent of the fee initially estimated unless the team provided prior notification to the ap-  
11 plicant and a detailed projected budget the team believes is necessary to complete evaluation of the  
12 application. If costs are less than the fee paid, the team shall refund the excess to the applicant.

13 (6) The [*Water Resources*] department shall reimburse participating agencies for costs incurred  
14 in their review of a project. Such costs shall not include expenses of other state agencies for which  
15 a fee is otherwise collected under state law.

16 **SECTION 1699.** ORS 543A.410 is amended to read:

17 543A.410. (1) All expenses incurred by the Hydroelectric Application Review Team and its par-  
18 ticipating agencies that are charged to or allocated to the fee paid by an applicant shall be neces-  
19 sary, just and reasonable. Upon request, the team shall provide the applicant with a detailed  
20 justification for all charges. Not later than January 1 of each year, the [*Water Resources Director*]  
21 **Director of the Oregon Department of Natural Resources** by order shall establish a schedule  
22 of fees that those persons submitting a notice of intent must submit under ORS 543A.030 or  
23 543A.075. The fee schedule shall be designed to recover the actual costs of evaluating the notice of  
24 intent. Fees shall be based on actual, historical costs incurred by the team and its participating  
25 agencies to the extent historical costs are available. The fees established by the schedule shall re-  
26 flect the size and complexity of the project for which a notice of intent is submitted.

27 (2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allo-  
28 cated to the fee paid by an applicant, and if the dispute is not resolved by the directors of the af-  
29 fected agencies, the applicant may seek judicial review in circuit court of the amount of expenses  
30 charged or allocated as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant es-  
31 tablishes that any of the charges or allocations are unnecessary or unreasonable, the amount found  
32 to be unnecessary or unreasonable shall be refunded to the applicant. The applicant shall not waive  
33 the right to judicial review by paying the portion of the fee or expense in dispute.

34 **SECTION 1700.** ORS 543A.415 is amended to read:

35 543A.415. (1) Except as provided in subsection (2) of this section, each holder of an existing  
36 hydroelectric license shall pay to the [*Water Resources Department*] **Oregon Department of Na-**  
37 **tural Resources** annually a reauthorization fee in an amount per theoretical horsepower covered  
38 by the existing license that, when added to the amount per theoretical horsepower covered by the  
39 existing license that is paid under ORS 543.300, equals 28 cents for each horsepower covered by the  
40 existing license, or \$15, whichever is greater, for the purpose of implementing the state reauthori-  
41 zation process established by this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015,  
42 536.050, 543.012 and 543.710. The reauthorization fee shall be paid until the project is reauthorized,  
43 and a water right issued, under this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015,  
44 536.050, 543.012 and 543.710. Upon reauthorization and issuance of a water right, a new annual fee  
45 shall be assessed under ORS 543.300, and the reauthorization fee shall no longer apply.

1 (2) The department shall notify existing license holders of the amount of the fee described in  
 2 subsection (1) of this section. The notice shall state the date by which the license holder must notify  
 3 the department if the license holder does not intend to reauthorize the project. The department shall  
 4 assess the fee described in subsection (1) of this section unless the license holder notifies the state  
 5 that it does not intend to apply to reauthorize the project upon expiration of the license. The holder  
 6 of an existing hydroelectric license that notifies the department that it does not intend to reau-  
 7 thorize the project need not pay the reauthorization fee and may not seek reauthorization of the  
 8 project upon expiration of the existing license.

9 (3) The department shall submit a report to the Legislative Assembly during each legislative  
 10 session describing the department's use of reauthorization funds.

11 (4) Four cents of each 28 cents paid as a reauthorization fee as required by subsection (1) of this  
 12 section shall be deposited [*to the Water Resources Department Hydroelectric Fund and disbursed to*  
 13 *the Department of Environmental Quality.*] **in the Oregon Natural Resources Fund. Moneys de-**  
 14 **posited in the fund under this subsection are continuously appropriated to the department**  
 15 **for purposes described in ORS 536.015.**

16 **SECTION 1701.** ORS 545.643 is amended to read:

17 545.643. An irrigation district desiring to become a party to any contract providing a plan for  
 18 the liquidation in any manner of all or part of its outstanding bonded or other indebtedness, whether  
 19 then due or not due, may adopt the procedure provided by ORS 545.643 to 545.667. The procedure  
 20 provided by ORS 545.643 to 545.667 is in lieu of other procedures provided by law. Before becoming  
 21 a party to a contract under ORS 545.643 to 545.667, the board of directors shall adopt a resolution  
 22 substantially describing all the terms and conditions of the proposed contract and requesting the  
 23 [*Water Resources Commission*] **Oregon Natural Resources Commission** to make an investigation  
 24 of all matters relating to the district, with particular reference to the ability of the district or the  
 25 landowners in the district to perform the obligations of the proposed contract. Upon receipt of a  
 26 copy of the resolution, the [*Water Resources*] commission shall conduct the investigation, which shall  
 27 include all physical, economic and financial matters relating to the district and the irrigable acreage  
 28 of each legal subdivision or other described tract of land if held in separate ownership. If, after the  
 29 investigation, the [*Water Resources*] commission determines that the contract may prudently be ex-  
 30 ecuted by the district, the [*Water Resources*] commission shall advise the district of its determination  
 31 by adopting a resolution of the commission to that effect.

32 **SECTION 1702.** ORS 548.940 is amended to read:

33 548.940. (1) Jurisdiction of all interested parties may be had by the publication of summons in  
 34 the manner provided by ORCP 7. Copies of the summons and the petition of the district shall be  
 35 mailed to each qualified elector and landowner at the mailing address as shown by the records of  
 36 the county clerk, the county tax collector and the county assessor, and to all known creditors of the  
 37 district.

38 (2) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall be served  
 39 with a copy of the summons and petition.

40 **SECTION 1703.** ORS 548.955 is amended to read:

41 548.955. The judgment of the court shall order the clerk of the court to file certified copies of  
 42 the judgment with the county treasurer and the county assessor of each county in which any prop-  
 43 erty located within or assessed by the district is located, and with the Secretary of State and the  
 44 [*Water Resources Commission*] **Oregon Natural Resources Commission.**

45 **SECTION 1704.** ORS 549.605 is amended to read:

1 549.605. As used in ORS 549.605 to 549.645, unless the context requires otherwise:

2 [(1) "*Commission*" means the *Water Resources Commission*.]

3 [(2)] (1) "Federal flood control projects" includes all authorized federal projects located wholly  
4 or partially within this state which the **Oregon Natural Resources Commission** determines would  
5 be beneficial to this state as flood control measures.

6 (3) "Federal government" means the United States, or any agency or instrumentality of the  
7 United States which is designated or authorized to engage in flood control projects within Oregon.

8 **SECTION 1705.** ORS 549.610 is amended to read:

9 549.610. The [*Water Resources Commission*] **Oregon Natural Resources Commission** is di-  
10 rected to carry out, for and on behalf of the state, the state's participation in federal flood control  
11 projects. In discharging this responsibility, the commission, or one or more of its members or em-  
12 ployees designated by the commission to represent it, may sign agreements with the federal gov-  
13 ernment and other persons, to integrate, if possible, into the federal project necessary or desirable  
14 state or local features and works, to relocate facilities displaced by such projects and to perform  
15 all other acts connected with and necessary to such participation. Work to be done by the state  
16 may be carried out by contract or by available state forces or by a combination of these two  
17 methods. If the commission deems it to be in the public interest, they may agree with public or  
18 quasi-public bodies and other persons affected by such projects to have such bodies or persons per-  
19 form the work. The commission shall, in all instances, carry out the powers and duties imposed upon  
20 it by ORS 549.605 to 549.645 in a manner which will comply with federal flood control legislation  
21 and rules and regulations promulgated pursuant to such legislation.

22 **SECTION 1706.** ORS 549.615 is amended to read:

23 549.615. The [*Water Resources Commission*] **Oregon Natural Resources Commission** and its  
24 agents and employees may enter upon lands to gather information when necessary for the perform-  
25 ance of those duties imposed upon them by ORS 549.605 to 549.645.

26 **SECTION 1707.** ORS 549.620 is amended to read:

27 549.620. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may ac-  
28 quire property, as defined in ORS 35.550 (1), by purchase, donation or condemnation in the manner  
29 provided in ORS 35.550 to 35.575, when necessary to carry out the duties assigned it by ORS 549.610.

30 **SECTION 1708.** ORS 549.625 is amended to read:

31 549.625. As to any property acquired pursuant to ORS 549.605 to 549.645, the [*Water Resources*  
32 *Commission*] **Oregon Natural Resources Commission** may sell, donate, exchange or lease it or  
33 grant easements thereon, on terms which are beneficial to the state and meet all federal flood con-  
34 trol project requirements; and the commission, or one or more of its members or employees desig-  
35 nated by the commission to represent it, may execute and deliver, in the name of the State of  
36 Oregon, a lease, deed or other instrument of conveyance of such property. These leases, deeds and  
37 instruments may contain such reservations as the commission deems necessary to protect the in-  
38 terests of the state in flood control.

39 **SECTION 1709.** ORS 549.630 is amended to read:

40 549.630. After the completion of a flood control project or a portion thereof and, in the case of  
41 projects constructed by the federal government, after such project or a useful portion thereof has  
42 been turned over to the state by the federal government, such projects may be operated and main-  
43 tained by the [*Water Resources Commission*] **Oregon Natural Resources Commission** for the pri-  
44 mary purpose of flood control; or, when the commission deems such action to be in the public  
45 interest, the commission may enter into agreements with public or quasi-public bodies and other

1 persons to operate and maintain such projects.

2 **SECTION 1710.** ORS 549.635 is amended to read:

3 549.635. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may enter  
4 into agreements with the federal government, public and quasi-public bodies, including but not lim-  
5 ited to drainage and irrigation districts organized under the laws of Oregon, water control districts  
6 and subdistricts formed under ORS chapter 553 and district improvement companies formed under  
7 ORS chapter 554, and other persons for the purpose of participating jointly with such bodies or  
8 persons in federal flood control projects or aiding such bodies or persons in meeting obligations  
9 imposed upon them in connection with federal flood control project agreements. The commission  
10 shall not aid or agree to aid any public or quasi-public body or person unless such body or person  
11 is meeting satisfactorily or to the best of its ability all obligations imposed upon it under such  
12 agreements.

13 **SECTION 1711.** ORS 549.640 is amended to read:

14 549.640. Except as provided in ORS 536.500, all moneys received by the [*Water Resources Com-*  
15 *mission*] **Oregon Natural Resources Commission** under the provisions of ORS 549.605 to 549.645,  
16 including any allotment of moneys from the federal government to reimburse the state for expen-  
17 ditures made in connection with a flood control project, shall be turned over to the State Treasurer  
18 to be placed in the State Treasury to the credit of the General Fund.

19 **SECTION 1712.** ORS 549.645 is amended to read:

20 549.645. Except upon contracts providing for arbitration under the provisions of ORS 36.600 to  
21 36.740, a suit or action may be maintained against the State of Oregon through and in the name of  
22 the [*Water Resources Commission*] **Oregon Natural Resources Commission** for an injury to the  
23 rights of the plaintiff arising from some act or omission attributable to the [*Water Resources*] com-  
24 mission acting as authorized by ORS 549.605 to 549.645.

25 **SECTION 1713.** ORS 552.403 is amended to read:

26 552.403. (1) A district shall, within a reasonable time after formation, prepare broad, general  
27 plans of watershed improvement. The plan may be prepared in cooperation with the [*Water Re-*  
28 *sources Commission*] **Oregon Natural Resources Commission** and shall conform to the state water  
29 resources policy declared by ORS 536.220.

30 (2) The plan also shall show existing and proposed works of the district and of other public and  
31 private agencies relating to water use and control. It shall demonstrate a basis for the coordination  
32 and planning of future works of the district, governmental agencies and private interests to assure  
33 the maximum beneficial use and conservation of the water resources of the district. The projects  
34 and improvement plans shall be based on the inventory of water, needs of the district related to  
35 natural resources, and plans and programs, if any, developed by the [*Water Resources*] commission.  
36 The district may have access to all information, statistics, plans and data in the possession of or  
37 available to any state agency or public corporation which is pertinent to the preparation of the plan  
38 and may reimburse the agency or corporation for any expense incurred in cooperating with the  
39 board.

40 (3) After approval by the district board, the plan of the district including the plan for financing  
41 any existing or proposed works may be submitted to the [*Water Resources*] commission for recom-  
42 mendations.

43 (4) The district board shall make revisions found necessary for the proper control, utilization,  
44 conservation, development and improvement of the water resources of the district, and for the pro-  
45 tection and enhancement of the quality of such water resources.

1       **SECTION 1714.** ORS 555.020 is amended to read:

2       555.020. The selection, management, and disposal of the land referred to in ORS 555.010 shall  
3 be vested in the [*Water Resources Commission*] **Oregon Natural Resources Commission**. The  
4 commission may employ necessary assistance, purchase material and supplies, and shall have charge  
5 and control of all reclamation work undertaken, contracted for, or initiated by the State Land Board  
6 prior to the passage of chapter 226, Oregon Laws 1909, or by the Desert Land Board prior to the  
7 passage of chapter 434, Oregon Laws 1927, and of the reclamation companies which were operating  
8 under either of those boards.

9       **SECTION 1715.** ORS 555.030 is amended to read:

10       555.030. The [*Water Resources Commission*] **Oregon Natural Resources Commission**, or some  
11 authorized assistant, shall:

12       (1) Have custody of all the records and files under the provisions of ORS 555.010 to 555.160,  
13 which shall be public records and open to inspection by the public during office hours.

14       (2) Receive and file all proposals for construction of irrigation works to reclaim lands selected  
15 under the provisions of ORS 555.010 to 555.160.

16       (3) Keep for public inspection maps or plats of all land selected.

17       (4) Receive entries of settlers on these lands.

18       (5) Do any and all work necessary in carrying out the provisions of ORS 555.010 to 555.160.

19       **SECTION 1716.** ORS 555.040 is amended to read:

20       555.040. Upon application, made as provided in ORS 555.050, by any person desiring to reclaim  
21 any of the desert government lands in this state, the [*Water Resources Commission*] **Oregon Natural**  
22 **Resources Commission** shall make proper application for the lands which the applicant undertakes  
23 to reclaim, and make and enter into contract or agreement with the Secretary of the Interior for the  
24 donation and patent to the state, free of cost for survey or price, of such desert lands. The com-  
25 mission may make and enter into such contracts and agreements, and create and assume such obli-  
26 gations in relation to and concerning the lands, as may be necessary to induce and cause such  
27 reclamation thereof as is required by the contract with the Secretary of the Interior and the Acts  
28 of Congress. The commission may create a lien which shall be valid on and against the separate  
29 legal subdivisions of land reclaimed, for the necessary expenses of reclamation, and reasonable in-  
30 terest thereon from the date of reclamation until the lien is satisfied; provided that in no event, in  
31 no contingency, and under no circumstances, shall the state be in any manner directly or indirectly  
32 liable for any amount of any such lien or liability, in whole or in part.

33       **SECTION 1717.** ORS 555.050 is amended to read:

34       555.050. (1) Any person desiring to construct ditches, canals or other irrigation works to reclaim  
35 land under the provisions of ORS 555.010 to 555.160 shall, at the expense of the person, file with the  
36 [*Water Resources Commission*] **Oregon Natural Resources Commission** an application for selection  
37 on behalf of the state, by the commission, of the land to be reclaimed. The application shall conform  
38 to all requirements of the federal laws and rulings thereunder, and be accompanied by the necessary  
39 land office fees and such additional data as may be prescribed by the commission, including a pre-  
40 liminary estimate of costs and the amount of lien asked for. If the application is made in proper  
41 form, and it appears that the proposed plan is feasible, that the applicant is financially able to  
42 complete the work, and that its completion will be to the best interests of the state, then the com-  
43 mission, at the expense and cost of the applicant, shall make proper application for the selection  
44 and withdrawal of the lands included in the application.

45       (2) The commission may do all things necessary to secure the withdrawal of lands on behalf of

1 the commission by the Secretary of the Interior, and let a contract to the lowest responsible bidder  
2 for the reclamation and colonization of the same when withdrawn.

3 **SECTION 1718.** ORS 555.060 is amended to read:

4 555.060. A deposit shall accompany each application in a sum not less than 10 cents per acre  
5 up to 1,000 acres, and two cents per acre for each acre over that amount, which sum shall be de-  
6 posited with the [*Water Resources Commission*] **Oregon Natural Resources Commission** and held  
7 in trust as a guarantee of good faith on the part of the applicant, to whom it shall be returned at  
8 the time of execution of a contract between the state and the applicant. In case the person making  
9 the application shall, upon segregation by the Secretary of the Interior of any or all of the lands  
10 mentioned therein, refuse to enter into a contract with the state, the deposit shall be forfeited to  
11 the state and credited to the Oregon Irrigation Fund.

12 **SECTION 1719.** ORS 555.070 is amended to read:

13 555.070. Upon withdrawal of the land by the Department of the Interior, the [*Water Resources*  
14 *Commission*] **Oregon Natural Resources Commission** shall enter into a contract for the reclama-  
15 tion of such land with the person submitting the application, which contract shall contain plans and  
16 specifications of the proposed irrigation works; provided, that no contract shall be executed by the  
17 commission until after an examination by the commission concerning the feasibility of the proposed  
18 plan of reclamation, sufficiency and availability of the water supply, and reasonableness of the es-  
19 timate of cost and the lien requested. The contract shall provide for the sale of the water right to  
20 settlers on the land in satisfaction of the reclamation lien allowed. This contract shall not be en-  
21 tered into on the part of the state until the withdrawal of the lands by the Department of the Inte-  
22 rior and the filing of a satisfactory bond on the part of the proposed contractor, which bond shall  
23 be in a penal sum not less than two percent of the lien to be allowed, and shall be conditioned upon  
24 the faithful performance of the provisions of the contract with the state; provided, that in case the  
25 contractor is the irrigation district such bond need not be filed. The commission may, however, re-  
26 quire the contractor to make a deposit at the time of application for entry of land by settlers to  
27 insure the transfer of the system in good condition and repair to the purchasers of water rights as  
28 herein provided, which deposit shall be returned by the commission at the time of such transfer.

29 **SECTION 1720.** ORS 555.090 is amended to read:

30 555.090. No contract shall be made by the [*Water Resources Commission*] **Oregon Natural Re-**  
31 **sources Commission** which requires a greater time than five years for construction of the works.  
32 All contracts shall state that the work shall begin within six months from date of contract; that the  
33 contractor shall secure for the use and benefit of the reclamation system all necessary water rights,  
34 rights of way, reservoir sites, or other property necessary for its construction and operation; that  
35 construction shall be prosecuted diligently and continuously to completion; and that a cessation of  
36 work under the contract with the state for a period of six months, without the sanction of the  
37 commission, will forfeit to the state all rights under the contract. The commission may extend the  
38 time in which to begin the construction of works, or for the completion of work, on account of delay  
39 caused by physical or engineering difficulties beyond the power of the contractor to control.

40 **SECTION 1721.** ORS 555.100 is amended to read:

41 555.100. (1) Upon the failure of any parties having contracts with the state for the construction  
42 of irrigation works, to begin the same within the time specified by the contract, or to complete the  
43 same within the time or in accordance with the specifications of the contract with the state, to the  
44 satisfaction of the [*Water Resources Commission*] **Oregon Natural Resources Commission**, the  
45 commission shall give the parties written notice of such failure. If after a period of 60 days from



1 the sending of such notice they have failed to proceed with the work or to conform to the specifi-  
2 cations of their contract with the state, or secure an extension of time, their contract and all works  
3 constructed thereunder shall be at once forfeited to the state.

4 (2) In case of any forfeiture, cancellation, or relinquishment of any contract to the state, the  
5 commission shall so declare and give notice once each week, for four weeks, in some newspaper of  
6 general circulation in the county in which the work is situated, and in one newspaper at the state  
7 capital in like manner and for a like period, of the forfeiture, cancellation, or relinquishment of the  
8 contract, and that upon a fixed day proposals will be received at the office of the commission for  
9 purchase of the incompleated works and for completion of the irrigation works in accordance with  
10 plans, specifications and other conditions prescribed by the commission, the time for receiving bids  
11 to be at least 60 days subsequent to the issuing of the last notice of forfeiture. The money received  
12 by the commission from sale of the partially completed works under the provisions of this section  
13 shall first be applied to the expenses incurred by the state in their forfeiture and disposal, and the  
14 surplus, if any exists, shall be paid to the original contractors with the state.

15 **SECTION 1722.** ORS 555.110 is amended to read:

16 555.110. Nothing in ORS 555.010 to 555.160 shall be construed as authorizing the [*Water Re-*  
17 *sources Commission*] **Oregon Natural Resources Commission** to obligate the state to pay for any  
18 work constructed under any contract, or to hold the state in any way responsible to settlers for the  
19 failure of contractors to complete the work according to the terms of their contracts with the state.

20 **SECTION 1723.** ORS 555.120 is amended to read:

21 555.120. No land shall be open to entry and no water rights shall be sold by the parties under  
22 contract with the [*Water Resources Commission*] **Oregon Natural Resources Commission** until the  
23 construction of the works is sufficiently advanced to insure a water supply, and the entry of an or-  
24 der by the commission opening the land or any portion thereof to entry and sale. All applications  
25 to purchase lands, or for release of lien for construction of the reclamation works, shall be upon the  
26 forms provided by the commission. The "date of reclamation," for the purposes of ORS 555.010 to  
27 555.160, shall be the date shown by the proof furnished the Secretary of the Interior by the com-  
28 mission at which water was furnished available for the reclamation of each tract in the list of lands.

29 **SECTION 1724.** ORS 555.130 is amended to read:

30 555.130. Any citizen of the United States, or any person having declared an intention to become  
31 such, over the age of 21 years, may make application, under oath, to the [*Water Resources Commis-*  
32 *sion*] **Oregon Natural Resources Commission**, upon forms prescribed by the commission, to enter  
33 any of the lands reclaimed under the provisions of ORS 555.010 to 555.160, in an amount not to ex-  
34 ceed 160 acres for any one person. Each application shall be accompanied by a contract, made and  
35 entered into by the applicant with the person who has undertaken the reclamation of the tract in  
36 question, which contract shall show that the applicant has made proper arrangement for purchase  
37 of the necessary water rights and the release of the construction lien. Each application to the  
38 commission shall in addition be accompanied by a payment of not less than \$1 per acre for each acre  
39 included in the application, which payment shall be made by the contractor out of the first payment  
40 by the applicant, and shall be deposited by the commission with the State Treasurer, who shall  
41 credit it to the Oregon Irrigation Fund. If the application is not approved, the \$1 payment shall be  
42 returned to the contractor.

43 **SECTION 1725.** ORS 555.140 is amended to read:

44 555.140. Upon filing with the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
45 **mission** a satisfactory release of the construction lien apportioned by the commission against the

1 land in any application, accompanied by satisfactory proof of reclamation, cultivation and settle-  
2 ment, as required by the rules of the commission, it shall be the duty of the commission to deed to  
3 the applicant, or the assignee of the applicant, the land described in the application. The deeds shall  
4 be in form of a quitclaim and shall operate to convey only such title as the state may have in the  
5 land conveyed. The deeds, without acknowledgment, or copies thereof duly certified and attested  
6 under seal by the commission, certified from the official copy in the keeping of the commission, shall  
7 be admitted to record. The commission shall preserve, in a suitable book, a true copy of the deeds,  
8 with an alphabetical index of the names of the grantees, and such copies or certified copies thereof  
9 certified and attested as aforesaid shall be primary evidence of such conveyances.

10 **SECTION 1726.** ORS 555.150 is amended to read:

11 555.150. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
12 provide suitable rules for the filing of applications for constructing irrigation works, prescribing the  
13 nature of final surveys, and the gathering of engineering data upon which the contract with the  
14 state is to be based, the manner in which the plans and specifications shall be submitted, and for  
15 the entry of and payment for the land and water rights by settlers and for the settlement or for-  
16 feiting of entry by settlers, and such other rules and regulations as are necessary to carry out the  
17 provisions of ORS 555.010 to 555.160.

18 **SECTION 1727.** ORS 555.160 is amended to read:

19 555.160. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall is-  
20 sue, on or before September 30 of the year preceding each regular session of the legislature, a full  
21 report of the work of the commission under the provisions of ORS 555.010 to 555.160, including a  
22 statement of expenditures and condition of all funds, and such recommendations for legislation as  
23 are deemed advisable.

24 **SECTION 1728.** ORS 555.180 is amended to read:

25 555.180. Wherever an irrigation system has been constructed under contract with the State of  
26 Oregon pursuant to the Act of Congress known as the Carey Act, and under and pursuant to ORS  
27 555.010 to 555.160, and it develops that the acreage of land actually irrigated in any smallest legal  
28 subdivision of the land is greater than the acreage made subject to the lien in the reclamation  
29 contract for said smallest legal subdivision and the waters for the excess acres actually irrigated in  
30 such legal subdivision over and above the amount fixed in the contract for lien have not as yet been  
31 paid for, nor the amount to be paid therefor agreed upon, the [*Water Resources Commission*] **Oregon**  
32 **Natural Resources Commission** upon request of the company supplying water to the excess acres  
33 shall notify the person using the water upon the excess acres to pay for the same or enter into an  
34 arrangement with the company furnishing the water providing for the price to be paid therefor and  
35 the manner of payment; provided, the company furnishing the water shall not exact a price per acre  
36 for such excess acres greater than the price per acre as now fixed by the commission.

37 **SECTION 1729.** ORS 555.190 is amended to read:

38 555.190. The notice given by the [*Water Resources Commission*] **Oregon Natural Resources**  
39 **Commission** shall be in writing and may be served by registered mail or by certified mail with re-  
40 turn receipt. If the user of the water does not comply with the notice and either pay for the excess  
41 water or enter into a definite arrangement with the company for payment thereof within 30 days  
42 from the mailing of the notice, the commission shall, upon notice from the company furnishing the  
43 water, cancel the right of the landowner to the excess acres and thereafter, without further appli-  
44 cation for permission so to do, the company furnishing the water may sell and deliver the water to  
45 other lands. Upon effecting the sale of the water to other lands the company shall notify the com-

1 mission of the lands to which the water is transferred.

2 **SECTION 1730.** ORS 555.310 is amended to read:

3 555.310. The [*Water Resources Commission*] **Oregon Natural Resources Commission** is au-  
4 thorized and empowered to contract for the completion of the reclamation of lands in the Tumalo  
5 Project or any part thereof, and to otherwise carry out the provisions of ORS 555.310 to 555.410,  
6 with any irrigation district, organized pursuant to the laws of Oregon, including lands in the project  
7 or any part thereof, or with any other irrigation district, or with the federal government, or with  
8 any person.

9 **SECTION 1731.** ORS 555.320 is amended to read:

10 555.320. (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
11 appoint, at a salary to be fixed by the commission, a project manager for the Tumalo Project, who  
12 shall hold office and serve at the pleasure of the commission, but not longer than two years without  
13 reappointment. In the selection of a project manager, due consideration shall be given the recom-  
14 mendations of the Board of Directors of the Water Users' Association of the Tumalo Project, which  
15 project was designated in chapter 119, Oregon Laws 1913, as the Columbia Southern Irrigation  
16 Project. The project manager shall have complete charge of the operation, maintenance and man-  
17 agement of all matters pertaining to the project, and shall have authority to collect maintenance  
18 fees and issue receipts therefor, to employ necessary assistants, purchase materials and supplies,  
19 make proper and necessary repairs, renewals and alterations in the irrigation system when required,  
20 necessary or authorized by the commission, and to furnish inventories of machinery, equipment and  
21 materials at stated intervals.

22 (2) All machinery, materials, supplies and land acquired by the state under the provisions of  
23 chapter 119, Oregon Laws 1913, not required in the future operation of the project, shall be sold by  
24 the project manager under the direction of the commission, and the funds arising therefrom shall  
25 be placed in the Tumalo Project Fund. The project manager shall render a monthly report to the  
26 commission covering the operation of the project and such other matters as the commission may  
27 direct. The project manager shall furnish a good and sufficient surety bond in the sum of \$5,000  
28 running to the State of Oregon, subject to the approval of the Attorney General, and conditioned  
29 upon the faithful performance of duties.

30 **SECTION 1732.** ORS 555.330 is amended to read:

31 555.330. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
32 make all necessary rules and regulations for properly carrying out the provisions of ORS 555.310 to  
33 555.410.

34 **SECTION 1733.** ORS 555.340 is amended to read:

35 555.340. (1) Subject to ORS 555.350, the prices to be paid for the sale of water rights on private  
36 lands as well as Carey Act lands, in the Tumalo Project, shall be \$40, with interest at five percent  
37 from the date of contract of sale, in addition to which there shall be a charge of \$2.50 per acre for  
38 the nonirrigable Carey Act lands; provided, however, that no new lien shall be placed upon any  
39 lands having a complete vested water right on June 3, 1913. A certified copy of the lien list shall  
40 be prepared by the [*Water Resources Commission*] **Oregon Natural Resources Commission**, show-  
41 ing the price to be paid for water rights for each small subdivision or farm unit of Carey Act land  
42 in the project. A certified copy of the lien list shall be filed in the records of Crook County. From  
43 and after the date of reclamation of any tract designated in the list a valid lien in favor of the State  
44 of Oregon shall exist against each tract in the list for the amount designated therein until the same,  
45 together with accruing interest, has been paid in full.

1 (2) The total amount to be realized from the sale of Carey Act lands and water rights for private  
2 lands shall insure the return to the state of all money expended by it in the reclamation of the lands  
3 in the project with interest at five percent from the date of the contract of sale, in addition to any  
4 further sums or amounts which are found necessary to be paid on account of the project.

5 (3) Any person who holds a contract with the Columbia Southern Irrigation Company or its  
6 successors in interest, for any tract in the project, may execute a new contract with the state for  
7 reclamation, under the provisions of ORS 555.310 to 555.410, of the land described in the original  
8 contract with the company, or a new selection, receiving credit thereon for the principal paid to the  
9 company under the original contract; or, may surrender the contract and receive, in cash, the full  
10 amount of principal paid to the company on the contract; provided, however, that no contract holder  
11 shall be entitled to a refund of the money as herein provided unless an assignment of all rights, title  
12 and interest in and to the contract and the land described therein was filed with the Desert Land  
13 Board on or before July 1, 1917; provided, further, that refunds shall be made to contract holders  
14 pro rata as funds may become available from time to time after July 1, 1915. The failure to comply  
15 with the above option by any contract holder under the old Columbia Southern Project shall render  
16 the contract void and the lands embraced therein shall revert to the state and be subject to reentry.

17 **SECTION 1734.** ORS 555.350 is amended to read:

18 555.350. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may in-  
19 crease the reclamation lien against the land not now sold in the Tumalo Project as fixed in ORS  
20 555.340, if such increase is necessary or expedient in the completion of the project. The commission  
21 may reduce the amount due the state on account of the construction of the Tumalo Project by the  
22 amount expended by any such district or the federal government in completing the reclamation of  
23 the lands embraced within the project or any amount which may be expended in discharging the  
24 obligations of the state incurred under and pursuant to ORS 555.320, 555.340 and 555.380, or other-  
25 wise.

26 **SECTION 1735.** ORS 555.360 is amended to read:

27 555.360. The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
28 make all necessary arrangements to secure the settlement, cultivation and reclamation of Carey Act  
29 lands in the Tumalo Project; accept applications for the entry of the lands; make contracts for the  
30 purchase of water rights and release of lien for the lands; make rules for their cultivation and  
31 settlement; and prescribe the forms to be used for such purposes. Each contract with purchasers  
32 shall provide for payment of the full amount of lien assessed against the tract covered by the con-  
33 tract within a period of not to exceed 20 years, with interest on deferred payments at five percent  
34 per annum, and shall also provide for payment of an annual maintenance fee, to be fixed by the  
35 commission. Contracts executed before May 27, 1913, may be brought under the terms of ORS  
36 555.310 to 555.410, and the rate of interest thereunder shall be five percent from and after December  
37 1, 1916. Contracts for the sale of water rights to private lands within the project shall be upon the  
38 same terms and conditions as for Carey Act lands, and the commission shall in addition require the  
39 purchaser to give a first mortgage on such private lands, to the state, as security for the payments  
40 due under the contract. The contracts with purchasers, both on Carey Act and private lands, shall  
41 provide for the sale of a proportionate interest in the reclamation system to each purchaser, and for  
42 transfer of the reclamation system to the purchasers when the water rights for a majority of the  
43 lands in the project have been fully paid for, the state retaining an interest proportionate to the  
44 unpaid balance on the contracts.

45 **SECTION 1736.** ORS 555.370 is amended to read:

1 555.370. Upon failure of any purchaser having a contract with the [*Water Resources*  
2 *Commission*] **Oregon Natural Resources Commission** to make payments of principal and interest  
3 according to the terms of the contract, the commission shall notify the purchaser by registered mail  
4 or by certified mail with return receipt of the default. If the default continues for a period of six  
5 months after the sending of such notice, the commission may cancel the contract, and all payments  
6 made thereunder shall be forfeited to the state and placed in the irrigation fund. The commission  
7 may reopen the lands covered by the canceled contract for entry, and resell water rights to the land  
8 to some other purchaser. Nothing in this section, however, shall be construed so as to prevent the  
9 commission from extending the time to make any payment due under any contract with a purchaser,  
10 when in the judgment of the commission the purchaser is entitled to an extension.

11 **SECTION 1737.** ORS 555.390 is amended to read:

12 555.390. The [*Water Resources Commission*] **Oregon Natural Resources Commission** may, with  
13 due regard to the interests of the state, transfer all the right, title and interest of the state in and  
14 to the Tumalo Project, and all rights or franchises thereunto appertaining, to any irrigation district  
15 or to the federal government, whenever it appears to the commission that such transfer will be in  
16 the best interests of the project.

17 **SECTION 1738.** ORS 555.400 is amended to read:

18 555.400. In the sale of water and water rights and the entry upon lands now remaining unsold  
19 in the Tumalo Project, honorably discharged soldiers and sailors, marines, and Red Cross nurses of  
20 the Mexican, Spanish or Indian wars and of World War I shall have a preferred right to the pur-  
21 chase and acquiring of the same for such period of time as may be designated by the [*Water Re-*  
22 *sources Commission*] **Oregon Natural Resources Commission**.

23 **SECTION 1739.** ORS 555.410 is amended to read:

24 555.410. The sum of \$10,000, which was appropriated by section 2, chapter 424, Oregon Laws  
25 1917, shall be considered a loan to the Tumalo Project and shall be returned to the General Fund,  
26 together with interest at the legal rate from the date on which the money is made available, from  
27 the receipts of the sale of project lands. All expenditures incurred under the provisions of ORS  
28 555.340, 555.360 and 555.380 shall be paid at the same time and in the same manner as state officers,  
29 upon vouchers approved by the [*Water Resources Commission*] **Oregon Natural Resources Com-**  
30 **mission**.

31 **SECTION 1740.** ORS 561.191 is amended to read:

32 561.191. (1) The State Department of Agriculture shall develop and implement any program or  
33 rules that directly regulate farming practices, as defined in ORS 30.930, that are for the purpose of  
34 protecting water quality and that are applicable to areas of the state designated as exclusive farm  
35 use zones under ORS 215.203 or other agricultural lands in Oregon, including but not limited to  
36 rules related to:

- 37 (a) Protection of the quality of surface or ground water;  
38 (b) Wellhead protection areas;  
39 (c) Coastal zone management areas;  
40 (d) Areas of ground water concern; and  
41 (e) Ground water management areas.

42 (2) Any program or rules adopted by the State Department of Agriculture under subsection (1)  
43 of this section shall be designed to assure achievement and maintenance of water quality standards  
44 adopted by the Environmental Quality Commission.

45 (3) If two or more state agencies are required to adopt rules under ORS 468B.150 to 468B.190,

1 the agencies:

2 (a) Shall consult with one another and coordinate the rules; and

3 (b) May consolidate the rulemaking proceedings.

4 (4) Nothing in this section is intended to change or reduce the authority of the [*Water Resources*  
5 *Commission or the Water Resources Department*] **Oregon Department of Natural Resources or the**  
6 **Oregon Natural Resources Commission** under ORS chapters 536 to 543.

7 **SECTION 1741.** ORS 568.552 is amended to read:

8 568.552. (1) The members of the local governing body of a soil and water conservation district  
9 shall have, in addition to the powers granted to them by ORS 568.550 and within the limits of ap-  
10 propriations and other moneys duly made available to the soil and water conservation district, the  
11 power:

12 (a) To plan, construct, maintain, manage, administer or control any works of improvement for  
13 flood prevention or for the conservation, development, utilization or disposal of water upon lands  
14 within their respective districts upon obtaining the consent of the landowner as defined in ORS  
15 568.210, and the land occupier as defined in ORS 568.210, of such lands.

16 (b) To enter into written agreements to furnish financial or other aid to any agency, govern-  
17 mental or otherwise, or any landowner as defined in ORS 568.210, or land occupier as defined in  
18 ORS 568.210, or both of them, of lands within the district, for flood prevention or for the conserva-  
19 tion, development, utilization or disposal of water within their respective districts.

20 (c) To manage, as agent, or to take over, by purchase, lease, or otherwise any flood prevention,  
21 drainage, irrigation or agricultural water management project or any combination thereof, under-  
22 taken by the United States or any of its agencies, or by this state or any of its agencies.

23 (2) Authority granted under this chapter shall be subject to the authority of the [*Water Re-*  
24 *sources Commission*] **Oregon Natural Resources Commission** to formulate an integrated, coordi-  
25 nated program for the use and control of all water resources of this state and to classify and  
26 withdraw water resources of this state under ORS 536.300 to 536.410.

27 **SECTION 1742.** ORS 701.010 is amended to read:

28 701.010. The Construction Contractors Board may adopt rules to make licensure optional for  
29 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-  
30 ministrative rule of the board. The following persons are exempt from licensure under this chapter:

31 (1) A person who is constructing, altering, improving or repairing personal property.

32 (2) A person who is constructing, altering, improving or repairing a structure located within the  
33 boundaries of any site or reservation under the jurisdiction of the federal government.

34 (3) A person who furnishes materials, supplies, equipment or finished product and does not fab-  
35 ricate them into, or consume them, in the performance of the work of a contractor.

36 (4) A person working on one structure or project, under one or more contracts, when the ag-  
37 gregate price of all of that person's contracts for labor, materials and all other items is less than  
38 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply  
39 to a person who advertises or puts out any sign or card or other device that might indicate to the  
40 public that the person is a contractor.

41 (5) An owner who contracts for work to be performed by a licensed contractor. This subsection  
42 does not apply to a person who, in the pursuit of an independent business, constructs, remodels,  
43 repairs or for compensation and with the intent to sell the structure, arranges to have constructed,  
44 remodeled or repaired a structure with the intent of offering the structure for sale before, upon or  
45 after completion. It is prima facie evidence that there was an intent of offering the structure for sale

1 if the person who constructed, remodeled or repaired the structure or arranged to have the struc-  
2 ture constructed, remodeled or repaired does not occupy the structure after its completion.

3 (6) An owner who contracts for one or more licensed contractors to perform work wholly or  
4 partially within the same calendar year on not more than three existing residential structures of the  
5 owner. This subsection does not apply to an owner contracting for work that requires a building  
6 permit unless the work that requires a permit is performed by, or under the direction of, a residen-  
7 tial general contractor.

8 (7) A person performing work on a property that person owns or performing work as the owner's  
9 employee, whether the property is occupied by the owner or not, or a person performing work on  
10 that person's residence, whether or not that person owns the residence. This subsection does not  
11 apply to a person performing work on a structure owned by that person or the owner's employee,  
12 if the work is performed in the pursuit of an independent business with the intent of offering the  
13 structure for sale before, upon or after completion.

14 (8) A person licensed in one of the following trades or professions when operating within the  
15 scope of that license:

16 (a) An architect licensed by the State Board of Architect Examiners.

17 (b) A professional engineer registered by the State Board of Examiners for Engineering and  
18 Land Surveying.

19 (c) A water well contractor licensed by the [*Water Resources Department*] **Oregon Department**  
20 **of Natural Resources**.

21 (d) A sewage disposal system installer licensed by the Department of Environmental Quality.

22 (e) A landscape contracting business licensed under ORS 671.510 to 671.760.

23 (f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood  
24 destroying organisms for the transfer of real estate.

25 (g) An appraiser certified or licensed under ORS chapter 674 or an appraiser assistant registered  
26 under ORS chapter 674 by the Appraiser Certification and Licensure Board.

27 (9) A landscape contracting business operating within the scope of a license issued under ORS  
28 671.510 to 671.760 that:

29 (a) Constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining  
30 walls and meets the applicable bonding requirements under ORS 671.690; or

31 (b) Subcontracts to a licensed plumbing contractor, or otherwise arranges for a licensed plumb-  
32 ing contractor to perform, the installation of an irrigation system described in ORS 671.540 (1)(m)  
33 or the repair or maintenance of an irrigation system.

34 (10) A person who performs work subject to this chapter as an employee of a contractor.

35 (11) A manufacturer of a manufactured home constructed under standards established by the  
36 federal government.

37 (12) A person involved in the movement of:

38 (a) Modular buildings or structures other than manufactured structures not in excess of 14 feet  
39 in width.

40 (b) Structures not in excess of 16 feet in width when the structures are being moved by their  
41 owner if the owner is not a contractor required to be licensed under this chapter.

42 (13) A commercial lending institution or surety company that arranges for the completion, repair  
43 or remodeling of a structure. As used in this subsection, "commercial lending institution" means  
44 any bank, mortgage banking company, trust company, savings bank, savings and loan association,  
45 credit union, national banking association, federal savings and loan association, insurance company

1 or federal credit union maintaining an office in this state.

2 (14) A real estate licensee as defined in ORS 696.010 or the employee of that licensee when  
3 performing work on a structure that the real estate licensee manages under a contract.

4 (15) Units of government other than those specified in ORS 701.005 (5)(c) and (d).

5 (16) A qualified intermediary in a property exchange that qualifies under section 1031 of the  
6 Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary  
7 is not performing construction activities.

8 (17) A business that supplies personnel to a licensed contractor for the performance of work  
9 under the direction and supervision of the contractor.

10 (18) City or county inspectors acting under ORS 701.225 or inspectors described in ORS 455.715.

11 **SECTION 1743.** ORS 772.305 is amended to read:

12 772.305. (1) The United States, the state, or any person, firm, cooperative, association or corpo-  
13 ration, shall have the right of way across and upon public, private and corporate lands or other  
14 rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams,  
15 water gates, canals, ditches, flumes, tunnels, pipelines or other means of securing, storing and con-  
16 veying water for irrigation or for drainage, or any other beneficial purpose, upon payment of just  
17 compensation therefor.

18 (2) But such right of way shall in all cases be so constructed, obtained, located and exercised  
19 in a manner consistent with proper and economical and engineering construction, so as not to un-  
20 necessarily impair practical use of any other right of way, highway or public or private road, nor  
21 to unnecessarily injure any public or private property.

22 (3) Such right of way may be acquired in the manner provided by law for the taking of private  
23 property for public use. If a water right permit is required under the applicable provisions of ORS  
24 chapter 537 in order to use, store or convey water within the right of way, a person, firm, cooper-  
25 ative, association or corporation may not acquire a right of way under this subsection before ob-  
26 taining a water right permit or obtaining a final order of the [*Water Resources Department*] **Oregon**  
27 **Department of Natural Resources** approving an application for a water right permit.

28 (4) In determining just compensation under subsection (1) of this section for a right of way  
29 across forestlands, consideration shall be given, but not limited to, the effect of the right of way on:

30 (a) Access to the whole of the affected parcel;

31 (b) Ease and method of timber harvesting or other commercial uses of the affected parcel; and

32 (c) Any agricultural or silvicultural activities on the affected parcel, including but not limited  
33 to application of chemicals, cultivation or harvesting activities and movement of equipment associ-  
34 ated with any of the above activities.

35 **SECTION 1744.** ORS 772.310 is amended to read:

36 772.310. (1) When the United States, the state, or any person, firm or corporation desires to  
37 convey water for irrigation, drainage or for any other beneficial purpose, and there is a canal or  
38 ditch already constructed that can be enlarged to convey the required quantity of water, then the  
39 United States, the state, or any such person, firm or corporation, or the owner or owners of the land  
40 through which a new canal or ditch would have to be constructed to convey the quantity of water  
41 necessary, may enlarge the canal or ditch already constructed, by compensating the owner of the  
42 canal or ditch to be enlarged for the damages, if any, caused by the enlargement.

43 (2) The enlargement may be made at any time between October 1 and March 1, but not any  
44 other times, unless upon agreement in writing with the owner or owners of the canal or ditch.

45 (3) If a water right permit is required under the applicable provisions of ORS chapter 537 in



1 order to use, store or convey water within the enlargement, a person, firm, cooperative, association  
 2 or corporation may not acquire an enlargement under this section before obtaining a water right  
 3 permit or obtaining a final order of the [*Water Resources Department*] **Oregon Department of Na-**  
 4 **tural Resources** approving an application for a water right permit.

5 **NOTE:** Section 1745 was deleted. Subsequent sections were not renumbered.

6 **SECTION 1746.** Section 4, chapter 669, Oregon Laws 2005, is amended to read:

7 **Sec. 4.** Section 2, **chapter 669, Oregon Laws 2005**, [*of this 2005 Act*] applies to all ground water  
 8 permits containing a ground water mitigation requirement, all final orders approving water right  
 9 applications containing a ground water mitigation requirement, all mitigation credits, all ground  
 10 water mitigation projects and all mitigation banks issued or approved in the Deschutes River Basin  
 11 by the [*Water Resources Department or the Water Resources Commission*] **Oregon Department of**  
 12 **Natural Resources or the Oregon Natural Resources Commission** before, on or after [*the effec-*  
 13 *tive date of this 2005 Act*] **July 29, 2005**.

14 **SECTION 1747.** Section 5, chapter 669, Oregon Laws 2005, is amended to read:

15 **Sec. 5.** (1) The [*Water Resources Commission*] **Oregon Natural Resources Commission** shall  
 16 repeal the rules referred to in section 2, **chapter 669, Oregon Laws 2005**, [*of this 2005 Act*] on  
 17 January 2, 2014.

18 (2) Ground water permits and mitigation projects approved before the repeal remain valid and  
 19 effective.

20 **SECTION 1748.** Section 2, chapter 496, Oregon Laws 2001, is amended to read:

21 **Sec. 2.** (1) There is established a Well Constructors Continuing Education Committee consisting  
 22 of four members appointed by the [*Water Resources Director*] **Director of the Oregon Department**  
 23 **of Natural Resources** as follows:

24 (a) Three persons from the well drilling industry licensed pursuant to ORS 537.747; and

25 (b) One person from the regulatory community.

26 (2) The term of office of each member is three years, but a member serves at the pleasure of the  
 27 director. Before the expiration of the term of a member, the director shall appoint a successor whose  
 28 term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy  
 29 for any cause, the director shall make an appointment to become effective immediately for the un-  
 30 expired term.

31 (3) A member of the committee is entitled to travel expenses as provided in ORS 292.495.

32 (4) Members of the committee must be residents of this state who are knowledgeable about the  
 33 principles of well construction.

34 (5) The committee shall select one of its members as chairperson and another as vice chair-  
 35 person, for such terms and with the duties and powers necessary for the performance of the func-  
 36 tions of such offices as the committee determines.

37 (6) Three members of the committee constitute a quorum for the transaction of business. At least  
 38 three members of the committee must approve all official actions or decisions of the committee.

39 **SECTION 1749.** Section 4, chapter 496, Oregon Laws 2001, as amended by section 2, chapter  
 40 221, Oregon Laws 2007, is amended to read:

41 **Sec. 4.** (1) The Well Constructors Continuing Education Committee shall recommend to the  
 42 [*Water Resources Commission*] **Oregon Natural Resources Commission** a process for reviewing  
 43 and approving continuing education requirements for licensed water well constructors established  
 44 by rule pursuant to subsection (2) of this section.

45 (2) The commission shall adopt rules necessary for the administration of a continuing education

1 program for licensed water well constructors consistent with the recommendations of the committee.

2 (3) The rules adopted by the commission under this section for the continuing education program  
3 shall:

4 (a) Authorize the committee to review and approve continuing education courses and to assign  
5 continuing education credits.

6 (b) At a minimum require, for renewal of a license issued under ORS 537.747, that an applicant:

7 (A) Through clinics, schools, professional organizations or seminars, lectures or other courses  
8 of study that relate to the practice of well construction and that are approved by the committee,  
9 obtain continuing education credits during each licensing period in an amount designated by the  
10 commission, but not to exceed 14 credits; and

11 (B) Furnish proof on a form approved by the committee that the applicant has complied with the  
12 continuing education requirements during the preceding licensing period unless the applicant is ex-  
13 empt under subsection (4) of this section.

14 (4) The commission may waive the continuing education requirements established by rule pur-  
15 suant to subsection (2) of this section for a licensed water well constructor if the constructor sub-  
16 mits satisfactory evidence of inability to attend continuing education courses because of health,  
17 military duty or other circumstances beyond the control of the constructor.

18 (5) For courses sponsored by the [*Water Resources Department*] **Oregon Department of Natural**  
19 **Resources**, the fee for one continuing education credit is \$40, and the total fees per day may not  
20 exceed \$250.

21 (6) The fees collected under this section for continuing education courses sponsored by the de-  
22 partment shall be [*paid into the Water Resources Department Water Right Operating Fund.*  
23 *Notwithstanding ORS 536.009, such moneys shall be used*] **deposited in the Oregon Natural Re-**  
24 **sources Fund. Moneys deposited in the fund under this subsection are continuously appro-**  
25 **riated to the department** to pay the department's expenses associated with conducting continuing  
26 education courses.

27 (7) At the time of application to renew a water well constructor's license pursuant to ORS  
28 537.747 (5), a person shall provide the department with evidence of compliance with the continuing  
29 education requirements established pursuant to this section.

30 **SECTION 1749a.** Section 23, chapter 705, Oregon Laws 2003, as amended by section 1, chapter  
31 283, Oregon Laws 2009, is amended to read:

32 **Sec. 23.** (1) In order to increase district water management flexibility, the [*Water Resources*  
33 *Department*] **Oregon Department of Natural Resources** shall establish a pilot project in which  
34 districts may temporarily allow, for water uses subject to transfer, the use of water on any land  
35 within the legal boundaries of the district established pursuant to ORS chapter 545, 547, 552, 553  
36 or 554.

37 (2) The use of water on any land within the legal boundaries of the district may be allowed if:

38 (a) The rate and duty, and the total number of acres to which water will be applied under the  
39 transfer, do not exceed existing limits on the water use subject to transfer;

40 (b) The type of use authorized under the water use subject to transfer remains the same; and

41 (c) The land from which the water use is being transferred does not receive any water under  
42 the right being transferred during the irrigation season in which the change is made.

43 (3) The department shall allow the pilot project to be implemented in the Talent Irrigation Dis-  
44 trict, the Owyhee Irrigation District, the Tualatin Valley Irrigation District, the Central Oregon  
45 Irrigation District, the Swalley Irrigation District, the Westland Irrigation District, the North Unit

1 Irrigation District, the Arnold Irrigation District, the Stanfield Irrigation District, the West Extension  
 2 Irrigation District, the Hermiston Irrigation District, the Medford Irrigation District, the  
 3 Sutherlin Water Control District, the Santiam Water Control District and the Ochoco Irrigation  
 4 District or their successor districts. However, any district participating in the project must:

5 (a) Have defined state district boundaries;

6 (b) Have a management structure that can ensure that water is applied only where the water  
 7 use is authorized;

8 (c) Not irrigate an area in any one irrigation season that exceeds the maximum number of acres  
 9 allowed to be irrigated under the original water right;

10 (d) Have a full and accurate measurement of the water appropriated;

11 (e) Have an accurate map identifying the location of authorized use, by priority date, for review  
 12 upon request and provide a copy of the map to the watermaster; and

13 (f) Have on file statements by any landowner affected by the water use change indicating that  
 14 the landowner agrees to the change.

15 (4) If any of the specified districts are unable to participate in the project, the department may  
 16 identify another district for the project.

17 (5) The department may require that use of water under the pilot project cease and that the use  
 18 revert to the use allowed under the water right of record if the department determines that:

19 (a) The district does not meet the qualifications established in subsection (3) of this section;

20 (b) The water is being used in a manner that violates the requirements in subsection (2) of this  
 21 section; or

22 (c) The changes made to the use of water would result in injury to existing water rights or an  
 23 enlargement of the original water right.

24 (6) Use of water under the pilot project constitutes a beneficial use of water and does not con-  
 25 stitute nonuse for purposes of forfeiture under ORS 540.610.

26 **SECTION 1749b.** Section 24, chapter 705, Oregon Laws 2003, as amended by section 1, chapter  
 27 10, Oregon Laws 2007, and section 2, chapter 283, Oregon Laws 2009, is amended to read:

28 **Sec. 24.** The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
 29 report to the Seventy-eighth Legislative Assembly, no later than January 31, 2015, on the operation  
 30 of the pilot project established under section 23, chapter 705, Oregon Laws 2003.

31 **SECTION 1749c.** Section 5, chapter 13, Oregon Laws 2008, is amended to read:

32 **Sec. 5.** (1) The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
 33 conduct a regional aquifer recovery assessment for the Umatilla Basin. The assessment conducted  
 34 under this section must:

35 (a) Include an engineering and hydrogeologic study that evaluates the cost and feasibility of  
 36 designing, constructing and expanding facilities to extract surface water during times that would  
 37 avoid impacts on state or federally listed endangered or threatened fish species and on existing  
 38 water rights.

39 (b) Evaluate the feasibility of:

40 (A) Recharging ground water pursuant to ORS 537.135 in the Ordnanee and Echo Meadows  
 41 aquifers; and

42 (B) Injecting water into the Ordnanee, Butter Creek and Stage Gulch basalt aquifers pursuant  
 43 to ORS 537.531, 537.532 and 537.534.

44 (2) The feasibility study required under this section must identify:

45 (a) Monitoring requirements to aid in the evaluation of potential impacts to stream flows,

1 ground water quality and surface water quality.

2 (b) Options for the treatment of ground water and surface water that meet requirements under  
3 ORS 537.135, 537.531, 537.532 and 537.534.

4 (c) Potential permitting and other jurisdictional issues under ORS 537.135, 537.531, 537.532 and  
5 537.534.

6 (d) Opportunities to protect fish and fish habitat, and to improve streamflows, in the Lower  
7 Umatilla River based on existing information.

8 **SECTION 1749d.** Section 6, chapter 13, Oregon Laws 2008, is amended to read:

9 **Sec. 6.** In completing the Umatilla Basin regional aquifer recovery assessment required by sec-  
10 tion 5, **chapter 13, Oregon Laws 2008** [of this 2008 Act], the [Water Resources Department] **Oregon**  
11 **Department of Natural Resources** shall request that the Bureau of Reclamation of the United  
12 States Department of the Interior:

13 (1) Consider the feasibility of using infrastructure from the bureau's Umatilla Basin Project  
14 Phase II to deliver surface water from the Columbia River to the Stage Gulch critical ground water  
15 area; and

16 (2) Coordinate the Bureau of Reclamation study of the water supply in the Umatilla Basin with  
17 the department's Umatilla Basin regional aquifer recovery assessment and determine whether the  
18 bureau may assist with the temporary or permanent replacement of water for designated critical  
19 ground water areas in the Umatilla Basin.

20 **SECTION 1749e.** Section 17, chapter 907, Oregon Laws 2009, is amended to read:

21 **Sec. 17.** (1) As used in this section, "critical ground water storage project" means an under-  
22 ground or below-ground storage of river water in a critical ground water area designated under ORS  
23 537.730 for use in:

24 (a) Aquifer storage and recovery as described in ORS 537.534 and streamflow augmentation and  
25 restoration; or

26 (b) Recharging ground water basins and reservoirs as described in ORS 537.135 and streamflow  
27 augmentation and restoration.

28 (2) The [Water Resources Department] **Oregon Department of Natural Resources** may issue  
29 a grant under this section only for a critical ground water storage project that is located in the  
30 Umatilla Basin and that meets the conditions described in this section.

31 (3) Except as provided in subsection (4) of this section, notwithstanding ORS 537.534, if the  
32 project uses artificial recharge to recharge an alluvial aquifer that is not confined, the project must  
33 be designed:

34 (a) To provide for no more than 75 percent of new stored water to be withdrawn and for not less  
35 than 25 percent of the new water to be dedicated for the purpose of providing net environmental  
36 public benefits or in-stream benefits; and

37 (b) To the extent practicable, to return dedicated new stored water for stream augmentation at  
38 a time of year that the [Water Resources] department, in consultation with [the State Department of  
39 Fish and Wildlife and] relevant tribal governments, determines will provide the maximum net envi-  
40 ronmental public benefit or in-stream benefit.

41 (4) If more than 25 percent of the funding for an aquifer storage and recovery project is from  
42 grants of state moneys and is not subject to repayment, the project must be designed to dedicate for  
43 the purpose of providing net environmental public benefit or in-stream benefit a percentage of the  
44 new stored water created by the project that equals or exceeds the percentage of funding for the  
45 project that is from grants of state moneys. The [Water Resources] department shall manage the

1 dedicated increment of new stored water for net environmental public benefit and in-stream benefit.

2 (5) On or before the earlier of six years after the issuance of the ground water recharge permit  
3 or the date the water right certificate is issued, the department shall quantify and legally protect  
4 in-stream the increment of new water returned in stream from a project described in this section.

5 (6) The department shall require as a contractual condition for issuing the grant, and as a con-  
6 dition of any new groundwater recharge permit or water right certificate issued for the project, that  
7 if the project receives grants or loans from state moneys other than a grant issued under this sec-  
8 tion, the project must be operated in a manner that actually dedicates the percentage of new stored  
9 water for net environmental public benefit or in-stream benefit that the project was designed to  
10 dedicate for those purposes.

11 (7) This section does not limit the authority granted the Environmental Quality Commission or  
12 the Department of Environmental Quality under ORS chapter 468B.

13 (8) This section is repealed January 2, 2030.

14 **SECTION 1749f.** Section 20, chapter 907, Oregon Laws 2009, is amended to read:

15 **Sec. 20.** (1) A water developer, as defined in ORS 541.700, shall file an application for a loan  
16 from the Water Development Fund as provided in this section instead of under ORS 541.705 if:

17 (a) The applicant is not a municipality or a provider of water for municipal purposes;

18 (b) The loan is for the purpose of enabling the construction of a water development project in  
19 the Columbia River Basin; and

20 (c) The moneys from which the loan is to be funded were provided under an appropriation that  
21 dedicates the moneys for use under this section or for loans of a type described in this subsection  
22 made to applicants of a type described in this subsection.

23 (2) An application filed under this section must be in a form prescribed by the [*Water Resources*  
24 *Commission*] **Oregon Natural Resources Commission** and include the following:

25 (a) A description of the nature and the primary and secondary purposes of the project.

26 (b) An analysis of the need for the project and for the water that the project is intended to de-  
27 liver.

28 (c) Identification and description of the project components sufficient to meet the conditions for  
29 project funding approval under section 25, **chapter 907, Oregon Laws 2009** [*of this 2009 Act*].

30 (d) A description of the economic feasibility of the project, including but not limited to:

31 (A) The costs of the project; and

32 (B) Information about the financial and other aspects of the operation and maintenance plans  
33 for the project.

34 (e) Suggestions for interim and long-term project performance benchmarks.

35 (f) An analysis of the project impacts including, but not limited to, the:

36 (A) Expected economic public benefits.

37 (B) Expected social and cultural public benefits.

38 (C) Expected net environmental public benefits.

39 (g) An evaluation of the potential impact on water quality, based upon water quality standards.

40 (h) Proof that the applicant has acquired at least a final order or limited license for necessary  
41 water permits from the [*department*] **Oregon Department of Natural Resources**.

42 (i) Letters of support for the proposed water resource development project.

43 (j) If the project has not previously received state funding, a statement regarding whether other  
44 moneys are available or have been sought or received for the implementation of the water resource  
45 development project.

1 (k) A description of a loan repayment plan.

2 (L) Any other information required by the department.

3 (3) Any relevant information described in ORS 541.705 (2)(c) or (e) or (3).

4 (4) If the project will receive surface water impounded from a perennial stream, water diverted  
5 from a stream that supports sensitive, threatened or endangered fish, or more than 500 acre-feet of  
6 diverted surface water annually, in addition to the other information required under this section the  
7 application shall include the following completed studies:

8 (a) An analysis of by-pass, optimum peak, flushing and other ecological flows of the affected  
9 stream and of the impact of the project on those flows, that conforms to standards set by the de-  
10 partment in consultation with [*the State Department of Fish and Wildlife and other*] relevant agen-  
11 cies;

12 (b) An independent comparative analysis of alternative means of supplying the water intended  
13 to be generated by the project, including but not limited to the costs and benefits of conservation,  
14 reuse and alternatives and the extent to which long-term water supply needs may be met using those  
15 alternatives; and

16 (c) Evaluation of the need for and feasibility of using project-derived water to augment in-stream  
17 flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.

18 (5) If the applicant is an agricultural water supplier, the applicant must have an approved ag-  
19 riculture water management and conservation plan, have submitted a completed agricultural water  
20 management and conservation plan to the [*Water Resources*] department for approval or be in the  
21 process of completing or updating a water management and conservation plan.

22 (6) An application under this section is subject to application fees and additional processing  
23 costs as described in ORS 541.710 and loan processing fees under ORS 541.730.

24 (7) An analysis and evaluation conducted as part of a study performed pursuant to [*chapter 13,*  
25 *Oregon Laws 2008*] **ORS 541.561 to 541.581 and sections 5 and 6, chapter 13, Oregon Laws**  
26 **2008**, is deemed to satisfy the requirements of subsection (4) of this section.

27 **SECTION 1749g.** Section 25, chapter 907, Oregon Laws 2009, is amended to read:

28 **Sec. 25.** (1) The [*Water Resources Department*] **Oregon Department of Natural Resources**,  
29 acting as agent for the [*Water Resources Commission*] **Oregon Natural Resources Commission**,  
30 may approve a loan for which an application is filed under section 20, **chapter 907, Oregon Laws**  
31 **2009** [*of this 2009 Act*], if the department finds that:

32 (a) The loan meets any applicable qualifications or restrictions under Article XI-I(1) of the  
33 Oregon Constitution, ORS 541.700 to 541.855, section 26, **chapter 907, Oregon Laws 2009**, [*of this*  
34 *2009 Act, Water Resources Commission*] **rules of the commission** and bondholder agreements;

35 (b) The plan for the construction of the proposed project complies with all applicable provisions  
36 related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams un-  
37 der ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

38 (c) Planned diversions of surface water include provision for fish screens and, if applicable,  
39 volitional fish passage;

40 (d) The use of surface water or ground water from the project will be measured and reported;

41 (e) The applicant or beneficiaries of water from the project measure and report, or have sched-  
42 uled and financed the measurement of, all existing water use at the point of diversion;

43 (f) There is a reasonable certainty that the project will deliver a measurable net environmental  
44 public benefit; and

45 (g) The project is designed to deliver in-stream benefits.

1 (2) The department may require that a project protect peak and ecological flows to the extent  
 2 [determined by the State Department of Fish and Wildlife to be] **that the department determines**  
 3 **that such protection is** necessary.

4 (3) This section and sections 20 and 26, **chapter 907, Oregon Laws 2009**, [of this 2009 Act] do  
 5 not limit the authority granted the Environmental Quality Commission or the Department of Envi-  
 6 ronmental Quality under ORS chapter 468B.

7 **SECTION 1749h.** Section 25, chapter 907, Oregon Laws 2009, as amended by section 31, chapter  
 8 907, Oregon Laws 2009, is amended to read:

9 **Sec. 25.** (1) The [Water Resources Department] **Oregon Department of Natural Resources**,  
 10 acting as agent for the [Water Resources Commission] **Oregon Natural Resources Commission**,  
 11 may approve a loan for which an application is filed under section 20, **chapter 907, Oregon Laws**  
 12 **2009** [of this 2009 Act], if the department finds that:

13 (a) The loan meets any applicable qualifications or restrictions under Article XI-I(1) of the  
 14 Oregon Constitution, ORS 541.700 to 541.855, section 26, **chapter 907, Oregon Laws 2009**, [of this  
 15 2009 Act, Water Resources Commission] rules **of the commission** and bondholder agreements;

16 (b) The plan for the construction of the proposed project complies with all applicable provisions  
 17 related to water well constructors under ORS 537.747 to 537.765, reservoirs and diversion dams un-  
 18 der ORS 540.340 and dams, dikes and hydraulic structures or works in ORS 540.350;

19 (c) Planned diversions of surface water include provision for fish screens and, if applicable,  
 20 volitional fish passage;

21 (d) The use of surface water or ground water from the project will be measured and reported;

22 (e) The applicant or beneficiaries of water from the project measure and report, or have sched-  
 23 uled and financed the measurement of, all existing water use at the point of diversion;

24 (f) There is a reasonable certainty that the project will deliver a measurable net environmental  
 25 public benefit; and

26 (g) The project is designed to deliver in-stream benefits.

27 (2) The department shall require that a project protect peak and ecological flows to the extent  
 28 [determined by the State Department of Fish and Wildlife to be] **that the department determines**  
 29 **that such protection is** necessary.

30 (3) This section and sections 20 and 26, **chapter 907, Oregon Laws 2009**, [of this 2009 Act] do  
 31 not limit the authority granted the Environmental Quality Commission or the Department of Envi-  
 32 ronmental Quality under ORS chapter 468B.

33 **SECTION 1749i.** Section 26, chapter 907, Oregon Laws 2009, is amended to read:

34 **Sec. 26.** (1) The [Water Resources Department] **Oregon Department of Natural Resources**  
 35 shall ensure that any necessary federal and state environmental impact approval processes have  
 36 been completed, and that agencies have issued any relevant approvals and permits, before the ad-  
 37 vancement of any loan moneys for a project described in section 25, **chapter 907, Oregon Laws**  
 38 **2009** [of this 2009 Act]. The department shall determine the amount of a loan for a project described  
 39 in section 25, **chapter 907, Oregon Laws 2009**, [of this 2009 Act] on a case-by-case basis. The de-  
 40 partment shall determine the maximum amount of a loan based in part upon a reasonable and pru-  
 41 dent expectation of the ability of the borrower to repay the loan. The department may not issue a  
 42 loan to provide assistance for operational or maintenance expenses of a water development project  
 43 other than project startup costs.

44 (2) Notwithstanding ORS 541.730, if the [Water Resources Commission] **Oregon Natural Re-**  
 45 **sources Commission**, in consultation with the State Treasurer, believes that the project is unlikely

1 to produce a net profit for the borrower or for any for-profit entity, the commission may set the loan  
 2 interest rate at a level that reduces or waives the amount of the interest rate set under ORS 541.730  
 3 that is in excess of the interest to be paid to bondholders on the underlying bonds.

4 (3) The department may issue a loan only if the applicant agrees to periodic review of the  
 5 project, including but not limited to:

6 (a) Review of interim and long-term performance benchmarks set by the department; and

7 (b) Program and fiscal audits to ensure that performance benchmarks are achieved on project  
 8 development, project benefits and return on investment.

9 (4) The department may issue a loan only if the applicant agrees to report to the department  
 10 no later than two years after receiving the loan moneys regarding the progress of the project and  
 11 the economic public benefit, social and cultural public benefit and net environmental public benefit  
 12 realized from the project. The department shall provide copies of the applicant reports received by  
 13 the department during the biennium to an interim committee of the Legislative Assembly dealing  
 14 with natural resources.

15 (5) The commission may establish reasonable fees for management, oversight or review services  
 16 that the department provides for a water development project. The fees shall be deposited to the  
 17 Water Development Administration and Bond Sinking Fund.

18 **SECTION 1749j.** Section 29, chapter 907, Oregon Laws 2009, is amended to read:

19 **Sec. 29.** The [*Water Resources Department*] **Oregon Department of Natural Resources** shall  
 20 report to the Seventy-sixth Legislative Assembly in the manner provided by ORS 192.245 no later  
 21 than October 1, 2012, regarding the operation of the loan and grant programs described in **ORS**  
 22 **541.600 to 541.641 and sections 20, 25 and 26, chapter 907, Oregon Laws 2009** [*sections 18 to 27*  
 23 *of this 2009 Act* ], including but not limited to:

24 (1) The number and types of jobs created by water development projects receiving loans or  
 25 grants from the department;

26 (2) Any studies conducted by the department or loan or grant recipients during the 2009-2011  
 27 biennium regarding peak and ecological flows in streams;

28 (3) Any recommendations by the department for legislative changes to improve the operation of  
 29 the loan and grant programs;

30 (4) Any recommendations for changes to Article XI-I(1) of the Oregon Constitution to be referred  
 31 to the people;

32 (5) The total economic public benefit, social and cultural public benefit and net environmental  
 33 public benefit created as a result of loans and grants issued under [*sections 23 and 25 of this 2009*  
 34 *Act*] **ORS 541.631 and section 25, chapter 907, Oregon Laws 2009;**

35 (6) An analysis of the effect of the requirement imposed under [*section 23 (2) of this 2009 Act*]  
 36 **ORS 541.631 (2);**

37 (7) Estimated increases in state tax revenues generated by projects receiving grants or loans;

38 (8) The gross dollar value of issued loans, the amount of loan reserves and the increase the  
 39 Water Development Fund attributable to the interest rate amount described in ORS 541.730 (3)(e);  
 40 and

41 (9) Moneys generated from fees under [*sections 19, 20, 24 and 26 of this 2009 Act*] **ORS 541.611**  
 42 **and 541.636 and sections 20 and 26, chapter 907, Oregon Laws 2009.**

43 **SECTION 1749k.** Section 33, chapter 907, Oregon Laws 2009, is amended to read:

44 **Sec. 33.** (1) Notwithstanding [*sections 19 and 21 to 23 of this 2009 Act*] **ORS 541.611, 541.616,**  
 45 **541.621 and 541.631,** but subject to [*section 24 of this 2009 Act, the Water Resources Department*] **ORS**



1 **541.636, the Oregon Department of Natural Resources** shall waive the grant application process  
 2 described in [sections 19 and 21 to 23 of this 2009 Act] **ORS 541.611, 541.616, 541.621 and 541.631**  
 3 when issuing a grant for water development projects that:

4 (a) Are located in an area of the Umatilla Basin for which an assessment has been performed  
 5 under [chapter 13, Oregon Laws 2008] **ORS 541.561 to 541.581 and sections 5 and 6, chapter 13,**  
 6 **Oregon Laws 2008;** and

7 (b) Except as provided in subsection (2) of this section, are designed:

8 (A) To provide for no more than 75 percent of new stored water to be withdrawn and for not  
 9 less than 25 percent of the new water to be dedicated for the purpose of providing net environmental  
 10 public benefits or in-stream benefits; and

11 (B) To the extent practicable, to return dedicated new stored water for stream augmentation at  
 12 a time of year that the [Water Resources] department, in consultation with [the State Department of  
 13 Fish and Wildlife and] relevant tribal governments, determines will provide the maximum net envi-  
 14 ronmental public benefit or in-stream benefit.

15 (2) If more than 25 percent of the funding for an aquifer storage and recovery project is from  
 16 grants of state moneys and is not subject to repayment, the project must be designed to dedicate for  
 17 the purpose of providing net environmental public benefit or in-stream benefit a percentage of the  
 18 new stored water created by the project that equals or exceeds the percentage of funding for the  
 19 project that is from grants of state moneys. The [Water Resources] department shall manage the  
 20 dedicated increment of new stored water for net environmental public benefit and in-stream benefit.

21 (3) This section does not limit the authority granted the Environmental Quality Commission or  
 22 the Department of Environmental Quality under ORS chapter 468B.

23 (4) This section is repealed January 2, 2030.

24  
 25 **OREGON WATERSHED ENHANCEMENT BOARD**

26  
 27 **(Abolishment and Transfer of**  
 28 **Duties, Functions and Powers)**

29  
 30 **SECTION 1750. (1) The Oregon Watershed Enhancement Board is abolished. On the op-**  
 31 **erative date of this section, the tenure of office of the executive director and the members**  
 32 **of the Oregon Watershed Enhancement Board ceases.**

33 **(2) All the duties, functions and powers of the Oregon Watershed Enhancement Board**  
 34 **are imposed upon, transferred to and vested in the Oregon Department of Natural Re-**  
 35 **sources.**

36  
 37 **(Transfer of Records, Property and Employees)**

38  
 39 **SECTION 1751. (1) The board of directors of the Oregon Watershed Enhancement Board**  
 40 **shall:**

41 **(a) Deliver to the Oregon Department of Natural Resources all records and property**  
 42 **within the jurisdiction of the board that relate to the duties, functions and powers trans-**  
 43 **ferred by section 1750 of this 2011 Act; and**

44 **(b) Transfer to the Oregon Department of Natural Resources those employees engaged**  
 45 **primarily in the exercise of the duties, functions and powers transferred by section 1750 of**

1 this 2011 Act.

2 (2) The Director of the Oregon Department of Natural Resources shall take possession  
3 of the records and property, and shall take charge of the employees and employ them in the  
4 exercise of the duties, functions and powers transferred by section 1750 of this 2011 Act,  
5 without reduction of compensation but subject to change or termination of employment or  
6 compensation as provided by law.

7 (3) The Governor shall resolve any dispute between the Oregon Watershed Enhancement  
8 Board and the Oregon Department of Natural Resources relating to transfers of records,  
9 property and employees under this section, and the Governor's decision is final.

10  
11 (Transfer of Unexpended Revenues)

12  
13 **SECTION 1752.** (1) The unexpended balances of amounts authorized to be expended by the  
14 Oregon Watershed Enhancement Board for the biennium beginning July 1, 2011, from re-  
15 venues dedicated, continuously appropriated, appropriated or otherwise made available for  
16 the purpose of administering and enforcing the duties, functions and powers transferred by  
17 section 1750 of this 2011 Act are transferred to and are available for expenditure by the  
18 Oregon Department of Natural Resources for the biennium beginning July 1, 2011, for the  
19 purpose of administering and enforcing the duties, functions and powers transferred by sec-  
20 tion 1750 of this 2011 Act.

21 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
22 expenditures by the Oregon Watershed Enhancement Board remain applicable to expen-  
23 ditures by the Oregon Department of Natural Resources under this section.

24  
25 (Action, Proceeding and Prosecution)

26  
27 **SECTION 1753.** The transfer of duties, functions and powers to the Oregon Department  
28 of Natural Resources by section 1750 of this 2011 Act does not affect any action, proceeding  
29 or prosecution involving or with respect to such duties, functions and powers begun before  
30 and pending at the time of the transfer, except that the Oregon Department of Natural Re-  
31 sources is substituted for the Oregon Watershed Enhancement Board in the action, pro-  
32 ceeding or prosecution.

33  
34 (Liability, Duty and Obligation)

35  
36 **SECTION 1754.** (1) Nothing in sections 1750 to 1756 of this 2011 Act, the amendments to  
37 statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257,  
38 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS  
39 541.360, 541.362 or 541.363 by section 2161 of this 2011 Act relieves a person of a liability, duty  
40 or obligation accruing under or with respect to the duties, functions and powers transferred  
41 by section 1750 of this 2011 Act. The Oregon Department of Natural Resources may under-  
42 take the collection or enforcement of any such liability, duty or obligation.

43 (2) The rights and obligations of the Oregon Watershed Enhancement Board legally in-  
44 curred under contracts, leases and business transactions executed, entered into or begun  
45 before the operative date of section 1750 of this 2011 Act are transferred to the Oregon De-

1 **partment of Natural Resources. For the purpose of succession to these rights and obli-**  
 2 **gations, the Oregon Department of Natural Resources is a continuation of the Oregon**  
 3 **Watershed Enhancement Board and not a new authority.**

4  
 5 **(Rules)**  
 6

7 **SECTION 1755. Notwithstanding the transfer of duties, functions and powers by section**  
 8 **1750 of this 2011 Act, the rules of the Oregon Watershed Enhancement Board in effect on**  
 9 **the operative date of section 1750 of this 2011 Act continue in effect until superseded or re-**  
 10 **pealed by rules of the Oregon Department of Natural Resources. References in rules of the**  
 11 **Oregon Watershed Enhancement Board to the Oregon Watershed Enhancement Board, or**  
 12 **to an officer or employee of the Oregon Watershed Enhancement Board, are considered to**  
 13 **be references to the Oregon Department of Natural Resources or to an officer or employee**  
 14 **of the Oregon Department of Natural Resources.**

15  
 16 **(References)**  
 17

18 **SECTION 1756. Whenever, in any uncodified law or resolution of the Legislative Assembly**  
 19 **or in any rule, document, record or proceeding authorized by the Legislative Assembly, ref-**  
 20 **erence is made to the Oregon Watershed Enhancement Board, or to an officer or employee**  
 21 **of the Oregon Watershed Enhancement Board, the reference is considered to be a reference**  
 22 **to the Oregon Department of Natural Resources or to an officer or employee of the Oregon**  
 23 **Department of Natural Resources.**

24  
 25 **(Agency Name Change)**  
 26

27 **SECTION 1757. For the purpose of harmonizing and clarifying statutory law, the Legis-**  
 28 **lative Counsel may substitute for words designating the “Oregon Watershed Enhancement**  
 29 **Board” or its officers, wherever they occur in statutory law, words designating the “Oregon**  
 30 **Department of Natural Resources” or its officers.**

31  
 32 **(Conforming Amendments)**  
 33

34 **SECTION 1758. ORS 541.351 is amended to read:**

35 541.351. As used in ORS 541.351 to 541.415:

36 (1) “Adaptive management” means applying management or practices over time and across the  
 37 landscape to achieve site specific resource goals using an integrated and science based approach  
 38 that results in changes over time in response to feedback or monitoring.

39 (2) “Associated uplands” includes those lands of a watershed that are critical to the functioning  
 40 and protection of a riparian area.

41 [(3) “Board” means the Oregon Watershed Enhancement Board created under ORS 541.360.]

42 [(4)] (3) “Capital expenditures” means direct expenses related to:

43 (a) Personal property of a nonexpendable nature including items that are not consumed in the  
 44 normal course of operations, can normally be used more than once, have a useful life of more than  
 45 two years and are for use in the enforcement of fish and wildlife and habitat protection laws and

1 regulations; or

2 (b) Projects that restore, enhance or protect fish and wildlife habitat, watershed functions, na-  
3 tive salmonid populations or water quality, including but not limited to:

4 (A) Expenses of assessment, research, design or other technical requirements for the implemen-  
5 tation of a project;

6 (B) The acquisition of determinate interests, including fee and less than fee interests, in land  
7 or water in order to protect watershed resources, including appraisal costs and other costs directly  
8 related to such acquisitions;

9 (C) Development, construction or implementation of a project to restore, enhance or protect  
10 water quality, a watershed, fish or wildlife, or riparian or other habitat;

11 (D) Technical support directly related to the implementation of a project; and

12 (E) Monitoring or evaluation activities necessary to determine the actual effectiveness of a  
13 project.

14 [(5)] (4) "Independent Multidisciplinary Science Team" means the scientific team of recognized  
15 experts in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricul-  
16 tural management created under ORS 541.409.

17 [(6)] (5) "Native" means indigenous to Oregon and not introduced.

18 [(7)] (6) "Oregon Plan" means the guidance statement and framework described in ORS 541.405.

19 [(8)] (7) "Protect" or "protection" means to minimize or mitigate adverse effects on salmonid and  
20 habitat to the maximum extent practicable given the anticipated duration, geographic scope and  
21 primary purpose of proposed activities.

22 [(9)] (8) "Restore" or "restoration" means to take actions likely to achieve sustainable popu-  
23 lation levels of native fish or wildlife and their habitats.

24 [(10)] (9) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial  
25 ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or  
26 potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area  
27 may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or  
28 ephemeral, intermittent or perennial stream.

29 [(11)] (10) "Soil and water conservation district" means a political subdivision of the state as  
30 described in ORS 568.550.

31 [(12)] (11) "Stewardship" means the careful and responsible management of the environment.

32 [(13)] (12) "Tribe" means a federally recognized Indian tribe in Oregon.

33 [(14)] (13) "Watershed" means the entire land area drained by a stream or system of connected  
34 streams such that all streamflow originating in the area is discharged through a single outlet.

35 [(15)] (14) "Watershed council" means a voluntary local organization, designated by a local  
36 government group convened by a county governing body, to address the goal of sustaining natural  
37 resource and watershed protection, restoration and enhancement within a watershed.

38 **SECTION 1759.** ORS 541.365 is amended to read:

39 541.365. (1) The [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Re-**  
40 **sources** shall conduct a watershed enhancement program to benefit all users of the waters of this  
41 state. The [*board*] **department** shall conduct the program in a manner that:

42 (a) Provides the greatest possible opportunity for volunteer participation to achieve the goals  
43 of the program; and

44 (b) Coordinates the information, data and data retrieval needs of the natural resource agencies  
45 of the state with the State Service Center for Geographic Information Systems.

1 (2) In order to effectuate the program described in this section, the [board] **department** shall  
2 establish protocols, policies and procedures necessary to integrate and organize geographic infor-  
3 mation and make it available to persons and entities involved in implementation of the Oregon Plan.

4 (3) In working with the State Service Center for Geographic Information Systems, the [board]  
5 **department** shall ensure that:

6 (a) Information received by the center is formatted in a manner that results in an integrated  
7 geographic information system that meets the needs of all local, state, regional, tribal and federal  
8 entities involved in implementation of the Oregon Plan; and

9 (b) The data are available to local, state and federal agencies and to any person implementing  
10 activities under the Oregon Plan.

11 (4) The program developed under this section shall include development and implementation, in  
12 coordination with the natural resource agencies of the state, of a statewide monitoring program for  
13 activities conducted under the Oregon Plan.

14 **SECTION 1760.** ORS 541.368 is amended to read:

15 541.368. In cooperation with other state, interstate and federal agencies, tribes, local govern-  
16 ments, watershed councils, soil and water conservation districts, not-for-profit organizations and  
17 volunteer groups, the [Oregon Watershed Enhancement Board] **Oregon Department of Natural**  
18 **Resources** shall facilitate the implementation of the grant programs established under ORS 541.351  
19 to 541.415.

20 **SECTION 1761.** ORS 541.370 is amended to read:

21 541.370. (1) In carrying out the watershed enhancement program[, *the Oregon Watershed En-*  
22 *hancement Board*] **required by ORS 541.365, the Oregon Department of Natural Resources** shall:

23 [(a) *Coordinate the board's funding of enhancement projects with the activities of the Natural Re-*  
24 *sources Division staff and other agencies, especially those agencies working together through a system*  
25 *of coordinated resource management planning.*]

26 [(b) *Use the expertise of the appropriate state agency according to the type of enhancement*  
27 *project.*]

28 [(c) (a) Provide educational and informational materials to promote public awareness and in-  
29 volvement in the watershed enhancement program.

30 [(d) (b) Coordinate and provide for or arrange for assistance in the activities of persons, agen-  
31 cies or political subdivisions developing local watershed enhancement projects funded by the  
32 [board] **department**.

33 [(e) (c) Grant funds for the support of watershed councils in assessing watershed conditions,  
34 developing action plans, implementing projects and monitoring results and for the implementation  
35 of watershed enhancement projects from such moneys as may be available to the [board] **depart-**  
36 **ment** therefor.

37 [(f) (d) Develop and maintain a centralized repository for information about the effects of  
38 watershed enhancement and education projects.

39 [(g) (e) Give priority to proposed watershed enhancement projects receiving funding or assist-  
40 ance from other sources.

41 [(h) (f) Identify gaps in research or available information about watershed health and en-  
42 hancement.

43 [(i) (g) Cooperate with appropriate federal entities to identify the needs and interests of the  
44 State of Oregon so that federal plans and project schedules relating to watershed enhancement in-  
45 corporate the state's intent to the fullest extent practicable.

1        [(j)] (h) Encourage the use of nonstructural methods to enhance the riparian areas and associ-  
2 ated uplands of Oregon's watersheds.

3        [(k)] (i) Determine criteria for utilizing the private sector, both not-for-profit and for-profit or-  
4 ganizations, to provide landowners with technical assistance to help develop and implement conser-  
5 vation easements and resource improvement projects.

6        (2) In accordance with ORS 541.351 to 541.415, the [*Oregon Watershed Enhancement Board*] **de-**  
7 **partment** shall administer a watershed improvement grant program using funds from the Watershed  
8 Improvement Grant Fund established under ORS 541.397, from the Restoration and Protection Sub-  
9 account established under ORS 541.377 and from the Flexible Incentives Account established under  
10 ORS 541.381.

11        [(3) *To aid and advise the board in the performance of the functions of the board, the board may*  
12 *establish such advisory and technical committees as the board considers necessary. These committees*  
13 *may be continuing or temporary. The board shall determine the representation, membership, terms and*  
14 *organization of the committees and shall appoint their members. The chairperson is ex officio a member*  
15 *of each committee.*]

16        **SECTION 1762.** ORS 541.371 is amended to read:

17        541.371. (1) In addition to the duties set forth in ORS 541.370, in carrying out the provisions of  
18 ORS 541.351 to 541.415, the [*Oregon Watershed Enhancement Board*] **Oregon Department of Na-**  
19 **tural Resources:**

20        (a) Shall establish a framework for a locally based integrated watershed planning and manage-  
21 ment process designed to assist watershed councils and soil and water conservation districts and to  
22 support the efforts of watershed councils and soil and water conservation districts to work within  
23 the requirements of state and federal laws without duplication of planning effort. The framework  
24 shall include all of the following:

25        (A) Guidance and protocols for watershed assessments to encourage consistent assessment  
26 methods across all watersheds and agencies, including assessment of cumulative effects. At a mini-  
27 mum, such guidance shall address the following plan components:

28        (i) A description of the watershed;

29        (ii) An assessment of current watershed conditions and the distribution and condition of habitat;  
30 and

31        (iii) Identification of conditions preventing watershed restoration.

32        (B) Guidance on how to prepare watershed action plans. At a minimum, such guidance shall  
33 address the following plan components:

34        (i) Applicable water quality standards and native salmonid and habitat recovery objectives;

35        (ii) Proposed measures needed to restore watershed health;

36        (iii) Timeline and budget estimates for implementation of action measures in priority order; and

37        (iv) Monitoring and evaluation systems.

38        (b) May review plans, actions and rules of state agencies pertaining to restoration and pro-  
39 tection grants for the purpose of coordinating the [*board's*] **department's** grant program with other  
40 ongoing grant programs.

41        (c) Shall establish statewide and regional goals and priorities that shall become the basis for  
42 funding decisions by the [*board*] **department**. In adopting such goals and priorities, the [*board*] **de-**  
43 **partment** shall adopt priorities for grant funding based on the Oregon Plan and on measurable  
44 goals. In carrying out this function, the [*board*] **department** shall consider local economic and social  
45 impacts among the criteria.

1 (d) Shall support development and implementation of a system that enables standardized col-  
2 lection, management and reporting of natural resources information in Oregon, including water data,  
3 geographic information system data and information on native fish and wildlife and habitat.

4 (e) Shall promote the availability of information on the effects of watershed enhancement.

5 (f) May not have regulatory or enforcement authority except for the fiscal responsibilities de-  
6 scribed in ORS 541.351 to 541.415.

7 (2) In addition to the uses of grant funds described in ORS 541.399, in allocating grant funds  
8 under ORS 541.351 to 541.415 that are derived from the Restoration and Protection Subaccount, the  
9 *[board]* **department**:

10 (a) May allocate funds to be used for staff for soil and water conservation districts and  
11 watershed councils.

12 (b) May award funds for a specific project or program application or for implementation of an  
13 approved action plan.

14 (3) To the maximum extent practicable, soil and water conservation districts and watershed  
15 councils shall share technical staff.

16 **SECTION 1763.** ORS 541.372 is amended to read:

17 541.372. (1) The *[Oregon Watershed Enhancement Board]* **Oregon Department of Natural Re-**  
18 **sources** may accept moneys from any public or private source, including the federal government,  
19 made available for the purpose of encouraging, promoting and securing watershed enhancement or  
20 to facilitate and assist in carrying out the functions of the *[board]* **department**, including adminis-  
21 trative expenses, as provided by law.

22 (2) All moneys received by the *[board]* **department** under this section shall be deposited in the  
23 State Treasury and kept in separate accounts in the General Fund designated according to the  
24 purposes for which moneys were made available.

25 (3) Notwithstanding the provisions of ORS 291.238, all moneys received under this section are  
26 continuously appropriated to the *[board]* **department** for the purpose for which they were made  
27 available and shall be expended in accordance with the terms and conditions upon which they were  
28 made available.

29 **SECTION 1764.** ORS 541.375 is amended to read:

30 541.375. (1) Any person, tribe, watershed council, soil and water conservation district, commu-  
31 nity college, state institution of higher education, independent not-for-profit institution of higher  
32 education or political subdivision of this state that is not a state agency may submit a request for  
33 funding for or for advice and assistance in developing a project under ORS 541.351 to 541.415. A  
34 state agency or federal agency may apply for funding under this section only as a coapplicant with  
35 one of the other eligible entities.

36 (2) The request under subsection (1) of this section shall be filed in the manner, be in the form  
37 and contain the information required by the *[Oregon Watershed Enhancement Board]* **Oregon De-**  
38 **partment of Natural Resources**.

39 (3) The *[board]* **department** may establish a grant program through soil and water conservation  
40 districts organized under ORS 568.210 to 568.808 and 568.900 to 568.933 that provides funds for local  
41 implementation of watershed enhancement, education and monitoring efforts.

42 (4) The *[board]* **department** may fund implementation of action plans based on a watershed as-  
43 sessment that addresses water quality and aquatic resources of the watershed.

44 (5) A project may use mechanical, vegetative or structural methods including, but not limited  
45 to, management techniques, erosion control, streambank stabilization, forest, range or crop land

1 treatment, site specific in-stream structures, acquisitions or leases of land or water rights from a  
 2 willing owner, watershed assessments, landowner incentives and action plan development, imple-  
 3 mentation and monitoring.

4 (6) The actions of a soil and water conservation district carried out pursuant to a grant program  
 5 established by the [board] **department** under subsection (3) of this section shall not be subject to  
 6 review and approval by the [Natural Resources Division] **department** under ORS 561.400.

7 (7) The [Oregon Watershed Enhancement Board] **department** shall approve for funding only  
 8 those projects that:

9 (a) Are based on sound principles of watershed management;

10 (b) Use methods most adapted to the project locale;

11 (c) Meet the criteria established by the [board] **department** under ORS 541.396; and

12 (d) Contribute to either:

13 (A) The improved health of a stream, lake or reservoir and toward the achievement of standards  
 14 that satisfy the requirements of the Federal Water Pollution Control Act (P.L. 92-500), as amended;  
 15 or

16 (B) The restoration of wildlife, habitat or native fish.

17 (8) The [Oregon Watershed Enhancement Board] **department** may fund a project for the resto-  
 18 ration of a riparian area or associated upland that is carried out in conjunction with a storage  
 19 structure. However, the [board] **department** shall not approve funding for any proposed project that  
 20 consists solely of construction of a storage structure for out-of-stream use.

21 (9) The [Oregon Watershed Enhancement Board] **department** may fund projects involving the  
 22 acquisition of lands and waters, or interests therein from willing sellers, for the purpose of main-  
 23 taining or restoring watersheds, habitat and native salmonids. Interests in these lands and waters  
 24 may be held by local, state and federal agencies, tribes, not-for-profit land conservation organiza-  
 25 tions and trusts, state institutions of higher education, independent not-for-profit institutions of  
 26 higher education or political subdivisions of this state, as long as the entity continues to use the  
 27 land or water for the purposes specified under section 4b, Article XV of the Oregon Constitution.

28 (10) If the [Oregon Watershed Enhancement Board] **department** approves funding for a project  
 29 under this section that requires the applicant to obtain a permit or license from a local, state or  
 30 federal agency or governing body, the [board] **department** shall not disburse any funds to the ap-  
 31 plicant until the applicant presents evidence that the agency has granted the permit or license.

32 **SECTION 1765.** ORS 541.376 is amended to read:

33 541.376. (1) Land purchased through a grant agreement with the [Oregon Watershed Enhancement  
 34 Board] **Oregon Department of Natural Resources** shall be subject to title restrictions that give  
 35 the [board] **department** the authority to approve, approve with conditions or deny the sale or  
 36 transfer of the land. Specifically, the [board] **department** may require conditions on the sale or  
 37 transfer to:

38 (a) Ensure consistency with the intent of the original grant;

39 (b) Ensure the ability of the party receiving the land through the sale or transfer to carry out  
 40 the obligations under the grant agreement; and

41 (c) Address the disposition of proceeds from the sale or transfer, including any provisions for  
 42 repayment, with interest, of any grant funds.

43 (2) The [board] **department** may not allow a sale or transfer that results in any profit to any  
 44 person.

45 (3) The [board] **department** shall, by rule, define "profit" for the purpose of not allowing sales



1 or transfers and shall specify the process and criteria that the [board] **department** will use in  
2 considering whether to approve, approve with conditions or deny a sale or transfer.

3 **SECTION 1766.** ORS 541.377 is amended to read:

4 541.377. (1) There is established in the State Treasury, separate and distinct from the General  
5 Fund, the Parks and Natural Resources Fund to be administered by the Oregon Department of Ad-  
6 ministrative Services. All moneys transferred from the State Lottery Fund and all other moneys  
7 authorized to be transferred to the Parks and Natural Resources Fund from whatever source are  
8 **continuously** appropriated [*continuously*] for the public purposes of restoring and protecting  
9 Oregon's parks, beaches, watersheds and critical fish and wildlife habitats. Fifteen percent of the  
10 net proceeds from the Oregon State Lottery shall be deposited in the Parks and Natural Resources  
11 Fund created under this subsection.

12 (2) Of the moneys deposited into the Parks and Natural Resources Fund from the Oregon State  
13 Lottery, 50 percent shall be deposited into a Parks Subaccount for the public purpose of financing  
14 the protection, repair, operation, creation and development of state parks, ocean shores, public  
15 beach access areas, historic sites and recreation areas. The State Treasurer may invest and reinvest  
16 the moneys in the Parks Subaccount as provided in ORS 293.701 to 293.820. Interest from the moneys  
17 deposited in the subaccount and earnings from investment of the moneys in the subaccount shall be  
18 credited to the subaccount.

19 (3) All moneys in the Parks Subaccount for financing the protection, repair, operation, creation  
20 and development of state parks, ocean shores, public beach access areas, historic sites and recre-  
21 ation areas shall be allocated to the [*State Parks and Recreation Department*] **Oregon Department**  
22 **of Natural Resources**. Such moneys shall be deposited into the [*State Parks and Recreation De-*  
23 *partment Fund established under ORS 390.134 and shall be used*] **Oregon Natural Resources Fund.**  
24 **Moneys deposited in the fund under this subsection are continuously appropriated to the**  
25 **Oregon Department of Natural Resources** for the following purposes:

26 (a) Maintaining, constructing, improving, developing, managing and operating state park and  
27 recreation facilities, programs and areas.

28 (b) Acquiring real property, or interest therein, deemed necessary for the creation and operation  
29 of state parks, ocean shores, public beach access areas, recreation areas and historic sites or be-  
30 cause of natural, scenic, cultural, historic and recreational values.

31 (c) Operating grant programs for local government entities deemed necessary to accomplish the  
32 public purposes of the Parks and Natural Resources Fund.

