

B-Engrossed
Senate Bill 202

Ordered by the Senate June 25
Including Senate Amendments dated April 24 and June 25

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes Task Force on Independent Scientific Review for Natural Resources to evaluate and assess need for independent scientific review in Oregon and make recommendations.

Sunsets task force on January 2, 2019.

Establishes Institute for Natural Resources at Oregon State University in cooperation with other public universities. Requires public university employees to obtain landowner permission before entering private land, collecting information or entering information in institute data bank.

Abolishes Independent Multidisciplinary Science Team on January 1, 2017.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to independent scientific review; creating new provisions; amending ORS 352.239, 541.890
3 and 541.898; repealing ORS 541.914; and declaring an emergency.

4 Whereas the Legislative Assembly seeks recommendations regarding independent scientific re-
5 view of a broad range of natural resources issues; now, therefore,

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

7
8 **TASK FORCE ON INDEPENDENT SCIENTIFIC REVIEW**
9 **FOR NATURAL RESOURCES**

10
11 **SECTION 1. The Legislative Assembly finds and declares that:**

12 **(1) Policy and program decisions made by natural resources agencies, boards and com-**
13 **missions can benefit from independent scientific review that:**

14 **(a) Reflects a balance of representation from various research sectors, academic and**
15 **nonacademic, public and private;**

16 **(b) Is performed by distinguished scientists from a range of disciplines; and**

17 **(c) Is clearly communicated to the public and state and local officials.**

18 **(2) Oregon is home to many highly qualified scientists with recognized expertise in a va-**
19 **riety of disciplines who are willing to contribute their time and knowledge to scientific re-**
20 **views to inform the decisions made regarding state and local natural resources policies and**
21 **programs.**

22 **SECTION 2. (1) The Task Force on Independent Scientific Review for Natural Resources**
23 **is established, consisting of up to 15 members.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **(2) Members of the task force shall be appointed by the Governor in consultation with**
2 **the Vice Presidents of Research, or their designees, at Oregon State University, the Uni-**
3 **versity of Oregon and Portland State University.**

4 **(3)(a) The task force shall consist of members from the forestry, agriculture, manufac-**
5 **turing, conservation, academic and research sectors, and representatives of Oregon State**
6 **University, the University of Oregon and Portland State University.**

7 **(b) At least one member of the task force shall have previously served on the Independ-**
8 **ent Multidisciplinary Science Team created under ORS 541.914, as in effect prior to the op-**
9 **erative date specified in section 9 of this 2015 Act, or on another state or federal scientific**
10 **review body, such as the National Academy of Sciences.**

11 **(c) Representatives from state natural resources agencies may participate as nonvoting**
12 **members.**

13 **(4) The task force shall evaluate and assess the need for independent scientific review in**
14 **Oregon and make appropriate recommendations. In developing its recommendations, the**
15 **task force shall:**

16 **(a) Proceed with the understanding that:**

17 **(A) Independent scientific reviews are not intended to replace internal agency reviews**
18 **of natural resources policy and program decisions; and**

19 **(B) Agencies are not required to use an independent scientific review panel as recom-**
20 **mended by the task force;**

21 **(b) Evaluate whether natural resources agencies, legislators and the public would benefit**
22 **from the incorporation of independent scientific review in the making of policy decisions;**

23 **(c) Evaluate whether existing state, federal and academic resources for conducting in-**
24 **dependent scientific review are meeting the needs of natural resources agencies and other**
25 **policymakers; and**

26 **(d) Evaluate the mechanisms and structures that are in place in other states and at the**
27 **federal level for independent scientific review related to natural resources policy.**

28 **(5)(a) If the task force determines there is a need for independent scientific review in**
29 **Oregon, the task force shall make recommendations on one or more entities, which may in-**
30 **clude existing scientific entities in Oregon or a new independent scientific review entity, that**
31 **are best situated to conduct or coordinate independent scientific review and whether the**
32 **entities identified would need legislative authority to act as independent scientific review**
33 **bodies for Oregon.**

