

## SENATE AMENDMENTS TO SENATE BILL 941

By COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 28

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and delete lines 3  
2 through 7 and insert “137.103, 137.106, 137.295, 144.275, 180.095, 196.890, 196.895, 390.663, 390.669,  
3 390.674, 390.925, 390.986, 390.992, 419A.004, 468.090, 468.100, 468.135, 468.140, 469.085, 469.563,  
4 496.303, 517.880, 517.992, 520.175, 522.810, 561.280, 568.933, 634.905 and 634.925; and declaring an  
5 emergency.”.

6 Delete lines 9 through 25 and delete pages 2 through 32 and insert:  
7

8 **“DEPARTMENT OF JUSTICE PROTECTION AND**  
9 **EDUCATION REVOLVING ACCOUNT, RESTITUTION,**  
10 **AND CATEGORIES OF MONETARY OBLIGATIONS**  
11

12 **“SECTION 1.** ORS 180.095 is amended to read:

13 “180.095. (1) The Department of Justice Protection and Education Revolving Account is created  
14 in the General Fund. All moneys in the account are continuously appropriated to the Department  
15 of Justice and may be used to pay for only the following activities:

16 “(a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;

17 “(b) Consumer and business education relating to the laws governing antitrust, unlawful trade  
18 practices and the environment; and

19 “(c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the  
20 department in investigating, preparing, commencing and prosecuting the following actions and suits,  
21 and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising  
22 out of the following actions and suits:

23 “(A) Actions and suits under the state and federal antitrust laws;

24 “(B) Actions and suits under ORS 646.605 to 646.656;

25 “(C) Criminal prosecutions under state [*and*] or federal environmental laws, **including but not**  
26 **limited to prosecutions for conduct made criminal under ORS 164.775, 164.785, 164.805,**  
27 **273.990, 274.990, 390.995, 448.992, 448.994, 453.990, 459.992, 466.995, 467.990, 468.922, 468.926,**  
28 **468.929, 468.931, 468.936, 468.939, 468.943, 468.946, 468.951, 468.953, 468.956, 468A.595, 468A.655,**  
29 **468A.990, 496.992, 498.222, 506.991, 517.990, 520.991, 522.990, 526.990, 527.990, 537.990, 540.990,**  
30 **561.990 (2), 564.994, 596.990, 600.990, 609.992, 634.992, 783.990 (8) and 824.992 (7) and (8);**

31 “(D) Actions commenced under ORS 59.331; [*and*]

32 “(E) Actions and suits under ORS 180.750 to 180.785[.]; **and**

33 **“(F) Civil actions under state or federal environmental laws, including but not limited to**  
34 **actions under ORS 196.870, 196.895, 390.663 (1)(f) and (6), 390.674, 390.925, 390.986, 390.992 (2),**  
35 **468.090, 468.100, 468.135, 469.085, 469.563, 506.995, 509.910, 517.880 (3), 517.992, 520.175, 522.810,**

1 **561.191, 568.933 (8) and 634.905 and sections 20, 22, 28 and 30 of this 2011 Act and actions under**  
2 **ORS 561.280 that seek to enjoin the violation of ORS 634.372 or the violation of rules adopted**  
3 **pursuant to ORS 568.912.**

4 “(2) Moneys in the Department of Justice Protection and Education Revolving Account are not  
5 subject to allotment. Upon request of the Attorney General, the State Treasurer shall create sub-  
6 accounts within the account for the purposes of managing moneys in the account and allocating  
7 those moneys to the activities described in subsection (1) of this section.

8 “(3) Except as otherwise provided by law, all sums of money received by the Department of  
9 Justice under a judgment, settlement, compromise or assurance of voluntary compliance, including  
10 damages, restitution, refunds, attorney fees, costs, disbursements, **penalties** and other recoveries,  
11 but excluding civil penalties under ORS 646.642, in proceedings described in subsection (1)(c) of this  
12 section shall, upon receipt, be deposited with the State Treasurer to the credit of the Department  
13 of Justice Protection and Education Revolving Account. However, if the action or suit was based  
14 on an expenditure or loss from a public body or a dedicated fund, the amount of such expenditure  
15 or loss, after deduction of attorney fees and expenses awarded to the department by the court or  
16 agreed to by the parties, if any, shall be credited to the public body or dedicated fund and the re-  
17 mainder thereof credited to the Department of Justice Protection and Education Revolving Account.

18 “(4) If the Department of Justice recovers restitution or refunds in a proceeding described in  
19 subsection (1)(c) of this section, and the department cannot determine the persons to whom the  
20 restitution or refunds should be paid or the amount of the restitution or refund payable to individual  
21 claimants is de minimis, the restitution or refunds may not be deposited in the Department of Justice  
22 Protection and Education Revolving Account and shall be deposited in the General Fund.

23 “(5) Before April 1 of each odd-numbered year, the Department of Justice shall report to the  
24 Joint Committee on Ways and Means:

25 “(a) The department’s projection of the balance in the Department of Justice Protection and  
26 Education Revolving Account at the end of the biennium in which the report is made and at the end  
27 of the following biennium;

28 “(b) The amount of the balance held for restitution and refunds; and

29 “(c) An estimate of the department’s anticipated costs and expenses under subsection (1)(b) and  
30 (c) of this section for the biennium in which the report is made and for the following biennium.

31 “(6) The Joint Committee on Ways and Means, after consideration of recommendations made by  
32 the Department of Justice, shall use the information reported under subsection (5) of this section to  
33 determine an appropriate balance for the revolving account.

34 “**SECTION 2.** ORS 137.103 is amended to read:

35 “137.103. As used in ORS 137.101 to 137.109, 161.675 and 161.685:

36 “(1) ‘Criminal activities’ means any offense with respect to which the defendant is convicted or  
37 any other criminal conduct admitted by the defendant.

38 “(2) ‘Economic damages’:

39 “(a) Has the meaning given that term in ORS 31.710, except that ‘economic damages’ does not  
40 include future impairment of earning capacity; and

41 “(b) In cases involving criminal activities described in ORS 163.263, 163.264 or 163.266, includes  
42 the greater of:

43 “(A) The value to the defendant of the victim’s services as defined in ORS 163.261; or

44 “(B) The value of the victim’s services, as defined in ORS 163.261, computed using the minimum  
45 wage established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards

1 Act of 1938 (29 U.S.C. 201 et seq.).

2 “(3) ‘Restitution’ means:

3 “(a) Full, partial or nominal payment of economic damages to a victim[. *Restitution is inde-*  
4 *pendent of and may be awarded in addition to a compensatory fine awarded under ORS 137.101.]; and*

5 “(b) **In a criminal prosecution described in ORS 180.095 (1)(c)(C), any portion of the fine**  
6 **imposed by the court that is not ordered paid under ORS 137.101.**

7 “(4) ‘Victim’ means:

8 “(a) The person against whom the defendant committed the criminal offense, if the court deter-  
9 mines that the person has suffered economic damages as a result of the offense.

10 “(b) Any person not described in paragraph (a) of this subsection whom the court determines  
11 has suffered economic damages as a result of the defendant’s criminal activities.

12 “(c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a  
13 victim described in paragraph (a) of this subsection.

14 “(d) An insurance carrier, if it has expended moneys on behalf of a victim described in para-  
15 graph (a) of this subsection.

16 “(5) ‘Victim’ does not include any coparticipant in the defendant’s criminal activities.

17 “**SECTION 2a.** ORS 137.106 is amended to read:

18 “137.106. (1) When a person is convicted of a crime, or a violation as described in ORS 153.008,  
19 that has resulted in economic damages, the district attorney shall investigate and present to the  
20 court, prior to the time of sentencing, evidence of the nature and amount of the damages. If the  
21 court finds from the evidence presented that a victim suffered economic damages, in addition to any  
22 other sanction it may impose, the court shall include one of the following in the judgment:

23 “(a) A requirement that the defendant pay the victim restitution in a specific amount that equals  
24 the full amount of the victim’s economic damages as determined by the court.

25 “(b) A requirement that the defendant pay the victim restitution, and that the specific amount  
26 of restitution will be established by a supplemental judgment based upon a determination made by  
27 the court within 90 days of entry of the judgment. In the supplemental judgment, the court shall  
28 establish a specific amount of restitution that equals the full amount of the victim’s economic dam-  
29 ages as determined by the court. The court may extend the time within which the determination and  
30 supplemental judgment may be completed for good cause. The lien, priority of the lien and ability  
31 to enforce the specific amount of restitution established under this paragraph by a supplemental  
32 judgment relates back to the date of the original judgment that is supplemented.

33 “(c)(A) A requirement that the defendant pay the victim restitution in a specific amount that is  
34 less than the full amount of the victim’s economic damages, with the consent of the victim.

35 “(B) If the defendant is convicted of a person felony, as that term is defined in the rules of the  
36 Oregon Criminal Justice Commission, a requirement that the defendant pay the victim restitution  
37 in a specific amount that is less than the full amount of the victim’s economic damages, only with  
38 the written consent of the victim.

39 “(2) After the district attorney makes a presentation described in subsection (1) of this section,  
40 if the court is unable to find from the evidence presented that a victim suffered economic damages,  
41 the court shall make a finding on the record to that effect.

42 “(3) No finding made by the court or failure of the court to make a finding under this section  
43 limits or impairs the rights of a person injured to sue and recover damages in a civil action as  
44 provided in ORS 137.109.

45 “(4) **When the court imposes a fine in a criminal prosecution described in ORS 180.095**

1 (1)(c)(C), the court shall include in the judgment a requirement that the defendant pay as  
2 restitution any portion of the fine not ordered paid under ORS 137.101.

3 “[(4)(a)] (5)(a) If a judgment or supplemental judgment described in [subsection (1) of] this section  
4 includes restitution, a court may delay the enforcement of the monetary sanctions, including  
5 restitution, only if the defendant alleges and establishes to the satisfaction of the court the  
6 defendant’s inability to pay the judgment in full at the time the judgment is entered. If the court  
7 finds that the defendant is unable to pay, the court may establish or allow an appropriate super-  
8 vising authority to establish a payment schedule, taking into consideration the financial resources  
9 of the defendant and the burden that payment of restitution will impose, with due regard to the  
10 other obligations of the defendant. The supervising authority shall be authorized to modify any  
11 payment schedule established under this section.

12 “(b) As used in this subsection, ‘supervising authority’ means any state or local agency that is  
13 authorized to supervise the defendant.

14 “[5] (6) If the defendant objects to the imposition, amount or distribution of the restitution, the  
15 court shall allow the defendant to be heard on such issue at the time of sentencing or at the time  
16 the court determines the amount of restitution.

