

Enrolled
Senate Bill 58

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber for Department of State Lands)

CHAPTER

AN ACT

Relating to the Oregon Natural Areas Plan; creating new provisions; amending ORS 273.563, 273.566, 273.576, 273.578, 273.581, 273.586, 273.591, 308A.706, 352.239, 390.124, 496.176, 527.710 and 564.110; repealing ORS 273.571; and limiting expenditures.

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

SECTION 1. (1) **The Natural Heritage Advisory Council is abolished. On the effective date of this 2011 Act, the tenure of office of the members of the Natural Heritage Advisory Council ceases.**

(2) **The duties, functions and powers of the Natural Heritage Advisory Council are imposed upon, transferred to and vested in the State Parks and Recreation Department.**

(3) **The duties, functions and powers of the State Land Board relating to the Oregon Natural Areas Plan and the Natural Areas Program are imposed upon, transferred to and vested in the State Parks and Recreation Commission and the State Parks and Recreation Department as provided in the amendments to ORS 273.563, 273.566, 273.576, 273.578, 273.581, 273.586, 273.591, 390.124 and 527.710 by sections 10 to 16, 19 and 21 of this 2011 Act and the repeal of ORS 273.571 by section 23 of this 2011 Act.**

SECTION 2. (1) **The Natural Heritage Advisory Council shall deliver to the State Parks and Recreation Department all records and property within the jurisdiction of the Natural Heritage Advisory Council that relate to the duties, functions and powers transferred by section 1 of this 2011 Act.**

(2) **The State Parks and Recreation Director shall take possession of the records and property within the jurisdiction of the Natural Heritage Advisory Council that relate to the duties, functions and powers transferred by section 1 of this 2011 Act.**

(3)(a) **The State Land Board shall deliver to the State Parks and Recreation Commission all records and property within the jurisdiction of the State Land Board that relate to the duties, functions and powers transferred to the commission by section 1 of this 2011 Act.**

(b) **The State Land Board shall deliver to the State Parks and Recreation Department all records and property within the jurisdiction of the State Land Board that relate to the duties, functions and powers transferred to the department by section 1 of this 2011 Act.**

(4)(a) **The chairperson of the State Parks and Recreation Commission shall take possession of the records and property within the jurisdiction of the State Land Board that relate to the duties, functions and powers transferred to the commission by section 1 of this 2011 Act.**

(b) The State Parks and Recreation Director shall take possession of the records and property within the jurisdiction of the State Land Board that relate to the duties, functions and powers transferred to the department by section 1 of this 2011 Act.

(5)(a) The Governor shall resolve any dispute between the Natural Heritage Advisory Council and the State Parks and Recreation Department relating to transfers of records and property under this section, and the Governor's decision is final.

(b) The Governor shall resolve any dispute between the State Land Board and the State Parks and Recreation Commission or the State Parks and Recreation Department relating to transfers of records and property under this section, and the Governor's decision is final.

SECTION 3. (1)(a) The unexpended balances of amounts authorized to be expended by the State Land Board 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 to the State Parks and Recreation Commission by section 1 of this 2011 Act are appropriated and transferred to and are available for expenditure by the State Parks and Recreation Commission for the biennium beginning July 1, 2011, for the purpose of administering and enforcing the duties, functions and powers transferred to the commission by section 1 of this 2011 Act.

(b) The unexpended balances of amounts authorized to be expended by the State Land Board 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 to the State Parks and Recreation Department by section 1 of this 2011 Act are appropriated and transferred to and are available for expenditure by the State Parks and Recreation Department for the biennium beginning July 1, 2011, for the purpose of administering and enforcing the duties, functions and powers transferred to the department by section 1 of this 2011 Act.

(2) The unexpended balances of amounts authorized to be expended by the Natural Heritage Advisory Council 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 to the State Parks and Recreation Department by section 1 of this 2011 Act are appropriated and transferred to and are available for expenditure by the State Parks and Recreation Department for the biennium beginning July 1, 2011, for the purpose of administering and enforcing the duties, functions and powers transferred to the department by section 1 of this 2011 Act.