34 **(b) If the task force recommends use of a particular existing scientific entity, the task**
35 **force shall make any recommendations regarding necessary changes to the entity based on**
36 **the evaluation and assessment undertaken pursuant to subsection (4) of this section. If the**
37 **task force recommends the development of a new independent scientific review entity, the**
38 **task force shall make recommendations regarding how to structure a new independent sci-**
39 **entific entity.**

40 **(6) In making recommendations under subsection (5) of this section, to ensure that an**
41 **entity will provide scientific review that is independent, the task force shall consider:**

42 **(a) Whether the entity should provide reports to the Legislative Assembly or otherwise**
43 **be subject to special legislative oversight;**

44 **(b) Whether organizational safeguards must be established or changed within the entity**
45 **to ensure that the entity is free from bias and that a wide variety of natural resources dis-**

1 **ciplines and interests are represented;**

2 **(c) How to develop or change the structure or processes of the entity's advisory board**
3 **or other governing body in order to support the independence of scientific review panels**
4 **convened by the entity, which shall include consideration of the entity's advisory board or**
5 **other governing body directing or participating in the scientific analysis and review con-**
6 **ducted or coordinated by the entity;**

7 **(d) How the entity's funding structure should be created, altered or supplemented to**
8 **ensure that there is no perception of bias in the funding of independent scientific review**
9 **panels and to ensure that adequate funds are available to convene such panels;**

10 **(e) How to develop processes for conducting or coordinating independent scientific review**
11 **in order to encourage balanced, broad and diverse participation among the scientific disci-**
12 **plines that may be called upon in the course of independent scientific review; and**

13 **(f) How to develop procedures for the selection and deliberation of scientific experts to**
14 **participate in independent scientific reviews, taking into consideration lessons learned from**
15 **the processes used by the former Independent Multidisciplinary Science Team and other**
16 **processes for independent scientific reviews.**

17 **(7) The task force also shall make recommendations regarding the structure and function**
18 **of the process to be used by the recommended entities in the course of independent scientific**
19 **reviews. In making recommendations under this subsection, the task force shall consider:**

20 **(a) Whether the entity should respond to inquiries from the Governor's office or the**
21 **Legislative Assembly, the citizen boards of natural resources agencies or from other appro-**
22 **priate parties;**

23 **(b) Whether the entity should independently select science issues to review;**

24 **(c) Whether a state agency should be required to respond in writing to a report issued**
25 **by an independent scientific review panel, explaining how the agency intends to implement**
26 **the panel's suggestions or why the agency does not plan to implement the suggestions;**

27 **(d) How to enhance involvement of the University of Oregon, Oregon State University,**
28 **Portland State University and other universities in the independent scientific review process;**
29 **and**

30 **(e) How to provide a scientific review process that is open to the public and that inspires**
31 **public confidence in, and understanding of, the review process without compromising the**
32 **independence of the review.**

33 **(8) A majority of the voting members of the task force constitutes a quorum for the**
34 **transaction of business.**

35 **(9) Official action by the task force requires the approval of a majority of the voting**
36 **members of the task force.**

37 **(10) The task force shall elect one of the voting members to serve as chairperson.**

38 **(11) If there is a vacancy for any cause, the Governor shall, in consultation with the Vice**
39 **Presidents of Research, or their designees, at Oregon State University, the University of**
40 **Oregon and Portland State University, make an appointment to become immediately effec-**
41 **tive.**

42 **(12) The task force shall meet at times and places specified by a majority of the voting**
43 **members of the task force.**

44 **(13) The task force may adopt rules necessary for the operation of the task force.**

45 **(14) The task force shall have its first meeting on or before January 1, 2016.**

1 (15) The task force shall submit a report of its findings and recommendations to the
2 Governor and to an appropriate committee of the Legislative Assembly in the manner pro-
3 vided in ORS 192.245 no later than September 15, 2016.

4 (16) The Institute for Natural Resources shall provide staff support to the task force.