17 “(7) Restitution is independent of and may be awarded in addition to a compensatory fine  
18 awarded under ORS 137.101.

19 “**SECTION 2b.** ORS 144.275 is amended to read:

20 “144.275. Whenever the State Board of Parole and Post-Prison Supervision orders the release  
21 on parole of an inmate who has been ordered to pay compensatory fines pursuant to ORS 137.101  
22 or to make restitution pursuant to ORS 137.106, but with respect to whom payment of all or a por-  
23 tion of the fine or restitution was suspended until the release of the inmate from imprisonment, the  
24 board may establish a schedule by which payment of the compensatory fine or restitution shall be  
25 resumed. In fixing the schedule and supervising the paroled inmate’s performance thereunder, the  
26 board shall consider the factors specified in ORS 137.106 [(4)] (5). The board shall provide to the  
27 sentencing court a copy of the schedule and any modifications thereof.

28 “**SECTION 2c.** ORS 419A.004 is amended to read:

29 “419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires  
30 otherwise:

31 “(1) ‘CASA Volunteer Program’ means a program approved or sanctioned by the juvenile court  
32 to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

33 “(2) ‘Child care center’ means a residential facility for wards or youth offenders that is licensed  
34 under the provisions of ORS 418.240.

35 “(3) ‘Community service’ has the meaning given that term in ORS 137.126.

36 “(4) ‘Conflict of interest’ means a person appointed to a local citizen review board who has a  
37 personal or pecuniary interest in a case being reviewed by that board.

38 “(5) ‘Counselor’ means a juvenile department counselor or a county juvenile probation officer.

39 “(6) ‘Court’ means the juvenile court.

40 “(7) ‘Court appointed special advocate’ or ‘CASA’ means a person appointed by the court pur-  
41 suant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

42 “(8) ‘Court facility’ has the meaning given that term in ORS 166.360.

43 “(9) ‘Department’ means the Department of Human Services.

44 “(10) ‘Detention’ or ‘detention facility’ means a facility established under ORS 419A.010 to  
45 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders

1 pursuant to a judicial commitment or order.

2 “(11) ‘Director’ means the director of a juvenile department established under ORS 419A.010 to  
3 419A.020 and 419A.050 to 419A.063.

4 “(12) ‘Guardian’ means guardian of the person and not guardian of the estate.

5 “(13) ‘Indian child’ means any unmarried person less than 18 years of age who is:

6 “(a) A member of an Indian tribe; or

7 “(b) Eligible for membership in an Indian tribe and is the biological child of a member of an  
8 Indian tribe.

9 “(14) ‘Juvenile court’ means the court having jurisdiction of juvenile matters in the several  
10 counties of this state.

11 “(15) ‘Local citizen review board’ means the board specified by ORS 419A.090 and 419A.092.

12 “(16) ‘Parent’ means the biological or adoptive mother and the legal father of the child, ward,  
13 youth or youth offender. As used in this subsection, ‘legal father’ means:

14 “(a) A man who has adopted the child, ward, youth or youth offender or whose paternity has  
15 been established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and

16 “(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under ap-  
17 plicable tribal law.

18 “(17) ‘Permanent foster care’ means an out-of-home placement in which there is a long-term  
19 contractual foster care agreement between the foster parents and the department that is approved  
20 by the juvenile court and in which the foster parents commit to raise a ward in substitute care or  
21 youth offender until the age of majority.

22 “(18) ‘Planned permanent living arrangement’ means an out-of-home placement other than by  
23 adoption, placement with a relative or placement with a legal guardian that is consistent with the  
24 case plan and in the best interests of the ward.

25 “(19) ‘Public building’ has the meaning given that term in ORS 166.360.

26 “(20) ‘Reasonable time’ means a period of time that is reasonable given a child or ward’s emo-  
27 tional and developmental needs and ability to form and maintain lasting attachments.

28 “(21) ‘Records’ means any information in written form, pictures, photographs, charts, graphs,  
29 recordings or documents pertaining to a case.

30 “(22) ‘Resides’ or ‘residence,’ when used in reference to the residence of a child, ward, youth or  
31 youth offender, means the place where the child, ward, youth or youth offender is actually living  
32 or the jurisdiction in which wardship or jurisdiction has been established.

33 “(23) ‘Restitution’ has the meaning given that term in ORS 137.103 **(3)(a)**.

34 “(24) ‘Serious physical injury’ means:

35 “(a) A serious physical injury as defined in ORS 161.015; or

36 “(b) A physical injury that:

37 “(A) Has a permanent or protracted significant effect on a child’s daily activities;

38 “(B) Results in substantial and recurring pain; or

39 “(C) In the case of a child under 10 years of age, is a broken bone.

40 “(25) ‘Shelter care’ means a home or other facility suitable for the safekeeping of a child, ward,  
41 youth or youth offender who is taken into temporary custody pending investigation and disposition.

42 “(26) ‘Short-term detention facility’ means a facility established under ORS 419A.050 (3) for  
43 holding children, youths and youth offenders pending further placement.

44 “(27) ‘Sibling’ means one of two or more children or wards related:

45 “(a) By blood or adoption through a common legal parent; or

1           “(b) Through the marriage of the children’s or wards’ legal or biological parents.

2           “(28) ‘Substitute care’ means an out-of-home placement directly supervised by the department  
3 or other agency, including placement in a foster family home, group home or other child caring in-  
4 stitution or facility. ‘Substitute care’ does not include care in:

5           “(a) A detention facility, forestry camp or youth correction facility;

6           “(b) A family home that the court has approved as a ward’s permanent placement, when a pri-  
7 vate child caring agency has been appointed guardian of the ward and when the ward’s care is en-  
8 tirely privately financed; or

9           “(c) In-home placement subject to conditions or limitations.

10          “(29) ‘Surrogate’ means a person appointed by the court to protect the right of the child, ward,  
11 youth or youth offender to receive procedural safeguards with respect to the provision of free ap-  
12 propriate public education.

13          “(30) ‘Tribal court’ means a court with jurisdiction over child custody proceedings and that is  
14 either a Court of Indian Offenses, a court established and operated under the code of custom of an  
15 Indian tribe or any other administrative body of a tribe that is vested with authority over child  
16 custody proceedings.

17          “(31) ‘Victim’ means any person determined by the district attorney, the juvenile department or  
18 the court to have suffered direct financial, psychological or physical harm as a result of the act that  
19 has brought the youth or youth offender before the juvenile court. When the victim is a minor,  
20 ‘victim’ includes the legal guardian of the minor. The youth or youth offender may not be considered  
21 the victim. When the victim of the crime cannot be determined, the people of Oregon, as represented  
22 by the district attorney, are considered the victims.

23          “(32) ‘Violent felony’ means any offense that, if committed by an adult, would constitute a felony  
24 and:

25          “(a) Involves actual or threatened serious physical injury to a victim; or

26          “(b) Is a sexual offense. As used in this paragraph, ‘sexual offense’ has the meaning given the  
27 term ‘sex crime’ in ORS 181.594.

28          “(33) ‘Ward’ means a person within the jurisdiction of the juvenile court under ORS 419B.100.

29          “(34) ‘Young person’ means a person who has been found responsible except for insanity under  
30 ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

31          “(35) ‘Youth’ means a person under 18 years of age who is alleged to have committed an act that  
32 is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the  
33 United States or a state, county or city.

34          “(36) ‘Youth care center’ has the meaning given that term in ORS 420.855.

35          “(37) ‘Youth offender’ means a person who has been found to be within the jurisdiction of the  
36 juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

37          “**SECTION 3.** ORS 137.295 is amended to read:

38          “137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or mu-  
39 nicipal court, or allowed diversion in such a case, makes a payment of money to be credited against  
40 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute  
41 the payment as provided in this section.

42          “(2) There are four categories of monetary obligations. The categories are as follows:

43          “(a) Category 1 consists of compensatory fines under ORS 137.101.

44          “(b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS  
45 419C.450 and a monetary obligation imposed under ORS 811.706.

1 “(c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed  
2 under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary  
3 obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal  
4 cases for which moneys the law does not expressly provide other disposition.

5 “(d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the  
6 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-  
7 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-  
8 pressly directs be paid to an agency, person or political subdivision of the state, and any other  
9 obligation to reimburse for payment of a reward under ORS 131.897. Notwithstanding paragraph (c)  
10 of this subsection, the portion of assessments collected as required by ORS 137.290 (2)(c) and (d)  
11 shall be considered category 4 obligations.

12 “(3) As long as there remains unpaid any obligation under category 1, the clerk shall credit to-  
13 ward category 1 all of each payment received.

14 “(4) After the total obligation has been credited under category 1, then as long as there remains  
15 unpaid any obligation under both categories 2 and 3, the clerk shall credit toward each such cate-  
16 gory 50 percent of each payment received.

17 “(5)(a) The clerk shall monthly transfer the moneys credited under category 1 and under cate-  
18 gory 2 to the victims for whose benefit moneys under that category were ordered paid. If there are  
19 multiple victims for whose benefit moneys have been ordered paid under category 2, the clerk shall  
20 first transfer moneys credited under category 2 to the victim, as defined in ORS 137.103 (4)(a). When  
21 the moneys due the victim, as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall  
22 transfer moneys credited under category 2 to the Criminal Injuries Compensation Account if moneys  
23 have been ordered paid to the account under category 2. When the moneys due the account have  
24 been fully paid, the clerk shall transfer moneys credited under category 2 to any other victims, as  
25 defined in ORS 137.103 (4)(b) or (d), for whose benefit moneys under that category were ordered paid  
26 in proportion to the amounts ordered. **When all moneys due the victims have been fully paid,  
27 the clerk shall transfer any moneys credited under category 2 that are ordered paid under  
28 ORS 137.106 (4) to the Department of Justice Protection and Education Revolving Account  
29 created pursuant to ORS 180.095.**

30 “(b) The clerk of a circuit court shall monthly transfer the moneys credited under category 3  
31 as directed by the State Court Administrator for deposit in the State Treasury to the credit of the  
32 Criminal Fine and Assessment Account established under ORS 137.300. The clerk of a justice or  
33 municipal court shall monthly transfer the moneys credited under category 3 to the Department of  
34 Revenue as provided in ORS 305.830.

35 “(6) When the entire amount owing for purposes of either category 2 or category 3 has been  
36 credited, further payments by the defendant shall be credited by the clerk entirely to the unpaid  
37 balance of whichever of those categories remains unpaid, until both category 2 and category 3 have  
38 been entirely paid.