(3) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the State Land Board remain applicable to expenditures by the State Parks and Recreation Commission and the State Parks and Recreation Department under this section.

(4) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the Natural Heritage Advisory Council remain applicable to expenditures by the State Parks and Recreation Department under this section.

SECTION 4. The transfer of duties, functions and powers to the State Parks and Recreation Commission and the State Parks and Recreation Department by section 1 of this 2011 Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the State Parks and Recreation Commission or the State Parks and Recreation Department, as appropriate, is substituted for the State Land Board or the Natural Heritage Advisory Council in the action, proceeding or prosecution.

SECTION 5. (1) Nothing in sections 1 to 7 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 1 of this 2011 Act. The State Parks and Recreation Department or the State Parks and Recreation Commission may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the State Land Board or the Natural Heritage Advisory Council legally incurred under contracts, leases and business transactions executed, entered into or begun before the effective date of this 2011 Act accruing under or with respect to the duties, functions and powers transferred by section 1 of this 2011 Act are transferred to the State Parks and Recreation Department or the State Parks and Recreation Commission. For the purpose of succession to these rights and obligations, the State Parks and Recreation Department is a continuation of the Natural Heritage Advisory Council and not a new authority.

SECTION 6. Notwithstanding the transfer of duties, functions and powers by section 1 of this 2011 Act, the rules of the State Land Board with respect to such duties, functions or powers that are in effect on the effective date of section 1 of this 2011 Act continue in effect until superseded or repealed by rules of the State Parks and Recreation Commission. References in such rules of the State Land Board to the State Land Board or an officer or employee of the State Land Board are considered to be references to the State Parks and Recreation Commission or an officer or employee of the State Parks and Recreation Commission.

SECTION 7. (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, in the context of the duties, functions and powers transferred to the State Parks and Recreation Department by section 1 of this 2011 Act, reference is made to the Natural Heritage Advisory Council, or to an officer or employee of the Natural Heritage Advisory Council, whose duties, functions or powers are transferred to the State Parks and Recreation Department by section 1 of this 2011 Act, the reference is considered to be a reference to the State Parks and Recreation Department or an officer or employee of the State Parks and Recreation Department who by this 2011 Act is charged with carrying out such duties, functions and powers.

(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, in the context of the duties, functions and powers transferred to the State Parks and Recreation Commission by section 1 of this 2011 Act, reference is made to the State Land Board, or to an officer or employee of the State Land Board, whose duties, functions or powers are transferred to the State Parks and Recreation Commission by section 1 of this 2011 Act, the reference is considered to be a reference to the State Parks and Recreation Commission or an officer or employee of the State Parks and Recreation Commission who by this 2011 Act is charged with carrying out such duties, functions and powers.

SECTION 8. Section 9 of this 2011 Act is added to and made a part of ORS 273.563 to 273.591.

SECTION 9. (1) To aid and advise the State Parks and Recreation Director in the performance of the functions related to the Natural Areas Program, the director may establish a natural areas advisory committee.

(2) The advisory committee may assist the State Parks and Recreation Department:

(a) In the development of policy for the Natural Areas Program through the review and approval of the Oregon Natural Areas Plan;

(b) By reviewing nominations for registration and the voluntary dedication of natural areas, and instruments of dedication for such areas;

(c) In providing recommendations to the State Parks and Recreation Commission, State Land Board, State Board of Forestry, State Fish and Wildlife Commission, State Board of Higher Education and Oregon Transportation Commission regarding areas under their respective jurisdictions that are appropriate for dedication; and

(d) In advising the State Parks and Recreation Commission in the adoption of rules that may be considered necessary in carrying out ORS 273.563 to 273.591.

(3) Members of the advisory committee are not entitled to compensation, but in the discretion of the director may be reimbursed from funds available to the department 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.