5 (17) Members of the task force are not entitled to compensation, but may be reimbursed
6 for actual and necessary travel and other expenses incurred by them in the performance of
7 their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-
8 penses shall be paid out of funds appropriated to the Institute for Natural Resources for
9 purposes of the task force.

10 (18) All agencies of state government, as defined in ORS 174.111, are directed to assist
11 the task force in the performance of its duties and, to the extent permitted by laws relating
12 to confidentiality, to furnish such information and advice as the members of the task force
13 consider necessary to perform their duties.

14 **SECTION 3.** Sections 1 and 2 of this 2015 Act are repealed on January 2, 2019.

15
16 **INSTITUTE FOR NATURAL RESOURCES**

17
18 **SECTION 4.** ORS 352.239 is amended to read:

19 352.239. [(1) *There is created within the Oregon University System the Institute for Natural Re-*
20 *sources. The Institute for Natural Resources shall be administered by Oregon State University and*
21 *other institutions in the Oregon University System.*]

22 (1) **The Institute for Natural Resources is established at Oregon State University. In ad-**
23 **ministering the institute, Oregon State University may seek the cooperation of other public**
24 **universities listed in ORS 352.002.**

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

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

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

29 (c) Coordinate efforts with other state agencies and bodies to provide natural resources infor-
30 mation to the public in a comprehensive manner.

31 (d) Facilitate and conduct research.

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

33 (f) Assist the State Parks and Recreation Commission in carrying out the Natural Areas Pro-
34 gram by maintaining a data bank that contains a classification of natural heritage resources and
35 an inventory of the locations of the resources. At a minimum, the institute shall record in the data
36 bank the location of state natural areas, the natural heritage resources in those areas, sites that
37 are inhabited by rare species, and lists that rank by rarity species, plant communities and ecosystem
38 types. The institute shall make the information included in the data bank available to private land-
39 owners, researchers and local, state and federal agencies.

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

43 (3) When making observations on private land, an employee of [*an institution in the Oregon*
44 *University System*] **a public university listed in ORS 352.002** who is compiling information for the
45 Natural Areas Program pursuant to subsection (2)(f) of this section must obtain permission from the

1 landowner before **entering private land, collecting information or** entering the information into
2 the data bank.

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

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

10
11 **INDEPENDENT MULTIDISCIPLINARY SCIENCE TEAM ABOLISHED**

12
13 **SECTION 5. The Independent Multidisciplinary Science Team is abolished.**

14 **SECTION 6. ORS 541.914 is repealed.**

15 **SECTION 7. ORS 541.890 is amended to read:**

16 541.890. As used in ORS 541.890 to 541.969:

17 (1) "Adaptive management" means applying management or practices over time and across the
18 landscape to achieve site specific resource goals using an integrated and science based approach
19 that results in changes over time in response to feedback or monitoring.

20 (2) "Associated uplands" includes those lands of a watershed that are critical to the functioning
21 and protection of a riparian area.

22 (3) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.

23 [(4) "*Independent Multidisciplinary Science Team*" means the scientific team of recognized experts
24 in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural man-
25 agement created under ORS 541.914.]

26 [(5)] (4) "Native" means indigenous to Oregon and not introduced.

27 [(6)] (5) "Oregon Conservation Strategy" means the comprehensive wildlife conservation strat-
28 egy for this state adopted by the State Fish and Wildlife Commission.

29 [(7)] (6) "Oregon Plan" means the guidance statement and framework described in ORS 541.898.

30 [(8)] (7) "Protect" or "protection" means to minimize or mitigate adverse effects on native fish
31 or wildlife habitat to the maximum extent practicable given the anticipated duration, geographic
32 scope and primary purpose of proposed activities.

33 [(9)] (8) "Restore" or "restoration" means to take actions likely to achieve sustainable popu-
34 lation levels of native fish or wildlife and their habitats.