33 (4) Of the moneys deposited into the Parks and Natural Resources Fund from the Oregon State  
34 Lottery, 50 percent shall be deposited into a Restoration and Protection Subaccount for the public  
35 purpose of financing the restoration and protection of native salmonid populations, watersheds, fish  
36 and wildlife habitats and water quality in Oregon. The State Treasurer may invest and reinvest the  
37 moneys in the Restoration and Protection Subaccount as provided in ORS 293.701 to 293.820. Inter-  
38 est from the moneys deposited in the subaccount and earnings from investment of the moneys in the  
39 subaccount shall be credited to the Restoration and Protection Research Fund created under ORS  
40 541.378.

41 (5) The moneys in the Restoration and Protection Subaccount for financing the restoration and  
42 protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality  
43 shall be administered by the [*Oregon Watershed Enhancement Board*] **Oregon Department of Na-**  
44 **tural Resources** and shall be used for all of the following purposes:

45 (a) Restoration and protection of watersheds and fish, wildlife, riparian and native species and

1 for habitat conservation activities, including but not limited to planning, coordination, assessment,  
2 implementation, restoration, inventory, information management and monitoring activities.

3 (b) Watershed and riparian education efforts.

4 (c) Development and implementation of watershed and water quality enhancement plans.

5 (d) Entering into agreements to obtain from willing owners determinate interests in lands and  
6 waters that protect watershed resources, including but not limited to fee simple interests in land,  
7 leases of land or water or conservation easements.

8 (e) Enforcement of fish and wildlife and habitat protection laws and regulations.

9 (6) Of the moneys deposited into the Restoration and Protection Subaccount from the Oregon  
10 State Lottery, the [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Re-**  
11 **sources** shall deposit:

12 (a) Sixty-five percent of the funds into the Watershed Improvement Grant Fund established un-  
13 der ORS 541.397 to be used only for funding capital expenditure projects; and

14 (b) Thirty-five percent of the funds into the Watershed Improvement Operating Fund established  
15 under ORS 541.379 to be used for the purposes set forth in ORS 541.379 (1).

16 (7) The Legislative Assembly shall not limit expenditures from the Parks and Natural Resources  
17 Fund. The Legislative Assembly may appropriate other moneys or revenues to the Parks and Na-  
18 tural Resources Fund.

19 **SECTION 1767.** ORS 541.378 is amended to read:

20 541.378. (1) The Restoration and Protection Research Fund is established separate and distinct  
21 from the General Fund. Interest earned by the Restoration and Protection Research Fund shall be  
22 credited to the fund. Moneys credited to the fund are continuously appropriated to the [*Oregon*  
23 *Watershed Enhancement Board*] **Oregon Department of Natural Resources** for the purpose of  
24 funding research and other activities related to the restoration and protection of native salmonid  
25 populations, watersheds, fish and wildlife habitats and water quality, including but not limited to  
26 research, monitoring, evaluation and assessment related to the Oregon Plan.

27 (2) All moneys received by the [*Oregon Watershed Enhancement Board*] **Oregon Department**  
28 **of Natural Resources** from interest earned on the Restoration and Protection Subaccount of the  
29 Parks and Natural Resources Fund created under ORS 541.377, from the Watershed Improvement  
30 Operating Fund created under ORS 541.379 and from the Watershed Improvement Grant Fund cre-  
31 ated under ORS 541.397 shall be credited to the Restoration and Protection Research Fund. Moneys  
32 credited to the fund and not expended by the completion of a biennium shall remain in the fund.

33 **SECTION 1768.** ORS 541.379 is amended to read:

34 541.379. (1) The Watershed Improvement Operating Fund is established in the State Treasury  
35 separate and distinct from the General Fund. The Watershed Improvement Operating Fund shall  
36 consist of all moneys placed in the fund as provided by law. All moneys in the Watershed Improve-  
37 ment Operating Fund are continuously appropriated for the following purposes:

38 (a) Operational activities of the [*Oregon Watershed Enhancement Board*] **Oregon Department**  
39 **of Natural Resources**;

40 (b) Activities of state and local agencies and other public entities related to the restoration and  
41 protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality,  
42 including but not limited to activities under the Oregon Plan;

43 (c) Watershed improvement grants described in ORS 541.399 and 541.401 that are not capital  
44 expenditures; and

45 (d) Watershed improvement grants described in ORS 541.399 and 541.401 that are capital

1 expenditures.

2 (2) Interest accruing to the Watershed Improvement Operating Fund shall be credited to the  
3 Restoration and Protection Research Fund created under ORS 541.378. Funds appropriated and not  
4 expended by the completion of a biennium shall remain in the Watershed Improvement Operating  
5 Fund.

6 (3) The [*Oregon Watershed Enhancement Board created under ORS 541.360*] **department** shall  
7 administer the Watershed Improvement Operating Fund.

8 (4) In addition to the funds made available for the purposes of ORS 541.351 to 541.415 under ORS  
9 541.399, the [*board*] **department** also may accept gifts and grants from any public or private source  
10 for the purposes described in subsection (1) of this section.

11 **SECTION 1769.** ORS 541.381 is amended to read:

12 541.381. (1) There is created a Flexible Incentives Account in the State Treasury, separate and  
13 distinct from the General Fund. Interest earned by the account shall be credited to the account. The  
14 moneys in the account are continuously appropriated to the [*Oregon Watershed Enhancement*  
15 *Board*] **Oregon Department of Natural Resources** for the purposes specified in this section.

16 (2) The [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Resources**  
17 shall use the Flexible Incentives Account to assist landowners in the implementation of strategies  
18 intended to protect and restore native species of fish, wildlife and plants and to maintain long-term  
19 ecological health, diversity and productivity in a manner consistent with statewide, regional or local  
20 conservation plans. The [*board*] **Oregon Department of Natural Resources** shall seek to fund  
21 those strategies that offer the greatest public benefit at the lowest cost. The account may also be  
22 used to fund activities to achieve the purposes of stewardship agreements entered into under ORS  
23 541.423 between a landowner, or a representative of the landowner, and the State Department of  
24 Agriculture or the [*State Board of Forestry*] **Oregon Department of Natural Resources**.

25 (3) The account shall consist of moneys appropriated to it by the Legislative Assembly and  
26 moneys provided to the [*board*] **Oregon Department of Natural Resources** by federal, state, re-  
27 gional or local governments for the purposes specified in this section. The [*board*] **Oregon Depart-**  
28 **ment of Natural Resources** may accept private moneys in the form of gifts, grants and bequests  
29 for deposit into the account.

30 **SECTION 1770.** ORS 541.384 is amended to read:

31 541.384. (1) The [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Re-**  
32 **sources** shall initiate a watershed management program that relies on the establishment of volun-  
33 tary local watershed councils comprised of residents, state and federal agency staff, members of  
34 federally recognized Indian tribes and other citizens interested in the management of watersheds and  
35 that provides for the development by these partnerships of local plans that may include but are not  
36 limited to the assessment of the watershed condition, the creation of a watershed action plan and  
37 a strategy for implementing the action plan. The program shall focus state resources on the  
38 achievement of sustainable watershed health, including funding major projects that contribute to the  
39 overall health of a watershed. In addition, the [*board*] **department** shall fund smaller, voluntary  
40 projects for watershed enhancement and for restoration of riparian areas and associated uplands.

41 (2) In carrying out the program under subsection (1) of this section, the [*board*] **department**  
42 may designate high priority watersheds. However, the designation of high priority watersheds is  
43 intended only as a management tool for state agencies in allocating resources to support coordi-  
44 nated watershed management activities. Such designation is not intended to establish or confer any  
45 right, duty or authority, nor to have any legal significance beyond that described in this section,

1 nor to discourage or prohibit the formation and function of voluntary local watershed councils in  
2 other watersheds.

3 (3) The elected officials representing the appropriate local government groups containing or  
4 within a proposed watershed council area shall determine whether to participate in the voluntary  
5 formation of a local watershed council. When multiple local government groups are involved within  
6 an area that would be served by a watershed council, the affected local government groups shall  
7 together determine their respective roles and the appropriate method for appointing members to a  
8 local watershed council.

9 **SECTION 1771.** ORS 541.388 is amended to read:

10 541.388. (1) Local government groups are encouraged to form voluntary local watershed councils  
11 in accordance with the guidelines set forth in subsection (2) of this section. The [*Oregon Watershed*  
12 *Enhancement Board*] **Oregon Department of Natural Resources** may work cooperatively with any  
13 local watershed council that may be formed. Requests from local watershed councils for state as-  
14 sistance shall be evaluated on the basis of whether the requesting organization reflects the interests  
15 of the affected watershed and the potential to protect and enhance the quality of the watershed in  
16 question.

17 (2) Local watershed councils formed under subsection (1) of this section shall consist of a ma-  
18 jority of local residents, including local officials. A watershed council may be a new or existing or-  
19 ganization as long as the council represents a balance of interested and affected persons within the  
20 watershed and assures a high level of citizen involvement in the development and implementation  
21 of a watershed action program. A local watershed council may include representatives of local  
22 government, representatives of nongovernment organizations and private citizens, including but not  
23 limited to:

- 24 (a) Representatives of local and regional boards, commissions, districts and agencies;
- 25 (b) Representatives of federally recognized Indian tribes;
- 26 (c) Public interest group representatives;
- 27 (d) Private landowners;
- 28 (e) Industry representatives;
- 29 (f) Members of academic, scientific and professional communities; and
- 30 (g) Representatives of state and federal agencies.

31 (3) If more than one watershed council exists in a county, each watershed council shall period-  
32 ically report the activities of the council to the county governing body.

33 (4) The Oregon Department of Administrative Services may provide to voluntary local watershed  
34 councils and their officers, employees and agents acting within the scope of their employment or  
35 duties, protection against liability as part of the insurance provided to the [*Oregon Watershed En-*  
36 *hancement Board*] **Oregon Department of Natural Resources** pursuant to ORS 278.120 to 278.215.  
37 The [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Resources**, after  
38 consulting the Oregon Department of Administrative Services and local watershed councils, shall  
39 establish guidelines for liability coverage and limits of coverage. The Oregon Department of Ad-  
40 ministrative Services shall determine any additional contributions to be apportioned to the [*Oregon*  
41 *Watershed Enhancement Board*] **Oregon Department of Natural Resources** for extending insur-  
42 ance to voluntary local watershed councils, and the [*Oregon Watershed Enhancement Board*] **Oregon**  
43 **Department of Natural Resources** shall pay the assessments from such moneys as may be avail-  
44 able for those assessments.

45 **SECTION 1772.** ORS 541.392 is amended to read:

1 541.392. (1) The [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Re-**  
 2 **sources** shall report biennially to the Legislative Assembly on the implementation of the manage-  
 3 ment program under ORS 541.384 and grants awarded under ORS 541.399. The report shall include  
 4 but need not be limited to:

5 (a) An explanation of the effectiveness and workability of the partnership process described in  
 6 ORS 541.384;

7 (b) A description of any modifications to the process that have been instituted;

8 (c) Recommendations concerning the need for future legislative action; and

9 (d) Information about the use of moneys received by and distributed by the [*board*] **department**  
 10 under section 4b, Article XV of the Oregon Constitution.

11 (2) The [*board*] **department** shall include with each report under subsection (1) of this section  
 12 a copy of each audit completed pursuant to section 4c, Article XV of the Oregon Constitution.

13 **SECTION 1773.** ORS 541.395 is amended to read:

14 541.395. **In order to assist the Oregon Department of Natural Resources in developing and**  
 15 **maintaining a centralized repository under ORS 541.370, the Department of Environmental**  
 16 **Quality, the State Department of Agriculture and the agricultural extension service of**  
 17 **Oregon State University shall provide the Oregon Department of Natural Resources with a**  
 18 **copy of any report produced by the university that is related to enhancement or restoration**  
 19 **of riparian areas or associated uplands.** [*In order to assist the Oregon Watershed Enhancement*  
 20 *Board in developing and maintaining a centralized repository under ORS 541.370, the following*  
 21 *agencies shall provide the board with a copy of any report produced by the agency that is related to*  
 22 *enhancement or restoration of riparian areas or associated uplands:]*

23 [(1) *The Department of Environmental Quality.*]

24 [(2) *The State Department of Fish and Wildlife.*]

25 [(3) *The Water Resources Department.*]

26 [(4) *The State Forestry Department.*]

27 [(5) *The State Department of Agriculture.*]

28 [(6) *The agricultural extension service of Oregon State University.*]

29 **SECTION 1774.** ORS 541.396 is amended to read:

30 541.396. (1) In accordance with the applicable provisions of ORS chapter 183, the [*Oregon*  
 31 *Watershed Enhancement Board*] **Oregon Department of Natural Resources** shall adopt rules and  
 32 standards to carry out the watershed enhancement program.

33 (2) The rules and standards adopted by the [*board*] **department** under subsection (1) of this  
 34 section shall include, but need not be limited to:

35 (a) Grant application requirements and review and selection criteria for projects to receive as-  
 36 sistance or funding from the [*board*] **department**, including funding from the Flexible Incentives  
 37 Account established under ORS 541.381.

38 (b) Criteria for distributing to those entities specified in ORS 541.375 those funds appropriated  
 39 to the [*board*] **department** for funding projects. The criteria shall include a process for periodic  
 40 review of the distribution by the appropriate legislative committee.

41 (c) Conditions for approval by the [*board*] **department** for implementation of a project including  
 42 but not limited to:

43 (A) Provisions satisfactory to the [*board*] **department** for inspection and evaluation of the im-  
 44 plementation of a project including all necessary agreements to allow the [*board*] **department** and  
 45 employees of any cooperating agency providing staff services for the [*board*] **department** access to

1 the project area;

2 (B) Provisions satisfactory to the [board] **department** for controlling the expenditure of and  
3 accounting for any funds granted by the [board] **department** for implementation of the project;

4 (C) An agreement that those initiating the project will submit all pertinent information and re-  
5 search gained from the project to the [board] **department** for inclusion in the centralized repository  
6 established by the [board] **department**; and

7 (D) Provisions for the continued maintenance of the portion of the riparian area or associated  
8 uplands enhanced by the project.

9 **SECTION 1775.** ORS 541.397 is amended to read:

10 541.397. (1) The Watershed Improvement Grant Fund is established separate and distinct from  
11 the General Fund. The Watershed Improvement Grant Fund shall consist of all moneys placed in the  
12 fund as provided by law. All moneys in the Watershed Improvement Grant Fund are continuously  
13 appropriated to fund watershed improvement grants described in ORS 541.399 and 541.401. Interest  
14 accruing to the Watershed Improvement Grant Fund shall be credited to the Restoration and Pro-  
15 tection Research Fund created under ORS 541.378. Funds appropriated and not expended by the  
16 completion of a biennium shall remain in the Watershed Improvement Grant Fund.

17 (2) The [*Oregon Watershed Enhancement Board created under ORS 541.360*] **Oregon Department**  
18 **of Natural Resources** shall administer the Watershed Improvement Grant Fund and provide grants  
19 from the fund for the purposes described in ORS 541.399 and 541.401 in the manner described under  
20 ORS 541.399 and 541.401.

21 (3) In addition to the funds made available for the purposes of ORS 541.351 to 541.415 under ORS  
22 541.399, the [board] **department** also may accept gifts and grants from any public or private source  
23 for the purpose of providing the grants described in subsection (2) of this section.

24 **SECTION 1776.** ORS 541.401 is amended to read:

25 541.401. The [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Re-**  
26 **sources** may award funds from the Watershed Improvement Grant Fund only for the purposes listed  
27 in ORS 541.399. Any project that the [board] **department** approves for funding shall comply with  
28 the following criteria:

29 (1) There is a matching contribution from other program funds, in-kind services or other in-  
30 vestment in the project; **and**

31 [(2) *The project to be funded is reviewed and approved by a technical committee in accordance with*  
32 *ORS 541.370 (3); and*]

33 [(3)] (2) The project provides a public benefit through improved:

34 (a) Water quality;

35 (b) Fish or wildlife habitat; or

36 (c) Public information or education on a watershed function.

37 **SECTION 1777.** ORS 541.420 is amended to read:

38 541.420. (1) The [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Re-**  
39 **sources** shall, by January 15 of each odd-numbered year, submit a report to the Governor and to  
40 the appropriate committee or committees of the Legislative Assembly that assesses the implemen-  
41 tation and effectiveness of the Oregon Plan in the state. The report shall address each drainage  
42 basin in the state and shall include, but need not be limited to:

43 (a) A status report on watershed and key habitat conditions in the drainage basin based on  
44 available information;

45 (b) An assessment of data and information needs deemed critical to monitoring and evaluating

1 watershed and habitat enhancement programs and efforts;

2 (c) An overview of state agency programs addressing watershed conditions;

3 (d) An overview of voluntary restoration activities addressing watershed conditions;

4 (e) A summary of investments made by the [board] **department** from funds received under sec-  
5 tion 4b, Article XV of the Oregon Constitution, and all other sources; and

6 (f) The recommendations of the [board] **department** for enhancing the effectiveness of Oregon  
7 Plan implementation in each drainage basin.

8 (2) In order to provide the [board] **Oregon Department of Natural Resources** with the infor-  
9 mation necessary to complete the report described in subsection (1) of this section, each natural  
10 resources agency shall provide information requested by the [board] **department** in the format and  
11 at the times determined by the [board] **department**.

12 (3) For purposes of this section, “natural resources agency” includes:

13 (a) Department of Environmental Quality;

14 (b) State Department of Agriculture;

15 [(c) *State Department of Fish and Wildlife*];

16 [(d) *State Forestry Department*];

17 [(e) *Department of State Lands*];

18 [(f) *Water Resources Department*];

19 [(g) *Department of Land Conservation and Development*];

20 [(h) *State Department of Geology and Mineral Industries*];

21 [(i) *Oregon Watershed Enhancement Board*];

22 [(j)] (c) Fish and Wildlife Division of the Department of State Police;

23 [(k)] (d) Department of Transportation;

24 [(L) *State Parks and Recreation Department*];

25 [(m)] (e) Oregon Business Development Department;

26 [(n)] (f) State Marine Board; and

27 [(o)] (g) Any other state agency that is required to manage, allocate or protect natural re-  
28 sources, either as the primary responsibility of the agency or in conjunction with the primary re-  
29 sponsibilities of the agency.

30 (4) In addition to the report specified under subsection (1) of this section, the [*Oregon Watershed*  
31 *Enhancement Board*] **Oregon Department of Natural Resources** shall report regularly during the  
32 interim on the implementation of the Oregon Plan to the appropriate legislative committee.

33 **SECTION 1778.** ORS 561.020 is amended to read:

34 561.020. (1) The State Department of Agriculture shall have full responsibility and authority for  
35 all the inspectional, regulatory and market development work provided for under the provisions of  
36 all statutes which the department is empowered and directed to enforce.

37 (2) The department shall encourage and work toward long-range planning to develop and pro-  
38 mote the agricultural resources of Oregon that they may contribute as greatly as possible to the  
39 future economy of the state.

40 (3) The Director of Agriculture shall coordinate any activities of the department related to a  
41 watershed enhancement project approved by the [*Oregon Watershed Enhancement Board*] **Oregon**  
42 **Department of Natural Resources** under ORS 541.375 with activities of other cooperating state  
43 and federal agencies participating in the project.

44 (4) The Director of Agriculture shall conduct any activities of the department in a manner  
45 consistent with the goal set forth in ORS 468B.155.

1        **SECTION 1779.** ORS 561.362 is amended to read:

2        561.362. Oregon State University shall have full authority and responsibility:

3        (1) For resident instruction in all branches of agriculture.

4        (2) For research and experimentation in all branches and phases of agriculture as set forth in  
5 federal and state laws creating, maintaining and defining the work of the agricultural experiment  
6 stations.

7        (3) For educational and demonstrational work in all branches and phases of agriculture under  
8 authority of all federal and state laws creating, maintaining and defining the work of the Agricul-  
9 tural Extension Service.

10       (4) For collection and dissemination of statistical information bearing upon crop and market  
11 conditions and trends of agricultural production, including agricultural outlook reports and market  
12 news reports.

13       (5) To conduct educational work in the field of marketing, which includes information, advice  
14 and assistance relative to organizing and operating cooperative associations and marketing agencies,  
15 in accordance with the division of functions set forth in this chapter.

16       (6) For coordinating any activities of the agricultural extension service related to a watershed  
17 enhancement project approved by the [*Oregon Watershed Enhancement Board*] **Oregon Department**  
18 **of Natural Resources** under ORS 541.375 with activities of other cooperating state and federal  
19 agencies participating in the project.

20       **SECTION 1780.** ORS 561.400 is amended to read:

21       561.400. (1) There is established within the State Department of Agriculture a Natural Resources  
22 Division which shall have the duties and powers conferred by subsection (2) of this section, by ORS  
23 568.210 to 568.808 and 568.900 to 568.933 and by the Director of Agriculture. The administrator of  
24 the division shall be appointed by the director under ORS 561.050 after consultation with the Soil  
25 and Water Conservation Commission.

26       (2) In addition to other duties and powers, the division is authorized:

27       (a) To review and approve or disapprove all projects, practices, budgets, contracts or regulations  
28 of soil and water conservation districts organized under ORS 568.300 to 568.790;

29       (b) To keep the directors of the soil and water conservation districts informed of the activities  
30 and experiences of other districts, to assist in the interchange of advice and information among the  
31 districts, and to promote cooperation among the districts;

32       (c) To coordinate, as much as possible, the various programs of the soil and water conservation  
33 districts;

34       (d) To solicit the cooperation and assistance of any department or agency of the United States  
35 or other department or agency of this state;

36       (e) To disseminate information concerning the activities and programs of soil and water con-  
37 servation districts and encourage formation of such districts in areas where they would be desirable  
38 and feasible;

39       (f) To receive, from any source, materials, machinery and equipment and to transfer such to any  
40 soil and water conservation district under terms and conditions deemed appropriate, including pay-  
41 ment by the district for costs of delivery or use;

42       (g) To receive from any public or private source, donations, gifts and grants for the furtherance  
43 of soil and water conservation, the provisions of ORS 568.225 or the protection of natural resources  
44 affecting agriculture, which moneys are continuously appropriated to the department for the ad-  
45 ministration of the Natural Resources Division and functions related thereto and for furnishing



1 support and financial assistance for the projects and activities of soil and water conservation dis-  
 2 tricts or other projects and activities relating to natural resources affecting agriculture or consist-  
 3 ent with ORS 568.225;

4 (h) To establish the procedures for developing and implementing extended stream bank erosion  
 5 plans under ORS 561.403;

6 (i) To review and evaluate documents and proposals of the federal government, agencies of the  
 7 State of Oregon, counties, cities, other governmental bodies or subdivisions thereof relating to na-  
 8 tural resources affecting agriculture or consistent with ORS 568.225; and

9 (j) To conduct research in and assist in the development of agricultural management procedures  
 10 and practices relating to natural resources for the prevention of soil erosion, water contamination  
 11 and air pollution or for the enhancement of water quality and quantity and air quality.

12 (3) The administrator of the division shall coordinate any activities of the Natural Resources  
 13 Division related to a watershed enhancement project approved by the [*Oregon Watershed Enhance-*  
 14 *ment Board*] **Oregon Department of Natural Resources** under ORS 541.375 with activities of other  
 15 cooperating state and federal agencies participating in the project.

16 (4) In addition to or in lieu of the coverage provided pursuant to ORS 30.282 (4), the Oregon  
 17 Department of Administrative Services may provide to soil and water conservation districts and  
 18 their officers, employees and agents acting within the scope of their employment or duties, pro-  
 19 tection against liability as part of the insurance provided to the State Department of Agriculture  
 20 pursuant to ORS 278.120 to 278.215. The Oregon Department of Administrative Services shall de-  
 21 termine any additional contributions to be apportioned to the State Department of Agriculture under  
 22 ORS 278.110 for extending insurance to soil and water conservation districts, and the State De-  
 23 partment of Agriculture shall pay the assessments from such moneys as may be available therefor.

## 24 25 STATE FORESTRY DEPARTMENT

### 26 27 (Abolishment and Transfer of 28 Duties, Functions and Powers)

29  
30 **SECTION 1781. (1) The State Forestry Department and the State Board of Forestry are**  
 31 **abolished. On the operative date of this section, the tenure of office of the State Forester**  
 32 **and the members of the State Board of Forestry ceases.**

33 **(2)(a) All the duties, functions and powers of the State Forestry Department are imposed**  
 34 **upon, transferred to and vested in the Oregon Department of Natural Resources.**

35 **(b) Where the law imposed the duty or function upon or vested the power in the State**  
 36 **Forester, the duty, function or power is imposed upon, transferred to or vested in the Di-**  
 37 **rector of the Oregon Department of Natural Resources.**

38 **(c) Where the law imposed the duty or function upon or vested the power in the State**  
 39 **Board of Forestry, the duty, function or power is imposed upon, transferred to and vested**  
 40 **in the Oregon Natural Resources Commission.**

### 41 42 (Transfer of Records, Property and Employees)

43  
44 **SECTION 1782. (1) The State Forester and the State Board of Forestry shall:**

45 **(a) Deliver to the Oregon Department of Natural Resources all records and property**

1 within the jurisdiction of the State Forester or the board that relate to the duties, functions  
2 and powers transferred by section 1781 of this 2011 Act; and

3 (b) Transfer to the Oregon Department of Natural Resources those employees engaged  
4 primarily in the exercise of the duties, functions and powers transferred by section 1781 of  
5 this 2011 Act.

6 (2) The Director of the Oregon Department of Natural Resources and the Oregon Natural  
7 Resources Commission shall take possession of the records and property, and shall take  
8 charge of the employees and employ them in the exercise of the duties, functions and powers  
9 transferred by section 1781 of this 2011 Act, without reduction of compensation but subject  
10 to change or termination of employment or compensation as provided by law.

11 (3) The Governor shall resolve any dispute between the State Forestry Department and  
12 the Oregon Department of Natural Resources, or the State Board of Forestry and the Oregon  
13 Natural Resources Commission, relating to transfers of records, property and employees  
14 under this section, and the Governor's decision is final.

15  
16 (Transfer of Unexpended Revenues)

17  
18 **SECTION 1783.** (1) The unexpended balances of amounts authorized to be expended by the  
19 State Forestry Department for the biennium beginning July 1, 2011, from revenues dedicated,  
20 continuously appropriated, appropriated or otherwise made available for the purpose of ad-  
21 ministering and enforcing the duties, functions and powers transferred by section 1781 of this  
22 2011 Act are transferred to and are available for expenditure by the Oregon Department of  
23 Natural Resources for the biennium beginning July 1, 2011, for the purpose of administering  
24 and enforcing the duties, functions and powers transferred by section 1781 of this 2011 Act.

25 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
26 expenditures by the State Forestry Department remain applicable to expenditures by the  
27 Oregon Department of Natural Resources under this section.

28 (3) The unexpended balances of amounts authorized to be expended by the State Board  
29 of Forestry for the biennium beginning July 1, 2011, from revenues dedicated, continuously  
30 appropriated, appropriated or otherwise made available for the purpose of administering and  
31 enforcing the duties, functions and powers transferred by section 1781 of this 2011 Act are  
32 transferred to and are available for expenditure by the Oregon Natural Resources Commis-  
33 sion for the biennium beginning July 1, 2011, for the purpose of administering and enforcing  
34 the duties, functions and powers transferred by section 1781 of this 2011 Act.

35 (4) The expenditure classifications, if any, established by Acts authorizing or limiting  
36 expenditures by the State Board of Forestry remain applicable to expenditures by the Oregon  
37 Natural Resources Commission under this section.

38  
39 (Action, Proceeding and Prosecution)

40  
41 **SECTION 1784.** The transfer of duties, functions and powers to the Oregon Department  
42 of Natural Resources by section 1781 of this 2011 Act does not affect any action, proceeding  
43 or prosecution involving or with respect to such duties, functions and powers begun before  
44 and pending at the time of the transfer, except that:

45 (1) The Oregon Department of Natural Resources is substituted for the State Forestry

1 Department where the State Forestry Department is involved in the action, proceeding or  
2 prosecution; or

3 (2) The Oregon Natural Resources Commission is substituted for the State Board of  
4 Forestry where the State Board of Forestry is involved in the action, proceeding or prose-  
5 cution.

6  
7 (Liability, Duty and Obligation)

8  
9 SECTION 1785. (1) Nothing in sections 1781 to 1787 of this 2011 Act, the amendments to  
10 statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257,  
11 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS  
12 526.008, 526.009, 526.016, 526.031, 526.054, 526.625, 526.660 or 526.730 by section 2161 of this 2011  
13 Act relieves a person of a liability, duty or obligation accruing under or with respect to the  
14 duties, functions and powers transferred by section 1781 of this 2011 Act. The Oregon De-  
15 partment of Natural Resources may undertake the collection or enforcement of any such li-  
16 ability, duty or obligation.

17 (2) The rights and obligations of the State Forestry Department or the State Board of  
18 Forestry legally incurred under contracts, leases and business transactions executed, entered  
19 into or begun before the operative date of section 1781 of this 2011 Act are transferred to the  
20 Oregon Department of Natural Resources or to the Oregon Natural Resources Commission.  
21 For the purpose of succession to these rights and obligations:

22 (a) The Oregon Department of Natural Resources is a continuation of the State Forestry  
23 Department where the right or obligation was incurred by the State Forestry Department;  
24 or

25 (b) The Oregon Natural Resources Commission is a continuation of the State Board of  
26 Forestry where the right or obligation was incurred by the State Board of Forestry.

27  
28 (Rules)

29  
30 SECTION 1786. (1) Notwithstanding the transfer of duties, functions and powers by sec-  
31 tion 1781 of this 2011 Act, the rules of the State Forestry Department, or of the State Board  
32 of Forestry, in effect on the operative date of section 1781 of this 2011 Act continue in effect  
33 until superseded or repealed by rules of the Oregon Department of Natural Resources or the  
34 Oregon Natural Resources Commission.

35 (2) References in rules of the State Forestry Department to the State Forestry Depart-  
36 ment, or to an officer or employee of the State Forestry Department, are considered to be  
37 references to the Oregon Department of Natural Resources or to an officer or employee of  
38 the Oregon Department of Natural Resources.

39 (3) References in rules of the State Board of Forestry to the State Board of Forestry,  
40 or to an officer or employee of the State Board of Forestry, are considered to be references  
41 to the Oregon Natural Resources Commission or to an officer or employee of the Oregon  
42 Natural Resources Commission.

43  
44 (References)

**SECTION 1787.** (1) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the State Forestry Department, or to an officer or employee of the State Forestry Department, the reference is considered to be a reference to the Oregon Department of Natural Resources or to an officer or employee of the Oregon Department of Natural Resources.

(2) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the State Board of Forestry, or to an officer or employee of the State Board of Forestry, the reference is considered to be a reference to the Oregon Natural Resources Commission or to an officer or employee of the Oregon Natural Resources Commission.

(Agency Name Change)

**SECTION 1788.** (1) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “State Forestry Department,” wherever they occur in statutory law, words designating the “Oregon Department of Natural Resources.”

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “State Forester,” wherever they occur in statutory law, words designating the “Director of the Oregon Department of Natural Resources.”

(Account Name Change)

**SECTION 1789.** For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “State Forestry Department Account,” wherever they occur in statutory law, words designating the “Oregon Natural Resources Fund.”

(Board Name Change)

**SECTION 1790.** For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “State Board of Forestry,” wherever they occur in statutory law, words designating the “Oregon Natural Resources Commission.”

(Conforming Amendments)

**SECTION 1791.** ORS 30.942 is amended to read:

30.942. (1) The State Department of Agriculture may adopt rules to implement the provisions of ORS 30.930 to 30.947.

(2) The [State Forestry Department] Oregon Department of Natural Resources may adopt rules to implement the provisions of ORS 30.930 to 30.947.

**SECTION 1792.** ORS 93.270 is amended to read:

93.270. (1) A person conveying or contracting to convey fee title to real property may not in-

1 clude in an instrument for that purpose a provision:

2 (a) Restricting the use of the real property by any person or group of persons by reason of race,  
3 color, religion, sex, sexual orientation, national origin or disability.

4 (b) Restricting the use of the real property by any home or facility that is licensed under ORS  
5 443.400 to 443.455 or 443.705 to 443.825 to provide residential care alone or in conjunction with  
6 treatment or training or a combination thereof.

7 (2) Any provision in an instrument executed in violation of subsection (1) of this section is void  
8 and unenforceable.

9 (3) An instrument that contains a provision restricting the use of real property in a manner  
10 listed in subsection (1)(b) of this section does not give rise to any public or private right of action  
11 to enforce the restriction.

12 (4)(a) An instrument that contains a provision restricting the use of real property by requiring  
13 roofing materials with a lower fire rating than that required in the state building code established  
14 under ORS chapter 455 does not give rise to any public or private right of action to enforce the  
15 restriction in an area determined by a local jurisdiction as a wildfire hazard zone. Prohibitions on  
16 public or private right of action under this paragraph are limited solely to considerations of fire  
17 rating.

18 (b) As used in this subsection, "wildfire hazard zones" are areas that are legally declared by a  
19 governmental agency having jurisdiction over the area to have special hazards caused by a combi-  
20 nation of combustible natural fuels, topography and climatic conditions that result in a significant  
21 hazard of catastrophic fire over relatively long periods each year. Wildfire hazard zones shall be  
22 determined using criteria established by the [*State Forestry Department*] **Oregon Department of**  
23 **Natural Resources**.

24 **SECTION 1793.** ORS 93.710 is amended to read:

25 93.710. (1) Any instrument creating a license, easement, profit a prendre, or a leasehold interest  
26 or oil, gas or other mineral interest or estate in real property or an interest in real property created  
27 by a land sale contract, or memorandum of such instrument or contract, which is executed by the  
28 person from whom the interest is intended to pass, and acknowledged or proved in the manner  
29 provided for the acknowledgment or proof of other conveyances, may be indexed and recorded in the  
30 records of deeds of real property in the county where such real property is located. Any instrument  
31 creating a mortgage or trust deed, or a memorandum thereof, or assignment for security purposes  
32 relating to any of the interests or estates in real property referred to in this subsection, which is  
33 executed by the person from whom the mortgage, trust deed, or assignment for security purposes is  
34 intended to be given, and acknowledged or proved in the manner provided for the acknowledgment  
35 or proof of other conveyances, may be indexed and recorded in the records of mortgages of real  
36 property in the county where such real property is located. Such recordation, whether the instru-  
37 ment be recorded prior to or subsequent to May 29, 1963, constitutes notice to third persons of the  
38 rights of the parties under the instrument irrespective of whether the party granted such interest  
39 or estate is in possession of the real property. Any such instrument when so acknowledged or  
40 proved, or certified in the manner prescribed by law by any of the authorized officers, may be read  
41 in evidence without further proof thereof.

42 (2) Any notice under ORS 527.710 or order under ORS 527.680 by the [*State Forester*] **Director**  
43 **of the Oregon Department of Natural Resources** requiring the reforestation of specific lands may  
44 be indexed and recorded in the records of deeds of real property in the county where such real  
45 property is located. Such recordation constitutes notice to third persons of the rights and obligations

1 of the parties to the notice or order. Any such notice or order when properly prepared in the man-  
 2 ner prescribed by law by any of the authorized officers may be read in evidence without further  
 3 proof thereof.

4 (3)(a) As used in this section, "memorandum" means an instrument that:

5 (A) Contains the date of the instrument being memorialized;

6 (B) Contains the names and addresses of the parties;

7 (C) Contains a legal description of the real property involved and the nature of the interest  
 8 created which is signed by the person from whom the interest is intended to pass; and

9 (D) Is acknowledged or proved in the manner provided for the acknowledgment or proof of  
 10 deeds.

11 (b) In addition to the requirements of paragraph (a) of this subsection, a memorandum of a  
 12 mortgage or trust deed shall contain:

13 (A) The legend "Memorandum of Mortgage" or "Memorandum of Trust Deed" either in capital  
 14 letters or underscored above the body of the memorandum;

15 (B) A description of any collateral encumbered by the mortgage or trust deed, other than the  
 16 real property, that can be perfected by filing in the real property records of the county in which the  
 17 collateral is situated;

18 (C) A description in general terms of the obligation or obligations secured and a statement of  
 19 the term or maturity date, if any, of the obligation or obligations;

20 (D) A statement by the mortgagee or beneficiary that a complete copy of the mortgage or trust  
 21 deed is available upon written request to the mortgagee or beneficiary; and

22 (E) If the mortgage or trust deed constitutes a line of credit instrument as defined in ORS  
 23 86.155, the information required to appear on the front page of the instrument under ORS 86.155  
 24 (1)(b).

25 (c) In addition to the requirements of paragraph (a) of this subsection, a memorandum of an in-  
 26 strument conveying or contracting to convey fee title to any real estate shall state on its face the  
 27 true and actual consideration paid for such transfer as provided in ORS 93.030.

28 **SECTION 1794.** ORS 105.699 is amended to read:

29 105.699. The [*State Forester, under the general supervision of the State Board of Forestry,*] **Di-**  
 30 **rector of the Oregon Department of Natural Resources** may adopt any rules considered neces-  
 31 sary for the administration of the provisions of ORS 105.672 to 105.696 on state land.

32 **SECTION 1795.** ORS 164.814 is amended to read:

33 164.814. [*No later than three months after September 9, 1995, the State Forester*] **The Director**  
 34 **of the Oregon Department of Natural Resources** shall develop a typical form for the permit and  
 35 document of sale required by ORS 164.813 and for the records required by ORS 164.813 (3). The  
 36 [*State Forester*] **director** shall make copies of the forms available. Use of the forms is not required.

37 **SECTION 1796.** ORS 181.637 is amended to read:

38 181.637. (1) The Board on Public Safety Standards and Training shall establish the following  
 39 policy committees:

40 (a) Corrections Policy Committee;

41 (b) Fire Policy Committee;

42 (c) Police Policy Committee;

43 (d) Telecommunications Policy Committee; and

44 (e) Private Security Policy Committee.

45 (2) The members of each policy committee shall select a chairperson and vice chairperson for

1 the policy committee. Only members of the policy committee who are also members of the board are  
 2 eligible to serve as a chairperson or vice chairperson. The vice chairperson may act as chairperson  
 3 in the absence of the chairperson.

4 (3) The Corrections Policy Committee consists of:

5 (a) All of the board members who represent the corrections discipline;

6 (b) The chief administrative officer of the training division of the Department of Corrections;

7 (c) A security manager from the Department of Corrections recommended by the Director of the  
 8 Department of Corrections; and

9 (d) The following, who may not be current board members, appointed by the chairperson of the  
 10 board:

11 (A) One person recommended by and representing the Oregon State Sheriffs' Association;

12 (B) Two persons recommended by and representing the Oregon Sheriff's Jail Command Council;

13 (C) One person recommended by and representing a statewide association of community cor-  
 14 rections directors;

15 (D) One nonmanagement corrections officer employed by the Department of Corrections;

16 (E) One corrections officer who is a female, who is employed by the Department of Corrections  
 17 at a women's correctional facility and who is a member of a bargaining unit; and

18 (F) Two nonmanagement corrections officers.

19 (4) The Fire Policy Committee consists of:

20 (a) All of the board members who represent the fire service discipline; and

21 (b) The following, who may not be current board members, appointed by the chairperson of the  
 22 board:

23 (A) One person recommended by and representing a statewide association of fire instructors;

24 (B) One person recommended by and representing a statewide association of fire marshals;

25 (C) One person recommended by and representing community college fire programs;

26 (D) One nonmanagement firefighter recommended by a statewide organization of firefighters; and

27 (E) One person representing [*the forest protection agencies and recommended by the State Forestry*  
 28 *Department*] **forest protection services and recommended by the Oregon Department of Na-**  
 29 **tural Resources.**

30 (5) The Police Policy Committee consists of:

31 (a) All of the board members who represent the law enforcement discipline; and

32 (b) The following, who may not be current board members, appointed by the chairperson of the  
 33 board:

34 (A) One person recommended by and representing the Oregon Association Chiefs of Police;

35 (B) Two persons recommended by and representing the Oregon State Sheriffs' Association;

36 (C) One command officer recommended by and representing the Oregon State Police; and

37 (D) Three nonmanagement law enforcement officers.

38 (6) The Telecommunications Policy Committee consists of:

39 (a) All of the board members who represent the telecommunications discipline; and

40 (b) The following, who may not be current board members, appointed by the chairperson of the  
 41 board:

42 (A) Two persons recommended by and representing a statewide association of public safety  
 43 communications officers;

44 (B) One person recommended by and representing the Oregon Association Chiefs of Police;

45 (C) One person recommended by and representing the Oregon State Police;

- 1 (D) Two persons representing telecommunicators;
- 2 (E) One person recommended by and representing the Oregon State Sheriffs' Association;
- 3 (F) One person recommended by and representing the Oregon Fire Chiefs Association;
- 4 (G) One person recommended by and representing the Emergency Medical Services and Trauma
- 5 Systems Program of the Oregon Health Authority; and
- 6 (H) One person representing paramedics and recommended by a statewide association dealing
- 7 with fire medical issues.
- 8 (7) The Private Security Policy Committee consists of:
- 9 (a) All of the board members who represent the private security industry; and
- 10 (b) The following, who may not be current board members, appointed by the chairperson of the
- 11 board:
- 12 (A) One person representing unarmed private security professionals;
- 13 (B) One person representing armed private security professionals;
- 14 (C) One person representing the health care industry;
- 15 (D) One person representing the manufacturing industry;
- 16 (E) One person representing the retail industry;
- 17 (F) One person representing the hospitality industry;
- 18 (G) One person representing private business or a governmental entity that utilizes private se-
- 19 curity services;
- 20 (H) One person representing persons who monitor alarm systems;
- 21 (I) Two persons who are investigators licensed under ORS 703.430, one of whom is recommended
- 22 by the Oregon State Bar and one of whom is in private practice; and
- 23 (J) One person who represents the public at large and who is not related within the second de-
- 24 gree by affinity or consanguinity to a person who is employed or doing business as a private security
- 25 professional or executive manager, as defined in ORS 181.870, or as an investigator, as defined in
- 26 ORS 703.401.
- 27 (8) In making appointments to the policy committees under this section, the chairperson of the
- 28 board shall seek to reflect the diversity of the state's population. An appointment made by the
- 29 chairperson of the board must be ratified by the board before the appointment is effective. The
- 30 chairperson of the board may remove an appointed member for just cause. An appointment to a
- 31 policy committee that is based on the member's employment is automatically revoked if the member
- 32 changes employment. The chairperson of the board shall fill a vacancy in the same manner as
- 33 making an initial appointment. The term of an appointed member is two years. An appointed member
- 34 may be appointed to a second term.
- 35 (9) A policy committee may meet at such times and places as determined by the policy commit-
- 36 tee in consultation with the Department of Public Safety Standards and Training. A majority of a
- 37 policy committee constitutes a quorum to conduct business. A policy committee may create sub-
- 38 committees if needed.
- 39 (10)(a) Each policy committee shall develop policies, requirements, standards and rules relating
- 40 to its specific discipline. A policy committee shall submit its policies, requirements, standards and
- 41 rules to the board for the board's consideration. When a policy committee submits a policy, re-
- 42 quirement, standard or rule to the board for the board's consideration, the board shall:
- 43 (A) Approve the policy, requirement, standard or rule;
- 44 (B) Disapprove the policy, requirement, standard or rule; or
- 45 (C) Defer a decision and return the matter to the policy committee for revision or reconsider-



1 ation.

2 (b) The board may defer a decision and return a matter submitted by a policy committee under  
3 paragraph (a) of this subsection only once. If a policy, requirement, standard or rule that was re-  
4 turned to a policy committee is resubmitted to the board, the board shall take all actions necessary  
5 to implement the policy, requirement, standard or rule unless the board disapproves the policy, re-  
6 quirement, standard or rule.

7 (c) Disapproval of a policy, requirement, standard or rule under paragraph (a) or (b) of this  
8 subsection requires a two-thirds vote by the members of the board.

9 (11) At any time after submitting a matter to the board, the chairperson of the policy committee  
10 may withdraw the matter from the board's consideration.

11 **SECTION 1797.** ORS 182.415 is amended to read:

12 182.415. As used in ORS 182.415 to 182.435 unless the context requires otherwise:

13 (1) "Furnishings" includes furniture usually used in connection with occupancy of a household  
14 but does not include rugs, draperies, ranges, refrigerators, washers, dryers or any item of furnishings  
15 received by the state or one of its agencies as a gift, nor does it include any furniture purchased  
16 for the state-owned residence required in relation to the official duties of an institutional executive  
17 or the Chancellor of the Oregon University System prior to September 9, 1971.

18 (2) "Housing" includes single and multiple family dwellings, apartments, and manufactured  
19 dwellings and manufactured dwelling pads, available on a monthly tenancy but does not include  
20 guard stations maintained by the [*State Forestry Department*] **Oregon Department of Natural Re-**  
21 **sources** or dormitory facilities at any state institution or at any state institution of higher educa-  
22 tion.

23 (3) "Dormitory" includes any facility that houses students and those facilities used primarily for  
24 sleeping purposes by the employees of the Department of Human Services or the Oregon Health  
25 Authority.

26 (4) "State agency" has the meaning given that term in ORS 291.002.

27 **SECTION 1798.** ORS 192.502, as amended by section 15, chapter 76, Oregon Laws 2010, is  
28 amended to read:

29 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

30 (1) Communications within a public body or between public bodies of an advisory nature to the  
31 extent that they cover other than purely factual materials and are preliminary to any final agency  
32 determination of policy or action. This exemption shall not apply unless the public body shows that  
33 in the particular instance the public interest in encouraging frank communication between officials  
34 and employees of public bodies clearly outweighs the public interest in disclosure.

35 (2) Information of a personal nature such as but not limited to that kept in a personal, medical  
36 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the  
37 public interest by clear and convincing evidence requires disclosure in the particular instance. The  
38 party seeking disclosure shall have the burden of showing that public disclosure would not consti-  
39 tute an unreasonable invasion of privacy.

40 (3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and  
41 telephone numbers contained in personnel records maintained by the public body that is the em-  
42 ployer or the recipient of volunteer services. This exemption:

43 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-  
44 unteers who are elected officials, except that a judge or district attorney subject to election may  
45 seek to exempt the judge's or district attorney's address or telephone number, or both, under the

1 terms of ORS 192.445;

2 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure  
3 shows by clear and convincing evidence that the public interest requires disclosure in a particular  
4 instance;

5 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-  
6 fessional education association of which the substitute teacher may be a member; and

7 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

8 (4) Information submitted to a public body in confidence and not otherwise required by law to  
9 be submitted, where such information should reasonably be considered confidential, the public body  
10 has obliged itself in good faith not to disclose the information, and when the public interest would  
11 suffer by the disclosure.

12 (5) Information or records of the Department of Corrections, including the State Board of Parole  
13 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of  
14 a person in custody of the department or substantially prejudice or prevent the carrying out of the  
15 functions of the department, if the public interest in confidentiality clearly outweighs the public in-  
16 terest in disclosure.

17 (6) Records, reports and other information received or compiled by the Director of the Depart-  
18 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not  
19 otherwise required by law to be made public, to the extent that the interests of lending institutions,  
20 their officers, employees and customers in preserving the confidentiality of such information out-  
21 weighs the public interest in disclosure.

22 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

23 (8) Any public records or information the disclosure of which is prohibited by federal law or  
24 regulations.

25 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-  
26 wise made confidential or privileged under Oregon law.

27 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information  
28 compiled in a public record when:

29 (A) The basis for the claim of exemption is ORS 40.225;

30 (B) The factual information is not prohibited from disclosure under any applicable state or fed-  
31 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410  
32 to 192.505;

33 (C) The factual information was compiled by or at the direction of an attorney as part of an  
34 investigation on behalf of the public body in response to information of possible wrongdoing by the  
35 public body;

36 (D) The factual information was not compiled in preparation for litigation, arbitration or an  
37 administrative proceeding that was reasonably likely to be initiated or that has been initiated by  
38 or against the public body; and

39 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement  
40 characterizing or partially disclosing the factual information compiled by or at the attorney's di-  
41 rection.

42 (10) Public records or information described in this section, furnished by the public body ori-  
43 ginally compiling, preparing or receiving them to any other public officer or public body in con-  
44 nection with performance of the duties of the recipient, if the considerations originally giving rise  
45 to the confidential or exempt nature of the public records or information remain applicable.

1 (11) Records of the Energy Facility Siting Council concerning the review or approval of security  
2 programs pursuant to ORS 469.530.

3 (12) Employee and retiree address, telephone number and other nonfinancial membership records  
4 and employee financial records maintained by the Public Employees Retirement System pursuant to  
5 ORS chapters 238 and 238A.

6 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the  
7 agents of the treasurer or the council relating to active or proposed publicly traded investments  
8 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or  
9 liquidation of the investments. For the purposes of this subsection:

10 (a) The exemption does not apply to:

11 (A) Information in investment records solely related to the amount paid directly into an invest-  
12 ment by, or returned from the investment directly to, the treasurer or council; or

13 (B) The identity of the entity to which the amount was paid directly or from which the amount  
14 was received directly.

15 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange  
16 or liquidation of the investment has been concluded.

17 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the  
18 Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual  
19 or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a  
20 private asset including but not limited to records regarding the solicitation, acquisition, deployment,  
21 exchange or liquidation of the investments including but not limited to:

22 (A) Due diligence materials that are proprietary to an investment fund, to an asset ownership  
23 or to their respective investment vehicles.

24 (B) Financial statements of an investment fund, an asset ownership or their respective invest-  
25 ment vehicles.

26 (C) Meeting materials of an investment fund, an asset ownership or their respective investment  
27 vehicles.

28 (D) Records containing information regarding the portfolio positions in which an investment  
29 fund, an asset ownership or their respective investment vehicles invest.

30 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-  
31 spective investment vehicles.

32 (F) Investment agreements and related documents.

33 (b) The exemption under this subsection does not apply to:

34 (A) The name, address and vintage year of each privately placed investment fund.

35 (B) The dollar amount of the commitment made to each privately placed investment fund since  
36 inception of the fund.

37 (C) The dollar amount of cash contributions made to each privately placed investment fund since  
38 inception of the fund.

39 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State  
40 Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the  
41 treasurer, council or board from each privately placed investment fund.

42 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately  
43 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment  
44 Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

45 (F) The net internal rate of return of each privately placed investment fund since inception of

1 the fund.

2 (G) The investment multiple of each privately placed investment fund since inception of the fund.

3 (H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end  
4 basis to each privately placed investment fund.

5 (I) The dollar amount of cash profit received from each privately placed investment fund on a  
6 fiscal year-end basis.

7 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the  
8 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as  
9 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

10 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted  
11 by ORS 98.352.

12 (17)(a) The following records, communications and information submitted to the Oregon Business  
13 Development Commission, the Oregon Business Development Department, the State Department of  
14 Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in  
15 ORS 777.005, by applicants for investment funds, loans or services including, but not limited to,  
16 those described in ORS 285A.224:

17 (A) Personal financial statements.

18 (B) Financial statements of applicants.

19 (C) Customer lists.

20 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the  
21 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
22 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
23 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-  
24 ery or deposition statutes to a party to litigation or potential litigation.

25 (E) Production, sales and cost data.

26 (F) Marketing strategy information that relates to applicant's plan to address specific markets  
27 and applicant's strategy regarding specific competitors.

28 (b) The following records, communications and information submitted to the State Department  
29 of Energy by applicants for tax credits:

30 (A) Personal financial statements.

31 (B) Financial statements of applicants.

32 (C) Customer lists.

33 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the  
34 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
35 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
36 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-  
37 ery or deposition statutes to a party to litigation or potential litigation.

38 (E) Production, sales and cost data.

39 (F) Marketing strategy information that relates to applicant's plan to address specific markets  
40 and applicant's strategy regarding specific competitors.

41 (18) Records, reports or returns submitted by private concerns or enterprises required by law  
42 to be submitted to or inspected by a governmental body to allow it to determine the amount of any  
43 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such  
44 information is in a form which would permit identification of the individual concern or enterprise.  
45 Nothing in this subsection shall limit the use which can be made of such information for regulatory

1 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-  
2 payer of the delinquency immediately by certified mail. However, in the event that the payment or  
3 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the  
4 public body shall disclose, upon the request of any person, the following information:

5 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the  
6 payment or delivery of the taxes.

7 (b) The period for which the taxes are delinquent.

8 (c) The actual, or estimated, amount of the delinquency.

9 (19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-  
10 pointed counsel, and all information supplied to the court from whatever source for the purpose of  
11 verifying the financial eligibility of a person pursuant to ORS 151.485.

12 (20) Workers' compensation claim records of the Department of Consumer and Business Services,  
13 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-  
14 ness Services, in any of the following circumstances:

15 (a) When necessary for insurers, self-insured employers and third party claim administrators to  
16 process workers' compensation claims.

17 (b) When necessary for the director, other governmental agencies of this state or the United  
18 States to carry out their duties, functions or powers.

19 (c) When the disclosure is made in such a manner that the disclosed information cannot be used  
20 to identify any worker who is the subject of a claim.

21 (d) When a worker or the worker's representative requests review of the worker's claim record.

22 (21) Sensitive business records or financial or commercial information of the Oregon Health and  
23 Science University that is not customarily provided to business competitors.

24 (22) Records of Oregon Health and Science University regarding candidates for the position of  
25 president of the university.

26 (23) The records of a library, including:

27 (a) Circulation records, showing use of specific library material by a named person;

28 (b) The name of a library patron together with the address or telephone number of the patron;  
29 and

30 (c) The electronic mail address of a patron.

31 (24) The following records, communications and information obtained by the Housing and Com-  
32 munity Services Department in connection with the department's monitoring or administration of  
33 financial assistance or of housing or other developments:

34 (a) Personal and corporate financial statements and information, including tax returns.

35 (b) Credit reports.

36 (c) Project appraisals.

37 (d) Market studies and analyses.

38 (e) Articles of incorporation, partnership agreements and operating agreements.

39 (f) Commitment letters.

40 (g) Project pro forma statements.

41 (h) Project cost certifications and cost data.

42 (i) Audits.

43 (j) Project tenant correspondence.

44 (k) Personal information about a tenant.

45 (L) Housing assistance payments.

1 (25) Raster geographic information system (GIS) digital databases, provided by private forestland  
2 owners or their representatives, voluntarily and in confidence to the [*State Forestry Department*]  
3 **Oregon Department of Natural Resources**, that is not otherwise required by law to be submitted.

4 (26) Sensitive business, commercial or financial information furnished to or developed by a  
5 public body engaged in the business of providing electricity or electricity services, if the information  
6 is directly related to a transaction described in ORS 261.348, or if the information is directly related  
7 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and  
8 disclosure of the information would cause a competitive disadvantage for the public body or its re-  
9 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-  
10 velopment or review of generally applicable rate schedules.

11 (27) Sensitive business, commercial or financial information furnished to or developed by the  
12 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath  
13 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085  
14 and disclosure of the information would cause a competitive disadvantage for the Klamath  
15 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-  
16 ment or review of generally applicable rate schedules.

17 (28) Personally identifiable information about customers of a municipal electric utility or a  
18 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,  
19 electronic mail addresses or Social Security numbers of customers who receive water, sewer or  
20 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-  
21 lease personally identifiable information about a customer, and a public body providing water, sewer  
22 or storm drain services may release the name, date of birth, driver license number, telephone num-  
23 ber, electronic mail address or Social Security number of a customer, if the customer consents in  
24 writing or electronically, if the disclosure is necessary for the utility, district or other public body  
25 to render services to the customer, if the disclosure is required pursuant to a court order or if the  
26 disclosure is otherwise required by federal or state law. The utility, district or other public body  
27 may charge as appropriate for the costs of providing such information. The utility, district or other  
28 public body may make customer records available to third party credit agencies on a regular basis  
29 in connection with the establishment and management of customer accounts or in the event such  
30 accounts are delinquent.

31 (29) A record of the street and number of an employee's address submitted to a special district  
32 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

33 (30) Sensitive business records, capital development plans or financial or commercial information  
34 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

35 (31) Documents, materials or other information submitted to the Director of the Department of  
36 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory  
37 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates  
38 or subsidiaries under ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to  
39 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank  
40 Act or the Insurance Code when:

41 (a) The document, material or other information is received upon notice or with an under-  
42 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of  
43 the document, material or other information; and

44 (b) The director has obligated the Department of Consumer and Business Services not to dis-  
45 close the document, material or other information.

1 (32) A county elections security plan developed and filed under ORS 254.074.

2 (33) Information about review or approval of programs relating to the security of:

3 (a) Generation, storage or conveyance of:

4 (A) Electricity;

5 (B) Gas in liquefied or gaseous form;

6 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

7 (D) Petroleum products;

8 (E) Sewage; or

9 (F) Water.

10 (b) Telecommunication systems, including cellular, wireless or radio systems.

11 (c) Data transmissions by whatever means provided.

12 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-  
13 ignates the information as confidential by rule under ORS 1.002.

14 (35)(a) Employer account records of the State Accident Insurance Fund Corporation.

15 (b) As used in this subsection, "employer account records" means all records maintained in any  
16 form that are specifically related to the account of any employer insured, previously insured or un-  
17 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-  
18 mation obtained or developed by the corporation in connection with providing, offering to provide  
19 or declining to provide insurance to a specific employer. "Employer account records" includes, but  
20 is not limited to, an employer's payroll records, premium payment history, payroll classifications,  
21 employee names and identification information, experience modification factors, loss experience and  
22 dividend payment history.

23 (c) The exemption provided by this subsection may not serve as the basis for opposition to the  
24 discovery documents in litigation pursuant to applicable rules of civil procedure.

25 (36)(a) Claimant files of the State Accident Insurance Fund Corporation.

26 (b) As used in this subsection, "claimant files" includes, but is not limited to, all records held  
27 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all  
28 records pertaining to such a claim.

29 (c) The exemption provided by this subsection may not serve as the basis for opposition to the  
30 discovery documents in litigation pursuant to applicable rules of civil procedure.

31 (37) Except as authorized by ORS 408.425, records that certify or verify an individual's discharge  
32 or other separation from military service.

33 **SECTION 1799.** ORS 197.455, as amended by section 1, chapter 32, Oregon Laws 2010, is  
34 amended to read:

35 197.455. (1) A destination resort may be sited only on lands mapped as eligible for destination  
36 resort siting by the affected county. The county may not allow destination resorts approved pursu-  
37 ant to ORS 197.435 to 197.467 to be sited in any of the following areas:

38 (a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or  
39 more unless residential uses are limited to those necessary for the staff and management of the re-  
40 sort.

41 (b)(A) On a site with 50 or more contiguous acres of unique or prime farmland identified and  
42 mapped by the United States Natural Resources Conservation Service, or its predecessor agency.

43 (B) On a site within three miles of a high value crop area unless the resort complies with the  
44 requirements of ORS 197.445 (6) in which case the resort may not be closer to a high value crop  
45 area than one-half mile for each 25 units of overnight lodging or fraction thereof.

1 (c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the [State  
2 *Forestry Department*] **Oregon Department of Natural Resources**, which are not subject to an ap-  
3 proved goal exception.

4 (d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge  
5 National Scenic Act, P.L. 99-663.

6 (e) In an especially sensitive big game habitat area:

7 (A) As determined by the state [*Department of Fish and Wildlife*] in July 1984, and in additional  
8 especially sensitive big game habitat areas designated by a county in an acknowledged comprehen-  
9 sive plan; or

10 (B) If the [*State Fish and Wildlife Commission*] **Oregon Natural Resources Commission**  
11 amends the 1984 determination with respect to an entire county and the county amends its com-  
12 prehensive plan to reflect the commission's subsequent determination, as designated in the ac-  
13 knowledged comprehensive plan.

14 (f) On a site in which the lands are predominantly classified as being in Fire Regime Condition  
15 Class 3, unless the county approves a wildfire protection plan that demonstrates the site can be  
16 developed without being at a high overall risk of fire.

17 (2) In carrying out subsection (1) of this section, a county shall adopt, as part of its compre-  
18 hensive plan, a map consisting of eligible lands within the county. The map must be based on rea-  
19 sonably available information and may be amended pursuant to ORS 197.610 to 197.625, but not more  
20 frequently than once every 30 months. The county shall develop a process for collecting and pro-  
21 cessing concurrently all map amendments made within a 30-month planning period. A map adopted  
22 pursuant to this section shall be the sole basis for determining whether tracts of land are eligible  
23 for destination resort siting pursuant to ORS 197.435 to 197.467.

24 **SECTION 1800.** ORS 238.005, as amended by section 8, chapter 1, Oregon Laws 2010, is  
25 amended to read:

26 238.005. For purposes of this chapter:

27 (1) "Annuity" means payments for life derived from contributions made by a member as provided  
28 in this chapter.

29 (2) "Board" means the Public Employees Retirement Board.

30 (3) "Calendar year" means 12 calendar months commencing on January 1 and ending on De-  
31 cember 31 following.

32 (4) "Continuous service" means service not interrupted for more than five years, except that  
33 such continuous service shall be computed without regard to interruptions in the case of:

34 (a) An employee who had returned to the service of the employer as of January 1, 1945, and  
35 who remained in that employment until having established membership in the Public Employees  
36 Retirement System.

37 (b) An employee who was in the armed services on January 1, 1945, and returned to the service  
38 of the employer within one year of the date of being otherwise than dishonorably discharged and  
39 remained in that employment until having established membership in the Public Employees Retire-  
40 ment System.

41 (5) "Creditable service" means any period of time during which an active member is being paid  
42 a salary by a participating public employer and for which benefits under this chapter are funded by  
43 employer contributions and earnings on the fund. For purposes of computing years of "creditable  
44 service," full months and major fractions of a month shall be considered to be one-twelfth of a year  
45 and shall be added to all full years. "Creditable service" includes all retirement credit received by



1 a member.

2 (6) "Earliest service retirement age" means the age attained by a member when the member  
3 could first make application for retirement under the provisions of ORS 238.280.

4 (7) "Employee" includes, in addition to employees, public officers, but does not include:

5 (a) Persons engaged as independent contractors.

6 (b) Seasonal, emergency or casual workers whose periods of employment with any public em-  
7 ployer or public employers do not total 600 hours in any calendar year.

8 (c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, pro-  
9 vided sheltered employment or made-work by a public employer in an employment or industries  
10 program maintained for the benefit of such persons.

11 (d) Persons employed and paid from federal funds received under the Emergency Job and Un-  
12 employment Assistance Act of 1974 (Public Law 93-567) or any other federal program intended pri-  
13 marily to alleviate unemployment. However, any such person shall be considered an "employee" if  
14 not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects to  
15 have the person so considered by an irrevocable written notice to the board.

16 (e) Persons who are employees of a railroad, as defined in ORS 824.020, and who, as such em-  
17 ployees, are included in a retirement plan under federal railroad retirement statutes. This paragraph  
18 shall be deemed to have been in effect since the inception of the system.

19 (8) "Final average salary" means whichever of the following is greater:

20 (a) The average salary per calendar year paid by one or more participating public employers to  
21 an employee who is an active member of the system in three of the calendar years of membership  
22 before the effective date of retirement of the employee, in which three years the employee was paid  
23 the highest salary. The three calendar years in which the employee was paid the largest total salary  
24 may include calendar years in which the employee was employed for less than a full calendar year.  
25 If the number of calendar years of active membership before the effective date of retirement of the  
26 employee is three or fewer, the final average salary for the employee is the average salary per cal-  
27 endar year paid by one or more participating public employers to the employee in all of those years,  
28 without regard to whether the employee was employed for the full calendar year.

29 (b) One-third of the total salary paid by a participating public employer to an employee who is  
30 an active member of the system in the last 36 calendar months of active membership before the ef-  
31 fective date of retirement of the employee.

32 (9) "Firefighter" does not include a volunteer firefighter, but does include:

33 (a) The State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals; and

34 (b) An employee of the [*State Forestry Department who is certified by the State Forester*] **Oregon**  
35 **Department of Natural Resources who is certified by the Director of the Oregon Department**  
36 **of Natural Resources** as a professional wildland firefighter and whose primary duties include the  
37 abatement of uncontrolled fires as described in ORS 477.064.

38 (10) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-  
39 lowing.

40 (11) "Fund" means the Public Employees Retirement Fund.

41 (12)(a) "Member" means a person who has established membership in the system and whose  
42 membership has not been terminated as described in ORS 238.095. "Member" includes active, inac-  
43 tive and retired members.

44 (b) "Active member" means a member who is presently employed by a participating public em-  
45 ployer in a qualifying position and who has completed the six-month period of service required by

1 ORS 238.015.

2 (c) "Inactive member" means a member who is not employed in a qualifying position, whose  
3 membership has not been terminated in the manner described by ORS 238.095, and who is not retired  
4 for service or disability.

5 (d) "Retired member" means a member who is retired for service or disability.

6 (13)(a) "Member account" means the regular account and the variable account.

7 (b) "Regular account" means the account established for each active and inactive member under  
8 ORS 238.250.

9 (c) "Variable account" means the account established for a member who participates in the  
10 Variable Annuity Account under ORS 238.260.

11 (14) "Normal retirement age" means:

12 (a) For a person who establishes membership in the system before January 1, 1996, as described  
13 in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter  
14 or 58 years of age if the employee retires at that age as other than a police officer or firefighter.

15 (b) For a person who establishes membership in the system on or after January 1, 1996, as de-  
16 scribed in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or  
17 firefighter or 60 years of age if the employee retires at that age as other than a police officer or  
18 firefighter.

19 (15) "Pension" means annual payments for life derived from contributions by one or more public  
20 employers.

21 (16) "Police officer" includes:

22 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions  
23 whose duties, as assigned by the Director of the Department of Corrections, include the custody of  
24 persons committed to the custody of or transferred to the Department of Corrections and employees  
25 of the Department of Corrections who were classified as police officers on or before July 27, 1989,  
26 whether or not such classification was authorized by law.

27 (b) Employees of the Department of State Police who are classified as police officers by the  
28 Superintendent of State Police.

29 (c) Employees of the Oregon Liquor Control Commission who are classified as enforcement of-  
30 ficers by the administrator of the commission.

31 (d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified  
32 by the sheriff, are the regular duties of police officers or corrections officers.

33 (e) Police chiefs and police personnel of a city who are classified as police officers by the  
34 council or other governing body of the city.

35 (f) Parole and probation officers employed by the Department of Corrections, parole and pro-  
36 bation officers who are transferred to county employment under ORS 423.549 and adult parole and  
37 probation officers, as defined in ORS 181.610, who are classified as police officers for the purposes  
38 of this chapter by the county governing body. If a county classifies adult parole and probation offi-  
39 cers as police officers for the purposes of this chapter, and the employees so classified are repres-  
40 ented by a labor organization, any proposal by the county to change that classification or to cease  
41 to classify adult parole and probation officers as police officers for the purposes of this chapter is  
42 a mandatory subject of bargaining.

43 (g) Police officers appointed under ORS 276.021 or 276.023.

44 (h) Employees of the Port of Portland who are classified as airport police by the Board of  
45 Commissioners of the Port of Portland.

1 (i) Employees of the State Department of Agriculture who are classified as livestock police of-  
2 ficers by the Director of Agriculture.

3 (j) Employees of the Department of Public Safety Standards and Training who are classified by  
4 the department as other than secretarial or clerical personnel.

5 (k) Investigators of the Criminal Justice Division of the Department of Justice.

6 (L) Corrections officers as defined in ORS 181.610.

7 (m) Employees of the Oregon State Lottery Commission who are classified by the Director of the  
8 Oregon State Lottery as enforcement agents pursuant to ORS 461.110.

9 (n) The Director of the Department of Corrections.

10 (o) An employee who for seven consecutive years has been classified as a police officer as de-  
11 fined by this section, and who is employed or transferred by the Department of Corrections to fill  
12 a position designated by the Director of the Department of Corrections as being eligible for police  
13 officer status.

14 (p) An employee of the Department of Corrections classified as a police officer on or prior to  
15 July 27, 1989, whether or not that classification was authorized by law, as long as the employee  
16 remains in the position held on July 27, 1989. The initial classification of an employee under a sys-  
17 tem implemented pursuant to ORS 240.190 does not affect police officer status.

18 (q) Employees of a school district who are appointed and duly sworn members of a law  
19 enforcement agency of the district as provided in ORS 332.531 or otherwise employed full-time as  
20 police officers commissioned by the district.

21 (r) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,  
22 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who  
23 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the  
24 Department of Corrections or the Oregon Youth Authority.

25 (s) Employees at youth correction facilities as defined in ORS 420.005 whose primary job de-  
26 scription involves the custody, control, treatment, investigation or supervision of juveniles placed  
27 in such facilities.

28 (t) Employees of the Oregon Youth Authority who are classified as juvenile parole and probation  
29 officers.

30 (17) "Public employer" means the state, one of its agencies, any city, county, or municipal or  
31 public corporation, any political subdivision of the state or any instrumentality thereof, or an agency  
32 created by one or more such governmental organizations to provide governmental services. For  
33 purposes of this chapter, such agency created by one or more governmental organizations is a gov-  
34 ernmental instrumentality and a legal entity with power to enter into contracts, hold property and  
35 sue and be sued.

36 (18) "Prior service credit" means credit provided under ORS 238.442 or under ORS 238.225 (2)  
37 to (6) (1999 Edition).

38 (19) "Qualifying position" means one or more jobs with one or more participating public em-  
39 ployers in which an employee performs 600 or more hours of service in a calendar year, excluding  
40 any service in a job for which a participating public employer does not provide benefits under this  
41 chapter pursuant to an application made under ORS 238.035.

42 (20) "Retirement credit" means a period of time that is treated as creditable service for the  
43 purposes of this chapter.

44 (21)(a) "Salary" means the remuneration paid an employee in cash out of the funds of a public  
45 employer in return for services to the employer, plus the monetary value, as determined by the

1 Public Employees Retirement Board, of whatever living quarters, board, lodging, fuel, laundry and  
2 other advantages the employer furnishes the employee in return for services.

3 (b) "Salary" includes but is not limited to:

4 (A) Payments of employee and employer money into a deferred compensation plan, which are  
5 deemed salary paid in each month of deferral;

6 (B) The amount of participation in a tax-sheltered or deferred annuity, which is deemed salary  
7 paid in each month of participation;

8 (C) Retroactive payments described in section 7, chapter 1, Oregon Laws 2010; and

9 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
10 652.190.

11 (c) "Salary" or "other advantages" does not include:

12 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the  
13 employer;

14 (B) Payments for insurance coverage by an employer on behalf of employee or employee and  
15 dependents, for which the employee has no cash option;

16 (C) Payments made on account of an employee's death;

17 (D) Any lump sum payment for accumulated unused sick leave;

18 (E) Any accelerated payment of an employment contract for a future period or an advance  
19 against future wages;

20 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement  
21 gratuitous payment;

22 (G) Payments for periods of leave of absence after the date the employer and employee have  
23 agreed that no future services qualifying pursuant to ORS 238.015 (3) will be performed, except for  
24 sick leave and vacation;

25 (H) Payments for instructional services rendered to institutions of the Oregon University System  
26 or the Oregon Health and Science University when such services are in excess of full-time employ-  
27 ment subject to this chapter. A person employed under a contract for less than 12 months is subject  
28 to this subparagraph only for the months to which the contract pertains; or

29 (I) Payments made by an employer for insurance coverage provided to a domestic partner of an  
30 employee.

31 (22) "School year" means the period beginning July 1 and ending June 30 next following.

32 (23) "System" means the Public Employees Retirement System.

33 (24) "Vested" means being an active member of the system in each of five calendar years.

34 (25) "Volunteer firefighter" means a firefighter whose position normally requires less than 600  
35 hours of service per year.

36 **SECTION 1801.** ORS 238A.005, as amended by section 9, chapter 1, Oregon Laws 2010, and  
37 section 1, chapter 82, Oregon Laws 2010, is amended to read:

38 238A.005. For the purposes of this chapter:

39 (1) "Active member" means a member of the pension program or the individual account program  
40 of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

41 (2) "Actuarial equivalent" means a payment or series of payments having the same value as the  
42 payment or series of payments replaced, computed on the basis of interest rate and mortality as-  
43 sumptions adopted by the board.

44 (3) "Board" means the Public Employees Retirement Board.

45 (4) "Eligible employee" means a person who performs services for a participating public em-

1 ployer, including elected officials other than judges. “Eligible employee” does not include:

2 (a) Persons engaged as independent contractors;

3 (b) Aliens working under a training or educational visa;

4 (c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190,  
5 provided sheltered employment or make-work by a public employer;

6 (d) Persons categorized by a participating public employer as student employees;

7 (e) Any person who is an inmate of a state institution;

8 (f) Employees of foreign trade offices of the Oregon Business Development Department who live  
9 and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

10 (g) An employee actively participating in an alternative retirement program established under  
11 ORS 353.250 or an optional retirement plan established under ORS 341.551;

12 (h) Employees of the Oregon University System who are actively participating in an optional  
13 retirement plan offered under ORS 243.800;

14 (i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003,  
15 for membership in the system under the provisions of ORS chapter 238 or other law;

16 (j) Any person who belongs to a class of employees who are not eligible to become members of  
17 the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

18 (k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who  
19 continues to receive retirement benefits while employed; and

20 (L) Judges.

21 (5) “Firefighter” means:

22 (a) A person employed by a local government, as defined in ORS 174.116, whose primary job  
23 duties include the fighting of fires;

24 (b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals;  
25 and

26 (c) An employee of the [*State Forestry Department who is certified by the State Forester*] **Oregon**  
27 **Department of Natural Resources who is certified by the Director of the Oregon Department**  
28 **of Natural Resources** as a professional wildland firefighter and whose primary duties include the  
29 abatement of uncontrolled fires as described in ORS 477.064.

30 (6) “Fund” means the Public Employees Retirement Fund.

31 (7)(a) “Hour of service” means:

32 (A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment  
33 by a participating public employer for performance of duties in a qualifying position; and

34 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave  
35 during which an employee does not perform duties but for which the employee is directly or indi-  
36 rectly paid or entitled to payment by a participating public employer for services in a qualifying  
37 position, as long as the hour is within the number of hours regularly scheduled for the performance  
38 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-  
39 thorized leave.

40 (b) “Hour of service” does not include any hour for which payment is made or due under a plan  
41 maintained solely for the purpose of complying with applicable workers’ compensation laws or un-  
42 employment compensation laws.

43 (8) “Inactive member” means a member of the pension program or the individual account pro-  
44 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who  
45 is not a retired member and who is not employed in a qualifying position.

1 (9) "Individual account program" means the defined contribution individual account program of  
2 the Oregon Public Service Retirement Plan established under ORS 238A.025.

3 (10) "Member" means an eligible employee who has established membership in the pension pro-  
4 gram or the individual account program of the Oregon Public Service Retirement Plan and whose  
5 membership has not been terminated under ORS 238A.110 or 238A.310.

6 (11) "Participating public employer" means a public employer as defined in ORS 238.005 that  
7 provides retirement benefits for employees of the public employer under the system.

8 (12) "Pension program" means the defined benefit pension program of the Oregon Public Service  
9 Retirement Plan established under ORS 238A.025.

10 (13) "Police officer" means a police officer as described in ORS 238.005.

11 (14) "Qualifying position" means one or more jobs with one or more participating public em-  
12 ployers in which an eligible employee performs 600 or more hours of service in a calendar year,  
13 excluding any service in a job for which benefits are not provided under the Oregon Public Service  
14 Retirement Plan pursuant to ORS 238A.070 (2).

15 (15) "Retired member" means a pension program member who is receiving a pension as provided  
16 in ORS 238A.180 to 238A.195.

17 (16)(a) "Salary" means the remuneration paid to an active member in return for services to the  
18 participating public employer, including remuneration in the form of living quarters, board or other  
19 items of value, to the extent the remuneration is includable in the employee's taxable income under  
20 Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection,  
21 but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether  
22 those amounts are includable in taxable income.

23 (b) "Salary" includes the following amounts:

24 (A) Payments of employee and employer money into a deferred compensation plan that are made  
25 at the election of the employee.

26 (B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the  
27 employee.

28 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit  
29 plan by the employer at the election of the employee and that is not includable in the taxable in-  
30 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2009.

31 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the  
32 election of the employee and that is not included in the taxable income of the employee by reason  
33 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2009.

34 (E) Retroactive payments described in section 7, chapter 1, Oregon Laws 2010.

35 (F) The amount of an employee contribution to the individual account program that is paid by  
36 the employer and deducted from the compensation of the employee, as provided under ORS 238A.335  
37 (1) and (2)(a).

38 (G) The amount of an employee contribution to the individual account program that is not paid  
39 by the employer under ORS 238A.335.

40 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
41 652.190.

42 (c) "Salary" does not include the following amounts:

43 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the  
44 employer.

45 (B) Payments made on account of an employee's death.

1 (C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid  
2 leave.

3 (D) Any severance payment, accelerated payment of an employment contract for a future period  
4 or advance against future wages.

5 (E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

6 (F) Payment for a leave of absence after the date the employer and employee have agreed that  
7 no future services in a qualifying position will be performed.

8 (G) Payments for instructional services rendered to institutions of the Oregon University System  
9 or the Oregon Health and Science University when those services are in excess of full-time em-  
10 ployment subject to this chapter. A person employed under a contract for less than 12 months is  
11 subject to this subparagraph only for the months covered by the contract.

12 (H) The amount of an employee contribution to the individual account program that is paid by  
13 the employer and is not deducted from the compensation of the employee, as provided under ORS  
14 238A.335 (1) and (2)(b).

15 (I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is  
16 determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a  
17 fraction, the numerator of which is the number of months in the determination period and the de-  
18 nominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate  
19 cost-of-living adjustments authorized by the Internal Revenue Service.

20 (17) "System" means the Public Employees Retirement System.

21 **SECTION 1802.** ORS 272.050 is amended to read:

22 272.050. Acquisition authorized under ORS 272.040 shall be contingent on the consent of the  
23 governing body of the county wherein such tract or any portion thereof is situated and such consent  
24 must be given by an order duly made and entered in the records of such governing body and a  
25 certified copy thereof transmitted to the [State Forester] **Director of the Oregon Department of**  
26 **Natural Resources.**

27 **SECTION 1803.** ORS 275.080 is amended to read:

28 275.080. (1) The governing body of a county may sell in the manner provided for sale of county  
29 land under ORS 275.120, 275.140 to 275.160 and 275.180 to 275.260, and convey to any person or  
30 corporation impounding and selling water to the public, any lands acquired by such county through  
31 foreclosure of tax liens or otherwise, when, in the discretion of the governing body of the county,  
32 the conveyance is necessary for the preservation or protection of any watershed from which water  
33 is being impounded and sold to the public by such person or corporation.

34 (2) Legal title to timber on such lands shall remain in the county and such timber shall not be  
35 removed therefrom except with the express written consent of and under the direct supervision of  
36 the [State Board of Forestry] **Oregon Natural Resources Commission.**

37 (3) Should any such lands so conveyed cease to be used to preserve and protect the watershed  
38 for which it was conveyed, or if the person or corporation does not take water from the watershed  
39 for a period of one year, legal title to such land shall immediately revert to and revest in the county  
40 without the necessity of reentry.

41 **SECTION 1804.** ORS 279B.020 is amended to read:

42 279B.020. (1) When labor is employed by a contracting agency through a contractor, a person  
43 may not be required or permitted to labor more than 10 hours in any one day, or 40 hours in any  
44 one week, except in cases of necessity or emergency or when the public policy absolutely requires  
45 it, in which event, the person so employed for excessive hours shall receive at least time and a half

1 pay:

2 (a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week  
3 when the work week is five consecutive days, Monday through Friday; or

4 (B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the  
5 work week is four consecutive days, Monday through Friday; and

6 (b) For all work performed on Saturday and on the following legal holidays:

7 (A) Each Sunday.

8 (B) New Year's Day on January 1.

9 (C) Memorial Day on the last Monday in May.

10 (D) Independence Day on July 4.

11 (E) Labor Day on the first Monday in September.

12 (F) Thanksgiving Day on the fourth Thursday in November.

13 (G) Christmas Day on December 25.

14 (2) An employer shall give notice in writing to employees who perform work under subsection  
15 (1) of this section, either at the time of hire or before commencement of work on the contract, or  
16 by posting a notice in a location frequented by employees, of the number of hours per day and days  
17 per week that employees may be required to work.

18 (3) For the purpose of this section, each time a legal holiday, other than Sunday, listed in sub-  
19 section (1) of this section falls on Sunday, the succeeding Monday shall be recognized as a legal  
20 holiday. Each time a legal holiday listed in subsection (1) of this section falls on Saturday, the pre-  
21 ceding Friday shall be recognized as a legal holiday.

22 (4) When specifically agreed to under a written labor-management negotiated labor agreement,  
23 an employee may be paid at least time and a half pay for work performed on any legal holiday  
24 specified in ORS 187.010 and 187.020 that is not listed in subsection (1) of this section.

25 (5) This section does not apply to contracts for personal services designated under ORS  
26 279A.055, provided that persons employed under such contracts shall receive at least time and a half  
27 pay for work performed on the legal holidays specified in subsection (1)(b)(B) to (G) of this section  
28 and for all overtime worked in excess of 40 hours in any one week, except for individuals under  
29 personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201  
30 to 209 from receiving overtime.

31 (6) Subsections (1) and (2) of this section do not apply to contracts for services at a county fair  
32 or for other events authorized by a county fair board if persons employed under the contract receive  
33 at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week.

34 (7) Subsections (1) to (3) of this section do not apply to a contract for services if the contractor  
35 is a party to a collective bargaining agreement in effect with any labor organization.

36 (8)(a) Subsections (1) and (2) of this section do not apply to contracts for services. However,  
37 persons employed under such contracts shall receive at least time and a half pay for work performed  
38 on the legal holidays specified in a collective bargaining agreement or in subsection (1)(b)(B) to (G)  
39 of this section and for all time worked in excess of 10 hours in any one day or in excess of 40 hours  
40 in any one week, whichever is greater.

41 (b) An employer shall give notice in writing to employees who work on a contract for services,  
42 either at the time of hire or before commencement of work on the contract, or by posting a notice  
43 in a location frequented by employees, of the number of hours per day and days per week that the  
44 employees may be required to work.

45 (9) Any contractor or subcontractor or contractor's or subcontractor's surety that violates the



1 provisions of this section is liable to the affected employees in the amount of their unpaid overtime  
 2 wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the  
 3 violation resulted from willful falsification of payroll records, the contractor or subcontractor or  
 4 contractor's or subcontractor's surety is liable to the affected employees in the amount of their un-  
 5 paid overtime wages and in an additional amount equal to twice the unpaid overtime wages as liq-  
 6 uidated damages.

7 (10) An action to enforce liability to employees under subsection (9) of this section may be  
 8 brought as an action on the contractor's payment bond as provided for in ORS 279C.610.

9 (11) This section does not apply to:

10 (a) Financial institutions as defined in ORS 706.008.

11 (b) Labor performed in the prevention or suppression of fire under contracts and agreements  
 12 made pursuant to the authority of the [*State Forester or the State Board of Forestry*] **Director of**  
 13 **the Oregon Department of Natural Resources or the Oregon Natural Resources Commission**  
 14 under ORS 477.406.

15 (c) Public contracts for goods or personal property.

16 (12) In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Indus-  
 17 tries may adopt rules to carry out the provisions of this section.

18 **SECTION 1805.** ORS 279B.235 is amended to read:

19 279B.235. (1) Except as provided in subsections (3) to (6) of this section, every public contract  
 20 subject to this chapter must contain a condition that a person may not be employed for more than  
 21 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or  
 22 when the public policy absolutely requires it, and in such cases, except in cases of contracts for  
 23 personal services designated under ORS 279A.055, the employee shall be paid at least time and a  
 24 half pay:

25 (a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week  
 26 when the work week is five consecutive days, Monday through Friday; or

27 (B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the  
 28 work week is four consecutive days, Monday through Friday; and

29 (b) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

30 (2) An employer must give notice in writing to employees who work on a public contract, either  
 31 at the time of hire or before commencement of work on the contract, or by posting a notice in a  
 32 location frequented by employees, of the number of hours per day and days per week that the em-  
 33 ployees may be required to work.

34 (3) In the case of contracts for personal services as described in ORS 279A.055, the contract  
 35 shall contain a provision that the employee shall be paid at least time and a half for all overtime  
 36 worked in excess of 40 hours in any one week, except for individuals under personal services con-  
 37 tracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving  
 38 overtime.

39 (4) In the case of a contract for services at a county fair or for other events authorized by a  
 40 county fair board, the contract must contain a provision that employees must be paid at least time  
 41 and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer  
 42 shall give notice in writing to employees who work on such a contract, either at the time of hire  
 43 or before commencement of work on the contract, or by posting a notice in a location frequented  
 44 by employees, of the number of hours per day and days per week that employees may be required  
 45 to work.

1 (5)(a) Except as provided in subsection (4) of this section, contracts for services must contain a  
 2 provision that requires that persons employed under the contracts shall receive at least time and a  
 3 half pay for work performed on the legal holidays specified in a collective bargaining agreement or  
 4 in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in  
 5 excess of 40 hours in any one week, whichever is greater.

6 (b) An employer shall give notice in writing to employees who work on a contract for services,  
 7 either at the time of hire or before commencement of work on the contract, or by posting a notice  
 8 in a location frequented by employees, of the number of hours per day and days per week that the  
 9 employees may be required to work.

10 (6) This section does not apply to public contracts:

11 (a) With financial institutions as defined in ORS 706.008.

12 (b) Made pursuant to the authority of the [*State Forester or the State Board of Forestry*] **Director**  
 13 **of the Oregon Department of Natural Resources or the Oregon Natural Resources Com-**  
 14 **mission** under ORS 477.406 for labor performed in the prevention or suppression of fire.

15 (c) For goods or personal property.

16 **SECTION 1806.** ORS 315.104 is amended to read:

17 315.104. (1) A credit against the taxes otherwise due under ORS chapter 316 (or if the taxpayer  
 18 is a corporation, under ORS chapter 317 or 318) shall be allowed in an amount equal to 50 percent  
 19 of reforestation project costs actually paid or incurred to reforest underproductive Oregon  
 20 forestlands. Such costs include, but are not limited to, any fees established by the [*State Forester*]  
 21 **Director of the Oregon Department of Natural Resources** under ORS 315.106 (4), site prepara-  
 22 tion, tree planting and other silviculture treatments considered necessary by the [*State Forester*]  
 23 **director** to establish commercial, hardwood or softwood stands on appropriate sites. Subject to  
 24 subsection (5) of this section:

25 (a) One-half of the credit shall be taken in the tax year for which the [*State Forester*] **director**,  
 26 after physical inspection of the forestland, issues a preliminary certificate under ORS 315.106 certi-  
 27 fying that the land qualifies as underproductive Oregon forestland and that the reforestation project  
 28 undertaken meets the requirements of this section and the specifications established by the [*State*  
 29 *Forester*] **director** and the costs appear to be reasonable; and

30 (b) One-half of the credit shall be taken in the tax year for which the [*State Forester*] **director**,  
 31 after further physical inspection of the land and project, certifies that the new forest is established  
 32 in accordance with the specifications of the [*State Forester*] **director**.

33 (2) No credit shall be allowed under either subsection (1)(a) or (b) of this section unless written  
 34 certification containing the following statements accompanies the claim for the credit or is other-  
 35 wise filed with the Department of Revenue:

36 (a) A preliminary certificate issued by the [*State Forester*] **director** under ORS 315.106 that the  
 37 land and project meet the preliminary specifications established by the [*State Forester*] **director** or  
 38 that the new forest is established, whichever is applicable at the time.

39 (b) A statement by the landowner or person in possession of the land that the land within the  
 40 project area will be used for the primary purpose of growing and harvesting trees of an acceptable  
 41 species.

42 (c) A statement that the landowner or person in possession of the land is aware that mainte-  
 43 nance practices, including release, may be needed to insure that a new forest is established and will  
 44 remain established.

45 (3) For purposes of this section, reforestation project costs shall not include:

1 (a) Costs paid or incurred to reforest any forestland that has been commercially logged to the  
2 extent that reforestation is required under the Oregon Forest Practices Act, except costs paid or  
3 incurred to reforest forestland following a hardwood harvest, conducted for the purposes of con-  
4 verting underproductive forestlands, as determined by administrative rule.

5 (b) That portion of costs or expenses paid through a federal or state cost share, financial as-  
6 sistance or other incentive program.

7 (c) Those costs paid or incurred to grow Christmas trees, ornamental trees, shrubs or plants,  
8 or those costs paid or incurred to grow hardwood timber described under ORS 321.267 (3) or 321.824  
9 (3).

10 (d) Any costs paid or incurred to purchase or otherwise acquire the land.

11 (e) The cost of purchase or other acquisition of tools and equipment with a useful life of more  
12 than one year.

13 (4) To qualify for the credit:

14 (a) The project must be completed to specifications approved by the [*State Forester*] **director**.

15 (b) The taxpayer's portion of the project costs must be \$500 or more.

16 (c) The taxpayer must be a private individual, corporation, group, Indian tribe or other native  
17 group, association or other nonpublic legal entity owning, purchasing under recorded contract of  
18 sale or leasing at least five acres of Oregon commercial forestland.

19 (d) Prior to December 31, 2012, the taxpayer must file with the [*State Forester*] **director** a  
20 written request for preliminary certification under ORS 315.106.

21 (5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in  
22 a particular year may be carried forward and offset against the taxpayer's tax liability for the next  
23 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried  
24 forward and used in the second succeeding tax year, and likewise, any credit not used in that second  
25 succeeding tax year may be carried forward and used in the third succeeding tax year, but may not  
26 be carried forward for any tax year thereafter. In all cases the taxpayer must be the person who  
27 made the investment into the project.

28 (6) The credit provided by this section shall be in addition to and not in lieu of any depreciation  
29 or amortization deduction to which the taxpayer otherwise may be entitled with respect to the  
30 reforestation project and the credit shall not affect the computation of basis for the property.

31 (7) In compliance with ORS chapter 183, the Department of Revenue and the [*State Forestry*  
32 *Department*] **Oregon Department of Natural Resources** may adopt rules consistent with law for  
33 carrying out the provisions of this section.

34 (8) As used in this section, "underproductive Oregon forestlands" means Oregon commercial  
35 forestlands not meeting the minimum stocking standards of the Oregon Forest Practices Act.

36 (9) If, for any reason other than those specified in subsection (10) of this section, a new forest  
37 is not established by the last day of the second taxable year following the taxable year for which  
38 the preliminary certificate was issued, the [*State Forester*] **director** shall so report to the Depart-  
39 ment of Revenue. The report filed under this subsection shall be the basis for the department to  
40 recover any credit granted under subsection (1)(a) of this section. If, however, the new forest is not  
41 established within the time required by this subsection on account of the reasons specified in sub-  
42 section (10) of this section, any credit allowed under subsections (1)(a) and (5) of this section shall  
43 not be recovered but no further credit as provided under subsections (1)(b) and (5) of this section  
44 shall be allowed.

45 (10) Subject to requalification under this section in the manner applicable for the original claim,

1 including obtaining a new preliminary certificate, a taxpayer may claim an additional credit or  
 2 credits for reestablishing a new planting in the event that the new forest is destroyed by a natural  
 3 disaster or is not established for reasons beyond the control of the taxpayer, if the measures taken  
 4 in completing the original or earlier project would normally have resulted in establishing the mini-  
 5 mum number of trees per acre anticipated by the project.

6 (11) Any owner affected by a determination, regarding the reforestation tax credit made by:

7 (a) The *[State Forester]* **director**, except for a denial of a request for a preliminary certificate  
 8 due to the annual reforestation credit cost limitation calculated under ORS 315.108, may appeal that  
 9 determination in the manner provided for in ORS 526.475 (1).

10 (b) The Department of Revenue, may appeal that determination in the manner provided for in  
 11 ORS 526.475 (2).

12 **SECTION 1807.** ORS 315.106 is amended to read:

13 315.106. (1) A taxpayer claiming the credit provided under ORS 315.104 shall file a written re-  
 14 quest with the *[State Forester]* **Director of the Oregon Department of Natural Resources** for a  
 15 preliminary certificate. The request shall contain:

16 (a) Information that is required by the *[State Forester]* **director** by rule;

17 (b) An estimate of the amount of the credit the taxpayer expects to claim under ORS 315.104  
 18 (1)(a); and

19 (c) Payment of any fee required by the *[State Forester]* **director** by rule adopted under sub-  
 20 section (4) of this section.

21 (2) The *[State Forester]* **director** shall consider requests for preliminary certificates in the  
 22 chronological order in which the requests are filed with the *[State Forester. If the State Forester]*  
 23 **director. If the director** determines that the request complies with ORS 315.104 (1)(a), the *[State*  
 24 *Forester]* **director** shall issue the preliminary certificate to the taxpayer, to the extent the total  
 25 amount of estimated claims for credit under ORS 315.104 (1)(a) for all preliminary certificates issued  
 26 for the calendar year do not exceed the annual reforestation credit cost limitation calculated under  
 27 ORS 315.108.

28 (3) The *[State Forester]* **director** may not issue a preliminary certificate to a taxpayer to the  
 29 extent the estimated claim for credit under ORS 315.104 (1)(a) contained in the request for a pre-  
 30 liminary certificate, when added to the total of estimated claims for credit under ORS 315.104 (1)(a)  
 31 for all preliminary certificates issued by the *[State Forester]* **director** for the calendar year, exceeds  
 32 the annual reforestation credit cost limitation calculated under ORS 315.108.

33 (4) The *[State Forester]* **director** shall establish by rule a fee for filing a written request for a  
 34 preliminary certificate under this section. The fee shall be adequate to recover the costs incurred  
 35 by the *[State Forestry Department]* **Oregon Department of Natural Resources** in administering the  
 36 reforestation tax credit program established under this section and ORS 315.104 and 315.108.

37 (5) Moneys collected from fees established by the *[State Forester]* **director** under rules adopted  
 38 under this section shall be deposited in the *[State Forestry Department Account to be used]* **Oregon**  
 39 **Natural Resources Fund. Moneys deposited in the fund under this subsection are contin-**  
 40 **uously appropriated to the department** for the purposes of administering the reforestation tax  
 41 credit program.

42 **NOTE:** Section 1808 was deleted. Subsequent sections were not renumbered.

43 **SECTION 1809.** ORS 319.320 is amended to read:

44 319.320. (1) Upon compliance with subsection (2) or (3) of this section the Department of  
 45 Transportation shall refund, in the manner provided in subsection (2) or (3) of this section, the tax

1 on motor vehicle fuel that is used in the operation of a motor vehicle:

2 (a) By any person on any road, thoroughfare or property in private ownership.

3 (b) By any person on any road, thoroughfare or property, other than a state highway, county  
4 road or city street, for the removal of forest products, as defined in ORS 321.005, or the products  
5 of such forest products converted to a form other than logs at or near the harvesting site, or for the  
6 construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement  
7 or permit authorizing the use, construction or maintenance of the road, thoroughfare or property,  
8 with or by:

9 (A) An agency of the United States;

10 (B) The [*State Board of Forestry*] **Oregon Natural Resources Commission**;

11 (C) The [*State Forester*] **Director of the Oregon Department of Natural Resources**; or

12 (D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph.

13 (c) By an agency of the United States or of this state or of any county, city or port of this state  
14 on any road, thoroughfare or property, other than a state highway, county road or city street.

