

House Bill 2327

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Watershed Enhancement Board)

SUMMARY

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

Removes guidance statement and framework of healthy streams partnership from description of Oregon Plan.

Expands Oregon Watershed Enhancement Board to include representative of United States Fish and Wildlife Service as nonvoting member. Revises language regarding applicant revision and resubmission of proposal board has rejected for funding.

Requires all local watershed councils to periodically report to county governing body.

Eliminates Oregon Department of Administrative Services authority to pay liability insurance costs for local watershed councils. Requires recipients of grants from Oregon Watershed Enhancement Board to maintain liability insurance for actions in connection with grant.

Eliminates requirement that watershed enhancement program conducted by board include coordination of certain geographic information. Revises program duties of board.

Eliminates requirement that board annual report to Governor and Legislative Assembly include status report on drainage basin watershed and key habitat conditions. Revises requirement that natural resources agencies provide board with information for report.

Eliminates requirement that certain state agencies provide board with copies of agency reports pertaining to riparian areas and associated uplands.

A BILL FOR AN ACT

1
2 Relating to administration of the Oregon Plan; creating new provisions; amending ORS 541.898,
3 541.900, 541.910, 541.926 and 541.972; and repealing ORS 541.920 and 541.965.

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

5 **SECTION 1. The recipient of a grant issued by the Oregon Watershed Enhancement**
6 **Board must maintain an insurance policy providing liability protection for actions by, or on**
7 **behalf of, the recipient in connection with the grant. The insurance must provide liability**
8 **protection for the recipient and for all officers, employees and agents of the recipient acting**
9 **within the scope of their employment or duties. The board may include the cost of liability**
10 **insurance as part of, or in connection with, a grant award. The board, in consultation with**
11 **the grant recipient, shall establish guidelines for the liability coverage.**

12 **SECTION 2.** ORS 541.898, as amended by section 8, chapter 771, Oregon Laws 2015, is amended
13 to read:

14 541.898. (1) As used in this section when referring to salmonid recovery:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (E) Development of expectations for the sustainability of interrelated natural resources that
32 accurately reflect a scientific understanding of the physical and biological constraints of the
33 ecosystem.

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

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

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

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

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

44 (3) The Oregon Plan is a comprehensive program for the protection and recovery of species and
45 for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory

1 and other actions of state and federal agencies and local governments with voluntary watershed
 2 restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

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

4 (A) ORS 196.600 to 196.905;

5 (B) ORS chapter 197;

6 (C) ORS chapter 274;

7 (D) ORS chapter 366;

8 (E) ORS chapter 390;

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

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

11 (H) ORS chapter 477;

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

13 (J) ORS 517.702 to 517.989;

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

15 (L) ORS chapter 530;

16 (M) ORS chapters 536 to 543A;

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

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

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

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

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

24 (e) Scientific review by independent scientific review panels, and others, of the activities per-
 25 formed under the Oregon Plan;

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

28 *[(g) The guidance statement and framework provided by the healthy streams partnership developed*
 29 *to provide cooperative solutions and voluntary approaches to improving the water quality of streams*
 30 *and to achieve healthy streams throughout Oregon; and]*

31 *[(h)]* (g) Programs for the restoration and enhancement of multiple species and of the habitat
 32 of those species.

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

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

38 (6) The Oregon Plan shall:

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

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

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

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

9 (8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain
10 assurances to the effect that compliance with the Oregon Plan and the programs and policies found
11 in the statutes listed in subsection (3) of this section and implementation of related state programs
12 and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Spe-
13 cifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of
14 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or
15 shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

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

20 **SECTION 3.** ORS 541.900 is amended to read:

21 541.900. (1) The Oregon Watershed Enhancement Board is created. The board shall consist of
22 [17] 18 members as set forth in subsection (2) of this section. The chairperson shall have such pow-
23 ers and duties as are provided by the rules of the board.

24 (2)(a) The 11 voting members of the board shall be knowledgeable about natural resource issues,
25 represent all geographic regions of this state and include at least one representative of a tribe. The
26 board shall consist of the following:

27 (A) Each of the following boards or commissions shall designate one member of their board or
28 commission to serve on the Oregon Watershed Enhancement Board:

- 29 (i) The Environmental Quality Commission;
- 30 (ii) The State Fish and Wildlife Commission;
- 31 (iii) The State Board of Forestry;
- 32 (iv) The State Board of Agriculture; and
- 33 (v) The Water Resources Commission; and

34 (B) Six public members appointed by the Governor and confirmed by the Senate in accordance
35 with ORS 171.562 and 171.565. Each public member shall serve for a term of four years. A member
36 shall be eligible for reappointment, but no member shall serve more than two consecutive terms.