SECTION 10. ORS 273.563 is amended to read:

273.563. As used in ORS 273.563 to 273.591, unless the context requires otherwise:

(1) "Agency" means a local, state or federal agency, board, commission or department.

(2) "*Board*" means the State Land Board.]

(3) (2) "Candidate natural area" means a natural resource area that may be considered for registration or dedication.

(4) (3) "Commodity" means timber, minerals, livestock, agricultural products or any other product of the land which is an important economic resource.

(5) "*Council*" means the Natural Heritage Advisory Council established in ORS 273.571.]

(6) (4) "Data bank" means the Natural Areas Program [element] inventory of [element] **natural heritage resources** classification, data analysis, priority setting, owner and other data maintained by the Institute for Natural Resources under ORS 352.239.

(7) (5) "Dedicate" means the formal recognition and protection of a natural area for conservation purposes.

(8) "*Elements*" means both the natural heritage resources and the special species.]

(9) (6) "Instrument" means any written document intended to convey an interest in real property under ORS 93.710, or an agreement between parties according to the Natural Areas Program or the Oregon Natural Areas Plan.

(10) (7) "Natural area" means a unit of land or water or both that may be considered for dedication under ORS 273.563 to 273.591 and that has substantially retained its natural character, or, if altered in character, shall in addition to its natural heritage resource values, be valuable as habitat for plant and animal species or for the study and appreciation of the natural features.

(11) (8) "Natural heritage resources" means the terrestrial ecosystem types, aquatic ecosystem types and unique geologic types as defined in the Oregon Natural Areas Plan or a unit of land or water that contains a natural resource.

(12) (9) "Plan" means the Oregon Natural Areas Plan established under ORS [273.576] **273.578**, which governs the Natural Areas Program in selecting **natural** areas for conservation.

(13) (10) "Program" means the Natural Areas Program as established in ORS 273.566.

(14) (11) "Register" means the Oregon Register of Natural [*Heritage*] Areas established under ORS 273.581.

(15) (12) "Special species" means those species of plants and animals determined by the [council] **State Parks and Recreation Department** to be significant in value in a state natural area and defined in the Oregon Natural Areas Plan.

(16) (13) "State natural area" means an area that an individual, organization or public agency dedicates as a state natural area under ORS 273.586.

SECTION 11. ORS 273.566 is amended to read:

273.566. (1) The Legislative Assembly finds that many valuable natural heritage [elements] **resources** are represented in natural areas that can be protected through the voluntary cooperation of private landowners and public land managers. These areas will comprise a discrete and limited system of natural areas that are selected to represent the full range of Oregon's natural heritage resources. These areas shall have substantially retained their natural character, or, if altered in character, shall in addition to their natural heritage resource values be valuable as habitat for plant and animal species or for the study and appreciation of the natural features. As such they will be living museums for scientific research, educational purposes and nature interpretation.

(2) The Legislative Assembly also finds that it is necessary to establish a process and means for public and private sector cooperation in the development of this system of [conservation] **state natural** areas. Private landowners and public land managers should be encouraged to voluntarily participate in the program through conservation activities that benefit all Oregonians.

(3) In order to [assure] **ensure** that [conservation] activities **related to natural heritage resources** cause the minimum of conflict with other resource uses and that they are cost effective, the Legislative Assembly finds that the [Natural Heritage Advisory Council] **State Parks and Recreation Department** should provide a specific framework for [conservation] decision making **related to natural heritage resources** through a classification and planning process known as the Natural Areas Program. Future state natural areas should avoid unnecessary duplication of already protected natural heritage [elements] **resources**. Each [conservation] decision should address alternative methods of accomplishing the same purpose and should consider cost effectiveness.

(4) The Legislative Assembly recognizes that there is a need for systematic, accessible information concerning the locations of the resources of Oregon's natural areas, including special plant and animal species, native terrestrial ecosystems, aquatic ecosystems[,] and geologic features, and especially including the **natural** areas already protected that contain these [elements] **resources**.