39 “(7) When category 1, category 2 and category 3 have been entirely paid and any obligation  
40 remains owing under category 4, the clerk shall credit further payments by the defendant to the  
41 obligations under category 4 and shall monthly transfer the moneys so received to the appropriate  
42 recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions  
43 in justice and municipal courts and giving last priority to persons entitled to moneys as reimburse-  
44 ment for reward under ORS 131.897. The clerk shall monthly transfer the portion of assessments  
45 collected as required by ORS 137.290 (2)(c) and (d) to the county for administration of substance

1 abuse treatment programs described in ORS 430.420.

2 “(8) Notwithstanding subsection (5) of this section, the clerk of a circuit court shall monthly  
3 transfer the moneys attributable to parking violations to the State Treasurer for deposit in the  
4 General Fund.

5 “(9) The clerk of a justice or municipal court must make the transfers required by this section  
6 not later than the last day of the month immediately following the month in which a payment is  
7 made.

8  
9 **“DEPARTMENT OF STATE LANDS**

10  
11 **“SECTION 4.** ORS 196.890 is amended to read:

12 “196.890. Any person who violates any provision of ORS 196.600 to 196.905 or any rule, order  
13 or permit adopted or issued under ORS 196.600 to 196.905 shall be subject to a:

14 “(1) Civil penalty in an amount to be determined by the Director of the Department of State  
15 Lands of not more than \$10,000 per day of violation[.]; **or**

16 **“(2) Penalty of not more than \$10,000 per day of violation in a civil action under ORS**  
17 **196.895 (1)(b). The specific amount of any such penalty shall be consistent with the amount**  
18 **of civil penalty that would be awarded for such violation as provided in rules adopted by the**  
19 **department under ORS 196.900.**

20 **“SECTION 5.** ORS 196.895 is amended to read:

21 “196.895. (1)(a) **Subject to paragraph (b) of this subsection,** civil penalties under ORS 196.890  
22 (1) shall be imposed as provided in ORS 183.745.

23 **“(b) When the Department of State Lands brings a civil action pursuant to ORS 196.870,**  
24 **in lieu of imposing a civil penalty under ORS 196.890 (1), the Department of State Lands may**  
25 **recover a penalty in such civil action in amounts equal to those provided in ORS 196.890 (2).**

26 “(2) The provisions of this section are in addition to and not in lieu of any other penalty or  
27 sanction provided by law. An action taken by the Director of the Department of State Lands under  
28 this section may be joined by the director with any other action taken against the same person  
29 under ORS 196.860 (1)(f).

30 “(3)(a) Any civil penalty recovered under this section shall be deposited in the Common School  
31 Fund for use by the Department of State Lands in administration of ORS 196.600 to 196.905, 196.990  
32 and 541.990 and as otherwise required by law.

33 **“(b) Any penalty recovered in a civil action under this section shall be deposited in the**  
34 **Department of Justice Protection and Education Revolving Account created pursuant to ORS**  
35 **180.095. The provisions of this paragraph do not affect the deposit of compensation amounts**  
36 **into the Common School Fund pursuant to ORS 196.870 (6).**

37 **“SECTION 6.** ORS 196.895, as amended by section 5, chapter 516, Oregon Laws 2001, is  
38 amended to read:

39 “196.895. (1)(a) Except as provided in **paragraph (b) of this subsection and** subsection (4) of  
40 this section, civil penalties under ORS 196.890 shall be imposed as provided in ORS 183.745.

41 **“(b) When the Department of State Lands brings a civil action pursuant to ORS 196.870,**  
42 **in lieu of imposing a civil penalty under ORS 196.890 (1), the Department of State Lands may**  
43 **recover a penalty in such civil action in amounts equal to those provided in ORS 196.890 (2).**

44 “(2) The provisions of this section are in addition to and not in lieu of any other penalty or  
45 sanction provided by law. An action taken by the Director of the Department of State Lands under



1 this section may be joined by the director with any other action taken against the same person  
2 under ORS 196.860 (1)(f).

3 “(3)(a) Any civil penalty recovered under this section shall be deposited in the Common School  
4 Fund for use by the Department of State Lands in administration of ORS 196.600 to 196.905, 196.990  
5 and 541.990 and as otherwise required by law.

6 “(b) **Any penalty recovered in a civil action under this section shall be deposited in the**  
7 **Department of Justice Protection and Education Revolving Account created pursuant to ORS**  
8 **180.095. The provisions of this paragraph do not affect the deposit of compensation amounts**  
9 **into the Common School Fund pursuant to ORS 196.870 (6).**

10 “(4) Notwithstanding any provision of ORS 183.745, any person having an interest that is ad-  
11 versely affected or aggrieved by an alleged violation for which civil penalties are imposed under  
12 ORS 196.890 may intervene in a contested case proceeding **or civil action** pertaining to the im-  
13 position of civil penalties under this section.

14  
15 **“STATE PARKS AND RECREATION DEPARTMENT**

16  
17 **“SECTION 7.** ORS 390.663 is amended to read:

18 “390.663. (1) If the State Parks and Recreation Director determines that any improvement is  
19 being made on property within the ocean shore without a permit issued under ORS 390.650, or in a  
20 manner contrary to the conditions set out in the permit, the director may:

21 “(a) Investigate, hold hearings, make orders and take action, as provided in ORS 390.620 to  
22 390.676, as soon as possible.

23 “(b) For the purpose of investigating conditions relating to such improvements, through the  
24 employees or the duly authorized representatives of the State Parks and Recreation Department,  
25 enter at reasonable times upon any private or public property.

26 “(c) Conduct public hearings in accordance with ORS chapter 183.

27 “(d) Publish findings and recommendations as they are developed relative to public policies and  
28 procedures necessary for the correction of conditions or violations of ORS 390.620 to 390.676.

29 “(e) Give notice of any proposed order relating to a violation by personal service or by mailing  
30 the notice by registered or certified mail to the person or governmental body affected. Any person  
31 aggrieved by a proposed order of the director may request a hearing within 20 days of the date of  
32 personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS  
33 chapter 183 applicable to contested cases, and judicial review of final orders shall be conducted in  
34 the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to  
35 appear, a final order shall be issued upon a prima facie case on the record of the department.

36 “(f) Take appropriate action for the enforcement of any rules or final orders. Any violation of  
37 ORS 390.620 to 390.676 or of any rule or final order of the director under ORS 390.620 to 390.676  
38 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. In any  
39 such proceedings, the director may seek and the court may award a sum of money sufficient to  
40 compensate the public for any destruction or infringement of any public right of navigation, fishery  
41 or recreation resulting from such violation. Proceedings brought by the director shall set forth, if  
42 applicable, the dates of notice and hearing and the specific rule or order of the director, together  
43 with the facts of noncompliance, the facts giving rise to the public nuisance and a statement of the  
44 damages to any public right of navigation, fishery or recreation, if any, resulting from such vio-  
45 lation. **The director may not be required to furnish a bond in such proceeding. Any action**

1 **authorized by this section must be tried in the circuit court of the county in which the vio-**  
2 **lation occurs or in Marion County. The State Parks and Recreation Commission, the de-**  
3 **partment, the director and the employees and duly authorized representatives of the**  
4 **department may not be held liable for any damages a defendant may sustain as a result of**  
5 **an injunction, restraining order or other order issued under this section.**

6 “(2) In addition to the administrative action the director may take under subsection (1) of this  
7 section, the director may enter an order requiring any person to cease and desist from any violation  
8 if the director determines that such violation presents an imminent and substantial risk of injury,  
9 loss or damage to the ocean shore.

10 “(3) An order under subsection (2) of this section:

11 “(a) May be entered without prior notice or hearing.

12 “(b) Shall be served upon the person by personal service or by registered or certified mail.

13 “(c) Shall state that a hearing will be held on the order if a written request for hearing is filed  
14 by the person subject to the order within 10 days after receipt of the order.

15 “(d) Shall not be stayed during the pendency of a hearing conducted under subsection (4) of this  
16 section.

17 “(4) If a person subject to an order under subsection (2) of this section files a timely demand for  
18 hearing, the director shall hold a contested case hearing according to the applicable provisions of  
19 ORS chapter 183. If the person fails to request a hearing, the order shall be entered as a final order  
20 upon prima facie case made on the record of the department.

21 “(5) Neither the director nor any duly authorized representative of the department shall be lia-  
22 ble for any damages a person may sustain as a result of a cease and desist order issued under sub-  
23 section (2) of this section.

24 “(6) The state and local police shall cooperate in the enforcement of any order issued under  
25 subsection (2) of this section and shall require no further authority or warrant in executing or en-  
26 forcing such order. If any person fails to comply with an order issued under subsection (2) of this  
27 section, the circuit court of the county in which the violation occurred or is threatened shall compel  
28 compliance with the director’s order in the same manner as with an order of that court.

29 “(7) As used in this section, ‘violation’ means making an improvement on property within the  
30 ocean shore without a permit or in a manner contrary to the conditions set out in a permit issued  
31 under ORS 390.650.

32 “**SECTION 8.** ORS 390.669 is amended to read:

33 “390.669. (1) In addition to any enforcement action taken under ORS 390.663, civil proceedings  
34 to abate alleged public nuisances under ORS 390.661 may be instituted in the name of the State of  
35 Oregon upon relation of the State Parks and Recreation Director or by any person in the person’s  
36 name.

37 “(2) Before beginning any action under subsection (1) of this section, a person other than the  
38 director shall provide to the director 60 days’ notice of the intended action. A person other than the  
39 director may not begin an action under subsection (1) of this section if the director has commenced  
40 and is diligently prosecuting civil, criminal or administrative proceedings in the same matter.

41 “(3) The director may institute an action in the name of the State of Oregon for a temporary  
42 restraining order or preliminary injunction if a threatened or existing public nuisance under ORS  
43 390.661 creates an emergency that requires immediate action to protect the public health, safety or  
44 welfare. The director shall not be required to furnish a bond in such proceeding. **Any action au-**  
45 **thorized by this section must be tried in the circuit court of the county in which the vio-**

1 **lition occurs or in Marion County.**

2 “(4) The State Parks and Recreation Commission, the State Parks and Recreation Director and  
3 the employees or duly authorized representatives of the State Parks and Recreation Department  
4 shall not be liable for any damages a defendant may sustain as a result of an injunction, restraining  
5 order or abatement order issued under this section.

6 “(5) A case filed under this section shall be given preference on the docket over all other civil  
7 cases except those given an equal preference by statute.

8 “(6) In any action brought under this section, the plaintiff may seek and the court may award  
9 a sum of money sufficient to compensate the public for any destruction or infringement of any public  
10 right of navigation, fishery or recreation resulting from an existing public nuisance under ORS  
11 390.661. Any money received by the plaintiff under this subsection shall be deposited in an account  
12 of the State Parks and Recreation Department for use by the department in administering the ocean  
13 shore program.