35 [(10)] (9) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial
36 ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or
37 potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area
38 may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or
39 ephemeral, intermittent or perennial stream.

40 [(11)] (10) "Soil and water conservation district" means a political subdivision of the state as
41 described in ORS 568.550.

42 [(12)] (11) "Stewardship" means the careful and responsible management of the environment.

43 [(13)] (12) "Tribe" means a federally recognized Indian tribe in Oregon.

44 [(14)] (13) "Watershed" means the entire land area drained by a stream or system of connected
45 streams such that all streamflow originating in the area is discharged through a single outlet.

1 [(15)] (14) "Watershed council" means a voluntary local organization, designated by a local
2 government group convened by a county governing body, to address the goal of sustaining natural
3 resource and watershed protection, restoration and enhancement within a watershed.

4 **SECTION 8.** ORS 541.898 is amended to read:

5 541.898. (1) As used in this section when referring to salmonid recovery:

6 (a) "Listed unit" means one population or a group of populations of a species, such as an
7 evolutionarily significant unit, that has been listed as threatened or endangered under the federal
8 Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

9 (b) "Native fish" means a fish indigenous to Oregon and not introduced. Naturally produced fish
10 and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not intro-
11 duced.

12 (c) "Naturally produced" means a fish that reproduces and completes its full life cycle in its
13 natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

14 (d) "Population" means a group of fish that:

15 (A) Originates and reproduces in a particular area at a particular time;

16 (B) Does not interbreed to any substantial degree with any other group reproducing in a dif-
17 ferent area or in the same area at a different time; and

18 (C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

19 (e) "Recovery" means that a proportion of the constituent populations of naturally produced
20 native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histo-
21 ries and distribution such that the listed unit as a whole is likely to be self-sustaining into the
22 foreseeable future.

23 (f) "Self-sustaining" means having a sufficient proportion and distribution of constituent popu-
24 lations:

25 (A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental condi-
26 tions that are detrimental to a population; and

27 (B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate
28 to maintain associated ecological, cultural and economic benefits.

29 (2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the
30 creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission
31 and goals:

32 (a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the
33 fish and wildlife populations of those watersheds to productive and sustainable levels in a manner
34 that provides substantial ecological, cultural and economic benefits.

35 (b) The goals of the Oregon Plan that guide the citizens of Oregon in achieving the mission of
36 the Oregon Plan are the:

37 (A) Establishment and maintenance of an infrastructure that provides long-term continuity in
38 leadership, direction and oversight of watershed restoration and species recovery.

39 (B) Continued opportunity for a wide range of natural resource uses that are consistent with
40 watershed restoration and species recovery.

41 (C) Implementation of existing laws and environmental regulations to achieve the mission before
42 enacting new laws and environmental regulations.

43 (D) Development and maintenance of funding for programs to protect and restore watersheds.

44 (E) Development of expectations for the sustainability of interrelated natural resources that
45 accurately reflect a scientific understanding of the physical and biological constraints of the

1 ecosystem.

2 (F) Enhancement of habitat available to support healthy populations of fish and wildlife
3 throughout the state.

4 (G) Production of populations of threatened or endangered species to achieve levels of natural
5 production consistent with overall restoration goals.

6 (H) Establishment of a science-based system that supports evaluation of the Oregon Plan and
7 provides a basis for making appropriate future changes to management programs.

8 (I) Coordination of activities and programs among federal, state and local governments and other
9 entities.

10 (J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan
11 whenever possible.