SECTION 12. ORS 273.576 is amended to read:

273.576. (1)(a) [*The State Land Board, with the assistance of the Natural Heritage Advisory Council, shall maintain a natural heritage office to*] **The State Parks and Recreation Department shall** provide assistance in the selection and nomination of **natural** areas containing natural heritage [elements] **resources** for registration or dedication.

(b) The Oregon Natural Areas Plan established by ORS 273.578 shall govern the Natural Areas Program in the conduct of activities to create and manage a system of state natural areas that are complementary to and consistent with the research natural area program on federal lands in Oregon. This plan lists the natural heritage [elements] **resources** that should be represented on the Oregon Register of Natural [*Heritage*] Areas and in state natural areas and provides criteria for the selection and approval of candidate natural areas for registration and dedication under ORS 273.563 to 273.591. In selecting state natural areas, the **department shall give primary consideration to** inclusion of natural heritage resources, and especially those [*which*] **natural heritage resources that** are not adequately protected elsewhere[, *shall be given primary consideration*]. Inclusion and protection of special species shall be an important additional consideration in selecting state natural areas, and wherever possible, individual species shall be protected in association with natural heritage resources or in assemblages of those species determined by the [*council*] **department** to have special significance.

(2) The [*board*] **department** may advise owners of state natural areas concerning the management and use of such areas and may make available to state, federal and local agencies that manage lands within Oregon, information concerning the conservation of natural heritage [elements] **resources**.

(3) The [*board*] **department** may apply for and accept grants, contributions and assistance from any federal, state or local government agency and any foundation, individual or organization for the purpose of carrying out the provisions of ORS 273.563 to 273.591.

SECTION 13. ORS 273.578 is amended to read:

273.578. (1) The Sixty-first Legislative Assembly approves the Oregon Natural Areas Plan submitted under ORS 273.576.

(2) The [*State Land Board*] **State Parks and Recreation Commission** may review and approve or disapprove any modification to the **Oregon Natural Areas** Plan submitted by the [*Natural Heritage Advisory Council*] **State Parks and Recreation Department**.

SECTION 14. ORS 273.581 is amended to read:

273.581. (1) The [*Natural Heritage Advisory Council*] **State Parks and Recreation Department** shall maintain a state register of **natural** areas containing significant natural heritage [elements] **resources** to be called the Oregon Register of Natural [*Heritage*] Areas.

(2) The [*council*] **department** shall from time to time identify **natural** areas from the natural heritage data bank that qualify for registration. Priority shall be based on the Oregon Natural Areas Plan and shall generally be given to those [elements] **resources** that are rarest, most threatened or underrepresented in the conservation system on a statewide basis. State natural areas shall not unnecessarily duplicate resources or special species already adequately protected by other methods

of land protection. Whenever feasible, **natural** areas that qualify for registration shall be located on lands that have been allocated primarily to special noncommodity uses.

(3) The [council] **department** shall review each registration proposal, including the landowner's written permission for registration if the **natural** area is located on privately owned land.

(4) After review **and recommendation** by the [council, the State Land Board] **department, the State Parks and Recreation Commission** may place [sites] **natural areas** onto the register or remove [sites] **natural areas** from the register.

(5) A voluntary management agreement may be developed between the [board] **department** and the owners of the [sites] **natural areas** on the register.

SECTION 15. ORS 273.586 is amended to read:

273.586. (1) A private individual or organization that is the owner of any registered natural area may voluntarily agree to dedicate that area as a state natural area by executing with the [State Land Board] **State Parks and Recreation Department** an instrument of dedication. The instrument of dedication shall be effective upon its recording in the real property records of the office of the clerk of the county in which any or all of the state natural area is located.