14 “**SECTION 9.** ORS 390.674 is amended to read:

15 “390.674. (1)(a) **Except as provided in paragraph (b) of this subsection,** civil penalties under  
16 ORS 390.992 shall be imposed as provided in ORS 183.745.

17 “**(b) When the State Parks and Recreation Department brings a civil action pursuant to**  
18 **ORS 390.663 (1)(f), 390.669 or 390.992 (2), in lieu of imposing a civil penalty under ORS 390.992,**  
19 **the State Parks and Recreation Department may recover a penalty in such civil action in**  
20 **amounts equal to those provided for in ORS 390.992 (1)(b).**

21 “(2) The provisions of this section are in addition to and not in lieu of any other penalty or  
22 sanction provided by law. An action taken by the State Parks and Recreation Director under this  
23 section may be joined by the director with any other action taken against the same person under  
24 ORS 390.995 (1).

25 “(3)(a) Any civil penalty recovered under this section shall be deposited into an account of the  
26 State Parks and Recreation Department for use by the department in administration of the ocean  
27 shore program.

28 “**(b) Any penalty recovered in a civil action under ORS 390.992 (1)(b) shall be deposited in**  
29 **the Department of Justice Protection and Education Revolving Account created pursuant to**  
30 **ORS 180.095. The provisions of this paragraph do not affect the deposit of compensation**  
31 **amounts into an account of the State Parks and Recreation Department pursuant to ORS**  
32 **390.669 (6).**

33 “**SECTION 10.** ORS 390.925 is amended to read:

34 “390.925. In addition to any other penalties provided by law for violation of ORS 390.805 to  
35 390.925 or rules adopted thereunder, the State Parks and Recreation Department is vested with  
36 power to obtain injunctions and other appropriate relief against violations of any provisions of ORS  
37 390.805 to 390.925 and any rules adopted under ORS 390.805 to 390.925 and agreements made under  
38 ORS 390.805 to 390.925. **The department may not be required to furnish a bond in such pro-**  
39 **ceeding. Any action authorized by this section must be tried in the circuit court of the**  
40 **county in which the violation occurs or in Marion County. The State Parks and Recreation**  
41 **Commission, the department, the State Parks and Recreation Director and the employees**  
42 **and duly authorized representatives of the department may not be held liable for any dam-**  
43 **ages a defendant may sustain as a result of an injunction, restraining order or other order**  
44 **issued under this section.**

45 “**SECTION 11.** ORS 390.986 is amended to read:

1 “390.986. The State Parks and Recreation Department has power to obtain injunctions against  
2 violations of any provisions of ORS 390.950 to 390.989 and any rules and regulations adopted under  
3 ORS 390.950 to 390.989 and agreements made under ORS 390.950 to 390.989. **The department may  
4 not be required to furnish a bond in such proceeding. Any action authorized by this section  
5 must be tried in the circuit court of the county in which the violation occurs or in Marion  
6 County. The State Parks and Recreation Commission, the department, the State Parks and  
7 Recreation Director and the employees and duly authorized representatives of the depart-  
8 ment may not be held liable for any damages a defendant may sustain as a result of an in-  
9 junction, restraining order or other order issued under this section.**

10 **“SECTION 12.** ORS 390.992 is amended to read:

11 “390.992. (1) Any person who violates any provision of ORS 390.610, 390.620 to 390.676, 390.690  
12 and 390.705 to 390.770 or any rule, order or permit adopted or issued under ORS 390.610, 390.620 to  
13 390.676, 390.690 and 390.705 to 390.770 shall be subject to a:

14 **“(a) Civil penalty in an amount to be determined by the State Parks and Recreation Director  
15 of not more than \$10,000 per day of violation[.]; or**

16 **“(b) Penalty of not more than \$10,000 per day of violation in a civil action under ORS  
17 390.674 (1)(b). The specific amount of any such penalty shall be consistent with the amount  
18 of civil penalty that would be awarded for such violation as provided in rules adopted by the  
19 State Parks and Recreation Commission under ORS 390.124 or by the State Parks and Re-  
20 creation Department under ORS 390.660.**

21 **“(2) In addition to any other penalties provided under subsection (1) of this section, the State  
22 Parks and Recreation Department is vested with power to obtain injunctions and other appropriate  
23 relief against a person who violates any provisions of ORS 390.610, 390.620 to 390.676, 390.690 and  
24 390.705 to 390.770 or any rule, order or permit adopted or issued under ORS 390.610, 390.620 to  
25 390.676, 390.690 and 390.705 to 390.770. The department shall not be required to furnish a bond  
26 in any such action seeking injunctive relief. Any action authorized by this section shall be  
27 tried in the circuit court of the county in which the violation occurs or in Marion County.  
28 The State Parks and Recreation Commission, the department, the State Parks and Recre-  
29 ation Director and the employees and duly authorized representatives of the department  
30 shall not be liable for any damages a defendant may sustain as a result of an injunction,  
31 restraining order or abatement order issued under this section.**

32  
33 **“DEPARTMENT OF ENVIRONMENTAL QUALITY**

34  
35 **“SECTION 13.** ORS 468.090 is amended to read:

36 “468.090. [(1)] In case any written substantiated complaint is filed with the Department of En-  
37 vironmental Quality which it has cause to believe, or in case the department itself has cause to  
38 believe, that any person is violating any rule or standard adopted by the Environmental Quality  
39 Commission or any permit issued by the department by causing or permitting water pollution or air  
40 pollution or air contamination, the department shall cause an investigation thereof to be made. If  
41 it finds after such investigation that such a violation of any rule or standard of the commission or  
42 of any permit issued by the department exists, it:

43 **“(1) Shall by conference, conciliation and persuasion endeavor to eliminate the source or cause  
44 of the pollution or contamination which resulted in such violation[.]; and**

45 **“[(2) In case of failure to remedy the violation, the department shall]**

1 “(2)(a) **May** commence enforcement proceedings pursuant to the procedures set forth in ORS  
2 chapter 183 for a contested case and in ORS 468B.032; or

3 “(b) **May commence a civil action as provided in ORS 468.100.**

4 “**SECTION 14.** ORS 468.100 is amended to read:

5 “468.100. (1) Whenever the **Department of Environmental Quality** [*Commission*] has good cause  
6 to believe that any person **has engaged**, is engaged or is about to engage in any acts or practices  
7 which constitute a violation of ORS [*448.305*] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to  
8 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to 454.800, 459.900, 459A.552 to 459A.599,**  
9 **459A.695, 459A.780, 468A.655, 468B.095, 468B.165 and 783.625 to 783.640** and ORS chapters **459,**  
10 **459A. 465, 466, 467,** 468, 468A and 468B, or any rule, standard or order adopted or entered pursuant  
11 thereto, or of any permit **or certificate** issued pursuant to ORS [*448.305*] **448.410 to 448.430**, 454.010  
12 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to 454.800, 459A.552**  
13 **to 459A.599 and 468B.095** and ORS chapters **459, 459A, 465, 466, 467,** 468, 468A and 468B, the  
14 [*commission*] **department** may institute [*actions or proceedings for*] **a civil action to recover pen-**  
15 **alties as described in ORS 468.135, or for such other** legal or equitable remedies to enforce  
16 compliance thereto or to restrain further violations. **The department may not be required to**  
17 **furnish a bond in any such action seeking injunctive relief. Any action authorized by this**  
18 **section must be tried in the circuit court of the county in which the violation occurs or in**  
19 **Marion County. The Environmental Quality Commission, the department, the Director of the**  
20 **Department of Environmental Quality and the employees and duly authorized representatives**  
21 **of the department may not be liable for any damages a defendant may sustain as a result**  
22 **of an injunction, restraining order or abatement order issued under this section.**

23 “(2) The proceedings authorized by subsection (1) of this section may be instituted without the  
24 necessity of prior agency notice, hearing and order, or during said agency hearing if it has been  
25 initially commenced by the [*commission*] **department.**

26 “(3) A regional authority formed under ORS 468A.105 may exercise the same functions as are  
27 vested in the [*commission*] **department** by this section insofar as such functions relate to air pol-  
28 lution control and are applicable to the conditions and situations of the territory within the regional  
29 authority. The regional authority shall carry out these functions in the manner provided for the  
30 [*commission*] **department** to carry out the same functions.

31 “(4) The provisions of this section are in addition to and not in substitution of any other civil  
32 or criminal enforcement provisions available to the [*commission*] **department** or a regional author-  
33 ity. The provisions of this section shall not prevent the maintenance of actions for legal or equitable  
34 remedies relating to private or public nuisances brought by any other person, or by the state on  
35 relation of any person without prior order of the [*commission*] **department.**

36 “**SECTION 15.** ORS 468.135 is amended to read:

37 “468.135. (1)(a) Any civil penalty under ORS 468.140 shall be imposed in the manner provided  
38 in ORS 183.745.

39 “(b) **If the Department of Environmental Quality institutes a civil action as provided in**  
40 **ORS 468.100, in lieu of imposing a civil penalty under ORS 466.992 and 468.140, the department**  
41 **may recover a penalty in such civil action in an amount equal to the amount of civil penalty**  
42 **that would be recovered as provided in ORS 466.992 and 468.140.**

43 “(2) **Except as otherwise provided by law and by subsection (3) of this section,** all penalties  
44 recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General  
45 Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall

1 be paid into the county treasury of the county in which the violation occurred.

2 “(3) Any penalty recovered in a civil action under this section shall be deposited in the  
3 Department of Justice Protection and Education Revolving Account created pursuant to ORS  
4 180.095.

5 “**SECTION 16.** ORS 468.140, as amended by section 9, chapter 267, Oregon Laws 2009, is  
6 amended to read:

7 “468.140. (1) In addition to any other penalty provided by law, any person who violates any of  
8 the following shall incur a civil penalty for each day of violation in the amount prescribed by the  
9 schedule adopted under ORS 468.130:

10 “(a) The terms or conditions of any permit required or authorized by law and issued by the  
11 Department of Environmental Quality or a regional air quality control authority.

12 “(b) Any provision of ORS 164.785, [448.305] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to  
13 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to 454.800, 459.900, 459A.552 to 459A.599,**  
14 **459A.695, 459A.780, 468A.655, 468B.095, 468B.165** and 783.625 to 783.640 and [ORS chapter 467  
15 and] ORS chapters **459, 459A, 465, 466, 467**, 468, 468A and 468B.