15 (d) By any person on any county road for the removal of forest products, as defined in ORS  
16 321.005, or the products of such forest products converted to a form other than logs at or near the  
17 harvesting site, if:

18 (A) The use of the county road is pursuant to a written agreement entered into with, or to a  
19 permit issued by, the [*State Board of Forestry, the State Forester*] **Oregon Natural Resources**  
20 **Commission, the Director of the Oregon Department of Natural Resources** or an agency of the  
21 United States, authorizing such person to use such road and requiring such person to pay for or to  
22 perform the construction or maintenance of the county road;

23 (B) The board, officer or agency that entered into the agreement or granted the permit, by  
24 contract with the county court or board of county commissioners, has assumed the responsibility for  
25 the construction or maintenance of such county road; and

26 (C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph  
27 are filed with the department.

28 (2) Except for a farmer subject to subsection (3) of this section, the person or agency, as the  
29 case may be, who has paid any tax on such motor vehicle fuels levied or directed to be paid, as  
30 provided by ORS 319.010 to 319.430, is entitled to claim a refund of the tax so paid on such fuels  
31 or for the proportionate part of tax paid on fuels used in the operation of such vehicles, when part  
32 of the operations are over such roads, thoroughfares or property. The proportionate part shall be  
33 based upon the number of miles traveled by any such vehicle over such roads, thoroughfares or  
34 property as compared to the total number of miles traveled by such vehicle. To be eligible to claim  
35 such refund the person or agency, as the case may be, shall first establish and maintain a complete  
36 record of the operations, miles traveled, gallons of fuel used and other information, in such form and  
37 in such detail as the department may prescribe and require, the source of supply of all fuels pur-  
38 chased or used, and the particular vehicles or equipment in which used. Whenever any such claim  
39 is received and approved by the department, it shall cause the refund of tax to be paid to the  
40 claimant in like manner as provided for paying of other refund claims.

41 (3) A farmer who has paid any tax on motor vehicle fuels levied or directed to be paid, as pro-  
42 vided in ORS 319.010 to 319.430, is entitled to claim a refund of the tax paid on such fuels used in  
43 farming operations in the operation of any motor vehicle on any road, thoroughfare or property in  
44 private ownership. To be eligible to claim such refund a farmer shall maintain in such form and in  
45 such detail as the department may prescribe and require, a record, supported by purchase invoices,

1 of all such motor vehicle fuel purchased (including fuel purchased to operate any motor vehicle on  
 2 the highway) and, for each and every motor vehicle operated on the highway, a record of all fuel  
 3 used and of all miles traveled on the highway. Whenever any such claim is received and approved  
 4 by the department, it shall cause the refund of tax to be paid to the claimant in like manner as  
 5 provided for paying of other refund claims.

6 (4) As used in subsections (2) and (3) of this section, "farmer" includes any person who manages  
 7 or conducts a farm for the production of livestock or crops but does not include a person who  
 8 manages or conducts a farm for the production of forest products, as defined in ORS 321.005, or the  
 9 products of such forest products converted to a form other than logs at or near the harvesting site,  
 10 or of forest trees unless the production of such forest products or forest trees is only incidental to  
 11 the primary purpose of the farming operation.

12 **SECTION 1810.** ORS 319.831 is amended to read:

13 319.831. (1) If a user obtains fuel for use in a motor vehicle in this state and pays the use fuel  
 14 tax on the fuel obtained, the user may apply for a refund of that part of the use fuel tax paid which  
 15 is applicable to use of the fuel to propel a motor vehicle:

16 (a) In another state, if the user pays to the other state an additional tax on the same fuel;

17 (b) Upon any road, thoroughfare or property in private ownership;

18 (c) Upon any road, thoroughfare or property, other than a state highway, county road or city  
 19 street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest  
 20 products converted to a form other than logs at or near the harvesting site, or for the construction  
 21 or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit  
 22 authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

23 (A) An agency of the United States;

24 (B) The [*State Board of Forestry*] **Oregon Natural Resources Commission**;

25 (C) The [*State Forester*] **Director of the Oregon Department of Natural Resources**; or

26 (D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph;

27 (d) By an agency of the United States or of this state or of any county, city or port of this state  
 28 on any road, thoroughfare or property, other than a state highway, county road or city street;

29 (e) By any incorporated city or town of this state;

30 (f) By any county of this state or by any road assessment district formed under ORS 371.405 to  
 31 371.535;

32 (g) Upon any county road for the removal of forest products as defined in ORS 321.005, or the  
 33 products of such forest products converted to a form other than logs at or near the harvesting site,  
 34 if:

35 (A) Such use upon the county road is pursuant to a written agreement entered into with, or to  
 36 a permit issued by, the [*State Board of Forestry, the State Forester*] **Oregon Natural Resources**  
 37 **Commission, the Director of the Oregon Department of Natural Resources** or an agency of the  
 38 United States, authorizing such user to use such road and requiring such user to pay for or to per-  
 39 form the construction or maintenance of the county road;

40 (B) The [*board*] **commission**, officer or agency that entered into the agreement or granted the  
 41 permit, by contract with the county court or board of county commissioners, has assumed the re-  
 42 sponsibility for the construction or maintenance of such county road; and

43 (C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph  
 44 are filed with the Department of Transportation;

45 (h) By a school district or education service district of this state or the contractors of a school

1 district or education service district, for those vehicles being used to transport students;

2 (i) By a rural fire protection district organized under the provisions of ORS chapter 478;

3 (j) By any district, as defined in ORS chapter 198, that is not otherwise specifically provided for  
4 in this section; or

5 (k) By any state agency, as defined in ORS 240.855.

6 (2) An application for a refund under subsection (1) of this section shall be filed with the de-  
7 partment within 15 months after the date the use fuel tax, for which a refund is claimed, is paid.

8 (3) The application for a refund provided by subsection (1) of this section shall include a signed  
9 statement by the applicant indicating the amount of fuel for which a refund is claimed, and the way  
10 in which the fuel was used which qualifies the applicant for a refund. If the fuel upon which the  
11 refund is claimed was obtained from a seller to whom the use fuel tax was paid, the application shall  
12 be supported by the invoices which cover the purchase of the fuel. If the applicant paid the use fuel  
13 tax directly to the department, the applicant shall indicate the source of the fuel and the date it  
14 was obtained.

15 (4) The department may require any person who applies for a refund provided by subsection (1)  
16 of this section to furnish a statement, under oath, giving the person's occupation, description of the  
17 machines or equipment in which the fuel was used, the place where used and such other information  
18 as the department may require.

19 **SECTION 1811.** ORS 321.005 is amended to read:

20 321.005. As used in ORS 321.005 to 321.185, 321.560 to 321.600 and 477.440 to 477.460, unless the  
21 context requires otherwise:

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

23 [(2)] (1) "Protected forestlands" means those lands which are protected from the starting or  
24 spread of fire thereon or therefrom by:

25 (a) The [*State Forester, with the approval of the board*] **Director of the Oregon Department**  
26 **of Natural Resources;**

27 (b) The United States of America through contract with the [*State Forester*] **director;**

28 (c) Any forest protective agency under contract with the [*State Forester or the board*] **director**  
29 **or the commission** pursuant to ORS 477.406; or

30 (d) Any forest protective agency, described in paragraph (c) of this subsection, under an agree-  
31 ment with the United States of America wherein such agency agrees to protect specific federal  
32 forestlands and, in return, the United States of America agrees to protect specific lands of such  
33 agency.

34 [(3)] (2) "Department" means the Department of Revenue.

35 [(4)] (3) "Committee" means the Emergency Fire Cost Committee.

36 [(5)] (4) "Forestland" means any land producing forest products.

37 [(6)] (5) "Forest products" means products from harvested timber, but does not include products  
38 from short rotation fiber grown under agricultural conditions as described in ORS 321.267 (3) or  
39 321.824 (3), western juniper or products from harvested western juniper.

40 [(7)] (6) "Harvest" means the point at which timber that has been cut, severed, or removed for  
41 purposes of sale or use is first measured in the ordinary course of business as determined by refer-  
42 ence to common practice in the timber industry.

43 [(8)] (7) "Merchantable stand of timber" means any stand on forestlands containing living or  
44 dead timber which is being or can be harvested.

45 [(9)] (8) "Taxpayer" means the owner of timber at time of harvest.

1 [(10)] (9) "Taxes" means the taxes provided for in ORS 321.015.

2 [(11)] (10) "Owner of timber" means any individual or combination of individuals, partnership,  
3 firm, corporation or association of whatever nature holding title to harvested timber by virtue of:

4 (a) An instrument of conveyance;

5 (b) The harvesting of the timber; or

6 (c) The harvesting of the timber and payment therefor.

7 [(12)] (11) "Timber" means all logs which can be measured in board feet and other forest pro-  
8 ducts as determined by department rule.

9 **SECTION 1812.** ORS 321.152 is amended to read:

10 321.152. (1) Subject to ORS 321.145 (2), moneys remaining in the Department of Revenue's sus-  
11 pense account referred to in ORS 321.145 on February 10, May 10, August 10 and November 10 of  
12 each year shall be transferred to the various appropriation accounts described in subsections (2), (3)  
13 and (4) of this section.

14 (2) That part of the moneys derived from taxes levied by ORS 321.015 (1) shall be transferred  
15 to the Forest Research and Experiment Account described in ORS 321.185.

16 (3) That part of the moneys derived from taxes levied by ORS 321.015 (3) shall be transferred  
17 to the [State Forestry Department Account referred to in ORS 526.060] **Oregon Natural Resources**  
18 **Fund**. Notwithstanding ORS 291.238, the moneys transferred to the [State Forestry Department Ac-  
19 count] **fund** under this section are [appropriated continuously for and shall be used by the State  
20 Forester, under the supervision and direction of the State Board of Forestry,] **continuously appro-**  
21 **priated to the Oregon Department of Natural Resources** for the purposes of administering the  
22 Oregon Forest Practices Act and the forest practices monitoring program.

23 (4) That part of the moneys derived from taxes levied by ORS 321.015 (2) shall be transferred  
24 to the Oregon Forest Land Protection Fund described in ORS 477.750.

25 **SECTION 1813.** ORS 321.213 is amended to read:

26 321.213. (1) At any time, the Department of Revenue may convene a forestland value advisory  
27 committee to assist the department in developing a valuation model under ORS 321.207 or in deter-  
28 mining specially assessed values of forestland. If the department convenes a committee, it shall be  
29 composed of members appointed by the Director of the Department of Revenue. In appointing mem-  
30 bers, the director shall strive to include representation of counties, the [State Forestry Department]  
31 **Oregon Department of Natural Resources** and large and small forestland owners from western  
32 Oregon and eastern Oregon.

33 (2) The Department of Revenue shall provide staff and administrative support to facilitate the  
34 work of a committee convened by the department.

35 **SECTION 1814.** ORS 321.257 is amended to read:

36 321.257. As used in ORS 321.257 to 321.390, unless the context requires otherwise:

37 (1) "Department" means the Department of Revenue.

38 (2) "Forestland" means land in western Oregon that is being held or used for the predominant  
39 purpose of growing and harvesting trees of a marketable species and has been designated as  
40 forestland or land in western Oregon, the highest and best use of which is the growing and har-  
41 vesting of such trees. Trees of a marketable species may vary in different areas in western Oregon  
42 and may change as the utilization of forest trees changes. The size, age, location, quality and con-  
43 dition of trees do not necessarily determine marketable species. Forestland often contains isolated  
44 openings which because of rock outcrops, river wash, swamps, chemical conditions of the soil, brush  
45 and other like conditions prevent adequate stocking of such openings for the production of trees of



1 a marketable species. If the openings in their natural state are necessary to hold the surrounding  
 2 forestland in forest use through sound management practices, the openings are deemed forestland.  
 3 Forestland does not include buildings, structures, machinery, equipment or fixtures erected upon,  
 4 under or above the soil. Forestland includes roads described in ORS 308.236.

5 (3) "Land class" or "land classes" means one of the eight classifications of forestland, used for  
 6 assessment purposes by the department, based upon State Tax Commission Valuation Division Sup-  
 7 plements published in 1967, and identified in ORS 321.210.

8 [(4) "*State Forester*" means the *State Forester* or the authorized representative of the *State*  
 9 *Forester*.]

10 [(5)] (4) "Sustained yield management" means the growing and harvesting of timber crops on a  
 11 continuous basis on land that is primarily dedicated to timber production.

12 [(6)] (5) "Taxing district" or "district" means each county, city, school district and other cor-  
 13 poration vested with the power to levy property taxes in western Oregon.

14 [(7)] (6) "Timber" means all logs which can be measured in board feet and other forest products  
 15 as determined by department rule.

16 [(8)] (7) "Western Oregon" means that portion of the state lying west of a line beginning at the  
 17 intersection of the northern boundary of the State of Oregon and the western boundary of Wasco  
 18 County, thence southerly along the western boundaries of the counties of Wasco, Jefferson,  
 19 Deschutes and Klamath to the southern boundary of the State of Oregon.

20 **SECTION 1815.** ORS 321.367 is amended to read:

21 321.367. (1) The [*State Forester*] **Director of the Oregon Department of Natural Resources**  
 22 shall identify all of the forestlands that fail to meet the minimum stocking required under ORS  
 23 527.610 to 527.770 and that are therefore underproductive as described under ORS 526.455.

24 (2) At any time the [*State Forester*] **director** has reason to believe that forestland is not being  
 25 managed as forestland, the [*State Forester*] **director** shall review the owner's management plan, if  
 26 any, and inspect the property. Subject to subsection (5) of this section, the [*State Forester*] **director**  
 27 shall advise the owner as prescribed in subsection (3) of this section if the [*State Forester*] **director**  
 28 determines the land is not being managed in accordance with a plan that provides for:

- 29 (a) Regeneration of all suitable nonstocked land;
- 30 (b) Maintenance of a free-to-grow condition;
- 31 (c) Protection from fire, insects, disease, animal damage, undesirable vegetative competition; and
- 32 (d) Final harvest.

33 (3)(a) The [*State Forester*] **director** shall advise the owner that the land is not being managed  
 34 in accordance with a plan that meets the criteria set forth in subsection (2) of this section and that  
 35 a plan for the land that does meet the criteria must be developed and activated within one year after  
 36 the date of the advisement.

37 (b) At the request of the owner, the [*State Forester*] **director** shall assign a forester or provide  
 38 a listing of foresters to assist the owner in developing and implementing an appropriate management  
 39 plan for the land.

40 (c) As soon as practicable after the time indicated in the advisement has expired, the [*State*  
 41 *Forester*] **director** shall view the land to determine if the land is being managed in accordance with  
 42 a plan that meets the criteria set forth in subsection (2) of this section. If, upon inspection, the [*State*  
 43 *Forester*] **director** finds that the land is not being so managed, the [*State Forester*] **director** shall  
 44 notify the owner and the county assessor.

45 (4) The county assessor, upon receipt of the notice from the [*State Forester*] **director**, shall cease

1 to treat that land as forestland under ORS 321.257 to 321.390 and shall value the land as prescribed  
2 under ORS 308.146 and 308.232.

3 (5) If at the time that the [*State Forester*] **director** views the land under subsection (3)(c) of this  
4 section, it is determined that a change in ownership has occurred, the [*State Forester*] **director** shall  
5 notify the new owner as required under subsection (3) of this section in the manner of the original  
6 notification.

7 (6) When the owner of land disqualified from forestland assessment provides satisfactory infor-  
8 mation to the [*State Forester*] **director** of subsequent action taken to correct the deficiency resulting  
9 in the disqualification of land, or provides an acceptable management plan to correct such defi-  
10 ciency, the [*State Forester*] **director** shall so indicate to the county assessor. The assessor shall then  
11 assess the land under ORS 321.257 to 321.390, if the land is otherwise qualified for such assessment.

12 (7) The [*State Forester*] **director** shall adopt rules necessary to carry out the purposes of this  
13 section.

14 **SECTION 1816.** ORS 321.550 is amended to read:

15 321.550. (1) No person shall harvest or cause to be harvested any timber from land in Oregon  
16 without first having notified the [*State Forester*] **Director of the Oregon Department of Natural**  
17 **Resources** in writing with a copy to the Department of Revenue on forms prepared by the [*State*  
18 *Forester*] **director** and the department of intent to harvest pursuant to ORS 321.005 to 321.185,  
19 321.560 to 321.600 and 321.700 to 321.754.

20 (2) The notification shall specify where and when the harvest will take place and the nature of  
21 the harvest and shall include maps and other data as required by the [*State Forester*] **director** and  
22 the department. The department shall establish by rule procedures to assure the receipt of the tax  
23 returns sent out or a report of nonharvest from the person. The department shall conduct field and  
24 office audits to ascertain the correctness of any timber tax return.

25 (3)(a) If a person fails to file a written notice as required in subsection (1) of this section with  
26 respect to any harvest over 5,000 board feet, the department shall notify the person. If, after the  
27 person has been notified, the person fails to file a written notice as required in subsection (1) of this  
28 section with respect to any subsequent harvest over 5,000 board feet, there shall be added to the  
29 amount of the timber tax required to be shown on the return as a result of the subsequent harvest  
30 a delinquency penalty of \$250 for each violation occurring within a calendar year. The department  
31 shall collect the penalty in the same manner as taxes are collected.

32 (b) No penalty shall be imposed under this subsection if a penalty for failure to file the notice  
33 with the [*State Forester*] **director** has been imposed under ORS 527.992.

34 (c) The delinquency penalty shall first be added to the small tract forestland timber severance  
35 tax imposed under ORS 321.700 to 321.754, if applicable to the harvest. If the small tract forestland  
36 timber severance tax is not applicable, the delinquency penalty shall be added to the forest products  
37 harvest tax imposed under ORS 321.005 to 321.185.

38 **SECTION 1817.** ORS 321.684 is amended to read:

39 321.684. (1) The Department of Revenue may:

40 (a) Furnish to any taxpayer or authorized representative, upon request of the taxpayer or au-  
41 thorized representative, a copy of the taxpayer's forest products harvest tax report or return re-  
42 quired by ORS 321.045 or 321.741 that is filed with the department for any year, or a copy of any  
43 report filed by the taxpayer in connection with the return.

44 (b) Publish a list of taxpayers who are entitled to unclaimed tax refunds.

45 (c) Publish statistics classified so as to prevent the identification of taxable value or any par-

1 particulars contained in any report or return.

2 (d) Disclose a taxpayer's name, address and Social Security number or employer identification  
3 number to the extent necessary in connection with the processing and mailing of forms for any re-  
4 port or return required in the administration of ORS 321.045 and 321.741.

5 *[(e) Disclose to the State Forester, upon request of the forester, for the purpose of soliciting nomi-  
6 nations and recommendations referred to in ORS 526.610, the names of producers meeting producer  
7 class qualifications established under ORS 526.610 who filed forest products harvest tax returns.]*

8 *[(f)]* (e) Disclose appraisal data collected to make determinations of specially assessed value of  
9 forestland under ORS 321.201 to 321.222 to any member of a forestland value advisory committee the  
10 department has convened under ORS 321.213.

11 (2) The department also may disclose and give access to information described in ORS 321.682  
12 to:

13 (a) The Commissioner of Internal Revenue or authorized representative, for tax purposes only.

14 (b) The United States Forest Service, Bureau of Land Management and the [*State Forestry De-  
15 partment*] **Oregon Department of Natural Resources** pursuant to their regulatory programs and  
16 for investigative purposes related to timber theft.

17 (c) The Attorney General, assistants and employees in the Department of Justice or other legal  
18 representative of the State of Oregon, to the extent the department considers disclosure or access  
19 necessary for the performance of the duties of advising or representing the department pursuant to  
20 ORS 321.045 and 321.741.

21 (d) Employees of the State of Oregon, other than the Department of Revenue or Department of  
22 Justice, to the extent the department considers disclosure or access necessary for such employees  
23 to perform their duties under contracts or agreements between the department and any other de-  
24 partment, agency or subdivision of the State of Oregon in the department's administration of the tax  
25 laws.

26 (e) The Legislative Revenue Officer or the authorized representative of the Legislative Revenue  
27 Officer upon compliance with ORS 173.850. The officer or representative may not remove from the  
28 premises of the department any materials that would reveal the identity of any taxpayer or any  
29 other person or the volume of harvest and value reported on individual returns and reports.

30 (f) Any agency of the State of Oregon, or any person, or any officer or employee of the agency  
31 or person to whom disclosure or access is given by state law and not otherwise referred to in this  
32 section, including but not limited to the Secretary of State as Auditor of Public Accounts under  
33 section 2, Article VI of the Constitution of the State of Oregon.

34 (3) Each officer or employee of the department and each person described or referred to in  
35 subsection (2)(b) to (f) of this section to whom disclosure or access to the tax information is given  
36 under subsection (2) of this section or any other provision of state law, prior to beginning employ-  
37 ment or the performance of duties involving such disclosure or access, shall be advised in writing  
38 of the provisions of ORS 321.682 and 321.686 relating to penalties for the violation of ORS 321.682,  
39 and shall, as a condition of employment or performance of duties, execute a certificate for the de-  
40 partment, in a form prescribed by the department, stating in substance that the person has read  
41 these provisions of law, that the person has had them explained and that the person is aware of the  
42 penalties for the violation of ORS 321.682.

43 **SECTION 1818.** ORS 321.716 is amended to read:

44 321.716. (1) The county assessor shall disqualify land as small tract forestland upon:

45 (a) Sale or transfer of the small tract forestland;

1 (b) Discovery by the assessor that the land is no longer forestland;

2 (c) The owner's owning or holding in common ownership more than 5,000 acres of Oregon  
3 forestland;

4 (d) The owner's owning or holding in common ownership less than 10 acres of Oregon forestland;

5 (e) Written notice from the [*State Forestry Department*] **Oregon Department of Natural Re-**  
6 **sources** that the land no longer meets the stocking and species requirements applicable to small  
7 tract forestland under rules adopted by the Department of Revenue;

8 (f) The land's qualifying for another special assessment listed in ORS 308A.706 (1)(d)(A), (B), (F)  
9 or (G); or

10 (g) The recording of a subdivision plat under ORS chapter 92 that subdivides the land.

11 (2) If, pursuant to subsection (1)(g) of this section, the county assessor disqualifies small tract  
12 forestland upon the recording of a subdivision plat, the land may requalify for small tract forestland  
13 assessment upon:

14 (a) Payment of all additional tax and interest that remains due and owing as a result of the  
15 disqualification;

16 (b) Submission of an application for small tract forestland assessment under ORS 321.706 and  
17 approval of the application by the county assessor; and

18 (c) Compliance with any applicable local government zoning ordinances governing minimum lot  
19 or parcel acreage for forest use.

20 (3)(a) If a sale or transfer of small tract forestland is the basis for disqualification under sub-  
21 section (1)(a) of this section, the land may not be disqualified until 30 days after the county assessor  
22 issues a notice of intent to disqualify to the purchaser or transferee of the small tract forestland.  
23 The assessor shall issue a notice of intent to disqualify within 15 months after the date of the sale  
24 or transfer.

25 (b) The land shall automatically qualify for special assessment under ORS 321.257 to 321.390 or  
26 321.805 to 321.855, whichever is applicable, unless the assessor determines that the land does not  
27 constitute forestland.

28 (4) Upon disqualification of land under subsection (1) of this section, additional taxes shall be  
29 determined as provided in ORS 308A.700 to 308A.733.

30 **SECTION 1819.** ORS 321.733 is amended to read:

31 321.733. (1) The Department of Revenue shall mail a severance tax return form to an owner of  
32 timber harvested from lands assessed as small tract forestland, as shown on [*a State Forestry De-*  
33 *partment*] **an Oregon Department of Natural Resources** Notification of Operations permit issued  
34 during a calendar year.

35 (2) Any owner of timber receiving a severance tax return mailed by the Department of Revenue  
36 shall complete the return and submit the return to the department within the time prescribed in  
37 ORS 321.741, even if the owner of timber has not incurred severance tax liability during the calen-  
38 dar year.

39 **SECTION 1820.** ORS 321.805 is amended to read:

40 321.805. As used in ORS 321.805 to 321.855, unless the context requires otherwise:

41 (1) "Cultured Christmas trees" means trees:

42 (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive culti-  
43 vation methods such as plowing or turning over the soil;

44 (b) Of a marketable species;

45 (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as

1 specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

2 (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed  
3 and brush control, and basal pruning, fertilizing, insect and disease control, stump culture, soil cul-  
4 tivation or irrigation.

5 (2) "Department" means the Department of Revenue.

6 (3) "Eastern Oregon" means that portion of the state lying east of a line beginning at the  
7 intersection of the northern boundary of the State of Oregon and the western boundary of Wasco  
8 County, thence south along the western boundaries of the counties of Wasco, Jefferson, Deschutes  
9 and Klamath to the southern boundary of the State of Oregon.

10 (4) "Forestland" means land in eastern Oregon that is being held or used for the predominant  
11 purpose of growing and harvesting trees of a marketable species and that has been designated as  
12 forestland under ORS 321.805 to 321.855 or land in eastern Oregon, the highest and best use of  
13 which is the growing and harvesting of such trees. Forestland is the land alone. Forestland often  
14 contains isolated openings that because of rock outcrops, river wash, swamps, chemical conditions  
15 of the soil, brush and other like conditions prevent adequate stocking of such openings for the pro-  
16 duction of trees of a marketable species. If such openings in their natural state are necessary to  
17 hold the surrounding forestland in forest use through sound management practices, the openings are  
18 deemed forestland.

19 [(5) "*State Forester*" means the *State Forester* or the authorized representative of the *State*  
20 *Forester*.]

21 [(6)] (5) "Summit of the Cascade Mountains" means a line beginning at the intersection of the  
22 northern boundary of the State of Oregon and the western boundary of Wasco County, thence  
23 southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath  
24 to the southern boundary of the State of Oregon.

25 [(7)] (6) "Timber" means all logs which can be measured in board feet and other forest products  
26 as determined by department rule, but does not include western juniper or products from harvested  
27 western juniper.

28 **SECTION 1821.** ORS 336.015 is amended to read:

29 336.015. (1) The first full week in April shall be known as Arbor Week. In order that pupils in  
30 the public schools shall be made better aware of the benefits of the preservation and perpetuation  
31 of forests and the growing of timber and of the environment, the district school board shall cause  
32 to be conducted, during school hours, activities which tend to encourage the planting, protection  
33 and preservation of trees and shrubs and a greater understanding of the environment and means for  
34 preserving and improving it.

35 (2) The Superintendent of Public Instruction, with the approval of the State Board of Education  
36 and with the technical assistance of the [*State Forester*] **Director of the Oregon Department of**  
37 **Natural Resources**, may prescribe and alter a schedule of activities and instruction to be observed  
38 during Arbor Week.

39 (3) The [*State Forester*] **director** or person in charge of the state tree nurseries may release for  
40 use by schools upon application thereof seedlings that would otherwise be destroyed.

41 **SECTION 1822.** ORS 351.155 is amended to read:

42 351.155. Notwithstanding the applicable provisions of ORS 279.835 to 279.855, 279A.140 to  
43 279A.155, 279A.250 to 279A.290, 279A.990, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,  
44 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,  
45 279C.600 to 279C.625, 279C.650 to 279C.670 and 279C.800 to 279C.870, the State Board of Higher

1 Education may, in the management of all forestlands under its control and supervision, sell the for-  
 2 est products on such lands in the same manner as is provided in ORS 530.059, and for that purpose  
 3 the State Board of Higher Education shall have the same powers with respect to experimental or  
 4 research projects in the field of forestland management or for forest product utilization on  
 5 forestlands under its control as the [*State Forester*] **Director of the Oregon Department of Na-**  
 6 **tural Resources** has pursuant to the provisions of ORS 530.050 and 530.059. In the management of  
 7 its forestlands, the State Board of Higher Education may lease mineral and geothermal resource  
 8 rights as provided in ORS 351.060 (5).

9 **SECTION 1823.** ORS 403.450, as amended by section 59, chapter 107, Oregon Laws 2010, is  
 10 amended to read:

11 403.450. (1) The State Interoperability Executive Council is created within the Department of  
 12 Transportation. The membership of the council shall consist of:

13 (a) Two members from the Legislative Assembly, as follows:

14 (A) The President of the Senate shall appoint one member from the Senate with an interest in  
 15 public safety communications infrastructure; and

16 (B) The Speaker of the House of Representatives shall appoint one member from the House of  
 17 Representatives with an interest in public safety and wireless communications infrastructure.

18 (b) The following members appointed by the Governor:

19 (A) One member from the Department of State Police;

20 (B) One member from the Office of Emergency Management;

21 (C) One member from the [*State Forestry Department*] **Oregon Department of Natural Re-**  
 22 **sources;**

23 (D) One member from the Department of Corrections;

24 (E) One member from the Department of Transportation;

25 (F) One member from the Oregon Department of Administrative Services;

26 (G) One member from the Department of Human Services;

27 (H) One member from the Oregon Health Authority;

28 (I) One member from the Oregon Military Department;

29 (J) One member from the Department of Public Safety Standards and Training;

30 (K) One member of an Indian tribe as defined in ORS 97.740 or a designee of an Indian tribe;

31 (L) One member from a nonprofit professional organization devoted to the enhancement of public  
 32 safety communications systems; and

33 (M) One member from the public.

34 (c) The following members appointed by the Governor with the concurrence of the President of  
 35 the Senate and the Speaker of the House of Representatives:

36 (A) One member from the Oregon Fire Chiefs' Association;

37 (B) One member from the Oregon Association Chiefs of Police;

38 (C) One member from the Oregon State Sheriffs' Association;

39 (D) One member from the Association of Oregon Counties;

40 (E) One member from the League of Oregon Cities; and

41 (F) One member from the Special Districts Association of Oregon.

42 (2) Each agency or organization identified in subsection (1)(b)(A) to (J) and (1)(c) of this section  
 43 shall recommend a person from the agency or organization for membership on the council.

44 (3) Members of the council are not entitled to compensation, but in the discretion of the Direc-  
 45 tor of Transportation may be reimbursed from funds available to the Department of Transportation

1 for actual and necessary travel and other expenses incurred by them in the performance of their  
2 official duties in the manner and amount provided in ORS 292.495.

3 (4) Members of the Legislative Assembly appointed to the council are nonvoting members and  
4 may act in an advisory capacity only.

5 **SECTION 1824.** ORS 421.298 is amended to read:

6 421.298. The [*State Forester*] **Director of the Oregon Department of Natural Resources** shall  
7 make reasonable efforts to use local available crews within Oregon before calling on fire sup-  
8 pression units from other states.

9 **SECTION 1825.** ORS 421.455 is amended to read:

10 421.455. (1) The Director of the Department of Corrections shall establish at places in state  
11 forests recommended by the [*State Board of Forestry*] **Oregon Natural Resources Commission** one  
12 or more forest work camps at which state inmates and local inmates may be employed. Only such  
13 state inmates as are determined by the Department of Corrections to require minimum security may  
14 be placed at a forest work camp, but the department [*of Corrections*] shall not place an inmate at  
15 a forest work camp if the department is aware that the inmate has ever been convicted, of:

16 (a) Rape in the first degree, as described in ORS 163.375.

17 (b) Rape in the second degree, as described in ORS 163.365.

18 (c) Rape in the third degree, as described in ORS 163.355.

19 (d) Sodomy in the first degree, as described in ORS 163.405.

20 (e) Sodomy in the second degree, as described in ORS 163.395.

21 (f) Sodomy in the third degree, as described in ORS 163.385.

22 (g) Unlawful sexual penetration in the first degree, as described in ORS 163.411.

23 (h) Unlawful sexual penetration in the second degree, as described in ORS 163.408.

24 (i) Sexual abuse in the first degree, as described in ORS 163.427.

25 (j) Sexual abuse in the second degree, as described in ORS 163.425.

26 (k) Any crime in any other jurisdiction that would constitute a crime described in this sub-  
27 section if presently committed in this state.

28 (L) Any attempt to commit a crime described in this subsection.

29 (2) The [*State Board of Forestry*] **commission** may make contracts with any other state agency  
30 in order to effectuate the purposes of ORS 421.455, 421.465, 421.470 and 421.476.

31 **SECTION 1826.** ORS 421.465 is amended to read:

32 421.465. (1) Upon the requisition of the [*State Forester*] **Director of the Oregon Department**  
33 **of Natural Resources**, the superintendent shall send at the time and to the place designated as  
34 many state inmates requisitioned from the institution under the supervision of the superintendent  
35 as have been determined under rules adopted by the Director of the Department of Corrections to  
36 be eligible for employment at a forest work camp and as are available.

37 (2) Before a state inmate is sent to any forest work camp, the superintendent of the institution  
38 in which the inmate is confined shall cause the inmate to be given such inoculations as are neces-  
39 sary in the public interest.

40 (3) While a state inmate is at a forest work camp, the superintendent of the institution in which  
41 the inmate was confined is responsible for the custody and care of the inmate.

42 **SECTION 1827.** ORS 421.470 is amended to read:

43 421.470. (1) The Director of the Department of Corrections has authority over the forest work  
44 camps except as provided in subsection (2) of this section.

45 (2) The [*State Forester*] **Director of the Oregon Department of Natural Resources** shall as-

1 sign and supervise the work of the state inmates and local inmates, which work shall be:

2 (a) Manual labor, as far as possible, of the type contemplated by ORS 530.210 to 530.280.

3 (b) Fire-fighting labor of the type contemplated for forest protection districts under ORS chapter  
4 477.

5 (3) Moneys for the cost of custody of the state inmates and local inmates, and for the labor done  
6 by them under this section, shall be paid from funds appropriated and made available to the [*State*  
7 *Board of Forestry*] **Oregon Department of Natural Resources**. Moneys for the cost of care of  
8 each local inmate shall be paid by the county or city from which the local inmate was transferred  
9 under ORS 421.467, but not to exceed \$2 a day for each local inmate. Additional moneys required  
10 for the cost of care of local inmates shall be paid from funds appropriated and made available to the  
11 [*State Board of Forestry*] **Oregon Department of Natural Resources**. All such moneys shall be  
12 collected by the Director of the Department of Corrections who shall deposit such funds to the  
13 credit of the State Prison Work Programs Account.

14 **SECTION 1828.** ORS 468B.105 is amended to read:

15 468B.105. Upon request of the [*State Board of Forestry*] **Oregon Natural Resources Commis-**  
16 **sion**, the Environmental Quality Commission shall review any water quality standard that affects  
17 forest operations on forestlands. The [*commission's*] review **by the Environmental Quality Com-**  
18 **mission** may be limited to or coordinated with the triennial or any other regularly scheduled review  
19 of the state's water quality standards, consistent with ORS 468B.048 and 468B.110 and applicable  
20 federal law.

21 **SECTION 1829.** ORS 469.634 is amended to read:

22 469.634. (1) The Public Utility Commission of Oregon by rule shall establish a system to allow  
23 customers of investor-owned utilities to voluntarily contribute an amount that is to be used for ur-  
24 ban and community forest activities within the area served by the utility. The amount shall be in  
25 addition to the customer's utility bill. Investor-owned utilities may choose to use the system estab-  
26 lished by the commission.

27 (2) The utility shall pay to the [*State Forester*] **Director of the Oregon Department of Natural**  
28 **Resources** the amount designated under subsection (1) of this section. The [*State Forester*] **director**  
29 shall deposit the moneys collected under this section into the Urban and Community Forestry Sub-  
30 account established under ORS 526.060.

31 (3) The [*State Forester*] **director** shall use the moneys collected under this section for urban and  
32 community forest activities. The [*State Forester*] **director** by rule, in consultation with the Public  
33 Utility Commission of Oregon and local utilities, shall establish guidelines to distribute moneys  
34 collected under this section through the Urban and Community Forestry Assistance Program. The  
35 guidelines shall include a requirement that moneys are distributed for energy conservation, by  
36 means of tree plantings, care and maintenance.

37 (4) A utility shall not use more than 16 percent of the moneys collected under this section for  
38 administrative expenses. The [*State Forester*] **director** shall not use more than 16 percent of the  
39 moneys collected under this section for administrative expenses.

40 (5) As used in this section, "urban and community forest activities" means activities that pro-  
41 mote cost-effective energy conservation. These activities may include the planting, managing and  
42 maintaining of residential, street and park trees on public and private land.

43 **SECTION 1830.** ORS 469.652 is amended to read:

44 469.652. (1) Publicly owned utilities may establish a system to allow customers of publicly owned  
45 utilities to voluntarily contribute an amount that is to be used for urban and community forest ac-



1 tivities within the area served by the utility. The amount shall be in addition to the customer's  
2 utility bill.

3 (2) The utility shall pay to the [*State Forester*] **Director of the Oregon Department of Natural**  
4 **Resources** the amount designated under subsection (1) of this section. The [*State Forester*] **director**  
5 shall deposit the moneys collected under this section into the Urban and Community Forestry Sub-  
6 account established under ORS 526.060.

7 (3) The [*State Forester*] **director** shall use the moneys collected under this section for urban and  
8 community forest activities. The [*State Forester*] **director** by rule, in consultation with local utilities,  
9 shall establish guidelines to distribute moneys collected under this section through the Urban and  
10 Community Forestry Assistance Program. The guidelines shall include a requirement that moneys  
11 are distributed for energy conservation, by means of tree plantings, care and maintenance.

12 (4) A utility shall not use more than 16 percent of the moneys collected under this section for  
13 administrative expenses. The [*State Forester*] **director** shall not use more than 16 percent of the  
14 moneys collected under this section for administrative expenses.

15 (5) As used in this section, "urban and community forest activities" means activities that pro-  
16 mote cost-effective energy conservation. These activities may include the planting, managing and  
17 maintaining of residential, street and park trees on public and private land.

18 **SECTION 1831.** ORS 476.090 is amended to read:

19 476.090. (1) The State Fire Marshal shall keep a record of all fires occurring in this state and  
20 of all facts concerning the same, including statistics as to the extent of such fires and the damage  
21 caused, whether such losses were covered by insurance, and if so, in what amount. All such records  
22 shall be public, except any testimony, information or other evidence taken in an investigation under  
23 ORS 476.010 to 476.090, 476.155 to 476.170, 476.210 to 476.270 and 479.180, which shall be considered  
24 investigatory information as described in ORS 192.501.

25 (2) This section shall not apply to forestlands under the jurisdiction of the [*State Forester*] **Di-**  
26 **rector of the Oregon Department of Natural Resources.**

27 **SECTION 1832.** ORS 476.210 is amended to read:

28 476.210. (1) The municipal fire marshals, fire department chiefs, constables and other officers  
29 referred to in ORS 476.060 shall investigate the cause, origin and circumstances of each fire occur-  
30 ring in their respective cities, villages or townships, by which property has been destroyed or dam-  
31 aged, and shall make an investigation to determine whether the fire was the result of carelessness  
32 or design. The investigation shall be commenced immediately after the occurrence of the fire. The  
33 State Fire Marshal may superintend and direct the investigation if the State Fire Marshal deems it  
34 necessary.

35 (2) The fire chief of every city, or rural fire protection district shall provide the State Fire  
36 Marshal with a full report of every fire occurring within the jurisdiction of the fire chief on a form  
37 provided or approved by the State Fire Marshal. Whenever the fire chief of every city under 200,000  
38 population finds any fire is of undetermined or suspicious origin or involves a death or serious in-  
39 jury, the fire chief shall immediately notify the State Fire Marshal or a deputy state fire marshal  
40 and shall assemble all known facts and circumstances concerning the fire in an approved report  
41 form and shall submit such report to the State Fire Marshal, or the deputy state fire marshal as-  
42 signed to the territory in which the fire originated. When evidence clearly indicates the cause of fire  
43 to be of incendiary origin, the fire chief shall also immediately notify the state, county or municipal  
44 police agency.

45 (3) This section shall not apply to forestlands under the jurisdiction of the [*State Forester*] **Di-**

1 **rector of the Oregon Department of Natural Resources.**

2 **SECTION 1833.** ORS 476.220 is amended to read:

3 476.220. (1) The officer making an investigation of a fire occurring in a city, village or township  
4 shall forthwith notify the State Fire Marshal and, within one week of the occurrence of the fire,  
5 shall furnish the State Fire Marshal a written statement of all facts relating to its cause and origin,  
6 and such other information as is required by forms provided by the State Fire Marshal.

7 (2) This section shall not apply to forestland under the jurisdiction of the [*State Forester*] **Di-**  
8 **rector of the Oregon Department of Natural Resources.**

9 **SECTION 1834.** ORS 476.310 is amended to read:

10 476.310. (1) The governing body of each county may, in cooperation with the [*State Board of*  
11 *Forestry*] **Oregon Natural Resources Commission**, zone and, as often as necessary, rezone any  
12 lands within the county lying outside the boundaries of incorporated cities, organized rural fire  
13 protection districts, federal and state-owned lands, lands protected under ORS chapter 477 and  
14 railroad rights of way, except that railroad rights of way may be zoned or rezoned if the owners of  
15 such rights of way file their written consent with the governing body. Lands, when zoned or rezoned,  
16 shall be divided into two zones as follows:

17 (a) Zone 1 shall be composed of forest, range, grass or undeveloped lands, or any of such lands  
18 intermingled with grazing and agricultural lands.

19 (b) Zone 2 shall be composed of rural lands not included in zone 1.

20 (2) During the season of the year when there is danger of fire, every owner of zone 1 land shall  
21 provide adequate protection against the starting or spread of fire thereon or therefrom, which pro-  
22 tection shall meet with the approval of the governing body of the county in which the zone 1 land  
23 is located.

24 (3) An owner shall be deemed to have complied with the requirements of subsection (2) of this  
25 section if, on January 1 of each year, the owner files with the governing body of the county a bona  
26 fide fire protection plan that meets with the approval of the county governing body. The governing  
27 body of the county, or its appointed representative, shall periodically inspect the protection facilities  
28 provided under such a plan in order to confirm compliance by the owner.

29 (4) If any owner of zone 1 land fails or neglects to file a fire protection plan, or to comply with  
30 the standard of protection approved by the county governing body, the governing body shall provide  
31 for forest protection pursuant to ORS 476.320.

32 (5) Nothing contained in ORS 476.310 to 476.340 shall prevent interested property owners in any  
33 nonzoned territory from petitioning the governing body and [*State Board of Forestry*] **the Oregon**  
34 **Natural Resources Commission** to hold a hearing on the matter of zoning the territory if a ma-  
35 jority of the landowners within the territory file such petition. The governing body, cooperating with  
36 the [*State Board of Forestry*] **commission**, shall give full consideration to the wishes of the land-  
37 owners as shown by the hearing.

38 **SECTION 1835.** ORS 476.320 is amended to read:

39 476.320. (1) The form of protection from fire for lands lying in zone 1 shall be determined jointly  
40 by the governing body of the county, the State Fire Marshal and the [*State Board of Forestry*]  
41 **Oregon Natural Resources Commission**, which determination shall be reduced to writing, signed  
42 by the officers of the agencies and entered in the journal of the governing body of the county.

43 (2) The authority of the [*State Board of Forestry*] **commission under ORS chapter 477** may be  
44 extended to include the establishment of forest protection on lands lying within zone 1 for lands not  
45 subject to a fire protection plan under ORS 476.310. For such purposes the [*board of forestry*] **com-**

1 **mission** may contract with individuals, associations, agencies, corporations, rural fire protection  
 2 districts, counties, cities, federal agencies, or any of them. The cost of protection in zone 1 shall be  
 3 assessed and collected in the same manner as protection costs for lands protected under ORS  
 4 chapter 477.

5 (3) The moneys received by the [*State Board of Forestry under this section shall be paid into the*  
 6 *State Treasury and credited to the State Forestry Department Account and shall be used exclusively*  
 7 *for the purposes stated in this section.*] **commission under this section shall be deposited in the**  
 8 **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection are**  
 9 **continuously appropriated to the Oregon Department of Natural Resources for the purpose**  
 10 **of administering this section.**

11 [(4) *As used in this section, the “authority of the State Board of Forestry” means the duties, obli-*  
 12 *gations, requirements and penalties of ORS chapter 477.*]

13 **SECTION 1836.** ORS 477.001 is amended to read:

14 477.001. As used in this chapter, unless the context otherwise requires:

15 (1) “Additional fire hazard” means a hazard that has been determined to exist by the [*forester*]  
 16 **Director of the Oregon Department of Natural Resources** pursuant to ORS 477.580.

17 [(2) *“Board” means the State Board of Forestry.*]

18 [(3)] (2) “Campfire” means any open fire used for cooking, personal warmth, lighting, ceremonial  
 19 or aesthetic purposes that is hand built and that is not associated with any debris disposal activities.

20 [(4) *“Department” means the State Forestry Department.*]

21 [(5)] (3) “District” means a forest protection district organized under ORS 477.225.

22 [(6)] (4) “Every reasonable effort” means the use of the reasonably available personnel and  
 23 equipment under the supervision and control of an owner or operator, which are needed and effec-  
 24 tive to fight the fire in the judgment of the [*forester*] **director** and which can be brought to bear on  
 25 the fire in a timely fashion.

26 [(7)] (5) “Fire season” means a period designated pursuant to ORS 477.505.

27 [(8)] (6) “Fiscal year” means the period beginning on July 1 of any year and ending on June 30  
 28 of the next year.

29 [(9)] (7) “Forestland” means any woodland, brushland, timberland, grazing land or clearing that,  
 30 during any time of the year, contains enough forest growth, slashing or vegetation to constitute, in  
 31 the judgment of the [*forester*] **director**, a fire hazard, regardless of how the land is zoned or taxed.  
 32 As used in this subsection, “clearing” means any grassland, improved area, lake, meadow, mechan-  
 33 ically or manually cleared area, road, rocky area, stream or other similar forestland opening that  
 34 is surrounded by or contiguous to forestland and that has been included in areas classified as  
 35 forestland under ORS 526.305 to 526.370.

36 [(10)] (8) “Forest patrol assessment” means the costs levied and assessed under ORS 477.270.

37 [(11)] (9) “Forest protective association” or “association” means an association, group or agency  
 38 composed of owners of forestlands, organized for the purpose of protecting such forestlands from  
 39 fire.

40 [(12)] (10) “Forest resource” means the various types of vegetation normally growing on  
 41 Oregon’s forestland, the associated harvested products and the associated residue, including but not  
 42 limited to brush, grass, logs, saplings, seedlings, trees and slashing.

43 [(13) *“Forester” means the State Forester or authorized representative.*]

44 [(14)] (11) “Governing body” of a county means the county court or board of county commis-  
 45 sioners.

1 [(15)] (12) "Grazing land" is defined by ORS 477.205.

2 [(16)] (13) "Open fire" means any outdoor fire that occurs in such a manner that combustion air  
3 is not effectively controlled and combustion products are not effectively vented through a stack or  
4 chimney.

5 [(17)] (14) "Operation" means any industrial activity, any development or any improvement on  
6 forestland inside or within one-eighth of one mile of a forest protection district, including but not  
7 limited to the harvesting of forest tree species, the clearing of land, the use of power-driven ma-  
8 chinery and the use of fire, excluding, however, the culture and harvesting of agricultural crops.

9 [(18)] (15) "Operation area" means the area on which an operation is being conducted and the  
10 area on which operation activity may have resulted in the ignition of a fire.

11 [(19)] (16) "Operation in progress" means that time when workers are on an operation area for  
12 the purpose of an operation, including the period of time when fire watches are required to be on  
13 the operation area pursuant to ORS 477.665.

14 [(20)] (17) "Operator" means any person who, either personally or through employees, agents,  
15 representatives or contractors, is carrying on or has carried on any operation.

16 [(21)] (18) "Owner" means an individual, a combination of individuals, a partnership, a corpo-  
17 ration, the State of Oregon or a political subdivision thereof, or an association of any nature that  
18 holds an ownership interest in land.

19 [(22)] (19) "Political subdivision" includes, but is not limited to, counties, cities and special dis-  
20 tricts.

21 [(23)] (20) "Rangeland" is defined by ORS 477.315.

22 [(24)] (21) "Routine road maintenance" is defined by ORS 477.625.

23 [(25)] (22) "Side" means any single unit of a logging operation employing power-driven machin-  
24 ery.

25 [(26)] (23) "Slashing" means the forest debris or refuse on any forestland resulting from the  
26 cutting, killing, pruning, severing or removal of brush, trees or other forest growth.

27 [(27) "*State Forester*" means the person appointed State Forester pursuant to ORS 526.031 or the  
28 person serving in the position on an interim or delegated basis.]

29 [(28)] (24) "Summit of the Cascade Mountains" is considered to be a line beginning at the  
30 intersection of the northern boundary of the State of Oregon and the western boundary of Wasco  
31 County; thence southerly along the western boundaries of Wasco, Jefferson, Deschutes and Klamath  
32 Counties to the southern boundary of the State of Oregon.

33 [(29)] (25) "Timberland" is defined by ORS 477.205.

34 [(30)] (26) "Warden" means a fire warden appointed under ORS 477.355.

35 **SECTION 1837.** ORS 477.005 is amended to read:

36 477.005. (1) The preservation of the forests and the conservation of the forest resources through  
37 the prevention and suppression of forest fires hereby are declared to be the public policy of the  
38 State of Oregon.

39 (2) In order to accomplish the purposes of the policy stated in this section:

40 (a) The need for a complete and coordinated forest protection system is acknowledged and the  
41 primary mission of the [*State Forestry Department*] **Oregon Department of Natural Resources** in  
42 such a system is protecting forest resources, second only to saving lives. Structural protection,  
43 though indirect, shall not inhibit protection of forest resources; and

44 (b) This chapter shall include all persons and activities designated in this chapter, irrespective  
45 as to whether or not such person or activity is concerned with the harvesting, cutting, removal or

1 marketing of trees, timber or other forest products.

2 **SECTION 1838.** ORS 477.009 is amended to read:

3 477.009. (1) For the purpose of an investigation as to liability for cost of hazard abatement, fire  
4 abatement or damages under this chapter, the Attorney General, at the request of the [*State*  
5 *Forester*] **Director of the Oregon Department of Natural Resources**, may administer oaths and  
6 affirmations, take testimony or depositions and by subpoena compel the:

7 (a) Attendance of witnesses;

8 (b) Production of documents, including but not limited to writings, drawings, graphs, charts,  
9 photographs, and other data compilations from which information can be obtained and translated;  
10 and

11 (c) Production of any other tangible thing that the Attorney General deems relevant or material  
12 to the investigation.

13 (2) Each witness subpoenaed under subsection (1) of this section shall receive the fees and  
14 mileage provided in ORS 44.415 (2).

15 (3) If a person fails to comply with a subpoena issued or a party or witness refuses to testify  
16 on any matters, the judge of the circuit court of any county, on the application of the [*State*  
17 *Forester*] **director**, shall compel obedience by proceedings for contempt as in the case of disobedi-  
18 ence of the requirements of a subpoena issued from such court or a refusal to testify therein.

19 **SECTION 1839.** ORS 477.013 is amended to read:

20 477.013. (1) For the purpose of maintaining air quality, the [*State Forester*] **Oregon Department**  
21 **of Natural Resources** and the Department of Environmental Quality shall approve a plan for the  
22 purpose of managing smoke in areas they shall designate. The plan shall delineate regulated areas  
23 to which this section applies. The plan shall also include but not be limited to considerations of  
24 weather, volume of material to be burned, distance of the burning from designated areas, burning  
25 techniques and provisions for cessation of further burning under adverse air quality conditions. All  
26 burning permitted within the regulated areas shall be according to the plan. The plan shall be de-  
27 veloped by the [*State Forestry Department*] **Oregon Department of Natural Resources** in cooper-  
28 ation with federal and state agencies, landowners and organizations that will be affected by the plan.  
29 The approved plan shall be filed with the Secretary of State and may thereafter be amended in the  
30 same manner as its formation.

31 (2) The [*State Forester*] **Director of the Oregon Department of Natural Resources** shall  
32 promulgate rules to carry out the provisions of the smoke management plan approved under this  
33 section.

34 **SECTION 1840.** ORS 477.023 is amended to read:

35 477.023. (1) The forestland-urban interface in Oregon represents a unique fire protection situ-  
36 ation that requires that unique and special measures be taken to ensure adequate public safety and  
37 protection of property, development and natural resources. Therefore, it is declared to be the public  
38 policy of the State of Oregon to encourage and provide a complete and coordinated forestland-urban  
39 interface fire protection system.

40 (2)(a) It is recognized that forestland-urban interface areas are already subject to other laws and  
41 to regulations of other agencies. It is the intent of ORS 477.015 to 477.061 to integrate with and not  
42 replace those other laws and regulations.

43 (b) In the event of an apparent conflict between the obligations imposed by ORS 477.015 to  
44 477.061 and by other laws or regulations for which the [*forester*] **Director of the Oregon Depart-**  
45 **ment of Natural Resources** is responsible and has jurisdiction, the [*forester*] **director** shall resolve

1 the conflict within the scope of the [*forester's*] **director's** authority.

2 (c) Except as provided in paragraph (d) of this subsection, the obligations imposed by ORS  
3 477.015 to 477.061 do not supersede or replace federal law or regulation, other state law or rules,  
4 or more restrictive local government ordinance or code.

5 (d) In the event of an apparent conflict between the obligations imposed by ORS 477.015 to  
6 477.061 and a more restrictive local government ordinance or code, the [*State Forester*] **director** may  
7 enter into a cooperative agreement with the governing body of a local government, the terms of  
8 which provide that ORS 477.015 to 477.061 supersede the local government ordinance or code in  
9 specified cases.

10 (e) In the event of an apparent conflict between the obligations imposed by ORS 477.015 to  
11 477.061 and the declaration, bylaws, rules or regulations of a homeowners association, the [*State*  
12 *Forester*] **director** may enter into a cooperative agreement with the homeowners association that  
13 allows the declaration, bylaws, rules or regulations of the homeowners association to supersede ORS  
14 477.015 to 477.061 in specified cases. The term of a cooperative agreement entered into under this  
15 paragraph may not exceed five years.

16 (f) When a real property lot includes one or more structures that have multiple owners, the  
17 [*State Forester*] **director** may enter into a cooperative agreement with one or more of the owners,  
18 or a person designated as the representative of the owners, for the purposes of matters related to  
19 ORS 477.015 to 477.061. The term of a cooperative agreement entered into under this paragraph may  
20 not exceed five years.

21 (g) Compliance with the obligations imposed by ORS 477.015 to 477.061 does not relieve the  
22 owner of land of the requirements of other laws or regulations that might apply to the land in  
23 question.

24 (3) To encourage development of a complete and coordinated forestland-urban interface fire  
25 protection system, it is declared to be in the public interest that the [*State Board of Forestry and*  
26 *the State Forester*] **director and the Oregon Natural Resources Commission** take a lead role in  
27 statewide coordination of the forestland-urban interface situation with other state and federal  
28 agencies, local governments and private sector interests that are concerned with fire protection in  
29 the forestland-urban interface.

30 **SECTION 1841.** ORS 477.027 is amended to read:

31 477.027. By administrative rule, the [*State Board of Forestry*] **Oregon Natural Resources**  
32 **Commission** shall establish criteria by which the forestland-urban interface shall be identified and  
33 classified. The criteria shall recognize differences across the state in fire hazard, fire risk and  
34 structural characteristics within the forestland-urban interface. The criteria shall include not less  
35 than three nor more than five classes of forestland-urban interface.

36 **SECTION 1842.** ORS 477.029 is amended to read:

37 477.029. (1) Pursuant to a request by the [*State Forester*] **Director of the Oregon Department**  
38 **of Natural Resources**, the governing body of a county containing forestland-urban interface may  
39 establish a county forestland-urban interface classification committee of five persons, of whom one  
40 shall be appointed by the [*State Forester*] **director**, one by the State Fire Marshal and three by the  
41 governing body. Of the members appointed by the governing body, one must be an owner of land  
42 within the forestland-urban interface who permanently resides on the land. Each appointing au-  
43 thority shall file with the [*State Forester*] **director** the name of its appointee or appointees, and the  
44 persons so named shall constitute the committee for the county. Unless otherwise provided for by  
45 the appointing authority, members of the committee shall serve a term of four years and may be

1 reappointed to any number of terms. Each member of the committee at all times is subject to re-  
2 placement by the appointing authority, effective upon the filing with the [*State Forester*] **director**  
3 by that authority of written notice of the name of the new appointee.

4 (2) The committee shall elect from among its members a chair and a secretary and may elect  
5 other officers as it finds advisable. The committee shall adopt rules governing its organization and  
6 proceedings and the performance of its duties, and shall keep written minutes of all its meetings.  
7 A quorum of the county forestland-urban interface classification committee for official actions is  
8 three members, and a quorum of a committee established pursuant to subsection (4)(a) of this section  
9 is four members.

10 (3) The governing body of the county may provide for the committee and its employees such  
11 accommodations and supplies and such county funds not otherwise appropriated as the governing  
12 body finds necessary for the proper performance of the committee's functions. The members of the  
13 committee shall receive no compensation for their services, but the governing body may reimburse  
14 them for their actual and necessary travel and other expenses incurred in the performance of their  
15 duties. By written agreement between the [*State Forester*] **director** and the governing body, the  
16 [*State Forestry Department*] **Oregon Department of Natural Resources** may provide the functions  
17 or be responsible for part or all of the expenses referred to in this subsection.

18 (4) In the interest of efficiency, by written agreement between the [*State Forester*] **director** and  
19 the governing body, if a forestland classification committee is established and active within a county  
20 pursuant to ORS 526.305 to 526.340, the members of that committee may also serve on the county  
21 forestland-urban interface classification committee established by subsection (1) of this section. In  
22 the event that this agreement is made, the [*State Forester*] **director** and the governing body shall  
23 ensure that either:

24 (a) A State Fire Marshal appointee and an owner of land within the forestland-urban interface  
25 who permanently resides on the land are added to the county forestland classification committee to  
26 bring the total number of committee members to seven; or

27 (b) The State Fire Marshal approves of the current membership of the county forestland classi-  
28 fication committee and the committee includes an owner of land within the forestland-urban inter-  
29 face who permanently resides on the land.

30 **SECTION 1843.** ORS 477.052 is amended to read:

31 477.052. (1) The county forestland-urban interface classification committee shall hold a public  
32 hearing at the time and place stated in the notice published under ORS 477.031 (3), or at such other  
33 time and place to which the hearing may be adjourned, to receive from any interested persons ob-  
34 jections, remonstrances or suggestions relating to the proposed designations and classifications.  
35 Following the hearing the committee may make such changes in the proposed designations and  
36 classifications as it finds to be proper, hold additional hearings as it finds necessary, and thereafter  
37 shall make final designations and classifications.

38 (2) All final action by the committee in designating and classifying forestland-urban interface  
39 shall be by formal written order, which must include a statement of findings of fact on the basis of  
40 which the order is made, and must include a list of all land designated and classified. The committee  
41 shall prepare one or more maps showing the final designations and classifications made. The ori-  
42 ginal of the order shall be filed with the county clerk of the county. The order need not meet the  
43 requirements of ORS 205.232 to be filed and recorded. A copy of the order certified by the secretary  
44 of the committee shall be sent to the [*State Forester*] **Director of the Oregon Department of Na-**  
45 **tural Resources.**

1 (3) Copies of the order, lists of land and maps required by this section shall be maintained in  
2 designated offices of the [*forester*] **director** where they shall be made available for public inspection.

3 **SECTION 1844.** ORS 477.054 is amended to read:

4 477.054. (1) Any owner of land designated and classified under ORS 477.027 to 477.057 who is  
5 aggrieved by the designation or classification may, within 30 days after the date of the order making  
6 the designation and classification, appeal to the circuit court for the county. Notice of an appeal  
7 shall be promptly served on the secretary of the committee or, if the designation and classification  
8 was made under ORS 477.057, on the [*State Forester*] **Director of the Oregon Department of Na-**  
9 **tural Resources.**

10 (2) The appeal shall be tried by the circuit court as an action not triable by right to a jury.

11 **SECTION 1845.** ORS 477.057 is amended to read:

12 477.057. (1) The [*State Forester*] **Director of the Oregon Department of Natural Resources**  
13 may designate and classify forestland-urban interface, consistent with and as described in ORS  
14 477.031 to 477.054, if a designation and classification of forestland-urban interface is not made by the  
15 county forestland-urban interface classification committee within a county in which such land is  
16 situated because:

17 (a) The governing body of the county fails to establish a county forestland-urban interface  
18 committee within two years after the [*State Forester*] **director** makes a request under ORS 477.029  
19 (1);

20 (b) The committee fails to make a designation and classification within five years after being  
21 appointed, or the committee fails to make a designation and classification within five years of the  
22 last designation and classification made by the committee; or

23 (c) The committee fails to make a designation and classification in a manner consistent with  
24 ORS 477.031 to 477.054.

25 (2) Designation and classification by the [*State Forester*] **director** has the same force and effect  
26 as though made by a committee for that county. However, designations and classifications made by  
27 the [*State Forester*] **director** cease to be effective if replaced by designations and classifications  
28 made pursuant to ORS 477.052 by the appropriate committee.

29 **SECTION 1846.** ORS 477.059 is amended to read:

30 477.059. (1)(a) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall by  
31 rule establish minimum standards for minimizing or mitigating:

32 (A) Fire hazards or risks on land within a forestland-urban interface due to the presence of  
33 structures or the arrangement or accumulation of vegetative fuels; and

34 (B) Other fire hazards or risks or combinations of fire hazards or risks.

35 (b) In adopting rules under this subsection, the [*board*] **commission** shall take into account the  
36 variability of the forestland-urban interface in different parts of the state.

37 (c) An owner of land within a forestland-urban interface must comply with the minimum stan-  
38 dards applicable to the land.

39 (2)(a) Except as provided in paragraph (b) of this subsection, but no more frequently than once  
40 every five years, the [*State Forester*] **Director of the Oregon Department of Natural Resources**  
41 shall provide written notice of the applicable minimum standards established under this section to  
42 each owner of land within a forestland-urban interface, unless the owner requests a copy more fre-  
43 quently.

44 (b) The [*board*] **commission** need not give notice under paragraph (a) of this subsection to an  
45 owner of land if the owner is a member of a homeowners association by reason of owning the land



1 and the [*State Forester*] **director** has entered into a cooperative agreement with the homeowners  
 2 association pursuant to ORS 477.023 (2)(e) that provides for notice to owners through the associ-  
 3 ation.

4 (3) An owner of land within a forestland-urban interface must certify in writing to the [*State*  
 5 *Forester*] **director** that the owner has complied with the applicable minimum standards established  
 6 under this section not later than two years after the order designating the land as being within the  
 7 forestland-urban interface is filed with the county clerk under ORS 477.052 (2). If a subsequent order  
 8 is filed that changes the classification of the land, the owner of the land must make a supplemental  
 9 certification in writing to the [*State Forester*] **director** that reflects the measures that the owner  
 10 has taken to comply with the applicable minimum standards established under this section for the  
 11 new classification not later than six months after the new order is filed.

12 (4) The [*State Forester*] **director** shall accept certifications made to the [*forester*] **director** under  
 13 subsection (3) of this section. Any owner of land whose written certification has been accepted by  
 14 the [*State Forester*] **director** under this subsection is not liable for the costs of suppressing a fire  
 15 under subsection (6) of this section, unless the [*State Forester*] **director** subsequently determines  
 16 that the owner of land has provided a false certification.

17 (5) The [*State Board of Forestry*] **commission** may require periodic renewal of a certification  
 18 accepted by the [*State Forester*] **director** under subsection (4) of this section, and may require sup-  
 19 plemental certifications from the owner of land that reflect the measures that the owner has taken  
 20 to comply with the applicable minimum standards established under this section. An owner of land  
 21 is responsible for maintaining the land described by the certification in compliance with the appli-  
 22 cable minimum standards established under this section.

23 (6) The owner of land designated to be within a forestland-urban interface is liable to the [*State*  
 24 *Forester*] **director** for the costs of suppressing a fire that occurs on that land, as described in sub-  
 25 section (7) of this section, if:

26 (a) The owner has failed to meet the applicable minimum standards established under this sec-  
 27 tion;

28 (b) The fire originates on the owner's land;

29 (c) The ignition or spread of the fire is directly related to the owner's failure to meet the ap-  
 30 plicable minimum standards established under this section; and

31 (d) The fire requires action by the [*forester*] **director** pursuant to ORS 477.066 (2).

32 (7) The liability of an owner of land under subsection (6) of this section may not exceed \$100,000.  
 33 The [*State Forester*] **director** may not seek recovery under subsection (6) of this section for any  
 34 portion of the costs of suppressing a fire that are the ordinary costs of the regular personnel and  
 35 equipment of the forest protection district in which the land is located. This subsection does not  
 36 limit the liability of the owner under ORS 477.120.

37 **SECTION 1847.** ORS 477.060 is amended to read:

38 477.060. (1) In determining the annual cost of protection pursuant to ORS 477.230, the [*forester*]  
 39 **Director of the Oregon Department of Natural Resources** may consider and include the special  
 40 or additional cost of fire protection for property owners within a forestland-urban interface classi-  
 41 fication, including the special or unique costs of assessment processing and administration.

42 (2) The [*forester*] **director** shall identify special or additional costs identified by subsection (1)  
 43 of this section in the budget required by ORS 477.230 to 477.300. These special or additional costs  
 44 are in addition to the annual cost of ORS 477.230 (1) and may not exceed \$25 annually for each real  
 45 property lot. Only those owners of land within a forestland-urban interface classification in a forest

1 protection district shall bear the special or additional cost of fire protection within the forestland-  
 2 urban interface in a manner consistent with rules promulgated by the [State Board of Forestry]  
 3 **Oregon Natural Resources Commission.**

4 **SECTION 1848.** ORS 477.062 is amended to read:

5 477.062. (1) All forestland that by reason of its lack of adequate fire protection endangers life,  
 6 forest resources or property is declared to be a public nuisance.

7 (2) Whenever the [forester learns thereof, the forester] **Director of the Oregon Department of**  
 8 **Natural Resources learns of a public nuisance under subsection (1) of this section, the di-**  
 9 **rector** may direct the owner or operator of such forestland to take proper steps for its protection  
 10 and advise the owner or operator of means to that end. In case of refusal or neglect by either to  
 11 take precautions against fire required by law or when so directed by the [forester] **director** in  
 12 writing, within such time as is specified in the writing, then the [forester] **director** may have such  
 13 work done as the [forester] **director** considers necessary for the protection of life, forest resources  
 14 or property, without the necessity of court action.

15 (3) The cost of work under subsection (2) of this section and the expense of any patrol rendered  
 16 necessary by the want of adequate protection of such forestland shall be recoverable from the  
 17 offender by an action prosecuted in the name of the state.

18 (4) All moneys collected under this section shall be [paid into the State Treasury, credited to the  
 19 State Forestry Department Account and expended as other moneys in that account are expended] **de-**  
 20 **posited in the Oregon Natural Resources Fund and are continuously appropriated to the**  
 21 **Oregon Department of Natural Resources for purposes related to the administration of this**  
 22 **chapter and ORS chapter 526.**

23 **SECTION 1849.** ORS 477.066 is amended to read:

24 477.066. (1) Each owner and operator of forestland on which a fire exists or from which it may  
 25 have spread, notwithstanding the origin or subsequent spread thereof, shall immediately proceed to  
 26 control and extinguish such fire when its existence comes to the knowledge of the owner or opera-  
 27 tor, without awaiting instructions from the [forester] **Director of the Oregon Department of Na-**  
 28 **tural Resources**, and shall continue until the fire is extinguished.

29 (2) If the [forester] **director** determines the fire is either burning uncontrolled or the owner or  
 30 operator does not then have readily and immediately available personnel and equipment to control  
 31 or extinguish the fire, the [forester] **director**, or any forest protective association or agency under  
 32 contract or agreement with the [State Board of Forestry] **Oregon Natural Resources Commission**  
 33 for the protection of forestland against fire, and within whose protection area the fire exists, shall  
 34 summarily abate the nuisance thus constituted by controlling and extinguishing the fire.

35 (3) An owner may request in writing that the [forester] **director** employ alternate fire prevention  
 36 and suppression strategies or techniques on the owner's forestland. The [forester] **director** may em-  
 37 ploy some or all of the requested strategies or techniques when, in the judgment of the [forester]  
 38 **director**, conditions warrant the use of the alternate strategies or techniques.

39 **SECTION 1850.** ORS 477.068 is amended to read:

40 477.068. (1) In case an owner or operator fails to perform the duty required by ORS 477.066, or  
 41 is willful, malicious or negligent in the origin or subsequent spread of the fire, the actual cost in-  
 42 curred by the [forester] **Director of the Oregon Department of Natural Resources** or a forest  
 43 protective association or agency in controlling or extinguishing the fire shall be paid by the owner  
 44 or operator within 90 days after the date on which the first written demand for payment of the ac-  
 45 tual cost is mailed by the [State Forester] **director** to the owner or operator. If the actual cost is

1 not paid within such 90-day period, such amount shall bear interest at 10 percent per year from the  
 2 date on which the first written demand for the payment of the actual costs was mailed by the [*State*  
 3 *Forester*] **director** and the actual cost together with such interest may be recovered from such  
 4 owner or operator by an action prosecuted in the name of the State of Oregon, or such forest pro-  
 5 tective association or agency, or both.

6 (2) An itemized statement of the actual cost incurred by the [*forester or association or agency,*  
 7 *or both, certified to by the forester,*] **director, association or agency and certified to by the di-**  
 8 **rector** shall be accepted as prima facie evidence of the actual cost in any proceeding authorized  
 9 by this section.

10 (3) The actual cost in cases covered by ORS 477.066 shall constitute a general lien upon the real  
 11 and personal property of such owner or operator. A written notice of the lien, containing a de-  
 12 scription of the property and a statement of the actual cost, shall be certified under oath by the  
 13 [*forester*] **director** or any warden and filed in the office of the county clerk of the county in which  
 14 the lands and personal property are situated within 12 months after the calendar year within which  
 15 the fire originated, and may be foreclosed in the manner provided by law for foreclosure of liens for  
 16 labor and material. In any proceeding to foreclose a lien created under this subsection, recovery for  
 17 the plaintiff shall include, in addition to the amount of the actual cost, interest on such amount at  
 18 the rate of 10 percent per year from the date of the filing of the written notice of the lien.

19 (4) Upon request of the [*forester*] **director**, the district attorney for the district in which the  
 20 lands and personal property are situated or the Attorney General shall prosecute such action or  
 21 foreclose the lien in the name of the State of Oregon or such forest protective association or agency,  
 22 or both. Liens provided for in this section shall cease to exist unless suit for foreclosure is instituted  
 23 within 12 months from the date of filing under subsection (3) of this section.

24 (5) In any action under subsection (1) of this section to recover actual cost and in any pro-  
 25 ceeding to foreclose any lien created by subsection (3) of this section, the court shall award, in ad-  
 26 dition to costs and disbursements, reasonable attorney fees at trial and on appeal to the prevailing  
 27 party.

28 **SECTION 1851.** ORS 477.085 is amended to read:

29 477.085. Any person who willfully or negligently sets a fire or causes a fire to be set for which  
 30 efforts to control or extinguish the fire in order to protect forestland within a forest protection  
 31 district from fire are exerted by the [*forester*] **Director of the Oregon Department of Natural**  
 32 **Resources** or any forest protective association or agency under contract or agreement with the  
 33 [*State Board of Forestry*] **Oregon Natural Resources Commission** is liable for the actual costs  
 34 incurred by the [*forester,*] **director, association or agency** in such efforts. The costs shall be re-  
 35 covered from the person liable therefor in the same manner as costs recovered under ORS 477.068.

36 **SECTION 1852.** ORS 477.100 is amended to read:

37 477.100. (1) The [*State Forester*] **Director of the Oregon Department of Natural Resources,**  
 38 or any agency or organization with responsibility under this chapter to suppress fires, may not  
 39 prohibit an owner or the owner's agent from suppressing a fire occurring on the owner's property  
 40 or that poses a threat to the owner's property.

41 (2) Notwithstanding subsection (1) of this section, the [*forester*] **director, agency or organization**  
 42 may prohibit an owner or the owner's agent from suppressing a fire if the owner or agent conducts  
 43 the action in a manner that the [*forester*] **director, agency or organization** reasonably determines  
 44 is likely to increase the risk of injury or damage to the personnel or equipment of the [*forester*] **di-**  
 45 **rector, agency or organization.**

1        **SECTION 1853.** ORS 477.120 is amended to read:

2        477.120. (1) Except as provided in subsections (2) and (3) of this section, the owner or operator  
3 of forestland is not subject to the obligations or penalties of ORS 164.335 and 477.740 or 477.064,  
4 477.066 and 477.068 if:

5        (a) Forest patrol assessments are regularly paid for the forestland;

6        (b) Such forestland is protected pursuant to membership in a forest protective association in  
7 accordance with ORS 477.210, which association has undertaken the control and suppression of fires  
8 on such land as provided in the contract; or

9        (c) Such forestland is protected pursuant to cooperative agreement or contract under ORS  
10 477.406.

11        (2) The provisions of subsection (1) of this section do not apply to such owner or operator if the  
12 owner or operator:

13        (a) Is willful, malicious or negligent in the origin or subsequent spread of a fire on such  
14 forestland;

15        (b) Has caused or permitted an operation to exist on such forestland and a fire originates  
16 thereon as a result of the operation;

17        (c) Has failed to give notice to the [*forester*] **Director of the Oregon Department of Natural**  
18 **Resources** pursuant to ORS 527.670 (6), has failed to obtain a permit for the use of fire in any form  
19 or power-driven machinery pursuant to ORS 477.625 or has failed within the time prescribed in any  
20 order or notice issued by the [*forester*] **director** to reduce, abate, or offset any hazard determined  
21 to exist pursuant to ORS 477.062 or 477.580 and a fire originates on or spreads to the area on which  
22 such hazard exists and for which no release has been granted pursuant to ORS 477.580 (3) or (4);  
23 or

24        (d) Has caused or allowed any burning, including burning regulated by ORS 477.013 or 477.515,  
25 whether or not a permit has been obtained and a fire results from or is caused by such burning.

26        (3) Unless subsection (2)(a) or (c) of this section applies, the owner or operator shall not be ob-  
27 ligated to pay that portion of the actual costs provided in ORS 477.068 which are the ordinary costs  
28 of the regular personnel and equipment of the forest protection district wherein the forestland is  
29 located.

30        (4) If subsection (2)(b) or (d) of this section applies and subsection (2)(a) and (c) of this section  
31 do not apply, the owner or operator shall not be liable to the [*forester*] **director** for fire suppression  
32 costs in excess of \$300,000.

33        (5) The provisions of subsections (3) and (4) of this section do not apply to the owner or operator  
34 if the owner or operator fails to make every reasonable effort.

35        (6) For the purpose of subsection (2)(b) of this section, if a fire originates while an operation is  
36 in progress, there is a presumption, under ORS 40.120, that the fire originated as a result of the  
37 operation.

38        **SECTION 1854.** ORS 477.125 is amended to read:

39        477.125. (1) A forest protective association, rangeland protection association organized under  
40 ORS 477.317 or public body as defined in ORS 174.109, or a person acting as an agent of a forest  
41 protective association, rangeland protection association or public body, is not liable for any injury  
42 to persons or property resulting from carrying out the provisions of this chapter or while acting  
43 within the scope of a duty imposed by this chapter.

44        (2) The exemption from liability provided by subsection (1) of this section does not apply to any  
45 injury to persons or property resulting from willful misconduct or gross negligence.

1 (3) An employee of a forest protective association, or a person acting as an agent of a forest  
 2 protective association, is an agent of a public body acting within the scope of their duties for pur-  
 3 poses of ORS 30.260 to 30.300, if the person:

4 (a) Engages in fire fighting activities occurring on lands located outside of the forest protection  
 5 district in which the association is located; and

6 (b) Acts under the direction and control of the [*forester*] **Director of the Oregon Department**  
 7 **of Natural Resources.**

8 **SECTION 1855.** ORS 477.180 is amended to read:

9 477.180. If the Northwest Wildland Fire Protection Agreement is amended in accordance with  
 10 Article IX of the agreement, the Governor shall invoke Article X of the agreement to withdraw from  
 11 the agreement until such time as the Legislative Assembly ratifies the amendment, or during the  
 12 interim between legislative sessions, until such time as the [*State Forester*] **Director of the Oregon**  
 13 **Department of Natural Resources** submits the amendment to the Emergency Board for review.  
 14 The [*State Forester*] **director** shall submit any amendment reviewed by the Emergency Board to the  
 15 next Legislative Assembly for ratification. If the Legislative Assembly does not ratify the amend-  
 16 ment prior to adjournment sine die, the Governor shall immediately invoke Article X of the agree-  
 17 ment to withdraw from the agreement.

18 **SECTION 1856.** ORS 477.190 is amended to read:

19 477.190. The Governor may take any action necessary to carry out the Northwest Wildland Fire  
 20 Protection Agreement as set forth in ORS 477.200. The Governor may delegate the authority granted  
 21 under this section or ORS 477.180 and 477.185 to the [*State Forester*] **Director of the Oregon De-**  
 22 **partment of Natural Resources.**

23 **SECTION 1857.** ORS 477.210 is amended to read:

24 477.210. (1) During the season of the year when there is danger of fire, every owner of forestland  
 25 shall provide adequate protection against the starting or spread of fire thereon or therefrom, which  
 26 protection shall meet with the approval of the [*State Board of Forestry*] **Oregon Natural Resources**  
 27 **Commission.**

28 (2) Subsection (1) of this section is considered to have been complied with if, on January 1 of  
 29 each year, the owner:

30 (a) Files with the [*forester*] **Director of the Oregon Department of Natural Resources** a bona  
 31 fide forest protection plan that meets with the approval of the [*board*] **commission**; or

32 (b) Is a member in good standing in a forest protective association maintaining a standard of  
 33 protection approved by the [*board*] **commission.**

34 (3) The [*forester*] **director** shall make periodic inspections of the protection facilities provided  
 35 in order to ascertain compliance by the owner.

36 (4) In case any owner of forestland shall fail or neglect to file such a fire plan or maintain the  
 37 standard of protection approved by the [*board*] **commission**, either through compliance with the fire  
 38 plan or membership in an approved association, then the [*forester*] **director** under the direction of  
 39 the [*board*] **commission** shall provide forest protection pursuant to ORS 477.205 to 477.281.

40 (5) The [*forester*] **director** shall provide protection pursuant to ORS 477.205 to 477.281 for  
 41 forestland owned by the state or by a political subdivision located within a forest protection district,  
 42 unless adequate protection as required by this section is otherwise provided.

43 **SECTION 1858.** ORS 477.220 is amended to read:

44 477.220. (1) The [*forester*] **Director of the Oregon Department of Natural Resources** is not  
 45 required to provide protection for forestland that is either a small parcel or a tract isolated from

1 a forest protection district and which land is found by the [*forester*] **director** as not practicable to  
2 be included in a forest patrol system.

3 (2) ORS 477.205 to 477.281 do not apply to federal grazing land or federal timberland within this  
4 state for which adequate protection is provided unless the lands have been included within the  
5 boundaries of a forest protection district pursuant to a cooperative agreement with the federal  
6 government approved by the [*State Board of Forestry*] **Oregon Natural Resources Commission**.

7 (3) Upon written request of the owner of lands that have been incorporated within a rural fire  
8 protection district, the [*forester*] **director** shall determine whether the lands, or any part thereof,  
9 are forestland. Thereafter, those lands that have been so determined shall be included within ORS  
10 477.205 to 477.281 unless excluded pursuant to subsection (1) of this section.

11 **SECTION 1859.** ORS 477.225 is amended to read:

12 477.225. The [*State Forester*] **Director of the Oregon Department of Natural Resources**, by  
13 rule, shall designate areas of forestland within this state as forest protection districts within which  
14 the [*forester*] **director** is required to provide protection pursuant to this chapter. In establishing new  
15 boundaries or changes in boundaries of the districts, the [*State Forester*] **director** may, for the pur-  
16 poses of administrative convenience, designate mountain ranges, rivers, streams, roads or other re-  
17 cognizable landmarks as boundaries. Boundaries may be established or changed only after a public  
18 hearing.

19 **SECTION 1860.** ORS 477.230 is amended to read:

20 477.230. (1) The annual cost of protection provided by the [*forester*] **Director of the Oregon**  
21 **Department of Natural Resources** for forestland within a forest protection district shall be as  
22 follows:

23 (a) Grazing land within the district shall be protected by the [*forester*] **director** at a pro rata  
24 cost per acre for all grazing land within the district boundary. However, forest patrol assessments  
25 levied and assessed under ORS 477.270 against such lands that are not owned by public agencies  
26 may not exceed one-half of the pro rata cost per acre, exclusive of any assessment per acre under  
27 ORS 477.880.

28 (b) Timberland within the district shall be protected by the [*forester*] **director** at a pro rata cost  
29 per acre for all timberland within the district boundary. However, forest patrol assessments levied  
30 and assessed under ORS 477.270 against such lands that are not owned by public agencies may not  
31 exceed one-half of the pro rata cost per acre, exclusive of any assessment per acre under ORS  
32 477.880.

33 (2) The cost of protection described in this section shall be in accordance with a budget for the  
34 district approved by the [*State Board of Forestry*] **Oregon Natural Resources Commission**.

35 **SECTION 1861.** ORS 477.232 is amended to read:

36 477.232. Subject to the forest patrol assessment limitations set forth in ORS 477.230:

37 (1) Actual costs incurred by the [*forester*] **Director of the Oregon Department of Natural**  
38 **Resources** in the prevention and suppression of fire on grazing land or timberland located within  
39 a forest protection district, in excess of the amount budgeted as required by ORS 477.230, but not  
40 including those costs eligible for equalization by the Oregon Forest Land Protection Fund, shall be,  
41 without regard to proceedings for the collection of the costs:

42 (a) Included in the budget for the next fiscal year; and

43 (b) Levied and assessed against the grazing land or timberland in the district.

44 (2) Budgeted amounts not expended may be carried forward as a credit to the assessment rate  
45 for the ensuing year.

1       **SECTION 1862.** ORS 477.235 is amended to read:

2       477.235. The [*forester*] **Director of the Oregon Department of Natural Resources** shall pre-  
3 pare tentative budget estimates for each forest protection district for the ensuing fiscal year begin-  
4 ning July 1, in a manner consistent with accounting and budgetary procedures prescribed by the  
5 [*State Board of Forestry*] **Oregon Natural Resources Commission**.

6       **SECTION 1863.** ORS 477.240 is amended to read:

7       477.240. In any forest protection district wherein the [*forester*] **Director of the Oregon De-**  
8 **partment of Natural Resources** has entered into a cooperative agreement or contract with a for-  
9 est protective association or agency described in ORS 477.406 (1), and the association or agency has  
10 appointed an advisory and guidance committee for the purposes of analysis and review of the pro-  
11 tection plans and budgets for the district, the [*forester*] **director** shall prepare the protection plans  
12 and budgets in conjunction with the committee.

13       **SECTION 1864.** ORS 477.245 is amended to read:

14       477.245. (1) All owners of lands assessed under ORS 477.205 to 477.281 shall have an opportunity  
15 to be heard on matters pertaining to the budgeting of moneys required to defray the cost of pro-  
16 tection in each forest protection district. The [*forester*] **Director of the Oregon Department of**  
17 **Natural Resources**, under the direction of the [*State Board of Forestry*] **Oregon Natural Re-**  
18 **sources Commission**, shall provide for the holding of a public budget meeting in each district on  
19 or before May 1 of each year. The meeting shall be held at any convenient place designated by the  
20 [*forester*] **director**.

21       (2) In forest protection districts wherein the [*board*] **commission** has entered into cooperative  
22 agreements or contracts with forest protective agencies, the [*board*] **commission** may make pro-  
23 vision for the holding of the public budget meeting required in subsection (1) of this section on the  
24 same date and at the same place as a regular meeting of the agency.

25       **SECTION 1865.** ORS 477.250 is amended to read:

26       477.250. (1) Not more than four weeks preceding each budget meeting, the [*forester*] **Director**  
27 **of the Oregon Department of Natural Resources** shall cause notice of such meeting to be pub-  
28 lished once a week for two consecutive weeks in one or more newspapers published in or having  
29 general circulation in each of the counties in the forest protection district and in such other media  
30 of communication as the [*forester*] **director** finds advisable. However, the final publication shall be  
31 made at least one week prior to the date of the meeting. The notice shall state the time and place  
32 where the tentative budget for the district may be inspected and shall state the time and place of  
33 the meeting.

34       (2) Whenever the [*forester*] **director** determines that any privately owned land should be subject  
35 to assessment for forest protection and such land was not subject to the assessment during the  
36 preceding year, the [*forester*] **director** shall give written notice by mail of the determination to each  
37 owner of such land not later than March 1 of the year the assessment is to be made. The notice  
38 shall inform the owner of the acreage and tax lot number of the lands to be assessed and the name  
39 and address of the nearest representative of the [*forester*] **director** the owner may contact if review  
40 of the proposed assessment is desired. The notice shall also inform the owner of the procedure for  
41 hearing and appeals prescribed in ORS 477.205 to 477.281.

42       **SECTION 1866.** ORS 477.255 is amended to read:

43       477.255. (1) The public budget meeting shall be held at the time and place as stated in the pub-  
44 lished notice, or at such other time and place to which the meeting may be adjourned.

45       (2) [*A member of the State Board of Forestry, or the forester,*] **The Director of the Oregon De-**

1 **partment of Natural Resources or the director's designee** shall act as chairperson of the meet-  
 2 ing. The [*forester shall cause the minutes of the meeting to be preserved*] **chairperson shall preserve**  
 3 **the minutes of the meeting** as a public record.

4 (3) During the meeting the chairperson shall receive from any interested persons suggestions,  
 5 advice, objections or remonstrances as to the proposed budget for that forest protection district. The  
 6 [*forester, under the direction of the board,*] **director, under the direction of the Oregon Natural**  
 7 **Resources Commission** may make changes in the budget proper and consistent with law, and  
 8 thereafter submit the budget for final approval under ORS 477.265.

9 **SECTION 1867.** ORS 477.260 is amended to read:

10 477.260. (1) Any owner of grazing land or timberland within the boundary of the forest pro-  
 11 tection district who is adversely affected by the proposed budget may file an appeal within 30 days  
 12 after the date of the public budget meeting.

13 (2) Any owner of grazing land or timberland subject to ORS 477.205 to 477.281 shall, upon re-  
 14 quest, be granted a hearing by the [*State Board of Forestry*] **Oregon Natural Resources Commis-**  
 15 **sion** on any subject pertaining to the activities of the [*forester or board affecting*] **Director of the**  
 16 **Oregon Department of Natural Resources or the commission that affect** the land.

17 (3) Appeals and hearings shall be conducted by the [*board in accordance with rules adopted*  
 18 *pursuant to ORS 526.016 (4).*] **commission. In accordance with ORS chapter 183, the commission**  
 19 **shall adopt rules to implement this subsection.**

20 **SECTION 1868.** ORS 477.265 is amended to read:

21 477.265. The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall annually  
 22 review the forest protection district budgets, make any changes in the budgets that are proper and  
 23 consistent with law, and pass final approval on all district budgets and the prorated acreage rates  
 24 therein.

25 **SECTION 1869.** ORS 477.270 is amended to read:

26 477.270. (1) Subject to the forest patrol assessment limitations set forth in ORS 477.230:

27 (a) The budgeted cost of the [*forester*] **Director of the Oregon Department of Natural Re-**  
 28 **sources**, as provided for in ORS 477.205 to 477.281, in providing protection for privately owned  
 29 forestland shall be a lien upon such property, shall be reported by the [*forester*] **director** to the  
 30 governing body of the county in which the lands are situated on or after July 1 of each fiscal year,  
 31 and shall be levied and collected by the governing body with the next taxes on the land in the same  
 32 manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes  
 33 in this state. The governing body shall instruct the proper officer to extend the amounts on the as-  
 34 sessment roll in a separate account, and the procedure provided by law for the collection of taxes  
 35 and delinquent taxes shall apply. Upon collection thereof, the governing body shall repay the entire  
 36 amount collected to the [*forester*] **director**.

37 (b) In lieu of the procedures under paragraph (a) of this subsection, the [*forester, under the di-*  
 38 *rection of the State Board of Forestry,*] **director, under the direction of the Oregon Natural Re-**  
 39 **sources Commission**, may make direct billing of the budgeted cost to owners of forestland and  
 40 receive payment of the cost therefrom. In the event that under such billing procedures any owners  
 41 fail to make payment, the unpaid budgeted cost shall become a lien against the property so billed  
 42 and shall be levied and collected with the next taxes on such property as described in paragraph (a)  
 43 of this subsection.

44 (c) The budgeted cost of the [*forester*] **director** in providing protection for forestland owned by  
 45 the state or by a political subdivision shall be paid to the [*forester*] **director** on or before the first



1 day of January of the fiscal year for which such protection is to be provided.

2 (2) Except as provided in ORS 477.230 (2), all moneys received by the [forester] **director** pursu-  
 3 ant to this section shall be [paid into the State Treasury, credited to the State Forestry Department  
 4 Account and used exclusively for the purposes of] **deposited in the Oregon Natural Resources**  
 5 **Fund. Money deposited in the fund under this subsection are continuously appropriated to**  
 6 **the Oregon Department of Natural Resources for the purpose of administering** ORS 477.205  
 7 to 477.281.

8 **SECTION 1870.** ORS 477.277 is amended to read:

9 477.277. (1) In addition to any other assessment prescribed by ORS 477.205 to 477.281, in any  
 10 fiscal year in which the Emergency Fire Cost Committee determines pursuant to ORS 477.760 that  
 11 the unencumbered balance of the Oregon Forest Land Protection Fund is less than \$22.5 million, a  
 12 surcharge shall be levied and assessed in the amount of \$47.50 for each improved lot or parcel, ex-  
 13 cept as provided in ORS 477.760, to defray the increased cost of fire suppression on forestland that  
 14 is caused by the existence of the improvements.

15 (2) All surcharge moneys collected pursuant to this section shall be paid into the Oregon Forest  
 16 Land Protection Fund.

17 (3) If an owner of forestland files **with the Director of the Oregon Department of Natural**  
 18 **Resources** a forest protection plan [with the forester which is approved by the State Board of  
 19 Forestry] **that is approved by the Oregon Natural Resources Commission** under ORS 477.210 (2),  
 20 the owner shall not be required to pay the surcharge levied under subsection (1) of this section.

21 (4) Contiguous lots included in a combined lot that is described in ORS 477.295 (3)(a) and whose  
 22 owner has made application to the [forester] **director** under ORS 477.295 (4) are considered one lot  
 23 for purposes of subsection (1) of this section.

24 (5) As used in this section, a lot or parcel is “improved” if it is indicated as improved in the  
 25 county assessor’s property classification files or if a manufactured dwelling is sited on the lot or  
 26 parcel.

27 **SECTION 1871.** ORS 477.295 is amended to read:

28 477.295. (1) For purposes of making the levy and assessment of costs against forestland under  
 29 ORS 477.270, the minimum cost to provide fire protection or suppression for any lot or parcel of real  
 30 property separately assessed for ad valorem taxes or other taxes provided by law in lieu thereof,  
 31 on the current assessment roll shall be not less than \$18.75, except as provided in ORS 477.760.  
 32 Three dollars and seventy-five cents of each minimum assessment shall be paid into the Oregon  
 33 Forest Land Protection Fund. Otherwise, such assessments shall be determined under ORS 477.230  
 34 and 477.270.

35 (2) In any fiscal year in which the Emergency Fire Cost Committee determines pursuant to ORS  
 36 477.760 that the unencumbered balance of the Oregon Forest Land Protection Fund has:

37 (a) Increased to an amount:

38 (A) More than \$22.5 million but less than or equal to \$30 million, the minimum assessment re-  
 39 ferred to in subsection (1) of this section shall be \$16.88 for each lot or parcel. Of that amount, \$1.88  
 40 of each minimum assessment shall be paid into the Oregon Forest Land Protection Fund.

41 (B) More than \$30 million, the minimum assessment referred to in subsection (1) of this section  
 42 shall be \$15 for each lot or parcel. This amount shall be treated in the same manner as assessments  
 43 under ORS 477.230 and 477.270.

44 (b) Decreased to an amount that is at or below \$22.5 million, the minimum assessment referred  
 45 to in subsection (1) of this section shall be \$18.75 for each lot or parcel. This amount shall be treated

1 in the same manner as assessments under subsection (1) of this section.

2 (3) Upon application to the [*forester*] **Director of the Oregon Department of Natural Re-**  
 3 **sources** under subsection (4) of this section, contiguous lots held under identical ownership shall  
 4 be considered as one combined lot for purposes of subsection (1) of this section. However, the fol-  
 5 lowing may not be included in a combined lot:

6 (a) Except as provided in this paragraph, a lot on which a structure has been placed or im-  
 7 provements made for the purpose of erecting any temporary or permanent structure. One lot on  
 8 which a single-family dwelling has been placed, and lots on which the structures and improvements  
 9 that are appurtenant to that single-family dwelling have been placed, may be included in a combined  
 10 lot that does not exceed 20 acres.

11 (b) A lot that is in a subdivision containing lots that have been or are being offered for sale.

12 (c) A lot that is not designated forest or agricultural land for the purpose of land use or special  
 13 tax assessment purposes.

14 (4) To qualify under subsection (3) of this section, an owner of forestland shall make application  
 15 to the [*forester*] **director** no later than April 15 of the fiscal year preceding each fiscal year for  
 16 which the owner desires the land to be assessed under subsection (3) of this section. The application  
 17 shall be on a form prescribed by the [*State Forester*] **director**. A fee of \$25 per combined lot shall  
 18 be paid to the [*forester*] **director** at the time of first application for the combined lot. An additional  
 19 fee of \$25 per combined lot shall be paid to the [*forester*] **director** at the time of subsequent appli-  
 20 cation, if an application for the combined lot was not made for the previous fiscal year.

21 (5) The [*State Board of Forestry*] **Oregon Natural Resources Commission** may adopt rules for  
 22 the administration of the provisions of subsections (3) and (4) of this section.

23 (6) For the purposes of this section, "lot" and "subdivision" have the meanings given those terms  
 24 in ORS 92.010.

25 **SECTION 1872.** ORS 477.300 is amended to read:

26 477.300. (1) Moneys available at any time in the [*State Forestry Department Account*] **Oregon**  
 27 **Natural Resources Fund** for the purposes of this chapter, particularly **moneys available under**  
 28 ORS 477.205 to 477.281, which [*moneys*] are not specifically obligated for other purposes, may be  
 29 used by the [*forester*] **Director of the Oregon Department of Natural Resources** with the ap-  
 30 proval of the [*State Board of Forestry*] **Oregon Natural Resources Commission** for capital outlay  
 31 expenditures in any forest protection district. Prior to the making of such capital outlay expen-  
 32 ditures, the [*forester and board*] **director or commission** may specify that the account shall be re-  
 33 imbursemented for all or a part of such expenditures, over a period not to exceed 10 years, from any one  
 34 or a combination of the following sources:

35 (a) Forest patrol assessments of the district involved.

36 (b) Moneys derived from an association under ORS 477.406.

37 (c) Moneys derived from municipal, county, state or federal agencies under this chapter, for the  
 38 protection of their forestland from fire.

39 (2) Any reimbursement of capital outlay expenditures required by the [*forester and board*] **di-**  
 40 **rector or commission** under subsection (1) of this section shall be a pro rata amount from the  
 41 source or sources involved, based upon forestland acreage being protected in the district for which  
 42 the expenditures are made.

43 **SECTION 1873.** ORS 477.305 is amended to read:

44 477.305. The [*forester*] **Director of the Oregon Department of Natural Resources** is author-  
 45 ized to enforce the provisions of ORS 164.805 insofar as such affects forestland within forest pro-

1 tection districts established under this chapter.