(2) Any public agency may dedicate lands under the provisions of ORS 273.563 to 273.591 following the providing of opportunity for adequate public notice and hearing by the agency. The Oregon Transportation Commission, the State Fish and Wildlife Commission, the State Board of Forestry, the State Board of Higher Education, the State Parks and Recreation Commission and the State Land Board shall, with the advice and assistance of the [Natural Heritage Advisory Council] **department**, establish procedures for the dedication of state natural areas on land, the title of which is held by the State of Oregon, and which is under that agency's management and control.

(3) The instrument of dedication shall contain any information or provisions as the private owner, organization or agency and [council] **department** consider necessary to complete the dedication.

(4) Dedication of a state natural area may be terminated as follows:

(a) The dedication of a state natural area by a public agency may be terminated following the providing of opportunity for adequate public notice and hearing and a finding by that agency of an imperative and unavoidable necessity, or a finding by that agency, with the approval of the [council] **department**, that the state natural area is no longer needed according to the guidelines of the Oregon Natural Areas Plan.

(b) The dedication of a state natural area by a private individual or organization may be terminated by the private individual or organization after the [council] **department** is assured that there has been compliance with the procedures required by the terms of the dedication instrument.

(c) The dedication of a state natural area may be terminated by the [board] **State Parks and Recreation Commission** upon the advice of the [council] **department** if the area is no longer needed according to the guidelines of the plan, or has permanently lost its natural character.

SECTION 16. ORS 273.591 is amended to read:

273.591. The Natural Areas Program Account is established within the General Fund of the State Treasury. All moneys received by the [State Land Board] **State Parks and Recreation Department** for the purposes of ORS 273.563 to 273.591 shall be paid into the State Treasury and credited to the account. All moneys in the account are continuously appropriated for the use of the [board] **department** in carrying out the provisions of ORS 273.563 to 273.591.

SECTION 17. ORS 308A.706 is amended to read:

308A.706. (1) Notwithstanding that land is disqualified from special assessment, the additional taxes described under ORS 308A.703 may not be imposed and shall remain a potential tax liability if, as of the date the disqualification is taken into account on the assessment and tax roll, the land is any of the following:

(a) Disqualified exclusive farm use zone farmland or nonexclusive farm use zone farmland that:

(A) Is not being used as farmland; and

(B) Is not being used for industrial, commercial, residential or other use that is incompatible with a purpose to return the land to farm use.

(b) Acquired by a governmental agency or body as a result of an exchange of the land for land of approximately equal value held by the governmental agency or body.

(c) Acquired and used for natural heritage purposes and all of the following additional requirements are met:

(A) The land is registered under ORS 273.581 as a state natural area;

(B) The land is acquired by a private nonprofit corporation;

(C) The land is retained by the corporation, or transferred to the state by the corporation, for the purpose of educational, scientific and passive recreational use consistent with conservation of the ecological values and natural heritage [*elements*] **resources** of the area;

(D) If the land is retained by the corporation, it remains open to the public without charge for the uses described in subparagraph (C) of this paragraph; and

(E) The land is managed pursuant to a voluntary management agreement under ORS 273.581 (5).

(d) Qualified for special assessment under:

(A) ORS 308A.062, relating to farm use special assessment of land in an exclusive farm use zone;

(B) ORS 308A.068, relating to farm use special assessment of nonexclusive farm use zone farmland;

(C) ORS 321.358, relating to classification as designated forestland in western Oregon;

(D) ORS 321.839, relating to classification as designated forestland in eastern Oregon;

(E) ORS 321.709, relating to qualification as small tract forestland;

(F) ORS 308A.424, relating to wildlife habitat special assessment; or

(G) ORS 308A.456, relating to conservation easement special assessment.

(e) Disqualified nonexclusive farm use zone farmland, to the extent the additional taxes are deferred or abated as provided in ORS 308A.119.

(2) This section does not apply to the additional taxes imposed under ORS 308A.703 (4)(a) for the number of years during which farm use special assessment was granted pursuant to a remediation plan as defined in ORS 308A.053.