16 “(c) Any rule or standard or order of the Environmental Quality Commission adopted or issued  
17 pursuant to ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to  
18 454.535, 454.605 to 454.755, **454.782 to 454.800, 459A.552 to 459A.599, 468B.095, 468B.165** and  
19 783.625 to 783.640 and [ORS chapter 467 and] ORS chapters **459, 459A, 465, 466, 467**, 468, 468A and  
20 468B.

21 “(d) Any term or condition of a variance granted by the commission or department pursuant to  
22 ORS 467.060.

23 “(e) Any rule or standard or order of a regional authority adopted or issued under authority of  
24 ORS 468A.135.

25 “(f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related  
26 to the financial assurance requirement under ORS 468B.390.

27 “(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

28 “(3)(a) In addition to any other penalty provided by law, any person who intentionally or  
29 negligently causes or permits the discharge of oil or hazardous material into the waters of the state  
30 or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into  
31 the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the  
32 amount of \$100,000 for each violation.

33 “(b) In addition to any other penalty provided by law, the following persons shall incur a civil  
34 penalty not to exceed the amount of \$25,000 for each day of violation:

35 “(A) Any person who violates the terms or conditions of a permit authorizing waste discharge  
36 into the air or waters of the state.

37 “(B) Any person who violates any law, rule, order or standard in ORS [448.305] **448.410 to**  
38 **448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to**  
39 **454.800, 459.900, 459A.552 to 459A.599, 459A.695, 459A.780, 468A.655, 468B.095, 468B.165** and  
40 783.625 to 783.640 and ORS chapters **459, 459A, 465, 466, 467**, 468, 468A and 468B relating to air  
41 or water pollution.

42 “(C) Any person who violates the provisions of a rule adopted or an order issued under ORS  
43 459A.590.

44 “(4) In addition to any other penalty provided by law, any person who violates the provisions  
45 of ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$1,000 for each day of vio-

1 lation.

2 “(5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emis-  
3 sion standards which are not violations of standards for control of noise emissions.

4 “(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided  
5 by law, any person who intentionally or negligently causes or permits open field burning contrary  
6 to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed  
7 by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned.  
8 Any fines collected by the department pursuant to this subsection shall be deposited with the State  
9 Treasurer to the credit of the General Fund and shall be available for general governmental ex-  
10 pense. As used in this subsection, ‘open field burning’ does not include propane flaming of mint  
11 stubble.

12  
13 **“STATE DEPARTMENT OF ENERGY**

14  
15 **“SECTION 17.** ORS 469.085 is amended to read:

16 “469.085. (1) Except as otherwise provided in this section, civil penalties under ORS 469.992  
17 shall be imposed as provided in ORS 183.745.

18 “(2) Notwithstanding ORS 183.745 (2), the notice to the person against whom a civil penalty is  
19 to be imposed shall reflect a complete statement of the consideration given to the factors listed in  
20 subsection (7) of this section. The notice may be served by either the Director of the State Depart-  
21 ment of Energy or the Energy Facility Siting Council.

22 “(3) Notwithstanding ORS 183.745, if a hearing is not requested or if the person requesting a  
23 hearing fails to appear, a final order shall be entered upon a prima facie case made on the record  
24 of the agency.

25 “(4) The provisions of this section are in addition to and not in lieu of any other penalty or  
26 sanction provided by law. An action taken by the director or the council under this section may be  
27 joined by the director or the council with any other action against the same person under this  
28 chapter.

29 “(5) Any civil penalty recovered under this section shall be paid into the General Fund.

30 “(6) The director or the council shall adopt by rule a schedule of the amount of civil penalty  
31 that may be imposed for a particular violation.

32 “(7) In imposing a penalty under ORS 469.992, the director or the council shall consider:

33 “(a) The past history of the person incurring a penalty in taking all feasible steps or procedures  
34 necessary or appropriate to correct or prevent any violation;

35 “(b) Any prior violations of ORS chapter 469 or rules, orders or permits relating to the alleged  
36 violation;

37 “(c) The impact of the violation on public health and safety or public interests in fishery, navi-  
38 gation and recreation;

39 “(d) Any other factors determined by the director or the council to be relevant; and

40 “(e) The alleged violator’s cooperativeness and effort to correct the violation.

41 “(8) The penalty imposed under ORS 469.992 may be remitted or mitigated upon such terms and  
42 conditions as the director or council determines to be proper. Upon the request of the person in-  
43 curring the penalty, the director or council shall consider evidence of the economic and financial  
44 condition of the person in determining whether a penalty shall be remitted or mitigated.

45 **“(9)(a) Notwithstanding any other provision of this section, when the State Department**

1 of Energy brings a civil action pursuant to ORS 469.563, in lieu of imposing civil penalties  
2 under ORS 469.992, the State Department of Energy may recover a penalty in such civil  
3 action in an amount equal to the amount of civil penalty that would be recovered as provided  
4 in ORS 469.992.

5 “(b) Any penalty recovered in a civil action under this section shall be deposited in the  
6 Department of Justice Protection and Education Revolving Account created pursuant to ORS  
7 180.095.

8 “SECTION 18. ORS 469.563 is amended to read:

9 “469.563. Without prior administrative proceedings, a circuit court may issue such restraining  
10 orders, and such temporary and permanent injunctive relief as is necessary to secure compliance  
11 with ORS 469.320, 469.405 (3), 469.410, 469.421, 469.430, 469.440, 469.442, 469.507, 469.525 to 469.559,  
12 469.560, 469.561, 469.562, 469.590 to 469.619, 469.930 and 469.992 or with the terms and conditions  
13 of a site certificate. **The State Department of Energy may not be required to furnish a bond  
14 in such proceeding. Any action authorized by this section must be tried in the circuit court  
15 of the county in which the violation occurs or in Marion County. The State Department of  
16 Energy, the Director of the State Department of Energy, the employees and duly authorized  
17 representatives of the department, and the Energy Facility Siting Council may not be liable  
18 for any damages a defendant may sustain as a result of an injunction, restraining order or  
19 other order issued under this section.**

20  
21 **“STATE DEPARTMENT OF FISH AND WILDLIFE**

22  
23 “SECTION 19. Section 20 of this 2011 Act is added to and made a part of ORS chapter 496.

24 “SECTION 20. In addition to any other remedies provided by law, the State Department  
25 of Fish and Wildlife may institute a civil action in circuit court to enjoin or abate any vio-  
26 lation of wildlife laws or any rule promulgated by the State Fish and Wildlife Commission in  
27 carrying out the wildlife laws. The department may not be required to furnish a bond in such  
28 proceeding. Any action authorized by this section must be tried in the circuit court of the  
29 county in which the violation occurs or in Marion County. The commission, the department,  
30 the State Fish and Wildlife Director and the employees and duly authorized representatives  
31 of the department may not be held liable for any damages a defendant may sustain as a re-  
32 sult of an injunction, restraining order or abatement order issued under this section.

33 “SECTION 21. Section 22 of this 2011 Act is added to and made a part of ORS chapter 506.

34 “SECTION 22. (1) In addition to any other remedies provided by law, the State Depart-  
35 ment of Fish and Wildlife may institute a civil action in circuit court to enjoin or abate any  
36 violation of any provision of the commercial fishing laws or of any rule promulgated by the  
37 State Fish and Wildlife Commission in carrying out the commercial fishing laws. The de-  
38 partment shall not be required to furnish a bond in such proceeding.

39 “(2) Any action authorized by this section shall be tried in the circuit court of the county  
40 in which the violation occurs or in Marion County.

41 “(3) The commission, the department, the State Fish and Wildlife Director and the em-  
42 ployees and duly authorized representatives of the department may not be held liable for any  
43 damages a defendant may sustain as a result of an injunction, restraining order or abate-  
44 ment order issued under this section.

45 “(4) When the department brings a civil action under this section, in lieu of imposing a



1 **civil penalty under ORS 506.995, the department may recover a penalty in such civil action**  
2 **in an amount equal to the amount of civil penalty that would be recovered as provided in**  
3 **ORS 506.995 (2). Any such penalty recovered in a civil action shall be deposited in the De-**  
4 **partment of Justice Protection and Education Revolving Account created pursuant to ORS**  
5 **180.095.**

6  
7 **“STATE DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES**

8  
9 **“SECTION 23.** ORS 517.880 is amended to read:

10 “517.880. (1) When the State Department of Geology and Mineral Industries finds that an oper-  
11 ator is conducting a surface mining operation for which an operating permit is required by ORS  
12 517.702 to 517.989 or by rules adopted by the department, but has not been issued by the department,  
13 the department may issue an order to the operator to suspend the operation until an operating  
14 permit has been issued by the department for the surface mining operation or until the department  
15 is assured that the operator will comply with the requirement to obtain a permit.

16 “(2) The department may issue an order to an operator to suspend operations if the operator  
17 has not complied with or is not complying with the operating permit, reclamation plan, this chapter  
18 or rules of the department. Failure to comply includes, but is not limited to, disturbing land within  
19 the permit boundary that has not been approved by the department for excavation, placement of  
20 debris or removal of vegetation.

21 “(3) If the operator fails or refuses to comply with a suspension order, the Attorney General,  
22 at the request of the department, shall initiate any necessary legal proceeding to enjoin the surface  
23 mining operation and to provide for completion of the reclamation of the lands affected by the op-  
24 eration, including the restoration of buffers, setbacks or other areas not approved for disturbance.  
25 **The department may not be required to furnish a bond in such proceeding. Any action au-**  
26 **thorized by this section must be tried in the circuit court of the county in which the vio-**  
27 **lation occurs or in Marion County. The governing board of the department, the department,**  
28 **the State Geologist and the employees and duly authorized representatives of the department**  
29 **may not be liable for any damages a defendant may sustain as a result of an injunction, re-**  
30 **straining order or other order issued under this section.**

31 **“SECTION 24.** ORS 517.992 is amended to read:

32 “517.992. (1) In addition to any other sanction authorized by law, the governing board of the  
33 State Department of Geology and Mineral Industries may impose a civil penalty of not less than  
34 \$200 per day and not more than \$50,000 per day for any violation of ORS 517.702 to 517.989 related  
35 to a chemical process mine, of any rules adopted under those provisions related to a chemical pro-  
36 cess mine, of any orders issued under those provisions related to a chemical process mine or of any  
37 conditions of a permit issued under those provisions related to a chemical process mine. A penalty  
38 may be imposed under this section without regard to whether the violation occurs on property  
39 covered by a permit issued under ORS 517.702 to 517.989.

