

# Senate Bill 715

Sponsored by Senator KRUSE

## 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**.

Abolishes Oregon Watershed Enhancement Board.  
Transfers duties, functions and powers of board to State Department of Agriculture and State Department of Fish and Wildlife.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to Oregon Watershed Enhancement Board; creating new provisions; amending ORS 171.553,  
3 196.635, 468.035, 496.118, 496.270, 526.041, 536.037, 541.351, 541.363, 541.365, 541.368, 541.370,  
4 541.371, 541.372, 541.375, 541.376, 541.377, 541.378, 541.379, 541.381, 541.384, 541.388, 541.390,  
5 541.392, 541.395, 541.396, 541.397, 541.401, 541.420, 541.700, 561.020, 561.080, 561.400 and 805.256;  
6 repealing ORS 541.360 and 541.362; and declaring an emergency.

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

8 **SECTION 1. (1) The Oregon Watershed Enhancement Board is abolished. On the opera-**  
9 **tive date of this section, the tenure of office of the members of the Oregon Watershed En-**  
10 **hancement Board and of the executive director of the Oregon Watershed Enhancement**  
11 **Board ceases.**

12 **(2) The duties, functions and powers of the Oregon Watershed Enhancement Board re-**  
13 **lating to the granting of funds and the administration of moneys received pursuant to sec-**  
14 **tion 4b, Article XV of the Oregon Constitution, are imposed upon, transferred to and vested**  
15 **in the State Department of Agriculture. All the duties, functions and powers of the Oregon**  
16 **Watershed Enhancement Board that relate to the watershed enhancement program, the co-**  
17 **ordination of the State Department of Agriculture's funding of enhancement projects and the**  
18 **framework of watershed planning and management under the Oregon Plan are imposed upon,**  
19 **transferred to and vested in the State Department of Fish and Wildlife. All other duties,**  
20 **functions and powers of the Oregon Watershed Enhancement Board are imposed upon,**  
21 **transferred to and vested in the State Department Agriculture and the State Department**  
22 **of Fish and Wildlife as specified in sections 1 to 7 of this 2005 Act, the amendments to stat-**  
23 **utes by sections 10 to 44 of this 2005 Act and the repeal of ORS 541.360 and 541.362 by section**  
24 **46 of this 2005 Act.**

25 **SECTION 2. (1) The executive director of the Oregon Watershed Enhancement Board**  
26 **shall:**

27 **(a) Deliver to the State Department of Agriculture and to the State Department of Fish**  
28 **and Wildlife all records and property within the jurisdiction of the executive director that**  
29 **relate to the duties, functions and powers transferred by section 1 of this 2005 Act; and**

30 **(b) Transfer to the State Department of Agriculture and to the State Department of Fish**

**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 and Wildlife those employees engaged primarily in the exercise of the duties, functions and  
2 powers transferred by section 1 of this 2005 Act.

3 (2) The Director of Agriculture and the State Fish and Wildlife Director shall take pos-  
4 session of the records and property, and shall take charge of the employees and employ them  
5 in the exercise of the duties, functions and powers transferred by section 1 of this 2005 Act,  
6 without reduction of compensation but subject to change or termination of employment or  
7 compensation as provided by law.

8 (3) The Governor shall resolve any dispute between the Oregon Watershed Enhancement  
9 Board and the State Department of Agriculture or the State Department of Fish and  
10 Wildlife, or between the State Department of Agriculture and the State Department of Fish  
11 and Wildlife, relating to transfers of records, property and employees under this section. The  
12 Governor's decision is final.

13 **SECTION 3.** (1) The unexpended balances of amounts authorized to be expended by the  
14 Oregon Watershed Enhancement Board for the biennium beginning July 1, 2005, from re-  
15 venues dedicated, continuously appropriated, appropriated or otherwise made available for  
16 the purpose of administering and enforcing the duties, functions and powers transferred by  
17 section 1 of this 2005 Act are appropriated and transferred to and are available for expendi-  
18 ture by the State Department of Agriculture for the biennium beginning July 1, 2005, for the  
19 purpose of administering and enforcing the duties, functions and powers transferred by sec-  
20 tion 1 of this 2005 Act.