(3) In any case where the additional tax is deferred under the provisions of this section but may subsequently be imposed under ORS 308A.712, the county assessor shall continue to enter the notation "potential additional tax liability" on the assessment and tax roll.

SECTION 18. ORS 352.239 is amended to read:

352.239. (1) There is created within the Oregon University System the Institute for Natural Resources. The Institute for Natural Resources shall be administered by Oregon State University and other institutions in the Oregon University System.

(2) The Institute for Natural Resources shall serve the following purposes:

(a) Serve as a clearinghouse for scientifically based natural resources information.

(b) Provide scientifically based natural resources information to the public in integrated and accessible formats.

(c) Coordinate efforts with other state agencies and bodies to provide natural resources information to the public in a comprehensive manner.

(d) Facilitate and conduct research.

(e) Provide information and technical tools to assist decision-making on natural resources issues.

(f) Assist the [*State Land Board*] **State Parks and Recreation Commission** in carrying out the Natural Areas Program by maintaining a data bank that contains a classification of natural heritage [*elements*] **resources** and an inventory of the locations of the [*elements*] **resources**. At a minimum, the institute shall record in the data bank the location of state natural areas, the natural heritage [*elements*] **resources** in those areas, sites that are inhabited by rare species, and lists that rank by rarity species, plant communities and ecosystem types. The institute shall make the information included in the data bank available to private landowners, researchers and local, state and federal agencies.

(g) Assist the State Parks and Recreation Department in carrying out the Natural Areas Program by reviewing and providing recommendations on proposals for registration and dedication of natural areas.

(3) When making observations on private land, an employee of an institution in the Oregon University System who is compiling information for the Natural Areas Program pursuant to subsection (2)(f) of this section must obtain permission from the landowner before entering the information into the data bank.

(4) Using existing resources, state agencies designated by the Governor shall enter into a memorandum of understanding, or other agreement deemed appropriate by the Governor, with the institute that defines and clarifies the roles and responsibilities of the agencies in order to prevent duplication of effort and to ensure that agency resources are used efficiently.

(5) State agencies may contract with the institute to fulfill agency needs regarding the collection, storage, integration, analysis, dissemination and monitoring of natural resources information and natural resources research and training.

SECTION 19. ORS 390.124 is amended to read:

390.124. (1) In accordance with any applicable provision of ORS chapter 183, the State Parks and Recreation Commission may adopt rules necessary to carry out the duties, functions and powers imposed by law upon the commission and the State Parks and Recreation Department. Rules adopted pursuant to this section shall be duly entered in the minutes and records of the commission.

(2) The commission may adopt rules that assess reasonable charges, including fee reductions, waivers and exemptions, for the use of areas established and maintained by the department. However, the commission shall authorize the use of any state park, individual campsite or day use fee area without charge:

(a) Upon the showing of proper identification, by a person maintaining a foster home, as defined by ORS 418.625, and the person's children, when accompanied by a foster child residing in the home.

(b) Upon the showing of proper identification, by a person maintaining a developmental disability child foster home, as defined by ORS 443.830, and the person's children, when accompanied by a foster child residing in the home.

(c) If a deed to, lease of or contract to use the property used as a state park, campsite or day use fee area prohibits the charging of fees for use of the property.

(d) Upon the showing of proper identification, by either a disabled veteran or a person on leave from military active duty status on Memorial Day, Independence Day or Veterans Day.

(3) The commission shall report to an appropriate committee of the Legislative Assembly, no later than January 31 of each odd-numbered year, on the fee reductions, waivers and exemptions adopted by rule by the commission pursuant to subsection (2) of this section.

(4) The commission shall adopt any rules pursuant to ORS chapter 183 that the commission considers necessary to carry out ORS 273.563 to 273.591.

SECTION 20. ORS 496.176 is amended to read:

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

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

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

(2) The commission, by rule, may add or remove any wildlife species from either list, or change the status of any species on the lists, upon a determination that the species is or is not a threatened species or an endangered species.