40 “(2)(a) In addition to any other sanction authorized by law, and subject to the limitations of  
41 paragraph (b) of this subsection, the governing board of the State Department of Geology and Min-  
42 eral Industries may impose a civil penalty of not more than \$10,000 per day for any violation of ORS  
43 517.702 to 517.740, 517.750 to 517.901 and 517.905 to 517.951 not related to a chemical process mine,  
44 of any rules adopted under those provisions not related to a chemical process mine, of any orders  
45 issued under those provisions not related to a chemical process mine or of any conditions of a per-

1 mit issued under those provisions not related to a chemical process mine.

2 “(b) A penalty may be imposed under this subsection only if a landowner or operator fails to  
3 complete erosion stabilization as required by ORS 517.775 or board rules adopted to implement that  
4 section, if the operator has failed to comply with an order issued under ORS 517.860 or 517.880, if  
5 the operation is being conducted in violation of conditions imposed on an operating permit or rec-  
6 lamation plan pursuant to ORS 517.835 or if the operation is being conducted:

7 “(A) Without a permit;

8 “(B) Outside the permit boundary; or

9 “(C) Outside a permit condition regarding boundaries, setbacks, buffers or the placement of  
10 surface mining refuse.

11 “(3)(a) **Except as provided in paragraph (b) of this subsection**, civil penalties under this  
12 section shall be imposed in the manner provided by ORS 183.745.

13 “(b) **When the State Department of Geology and Mineral Industries brings a civil action**  
14 **pursuant to ORS 517.860 (3) or 517.880 (3), in lieu of imposing a civil penalty under this sec-**  
15 **tion, the State Department of Geology and Mineral Industries may recover a penalty in such**  
16 **civil action in an amount equal to the amount of the civil penalty that would be awarded as**  
17 **provided in the rules adopted under subsection (8) of this section.**

18 “(4) Failure to pay a civil penalty that has become final under this section shall be grounds for  
19 revocation of any permit issued under ORS 517.702 to 517.989 to the person against whom the pen-  
20 alty has been assessed.

21 “(5)(a) Any civil penalty received by the State Treasurer under this section shall be deposited  
22 in the General Fund to the credit of the Geology and Mineral Industries Account and is contin-  
23 uously appropriated to the State Department of Geology and Mineral Industries to the extent nec-  
24 essary for the administration and enforcement of the laws, rules and orders under which the penalty  
25 was assessed.

26 “(b) **Any penalty recovered in a civil action under this section shall be deposited in the**  
27 **Department of Justice Protection and Education Revolving Account created pursuant to ORS**  
28 **180.095.**

29 “(6) A reclamation fund shall be established into which funds not used as described in subsection  
30 (5) of this section shall be deposited. This money shall be used by the State Department of Geology  
31 and Mineral Industries for the purpose of the reclamation of abandoned mine and drill sites.

32 “(7) When a single incident violates statutes, rules, board orders or permit conditions adminis-  
33 tered by more than one agency, the department shall coordinate with the other agencies having civil  
34 penalty authority before imposing a civil penalty.

35 “(8) In implementing this section, the department shall adopt rules that provide civil penalties  
36 that are commensurate with the severity of violations.

37 “(9) A civil penalty may be imposed against the board of directors and high managerial agents  
38 of a corporation if those persons engage in, authorize, solicit, request, command or knowingly tol-  
39 erate the conduct for which the penalty is to be imposed. As used in this subsection, ‘agent’ and  
40 ‘high managerial agent’ have the meanings given those terms in ORS 161.170.

41 “**SECTION 25.** ORS 520.175 is amended to read:

42 “520.175. (1) Whenever it appears that any person is violating or threatening to violate any  
43 provision of this chapter or any rule adopted or order issued under this chapter, the governing board  
44 of the State Department of Geology and Mineral Industries may bring an action against such person  
45 in the circuit court of any county where the violation occurs or is threatened, to restrain such

1 person from continuing such violation. In any such action, the court shall have jurisdiction to grant  
2 to the board, without bond or other undertaking, such temporary restraining orders or final  
3 prohibitory and mandatory injunctions as the facts may warrant, including any such orders re-  
4 straining the movement or disposition of oil or gas. **The governing board of the State Department  
5 of Geology and Mineral Industries may not be required to furnish a bond in such proceeding.  
6 The governing board of the State Department of Geology and Mineral Industries, the State  
7 Department of Geology and Mineral Industries, the State Geologist and the employees and  
8 duly authorized representatives of the State Department of Geology and Mineral Industries  
9 may not be held liable for any damages a defendant may sustain as a result of an injunction,  
10 restraining order or other order issued under this section.**

11 “(2) If the board fails to bring an action to enjoin a violation or threatened violation of any  
12 provision of this chapter or any rule adopted or order issued under this chapter, within 60 days after  
13 receipt of a written request to do so by any person who is or will be adversely affected by such  
14 violation, then the person making such request may bring an action to restrain such violation or  
15 threatened violation in any court in which the board might have brought such action. The board  
16 shall be made a party defendant in such action in addition to the person or persons bringing the  
17 action and the action shall proceed and injunctive relief may be granted without bond in the same  
18 manner as if the action had been brought by the board.

19 **“SECTION 26.** ORS 522.810 is amended to read:

20 “522.810. Whenever it appears that any person is violating or threatening to violate any pro-  
21 vision of this chapter or any rule or order of the governing board of the State Department of  
22 Geology and Mineral Industries made thereunder, or is threatening to or committing waste, the  
23 board may bring suit against such person in the circuit court of any county where the violation or  
24 waste occurs or is threatened, to restrain such person from continuing such violation or waste. In  
25 any such suit, the court shall have jurisdiction to grant to the board, without bond or other under-  
26 taking, such temporary restraining orders or final prohibitory and mandatory injunctions as the  
27 facts may warrant, including any such orders restraining the movement, disposition or waste of  
28 geothermal resources. **The board may not be required to furnish a bond in such proceeding.  
29 The board, the State Department of Geology and Mineral Industries, the State Geologist and  
30 the employees and duly authorized representatives of the department may not be held liable  
31 for any damages a defendant may sustain as a result of an injunction, restraining order or  
32 other order issued under this section.**

33  
34 **“STATE FORESTRY DEPARTMENT**

35  
36 **“SECTION 27.** Section 28 of this 2011 Act is added to and made a part of ORS 527.610 to  
37 **527.770.**

38 **“SECTION 28.** (1) In addition to any other remedies provided by law, the State Forester  
39 may institute a civil action in circuit court to enjoin or abate any violation described in ORS  
40 527.992 (1). The State Forester may not be required to furnish a bond in such proceeding.

41 **“(2) When the State Forester brings a civil action under this section, in lieu of imposing  
42 a civil penalty under ORS 527.992, the State Forestry Department may recover a penalty in  
43 such civil action an amount equal to the amount of civil penalty that would be recovered as  
44 provided in ORS 527.992 (1). Any such penalty recovered in a civil action shall be deposited  
45 in the Department of Justice Protection and Education Revolving Account created pursuant**

1 to ORS 180.095.

2 “(3) Any action authorized by this section shall be tried in the circuit court of the county  
3 in which the violation occurs or in Marion County.

4 “(4) The State Board of Forestry, the State Forestry Department, the State Forester and  
5 the employees and duly authorized representatives of the department may not be liable for  
6 any damages a defendant may sustain as a result of an injunction, restraining order or  
7 abatement order issued under this section.

8  
9 “WATER RESOURCES DEPARTMENT

10  
11 “SECTION 29. Section 30 of this 2011 Act is added to and made a part of ORS chapter 536.

12 “SECTION 30. (1) In addition to any other remedies provided by law, the Water Re-  
13 sources Department may institute a civil action in circuit court to enjoin or abate any vio-  
14 lation described in ORS 536.900 (1). The department shall not be required to furnish a bond  
15 in such proceeding.

16 “(2) When the Water Resources Department brings a civil action under this section, in  
17 lieu of imposing a civil penalty under ORS 536.900 to 536.920, the Water Resources Depart-  
18 ment may recover a penalty in such civil action in an amount equal to the amount of civil  
19 penalty that would be recovered as provided in ORS 536.900 to 536.920. Any such penalty re-  
20 covered in a civil action shall be deposited in the Department of Justice Protection and Ed-  
21 ucation Revolving Account created pursuant to ORS 180.095.

22 “(3) When the Water Resources Department brings a civil action under this section, the  
23 department also may recover in such civil action the damages provided for in ORS 536.930.  
24 Any damages recovered in a civil action under this subsection shall be deposited as provided  
25 in ORS 536.935.

26 “(4) Any action authorized by this section shall be tried in the circuit court of the county  
27 in which the violation occurs or in Marion County.

28 “(5) The Water Resources Commission, the Water Resources Department, the Water  
29 Resources Director and the employees and duly authorized representatives of the commis-  
30 sion and the department shall not be liable for any damages a defendant may sustain as a  
31 result of an injunction, restraining order or abatement order issued under this section.

32 “SECTION 31. ORS 496.303 is amended to read:

33 “496.303. (1) The Fish and Wildlife Account is established in the State Treasury, separate and  
34 distinct from the General Fund. All moneys in the account are continuously appropriated to the  
35 State Fish and Wildlife Commission. The Fish and Wildlife Account shall consist of the moneys in  
36 its various subaccounts and any moneys transferred to the account by the Legislative Assembly.  
37 Unless otherwise specified by law, interest earnings on moneys in the account shall be paid into the  
38 State Treasury and credited to the State Wildlife Fund.

39 “(2)(a) The Fish Screening Subaccount is established in the Fish and Wildlife Account. The  
40 subaccount shall consist of:

41 “(A) All penalties recovered under ORS 536.900 to 536.920, **except those required to be de-**  
42 **posited in the Department of Justice Protection and Education Revolving Account pursuant**  
43 **to section 30 of this 2011 Act.**

44 “(B) All moneys received pursuant to ORS 498.306.

45 “(C) All gifts, grants and other moneys from whatever source that may be used to carry out the

1 provisions of ORS 498.306.

2 “(D) All moneys received from the surcharge on angling licenses imposed by ORS 497.124.

3 “(b) All moneys in the subaccount shall be used to carry out the provisions of ORS 315.138,  
4 498.306 and 509.620. However, moneys received from the surcharge on angling licenses imposed by  
5 ORS 497.124 shall be expended only to carry out the provisions of law relating to the screening of  
6 water diversions.

7 “(3) The Fish Endowment Subaccount is established in the Fish and Wildlife Account. The sub-  
8 account shall consist of transfers of moneys authorized by the Legislative Assembly from the State  
9 Wildlife Fund and gifts and grants of moneys from whatever source for the purpose of paying the  
10 expense of maintaining fish hatcheries operated by the department.