2 **SECTION 1874.** ORS 477.317 is amended to read:

3 477.317. (1) Any group of owners of rangeland that is within a rangeland protection system es-  
4 tablished under ORS 477.320, and that lies wholly outside any forest protection district, may organ-  
5 ize a rangeland protection association for the purpose of protecting the rangeland from fire. The  
6 [forester] **Director of the Oregon Department of Natural Resources** may enter into cooperative  
7 agreements or contracts with a rangeland protection association under the provisions of ORS  
8 477.320 for the purpose of providing the assistance specified in subsection (2) of this section.

9 (2) The [forester] **director** may assist a rangeland protection association with organizing the  
10 association, training association members and acquiring firefighting equipment for the association.  
11 The [forester] **director** may also assist a rangeland protection association with payment for liability  
12 insurance and other administrative expenses of the association, which may not exceed 50 percent  
13 of the total of budgeted operating costs and the cash equivalent of in-kind supplies and services of  
14 the association in any fiscal year. The costs of assistance specified in this subsection may not be  
15 paid from funds assessed from forestland owners under ORS 477.230.

16 **SECTION 1875.** ORS 477.320 is amended to read:

17 477.320. (1) Owners of rangeland may request the [State Board of Forestry] **Oregon Natural**  
18 **Resources Commission** to hold a hearing on the subject of providing protection from fire for  
19 rangeland. Upon receipt of such request, the [board] **commission** or its authorized representative  
20 shall hold one or more public hearings in order to receive from interested persons information re-  
21 lating to the providing of such protection, and shall cause public notice of the time and place of  
22 each hearing to be given. The [board] **commission** or its authorized representatives shall keep the  
23 records of the proceedings of such hearings as public records.

24 (2) After the hearing referred to in subsection (1) of this section, the [board] **commission** shall  
25 determine whether the rangeland should be included within a protection system. If the [board]  
26 **commission** determines that rangeland should be included in a rangeland protection system, the  
27 [board] **commission**, in cooperation with interested persons, shall establish the extent and type of  
28 protection to be provided and direct the [forester] **Director of the Oregon Department of Natural**  
29 **Resources** or a rangeland protection association organized under ORS 477.317 to provide the pro-  
30 tection. Such protection shall be commensurate with the values and uses of the rangeland to be  
31 protected.

32 (3) After proceedings under subsections (1) and (2) of this section, the [forester] **director** or a  
33 rangeland protection association organized under ORS 477.317 shall provide the type and extent of  
34 protection determined under subsection (2) of this section for rangeland determined to be included  
35 within a protection system under subsection (2) of this section. For the purpose of providing such  
36 protection, the [forester] **director** and a rangeland protection association may enter into cooperative  
37 agreements or contracts with each other or, jointly or separately, with owners of rangeland, indi-  
38 viduals, associations, corporations, road districts, rural fire protection districts or agencies of the  
39 federal government.

40 **SECTION 1876.** ORS 477.325 is amended to read:

41 477.325. (1) Before June 1 each year, the owners of rangeland to be protected under ORS  
42 477.320, including all rangeland protection associations organized under ORS 477.317, shall prepare  
43 in cooperation with the [State Board of Forestry] **Oregon Natural Resources Commission** or its  
44 authorized representative[, and submit to the board,] **for submission to the commission** a proposed  
45 budget for the fiscal year beginning on the next succeeding July 1. The budget shall include the

1 proposed cost of such protection. At the meeting of the [board] **commission** under ORS 477.265, the  
 2 [board] **commission** shall review the budget, make any changes therein that are proper and con-  
 3 sistent with law, and pass final approval thereon.

4 (2) The cost of protection of rangeland under ORS 477.317 and 477.320 shall be in accordance  
 5 with the budget approved under subsection (1) of this section. The cost shall be collected pursuant  
 6 to the cooperative agreement or contract entered into between the [forester] **Director of the**  
 7 **Oregon Department of Natural Resources** and the owners of the rangeland under ORS 477.320.  
 8 All moneys received by the [board] **commission** pursuant to this subsection shall be [paid into the  
 9 State Treasury and credited to the State Forestry Department Account and shall be used exclusively  
 10 for the purposes of] **deposited in the Oregon Natural Resources Fund. Moneys deposited in the**  
 11 **fund under this subsection are continuously appropriated to the Oregon Department of Na-**  
 12 **tural Resources for the purpose of administering** ORS 477.315 to 477.325.

13 **SECTION 1877.** ORS 477.355 is amended to read:

14 477.355. (1) The [State Forester] **Director of the Oregon Department of Natural Resources**  
 15 shall appoint one or more district fire wardens for each forest protection district.

16 (2) The [State Forester] **director** shall appoint such additional fire wardens as are needed to  
 17 enforce this chapter.

18 **SECTION 1878.** ORS 477.360 is amended to read:

19 477.360. The district fire warden, under the direction of the [State Forester] **Director of the**  
 20 **Oregon Department of Natural Resources**, has charge of the fire prevention and suppression  
 21 system in the forest protection district of the warden and such other duties as are required by law  
 22 and the rules of the [State Board of Forestry] **Oregon Natural Resources Commission**. Any other  
 23 wardens serving in the district are subject to the direction of the district fire warden.

24 **SECTION 1879.** ORS 477.365 is amended to read:

25 477.365. (1) Under instructions from the [forester] **Director of the Oregon Department of Na-**  
 26 **tural Resources** as to their exercise of state authority, all wardens shall:

27 (a) Take proper steps for the prevention and extinguishment of fires within the localities in  
 28 which they exercise their functions.

29 (b) Control the use of fire for clearing land during fire season, as provided by ORS 477.505 to  
 30 477.520.

31 (c) Make such reports of their work and conditions within their localities as may be requested  
 32 by the [forester] **director**.

33 (d) Have the power of peace officers to make arrests or issue citations pursuant to ORS 477.985  
 34 for violation of this chapter or rules or orders adopted pursuant thereto.

35 (e) Enter upon the lands of any owner only in the discharge of their fire prevention and sup-  
 36 pression duties, provided that in so entering they exercise due care to avoid doing damage.

37 (f) Investigate the causes of fires and may secure a fire origin area, at any time, for the purpose  
 38 of preserving evidence and conducting an investigation pertinent to this chapter and control, re-  
 39 strict or prohibit access by any unauthorized person so long as is reasonably necessary in the  
 40 judgment of the warden.

41 (g) Make a written determination, on a form prescribed by the [State Forester] **director**, of the  
 42 personnel and equipment reasonably available to an owner or operator who is required to make  
 43 every reasonable effort pursuant to ORS 477.120 (5) and revise such determination as frequently as  
 44 is necessary in the judgment of the warden.

45 (h) Make a written determination, on a form prescribed by the [State Forester] **director**, of the

1 use of any power-driven machinery in any operation pursuant to ORS 477.670 and revise such de-  
 2 termination as frequently as is necessary in the judgment of the warden.

3 (2) The [*forester*] **director**, or any warden coming under the jurisdiction of the [*forester*]  
 4 **director**, may administer oaths in investigations of violations of this chapter and the preparation  
 5 of reports thereon.

6 **SECTION 1880.** ORS 477.406 is amended to read:

7 477.406. (1) The [*forester*] **Director of the Oregon Department of Natural Resources** and a  
 8 forest protective association may enter into a contract or agreement with each other or, jointly or  
 9 separately, with a federal or state agency, political subdivision, corporation, responsible organiza-  
 10 tion or responsible landowner or group of landowners for the prevention and suppression of fire on  
 11 forestland or on land other than forestland, or both, to prevent and suppress fire.

12 (2) Contracts and agreements under subsection (1) of this section, and all renewals and revisions  
 13 thereof, must be negotiated in accordance with procedures specified by rules of the [*State Board of*]  
 14 **Forestry] Oregon Natural Resources Commission.**

15 (3) The [*forester*] **director** and a forest protective association may enter into a contract or  
 16 agreement for the accomplishment of forestry related activities.

17 (4) Contracts and agreements between the [*forester*] **director** and a forest protective association  
 18 under subsections (1) and (2) of this section may include [*the purchase from the forester of*] **contracts**  
 19 **for the sale of** supplies and equipment needed to provide and support fire protection services.

20 **SECTION 1881.** ORS 477.412 is amended to read:

21 477.412. [*All money received by the forester pursuant to a contract or agreement described in ORS*  
 22 *477.406 shall be paid into the State Treasury, credited to the State Forestry Department Account and*  
 23 *used pursuant to law for the purposes of the contract or agreement.*] **All moneys received by the**  
 24 **Director of the Oregon Department of Natural Resources pursuant to a contract or agree-**  
 25 **ment described in ORS 477.406 shall be deposited in the Oregon Natural Resources Fund.**  
 26 **Money deposited in the fund under this section are continuously appropriated to the Oregon**  
 27 **Department of Natural Resources for purposes related to the administration of ORS 477.406.**

28 **SECTION 1882.** ORS 477.440 is amended to read:

29 477.440. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall ap-  
 30 point an Emergency Fire Cost Committee consisting of four members, who shall be forest landowners  
 31 or representatives of forest landowners whose forestland is being assessed for forest fire protection  
 32 within a forest protection district. At least one member shall be selected from each forest region  
 33 of the state. Members shall serve at the pleasure of the [*board*] **commission.**

34 (2) Members of the Emergency Fire Cost Committee shall be appointed by the [*board*] **com-**  
 35 **mission** for four-year terms. [*Appointments under this subsection shall be made by the board within*  
 36 *60 days after July 21, 1987.*] If there is a vacancy for any cause, the [*board*] **commission** shall make  
 37 an appointment to become immediately effective for the unexpired term.

38 **SECTION 1883.** ORS 477.455 is amended to read:

39 477.455. (1) Regular meetings of the **Emergency Fire Cost** Committee shall be held quarterly  
 40 [*prior to the day set for meetings of the State Board of Forestry, as otherwise provided by law*]. Special  
 41 meetings of the committee may be called by its chairperson or by three members. The act or deci-  
 42 sion of any three members shall be deemed the act or decision of the committee.

43 (2) A staff member of the [*State Forestry Department*] **Oregon Department of Natural Re-**  
 44 **sources** shall be designated by the [*State Forester*] **Director of the Oregon Department of Na-**  
 45 **tural Resources** to serve as administrator for the committee.

1        **SECTION 1884.** ORS 477.505 is amended to read:

2        477.505. (1) When conditions of fire hazard exist in a forest protection district or any part  
3 thereof, the [*State Forester*] **Director of the Oregon Department of Natural Resources** may des-  
4 ignate for that district or any part thereof the date of the beginning of a fire season for that year.  
5 The fire season shall continue for that district or part thereof until ended by order of the [*State*  
6 *Forester*] **director** when conditions of fire hazard no longer exist in that district or part thereof.

7        (2) The [*State Forester*] **director** may, during the same year and for the same district under  
8 circumstances similar to those described in subsection (1) of this section, designate one or more  
9 subsequent fire seasons.

10       **SECTION 1885.** ORS 477.510 is amended to read:

11       477.510. It is unlawful, during a fire season **and when** inside or within one-eighth of one mile  
12 of a forest protection district, to:

13       (1) Smoke while working in or traveling through any operation area.

14       (2) Use fuse and caps for blasting unless [*approval is granted by the forester*] **the Director of**  
15 **the Oregon Department of Natural Resources approves the use.**

16       **SECTION 1886.** ORS 477.515 is amended to read:

17       477.515. (1) It is unlawful to set or cause to be set an open fire inside or within one-eighth of  
18 one mile of a forest protection district, either on one's own land or on the land of another, without  
19 first securing a written permit for burning from the [*forester*] **Director of the Oregon Department**  
20 **of Natural Resources** and complying with the conditions of the permit. In granting permits for  
21 burning:

22       (a) The [*forester*] **director** may waive the requirement that permits be secured prior to burning,  
23 except during a fire season or when required under rules adopted pursuant to subsection (4) of this  
24 section.

25       (b) The [*forester*] **director** shall prescribe conditions necessary to be observed in setting a fire  
26 and preventing it from spreading out of control.

27       (c) The [*forester*] **director** may prescribe conditions necessary to be observed in maintaining air  
28 quality.

29       (2) Any permit obtained through willful misrepresentation is void.

30       (3) To avoid confusion or duplication of administration and to promote government efficiency,  
31 the [*forester*] **director** may enter into a cooperative agreement with a county, a city or a rural fire  
32 protection district that:

33       (a) Allows the [*forester*] **director** to administer the requirements of this section, in conjunction  
34 with the enforcement authority of ORS 477.980 to 477.993, on lands not otherwise subject to the  
35 requirements of this chapter; or

36       (b) Allows the cooperating agency to administer the burning permit requirements of ORS chap-  
37 ter 476 or 478, as appropriate, including applicable enforcement authority, on lands otherwise sub-  
38 ject to the requirements of this chapter.

39       (4) All burning allowed under this section shall comply with applicable rules that may be  
40 adopted by the [*State Board of Forestry and the Department of Environmental Quality*] **Oregon Na-**  
41 **tural Resources Commission or the Department of Environmental Quality.**

42       (5) The provisions of this section do not apply to campfires.

43       **SECTION 1887.** ORS 477.520 is amended to read:

44       477.520. The [*forester*] **Director of the Oregon Department of Natural Resources** may refuse,  
45 suspend or revoke a permit authorized by or issued under ORS 477.515 (1), when necessary in the

1 judgment of the [forester] **director** to prevent danger to life, health, forest resources or property.  
2 The [forester] **director** may also refuse, suspend or revoke a permit authorized by or issued under  
3 ORS 477.515 (1)[, *when necessary in the judgment of the forester, and after consultation with the En-*  
4 *vironmental Quality Commission*] to prevent air pollution, as defined in ORS 468A.005.

5 **SECTION 1888.** ORS 477.535 is amended to read:

6 477.535. (1) If the [forester] **Director of the Oregon Department of Natural Resources** de-  
7 termines that any forestland inside or within one-eighth of one mile of a forest protection district  
8 is particularly exposed to fire danger, by proclamation the [forester] **director** may designate such  
9 forestland as an extra fire hazard and may restrict the use of such forestland.

10 (2) The proclamation shall designate the area to which and the period during which the re-  
11 strictions apply, and require that the area be subject to use only upon the condition that entrants  
12 comply with all the restrictions for the area.

13 (3) The proclamation shall designate the type of closure as:

14 (a) Regulated closure;

15 (b) Permit closure; or

16 (c) Absolute closure.

17 (4) For the purpose of consistency and coordination between all affected agencies in the ad-  
18 ministration of forestland restrictions, a plan shall be developed by the [forester] **director**, in coop-  
19 eration with federal, state and local governmental agencies, landowners and organizations affected  
20 by the restrictions. The primary objective of the plan is uniformity of regulations regardless of land  
21 ownership. The plan must recognize variation in fire danger and must specify levels of closure by  
22 unique but easily recognizable geographic boundaries.

23 **SECTION 1889.** ORS 477.540 is amended to read:

24 477.540. (1) The [forester] **Director of the Oregon Department of Natural Resources** shall  
25 cause a notice of the closure proclaimed under ORS 477.535 to be posted in conspicuous locations  
26 that are in or near the designated areas. The [forester] **director** shall cause a notice of each proc-  
27 lamation to be published in at least one newspaper published in each forest protection district con-  
28 taining the designated areas. Each published notice shall describe the area, type, restrictions and  
29 effective date of closure, and the manner in which permits may be secured if the area is subject to  
30 a permit closure.

31 (2) The proclamation shall remain in force until the time designated therein expires or until the  
32 [forester] **director** finds that the restricted use is no longer requisite and by order suspends or ter-  
33 minates it. A reinstatement of a closure after a suspension does not require the notices described  
34 in subsection (1) of this section.

35 **SECTION 1890.** ORS 477.545 is amended to read:

36 477.545. (1) Regulated closures require entrants into designated areas to comply with the re-  
37 quirements set forth in the proclamation under ORS 477.535, which requirements in the judgment  
38 of the [forester] **Director of the Oregon Department of Natural Resources** are necessary to  
39 prevent danger to life, forest resources or property.

40 (2) Permit closures make the area subject to entry only through permit issued by the [forester]  
41 **director**. The permit shall contain requirements which in the judgment of the [forester] **director** are  
42 necessary to prevent danger to life, forest resources or property. The [forester] **director** may, during  
43 periods of fire hazard conditions, refuse, suspend, revoke or restrict such permits.

44 (3) Absolute closures restrict the areas to all forms of use and shall be designated only during  
45 periods of extreme fire hazard conditions endangering life, forest resources or property.

1        **SECTION 1891.** ORS 477.554 is amended to read:

2        477.554. (1) With the advice and assistance of the advisory committee established under ORS  
3 477.556, and subject to the review of the [*State Board of Forestry, the State Forester*] **Oregon Na-**  
4 **tural Resources Commission, the Director of the Oregon Department of Natural Resources**  
5 shall adopt and implement programs for meeting the objectives set forth in ORS 477.013 and 477.552  
6 to 477.562. The programs shall include:

7        (a) Collection, analysis and distribution of information regarding prescribed burning and other  
8 alternative fuel management techniques;

9        (b) Assistance to landowners wanting to evaluate alternative burning and nonburning fuel man-  
10 agement strategies and the collection of data regarding fuel conditions existing before and after  
11 treatment;

12        (c) Aerial monitoring of prescribed burning activity;

13        (d) **Collection, analysis and** distribution of information to the Department of Environmental  
14 Quality on progress toward meeting federal and state air quality standards;

15        (e) Establishment of a system to track forest burning on a geographically specific basis; and

16        (f) Collection, analysis and distribution of information regarding emissions from wildfires for  
17 comparison with prescribed burning.

18        (2) The programs shall be administered by the [*State Forestry Department*] **Oregon Department**  
19 **of Natural Resources.**

20        **SECTION 1892.** ORS 477.556 is amended to read:

21        477.556. (1) An advisory committee shall be created by the [*State Forester*] **Director of the**  
22 **Oregon Department of Natural Resources** to advise and assist the [*State Forester*] **director** in  
23 carrying out the programs required by ORS 477.013, 477.515 and 477.552 to 477.562. The advisory  
24 committee shall consist of five members as set forth in subsections (2) and (3) of this section.

25        (2) The following three members shall be appointed by the [*State Forester*] **director**:

26        (a) One member representing a nonindustrial forest landowner;

27        (b) One member representing an industrial forest landowner; and

28        (c) One member representing the public.

29        (3) In addition to the members designated in subsection (2) of this section, representatives of the  
30 following federal agencies shall be invited to serve as members of the advisory committee:

31        (a) A representative of the United States Forest Service.

32        (b) A representative of the United States Bureau of Land Management.

33        (4) Each member of the advisory committee shall serve for a term of two years.

34        (5) Members of the advisory committee are entitled to compensation as provided in ORS 292.495.

35        (6) A vacancy for any cause occurring before the expiration of a term shall be filled for the  
36 unexpired term by a person appointed by the [*State Forester*] **director.**

37        (7) A staff member of the [*State Forestry Department shall be designated by the State Forester*]  
38 **Oregon Department of Natural Resources shall be designated by the director** to serve as sec-  
39 retary for the committee.

40        **SECTION 1893.** ORS 477.558 is amended to read:

41        477.558. The advisory committee created under ORS 477.556 shall:

42        (1) Advise the [*State Forestry Department*] **Oregon Department of Natural Resources** in col-  
43 lecting information about prescribed burning operations; and

44        (2) Advise the [*State Forestry*] department on the collection, analysis and distribution of infor-  
45 mation required under ORS 477.554.



1       **SECTION 1894.** ORS 477.560 is amended to read:

2       477.560. (1) The Oregon Forest Smoke Management Account is established separate and distinct  
3 from the General Fund in the State Treasury.

4       (2) The following moneys shall be credited to the Oregon Forest Smoke Management Account:

5       (a) Nonrefundable registration fees received by the [*State Forestry Department*] **Oregon De-**  
6 **partment of Natural Resources** for Class 1 forestland under ORS 526.324 to be burned west of the  
7 summit of the Cascade Mountains, not including Hood River County.

8       (b) Fees received by the [*State Forester*] **Director of the Oregon Department of Natural Re-**  
9 **sources** for Class 1 forestland under ORS 526.324 treated by a prescription burn method under ORS  
10 477.515 (1) west of the summit of the Cascade Mountains, not including Hood River County.

11       (c) Fees for federal forestland included within the regulated area under ORS 477.013 to be  
12 treated by any prescription burn method subject to the provisions of the State of Oregon Clean Air  
13 Act Implementation Plan and the federal Clean Air Act received by the [*State Forester*] **director**.

14       (3) The moneys in the Oregon Forest Smoke Management Account are **continuously** appropri-  
15 ated [*continuously*] for and shall be used by the [*State Forester*] **director** exclusively for the admin-  
16 istration of the smoke management program approved under ORS 477.013 and 477.554.

17       **SECTION 1895.** ORS 477.562 is amended to read:

18       477.562. (1) The [*State Forestry Department*] **Oregon Department of Natural Resources** shall  
19 collect a nonrefundable registration fee for Class 1 forestland under ORS 526.324 to be burned west  
20 of the summit of the Cascade Mountains, not including Hood River County.

21       (2) Any owner of Class 1 forestland under ORS 526.324 and any agency managing Class 1  
22 forestland under ORS 526.324 lying within the regulated area as described in the plan required un-  
23 der ORS 477.013 shall register with the [*State Forester*] **Director of the Oregon Department of**  
24 **Natural Resources**, in accordance with rules adopted by the [*State Forester*] **director**, the number  
25 of acres to be burned prior to December 31 of the same year.

26       (3) The [*State Forester*] **director** shall establish by rule the amount of fees to be collected under  
27 this section. The fees may not exceed:

28       (a) Fifty cents per acre for registration.

29       (b) \$5 per acre for forestland classified as Class 1 under ORS 526.324 that has been treated by  
30 any prescription burn method authorized by the issuance of a permit under ORS 477.515 (1).

31       (4) Federal lands included within the regulated area under the provision of the smoke manage-  
32 ment plan approved under ORS 477.013 shall also be subject to the fees authorized under subsection  
33 (3) of this section for forestland to be treated by any prescription burn method subject to the pro-  
34 visions of the State of Oregon Clean Air Act Implementation Plan and the federal Clean Air Act.

35       (5) The [*State Forester*] **director** may establish a minimum fee per billing, combining the fees in  
36 subsections (1) and (3) of this section. The combined minimum fee may not exceed \$30.

37       (6) In order to efficiently collect fees established by this section, the [*State Forester*] **director**  
38 is authorized to enter into contracts or agreements with a federal land management agency, a per-  
39 son or a public body as defined in ORS 174.109. Such a contract or agreement may provide for  
40 payment methods such as estimated annual payments with periodic adjustment to ensure the recov-  
41 ery of actual fees due, or semiannual or quarterly consolidated billings.

42       (7) Notwithstanding ORS 291.238, moneys collected under this section shall be deposited in the  
43 Oregon Forest Smoke Management Account established under ORS 477.560.

44       **SECTION 1896.** ORS 477.565 is amended to read:

45       477.565. (1) In an operation area on forestland inside or within one-eighth of one mile of a forest

1 protection district:

2 (a) If power-driven machinery is used at any location to load and assemble forest products, the  
3 operator shall fell all dead trees and snags of such size and within such distance of the equipment  
4 as may be required by rules promulgated by the [State Forester] **Director of the Oregon Depart-**  
5 **ment of Natural Resources.**

6 (b) On forestland west of the summit of the Cascade Mountains, the operator shall fell all dead  
7 trees and snags within the operation area of such size, at such times and in such manner as may  
8 be required by rules promulgated by the [State Forester] **director.**

9 (2) Rules promulgated under this section shall prescribe such felling as reasonably is necessary  
10 to prevent the spread of fire.

11 **SECTION 1897.** ORS 477.580 is amended to read:

12 477.580. (1) Following the issuance of a permit pursuant to ORS 477.625, and after slashing has  
13 been created in an operation area inside or within one-eighth of one mile of a forest protection  
14 district, the [forester] **Director of the Oregon Department of Natural Resources** may make a  
15 determination if such slashing and debris exists on the operation area in sufficient quantity and  
16 arrangement as to constitute an additional fire hazard that endangers life, forest resources or  
17 property, and if such area is in need of additional work or protection to reduce, abate or offset the  
18 additional fire hazard. Whenever practical, the [forester] **director** shall make the determination re-  
19 ferred to in this subsection during the administration and enforcement of the Oregon Forest Prac-  
20 tices Act.

21 (2) If the [forester] **director** determines that an additional fire hazard exists on the operation  
22 area sufficient to endanger life, forest resources or property, and that such area is in need of addi-  
23 tional work or protection to reduce, abate or offset the additional fire hazard, the [forester] **director**  
24 shall so notify the landowner and operator or their representatives in writing of such determination.  
25 Pursuant to rules promulgated by the [State Forester] **director**, the notice to the landowner or op-  
26 erator shall contain provisions for offsetting the additional fire hazard by burning, improvements,  
27 extra protection or other means. The notice shall also specify a reasonable time for completion of  
28 the provisions contained therein.

29 (3) When the [forester] **director** finds that the provisions set forth in subsection (2) of this sec-  
30 tion have been complied with or that the additional hazard has been[, *in the opinion of the*  
31 *forester,*] sufficiently reduced by other means to offset the hazard, the [forester] **director** shall im-  
32 mediately issue to the operator or landowner a release from all obligations imposed by ORS 477.120  
33 (2)(c).

34 (4) If the [forester] **director** determines that an additional fire hazard exists, the [forester] **di-**  
35 **rector** shall, at the request of the owner or operator, with the approval of the owner, grant a re-  
36 lease upon payment by the owner or operator of such sum of money as the [forester] **director** finds  
37 necessary to provide additional protection or means necessary to reduce or offset the additional  
38 hazard created by such slashing and other debris. In no event may this sum exceed the lesser of:

39 (a) \$6 for each 1,000 board feet of timber harvested in an operation;

40 (b) The [forester's] **director's** estimated cost of reducing or providing other means to offset the  
41 additional hazard; or

42 (c) \$10 for each acre in a stand improvement operation where no timber is harvested.

43 (5) Moneys received under subsection (4) of this section shall be [*placed in the State Treasury,*  
44 *credited to the State Forestry Department Account and used exclusively for the purposes of*] **deposited**  
45 **in the Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection**

1 **are continuously appropriated to the Oregon Department of Natural Resources for purposes**  
 2 **related to forest protection within the district.**

3 (6) Any owner of forestland may make written request to the [*forester*] **director** to assume all  
 4 obligations for the disposal or reduction of any additional fire hazard determined to exist thereon.  
 5 If the [*forester*] **director** then determines that the owner can comply with such obligation, the  
 6 [*forester*] **director** shall immediately issue to all other persons involved a written release of such  
 7 obligations.

8 (7) Any order or determination made by the [*forester*] **director** pursuant to this section is final  
 9 unless modified or vacated in an appeal to the [*State Board of Forestry*] **Oregon Natural Resources**  
 10 **Commission** taken within 30 days after issuance of the order.

11 **SECTION 1898.** ORS 477.610 is amended to read:

12 477.610. (1) Notwithstanding any other law, the [*State Forester*] **Director of the Oregon De-**  
 13 **partment of Natural Resources**, in cooperation with other forest protection associations and  
 14 agencies, shall carry on a continuous program for the standardization of equipment used for the  
 15 protection of forestland from fire, and may issue rules, with the approval of the [*State Board of*  
 16 *Forestry*] **Oregon Natural Resources Commission**, for such standardization where it is the finding  
 17 of the [*forester and board*] **director and commission** that such standardization is economically  
 18 feasible.

19 (2) The provisions of ORS 476.410 to 476.440 shall not apply to equipment used for the protection  
 20 of forestland from fire.

21 **SECTION 1899.** ORS 477.615 is amended to read:

22 477.615. (1) During a fire season inside or within one-eighth of one mile of a forest protection  
 23 district, when, in the judgment of the [*forester*] **Director of the Oregon Department of Natural**  
 24 **Resources**, an operation is of sufficient size or so planned and operated as to justify additional  
 25 protection from fire, the owner or operator, when so directed by the [*forester*] **director** in writing,  
 26 shall provide, within such time as is specified in the writing, additional water supply and equipment  
 27 for use in fire suppression that is in conformity with rules promulgated by the [*State Forester*] **di-**  
 28 **rector**.

29 (2) All such equipment shall be kept in constant readiness for instant use in fighting forest fires.  
 30 However, nothing in this section prohibits the use of the equipment by the operator for sprinkling  
 31 roads or other uses within the operation area.

32 (3) Rules promulgated under this section shall prescribe such water supply and equipment as  
 33 reasonably are necessary to provide immediate and effective suppression of fires on forestland and  
 34 may provide for the use of alternate methods and equipment.

35 **SECTION 1900.** ORS 477.625 is amended to read:

36 477.625. (1) Every person conducting an operation inside or within one-eighth of one mile of a  
 37 forest protection district that uses fire in any form or power-driven machinery shall first obtain from  
 38 the [*forester*] **Director of the Oregon Department of Natural Resources** a written permit, which  
 39 shall require that the holder of the permit:

40 (a) Take reasonable precautions that in the judgment of the [*forester*] **director** are necessary in  
 41 the use of fire and power-driven machinery to prevent the spread of fire on or from an operation  
 42 area.

43 (b) Designate a representative authorized to act on all matters having to do with fire control,  
 44 which representatives shall be available at all times by direct means of communication with the  
 45 [*forester*] **director**.

1 (c) If operating west of the summit of the Cascade Mountains, close down any part or all of the  
2 operation during any period of time when notified that, in the judgment of the [forester] **director**,  
3 conditions exist as described in ORS 477.670.

4 (2) Routine road maintenance is excepted from the requirement to obtain a permit to operate  
5 power-driven machinery under this section. As used in this subsection "routine road maintenance"  
6 means grading, cleaning ditches, culvert cleaning, spot rocking or mechanical brushing along the  
7 roadside to maintain visibility.

8 (3)(a) The [forester] **director** may waive the requirement to obtain a written permit under this  
9 section when in the judgment of the [forester] **director** the operation will not constitute a fire haz-  
10 ard sufficient to justify the requirement.

11 (b) Waiver of the requirement to obtain a written permit under this section does not relieve the  
12 owner and operator of the responsibility for complying with other applicable duties, requirements  
13 or penalties of this chapter.

14 **SECTION 1901.** ORS 477.630 is amended to read:

15 477.630. (1) Each permit issued under ORS 477.625 shall include:

16 (a) The legal description of the area upon which any operation is to be conducted, or an alter-  
17 nate description of the area permitted by the [forester] **Director of the Oregon Department of**  
18 **Natural Resources**;

19 (b) The name and address of the operator and owner; and

20 (c) Any other information considered by the [forester] **director** to be necessary for the adminis-  
21 tration of the rules promulgated under this chapter.

22 (2) The information required in subsection (1) of this section shall be provided by the operator  
23 or owner, prior to issuance of the permit by the [forester] **director**.

24 **SECTION 1902.** ORS 477.635 is amended to read:

25 477.635. The [forester] **Director of the Oregon Department of Natural Resources** may issue  
26 the permits required in ORS 477.625 and suspend or revoke such permits because of violation of the  
27 terms thereof or noncompliance with this chapter. The [forester] **director** shall refuse to issue a  
28 permit to any person for the conduct of an operation when, in the judgment of the [forester]  
29 **director**, an excessive amount of forest debris in and around the operation area results in an ex-  
30 treme fire hazard that endangers life, forest resources or property.

31 **SECTION 1903.** ORS 477.640 is amended to read:

32 477.640. During a fire season, every person using, operating or fueling a saw powered by an  
33 internal combustion engine inside or within one-eighth of one mile of a forest protection district  
34 shall comply with the rules of the [State Forester] **Director of the Oregon Department of Natural**  
35 **Resources** relating thereto, promulgated for the prevention and suppression of fire.

36 **SECTION 1904.** ORS 477.645 is amended to read:

37 477.645. (1) During a fire season every person operating an internal combustion engine inside  
38 or within one-eighth of one mile of a forest protection district shall equip and maintain the engine  
39 in conformity with rules promulgated by the [State Forester] **Director of the Oregon Department**  
40 **of Natural Resources**. These rules shall prescribe such equipment as reasonably is necessary to  
41 prevent the escape of fire from such an engine.

42 (2) Escape of fire from any engine described in this section is prima facie evidence that it has  
43 not been equipped and maintained adequately in compliance with rules promulgated under this sec-  
44 tion.

45 **SECTION 1905.** ORS 477.650 is amended to read:

1 477.650. (1) During a fire season every person operating a stationary internal combustion engine  
2 inside or within one-eighth of one mile of a forest protection district shall provide at each engine  
3 on an operation area a water supply, and equipment for its use in fire suppression, in conformity  
4 with rules promulgated by the [*State Forester*] **Director of the Oregon Department of Natural**  
5 **Resources**. These rules shall prescribe such water supply and equipment as reasonably are neces-  
6 sary to prevent the spread of fire and may provide for the use of alternate methods and equipment.

7 (2) When a person has equipped one engine as required by subsection (1) of this section, any  
8 additional engines operated by the person within 150 feet of the equipped engine shall be exempt  
9 from the requirements of subsection (1) of this section.

10 (3) For the purposes of this section, an internal combustion engine shall be considered stationary  
11 if it is operated for a period of more than two days exclusively at one location in an operation area.

12 (4) The [*forester*] **director** in writing may waive any requirement of this section when an oper-  
13 ation will not constitute a fire hazard sufficient to justify the requirement.

14 **SECTION 1906.** ORS 477.655 is amended to read:

15 477.655. During a fire season inside or within one-eighth of one mile of a forest protection dis-  
16 trict:

17 (1) Every person conducting an operation shall provide and maintain, at the operation area or  
18 at a location designated by the [*forester, fire-fighting tools that are in conformity with rules*  
19 *promulgated by the State Forester*] **Director of the Oregon Department of Natural Resources,**  
20 **fire-fighting tools that are in conformity with rules promulgated by the director.** The tools  
21 shall be used only for fighting fire and for no other purpose.

22 (2) Each internal combustion engine used in an operation area shall be equipped with fire-  
23 fighting tools and equipment that are in conformity with rules promulgated by the [*State Forester*]  
24 **director.**

25 (3) All trucks driven over roads through forestland, excepting county roads and state highways,  
26 shall be equipped with fire-fighting tools and equipment that are in conformity with rules  
27 promulgated by the [*State Forester*] **director.**

28 (4) For purposes of this section, the rules promulgated by the [*State Forester*] **director:**

29 (a) Shall prescribe such type and number of tools and equipment for extinguishing fires as rea-  
30 sonably are necessary to suppress fires, and the manner of storing such tools when not in use.

31 (b) May provide for the use of alternate methods, tools and equipment.

32 (5) The tools and equipment prescribed by these rules shall be kept in constant repair and  
33 readiness for instant use.

34 **SECTION 1907.** ORS 477.660 is amended to read:

35 477.660. During a fire season when in the judgment of the [*forester*] **Director of the Oregon**  
36 **Department of Natural Resources** any operation inside or within one-eighth of one mile of a forest  
37 protection district has a fire hazard requiring additional protection, the operator shall provide such  
38 other facilities or services as the [*forester*] **director** by written notice may direct.

39 **SECTION 1908.** ORS 477.665 is amended to read:

40 477.665. (1) During a fire season inside or within one-eighth of one mile of a forest protection  
41 district, every operator using power-driven machinery in an operation area shall provide fire watch  
42 service on the operation area. The fire watch service shall consist of not less than one competent  
43 person, who shall be constantly on duty at times prescribed by rules promulgated by the [*State*  
44 *Forester*] **Director of the Oregon Department of Natural Resources**. These rules shall require  
45 fire watch service at such times and at such places as the spread of fire on or from the operation

1 area to forestland reasonably may be expected.

2 (2) The [forester] **director** may modify or waive, in writing, any requirement of this section as  
3 to any operation whenever the fire hazard is not sufficient to justify the requirement.

4 **SECTION 1909.** ORS 477.670 is amended to read:

5 477.670. During a fire season inside or within one-eighth of one mile of a forest protection dis-  
6 trict situated west of the summit of the Cascade Mountains, if the forestland in such district, or any  
7 part thereof, is susceptible in the judgment of the [forester] **Director of the Oregon Department**  
8 **of Natural Resources** to damage by fire, the [forester] **director** shall issue notice to that effect.  
9 Thereafter the use of fire in any form by any person in any operation area or the use of power-  
10 driven machinery for any operation, is unlawful unless approved by the [forester] **director**. Approval  
11 shall be granted only when in the judgment of the [forester] **director** the activity will not constitute  
12 a fire hazard sufficient to justify the requirement.

13 **SECTION 1910.** ORS 477.695 is amended to read:

14 477.695. (1) Every person operating a railroad of any kind in this state inside or within one-  
15 eighth of one mile of a forest protection district shall annually or more often, if so ordered in  
16 writing by the [forester, in a manner and to an extent ordered by the forester,] **Director of the**  
17 **Oregon Department of Natural Resources**, destroy or remove all flammable growth and  
18 flammable material from the right of way of the railroad. All burning done to comply with this  
19 section must be in accordance with ORS 477.505 to 477.520 and 477.625.

20 (2) The [forester] **director** shall allow a reasonable period of time for compliance with this order.

21 **SECTION 1911.** ORS 477.745 is amended to read:

22 477.745. (1) In addition to any other remedy provided by law, the parent or parents of an  
23 unemancipated minor child shall be liable for costs incurred by the [forester] **Director of the**  
24 **Oregon Department of Natural Resources** in suppressing fires on forestland caused by such mi-  
25 nor child. However, a parent who is not entitled to legal custody of the minor child at the time of  
26 the fire shall not be liable for such damages.

27 (2) The legal obligation of the parent or parents of an unemancipated minor child to pay dam-  
28 ages under this section shall be limited to not more than \$5,000 payable to the [forester] **director**  
29 for one or more acts.

30 (3) When an action is brought under this section on parental responsibility for acts of their  
31 children, the parents shall be named as defendants therein and, in addition, the minor child shall  
32 be named as a defendant. The filing of an answer by the parents shall remove any requirement that  
33 a guardian ad litem be required.

34 (4) Nothing in subsections (1) to (3) of this section applies to:

35 (a) Foster parents.

36 (b) Parents who have filed a petition for the unemancipated minor child under ORS 419B.809.

37 **SECTION 1912.** ORS 477.747 is amended to read:

38 477.747. The [State Forestry Department, the State Parks and Recreation Department, the State  
39 Department of Fish and Wildlife, the Department of State Lands and any other state agency with  
40 oversight responsibilities for state forestlands] **Oregon Department of Natural Resources** shall  
41 promote the effective use of state resources by adopting and implementing policies and management  
42 plans to begin efforts to restore and recover forestlands burned by fire so that social, economic and  
43 environmental values are not lost due to delay. These agencies shall coordinate, to the extent  
44 needed, to promote the efficient use of state resources in developing their fire restoration and re-  
45 covery policies and plans. The Oregon Department of Administrative Services may assist state

1 agencies under this section in developing contract and other procedures to expedite restoration and  
2 recovery efforts. The Oregon Department of Administrative Services shall provide appropriate con-  
3 tracting assistance and exceptions as may be necessary to expedite restoration and recovery efforts.

4 **SECTION 1913.** ORS 477.760 is amended to read:

5 477.760. (1) The reserve base of the Oregon Forest Land Protection Fund is \$22.5 million. On  
6 or about the last day of February of each year the Emergency Fire Cost Committee shall meet and  
7 determine the unencumbered balance of the fund as of the preceding February 16.

8 (2) In order to maintain the reserve base of the fund at \$22.5 million, the Emergency Fire Cost  
9 Committee may request and the State Treasurer may approve transfers to the fund in accordance  
10 with ORS 293.205 to 293.225, if the moneys in this fund fall below the reserve base, whether or not  
11 there are sufficient moneys in the fund to pay the obligations of the fund. Repayment of any such  
12 transfers shall be made from moneys paid into the fund pursuant to ORS 321.015 (2), 477.277 and  
13 477.880 and from such other moneys as may be credited to the fund therefor.

14 (3) If the committee determines that the moneys in the fund exceed:

15 (a) The reserve base, and that no repayment obligations are outstanding from transfers made  
16 pursuant to subsection (2) of this section, then the Department of Revenue shall reduce the taxes  
17 described in ORS 321.015 (2) by 50 percent for the following calendar year and the surcharge for  
18 each improved lot or parcel described in ORS 477.277 and the assessments described in ORS 477.880  
19 shall be reduced by 50 percent for the following fiscal year.

20 (b) \$30 million, and that no repayment obligations are outstanding from transfers made pursuant  
21 to subsection (2) of this section, then the Department of Revenue may not collect the taxes described  
22 in ORS 321.015 (2) for the following calendar year and the surcharge for each improved lot or parcel  
23 described in ORS 477.277 and the assessments described in ORS 477.880 may not be collected until  
24 the calendar year or fiscal year following the determination of the committee that the unencumbered  
25 balance in the fund is less than or equal to \$22.5 million.

26 (4)(a) Notwithstanding any other provision of law, if the funds referred to in subsection (2) of  
27 this section are inadequate to cover repayment of transfers from the State Treasurer or from other  
28 sources, the [State Forester] **Director of the Oregon Department of Natural Resources** shall in-  
29 crease the following taxes, assessments and charges in an amount adequate to ensure repayment of  
30 the transfers, and any interest accrued thereon, allowing for contingencies in valuation, assessment  
31 and collection:

32 (A) The harvest tax referred to in ORS 321.015 (2).

33 (B) The surcharge on developed lots referred to in ORS 477.277.

34 (C) The minimum assessment referred to in ORS 477.295.

35 (D) The acreage assessments referred to in ORS 477.880 (2).

36 (b) The increases to taxes, assessments and charges shall be apportioned based upon the  
37 proportionate levels of revenues received from each source by the Oregon Forest Land Protection  
38 Fund. Any such increases shall be computed on or before January 1 of each year, and shall be based  
39 upon revenues received during the previous four quarters. Any such increases shall be made in the  
40 appropriate calendar or fiscal year following that in which the requested transfers from the State  
41 Treasurer or from other sources are made.

42 **SECTION 1914.** ORS 477.775 is amended to read:

43 477.775. (1) Prior to February 1 of each year, the Emergency Fire Cost Committee and the  
44 [forester] **Director of the Oregon Department of Natural Resources** shall consult regarding the  
45 purchase of emergency fire suppression costs insurance and the level of coverage to purchase for

1 the fire season of that year.

2 (2) In determining whether the purchase of insurance is advisable, the [*forester*] **director** and the  
3 committee shall consider:

4 (a) The cost, coverage and deductible of insurance available from private insurance carriers;

5 (b) The funding available for fire suppression from the Oregon Forest Land Protection Fund and  
6 other sources;

7 (c) The current condition of forests;

8 (d) Long-term weather predictions;

9 (e) Available fire fighting resources; and

10 (f) Available funds for the purchase of insurance.

11 (3) If the committee and the [*forester*] **director** agree to purchase insurance, the [*forester*] **di-**  
12 **rector** shall purchase insurance through the Oregon Department of Administrative Services to cover  
13 any lawful expense incurred by the [*State Forestry Department*] **Oregon Department of Natural**  
14 **Resources**, or contractors or cooperators, that is payable by the Oregon Forest Land Protection  
15 Fund. The insurance may be obtained through negotiation or competitive bids, whichever is in the  
16 best interest of the state, its contractors and cooperators.

17 (4) The Oregon Forest Land Protection Fund may not be charged for payment of more than  
18 one-half of any premium for the insurance.

19 **SECTION 1915.** ORS 477.777 is amended to read:

20 477.777. (1) As part of the preparation of the budget forms submitted to the Oregon Department  
21 of Administrative Services pursuant to ORS 291.208 for the [*State Forestry Department, the State*  
22 *Forester*] **Oregon Department of Natural Resources, the Director of the Oregon Department**  
23 **of Natural Resources** shall prepare, in addition to any amounts budgeted for forest protection  
24 districts pursuant to ORS 477.205 to 477.281, a budget request for a General Fund appropriation that  
25 may be used for any or all of the following:

26 (a) Providing funds for the purchase of insurance under ORS 477.775.

27 (b) Placement of centrally managed fire suppression resources for statewide use.

28 (c) Acquisition of fast-mobilizing, short-term contingency resources to be used based on predic-  
29 tions of unusually severe fire weather, widespread lightning events or serious resource shortage due  
30 to a heavy fire season.

31 (d) Enhancement of forest protection district resources in limited cases where land productivity  
32 or other economic factors seriously limit the protection district's ability to provide adequate funding  
33 to meet performance standards.

34 (2) The [*State Forester*] **director** shall utilize critical discretion in the expenditure of the funds  
35 provided to the [*State Forestry*] department pursuant to the separate budget request required under  
36 subsection (1) of this section.

37 (3) The [*State Forester*] **director** shall report to the Emergency Board, each year, after the close  
38 of the fire season, on:

39 (a) The nature and severity of the fire season;

40 (b) The moneys expended on fire suppression;

41 (c) The rationale for the expenditures; and

42 (d) The balance remaining from the biennial appropriation.

43 **SECTION 1916.** ORS 477.880 is amended to read:

44 477.880. (1) An assessment for the cost of fire protection and suppression is levied upon the  
45 owners of all forestland that has been classified under ORS 526.305 to 526.370 and that is protected



1 from the start or spread of fire thereon or therefrom by:

2 (a) The [*forester*] **Director of the Oregon Department of Natural Resources** under ORS  
3 477.210 (4), *with the approval of the State Board of Forestry*];

4 (b) The United States of America through contract or agreement with the [*forester or board*]  
5 **director or the Oregon Natural Resources Commission**;

6 (c) Any forest protective agency under contract or agreement with the [*forester or board*] **di-**  
7 **rector or commission** pursuant to ORS 477.406; or

8 (d) Any forest protective agency, described in paragraph (c) of this subsection, under a contract  
9 or agreement with the United States of America wherein such agency agrees to protect specific  
10 federal forestlands, and in return, the United States of America agrees to protect specific lands of  
11 such agency.

12 (2) Except as otherwise provided in ORS 477.760, for each fiscal year the assessment levied per  
13 acre of ownership of forestland designated in subsection (1) of this section shall be:

14 (a) Seven and one-half cents for all forestlands east of the summit of the Cascade Mountains and  
15 all forestlands which have been classified Class 3, agricultural class, under ORS 526.305 to 526.370;  
16 or

17 (b) Five cents for all forestlands not described in paragraph (a) of this subsection.

18 **SECTION 1917.** ORS 477.960 is amended to read:

19 477.960. (1) Insofar as applicable, the assessment levied under ORS 477.880 shall be due and  
20 payable to the [*forester*] **Director of the Oregon Department of Natural Resources** in like man-  
21 ner and procedure, including penalties and interest, as set forth for the collection of the protection  
22 costs provided in ORS 477.270. Wherever applicable, the assessment levied under ORS 477.880 shall  
23 be combined with the budgeted cost certified to the county under ORS 477.270 as one amount for  
24 each account listed so that the officer in charge of the roll can extend the amounts on the assess-  
25 ment roll in a separate column in a single figure.

26 (2) The minimum assessment set forth in ORS 477.295 shall be applied to the combined amount  
27 described in subsection (1) of this section.

28 **SECTION 1918.** ORS 477.980 is amended to read:

29 477.980. The [*State Board of Forestry, by rule,*] **Oregon Natural Resources Commission by**  
30 **rule** shall establish the enforcement policy for violations prescribed in ORS 477.993. In determining  
31 the enforcement policy, the [*board*] **commission** may consider the following factors:

32 (1) Prior violation of the same or similar statutes, rules or orders.

33 (2) The gravity and magnitude of the violation.

34 (3) Whether the violations were repeated or continuous.

35 (4) Whether the cause of the violation was an unavoidable accident or a willful, malicious or  
36 negligent act.

37 (5) Whether the violation directly threatened human life or caused property damage of \$10,000  
38 or more.

39 **SECTION 1919.** ORS 477.985 is amended to read:

40 477.985. (1) In addition to any other persons permitted to enforce violations, the [*State Forestry*  
41 *Department and the State Forester, or any employee specifically designated by the department or by the*  
42 *State Forester,*] **Director of the Oregon Department of Natural Resources or an employee of**  
43 **the Oregon Department of Natural Resources who been specifically designated by the direc-**  
44 **tor** may issue citations for violations established under ORS 477.993 in the manner provided by ORS  
45 chapter 153.

1 (2) All fines and court costs recovered from violations established under ORS 477.993 shall be  
 2 paid to the clerk of the court involved. Such moneys shall be credited and distributed under ORS  
 3 137.290 and 137.295 as monetary obligations payable to the state.

4 **SECTION 1920.** ORS 478.150 is amended to read:

5 478.150. Prior to the formation of any rural fire protection district or the annexation of any  
 6 territory to an existing rural fire protection district of any territory within the exterior boundaries  
 7 of a forest protection district established pursuant to ORS chapter 477, the petitioners of the pro-  
 8 posed district or annexation shall confer with the [*State Forestry Department*] **Oregon Department**  
 9 **of Natural Resources** in determining the boundaries and lands to be included within the rural fire  
 10 protection district.

11 **SECTION 1921.** ORS 478.665 is amended to read:

12 478.665. In addition to any other method of initiating proceedings to withdraw territory from a  
 13 district, the county board may, after appropriate proceedings, order the withdrawal of forestland  
 14 from a district if:

15 (1) Written request for the withdrawal is submitted to the county board by the district board;

16 (2) Inclusion of the withdrawn forestland within a forest protection district under ORS 477.205  
 17 to 477.281 is agreed to by the [*State Forester*] **Director of the Oregon Department of Natural**  
 18 **Resources**;

19 (3) A public hearing for the landowners concerned is held regarding the withdrawal by the  
 20 county board; and

21 (4) Any lands so withdrawn and transferred to a forest protection district for purposes of fire  
 22 protection shall be assessed for this purpose under ORS chapter 477 and, except as provided by ORS  
 23 198.880, shall no longer be assessed for fire protection by the rural fire protection district.

24 **SECTION 1922.** ORS 526.005 is amended to read:

25 526.005. As used in this chapter, unless the context otherwise requires:

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

27 [(2)] (1) "Certified Burn Manager" means an individual, other than the [*forester*] **Director of the**  
 28 **Oregon Department of Natural Resources**, who is currently certified under a program established  
 29 pursuant to ORS 526.360 (3).

30 [(3) "*Department*" means the *State Forestry Department*.]

31 [(4) "*Forester*" means the *State Forester* or the *authorized representative of the forester*.]

32 [(5)] (2)(a) "Forestland" means any woodland, brushland, timberland, grazing land or clearing  
 33 that, during any time of the year, contains enough forest growth, slashing or vegetation to consti-  
 34 tute, in the judgment of the [*forester*] **director**, a fire hazard, regardless of how the land is zoned  
 35 or taxed.

36 (b) As used in this subsection, "clearing" means any grassland, improved area, lake, meadow,  
 37 mechanically or manually cleared area, road, rocky area, stream or other similar opening that is  
 38 surrounded by or contiguous to land described in paragraph (a) of this subsection and that has been  
 39 included in areas classified as forestland under ORS 526.305 to 526.370.

40 [(6)] (3) "Forestry carbon offset" means a transferable unit based on a measured amount of  
 41 carbon storage expressed as a carbon dioxide emission equivalent, or other equivalent standard, and  
 42 accruing on forestland as live or dead matter in trees, shrubs, forest litter and soil.

43 [(7)] (4) "Nonindustrial private forest landowner" means any forest landowner who does not own  
 44 a forest products manufacturing facility that employs more than six people.

45 [(8)] (5) "Nonindustrial private forestland" means any forestland owned by a nonindustrial pri-

1 vate forest landowner.

2 **SECTION 1923.** ORS 526.036 is amended to read:

3 526.036. (1) *[Before entering upon the duties of office, the forester shall furnish]* **For purposes**  
 4 **related to the administration of this chapter and ORS chapter 477, the Director of the**  
 5 **Oregon Department of Natural Resources shall secure, before being appointed by the Gov-**  
 6 **ernor under section 2 of this 2011 Act,** a fidelity bond in favor of the State of Oregon in the penal  
 7 sum of \$100,000 issued by one or more corporate sureties authorized to do business in the State of  
 8 Oregon[, *conditioned upon the faithful and honest handling and disposition of the moneys in the State*  
 9 *Forestry Department Account and any other moneys in the hands of the forester*]. **The director may**  
 10 **use moneys in the Oregon Natural Resources Fund to secure the bond.** The bond and sureties  
 11 are subject to approval by the Director of the Oregon Department of Administrative Services as  
 12 provided in ORS 291.011.

13 (2) The premium for the bond shall be *[paid from the appropriation of the State Board of*  
 14 *Forestry]* **funded by moneys appropriated to the Oregon Natural Resources Commission.**

15 (3) Except as provided in subsection (1) of this section, the *[board]* **commission** may require a  
 16 fidelity bond, with one or more corporate sureties authorized to do business in this state, of any  
 17 officer or employee of the *[State Forestry Department. The board]* **Oregon Department of Natural**  
 18 **Resources who is involved in the administration of this chapter or ORS chapter 477. The**  
 19 **commission** shall fix the amount of the bond, which otherwise is subject to subsections (1) and (2)  
 20 of this section.

21 **SECTION 1924.** ORS 526.041 is amended to read:

22 526.041. *[The forester, under the general supervision of the State Board of Forestry,]* **In admin-**  
 23 **istering programs related to the protection of forests from fire and managing and controlling**  
 24 **the forestland of this state, the Director of the Oregon Department of Natural Resources**  
 25 **shall:**

26 (1) In compliance with ORS chapter 183, promulgate rules consistent with law for the enforce-  
 27 ment of the state forest laws relating directly to the protection of forestland and the conservation  
 28 of forest resources.

29 (2) Appoint and instruct fire wardens as provided in ORS chapter 477.

30 (3) Direct the improvement and protection of forestland owned by the State of Oregon.

31 (4) Collect data relative to forest conditions.

32 (5) Take action authorized by law to prevent and extinguish forest, brush and grass fires.

33 (6) Enforce all laws pertaining to forestland and prosecute violations of such laws.

34 (7) Cooperate with landowners, political subdivisions, private associations and agencies and  
 35 others in forest protection.

36 (8) Advise and encourage reforestation.

37 (9) Publish such information on forestry as the *[forester]* **director** determines to be in the public  
 38 interest.

39 (10) Enter into contracts and cooperative agreements pertaining to experiments and research in  
 40 forestry.

41 (11) Sell, exchange or otherwise dispose of any real property heretofore or hereafter acquired  
 42 by the *[board]* **Oregon Department of Natural Resources** for administrative purposes and no  
 43 longer needed.

44 *[(12) Coordinate any activities of the State Forestry Department related to a watershed enhance-*  
 45 *ment project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities*

1 of other cooperating state and federal agencies participating in the project.]

2 [(13)] (12) Prescribe uniform state standards for certification of wildland fire training courses  
3 and educational programs.

4 **SECTION 1924a.** ORS 526.046 is amended to read:

5 526.046. (1) Under the direction of the [*State Board of Forestry, the forester*] **Oregon Depart-**  
6 **ment of Natural Resources, the Director of the Oregon Department of Natural Resources:**

7 (a) Shall, upon request, and whenever the [*forester*] **director** deems that it is in the public in-  
8 terest, assist and cooperate with any federal or state department or any institution, political subdivi-  
9 sion or person owning or controlling forestland within this state, in the preparation of plans for  
10 their protection, management, replacement or extension. Unless otherwise provided by law, the  
11 parties obtaining such assistance shall pay the necessary costs of travel, subsistence and other field  
12 expenses incurred by the [*forester*] **director** or the assistants of the [*forester*] **director** in the prep-  
13 aration and execution of these plans.

14 (b) May enter into contracts with the applicants under which the [*forester*] **director** will super-  
15 vise the execution of the plans. However, the costs of carrying out the plans shall be paid by the  
16 applicants.

17 (2) In carrying out this section the [*forester*] **director** may require the applicant to deposit in  
18 one or more installments the moneys needed to cover the cost of preparing and executing the plans.  
19 These deposits shall be [*placed in the State Treasury, credited to the State Forestry Department Ac-*  
20 *count and used exclusively for the purposes of this section.*] **deposited in the Oregon Natural Re-**  
21 **sources Fund. Moneys deposited in the fund under this subsection are continuously**  
22 **appropriated to the department for the purposes of this section.**

23 **SECTION 1925.** ORS 526.052 is amended to read:

24 526.052. (1) For purposes of this section, “forest protective association” or “association” has the  
25 meaning for that term provided in ORS 477.001.

26 (2) Subject to subsection (3) of this section, a person employed by a forest protective association  
27 at a time when the association was under contract or cooperative agreement with the [*forester or*  
28 *State Board of Forestry*] **Director of the Oregon Department of Natural Resources or the**  
29 **Oregon Natural Resources Commission** by authority of ORS chapter 477 and this chapter, with  
30 specific reference to ORS 477.406 to 477.412, or predecessor statutes, shall receive the following  
31 credits when transferring directly from association employment to employment by the [*State Forestry*  
32 *Department*] **Oregon Department of Natural Resources:**

33 (a) Sick leave accrual earned during employment as an association employee.

34 (b) Rate of accumulating annual leave based on years of service as an association employee.

35 (c) Credit for current service under the Public Employees Retirement System equal to periods  
36 of service as an association employee as determined by the Public Employees Retirement Board, if  
37 the person, before the effective date of retirement of the person as a member of the system, applies  
38 in writing to the retirement board for that credit or any part thereof and pays to the retirement  
39 board in a lump sum for credit to the member account of the member an amount determined by the  
40 retirement board to be equal to the total amount of employee and employer contributions with in-  
41 terest that would have accumulated had the person been a member of the system as an employee  
42 of the [*State Forestry*] department in a position equivalent to that held by the person for the periods  
43 of service or part thereof as an association employee.

44 (3) The credits granted by subsection (2) of this section shall be granted if the employee makes  
45 an immediate transfer from association employment to state employment, and if the person earned

1 employment credits as an association employee under standards comparable to laws and rules of the  
2 State of Oregon governing similar credits in state employment.

3 (4) Unless the employee transferring to employment with the [*State Forestry*] department first  
4 becomes a member of the Public Employees Retirement System before January 1, 2000, as described  
5 in subsection (6) of this section:

6 (a) The employee may acquire credit under subsection (2)(c) of this section only after the em-  
7 ployee has been a member of the Public Employees Retirement System for at least 60 calendar  
8 months; and

9 (b) The maximum number of years of retirement credit that a person may acquire under sub-  
10 section (2)(c) of this section is five years.

11 (5) If a person subject to the limitation imposed by subsection (4)(b) of this section is also eli-  
12 gible for credit under ORS 238.145, and the person is subject to the limitation imposed by ORS  
13 238.145 (4), the total years of credit that the person may acquire under this section and under the  
14 provisions of ORS 238.145 may not exceed five years.

15 (6) A person becomes a member of the Public Employees Retirement System before January 1,  
16 2000, for the purposes of this section if:

17 (a) The person is a member of the system on January 1, 2000; or

18 (b) The person was a member of the system before January 1, 2000, ceased to be a member of  
19 the system under the provisions of ORS 238.095, 238.265 or 238.545 before January 1, 2000, but re-  
20 stores part or all of the forfeited creditable service from before January 1, 2000, under the pro-  
21 visions of ORS 238.105 or 238.115 after January 1, 2000.

22 **SECTION 1926.** ORS 526.060 is amended to read:

23 526.060. [(1) *Except as provided in ORS 526.121, 530.147 and 530.280, all assessments, federal ap-  
24 portionments or contributions, and other moneys received by the forester or State Board of Forestry,  
25 shall be paid into the State Treasury and credited to the State Forestry Department Account, which is  
26 established separate and distinct from the General Fund. All moneys in the State Forestry Department  
27 Account are continuously appropriated, and shall be used by the forester, under the supervision and  
28 direction of the board, for the purposes authorized by law.*]

29 [(2) *The forester shall keep a record of all moneys deposited in the State Forestry Department  
30 Account. The record shall indicate by separate cumulative accounts the source from which the moneys  
31 are derived and the individual activity or program against which each withdrawal is charged. All  
32 moneys in the account received pursuant to ORS 527.610 to 527.770 and 527.992 shall be used only for  
33 carrying out the duties, functions and powers of the State Forestry Department in administering ORS  
34 527.610 to 527.770 and 527.992.*]

35 **(1) All moneys received pursuant to ORS 527.610 to 527.770 and 527.992 shall be deposited  
36 in the Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection  
37 are continuously appropriated to the Oregon Department of Natural Resources for purposes  
38 related to the administration of ORS 527.610 to 527.770 and 527.992.**

39 [(3)] **(2)** The Urban and Community Forestry Subaccount is established as a subaccount of the  
40 [*State Forestry Department Account*] **Oregon Natural Resources Fund.** Moneys in the Urban and  
41 Community Forestry Subaccount are continuously appropriated to the [*State Forestry Department*]  
42 **department** to be used for urban and community forest activities described in ORS 469.634 and  
43 469.652.

44 [(4)] **(3)** The State Forest Enhancement Donation Subaccount is established as a subaccount [*to  
45 the State Forestry Department Account*] **of the Oregon Natural Resources Fund.** Moneys in the

1 State Forest Enhancement Donation Subaccount are continuously appropriated to the [*State*  
2 *Forestry*] department to be used for the purposes described in ORS 526.065.

3 [(5)] (4) The State Forest Nursery Subaccount is established as a subaccount [*to the State*  
4 *Forestry Department Account*] **of the Oregon Natural Resources Fund**. Moneys in the State Forest  
5 Nursery Subaccount are continuously appropriated to the [*State Forestry*] department to be used for  
6 the purposes described in ORS 526.235.

7 [(6)] (5) The State Forest Tree Seed Bank Subaccount is established as a subaccount [*to the State*  
8 *Forestry Department Account*] **of the Oregon Natural Resources Fund**. Moneys in the State Forest  
9 Tree Seed Bank Subaccount are continuously appropriated to the [*State Forestry*] department to be  
10 used for the purposes described in ORS 526.470.

11 [(7)] (6) The State Forest Tree Seed Orchard Subaccount is established as a subaccount [*to the*  
12 *State Forestry Department Account*] **of the Oregon Natural Resources Fund**. Moneys in the State  
13 Forest Tree Seed Orchard Subaccount are continuously appropriated to the [*State Forestry*] depart-  
14 ment to be used for the purposes described in ORS 526.472.

15 [(8)] (7) Notwithstanding ORS 291.238, the moneys credited to the subaccounts established under  
16 subsections [(5), (6) and (7)] (4), (5) and (6) of this section shall be continuously available on a re-  
17 volving basis.

18 **SECTION 1927.** ORS 526.065 is amended to read:

19 526.065. (1) The [*State Forestry Department*] **Oregon Department of Natural Resources** may  
20 receive gifts, grants, bequests, endowments and donations of moneys, labor or materials from public  
21 and private sources for the purpose of contributing to the management and enhancement of state  
22 forests, including but not limited to activities such as recreation, education, interpretation, research  
23 and monitoring, cultural resources management and habitat improvement.

24 (2) The department may apply for, accept and utilize grants from the federal government to ac-  
25 complish the goals of a federal forest legacy program. In implementing the federal forest legacy  
26 program, the department shall ensure that the program complies with all land use laws and regu-  
27 lations.

28 (3) On or before January 15 of each odd-numbered year, the [*State Forester*] **Director of the**  
29 **Oregon Department of Natural Resources** shall report to the committee created by ORS 171.555  
30 and to any legislative committee with responsibility for forestry issues regarding:

31 (a) The number and monetary amounts of grants applied for under the federal forest legacy  
32 program;

33 (b) The number and monetary amounts of grants awarded under the federal forest legacy pro-  
34 gram; and

35 (c) The location and disposition of areas affected by the federal forest legacy program.

36 (4) The department shall deposit moneys received under this section into the State Forest En-  
37 hancement Donation Subaccount created under ORS 526.060. The department may expend moneys,  
38 materials or labor received under this section only for the purposes specified in the gift, grant, be-  
39 quest, endowment or donation. If no purpose is specified, the department may use the moneys, ma-  
40 terials or labor for the management and enhancement of state forests.

41 **SECTION 1928.** ORS 526.090 is amended to read:

42 526.090. The [*forester, under the supervision and direction of the State Board of Forestry,*] **Di-**  
43 **rector of the Oregon Department of Natural Resources** may receive moneys from the federal  
44 government in connection with cooperative work and programs set out in the Agricultural Act of  
45 1956, as amended (Public Law 84-540, 70 Stat. 188), particularly the provisions of Title I (7 U.S.C.

1 1801 to 1837) and Title IV (16 U.S.C. 568e to 568g), and Acts amendatory thereof and supplemental  
2 or complementary thereto.

3 **SECTION 1929.** ORS 526.095 is amended to read:

4 526.095. The State of Oregon has accepted the provisions of the Clarke-McNary Act (43 Stat.  
5 653), as amended, and will observe and comply with the requirements of that Act. The [*forester, un-*  
6 *der the supervision and direction of the State Board of Forestry,*] **Director of the Oregon Depart-**  
7 **ment of Natural Resources** is the agent of the State of Oregon for the purposes of that Act, and  
8 may cooperate with the authorities of the United States having powers and duties under that Act  
9 to do all things necessary to secure to the State of Oregon the benefits of that Act or Acts  
10 amendatory thereof and supplemental or complementary thereto.

11 **SECTION 1930.** ORS 526.105 is amended to read:

12 526.105. All moneys received pursuant to the Acts of Congress mentioned in ORS 526.090 and  
13 526.095 shall be [*paid into the State Treasury, credited to the State Forestry Department Account, and*  
14 *used exclusively for the purposes of the respective*] **deposited in the Oregon Natural Resources**  
15 **Fund. Moneys deposited in the fund under this section are continuously appropriated to the**  
16 **Oregon Department of Natural Resources for purposes related to the administration of the**  
17 **Acts.**

18 **SECTION 1931.** ORS 526.111 is amended to read:

19 526.111. (1) Notwithstanding ORS 291.238 or any other law, a revolving account in the sum of  
20 \$750,000 deposited with the State Treasurer shall be at the disposal of the [*forester*] **Director of the**  
21 **Oregon Department of Natural Resources** for the payment of:

22 (a) Lawful expenses incurred under the direction of the [*forester and the State Board of*  
23 *Forestry*] **director and the Oregon Natural Resources Commission** in the prevention or sup-  
24 pression of fire and the protection of forestlands; and

25 (b) Miscellaneous bills and extraordinary items which are payable in cash immediately upon  
26 presentation.

27 (2) The [*forester*] **director** may draw checks upon the State Treasurer in making disbursements  
28 from the revolving account for the purposes stated in this section. Reimbursement of such dis-  
29 bursements shall be made from funds and accounts budgeted and allotted for expenses of the [*State*  
30 *Forestry Department*] **Oregon Department of Natural Resources**. The revolving account is not  
31 subject to allotment or allocation of moneys pursuant to ORS 291.234 to 291.260.

32 **SECTION 1932.** ORS 526.121 is amended to read:

33 526.121. (1) Reimbursement vouchers for claims paid from the revolving account created by ORS  
34 526.111 shall be approved by the [*forester*] **Director of the Oregon Department of Natural Re-**  
35 **sources**. Warrants in payment of the vouchers shall be drawn in favor of the [*forester*] **director**  
36 and deposited with the State Treasurer to reimburse the revolving account.

37 (2) The [*forester*] **director** shall maintain such records as readily disclose the true status of  
38 vouchers payable from, and checks outstanding against, the revolving account and the balance to  
39 the credit thereof.

40 **SECTION 1933.** ORS 526.125 is amended to read:

41 526.125. (1) The [*State Forestry Department*] **Oregon Department of Natural Resources** may  
42 receive and disburse gifts, grants, bequests, endowments and donations of labor and material from  
43 public and private sources for the purpose of developing and operating a forest interpretation and  
44 education center in the Tillamook State Forest.

45 (2) The Tillamook Forest Interpretive Center Fund is created in the State Treasury, separate

1 and distinct from the General Fund. All moneys received by the [*State Forestry*] department under  
 2 subsection (1) of this section shall be paid into the State Treasury and credited to the Tillamook  
 3 Forest Interpretive Center Fund. All interest earned by the fund shall be credited to the fund.

4 (3) All moneys in the Tillamook Forest Interpretive Center Fund are continuously appropriated  
 5 to the [*State Forestry*] department and may be expended only for the purposes specified in the gift  
 6 or donation, or, if no purpose is specified, only for the purpose of forest interpretation and educa-  
 7 tion.

8 **SECTION 1934.** ORS 526.131 is amended to read:

9 526.131. Subject to the allotment provisions of ORS 291.238, the [*State Forester and State Board*  
 10 *of Forestry*] **Director of the Oregon Department of Natural Resources and the Oregon Natural**  
 11 **Resources Commission** hereby are authorized to purchase or accept excess and surplus property  
 12 from the United States.

13 **SECTION 1935.** ORS 526.135 is amended to read:

14 526.135. The [*forester, with the approval of the State Board of Forestry,*] **Director of the Oregon**  
 15 **Department of Natural Resources, with the approval of the Oregon Natural Resources Com-**  
 16 **mission,** may lease equipment that is under the jurisdiction [*and control of the forester and board*  
 17 *to any agency of the United States.*] **or control of the director or the commission to any agency**  
 18 **of the United States for purposes related to this chapter or ORS chapter 477.** However:

19 (1) The lease must include a reasonable rental fee and require the lessee to maintain the  
 20 equipment during the lease period; and

21 (2) The federal agency must be a cooperator with the [*forester and board*] **director or the**  
 22 **commission** in common activities and programs for which the equipment is leased.

23 **SECTION 1936.** ORS 526.142 is amended to read:

24 526.142. As used in ORS 526.142 to 526.152[,]:

25 (1) "Equipment" includes the necessary materials and supplies for the operation of equipment  
 26 in the equipment pool authorized by ORS 526.144; **and**

27 (2) "**Equipment pool**" means the aggregate of equipment transferred or purchased pur-  
 28 **suant to ORS 526.144 for purposes related to acquiring, operating, storing, maintaining or**  
 29 **replacing equipment used in the administration of this state's forestlands.**

30 **SECTION 1937.** ORS 526.144 is amended to read:

31 526.144. (1) [*The equipment pool operated by the forester and the State Board of Forestry, which*  
 32 *furnishes transportation and equipment for the various activities and programs of the board, is for the*  
 33 *acquisition, operation, storage, maintenance and replacement of equipment. Notwithstanding any other*  
 34 *law, the forester, under the direction of the board,*] **In administering this state's forestlands, the**  
 35 **Director of the Oregon Department of Natural Resources, under the direction of the Oregon**  
 36 **Natural Resources Commission** may:

37 (a) Determine each activity or program of the [*board*] **Oregon Department of Natural Re-**  
 38 **sources** that shall participate in the equipment pool, and in so doing, cause the transfer of moneys  
 39 from the account representing such activity or program in an amount determined advisable for  
 40 equipment pool purposes. However, in each instance the transfer of moneys must be based on the  
 41 proportionate use of the equipment pool, or the proposed use thereof, by the activity or program.

42 (b) Transfer equipment to the equipment pool, which items of transfer are owned by the State  
 43 of Oregon and under the jurisdiction of the [*board or forester*] **department.** In such event the re-  
 44 cords shall reveal the cash value of the transferred items as of the date of the transfer.

45 (2) Forest protective associations or agencies under contract or cooperative agreement with the



1 [board] **director** pursuant to ORS 477.406 may, with the approval of the [board] **director**, participate  
 2 in the equipment pool for the purposes of the contract or agreement. Participation by such an as-  
 3 sociation or agency shall be on the same basis as an activity or program of the [board] **director** that  
 4 participates in the equipment pool.

5 **SECTION 1938.** ORS 526.146 is amended to read:

6 526.146. (1) All items transferred under ORS 526.144, together with any equipment purchased  
 7 from moneys transferred to the equipment pool, are available for all activities or programs partic-  
 8 ipating in the equipment pool. However, upon use of such equipment for any activity or program, a  
 9 reasonable use charge shall be made against such activity or program. The charge shall be based  
 10 upon the maintenance and replacement costs for the equipment used, including operational expenses.

11 (2) At the end of each month the [*forester, under the supervision and direction of the State Board*  
 12 *of Forestry,*] **Director of the Oregon Department of Natural Resources** shall render a statement  
 13 on a basis of mileage or rental against each activity or program for transportation or equipment  
 14 used or furnished for such activity or program. Administrative costs in connection with the opera-  
 15 tion of the equipment pool shall be included in the computation of the mileage or rental statement.  
 16 The [*forester*] **director** shall at all times keep records showing the mileage and rental charges, and  
 17 against which activity or program the charges are a claim. The amount specified in the statement  
 18 shall be a charge against the moneys available for such activity or program. All amounts so charged  
 19 shall be [*credited to the State Forestry Department Account and, notwithstanding ORS 291.238, are*  
 20 *available and shall be used exclusively*] **deposited in the Oregon Natural Resources Fund and,**  
 21 **notwithstanding ORS 291.238, are continuously appropriated to the Oregon Department of**  
 22 **Natural Resources** for:

23 (a) The acquisition, operation, storage, maintenance, repair and replacement of equipment [*by*  
 24 *the forester*] **used in the administration of this state's forestlands by the director;**

25 (b) Administrative expenses of the [*forester and the board*] **director and the Oregon Natural**  
 26 **Resources Commission** in connection therewith; and

27 (c) The payment of insurance premiums for such equipment.

28 **SECTION 1939.** ORS 526.148 is amended to read:

29 526.148. (1) The [*forester and State Board of Forestry*] **Director of the Oregon Department of**  
 30 **Natural Resources or the Oregon Natural Resources Commission** may lease communication  
 31 equipment owned or acquired under ORS 526.144 to any forest protective association or agency un-  
 32 der contract or agreement with the [board] **director pursuant to ORS 477.406** for the protection  
 33 of forestland against fire. However, the communication equipment may be used only for purposes of  
 34 the forest protection system designated in ORS 477.005. Any lease so made must provide for a rental  
 35 at the current rates established for the equipment pool. All amounts so charged shall be credited  
 36 as provided in ORS 526.146.

37 (2) At the option of the [board] **director or the commission**, the lease agreements made under  
 38 this section may be merged under the equipment pool administration and equities set forth in ORS  
 39 526.152.

40 **SECTION 1940.** ORS 526.152 is amended to read:

41 526.152. (1) Any proceeds from the sale or other disposition of equipment of the equipment pool  
 42 shall be [*credited to the State Forestry Department Account*] **deposited in the Oregon Natural Re-**  
 43 **sources Fund and are continuously appropriated to the Oregon Department of Natural Re-**  
 44 **sources** for equipment pool purposes.

45 (2) Should the equipment pool be terminated [*by the State Board of Forestry*], each activity or

1 program shall have an equity in the moneys of the pool and in the cash value of the equipment and  
 2 personalty of the pool. The equity shall be in proportion to the amount of moneys and value of the  
 3 equipment and personalty transferred to the pool under ORS 526.144. By this subsection, each ac-  
 4 tivity or program participating in the equipment pool has a continuing and recognized interest in  
 5 the total value of the pool so long as the equipment pool exists unless otherwise such equity is  
 6 purchased.

7 **SECTION 1941.** ORS 526.156 is amended to read:

8 526.156. (1) A Forest Trust Land Advisory Committee is established to be composed of the board  
 9 of directors of the Council of Forest Trust Land Counties.

10 (2) Members may receive reimbursement for actual and reasonable traveling and other expenses  
 11 necessarily incurred in performing official duties. This reimbursement shall not be deemed lucrative.

12 (3) The committee shall advise the [*State Board of Forestry and the State Forester*] **Director of**  
 13 **the Oregon Department of Natural Resources and the Oregon Natural Resources Commission**  
 14 on the management of lands subject to the provisions of ORS 530.010 to 530.170 and on other matters  
 15 in which counties may have a responsibility pertaining to forestland. The [*board and the State*  
 16 *Forester*] **director and the commission** shall consult with the committee with regard to such mat-  
 17 ters.

18 **SECTION 1942.** ORS 526.162 is amended to read:

19 526.162. In all cases where a title in fee simple to real property is acquired by the [*State Board*  
 20 *of Forestry*] **Oregon Natural Resources Commission** under ORS 526.166 or 526.168, such title shall  
 21 be taken in the name of the State of Oregon.

22 **SECTION 1943.** ORS 526.164 is amended to read:

23 526.164. The [*State Board of Forestry*] **Oregon Natural Resources Commission** may convey to  
 24 any person all or parts of the real property described in ORS 526.166 or 526.168, in exchange for  
 25 other property, real or personal, which, in the judgment of the [*board*] **commission**, is of equal or  
 26 superior value for public use.

27 **SECTION 1944.** ORS 526.166 is amended to read:

28 526.166. [*In addition to any authority otherwise granted by law, the State Board of Forestry*] **For**  
 29 **purposes related to the administration of this state's forestlands, the Oregon Natural Re-**  
 30 **sources Commission** may acquire, by purchase, agreement or donation, real property or any in-  
 31 terest therein, including easements and ways, found necessary by the [*board*] **commission** for:

32 (1) Rights of way to lands of the state[, *which lands are under the management or jurisdiction*  
 33 *of the board or forester*] **that are under the jurisdiction of the Oregon Department of Natural**  
 34 **Resources.**

35 (2) Forest patrol sites, administrative sites, nursery sites, communication sites, construction of  
 36 shops, equipment sheds and office buildings.

37 (3) Quarry sites, gravel pits and rights of way for pipelines, communication lines and power  
 38 lines.

39 (4) Any other use or purpose necessary in carrying out the powers and duties of the [*board or*  
 40 *forester*] **commission that relate to the administration of this state's forestlands.**

41 **SECTION 1945.** ORS 526.168 is amended to read:

42 526.168. [*In addition to any authority otherwise granted by law, the State Board of Forestry*] **For**  
 43 **purposes related to the administration of this state's forestlands, the Oregon Natural Re-**  
 44 **sources Commission** may acquire, by the exercise of the power of eminent domain, real property  
 45 or any interest therein, including easements and ways, found necessary by the [*board*] **commission**

1 for:

2 (1) Rights of way to lands of the state[, *which lands are under the management or jurisdiction*  
3 *of the board or forester*] **that are under the management or jurisdiction of the Oregon Depart-**  
4 **ment of Natural Resources.**

5 (2) Forest patrol or communication sites.

6 (3) Rights of way for pipelines, communication lines and power lines.

7 **SECTION 1946.** ORS 526.178 is amended to read:

8 526.178. The [*State Board of Forestry, or any duly authorized representative of the board,*] **Di-**  
9 **rector of the Oregon Department of Natural Resources, the Oregon Natural Resources**  
10 **Commission or an authorized representative of the director or commission** may go upon pri-  
11 vate property in the manner provided by ORS 35.220 to determine the advisability or practicability  
12 of acquiring real property or any interest in real property.

13 **SECTION 1947.** ORS 526.192 is amended to read:

14 526.192. After request of the [*State Board of Forestry*] **Oregon Natural Resources Commission**  
15 pursuant to ORS 35.235 (1), the Attorney General shall commence and prosecute, in any court of  
16 competent jurisdiction in the name of the State of Oregon, the necessary or appropriate suit, action  
17 or proceeding for condemnation of the amount of or interest in the property required for such pur-  
18 poses, and for the assessment of the damages for the taking thereof.

19 **SECTION 1948.** ORS 526.194 is amended to read:

20 526.194. The [*State Board of Forestry*] **Oregon Natural Resources Commission** may sell, lease,  
21 exchange, permit use of or otherwise dispose of any real property, or interest therein, acquired  
22 pursuant to ORS 526.162 to 526.194, when, in the judgment of the [*board*] **commission**, such will best  
23 serve the interests of the state. In the case of real property, interest in or title to the same may be  
24 conveyed by deed or other instrument executed in the name of the state, by and through the  
25 [*board*] **commission**. All funds or moneys derived from the sale or lease of any such property shall  
26 be [*paid by the board to the State Treasurer and by the State Treasurer credited to the funds from*  
27 *which moneys originally were used for the acquisition of the property involved.*] **deposited in the**  
28 **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection are**  
29 **continuously appropriated to the Oregon Department of Natural Resources for the purpose**  
30 **of carrying out the duties, functions and powers of the department as prescribed by section**  
31 **1 (10) and (11) of this 2011 Act.**

32 **SECTION 1949.** ORS 526.233 is amended to read:

33 526.233. The Legislative Assembly intends that ORS 526.237 and the amendments to ORS 526.235  
34 by section 4, chapter 541, Oregon Laws 2005, authorize the displacement of competition in the forest  
35 tree seedling industry to a limited degree. The regulatory program of the [*State Forester*] **Director**  
36 **of the Oregon Department of Natural Resources** described in ORS 526.237 is intended to grant  
37 immunity from state and federal antitrust laws to a cooperative and its members that enter into an  
38 agreement with the [*forester or the State Board of Forestry*] **director or the Oregon Natural Re-**  
39 **sources Commission** for the members to produce nonindustrial private forest tree seedlings for the  
40 [*forester and the board*] **director or commission**. The activities that any person performs in com-  
41 pliance with ORS 526.237 may not be considered in restraint of trade, a conspiracy or combination  
42 or any other unlawful activity in violation of ORS 646.705 to 646.805 or federal antitrust laws.

43 **SECTION 1950.** ORS 526.235 is amended to read:

44 526.235. (1) A state forest nursery may be operated by the [*forester and the State Board of*  
45 *Forestry*] **Director of the Oregon Department of Natural Resources or the Oregon Natural**

1 **Resources Commission** to provide forest tree seedlings for the reforestation of forestland. The  
 2 nursery program may provide for the growth, care and maintenance of nursery stock and for the  
 3 sale of such stock to private, state and other public owners of forestland.

4 (2) The [*forester and the board*] **director or commission** may use means in addition to, or in-  
 5 stead of, operating a state forest nursery under subsection (1) of this section to secure forest tree  
 6 seedlings and may sell those forest tree seedlings to private, state and other public owners of  
 7 forestland. The means of securing forest tree seedlings may include, but need not be limited to:

8 (a) Contracting with private nurseries to grow forest tree seedlings;

9 (b) Allocating all or part of forest tree seedling production on behalf of the [*forester and the*  
 10 *board*] **director or commission** to a cooperative of private growers under ORS 526.237; and

11 (c) Leasing or otherwise making state nursery property available for operation by private  
 12 growers of forest tree seedlings.

13 (3) Each year the [*forester*] **director** shall determine the costs of nursery operation and of se-  
 14 curing forest tree seedlings under subsection (2) of this section and shall offer nursery stock or  
 15 otherwise secured forest tree seedlings for sale to forest owners at prices that will recover actual  
 16 costs.

17 (4) All revenues derived from the selling of nursery stock and otherwise secured forest tree  
 18 seedlings shall be [*credited to the State Forestry Department Account and*] deposited in the State  
 19 Forest Nursery Subaccount established in ORS 526.060.

20 **SECTION 1951.** ORS 526.237 is amended to read:

21 526.237. (1) As used in this section:

22 (a) "Cooperative" means a cooperative of forest tree seedling growers formed under ORS chap-  
 23 ter 62 for the purpose of allocating among those growers agreements to grow forest tree seedlings  
 24 under this section.

25 (b) "Member" means a grower who qualifies and is accepted for membership in the cooperative.

26 (2) The [*State Forester and the State Board of Forestry*] **Director of the Oregon Department**  
 27 **of Natural Resources or the Oregon Natural Resources Commission** may secure forest tree  
 28 seedlings for the reforestation of forestlands by means that include, but need not be limited to, en-  
 29 tering into agreements with a cooperative to allocate among the members of the cooperative the  
 30 production of forest tree seedlings for the [*forester and the board*] **director or commission** in  
 31 amounts, types and species specified by the [*board*] **director or commission**.

32 (3) The [*forester*] **director** shall actively supervise the conduct of the cooperative and members  
 33 in carrying out agreements described in subsection (2) of this section to ensure that the activities  
 34 of the cooperative and members are consistent with the provision of a reasonably priced, adequate  
 35 and reliable source of high-quality forest tree seedlings. The [*forester*] **director** may inspect during  
 36 reasonable hours any facility or land used by a member to produce forest tree seedlings for the  
 37 [*forester and the board. The forester*] **director or commission. The director** may examine, test and  
 38 take samples of forest tree seedlings being produced by the member for the [*forester and the board*]  
 39 **director or commission**.

40 (4) The [*forester*] **director** may assess a charge on forest tree seedlings grown by a member un-  
 41 der a production allocation. Any charges collected under this subsection shall be deposited in the  
 42 [*State Forestry Department Account*] **Oregon Natural Resources Fund** and are continuously ap-  
 43 propriated to the [*forester*] **director** for purposes of carrying out the duties of the [*forester*] **director**  
 44 under this section.

45 **SECTION 1952.** ORS 526.255 is amended to read:

1       526.255. The [*forester*] **Director of the Oregon Department of Natural Resources** shall submit  
2 a biennial report to the Governor and to those committees of the Legislative Assembly with re-  
3 sponsibility for forestry matters. The report shall contain matters that include, but are not limited  
4 to:

5       (1) The long range management plans based on current resource descriptions and technical as-  
6 sumptions, including sustained yield calculations for the purpose of maintaining economic stability  
7 in each management region.

8       (2) Marketing, reforestation and intensive management programs for the last completed  
9 biennium and the current biennium, and projected programs for the ensuing biennium. The market-  
10 ing report shall include volume and value of new sales, volume and value of timber harvested and  
11 timber sales receipts distributed to counties and to the Common School Fund.

12       (3) The programmed harvest level on federal lands or federal policy changes that would impact  
13 that level of harvest on lands in Oregon.

14       **SECTION 1953.** ORS 526.265 is amended to read:

15       526.265. (1) The [*State Forester*] **Director of the Oregon Department of Natural Resources**  
16 may conduct biennial public hearings in each management region to report the matters included in  
17 ORS 526.255 and to accept public testimony.

18       (2) For the purpose of this section and ORS 526.255, the following forest management regions  
19 are established:

20       (a) Northwest Region, consisting of Clatsop, Columbia, Tillamook, Washington and Yamhill  
21 Counties.

22       (b) Willamette Region, consisting of Multnomah, Clackamas, Marion, Polk, Lincoln, Benton, Linn  
23 and Lane Counties.

24       (c) Southern Region, consisting of Douglas, Coos, Curry, Josephine and Jackson Counties.

25       (d) Eastern Region, consisting of Hood River, Wasco, Gilliam, Sherman, Morrow, Umatilla, Un-  
26 ion, Wallowa, Jefferson, Wheeler, Grant, Baker, Deschutes, Crook, Klamath, Lake, Harney and  
27 Malheur Counties.

28       **SECTION 1954.** ORS 526.271 is amended to read:

29       526.271. The Legislative Assembly finds and declares that:

30       (1) The [*State Forestry Department*] **Oregon Department of Natural Resources** is well-  
31 positioned, due to experience in managing Oregon forests and its understanding of science-based,  
32 active forest management, to facilitate state government participation in forest management on  
33 federal lands located within the state.

34       (2) [*The State Department of Fish and Wildlife has expertise with fish and wildlife habitat and*]  
35 The Department of Environmental Quality has expertise with water quality[. *Both departments*  
36 *have*] **and thus has** an important role to play in the management of federal forests located within  
37 the state.

38       (3) A collaborative relationship between the [*State Forestry Department*] **Oregon Department**  
39 **of Natural Resources**, the federal government, other agencies of the executive department, as de-  
40 fined in ORS 174.112, interested persons and nongovernmental organizations may restore the health,  
41 diversity and resilience of federal forests by increasing the information shared and by providing a  
42 variety of perspectives on site-specific and landscape-level determinations.

43       (4) In cooperation with the [*State Forestry Department*] **Oregon Department of Natural Re-**  
44 **sources** and the federal government, many communities in wildfire-prone areas have completed a  
45 community wildfire protection plan that identifies priority areas for hazardous fuel removal from

1 federal lands.

2 (5) The federal government has provided opportunities for agencies of the executive department,  
3 as defined in ORS 174.112, to become involved, to a greater extent, in the management of federal  
4 lands.

5 **SECTION 1955.** ORS 526.274 is amended to read:

6 526.274. In furtherance of the policy established in ORS 526.271, the [*State Board of Forestry*]  
7 **Oregon Natural Resources Commission**, in consultation with the Governor, may:

8 (1) In conformance with federal law, including Public Law 108-7, [*direct the State Forester*] **work**  
9 **with the Director of the Oregon Department of Natural Resources** to facilitate the development  
10 of stewardship contracts utilizing private contractors and, when appropriate, to seek and enter into  
11 a stewardship contract agreement with federal agencies to carry out forest management activities  
12 on federal lands. The [*State Forester*] **director** may, under the stewardship contract agreements:

13 (a) Perform road and trail maintenance;

14 (b) Set prescribed fires to improve forest health, composition, structure and condition;

15 (c) Manage vegetation;

16 (d) Perform watershed restoration and maintenance;

17 (e) Restore wildlife habitat;

18 (f) Control exotic weeds and species; and

19 (g) Perform other activities related to stewardship.

20 (2) Create a forum for interagency cooperation and collaborative public involvement regarding  
21 federal forest management issues that may include, at the discretion of the [*board*] **commission**, the  
22 appointment of advisory committees, the use of existing advisory committees and procedures for  
23 holding public hearings.

24 (3) [*Provide guidelines for the State Forestry Department and State Forester to follow that contain*  
25 *directions*] **Adopt guidelines** regarding the management of federal lands and that specify the goals  
26 and objectives of the [*board*] **commission** regarding the management of federal lands.

27 (4) Participate, to the extent allowed by federal law, in the development of federal forest policies  
28 and the forest management planning processes of federal agencies.

29 (5) [*Provide guidelines for the department to follow in*] **Adopt guidelines for** implementing this  
30 section.

31 (6) Coordinate with Oregon State University, [*the State Department of Fish and Wildlife, the*  
32 *Oregon Forest Resources Institute,*] the Department of Environmental Quality, the Oregon Business  
33 Development Department, the State Department of Energy and other agencies of the executive de-  
34 partment, as defined in ORS 174.112, to assist the [*State Forestry Department*] **Oregon Department**  
35 **of Natural Resources** in carrying out the provisions of this section.

36 **SECTION 1956.** ORS 526.280 is amended to read:

37 526.280. In furtherance of the policy established in ORS 526.277, the [*State Forester*] **Director**  
38 **of the Oregon Department of Natural Resources** shall:

39 (1) Establish a policy of active and inclusive communication with the federal government, public  
40 bodies as defined in ORS 174.109, residents of Oregon and interested parties regarding the utilization  
41 of woody biomass produced through forest health restoration. The [*State Forester*] **director** shall  
42 actively utilize the statutory provisions of the National Forest Management Act of 1976, the Forest  
43 and Rangeland Renewable Resources Planning Act of 1974, the National Environmental Policy Act  
44 of 1969, the Federal Land Policy and Management Act of 1976 and the Healthy Forests Restoration  
45 Act of 2003 that allow the state to participate in federal policy development in a manner that ex-

1 presses the policy established in ORS 526.277.

2 (2) Promote public involvement in the identification of the areas of interface between urban  
3 lands and forestlands that pose the highest potential to threaten lives and private property.

4 (3) Solicit public comment on the location of biomass-based energy projects and conversion fa-  
5 cilities.

6 (4) Promote public understanding, through education and outreach, of forest conditions, forest  
7 management options, the potential benefits and potential consequences of woody biomass utilization,  
8 the quality and quantity of woody biomass on federal lands and the potential for woody biomass  
9 utilization to assist in reducing wildfire risk and in enhancing forest health, diversity and resilience.  
10 The [*State Forestry Department*] **Oregon Department of Natural Resources** may coordinate with  
11 the State Department of Energy, the Oregon Business Development Department, Oregon State Uni-  
12 versity, [*the State Department of Fish and Wildlife,*] the Department of Environmental Quality and  
13 other entities in any education [*and outreach*] **or outreach program** performed pursuant to this  
14 subsection.

15 (5) [*Allow the State Forestry Department to*] Conduct inventories of the types of woody biomass  
16 available and to serve as an information resource for persons seeking to utilize woody biomass for  
17 energy development. Notwithstanding ORS 192.501, reports on any inventories of biomass conducted  
18 by the [*department*] **Oregon Department of Natural Resources** shall be made available for public  
19 inspection.

20 (6) Promote public understanding that woody biomass utilization may be an effective tool for  
21 restoration of forest health and for economic development in rural communities.

22 (7) Develop and apply, with advice from the forestry program at Oregon State University, [*the*  
23 *State Department of Fish and Wildlife,*] the Department of Environmental Quality and other sources,  
24 the best available scientific knowledge and technologies pertaining to forest and wildlife habitat  
25 restoration and woody biomass utilization when developing rules under ORS 527.630.

26 (8) Seek opportunities to provide a source of woody biomass from federal, tribal, state and pri-  
27 vate forests.

28 (9) Prepare a report every three years utilizing, to the greatest extent practicable, data collected  
29 from state and federal sources that specify the effect of woody biomass collection and conversion  
30 on the plant and wildlife resources and on the air and water quality of this state. The report shall  
31 identify any changes that the [*State Forester*] **director** determines are necessary to encourage woody  
32 biomass collection and conversion and to avoid negative effects on the environment from woody  
33 biomass collection and conversion. The [*State Forester*] **director** shall submit the report to the  
34 Governor and to an appropriate legislative interim committee with jurisdiction over forestry issues.

35 **SECTION 1957.** ORS 526.310 is amended to read:

36 526.310. (1) Pursuant to a request by the [*State Forester*] **Director of the Oregon Department**  
37 **of Natural Resources:**

38 (a) The governing body of a county may establish a forestland classification committee of six  
39 persons, of whom one shall be appointed by the [*State Forester*] **Director of the Oregon Depart-**  
40 **ment of Natural Resources**, one by the Director of the Oregon State University Extension Service,  
41 one by the State Fire Marshal and three by the governing body. Of the members appointed by the  
42 governing body, one must be an owner of forestland, and, if the land to be investigated and studied  
43 by the committee includes or is expected to include grazing land, one must be an owner of grazing  
44 land; or

45 (b) The governing bodies of two or more counties may, by written agreement, establish a joint

1 forestland classification committee. One member of a joint committee shall be appointed by the  
 2 [State Forester] **Director or the Oregon Department of Natural Resources**, one by the Director  
 3 of the Oregon State University Extension Service and one by the State Fire Marshal. The governing  
 4 body of each participating county shall appoint two members. Of the members appointed by a gov-  
 5 erning body to a joint committee, one must be an owner of forestland.

6 (2) Each appointing authority shall file with the [State Forester] **Director of the Oregon De-**  
 7 **partment of Natural Resources** the name of its appointee or appointees, and the persons so named  
 8 shall constitute the committee. Unless otherwise provided for by the appointing authority, members  
 9 of the committee shall serve a term of four years and may be reappointed to any number of terms.  
 10 Each member of the committee at all times is subject to replacement by the appointing authority,  
 11 effective upon the filing with the [State Forester] **director** by that authority of written notice of the  
 12 name of the new appointee.

13 (3) The committee shall elect from among its members a chair and a secretary and may elect  
 14 other officers as it finds advisable. It shall adopt rules governing its organization and proceedings  
 15 and the performance of its duties, and shall keep written minutes of all its meetings.