(3) A determination that a species is a threatened species or an endangered species shall be based on documented and verifiable scientific information about the species' biological status. To list a species as a threatened species or an endangered species under ORS 496.004 and 496.171 to 496.182, the commission shall determine that the natural reproductive potential of the species is in danger of failure due to limited population numbers, disease, predation or other natural or human actions affecting its continued existence and, to the extent possible, assess the relative impact of

human actions. In addition, the commission shall determine that one or more of the following factors exists:

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

(b) That overutilization for commercial, recreational, scientific or educational purposes is occurring or is likely to occur; or

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

(4) Determinations required by subsection (3) of this section shall be made by the commission on the basis of verifiable scientific and other data after consultation with federal agencies, other interested state agencies, [*the Natural Heritage Advisory Council,*] other states having a common interest in the species and interested persons and organizations.

(5) Any person may petition the commission to, by rule, add, remove or change the status of a species on the list:

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

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

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

(d) A final determination by the commission concerning the action requested in a petition shall be provided within one year from the date of receipt of the petition, with the option for an additional 12-month extension of time to complete the listing if the commission determines that limited information or other appropriate considerations require the extension.

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

(6) The commission may determine not to list a species as a threatened species or an endangered species in any of the following cases:

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

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

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

(7) Notwithstanding subsections (1) to (5) of this section, the commission shall take emergency action to add a species to the list of threatened species or endangered species if it determines there is a significant threat to the continued existence of the species within the state:

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

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

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

(9) Notwithstanding the provisions of this section, the commission:

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

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

SECTION 21. ORS 527.710 is amended to read:

527.710. (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the State Board of Forestry shall adopt, in accordance with applicable provisions of ORS chapter 183, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall ensure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

- (a) Air quality;
- (b) Water resources, including but not limited to sources of domestic drinking water;
- (c) Soil productivity; and
- (d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973 as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the inventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a) of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat improvement tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060, 315.134 and ORS chapters 496, 498, 501, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.480 to 358.545, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99-663 and ORS 196.110 and 196.150;

(f) Removal and fill, *conservation and conservation tax incentive* programs administered by *[the State Land Board and]* the Department of State Lands under ORS 196.800 to 196.900 *[and 273.553 to 273.591]*;

(g) Federal Safe Drinking Water Act programs administered by the Oregon Health Authority under ORS 448.273 to 448.990;

(h) Conservation and conservation tax incentive programs administered by the [*Natural Heritage Advisory Council*] **State Parks and Recreation Department** under ORS [273.553] **273.563** to 273.591;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308A.300 to 308A.330;

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540; and

(k) Pesticide control programs administered by the State Department of Agriculture under ORS chapter 634.

(5) In carrying out the provisions of subsection (4) of this section, the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630.

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forestland and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7)(a) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630.

(b) The State Forestry Department shall enter into agreements with appropriate state agencies for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and water quality.

(8) If, based upon the study completed pursuant to section 15 (2)(f), chapter 919, Oregon Laws 1991, the board determines that additional rules are necessary to protect forest resources pursuant to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall include a process for determining areas where adverse impacts from cumulative effects have occurred or are likely to occur, and may require that a written plan be submitted for harvests in such areas.

(9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall identify streams for which restoration of habitat would be environmentally beneficial. The State Forester shall select as a priority those streams where restoration efforts will provide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

(b) For those streams identified in paragraph (a) of this subsection, the State Forester shall encourage landowners to enter into cooperative agreements with appropriate state agencies for conduct of restoration activities.

(c) The board, in consultation with appropriate state agencies, shall study and identify methods for restoring or enhancing fish and wildlife populations through restoration and rehabilitation of sites beneficial to fish and wildlife.

(d) The board shall adopt rules to implement the findings of this subsection.

(10) In addition to its responsibilities under subsections (1) to (3) of this section, the board shall adopt rules to reduce the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices. The rules shall consider the exposure of the public to these safety risks and shall include appropriate practices designed to reduce the occurrence, timing or effects of rapidly moving landslides. As used in this subsection, "rapidly moving landslide" has the meaning given that term in ORS 195.250.