11 “(4) The Migratory Waterfowl Subaccount is established in the Fish and Wildlife Account. All  
12 moneys received by the commission from the sale of art works and prints related to the migratory  
13 waterfowl stamp shall be deposited in the subaccount. Moneys in the subaccount may be expended  
14 only for activities that promote the propagation, conservation and recreational uses of migratory  
15 waterfowl and for activities related to the design, production, issuance and arrangements for sale  
16 of the migratory waterfowl stamps and related art works and prints. Expenditures of moneys in the  
17 subaccount may be made within this state, in other states or in foreign countries, in such amounts  
18 as the commission determines appropriate. Expenditures in other states and foreign countries shall  
19 be on such terms and conditions as the commission determines will benefit most directly the mi-  
20 gratory waterfowl resources of this state.

21 “(5) The Halibut Research Subaccount is established in the Fish and Wildlife Account. Based  
22 on the annual number of recreational halibut anglers, a portion of the moneys derived from the sale  
23 of the salmon, steelhead trout, sturgeon and halibut tag pursuant to ORS 497.121 shall be credited  
24 to the subaccount. Moneys in the subaccount may be expended only for halibut population studies  
25 and other research.

26 “(6) The Upland Bird Subaccount is established in the Fish and Wildlife Account. All moneys  
27 received by the State Fish and Wildlife Commission from the sale of upland bird stamps, from the  
28 sale of any art works and prints related to the upland bird stamp and from private hunting preserve  
29 permit fees shall be deposited in the subaccount. Moneys in the subaccount may be expended only  
30 for promoting the propagation and conservation of upland birds and the acquisition, development,  
31 management, enhancement, sale or exchange of upland bird habitat, and for activities related to the  
32 design, production, issuance and arrangements for sale of the upland bird stamps and related art  
33 works and prints. Expenditures of moneys in the subaccount shall be made for the benefit of pro-  
34 grams within this state in such amounts and at such times as the commission determines appropriate  
35 to most directly benefit the upland bird resources of the state.

36 “(7)(a) The Fish and Wildlife Deferred Maintenance Subaccount is established in the Fish and  
37 Wildlife Account. Interest earnings on moneys in the subaccount shall be credited to the subac-  
38 count. The subaccount shall consist of moneys authorized by the Legislative Assembly from the  
39 State Wildlife Fund and moneys obtained by gift, grant, bequest or donation from any other public  
40 or private source.

41 “(b) The principal in the subaccount may be utilized only as provided in paragraph (c) of this  
42 subsection. Interest earnings on the moneys in the subaccount may be expended only for the main-  
43 tenance of fish hatcheries and State Department of Fish and Wildlife facilities other than adminis-  
44 trative facilities located in Salem.

45 “(c) The department may borrow funds from the principal of the subaccount to maintain ade-

1 quate cash flow requirements. However, moneys borrowed from the principal must be repaid to the  
2 subaccount:

3 “(A) Within six months from the date on which the moneys were borrowed.

4 “(B) With interest at the standard rate that the State Treasurer charges to state agencies for  
5 other loans. Interest paid under this subparagraph shall be paid to the subaccount.

6 “(d) For purposes of this subsection, ‘principal’ means moneys authorized by the Legislative  
7 Assembly for transfer to the subaccount from the State Wildlife Fund, including any assignment of  
8 earnings on moneys in the fund and other moneys obtained by gift, grant, bequest or donation de-  
9 posited into the subaccount.

10 “(8) The Access and Habitat Board Subaccount is established in the Fish and Wildlife Account.  
11 The subaccount shall consist of moneys transferred to the subaccount pursuant to ORS 496.242.  
12 Moneys in the subaccount may be used for the purposes specified in ORS 496.242.

13 “(9) The Marine Shellfish Subaccount is established in the Fish and Wildlife Account. Interest  
14 earnings on moneys in the subaccount shall be credited to the subaccount. All moneys received by  
15 the commission from the sale of resident and nonresident shellfish licenses pursuant to ORS 497.121  
16 shall be deposited in the subaccount. Moneys in the subaccount shall be used for the protection and  
17 enhancement of shellfish for recreational purposes, including shellfish sanitation costs and the cost  
18 of enforcement of wildlife laws pertaining to the taking of shellfish. The State Fish and Wildlife  
19 Director, or a designee, the Director of Agriculture, or a designee, and the Superintendent of State  
20 Police, or a designee, shall jointly make a recommendation to the Governor for inclusion in the  
21 Governor’s budget beginning July 1 of each odd-numbered year.

22 “(10)(a) The Mountain Sheep Subaccount is established in the Fish and Wildlife Account, con-  
23 sisting of moneys collected under ORS 497.112 (2)(a) to (c).

24 “(b) All moneys in the subaccount shall be used for the propagation and conservation of moun-  
25 tain sheep, for research, development, management, enhancement and sale or exchange of moun-  
26 tain sheep habitat and for programs within the state that in the discretion of the commission most di-  
27 rectly benefit mountain sheep resources of this state.

28 “(11)(a) The Antelope Subaccount is established in the Fish and Wildlife Account, consisting of  
29 moneys collected under ORS 497.112 (2)(a) to (c).

30 “(b) All moneys in the subaccount shall be used for the propagation and conservation of  
31 antelope, for research, development, management, enhancement and sale or exchange of antelope  
32 habitat and for programs within the state that in the discretion of the commission most directly  
33 benefit antelope resources of this state.

34 “(12)(a) The Mountain Goat Subaccount is established in the Fish and Wildlife Account, con-  
35 sisting of moneys collected under ORS 497.112 (2)(a) to (c).

36 “(b) All moneys in the subaccount shall be used for the propagation and conservation of moun-  
37 tain goats for research, development, management, enhancement and sale or exchange of mountain  
38 goat habitat and for programs within the state that in the discretion of the commission most directly  
39 benefit mountain goat resources of this state.

40 “(13)(a) The commission shall keep a record of all moneys deposited in the Fish and Wildlife  
41 Account. The record shall indicate by separate cumulative accounts the sources from which the  
42 moneys are derived and the individual activity or programs against which each withdrawal is  
43 charged.

44 “(b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall  
45 report, in the budget documents submitted to the Legislative Assembly, on the application of in-

1 vestment and interest earnings to the maintenance of fish hatcheries and other State Department  
2 of Fish and Wildlife facilities.

3 **“SECTION 32.** ORS 496.303, as amended by section 14, chapter 625, Oregon Laws 2007, is  
4 amended to read:

5 “496.303. (1) The Fish and Wildlife Account is established in the State Treasury, separate and  
6 distinct from the General Fund. All moneys in the account are continuously appropriated to the  
7 State Fish and Wildlife Commission. The Fish and Wildlife Account shall consist of the moneys in  
8 its various subaccounts and any moneys transferred to the account by the Legislative Assembly.  
9 Unless otherwise specified by law, interest earnings on moneys in the account shall be paid into the  
10 State Treasury and credited to the State Wildlife Fund.

11 “(2)(a) The Fish Screening Subaccount is established in the Fish and Wildlife Account. The  
12 subaccount shall consist of:

13 “(A) All penalties recovered under ORS 536.900 to 536.920, **except those required to be de-**  
14 **posited in the Department of Justice Protection and Education Revolving Account pursuant**  
15 **to section 30 of this 2011 Act.**

16 “(B) All moneys received pursuant to ORS 498.306.

17 “(C) All gifts, grants and other moneys from whatever source that may be used to carry out the  
18 provisions of ORS 498.306.

19 “(D) All moneys received from the surcharge on angling licenses imposed by ORS 497.124.

20 “(b) All moneys in the subaccount shall be used to carry out the provisions of ORS 498.306 and  
21 509.620. However, moneys received from the surcharge on angling licenses imposed by ORS 497.124  
22 shall be expended only to carry out the provisions of law relating to the screening of water diver-  
23 sions.

24 “(3) The Fish Endowment Subaccount is established in the Fish and Wildlife Account. The sub-  
25 account shall consist of transfers of moneys authorized by the Legislative Assembly from the State  
26 Wildlife Fund and gifts and grants of moneys from whatever source for the purpose of paying the  
27 expense of maintaining fish hatcheries operated by the department.

28 “(4) The Migratory Waterfowl Subaccount is established in the Fish and Wildlife Account. All  
29 moneys received by the commission from the sale of art works and prints related to the migratory  
30 waterfowl stamp shall be deposited in the subaccount. Moneys in the subaccount may be expended  
31 only for activities that promote the propagation, conservation and recreational uses of migratory  
32 waterfowl and for activities related to the design, production, issuance and arrangements for sale  
33 of the migratory waterfowl stamps and related art works and prints. Expenditures of moneys in the  
34 subaccount may be made within this state, in other states or in foreign countries, in such amounts  
35 as the commission determines appropriate. Expenditures in other states and foreign countries shall  
36 be on such terms and conditions as the commission determines will benefit most directly the mi-  
37 gratory waterfowl resources of this state.

38 “(5) The Halibut Research Subaccount is established in the Fish and Wildlife Account. Based  
39 on the annual number of recreational halibut anglers, a portion of the moneys derived from the sale  
40 of the salmon, steelhead trout, sturgeon and halibut tag pursuant to ORS 497.121 shall be credited  
41 to the subaccount. Moneys in the subaccount may be expended only for halibut population studies  
42 and other research.

43 “(6) The Upland Bird Subaccount is established in the Fish and Wildlife Account. All moneys  
44 received by the State Fish and Wildlife Commission from the sale of upland bird stamps, from the  
45 sale of any art works and prints related to the upland bird stamp and from private hunting preserve

1 permit fees shall be deposited in the subaccount. Moneys in the subaccount may be expended only  
2 for promoting the propagation and conservation of upland birds and the acquisition, development,  
3 management, enhancement, sale or exchange of upland bird habitat, and for activities related to the  
4 design, production, issuance and arrangements for sale of the upland bird stamps and related art  
5 works and prints. Expenditures of moneys in the subaccount shall be made for the benefit of pro-  
6 grams within this state in such amounts and at such times as the commission determines appropriate  
7 to most directly benefit the upland bird resources of the state.

8 “(7)(a) The Fish and Wildlife Deferred Maintenance Subaccount is established in the Fish and  
9 Wildlife Account. Interest earnings on moneys in the subaccount shall be credited to the subac-  
10 count. The subaccount shall consist of moneys authorized by the Legislative Assembly from the  
11 State Wildlife Fund and moneys obtained by gift, grant, bequest or donation from any other public  
12 or private source.

13 “(b) The principal in the subaccount may be utilized only as provided in paragraph (c) of this  
14 subsection. Interest earnings on the moneys in the subaccount may be expended only for the main-  
15 tenance of fish hatcheries and State Department of Fish and Wildlife facilities other than adminis-  
16 trative facilities located in Salem.