37 (b) In addition to the voting members, the director of the Oregon State University Extension
38 Service, or the director's designee, shall serve as a nonvoting member of the board and shall par-
39 ticipate as needed in the activities of the board.

40 (c) In addition to the voting and nonvoting members designated in paragraphs (a) and (b) of this
41 subsection, representatives of the following federal agencies shall be invited to serve as additional
42 nonvoting members of the board:

- 43 (A) A representative of the United States Forest Service.
- 44 (B) A representative of the United States Bureau of Land Management.
- 45 (C) A representative of the Natural Resources Conservation Service of the United States De-

1 partment of Agriculture.

2 (D) A representative of the United States Environmental Protection Agency.

3 (E) A representative of the National Marine Fisheries Service of the United States Department
4 of Commerce.

5 **(F) A representative of the United States Fish and Wildlife Service.**

6 (3) The voting members of the board shall select a chairperson from among the voting members
7 of the board.

8 (4) At least eight voting members of the board must be present to take action to award grant
9 funds under ORS 541.926. If three or more voting members object to an award of grant funds, the
10 board shall reject the proposal. *[and direct the]* **The board shall allow an** applicant to revise *[the]*
11 **a rejected** proposal to comply with the requirements of ORS 541.947, 541.956 and 541.958 and re-
12 submit the proposal.

13 **SECTION 4.** ORS 541.910 is amended to read:

14 541.910. (1) Local government groups are encouraged to form voluntary local watershed councils
15 in accordance with the guidelines set forth in subsection (2) of this section. The Oregon Watershed
16 Enhancement Board may work cooperatively with any local watershed council that may be formed.
17 Requests from local watershed councils for state assistance shall be evaluated on the basis of
18 whether the requesting organization reflects the interests of the affected watershed and the poten-
19 tial to protect and enhance the quality of the watershed in question.

20 (2) Local watershed councils formed under subsection (1) of this section shall consist of a ma-
21 jority of local residents, including local officials. A watershed council may be a new or existing or-
22 ganization as long as the council represents a balance of interested and affected persons within the
23 watershed and assures a high level of citizen involvement in the development and implementation
24 of a watershed action program. A local watershed council may include representatives of local
25 government, representatives of nongovernment organizations and private citizens, including but not
26 limited to:

27 (a) Representatives of local and regional boards, commissions, districts and agencies;

28 (b) Representatives of federally recognized Indian tribes;

29 (c) Public interest group representatives;

30 (d) Private landowners;

31 (e) Industry representatives;

32 (f) Members of academic, scientific and professional communities; and

33 (g) Representatives of state and federal agencies.

34 (3) *[If more than one watershed council exists in a county,]* Each watershed council shall period-
35 ically report the activities of the council to the county governing body.

36 *[(4) The Oregon Department of Administrative Services may provide to voluntary local watershed*
37 *councils and their officers, employees and agents acting within the scope of their employment or duties,*
38 *protection against liability as part of the insurance provided to the Oregon Watershed Enhancement*
39 *Board pursuant to ORS 278.120 to 278.215. The Oregon Watershed Enhancement Board, after con-*
40 *sulting the Oregon Department of Administrative Services and local watershed councils, shall establish*
41 *guidelines for liability coverage and limits of coverage. The Oregon Department of Administrative*
42 *Services shall determine any additional contributions to be apportioned to the Oregon Watershed En-*
43 *hancement Board for extending insurance to voluntary local watershed councils, and the Oregon*
44 *Watershed Enhancement Board shall pay the assessments from such moneys as may be available for*
45 *those assessments.]*

1 **SECTION 5.** ORS 541.926 is amended to read:

2 541.926. (1) **The Oregon Watershed Enhancement Board shall conduct a watershed en-**
3 **hancement program to benefit all users of the waters of this state. The board shall conduct**
4 **the program in a manner that provides the greatest possible opportunity for volunteer par-**
5 **ticipation to achieve the goals of the program.** In carrying out the watershed enhancement pro-
6 gram [*described in ORS 541.920, the Oregon Watershed Enhancement Board*], **the board** shall:

7 (a) Coordinate the board's funding of enhancement projects with the activities of the Natural
8 Resources Division staff and other agencies, especially those agencies working together through a
9 system of coordinated resource management planning.

10 (b) Use the expertise of the appropriate state agency according to the type of enhancement
11 project.

12 (c) Provide educational and informational materials to promote public awareness and involve-
13 ment in the watershed enhancement program.

14 (d) Coordinate and provide for or arrange for assistance in the activities of persons, agencies
15 or political subdivisions developing local watershed enhancement projects funded by the board.