16 (4)(a) The governing body of a county may provide for the committee and its members such ac-  
 17 commodations and supplies and such county funds not otherwise appropriated as the governing body  
 18 finds necessary for the proper performance of the committee's functions.

19 (b) The [forester] **Director of the Oregon Department of Natural Resources** may provide for  
 20 the committee and its members such accommodations and supplies and such forest protection district  
 21 funds as the [forester] **director** finds necessary for the proper performance of the committee's func-  
 22 tions.

23 (5) The members of the committee shall receive no compensation for their services but a gov-  
 24 erning body or a forest protection district may reimburse them for their actual and necessary travel  
 25 and other expenses incurred in the performance of their duties.

26 **SECTION 1958.** ORS 526.328 is amended to read:

27 526.328. (1) The committee shall hold a public hearing within the boundaries of its county or  
 28 within the boundaries of each of its counties at the time and place stated in the notice published  
 29 under ORS 526.324 (2), or at such other time and place as the hearing may then be adjourned to, to  
 30 receive from any interested persons objections, remonstrances or suggestions relating to the pre-  
 31 liminary classifications. Following the hearing the committee may make such changes to the pre-  
 32 liminary classifications as it finds to be proper, and thereafter shall adopt final classifications.

33 (2) All action by the committee in adopting final classifications shall be by formal written order  
 34 that must include a statement of findings of fact on the basis of which the order is made and must  
 35 include a list of tax lots affected by the classifications or reclassifications. The committee shall  
 36 prepare one or more maps showing the final classifications, but the maps may not be included as  
 37 part of the formal written order. The original of the order shall be filed with the county clerk of its  
 38 county or with the county clerk of each of its counties. The order need not meet the requirements  
 39 of ORS 205.232, 205.234 and 205.236 to be filed and recorded. A copy of the order certified by the  
 40 secretary of the committee shall be sent to the [State Forester] **Director of the Oregon Depart-**  
 41 **ment of Natural Resources.**

42 **SECTION 1959.** ORS 526.332 is amended to read:

43 526.332. (1) Any owner of land classified under ORS 526.328 or 526.340 who is aggrieved by the  
 44 classification may, within 30 days after the date of the order making the classification, appeal to the  
 45 circuit court for the county in which the property is located. If the forestland classification com-



1 mittee has been established for more than one county and the property is located in more than one  
 2 of those counties, the owner of the land may appeal to the circuit court for any of those counties.  
 3 Notice of an appeal shall be promptly served on the secretary of the committee or, if the classi-  
 4 fication was made under ORS 526.340, on the [*State Forester*] **Director of the Oregon Department**  
 5 **of Natural Resources**.

6 (2) The appeal shall be tried by the circuit court as an action not triable by right to a jury.

7 **SECTION 1960.** ORS 526.335 is amended to read:

8 526.335. The [*State Board of Forestry*] **Oregon Natural Resources Commission** may adopt  
 9 rules as necessary to implement ORS 526.305 to 526.340.

10 **SECTION 1961.** ORS 526.340 is amended to read:

11 526.340. (1) The [*State Forester*] **Director of the Oregon Department of Natural Resources**  
 12 may identify and classify forestland in a county, consistent with ORS 526.324 and 526.328, if:

13 (a) The governing body of a county has failed to establish a forestland classification committee  
 14 within two years after the [*State Forester*] **director** made a request under ORS 526.310 (1);

15 (b) A forestland classification committee has failed to adopt and file a final classification pur-  
 16 suant to ORS 526.328 within the five-year period after the date the forestland classification com-  
 17 mittee was first established; or

18 (c) A forestland classification committee has failed to act in a manner consistent with ORS  
 19 526.310, 526.320, 526.324 and 526.328.

20 (2) Classifications by the [*State Forester*] **director** have the same force and effect as though  
 21 made by a forestland classification committee. However, classifications made by the [*State*  
 22 *Forester*] **director** cease to be effective if replaced by classifications made pursuant to ORS 526.320,  
 23 526.324 and 526.328.

24 **SECTION 1962.** ORS 526.350 is amended to read:

25 526.350. (1) All forest laws relating to forestland classified pursuant to ORS 526.328 or 526.340,  
 26 and all rules promulgated under such laws, shall be so administered as best to promote the primary  
 27 use for which that land is classified. Any contract by the [*State Board of Forestry or the State*  
 28 *Forester*] **Director of the Oregon Department of Natural Resources or the Oregon Natural**  
 29 **Resources Commission** with any forest protective association or agency for the care of any such  
 30 forestland shall provide that the care shall be in accord with the provisions of this section relating  
 31 to that land.

32 (2) It shall be the policy of the [*board and the forester*] **director and the commission** as to all  
 33 forestland classified in:

34 (a) Class 1, to give primary consideration to timber production and reforestation, in preference  
 35 to grazing or agricultural uses, not excluding, however, recreation needs or scenic values.

36 (b) Class 2, to give equal consideration and value to timber production and the development or  
 37 maintenance of grazing, either as a temporary use for the interim between logging and reforestation  
 38 or as a permanent or semipermanent joint use.

39 (c) Class 3, to give primary consideration to the development of grazing or agriculture, in pref-  
 40 erence to timber production.

41 (3) The [*forester*] **director**, on forestland classified pursuant to ORS 526.328 or 526.340, shall  
 42 administer the forest laws of this state in accordance with the policy stated in this section as it  
 43 applies to the land involved.

44 **SECTION 1963.** ORS 526.360 is amended to read:

45 526.360. (1) The [*State Board of Forestry and the forester*] **Director of the Oregon Department**

1 **of Natural Resources or the Oregon Natural Resources Commission** may assist to the extent  
 2 possible in developing, for forestry, grazing or agricultural uses, all forestland classified pursuant  
 3 to ORS 526.328 or 526.340 for such uses, including the burning of brush or other flammable material  
 4 for the purpose of:

5 (a) Removing a fire hazard to any property;

6 (b) Preparing seed beds;

7 (c) Removing obstructions to or interference with the proper seeding or agricultural or grazing  
 8 development or use of that land;

9 (d) Promoting the establishment of new forest crops on cutover, denuded or underproductive  
 10 lands;

11 (e) Implementing pest prevention and suppression activities, as provided in ORS 527.310 to  
 12 527.370; or

13 (f) Promoting improvements to forest health, including improvements to fish and wildlife habitat.

14 (2) Upon request of the owner or the agent of the owner of any forestland classified pursuant  
 15 to ORS 526.328 or 526.340, the [*forester*] **director** may perform or supervise burning operations  
 16 thereon for any of the purposes stated in subsection (1) of this section. The owner or the agent of  
 17 the owner shall supply such personnel and equipment and shall perform such fire control actions  
 18 and activities as the [*forester*] **director** may require while there is danger of the fire spreading. The  
 19 [*forester*] **director** may refuse to perform or supervise burning or to issue any burning permit when,  
 20 in the judgment of the [*forester*] **director**, conditions so warrant.

21 (3) To accomplish the purposes set forth in subsection (1) of this section, the [*State Board of*  
 22 *Forestry*] **commission** may establish by rule a Certified Burn Manager program. The rules shall  
 23 include:

24 (a) Certification standards, requirements and procedures;

25 (b) Standards, requirements and procedures to revoke certification;

26 (c) Actions and activities that a Certified Burn Manager must perform;

27 (d) Actions and activities that a Certified Burn Manager may not allow or perform;

28 (e) Limitations on the use of a Certified Burn Manager; and

29 (f) Any other standard, requirement or procedure that the [*board*] **commission** considers nec-  
 30 essary for the safe and effective administration of the program.

31 (4) When any burning for any of the purposes stated in subsection (1) of this section on  
 32 forestland classified pursuant to ORS 526.328 or 526.340 is started under the supervision of and  
 33 supervised by the [*forester*] **director** or a Certified Burn Manager, no person shall be liable for  
 34 property damage resulting from that burning unless the damage is caused by the negligence of the  
 35 person.

36 **SECTION 1964.** ORS 526.370 is amended to read:

37 526.370. (1) The [*forester*] **Director of the Oregon Department of Natural Resources** may, as  
 38 a condition precedent to supervising of any burning as provided in ORS 526.360, require the owner  
 39 or the agent of the owner in control of the land involved to agree in writing to seed properly the  
 40 land over which the burning operation is to be conducted, with such seed or seed mixtures as may  
 41 be suitable for that area.

42 (2) In the event of failure by the owner or agent of the owner to seed the property in accordance  
 43 with such agreement, the governing body of that county may cause the seeding to be done and the  
 44 cost thereof may be recovered by the governing body from the owner or the agent of the owner by  
 45 legal action. The cost shall constitute a lien upon the land seeded. The governing body shall cause

1 a written statement and notice of such lien, describing the land and stating the amount of the cost,  
 2 to be certified under oath and filed in the office of the county clerk within 90 days following the  
 3 completion of reseeded. The lien may be foreclosed, within six months after such filing, by suit, in  
 4 the manner provided by law for foreclosure of liens for labor and material.

5 **SECTION 1965.** ORS 526.425 is amended to read:

6 526.425. Recognizing that nonindustrial private forests make a vital contribution to Oregon by  
 7 providing jobs, products, tax base and other social and economic benefits, it is hereby declared to  
 8 be the public policy of the State of Oregon to encourage management of nonindustrial private  
 9 forestlands for tree production. Therefore, [*under the direction of the State Board of Forestry and*]  
 10 to the extent funds are available, the [*State Forester*] **Director of the Oregon Department of**  
 11 **Natural Resources** shall:

12 (1) Provide for coordinated technical and financial assistance to the nonindustrial private forest  
 13 landowner;

14 (2) Provide management planning for nonindustrial private forestlands;

15 (3) Advise and encourage nonindustrial private forest landowners to carry out young growth  
 16 management activities, such as converting underproductive forestlands, reforestation, release, pre-  
 17 commercial thinning and salvaging insect or disease damaged trees;

18 (4) Administer federal programs, such as the Agricultural Conservation Program or Forestry  
 19 Incentives Program, that are designed to help encourage management of nonindustrial private  
 20 forestlands;

21 (5) Advise and encourage nonindustrial private forest landowners to form cooperatives or ag-  
 22 gregates for the purpose of more efficiently carrying out their young growth management activities;

23 (6) Periodically advise and recommend changes to the Legislative Assembly on laws conflicting  
 24 with the intent of this statute; and

25 (7) In compliance with ORS chapter 183, promulgate rules consistent with law for providing  
 26 management planning for nonindustrial private forestlands.

27 **SECTION 1966.** ORS 526.455 is amended to read:

28 526.455. As used in ORS 315.104, 318.031 and 526.450 to 526.475, unless the context requires  
 29 otherwise:

30 (1) "Approved forest management practice" means and includes site preparation, tree planting,  
 31 precommercial thinning, release, fertilization, animal damage control, insect and disease manage-  
 32 ment or such other young growth management practices that increase wood growth as [*the State*  
 33 *Forester shall approve or determine proper generally with regard to any particular applicant*] **ap-**  
 34 **proved or determined to be proper with regard to a particular applicant by the Director of**  
 35 **the Oregon Department of Natural Resources.**

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

37 [(3)] (2) "Commercial forestland" means land for which a primary use is the growing and har-  
 38 vesting of forest tree species and other forest resource values.

39 [(4)] (3) "Eligible owner" means any private individual, group, Indian tribe or other native  
 40 group, association, corporation or other nonpublic legal entity owning 10 to 500 acres of Oregon  
 41 commercial forestland.

42 [(5)] (4) "Forest management plan" means an operation plan to reach landowner objectives and  
 43 assures public benefits as they relate to producing timber and other values. It shall include a cover  
 44 map, basic forest stand description data, treatment opportunities, landowner objectives and a  
 45 schedule for implementing the forest management plan.

1        [(6)] (5) “Forest management practices” means and includes site preparation, tree planting, pre-  
2 commercial thinning, release, fertilization, animal damage control, insect and disease management  
3 and other young growth management practices that increase wood growth.

4        [(7)] (6) “Industrial private forestlands” means lands capable of producing crops of industrial  
5 wood, greater than 10 acres and owned by other than an eligible owner.

6        [(8)] (7) “Industrial wood” means forest products used to sustain a sawmill, plywood mill, pulp  
7 mill or other forest industry related manufacturing facility.

8        [(9)] (8) “Landowner” means any private individual, group, Indian tribe or other native group,  
9 association, corporation or other legal entity, owning both the forestland and any timber thereon.

10       [(10)] (9) “Nonindustrial private forestlands” means lands capable of producing crops of indus-  
11 trial wood and owned by an eligible owner.

12       [(11) “State Forester” means the individual appointed pursuant to ORS 526.031, or the authorized  
13 representative of the State Forester.]

14       [(12)] (10) “Timber” means wood growth, mature or immature, growing or dead, standing or  
15 down of species acceptable for regeneration under the Oregon Forest Practices Act.

16       [(13)] (11) “Underproductive forestlands” means commercial forestlands not meeting the mini-  
17 mum stocking standards of the Oregon Forest Practices Act.

18       **SECTION 1967.** ORS 526.455, as amended by section 6, chapter 883, Oregon Laws 2007, is  
19 amended to read:

20       526.455. As used in ORS 318.031 and 526.450 to 526.475, unless the context requires otherwise:

21       (1) “Approved forest management practice” means and includes site preparation, tree planting,  
22 precommercial thinning, release, fertilization, animal damage control, insect and disease manage-  
23 ment or such other young growth management practices that increase wood growth as [*the State*  
24 *Forester shall approve or determine proper generally with regard to any particular applicant*] **ap-**  
25 **proved or determined to be proper with regard to a particular applicant by the Director of**  
26 **the Oregon Department of Natural Resources.**

27       [(2) “Board” means State Board of Forestry.]

28       [(3)] (2) “Commercial forestland” means land for which a primary use is the growing and har-  
29 vesting of forest tree species and other forest resource values.

30       [(4)] (3) “Eligible owner” means any private individual, group, Indian tribe or other native  
31 group, association, corporation or other nonpublic legal entity owning 10 to 500 acres of Oregon  
32 commercial forestland.

33       [(5)] (4) “Forest management plan” means an operation plan to reach landowner objectives and  
34 assures public benefits as they relate to producing timber and other values. It shall include a cover  
35 map, basic forest stand description data, treatment opportunities, landowner objectives and a  
36 schedule for implementing the forest management plan.

37       [(6)] (5) “Forest management practices” means and includes site preparation, tree planting, pre-  
38 commercial thinning, release, fertilization, animal damage control, insect and disease management  
39 and other young growth management practices that increase wood growth.

40       [(7)] (6) “Industrial private forestlands” means lands capable of producing crops of industrial  
41 wood, greater than 10 acres and owned by other than an eligible owner.

42       [(8)] (7) “Industrial wood” means forest products used to sustain a sawmill, plywood mill, pulp  
43 mill or other forest industry related manufacturing facility.

44       [(9)] (8) “Landowner” means any private individual, group, Indian tribe or other native group,  
45 association, corporation or other legal entity, owning both the forestland and any timber thereon.

1        [(10)] (9) “Nonindustrial private forestlands” means lands capable of producing crops of indus-  
2        trial wood and owned by an eligible owner.

3        [(11) “State Forester” means the individual appointed pursuant to ORS 526.031, or the authorized  
4        representative of the State Forester.]

5        [(12)] (10) “Timber” means wood growth, mature or immature, growing or dead, standing or  
6        down of species acceptable for regeneration under the Oregon Forest Practices Act.

7        [(13)] (11) “Underproductive forestlands” means commercial forestlands not meeting the mini-  
8        mum stocking standards of the Oregon Forest Practices Act.

9        **SECTION 1968.** ORS 526.470 is amended to read:

10        526.470. (1) A state forest tree seed bank may be operated by the [*State Forester and the State*  
11        *Board of Forestry*] **Director of the Oregon Department of Natural Resources or the Oregon**  
12        **Natural Resources Commission** to provide forest tree seed for the raising of forest tree seedlings  
13        suitable for reforestation. Such tree seed bank is to provide for the research and development, pro-  
14        duction, purchase, collection, storage, care and maintenance of forest tree seed and for the sale of  
15        such tree seed to private, state and other public owners of forest nurseries or forestland.

16        (2) Each year the [*State Forester*] **director** shall determine the costs of tree seed bank operation  
17        and shall offer tree seed for sale to forest or nursery owners at prices that will recover actual costs.

18        (3) All revenues derived from the operation of the tree seed bank shall be [*credited to the State*  
19        *Forestry Department Account and*] deposited in the State Forest Tree Seed Bank Subaccount estab-  
20        lished in ORS 526.060.

21        (4) In order to develop and produce high quality forest tree seed, the moneys deposited in the  
22        State Forest Tree Seed Bank Subaccount may be used for research and development activities, in-  
23        cluding establishing and maintaining seed production areas, seed orchards or select forest trees from  
24        which seed, cuttings or pollen may be collected. The activities described in this subsection may be  
25        conducted independently by the [*State Forester*] **Director of the Oregon Department of Natural**  
26        **Resources** or in collaboration, partnership or cooperation with private entities and public bodies  
27        as defined in ORS 174.109.

28        **SECTION 1969.** ORS 526.472 is amended to read:

29        526.472. (1) A state forest tree seed orchard may be operated by the [*State Forester and the State*  
30        *Board of Forestry*] **Director of the Oregon Department of Natural Resources or the Oregon**  
31        **Natural Resources Commission** to produce high quality forest tree seed suitable for reforestation.  
32        The purposes of the state forest tree seed orchard are to:

33        (a) Grow, care for and maintain seed orchard stock and produce seed, pollen, cuttings and other  
34        propagules for reforestation uses by private entities and public bodies as defined in ORS 174.109;

35        (b) Promote the conservation of genetic resources; and

36        (c) Support research and development activities for the purpose of producing high quality, well  
37        adapted seeds.

38        (2) The [*State Forester*] **director** may enter into cooperative cost sharing and management  
39        agreements with private entities and public bodies as defined in ORS 174.109 to carry out the pur-  
40        poses set forth in subsection (1) of this section.

41        (3) Each year the [*State Forester*] **director** shall determine the costs of operating the state forest  
42        tree seed orchard and shall recover actual costs.

43        (4) All revenues derived from the operation of the state forest tree seed orchard shall be [*cred-*  
44        *ited to the State Forestry Department Account and*] deposited in the State Forest Tree Seed Orchard  
45        Subaccount established in ORS 526.060.

1        **SECTION 1970.** ORS 526.475 is amended to read:

2        526.475. (1) Any owner affected by a determination of the [*State Forester*] **Director of the**  
3 **Oregon Department of Natural Resources** made under ORS 315.104, 318.031 and 526.450 to  
4 526.475 may appeal to the [*State Board of Forestry*] **Oregon Natural Resources Commission** under  
5 such rules as it may adopt. An appeal to set aside any decision of the [*board*] **commission** with  
6 respect to ORS 315.104 or 318.031 may be taken within 60 days of the decision to the Oregon Tax  
7 Court in the manner provided for tax cases under ORS chapter 305.

8        (2) Any owner affected by a determination of the Department of Revenue made under ORS  
9 315.104 or 318.031 may appeal directly to the tax court under ORS 305.404 to 305.560.

10       **SECTION 1971.** ORS 526.475, as amended by section 8, chapter 883, Oregon Laws 2007, is  
11 amended to read:

12       526.475. (1) Any owner affected by a determination of the [*State Forester*] **Director of the**  
13 **Oregon Department of Natural Resources** made under ORS 318.031 and 526.450 to 526.475 may  
14 appeal to the [*State Board of Forestry*] **Oregon Natural Resources Commission** under such rules  
15 as it may adopt. An appeal to set aside any decision of the [*board*] **commission** with respect to ORS  
16 318.031 may be taken within 60 days of the decision to the Oregon Tax Court in the manner pro-  
17 vided for tax cases under ORS chapter 305.

18       (2) Any owner affected by a determination of the Department of Revenue made under ORS  
19 318.031 may appeal directly to the tax court under ORS 305.404 to 305.560.

20       **SECTION 1972.** ORS 526.490 is amended to read:

21       526.490. (1) It is the policy of the State of Oregon to encourage the afforestation of idle land for  
22 the purpose of establishing commercial forests if such afforestation is consistent with landowner  
23 objectives. The purpose of this section is to provide an incentive for afforestation by providing as-  
24 surance that the State of Oregon will not prohibit the harvesting of trees planted on such lands  
25 within the first crop rotation.

26       (2) As used in this section:

27       (a) "Free to grow" means a stand of well-distributed trees that has a high probability of re-  
28 maining or becoming vigorous, healthy and dominant over undesired competing vegetation.

29       (b) "Parcel" has the meaning given that term in ORS 92.010.

30       (3) Notwithstanding ORS 527.676, 527.710 or 527.755 or any rules promulgated thereunder, and  
31 except as provided in subsection (4) of this section, a person who, after September 9, 1995, plants  
32 or causes to be planted a stand of timber that is intended to become a merchantable stand of timber  
33 as defined in ORS 321.005 on a parcel owned by the person, or a portion of such parcel not less than  
34 five contiguous acres, shall not be prohibited from harvesting the planted timber provided that:

35       (a) Prior to the time of planting, the parcel or portion thereof has not been subject to any forest  
36 practice as defined in ORS 527.620 since July 1, 1972; and

37       (b) Prior to the time of planting, the stocking of forest tree species on the subject parcel or  
38 portion thereof is less than 25 square feet of basal area per acre.

39       (4) The provisions of subsection (3) of this section shall not apply to any land or timber located  
40 within 20 feet of any large or medium stream, or any small stream that is a fish-bearing or domestic  
41 use stream, as defined by the [*State Board of Forestry*] **Oregon Natural Resources Commission**.

42       (5)(a) If, within two to five years of planting under subsection (3) of this section, the person  
43 notifies the [*State Forester, the State Forester*] **Director of the Oregon Department of Natural**  
44 **Resources, the director** shall inspect the timber and shall issue a certificate to the owner indi-  
45 cating that a free to grow stand of timber has been established under subsection (3) of this section

1 and identifying the location of the timber. Upon request of the owner and payment of any applicable  
2 fee, the county clerk in the county wherein the parcel is located shall record the certificate as  
3 specified under ORS 205.130.

4 (b) A person who notifies the [State Forester] **director** and requests certification shall provide  
5 an accurate plat of the parcel or portion planted under subsection (3) of this section to the [State  
6 Forester] **director** as well as photographs that accurately depict the condition of the land prior to  
7 planting.

8 (c) The [State Forester] **director** may, by rule, establish a fee or schedule of fees adequate to  
9 cover such necessary expenses incurred by the [State Forester] **director** in conducting inspection  
10 and certification activities. Fees may be charged to the person requesting certification.

11 (6)(a) Except as provided in subsection (3) of this section, all forest practices conducted on the  
12 planted parcel or portion thereof shall be subject to the provisions of ORS 527.610 to 527.770, 527.990  
13 (1) and 527.992.

14 (b) No parcel or portion of such parcel shall be subject to the provisions of subsections (3) and  
15 (5) of this section more than once.

16 **SECTION 1973.** ORS 526.510 is amended to read:

17 526.510. (1) The [State Forestry Department] **Oregon Department of Natural Resources** shall  
18 provide technical assistance to cities, counties, other governmental units, nonprofit and civic or-  
19 ganizations and other groups interested in planting and caring for trees in communities. Technical  
20 assistance may include, but is not limited to, the following areas:

21 (a) Establishing and maintaining local urban and community forestry programs;

22 (b) Developing local tree management ordinances;

23 (c) Developing public information programs to promote awareness of the values and benefits of  
24 the urban forest as a resource of the urban community;

25 (d) Implementing appropriate tree management and care practices;

26 (e) Performing street tree inventories; and

27 (f) Planning and coordinating local tree planting projects.

28 (2) The department shall make the fullest use of cooperative agreements, projects and resource  
29 sharing with local grassroots organizations, community action groups, businesses, local and state  
30 agencies, federal agencies, public and private schools, colleges and universities in designing, devel-  
31 oping and implementing local programs, plans and activities.

32 **SECTION 1974.** ORS 526.515 is amended to read:

33 526.515. (1) The [State Forestry Department] **Oregon Department of Natural Resources** may  
34 receive and disburse such gifts, grants, bequests, federal moneys and endowments and donations of  
35 labor, material, seedlings, trees and equipment from public and private sources for the purpose of  
36 conducting an urban and community forestry program. In addition, the department is authorized to  
37 charge fees for services and for attendance at workshops and conferences and to sell various pub-  
38 lications and other materials that the department prepares.

39 (2) All revenues received under subsection (1) of this section and any interest earned on all cash  
40 balances except federal moneys shall be [*credited to the State Forestry Department Account and may*  
41 *be expended only*] **deposited in the Oregon Natural Resources Fund. Moneys deposited in the**  
42 **fund under this subsection are continuously appropriated to the department** for urban and  
43 community forestry purposes.

44 **SECTION 1975.** ORS 526.695 is amended to read:

45 526.695. As used in ORS 526.695 to 526.775, unless the context otherwise requires:

1 (1) "Contract" means the contract signed by the forestland owner and the [*State Forester*] **Director of the Oregon Department of Natural Resources**, acting on behalf of the Forest Resource  
2 Trust pursuant to ORS 526.705.

4 (2) "Ecosystem services" means environmental benefits arising from the conservation and man-  
5 agement of forestland, including, but not limited to, fish and wildlife habitat, clean water and air,  
6 pollination, mitigation of environmental hazards, control of pests and diseases, carbon sequestration,  
7 avoidance of carbon dioxide emissions and maintenance of soil productivity.

8 (3) "Forestland owner" means the individual, corporation, limited liability company, partnership,  
9 association, joint stock company, trustee, business trust or unincorporated organization holding fee  
10 simple ownership of land capable of producing forest products.

11 (4) "Forest products" includes, but is not limited to, trees, logs, poles, lumber, chips or pulp that  
12 flow from investment of the Forest Resource Trust.

13 (5) "Forest Resource Trust programs" means the voluntary cost share program established by  
14 ORS 526.703, the voluntary loan program established by ORS 526.705 and other programs adminis-  
15 tered by the [*State Board of Forestry*] **Oregon Natural Resources Commission** to further the  
16 purposes of the Forest Resource Trust pursuant to ORS 526.695 to 526.775.

17 (6) "Qualified private or local government forestland owner" means a private or local govern-  
18 ment forestland owner that qualifies for a specific Forest Resource Trust program, as described in  
19 rules adopted by the [*board*] **commission**.

20 **SECTION 1976.** ORS 526.700 is amended to read:

21 526.700. (1) The Forest Resource Trust is established in the [*State Forestry Department*] **Oregon**  
22 **Department of Natural Resources**. The Forest Resource Trust shall provide funds for financial,  
23 technical and related assistance to qualified private and local government forestland owners for  
24 stand establishment and improved management of forestlands for timber production as well as  
25 wildlife, water quality and other environmental purposes.

26 (2) The members of the [*State Board of Forestry*] **Oregon Natural Resources Commission** shall  
27 have overall responsibility for management of the Forest Resource Trust. The [*board*] **commission**  
28 is authorized to establish policies and programs in addition to those created by ORS 526.695 to  
29 526.775 to further the purposes of the trust.

30 (3) The [*board*] **commission** shall appoint an advisory committee consisting of no more than 15  
31 members representing the public, nonindustrial private forestland owners, the forest products in-  
32 dustry, forest consultants and contractors, the financial community, environmental and conservation  
33 organizations and other related interests including affected state agencies. The advisory committee  
34 shall assist the [*board*] **commission** in setting policy for the best use and investment of funds  
35 available to the trust and otherwise assist [*board*] **commission** members in the performance of their  
36 duties as trustees.

37 (4) In accordance with any applicable provisions of ORS chapter 183, the [*board*] **commission**  
38 shall adopt rules to carry out the duties, functions and powers of the Forest Resource Trust and to  
39 guide implementation of the Forest Resource Trust programs.

40 (5) The [*State Forester*] **Director of the Oregon Department of Natural Resources** is re-  
41 sponsible for implementing [*board*] **commission** policies and programs for the Forest Resource  
42 Trust.

43 **SECTION 1977.** ORS 526.703 is amended to read:

44 526.703. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall es-  
45 tablish a voluntary cost share program to ensure that the purposes of the Forest Resource Trust



1 are achieved. The purpose of the program is to provide financial and other incentives for stand es-  
2 tablishment and improved management of nonindustrial private forestlands.

3 (2) In advancing moneys and providing other assistance for stand establishment and improved  
4 forest management, the [*State Forester*] **Director of the Oregon Department of Natural Re-**  
5 **sources** shall:

6 (a) Give priority, to the extent possible, to lands zoned for forest use under county comprehen-  
7 sive plans and to other lands with moderate to high probability of success for long-term stand es-  
8 tablishment and improved forest management activities; and

9 (b) Assist landowners in securing payments for ecosystem services.

10 **SECTION 1978.** ORS 526.705 is amended to read:

11 526.705. (1) To carry out the duties, functions and powers of the Forest Resource Trust, there  
12 is created a voluntary loan program to finance establishment of stands of trees and the improved  
13 management of qualified private and local government forestlands.

14 (2) In advancing moneys and providing other assistance for stand establishment, the [*State Board*  
15 *of Forestry*] **Oregon Natural Resources Commission** shall:

16 (a) Give priority to lands zoned for forest uses under county comprehensive plans and to other  
17 lands with moderate to high probability of success for long-term stand establishment and improved  
18 forest management activities; and

19 (b) Assist landowners in securing payments for ecosystem services.

20 (3) The [*State Board of Forestry*] **commission** may, by rule, establish financial agreements for  
21 the repayment of moneys advanced consistent with subsection (2) of this section and including but  
22 not limited to the following, singly or in combination:

23 (a) A revenue-sharing proposal that guarantees the landowner a percentage of the receipts upon  
24 harvest after payment of harvest and severance taxes;

25 (b) Financial agreements; and

26 (c) Repayment in full with interest if a landowner fails to get the stand free to grow as that term  
27 is defined in the Oregon Forest Practices Act, unless said failure is through no fault of the land-  
28 owner.

29 (4) The terms of repayment shall be based on considerations that represent the best use and  
30 investment of funds including:

31 (a) Rates of return, as established by the [*State Board of Forestry*] **commission**, that provide a  
32 reasonable payback to the Forest Resource Trust of project costs;

33 (b) Measurable anticipated public benefits such as job creation, tax revenue, increased timber  
34 supply and environmental improvement; and

35 (c) The extent to which landowner contributions of money, labor or other resources reduce the  
36 risk to the Forest Resource Trust.

37 (5) Participating landowners shall not be required to comply with forest practices beyond those  
38 required by state and federal law with the exception that planting standards for stand establishment  
39 may be more than the required minimum.

40 (6) The [*State Forester*] **Director of the Oregon Department of Natural Resources** is au-  
41 thorized, on behalf of the Forest Resource Trust, to enter into contracts with eligible landowners  
42 to carry out the provisions of the voluntary loan program. The contracts may include, but are not  
43 limited to:

44 (a) Partial to full financing to the landowner, as specified in rules of the [*State Board of*  
45 *Forestry*] **commission**, from such moneys as may be available in the Forest Resource Trust Fund.

1 (b) Any obligations of the landowner for repayment of moneys advanced including, but not lim-  
2 ited to:

3 (A) Terms for sharing the revenue gained from the sales of timber and forest products, including  
4 salvage, from the lands enrolled under the voluntary loan program;

5 (B) Acknowledgment that the rights and obligations of the landowner and the Forest Resource  
6 Trust and all of the terms of the contract are covenants that run with the land upon sale, lease or  
7 transfer of the land benefiting from the voluntary loan program until all future obligations of the  
8 contract are met;

9 (C) Financial terms allowing the landowner to terminate the contract;

10 (D) Agreement that there is no obligation to repay the moneys advanced prior to sale of timber  
11 and forest products from the land;

12 (E) Terms to protect the contract from modification unless both parties consent to modification;

13 (F) Allowance for different prescriptions for stand management; and

14 (G) Repayment in full with interest if the landowner fails to meet any terms of the contract.

15 (c) Acknowledgment by the landowner that the [*State Forester*] **director** may require a statutory  
16 lien on the forest products.

17 (7) In addition to the contracts provided for in subsection (6) of this section, the [*State*  
18 *Forester*] **director**, on behalf of the Forest Resource Trust, may require landowners to execute se-  
19 curity agreements in favor of the trust to secure any repayment or other obligations of the land-  
20 owner. Any security interest required shall have priority from the date of recording or filing.

21 (8)(a) The [*State Forester*] **director** shall record a contract described in subsection (6) of this  
22 section with the recording officer of the county or counties in which the forestland is located.

23 (b) Upon recording, the rights and obligations of the landowner and the Forest Resource Trust  
24 under the contract shall become covenants that run with the land and shall be binding upon suc-  
25 cessors and assigns.

26 (c) The interest of the Forest Resource Trust created by recording the contract constitutes a  
27 purchaser's interest in real property for purposes of ORS 93.640.

28 (d) A memorandum of contract must include, but is not limited to:

29 (A) The date of execution of the contract;

30 (B) The name of each landowner of the forestland identified in the contract;

31 (C) A legal description of the forestland subject to the contract that conforms with ORS 93.600;  
32 and

33 (D) If the contract is secured by a lien as provided in ORS 526.695 and 526.740 to 526.775, a  
34 statement from each landowner acknowledging the lien.

35 (9) As used in this section, "eligible landowner" means a qualified private or local government  
36 forestland owner who:

37 (a) Owns land that qualifies as forestland, as defined by the [*State Board of Forestry*] **commis-**  
38 **sion**.

39 (b) Has not received an exemption from reforestation requirements pursuant to rules adopted  
40 by the [*board*] **commission** under ORS 527.760.

41 **SECTION 1979.** ORS 526.710 is amended to read:

42 526.710. To assist the [*State Board of Forestry*] **Oregon Natural Resources Commission** in  
43 carrying out the duties of the Forest Resource Trust, the [*State Forestry Department*] **Oregon De-**  
44 **partment of Natural Resources** shall:

45 (1) Identify potentially suitable lands, and educate the owners of those lands on Forest Resource

1 Trust programs.

2 (2) Provide technical and other management assistance to participating landowners.

3 (3) Monitor compliance with Forest Resource Trust programs by participating landowners.

4 (4) Encourage involvement of the landowner.

5 (5) Encourage the use of private contractors, consultants, forestry extension programs, nongov-  
6 ernmental organizations and landowner cooperatives.

7 (6) Develop project plans in cooperation with landowners that establish clear benchmarks for  
8 compliance with terms of the plan.

9 (7) Release from financial obligation for any portion of the qualified private and local govern-  
10 ment forestlands included under Forest Resource Trust programs and irretrievably lost to insects,  
11 disease, fire, storm, flood or other natural destruction through no fault of the landowner.

12 (8) Secure provisions for access to the land by the [*State Forester*] **Director of the Oregon**  
13 **Department of Natural Resources**.

14 (9) Give consideration to **fish and wildlife** conservation plans or strategies [*adopted by the State*  
15 *Department of Fish and Wildlife when setting priorities for Forest Resource Trust programs*].

16 **SECTION 1980.** ORS 526.720 is amended to read:

17 526.720. The Forest Resource Trust Fund is created in the State Treasury, separate and distinct  
18 from the General Fund. The Forest Resource Trust Fund shall consist of all moneys received from  
19 whatever source to carry out the duties, functions and powers of the Forest Resource Trust. All  
20 earnings on moneys in the fund shall be retained in the fund. All moneys in the fund are **contin-**  
21 **uously** appropriated [*continuously*] to the [*State Forestry Department*] **Oregon Department of Na-**  
22 **tural Resources** to carry out the duties, functions and powers of the Forest Resource Trust,  
23 including [*State Forestry Department*] administrative expenses.

24 **SECTION 1981.** ORS 526.725 is amended to read:

25 526.725. (1) The [*State Board of Forestry or the State Forester*] **Director of the Oregon De-**  
26 **partment of Natural Resources or the Oregon Natural Resources Commission** may enter into  
27 agreements with private, governmental or other organizations and may accept contributions, gifts  
28 or grants from any source to carry out the duties, functions and powers of the Forest Resource  
29 Trust. All moneys received by the [*board or the State Forester*] **director or the commission** pur-  
30 suant to this section shall be deposited in the Forest Resource Trust Fund.

31 (2) The [*board*] **director or commission** may acquire, on behalf of the Forest Resource Trust,  
32 through exchange, lease or purchase, land only to the extent necessary to carry out the duties,  
33 functions and powers of the trust.

34 (3) Agreements with private, governmental or other organizations under subsection (1) of this  
35 section may specify the terms under which funds are invested and benefits accrue to the contribut-  
36 ing party to the extent the agreement is consistent with the provisions of ORS 526.695 to 526.775.

37 (4) The [*State Forester*] **director** may, on behalf of the Forest Resource Trust, market, register,  
38 transfer or sell forestry carbon offsets attributable to the lands enrolled in the stand establishment  
39 program under ORS 526.705. Prices for the transfer or sale of forestry carbon offsets may be nego-  
40 tiated but must be at or greater than fair market value.

41 (5) Nothing in ORS 526.695 to 526.775 is intended to create an enforceable trust on any agency  
42 or officer of the State of Oregon.

43 **SECTION 1982.** ORS 526.745 is amended to read:

44 526.745. (1) The [*State Forester*] **Director of the Oregon Department of Natural Resources**  
45 may file a notice of lien under ORS 526.740 anytime after the contract is executed.

1 (2) The [*State Forester*] **director** shall file the notice of lien with the recording officer of the  
2 county or counties where the forestland is located. The notice shall be in writing verified by the  
3 [*State Forester*] **director** and shall contain:

4 (a) The name of each owner of the forestland identified in the contract;

5 (b) A legal description of the forestland identified in the contract in conformance with ORS  
6 93.600;

7 (c) A description of the forest products to be covered by the lien;

8 (d) A statement that the lien includes a lien on accounts receivable from the sale of any forest  
9 products covered by the lien and that the lien on forest products and accounts receivable shall have  
10 priority as of the date of filing of the notice of lien under this section; and

11 (e) A statement of the amount of funds to be paid under the contract.

12 (3) Within 10 days after the [*State Forester*] **director** files the notice of lien under this section,  
13 the [*State Forester*] **director** shall send a copy of the notice to each of the following persons whose  
14 interest in the forestland referred to in subsection (2)(a) of this section is of record as of the date  
15 the [*State Forester*] **director** files the notice of lien with the county recording officer:

16 (a) Each seller on a land sale contract covering all or any part of the forestland referred to in  
17 subsection (2)(a) of this section;

18 (b) Each mortgagee upon a mortgage covering all or part of the forestland referred to in sub-  
19 section (2)(a) of this section; and

20 (c) Each beneficiary of a trust deed covering all or part of the forestland referred to in sub-  
21 section (2)(a) of this section.

22 **SECTION 1983.** ORS 526.765 is amended to read:

23 526.765. (1) When the [*State Forester*] **Director of the Oregon Department of Natural Re-**  
24 **sources** receives full payment of funds described in the notice of lien filed under ORS 526.745, or  
25 if the lien is released, the [*State Forester*] **director** shall file with the recording officer of the county  
26 in which the claim is recorded a certificate declaring that full payment has been received, or that  
27 the lien has been released, and that the claim of lien is discharged. The certificate shall include the  
28 name of the forestland owner, the date of filing of the notice of lien under ORS 526.745 and a legal  
29 description of the land affected in conformance with ORS 93.600.

30 (2) Upon receiving the certificate, the recording officer shall enter it in full length in the book  
31 kept to record such liens.

32 **SECTION 1984.** ORS 526.770 is amended to read:

33 526.770. (1) No harvest or removal of forest products on forestland covered by a contract be-  
34 tween the forest landowner and the Forest Resource Trust shall occur without the landowner or the  
35 timber owner first notifying the [*State Forester*] **Director of the Oregon Department of Natural**  
36 **Resources** in writing, on forms prepared by the [*State Forester*] **director**, of intent to harvest or  
37 remove forest products. Notice shall be made in the same manner as notice provided under ORS  
38 527.670 (6).

39 (2) The notification shall specify where and when the harvest or removal of forest products will  
40 take place, the nature of the harvest or removal of forest products and where and to whom the  
41 forest products will be sold or delivered and shall include maps or other information as required by  
42 the [*State Forester*] **director**. Upon receipt of notification pursuant to subsection (1) of this section,  
43 the [*State Forester*] **director** shall notify the landowner, and any person to whom the forest products  
44 will be sold or delivered, of the repayment obligation specified in any contract between the forest  
45 landowner and the [*State Forester*] **director**. The landowner shall make payment to the [*State*

1 *Forester*] **director**. Such payment shall be deposited in the Forest Resource Trust Fund. If payment  
2 is not made within 60 days of harvest or removal of forest products, the lien shall be delinquent and  
3 may be foreclosed in the manner described in ORS 526.755.

4 **SECTION 1985.** ORS 526.775 is amended to read:

5 526.775. Notwithstanding ORS 526.695 and 526.740 to 526.775, if the forest landowner and the  
6 [*State Forester*] **Director of the Oregon Department of Natural Resources** entered into a con-  
7 tract as provided in ORS 526.705 and the contract is terminated or breached, and there are no forest  
8 products or accounts receivable subject to the lien created under ORS 526.740, any judgment entered  
9 against the landowner for breach or termination of the contract may be executed on any property  
10 of the landowner.

11 **SECTION 1986.** ORS 526.780 is amended to read:

12 526.780. (1) The [*State Forester*] **Director of the Oregon Department of Natural Resources**  
13 may enter into agreements with nonfederal forest landowners as a means to market, register,  
14 transfer or sell forestry carbon offsets on behalf of the landowners to provide a stewardship incen-  
15 tive for nonfederal forestlands.

16 (2) The [*State Forester*] **director** may enter into an agreement described in this section if all of  
17 the following criteria are met:

18 (a) The agreement must ensure continuous management of the nonfederal forestlands at a  
19 standard that, in the judgment of the [*State Forester*] **director**, would not occur in the absence of  
20 the agreement.

21 (b) Any forestry carbon offsets managed by the agreement must be attributable to the subject  
22 nonfederal forestland as determined by the forestry carbon offset accounting system established in  
23 ORS 526.783.

24 (c) Prices for the transfer or sale of forestry carbon offsets may be negotiated on behalf of the  
25 nonfederal forest landowner and must be at or greater than fair market value.

26 (d) The agreement must provide for the following distribution of proceeds from the transfer or  
27 sale of forest carbon offsets attributable to the subject nonfederal forestland:

28 (A) Not less than 50 percent to the nonfederal forest landowner;

29 (B) Not more than 25 percent to the [*State Forester*] **Oregon Department of Natural Re-**  
30 **sources** to fund programs providing coordinated technical, financial or management planning as-  
31 sistance to nonindustrial private forest landowners; and

32 (C) Not more than 25 percent to the [*State Forester*] **department** to fund administration of the  
33 forestry carbon offset program.

34 (3) All revenues received and any interest earned on moneys distributed to the [*State Forester*]  
35 **department** under subsection (2)(d)(B) and (C) of this section shall be [*credited to the State Forestry*  
36 *Department Account and may be expended only*] **deposited in the Oregon Natural Resources Fund.**  
37 **Moneys deposited in the fund under this subsection are continuously appropriated to the**  
38 **department** for the purposes stated in subsection (2)(d)(B) and (C) of this section.

39 (4) A person or governmental agency may create a forestry carbon offset by performing, fi-  
40 nancing or otherwise causing one or more of the following activities:

41 (a) Afforestation or reforestation of underproducing lands that are not subject to required  
42 reforestation under the Oregon Forest Practices Act;

43 (b) Forest management activities not required under law existing at the point of creation of the  
44 forestry carbon offset, including but not limited to the following practices:

45 (A) Stand density control treatments in overstocked, underproducing stands of timber;

1 (B) Silvicultural practices that increase forest stand biomass, including but not limited to  
2 structure based management, variable retention, uneven age management, longer rotation ages and  
3 no harvest reserves;

4 (C) Expanded riparian buffers and other leave areas; and

5 (D) Deferred harvest rotations past 50 years or the age of economic maturity, whichever is  
6 longer; and

7 (c) Other activities as defined by rule by the [*State Board of Forestry*] **Oregon Natural Re-**  
8 **sources Commission.**

9 **SECTION 1987.** ORS 526.783 is amended to read:

10 526.783. As a means of consistently reporting forestry carbon offsets created through programs  
11 established under ORS 526.725, 526.780 to 526.789, 530.050 or 530.500, the [*State Forester*] **Director**  
12 **of the Oregon Department of Natural Resources** shall develop a forestry carbon offset account-  
13 ing system for the registration, transfer or sale of forestry carbon offsets. The forestry carbon offset  
14 accounting system shall:

15 (1) Use accepted principles and standards relating to creating, measuring, monitoring, market-  
16 ing, verifying, registering, transferring and selling carbon offsets used as mitigation for carbon  
17 dioxide emissions; and

18 (2) Be consistent with any rules adopted by the [*State Board of Forestry*] **Oregon Natural Re-**  
19 **sources Commission** under ORS 526.786.

20 **SECTION 1988.** ORS 526.786 is amended to read:

21 526.786. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** may develop  
22 administrative rules that define principles and standards relating to the creation, measurement, ac-  
23 counting, marketing, verifying, registering, transferring and selling of forestry carbon offsets from  
24 nonfederal forestlands.

25 (2) Rules adopted by the [*board*] **commission** under this section shall set standards to ensure  
26 that in order to be marketed, registered, transferred or sold, a forestry carbon offset must be created  
27 as a result of forest management activities that:

28 (a) Have the effect of increasing carbon storage on forestlands as measured by a forestry carbon  
29 offset accounting system;

30 (b) Would not otherwise occur but for the carbon storage objective; and

31 (c) Provide environmental, social and economic benefits for Oregon and its [*citizens*] **residents**,  
32 including but not limited to, protection or enhancement of long term timber supplies, native fish and  
33 wildlife habitat and water quality.

34 (3) Rules adopted by the [*board*] **commission** under this section shall establish principles to  
35 ensure that the forestry carbon offset accounting system shall:

36 (a) Account for relevant sources of carbon dioxide emission debits and credits for carbon storage  
37 or sequestration;

38 (b) Account for the duration and permanence of the carbon dioxide storage or emission re-  
39 ductions;

40 (c) Include provisions for establishing the appropriate baseline for projects, practices, rotation  
41 ages, harvest schedules and ownership from which measured carbon dioxide emission debits, and  
42 credits for carbon storage or sequestration are made;

43 (d) Account for other relevant and measurable greenhouse gas consequences, specifically credits  
44 and debits expressed as a carbon dioxide emissions equivalent, when establishing baselines or oth-  
45 erwise as appropriate;

1 (e) Account for the specific forest management practices used on-site and include provisions for  
 2 monitoring carbon dioxide emission debits and credits for carbon storage or sequestration, from the  
 3 implementation of specific practices;

4 (f) Account for continuing carbon dioxide emission debits, and credits for carbon storage or  
 5 sequestration, based on the end product use of harvested biomass;

6 (g) Account for environmental, social and economic benefits of forestry carbon offsets and en-  
 7 sure that practices with unsustainable, long term consequences are not used to create forestry car-  
 8 bon offsets;

9 (h) Allow for public access to information in monitoring reports; and

10 (i) Encourage third-party verification of forestry carbon offsets.

11 (4) Rules adopted by the [board] **commission** under this section may address qualifications for  
 12 persons and agencies that provide third-party verification and registration of forestry carbon offsets.

13 (5) Rules adopted by the [board] **commission** under this section shall be developed with the  
 14 assistance of an advisory committee appointed by the [board] **commission**. The advisory committee  
 15 shall consist of at least nine persons and shall contain:

16 (a) Persons from businesses, governmental agencies and nongovernmental organizations with  
 17 knowledge and experience in the accounting of greenhouse gas emissions, sequestration and storage;

18 (b) At least one person from a nongovernmental forestry conservation organization;

19 (c) At least one nonindustrial private forest landowner or a representative of an organization  
 20 that represents nonindustrial private forest landowners;

21 (d) One representative of the State Department of Energy;

22 (e) [One representative of the State Department of Fish and Wildlife, or a designee of the State  
 23 Department of Fish and Wildlife] **One representative of the Oregon Department of Natural Re-  
 24 sources who is well informed on the fish and wildlife laws of this state;**

25 (f) One representative of the Department of Environmental Quality, or a designee of the De-  
 26 partment of Environmental Quality;

27 (g) At least one representative from a qualified organization, as defined in ORS 469.503; and

28 (h) At least one representative from the [State Forestry Department] **Oregon Department of  
 29 Natural Resources** who shall serve as the secretary to the advisory committee.

30 **SECTION 1989.** ORS 526.789 is amended to read:

31 526.789. Nothing in ORS 526.005, 526.725, 526.780 to 526.789, 530.050 or 530.500 shall prohibit any  
 32 person or governmental agency from marketing, selling or transferring forestry carbon offsets inde-  
 33 pendently from the [State Forester] program established under ORS 526.725, 526.780 to 526.789,  
 34 530.050 or 530.500. Rules adopted by the [State Board of Forestry] **Oregon Natural Resources  
 35 Commission** pursuant to ORS 526.786 may not prohibit any person from marketing, selling or  
 36 transferring forestry carbon offsets using principles and standards different than those adopted by  
 37 the [board] **commission**.

38 **SECTION 1990.** ORS 526.900 is amended to read:

39 526.900. (1) [The State Forestry Department and] The State Department of Agriculture **and the  
 40 Oregon Department of Natural Resources** shall, in consultation with relevant state agencies and  
 41 other public or private organizations, review state statutes, rules, policies and programs that affect  
 42 landowner decisions to implement conservation strategies.

43 (2) The review conducted under subsection (1) of this section shall include:

44 (a) Establishing a statewide strategy for the implementation and coordination of incentives,  
 45 regulatory disincentives, expedited permit processes and related taxes.

1 (b) The development of a stewardship agreement program for rural lands that establishes a  
 2 baseline management standard for landowners and a voluntary higher standard that provides natural  
 3 resource benefits and regulatory certainty for landowners.

4 **SECTION 1991.** ORS 526.905 is amended to read:

5 526.905. (1) Pursuant to its authority to improve the efficient and effective use of state re-  
 6 sources, the Oregon Department of Administrative Services shall coordinate with the [*State Depart-*  
 7 *ment of Fish and Wildlife, the State Parks and Recreation Department, the State Forestry Department,*  
 8 *the Department of State Lands and any other state agency that has oversight responsibilities for state*  
 9 *forestlands*] **Oregon Department of Natural Resources** to adopt forest management plans or poli-  
 10 cies that:

11 (a) Establish forest health programs and management strategies designed to reduce the risk of  
 12 catastrophic loss of forest resources from disease and insect infestation.

13 (b) Establish goals and strategies for managing forest fuel accumulation in order to reduce the  
 14 risk of catastrophic fires in areas historically subject to frequent, periodic fires.

15 (2) [*To the extent that a state agency with oversight responsibilities for state forestlands has, as*  
 16 *of January 1, 2004, policies, approved forest management plans or other strategies designed to address*  
 17 *forest health and forest fuels management, those policies, plans and strategies*] **Existing plans and**  
 18 **strategies designed to address forest health and forest fuels management** may be incorporated  
 19 into the plans and policies developed by the Oregon Department of Administrative Services.

20 (3) The Oregon Department of Administrative Services may develop forest fuel reduction and  
 21 forest health restoration projects that may be implemented by [*state agencies*] **the Oregon Depart-**  
 22 **ment of Natural Resources.** Such projects may include procedures for:

23 (a) Identifying forests that are at high risk of loss due to fuel accumulation, disease or insect  
 24 infestation.

25 (b) Cooperating with local governments to identify locations where the urban-forest interface  
 26 poses the greatest risk of contributing to damage or loss during a fire.

27 (c) Establishing priority areas for the projects due to natural, economic or scenic values.

28 **SECTION 1992.** ORS 526.992 is amended to read:

29 526.992. (1) A person who, with willful disregard for the prohibitions contained in ORS 526.801  
 30 to 526.831 against exporting public timber, exported or caused to be exported unprocessed timber  
 31 originating from public lands in violation of this chapter is guilty of a Class C felony and may be  
 32 assessed a civil penalty not to exceed \$500,000 for each violation or three times the gross value of  
 33 the unprocessed timber involved in the violation, whichever amount is greater.

34 (2) If the agency concerned finds, on the record and after an opportunity for a hearing, that a  
 35 person has violated any provision of ORS 526.801 to 526.831 or any rule issued pursuant thereto  
 36 relating to lands which the agency administers (notwithstanding that such violation may not have  
 37 caused the export of unprocessed public timber in violation of this chapter), such agency may:

38 (a) Assess against such person a civil penalty not more than \$75,000 for each violation if it is  
 39 determined that the violation was casual or involuntary.

40 (b) Assess against such person a civil penalty not more than \$500,000 or three times the gross  
 41 value of the unprocessed timber involved in the violation, whichever amount is greater, if it is de-  
 42 termined that the person committed such violation willfully. Any person who willfully commits such  
 43 a violation is guilty of a Class C felony.

44 (3) Any civil penalty imposed under this section shall become due and payable when the person  
 45 incurring the penalty receives a notice in writing of the imposition of the penalty. The notice may



1 be personally served on the person incurring the penalty or may be sent by registered or certified  
2 mail.

3 (4) The person incurring the penalty shall have 20 days from the date of receiving the notice to  
4 make written application for a hearing.

5 (5) Any person who makes application as provided for in subsection (4) of this section shall be  
6 entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the  
7 applicable provisions of ORS 183.413 to 183.470.

8 (6) Judicial review of an order made after a hearing under this section shall be as provided in  
9 ORS 183.480 to 183.497 for judicial review of contested cases.

10 (7) When an order assessing a civil penalty under this section becomes final by operation of law  
11 or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final,  
12 the order may be recorded with the county clerk in any county of this state. The clerk shall there-  
13 upon record the name of the person incurring the penalty and the amount of the penalty in the  
14 County Clerk Lien Record.

15 (8) All moneys recovered pursuant to this section shall be *[paid into the State Forestry Depart-*  
16 *ment Account and may be used only to pay the expenses of administration, investigation and enforce-*  
17 *ment of ORS 526.801 to 526.831 by the State Forester or any law enforcement agency.]* **deposited in**  
18 **the Oregon Natural Resources Fund and are continuously appropriated to the Oregon De-**  
19 **partment of Natural Resources for purposes related to the administration, investigation and**  
20 **enforcement of ORS 526.801 to 526.831.**

21 **SECTION 1993.** ORS 527.260 is amended to read:

22 527.260. (1) No person shall willfully and unlawfully:

- 23 (a) Bore or cut any forest tree belonging to another for the purpose of extracting pitch;
- 24 (b) Cut, injure or deface any such tree for the purpose of taking any part of it; or
- 25 (c) Injure or destroy any such tree.

26 (2) The *[State Forester]* **Director of the Oregon Department of Natural Resources**, with the  
27 consent of the owner of the land, shall issue permits for the extraction of pitch from forest trees.  
28 The terms of the permits shall clearly describe the area to which the extraction shall be confined  
29 and state the precautions necessary, in the judgment of the *[State Forester]* **director**, to be taken  
30 by the permittee, so that the extraction will not result in an increased fire hazard to life and ad-  
31 joining property.

32 (3) No person shall:

- 33 (a) Bore or cut any forest tree for the purpose of extracting pitch without having first obtained  
34 a permit to do so; or
- 35 (b) Willfully or negligently fail to comply with the terms of the permit.

36 **SECTION 1994.** ORS 527.310 is amended to read:

37 527.310. As used in and for the purposes of ORS 527.310 to 527.370:

38 (1) "Control" means reduction of resource losses or pest occurrences to an acceptable level by  
39 direct and immediate application of effective prevention, suppression or eradication strategies, or  
40 any combination thereof.

41 (2) "Eradication" means the implementation of strategies through host or pest destruction or  
42 removal, or by the use of pesticides, to contain or completely eliminate exotic pests in a specific  
43 area, or both.

44 (3) "Exotic" means any pest that has been accidentally or deliberately introduced into an area  
45 where it does not naturally occur.

1 (4) “Forestland” means any nonfederal land [*which*] **that** has enough timber or forest growths,  
 2 standing or down, to constitute, in the judgment of the [*State Board of Forestry*] **Oregon Natural**  
 3 **Resources Commission**, forest pests of a nature to be harmful, detrimental and injurious to the  
 4 management objectives for the site.

5 (5) “Integrated pest management” means a coordinated decision-making process that utilizes the  
 6 most appropriate of all reasonably available means, tactics or strategies blended together to mini-  
 7 mize the impact of forest pests in an environmentally and economically sound manner to meet site  
 8 specific management objectives.

9 (6) “Native” means any pest that is indigenous or naturally occurring in a particular area.

10 (7) “Owner” means any person owning nonfederal forestlands or timber as shown on the latest  
 11 records of the tax collector of the county in which the forestlands or timber is situated. Where  
 12 timber is owned entirely separate and apart from the land whereon it grows or is situated,  
 13 “owner” means any person owning such timber as shown on the latest records of the tax collector  
 14 of the county in which the timber is situated.

15 (8) “Pest” means any forest insect or disease which causes or may cause damage that prevents  
 16 or interferes with management objectives in a specific area.

17 (9) “Pesticide” has the meaning given that term in ORS 634.006.

18 (10) “Prevention” means the implementation of strategies designed to minimize the impact of a  
 19 pest before an outbreak occurs, including but not limited to, release or enhancement of natural en-  
 20 emies and silvicultural activities to increase tree vigor or otherwise reduce tree susceptibility to  
 21 pest damage. “Prevention” requires the incorporation of integrated pest management into overall  
 22 forest resource management in order to create ecological conditions unfavorable for the reproduc-  
 23 tion or survival of pest organisms.

24 (11) “Strategies” may include, but are not limited to, physical and biological methods and ap-  
 25 plication of pesticides.

26 (12) “Suppression” means the implementation of intervention strategies designed to reduce na-  
 27 tive pest populations to acceptable levels necessary to meet forest resource management objectives  
 28 in a specified area.

29 **SECTION 1995.** ORS 527.321 is amended to read:

30 527.321. The [*State Forester*] **Director of the Oregon Department of Natural Resources** shall  
 31 implement the integrated pest management process as provided in ORS 527.315 on [*department-*  
 32 *managed*] lands **managed by the Oregon Department of Natural Resources** and encourage the  
 33 process on other nonfederal lands by setting examples on department lands and through training  
 34 workshops, demonstration areas and on-site technical advice.

35 **SECTION 1996.** ORS 527.335 is amended to read:

36 527.335. (1) The [*State Forester*] **Director of the Oregon Department of Natural Resources**  
 37 shall conduct surveys and evaluations on nonfederal forestlands to determine the presence, extent,  
 38 trend and impact of native and exotic pests, as well as overall forest health monitoring. In so doing,  
 39 the [*forester or representatives of the forester*] **director or authorized representative of the di-**  
 40 **rector** may go upon privately owned lands with permission of the respective owners thereof, and  
 41 should any owner withhold such permission and the [*forester*] **director** believes an emergency exists,  
 42 the [*forester*] **director** may petition [*that*] **the** circuit court of this state having jurisdiction over the  
 43 lands involved for a warrant authorizing the [*forester or representatives of the forester*] **director or**  
 44 **the authorized representative of the director** to go upon such lands. Upon petition being made  
 45 the court shall forthwith summarily determine whether or not such emergency exists, and if deter-

1 mining such emergency exists, immediately issue a warrant authorizing the [*forester or represen-*  
 2 *tatives of the forester*] **director or authorized representative of the director** to go upon such lands  
 3 for the purposes of this section.

4 (2) The [*State Forester*] **director** may cooperate with the United States or agencies thereof,  
 5 other agencies of the state, county or municipal governments, agencies of other states or other  
 6 public or private organizations or individuals and may accept such funds, equipment, supplies or  
 7 services from cooperators and others as it may deem appropriate for the purposes of subsections (1)  
 8 and (4) of this section.

9 (3) The [*State Forester*] **director** is authorized to enter into contracts for selected services or  
 10 accept moneys from private and public sources for the purposes stated in subsections (1) and (4) of  
 11 this section; provided, however, that such moneys shall be [*placed in the State Forestry Department*  
 12 *Account and shall be continuously appropriated for such purposes*] **deposited in the Oregon Natural**  
 13 **Resources Fund. Moneys deposited in the fund under this subsection are continuously ap-**  
 14 **propriated to the Oregon Department of Natural Resources for the purposes stated in sub-**  
 15 **sections (1) and (4) of this section.**

16 (4) The [*State Forester*] **director** shall also provide on-site technical advice regarding insect and  
 17 disease management to nonfederal land owners who request such services.

18 **SECTION 1997.** ORS 527.346 is amended to read:

19 527.346. (1) Whenever the [*State Forester determines, using criteria approved by the State Board*  
 20 *of Forestry,*] **Director of the Oregon Department of Natural Resources determines, using cri-**  
 21 **teria approved by the Oregon Natural Resources Commission,** that owners are unable to take  
 22 action against a pest that is threatening Oregon's economic, social and environmental well-being, the  
 23 [*State Forester*] **director** shall, using funds appropriated by the Legislative Assembly, declare a  
 24 control district and implement the appropriate strategy.

25 (2) The [*State Forester*] **director** shall, within 15 days after receiving state funds, notify in  
 26 writing all owners of forestlands within the control district of the declared control project. The  
 27 notice shall be served by return receipt mail addressed to the last-known address of the owner. In  
 28 addition, there shall be published an article describing the nature of the control district, including  
 29 a legal description of the area and vicinity map, at least once a week for two consecutive weeks in  
 30 a newspaper having a general circulation in the area in which the control district is situated. Other  
 31 methods of notification may be used in the future as new technology becomes available.

32 **SECTION 1998.** ORS 527.360 is amended to read:

33 527.360. Upon completion of any work authorized and performed under the provisions of ORS  
 34 527.346, the [*State Forester*] **Director of the Oregon Department of Natural Resources** shall  
 35 prepare a certified statement of the expenses necessarily incurred in performing the work. The state  
 36 shall assist in the payment of control costs from funds available for that purpose. The balance of the  
 37 expenses, after deducting the sum of such amounts as may be contributed by the state, the federal  
 38 government or any other agencies or persons to defray control costs, shall constitute a charge  
 39 against the forestlands or timber involved and shall be collected in the same manner as forest patrol  
 40 assessments under the provisions of ORS chapter 477.

41 **SECTION 1999.** ORS 527.370 is amended to read:

42 527.370. All moneys collected under ORS 527.335 and 527.346, together with such moneys as have  
 43 been and may be appropriated by the legislature for the purposes of ORS 527.310 to 527.370, and  
 44 with such moneys as may be contributed by the federal government or any agencies or persons, shall  
 45 be [*placed into the State Forestry Department Account.*] **deposited in the Oregon Natural Re-**

1 **sources Fund. Moneys deposited in the fund under this section are continuously appropriated**  
 2 **to the Oregon Department of Natural Resources for the purpose of carrying out the duties,**  
 3 **functions and powers of the department as prescribed by section 1 (10) and (11) of this 2011**  
 4 **Act.**

5 **SECTION 2000.** ORS 527.620 is amended to read:

6 527.620. As used in ORS 527.610 to 527.770, 527.990 and 527.992:

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

8 [(2)] (1) "Cumulative effects" means the impact on the environment which results from the in-  
 9 cremental impact of the forest practice when added to other past, present and reasonably foreseea-  
 10 ble future forest practices regardless of what governmental agency or person undertakes such other  
 11 actions.

12 [(3)] (2) "DBH" means the diameter at breast height which is measured as the width of a  
 13 standing tree at four and one-half feet above the ground, on the uphill side.

14 [(4)] (3) "Edge of the roadway" means:

15 (a) For interstate highways, the fence.

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

18 [(5)] (4) "Forest practice" means any operation conducted on or pertaining to forestland, in-  
 19 cluding but not limited to:

20 (a) Reforestation of forestland;

21 (b) Road construction and maintenance;

22 (c) Harvesting of forest tree species;

23 (d) Application of chemicals; and

24 (e) Disposal of slash.

25 [(6)] (5) "Forest tree species" means any tree species capable of producing logs, fiber or other  
 26 wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial  
 27 forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used  
 28 solely for the production of Christmas trees.

29 [(7)] (6) "Forestland" means land that is used for the growing and harvesting of forest tree  
 30 species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances,  
 31 rules or regulations are applied.

32 [(8)] (7) "Harvest type 1" means an operation that requires reforestation but does not require  
 33 wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free  
 34 to grow seedlings, saplings, poles and larger trees that is less than the stocking level established  
 35 by rule of the [board] **Oregon Natural Resources Commission** that represents adequate utilization  
 36 of the productivity of the site.

37 [(9)] (8) "Harvest type 2" means an operation that requires wildlife leave trees but does not  
 38 require reforestation. A harvest type 2 does not require reforestation because it has an adequate  
 39 combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

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

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

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

1 [(10)] (9) "Harvest type 3" means an operation that requires reforestation and requires wildlife  
2 leave trees. This represents a level of stocking below which the size of operations is limited under  
3 ORS 527.740 and 527.750.

4 [(11)] (10) "Landowner" means any individual, combination of individuals, partnership, corpo-  
5 ration or association of whatever nature that holds an ownership interest in forestland, including  
6 the state and any political subdivision thereof.

7 [(12)] (11) "Operation" means any commercial activity relating to the establishment, manage-  
8 ment or harvest of forest tree species except as provided by the following:

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

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

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

15 (B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper pro-  
16 ducts;

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

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

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

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

24 (e) The management or harvest of juniper species conducted in a unit of less than 120 contig-  
25 uous acres within a single ownership.

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

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

32 [(13)] (12) "Operator" means any person, including a landowner or timber owner, who conducts  
33 an operation.

34 [(14)] (13) "Single ownership" means ownership by an individual, partnership, corporation, lim-  
35 ited liability company, trust, holding company or other business entity, including the state or any  
36 political subdivision thereof. Single ownership includes ownership held under different names or ti-  
37 tles where the same individual or individuals, or their heirs or assigns, are shareholders (other than  
38 those of public corporations whose stock is traded on the open market), partners, business trustees  
39 or officers, or otherwise have an interest in or are associated with each property.

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

42 [(16)] (14) "Suitable hardwood seedlings" means any hardwood seedling that will eventually yield  
43 logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or  
44 other forest products.

45 [(17)] (15) "Timber owner" means any individual, combination of individuals, partnership, cor-

1 poration or association of whatever nature, other than a landowner, that holds an ownership inter-  
2 est in any forest tree species on forestland.

3 [(18)] (16) “Visually sensitive corridor” means forestland extending outward 150 feet, measured  
4 on the slope, from the outermost edge of the roadway of a scenic highway referred to in ORS  
5 527.755, along both sides for the full length of the highway.

6 [(19)] (17) “Wildlife leave trees” means trees or snags required to be retained as described in  
7 ORS 527.676 (1).

8 [(20)] (18) “Written plan” means a document prepared by an operator, timber owner or land-  
9 owner that describes how the operation is planned to be conducted.

10 **SECTION 2001.** ORS 527.630 is amended to read:

11 527.630. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base  
12 and other social and economic benefits, by helping to maintain forest tree species, soil, air and water  
13 resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the  
14 public policy of the State of Oregon to encourage economically efficient forest practices that ensure  
15 the continuous growing and harvesting of forest tree species and the maintenance of forestland for  
16 such purposes as the leading use on privately owned land, consistent with sound management of soil,  
17 air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as  
18 provided in ORS 527.755 and to ensure the continuous benefits of those resources for future gener-  
19 ations of Oregonians.

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

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

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

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

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

37 **SECTION 2002.** ORS 527.640 is amended to read:

38 527.640. The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall establish  
39 a number of forest regions, but not less than three, necessary to achieve the purposes described in  
40 ORS 527.630.

41 **SECTION 2003.** ORS 527.650 is amended to read:

42 527.650. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall es-  
43 tablish a forest practice committee for each forest region established pursuant to ORS 527.640. Each  
44 such committee shall consist of nine members, a majority of whom must reside in the region. Mem-  
45 bers of each committee shall be qualified by education or experience in natural resource manage-

1 ment and not less than two-thirds of the members of each committee shall be private landowners,  
 2 private timber owners or authorized representatives of such landowners or timber owners who reg-  
 3 ularly engage in operations.

4 (2) Members of forest practice committees shall be appointed by the *[board]* **commission** for  
 5 three-year terms. If there is a vacancy for any cause, the *[board]* **commission** shall make an ap-  
 6 pointment to become immediately effective for the unexpired term. Each such committee shall select  
 7 a chairperson from among its members. A staff member of the *[State Forestry Department shall be*  
 8 *designated by the State Forester]* **Oregon Department of Natural Resources shall be designated**  
 9 **by the Director of the Oregon Department of Natural Resources** to serve as the secretary,  
 10 without voting power, for each such committee.

11 **SECTION 2004.** ORS 527.660 is amended to read:

12 527.660. Each forest practice committee shall review proposed forest practice rules in order to  
 13 assist the *[State Board of Forestry]* **Oregon Natural Resources Commission** in developing rules  
 14 appropriate to the forest conditions within its region. Committee recommendations are advisory only  
 15 and the committees need not be consulted prior to the adoption of any forest practice rule.

16 **SECTION 2005.** ORS 527.670 is amended to read:

17 527.670. (1) The *[State Board of Forestry]* **Oregon Natural Resources Commission** shall des-  
 18 ignate the types of operations for which notice shall be required under this section.

19 (2) The *[board]* **commission** shall determine by rule what types of operations require a written  
 20 plan.

21 (3) The *[board's]* **commission's** determination under subsection (2) of this section shall require  
 22 a written plan for operations:

23 (a) Within one hundred feet of a stream determined by the *[State Forester]* **Director of the**  
 24 **Oregon Department of Natural Resources** to be used by fish or for domestic use, unless the  
 25 *[board]* **commission**, by rule, provides that a written plan is not required because the proposed op-  
 26 eration will be conducted according to a general vegetation retention prescription described in ad-  
 27 ministrative rule, or unless the operation will be conducted pursuant to a stewardship agreement  
 28 entered into under ORS 541.423; or

29 (b) Within three hundred feet of a resource site inventoried pursuant to ORS 527.710 (3)(a) un-  
 30 less the operation will be conducted pursuant to a stewardship agreement entered into under ORS  
 31 541.423 and is consistent with the purposes and policies of any relevant Safe Harbor Agreements  
 32 or Candidate Conservation Agreements entered into between the State of Oregon and agencies of  
 33 the United States Government, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205,  
 34 16 U.S.C. 1531 et seq.) and federal regulations.

35 (4) The distances set forth in subsection (3)(a) and (b) of this section are solely for the purpose  
 36 of defining an area within which a hearing may be requested under ORS 527.700 and not the area  
 37 to be protected by the *[board's]* **commission's** rules adopted pursuant to ORS 527.710 (3)(c).

38 (5) For the purpose of determining the distances set forth in subsection (3)(a) and (b) of this  
 39 section "site" means the specific resource site and not any additional buffer area.

40 (6) An operator, timber owner or landowner, before commencing an operation, shall notify the  
 41 *[State Forester]* **director**. The notification shall be on forms provided by the *[State Forester]* **direc-**  
 42 **tor** and shall include the name and address of the operator, timber owner and landowner, the legal de-  
 43 scription of the operating area, and any other information considered by the *[State Forester]* **direc-**  
 44 **tor** to be necessary for the administration of the rules promulgated by the *[board]* **commission**  
 45 pursuant to ORS 527.710. Promptly upon receipt of such notice, the *[State Forester]* **director** shall

1 send a copy of the notice to whichever of the operator, timber owner or landowner did not submit  
2 the notification. The [State Forester] **director** shall send a copy of notices involving chemical ap-  
3 plications to persons within 10 miles of the chemical application who hold downstream surface water  
4 rights pursuant to ORS chapter 537, if such a person has requested that notification in writing. The  
5 [board] **commission** shall adopt rules specifying the information to be contained in the notice. All  
6 information filed with the [State Forester] **director** pertaining to chemical applications shall be  
7 public record.

8 (7) An operator, timber owner or landowner, whichever filed the original notification, shall no-  
9 tify the [State Forester] **director** of any subsequent change in the information contained in the no-  
10 tification.

11 (8) Within three working days of receipt of a notice or a written plan filed under subsection (6)  
12 or (7) of this section, the [State Forester] **director** shall send a copy of the notice or written plan  
13 to any person who requested of the [State Forester] **director** in writing that the person be sent  
14 copies of notice and written plan and who has paid any applicable fee established by the [State  
15 Forester] **director** for such service. The [State Forester] **director** may establish a fee for sending  
16 copies of notices and written plans under this subsection not to exceed the actual and reasonable  
17 costs. In addition, the [State Forester] **director** shall send a copy of the notification to the Depart-  
18 ment of Revenue and the county assessor for the county in which the operation is located, at times  
19 and in a manner determined through written cooperative agreement by the parties involved.

20 (9) Persons may submit written comments pertaining to the operation to the [State Forester]  
21 **director** within 14 calendar days of the date the notice or written plan was filed with the [State  
22 Forester] **director** under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of  
23 this subsection, the [State Forester] **director** may waive any waiting period for operations not re-  
24 quiring a written plan under subsection (3) of this section, except those operations involving aerial  
25 application of chemicals.

26 (10) If an operator, timber owner or landowner is required to submit a written plan of operations  
27 to the [State Forester] **director** under subsection (3) of this section:

28 (a) The [State Forester] **director** shall review a written plan and may provide comments to the  
29 person who submitted the written plan;

30 (b) The [State Forester] **director** may not provide any comments concerning the written plan  
31 earlier than 14 calendar days following the date that the written plan was filed with the [State  
32 Forester] **director** nor later than 21 calendar days following the date that the written plan was filed;  
33 and

34 (c) Provided that notice has been provided as required by subsection (6) of this section, the op-  
35 eration may commence on the date that the [State Forester] **director** provides comments or, if no  
36 comments are provided within the time period established in paragraph (b) of this subsection, at any  
37 time after 21 calendar days following the date that the written plan was filed.

38 (11)(a) Comments provided by the [State Forester, or by the board] **director, or by the com-**  
39 **mission** under ORS 527.700 (6), to the person who submitted the written plan are for the sole pur-  
40 pose of providing advice to the operator, timber owner or landowner regarding whether the  
41 operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules  
42 adopted thereunder. Comments provided by the [State Forester or the board] **director or the com-**  
43 **mission** do not constitute an approval of the written plan or operation.

44 (b) If the [State Forester or the board] **director or the commission** does not comment on a  
45 written plan, the failure to comment does not mean that an operation carried out in conformance



1 with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does  
2 the failure to comment constitute a rejection of the written plan or operation.

3 (c) In the event that the [*State Forester or board*] **director or commission** determines that an  
4 enforcement action may be appropriate concerning the compliance of a particular operation with  
5 ORS 527.610 to 527.770 or rules adopted thereunder, the [*State Forester or board*] **director or**  
6 **commission** shall consider, but [*are*] **is** not bound by, comments that the [*State Forester*] **director**  
7 provided under this section or comments that the [*board*] **commission** provided under ORS 527.700.

8 (12) When the operation is required to have a written plan under subsection (3) of this section  
9 and comments have been timely filed under subsection (9) of this section pertaining to the operation  
10 requiring a written plan, the [*State Forester*] **director** shall:

11 (a) Send a copy of the [*State Forester's*] **director's** review and comments, if any, to persons who  
12 submitted timely written comments under subsection (9) of this section pertaining to the operation;  
13 and

14 (b) Send to the operator, timber owner and landowner a copy of all timely comments submitted  
15 under subsection (9) of this section.

16 **SECTION 2006.** ORS 527.674 is amended to read:

17 527.674. The [*State Board of Forestry*] **Oregon Natural Resources Commission** may not adopt  
18 or enforce a rule under ORS 527.610 to 527.770 that requires that the [*board or the State Forester*]  
19 **commission or the Director of the Oregon Department of Natural Resources** approve written  
20 plans as a required precedent to conducting a forest practice or operation.

21 **SECTION 2007.** ORS 527.676 is amended to read:

22 527.676. (1) In order to contribute to the overall maintenance of wildlife, nutrient cycling,  
23 moisture retention and other resource benefits of retained wood, when a harvest type 2 unit ex-  
24 ceeding 25 acres or harvest type 3 unit exceeding 25 acres occurs the operator shall leave on av-  
25 erage, per acre harvested, at least:

26 (a) Two snags or two green trees at least 30 feet in height and 11 inches DBH or larger, at least  
27 50 percent of which are conifers; and

28 (b) Two downed logs or downed trees, at least 50 percent of which are conifers, that each  
29 comprise at least 10 cubic feet gross volume and are no less than six feet long. One downed conifer  
30 or suitable hardwood log of at least 20 cubic feet gross volume and no less than six feet long may  
31 count as two logs.

32 (2) In meeting the requirements of this section, the operator has the sole discretion to determine  
33 the location and distribution of wildlife leave trees, including the ability to leave snags, trees and  
34 logs in one or more clusters rather than distributed throughout the unit and, if specifically permitted  
35 by the [*State Board of Forestry*] **Oregon Natural Resources Commission** by rule, to meet the  
36 wildlife leave tree requirements by counting snags, trees or logs otherwise required to be left in  
37 riparian management areas or resource sites listed in ORS 527.710, subject to:

38 (a) Safety and fire hazard regulations;

39 (b) Rules or other requirements relating to wildlife leave trees established by the [*State Board*  
40 *of Forestry or the State Forester*] **Director of the Oregon Department of Natural Resources or**  
41 **the commission;** and

42 (c) All other requirements pertaining to forest operations.

43 (3) In meeting the requirements of this section, the [*State Forester*] **director**:

44 (a) Shall consult with the operator concerning the selection of wildlife leave trees when the  
45 [*State Forester*] **director** believes that retaining certain trees or groups of trees would provide in-

1 creased benefits to wildlife.

2 (b) May approve alternate plans submitted by the operator to meet the provisions of this section,  
3 including but not limited to waiving:

4 (A) The requirement that at least 50 percent of wildlife leave trees be conifers, upon a showing  
5 that a site is being intensively managed for hardwood production; and

6 (B) In whole or in part, the requirements of this section for one operation if an alternate plan  
7 provides for an equal or greater number of wildlife leave trees in another harvest type 2 or harvest  
8 type 3 operation, that the [State Forester] **director** determines would achieve better overall benefits  
9 for wildlife.

10 (c) May require, for operations adjacent to a fish-bearing or domestic use stream, in addition to  
11 trees otherwise required to be left in riparian management areas, up to 25 percent of the green trees  
12 required to be retained under this section to be left in or adjacent to the riparian management area  
13 of the stream.

14 (d) May require by rule, for operations adjacent to a small, nonfish-bearing stream subject to  
15 rapidly moving landslides as defined in ORS 195.250, that available green trees and snags be left in  
16 or adjacent to the stream. The operator must leave available green trees and snags under this par-  
17 agraph within an area that is 50 feet on each side of the stream and no more than 500 feet upstream  
18 from a riparian management area of a fish-bearing stream.

19 (4) When a harvest type 2 or harvest type 3 unit occurs adjacent to a prior harvest type 2 or  
20 harvest type 3 unit, resulting in a combined total contiguous acreage of harvest type 2 or harvest  
21 type 3 under single ownership exceeding 25 acres, the wildlife leave tree and downed log require-  
22 ments of subsection (1) of this section apply to the combined total contiguous acreage.

23 **SECTION 2008.** ORS 527.680 is amended to read:

24 527.680. (1) Whenever the [State Forester] **Director of the Oregon Department of Natural**  
25 **Resources** determines that an operator has committed a violation under ORS 527.990 (1), the [State  
26 Forester] **director** may issue and serve a citation upon the operator or authorized representative.  
27 The [State Forester] **director** shall cause a copy of the citation to be mailed or delivered to the  
28 timber owner and landowner. Whenever the [State Forester] **director** determines that the landowner  
29 has failed to comply with the reforestation rules under ORS 527.710, the [State Forester] **director**  
30 may issue and serve a citation upon the landowner or authorized representative. Each citation is-  
31 sued under this section shall specify the nature of the violation charged and any damage or unsat-  
32 isfactory condition that has occurred as the result of such violation.

33 (2) Whenever a citation is served pursuant to subsection (1) of this section, the [State Forester]  
34 **director**:

35 (a) Shall issue and serve upon the landowner or operator or authorized representative an order  
36 directing that the landowner or operator cease further violation. If the order is served upon an op-  
37 erator, the [State Forester] **director** shall cause a copy of such order to be mailed or delivered to  
38 the timber owner and landowner; and

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

44 (3) In the event the order issued under subsection (2)(a) of this section has not been complied  
45 with, and the violation specified in such order is resulting in continuing damage, the [State

1 *Forester*] **director**, by temporary order, may direct the landowner or operator to cease any further  
 2 activity in that portion of the operation that is resulting in such damage. Such temporary order shall  
 3 be in effect until the date of the expiration of the period as prescribed in subsection (4) of this  
 4 section or until the date that the violation ceases, whichever date occurs first.

5 (4) A temporary order issued under subsection (3) of this section shall be served upon the  
 6 landowner or operator or authorized representative, and the [*State Forester*] **director** shall cause a  
 7 copy of such temporary order to be mailed or delivered to the operator, timber owner and land-  
 8 owner. If requested by the operator, timber owner or landowner, the [*State Board of Forestry*]  
 9 **Oregon Natural Resources Commission**, following the appeal procedures of ORS 527.700, must  
 10 hold a hearing on the temporary order within five working days after the receipt by the [*board*]  
 11 **commission** of the request. A temporary order issued and served pursuant to subsection (3) of this  
 12 section shall remain in effect not more than five working days after such hearing unless the order  
 13 is sooner affirmed, modified or revoked by the [*board*] **commission**.

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

21 **SECTION 2009.** ORS 527.683 is amended to read:

22 527.683. (1) No civil penalty prescribed in ORS 527.992 shall be imposed until the person incur-  
 23 ring the penalty has received notice in writing from the [*State Forester*] **director** specifying the vi-  
 24 olation. Such notice is in addition to the notice required in ORS 183.745.

25 (2) The citation issued pursuant to ORS 527.680 (1) and the order issued pursuant to ORS 527.680  
 26 (2)(b) shall each constitute the notice required by subsection (1) of this section.

27 **SECTION 2010.** ORS 527.685 is amended to read:

28 527.685. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall by rule  
 29 establish the amount of civil penalty that may be imposed for a particular violation. Except as pro-  
 30 vided in subsection (5) of this section, no civil penalty shall exceed \$5,000 per violation.

31 (2) In imposing a penalty authorized by this section, the [*State Forester*] **Director of the Oregon**  
 32 **Department of Natural Resources** may consider the following factors:

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

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

37 (c) The gravity and magnitude of the violation.

38 (d) Whether the violation was repeated or continuous.

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

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

42 (g) Any relevant rule of the [*board*] **commission**.

43 (h) The violator's cooperativeness and efforts to correct the violation.

44 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and  
 45 conditions as the [*board*] **commission** determines to be proper and consistent with the public ben-

1 efit. Upon the request of the person incurring the penalty, the [board] **commission** shall consider  
 2 evidence of the economic and financial condition of the person in determining whether a penalty  
 3 shall be remitted or mitigated.

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

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

10 **SECTION 2011.** ORS 527.687 is amended to read:

11 527.687. (1) Subject to the notice provisions of ORS 527.683, any civil penalty under ORS 527.992  
 12 shall be imposed in the manner provided in ORS 183.745.

13 (2) In no case shall a hearing requested under ORS 183.745 be held less than 45 days from the  
 14 date of service of the notice of penalty to allow the party to prepare testimony. The hearing shall  
 15 be held not more than 180 days following issuance of the notice unless all parties agree on an ex-  
 16 tension.

17 (3) Hearings under this section shall be conducted by an administrative law judge assigned from  
 18 the Office of Administrative Hearings established under ORS 183.605.

19 (4) Except as provided in subsection (5) of this section, all civil penalties recovered under ORS  
 20 527.610 to 527.770, 527.990 and 527.992 shall be paid to the General Fund.

21 (5) Civil penalties recovered under ORS 527.685 (5) shall be deposited in the [State Forestry De-  
 22 partment Account under ORS 526.060 and used, consistently with ORS 527.690, by the State Forester  
 23 to reforest the] **Oregon Natural Resources Fund. Moneys deposited in the fund under this**  
 24 **subsection are continuously appropriated to the Oregon Department of Natural Resources**  
 25 **for purposes related to the reforestation of** land that is the subject of a violation of ORS 527.745  
 26 or rules for reforestation adopted pursuant to ORS 527.745. Civil penalties described in this sub-  
 27 section that exceed the costs of reforestation shall be paid to the General Fund.

28 **SECTION 2012.** ORS 527.690 is amended to read:

29 527.690. (1) In the event an order issued pursuant to ORS 527.680 (2)(b) directs the repair of  
 30 damage or correction of an unsatisfactory condition, including compliance with reforestation re-  
 31 quirements, and if the operator or landowner does not comply with the order within the period  
 32 specified in such order and the order has not been appealed to the [State Board of Forestry within  
 33 30 days, the State Forester based upon a determination by the forester of what action will best carry  
 34 out the purposes of ORS 527.630] **Oregon Natural Resources Commission within 30 days, the**  
 35 **Director of the Oregon Department of Natural Resources in consideration of what action**  
 36 **will best carry out the purposes of ORS 527.630** shall:

37 (a) Maintain an action in the Circuit Court for Marion County or the circuit court for the  
 38 county in which the violation occurred for an order requiring the landowner or operator to comply  
 39 with the terms of the [forester's] **director's** order or to restrain violations thereof; or

40 (b) Estimate the cost to repair the damage or the unsatisfactory condition as directed by the  
 41 order and shall notify the operator, timber owner and landowner in writing of the amount of the  
 42 estimate. Upon agreement of the operator, timber owner or the landowner to pay the cost, the [State  
 43 Forester] **director** may proceed to repair the damage or the unsatisfactory condition. In the event  
 44 approval of the expenditure is not obtained within 30 days after notification to the operator, timber  
 45 owner and landowner under this section, the [State Forester shall present to the board] **director shall**

1 **present to the commission** the alleged violation, the estimate of the expenditure to repair the  
2 damage or unsatisfactory condition and the justification for the expenditure.

3 (2) The [board] **commission** shall review the matter presented to it pursuant to subsection (1)  
4 of this section and shall determine whether to authorize the [State Forester] **director** to proceed to  
5 repair the damage or correct the unsatisfactory condition and the amount authorized for expendi-  
6 ture. The [board] **commission** shall afford the operator, timber owner or landowner the opportunity  
7 to appear before the [board] **commission** for the purpose of presenting facts pertaining to the al-  
8 leged violation and the proposed expenditure.

9 (3) If the [board] **commission** authorizes the [State Forester] **director** to repair the damage or  
10 correct the unsatisfactory condition, the [State Forester] **director** shall proceed, either with forces  
11 of the [State Forester] **director** or by contract, to repair the damage or correct the unsatisfactory  
12 condition. The [State Forester] **director** shall keep a complete account of direct expenditures in-  
13 curred, and upon completion of the work, shall prepare an itemized statement thereof and shall de-  
14 liver a copy to the operator, timber owner and landowner. In no event shall the expenditures exceed  
15 the amount authorized by subsection (2) of this section. An itemized statement of the direct expen-  
16 ditures incurred [by the State Forester, certified by the State Forester,] **and certified by the director**  
17 shall be accepted as prima facie evidence of such expenditures in any proceeding authorized by this  
18 section. If the [State Forester's] **director's** action to repair the damage or correct the unsatisfactory  
19 condition arose from an operation for which a bond, cash deposit or other security was required  
20 under ORS 527.760, the [State Forester] **director** shall retain any applicable portion of a cash deposit  
21 and the surety on the bond or holder of the other security deposit shall pay the amount of the bond  
22 or other security deposit to the [State Forester] **director** upon demand. If the amount specified in  
23 the demand is not paid within 30 days following the demand, the Attorney General, upon request  
24 by the [State Forester] **director**, shall institute proceedings to recover the amount specified in the  
25 demand.

26 (4) The expenditures in cases covered by this section, including cases where the amount col-  
27 lected on a bond, deposit or other security was not sufficient to cover authorized expenditures, shall  
28 constitute a general lien upon the real and personal property of the operator, timber owner and  
29 landowner within the county in which the damage occurred. A written notice of the lien, containing  
30 a statement of the demand, the description of the property upon which the expenditures were made  
31 and the name of the parties against whom the lien attaches, shall be certified under oath by the  
32 [State Forester] **director** and filed in the office of the county clerk of the county or counties in  
33 which the expenditures were made within six months after the date of delivery of the itemized  
34 statement referred to in subsection (3) of this section, and may be foreclosed in the manner provided  
35 in ORS chapter 88.

36 (5) All moneys recovered under this section shall be [paid into the State Forestry Department  
37 Account.] **deposited in the Oregon Natural Resources Fund. Moneys deposited in the fund**  
38 **under this subsection are continuously appropriated to the Oregon Department of Natural**  
39 **Resources for the purpose of carrying out the duties, functions and powers of the depart-**  
40 **ment as prescribed by section 1 (10) and (11) of this 2011 Act.**

41 **SECTION 2013.** ORS 527.700 is amended to read:

42 527.700. (1) Any operator, timber owner or landowner affected by any finding or order of the  
43 [State Forester] **Director of the Oregon Department of Natural Resources** issued under ORS  
44 527.610 to 527.770 and 527.992 may request a hearing within 30 days after issuance of the order. The  
45 hearing shall be commenced within 14 days after receipt of the request for hearing and a final order

1 shall be issued within 28 days of the request for the hearing unless all parties agree to an extension  
2 of the time limit.

3 (2) The [*State Board of Forestry*] **Oregon Natural Resources Commission** may delegate to the  
4 administrative law judge the authority to issue final orders on matters under this section. Hearings  
5 provided under this section shall be conducted as contested case hearings under ORS 183.413 to  
6 183.470. The [*board*] **commission** may establish such rules as it deems appropriate to carry out the  
7 provisions of this section. Appeals from final hearing orders under this section shall be provided in  
8 ORS 183.482, except that the comments of the [*board or the State Forester*] **commission or the di-**  
9 **rector** concerning a written plan are not reviewable orders under ORS 183.480.

10 (3) Any person adversely affected or aggrieved by an operation described in subsection (4) of  
11 this section may file a written request to the [*board*] **commission** for a hearing if the person sub-  
12 mitted written comments pertaining to the operation within the time limits established under ORS  
13 527.670 (9).

14 (4) A request for hearing may be filed under subsection (3) of this section only if a written plan  
15 was required pursuant to ORS 527.670 (3).

16 (5) A request for hearing filed under subsection (3) of this section shall be filed within 14 cal-  
17 endar days of the date the [*State Forester*] **director** completed review of the written plan and issued  
18 any comments. Copies of the complete request shall be served, within the 14-day period, on the op-  
19 erator, timber owner and landowner. The request shall include:

20 (a) A copy of the written plan on which the person is requesting a hearing;

21 (b) A copy of the comments pertaining to the operation that were filed by the person requesting  
22 the hearing;

23 (c) A statement that shows the person is adversely affected or aggrieved by the operation and  
24 has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder;  
25 and

26 (d) A statement of facts that establishes that the operation is of the type described in ORS  
27 527.670 (3).

28 (6) If the [*board*] **commission** finds that the person making the request meets the requirement  
29 of subsection (5)(c) of this section, the [*board*] **commission** shall set the matter for hearing within  
30 21 calendar days after receipt of the request for hearing. The operator, timber owner and landowner  
31 shall be allowable parties to the hearing. The person requesting the hearing may raise, in the  
32 hearing, only those issues that the person raised in written comments filed under ORS 527.670 (9)  
33 relating to conformity with the rules of the [*board. The board*] **commission. The commission** shall  
34 issue its own comments, which may affirm, modify or rescind comments of the [*State Forester*] **di-**  
35 **rector**, if any, on the written plan within 45 days after the request for hearing was filed, unless all  
36 parties agree to an extension of the time limit. The comments of the [*board or of the State*  
37 *Forester*] **director or the commission** concerning a written plan are not reviewable orders under  
38 ORS 183.480.

39 (7) The [*board*] **commission** may award reasonable attorney fees and expenses to each of the  
40 prevailing parties against any other party who the [*board*] **commission** finds presented a position  
41 without probable cause to believe the position was well-founded, or made a request primarily for a  
42 purpose other than to secure appropriate action by the [*board*] **commission.**

43 (8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this  
44 section, a stay of the operation subject to the hearing may be granted upon a showing that:

45 (A) Commencement or continuation of the operation will constitute a violation of the rules of

1 the *[board]* **commission**;

2 (B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

3 (C) The requirements of subsections (3), (4) and (5) of this section are met.

4 (b) If the *[board]* **commission** grants the stay, it shall require the person requesting the stay  
5 to give an undertaking which may be in the amount of the damages potentially resulting from the  
6 stay, but in any event shall not be less than \$15,000. The *[board]* **commission** may impose other  
7 reasonable requirements pertaining to the grant of the stay. The *[board]* **commission** shall limit the  
8 effect of the stay to the specific geographic area or elements of the operation for which the person  
9 requesting the stay has demonstrated a violation of the rules and irreparable injury under paragraph  
10 (a) of this subsection.

11 (c) If the *[board]* **commission** determines in its comments that the written plan pertaining to  
12 the operation for which the stay was granted is likely to result in compliance with ORS 527.610 to  
13 527.770 or the rules of the *[board, the board]* **commission, the commission** may award reasonable  
14 attorney fees and actual damages in favor of each of the prevailing parties, to the extent incurred  
15 by each, against the person requesting the stay.

16 (9) If the *[board]* **commission** rescinds or modifies the comments on the written plan as sub-  
17 mitted by the *[State Forester]* **director** pertaining to any operation, the *[board]* **commission** may  
18 award reasonable attorney fees and costs against the state in favor of each of the prevailing parties.

19 (10) As used in this section, “person” means any individual, partnership, corporation, associ-  
20 ation, governmental subdivision or public or private organization of any character.

21 **SECTION 2014.** ORS 527.710 is amended to read:

22 527.710. (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the  
23 *[State Board of Forestry]* **Oregon Natural Resources Commission** shall adopt, in accordance with  
24 applicable provisions of ORS chapter 183, rules to be administered by the *[State Forester]* **Director**  
25 **of the Oregon Department of Natural Resources** establishing standards for forest practices in  
26 each region or subregion.

27 (2) The rules shall ensure the continuous growing and harvesting of forest tree species. Con-  
28 sistent with ORS 527.630, the rules shall provide for the overall maintenance of the following re-  
29 sources:

30 (a) Air quality;

31 (b) Water resources, including but not limited to sources of domestic drinking water;

32 (c) Soil productivity; and

33 (d) Fish and wildlife.

34 (3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the  
35 *[board]* **commission** shall collect and analyze the best available information and establish invento-  
36 ries of the following resource sites needing protection:

37 (A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by  
38 rule, by the *[State Fish and Wildlife]* commission or are federally listed under the Endangered Spe-  
39 cies Act of 1973 as amended;

40 (B) Sensitive bird nesting, roosting and watering sites;

41 (C) Biological sites that are ecologically and scientifically significant; and

42 (D) Significant wetlands.

43 (b) The *[board]* **commission** shall determine whether forest practices would conflict with re-  
44 source sites in the inventories required by paragraph (a) of this subsection. If the *[board]* **commis-**  
45 **sion** determines that one or more forest practices would conflict with resource sites in the

1 inventory, the *[board]* **commission** shall consider the consequences of the conflicting uses and de-  
2 termine appropriate levels of protection.