12 (3) The Oregon Plan is a comprehensive program for the protection and recovery of species and
13 for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory
14 and other actions of state and federal agencies and local governments with voluntary watershed
15 restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

16 (a) Programs and policies found in the following statutes:

17 (A) ORS 196.600 to 196.905;

18 (B) ORS chapter 197;

19 (C) ORS chapter 274;

20 (D) ORS chapter 366;

21 (E) ORS chapter 390;

22 (F) ORS chapters 465, 466, 468 and 468B;

23 (G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

24 (H) ORS chapter 477;

25 (I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

26 (J) ORS 517.702 to 517.989;

27 (K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

28 (L) ORS chapter 530;

29 (M) ORS chapters 536 to 543A;

30 (N) ORS 543A.005 to 543A.415; and

31 (O) ORS 568.210 to 568.808 and 568.900 to 568.933;

32 (b) Commitments of state agencies in the form of measures;

33 (c) Actions of local governments and federal agencies taken in coordination with the state and
34 consistent with the purposes of the Oregon Plan;

35 (d) Voluntary activities undertaken by watershed councils, soil and water conservation districts,
36 landowners and other entities and consistent with the purposes of the Oregon Plan;

37 (e) Scientific review by [*the Independent Multidisciplinary Science Team*] **independent scientific**
38 **review panels**, and others, of the activities performed under the Oregon Plan;

39 (f) Programs and activities identified to address a coordinated approach for the recovery of na-
40 tive salmonid populations within Oregon;

41 (g) The guidance statement and framework provided by the healthy streams partnership devel-
42 oped to provide cooperative solutions and voluntary approaches to improving the water quality of
43 streams and to achieve healthy streams throughout Oregon; and

44 (h) Programs for the restoration and enhancement of multiple species and of the habitat of those
45 species.

1 (4) The Oregon Plan is subject to modification and alteration to enhance program efforts con-
2 sistent with appropriate guidance principles developed by the Legislative Assembly.

3 (5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid
4 populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy
5 economy.

6 (6) The Oregon Plan shall:

7 (a) Provide for coordination of local, state, federal and tribal agency responsibilities and au-
8 thorities for native salmonid, watershed and habitat restoration throughout Oregon.

9 (b) Rely on watershed councils and soil and water conservation districts, which are directed to
10 cooperate in the development of local watershed plans that assess watershed conditions and create
11 watershed action plans and strategies for the implementation of the local watershed action plans.

12 (c) Focus state policies and resources on achieving native salmonid recovery and watershed
13 restoration while sustaining a healthy economy and environment.

14 (7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or en-
15 dangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time
16 as recovery is achieved. Once recovery has been achieved for any species listed as threatened or
17 endangered under ORS 496.171 to 496.192, the Governor shall direct the State Fish and Wildlife
18 Commission to begin rulemaking, as provided in ORS 496.176, to remove the species from the list
19 created pursuant to ORS 496.172. Upon recovery, adequate measures pursuant to the Oregon Plan
20 shall remain in place, as necessary, to help a species avoid a return to threatened or endangered
21 status.

22 (8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain
23 assurances to the effect that compliance with the Oregon Plan and the programs and policies found
24 in the statutes listed in subsection (3) of this section and implementation of related state programs
25 and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Spe-
26 cifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of
27 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or
28 shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

29 (b) State agencies responsible for implementing the programs and policies found in the statutes
30 listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and
31 with federal officials to provide the information necessary to obtain the exemptions, agreement or
32 permit specified in paragraph (a) of this subsection.

33 **SECTION 9. Section 5 of this 2015 Act, the amendments to ORS 541.890 and 541.898 by**
34 **sections 7 and 8 of this 2015 Act and the repeal of ORS 541.914 by section 6 of this 2015 Act**
35 **become operative on January 1, 2017.**

36
37 **MISCELLANEOUS**

38
39 **SECTION 10. The unit captions used in this 2015 Act are provided only for the conven-**
40 **ience of the reader and do not become part of the statutory law of this state or express any**
41 **legislative intent in the enactment of this 2015 Act.**

42 **SECTION 11. There is appropriated to the Higher Education Coordinating Commission,**
43 **for the biennium beginning July 1, 2015, out of the General Fund, the amount of \$108,907 to**
44 **be distributed to Oregon State University to be used for the purposes of the Institute for**
45 **Natural Resources.**

1 **SECTION 12. This 2015 Act being necessary for the immediate preservation of the public**
2 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
3 **on its passage.**

4