16 (e) Grant funds for the support of watershed councils in assessing watershed conditions, devel-
17 oping action plans, implementing projects and monitoring results and for the implementation of
18 watershed enhancement projects from such moneys as may be available to the board [*therefor*] **for**
19 **that purpose.**

20 (f) Develop and maintain a centralized repository for information about the effects of watershed
21 enhancement [*and education*] projects.

22 (g) Give priority to proposed watershed enhancement projects receiving funding or assistance
23 from other sources.

24 (h) Identify, **and provide funding or support for filling,** gaps in [*research or available*] infor-
25 mation about watershed health and enhancement.

26 (i) Cooperate with appropriate federal entities to identify the needs and interests of the State
27 of Oregon so that federal plans and project schedules relating to watershed enhancement incorpo-
28 rate the state's intent to the fullest extent practicable.

29 (j) Encourage the use of nonstructural methods to enhance the riparian areas and associated
30 uplands of Oregon's watersheds.

31 (k) Determine criteria for utilizing the private sector, both not-for-profit and for-profit organ-
32 izations, to provide landowners with technical assistance to help develop and implement conserva-
33 tion easements and resource improvement projects.

34 (2) In accordance with ORS 541.890 to 541.969, the [*Oregon Watershed Enhancement*] board shall
35 administer a watershed conservation grant program using funds from the Watershed Conservation
36 Grant Fund established under ORS 541.947, from the Natural Resources Subaccount established un-
37 der ORS 541.942 and from the Flexible Incentives Account established under ORS 541.937.

38 (3) To aid and advise the board in the performance of the functions of the board, the board may
39 establish such advisory and technical committees as the board considers necessary. These commit-
40 tees may be continuing or temporary. The board shall determine the representation, membership,
41 terms and organization of the committees and shall appoint their members. The chairperson is ex
42 officio a member of each committee.

43 **SECTION 6.** ORS 541.972 is amended to read:

44 541.972. (1) The Oregon Watershed Enhancement Board shall, by January 15 of each odd-
45 numbered year, submit a report to the Governor and to the appropriate committee or committees

1 of the Legislative Assembly that assesses the implementation and effectiveness of the Oregon Plan
 2 in the state. The report shall address each drainage basin in the state and shall include, but need
 3 not be limited to:

4 [(a) *A status report on watershed and key habitat conditions in the drainage basin based on*
 5 *available information;*]

6 [(b)] (a) An assessment of data and information needs deemed critical to monitoring and evalu-
 7 ating watershed and habitat enhancement programs and efforts;

8 [(c)] (b) An overview of state agency programs addressing watershed conditions;

9 [(d)] (c) An overview of voluntary restoration activities addressing watershed conditions;

10 [(e)] (d) A summary of investments made by the board from funds received under [section 4b,]
 11 Article XV, **section 4b**, of the Oregon Constitution, and all other sources; and

12 [(f)] (e) The recommendations of the board for enhancing the effectiveness of Oregon Plan im-
 13 plementation [*in each drainage basin*].

14 [(2) *In order to provide the board with the information necessary to complete the report described*
 15 *in subsection (1) of this section, each natural resources agency shall provide information requested by*
 16 *the board in the format and at the times determined by the board.*]

17 **(2) Each natural resources agency shall provide information that the board requests for**
 18 **purposes of preparing the report described in subsection (1) of this section. An agency shall**
 19 **provide the information in the format and at the times determined by the board.**

20 (3) For purposes of this section, “natural resources agency” includes:

21 (a) Department of Environmental Quality;

22 (b) State Department of Agriculture;

23 (c) State Department of Fish and Wildlife;

24 (d) State Forestry Department;

25 (e) Department of State Lands;

26 (f) Water Resources Department;

27 (g) Department of Land Conservation and Development;

28 (h) State Department of Geology and Mineral Industries;

29 (i) Oregon Watershed Enhancement Board;

30 (j) Fish and Wildlife Division of the Department of State Police;

31 (k) Department of Transportation;

32 (L) State Parks and Recreation Department;

33 (m) Oregon Business Development Department;

34 (n) State Marine Board; and

35 (o) Any other state agency that is required to manage, allocate or protect natural resources,
 36 either as the primary responsibility of the agency or in conjunction with the primary responsibilities
 37 of the agency.

38 (4) In addition to the report specified under subsection (1) of this section, the Oregon Watershed
 39 Enhancement Board shall report regularly during the interim on the implementation of the Oregon
 40 Plan to the appropriate legislative committee.

41 **SECTION 7. ORS 541.920 and 541.965 are repealed.**