21 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
22 expenditures by the Oregon Watershed Enhancement Board remain applicable to expen-  
23 ditures by the State Department of Agriculture under this section.

24 **SECTION 4.** The transfer of duties, functions and powers to the State Department of  
25 Agriculture and to the State Department of Fish and Wildlife by section 1 of this 2005 Act  
26 does not affect any action, proceeding or prosecution involving or with respect to such du-  
27 ties, functions and powers begun before and pending at the time of the transfer, except that  
28 the State Department of Agriculture or the State Department of Fish and Wildlife is sub-  
29 stituted for the Oregon Watershed Enhancement Board, as appropriate, in the action, pro-  
30 ceeding or prosecution.

31 **SECTION 5.** (1) Nothing in sections 1 to 7 of this 2005 Act, the amendments to statutes  
32 by sections 10 to 44 of this 2005 Act or the repeal of ORS 541.360 and 541.362 by section 46  
33 of this 2005 Act relieves a person of a liability, duty or obligation accruing under or with  
34 respect to the duties, functions and powers transferred by section 1 of this 2005 Act. The  
35 State Department of Agriculture or the State Department of Fish and Wildlife may under-  
36 take the collection or enforcement of any such liability, duty or obligation.

37 (2) The rights and obligations of the Oregon Watershed Enhancement Board legally in-  
38 curred under contracts, leases and business transactions executed, entered into or begun  
39 before the operative date of section 1 of this 2005 Act accruing under or with respect to the  
40 duties, functions and powers transferred by section 1 of this 2005 Act are transferred to the  
41 State Department of Agriculture or the State Department of Fish and Wildlife, as appropri-  
42 ate. For the purpose of succession to these rights and obligations, the State Department of  
43 Agriculture and the State Department of Fish and Wildlife are continuations of the Oregon  
44 Watershed Enhancement Board and not new authorities.

45 **SECTION 6.** Notwithstanding the transfer of duties, functions and powers by section 1

1 of this 2005 Act, the rules of the Oregon Watershed Enhancement Board with respect to such  
2 duties, functions or powers that are in effect on the operative date of section 1 of this 2005  
3 Act continue in effect until superseded or repealed by rules of the State Department of Ag-  
4 riculture or the State Department of Fish and Wildlife, as appropriate. References in rules  
5 of the Oregon Watershed Enhancement Board to the Oregon Watershed Enhancement Board  
6 or an officer or employee of the Oregon Watershed Enhancement Board are considered to  
7 be references to the State Department of Agriculture or the State Department of Fish and  
8 Wildlife, as appropriate, or to an officer or employee of the State Department of Agriculture  
9 or the State Department of Fish and Wildlife, as appropriate.

10 **SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly  
11 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in  
12 the context of the duties, functions and powers transferred by section 1 of this 2005 Act,  
13 reference is made to the Oregon Watershed Enhancement Board, or an officer or employee  
14 of the Oregon Watershed Enhancement Board, whose duties, functions or powers are  
15 transferred by section 1 of this 2005 Act, the reference is considered to be a reference to the  
16 State Department of Agriculture or the State Department of Fish and Wildlife, as appropri-  
17 ate, or to an officer or employee of the State Department of Agriculture or the State De-  
18 partment of Fish and Wildlife, as appropriate, who by this 2005 Act is charged with carrying  
19 out such duties, functions and powers.

20 **SECTION 8.** The Director of Agriculture and the State Fish and Wildlife Director may  
21 take any action before the operative date of section 1 of this 2005 Act that is necessary to  
22 enable the directors to exercise, on and after the operative date of section 1 of this 2005 Act,  
23 the duties, functions and powers of the directors pursuant to section 1 of this 2005 Act.

24 **SECTION 9.** For the purpose of harmonizing and clarifying statute sections published in  
25 Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the  
26 Oregon Watershed Enhancement Board or its officers, wherever they occur in Oregon Re-  
27 vised Statutes, other words designating the State Department of Agriculture or its officers,  
28 or the State Department of Fish and Wildlife or its officers, as appropriate.