3 (c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the  
4 policies of ORS 527.630, the *[board]* **commission** shall adopt rules appropriate to protect resource  
5 sites in the inventories required by paragraph (a) of this subsection.

6 (4) Before adopting rules under subsection (1) of this section, the *[board]* **commission** shall  
7 consult with other agencies of this state or any of its political subdivisions that have functions with  
8 respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies  
9 and programs subject to consultation under this subsection include, but are not limited to:

10 (a) Air and water pollution programs administered by the Department of Environmental Quality  
11 under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532;

12 *[(b) Mining operation programs administered by the Department of Geology and Mineral Industries  
13 under ORS 516.010 to 516.130 and ORS chapter 517;]*

14 *[(c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat  
15 improvement tax incentive programs administered by the State Department of Fish and Wildlife under  
16 ORS 272.060, 315.134 and ORS chapters 496, 498, 501, 506 and 509;]*

17 *[(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs ad-  
18 ministered by the State Parks and Recreation Department under ORS 358.480 to 358.545, 390.310 to  
19 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;]*

20 *[(e)]* (b) The programs administered by the Columbia River Gorge Commission under Public Law  
21 99-663 and ORS 196.110 and 196.150;

22 *[(f) Removal and fill, conservation and conservation tax incentive programs administered by the  
23 State Land Board and the Department of State Lands under ORS 196.800 to 196.900 and 273.553 to  
24 273.591;]*

25 *[(g)]* (c) Federal Safe Drinking Water Act programs administered by the Oregon Health Au-  
26 thority under ORS 448.273 to 448.990;

27 *[(h)]* (d) Conservation and conservation tax incentive programs administered by the Natural  
28 Heritage Advisory Council under ORS 273.553 to 273.591;

29 *[(i)]* (e) Open space land tax incentive programs administered by cities and counties under ORS  
30 308A.300 to 308A.330; **and**

31 *[(j) Water resources programs administered by the Water Resources Department under ORS  
32 536.220 to 536.540; and]*

33 *[(k)]* (f) Pesticide control programs administered by the State Department of Agriculture under  
34 ORS chapter 634.

35 (5) In carrying out the provisions of subsection (4) of this section, the *[board]* **commission** shall  
36 consider and accommodate the rules and programs of other agencies to the extent deemed by the  
37 *[board]* **commission** to be appropriate and consistent with the purposes of ORS 527.630.

38 (6) The *[board]* **commission** shall adopt rules to meet the purposes of another agency's regula-  
39 tory program where it is the intent of the *[board]* **commission** to administer the other agency's  
40 program on forestland and where the other agency concurs by rule. An operation performed in  
41 compliance with the *[board's]* **commission's** rules shall be deemed to comply with the other  
42 agency's program.

43 (7)(a) The *[board]* **commission** may enter into cooperative agreements or contracts necessary  
44 in carrying out the purposes specified in ORS 527.630.

45 (b) The *[State Forestry Department]* **Oregon Department of Natural Resources** shall enter into



1 agreements with appropriate state agencies for joint monitoring of the effectiveness of forest prac-  
2 tice rules in protecting forest resources and water quality.

3 (8) If, based upon the study completed pursuant to section 15 (2)(f), chapter 919, Oregon Laws  
4 1991, the [board] **commission** determines that additional rules are necessary to protect forest re-  
5 sources pursuant to ORS 527.630, the [board] **commission** shall adopt forest practice rules that re-  
6 duce to the degree practicable the adverse impacts of cumulative effects of forest practices on air  
7 and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall  
8 include a process for determining areas where adverse impacts from cumulative effects have oc-  
9 curred or are likely to occur, and may require that a written plan be submitted for harvests in such  
10 areas.

11 (9)(a) The [*State Forester, in cooperation with the State Department of Fish and Wildlife,*] **director**  
12 shall identify streams for which restoration of habitat would be environmentally beneficial. The  
13 [*State Forester*] **director** shall select as a priority those streams where restoration efforts will pro-  
14 vide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

15 (b) For those streams identified in paragraph (a) of this subsection, the [*State Forester*] **director**  
16 shall encourage landowners to enter into cooperative agreements with appropriate state agencies for  
17 conduct of restoration activities.

18 (c) The [board] **commission**, in consultation with appropriate state agencies, shall study and  
19 identify methods for restoring or enhancing fish and wildlife populations through restoration and  
20 rehabilitation of sites beneficial to fish and wildlife.

21 (d) The [board] **commission** shall adopt rules to implement the findings of this subsection.

22 (10) In addition to its responsibilities under subsections (1) to (3) of this section, the [board]  
23 **commission** shall adopt rules to reduce the risk of serious bodily injury or death caused by a rap-  
24 idly moving landslide directly related to forest practices. The rules shall consider the exposure of  
25 the public to these safety risks and shall include appropriate practices designed to reduce the oc-  
26 currence, timing or effects of rapidly moving landslides. As used in this subsection, "rapidly moving  
27 landslide" has the meaning given that term in ORS 195.250.

28 **SECTION 2015.** ORS 527.714 is amended to read:

29 527.714. (1) The rulemaking authority of the [*State Board of Forestry*] **Oregon Natural Re-**  
30 **sources Commission** under ORS 527.610 to 527.770 consists generally of the following three types  
31 of rules:

32 (a) Rules adopted to implement administration, procedures or enforcement of ORS 527.610 to  
33 527.770 that support but do not directly regulate standards of forest practices.

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

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

39 (2) When considering the adoption of a rule, and prior to the notice required pursuant to ORS  
40 183.335, the [board] **commission** shall determine which type of rule described in subsection (1) of  
41 this section is being considered.

42 (3) If the [board] **commission** determines that a proposed rule is of the type described in sub-  
43 section (1)(a) or (b) of this section, or if the proposed rule is designed only to clarify the meaning  
44 of rules already adopted or to make minor adjustments to rules already adopted that are of the type  
45 described in subsection (1)(c) of this section, rulemaking may proceed in accordance with ORS

1 183.325 to 183.410 and is not subject to the provisions of this section.

2 (4) If the [board] **commission** determines that a proposed rule is of the type described in sub-  
3 section (1)(c) of this section, and the proposed rule would change the standards for forest practices,  
4 the [board] **commission** shall describe in its rule the purpose of the rule and the level of protection  
5 that is desired.

6 (5) If the [board] **commission** determines that a proposed rule is of the type described in sub-  
7 section (1)(c) of this section, including a proposed amendment to an existing rule not qualifying un-  
8 der subsection (3) of this section, and the proposed rule would provide new or increased standards  
9 for forest practices, the [board] **commission** may adopt such a rule only after determining that the  
10 following facts exist and standards are met:

11 (a) If forest practices continue to be conducted under existing regulations, there is monitoring  
12 or research evidence that documents that degradation of resources maintained under ORS 527.710  
13 (2) or (3) is likely, or in the case of rules proposed under ORS 527.710 (10), that there is a substantial  
14 risk of serious bodily injury or death;

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

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

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

22 (A) Are to prevent harm or provide benefits to the resource or resource site for which pro-  
23 tection is sought, or in the case of rules proposed under ORS 527.710 (10), to reduce risk of serious  
24 bodily injury or death; and

25 (B) Are directly related to the objective of the proposed rule and substantially advance its pur-  
26 pose;

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

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

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

37 (a) Requires the [board] **commission** to call witnesses;

38 (b) Requires the [board] **commission** to allow cross-examination of witnesses;

39 (c) Restricts ex parte communications with the [board] **commission** or requires the [board]  
40 **commission** to place statements of such communications on the record;

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

42 (e) Requires depositions, discovery or subpoenas.

43 (7) If the [board] **commission** determines that a proposed rule is of the type described in sub-  
44 section (1)(c) of this section, and the proposed rule would require new or increased standards for  
45 forest practices, as part of or in addition to the economic and fiscal impact statement required by

1 ORS 183.335 (2)(b)(E), the [board] **commission** shall, prior to the close of the public comment period,  
 2 prepare and make available to the public a comprehensive analysis of the economic impact of the  
 3 proposed rule. The analysis shall include, but is not limited to:

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

5 (b) An estimate of the overall statewide economic impact, including a change in output, em-  
 6 ployment and income;

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

9 (d) Information derived from consultation with potentially affected landowners and timber own-  
 10 ers and an assessment of the economic impact of the proposed rule under a wide variety of cir-  
 11 cumstances, including varying ownership sizes and the geographic location and terrain of a diverse  
 12 subset of potentially affected forestland parcels.

13 (8) The provisions of this section do not apply to temporary rules adopted by the [board] **com-  
 14 mission**.

15 **SECTION 2016.** ORS 527.715 is amended to read:

16 527.715. The [State Board of Forestry] **Oregon Natural Resources Commission** shall establish,  
 17 by rule, the standards and procedures to implement the provisions of ORS 197.180, 197.270, 197.825,  
 18 215.050, 477.090, 477.440, 477.455, 477.460, [526.009, 526.016,] 526.156, 527.620, 527.630, 527.660,  
 19 527.670, 527.683 to 527.724, 527.736 to 527.760 and 527.992.

20 **SECTION 2017.** ORS 527.721 is amended to read:

21 527.721. By rule or by cooperative agreement entered into following an opportunity for public  
 22 comment before the [State Board of Forestry, the board] **Oregon Natural Resources Commission,  
 23 the commission** shall provide for coordination with appropriate state and local agencies regarding  
 24 procedures to be followed for review and comment on individual forest operations.

25 **SECTION 2018.** ORS 527.722 is amended to read:

26 527.722. (1) Notwithstanding any provisions of ORS chapters 195, 196, 197, 215 and 227, and ex-  
 27 cept as provided in subsections (2), (3) and (4) of this section, no unit of local government shall adopt  
 28 any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject  
 29 to approval or in any other way affect forest practices on forestlands located outside of an ac-  
 30 knowledged urban growth boundary.

31 (2) Nothing in subsection (1) of this section prohibits local governments from adopting and ap-  
 32 plying a comprehensive plan or land use regulation to forestland to allow, prohibit or regulate:

33 (a) Forest practices on lands located within an acknowledged urban growth boundary;

34 (b) Forest practices on lands located outside of an acknowledged urban growth boundary, and  
 35 within the city limits as they exist on July 1, 1991, of a city with a population of 100,000 or more,  
 36 for which an acknowledged exception to an agriculture or forestland goal has been taken;

37 (c) The establishment or alteration of structures other than temporary on-site structures which  
 38 are auxiliary to and used during the term of a particular forest operation;

39 (d) The siting or alteration of dwellings;

40 (e) Physical alterations of the land, including but not limited to those made for purposes of ex-  
 41 ploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road  
 42 construction or recreational facilities, when such uses are not auxiliary to forest practices; or

43 (f) Partitions and subdivisions of the land.

44 (3) Nothing in subsection (2) of this section shall prohibit a local government from enforcing the  
 45 provisions of ORS 455.310 to 455.715 and the rules adopted thereunder.

1 (4) Counties may prohibit, but in no other manner regulate, forest practices on forestlands:

2 (a) Located outside an acknowledged urban growth boundary; and

3 (b) For which an acknowledged exception to an agricultural or forest land goal has been taken.

4 (5) To ensure that all forest operations in this state are regulated to achieve protection of soil,  
5 air, water, fish and wildlife resources, in addition to all other forestlands, the Oregon Forest Prac-  
6 tices Act applies to forest operations inside any urban growth boundary except in areas where a  
7 local government has adopted land use regulations for forest practices. For purposes of this sub-  
8 section, "land use regulations for forest practices" means local government regulations that are  
9 adopted for the specific purpose of directing how forest operations and practices may be conducted.  
10 These local regulations shall:

11 (a) Protect soil, air, water, fish and wildlife resources;

12 (b) Be acknowledged as in compliance with land use planning goals;

13 (c) Be developed through a public process;

14 (d) Be developed for the specific purpose of regulating forest practices; and

15 (e) Be developed in coordination with the [*State Forestry Department and with notice to the De-*  
16 *partment of Land Conservation and Development*] **Oregon Department of Natural Resources.**

17 (6) To coordinate with local governments in the protection of soil, air, water, fish and wildlife  
18 resources, the [*State Forester*] **Director of the Oregon Department of Natural Resources** shall  
19 provide local governments with a copy of the notice or written plan for a forest operation within  
20 any urban growth boundary. Local governments may review and comment on an individual forest  
21 operation and inform the landowner or operator of all other regulations that apply but that do not  
22 pertain to activities regulated under the Oregon Forest Practices Act.

23 (7) The existence or adoption by local governments of a comprehensive plan policy or land use  
24 regulation regulating forest practices consistent with subsections (1) to (5) of this section shall re-  
25 lieve the [*State Forester*] **director** of responsibility to administer the Oregon Forest Practices Act  
26 within the affected area.

27 [(8) *The Director of the Department of Land Conservation and Development shall provide the State*  
28 *Forester copies of notices submitted pursuant to ORS 197.615, whenever such notices concern the*  
29 *adoption, amendment or repeal of a comprehensive land use regulation allowing, prohibiting or regu-*  
30 *lating forest practices.*]

31 **SECTION 2019.** ORS 527.736 is amended to read:

32 527.736. (1) The standards established in ORS 527.740 to 527.750 shall be administered by the  
33 [*State Forester as standards applying to all operations in the state, including those on forestland owned*  
34 *by the state or any political subdivision thereof. Pursuant to ORS 527.710 the State Board of*  
35 *Forestry*] **Director of the Oregon Department of Natural Resources. The Oregon Natural Re-**  
36 **sources Commission** shall adopt, repeal or amend forest practice rules as necessary to be consist-  
37 ent with and to implement the standards established in ORS 527.740 to 527.750. Except as provided  
38 in ORS 527.714, nothing in ORS 468B.100 to 468B.110, 477.562, 527.620, 527.670, 527.690, 527.710,  
39 527.715, 527.722, 527.724 and 527.736 to 527.770 shall affect the powers and duties of the [*board to*  
40 *adopt, or the State Forester to administer, all other regulations pertaining to forest practices*] **com-**  
41 **mission or director to adopt or administer all other regulations pertaining to natural re-**  
42 **sources** under applicable state law.

43 (2) Nothing in ORS 527.740 to 527.750 is intended to apply to cutting of trees that is for growth  
44 enhancement treatments, as defined by the [*State Forester*] **director**, such as thinning or precom-  
45 mercial thinning.

1 (3) The [*State Board of Forestry*] **commission** may modify or waive the limitations and require-  
 2 ments of ORS 527.676, 527.740, 527.750 and 527.755 for the purposes of a bona fide research project  
 3 conducted by:

- 4 (a) A federal agency;
- 5 (b) Agencies of the executive department, as defined in ORS 174.112;
- 6 (c) An educational institution; or
- 7 (d) A private landowner.

8 (4) The [*State Board of Forestry*] **commission** may agree as a term of a stewardship agreement  
 9 entered into under ORS 541.423 to modify or waive the limitations and requirements of ORS 527.676,  
 10 527.740, 527.750 and 527.755.

11 (5) The [*State Board of Forestry*] **commission** may modify or waive the limitations and require-  
 12 ments of ORS 527.676, 527.740, 527.750 and 527.755 for the purpose of an operation for the planting,  
 13 growing, managing or harvesting of hardwood timber, including but not limited to hybrid  
 14 cottonwood, if:

- 15 (a) The timber is grown on land that has been prepared by intensive cultivation methods and is  
 16 cleared of competing vegetation for at least three years after planting;
- 17 (b) The timber is harvested on a rotation cycle of more than 12 years and less than 20 years  
 18 after planting; and
- 19 (c) The timber is subject to intensive agricultural practices, including but not limited to  
 20 fertilization, cultivation, irrigation, insect control and disease control.

21 **SECTION 2020.** ORS 527.740 is amended to read:

22 527.740. (1) No harvest type 3 unit within a single ownership shall exceed 120 acres in size, ex-  
 23 cept as provided in ORS 527.750.

24 (2) No harvest type 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest  
 25 type 3 unit within a single ownership if the combined acreage of the harvest type 3 areas subject  
 26 to regulation under the Oregon Forest Practices Act would exceed 120 acres in size, unless the prior  
 27 harvest type 3 unit has been reforested as required by all applicable regulations and:

- 28 (a) At least the minimum tree stocking required by rule is established per acre; and either
- 29 (b) The resultant stand of trees has attained an average height of at least four feet; or
- 30 (c) At least 48 months have elapsed since the stand was created and it is "free to grow" as de-  
 31 fined by the [*State Board of Forestry*] **Oregon Natural Resources Commission**.

32 (3) Any acreage attributable to riparian areas or to resource sites listed in ORS 527.710 (3) that  
 33 is located within a harvest unit shall not be counted in calculating the size of a harvest type 3 unit.

34 (4) The provisions of this section shall not apply when the land is being converted to managed  
 35 conifers or managed hardwoods from brush or hardwood stands that contain less than 80 square feet  
 36 of basal area per acre of trees 11 inches DBH or greater or when the harvest type 3 results from  
 37 disasters such as fire, insect infestation, disease, windstorm or other occurrence that the [*State*  
 38 *Forester*] **Director of the Oregon Department of Natural Resources** determines was beyond the  
 39 landowner's control and has substantially impaired productivity or safety on the unit or jeopardizes  
 40 nearby forestland. The prior approval of the [*State Forester*] **director** shall be required for such  
 41 conversion or harvest type 3 operations that exceed 120 acres in size.

42 (5) The provisions of this section do not apply to any operation where the operator demonstrates  
 43 to the [*State Forester*] **director** that:

- 44 (a) The trees are subject to a cutting right created by written contract prior to October 1, 1990,  
 45 which provides that the trees must be paid for regardless of whether the trees are cut, or subject

1 to a cutting right created by reservation in a deed prior to October 1, 1990; and

2 (b) If the provisions of this section were applied, the cutting right would expire before all the  
3 trees subject to the cutting right could reasonably be harvested.

4 **SECTION 2021.** ORS 527.745 is amended to read:

5 527.745. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall adopt  
6 standards for the reforestation of harvest type 1 and harvest type 3. Unless the [*board*] **commission**  
7 makes the findings for alternate standards under subsection (2) of this section, the standards for the  
8 reforestation of harvest type 1 and harvest type 3 shall include the following:

9 (a) Reforestation, including site preparation, shall commence within 12 months after the com-  
10 pletion of harvest and shall be completed by the end of the second planting season after the com-  
11 pletion of harvest. By the end of the fifth growing season after planting or seeding, at least 200  
12 healthy conifer or suitable hardwood seedlings, or a lesser number as permitted by the [*board*]  
13 **commission** by rule, shall be established per acre, well-distributed over the area, [*which*] **that** are  
14 “free to grow” as defined by the [*board*] **commission**.

15 (b) Landowners may submit plans for alternate practices that do not conform to the standards  
16 established under paragraph (a) of this subsection or the alternate standards adopted under sub-  
17 section (2) of this section, including but not limited to variances in the time in which reforestation  
18 is to be commenced or completed or plans to reforest sites by natural reforestation. Such alternate  
19 plans may be approved if the [*State Forester*] **Director of the Oregon Department of Natural**  
20 **Resources** determines that the plan will achieve equivalent or better regeneration results for the  
21 particular conditions of the site, or the plan carries out an authorized research project conducted  
22 by a public agency or educational institution.

23 (2) The [*board*] **commission**, by rule, may establish alternate standards for the reforestation of  
24 harvest type 1 and harvest type 3, in lieu of the standards established in subsection (1) of this sec-  
25 tion, but in no case can the [*board*] **commission** require the establishment of more than 200 healthy  
26 conifer or suitable hardwood seedlings per acre. Such alternate standards may be adopted upon  
27 finding that the alternate standards will better [*assure*] **ensure** the continuous growing and har-  
28 vesting of forest tree species and the maintenance of forestland for such purposes, consistent with  
29 sound management of soil, air, water, fish and wildlife resources based on one or more of the fol-  
30 lowing findings:

31 (a) Alternate standards are warranted based on scientific data concerning biologically effective  
32 regeneration;

33 (b) Different standards are warranted for particular geographic areas of the state due to vari-  
34 ations in climate, elevation, geology or other physical factors; or

35 (c) Different standards are warranted for different tree species, including hardwoods, and for  
36 different growing site conditions.

37 (3) Pursuant to ORS 527.710, the [*board*] **commission** may adopt definitions, procedures and  
38 further regulations to implement the standards established under subsection (1) of this section,  
39 without making the findings required in subsection (2) of this section, if those procedures or regu-  
40 lations are consistent with the standards established in subsection (1) of this section.

41 (4) The [*board*] **commission** shall encourage planting of disease and insect resistant species in  
42 sites infested with root pathogens or where planting of susceptible species would significantly fa-  
43 cilitate the spread of a disease or insect pest and there are immune or more tolerant commercial  
44 species available which are adapted to the site.

45 (5) Notwithstanding subsections (1), (2) and (3) of this section, in order to remove potential dis-

1 incentives to the conversion of underproducing stands, as defined by the [board] **commission**, or the  
 2 salvage of stands that have been severely damaged by wildfire, insects, disease or other factors be-  
 3 yond the landowner's control, the [State Forester] **director** may suspend the reforestation require-  
 4 ments for specific harvest type 1 or harvest type 3 units in order to take advantage of the Forest  
 5 Resource Trust provisions, or other cost-share programs administered by the [State Forester or where  
 6 the State Forester] **director or where the director** is the primary technical adviser. Such suspen-  
 7 sion may occur only on an individual case basis, in writing, based on a determination by the [State  
 8 Forester] **director** that the cost of harvest preparation, harvest, severance and applicable income  
 9 taxes, logging, site preparation, reforestation and any other measures necessary to establish a free  
 10 to grow forest stand will likely exceed the gross revenues of the harvest. The [board] **commission**  
 11 shall adopt rules implementing this subsection establishing the criteria for and duration of the sus-  
 12 pension of the reforestation requirements.

13 **SECTION 2022.** ORS 527.750 is amended to read:

14 527.750. (1) Notwithstanding the requirements of ORS 527.740, a harvest type 3 unit within a  
 15 single ownership that exceeds 120 acres but does not exceed 240 acres may be approved by the  
 16 [State Forester] **Director of the Oregon Department of Natural Resources** if all the requirements  
 17 of this section and any additional requirements established by the [State Board of Forestry] **Oregon**  
 18 **Natural Resources Commission** are met. Proposed harvest type 3 units that are within 300 feet  
 19 of the perimeter of a prior harvest type 3 unit, and that would result in a total combined harvest  
 20 type 3 area under a single ownership exceeding 120 acres but not exceeding 240 acres, may be ap-  
 21 proved by the [State Forester] **director** if the additional requirements are met for the combined area.  
 22 No harvest type 3 unit within a single ownership shall exceed 240 contiguous acres. No harvest type  
 23 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest type 3 unit within a single  
 24 ownership if the combined acreage of the areas subject to regulation under the Oregon Forest  
 25 Practices Act would exceed 240 acres, unless:

26 (a) The prior harvest type 3 unit has been reforested by all applicable regulations;

27 (b) At least the minimum tree stocking required by rule is established per acre; and

28 (c)(A) The resultant stand of trees has attained an average height of at least four feet; or

29 (B) At least 48 months have elapsed since the stand was created and it is "free to grow" as  
 30 defined by the [board] **commission**.

31 (2) The requirements of this section are in addition to all other requirements of the Oregon  
 32 Forest Practices Act and the rules adopted thereunder. The requirements of this section shall be  
 33 applied in lieu of such other requirements only to the extent the requirements of this section are  
 34 more stringent. Nothing in this section shall apply to operations conducted under ORS 527.740 (4)  
 35 or (5).

36 (3) The [board] **commission** shall require that a plan for an alternate practice be submitted  
 37 prior to approval of a harvest type 3 operation under this section. The [board] **commission** may  
 38 establish by rule any additional standards applying to operations under this section.

39 (4) The [State Forester] **director** shall approve the harvest type 3 operation if the proposed op-  
 40 eration would provide better overall results in meeting the requirements and objectives of the  
 41 Oregon Forest Practices Act.

42 (5) The [board] **commission** shall specify by rule the information to be submitted for approval  
 43 of harvest type 3 operations under this section, including evidence of past satisfactory compliance  
 44 with the Oregon Forest Practices Act.

45 **SECTION 2023.** ORS 527.755 is amended to read:

1 527.755. (1) The following highways are hereby designated as scenic highways for purposes of  
2 the Oregon Forest Practices Act:

3 (a) Interstate Highways 5, 84, 205, 405; and

4 (b) State Highways 6, 7, 20, 18/22, 26, 27, 30, 31, 34, 35, 36, 38, 42, 58, 62, 66, 82, 97, 101, 126, 138,  
5 140, 199, 230, 234 and 395.

6 (2) The purpose of designating scenic highways is to provide a limited mechanism that maintains  
7 roadside trees for the enjoyment of the motoring public while traveling through forestland, consist-  
8 ent with ORS 527.630, safety and other practical considerations.

9 (3) The [*State Board of Forestry*] **Oregon Natural Resources Commission**, in consultation with  
10 the Department of Transportation, shall establish procedures and regulations as necessary to im-  
11 plement the requirements of subsections (4), (5) and (6) of this section, consistent with subsection (2)  
12 of this section, including provisions for alternate plans. Alternate plans that modify or waive the  
13 requirements of subsection (4), (5) or (6) of this section may be approved when, in the judgment of  
14 the [*State Forester*] **Director of the Oregon Department of Natural Resources**, circumstances  
15 exist such as:

16 (a) Modification or waiver is necessary to maintain motorist safety, protect improvements such  
17 as dwellings and bridges, or protect forest health;

18 (b) Modification or waiver will provide additional scenic benefits to the motoring public, such  
19 as exposure of distant scenic vistas;

20 (c) Trees that are otherwise required to be retained will not be visible to motorists;

21 (d) The operation involves a change of land use that is inconsistent with maintaining a visually  
22 sensitive corridor; or

23 (e) The retention of timber in a visually sensitive corridor will result in severe economic hard-  
24 ship for the owner because all or nearly all of the owner's property is within the visually sensitive  
25 corridor.

26 (4)(a) For harvest operations within a visually sensitive corridor, at least 50 healthy trees of at  
27 least 11 inches DBH, or that measure at least 40 square feet in basal area, shall be temporarily left  
28 on each acre.

29 (b) Overstory trees initially required to be left under paragraph (a) of this subsection may be  
30 removed when the reproduction understory reaches an average height of at least 10 feet and has  
31 at least the minimum number of stems per acre of free to grow seedlings or saplings required by the  
32 [*board*] **commission** for reforestation, by rule.

33 (c) Alternatively, when the adjacent stand, extending from 150 feet from the outermost edge of  
34 the roadway to 300 feet from the outermost edge of the roadway, has attained an average height  
35 of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings  
36 or saplings required by the [*board*] **commission** for reforestation, by rule, or at least 40 square feet  
37 of basal area per acre, no trees are required to be left in the visually sensitive corridor, or trees  
38 initially required to be left under paragraph (a) of this subsection may be removed. When harvests  
39 within the visually sensitive corridor are carried out under this paragraph, the adjacent stand, ex-  
40 tending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge  
41 of the roadway, shall not be reduced below the minimum number of stems per acre of free to grow  
42 seedlings or saplings at least 10 feet tall required by the [*board*] **commission** for reforestation, by  
43 rule, or below 40 square feet of basal area per acre until the adjacent visually sensitive corridor  
44 has been reforested as required under subsection (6) of this section and the stand has attained an  
45 average height of at least 10 feet and has at least the minimum number of stems per acre.



1 (5) Harvest areas within a visually sensitive corridor shall be cleared of major harvest debris  
2 within 30 days of the completion of the harvest, or within 60 days of the cessation of active har-  
3 vesting activity on the site, regardless of whether the harvest operation is complete.

4 (6) Notwithstanding the time limits established in ORS 527.745 (1)(a), when harvesting within a  
5 visually sensitive corridor results in a harvest type 1 or harvest type 3, reforestation shall be com-  
6 pleted by the end of the first planting season after the completion of the harvest. All other pro-  
7 visions of ORS 527.745 shall also apply to harvest type 1 or harvest type 3 within visually sensitive  
8 corridors.

9 (7) Landowners and operators shall not be liable for injury or damage caused by trees left within  
10 the visually sensitive corridor for purposes of fulfilling the requirements of this section, when car-  
11 ried out in compliance with the provisions of the Oregon Forest Practices Act.

12 (8) The following are exempt from this section:

13 (a) Harvest on single ownerships less than five acres in size;

14 (b) Harvest within an urban growth boundary, as defined in ORS 195.060; and

15 (c) Harvest within zones designated for rural residential development pursuant to an exception  
16 adopted to the statewide land use planning goals under ORS 197.732.

17 **SECTION 2024.** ORS 527.760 is amended to read:

18 527.760. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall review  
19 its rules governing changes in land use and adopt or amend rules as necessary to assure that only  
20 bona fide, established and continuously maintained changes from forest uses are provided an ex-  
21 emption from reforestation requirements. The [*board*] **commission** shall set specific time periods for  
22 the completion of land use conversions. Among other factors, the [*board*] **commission** shall condi-  
23 tion exemptions from reforestation requirements upon:

24 (a) Demonstrating the intended change in land use is authorized under local land use and zoning  
25 ordinances, including obtaining and maintaining all necessary land use or construction permits and  
26 approvals for the intended change in land use;

27 (b) Demonstrating progress toward the change in land use within the time required for planting  
28 of trees, and substantial completion and continuous maintenance of the change in land use in a time  
29 certain;

30 (c) Allowing an exemption for only the smallest land area necessary to carry out the change in  
31 land use, and requiring that additional land area within the harvest unit remains subject to all ap-  
32 plicable reforestation requirements; and

33 (d) Allowing an exemption only to the extent that the proposed land use is not compatible with  
34 the maintenance of forest cover.

35 (2) The [*board*] **commission** may require that, prior to commencing an operation where a  
36 change in land use is proposed, a bond, cash deposit, irrevocable letter of credit or other security  
37 be filed with the [*State Forester in an amount determined by the State Forester*] **Director of the**  
38 **Oregon Department of Natural Resources in an amount determined by the director** sufficient  
39 to cover the cost of site preparation and reforestation for the area subject to an exemption from  
40 reforestation due to a change in land use, and shall require that provisions be made for the admin-  
41 istration and collection on such bond or security deposit in the event that the change in land use  
42 is not established or continuously maintained within a time certain.

43 (3) Nothing in this section is intended to exempt any change in land use from, nor affect the  
44 applicability and administration of, any planning, zoning or permitting requirements provided under  
45 state or local laws or regulations.

1       **SECTION 2025.** ORS 527.765 is amended to read:

2       527.765. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall es-  
3       tablish best management practices and other rules applying to forest practices as necessary to in-  
4       sure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from  
5       forest operations on forestlands do not impair the achievement and maintenance of water quality  
6       standards established by the Environmental Quality Commission for the waters of the state. Such  
7       best management practices shall consist of forest practices rules adopted to prevent or reduce pol-  
8       lution of waters of the state. Factors to be considered by the [*board*] **Oregon Natural Resources**  
9       **Commission** in establishing best management practices shall include, where applicable, but not be  
10      limited to:

- 11       (a) Beneficial uses of waters potentially impacted;
- 12       (b) The effects of past forest practices on beneficial uses of water;
- 13       (c) Appropriate practices employed by other forest managers;
- 14       (d) Technical, economic and institutional feasibility; and
- 15       (e) Natural variations in geomorphology and hydrology.

16       (2) The [*board*] **Oregon Natural Resources Commission** shall consult with the Environmental  
17      Quality Commission in adoption and review of best management practices and other rules to address  
18      nonpoint source discharges of pollutants resulting from forest operations on forestlands.

19       (3)(a) Notwithstanding ORS 183.310 (8), upon written petition for rulemaking under ORS 183.390  
20      of any interested person or agency, the [*board*] **Oregon Natural Resources Commission** shall re-  
21      view the best management practices adopted pursuant to this section. In addition to all other re-  
22      quirements of law, the petition must allege with reasonable specificity that nonpoint source  
23      discharges of pollutants resulting from forest operations being conducted in accordance with the  
24      best management practices are a significant contributor to violations of such standards.

25       (b) Except as provided in paragraph (c) of this subsection, if the [*board*] **Oregon Natural Re-**  
26      **sources Commission** determines that forest operations being conducted in accordance with the best  
27      management practices are neither significantly responsible for particular water quality standards  
28      not being met nor are a significant contributor to violations of such standards, the [*board*] **com-**  
29      **mission** shall issue an order dismissing the petition.

30       (c) If the petition for review of best management practices is made by the Environmental Quality  
31      Commission, the [*board*] **Oregon Natural Resources Commission** shall not terminate the review  
32      without the concurrence of the **Environmental Quality** Commission, unless the [*board*] **Oregon**  
33      **Natural Resources Commission** commences rulemaking in accordance with paragraph (e) of this  
34      subsection.

35       (d) If a petition for review is dismissed, upon conclusion of the review, the [*board*] **Oregon**  
36      **Natural Resources Commission** shall issue an order that includes findings regarding specific  
37      allegations in the petition and shall state the [*board's*] **commission's** reasons for any conclusions  
38      to the contrary.

39       (e) If, pursuant to review, the [*board*] **Oregon Natural Resources Commission** determines that  
40      best management practices should be reviewed, the [*board*] **commission** shall commence rulemaking  
41      proceedings for that purpose. Rules specifying the revised best management practices must be  
42      adopted not later than two years from the filing date of the petition for review unless the [*board,*  
43      *with concurrence of the Environmental Quality Commission,*] **commission** finds that special circum-  
44      stances require additional time.

45       (f) Notwithstanding the time limitation established in paragraph (e) of this subsection, at the

1 request of the Environmental Quality Commission, the *[board]* **Oregon Natural Resources Com-**  
 2 **mission** shall take action as quickly as practicable to prevent significant damage to beneficial uses  
 3 identified by the *[commission while the board]* **Environmental Quality Commission while the**  
 4 **Oregon Natural Resources Commission** is revising its best management practices and rules as  
 5 provided for in this section.

6 **SECTION 2026.** ORS 527.770 is amended to read:

7 527.770. A forest operator conducting, or in good faith proposing to conduct, operations in ac-  
 8 cordance with best management practices currently in effect shall not be considered in violation of  
 9 any water quality standards. When the *[State Board of Forestry]* **Oregon Natural Resources**  
 10 **Commission** adopts new best management practices and other rules applying to forest operations,  
 11 such rules shall apply to all current or proposed forest operations upon their effective dates. How-  
 12 ever, nothing in this section prevents enforcement of water quality standards against a forest oper-  
 13 ator conducting operations after the time provided in ORS 527.765 (3)(e) for adoption of revised best  
 14 management practices if the *[board]* **commission** either has not adopted revised management prac-  
 15 tices or has not made a finding that such revised best management practices are not required.

16 **SECTION 2027.** ORS 527.992 is amended to read:

17 527.992. (1) In addition to any other penalty provided by law, any person who fails to comply  
 18 with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

19 (a) The requirements of ORS 527.670, 527.676, 527.740, 527.750 or 527.755.

20 (b) The terms or conditions of any order of the *[State Forester]* **Director of the Oregon De-**  
 21 **partment of Natural Resources** issued in accordance with ORS 527.680.

22 (c) Any rule or standard of the *[State Board of Forestry]* **Oregon Natural Resources Com-**  
 23 **mission** adopted or issued pursuant to ORS 527.710.

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

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

29 **SECTION 2028.** ORS 530.005 is amended to read:

30 530.005. As used in ORS 530.010 to 530.170 and 530.210 to 530.280:

31 (1) "Bond-related costs" means:

32 (a) The costs and expenses of issuing, administering and maintaining bonds, including but not  
 33 limited to paying principal and interest, and premiums if any, on general obligation or revenue  
 34 bonds, redeeming general obligation or revenue bonds, paying amounts due in connection with credit  
 35 enhancements or any instruments authorized by ORS 286A.580 (6) and paying the administrative  
 36 costs and expenses of the State Treasurer and the *[State Forestry Department]* **Oregon Department**  
 37 **of Natural Resources**, including costs of consultants or advisors retained by the treasurer or the  
 38 department for the bonds;

39 (b) The costs of funding any bond reserves;

40 (c) Capitalized interest for bonds;

41 (d) Rebates or penalties due to the United States in connection with the bonds; and

42 (e) Any other costs or expenses that the State Treasurer or the *[State Forestry]* department de-  
 43 termines are necessary or desirable in connection with issuing, administering or maintaining the  
 44 bonds.

45 (2) "Reforestation" means to increase tree stocking to a level that meets or exceeds the stocking

1 standards relating to productivity specified by the [*State Board of Forestry*] **Oregon Natural Re-**  
 2 **sources Commission** by rule.

3 **SECTION 2029.** ORS 530.010 is amended to read:

4 530.010. (1) [*The State Board of Forestry, referred to in this chapter as the board,*] In the name  
 5 of the State of Oregon, **the Oregon Natural Resources Commission** may acquire, by purchase,  
 6 donation, devise or exchange from any public, quasi-public or private owner, lands which by reason  
 7 of their location, topographical, geological or physical characteristics are chiefly valuable for the  
 8 production of forest crops, watershed protection and development, erosion control, grazing, recre-  
 9 ation or forest administrative purposes.

10 (2) The [*board*] **commission** shall not acquire any land without prior approval, duly made and  
 11 entered, of the county court or board of county commissioners of the county in which the lands are  
 12 situated.

13 (3) Lands acquired under the provisions of this section shall be designated as state forests.

14 **SECTION 2030.** ORS 530.020 is amended to read:

15 530.020. Title to all lands acquired by the [*State Board of Forestry*] **Oregon Natural Resources**  
 16 **Commission** under ORS 530.010 shall be free and clear of all encumbrances except easements of  
 17 rights of way and reservations or exceptions of gas, oil, coal, mineral and timber rights, unless the  
 18 [*board*] **commission** determines other encumbrances will not unduly limit the management of the  
 19 lands consistent with ORS 530.010 to 530.170. All titles shall be approved by the Attorney General  
 20 before conveyance is accepted. However, the Attorney General may approve title to lands proposed  
 21 to be acquired from counties under the provisions of ORS 530.030 or proposed to be acquired by  
 22 donation or devise when, in the opinion of the Attorney General, existing defects of title are of  
 23 formal nature and may be cured by suit to quiet title. In case of acquisition of lands with defective  
 24 title, the Attorney General may institute suit to quiet title to such lands, and all costs in connection  
 25 therewith shall be a proper charge against the funds of the [*board*] **commission**. All deeds, ab-  
 26 stracts, title insurance policies, and other evidences of title to lands acquired under ORS 530.010 to  
 27 530.040 shall be deposited with the Secretary of State. All deeds shall promptly be recorded in the  
 28 county in which the lands are situated.

29 **SECTION 2031.** ORS 530.025 is amended to read:

30 530.025. For acquisitions made by the [*State Board of Forestry*] **Oregon Natural Resources**  
 31 **Commission** on or after July 28, 2009:

32 (1) The [*board*] **commission** may hold and manage lands alone or in cooperation with other  
 33 entities, including but not limited to community forest authorities under ORS 530.600 to 530.628.

34 (2) The [*board*] **commission** may acquire lands or partial interest in lands, including but not  
 35 limited to conservation easements.

36 (3) Subject to any covenants under ORS 530.130 or 530.147, the [*board*] **commission** may sell  
 37 lands or partial interest in lands, including but not limited to conservation easements, to other  
 38 parties if the [*board*] **commission** determines that the other parties are better situated to manage  
 39 the lands for the long term.

40 **SECTION 2032.** ORS 530.030 is amended to read:

41 530.030. (1) The county court or board of county commissioners of any county may convey to the  
 42 state for state forests any lands heretofore or hereafter acquired by such county through foreclosure  
 43 of tax liens, or otherwise, that are within the classification of lands authorized to be acquired under  
 44 ORS 530.010, if the [*State Board of Forestry*] **Oregon Natural Resources Commission** deems such  
 45 lands necessary or desirable for acquisition, in consideration of the payment to such county of the

1 percentage of revenue derived from such lands as provided in ORS 530.110. In connection with any  
 2 such conveyance, the [*State Board of Forestry*] **commission** shall have authority to make equitable  
 3 adjustments with any county of accrued delinquent fire patrol liens on lands heretofore or hereafter  
 4 acquired by such county by foreclosure of tax liens.

5 (2) As to such lands acquired by the [*State Board of Forestry*] **commission** with title to the  
 6 timber remaining in the county for a designated period of time, the [*State Forester*] **Director of the**  
 7 **Oregon Department of Natural Resources** may enter into contracts with the county to supervise  
 8 the removal and sale of such timber, and under such contracts the gross proceeds of the sale thereof  
 9 shall be disposed of as follows:

10 (a) Ten percent of such gross proceeds shall be [*paid into the State Treasury and credited to the*  
 11 *State Forestry Department Account and shall be used exclusively*] **deposited in the Oregon Natural**  
 12 **Resources Fund. Moneys deposited in the fund under this paragraph are continuously ap-**  
 13 **propriated to the Oregon Department of Natural Resources** for the purposes and under the  
 14 limitations set out in ORS 530.110 (1)(a).

15 (b) A percentage of such gross proceeds shall be accepted by the [*State Forester*] **director**, pur-  
 16 suant to written contract with the county authority, as compensation for the supervision and man-  
 17 agement of county-owned timber. The moneys so derived shall be [*paid into the State Treasury and*  
 18 *credited to the State Forestry Department Account and shall be used exclusively for*] **deposited in the**  
 19 **Oregon Natural Resources Fund. Moneys deposited in the fund under this paragraph are**  
 20 **continuously appropriated to the department for** the supervision and management of state for-  
 21 ests acquired pursuant to ORS 530.010.

22 **SECTION 2033.** ORS 530.040 is amended to read:

23 530.040. (1) It is desirable that lands acquired under the provisions of ORS 530.010 shall be  
 24 consolidated in areas wherever possible through exchanges of land. It is recognized that the man-  
 25 agement of state forests will be more economically feasible through such consolidation.

26 (2) In order to accomplish the objectives of subsection (1) of this section, the [*State Board of*  
 27 *Forestry*] **Oregon Natural Resources Commission** may exchange any land acquired under the  
 28 provisions of ORS 530.010, or may exchange the timber on such land, for land of approximately equal  
 29 aggregate value, situated in the same county, when such exchange is in furtherance of the purposes  
 30 of ORS 530.010. However, the [*State Board of Forestry*] **commission** may exchange land or timber  
 31 situated in one county or counties for land situated in another county or counties if such exchange  
 32 is first approved by the county court or board of county commissioners of each county involved.  
 33 Either party to any such exchange may make reservations of easements, rights of use and other  
 34 interests and rights. Under the authority granted in this section, the [*State Board of Forestry*]  
 35 **commission** may provide or receive, in addition to land to be exchanged, a monetary consideration  
 36 where necessary to make the values comply with this subsection.

37 (3) Before making any such exchange, the [*State Board of Forestry*] **commission** shall hold a  
 38 hearing thereon at the courthouse of the county in which such lands are situated and shall give  
 39 notice of the time and place thereof by publication in two successive issues of a newspaper of gen-  
 40 eral circulation published in such county. The notice shall contain a description of the lands to be  
 41 given and to be received in the proposed exchange. However, no such exchange shall be made until  
 42 the title to the lands to be received has been approved by the Attorney General.

43 (4) All lands received in exchange shall have the same status and be subject to the same pro-  
 44 visions of law as the lands given in exchange therefor.

45 **SECTION 2034.** ORS 530.050 is amended to read:

1       530.050. *[Under the authority and direction of the State Board of Forestry except as otherwise*  
2 *provided for the sale of forest products, the State Forester]* **Except as otherwise provided for the**  
3 **sale of forest products, the Director of the Oregon Department of Natural Resources** shall  
4 manage the lands acquired pursuant to ORS 530.010 to 530.040 so as to secure the greatest perma-  
5 nent value of those lands to the state, and to that end may:

6       (1) Protect the lands from fire, disease and insect pests, cooperate with the counties and with  
7 persons owning lands within the state in the protection of the lands and enter into all agreements  
8 necessary or convenient for the protection of the lands.

9       (2) Sell forest products from the lands, and execute mining leases and contracts as provided for  
10 in ORS 273.551.

11       (3) Enter into and administer contracts for the sale of timber from lands owned or managed by  
12 the *[State Board of Forestry and the State Forestry Department]* **Oregon Department of Natural**  
13 **Resources**.

14       (4) Permit the use of the lands for other purposes, including but not limited to forage and browse  
15 for domestic livestock, fish and wildlife environment, landscape effect, protection against floods and  
16 erosion, recreation, and protection of water supplies when, in the opinion of the *[board]* **director**,  
17 the use is not detrimental to the best interest of the state.

18       (5) Grant easements, permits and licenses over, through and across the lands. The *[State*  
19 *Forester]* **director** may require and collect reasonable fees or charges relating to the location and  
20 establishment of easements, permits and licenses granted by the state over the lands. The fees and  
21 charges collected shall be used exclusively for the expenses of locating and establishing the ease-  
22 ments, permits and licenses under this subsection and shall be *[placed in the State Forestry Depart-*  
23 *ment Account]* **deposited in the Oregon Natural Resources Fund**.

24       (6) Require and collect fees or charges for the use of state forest roads. The fees or charges  
25 collected shall be used exclusively for purposes of maintenance and improvements of the roads *[and*  
26 *shall be placed in the State Forestry Department Account]*.

27       (7) Reforest the lands and cooperate with the counties, and with persons owning timberlands  
28 within the state, in the reforestation, and make all agreements necessary or convenient for the  
29 reforestation.

30       (8) Require such undertakings as in the opinion of the *[board]* **director** are necessary or con-  
31 venient to secure performance of any contract entered into under the terms of this section or ORS  
32 273.551.

33       (9) Sell rock, sand, gravel, pumice and other such materials from the lands. The sale may be  
34 negotiated without bidding, provided the appraised value of the materials does not exceed \$2,500.

35       (10) Enter into agreements, each for not more than 10 years duration, for the production of mi-  
36 nor forest products.

37       (11) Establish a forestry carbon offset program to market, register, transfer or sell forestry  
38 carbon offsets. In establishing the program, the *[forester]* **director** may:

39       (a) Execute any contracts or agreements necessary to create opportunities for the creation of  
40 forestry carbon offsets; and

41       (b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of  
42 forestry carbon offsets.

43       (12) Do all things and make all rules, not inconsistent with law, necessary or convenient for the  
44 management, protection, utilization and conservation of the lands.

45       **(12) Moneys collected pursuant to subsection (6) of this section shall be deposited in the**

1 **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection are**  
2 **continuously appropriated to the department for the purpose of carrying out the provisions**  
3 **of this section.**

4 **SECTION 2035.** ORS 530.055 is amended to read:

5 530.055. Except as limited in this section but subject to separate sale of forest products under  
6 ORS 530.059, lands acquired under ORS 530.010 to 530.040 may be leased by the [*State Forester to*  
7 *any person when approved by the State Board of Forestry and for purposes deemed by the board*]  
8 **Director of the Oregon Department of Natural Resources when deemed by the director or**  
9 **the Oregon Natural Resources Commission** to be more in the public interest than the purposes  
10 for which the land was acquired.

11 **SECTION 2036.** ORS 530.059 is amended to read:

12 530.059. (1) Before offering any forest products for sale under authority of ORS 530.050 or  
13 530.500, the [*State Forester*] **Director of the Oregon Department of Natural Resources** shall  
14 cause the forest products to be appraised. Should the appraised value of the forest products be in  
15 excess of \$25,000, the [*State Forester*] **director** shall not sell the same to a private person, firm or  
16 corporation, except after giving notice of the sale as required by this section, and affording an op-  
17 portunity for competitive bidding either by public auction or through sealed bids, or a combination  
18 of both; provided, however, that such notice and opportunity for competitive bidding will not be re-  
19 quired for sales in connection with:

20 (a) Experimental or research projects in the field of forestland management or forest product  
21 utilization.

22 (b) The removal, injury or destruction of forest products necessitated by any grant of easement  
23 or right of way, or necessitated by a permit or license to use a right of way, including trees which  
24 may endanger the use of such easement or way.

25 (c) The removal of forest products with an appraised value of less than \$100,000 that, as a result  
26 of an act of nature or other unforeseen circumstance:

27 (A) Pose a threat to the health of the forests, waterways or forest road infrastructures; or

28 (B) Will lose value as a result of potential theft.

29 (d) The removal of forest products with an appraised value of less than \$100,000 to facilitate the  
30 development, placement or maintenance of forest road infrastructures.

31 (2) The [*State Forester*] **director** shall give the notice required by subsection (1) of this section  
32 by mail to all persons requesting such notice and in such other media of communication as the [*State*  
33 *Forester*] **director** may deem advisable. The [*State Forester*] **director** shall maintain a mailing list  
34 with the names and addresses of persons who have requested to receive [*State Forestry*  
35 *Department*] notices of timber sales **from the Oregon Department of Natural Resources**. The  
36 notice shall describe the forest products to be sold and the land on which such products are situ-  
37 ated, state the minimum price at which the same may be sold, and contain a brief statement of the  
38 terms of the sale. As a provision of each sale, the [*State Forester*] **director** shall reserve the right  
39 to accept or reject any or all bids.

40 (3) Prior to or at the time the [*State Forester*] **director** receives bids, each bidder shall furnish  
41 the [*State Forester*] **director** with a certified check, cashier's check, money order, surety bond, cash  
42 deposit, assignment of surety, irrevocable letters of credit or other securities as determined accept-  
43 able by the [*State Forester*] **director** in an amount designated by the [*State Forester*] **director** but  
44 said amount shall not exceed 10 percent of the minimum price of the forest products to be sold,  
45 which check, order or deposit, in the case of the successful bidder, shall be retained by the [*State*

1 *Forester*] **director** as a credit toward payment of the purchase price of the forest products sold, and  
 2 which, in the case of the unsuccessful bidders, shall be returned to them after determination of the  
 3 successful bid. Any checks, bonds or orders furnished under this subsection shall be made payable  
 4 to the State of Oregon.

5 (4) The [*State Forester*] **director** is authorized to require and accept a surety bond, cash deposit,  
 6 assignment of surety, irrevocable letters of credit or other securities as determined acceptable by  
 7 the [*State Forester*] **director**. Claims against such bond shall be made to the [*State Forester*] **director**  
 8 for determination. If the claim is disputed, the [*forester*] **director** may request settlement of the  
 9 claim through compromise or mediation or require the claim to be litigated.

10 (5) If the provisions of this section have been complied with, and no satisfactory bid has been  
 11 received, or the bidder fails to complete the purchase, the [*State Forester*] **director** may, at any time,  
 12 during a period of six months after the advertised date of sale, sell the forest products in such  
 13 manner as the [*forester*] **director** deems appropriate, but the sale price shall not be less than the  
 14 minimum terms offered in the notice of sale or the highest bid received, whichever is the larger  
 15 amount.

16 **SECTION 2037.** ORS 530.065 is amended to read:

17 530.065. (1) During the period of a timber sale contract made under ORS 530.059, either party  
 18 may propose to change or modify the terms of the contract if unforeseen circumstances develop. As  
 19 used in this subsection, "unforeseen circumstances" means acts of nature or other unforeseen cir-  
 20 cumstances or conditions that:

21 (a) Affect the nature or scope of the work to be performed or volume to be harvested under the  
 22 terms of the sale contract made by the [*State Forester*] **Director of the Oregon Department of**  
 23 **Natural Resources**; or

24 (b) Require additional work or harvest in an area adjacent to a timber sale made by the [*State*  
 25 *Forester*] **director**.

26 (2) The [*State Forester*] **director** is hereby authorized to change or modify the terms or condi-  
 27 tions of the contract in the event of unforeseen circumstances requiring such change or modification  
 28 under subsection (1) of this section only when:

29 (a) Such change or modification is in the best interest of the State of Oregon; and

30 (b) The purchaser of the timber sale agrees that the proposed change or modification will  
 31 maintain an equitable contractual relationship between the parties.

32 **SECTION 2038.** ORS 530.075 is amended to read:

33 530.075. (1) Notwithstanding ORS chapter 275 or any other law, deeds of conveyance or other  
 34 instruments transferring county forests, public parks or recreational areas, from a county to the  
 35 State of Oregon, either acting by and through or for the use and benefit of the [*State Board of*  
 36 *Forestry*] **Oregon Natural Resources Commission**, are validated and shall be conclusive evidence  
 37 of the transfer of such lands from the county to the state.

38 (2) The [*State Board of Forestry*] **commission** shall use, manage and develop such lands for the  
 39 purposes designated in ORS 275.320 if such lands are suitable for such purposes; otherwise, the lands  
 40 shall be used for the purposes stated in ORS 530.010 and any revenue derived from the sale of forest  
 41 products from such lands shall be disposed of in accordance with the provisions of ORS 530.110 (2).  
 42 In other instances where the county received title to the land from a grantor with the provision that  
 43 the land be used for particular purposes, this section shall not be construed to obviate such pur-  
 44 poses.

45 **NOTE:** Section 2039 was deleted. Subsequent sections were not renumbered.



1       **SECTION 2040.** ORS 530.110 is amended to read:

2       530.110. (1) All revenues derived from lands acquired without cost to the state, or acquired from  
3 counties pursuant to ORS 530.030, shall be *[paid into the State Treasury and credited to the State*  
4 *Forestry Department Account and shall be used in accordance with the following distribution]* **depos-**  
5 **ited in the Oregon Natural Resources Fund and distributed in the following amounts:**

6       (a) Fifteen percent shall be credited to the State Forests Protection Subaccount of the *[State*  
7 *Forestry Department Account]* **Oregon Natural Resources Fund** until the amount in such subac-  
8 count reaches \$475,000. Thereafter, the revenues shall be disposed of as stated in paragraphs (b) and  
9 (c) of this subsection, unless needed to maintain the \$475,000 level. All moneys in the State Forests  
10 Protection Subaccount are continuously appropriated to the *[State Forester who may use such money*  
11 *under the following priorities]* **Oregon Department of Natural Resources for the following pur-**  
12 **poses:**

13       (A) First, in addition to or in lieu of other moneys available, to pay the cost of protection, as  
14 determined **by the Director of the Oregon Department of Natural Resources** under ORS 477.270,  
15 for lands acquired under ORS 530.010 to 530.040.

16       (B) Second, to provide moneys needed for activities authorized by subsection (3) of this section.

17       (C) From remaining moneys, to pay costs incurred in the suppression of fire originating on or  
18 spreading from an operation area, as defined in ORS 477.001, on state-owned forestland acquired  
19 under ORS 530.010 to 530.040. The *[State Forester]* **director** shall make payments *[with approval of*  
20 *the State Board of Forestry]* for such fire suppression costs, except that no payments shall be made  
21 for such costs or portion thereof when other parties are responsible under law or contracts for the  
22 payment of such costs.

23       (b) Seventy-five percent of all such revenues remaining after the percentage disposed of as  
24 stated in paragraph (a) of this subsection, shall be disposed of as provided in ORS 530.115.

25       (c) Twenty-five percent of all such revenues remaining after the percentage disposed of as stated  
26 in paragraph (a) of this subsection, shall be used for the purposes set out in subsection (3) of this  
27 section.

28       (2) Except as provided in ORS 530.147 and *[ORS]* 530.280, all revenues from lands other than  
29 lands designated in subsection (1) of this section, acquired under ORS 530.010 to 530.040, shall be  
30 *[paid into the State Treasury and credited to the State Forestry Department Account and shall be used*  
31 *in accordance with the following distribution]* **deposited in the Oregon Natural Resources Fund**  
32 **and distributed as follows:**

33       (a) Until each legal subdivision of the lands has been credited with an amount equal to the  
34 purchase price thereof, the revenues shall reimburse the *[State Forestry Department Account]*  
35 **Oregon Natural Resources Fund**. If sufficient revenue to reimburse the *[State Forestry Department*  
36 *Account]* **fund** is not generated from the purchased parcels within five years from the date of ac-  
37 quisition, the *[State Forester]* **director**, with the consent of the affected county, shall deduct all or  
38 portions of the unreimbursed purchase costs from the revenue distributed to that county in accord-  
39 ance with ORS 530.115 (1). After the *[State Forestry Department Account]* **fund** has been reimbursed  
40 for the purchase price of the lands, the revenue from the lands shall be distributed according to the  
41 formula specified in paragraphs (b), (c) and (d) of this subsection.

42       (b) The percentage required under subsection (1)(a) of this section shall be credited to the State  
43 Forests Protection Subaccount, and the revenues shall be disposed of as stated in paragraphs (c) and  
44 (d) of this subsection.

45       (c) Seventy-five percent of all such revenues remaining after paragraphs (a) and (b) of this sub-

1 section have been complied with, shall be disposed of as provided in ORS 530.115.

2 (d) Twenty-five percent of all such revenues remaining after the percentage disposed of as stated  
3 in paragraphs (a) and (b) of this subsection, shall be used for the purposes set out in subsection (3)  
4 of this section.

5 (3) Unless otherwise consented to in advance and in writing by the counties from which the  
6 state has acquired lands without cost to the state or pursuant to ORS 530.130, the moneys in the  
7 [*State Forestry Department Account*] **Oregon Natural Resources Fund** derived from those percent-  
8 ages of revenues set out in subsections (1)(c) and (2)(d) of this section shall be used exclusively for  
9 the following purposes and in the following order:

10 (a) First, for the payment of bond-related costs for bonds issued under ORS 530.140.

11 (b) Second, to the Forest Acquisition County Reimbursement Fund to the extent necessary for  
12 paying tax revenue reimbursements to counties under ORS 530.175.

13 (c) Third, for such other purposes as are necessary in carrying out ORS 530.010 to 530.110.

14 **SECTION 2041.** ORS 530.110, as amended by section 11, chapter 831, Oregon Laws 2009, is  
15 amended to read:

16 530.110. (1) All revenues derived from lands acquired without cost to the state, or acquired from  
17 counties pursuant to ORS 530.030, shall be [*paid into the State Treasury and credited to the State*  
18 *Forestry Department Account and shall be used in accordance with the following distribution*] **depos-**  
19 **ited in the Oregon Natural Resources Fund and distributed in the following amounts:**

20 (a) Fifteen percent shall be credited to the State Forests Protection Subaccount of the [*State*  
21 *Forestry Department Account*] **Oregon Natural Resources Fund** until the amount in such subac-  
22 count reaches \$475,000. Thereafter, the revenues shall be disposed of as stated in paragraphs (b) and  
23 (c) of this subsection, unless needed to maintain the \$475,000 level. All moneys in the State Forests  
24 Protection Subaccount are continuously appropriated to the [*State Forester who may use such money*  
25 *under the following priorities*] **Oregon Department of Natural Resources for the following pur-**  
26 **poses:**

27 (A) First, in addition to or in lieu of other moneys available, to pay the cost of protection, as  
28 determined **by the Director of the Oregon Department of Natural Resources** under ORS 477.270,  
29 for lands acquired under ORS 530.010 to 530.040.

30 (B) Second, to provide moneys needed for activities authorized by subsection (3) of this section.

31 (C) From remaining moneys, to pay costs incurred in the suppression of fire originating on or  
32 spreading from an operation area, as defined in ORS 477.001, on state-owned forestland acquired  
33 under ORS 530.010 to 530.040. The [*State Forester*] **director** shall make payments [*with approval of*  
34 *the State Board of Forestry*] for such fire suppression costs, except that no payments shall be made  
35 for such costs or portion thereof when other parties are responsible under law or contracts for the  
36 payment of such costs.

37 (b) Seventy-five percent of all such revenues remaining after the percentage disposed of as  
38 stated in paragraph (a) of this subsection, shall be disposed of as provided in ORS 530.115.

39 (c) Twenty-five percent of all such revenues remaining after the percentage disposed of as stated  
40 in paragraph (a) of this subsection, shall be used for the purposes set out in subsection (3) of this  
41 section.

42 (2) Except as provided in ORS 530.147 and 530.280, all revenues from lands other than lands  
43 designated in subsection (1) of this section, acquired under ORS 530.010 to 530.040, shall be [*paid*  
44 *into the State Treasury and credited to the State Forestry Department Account and shall be used in*  
45 *accordance with the following distribution*] **deposited in the Oregon Natural Resources Fund and**

1 **distributed as follows:**

2 (a) Until each legal subdivision of the lands has been credited with an amount equal to the  
3 purchase price thereof, the revenues shall reimburse the [*State Forestry Department Account*]  
4 **Oregon Natural Resources Fund**. If sufficient revenue to reimburse the [*State Forestry Department*  
5 *Account*] **fund** is not generated from the purchased parcels within five years from the date of ac-  
6 quisition, the [*State Forester*] **director**, with the consent of the affected county, shall deduct all or  
7 portions of the unreimbursed purchase costs from the revenue distributed to that county in accord-  
8 ance with ORS 530.115 (1). After the [*State Forestry Department Account*] **fund** has been reimbursed  
9 for the purchase price of the lands, the revenue from the lands shall be distributed according to the  
10 formula specified in paragraphs (b), (c) and (d) of this subsection.

11 (b) The percentage required under subsection (1)(a) of this section shall be credited to the State  
12 Forests Protection Subaccount, and the revenues shall be disposed of as stated in paragraphs (c) and  
13 (d) of this subsection.

14 (c) Seventy-five percent of all such revenues remaining after paragraphs (a) and (b) of this sub-  
15 section have been complied with, shall be disposed of as provided in ORS 530.115.

16 (d) Twenty-five percent of all such revenues remaining after the percentage disposed of as stated  
17 in paragraphs (a) and (b) of this subsection, shall be used for the purposes set out in subsection (3)  
18 of this section.

19 (3) Unless otherwise consented to in advance and in writing by the counties from which the  
20 state has acquired lands without cost to the state or pursuant to ORS 530.130, the moneys in the  
21 [*State Forestry Department Account*] **Oregon Natural Resources Fund** derived from those percent-  
22 ages of revenues set out in subsections (1)(c) and (2)(d) of this section shall be used exclusively for  
23 the following purposes and in the following order:

24 (a) First, for the payment of bond related costs for bonds issued under ORS 530.140 prior to July  
25 28, 2009.

26 (b) Second, to the Forest Acquisition County Reimbursement Fund to the extent necessary for  
27 paying tax revenue reimbursements to counties under ORS 530.175.

28 (c) Third, for such other purposes as are necessary in carrying out ORS 530.010 to 530.110.

29 **SECTION 2041a.** ORS 530.115 is amended to read:

30 530.115. (1) Except as set forth in subsection (2) of this section, moneys described in ORS 530.110  
31 (1)(b) and (2)(c) shall be credited to the county in which the lands are situated and shall be paid  
32 quarterly to the county by a warrant drawn as provided by law, pursuant to claim therefor, duly  
33 approved by the [*State Board of Forestry*] **Oregon Natural Resources Commission**. Payment shall  
34 be made on or before the last day of each month following the end of the calendar quarters ending  
35 on March 31, June 30, September 30 and December 31. Money received under this subsection by the  
36 county shall be applied in the following order:

37 (a) The county general fund shall be reimbursed for all costs and expenses incurred by the  
38 county in the maintenance and supervision of such lands and in any suits by it to quiet its title to  
39 lands conveyed to the state; provided that the proceeds so applied shall not be less than 10 percent  
40 of the total proceeds received.

41 (b) Twenty-five percent of the remainder of the money shall be credited and paid into the county  
42 school fund created under ORS 328.005.

43 (c) The remainder of the money shall be by the county prorated and apportioned to the various  
44 taxing districts in which the lands are situated in the proportion that the rate of tax levy in each  
45 district as shown by the tax levy filed with the assessor for the last year in process of collection,

1 bears to the total rate of tax levy of all such taxing bodies for such year.

2 (2) After payment of the principal and interest of each bond issue issued pursuant to ORS  
3 530.210 to 530.280, 20 percent of the moneys derived from forest products created through expen-  
4 ditures of moneys available from such bond issue shall be credited to the General Fund until the  
5 state is reimbursed for its costs under the bond issue in that county. However, the governing body  
6 of the county in its discretion may authorize a higher percentage of that county's allocation for any  
7 year to be so credited to the General Fund.

8 **SECTION 2042.** ORS 530.120 is amended to read:

9 530.120. The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall keep an  
10 accurate account, by legal subdivisions, of all receipts from lands acquired under the provisions of  
11 ORS 530.010 to 530.040 and shall credit to each legal subdivision the revenues derived therefrom.  
12 The [*board*] **commission** shall render annually to each county in which lands acquired under the  
13 provisions of ORS 530.010 to 530.040 are situated, a statement, by legal subdivisions, showing the  
14 revenues derived from each of such legal subdivisions.

15 **SECTION 2043.** ORS 530.130 is amended to read:

16 530.130. (1) In compliance with the applicable provisions of ORS chapter 286A, the [*State Board*  
17 *of Forestry*] **Oregon Natural Resources Commission** may request the State Treasurer to issue the  
18 revenue bonds described in ORS 530.140 to acquire any lands as provided in ORS 530.010 and to sell  
19 revenue bonds under ORS 530.140 in the manner the State Treasurer deems advisable. The net pro-  
20 ceeds derived from the sale of the revenue bonds, after the payment of bond-related costs, shall be  
21 [*paid into the State Treasury and credited to the State Forestry Department Account to be used ex-*  
22 *clusively*] **deposited in the Oregon Natural Resources Fund and are continuously appropriated**  
23 **to the Oregon Department of Natural Resources** for the purpose of acquiring lands as provided  
24 by ORS 530.010 and 530.025. The [*State Forestry*] department may establish one or more subaccounts,  
25 as it determines are desirable for administration of the net proceeds, in the [*State Forestry Depart-*  
26 *ment Account*] **fund**.

27 (2) Subject to any management plan adopted under ORS 526.905 for the lands, the [*board*]  
28 **commission** may make covenants related to the operation, use and sale of, or revenues derived  
29 from, lands acquired with proceeds of the revenue bonds that the [*board*] **commission** determines  
30 after consultation with the State Treasurer to be necessary or desirable for repayment of the bonds.

31 (3) Any lands proposed to be acquired under subsection (1) of this section shall be appraised  
32 [*by the State Board of Forestry and the appraisal shall be approved by the Department of State*  
33 *Lands*] prior to the acquisition of the lands.

34 **SECTION 2044.** ORS 530.140 is amended to read:

35 530.140. (1) The [*State Board of Forestry*] **Oregon Natural Resources Commission** may request  
36 the State Treasurer to sell revenue bonds of the State of Oregon, to be known as Oregon forest  
37 development revenue bonds, in an amount authorized under ORS 286A.035. The bonds shall not  
38 constitute a general obligation of the state, nor be a lien on any of the lands acquired by the state  
39 under ORS 530.010.

40 (2) The bonds shall bear interest at a rate to be determined by the State Treasurer.

41 **SECTION 2045.** ORS 530.147 is amended to read:

42 530.147. (1) The Forest Development Revenue Bond Fund is established separate and distinct  
43 from the General Fund. Interest earned by the Forest Development Revenue Bond Fund shall be  
44 credited to the fund. Moneys in the fund may be invested as provided in ORS 286A.025 and 293.701  
45 to 293.820. All moneys in the fund are continuously appropriated to the [*State Board of Forestry*]

1 **Oregon Natural Resources Commission** for the purposes of paying bond-related costs when due  
2 on the revenue bonds issued under ORS 530.140 on or after July 28, 2009.

3 (2) The Forest Development Revenue Bond Fund may be credited with:

4 (a) Moneys [*deposited in the fund from the State Forestry Department Account, to the extent that*  
5 *the State Forestry Department*] **transferred from the Oregon Natural Resources Fund, to the**  
6 **extent that the Oregon Department of Natural Resources** allocates proceeds from the sale of  
7 revenue bonds issued on or after July 28, 2009, under ORS 530.140 to the payment of bond-related  
8 costs;

9 (b) Proceeds from the disposal of lands acquired with revenue bonds that were issued on or after  
10 July 28, 2009, under ORS 530.140;

11 (c) Proceeds from the disposal of forest products, as defined in ORS 532.010, minerals or other  
12 forest-related values derived from the lands acquired with revenue bonds that were issued on or  
13 after July 28, 2009, under ORS 530.140; and

14 (d) Gifts, grants or any other unrestricted moneys paid to the [*State Forestry Department or the*  
15 *State Board of Forestry*] **department or the commission** or appropriated by the Legislative As-  
16 sembly that may be used for the purpose set forth in this section.

17 (3) The [*board or the State Forester*] **Director of the Oregon Department of Natural Re-**  
18 **sources or the commission** may make covenants related to, or pledge moneys deposited in, the  
19 fund that the [*board or forester*] **director or commission**, after consultation with the State Treas-  
20 urer, determines to be necessary or desirable for the repayment of revenue bonds and the payment  
21 of bond-related costs.

22 **SECTION 2046.** ORS 530.170 is amended to read:

23 530.170. Revenues from lands acquired by the state pursuant to section 5, chapter 478, Oregon  
24 Laws 1939, shall be disposed of as provided by law at the time of such acquisition. However, the  
25 county court or board of county commissioners of any county from which such lands were acquired  
26 may, by resolution duly made and entered[,] and delivery of a certified copy [*thereof*] **of the resol-**  
27 **ution** to the [*State Board of Forestry*] **Oregon Natural Resources Commission**, elect to have such  
28 revenues disposed of as provided in ORS 530.110 (1).

29 **SECTION 2047.** ORS 530.175 is amended to read:

30 530.175. (1) The Forest Acquisition County Reimbursement Fund is established in the State  
31 Treasury, separate and distinct from the General Fund. Interest earned by the Forest Acquisition  
32 County Reimbursement Fund shall be credited to the fund. Moneys in the Forest Acquisition County  
33 Reimbursement Fund are continuously appropriated to the [*State Forestry Department*] **Oregon De-**  
34 **partment of Natural Resources** for use as provided in this section.

35 (2) The fund shall consist of moneys deposited in the fund pursuant to ORS 530.110 (3).

36 (3) If the department uses proceeds from bonds issued on or after July 28, 2009, under ORS  
37 530.140 or 530.210 to 530.280, or from lottery bonds that were issued on or after July 28, 2009, to  
38 acquire land that immediately prior to acquisition by the department was subject to taxation by a  
39 county, the department shall make payments as provided in this section to reimburse the county for  
40 the loss of tax revenue from the acquired land. The amount paid to a county under this section shall  
41 be the amount by which the tax revenue to the county for the last year in which the acquired land  
42 was taxable exceeds the amounts distributed to the counties under ORS 530.110 (1)(b) or (2)(c) from  
43 revenue generated by that land. However, if in any year the amounts distributed under ORS 530.110  
44 (1)(b) or (2)(c) from revenue generated by the acquired land equals or exceeds the tax revenue to the  
45 county for the last year in which the acquired land was taxable, payments under this section in

1 regard to that land shall terminate and not resume.

2 **NOTE:** Section 2048 was deleted. Subsequent sections were not renumbered.

3 **SECTION 2049.** ORS 530.230 is amended to read:

4 530.230. In order to provide funds for the purposes specified in Article XI-E of the Oregon Con-  
5 stitution, the [*State Board of Forestry*] **Oregon Natural Resources Commission** may request the  
6 State Treasurer to issue bonds in accordance with the provisions of ORS chapter 286A.

7 **SECTION 2050.** ORS 530.240 is amended to read:

8 530.240. The net proceeds, after payment of bond-related costs, arising from the sale of each is-  
9 sue of bonds under ORS 530.210 to 530.280 shall be [*paid into the State Treasury and credited to the*  
10 *State Forestry Department Account and shall be used exclusively*] **deposited in the Oregon Natural**  
11 **Resources Fund. Moneys deposited in the fund under this section are continuously appro-**  
12 **propriated to the Oregon Department of Natural Resources** for the rehabilitation, reforestation,  
13 management and development of state-owned forestlands and the acquisition of lands for said pur-  
14 poses. Moneys acquired under ORS 530.230 shall be in addition to and not in lieu of moneys regu-  
15 larly appropriated or otherwise made available to the [*State Board of Forestry*] **department** for the  
16 administration, management and protection of state forestlands. The [*State Forestry*] department  
17 may establish one or more subaccounts, as the department determines are desirable for adminis-  
18 tration of the net proceeds arising from the sale of each issue of bonds, in the [*State Forestry De-*  
19 *partment Account*] **fund.**

20 **SECTION 2051.** ORS 530.250 is amended to read:

21 530.250. (1) The [*State Forester, under the direction of the State Board of Forestry,*] **Director of**  
22 **the Oregon Department of Natural Resources** shall rehabilitate, reforest and develop state-owned  
23 forestlands so as to secure the highest permanent usefulness to the whole people of the state. In the  
24 management and control of such land, the [*State Forester*] **director** may employ assistants and such  
25 other help as in the judgment of the [*State Forester*] **director** may be necessary and may purchase  
26 machinery, equipment and supplies required to accomplish the purposes hereof. The [*State*  
27 *Forester*] **director** may enter into any and all contracts[, *in the name of the board,*] deemed necessary  
28 for the rehabilitation, reforestation and development of said lands.

29 (2) The [*board*] **director and the Oregon Natural Resources Commission** shall carry out the  
30 provisions of ORS 530.210 to 530.280 and may promulgate such rules and regulations and do any  
31 other act or thing necessary to meet fully the requirements of such sections.

32 **SECTION 2052.** ORS 530.255 is amended to read:

33 530.255. (1) When making reforestation plans for state-owned or state-managed lands the [*State*  
34 *Forester*] **Director of the Oregon Department of Natural Resources**, insofar as edaphic condi-  
35 tions permit, shall select suitable hardwood species as well as coniferous species.

36 (2) Silvicultural practices shall have as their objective the maintenance or improvement of forest  
37 health and soil fertility and the production of a continuous supply of coniferous and hardwood tim-  
38 ber consistent with sound management of fish, wildlife, recreational and watershed values.

39 **SECTION 2053.** ORS 530.280 is amended to read:

40 530.280. (1) The State Forestry General Obligation Bond Fund is established separate and dis-  
41 tinct from the General Fund. Interest earned by the State Forestry General Obligation Bond Fund  
42 shall be credited to the fund. Moneys in the fund may be invested as provided in ORS 286A.025 and  
43 293.701 to 293.820. All moneys in the State Forestry General Obligation Bond Fund are continuously  
44 appropriated to the [*State Forestry Department*] **Oregon Department of Natural Resources** for the  
45 purposes of paying bond-related costs when due on the general obligation bonds issued under Article

1 XI-E of the Oregon Constitution. However, an agreement for exchange of interest rates may not be  
 2 paid from moneys derived under paragraph (a) of this subsection or from General Fund moneys ap-  
 3 propriated under paragraph (d) of this subsection to fulfill a pledge of the full faith and credit of the  
 4 state set forth in Article XI-E of the Oregon Constitution. The State Forestry General Obligation  
 5 Bond Fund shall consist of the following:

6 (a) All moneys derived from taxes levied under ORS 291.445;

7 (b) All moneys derived from the sale, exchange or use of land acquired pursuant to ORS 530.240;

8 (c) Except as provided in ORS 530.115, all moneys received from the disposal of forest products  
 9 created through expenditures of moneys available under ORS 530.210 to 530.280 for reforestation;  
 10 and

11 (d) Any moneys that may be appropriated to the fund by the Legislative Assembly.

12 (2) The moneys referred to in subsection (1)(b) and (c) of this section shall be set aside for State  
 13 Forestry General Obligation Bond Fund purposes until there are no longer any bonds issued under  
 14 ORS 530.210 to 530.280 outstanding. If no bonds issued under ORS 530.210 to 530.280 are outstand-  
 15 ing, the moneys described in subsection (1)(b) and (c) of this section shall be disposed of using the  
 16 distribution formula described in ORS 530.115 (1)(a) to (c).

17 **SECTION 2054.** ORS 530.460 is amended to read:

18 530.460. (1) The [*Department of State Lands and the State Board of Forestry*] **Oregon Depart-**  
 19 **ment of Natural Resources** shall designate and set aside those lands owned by the State of  
 20 Oregon[,] **and** under the jurisdiction of the department [*of State Lands, which*] **that** are primarily  
 21 suited for the growing of timber and other forest products.

22 (2) The state-owned lands shall be designated and set aside pursuant to ORS 530.470 and 530.480,  
 23 and when so designated and set aside, shall be known as the Common School Forest Lands and  
 24 hereby are dedicated for the primary purposes stated in subsection (1) of this section and shall be  
 25 withdrawn from sale except as provided in ORS 530.450 to 530.520.

26 **SECTION 2055.** ORS 530.470 is amended to read:

27 530.470. (1) Periodically as is necessary, the [*Department of State Lands and the State Board of*  
 28 *Forestry*] **Oregon Department of Natural Resources** shall proceed to designate and set aside  
 29 Common School Forest Lands as rapidly as forestry data and information are obtained from field  
 30 examinations of the lands eligible for dedication under ORS 530.450 to 530.520.

31 (2) Any lands so designated and set aside may, at any time, be returned to their original status  
 32 by similar actions of said agencies, if said lands are to be used for higher and better use for the  
 33 general public, including the sale of said lands where lawful.

34 **SECTION 2056.** ORS 530.480 is amended to read:

35 530.480. As the Common School Forest Lands are determined as required by ORS 530.450 to  
 36 530.520, such lands shall be described by legal subdivision. The State Land Board and the [*State*  
 37 *Board of Forestry, respectively in their regular meetings, shall by separate board resolutions designate*  
 38 *and set*] **Oregon Department of Natural Resources shall each adopt a resolution designating**  
 39 **and setting** aside such lands as a part of the Common School Forest Lands.[;] Lands in the Elliott  
 40 State Forest, as determined by ORS 530.450, shall be similarly described and reserved. [*A copy of*  
 41 *each board resolution certified by the Director of the Department of State Lands or the State Forester,*  
 42 *respectively, together with the description of the lands involved, shall be filed with the Secretary of*  
 43 *State, who shall keep such copies and descriptions in conjunction with the auditing records of the State*  
 44 *Forestry Department Account.*] **The Director of the Oregon Department of Natural Resources**  
 45 **shall certify a copy of each resolution and file the copy with the Secretary of State.**

1       **SECTION 2057.** ORS 530.490 is amended to read:

2       530.490. (1) Notwithstanding the provisions of any other law, or authority granted thereunder,  
 3 after the [*State Board of Forestry and State Land Board resolutions and legal descriptions are filed*  
 4 *with the Secretary of State as required by ORS 530.480, the State Forester hereby shall be authorized,*  
 5 *under the supervision of the State Board of Forestry and the regulations of that board, to]* **Director**  
 6 **of the Oregon Department of Natural Resources files the resolution and land description with**  
 7 **the Secretary of State under ORS 530.480, the director may** manage, control and protect the  
 8 Common School Forest Lands. Also, notwithstanding the provisions of any other law, or authority  
 9 granted thereunder, the [*State Forester hereby is authorized, under the supervision of the State Board*  
 10 *of Forestry and the regulations of that board, to]* **director may** manage, control and protect the  
 11 Elliott State Forest Lands. In each instance the [*State Forester*] **director** shall manage, control and  
 12 protect such forests and forestlands so as to secure the greatest permanent value of the lands to the  
 13 whole people of the State of Oregon, particularly for the dedicated purposes of the lands and the  
 14 common schools to which the resources of the lands are devoted.

15       [(2) *Easements on, over and across the Common School Forest Lands and the Elliott State Forest*  
 16 *Lands may be granted as follows:]*

17       [(a) *Permanent easements determined by the State Forester and State Board of Forestry as neces-*  
 18 *sary to accomplish the dedicated purposes of such lands may be granted by the Department of State*  
 19 *Lands.]*

20       [(b) *Easements other than permanent may be granted by the State Forester under joint rules of the*  
 21 *State Board of Forestry and Department of State Lands.]*

22       [(3) *The authority granted the State Forester in this section shall not supersede the authority of the*  
 23 *Department of State Lands to grant easements on or leases for the Common School Forest Lands and*  
 24 *Elliott State Forest Lands for grazing purposes or for the exploration and development of minerals, oil*  
 25 *or gas, and any consideration received by the Department of State Lands therefor shall be excepted*  
 26 *from the provisions of ORS 530.520. However, the Department of State Lands shall cooperate with the*  
 27 *forestry program of the State Forester in granting such easements and leases and make provisions*  
 28 *therein for continuing the primary purposes for which such land has been dedicated.]*

29       **(2) The Director of the Oregon Department of Natural Resources may grant leases for**  
 30 **or easements on, over and across the Common School Forest Lands and the Elliot State**  
 31 **Forest Lands if the lease or easement is necessary to accomplish the dedicated purposes of**  
 32 **such lands.**

33       **SECTION 2058.** ORS 530.500 is amended to read:

34       530.500. In order to accomplish the purposes of ORS 530.490, the [*State Forester*] **Director of**  
 35 **the Oregon Department of Natural Resources** may:

36       (1) Protect the lands from fire, disease and insect pests, cooperate with the counties and with  
 37 persons owning lands within the state in the protection of the lands and enter into all agreements  
 38 necessary or convenient for the protection of the lands.

39       (2) Enter into and administer contracts for the sale of timber from lands owned or managed by  
 40 the [*State Board of Forestry and the State Forestry Department*] **Oregon Department of Natural**  
 41 **Resources.**

42       (3) Permit the use of the lands for other purposes, including but not limited to fish and wildlife  
 43 environment, landscape effect, protection against flood and erosion, recreation and production and  
 44 protection of water supplies when the use is not detrimental to the purpose for which the lands are  
 45 dedicated.



1 (4) Contract with other governmental bodies for the protection of water supplies to facilitate the  
 2 multiple use of publicly owned water supplies for recreational purposes as well as a source of water  
 3 for domestic and industrial use.

4 (5) Grant permits and licenses on, over and across the lands.

5 (6) Reforest the lands and cooperate with persons owning timberlands within the state in the  
 6 reforestation, and make all agreements necessary or convenient for the reforestation.

7 (7) Establish a forestry carbon offset program to market, register, transfer or sell forestry car-  
 8 bon offsets. In establishing the program, the [*forester*] **director** may:

9 (a) Execute any contracts or agreements necessary to create opportunities for the creation of  
 10 forestry carbon offsets; and

11 (b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of  
 12 forestry carbon offsets.

13 (8) Do all things and make all rules and regulations, not inconsistent with law, necessary or  
 14 convenient for the management, protection, utilization and conservation of the lands.

15 (9) Require such undertakings as in the opinion of the [*State Forester*] **director** are necessary  
 16 or convenient to secure performance of any agreement authorized in ORS 530.450 to 530.520.

17 **SECTION 2059.** ORS 530.510 is amended to read:

18 530.510. (1) **The Director of the Oregon Department of Natural Resources** [*The State*  
 19 *Forester*] may propose and initiate any exchange of land of the Elliott State Forest or Common  
 20 School Forest Lands, or propose and initiate any exchange of timber on such lands, for land of ap-  
 21 proximately equal aggregate value, when any such exchange is in the furtherance of the purposes  
 22 of ORS 530.450 to 530.520. However:

23 [(1)] (a) Any exchange of land of the Elliott State Forest must be for the consolidation of the  
 24 forest;

25 [(2)] (b) The State Land Board and the [*State Board of Forestry*] **Oregon Natural Resources**  
 26 **Commission** shall[, *each separately,*] **each** approve such exchanges by [*resolutions of the respective*  
 27 *boards*] **separate resolutions**; and

28 [(3)] (c) The county court or board of county commissioners of the county, or counties, in which  
 29 such land is situated, shall approve such exchange, and after such approval the exchanges shall be  
 30 consummated by legal conveyance from the [*Department of State Lands*] **Oregon Department of**  
 31 **Natural Resources**.

32 [(4)] (2) Under the authority granted in this section, in addition to land to be exchanged, a  
 33 monetary consideration may be provided or received where necessary to make the values comply  
 34 with this section. No exchange shall be made until title to the lands to be received has been ap-  
 35 proved by the Attorney General. All lands received in exchange shall have the same status and be  
 36 subject to the same provisions of law as the lands given in exchange therefor.

37 **SECTION 2060.** ORS 530.520 is amended to read:

38 530.520. (1) Excepting receipts from the easements and leases designated in ORS 530.490 [(3)],  
 39 all receipts from the Elliott State Forest and the Common School Forest Lands shall be paid into  
 40 the Common School Fund and are continuously appropriated to the [*Department of State Lands*]  
 41 **Oregon Department of Natural Resources** for the purposes for which other moneys in the Com-  
 42 mon School Fund may be used and to reimburse the Common School Forest Revolving Fund as  
 43 provided in subsection (2) of this section.

44 (2)(a) The Common School Forest Revolving Fund, in an amount not exceeding \$300,000, is es-  
 45 tablished as a fund, separate and distinct from the General Fund, in the State Treasury. Interest

1 earned by the fund shall be credited to the fund. The revolving fund is continuously appropriated  
 2 to the [*State Forester for the payment of administrative expenses incurred by the State Forester*] **Di-**  
 3 **rector of the Oregon Department of Natural Resources for payment of administrative ex-**  
 4 **penditures incurred by the director** in the management, control and protection of the Elliott State  
 5 Forest and the Common School Forest Lands and in processing the sale of forest products and the  
 6 disposal of privileges under ORS 530.500. The revolving fund shall be reimbursed at least once each  
 7 month [*by submission to the Department of State Lands of a claim for payment approved by the State*  
 8 *Forester and payment of the claim to the revolving fund out of the Common School Fund, that payment*  
 9 *representing a portion of receipts paid into the Common School Fund under subsection (1) of this sec-*  
 10 *tion*].

11 (b) As used in paragraph (a) of this subsection, “administrative expenses” means a classification  
 12 of expenses incurred by the [*State Forester*] **director** in performing functions referred to in para-  
 13 graph (a) of this subsection as a whole, rather than expenses incurred in performing any specific  
 14 function that is a part of the whole,[,] and it means expenditures recognized as operating costs of  
 15 a current or past period, including refund of overpayments in the sale of forest products, and capital  
 16 expenditures for buildings, furniture, fixtures or equipment.

17 [(3) *After the end of each six-month period the State Forester shall submit to the Department of*  
 18 *State Lands a statement of capital asset account balances as of the end of that period for buildings,*  
 19 *furniture, fixtures and equipment held by the State Forester in performing functions referred to in*  
 20 *subsection (2)(a) of this section and in which the Common School Fund has a vested interest, showing*  
 21 *the amount of that interest.*]

22 **SECTION 2061.** ORS 530.990 is amended to read:

23 530.990. (1) Except for violations arising from activities under contract with the [*State Board*  
 24 *of Forestry or the State Forestry Department*] **Oregon Department of Natural Resources or the**  
 25 **Oregon Natural Resources Commission**, and subject to ORS 153.022, violation of any rule or or-  
 26 der adopted pursuant to ORS 530.050 is a Class A violation.

27 (2) Multiple violations of any rule or order adopted pursuant to ORS 530.050 shall be considered  
 28 a single violation. However, each day a violation continues shall be considered a separate violation.

29 (3) Violations and punishments set forth in this section are in addition to and not in lieu of the  
 30 provisions of ORS 164.305 to 164.335.

31 **SECTION 2062.** ORS 532.010 is amended to read:

32 532.010. For purposes of ORS 532.010 to 532.140, unless the context or subject matter otherwise  
 33 requires:

34 (1) “Booming equipment” includes boom sticks.

35 (2) “Brand” means an identifying mark upon forest products or booming equipment, as provided  
 36 by rule and regulation of the [*State Forester*;] **Director of the Oregon Department of Natural**  
 37 **Resources**, but any brands in use and registered with the Public Utility Commission on October 1,  
 38 1951, with the exception of those brands enclosed in the letter “C,” the use of which is particularly  
 39 reserved for catch brands, may be continued in use, subject to the other provisions of ORS 532.010  
 40 to 532.140.

41 (3) “Catch brand” means a mark of brand used by a person as an identifying mark upon forest  
 42 products and booming equipment previously owned by another.

43 (4) “Forest products” means any form, including but not limited to logs, poles and piles, into  
 44 which a fallen tree may be cut before it undergoes manufacturing, but not including peeler cores.

45 (5) “Highway” means every street, alley, road, highway and thoroughfare in this state, used by

1 the public or dedicated or appropriated to public use.

2 (6) "Motor vehicle" means any self-propelled or motor driven vehicle or any train or combina-  
3 tion of vehicles used upon any highway in this state in transporting forest products.

4 (7) "Railroad" means any self-propelled vehicle or any train or combination of vehicles operating  
5 wholly on fixed rails or tracks.

6 (8) "Waters of this state" includes all bodies of fresh and salt water within the jurisdiction of  
7 the state capable of being used for the transportation of forest products, and all rivers and lakes  
8 and their tributaries, harbors, bays, sloughs and marshes.

9 **SECTION 2063.** ORS 532.020 is amended to read:

10 532.020. (1) Except as provided in ORS 532.030, every person who puts into any of the waters  
11 of this state, ships on any motor vehicle or railroad any forest products, or uses any booming  
12 equipment as a part of an operation in securing, rafting or floating forest products, shall have a  
13 mark or brand previously selected by the person and registered in the manner provided in ORS  
14 532.010 to 532.140 plainly impressed or cut in a conspicuous place on the forest products and  
15 booming equipment in a manner as required by the rules and regulations of the [*State Forester*] **Di-**  
16 **rector of the Oregon Department of Natural Resources.**

17 (2) The [*State Forester*] **director** hereby is authorized to issue rules and regulations to accom-  
18 plish the purposes of ORS 532.010 to 532.140.

19 **SECTION 2064.** ORS 532.030 is amended to read:

20 532.030. In view of the different conditions obtaining in the logging industry of this state be-  
21 tween the parts of the state lying respectively east and west of the crest of the Cascade Mountains,  
22 forest products may be put into the waters of this state or shipped on railroads or motor vehicles  
23 without having thereon a registered mark or brand as required in ORS 532.010 to 532.140, within  
24 that portion of the state lying east of the crest of the Cascade Mountains; and the penalties provided  
25 in ORS 532.990 for failure to mark or brand such forest products shall not apply. However, any  
26 person operating within the east side portion of the state may select a mark or brand and cause it  
27 to be registered in the [*office of the State Forester*] **Oregon Department of Natural Resources**  
28 pursuant to the terms of ORS 532.010 to 532.140 and use it for the purpose of marking or branding  
29 forest products and booming equipment. In the event of the registration of such mark or brand and  
30 the use of it in marking or branding forest products or booming equipment, the provisions of ORS  
31 532.010 to 532.140 shall apply to the forest products and booming equipment so marked or branded.

32 **SECTION 2065.** ORS 532.040 is amended to read:

33 532.040. All forest products and booming equipment having impressed thereupon a registered  
34 brand as provided in ORS 532.010 to 532.140 are presumed to belong to the person appearing on the  
35 records in the [*office of the State Forester*] **Oregon Department of Natural Resources** as the owner  
36 of the brand. However, all forest products having impressed thereupon also a registered catch brand  
37 are presumed to belong to the owner of the registered catch brand, unless there are impressed  
38 thereupon more than one registered catch brand, in which event they shall be presumed to belong  
39 to the owner whose registered catch brand was placed thereupon latest in point of time.

40 **SECTION 2066.** ORS 532.050 is amended to read:

41 532.050. (1) Every person selecting a brand, before using it, shall make application for its reg-  
42 istration in the [*office of the State Forester*] **Oregon Department of Natural Resources** by depos-  
43 iting therein an impression stamped on a designated form, together with, in duplicate, a written  
44 statement duly signed and verified by the person or the agent of the person, containing a description  
45 of the brand and declaring that it is not, and at the time of its adoption by the person, was not in

1 use to the knowledge of the person by any other person and that the person has selected it in good  
2 faith for branding forest products to be transported on motor vehicles or railroads, or floated or  
3 rafted in the waters of this state, or booming equipment to be used by the person as a part of the  
4 operations in securing, rafting or floating forest products.

5 (2) The [State Forester] **Director of the Oregon Department of Natural Resources**, upon the  
6 receipt of the application and the fee provided in ORS 532.110, if the [State Forester] **director** finds  
7 that the brand is not identical with any other brand registered in the [office of the State Forester]  
8 **department** or does not so closely resemble one registered therein as to be confused therewith,  
9 shall file in the [office of the State Forester] **department** the impression or drawing and one copy  
10 of the written statement and shall register the brand in a book to be provided by the [State  
11 Forester] **director** and kept for the purpose and known as the Forest Products Brand Register, en-  
12 tering therein the name of the owner, character of the brand, date of registration and such other  
13 details as the [State Forester] **director** may see fit to enter therein. The [State Forester] **director**  
14 shall return to the applicant the other copy of the written statement as evidence that the brand has  
15 been duly registered in accordance with the provisions of ORS 532.010 to 532.140 and that the ap-  
16 plicant is the registered owner. The [State Forester] **director**, in the event of refusal to register a  
17 brand on account of confliction with or resemblance to one already registered, shall immediately  
18 give notice of that fact to the applicant, who may select another brand and apply for its registration  
19 in the manner of an original application.

20 **SECTION 2067.** ORS 532.060 is amended to read:

21 532.060. Every person desiring to use a catch brand as an identifying mark upon forest products  
22 or booming equipment purchased or lawfully acquired by the person from another shall, before using  
23 it, make application for its registration in the [office of the State Forester] **Oregon Department of**  
24 **Natural Resources** in the manner prescribed for the registration of brands, and the provisions  
25 contained in ORS 532.010 to 532.140 in reference to registration, certifications, assignments and  
26 cancellation and the fees to be paid to the [State Forester] **Director of the Oregon Department**  
27 **of Natural Resources** shall apply equally to catch brands. However, the certificate of the [State  
28 Forester] **director** shall designate the mark or brand as a catch brand, and the mark selected by the  
29 applicant as a catch brand shall be enclosed in the letter "C," which letter "C" shall identify the  
30 mark as, and shall be used only in connection with, a catch brand.

31 **SECTION 2068.** ORS 532.070 is amended to read:

32 532.070. A copy of brand registration certified by the [State Forester] **Director of the Oregon**  
33 **Department of Natural Resources** or the deputy of the [State Forester] **director** as a true copy  
34 and in good standing shall be received in all the courts of this state as evidence of the due and  
35 proper registration of the mark or brand and of its ownership.

36 **SECTION 2069.** ORS 532.080 is amended to read:

37 532.080. Every mark or brand registered under ORS 532.010 to 532.140 shall be assignable in law.  
38 The [State Forester] **Director of the Oregon Department of Natural Resources**, upon payment  
39 of the fee mentioned in ORS 532.110 and presentation to the [State Forester] **director**, in duplicate,  
40 of an assignment, duly executed and acknowledged by the owner, transferring the mark or brand to  
41 a person named therein, shall file one copy of the assignment in the [office of the State Forester]  
42 **Oregon Department of Natural Resources** and make an entry in the Forest Products Brand  
43 Register of the fact of the assignment, the date, the name of the assignee and such other details as  
44 the [State Forester] **director** may see fit to enter therein. The [State Forester] **director** shall return  
45 to the assignee the other copy of the assignment, with a certificate attached thereto, signed by the

1 [State Forester] **director** or the employee of the [State Forester] **director**, to the effect that the mark  
2 or brand has been duly registered in accordance with the provisions of ORS 532.010 to 532.140 and  
3 assigned to the assignee and that the assignee is the registered owner. The assignee, upon the due  
4 registration of the assignment as herein provided, shall become the owner of the mark or brand with  
5 the full right of exclusive use to the same extent as though the assignee had been the original  
6 owner.