17 “(c) The department may borrow funds from the principal of the subaccount to maintain ade-  
18 quate cash flow requirements. However, moneys borrowed from the principal must be repaid to the  
19 subaccount:

20 “(A) Within six months from the date on which the moneys were borrowed.

21 “(B) With interest at the standard rate that the State Treasurer charges to state agencies for  
22 other loans. Interest paid under this subparagraph shall be paid to the subaccount.

23 “(d) For purposes of this subsection, ‘principal’ means moneys authorized by the Legislative  
24 Assembly for transfer to the subaccount from the State Wildlife Fund, including any assignment of  
25 earnings on moneys in the fund and other moneys obtained by gift, grant, bequest or donation de-  
26 posited into the subaccount.

27 “(8) The Access and Habitat Board Subaccount is established in the Fish and Wildlife Account.  
28 The subaccount shall consist of moneys transferred to the subaccount pursuant to ORS 496.242.  
29 Moneys in the subaccount may be used for the purposes specified in ORS 496.242.

30 “(9) The Marine Shellfish Subaccount is established in the Fish and Wildlife Account. Interest  
31 earnings on moneys in the subaccount shall be credited to the subaccount. All moneys received by  
32 the commission from the sale of resident and nonresident shellfish licenses pursuant to ORS 497.121  
33 shall be deposited in the subaccount. Moneys in the subaccount shall be used for the protection and  
34 enhancement of shellfish for recreational purposes, including shellfish sanitation costs and the cost  
35 of enforcement of wildlife laws pertaining to the taking of shellfish. The State Fish and Wildlife  
36 Director, or a designee, the Director of Agriculture, or a designee, and the Superintendent of State  
37 Police, or a designee, shall jointly make a recommendation to the Governor for inclusion in the  
38 Governor’s budget beginning July 1 of each odd-numbered year.

39 “(10)(a) The Mountain Sheep Subaccount is established in the Fish and Wildlife Account, con-  
40 sisting of moneys collected under ORS 497.112 (2)(a) to (c).

41 “(b) All moneys in the subaccount shall be used for the propagation and conservation of moun-  
42 tain sheep, for research, development, management, enhancement and sale or exchange of mountain  
43 sheep habitat and for programs within the state that in the discretion of the commission most di-  
44 rectly benefit mountain sheep resources of this state.

45 “(11)(a) The Antelope Subaccount is established in the Fish and Wildlife Account, consisting of



1 moneys collected under ORS 497.112 (2)(a) to (c).

2 “(b) All moneys in the subaccount shall be used for the propagation and conservation of  
3 antelope, for research, development, management, enhancement and sale or exchange of antelope  
4 habitat and for programs within the state that in the discretion of the commission most directly  
5 benefit antelope resources of this state.

6 “(12)(a) The Mountain Goat Subaccount is established in the Fish and Wildlife Account, con-  
7 sisting of moneys collected under ORS 497.112 (2)(a) to (c).

8 “(b) All moneys in the subaccount shall be used for the propagation and conservation of moun-  
9 tain goats for research, development, management, enhancement and sale or exchange of mountain  
10 goat habitat and for programs within the state that in the discretion of the commission most directly  
11 benefit mountain goat resources of this state.

12 “(13)(a) The commission shall keep a record of all moneys deposited in the Fish and Wildlife  
13 Account. The record shall indicate by separate cumulative accounts the sources from which the  
14 moneys are derived and the individual activity or programs against which each withdrawal is  
15 charged.

16 “(b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall  
17 report, in the budget documents submitted to the Legislative Assembly, on the application of in-  
18 vestment and interest earnings to the maintenance of fish hatcheries and other State Department  
19 of Fish and Wildlife facilities.

20  
21 **“STATE DEPARTMENT OF AGRICULTURE**

22  
23 **“SECTION 33.** ORS 561.280 is amended to read:

24 “561.280. In addition to the other remedies provided by law, the State Department of Agriculture  
25 may apply to the circuit court for, and such court shall have jurisdiction upon a summary hearing  
26 and for cause shown to grant, a temporary or permanent injunction restraining any person from  
27 violating any provision of a law under the jurisdiction of the department. **The department may**  
28 **not be required to furnish a bond in such proceeding. Any action authorized by this section**  
29 **must be tried in the circuit court of the county in which the violation occurs or in Marion**  
30 **County. The State Board of Agriculture, the department, the Director of Agriculture and the**  
31 **employees and duly authorized representatives of the department may not be held liable for**  
32 **any damages a defendant may sustain as a result of an injunction, restraining order or other**  
33 **order issued under this section.**

34 **“SECTION 34.** ORS 568.933 is amended to read:

35 “568.933. (1) In addition to any other liability or penalty provided by law, the State Department  
36 of Agriculture may impose a civil penalty on a landowner of lands within an agricultural or rural  
37 area subject to a water quality management plan for failure to comply with rules implementing the  
38 plan.

39 “(2) The department may not impose a civil penalty on a landowner for a first violation under  
40 this section unless the department:

41 “(a) Has notified the landowner of the violation in a writing that describes, with reasonable  
42 specificity, the factual basis for the department’s determination that a violation has occurred; and

43 “(b) Has prescribed a reasonable time for the landowner to correct the violation that may not  
44 exceed 30 days after the first notice of a violation, unless the violation requires more than 30 days  
45 to correct, in which case the department shall specify a reasonable period of time to correct the

1 violation in a plan of correction issued to the landowner.

2 “(3) A civil penalty imposed under this section may not exceed:

3 “(a) \$2,500 for a first violation; or

4 “(b) \$10,000 for a second or subsequent violation.

5 “(4) For purposes of this section, each day of a violation continuing after any period of time of  
6 correction set by the department is a separate violation unless the department finds that a different  
7 period of time is more appropriate to describe a specific violation event.

8 “(5) The landowner to whom a notice of violation or a notice of civil penalty is addressed shall  
9 have 30 days from the date of receipt of the notice in which to make written application for a  
10 hearing before the department.

11 “(6) In imposing a penalty under this section, the department shall consider the following fac-  
12 tors:

13 “(a) The past history of the landowner incurring a penalty in taking all feasible steps or proce-  
14 dures necessary or appropriate to correct a violation.

15 “(b) Any prior violations of rules, regulations or statutes pertaining to a water quality man-  
16 agement plan.

17 “(c) The gravity and magnitude of the violation.

18 “(d) Whether the violation was repeated or continuous.

19 “(e) Whether the cause of the violation was an unavoidable accident, negligence or an inten-  
20 tional act.

21 “(f) The violator’s efforts to correct the violation.

22 “(g) The immediacy and extent to which the violation threatens the public health or safety.

23 “(7) A notice of violation or period to comply shall not be required under subsection (2) of this  
24 section if:

25 “(a) The violation is intentional; or

26 “(b) The landowner has received a previous notice of the same or similar violation.

27 “(8) **When the State Department of Agriculture brings a civil action pursuant to ORS**  
28 **561.280 to enjoin the violation of any rules adopted under ORS 561.191 or 568.912, in lieu of**  
29 **imposing civil penalties under this section, the State Department of Agriculture may recover**  
30 **a penalty in such civil action in an amount equal to the amount of civil penalty that would**  
31 **be recovered as provided in this section.**

32 “[8] (9)(a) **Except as provided in paragraph (b) of this subsection**, the department shall  
33 deposit any civil penalty recovered under this section into a special subaccount in the Department  
34 of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the de-  
35 partment to be used for educational programs on water quality management and to provide funding  
36 for water quality management demonstration projects.

37 “(b) **Any penalty recovered in a civil action under this section shall be deposited in the**  
38 **Department of Justice Protection and Education Revolving Account created pursuant to ORS**  
39 **180.095.**

40 “[9] (10) The State Department of Agriculture shall reduce the amount of any civil penalty  
41 imposed under this section by the amount of any civil penalty imposed by the Environmental Quality  
42 Commission or the Department of Environmental Quality for violations of water quality rules or  
43 standards, if the latter penalty is imposed on the same person and is based on the same violation.

44 “**SECTION 35.** ORS 634.905 is amended to read:

45 “634.905. (1) [Any civil penalty] **Subject to subsection (3) of this section, civil penalties under**

1 ORS 634.900 shall be imposed as provided in ORS 183.745.

2 “(2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10  
3 days from the date of service of the notice in which to make written application for a hearing before  
4 the Director of Agriculture.

5 “(3) **When the State Department of Agriculture brings a civil action pursuant to ORS  
6 561.280 to enjoin the violation of ORS 634.372, in lieu of imposing civil penalties under ORS  
7 634.900, the department may recover a penalty in such civil action in an amount equal to the  
8 amount of civil penalty authorized to be recovered under ORS 634.900. In setting the amount  
9 of a penalty for a particular violation, the circuit court shall consider any schedule adopted  
10 under ORS 634.915 (1) and the factors described in ORS 634.915 (2).**

11 “**SECTION 36.** ORS 634.925 is amended to read:

12 “634.925. (1) **Except as provided in subsection (2) of this section,** all penalties recovered  
13 under ORS 634.900 to 634.915 shall be deposited by the State Treasurer in the Department of Agri-  
14 culture Service Fund. Such moneys are continuously appropriated to the State Department of Agri-  
15 culture to be used for information and education related to pesticide application.

16 “(2) **Any penalty recovered in a civil action under ORS 634.905 (3) shall be deposited in  
17 the Department of Justice Protection and Education Revolving Account created pursuant to  
18 ORS 180.095.**

19  
20 **“MISCELLANEOUS**

21  
22 “**SECTION 37.** (1) **The amendments to ORS 137.103, 137.106 and 137.295 by sections 2, 2a  
23 and 3 of this 2011 Act apply to crimes committed on or after the effective date of this 2011  
24 Act.**

25 “(2) **Sections 20, 22, 28 and 30 of this 2011 Act and the amendments to ORS 196.890,  
26 196.895, 390.674, 390.992, 468.135, 469.085, 517.992, 568.933 and 634.905 by sections 4 to 6, 9, 12,  
27 15, 17, 24, 34 and 35 of this 2011 Act apply to violations occurring on or after the effective  
28 date of this 2011 Act.**

29 “(3) **The amendments to ORS 468.090 by section 13 of this 2011 Act apply to complaints  
30 filed with the Department of Environmental Quality on or after the effective date of this 2011  
31 Act.**

32 “**SECTION 38.** **The unit captions used in this 2011 Act are provided only for the conven-  
33 ience of the reader and do not become part of the statutory law of this state or express any  
34 legislative intent in the enactment of this 2011 Act.**

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