SECTION 22. ORS 564.110 is amended to read:

564.110. (1) The lists of threatened species or endangered species established pursuant to ORS 564.105 (2) initially shall include those species listed as of May 15, 1987, as a threatened species or an endangered species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.), as amended.

(2) The Director of Agriculture, by rule, may add or remove any plant species from either list, or change the status of any species on the lists, upon a determination that the species is or is not a threatened species or an endangered species.

(3) A determination that a species is a threatened species or an endangered species shall be based on documented and verifiable scientific information about the species' biological status. To list a species as a threatened species or an endangered species under ORS 564.100 to 564.130, the director shall determine that the natural reproductive potential of the species is in danger of failure due to limited population numbers, disease, predation or other natural or man-made factors affecting its continued existence. In addition, the director shall determine that one or more of the following factors exist:

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

(b) That overutilization for commercial, recreational, scientific or educational purposes is occurring or is likely to occur; or

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

(4) Determinations required by subsection (3) of this section shall be made on the basis of the best scientific and other data available to the State Department of Agriculture, after consultation with federal agencies, other interested state agencies, [*the Natural Heritage Advisory Council,*] other states having a common interest in the species and interested persons and organizations.

(5)(a) Any person may petition the department to, by rule, add, remove or change the status of a species on the list.

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

(c) Within 90 days of receipt of a petition, the department shall respond in writing to the petitioner indicating whether the petition presents substantial scientific information to warrant the action requested.

(d) If the petition is found to present such information, the department shall commence rulemaking.

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

(6)(a) Notwithstanding subsections (1) to (5) of this section, the department shall take emergency action to add a species to the list of threatened species or endangered species if it determines there is a significant threat to the continued existence of the species.

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

(c) Such emergency addition shall take effect immediately upon publication in the Secretary of State's bulletin and shall remain valid for a period no longer than one year, unless during the one-year period the department completes rulemaking procedures as provided in subsections (1) to (4) of this section.

(7)(a) The director shall periodically review the status of all threatened and endangered plant species listed under ORS 496.004, 496.171 to 496.192, 498.026, 564.040 and 564.100 to 564.135.

(b) Each species shall be reviewed at least once every five years to determine whether substantial, documented scientific information exists to justify its reclassification or removal from the list, according to the criteria listed under subsection (3) of this section.

(c) If a determination is made to reclassify a species or remove it from the list, the department, within 90 days, shall commence rulemaking to change the status of the species.

SECTION 23. ORS 273.571 is repealed.

SECTION 24. (1) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (3), chapter ___, Oregon Laws 2011 (Enrolled House Bill 5042), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery

funds and federal funds, collected or received by the Department of State Lands, is decreased by \$20,828.

(2) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (2), chapter __, Oregon Laws 2011 (Enrolled House Bill 5042), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from federal funds collected or received by the Department of State Lands, is decreased by \$130,133.

(3) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (4), chapter __, Oregon Laws 2011 (Enrolled Senate Bill 5534), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the State Parks and Recreation Department, is increased by \$21,000.

(4) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (3), chapter __, Oregon Laws 2011 (Enrolled Senate Bill 5534), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from federal funds collected or received by the State Parks and Recreation Department, is increased by \$113,000.

SECTION 25. (1) The amendments to ORS 273.563, 273.566, 273.576, 273.578, 273.581, 273.586, 273.591, 390.124 and 527.710 by sections 10 to 16, 19 and 21 of this 2011 Act and the repeal of ORS 273.571 by section 23 of this 2011 Act are intended to change the name of the Natural Heritage Advisory Council to the State Parks and Recreation Department.

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the Natural Heritage Advisory Council, wherever they occur in statutory law, other words designating the State Parks and Recreation Department.

Passed by Senate May 19, 2011

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 1, 2011

.....
Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State