7 **SECTION 2070.** ORS 532.090 is amended to read:

8 532.090. The [State Forester] **Director of the Oregon Department of Natural Resources**, upon  
9 the petition of the owner of a registered mark or brand, may cause the registration thereof to be  
10 canceled, and in the event of such cancellation, the mark or brand shall be open to registration by  
11 any person subsequently applying therefor.

12 **SECTION 2071.** ORS 532.100 is amended to read:

13 532.100. (1) The [State Forester] **Director of the Oregon Department of Natural Resources**  
14 shall, each five-year period after October 1, 1951, notify the owners of all log marks or brands then  
15 of record in Oregon to renew them. Upon receipt of the fee provided for in ORS 532.110, the [State  
16 Forester] **director** shall give a renewal certificate, which shall give the holder and owner the ex-  
17 clusive right to continue the use of the brand or mark within Oregon. If any owner of a brand or  
18 mark which is on record fails or refuses to pay the renewing fee within three months after notifi-  
19 cation, such brand shall become forfeited and be no longer carried on the records.

20 (2) On or after January 1, 1952, no person shall claim or own any log mark or brand which has  
21 not been renewed in accordance with the provisions of this section, and any failure to renew the log  
22 mark or brand as required by such provisions shall be deemed an abandonment of the same. Any  
23 other person shall be at liberty to adopt or use the abandoned mark or brand; but the other person  
24 shall not claim or use it until after it has been recorded in the other person's own name, in the  
25 manner provided in ORS 532.010 to 532.140. However, no abandoned or canceled brand may be re-  
26 issued for a period of one year after such abandonment or cancellation, except to the previous owner  
27 or the assignee of the previous owner. In case of a dispute as to the right of any person to the use  
28 of such mark or brand, the [State Forester] **director** shall determine which of the applicants is en-  
29 titled to its use.

30 **SECTION 2072.** ORS 532.110 is amended to read:

31 532.110. The fees to be paid to the [State Forester] **Director of the Oregon Department of**  
32 **Natural Resources** are as follows:

33 (1) For filing an application to register a mark or brand and registering the same, including the  
34 certificate, \$20.

35 (2) For filing an application for an assignment of a registered mark or brand and registering  
36 such assignment, including the certificate, \$20.

37 (3) For every other certificate of registration, including a copy of the written statement or as-  
38 signment, \$20.

39 (4) For each copy of any drawing, the reasonable expense of preparing it.

40 (5) For renewing brands or marks, \$20.

41 **SECTION 2073.** ORS 532.120 is amended to read:

42 532.120. All fees collected by the [State Forester] **Director of the Oregon Department of Na-**  
43 **tural Resources** under ORS 532.010 to 532.140 shall be [paid into the State Treasury, credited to the  
44 State Forestry Department Account and available] **deposited in the Oregon Natural Resources**  
45 **Fund. Moneys deposited in the fund under this subsection are continuously appropriated to**

1 **the Oregon Department of Natural Resources** for expenses associated with ORS 532.010 to  
2 532.140.

3 **NOTE:** Section 2074 was deleted. Subsequent sections were not renumbered.

4 **SECTION 2075.** ORS 541.425 is amended to read:

5 541.425. (1) The Stewardship Agreement Grant Fund is established separate and distinct from the  
6 General Fund. The Stewardship Agreement Grant Fund shall consist of all moneys placed in the fund  
7 as provided by law. All moneys in the Stewardship Agreement Grant Fund are continuously appro-  
8 priated to the [*State Board of Forestry*] **Oregon Department of Natural Resources** to provide  
9 grants to carry out the purposes of stewardship agreements described in ORS 541.423. Interest ac-  
10 cruing to the Stewardship Agreement Grant Fund shall be credited to the fund. Funds appropriated  
11 and not expended by the completion of a biennium shall remain in the Stewardship Agreement Grant  
12 Fund.

13 (2) The [*State Board of Forestry*] **Oregon Natural Resources Commission** shall administer the  
14 Stewardship Agreement Grant Fund and provide grants from the fund to landowners who have en-  
15 tered into stewardship agreements for the purposes described in ORS 541.423.

16 (3) In addition to the funds made available for the purposes of ORS 541.423, the [*board*] **com-**  
17 **mission** also may accept gifts and grants from any public or private source for the purpose of pro-  
18 viding the grants described in subsection (2) of this section.

19 **SECTION 2076.** ORS 541.426 is amended to read:

20 541.426. The [*State Board of Forestry*] **Oregon Natural Resources Commission** may award  
21 funds from the Stewardship Agreement Grant Fund only for the purposes described in ORS 541.425.  
22 Any projects that the [*board*] **commission** approves for funding must comply with the following  
23 criteria:

24 (1) There must be matching contribution from other program funds, in-kind services or other  
25 investment in the project; and

26 (2) The project must provide a public benefit through improved water quality or improved fish  
27 or wildlife habitat.

28 **SECTION 2077.** ORS 634.322 is amended to read:

29 634.322. In carrying out and enforcing the provisions of this chapter, the State Department of  
30 Agriculture is authorized:

31 (1) To collect samples of pesticides from any source, for analysis to determine compliance with  
32 this chapter.

33 (2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesti-  
34 cide or device which is misbranded, adulterated or otherwise in violation of this chapter.

35 (3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has  
36 reasonable cause to believe a pesticide or device is being formulated, distributed, stored or trans-  
37 ported in violation of any of the provisions of this chapter, to issue and serve a written "stop sale,  
38 use or removal" order to and upon the owner or person in custody of any such pesticide or device.  
39 In the event the owner or person in custody is not available for service of the order, the department  
40 may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide  
41 or device shall not be sold, used or removed until the provisions of this chapter have been complied  
42 with and the pesticide or device has been released, by written notice of the department, under  
43 conditions specified by the department.

44 (4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue  
45 or renew any license or certificate if it determines that an applicant, licensee or certificate holder

1 has violated any of the provisions of this chapter.

2 (5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the  
3 registration of a pesticide for violation of any of the provisions of this chapter.

4 (6) To establish limitations and procedures deemed necessary and proper for the protection of  
5 persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

6 (a) Quantities of packages;

7 (b) Quantities of sales;

8 (c) Uses or applications;

9 (d) Methods of sale, including prescription or permit requirements; or

10 (e) Persons to whom sold.

11 (7) To inspect any records required to be maintained by persons formulating, distributing, using  
12 or selling the pesticides described in ORS 634.306 (4), and to cause monitoring of the effects of such  
13 pesticides on human or animal life in any area where it is used or applied by a recognized and  
14 qualified person or agency.

15 (8) To enter into cooperative and reciprocal agreements with the federal government, or any of  
16 its agencies, for the purpose of enforcement of the provisions of this chapter or federal laws and  
17 regulations on the same subject matters, and to receive and expend funds pursuant to such agree-  
18 ments in furtherance of such purpose.

19 (9) To cooperate with, and request the assistance of, Oregon State University, governmental  
20 agencies or other persons for the purpose of enforcement of the provisions of this chapter.

21 (10)(a) To act jointly in, and with the concurrence of the [*State Forester*] **Director of the**  
22 **Oregon Department of Natural Resources** and a research specialist designated by Oregon State  
23 University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal  
24 or higher volatility with regard to plant damage. Each such permit shall specify:

25 (A) The particular ester allowed;

26 (B) The boundaries of the area in which it may be used; and

27 (C) The prescribed time limit and condition under which it may be applied.

28 (b) Such permits shall only be issued when the issuing authority determines that the use of the  
29 ester will not damage agricultural and forest products and susceptible crops. In making such deter-  
30 mination, the issuing authority shall consider research data, topography, climate, temperature, hu-  
31 midity, prevailing winds, characteristics of the ester and location of agricultural and forest products  
32 and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing  
33 authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of  
34 this chapter.

35 **SECTION 2078.** ORS 757.266 is amended to read:

36 757.266. The Public Utility Commission of Oregon may allow a rate or rate schedule of a public  
37 utility to reflect amounts for small scale programs that enable the utility to gain experience with  
38 tree planting on underproducing forestland, as defined by the [*State Forestry Department*] **Oregon**  
39 **Department of Natural Resources**, as an offset to carbon dioxide emissions.

40 **SECTION 2079.** ORS 803.030 is amended to read:

41 803.030. This section establishes exemptions from the requirements under ORS 803.025 to obtain  
42 title issued by this state. The exemptions are subject to ORS 803.040. The exemptions are in addition  
43 to any exemptions under ORS 801.026. Vehicles exempted by this section from the requirements to  
44 be titled by this state are not prohibited from being titled by this state if titling is permitted under  
45 ORS 803.035. The exemptions are partial or complete as provided in the following:

1 (1) Title from this state is not required for a vehicle unless the vehicle is operated on a highway  
2 in this state.

3 (2) Title from this state is not required unless a vehicle is operated under a registration number  
4 of this state.

5 (3) Snowmobiles, Class I all-terrain vehicles and Class III all-terrain vehicles are not subject to  
6 the requirements under ORS 803.025. The requirements and procedures for titling snowmobiles are  
7 as provided under ORS 821.060 and 821.070.

8 (4) Road rollers, farm tractors and traction engines are exempt from the requirements for title.

9 (5) Trolleys are exempt from the requirements for title.

10 (6) Bicycles are exempt from the requirements for title.

11 (7) United States Government owned and operated motor vehicles and trailers are exempt from  
12 the requirements for title.

13 (8) Implements of husbandry, well drilling machinery, emergency fire apparatus providing public  
14 fire protection and wheelchairs are exempt from the requirements for title.

15 (9) Except as provided in subsection (23) of this section, fixed load vehicles are exempt from the  
16 requirements for title while operated within the immediate construction project, as described in the  
17 governmental agency contract, in the construction or reconstruction of state or county roads,  
18 highways or city streets.

19 (10) Motor vehicles designed to operate at a loaded weight over 8,000 pounds, trailers and  
20 equipment are exempt from requirements for title while:

21 (a) Owned, leased, contracted or requisitioned by the [*State Forester, State Board of Forestry,*]  
22 **Director of the Oregon Department of Natural Resources, Oregon Natural Resources Com-**  
23 **mission,** their contractors under ORS chapter 477[,], or the federal government; and

24 (b) Being used for the purposes of forest protection and fire suppression under ORS chapter 477  
25 or a similar federal statute, including movement of the vehicles to and from the work area.

26 (11) Farm trailers are exempt from requirements for title when the operation or movement of  
27 the vehicle upon the highways is incidental to its use in an agricultural operation.

28 (12) Golf carts operated under an ordinance adopted under ORS 810.070 are exempt from re-  
29 quirements for title.

30 (13) Golf carts or similar vehicles are exempt from requirements for title when:

31 (a) They have not less than three wheels in contact with the ground;

32 (b) They have an unloaded weight of less than 1,300 pounds;

33 (c) They are designed to be and are operated at not more than 15 miles per hour; and

34 (d) They are operated by persons with disabilities.

35 (14) The nonresident owners of vehicles currently registered and titled in any other country,  
36 state or territory may operate such vehicles over the highways of this state without complying with  
37 the titling requirements under ORS 803.025. All of the following apply to this subsection:

38 (a) This subsection only provides an exemption so long as the owner satisfactorily shows that  
39 the owner is not a resident of this state or has been a resident of this state for less than 30 days.  
40 For the purpose of this paragraph, a person is a resident of this state if the person meets the resi-  
41 dency requirements described in ORS 803.200.

42 (b) The exemption under this subsection applies to vehicles granted exemptions under ORS  
43 802.500, 802.520 or 826.005, unless otherwise provided under paragraph (c) of this subsection.

44 (c) Except as otherwise provided in this paragraph, a vehicle operated over the highways of this  
45 state for compensation or profit must comply with the titling requirements under ORS 803.025 in the



1 same manner as required of nontitled vehicles. The following vehicles are not subject to this para-  
2 graph:

3 (A) Vehicles operated under reciprocal registration exemptions established under ORS 802.500  
4 or 826.005.

5 (B) Vehicles operated under an exemption established under ORS 802.520.

6 (C) Vehicles that are proportionally registered under an agreement established under ORS  
7 826.007, and according to the procedures established under ORS 826.009 or 826.011.

8 (D) Any vehicle if duly registered and titled under the laws of the state or country of which the  
9 owner is a bona fide resident to the extent that in the foreign country, state, territory or federal  
10 district where the owner resides like exemptions and privileges are granted vehicles duly registered  
11 and titled under the laws of this state and owned by residents of this state.

12 (d) If no exemptions from titling requirements are in effect under ORS 802.500, 802.520, 826.005  
13 or 826.007 with respect to another jurisdiction, any vehicle properly registered and titled in such  
14 other jurisdiction and for which evidence of compliance is supplied shall receive, when operated in  
15 this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehi-  
16 cles properly registered and titled in this state. Reciprocity extended under this paragraph shall  
17 apply to commercial vehicles only when engaged exclusively in interstate commerce.

18 (e) Any vehicle operated under dealer registration plates issued by another state, country,  
19 province, territory or the District of Columbia is subject to this subsection.

20 (15) Vehicle dealers issued certificates under ORS 822.020 may use and operate untitled vehicles  
21 as provided under ORS 822.040.

22 (16) Towing businesses issued certificates under ORS 822.205 may tow untitled vehicles as pro-  
23 vided under ORS 822.210.

24 (17) Vehicle transporters issued certificates under ORS 822.310 may transport untitled vehicles  
25 as provided in ORS 822.310.

26 (18) Untitled vehicles may be operated under trip permits described under ORS 803.600 or under  
27 permits described under ORS 803.610 to 803.625.

28 (19) Vehicles that are registered by the United States Department of State and that are owned  
29 or operated by foreign nationals with diplomatic immunity are exempt from the requirements for  
30 title.

31 (20)(a) Vehicles that are registered under the proportional registration provisions of ORS chap-  
32 ter 826 and are titled in a jurisdiction other than Oregon are exempt from the requirements for title.

33 (b) A trailer that is registered under the proportional registration provisions of ORS chapter 826  
34 and titled in a jurisdiction other than Oregon shall remain exempt from the requirements for title  
35 in Oregon if the trailer is registered when the other jurisdiction removes its exception to propor-  
36 tional registration requirements for the trailer.

37 (21) Converter dollies and tow dollies are exempt from the requirements for title.

38 (22) Electric personal assistive mobility devices are exempt from the requirements for title.

39 (23) Road machinery that is operated at the direction of a road authority is exempt from the  
40 requirements for title. The exemption under this subsection also applies when the operation of road  
41 machinery upon a highway or an alley is incidental to its use in a highway maintenance operation.

42 **SECTION 2080.** ORS 803.305 is amended to read:

43 803.305. This section establishes exemptions from the requirements under ORS 803.300. The ex-  
44 emptions under this section are in addition to any exemptions under ORS 801.026. Vehicles exempted  
45 by this section from the requirements to be registered by this state are not prohibited from being

1 registered by this state if registration is permitted under ORS 803.310. The following are exempt,  
2 either partially or completely as described, from the registration requirements under ORS 803.300:

3 (1) Road rollers, farm tractors, trolleys and traction engines are exempt from registration.

4 (2) Bicycles are exempt from registration.

5 (3) A vehicle is exempt from registration if it has registration issued for the vehicle by the  
6 Armed Forces of the United States where the registration is issued in a foreign country to a vehicle  
7 owned by a member of the Armed Forces. The exemption granted by this subsection applies only for  
8 a period of 45 days from the time the vehicle is returned to the United States.

9 (4) A vehicle is exempt from registration if it is not operated on the highways of this state.

10 (5) A trailer is exempt from registration if it is equipped with pneumatic tires made of elastic  
11 material and is not operated in this state with a loaded weight of more than 1,800 pounds. A trailer  
12 for hire, travel trailer or camper is not exempt by this subsection.

13 (6) Vehicles owned and operated by the United States Government are exempt from registration.

14 (7) Snowmobiles are subject to the requirements for registration provided under ORS 821.080 to  
15 821.110.

16 (8) Implements of husbandry, well drilling machinery, emergency fire apparatus providing public  
17 fire protection and wheelchairs are exempt from registration.

18 (9) Road graders, farm tractors and farm trailers on highways are exempt from registration when  
19 the operation of the vehicle upon the highway is incidental to its use in an agricultural operation.

20 (10) Except as provided in subsection (26) of this section, fixed load vehicles are exempt from  
21 registration while the vehicles are operated:

22 (a) In the construction or reconstruction of state or county roads, highways or city streets; and

23 (b) Within the immediate construction projects, as described in the governmental agency con-  
24 tract under which the work is being performed.

25 (11) Motor vehicles designed to operate at a loaded weight over 8,000 pounds, trailers and  
26 equipment are exempt from registration while being used for the purposes of forest protection and  
27 fire suppression under ORS chapter 477 or a similar federal statute. The exemption under this sub-  
28 section applies to the vehicles or equipment described while being moved to or from the work area.  
29 The exemption under this subsection [*only*] applies **only** to vehicles or equipment owned, leased,  
30 contracted for or requisitioned by the [*State Forester or State Board of Forestry, a contractor of the*  
31 *State Forester or State Board of Forestry under ORS chapter 477*] **Director of the Oregon Depart-**  
32 **ment of Natural Resources, the Oregon Natural Resources Commission, a contractor of the**  
33 **director or commission under ORS chapter 477** or the United States Government.

34 (12) Vehicles being used for the purposes of forest protection and fire suppression are exempt  
35 if the vehicles are necessary in order to comply with ORS 477.615 or 477.650 or a similar federal  
36 statute. The exemption under this subsection also applies to the vehicles described being moved to  
37 or from the work area.

38 (13) Golf cart exemptions from registration are as provided in ORS 820.210.

39 (14) Vehicles currently registered and titled in any other country, state or territory are not re-  
40 quired to be registered by this state. All of the following apply to this subsection:

41 (a) This subsection only provides an exemption as long as the owner of the vehicle satisfactorily  
42 shows that the owner is not a resident of this state or has been a resident of this state for less than  
43 30 days. For the purpose of this paragraph, a person is a resident of this state if the person meets  
44 the residency requirements described in ORS 803.200.

45 (b) The exemption under this subsection applies to vehicles granted exemptions under ORS

1 802.500, 802.520 or 826.005 unless otherwise provided for under paragraph (c) of this subsection.

2 (c) Except as otherwise provided in this paragraph, a vehicle operated over the highways of this  
3 state for compensation or profit must comply with the registration requirements under ORS 803.300  
4 in the same manner as vehicles owned by persons in this state. The following vehicles are not sub-  
5 ject to this paragraph:

6 (A) Vehicles operated under reciprocal registration exemptions established under ORS 802.500  
7 or 826.005.

8 (B) Vehicles operated under an exemption established under ORS 802.520.

9 (C) Vehicles that are proportionally registered under an agreement established under ORS  
10 826.007 and according to the procedures established under ORS 826.009 and 826.011.

11 (D) Any vehicle if duly registered and titled under the laws of the state or country of which the  
12 owner is a bona fide resident to the extent that in the foreign country, state, territory or federal  
13 district where the owner resides like exemptions and privileges are granted vehicles duly registered  
14 and titled under the laws of this state and owned by residents of this state.

15 (d) If no exemption from registration requirements is in effect under ORS 802.500, 802.520,  
16 826.005 or 826.007 with respect to another jurisdiction, any vehicle properly registered and titled in  
17 such other jurisdiction and for which evidence of compliance is supplied shall receive, when oper-  
18 ated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions  
19 to vehicles properly registered and titled in this state. Reciprocity extended under this paragraph  
20 shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

21 (e) Any vehicle operated under dealer registration plates issued by another state, country,  
22 province, territory or the District of Columbia is subject to this subsection.

23 (15) Vehicles operated or used by vehicle dealers may be operated or used without registration  
24 as provided under ORS 822.040.

25 (16) Vehicles towed by towing businesses may be towed without registration as provided under  
26 ORS 822.210.

27 (17) Vehicles without registration may be transported by vehicle transporters as provided under  
28 ORS 822.310.

29 (18) Vehicles that are not registered may be operated under trip permits described under ORS  
30 803.600 or under permits described under ORS 803.610 to 803.625.

31 (19) If trailers that are part of a fleet of trailers for hire are properly registered in this state  
32 under an agreement entered into pursuant to ORS 802.500, all trailers that are identified as being  
33 a part of the same fleet and that are currently registered in any state, territory, province, country  
34 or the District of Columbia shall be permitted to operate in this state in both interstate and intra-  
35 state commerce without being registered by this state.

36 (20) Vehicles that are registered by the United States Department of State and that are owned  
37 or operated by foreign nationals with diplomatic immunity are exempt from registration.

38 (21) Tow dollies and converter dollies are exempt from registration.

39 (22) Class I and Class III all-terrain vehicles are exempt from registration.

40 (23) Motor assisted scooters are exempt from registration.

41 (24) Electric personal assistive mobility devices are exempt from registration.

42 (25) A racing activity vehicle that is being operated for the purposes of a test drive within a  
43 30-mile radius of the location where the vehicle is manufactured is exempt from registration.

44 (26) Road machinery that is operated at the direction of a road authority is exempt from regis-  
45 tration. The exemption under this subsection also applies when the operation of road machinery

1 upon a highway or an alley is incidental to its use in a highway maintenance operation.

2 **SECTION 2081.** ORS 825.017 is amended to read:

3 825.017. Except as provided in ORS 825.026 and 825.030, this chapter does not apply to the per-  
4 sons or vehicles described in this section. The exemption under this section applies to the following  
5 persons and vehicles:

6 (1) Vehicles being used by, or under contract with, any school board, district or person respon-  
7 sible for the administration of elementary or secondary school activities, and engaged exclusively  
8 in transporting students or combinations of students and other persons to or from school, to or from  
9 authorized school activities or other activities sponsored by the State Board of Higher Education,  
10 or for purposes provided under ORS 332.427. This exemption shall not be affected by the charging  
11 of a fee to cover the costs of the transportation.

12 (2) Vehicles being used in a taxicab operation if the vehicle:

13 (a) Is a passenger vehicle with a passenger seating capacity that does not exceed five;

14 (b) Carries passengers for hire where the destination and route traveled may be controlled by  
15 a passenger and the fare is calculated on the basis of any combination of an initial fee, distance  
16 traveled or waiting time; and

17 (c) Is transporting persons or property, or both, between points in Oregon.

18 (3) Vehicles being used for the transportation of property by private carrier by means of a single  
19 vehicle or combination of vehicles with a combined weight that does not exceed 8,000 pounds.

20 (4) Vehicles being used in operating implements of husbandry.

21 (5) Vehicles being used as a hearse or ambulance.

22 (6) Vehicles being used over any private road or thoroughfare.

23 (7) Vehicles being used on any road, thoroughfare or property, other than a state highway,  
24 county road or city street, for the removal of forest products as defined in ORS 321.005, or the  
25 product of forest products converted to a form other than logs at or near the harvesting site, or  
26 when used for the construction or maintenance of the road, thoroughfare or property, pursuant to  
27 a written agreement or permit authorizing the use, construction or maintenance of the road,  
28 thoroughfare or property, with:

29 (a) An agency of the United States;

30 (b) The [*State Board of Forestry*] **Oregon Natural Resources Commission;**

31 (c) The [*State Forester*] **Director of the Oregon Department of Natural Resources;** or

32 (d) A licensee of an agency named in this subsection.

33 (8) Vehicles being used on any county road for the removal of forest products as defined in ORS  
34 321.005, or the products of forest products converted to a form other than logs at or near the har-  
35 vesting site, if:

36 (a) The use is pursuant to a written agreement entered into with the [*State Board of Forestry,*  
37 *the State Forester*] **Director of the Oregon Department of Natural Resources, the Oregon Na-**  
38 **tural Resources Commission** or an agency of the United States, authorizing the owner of the  
39 motor vehicle to use the road and requiring the owner to pay for or to perform the construction or  
40 maintenance of the county road, including any operator of a motor vehicle retained to transport  
41 logs, poles and piling for the owners who are exempt under this section;

42 (b) The [*board*] **commission,** officer or agency that entered into the agreement or granted the  
43 permit, by contract with the county court or board of county commissioners, has assumed the re-  
44 sponsibility for the construction or maintenance of the county road; and

45 (c) Copies of the agreements or permits required by this subsection are filed with the Director

1 of Transportation.

2 (9) Vehicles being used in the transportation of persons for hire if the operation:

3 (a) Is performed by a nonprofit entity;

4 (b) Is not in competition with a regular route full-service scheduled carrier of persons that is  
5 subject to the provisions of this chapter or a service provided by a mass transit district formed un-  
6 der ORS chapter 267;

7 (c) Is performed by use of vehicles operating in compliance with ORS 820.020 to 820.070; and

8 (d) Is approved by the Department of Transportation as complying with paragraphs (a) to (c) of  
9 this subsection.

10 (10) Vehicles being used in transporting persons with disabilities, with or without their super-  
11 visors or assistants, to or from rehabilitation facilities or child care services if the motor vehicle is  
12 a passenger motor vehicle with a seating capacity of not more than 12 passengers. The exemption  
13 provided by this subsection applies only when the motor vehicle is operated by or under contract  
14 with any person responsible for the administration of rehabilitation facilities as defined in ORS  
15 344.710 to 344.730 or child care services provided by a facility licensed under ORS 657A.030 and  
16 657A.250 to 657A.450.

17 (11) Vehicles owned or operated by the United States or by any governmental jurisdiction within  
18 the United States except when owned or operated as a carrier of property for hire.

19 (12) Vehicles owned or operated by a mass transit district created under ORS chapter 267.

20 (13) Vehicles owned or operated by, or under contract with, a person responsible for the con-  
21 struction or reconstruction of a highway under contract with the Department of Transportation or  
22 with an agency of the United States when operated within the immediate construction project as  
23 described in the governmental agency contract during the construction period.

24 (14) Vehicles owned or operated by, or under contract with, a charitable organization when ex-  
25 clusively engaged in performing transportation, either one way or round trip, necessary to the op-  
26 eration of the charitable organization. As used in this subsection, "charitable organization" means  
27 an organization that has no capital stock and no provision for making dividends or profits, but de-  
28 rives its funds principally from public and private charity and holds them in trust for the promotion  
29 of the welfare of others and not for profit. Any organization claiming an exemption under this sub-  
30 section shall file an affidavit with the department stating that it is organized and operated in ac-  
31 cordance with the requirements of this subsection.

32 (15) Vehicles with a maximum speed that does not exceed 35 miles per hour that are designed  
33 for off-road use and that are operated on the public highways in any one calendar year a number  
34 of miles that does not exceed 15 percent of the total number of miles the vehicle is operated for that  
35 calendar year.

36 (16) Passenger vehicles with a passenger seating capacity that does not exceed five when used  
37 in the transportation of new telephone books.

38 (17) A vehicle that is used in a limousine service operation in which the destination and route  
39 traveled may be controlled by the passenger and the fare is calculated on the basis of any combi-  
40 nation of initial fee, distance traveled and waiting time if the vehicle:

41 (a) Is a passenger vehicle with a passenger seating capacity that does not exceed eight;

42 (b) Carries passengers for hire between points in Oregon; and

43 (c) Operates on an irregular route basis.

44 (18) Fire trucks and rescue vehicles that are designated as emergency vehicles by the Depart-  
45 ment of Transportation under ORS 801.260, while involved in emergency and related operations.

1 (19) A person who provides services related to the packing or loading of household goods if the  
2 person does not:

3 (a) Provide or operate a motor vehicle for the movement of the household goods; and

4 (b) Act as an agent for any person who does provide or operate a motor vehicle for the move-  
5 ment of the household goods.

6  
7 **OREGON FOREST RESOURCES INSTITUTE**

8  
9 **(Abolishment and Transfer of**  
10 **Duties, Functions and Powers)**

11  
12 **SECTION 2082. (1) The Oregon Forest Resources Institute is abolished. On the operative**  
13 **date of this section, the tenure of office of the board of directors of the Oregon Forest Re-**  
14 **sources Institute ceases.**

15 **(2) All the duties, functions and powers of the Oregon Forest Resources Institute are**  
16 **imposed upon, transferred to and vested in the Oregon Department of Natural Resources.**

17  
18 **(Transfer of Records, Property and Employees)**

19  
20 **SECTION 2083. (1) The board of directors of the Oregon Forest Resources Institute shall:**

21 **(a) Deliver to the Oregon Department of Natural Resources all records and property**  
22 **within the jurisdiction of the board that relate to the duties, functions and powers trans-**  
23 **ferred by section 2082 of this 2011 Act; and**

24 **(b) Transfer to the Oregon Department of Natural Resources those employees engaged**  
25 **primarily in the exercise of the duties, functions and powers transferred by section 2082 of**  
26 **this 2011 Act.**

27 **(2) The Director of the Oregon Department of Natural Resources shall take possession**  
28 **of the records and property, and shall take charge of the employees and employ them in the**  
29 **exercise of the duties, functions and powers transferred by section 2082 of this 2011 Act,**  
30 **without reduction of compensation but subject to change or termination of employment or**  
31 **compensation as provided by law.**

32 **(3) The Governor shall resolve any dispute between the Oregon Forest Resources Insti-**  
33 **tute and the Oregon Department of Natural Resources relating to transfers of records,**  
34 **property and employees under this section, and the Governor's decision is final.**

35  
36 **(Transfer of Unexpended Revenues)**

37  
38 **SECTION 2084. (1) The unexpended balances of amounts authorized to be expended by the**  
39 **Oregon Forest Resources Institute for the biennium beginning July 1, 2011, from revenues**  
40 **dedicated, continuously appropriated, appropriated or otherwise made available for the pur-**  
41 **pose of administering and enforcing the duties, functions and powers transferred by section**  
42 **2082 of this 2011 Act are transferred to and are available for expenditure by the Oregon De-**  
43 **partment of Natural Resources for the biennium beginning July 1, 2011, for the purpose of**  
44 **administering and enforcing the duties, functions and powers transferred by section 2082 of**  
45 **this 2011 Act.**

1 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
 2 expenditures by the Oregon Forest Resources Institute remain applicable to expenditures by  
 3 the Oregon Department of Natural Resources under this section.

4  
 5 (Action, Proceeding and Prosecution)

6  
 7 **SECTION 2085.** The transfer of duties, functions and powers to the Oregon Department  
 8 of Natural Resources by section 2082 of this 2011 Act does not affect any action, proceeding  
 9 or prosecution involving or with respect to such duties, functions and powers begun before  
 10 and pending at the time of the transfer, except that the Oregon Department of Natural Re-  
 11 sources is substituted for the Oregon Forest Resources Institute in the action, proceeding  
 12 or prosecution.

13  
 14 (Liability, Duty and Obligation)

15  
 16 **SECTION 2086.** (1) Nothing in sections 2082 to 2088 of this 2011 Act, the amendments to  
 17 statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257,  
 18 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act or the repeal of ORS  
 19 526.600, 526.610, 526.615, 526.620, 526.625, 526.632, 526.650, 526.660 or 526.670 by section 2161 of  
 20 this 2011 Act relieves a person of a liability, duty or obligation accruing under or with respect  
 21 to the duties, functions and powers transferred by section 2082 of this 2011 Act. The Oregon  
 22 Department of Natural Resources may undertake the collection or enforcement of any such  
 23 liability, duty or obligation.

24 (2) The rights and obligations of the Oregon Forest Resources Institute legally incurred  
 25 under contracts, leases and business transactions executed, entered into or begun before the  
 26 operative date of section 2082 of this 2011 Act are transferred to the Oregon Department of  
 27 Natural Resources. For the purpose of succession to these rights and obligations, the Oregon  
 28 Department of Natural Resources is a continuation of the Oregon Forest Resources Institute  
 29 and not a new authority.

30  
 31 (Rules)

32  
 33 **SECTION 2087.** Notwithstanding the transfer of duties, functions and powers by section  
 34 2082 of this 2011 Act, the rules of the Oregon Forest Resources Institute in effect on the  
 35 operative date of section 2082 of this 2011 Act continue in effect until superseded or repealed  
 36 by rules of the Oregon Department of Natural Resources. References in rules of the Oregon  
 37 Forest Resources Institute to the Oregon Forest Resources Institute, or to an officer or  
 38 employee of the Oregon Forest Resources Institute, are considered to be references to the  
 39 Oregon Department of Natural Resources or to an officer or employee of the Oregon De-  
 40 partment of Natural Resources.

41  
 42 (References)

43  
 44 **SECTION 2088.** Whenever, in any uncodified law or resolution of the Legislative Assembly  
 45 or in any rule, document, record or proceeding authorized by the Legislative Assembly, ref-

1 erence is made to the Oregon Forest Resources Institute, or to an officer or employee of the  
 2 Oregon Forest Resources Institute, the reference is considered to be a reference to the  
 3 Oregon Department of Natural Resources or to an officer or employee of the Oregon De-  
 4 partment of Natural Resources.

5  
 6 (Agency Name Change)  
 7

8 **SECTION 2089.** For the purpose of harmonizing and clarifying statutory law, the Legis-  
 9 lative Counsel may substitute for words designating the “Oregon Forest Resources  
 10 Institute” or its officers, wherever they occur in statutory law, words designating the  
 11 “Oregon Department of Natural Resources” or its officers.

12  
 13 (Fund Name Change)  
 14

15 **SECTION 2090.** For the purpose of harmonizing and clarifying statutory law, the Legis-  
 16 lative Counsel may substitute for words designating the “Oregon Forest Resources Institute  
 17 Fund,” wherever they occur in statutory law, words designating the “Oregon Natural Re-  
 18 sources Fund.”

19  
 20 (Conforming Amendments)  
 21

22 **SECTION 2091.** ORS 321.017 is amended to read:

23 321.017. (1) In addition to the taxes levied under ORS 321.015 (1) to (3), there hereby is levied  
 24 a privilege tax upon taxpayers on the harvesting of all merchantable forest products harvested on  
 25 forestlands in the amount provided in subsection (2) of this section.

26 (2) The rate of tax levied in subsection (1) of this section shall be established annually at the  
 27 beginning of each calendar year by the [*board of directors of the institute*] **Oregon Department of**  
 28 **Natural Resources**, at a rate not to exceed 75 cents per thousand feet, board measure, on all  
 29 merchantable forest products harvested on forestlands. The maximum tax rate prescribed by this  
 30 subsection may be increased by the [*board of directors*] **department** in an amount equal to the  
 31 previous year’s increase in the Consumer Price Index (Portland area -- all items) as published by the  
 32 Bureau of Labor Statistics of the United States Department of Labor for the Portland, Oregon, area.

33 (3) The tax shall be measured by and be applicable to each per thousand feet, board measure,  
 34 and such shall be subject to and determined by the procedures and provisions of ORS 321.015 (4)  
 35 and (5).

36 (4) The tax levied by subsection (1) of this section shall be due and payable to the Department  
 37 of Revenue in the manner and procedure, including penalties and interest, as set forth for the col-  
 38 lection of the privilege tax in ORS 321.005 to 321.185.

39 (5) The revenue from the tax levied by subsection (1) of this section shall be remitted to the  
 40 State Treasurer who shall deposit it in a suspense account established under ORS 321.145 (1). After  
 41 payment of refunds, which shall be paid in the same manner as other forest products harvest tax  
 42 refunds are paid in ORS 321.145 (2), the balance of the additional tax imposed under subsection (1)  
 43 of this section shall be deposited in the [*Oregon Forest Resources Institute Fund.*] **Oregon Natural**  
 44 **Resources Fund. Moneys deposited in the fund under this subsection are continuously ap-**  
 45 **propriated to the department for purposes related to the administration of ORS 526.640 and**



**526.645.**

**SECTION 2092.** ORS 526.605 is amended to read:

526.605. The State of Oregon recognizes that the forest products industry is one of the largest industries in the state. It provides monetary returns to labor, forestland owners, mill owners and operators, public timber purchasers, timber harvesters, investors and others. It is a source of local and state taxes. It is a major supporter of many secondary businesses that supply goods and services in our communities. The welfare of the state is therefore largely dependent on the health and vigor of the forest products industry. The [*Oregon Forest Resources Institute's*] objectives **of the Oregon Department of Natural Resources under ORS 526.640 and 526.645** support this important industry and the wise stewardship of natural resources for the benefit of Oregonians.

**SECTION 2093.** ORS 526.640 is amended to read:

526.640. The [*Oregon Forest Resources Institute*] **Oregon Department of Natural Resources** shall enhance and provide support for Oregon's forest products industry. In achieving these objectives the [*institute*] **department** may:

(1) Increase public understanding of the practice of forestry and the use and benefits of forest products.

(2) Support education and cooperative efforts among private forest landowners and within the forest products industry to:

(a) Practice good stewardship of the land, and protect water and other public resources to the maximum extent practicable;

(b) Encourage the conversion of underproductive rural lands to forest uses, and provide information to private landowners on the means to facilitate such conversions;

(c) Encourage, facilitate and assist private forest landowners to meet or exceed state and federal regulations governing forest operations;

(d) Evaluate and communicate to private forest landowners the stewardship responsibility expectations of the public; and

(e) [*In cooperation with the State Forestry Department, Oregon State University and other appropriate government or private entities,*] Serve as a clearinghouse for the dissemination of information to private forest landowners, through conferences, workshops and other means, about modern land management practices.

(3) Conduct research and help facilitate continued improvement in wood utilization and in secondary wood products manufacturing.

(4) Publish and sell publications and other materials relating to any program or function authorized by ORS [526.600 to 526.675] **526.645 and this section.** The [*institute*] **department** may contract for the publication of the materials described in this subsection, including the research, design and writing of the materials. The contract may include, among other matters, provisions for advance payment or reimbursement for services performed under the contract. The price of such publications shall include the cost of publishing and distributing the materials. All moneys received by the [*institute*] **department** from the sale of publications shall be deposited in the [*Oregon Forest Resources Institute Fund.*] **Oregon Natural Resources Fund. Moneys deposited in the fund under this subsection are continuously appropriated to the department for purposes of the functions listed in ORS 526.645 and this section.**

**SECTION 2094.** ORS 526.645 is amended to read:

526.645. In addition to the functions listed in ORS 526.640, the [*Oregon Forest Resources Institute*] **Oregon Department of Natural Resources** may:

1 (1) Conduct research **related to the functions listed in ORS 526.640** and disseminate reliable  
2 information based upon *[such]* **that** research.

3 [(2) *Sue and be sued as an institute without individual liability for acts of the board of directors*  
4 *within the scope of the powers conferred upon it by law.*]

5 [(3) *Enter into contracts which the board of directors considers necessary to carry out the duties,*  
6 *functions and powers imposed upon the institute by law.*]

7 [(4) *Borrow money in amounts not to exceed 50 percent of the board of directors' estimate of the*  
8 *institute's revenue from the current year's harvest.*]

9 [(5) *Appoint subordinate officers and employees of the institute and prescribe their duties and fix*  
10 *their compensation.*]

11 [(6)] **(2)** Adopt, rescind, modify or amend all proper orders, regulations, rules and resolutions for  
12 the exercise of its duties, functions and powers **under ORS 526.640**.

13 **SECTION 2095.** ORS 526.655 is amended to read:

14 526.655. The [*Oregon Forest Resources Institute*] **Oregon Department of Natural Resources**  
15 may accept grants, donations or gifts from any source for expenditures [*for any purposes consistent*  
16 *with the purposes of ORS 526.600 to 526.675. All funds so received shall be handled as specified in*  
17 *ORS 526.600 to 526.675 for other moneys received by the institute*] **related to the functions listed**  
18 **in ORS 526.640 and 526.645.**

19 **SECTION 2096.** ORS 526.665 is amended to read:

20 526.665. [*Except as otherwise provided in ORS 526.600 to 526.675,*] ORS 291.026, 291.201 to  
21 291.222, 291.232 to 291.260, 291.322 to 291.336, 292.210 to 292.250, 293.260 to 293.280, 293.295 to  
22 293.346 and 293.590 to 293.640 do not apply to the [*Oregon Forest Resources Institute or to the ad-*  
23 *ministration and enforcement of ORS 526.600 to 526.675*] **administration and enforcement of ORS**  
24 **526.640 and 526.645.**

25 **SECTION 2097.** ORS 526.675 is amended to read:

26 526.675. [(1) *The Oregon Forest Resources Institute Fund is created in the State Treasury, separate*  
27 *and distinct from the General Fund. Except as otherwise provided by law, all moneys received by the*  
28 *Oregon Forest Resources Institute shall be paid into the State Treasury and credited to the fund. All*  
29 *moneys in the fund are appropriated continuously to the institute to carry out its duties, functions and*  
30 *powers. Interest earnings on all moneys in the fund shall be retained in the fund.*]

31 [(2) *The board of directors of the institute may repay moneys from the fund to persons who paid*  
32 *a privilege tax levied under ORS 321.017. The board may repay the amount of tax paid upon applica-*  
33 *tion by the person who paid the tax. The board shall adopt rules necessary for the implementation of*  
34 *this subsection. Rules adopted by the board shall include standards for the repayment of moneys and*  
35 *limits on the amount that may be requested.*]

36 **(1) The Oregon Department of Natural Resources may repay moneys from the Oregon**  
37 **Natural Resources Fund to persons who paid a privilege tax levied under ORS 321.017. The**  
38 **department may repay the amount of tax paid upon application by the person who paid the**  
39 **tax.**

40 **(2) The Director of the Oregon Department of Natural Resources shall adopt rules nec-**  
41 **essary for the implementation of subsection (1) of this section. Rules adopted by the director**  
42 **shall include standards for the repayment of moneys and limits on the amount that may be**  
43 **requested.**

44  
45 **ADDITIONAL CONFORMING AMENDMENTS**

1       **SECTION 2098.** ORS 30.943 is amended to read:

2       30.943. The Department of Environmental Quality, [*Department of State Lands,*] State Depart-  
3       ment of Agriculture or [*State Forestry Department*] **Oregon Department of Natural Resources** is  
4       not required to investigate complaints if the agency has reason to believe that the complaint is  
5       based on practices protected by ORS 30.930 [*or*] **to** 30.947.

6       **SECTION 2098a.** ORS 94.508 is amended to read:

7       94.508. (1) A development agreement shall not be approved by the governing body of a city or  
8       county unless the governing body finds that the agreement is consistent with local regulations then  
9       in place for the city or county.

10       (2) The governing body of a city or county shall approve a development agreement or amend a  
11       development agreement by adoption of an ordinance declaring approval or setting forth the amend-  
12       ments to the agreement. Notwithstanding ORS 197.015 [(10)(b)] **(6)(b)**, the approval or amendment  
13       of a development agreement is a land use decision under ORS chapter 197.

14       **SECTION 2098b.** ORS 105.810 is amended to read:

15       105.810. (1) Except as provided in ORS 477.090 and subsections (4) to (7) of this section, when-  
16       ever any person, without lawful authority, willfully injures or severs from the land of another any  
17       produce thereof or cuts down, girdles or otherwise injures or carries off any tree, timber or shrub  
18       on the land of another person, or of the state, county, United States or any public corporation, or  
19       on the street or highway in front of any person's house, or in any village, town or city lot, or cul-  
20       tivated grounds, or on the common or public grounds of any village, town or city, or on the street  
21       or highway in front thereof, in an action by such person, village, town, city, the United States, state,  
22       county, or public corporation, against the person committing such trespasses if judgment is given for  
23       the plaintiff, it shall be given for treble the amount of damages claimed, or assessed for the trespass.  
24       In any such action, upon plaintiff's proof of ownership of the premises and the commission by the  
25       defendant of any of the acts mentioned in this section, it is prima facie evidence that the acts were  
26       committed by the defendant willfully, intentionally and without plaintiff's consent.

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

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

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

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

36       (b) The contract identifies the operation area by a metes and bounds description or other suffi-  
37       cient legal description;

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

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

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

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

45       (d) The contract logger verifies the deed, contract or instrument described in paragraph (c)(C)

1 of this subsection against the metes and bounds description or other sufficient legal description in  
2 the contract;

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

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

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

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

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

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

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

26 (8) For purposes of this section:

27 (a) "Contract logger" means a person engaged in a commercial timber harvesting operation.

28 (b) "Operation" has the meaning given in ORS 527.620 [(12)].

29 **SECTION 2099.** ORS 182.535 is amended to read:

30 182.535. For purposes of ORS 182.535 to 182.550, "natural resource agency" means the Depart-  
31 ment of Environmental Quality, the State Department of Agriculture, [*the Water Resources Depart-*  
32 *ment, the State Department of Fish and Wildlife, the State Forestry Department, the Department of*  
33 *State Lands, the Department of Education, the State Department of Geology and Mineral Industries,*  
34 *the Department of Land Conservation and Development,]* **the Oregon Department of Natural Re-**  
35 **sources, the Department of Education,** the State Marine Board, the Public Utility Commission,  
36 the Department of Transportation, the State Fire Marshal and the Oregon Health Authority.

37 **SECTION 2100.** ORS 183.457 is amended to read:

38 183.457. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by an-  
39 other law, a person participating in a contested case hearing conducted by an agency described in  
40 this subsection may be represented by an attorney or by an authorized representative subject to the  
41 provisions of subsection (2) of this section. The Attorney General shall prepare model rules for  
42 proceedings with lay representation that do not have the effect of precluding lay representation.  
43 No rule adopted by a state agency shall have the effect of precluding lay representation. The  
44 agencies before which an authorized representative may appear are:

45 (a) The State Landscape Contractors Board in the administration of the Landscape Contractors

1 Law.

2 (b) The State Department of Energy and the Energy Facility Siting Council.

3 (c) The [*Environmental Quality Commission and the Department of Environmental Quality*]

4 **Oregon Department of Natural Resources.**

5 (d) The Department of Consumer and Business Services for proceedings in which an insured  
6 appears pursuant to ORS 737.505.

7 (e) The Department of Consumer and Business Services and any other agency for the purpose  
8 of proceedings to enforce the state building code, as defined by ORS 455.010.

9 (f) The State Fire Marshal in the Department of State Police.

10 [(g) *The Department of State Lands for proceedings regarding the issuance or denial of fill or re-*  
11 *moval permits under ORS 196.800 to 196.825.*]

12 [(h)] (g) The Public Utility Commission.

13 [(i) *The Water Resources Commission and the Water Resources Department.*]

14 [(j) *The Land Conservation and Development Commission and the Department of Land Conserva-*  
15 *tion and Development.*]

16 [(k)] (h) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

17 [(L)] (i) The Bureau of Labor and Industries.

18 (2) A person participating in a contested case hearing as provided in subsection (1) of this sec-  
19 tion may appear by an authorized representative if:

20 (a) The agency conducting the contested case hearing has determined that appearance of such  
21 a person by an authorized representative will not hinder the orderly and timely development of the  
22 record in the type of contested case hearing being conducted;

23 (b) The agency conducting the contested case hearing allows, by rule, authorized representatives  
24 to appear on behalf of such participants in the type of contested case hearing being conducted; and

25 (c) The officer presiding at the contested case hearing may exercise discretion to limit an au-  
26 thorized representative's presentation of evidence, examination and cross-examination of witnesses,  
27 or presentation of factual arguments to ensure the orderly and timely development of the hearing  
28 record, and shall not allow an authorized representative to present legal arguments except to the  
29 extent authorized under subsection (3) of this section.

30 (3) The officer presiding at a contested case hearing in which an authorized representative ap-  
31 pears under the provisions of this section may allow the authorized representative to present evi-  
32 dence, examine and cross-examine witnesses, and make arguments relating to the:

33 (a) Application of statutes and rules to the facts in the contested case;

34 (b) Actions taken by the agency in the past in similar situations;

35 (c) Literal meaning of the statutes or rules at issue in the contested case;

36 (d) Admissibility of evidence; and

37 (e) Proper procedures to be used in the contested case hearing.

38 (4) Upon judicial review, no limitation imposed by an agency presiding officer on the partic-  
39 ipation of an authorized representative shall be the basis for reversal or remand of agency action  
40 unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the  
41 agency action.

42 (5) For the purposes of this section, "authorized representative" means a member of a partic-  
43 ipating partnership, an authorized officer or regular employee of a participating corporation, asso-  
44 ciation or organized group, or an authorized officer or employee of a participating governmental  
45 authority other than a state agency.

1       **SECTION 2101.** ORS 183.700 is amended to read:

2       183.700. (1) As used in this section and ORS 183.702, “permit” means an individual and  
3 particularized license, permit, certificate, approval, registration or similar form of permission re-  
4 quired by law to pursue any activity specified in this section, for which an agency must weigh in-  
5 formation, make specific findings and make determinations on a case-by-case basis for each  
6 applicant.

7       (2) The requirements of this section and ORS 183.702 apply to the following permits granted by:

8       (a) The Department of Environmental Quality under ORS 448.415, 454.655, 454.695, 454.790,  
9 454.800, 459.205, 465.315, 465.325, 466.140, 466.145, 466.706 to 466.882, 468A.040, 468A.310, 468B.035,  
10 468B.040, 468B.045, 468B.050 and 468B.095.

11       [(b) *The Department of State Lands under ORS 196.800 to 196.900 and 390.805 to 390.925.*]

12       [(c) *The Water Resources Department under ORS chapters 537 and 540, except those permits issued*  
13 *under ORS 537.747 to 537.765.*]

14       [(d)] (b) The State Department of Agriculture pursuant to ORS 468B.200 to 468B.230 and 622.250.

15       [(e) *The State Department of Fish and Wildlife pursuant to ORS 497.142, 497.218, 497.228, 497.238,*  
16 *497.248, 497.252, 497.298, 497.308, 498.019, 498.279, 508.106, 508.300, 508.760, 508.775, 508.801, 508.840,*  
17 *508.880, 508.926 and 509.140.*]

18       (c) **The Oregon Department of Natural Resources under ORS 196.800 to 196.900, 390.805**  
19 **to 390.925, 497.142, 497.218, 497.228, 497.238, 497.248, 497.252, 497.298, 497.308, 498.019, 498.279,**  
20 **508.106, 508.300, 508.760, 508.775, 508.801, 508.840, 508.880, 508.926 and 509.140 and ORS chapters**  
21 **537 and 540, except those permits issued under ORS 537.747 to 537.765.**

22       [(f)] (d) The Department of Transportation pursuant to ORS 374.312.

23       **SECTION 2102.** ORS 184.668 is amended to read:

24       184.668. (1) [Each state agency that issues] **When issuing** a permit or other governmental au-  
25 thorization necessary for the construction or siting of a transportation project undertaken by the  
26 Department of Transportation, **each state agency** shall:

27       (a) Upon request from the department, provide a list of applicable standards and criteria for the  
28 permit or other governmental authorization;

29       (b) Upon request from the department, provide technical assistance concerning how to complete  
30 the permitting or other governmental authorization process in the most cost-effective and timely  
31 manner consistent with legal requirements administered by the agency; and

32       (c) Within the authority and discretion otherwise afforded the agency by law, expedite review  
33 of, and the final decision on, the permit or other governmental authorization.

34       (2) When a local land use decision concerning a transportation project undertaken by the de-  
35 partment involves the application of statutes or rules that are administered by a state agency, upon  
36 request from the department the state agency shall provide technical assistance to the department  
37 concerning the application of the statute or rule to the transportation project. If a state agency  
38 provides technical assistance to the department under this subsection, upon request from the de-  
39 partment the state agency shall participate in the local land use decision in order to place the  
40 substance of its assistance to the department on the record of the local proceeding. If the local land  
41 use decision is appealed, the department may request that the state agency participate in the appeal.

42       (3) As used in this section:

43       [(a) “State agency” or “agency” means:]

44       [(A) *The Department of Environmental Quality;*]

45       [(B) *The Department of Land Conservation and Development;*]

1 [(C) *The Department of State Lands;*]

2 [(D) *The State Department of Agriculture;*]

3 [(E) *The State Department of Fish and Wildlife;*]

4 [(F) *The State Department of Geology and Mineral Industries;*]

5 [(G) *The State Forestry Department; and*]

6 [(H) *The State Parks and Recreation Department.*]

7 (a) “**State agency**” or “**agency**” means the **Department of Environmental Quality, the**  
8 **State Department of Agriculture or the Oregon Department of Natural Resources; and**

9 (b) “Transportation project” has the meaning given that term in ORS 367.010.

10 **SECTION 2103.** ORS 195.250 is amended to read:

11 195.250. As used in ORS 195.250 to 195.260:

12 (1) “Further review area” means an area of land within which further site specific review should  
13 occur before land management or building activities begin because [*either the State Department of*  
14 *Geology and Mineral Industries or the State Forestry Department*] **the Oregon Department of Na-**  
15 **tural Resources** determines that the area reasonably could be expected to include sites that expe-  
16 rience rapidly moving landslides as a result of excessive rainfall.

17 (2) “Landslide” means any detached mass of soil, rock or debris that is of sufficient size to cause  
18 damage and that moves down a slope or a stream channel.

19 (3) “Rapidly moving landslide” means a landslide that is difficult for people to outrun or escape.

20 **SECTION 2104.** ORS 196.408 is amended to read:

21 196.408. (1) [*State agencies*] **The Oregon Department of Natural Resources** shall, to the max-  
22 imum extent practicable, coordinate development of coastal and ocean information systems with  
23 those in adjacent states.

24 (2) [*State agencies*] **The department and any other state agency** with responsibility for oil  
25 spill and hazardous material response, damage assessment and compensation in the marine environ-  
26 ment shall, to the maximum extent practicable, coordinate Oregon’s plans, programs, policies and  
27 techniques with those of adjacent states.

28 (3) [*State agencies which have*] **The department and any other state agency that has** juris-  
29 diction over water areas, the seabed and resources adjacent to offshore rocks and islands may co-  
30 ordinate with adjacent states and federal agencies to develop programs and regulations to manage  
31 uses and activities of ocean areas adjacent to coastal cliffs and offshore rocks and islands managed  
32 within the National Wildlife Refuge System.

33 (4) The [*State Department of Fish and Wildlife*] **department** may coordinate with fishery man-  
34 agers in adjacent states to develop a uniform fish catch and monitoring system.

35 **SECTION 2105.** ORS 196.435 is amended to read:

36 196.435. (1) The [*Department of Land Conservation and Development*] **Oregon Department of**  
37 **Natural Resources** is designated the primary agency for coordination of ocean resources planning.  
38 The department is designated the State Coastal Management Agency for purposes of carrying out  
39 and responding to the Coastal Zone Management Act of 1972. The department shall assist:

40 (a) The Governor with the Governor’s duties and opportunities to respond to federal agency  
41 programs and activities affecting coastal and ocean resources; and

42 (b) The Ocean Policy Advisory Council.

43 (2) The provisions of ORS 196.405 to 196.515 do not change statutorily and constitutionally  
44 mandated responsibilities of other state agencies.

45 (3) ORS 196.405 to 196.515 do not provide the [*Land Conservation and Development*

1 *Commission*] **Director of the Oregon Department of Natural Resources or the Oregon Natural**  
 2 **Resources Commission** with authority to adopt specific regulation of ocean resources or ocean  
 3 uses.

4 **SECTION 2106.** ORS 196.438 is amended to read:

5 196.438. (1) The Governor shall establish an Ocean Policy Advisory Council that is staffed by  
 6 the [*State Department of Fish and Wildlife, the Department of Land Conservation and Development*]  
 7 **Oregon Department of Natural Resources** and other departments as the Governor deems neces-  
 8 sary. The council shall be composed of:

9 (a) The Governor or the Governor's designee, as a nonvoting member;

10 (b) The director or the director's designee of the following agencies, as nonvoting members:

11 (A) Department of Environmental Quality;

12 (B) [*State Department of Fish and Wildlife;*] **Oregon Department of Natural Resources; and**

13 [*C) State Department of Geology and Mineral Industries;*]

14 [*D) Department of Land Conservation and Development;*]

15 [*E) Department of State Lands;*]

16 [*F) Parks and Recreation Department;*]

17 [*G)*] (C) State Department of Agriculture; [*and*]

18 [*H)*] (c) On behalf of the State Board of Higher Education, the director or director's designee  
 19 of Oregon State University, Sea Grant College;

20 [*c)*] (d) A member of the governing body of Coos, Curry, Douglas or Lane County to be ap-  
 21 pointed by the Governor, chosen in consultation with and with the approval of a majority of the  
 22 members of the governing bodies of Coos, Curry, Douglas and Lane Counties;

23 [*d)*] (e) A member of the governing body of Clatsop, Lincoln or Tillamook County to be ap-  
 24 pointed by the Governor, chosen in consultation with and with the approval of a majority of the  
 25 members of the governing bodies of Clatsop, Lincoln and Tillamook Counties;

26 [*e)*] (f) An elected city official from a coastal city bordering the territorial sea to be appointed  
 27 by the Governor with advice from an Oregon coastal zone management association;

28 [*f)*] (g) A representative of each of the following ocean interests, to be appointed by the Gov-  
 29 ernor, and subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Consti-  
 30 tution:

31 (A) Commercial ocean fisheries of the North Coast from Newport north;

32 (B) Commercial ocean fisheries of the South Coast south of Newport;

33 (C) Charter, sport or recreation ocean fisheries of the North Coast from Newport north;

34 (D) Charter, sport or recreation ocean fisheries of the South Coast south of Newport;

35 (E) Ports marine navigation or transportation;

36 (F) Coastal nonfishing recreation interests of surfing, diving, kayaking or windsurfing;

37 (G) A coastal conservation or environmental organization;

38 (H) Oregon Indian tribes appointed after consultation with the Commission on Indian Services;

39 (I) A coastwide organization representing a majority of small ports and local governments, as  
 40 a nonvoting member; and

41 (J) A statewide conservation or environmental organization; and

42 [*g)*] (h) Two representatives of the public, at least one of whom shall be a resident of a county  
 43 bordering the territorial sea, to be appointed by the Governor.

44 (2) The term of office of each member appointed by the Governor is four years, but a member  
 45 serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor



1 shall appoint a successor whose term begins on July 1 next following. A member is eligible for re-  
2 appointment. If there is a vacancy for any cause, the Governor shall make an appointment to become  
3 immediately effective for the unexpired term.

4 (3) A majority of the voting members of the council constitutes a quorum for the transaction  
5 of business.

6 (4) The voting members of the council shall elect a person from among the membership to chair  
7 the council.

8 **SECTION 2107.** ORS 196.443 is amended to read:

9 196.443. (1) The purposes of the Ocean Policy Advisory Council are to:

10 (a) Periodically review the Territorial Sea Plan and submit recommendations for the plan to  
11 state agencies represented on the council. The council shall recommend deletions to the Territorial  
12 Sea Plan of all site designations and management prescriptions to the [*Land Conservation and De-*  
13 *velopment Commission*] **Oregon Natural Resources Commission**.

14 (b) Advance the policies of ORS 196.420 to the federal government and any multistate bodies.

15 (c) Provide a forum for discussing ocean resource policy, planning and management issues and,  
16 when appropriate, mediating disagreements.

17 (d) Recommend amendments to the Oregon Ocean Resources Management Plan as needed. If the  
18 recommended amendments to the plan incorporate the establishment of a system of limited marine  
19 reserves or other protected areas, the council also shall perform an economic analysis of short-term  
20 and long-term effects that the establishment of such areas would have on coastal communities. Any  
21 recommended amendments related to marine reserves or marine protected areas shall be submitted  
22 to the [*State Fish and Wildlife*] commission for review and approval.

23 (e) Offer advice to the Governor, the State Land Board, state agencies and local governments  
24 on specific ocean resources management issues.

25 (f) Encourage participation of federal agencies in discussion and resolution of ocean resources  
26 planning and management issues affecting Oregon.

27 (2) The Ocean Policy Advisory Council may not, except to the extent of fulfilling its advisory  
28 capacity under subsection (1)(e) of this section, establish fishing seasons, harvest allocations, ge-  
29 ographic restrictions or other harvest restrictions.

30 **SECTION 2108.** ORS 196.465 is amended to read:

31 196.465. (1) The Oregon Ocean Resources Management Plan and Territorial Sea Plan, when  
32 adopted pursuant to ORS 196.471, shall be compatible with acknowledged comprehensive plans of  
33 adjacent coastal counties and cities.

34 (2) To [*insure*] **ensure** that the plan is compatible with the comprehensive plans of adjacent  
35 coastal counties and cities, the Ocean Policy Advisory Council shall work with the [*Department of*  
36 *Land Conservation and Development*] **Oregon Department of Natural Resources** and any Oregon  
37 coastal zone management association to:

38 (a) Meet and consult with local government officials;

39 (b) Distribute draft materials and working papers for review and solicit comment on council  
40 materials; and

41 (c) Provide technical and policy information to local governments about ocean resource issues.

42 **SECTION 2109.** ORS 196.471 is amended to read:

43 196.471. (1) The [*Land Conservation and Development Commission*] **Oregon Natural Resources**  
44 **Commission** shall review the Territorial Sea Plan and any subsequent amendments recommended  
45 by the Ocean Policy Advisory Council to either the Territorial Sea Plan or the Oregon Ocean Re-

1 sources Management Plan and make findings that the plan or amendments:

2 (a) Carry out the policies of ORS 196.405 to 196.515; and

3 (b) Are consistent with applicable statewide planning goals, with emphasis on the four coastal  
4 goals.

5 (2) After making the findings required by subsection (1) of this section, the commission shall  
6 adopt the Territorial Sea Plan or proposed amendments as part of the Oregon Coastal Management  
7 Program.

8 (3) If the commission does not make the findings required by subsection (1) of this section, the  
9 commission shall return the plan or amendments to the council for revision. The commission may  
10 specify any needed revisions.

11 (4) Upon adoption of the Territorial Sea Plan or subsequent amendments the commission may,  
12 after consultation with affected state agencies, identify amendments to agency ocean or coastal re-  
13 source management programs necessary to conform to the provisions of the adopted plan.

14 **SECTION 2110.** ORS 196.485 is amended to read:

15 196.485. (1) If a state agency incorporates the Oregon Ocean Resources Management Plan and  
16 Territorial Sea Plan by reference in its coordination program and, upon a finding by the [*Land*  
17 *Conservation and Development Commission*] **Oregon Natural Resources Commission** that the  
18 agency has amended its rules, procedures and standards to conform with the objectives and re-  
19 quirements of the plan and Territorial Sea Plan, the state agency shall satisfy the requirements of  
20 state agency planning and coordination required by ORS 197.180 for ocean planning.

21 (2) If a state agency does not incorporate the plan or Territorial Sea Plan in its coordination  
22 program, the agency shall be subject to the state agency coordination requirements of ORS chapters  
23 195, 196 and 197 for state agency programs, procedures and standards that in any way affect ocean  
24 resources.

25 (3) State agency programs or rules for management of ocean resources or ocean uses shall be  
26 consistent with the Oregon Ocean Resources Management Plan and the Territorial Sea Plan.

27 **SECTION 2111.** ORS 196.540 is amended to read:

28 196.540. The [*State Department of Fish and Wildlife, State Fish and Wildlife Commission*], **Oregon**  
29 **Department of Natural Resources, Oregon Natural Resources Commission**, State Land Board  
30 and relevant state agencies shall, consistent with existing statutory authority, implement the No-  
31 vember 29, 2008, recommendations from the Ocean Policy Advisory Council on marine reserves by:

32 (1) Adopting rules to establish, study, monitor, evaluate and enforce a pilot marine reserve at  
33 Otter Rock and a pilot marine reserve and a marine protected area at Redfish Rocks;

34 (2) Studying and evaluating potential marine reserves at Cape Falcon, Cascade Head and Cape  
35 Perpetua; and

36 (3) Supporting the development of a marine reserve proposal at Cape Arago-Seven Devils.

37 **SECTION 2112.** ORS 196.545 is amended to read:

38 196.545. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
39 **sources**, in consultation with members from the scientific and technical advisory committee estab-  
40 lished under ORS 196.451, other relevant marine and fishery scientists, relevant state agencies,  
41 ocean users and coastal communities shall implement the activities described in ORS 196.540 by  
42 developing a work plan.

43 (2) The work plan shall contain the following elements regarding the marine reserves described  
44 in ORS 196.540:

45 (a) A biological assessment, including information on habitat characterization, biological re-

1 sources, local knowledge and, for the established pilot marine reserves, monitoring plans.

2 (b) A socioeconomic assessment, including a description of human uses, net effects on sport and  
3 commercial fisheries and communities and, for the established pilot marine reserves, monitoring  
4 plans.

5 (c) Formation of community teams, with diverse and balanced stakeholder representation that  
6 includes local government, recreational fishing industry, commercial fishing industry, nonfishing in-  
7 dustry, recreationalists, conservation, coastal watershed councils, relevant marine and avian scien-  
8 tists, to collaborate and develop recommendations for potential marine reserves, considering the  
9 biological and socioeconomic information developed under this section. Collaboration may be facili-  
10 tated by a neutral outside party hired through a competitive bidding process.

11 (d) Provision of information on the process and data gathered to interested parties and made  
12 available to the public.

13 (e) Development of scientifically based goals specific to each of the marine reserve sites, incor-  
14 porating continuity and cumulative outcomes, benefits and impacts.

15 (f) Provision of baseline data on Oregon's territorial sea, as defined in ORS 196.405.

16 (g) Development of an enforcement plan in consultation with the Oregon State Police and rep-  
17 resentatives from affected user groups.

18 (h) Use of communities and volunteers to assist in implementing the work plan where feasible  
19 and practical.

20 (3) The data and recommendations produced from the work plan and other available nearshore  
21 data shall be used by the [*State Department of Fish and Wildlife*] **Oregon Department of Natural**  
22 **Resources**, in consultation with the Ocean Policy Advisory Council, to recommend the number, size,  
23 location and restriction limits of the potential sites for marine reserve designation, consistent with  
24 Executive Order 08-07. If, through this process, it is determined that other appropriate sites need  
25 to be considered or that potential sites are not consistent with Executive Order 08-07, then the data  
26 and recommendations produced shall be provided to the public, the [*State Department of Fish and*  
27 *Wildlife*] **department** and other relevant state agencies for future purposes relevant to nearshore  
28 management.

29 **SECTION 2113.** ORS 196.550 is amended to read:

30 196.550. (1) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Re-**  
31 **sources** may accept only gifts, grants or contributions from any source for deposit in the [*State*  
32 *Wildlife Fund established in ORS 496.300*] **Oregon Natural Resources Fund** that are consistent  
33 with the department's work plan specified in ORS 196.545.

34 (2) Any designation of marine reserves in Oregon's territorial sea must include commitments by  
35 relevant state agencies to pursue long-term funding necessary to enforce prohibitions, support nec-  
36 essary research and monitoring and provide for public education.

37 (3) If funding cannot be secured to meet the enforcement and research-based monitoring needs  
38 associated with the goals specified in ORS 196.545 (2)(e), [*agencies responsible for managing the ma-*  
39 *rine reserves shall make recommendations to the State Fish and Wildlife Commission and*] **the Oregon**  
40 **Natural Resources Commission shall make recommendations to** the Legislative Assembly and  
41 initiate actions to scale down or suspend fisheries prohibitions in the marine reserves.

42 **SECTION 2114.** ORS 196.555 is amended to read:

43 196.555. Designation of marine reserves requires periodic reporting by the [*State Department of*  
44 *Fish and Wildlife*] **Oregon Department of Natural Resources** in consultation with other relevant  
45 state agencies on the accomplishment of the goals described in ORS 196.545 (2)(e). The [*State De-*

1 *partment of Fish and Wildlife]* **department** and the State Land Board shall, based on review of the  
2 periodic reporting, initiate appropriate rulemaking adjustments that may include size, location and  
3 restrictions on marine reserves.

4 **SECTION 2114a.** ORS 197.505 is amended to read:

5 197.505. As used in ORS 197.505 to 197.540:

6 (1) "Public facilities" means those public facilities for which a public facilities plan is required  
7 under ORS 197.712.

8 (2) "Special district" refers to only those entities as defined in ORS 197.015 [(19)] (15) that pro-  
9 vide services for which public facilities plans are required.

10 **SECTION 2115.** ORS 215.730 is amended to read:

11 215.730. (1) A local government shall require as a condition of approval of a single-family  
12 dwelling allowed under ORS 215.705 on lands zoned forestland that:

13 (a)(A) If the lot or parcel is more than 30 acres in eastern Oregon as defined in ORS 321.805,  
14 the property owner submits a stocking survey report to the assessor and the assessor verifies that  
15 the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met; or

16 (B) If the lot or parcel is more than 10 acres in western Oregon as defined in ORS 321.257, the  
17 property owner submits a stocking survey report to the assessor and the assessor verifies that the  
18 minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

19 (b) The dwelling meets the following requirements:

20 (A) The dwelling has a fire retardant roof.

21 (B) The dwelling will not be sited on a slope of greater than 40 percent.

22 (C) Evidence is provided that the domestic water supply is from a source authorized by the  
23 [Water Resources Department] **Oregon Department of Natural Resources** and not from a Class II  
24 stream as designated by the [State Board of Forestry] **Oregon Natural Resources Commission**.

25 (D) The dwelling is located upon a parcel within a fire protection district or is provided with  
26 residential fire protection by contract.

27 (E) If the dwelling is not within a fire protection district, the applicant provides evidence that  
28 the applicant has asked to be included in the nearest such district.

29 (F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.

30 (G) The owner provides and maintains primary fuel-free break and secondary break areas on  
31 land surrounding the dwelling that is owned or controlled by the owner.

32 (2)(a) If a governing body determines that meeting the requirement of subsection (1)(b)(D) of this  
33 section would be impracticable, the governing body may provide an alternative means for protecting  
34 the dwelling from fire hazards. The means selected may include a fire sprinkling system, on-site  
35 equipment and water storage or other methods that are reasonable, given the site conditions.

36 (b) If a water supply is required under this subsection, it shall be a swimming pool, pond, lake  
37 or similar body of water that at all times contains at least 4,000 gallons or a stream that has a  
38 minimum flow of at least one cubic foot per second. Road access shall be provided to within 15 feet  
39 of the water's edge for fire-fighting pumping units, and the road access shall accommodate a turn-  
40 around for fire-fighting equipment.

41 **SECTION 2116.** ORS 244.050 is amended to read:

42 244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon  
43 Government Ethics Commission a verified statement of economic interest as required under this  
44 chapter:

45 (a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the

1 Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and mem-  
2 bers of the Legislative Assembly.

3 (b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem  
4 judicial officer who does not otherwise serve as a judicial officer.

5 (c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

6 (d) The Deputy Attorney General.

7 (e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the  
8 Secretary of the Senate and the Chief Clerk of the House of Representatives.

9 (f) The Chancellor and Vice Chancellors of the Oregon University System and the president and  
10 vice presidents, or their administrative equivalents, in each institution under the jurisdiction of the  
11 State Board of Higher Education.

12 (g) The following state officers:

13 (A) Adjutant General.

14 (B) Director of Agriculture.

15 (C) Manager of State Accident Insurance Fund Corporation.

16 [(D) *Water Resources Director.*]

17 **(D) Director of the Oregon Department of Natural Resources.**

18 (E) Director of Department of Environmental Quality.

19 (F) Director of Oregon Department of Administrative Services.

20 [(G) *State Fish and Wildlife Director.*]

21 [(H) *State Forester.*]

22 [(I) *State Geologist.*]

23 [(J) **(G)** Director of Human Services.

24 [(K) **(H)** Director of the Department of Consumer and Business Services.

25 [(L) *Director of the Department of State Lands.*]

26 [(M) **(I)** State Librarian.

27 [(N) **(J)** Administrator of Oregon Liquor Control Commission.

28 [(O) **(K)** Superintendent of State Police.

29 [(P) **(L)** Director of the Public Employees Retirement System.

30 [(Q) **(M)** Director of Department of Revenue.

31 [(R) **(N)** Director of Transportation.

32 [(S) **(O)** Public Utility Commissioner.

33 [(T) **(P)** Director of Veterans' Affairs.

34 [(U) **(Q)** Executive director of Oregon Government Ethics Commission.

35 [(V) **(R)** Director of the State Department of Energy.

36 [(W) **(S)** Director and each assistant director of the Oregon State Lottery.

37 [(X) **(T)** Director of the Department of Corrections.

38 [(Y) **(U)** Director of the Oregon Department of Aviation.

39 [(Z) **(V)** Executive director of the Oregon Criminal Justice Commission.

40 [(AA) **(W)** Director of the Oregon Business Development Department.

41 [(BB) **(X)** Director of the Office of Emergency Management.

42 [(CC) **(Y)** Director of the Employment Department.

43 [(DD) **(Z)** Chief of staff for the Governor.

44 [(EE) **(AA)** Administrator of the Office for Oregon Health Policy and Research.

45 [(FF) **(BB)** Director of the Housing and Community Services Department.

- 1 [(GG)] (CC) State Court Administrator.
- 2 [(HH) Director of the Department of Land Conservation and Development.]
- 3 [(II) Board chairperson of the Land Use Board of Appeals.]
- 4 [(JJ)] (DD) State Marine Director.
- 5 [(KK)] (EE) Executive director of the Oregon Racing Commission.
- 6 [(LL) State Parks and Recreation Director.]
- 7 [(MM)] (FF) Public defense services executive director.
- 8 [(NN)] (GG) Chairperson of the Public Employees' Benefit Board.
- 9 [(OO)] (HH) Director of the Department of Public Safety Standards and Training.
- 10 [(PP)] (II) Chairperson of the Oregon Student Assistance Commission.
- 11 [(QQ) Executive director of the Oregon Watershed Enhancement Board.]
- 12 [(RR)] (JJ) Director of the Oregon Youth Authority.
- 13 [(SS)] (KK) Director of the Oregon Health Authority.
- 14 (h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.
- 15 (i) Every elected city or county official.
- 16 (j) Every member of a city or county planning, zoning or development commission.
- 17 (k) The chief executive officer of a city or county who performs the duties of manager or prin-
- 18 cipal administrator of the city or county.
- 19 (L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
- 20 (m) Every member of a governing body of a metropolitan service district and the executive of-
- 21 ficer thereof.
- 22 (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
- 23 (o) The chief administrative officer and the financial officer of each common and union high
- 24 school district, education service district and community college district.
- 25 (p) Every member of the following state boards and commissions:
- 26 (A) [Board of Geologic and Mineral Industries] **Oregon Natural Resources Commission.**
- 27 (B) Oregon Business Development Commission.
- 28 (C) State Board of Education.
- 29 (D) Environmental Quality Commission.
- 30 [(E) Fish and Wildlife Commission of the State of Oregon.]
- 31 [(F) State Board of Forestry.]
- 32 [(G)] (E) Oregon Government Ethics Commission.
- 33 [(H)] (F) Oregon Health Policy Board.
- 34 [(I)] (G) State Board of Higher Education.
- 35 [(J)] (H) Oregon Investment Council.
- 36 [(K) Land Conservation and Development Commission.]
- 37 [(L)] (I) Oregon Liquor Control Commission.
- 38 [(M)] (J) Oregon Short Term Fund Board.
- 39 [(N)] (K) State Marine Board.
- 40 [(O)] (L) Mass transit district boards.
- 41 [(P)] (M) Energy Facility Siting Council.
- 42 [(Q)] (N) Board of Commissioners of the Port of Portland.
- 43 [(R)] (O) Employment Relations Board.
- 44 [(S)] (P) Public Employees Retirement Board.
- 45 [(T)] (Q) Oregon Racing Commission.

- 1        [(U)] (R) Oregon Transportation Commission.
- 2        [(V)] (S) Wage and Hour Commission.
- 3        [(W)] *Water Resources Commission.*
- 4        [(X)] (T) Workers' Compensation Board.
- 5        [(Y)] (U) Oregon Facilities Authority.
- 6        [(Z)] (V) Oregon State Lottery Commission.
- 7        [(AA)] (W) Pacific Northwest Electric Power and Conservation Planning Council.
- 8        [(BB)] (X) Columbia River Gorge Commission.
- 9        [(CC)] (Y) Oregon Health and Science University Board of Directors.
- 10       [(DD)] (Z) Capitol Planning Commission.
- 11       (q) The following officers of the State Treasurer:
- 12       (A) Chief Deputy State Treasurer.
- 13       (B) Chief of staff for the office of the State Treasurer.
- 14       (C) Director of the Investment Division.
- 15       (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725
- 16       or 777.915 to 777.953.
- 17       (s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.
- 18       (2) By April 15 next after the date an appointment takes effect, every appointed public official
- 19       on a board or commission listed in subsection (1) of this section shall file with the Oregon Govern-
- 20       ment Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070
- 21       and 244.090.
- 22       (3) By April 15 next after the filing deadline for the primary election, each candidate described
- 23       in subsection (1) of this section shall file with the commission a statement of economic interest as
- 24       required under ORS 244.060, 244.070 and 244.090.
- 25       (4) Within 30 days after the filing deadline for the general election, each candidate described in
- 26       subsection (1) of this section who was not a candidate in the preceding primary election, or who
- 27       was nominated for public office described in subsection (1) of this section at the preceding primary
- 28       election by write-in votes, shall file with the commission a statement of economic interest as re-
- 29       quired under ORS 244.060, 244.070 and 244.090.
- 30       (5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or
- 31       appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections
- 32       (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the
- 33       filing deadline for the statewide general election.
- 34       (6) If a statement required to be filed under this section has not been received by the commis-
- 35       sion within five days after the date the statement is due, the commission shall notify the public of-
- 36       ficial or candidate and give the public official or candidate not less than 15 days to comply with the
- 37       requirements of this section. If the public official or candidate fails to comply by the date set by the
- 38       commission, the commission may impose a civil penalty as provided in ORS 244.350.
- 39       **SECTION 2117.** ORS 270.100 is amended to read:
- 40       270.100. (1)(a) Before offering for sale any real property or equitable interest therein owned by
- 41       the state, the state agency acting for the state in such transaction shall report its intent of sale or
- 42       transfer to the Oregon Department of Administrative Services. The department, or the agency spe-
- 43       cifically designated by the department, shall notify other state agencies authorized to own real
- 44       property of the intended sale or transfer to determine whether acquisition of the real property or
- 45       interest therein would be advantageous to another state agency.

1 (b) The department shall give political subdivisions, as defined in ORS 271.005, the first oppor-  
 2 tunity after other state agencies to acquire, purchase, exchange or lease real property to be sold  
 3 or disposed of by the State of Oregon. The state agency responsible for selling or transferring the  
 4 property may require at the time of the sale or transfer that any state real property sold or trans-  
 5 ferred to a political subdivision, as defined in ORS 271.005, shall be for use for a public purpose or  
 6 benefit, and not be for resale to a private purchaser.

7 (c) If property is not disposed of under paragraph (a) or (b) of this subsection, in accordance  
 8 with rules adopted by the department, the state agency desiring to sell or transfer the property shall  
 9 cause it to be appraised by one or more competent and experienced appraisers. Except as provided  
 10 in ORS 273.825, if such property has an appraised value exceeding \$5,000 it shall not be sold to any  
 11 private person except after notice calling for such proposals as set forth in ORS 270.130.

12 (d) The department shall adopt rules to carry out the provisions of this section.

13 (2) Before acquisition of any real property or interest therein by any state agency, except for  
 14 highway right of way acquired by the Department of Transportation and park properties acquired  
 15 by the [*State Parks and Recreation Department*] **Oregon Department of Natural Resources** and  
 16 property within the approved projected campus boundaries for institutions of the Oregon University  
 17 System, the state agency shall report its intent of acquisition to the Oregon Department of Admin-  
 18 istrative Services. The department shall notify other state agencies owning land of the intended  
 19 acquisition to determine whether another state agency desires to sell or transfer property which  
 20 would meet the needs of the purchasing agency. In accordance with rules adopted by the Oregon  
 21 Department of Administrative Services, if no other state agency desires to sell or transfer property  
 22 which would meet the needs of the agency, the agency may acquire the real property or interest  
 23 therein, consistent with applicable provisions of law.

24 (3) Before any terminal disposition of real property or an interest in real property, the state  
 25 agency acting for the state in the transaction must secure approval of the transaction from the  
 26 Oregon Department of Administrative Services.

27 (4) Subsection (3) of this section does not apply to terminal disposition of the following real  
 28 property:

29 (a) Property controlled by the [*State Department of Fish and Wildlife*] **Oregon Department of**  
 30 **Natural Resources;**

31 [*(b) State forestlands controlled by the State Forestry Department;*]

32 [*(c)*] (b) Property controlled by the Department of Transportation;

33 [*(d) Property controlled by the Department of State Lands;*]

34 [*(e)*] (c) Property controlled by the Oregon University System; **and**

35 [*(f)*] (d) Property controlled by the legislative or judicial branches of state government.[: *and*]

36 [*(g) Property controlled by the State Parks and Recreation Department.*]

37 (5) Notwithstanding the provisions of subsection (4) of this section, prior approval by the Oregon  
 38 Department of Administrative Services is required for the terminal disposition of public land for less  
 39 than the fair market value of that land.

40 (6) The provisions of ORS 184.634, 270.005 to 270.015, 270.100 to 270.190, 273.416, 273.426 to  
 41 273.436, 273.551 and 308A.709 (1) to (4) do not apply to a home or farm acquired, sold, or both, by  
 42 the Department of Veterans' Affairs under ORS 88.720, 273.388, 406.050, 407.135, 407.145, 407.375 and  
 43 407.377.

44 **SECTION 2118.** ORS 279A.025 is amended to read:

45 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting



- 1 Code applies to all public contracting.
- 2 (2) The Public Contracting Code does not apply to:
- 3 (a) Contracts between a contracting agency and:
- 4 (A) Another contracting agency;
- 5 (B) The Oregon Health and Science University;
- 6 (C) The Oregon State Bar;
- 7 (D) A governmental body of another state;
- 8 (E) The federal government;
- 9 (F) An American Indian tribe or an agency of an American Indian tribe;
- 10 (G) A nation, or a governmental body in a nation, other than the United States; or
- 11 (H) An intergovernmental entity formed between or among:
- 12 (i) Governmental bodies of this or another state;
- 13 (ii) The federal government;
- 14 (iii) An American Indian tribe or an agency of an American Indian tribe;
- 15 (iv) A nation other than the United States; or
- 16 (v) A governmental body in a nation other than the United States;
- 17 (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or
- 18 other authority for establishing agreements between or among governmental bodies or agencies or
- 19 tribal governing bodies or agencies;
- 20 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and
- 21 414.145 for purposes of source selection;
- 22 (d) Grants;
- 23 (e) Contracts for professional or expert witnesses or consultants to provide services or testimony
- 24 relating to existing or potential litigation or legal matters in which a public body is or may become
- 25 interested;
- 26 (f) Acquisitions or disposals of real property or interest in real property;
- 27 (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source se-
- 28 lection;
- 29 (h) Contracts for the procurement or distribution of textbooks;
- 30 (i) Procurements by a contracting agency from an Oregon Corrections Enterprises program;
- 31 (j) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001,
- 32 or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;
- 33 (k) Contracts entered into under ORS chapter 180 between the Attorney General and private
- 34 counsel or special legal assistants;
- 35 (L) Contracts for the sale of timber from lands owned or managed by the [*State Board of*
- 36 *Forestry and the State Forestry Department*] **Director of the Oregon Department of Natural Re-**
- 37 **sources or the Oregon Natural Resources Commission;**
- 38 (m) Contracts for forest protection or forest related activities, as described in ORS 477.406, by
- 39 the [*State Forester or the State Board of Forestry*] **Director of the Oregon Department of Natural**
- 40 **Resources or the Oregon Natural Resources Commission;**
- 41 (n) Sponsorship agreements entered into by the [*State Parks and Recreation Director*] **Director**
- 42 **of the Oregon Department of Natural Resources** in accordance with ORS 565.080 (4);
- 43 (o) Contracts entered into by the Housing and Community Services Department in exercising the
- 44 department's duties prescribed in ORS chapters 456 and 458, except that the department's public
- 45 contracting for goods and services is subject to ORS chapter 279B;

1 (p) Contracts entered into by the State Treasurer in exercising the powers of that office pre-  
 2 scribed in ORS chapters 178, 286A, 287A, 289, 293, 294 and 295, including but not limited to invest-  
 3 ment contracts and agreements, banking services, clearing house services and collateralization  
 4 agreements, bond documents, certificates of participation and other debt repayment agreements, and  
 5 any associated contracts, agreements and documents, regardless of whether the obligations that the  
 6 contracts, agreements or documents establish are general, special or limited, except that the State  
 7 Treasurer's public contracting for goods and services is subject to ORS chapter 279B;

8 (q) Contracts, agreements or other documents entered into, issued or established in connection  
 9 with:

10 (A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public body;

11 (B) The making of program loans and similar extensions or advances of funds, aid or assistance  
 12 by a public body to a public or private body for the purpose of carrying out, promoting or sustaining  
 13 activities or programs authorized by law; or

14 (C) The investment of funds by a public body as authorized by law, and other financial trans-  
 15 actions of a public body that by their character cannot practically be established under the com-  
 16 petitive contractor selection procedures of ORS 279B.050 to 279B.085;

17 (r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221,  
 18 243.275, 243.291, 243.303 and 243.565;

19 (s) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or

20 (t) Any other public contracting of a public body specifically exempted from the code by another  
 21 provision of law.

22 (3) The Public Contracting Code does not apply to the contracting activities of:

23 (a) The Oregon State Lottery Commission;

24 (b) The Oregon University System and member institutions, except as provided in ORS 351.086;

25 (c) The legislative department;

26 (d) The judicial department;

27 (e) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS 279.835 to  
 28 279.855 and 279A.250 to 279A.290;

29 (f) Oregon Corrections Enterprises;

30 (g) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to  
 31 279A.290;

32 (h) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

33 (i) The Oregon 529 College Savings Network and the Oregon 529 College Savings Board;

34 (j) The Oregon Innovation Council;

35 (k) The Oregon Utility Notification Center; or

36 (L) Any other public body specifically exempted from the code by another provision of law.

37 (4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with  
 38 qualified nonprofit agencies providing employment opportunities for individuals with disabilities un-  
 39 der ORS 279.835 to 279.855.

40 **SECTION 2119.** ORS 279A.050 is amended to read:

41 279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting  
 42 agency shall exercise all procurement authority in accordance with the provisions of the Public  
 43 Contracting Code.

44 (b) When a contracting agency has authority under this section to carry out functions described  
 45 in this section, or has authority to make procurements under a provision of law other than the

1 Public Contracting Code, the contracting agency is not required to exercise that authority in ac-  
2 cordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the  
3 contract or contracting authority.

4 (2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director  
5 of the Oregon Department of Administrative Services has all the authority to carry out the pro-  
6 visions of the Public Contracting Code.

7 (3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation  
8 has all the authority to:

9 (a) Procure or supervise the procurement of all services and personal services to construct, ac-  
10 quire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking  
11 facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

12 (b) Procure or supervise the procurement of all goods, services, public improvements and per-  
13 sonal services relating to the operation, maintenance or construction of highways, bridges and other  
14 transportation facilities that are subject to the authority of the Department of Transportation; and

15 (c) Establish standards for, prescribe forms for and conduct the prequalification of prospective  
16 bidders on public improvement contracts related to the operation, maintenance or construction of  
17 highways, bridges and other transportation facilities that are subject to the authority of the De-  
18 partment of Transportation.

19 (4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all  
20 the authority to procure or supervise the procurement of goods, services and personal services re-  
21 lated to programs under the authority of the Secretary of State.

22 (5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all the  
23 authority to procure or supervise the procurement of goods, services and personal services related  
24 to programs under the authority of the State Treasurer.

25 (6) The state agencies listed in this subsection have all the authority to do the following in ac-  
26 cordance with the Public Contracting Code:

27 (a) The Department of Human Services to procure or supervise the procurement of goods, ser-  
28 vices and personal services under ORS 179.040 for the department's institutions and the procurement  
29 of goods, services and personal services for the construction, demolition, exchange, maintenance,  
30 operation and equipping of housing for the purpose of providing care to individuals with mental re-  
31 tardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;

32 (b) The Oregon Health Authority to procure or supervise the procurement of goods, services and  
33 personal services under ORS 179.040 for the authority's institutions and the procurement of goods,  
34 services and personal services for the construction, demolition, exchange, maintenance, operation  
35 and equipping of housing for persons with chronic mental illness, subject to applicable provisions  
36 of ORS 426.504;

37 (c) The [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources** to  
38 procure or supervise the procurement of construction materials, equipment, supplies, services and  
39 personal services for public improvements, public works or ordinary construction described in ORS  
40 279C.320 that is subject to the authority of the [*State Department of Fish and Wildlife*] **Oregon**  
41 **Department of Natural Resources**;

42 [*(d) The State Parks and Recreation Department to procure or supervise the procurement of all*  
43 *goods, services, public improvements and personal services relating to state parks;*]

44 [*(e)*] (d) The Oregon Department of Aviation to procure or supervise the procurement of con-  
45 struction materials, equipment, supplies, services and personal services for public improvements,

1 public works or ordinary construction described in ORS 279C.320 that is subject to the authority  
2 of the Oregon Department of Aviation;

3 [(f)] (e) The Oregon Business Development Department to procure or supervise the procurement  
4 of all goods, services, personal services and public improvements related to its foreign trade offices  
5 operating outside the state;

6 [(g)] (f) The Housing and Community Services Department to procure or supervise the procure-  
7 ment of goods, services and personal services as provided in ORS 279A.025 (2)(o);

8 [(h)] (g) The Department of Corrections to procure or supervise the procurement of construction  
9 materials, equipment, supplies, services and personal services for public improvements, public works  
10 or ordinary construction described in ORS 279C.320 that is subject to the authority of the Depart-  
11 ment of Corrections;

12 [(i)] (h) The Department of Corrections, subject to any applicable provisions of ORS 279A.120,  
13 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, ser-  
14 vices and personal services under ORS 179.040 for its institutions;

15 [(j)] (i) The Department of Veterans' Affairs to procure or supervise the procurement of real  
16 estate broker and principal real estate broker services related to programs under the department's  
17 authority;

18 [(k)] (j) The Oregon Military Department to procure or supervise the procurement of con-  
19 struction materials, equipment, supplies, services and personal services for public improvements,  
20 public works or ordinary construction described in ORS 279C.320 that is subject to the authority  
21 of the Oregon Military Department;

22 [(L)] (k) The Department of Education, subject to any applicable provisions of ORS 329.075,  
23 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425),  
24 to procure or supervise the procurement of goods, services, personal services and information tech-  
25 nology relating to student assessment; and

26 [(m)] (L) Any state agency to conduct a procurement when the agency is specifically authorized  
27 by any provision of law other than the Public Contracting Code to enter into a contract.

28 (7) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department  
29 of Administrative Services has exclusive authority, unless the director delegates this authority, to  
30 procure or supervise the procurement of all price agreements on behalf of the state agencies iden-  
31 tified in subsection (6)(a) to [(k)] (j) of this section under which more than one state agency may  
32 order goods, services or personal services and all state agency information technology contracts.  
33 This subsection does not apply to contracts under which the contractor delivers to the state agency  
34 information technology products or services incidental to the performance of personal services con-  
35 tracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A  
36 state agency identified in subsection (3) or (6)(a) to [(k)] (j) of this section may not establish a price  
37 agreement or enter into a contract for goods, services or personal services without the approval of  
38 the director if the director has established a price agreement for the goods, services or personal  
39 services.

40 **SECTION 2120.** ORS 284.555 is amended to read:

41 284.555. (1) The Governor shall establish the Economic Revitalization Team in the office of the  
42 Governor for the purpose of coordinating and streamlining state policies, programs and procedures  
43 and providing coordinated state agency assistance to local governments.

44 (2) The team shall establish a regulatory efficiency group to assist the team consisting of the  
45 directors of the following state agencies:

- 1 (a) The Department of Environmental Quality;
- 2 (b) The Oregon Business Development Department;
- 3 (c) The Department of Transportation;
- 4 (d) The *[Department of State Lands]* **Oregon Department of Natural Resources**;
- 5 *[(e) The Department of Land Conservation and Development;]*
- 6 *[(f)]* (e) The State Department of Agriculture;
- 7 *[(g)]* (f) The Housing and Community Services Department; and
- 8 *[(h)]* (g) Other appropriate agencies as determined by the Governor.
- 9 (3) Subject to the direction of the Governor, the team shall:
- 10 (a) Develop mechanisms to increase coordination among agencies on common activities;
- 11 (b) Coordinate the activities of state agencies on specific state and local projects;
- 12 (c) Coordinate the planning and permitting activities of state agencies for the sites identified for
- 13 industrial or traded sector development under section 12, chapter 800, Oregon Laws 2003;
- 14 (d) Coordinate activities of the regulatory efficiency group agencies with local governments;
- 15 (e) Coordinate the grant and loan activities of state agencies to implement section 12, chapter
- 16 800, Oregon Laws 2003;
- 17 (f) Participate in the rulemaking activities of regulatory efficiency group agencies to coordinate
- 18 economic development activities;
- 19 (g) Prepare a report for the Seventy-second Legislative Assembly on the sites identified for in-
- 20 dustrial or traded sector development under section 12, chapter 800, Oregon Laws 2003, including
- 21 a description of each site and the economic benefit expected from site development. If fewer than
- 22 25 sites are identified, the report must include an analysis of why the target set forth in section 12,
- 23 chapter 800, Oregon Laws 2003, was not achieved;
- 24 (h) Prepare a report for the Seventy-second Legislative Assembly with specific recommendations
- 25 regarding the future of the team; and
- 26 (i) Undertake other activities as directed by the Governor.
- 27 (4) The team shall establish an advisory committee of individuals familiar with agency permit
- 28 procedures to advise the Governor and the regulatory efficiency group agencies on permit issues
- 29 related to economic development.
- 30 (5) The team shall submit a report detailing its activities to the Legislative Assembly in the
- 31 manner described in ORS 192.245 not later than January 31 of each odd-numbered year. The report
- 32 must include:
- 33 (a) Case studies that demonstrate the types of problems encountered in coordinating agency
- 34 functions;
- 35 (b) Case studies that demonstrate statutory impediments to efficient economic development; and
- 36 (c) Recommendations for legislative measures to improve agency operations and statewide eco-
- 37 nomic development.
- 38 (6) The team or a state agency working with the team to implement ORS 284.545 to 284.565 and
- 39 sections 12 and 15 to 20, chapter 800, Oregon Laws 2003, or a state agency implementing ORS
- 40 284.570 to 284.585 may:
- 41 (a) Accept and expend funds received from gifts, grants or other sources as necessary to perform
- 42 activities authorized under ORS 284.545 to 284.565 and sections 12 and 15 to 20, chapter 800, Oregon
- 43 Laws 2003, or ORS 284.570 to 284.585.
- 44 (b) Enter into contracts and other agreements as necessary to perform activities authorized
- 45 under ORS 284.545 to 284.565 and sections 12 and 15 to 20, chapter 800, Oregon Laws 2003, or ORS

1 284.570 to 284.585.

2 **SECTION 2121.** ORS 291.224 is amended to read:

3 291.224. (1) A capital construction program containing estimated capital construction needs, ir-  
4 respective of how financed, must be included with the budget report required by ORS 291.216. The  
5 capital construction program must contain the estimated physical construction requirements for  
6 each biennium of a period to be determined by the Governor, which period may not be less than six  
7 years. The Oregon Department of Administrative Services shall assist the Governor in the prepara-  
8 tion of the capital construction program.

9 (2) In accordance with regulations prescribed by the department, state agencies shall submit to  
10 the department their anticipated capital construction requirements for the period specified by the  
11 Governor. The department shall prescribe the basic assumptions relating to population changes,  
12 economic trends and other factors which might generally affect capital construction requirements  
13 and these basic assumptions must be used by the state agencies in preparing their anticipated cap-  
14 ital construction requirements. Each state agency is responsible for the basic assumptions that af-  
15 fect only its own program. The department shall prepare estimated capital construction  
16 requirements for necessary capital construction not covered by the capital construction require-  
17 ments submitted by the state agencies under this section.

18 (3) In accordance with regulations prescribed by the department, each state agency shall sepa-  
19 rately submit its estimated office space requirements for the period specified by the Governor, and  
20 the department shall consolidate those needs and make an estimate for all state office buildings to  
21 be included in the capital construction program.

22 (4) The Governor shall consolidate the estimates, review the estimates and make revisions the  
23 Governor finds warranted.

24 (5) The budget report must include the proposed expenditures for the capital construction pro-  
25 gram for the ensuing biennium and the proposed expenditures for preliminary planning of the con-  
26 struction projects included in the capital construction program for the biennium following the  
27 ensuing biennium. The budget report also must include dollar estimates of the cost of the capital  
28 construction projects included in the capital construction program for the succeeding years of the  
29 period determined by the Governor under subsection (1) of this section.

30 (6) Each state agency, including the department, required under subsection (2) of this section to  
31 submit or prepare anticipated or estimated capital construction requirements, shall submit a copy  
32 of the requirements that relate to construction or improvements within the areas described in ORS  
33 276.054 to the Capitol Planning Commission at a time specified by the commission, but not later than  
34 August 1 of each even-numbered year. The commission shall review the capital construction re-  
35 quirements and, not later than November 1 of each even-numbered year, make recommendations to  
36 the department with respect to the requirements.

37 (7) As used in this section, "capital construction program" does not include:

38 (a) The acquisition, repair, improvement, enlargement, construction or maintenance of highways  
39 and highway bridges by the Department of Transportation;

40 (b) Park improvements by the [*State Parks and Recreation Department*] **Oregon Department of**  
41 **Natural Resources**; or

42 (c) Road infrastructure work performed under timber sale contracts entered into by the [*State*  
43 *Forester*] **Director of the Oregon Department of Natural Resources**.

44 **SECTION 2122.** ORS 291.445 is amended to read:

45 291.445. (1) Before July 1 of each fiscal year, the Oregon Department of Administrative Services

1 shall request from the appropriate state agency a certificate as prescribed in this section. The re-  
2 quest shall be made by letter to the agency.

3 (2) Each state agency authorized to issue general obligation bonds that are ordinarily to be re-  
4 paid from other than General Fund appropriations shall, on or before August 15 of each fiscal year:

5 (a) Certify to the Director of the Oregon Department of Administrative Services that the  
6 amounts available or that will become available during the current year to the bond program debt  
7 service fund to pay bond principal and interest that has accrued or will accrue during the current  
8 year are sufficient and will be sufficient to pay bond program principal and interest scheduled for  
9 payment during the current year; or

10 (b) Certify to the Director of the Oregon Department of Administrative Services that the  
11 amounts available or that will become available during the current year to the bond program debt  
12 service fund will not be sufficient to pay bond program principal and interest scheduled for payment  
13 during the current year. A certificate issued under this paragraph shall specify the amount of the  
14 anticipated current year deficit. The Director of the Oregon Department of Administrative Services  
15 shall review and confirm the correctness of each certification made under this paragraph.

16 (3) On or before August 15 of each fiscal year, the administrative division of the Oregon De-  
17 partment of Administrative Services that has primary responsibility for accounting for each general  
18 obligation bond program in which the bond principal and interest is ordinarily to be repaid from  
19 General Fund appropriations shall:

20 (a) Certify to the Director of the Oregon Department of Administrative Services that the  
21 amounts available or that will become available during the current year from General Fund appro-  
22 priations to defray program bond principal and interest that has accrued or will accrue during the  
23 current year are sufficient and will be sufficient to pay program bond principal and interest sched-  
24 uled for payment during the current year; or

25 (b) Certify to the Director of the Oregon Department of Administrative Services that the  
26 amounts available or that will become available during the current year from General Fund appro-  
27 priations will not be sufficient to pay program bond principal and interest scheduled for payment  
28 during the current year. A certificate issued under this paragraph shall specify the amount of the  
29 anticipated current year deficit.

30 (4)(a) If a deficit in funds available to pay principal and interest in any general obligation bond  
31 program is certified and confirmed under subsection (2) or certified under subsection (3) of this  
32 section, the amount of the deficit, together with any deficit that is certified for any other general  
33 obligation bond program shall upon certification constitute a state tax levy on property that shall  
34 be apportioned among and charged to the several counties in that proportion which the total as-  
35 sessed value of all the taxable property in each county bears to the total assessed value of all the  
36 taxable property of the state as equalized.

37 (b) If any agency fails to make the certification under subsection (2) or (3) of this section with  
38 respect to any general obligation bond fund program, the Oregon Department of Administrative  
39 Services shall determine the amount of revenue and other funds that are available and the amount  
40 of taxes, if any, that should be levied in addition to the revenues and funds, to pay bond principal  
41 and interest under the program for the fiscal year in question. The additional amount so determined  
42 shall thereupon constitute a state tax levy on property that shall be apportioned, certified, collected  
43 and distributed as if determined and certified as a deficit by the agency. The Oregon Department  
44 of Administrative Services shall charge the agency for cost recovery for time spent on that agency's  
45 behalf.

1 (5) Immediately after the department has determined the amount of a state tax levy on property  
2 in accordance with subsection (4) of this section, a certificate of levy, signed by the director of the  
3 department, shall be filed in the office of the department. If no state levy is required for the fiscal  
4 or tax year, a certificate so stating and signed by the director shall be filed in the office of the de-  
5 partment.

6 (6) If, for any reason, after the close of any regular biennial session of the Legislative Assembly,  
7 it becomes necessary to reduce General Fund appropriations, General Fund appropriations for a debt  
8 service fund of a general obligation bond program described under subsection (3) of this section may  
9 not be reduced.

10 (7) For purposes of this section:

11 (a) State agencies that are authorized to issue general obligation bonds ordinarily to be repaid  
12 from other than General Fund appropriations include but are not limited to:

13 (A) The Director of Veterans' Affairs, as authorized by Article XI-A of the Oregon Constitution  
14 and ORS chapter 407 (veterans loans).

15 (B) The State Board of Higher Education, as authorized by Article XI-F(1) of the Oregon Con-  
16 stitution and ORS 351.350 (building projects).

17 (C) The Department of Environmental Quality, as authorized by Article XI-H of the Oregon  
18 Constitution and ORS 468.195 to 468.260 (pollution control).

19 (D) The [*Water Resources Commission and the Water Resources Director*] **Director of the**  
20 **Oregon Department of Natural Resources and the Oregon Natural Resources Commission**,  
21 as authorized by Article XI-I(1) of the Oregon Constitution and ORS 541.700 to 541.855 (water de-  
22 velopment).

23 (E) The Housing and Community Services Department, as authorized by Article XI-I(2) of the  
24 Oregon Constitution and ORS 456.515 to 456.725 and 458.505 to 458.515 (housing).

25 (F) The Director of the State Department of Energy, as authorized by Article XI-J of the Oregon  
26 Constitution and ORS 470.220 to 470.290 (small scale energy projects).

27 (G) Other agencies as required by the Oregon Department of Administrative Services by rule  
28 adopted using the criterion of this subsection.

29 (b) Each agency authorized to issue general obligation bonds that are ordinarily to be repaid  
30 from other than General Fund appropriations shall determine the amount of revenues or other funds  
31 that are available and the amount of taxes, if any, that should be levied for the ensuing year in the  
32 manner required under rules adopted by the Oregon Department of Administrative Services and  
33 make the certification required under subsection (2) of this section.

34 (8)(a) State agencies that are authorized to issue general obligation bonds that are ordinarily to  
35 be repaid from General Fund appropriations include but are not limited to:

36 (A) The [*State Board of Forestry and the State Forester*] **Director of the Oregon Department**  
37 **of Natural Resources and the Oregon Natural Resources Commission**, as authorized by Article  
38 XI-E of the Oregon Constitution and ORS 530.210 to 530.280 (state reforestation).

39 (B) The State Board of Higher Education, as authorized by Article XI-G of the Oregon Consti-  
40 tution and ORS 351.345 (higher education and community colleges).

41 (C) Other agencies as required by the Oregon Department of Administrative Services by rule  
42 adopted using the criterion of this subsection.

43 (b) Each agency authorized to issue general obligation bonds ordinarily to be repaid from Gen-  
44 eral Fund appropriations shall furnish any data required by the Oregon Department of Administra-  
45 tive Services to determine the amount of revenues or other funds that are available and the amount



1 of taxes, if any, that should be levied for the ensuing year and the administrative division of the  
 2 Oregon Department of Administrative Services that has primary responsibility for accounting shall  
 3 make the determination for purposes of the making of the certification required under subsection (3)  
 4 of this section.

5 **SECTION 2123.** ORS 401.054 is amended to read:

6 401.054. (1) The following state agencies shall designate a person within each agency to act as  
 7 a liaison with the Office of Emergency Management:

8 (a) The Department of Transportation;

9 (b) The State Department of Agriculture;

10 (c) The Department of Environmental Quality;

11 (d) The Department of Human Services;

12 (e) The State Department of Energy;

13 (f) The Oregon Department of Administrative Services;

14 (g) The Department of State Police;

15 (h) The [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**  
 16 **Resources**;

17 (i) The Oregon Health Authority; and

18 (j) The Oregon Military Department.

19 (2) Each person designated as a liaison under subsection (1) of this section shall assist in the  
 20 coordination of the functions of the person's agency that relate to emergency preparedness and re-  
 21 sponse with similar functions of the Office of Emergency Management.

22 **SECTION 2124.** ORS 401.904 is amended to read:

23 401.904. The Office of Emergency Management, in consultation with the [*State Department of*  
 24 *Geology and Mineral Industries*] **Oregon Department of Natural Resources**, shall adopt rules  
 25 governing the conduct of earthquake emergency drills required by ORS 401.900 and 401.902. In ad-  
 26 dition to the office submitting the rules for publication pursuant to ORS 183.360, the office and the  
 27 department shall each post the rules on an electronic bulletin board, home page or similar site.

28 **SECTION 2125.** ORS 401.910 is amended to read:

29 401.910. (1) The Director of the Office of Emergency Management, pursuant to the authority to  
 30 administer grant programs for seismic rehabilitation provided in ORS 401.092, shall develop a grant  
 31 program for the disbursement of funds for the seismic rehabilitation of critical public buildings, in-  
 32 cluding hospital buildings with acute inpatient care facilities, fire stations, police stations, sheriffs'  
 33 offices, other facilities used by state, county, district or municipal law enforcement agencies and  
 34 buildings with a capacity of 250 or more persons that are routinely used for student activities by  
 35 kindergarten through grade 12 public schools, community colleges, education service districts and  
 36 institutions of higher education. The funds for the seismic rehabilitation of critical public buildings  
 37 under the grant program are to be provided from the issuance of bonds pursuant to the authority  
 38 provided in Articles XI-M and XI-N of the Oregon Constitution.

39 (2) The grant program shall include the appointment of a grant committee. The grant committee  
 40 may be composed of any number of persons with qualifications that the director determines neces-  
 41 sary. However, the director shall include persons with experience in administering state grant pro-  
 42 grams and representatives of entities with responsibility over critical public buildings. The director  
 43 shall also include as permanent members representatives of:

44 (a) The Department of Human Services;

45 (b) The [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural**

1 **Resources;**

2 (c) The Seismic Safety Policy Advisory Commission;

3 (d) The Oregon Department of Administrative Services;

4 (e) The Department of Education;

5 (f) The Oregon Health Authority;

6 (g) The Oregon Fire Chiefs' Association;

7 (h) The Oregon Association Chiefs of Police; and

8 (i) The Oregon Association of Hospitals and Health Systems.

9 (3) The director shall determine the form and method of applying for grants from the grant  
10 program, the eligibility requirements for grant applicants, and general terms and conditions of the  
11 grants. The director shall also provide that the grant committee review grant applications and make  
12 a determination of funding based on a scoring system that is directly related to the statewide needs  
13 assessment performed by the [*State Department of Geology and Mineral Industries*] **Oregon Depart-**  
14 **ment of Natural Resources**. Additionally, the grant process may:

15 (a) Require that the grant applicant provide matching funds for completion of any seismic re-  
16 habilitation project.

17 (b) Provide authority to the grant committee to waive requirements of the grant program based  
18 on special circumstances such as proximity to fault hazards, community value of the structure,  
19 emergency functions provided by the structure and storage of hazardous materials.

20 (c) Allow an applicant to appeal any determination of grant funding to the director for reeval-  
21 uation.

22 (d) Provide that applicants release the state, the director and the grant committee from any  
23 claims of liability for providing funding for seismic rehabilitation.

24 (e) Provide separate rules for funding rehabilitation of structural and nonstructural building el-  
25 ements.

26 (4) Subject to the grant rules established by the director and subject to reevaluation by the di-  
27 rector, the grant committee has the responsibility to review and make determinations on grant ap-  
28 plications under the grant program established pursuant to this section.

29 **SECTION 2126.** ORS 401.915 is amended to read:

30 401.915. (1) There is established a Seismic Safety Policy Advisory Commission consisting of the  
31 following members:

32 (a) The chief officer or the chief officer's designee of the following:

33 (A) Department of Consumer and Business Services;

34 (B) [*State Department of Geology and Mineral Industries*] **Oregon Department of Natural Re-**  
35 **sources;**

36 [*(C) Department of Land Conservation and Development;*]

37 [*(D)*] (C) Department of Transportation; and

38 [*(E)*] (D) Office of Emergency Management; and

39 (b) Thirteen members appointed by the Governor as follows:

40 (A) One representative of local government;

41 (B) Six members representing the public interest, including:

42 (i) One representative of a school district, community college or university;

43 (ii) Two members of the Legislative Assembly; and

44 (iii) Three members of the general public; and

45 (C) Six members representing affected industries or stakeholders.

1 (2) The term of office of each member, except a member of the Legislative Assembly, appointed  
 2 under subsection (1)(b) of this section is four years, but a member serves at the pleasure of the  
 3 Governor. The term of office of a member of the Legislative Assembly expires at the end of the term  
 4 for which the member is elected. Before the expiration of the term of a member, the Governor shall  
 5 appoint a successor whose term begins on July 1 next following. A member is eligible for reap-  
 6 pointment. If there is a vacancy for any cause, the Governor shall make an appointment to become  
 7 immediately effective for the unexpired term.

8 **SECTION 2127.** ORS 401.922 is amended to read:

9 401.922. The Office of Emergency Management shall provide technical, clerical and other nec-  
 10 essary support services to the Seismic Safety Policy Advisory Commission. The Department of Con-  
 11 sumer and Business Services, the [*State Department of Geology and Mineral Industries, the*  
 12 *Department of Land Conservation and Development, the Department of Transportation, the Oregon*  
 13 *Health Authority, the Water Resources Department*] **Oregon Department of Natural Resources, the**  
 14 **Department of Transportation, the Oregon Health Authority** and the Oregon University System  
 15 shall provide assistance, as required, to the commission to enable it to meet its objectives.

16 **SECTION 2128.** ORS 401.950 is amended to read:

17 401.950. (1) As used in this section:

18 (a) "Transient lodging facility" means a hotel, motel, inn, condominium, any other dwelling unit  
 19 or a public or private park that is made available for transient occupancy or vacation occupancy  
 20 as those terms are defined in ORS 90.100.

21 (b) "Tsunami inundation zone" means an area of expected tsunami inundation, based on scien-  
 22 tific evidence that may include geologic field data and tsunami modeling, determined by the [*gov-*  
 23 *erning board of the State Department of Geology and Mineral Industries*] **Director of the Oregon**  
 24 **Department of Natural Resources**, by rule, as required by ORS 455.446 (1)(b) and (c).

25 (2) The Office of Emergency Management, in consultation and cooperation with the [*State De-*  
 26 *partment of Geology and Mineral Industries*] **Oregon Department of Natural Resources**, shall:

27 (a) Develop and adopt by rule tsunami warning information and evacuation plans for distribution  
 28 to transient lodging facilities located in a tsunami inundation zone; and

29 (b) Facilitate and encourage broad distribution of the tsunami warning information and evacu-  
 30 ation plans to transient lodging facilities and other locations within tsunami inundation zones fre-  
 31 quented by visitors to the area.

32 (3) The office is not required to carry out the duties assigned under subsection (2) of this section  
 33 if sufficient moneys are not available under ORS 401.955.

34 **SECTION 2129.** ORS 401.952 is amended to read:

35 401.952. (1) The Office of Emergency Management, in consultation with the [*State Department*  
 36 *of Geology and Mineral Industries*] **Oregon Department of Natural Resources**, shall establish by  
 37 rule a uniform tsunami warning signal, including rules specifying the type, duration and volume of  
 38 the warning signal and the location of warning signal delivery devices, for use on the Oregon coast.

39 (2) The office is not required to carry out the duties assigned under subsection (1) of this section  
 40 if sufficient moneys are not available under ORS 401.955.

41 **SECTION 2130.** ORS 401.955 is amended to read:

42 401.955. The Office of Emergency Management or the [*State Department of Geology and Mineral*  
 43 *Industries*] **Oregon Department of Natural Resources** may seek and accept gifts, grants and do-  
 44 nations from any source to finance all or part of the duties assigned under ORS 401.950 and 401.952.

45 **SECTION 2131.** ORS 406.090 is amended to read:

1 406.090. The administration of ORS 273.035 to 273.051[, 273.071, 273.161 to 273.175] and 408.710  
 2 to 408.750 shall in no way be affected by ORS 406.010 to 406.070, 406.210, 406.220 and 406.340, and  
 3 such laws are excepted from the operation thereof. The Department of Veterans' Affairs shall co-  
 4 operate with the person or agency responsible for the administration of such laws, and shall render  
 5 such reasonable assistance in that regard as may be requested by any such person or agency.

6 **SECTION 2132.** ORS 418.688 is amended to read:

7 418.688. The Legislative Assembly recognizes that it is in the public interest to provide em-  
 8 ployment for young people within the existing administrative and financial capabilities of the De-  
 9 partment of Transportation **and the Oregon Department of Natural Resources**[, *the State Fish*  
 10 *and Wildlife Commission, the State Forestry Department, the State Parks and Recreation Department*  
 11 *and the Department of State Lands*].

12 **SECTION 2133.** ORS 426.508 is amended to read:

13 426.508. (1) Notwithstanding ORS 421.611 to 421.630 or any actions taken under ORS 421.611 to  
 14 421.630, the Department of Corrections shall transfer the real property known as the F. H.  
 15 Dammasch State Hospital and all improvements to the Oregon Department of Administrative Ser-  
 16 vices to be sold for the benefit of the Oregon Health Authority.

17 (2)(a) Notwithstanding ORS 270.100 to 270.190, and except as provided in subsection (4) of this  
 18 section, the Oregon Department of Administrative Services shall sell or otherwise convey the real  
 19 property known as the F. H. Dammasch State Hospital in a manner consistent with the provisions  
 20 of this section. Conveyance shall not include transfer to a state agency. The sale price of the real  
 21 property shall equal or exceed the fair market value of the real property. The Oregon Department  
 22 of Administrative Services shall engage the services of a licensed real estate broker or principal real  
 23 estate broker to facilitate the sale of the real property.

24 (b) The Oregon Department of Administrative Services shall retain from the sale or other  
 25 conveyance of the real property those costs incurred by the state in selling or conveying the real  
 26 property, including costs incurred by the Department of Corrections in transferring the real prop-  
 27 erty to the Oregon Department of Administrative Services. The remaining proceeds from the sale  
 28 or other conveyance shall be transferred to the Community Housing Trust Account created under  
 29 ORS 426.506 (3).

30 (3) Redevelopment of the real property formerly occupied by the F. H. Dammasch State Hospital  
 31 shall be consistent with the Dammasch Area Transportation Efficient Land Use Plan developed by  
 32 Clackamas County, the City of Wilsonville, the Oregon Department of Administrative Services, [*the*  
 33 *Department of Land Conservation and Development,*] the Department of Transportation, the State  
 34 Housing Council, the Oregon Health Authority and the [*Department of State Lands*] **Oregon De-**  
 35 **partment of Natural Resources.**

36 (4) The Oregon Department of Administrative Services shall reserve from the sale of the real  
 37 property under subsection (2) of this section not more than 10 acres. The real property reserved  
 38 from sale shall be transferred to the Oregon Health Authority for use by the authority to develop  
 39 community housing for persons with chronic mental illness. The department and the authority shall  
 40 jointly coordinate with the City of Wilsonville to identify the real property reserved from sale under  
 41 this subsection.

42 **SECTION 2134.** ORS 459A.615 is amended to read:

43 459A.615. The [*State Forestry Department, the State Parks and Recreation Department*] **Oregon**  
 44 **Department of Natural Resources**, the Department of Transportation and the Oregon Department  
 45 of Administrative Services shall initiate programs that use compost or sewage sludge in place of,

1 or to supplement, soil amendments, ground cover materials, mulching materials or other similar  
2 products for which compost can be used as an effective substitute.

3 **SECTION 2135.** ORS 466.135 is amended to read:

4 466.135. Upon receipt of an application for a hazardous waste disposal site permit, the Depart-  
5 ment of Environmental Quality shall cause copies of the application to be sent to affected state  
6 agencies, including the Oregon Health Authority, the Public Utility Commission[, *the State Fish and*  
7 *Wildlife Commission and the Water Resources Director*] **and the Oregon Department of Natural**  
8 **Resources.** Each agency shall respond by making a recommendation as to whether the permit ap-  
9 plication should be granted. If the [*Oregon Health*] authority recommends against granting the per-  
10 mit, the Environmental Quality Commission must refuse to issue the permit. Recommendation from  
11 other agencies shall be considered as evidence in determining whether to grant the permit.

12 **SECTION 2136.** ORS 466.280 is amended to read:

13 466.280. Upon receipt of an application for a PCB disposal facility permit, the Department of  
14 Environmental Quality shall cause copies of the application to be sent to affected state agencies,  
15 including the Oregon Health Authority, the Public Utility Commission[, *the State Fish and Wildlife*  
16 *Commission and the Water Resources Director*] **and the Oregon Department of Natural**  
17 **Resources.** Each agency shall respond within the period specified by the Department of Environ-  
18 mental Quality by making a written recommendation as to whether the permit application should  
19 be granted. [*Recommendation from other agencies shall be considered*] **The department shall con-**  
20 **sider the recommendations** in determining whether to grant the permit.

21 **SECTION 2137.** ORS 468.035 is amended to read:

22 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-  
23 ment of Environmental Quality:

24 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,  
25 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the  
26 waters of the state in accordance with rules and standards established by the commission.

27 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-  
28 gations, research and programs pertaining to the quality and purity of the air or the waters of the  
29 state and to the treatment and disposal of wastes.

30 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,  
31 other states or the federal government, in respect to any proceedings and all matters pertaining to  
32 control of air or water pollution or for the formation and submission to the legislature of interstate  
33 pollution control compacts or agreements.

34 (d) May employ personnel, including specialists and consultants, purchase materials and sup-  
35 plies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010  
36 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and  
37 468B.

38 (e) Shall conduct and supervise programs of air and water pollution control education, including  
39 the preparation and distribution of information regarding air and water pollution sources and con-  
40 trol.

41 (f) Shall provide advisory technical consultation and services to units of local government and  
42 to state agencies.

43 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-  
44 ernment.

45 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or

1 other public or private agencies for the purposes of air and water pollution control, studies or re-  
2 search and to expend moneys after appropriation thereof for the purposes given.

3 (i) Shall make such determination of priority of air or water pollution control projects as may  
4 be necessary under terms of statutes enacted by the Congress of the United States.

5 (j) Shall seek enforcement of the air and water pollution laws of the state.

6 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to  
7 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,  
8 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to  
9 454.755 and ORS chapters 468, 468A and 468B.

10 (L) Shall encourage the formulation and execution of plans in conjunction with air and water  
11 pollution control agencies or with associations of counties, cities, industries and other persons who  
12 severally or jointly are or may be the source of air or water pollution, for the prevention and  
13 abatement of pollution.

14 (m) May determine, by means of field studies and sampling, the degree of air or water pollution  
15 in various regions of the state.

16 (n) May perform such other and further acts as may be necessary, proper or desirable to carry  
17 out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,  
18 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,  
19 468A and 468B.

20 (o) Shall coordinate any activities of the department related to a watershed enhancement project  
21 approved by the [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Re-**  
22 **sources** under ORS 541.375 with activities of other cooperating state and federal agencies partic-  
23 ipating in the project.

24 (2) Nothing in this section shall affect the authority of the Oregon Health Authority to make  
25 and enforce rules:

26 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115  
27 to 448.325, 624.010 to 624.121 and 624.310 to 624.430; and

28 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

29 (3) Nothing in this section shall prevent the State Department of Agriculture or the [*State*  
30 *Forestry Department*] **Oregon Department of Natural Resources** from independently receiving  
31 moneys from a public or private agency for the purposes of preventing or controlling air or water  
32 pollution resulting from agricultural or silvicultural activities or soil erosion, or for research related  
33 to such purposes.

34 (4)(a) In awarding a public contract under ORS 279.835 to 279.855 or ORS chapter 279A, 279B  
35 or 279C for a removal or remedial action pursuant to ORS 465.200 to 465.545, a corrective action  
36 or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a  
37 removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093,  
38 468B.095 and 468B.300 to 468B.500, the [*department*] **Department of Environmental Quality**, and  
39 the Oregon Department of Administrative Services[,] when administering the establishment of such  
40 a contract on behalf of the Department of Environmental Quality under ORS 279A.050 and 279A.140,  
41 shall subtract from the amount of any bid or proposal the hazardous waste management fees and  
42 solid waste fees that would be required by law to be paid to the department for waste that would  
43 be disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based  
44 on the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable  
45 preprocurement estimates of the amount of waste that would be disposed of under the contract and

1 that would be subject to those fees.

2 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract  
3 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less  
4 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates  
5 of amounts of waste that would be disposed of in projects of this character is technically challenging  
6 and requires the application of professional discretion. Therefore, no award of a contract under this  
7 subsection shall be subject to challenge, under ORS 279B.410, 279B.415 or 279C.460 or otherwise,  
8 on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

9 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-  
10 lishment, by or on behalf of the department, of master contracts by which the department engages  
11 the services of a contractor over a period of time for the purpose of issuing work orders for the  
12 performance of environmental activities on a project or projects for which the amounts of waste to  
13 be disposed of were not reasonably identified at the inception of the master contracts. However, the  
14 department shall require any contractor under a master contract to apply the subtraction for fees  
15 under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal  
16 of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.  
17 Nothing in this subsection shall be construed to prohibit the department or the Oregon Department  
18 of Administrative Services from establishing contracts pursuant to this section through contracting  
19 procedures authorized by ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C that do  
20 not require the solicitation of bids or proposals.

21 **SECTION 2137a.** ORS 468A.215 is amended to read:

22 468A.215. (1) There is created the Oregon Global Warming Commission. The commission shall  
23 consist of [25] **24** members, including 11 voting members appointed by the Governor under this sec-  
24 tion and [14] **13** ex officio nonvoting members specified in ORS 468A.220.

25 (2) Members of the commission appointed under this section shall be appointed so as to be rep-  
26 resentative of the social, environmental, cultural and economic diversity of the state and to be rep-  
27 resentative of the policy, science, education and implementation elements of the efforts to reduce  
28 greenhouse gas emissions and to prepare Oregon for the effects of global warming. Of the members  
29 appointed by the Governor under this section:

30 (a) One member shall have significant experience in manufacturing;

31 (b) One member shall have significant experience in energy;

32 (c) One member shall have significant experience in transportation;

33 (d) One member shall have significant experience in forestry;

34 (e) One member shall have significant experience in agriculture; and

35 (f) One member shall have significant experience in environmental policy.

36 (3) The Governor shall select a chairperson and a vice chairperson from among the members  
37 appointed under this section.

38 (4) The term of office of a member appointed under this section is four years. Before the expi-  
39 ration of the term of a member, the Governor shall appoint a successor whose term begins on Jan-  
40 uary 31 next following. A member appointed under this section is eligible for reappointment. In case  
41 of vacancy for any cause, the Governor shall make an appointment to become immediately effective  
42 for the unexpired term.

43 (5) The members of the commission appointed under this section must be residents of this state.  
44 Failure of a member to maintain compliance with the eligibility requirements related to the  
45 member's appointment shall result in disqualification from serving on the commission.

1 (6) Voting members of the commission appointed under this section are entitled to expenses as  
2 provided in ORS 292.495 (2).

3 **SECTION 2138.** ORS 468A.220 is amended to read:

4 468A.220. (1) In addition to the members appointed under ORS 468A.215, the Oregon Global  
5 Warming Commission shall include the following ex officio members:

- 6 (a) The Director of the State Department of Energy;
- 7 (b) The Director of Transportation;
- 8 (c) The chairperson of the Public Utility Commission of Oregon;
- 9 (d) The Director of the Department of Environmental Quality;
- 10 (e) The Director of Agriculture;
- 11 [(f) *The State Forester*;]

12 [(g)] (f) The [*Water Resources Director*] **Director of the Oregon Department of Natural Re-**  
13 **sources;** and

14 [(h)] (g) Three additional ex officio nonvoting members, each from a state agency or an academic  
15 institution.

16 (2) The following representatives of the Legislative Assembly also shall serve as ex officio non-  
17 voting members:

18 (a) Two members of the Senate, not from the same political party, appointed by the President  
19 of the Senate; and

20 (b) Two members of the House of Representatives, not from the same political party, appointed  
21 by the Speaker of the House of Representatives.

22 (3) Each legislative member serves at the pleasure of the appointing authority and may serve  
23 so long as the member remains in the chamber of the Legislative Assembly from which the member  
24 was appointed.

25 **SECTION 2139.** ORS 468B.365 is amended to read:

26 468B.365. (1) The Department of Environmental Quality shall approve a contingency plan only  
27 if it determines that the plan meets the requirements of ORS 468B.345 to 468B.360 and:

- 28 (a) The covered vessel or facility demonstrates evidence of compliance with ORS 468B.390; and
- 29 (b) If implemented, the plan is capable, to the maximum extent practicable in terms of personnel,  
30 materials and equipment, of removing oil promptly and properly and minimizing any damage to the  
31 environment.

32 (2) An owner or operator of a covered vessel or facility shall notify the department in writing  
33 immediately of any significant change affecting the contingency plan, including changes in any fac-  
34 tor set forth in this section or in rules adopted by the Environmental Quality Commission. The de-  
35 partment may require the owner or operator to update a contingency plan as a result of these  
36 changes.

37 (3) A holder of an approved contingency plan does not violate the terms of the contingency plan  
38 by furnishing to another plan holder, after notifying the department, equipment, materials or per-  
39 sonnel to assist the other plan holder in a response to an oil discharge. The plan holder shall re-  
40 place or return the transferred equipment, materials and personnel as soon as feasible.

41 (4) The department may attach any reasonable term or condition to its approval or modification  
42 of a contingency plan that the department determines is necessary to insure that the applicant:

- 43 (a) Has access to sufficient resources to protect environmentally sensitive areas and to prevent,  
44 contain, clean up and mitigate potential oil discharges from the facility or tank vessel;
- 45 (b) Maintains personnel levels sufficient to carry out emergency operations; and



1 (c) Complies with the contingency plan.

2 (5) The contingency plan must provide for the use by the applicant of the best technology  
3 available at the time the contingency plan was submitted or renewed.

4 (6) The department may require an applicant or a holder of an approved contingency plan to  
5 take steps necessary to demonstrate its ability to carry out the contingency plan, including:

6 (a) Periodic training;

7 (b) Response team exercises; and

8 (c) Verification of access to inventories of equipment, supplies and personnel identified as  
9 available in the approved contingency plan.

10 (7) The department may consider evidence that oil discharge prevention measures such as dou-  
11 ble hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic test-  
12 ing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented and  
13 in its discretion, may make exceptions to the requirements of this section to reflect the reduced risk  
14 of oil discharges from the facility or tank vessel for which the plan is submitted or being modified.

15 (8) Before the [*department*] **Department of Environmental Quality** approves or modifies a  
16 contingency plan required under ORS 468B.345, the [*department*] **Department of Environmental**  
17 **Quality** shall provide a copy of the contingency plan to the [*State Department of Fish and Wildlife,*  
18 *the office of the State Fire Marshal and the Department of Land Conservation and Development for*  
19 *review. The agencies*] **Oregon Department of Natural Resources and the office of the State Fire**  
20 **Marshal for review. The Oregon Department of Natural Resources and the office** shall review  
21 the plan according to procedures and time limits established by rule of the Environmental Quality  
22 Commission.

23 (9) Upon approval of a contingency plan, the Department **of Environmental Quality** shall issue  
24 to the plan holder a certificate stating that the plan has been approved. The certificate shall include  
25 the name of the facility or tank vessel for which the certificate is issued, the effective date of the  
26 plan and the date by which the plan must be submitted for renewal.

27 (10) The approval of a contingency plan by the department does not constitute an express as-  
28 surance regarding the adequacy of the plan or constitute a defense to liability imposed under ORS  
29 chapters 468, 468A and 468B or any other state law.

30 **SECTION 2140.** ORS 469.350 is amended to read:

31 469.350. (1) Applications for site certificates shall be made to the Energy Facility Siting Council  
32 in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

33 (2) Copies of the notice of intent and of the application shall be sent for comment and recom-  
34 mendation within specified deadlines established by the council to the Department of Environmental  
35 Quality, [*the Water Resources Commission, the State Fish and Wildlife Commission, the Water Re-*  
36 *sources Director, the State Geologist, the State Forestry Department,*] **the Oregon Department of**  
37 **Natural Resources**, the Public Utility Commission of Oregon, the State Department of Agriculture,  
38 [*the Department of Land Conservation and Development,*] the Oregon Department of Aviation, any  
39 other state agency that has regulatory or advisory responsibility with respect to the facility and any  
40 city or county affected by the application.

41 (3) Any state agency, city or county that is requested by the council to comment and make  
42 recommendations under this section shall respond to the council by the specified deadline. If a state  
43 agency, city or county determines that it cannot respond to the council by the specified deadline  
44 because the state agency, city or county lacks sufficient resources to review and comment on the  
45 application, the state agency, city or county shall contract with another entity to assist in preparing

1 a response. A state agency, city or county that enters into a contract to assist in preparing a re-  
2 sponse may request funding to pay for that contract from the council pursuant to ORS 469.360.

3 (4) The State Department of Energy shall notify the applicant whether the application is com-  
4 plete. When the department determines an application is complete, the department shall notify the  
5 applicant and provide notice to the public.

6 **SECTION 2141.** ORS 469.373 is amended to read:

7 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,  
8 an applicant may apply under the provisions of this section for expedited review of an application  
9 for a site certificate for an energy facility if the energy facility:

10 (a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine  
11 fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup  
12 power generation;

13 (b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-  
14 hensive plan, land use regulation or federal land use plan, and is located:

15 (A) At or adjacent to an existing energy facility; or

16 (B)(i) At, adjacent to or in close proximity to an existing industrial use; and

17 (ii) In an area currently zoned or designated for industrial use;

18 (c)(A) Requires no more than three miles of associated transmission lines or three miles of new  
19 natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines;  
20 or

21 (B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in  
22 the locating of associated transmission lines or new natural gas pipelines outside of existing rights  
23 of way;

24 (d) Requires no new water right or water right transfer;

25 (e) Provides funds to a qualified organization in an amount determined by the council to be  
26 sufficient to produce any required reduction in carbon dioxide emissions as specified in ORS 469.503  
27 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by  
28 the energy facility for the life of the energy facility; and

29 (f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing  
30 National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment  
31 permit, if needed, within the expedited review process time frame and has written confirmation from  
32 the wastewater facility permit holder that the additional wastewater load will be accommodated by  
33 the facility without resulting in a significant thermal increase in the facility effluent or without re-  
34 quiring any changes to the wastewater facility National Pollutant Discharge Elimination System  
35 permit;

36 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-  
37 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-  
38 idence from the municipal corporation that:

39 (i) The municipal corporation has included, or intends to include, the process wastewater load  
40 from the energy facility in an application for a National Pollutant Discharge Elimination System  
41 permit; and

42 (ii) All conditions required of the energy facility to allow the discharge of process wastewater  
43 from the energy facility will be satisfied; or

44 (C) Obtains a National Pollutant Discharge Elimination System or water pollution control fa-  
45 cility permit for process wastewater disposal, supplies evidence to support a finding that the dis-

1 charge can likely be permitted within the expedited review process time frame and that the  
2 discharge will not require:

3 (i) A new National Pollutant Discharge Elimination System permit, except for a storm water  
4 general permit for construction activities; or

5 (ii) A change in any effluent limit or discharge location under an existing National Pollutant  
6 Discharge Elimination System or water pollution control facility permit.

7 (2) An applicant seeking expedited review under this section shall submit documentation to the  
8 State Department of Energy, prior to the submission of an application for a site certificate, that  
9 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this  
10 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-  
11 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

12 (3) If the department determines that the energy facility preliminarily qualifies for expedited  
13 review, the applicant may submit an application for expedited review. Within 30 days after the date  
14 that the application for expedited review is submitted, the department shall determine whether the  
15 application is complete. If the department determines that the application is complete, the applica-  
16 tion shall be deemed filed on the date that the department sends the applicant notice of its deter-  
17 mination. If the department determines that the application is not complete, the department shall  
18 notify the applicant of the deficiencies in the application and shall deem the application filed on the  
19 date that the department determines that the application is complete. The department or the  
20 council may request additional information from the applicant at any time.

21 (4) The State Department of Energy shall send a copy of a filed application to the Department  
22 of Environmental Quality, [*the Water Resources Department, the State Department of Fish and*  
23 *Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agriculture,*  
24 *the Department of Land Conservation and Development,*] **the State Department of Agriculture, the**  
25 **Oregon Department of Natural Resources**, the Public Utility Commission and any other state  
26 agency, city, county or political subdivision of the state that has regulatory or advisory responsi-  
27 bility with respect to the proposed energy facility. The State Department of Energy shall send with  
28 the copy of the filed application a notice specifying that:

29 (a) In the event the council issues a site certificate for the energy facility, the site certificate  
30 will bind the state and all counties, cities and political subdivisions in the state as to the approval  
31 of the site, the construction of the energy facility and the operation of the energy facility, and that  
32 after the issuance of a site certificate, all permits, licenses and certificates addressed in the site  
33 certificate must be issued as required by ORS 469.401 (3); and

34 (b) The comments and recommendations of state agencies, counties, cities and political subdivi-  
35 sions concerning whether the proposed energy facility complies with any statute, rule or local  
36 ordinance that the state agency, county, city or political subdivision would normally administer in  
37 determining whether a permit, license or certificate required for the construction or operation of the  
38 energy facility should be approved will be considered only if the comments and recommendations  
39 are received by the department within a reasonable time after the date the application and notice  
40 of the application are sent by the department.

41 (5) Within 90 days after the date that the application was filed, the department shall issue a  
42 draft proposed order setting forth:

43 (a) A description of the proposed energy facility;

44 (b) A list of the permits, licenses and certificates that are addressed in the application and that  
45 are required for the construction or operation of the proposed energy facility;

1 (c) A list of the statutes, rules and local ordinances that are the standards and criteria for ap-  
2 proval of any permit, license or certificate addressed in the application and that are required for the  
3 construction or operation of the proposed energy facility; and

4 (d) Proposed findings specifying how the proposed energy facility complies with the applicable  
5 standards and criteria for approval of a site certificate.

6 (6) The council shall review the application for site certification in the manner set forth in  
7 subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council  
8 determines that the facility, with any required conditions to the site certificate, will comply with:

9 (a) The requirements for expedited review as specified in this section;

10 (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and  
11 (L) to (o);

12 (c) The requirements of ORS 469.503 (3); and

13 (d) The requirements of ORS 469.504 (1)(b).

14 (7) Following submission of an application for a site certificate, the council shall hold a public  
15 informational meeting on the application. Following the issuance of the proposed order, the council  
16 shall hold at least one public hearing on the application. The public hearing shall be held in the area  
17 affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior  
18 to the hearing. The notice shall comply with the notice requirements of ORS 197.763 (2) and shall  
19 include, but need not be limited to, the following:

20 (a) A description of the energy facility and the general location of the energy facility;

21 (b) The name of a department representative to contact and the telephone number at which  
22 people may obtain additional information;

23 (c) A statement that copies of the application and proposed order are available for inspection  
24 at no cost and will be provided at reasonable cost; and

25 (d) A statement that the record for public comment on the application will close at the conclu-  
26 sion of the hearing and that failure to raise an issue in person or in writing prior to the close of  
27 the record, with sufficient specificity to afford the decision maker an opportunity to respond to the  
28 issue, will preclude consideration of the issue, by the council or by a court on judicial review of the  
29 council's decision.

30 (8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present  
31 additional written evidence, arguments or testimony regarding the application. In the alternative,  
32 prior to the conclusion of the hearing, the applicant may request a contested case hearing on the  
33 application. If the applicant requests an opportunity to present written evidence, arguments or tes-  
34 timony, the council shall leave the record open for that purpose only for a period not to exceed 14  
35 days after the date of the hearing. Following the close of the record, the department shall prepare  
36 a draft final order for the council. If the applicant requests a contested case hearing, the council  
37 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-  
38 quest for a contested case hearing is granted, subsections (9) to (11) of this section do not apply,  
39 and the application shall be considered under the same contested case procedures used for a non-  
40 expedited application for a site certificate.

41 (9) The council shall make its decision based on the record and the draft final order prepared  
42 by the department. The council shall, within six months of the date that the application is deemed  
43 filed:

44 (a) Grant the application;

45 (b) Grant the application with conditions;

1 (c) Deny the application; or

2 (d) Return the application to the site certification process required by ORS 469.320.

3 (10) If the application is granted, the council shall issue a site certificate pursuant to ORS  
4 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-  
5 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an  
6 application based on those standards.

7 (11) Judicial review of the approval or rejection of a site certificate by the council under this  
8 section shall be as provided in ORS 469.403.

9 **SECTION 2142.** ORS 469.840 is amended to read:

10 469.840. (1) There is established a Northwest Regional Power and Conservation Account. Mon-  
11 eys received pursuant to Public Law 96-501 shall be placed in the account.

12 (2) The account created by subsection (1) of this section is continuously appropriated for dis-  
13 bursement to state agencies, including but not limited to the Public Utility Commission, the State  
14 Department of Energy[, *the State Department of Fish and Wildlife and the Water Resources Depart-*  
15 *ment*] **and the Oregon Department of Natural Resources**, to carry out the purposes of Public  
16 Law 96-501, subject to legislative approval or limitation by law or Emergency Board action.

17 **SECTION 2143.** ORS 517.430 is amended to read:

18 517.430. [(1)] The lessee of the [*Department of State Lands*] **Oregon Department of Natural**  
19 **Resources** under ORS 273.551 may use down timber found on the premises for fuel, and may cut  
20 and use green timber in the construction of buildings required in the operation of a mine on the  
21 premises, [or] for lining test pits or shafts, [or] for timbering drifts or excavations[,] or for other  
22 mining purposes, but for no other purpose.

23 [(2) *The lessee of the State Forester under ORS 273.551 may use down timber found on the prem-*  
24 *ises for fuel and may cut and use green timber for lining test pits or shafts, or for timbering drifts or*  
25 *excavations, or for other mining purposes, but for no other purpose.*]

26 **SECTION 2144.** ORS 570.770 is amended to read:

27 570.770. (1) The Invasive Species Council is established within the State Department of Agri-  
28 culture. Except as provided in ORS 570.780 (1), the council shall consist of [15] **14** members. The  
29 following persons are voting ex officio members of the council:

30 (a) The Director of Agriculture or a designated representative.

31 (b) The president of Portland State University or a designated representative.

32 (c) The [*State Fish and Wildlife Director*] **Director of the Oregon Department of Natural**  
33 **Resources** or a designated representative.

34 (d) The administrative head of the Sea Grant College of Oregon State University or a designated  
35 representative.

36 [(e) *The State Forester or a designated representative.*]

37 [(f)] (e) The Director of the Department of Environmental Quality or a designated represen-  
38 tative.

39 (2) The voting ex officio members of the council described in subsection (1) of this section shall  
40 collectively appoint [*nine*] **eight** members to the council.

41 (3) The term of office of each appointed member is two years, but an appointed member serves  
42 at the pleasure of the voting ex officio members of the council. Before the expiration of a term, the  
43 voting ex officio members of the council shall appoint a successor whose term begins on January 1  
44 next following. An appointed member may not serve more than two successive terms on the council.  
45 If there is a vacancy in an appointed member position for any cause, the voting ex officio members

1 of the council shall make an appointment to become immediately effective for the unexpired term.

2 (4) In making appointments to the council, the voting ex officio members of the council shall  
3 endeavor to appoint persons representative of the geographic, cultural and economic diversity of  
4 this state. The voting ex officio members of the council may give consideration to nominations sub-  
5 mitted by federal and state agencies, local governments, universities, industry and other groups  
6 having an interest in invasive species.

7 (5) An appointed member of the council is not entitled to compensation under ORS 292.495. A  
8 member of the council is not entitled to reimbursement for expenses. At the discretion of the coun-  
9 cil, council members may be reimbursed from funds available to the council for actual and necessary  
10 travel and other expenses incurred by members of the council in the performance of their official  
11 duties, subject to the limits described in ORS 292.495.

12 **SECTION 2145.** ORS 570.780 is amended to read:

13 570.780. (1) Subject to available funding, the Invasive Species Council may appoint a State  
14 Invasive Species Coordinator to serve at the pleasure of the voting members of the council. If the  
15 council appoints a coordinator, the coordinator shall serve as a nonvoting ex officio member of the  
16 council.

17 (2) The State Department of Agriculture is responsible for ensuring payment of the administra-  
18 tive expenses of the council. The State Department of Agriculture may enter into interagency  
19 agreements under ORS 190.110 with the [*State Department of Fish and Wildlife, the State Forestry*  
20 *Department,*] **Oregon Department of Natural Resources**, the Department of Environmental Qual-  
21 ity, Portland State University and Oregon State University for sharing the administrative expenses  
22 of the council.

23 (3) The State Department of Agriculture shall act as the fiscal agent of the council for purposes  
24 of:

25 (a) Budgeting, interagency agreements for sharing administrative expenses or other mechanisms  
26 for paying the administrative and other expenses of the council;

27 (b) Drafting and processing contracts, other agreements, grant applications or other documents;

28 (c) Receiving gifts, grants, donations or other moneys on behalf of the council and ensuring the  
29 appropriate crediting of those moneys to the Invasive Species Council Account or the trust account  
30 described in ORS 570.800; and

31 (d) Taking all reasonable actions to ensure the council is in compliance with state financial  
32 administration laws.

33 **SECTION 2146.** ORS 634.550 is amended to read:

34 634.550. (1) There is created a Pesticide Analytical and Response Center with a governing board  
35 consisting of the following members:

36 (a) The Director of Agriculture or designee.

37 (b) The [*State Forester*] **Director of the Oregon Department of Natural Resources** or  
38 designee.

39 [*c) The State Fish and Wildlife Director or designee.*]

40 [*d)*] (c) The Director of the Department of Environmental Quality or designee.

41 [*e)*] (d) The Director of the Oregon Health Authority or designee.

42 [*f)*] (e) The Administrator of the Occupational Safety and Health Division or designee.

43 [*g)*] (f) The State Fire Marshal or designee.

44 [*h)*] (g) The Director of the Poison Control and Drug Information Program of the Oregon Health  
45 and Science University or designee.

1        [(i) (h) One [citizen] **resident** from the state at large appointed jointly by the Director of Ag-  
2 riculture and the Director of the Oregon Health Authority.

3        (2) The Director of Agriculture shall appoint an administrator for the Pesticide Analytical and  
4 Response Center, who shall be responsible to the board for performance of the duties of the center  
5 and the board.

6        (3) The Director of Agriculture or designee and the Director of the Oregon Health Authority  
7 or designee shall alternate as chairperson of the board for terms of one year each. When one is  
8 serving as chairperson, the other shall serve as vice chairperson.

9        (4) The board shall seek expert consultation from the extension service toxicology program, the  
10 Center for Research on Occupational and Environmental Toxicology and such other sources as may  
11 be needed.

12        (5) The functions of the board are to:

13        (a) Direct the activities and priorities of the administrator of the center.

14        (b) Centralize receiving of information relating to actual or alleged health and environmental  
15 incidents involving pesticides.

16        (c) Mobilize expertise necessary for timely and accurate investigation of pesticide incidents and  
17 analyses of associated samples.

18        (d) Identify trends and patterns of problems related to pesticide use.

19        (e) Make recommendations for action to a state agency when a majority of the board considers  
20 that such action may be warranted on the basis of the findings of an incident investigation or on  
21 the basis of identification of a trend or pattern of problems. Recommended actions may include, but  
22 not be limited to, regulatory action, modification of administrative rules, proposal of new legislation,  
23 public education and consultation to industry.

24        (f) Report in a standardized format the results of the investigations of pesticide incidents.

25        (g) Establish by consensus, procedures for carrying out its responsibilities within the limits of  
26 available resources.

27        (h) Prepare and submit to each session of the Legislative Assembly a report of the activities of  
28 the center that includes a record of recommendations made by the board and the actions resulting  
29 from the board's work.

30        (6) Upon receipt of a recommendation from the board, a state agency shall respond in a timely  
31 manner to inform the board of actions taken or the reasons for taking no action on the recommen-  
32 dation.

33        (7) Any medical information received by a member of the board or by a staff member of the  
34 center in the course of carrying out the duties of the center or the board shall be held confidential  
35 as provided in ORS 192.518 to 192.529 and 433.008.

36        (8) The functions of the board do not supersede the regulatory authority of any agency and are  
37 not in lieu of the regulatory authority of any agency.

38        **SECTION 2147.** ORS 634.660 is amended to read:

39        634.660. Each of the following state agencies or services shall implement integrated pest man-  
40 agement practices when carrying out the agency's duties related to pest control:

41        (1) State Department of Agriculture, including the control of noxious weeds.

42        (2) [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources.**

43        (3) Department of Transportation.

44        [(4) *State Parks and Recreation Department.*]

45        [(5) *State Forestry Department.*]

1 [(6)] (4) Department of Corrections.

2 [(7)] (5) Oregon Department of Administrative Services.

3 [(8) *The Department of State Lands.*]

4 [(9)] (6) Each Oregon institution of higher education, for the institution's own building and  
5 grounds maintenance.

6 **SECTION 2148.** ORS 805.256 is amended to read:

7 805.256. (1) After deduction of the cost of administration of the salmon registration plate pro-  
8 gram, moneys from the surcharge imposed by ORS 805.255 shall be [*transferred and appropriated as*  
9 *follows*] **deposited in the Oregon Natural Resources Fund and are appropriated as follows:**

10 (a) Half of the moneys [*shall be transferred to the Oregon Watershed Enhancement Board estab-*  
11 *lished under ORS 541.360 and*] are continuously appropriated to the [*board*] **Oregon Department**  
12 **of Natural Resources** for activities under ORS 541.379 related to the restoration and protection  
13 of native salmonid populations, watersheds, fish and wildlife habitats and water quality, including  
14 but not limited to activities under the Oregon Plan; and

15 (b) Half of the moneys [*shall be transferred to the State Parks and Recreation Department Fund*  
16 *established under ORS 390.134 and continuously appropriated*] **are continuously appropriated to**  
17 **the department** for the purposes described in ORS 390.134 (4).

18 (2) As used in this section, "the cost of administration of the salmon registration plate  
19 program" is the sum of all Department of Transportation expenses for the issuance or transfer of  
20 salmon registration plates under ORS 805.255 that are above the normal costs of issuing, renewing  
21 and transferring registration plates in the normal course of the business of the department. These  
22 expenses include, but are not limited to, the costs of collecting the salmon registration plate sur-  
23 charge and transferring salmon registration plates.

24 **SECTION 2149.** Section 6, chapter 1059, Oregon Laws 1999, as amended by section 1154, chap-  
25 ter 595, Oregon Laws 2009, is amended to read:

26 **Sec. 6.** In carrying out its responsibilities under sections 2 to 9, chapter 1059, Oregon Laws  
27 1999, the State Department of Agriculture shall seek technical assistance as appropriate from at  
28 least the following entities:

29 (1) Oregon Department of Administrative Services;

30 (2) Department of Environmental Quality;

31 (3) [*State Department of Fish and Wildlife*] **Oregon Department of Natural Resources;**

32 [(4) *State Forestry Department;*]

33 [(5)] (4) Occupational Safety and Health Division of the Department of Consumer and Business  
34 Services;

35 [(6)] (5) Oregon Health Authority;

36 [(7)] (6) Oregon Poison Center;

37 [(8)] (7) Pesticide Analytical and Response Center; and

38 [(9)] (8) Office of the State Fire Marshal.

39 **NOTE:** Section 2150 was deleted. Subsequent sections were not renumbered.

40 **SECTION 2151.** Section 3, chapter 636, Oregon Laws 2009, as amended by section 1, chapter  
41 888, Oregon Laws 2009, is amended to read:

42 **Sec. 3.** (1) Notwithstanding ORS 215.700 to 215.780, one or two small-scale recreation commu-  
43 nities may be established as specified in sections 2 to 5, chapter 636, Oregon Laws 2009.

44 (2) If, within one year after [*the effective date of chapter 636, Oregon Laws 2009*] **June 29, 2009,**  
45 the owner of a Metolius resort site notifies the [*Department of Land Conservation and Development*]



1 **Oregon Department of Natural Resources** that it has elected to seek approval of a small-scale  
 2 recreation community, the owner may, within three years after [*the effective date of chapter 636,*  
 3 *Oregon Laws 2009*] **June 29, 2009**, apply to a county for approval of a small-scale recreation com-  
 4 munity.

5 (3) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon  
 6 Laws 2009, may be established only in conjunction with a transfer of development opportunity from  
 7 a Metolius resort site. A transfer of development opportunity must be carried out through an  
 8 agreement between the owner of a Metolius resort site and the owner of the site proposed for de-  
 9 velopment of a small-scale recreation community. In the agreement, the owner of the Metolius resort  
 10 site must:

11 (a) Agree to limit the use of the Metolius resort site, consistent with the management plan in  
 12 consideration for the opportunity to participate in the development of the small-scale recreation  
 13 community; and

14 (b) Agree to grant a conservation easement pursuant to ORS 271.715 to 271.795 that:

15 (A) Limits the use of the Metolius resort site to be consistent with the management plan;

16 (B) Allows public access to that portion of the site that is not developed; and

17 (C) Contains other provisions, as required by the department [*of Land Conservation and Devel-*  
 18 *opment*], that are necessary to ensure that the conservation easement is enforceable.

19 (4) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon  
 20 Laws 2009, must be sited on land that is within a county that has a seasonally adjusted average  
 21 annual unemployment rate over the preceding 10 calendar years that is more than 110 percent of  
 22 the unemployment rate for the entire state over the same period, as reported by the Employment  
 23 Department and that is either:

24 (a) Planned and zoned for forest use; or

25 (b) Rural and not subject to statewide land use planning goals relating to agricultural lands or  
 26 forestlands.

27 (5) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon  
 28 Laws 2009, may not be sited on land that is:

29 (a) Within an area identified as "Area 1" or "Area 2" in the management plan.

30 (b) Within an area described in ORS 197.455 in which destination resorts may not be sited.

31 (c) Within an area protected by or inventoried as a significant resource in an acknowledged  
 32 comprehensive plan provision implementing statewide land use planning goals relating to:

33 (A) Open space, scenic and historic areas and natural resources;

34 (B) Estuarine resources;

35 (C) Coastal shorelands; or

36 (D) Beaches and dunes.

37 (d) Within an area identified as subject to a natural hazard by an acknowledged comprehensive  
 38 plan provision implementing a statewide land use planning goal relating to protection from natural  
 39 hazards.

40 **SECTION 2152.** Section 5, chapter 636, Oregon Laws 2009, as amended by section 3, chapter  
 41 888, Oregon Laws 2009, is amended to read:

42 **Sec. 5.** (1) An application for a small-scale recreation community under sections 2 to 5, chapter  
 43 636, Oregon Laws 2009, may be filed only by the owner of a Metolius resort site and the owner of  
 44 the site on which development of the small-scale recreation community is proposed and must be filed  
 45 jointly by the owners. The owners shall file a copy of the application with the [*Department of Land*

1 *Conservation and Development*] **Oregon Department of Natural Resources** at the same time that  
 2 the owners file the application with the county having land use jurisdiction over the proposed de-  
 3 velopment site.

4 (2) A county shall review an application for a small-scale recreation community under sections  
 5 2 to 5, chapter 636, Oregon Laws 2009, as a conditional use in a forest zone and as a land division  
 6 under ORS chapter 92.

7 (3) In addition to the standards set forth in sections 2 to 5, chapter 636, Oregon Laws 2009, the  
 8 small-scale recreation community must meet the land division standards and other development  
 9 standards of the county, including standards for streets, utilities and services, unless the standards  
 10 conflict with sections 2 to 5, chapter 636, Oregon Laws 2009. If the development standards of the  
 11 county are dependent on the zoning of the site, the county shall apply the development standards  
 12 for the county's most dense rural residential zone.

13 (4) If more than two applications for a small-scale recreation community are filed under sections  
 14 2 to 5, chapter 636, Oregon Laws 2009, and a county has not yet approved an application, the de-  
 15 partment shall determine which of the applications may proceed, taking into consideration:

16 (a) The time at which each application was filed;

17 (b) The unemployment rate in the counties, if more than one county is involved; and

18 (c) The findings set forth in section 1, chapter 636, Oregon Laws 2009.

19 (5) When two applications for small-scale recreation communities have been approved, additional  
 20 applications may not be considered.

21 (6) A county may charge a fee to cover the costs of processing an application.

22 **SECTION 2153.** Section 6, chapter 636, Oregon Laws 2009, as amended by section 3, chapter  
 23 5, Oregon Laws 2010, is amended to read:

24 **Sec. 6.** (1) There is established the Oregon Transfer of Development Rights Pilot Program in the  
 25 [*Department of Land Conservation and Development*] **Oregon Department of Natural Resources**.  
 26 Working with [*the State Forestry Department,*] the State Department of Agriculture and local gov-  
 27 ernments and with other state agencies, as appropriate, the [*Department of Land Conservation and*  
 28 *Development*] **Oregon Department of Natural Resources** shall implement the pilot program.

29 (2) The [*Land Conservation and Development Commission*] **Oregon Natural Resources Com-**  
 30 **mission** shall adopt rules to implement the pilot program. The commission, by rule, may:

31 (a) Establish a maximum ratio of transferable development rights to severed development inter-  
 32 ests in a sending area for each pilot project. The maximum ratio:

33 (A) Must be calculated to protect lands planned and zoned for forest use and to create incen-  
 34 tives for owners of land in the sending area to participate in the pilot project; and

35 (B) May not exceed one transferable development right to one severed development interest if  
 36 the receiving area is outside of an urban growth boundary.

37 (b) Require participating owners of land in a sending area to grant conservation easements  
 38 pursuant to ORS 271.715 to 271.795, or otherwise obligate themselves, to ensure that additional  
 39 residential development of their property does not occur.

40 (c) Require participating owners of land in a sending area to allow reasonable public access to  
 41 the property.

42 (3) The commission, by rule, shall establish a process for selecting pilot projects from among  
 43 potential projects nominated by local governments. The process must require local governments to  
 44 nominate potential projects by submitting a concept plan for each proposed pilot project, including  
 45 proposed amendments, if any, to the comprehensive plan and land use regulations implementing the

1 plan that are necessary to implement the pilot project.

2 (4) When selecting a pilot project, the commission must find that the pilot project is:

3 (a) Reasonably likely to provide a net benefit to the forest economy or the agricultural economy  
4 of this state;

5 (b) Designed to avoid or minimize adverse effects on transportation, natural resources, public  
6 facilities and services, nearby urban areas and nearby farm and forest uses; and

7 (c) Designed so that new development authorized in a receiving area does not conflict with a  
8 resource or area inventoried under a statewide land use planning goal relating to natural resources,  
9 scenic and historic areas and open spaces, or with an area identified as a Conservation Opportunity  
10 Area in the "Oregon Conservation Strategy" adopted by the State Fish and Wildlife Commission and  
11 published by the State Department of Fish and Wildlife in September of 2006.

12 (5) The **Oregon Natural Resources** Commission may select up to three pilot projects for the  
13 transfer of development rights under sections 6 to 8, chapter 636, Oregon Laws 2009.

14 (6) A sending area for a pilot project under sections 6 to 8, chapter 636, Oregon Laws 2009:

15 (a) Must be planned and zoned for forest use;

16 (b) May not exceed 10,000 acres; and

17 (c) Must contain four or fewer dwelling units per square mile.

18 (7) The commission may establish additional requirements for sending areas.

19 (8)(a) Except as provided otherwise in paragraph (b) of this subsection, a local government par-  
20 ticipating in a pilot project shall select a receiving area for the pilot project based on the following  
21 priorities:

22 (A) First priority is lands within an urban growth boundary;

23 (B) Second priority is lands that are adjacent to an urban growth boundary and that are subject  
24 to an exception from a statewide land use planning goal relating to agricultural lands or forestlands;

25 (C) Third priority is lands that are within an urban unincorporated community or a rural com-  
26 munity in an acknowledged comprehensive plan.

27 (b) The commission may authorize a local government to select lower priority lands over higher  
28 priority lands for a receiving area in a pilot project only if the local government has established,  
29 to the satisfaction of the commission, that selecting higher priority lands as the receiving area is  
30 not likely to result in the severance and transfer of a significant proportion of the development in-  
31 terests in the sending area within five years after the receiving area is established.

32 (c) If lands described in paragraph (a)(B) of this subsection are selected for use as a receiving  
33 area in a pilot project, the minimum residential density of development allowed under sections 6 to  
34 8, chapter 636, Oregon Laws 2009, must be at least 10 dwelling units per net acre.

35 (d) A receiving area may not be located within 10 miles of the Portland metropolitan area urban  
36 growth boundary.

37 (9) The commission may establish additional requirements for receiving areas.

38 (10) The commission, by rule, may provide a bonus in the form of a higher ratio if a substantial  
39 portion of the new development in the receiving area of the pilot project is affordable housing within  
40 an urban growth boundary.

41 **SECTION 2154.** Section 7, chapter 636, Oregon Laws 2009, is amended to read:

42 **Sec. 7.** (1) Notwithstanding contrary provisions of statewide land use planning goals relating to  
43 public facilities and services and urbanization, and notwithstanding ORS 215.700 to 215.780, a local  
44 government may change its comprehensive plan and land use regulations implementing the plan to  
45 allow residential development in a receiving area consistent with sections 6 to 8, **chapter 636,**

1 **Oregon Laws 2009**, [of this 2009 Act] if the [Land Conservation and Development Commission]  
2 **Oregon Natural Resources Commission** has approved a concept plan for the pilot project.

3 (2) The local governments having land use jurisdiction over lands included in the sending area  
4 and the receiving area for the pilot project shall adopt amendments to their respective comprehen-  
5 sive plans and land use regulations implementing the plans that are consistent with subsection (3)  
6 of this section.

7 (3) When the commission has approved a proposed concept plan, the local governments having  
8 land use jurisdiction over the affected sending area and affected receiving area shall adopt overlay  
9 zone provisions and corresponding amendments to the comprehensive plan and land use regulations  
10 implementing the plan that identify the additional residential development allowed through partic-  
11 ipation in the pilot project. The [Department of Land Conservation and Development] **Oregon De-**  
12 **partment of Natural Resources** shall review the overlay zones and corresponding comprehensive  
13 plan amendments in the manner of periodic review under ORS 197.628 to 197.650.

14 (4) Notwithstanding ORS 197.296 and 197.298 and statewide land use planning goals relating to  
15 urbanization, a local government may amend its urban growth boundary to include adjacent lands  
16 in a receiving area, consistent with an approved concept plan, if the net residential density of de-  
17 velopment authorized in the receiving area is at least 10 dwelling units per acre.

18 (5) Local governments or other entities may establish a development rights bank or other system  
19 to facilitate the transfer of development rights.

20 (6) A county shall review an application for a pilot project under sections 6 to 8, **chapter 636,**  
21 **Oregon Laws 2009**, [of this 2009 Act] as a comprehensive plan amendment. A county may apply  
22 other procedures, including master plan approval, site plan review or conditional use review as the  
23 county finds appropriate to subsequent phases of review of the pilot project.

24 **SECTION 2155.** Section 8, chapter 636, Oregon Laws 2009, is amended to read:

25 **Sec. 8.** (1) The [Department of Land Conservation and Development, the State Forestry  
26 Department] **Oregon Department of Natural Resources**, a local government participating in the  
27 Oregon Transfer of Development Rights Pilot Program or a third-party holder identified by the de-  
28 partment [of Land Conservation and Development] may hold, monitor or enforce a conservation  
29 easement pursuant to ORS 271.715 to 271.795 or other property interest to ensure that lands in  
30 sending areas do not retain residential development rights transferred under sections 6 to 8, **chap-**  
31 **ter 636, Oregon Laws 2009** [of this 2009 Act].

32 (2) An entity that is eligible to be a holder of a conservation easement may acquire, from a  
33 willing seller in the manner provided by ORS 271.715 to 271.795, the right to carry out a use of land  
34 authorized under rules of the [Land Conservation and Development Commission] **Oregon Natural**  
35 **Resources Commission** implementing the pilot program.

36 **SECTION 2156.** Section 9, chapter 636, Oregon Laws 2009, as amended by section 4, chapter  
37 888, Oregon Laws 2009, is amended to read:

38 **Sec. 9.** (1) As used in this section:

39 (a) "Community forestlands" has the meaning given that term in ORS 530.600.

40 (b) "Skyline Forest" means that certain real property consisting of approximately 33,000 con-  
41 tiguous acres in Deschutes County owned on June 1, 2009, by Cascade Timberlands (Oregon) LLC  
42 and located within sections 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and  
43 36, township 16 south, range 10 east; sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23,  
44 24, 25, 26, 27, 35 and 36, township 17 south, range 10 east; and sections 6, 7, 8, 9, 17, 18, 19, 20, 29,  
45 30, 31, 32 and 33, township 17 south, range 11 east.

1 (c) "Skyline Forest Sustainable Development Area" means a portion of up to 3,000 contiguous  
2 acres of the tract known as the Skyline Forest that is located in township 16 south, range 10 east,  
3 Deschutes County: portions of the northwest quarter, southwest quarter, southeast quarter, north-  
4 east quarter of section 7; portions of the northwest quarter, southwest quarter, southeast quarter  
5 of section 8; portions of the southwest quarter of section 16; portions of the northwest quarter,  
6 southwest quarter, southeast quarter, northeast quarter of section 17; portions of the northwest  
7 quarter, southwest quarter, southeast quarter, northeast quarter of section 18; section 19; portions  
8 of the northwest quarter, southwest quarter, northeast quarter of section 20; portions of the north-  
9 west quarter of section 21; portions of the northwest quarter of section 29; and portions of the north  
10 half of section 30.

11 (d) "Skyline Conservation Tract" means the portion of the Skyline Forest consisting of approx-  
12 imately 30,000 contiguous acres that is not included within the Skyline Forest Sustainable Develop-  
13 ment Area.

14 (e) "Southern Conservation Tract" means that certain real property consisting of approximately  
15 34,700 acres in Deschutes and Klamath Counties owned on June 1, 2009, by Cascade Timberlands  
16 (Oregon) LLC and located within one of the following areas:

17 (A) "Area one" consists of approximately 14,000 acres of land located within sections 1, 2, 3, 10,  
18 11, 12, 13, 14, 15, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34 and 35 of township 22 south, range 9 east,  
19 Deschutes County; and sections 5, 6, 7, 8, 17, 18, 30 and 31 of township 22 south, range 10 east,  
20 Deschutes County;

21 (B) "Area two" consists of approximately 9,700 acres of land located within sections 2, 3, 4, 5,  
22 9, 10, 11, 14, 15, 17, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33 and 34 of township 23 south, range 9  
23 east, Klamath County and the portion of Parcel 3, Partition Plat No. 34-08 located in township 23  
24 south, range 9 east, Klamath County; and

25 (C) "Area three" consists of approximately 11,000 acres of land located within sections 14, 23,  
26 24, 25, 26, 34 and 35 of township 23 south, range 9 east; sections 3, 4, 8, 9 and 17 of township 24  
27 south, range 9 east; section 1 of township 25 south, range 7 east; sections 1, 2, 3, 4, 9, 10, 12, 13, 14,  
28 15, 16 and 17 of township 25 south, range 8 east; Parcel 1, Partition Plat No. 34-08 located in  
29 township 24 south, ranges 7 and 8 east, and township 25 south, range 8 east, Klamath County; and  
30 the portion of Parcel 3, Partition Plat No. 34-08 located in township 24 south, ranges 8 and 9 east,  
31 Klamath County and lying west of U.S. Route 97.

32 (f) "Land trust" means the Deschutes Land Trust, an Oregon nonprofit corporation or another  
33 nonprofit conservation organization that is either accredited by the Land Trust Accreditation Com-  
34 mission or is nationally recognized as a land conservation organization, the primary mission of  
35 which is land conservation.

36 (2) Contingent upon satisfaction of the requirements of subsection (3) of this section, the Skyline  
37 Forest Sustainable Development Area may be developed and used for the following purposes:

38 (a) The Skyline Forest Sustainable Development Area may contain up to 282 residential units,  
39 a caretaker's residence, a restaurant, a small community store, a small-scale community conference  
40 center, an equestrian facility, small-scale recreational, commercial and basic service uses, and all  
41 utility, maintenance and security facilities necessary to support the development. The residential  
42 units may be permanent residences, rental units or lodging units. The specific number of residential  
43 units allowed within the Skyline Forest Sustainable Development Area, up to a maximum of 282, is  
44 dependent upon the number of acres of the Skyline Conservation Tract and the Southern Conser-  
45 vation Tract conveyed to a land trust or a federal or state agency pursuant to this section. Up to:

1 (A) 137 residential units shall be allowed within the Skyline Forest Sustainable Development  
2 Area in exchange for the conveyance of the Skyline Conservation Tract to a land trust;

3 (B) 183 residential units shall be allowed within the Skyline Forest Sustainable Development  
4 Area in exchange for the conveyance of the Skyline Conservation Tract and area one of the South-  
5 ern Conservation Tract to a land trust or to a federal or state agency;

6 (C) 224 residential units shall be allowed within the Skyline Forest Sustainable Development  
7 Area in exchange for the conveyance of the Skyline Conservation Tract, area one and area two of  
8 the Southern Conservation Tract to a land trust or to a federal or state agency; or

9 (D) 282 residential units shall be allowed within the Skyline Forest Sustainable Development  
10 Area in exchange for the conveyance of the Skyline Conservation Tract, area one, area two and  
11 area three of the Southern Conservation Tract to a land trust or to a federal or state agency.

12 (b) The Skyline Forest Sustainable Development Area may not contain a golf course or golf-  
13 related facilities.

14 (c) All development, not including access roads and utility lines to the Skyline Forest  
15 Sustainable Development Area and up to five acres for maintenance and security facilities, shall be  
16 located on 1,200 contiguous acres within the Skyline Forest Sustainable Development Area. The  
17 owner shall use the remaining undeveloped 1,800 acres of the Skyline Forest Sustainable Develop-  
18 ment Area for the primary purposes of minimizing the risk of wildfire and maintaining wildlife  
19 habitat value. However, an equestrian facility may be located within the otherwise undeveloped  
20 1,800 acres if the facility is located on no more than 40 acres contiguous to the developed portion  
21 of the Skyline Forest Sustainable Development Area. The owner shall cause a conservation ease-  
22 ment pursuant to ORS 271.715 to 271.795 to be recorded on the entirety of the undeveloped 1,800  
23 acres prohibiting partitions and development, but allowing access roads, utility lines, maintenance  
24 and security facilities and recreational uses, such as picnic grounds, trails, the equestrian facility  
25 and restrooms. The conservation easement must be held by a land trust and shall contain terms  
26 agreed to by the [*State Department of Fish and Wildlife and the State Forestry Department*] **Oregon**  
27 **Department of Natural Resources.**

28 (d) Roads, utility corridors and all utility facilities necessary to serve the Skyline Forest  
29 Sustainable Development Area shall be allowed as outright permitted uses within the Skyline Forest  
30 Sustainable Development Area, the Skyline Forest and on nearby lands regardless of the compre-  
31 hensive plan or zoning designation of the lands.

32 (e) The uses allowed by this subsection shall be allowed only upon approval of a master plan  
33 as provided by subsection (5) of this section. The master plan shall contain design criteria and  
34 standards to ensure that sustainability principles will be incorporated into the development and  
35 operation of uses within the Skyline Forest Sustainable Development Area. The design criteria and  
36 standards shall promote sustainable building design, water conservation and energy conservation.

37 (f) The master plan described in subsection (5) of this section shall incorporate design criteria  
38 and standards to ensure that there will be negligible visual impacts under normal daylight viewing  
39 conditions from Awbrey Butte and the Plainview scenic turnout located on the McKenzie-Bend  
40 Highway No. 17, also known as U.S. Route 20, near milepost 9. The design criteria and standards  
41 shall also require all outdoor lighting to be downward facing, to the extent practicable.

42 (g) The Skyline Forest Sustainable Development Area shall be served by one primary access  
43 route and by one or more emergency and secondary access routes that use existing roads as much  
44 as practicable. The access routes may be private or public roads, including roads managed by the  
45 United States Forest Service. The primary access route shall intersect the McKenzie-Bend Highway

1 No. 17, also known as U.S. Route 20, between mileposts 3 and 6 to provide access from the eastern  
2 boundary of the Skyline Forest Sustainable Development Area to the referenced highway.

3 (h) The Skyline Forest Sustainable Development Area, including all access roads, must be de-  
4 veloped in consultation with the [*State Department of Fish and Wildlife*] **Oregon Department of**  
5 **Natural Resources** to minimize impacts on wildlife, particularly deer and elk populations.

6 (i) The Skyline Forest Sustainable Development Area, including all access roads, must be de-  
7 veloped in consultation with the [*State Forestry Department*] **Oregon Department of Natural Re-**  
8 **sources** and the United States Forest Service to minimize wildfire risks.

9 (j) The owner of the Skyline Forest Sustainable Development Area shall provide adequate  
10 firefighting facilities and services to address the needs of the development. All structures shall be  
11 designed and maintained consistent with the default wildfire safety standards of the Oregon  
12 Forestland-Urban Interface Fire Protection Act of 1997, as set forth in administrative rules of the  
13 [*State Forestry Department*] **Oregon Department of Natural Resources**.

14 (k) Any wells used to provide water for uses within the Skyline Forest Sustainable Development  
15 Area shall be sited to minimize impacts of groundwater use on Whychus Creek and Melvin Springs.

16 (3) The land uses described in subsection (2) of this section shall be allowed within the Skyline  
17 Forest Sustainable Development Area upon the satisfaction of the following conditions:

18 (a) The owner of the Skyline Forest and the Southern Conservation Tract transfers:

19 (A) The Skyline Conservation Tract to a land trust for the purpose of creating community  
20 forestlands; and

21 (B) The Southern Conservation Tract, whether to a single buyer or multiple buyers, to a land  
22 trust for the purpose of creating community forestlands or to a federal or state agency. However,  
23 the owner may choose to retain all or a portion of the Southern Conservation Tract, in which case  
24 the number of residential units allowed within the Skyline Forest Sustainable Development Area  
25 shall be limited as set forth in subsection (2)(a) of this section.

26 (b) The consideration for any transfer does not exceed the fair market value of the property as  
27 established by an appraisal based on the hypothetical condition or assumption that all development  
28 rights on the properties, whether actual or potential, have been extinguished as contemplated by  
29 subsection (7) of this section. The appraisal must comply with the Uniform Standards of Professional  
30 Appraisal Practice. The appraisal shall comply with the Uniform Appraisal Standards for Federal  
31 Land Acquisitions if:

32 (A) The land trust or state agency proposes, in part or in whole, to use federal funds to purchase  
33 the property and has demonstrated a reasonable likelihood that federal funds will be secured for the  
34 purchase; or

35 (B) The property is being conveyed to a federal agency.

36 (c) The Skyline Conservation Tract and the Southern Conservation Tract will be managed so  
37 that wildlife and recreational values are safeguarded and the overall forest health, including  
38 sustainable timber production and wildfire prevention, is maintained over the long term.

39 (d) The owner of the Skyline Forest Sustainable Development Area obtains the land use ap-  
40 provals required by subsection (5) of this section.

41 (4) The uses authorized by subsection (2) of this section shall be allowed as outright permitted  
42 uses by Deschutes County, following approval of the master plan required by subsection (5) of this  
43 section by Deschutes County. The uses allowed by subsection (2) of this section are allowed  
44 notwithstanding those provisions of ORS 215.700 to 215.780 relating to lot size and dwelling stan-  
45 dards on forestlands, those statewide land use planning goals relating to agricultural lands,

1 forestlands, public facilities and services, transportation and urbanization and those provisions of  
2 Deschutes County's comprehensive plan and land use regulations limiting uses of forestlands. Ap-  
3 proval of the master plan and land division applications required by subsection (5) of this section  
4 for the development and use of the Skyline Forest Sustainable Development Area and all associated  
5 road and utility corridors does not require exceptions to any statewide planning goal or amendment  
6 of any local comprehensive plan or land use regulation. Deschutes County shall apply only the  
7 provisions of this section as standards and criteria for an application for, or amendment to, a master  
8 plan or land division application or other development permit applications submitted pursuant to  
9 this section.

10 (5) The owner of the Skyline Forest Sustainable Development Area may submit an application  
11 to Deschutes County for approval of a master plan for the development and use of the area. The  
12 application must be submitted within five years after [*the effective date of chapter 636, Oregon Laws*  
13 *2009*] **June 29, 2009**, subject to the following:

14 (a) The master plan shall demonstrate compliance with subsection (2) of this section and include  
15 a tentative land division application to create the lots within the Skyline Forest Sustainable Devel-  
16 opment Area.

17 (b) Deschutes County shall process the master plan and all land division applications pursuant  
18 to the procedural review provisions of its local land use regulations. However, Deschutes County  
19 shall approve the master plan and any tentative or final land division applications if the applications  
20 are consistent with subsections (2) and (3) of this section. No additional land use or land division  
21 standards shall apply to the approval and development of the Skyline Forest Sustainable Develop-  
22 ment Area.

23 (c) Deschutes County shall condition final approval of the master plan and land division appli-  
24 cations on the execution of an agreement to record a conservation easement in accordance with  
25 subsection (2)(c) of this section, an agreement to transfer the Skyline Conservation Tract to a land  
26 trust for the purpose of creating community forestlands and, if applicable, an agreement to transfer  
27 all or a portion of the Southern Conservation Tract either to a land trust for the purpose of creating  
28 community forestland or to a federal or state agency. The agreements shall specify that recordation  
29 of the conservation easement, transfer of the Skyline Conservation Tract and transfer of all or a  
30 portion of the Southern Conservation Tract shall be contingent upon the following terms:

31 (A) The owner of the Skyline Forest Sustainable Development Area shall obtain all federal, state  
32 and local licenses, permits, rights and other entitlements necessary for development of the Skyline  
33 Forest Sustainable Development Area, each of which shall be final and no longer subject to appeal;

34 (B) The land trust or the federal or state agencies, as applicable, shall obtain adequate funding  
35 to purchase the Skyline Conservation Tract or the Southern Conservation Tract, as applicable, in  
36 accordance with subsection (3)(b) of this section; and

37 (C) The land trust or the federal or state agencies shall develop and implement management  
38 standards that provide reasonable assurance to the owner of the Skyline Forest Sustainable Devel-  
39 opment Area that the Skyline Conservation Tract and the Southern Conservation Tract will be  
40 managed to establish forest health, manage wildfire risk and maintain compatibility with the Skyline  
41 Forest Sustainable Development Area.

42 (d) The master plan and all associated land division plans shall govern development of the Sky-  
43 line Forest Sustainable Development Area in perpetuity and shall not expire. Regulations requiring  
44 the submittal of final plats within a specified time period following tentative plan approval shall not  
45 apply to the Skyline Forest Sustainable Development Area. The master plan may be amended at any



1 time following an administrative review by Deschutes County. Deschutes County shall approve the  
2 amendments if the amended master plan remains consistent with subsections (2) and (3) of this sec-  
3 tion.

4 (6) The Deschutes Land Trust, an Oregon nonprofit corporation, shall have a right of first op-  
5 portunity to purchase the Skyline Conservation Tract and the Southern Conservation Tract, and any  
6 purchase agreement shall provide a minimum of three years for the Deschutes Land Trust to obtain  
7 funding for any purchase. If at any time after two years from the date of any purchase agreement  
8 or the date of filing of a master plan under subsection (5) of this section, whichever is later, the  
9 Deschutes Land Trust has failed to demonstrate a reasonable likelihood it will be able to obtain the  
10 funds necessary to complete the purchase, the owner of the Skyline Conservation Tract and the  
11 Southern Conservation Tract may seek alternative buyers for any property that is the subject of a  
12 purchase agreement under this subsection. The Deschutes Land Trust will in good faith notify the  
13 owner of the Skyline Conservation Tract and the Southern Conservation Tract if at any time during  
14 the period of any purchase agreement the Deschutes Land Trust concludes it does not wish to  
15 complete the purchase or will be unable to obtain the necessary funding to complete the purchase.

16 (7) Development and construction of uses within the Skyline Forest Sustainable Development  
17 Area may proceed according to the approved master plan once the transfer of fee title of the Skyline  
18 Conservation Tract and, as applicable, all or a portion of the Southern Conservation Tract, is com-  
19 plete. Following transfer of fee title of the Skyline Conservation Tract and, as applicable, all or a  
20 portion of the Southern Conservation Tract, all development rights on the conveyed lands are ex-  
21 tinguished and the conveyed lands shall be thereafter managed as community forestlands or as fed-  
22 eral or state forestlands.

23 (8) At any time within five years after [*the effective date of chapter 636, Oregon Laws 2009*] **June**  
24 **29, 2009**, the owner of the Skyline Forest Sustainable Development Area may either file an appli-  
25 cation for a master plan pursuant to subsection (5) of this section, or submit written notice to  
26 Deschutes County and the Deschutes Land Trust stating the owner's intent to relinquish the devel-  
27 opment opportunities authorized by this section. Until the owner of the Skyline Forest Sustainable  
28 Development Area files a master plan application or submits a notice of relinquishment under this  
29 subsection, the owner may not divide, develop, obtain a lot of record determination or prohibit  
30 public access to any portion of the Skyline Forest. If the owner of the Skyline Forest Sustainable  
31 Development Area submits a notice of relinquishment under this subsection, or the owner allows the  
32 five-year time period to elapse without taking any action under this subsection, the development  
33 opportunities authorized by this section shall expire and the owner may divide, develop and prohibit  
34 public access to any portion of Skyline Forest pursuant to the laws in effect at that time.

35 (9) If the owner of the Skyline Forest Sustainable Development Area does not file a master plan  
36 within five years of [*the effective date of chapter 636, Oregon Laws 2009*] **June 29, 2009**, or if  
37 Deschutes County does not approve a master plan as provided in subsection (5) of this section within  
38 10 years of [*the effective date of chapter 636, Oregon Laws 2009*] **June 29, 2009**, then the provisions  
39 of subsection (2) of this section shall cease to have any force or effect.

40 (10) The development opportunities provided by this section are fully transferable and will run  
41 with the land in the event of a change of ownership of the Skyline Forest or all or a portion of the  
42 Southern Conservation Tract.

43 **SECTION 2157.** Section 10, chapter 636, Oregon Laws 2009, is amended to read:

44 **Sec. 10.** On or before February 1, 2013, the [*Department of Land Conservation and*  
45 *Development*] **Oregon Department of Natural Resources** shall make a report to the Seventy-

1 seventh Legislative Assembly, in the manner described in ORS 192.245:

2 (1) Evaluating the Oregon Transfer of Development Rights Pilot Program established in sections  
3 6 to 8, **chapter 636, Oregon Laws 2009** [of this 2009 Act]; and

4 (2) Recommending whether the pilot program should be continued, modified, expanded or termi-  
5 nated.

6 **SECTION 2158.** Section 1, chapter 11, Oregon Laws 2010, is amended to read:

7 **Sec. 1.** (1) Notwithstanding ORS 274.705 to 274.860 or 520.240, any form of leasing for purposes  
8 of exploration, development or production of oil, gas or sulfur is prohibited in the territorial sea.

9 (2) The provisions of subsection (1) of this section do not apply:

10 (a) To exploration for scientific or academic research purposes, or geologic survey activities of  
11 the [State Department of Geology and Mineral Industries] **Oregon Department of Natural Re-**  
12 **sources.**

13 (b) In the event the Governor determines that an oil embargo substantially affects the supply  
14 of oil to the United States.

15 (3) Any exploration for oil, gas or sulfur in the territorial sea allowed under ORS 274.705 to  
16 274.860 by the State Land Board or the department [of State Lands] must conform to standards of  
17 the Oregon Ocean Resources Management Program established under ORS 196.405 to 196.515.

18 (4) For the purposes of this section:

19 (a) "Gas" means:

20 (A) All natural gas, gas hydrates and all fluid hydrocarbons not defined as oil in this subsection;  
21 and

22 (B) Condensate originally in the gaseous phase in the reservoir.

23 (b) "Oil" means crude petroleum oil and all other hydrocarbons produced in liquid form by or-  
24 dinary production methods, regardless of gravity, other than liquid hydrocarbons originally in a  
25 gaseous phase in the reservoir.

26 (c) "Territorial sea" has the meaning given that term in ORS 196.405.

27 **SECTION 2159.** Section 1, chapter 63, Oregon Laws 2010, is amended to read:

28 **Sec. 1.** (1) Notwithstanding ORS 543.440, and subject to subsections (2) and (3) of this section,  
29 a license issued for a project under ORS 543.010 to 543.610 shall continue in effect following a  
30 transfer of the license, rights or property of the project to a county if:

31 (a) The project is located in the Umatilla Basin;

32 (b) The transfer of the license, rights or property is to Umatilla County;

33 (c) The transfer occurred through the foreclosure of a tax lien; and

34 (d) The transfer occurred on or before January 1, 2010.

35 (2) The license for a project described in subsection (1) of this section, and any water right that  
36 is included in the license, shall terminate:

37 (a) Upon Umatilla County commencing to operate the project for purposes of hydroelectric  
38 generation;

39 (b) Two years after transfer of the license, rights or property of the project to Umatilla County,  
40 unless the county has transferred all county-held licenses, rights and property of the project to a  
41 new owner that is unaffiliated with the county; or

42 (c) If a new owner of the project fails to comply with subsection (3) of this section prior to op-  
43 erating the project.

44 (3) If a project is transferred as described in subsection (2)(b) of this section:

45 (a) The project license authorizing the use of water by the project for hydroelectric purposes,

1 and any water right included in the license, is subordinate in priority to any in-stream water right  
2 for which a water right certificate is issued on or before [*the effective date of this 2010 Act*] **March**  
3 **18, 2010**.

4 (b) Prior to the new owner operating the project, the [*Water Resources Department*] **Oregon**  
5 **Department of Natural Resources** shall modify the conditions of the license, and of any water  
6 right included in the license, to include an implementation plan for fish passage and fish screening  
7 approved by the [*State Department of Fish and Wildlife*] **department** as described in paragraph (c)  
8 of this subsection.

9 (c) The new owner of the project shall develop an implementation plan for fish passage and fish  
10 screening for the project. The implementation plan shall identify project repairs or modifications  
11 necessary for the project to meet the fish passage and fish screening criteria of the [*State Depart-*  
12 *ment of Fish and Wildlife*] **department**. The new owner shall submit the plan to the [*State Depart-*  
13 *ment of Fish and Wildlife*] **department** for approval. The department shall consult with the  
14 Confederated Tribes of the Umatilla Indian Reservation before approving or disapproving a submit-  
15 ted plan. [*Upon approval of a plan by the State Department of Fish and Wildlife, the department shall*  
16 *notify the Water Resources Department to*] **Upon approval of a plan, the department shall** incor-  
17 porate the approved plan as a condition of the project license and of any water right included in the  
18 license.

19 (d) An implementation plan may contain provisions allowing the new owner to operate the  
20 project while project repairs or modifications are in progress. An implementation plan shall include,  
21 but need not be limited to, the following:

22 (A) Provisions for the protection of salmonids and lamprey.

23 (B) Interim measures identified by the [*State Department of Fish and Wildlife*] **department** to  
24 reduce entrainment and improve fish passage. The implementation plan shall require that the new  
25 owner install the interim measures prior to the new owner operating the project.

26 (C) A schedule for making repairs or modifications that provides for all of the repairs and  
27 modifications to be completed no later than four years after the project resumes operation.

28 (D) Provisions for monitoring, reporting and site access to the extent the [*State Department of*  
29 *Fish and Wildlife*] **department** considers necessary to ensure compliance with the implementation  
30 plan.

31 (E) Procedures for immediately addressing significant fish mortality, or significant delay in fish  
32 passage, resulting from project operations. The procedures shall include, at a minimum, provisions  
33 for giving notice to the [*State Department of Fish and Wildlife and Water Resources Department*]  
34 **department**, and for suspending project operations until the cause of the mortality or delay is  
35 identified and remedied.

36 (4) Notwithstanding any provision of a license for a project described in subsection (1) of this  
37 section, the license is not subject to termination based upon a failure to make beneficial use of  
38 water:

39 (a) During the period of any legal proceeding for the foreclosure of a tax lien;

40 (b) During a period, not exceeding two years, in which Umatilla County owns the project; or

41 (c) During a period, not exceeding five years following transfer of the license, rights or property  
42 of the project from Umatilla County to a new owner, if the new owner is actively engaged in:

43 (A) Attempting to obtain government authorization for operation of the project; or

44 (B) Attempting to install interim measures to reduce entrainment and improve fish passage un-  
45 der an implementation plan.

(5) If the water right that is included in the license of a project described in subsection (1) of this section is terminated based upon a failure to make beneficial use of water, the [*Water Resources*] department shall convert the water right to an in-stream water right as provided under ORS 543A.305.

(6) Subject to subsections (1) to (4) of this section, a new owner that acquires a license, right or property of a project described in subsection (1) of this section following Umatilla County ownership of the license, right or property is considered a successor or assignee of an original licensee for purposes of ORS 543.440.

**SECTION 2160.** ORS 541.390 is amended to read:

541.390. In addition to the duties conferred on the Natural Resources Division of the State Department of Agriculture under ORS 561.400 and 568.210 to 568.808 and 568.900 to 568.933, the division shall:

(1) In cooperation with the [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Resources**, provide appropriate personnel who, under the direction of the [*board*] **Oregon Department of Natural Resources**, shall:

(a) Serve as community advisors to cooperatively develop watershed enhancement projects with volunteers; and

(b) Cooperatively evaluate watershed enhancement projects with those responsible for project implementation.

(2) Provide technical assistance to individuals responsible for implementation of a watershed enhancement project.

(3) Work with the [*Oregon Watershed Enhancement Board*] **Oregon Department of Natural Resources** to coordinate the implementation of enhancement projects with the activities of other agencies, including but not limited to, those state and federal agencies participating in coordinated resource management planning.

**REPEALS**

**SECTION 2161.** ORS 197.030, 197.035, 197.075, 197.085, 197.095, 197.810, 197.815, 197.832, 273.071, 273.161, 273.165, 273.171, 273.175, 273.183, 390.005, 390.114, 390.117, 390.127, 390.131, 390.200, 390.231, 390.295, 496.080, 496.090, 496.108, 496.112, 496.116, 496.121, 496.300, 496.306, 496.311, 496.815, 508.326, 516.020, 516.080, 516.090, 516.120, 516.130, 516.133, 517.735, 522.275, 526.008, 526.009, 526.016, 526.031, 526.054, 526.600, 526.610, 526.615, 526.620, 526.625, 526.632, 526.650, 526.660, 526.670, 526.730, 536.022, 536.025, 536.026, 536.027, 536.032, 536.037, 536.039, 537.249, 537.895, 541.360, 541.362 and 541.363 are repealed.

**UNIT CAPTIONS**

**SECTION 2162.** The unit captions used in this 2011 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 2011 Act.

**OPERATIVE DATE**

**SECTION 2163.** (1) Sections 1 to 27, 412 to 421, 577 to 584, 902 to 911, 1091 to 1098a, 1113

1 to 1121, 1258 to 1268, 1750 to 1757, 1781 to 1790 and 2082 to 2090 of this 2011 Act, the amend-  
2 ments to statutes by sections 28 to 411, 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122  
3 to 1257, 1269 to 1749k, 1758 to 1780, 1791 to 2081 and 2091 to 2160 of this 2011 Act and the re-  
4 peal of ORS 197.030, 197.035, 197.075, 197.085, 197.095, 197.810, 197.815, 197.832, 273.071, 273.161,  
5 273.165, 273.171, 273.175, 273.183, 390.005, 390.114, 390.117, 390.127, 390.131, 390.200, 390.231,  
6 390.295, 496.080, 496.090, 496.108, 496.112, 496.116, 496.121, 496.300, 496.306, 496.311, 496.815,  
7 508.326, 516.020, 516.080, 516.090, 516.120, 516.130, 516.133, 517.735, 522.275, 526.008, 526.009,  
8 526.016, 526.031, 526.054, 526.600, 526.610, 526.615, 526.620, 526.625, 526.632, 526.650, 526.660,  
9 526.670, 526.730, 536.022, 536.025, 536.026, 536.027, 536.032, 536.037, 536.039, 537.249, 537.895,  
10 541.360, 541.362 and 541.363 by section 2161 of this 2011 Act become operative on July 1, 2012.

11 (2) Notwithstanding subsection (1) of this section:

12 (a) The Governor may appoint the Director of the Oregon Department of Natural Re-  
13 sources under section 2 of this 2011 Act and the members of the Oregon Natural Resources  
14 Commission under section 11 of this 2011 Act before the operative date specified in sub-  
15 section (1) of this section; and

16 (b) Once appointed, the director and the commission may adopt rules before the operative  
17 date specified in subsection (1) of this section for the purpose of administering sections 1 to  
18 27, 412 to 421, 577 to 584, 902 to 911, 1091 to 1098a, 1113 to 1121, 1258 to 1268, 1750 to 1757, 1781  
19 to 1790 and 2082 to 2090 of this 2011 Act, the amendments to statutes by sections 28 to 411,  
20 422 to 576, 585 to 901, 912 to 1090, 1099 to 1112, 1122 to 1257, 1269 to 1749k, 1758 to 1781, 1791  
21 to 2081 and 2091 to 2160 of this 2011 Act and the repeal of ORS 197.030, 197.035, 197.075,  
22 197.085, 197.095, 197.810, 197.815, 197.832, 273.071, 273.161, 273.165, 273.171, 273.175, 273.183,  
23 390.005, 390.114, 390.117, 390.127, 390.131, 390.200, 390.231, 390.295, 496.080, 496.090, 496.108,  
24 496.112, 496.116, 496.121, 496.300, 496.306, 496.311, 496.815, 508.326, 516.020, 516.080, 516.090,  
25 516.120, 516.130, 516.133, 517.735, 522.275, 526.008, 526.009, 526.016, 526.031, 526.054, 526.600,  
26 526.610, 526.615, 526.620, 526.625, 526.632, 526.650, 526.660, 526.670, 526.730, 536.022, 536.025,  
27 536.026, 536.027, 536.032, 536.037, 536.039, 537.249, 537.895, 541.360, 541.362 and 541.363 by section  
28 2161 of this 2011 Act.

29  
30 **EMERGENCY CLAUSE**

31  
32 **SECTION 2164.** This 2011 Act being necessary for the immediate preservation of the  
33 public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes  
34 effect on its passage.  
35