29 **SECTION 10.** ORS 541.351 is amended to read:

30 541.351. As used in ORS 541.351 to 541.415:

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

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

36 [(3) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.360.]

37 [(4)] (3) "Capital expenditures" means direct expenses related to:

38 (a) Personal property of a nonexpendable nature including items that are not consumed in the  
39 normal course of operations, can normally be used more than once, have a useful life of more than  
40 two years and are for use in the enforcement of fish and wildlife and habitat protection laws and  
41 regulations; or

42 (b) Projects that restore, enhance or protect fish and wildlife habitat, watershed functions, na-  
43 tive salmonid populations or water quality, including but not limited to:

44 (A) Expenses of assessment, research, design or other technical requirements for the implemen-  
45 tation of a project;

1 (B) The acquisition of determinate interests, including fee and less than fee interests, in land  
 2 or water in order to protect watershed resources, including appraisal costs and other costs directly  
 3 related to such acquisitions;

4 (C) Development, construction or implementation of a project to restore, enhance or protect  
 5 water quality, a watershed, fish or wildlife, or riparian or other habitat;

6 (D) Technical support directly related to the implementation of a project; and

7 (E) Monitoring or evaluation activities necessary to determine the actual effectiveness of a  
 8 project.

9 [(5)] (4) "Independent Multidisciplinary Science Team" means the scientific team of recognized  
 10 experts in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricul-  
 11 tural management created under ORS 541.409.

12 [(6)] (5) "Native" means indigenous to Oregon and not introduced.

13 [(7)] (6) "Oregon Plan" means the guidance statement and framework described in ORS 541.405.

14 [(8)] (7) "Protect" or "protection" means to minimize or mitigate adverse effects on salmonid and  
 15 habitat to the maximum extent practicable given the anticipated duration, geographic scope and  
 16 primary purpose of proposed activities.

17 [(9)] (8) "Restore" or "restoration" means to take actions likely to achieve sustainable popu-  
 18 lation levels of native fish or wildlife and their habitats.

19 [(10)] (9) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial  
 20 ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or  
 21 potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area  
 22 may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or  
 23 ephemeral, intermittent or perennial stream.

24 [(11)] (10) "Soil and water conservation district" means a political subdivision of the state as  
 25 described in ORS 568.550.

26 [(12)] (11) "Stewardship" means the careful and responsible management of the environment.

27 [(13)] (12) "Tribe" means a federally recognized Indian tribe in Oregon.

28 [(14)] (13) "Watershed" means the entire land area drained by a stream or system of connected  
 29 streams such that all stream flow originating in the area is discharged through a single outlet.

30 [(15)] (14) "Watershed council" means a voluntary local organization, designated by a local  
 31 government group convened by a county governing body, to address the goal of sustaining natural  
 32 resource and watershed protection, restoration and enhancement within a watershed.

33 **SECTION 11.** ORS 541.363 is amended to read:

34 541.363. In addition to any other authority granted to the [*executive director of the Oregon*  
 35 *Watershed Enhancement Board, the executive*] **State Fish and Wildlife Director, the director**, on  
 36 behalf of the [*board,*] **State Department of Fish and Wildlife**, may:

37 (1) Enter into interagency agreements necessary to carry out the duties and responsibilities of  
 38 the [*board*] **department in implementing the watershed enhancement program required under**  
 39 **ORS 541.365.**

40 (2) **Establish advisory and technical committees to aid and advise the department in**  
 41 **conducting the watershed enhancement program. The committees may be temporary or**  
 42 **continuing. The director shall determine the representation, membership, terms and organ-**  
 43 **ization of the committees and shall appoint their members. The director is an ex officio**  
 44 **member of each committee.**

45 **SECTION 12.** ORS 541.365 is amended to read:

1       541.365. (1) The [*Oregon Watershed Enhancement Board*] **State Department of Fish and**  
 2 **Wildlife** shall conduct a watershed enhancement program to benefit all users of the waters of this  
 3 state. The [*board*] **department** shall conduct the program in a manner that:

4       (a) Provides the greatest possible opportunity for volunteer participation to achieve the goals  
 5 of the program; and

6       (b) Coordinates the information, data and data retrieval needs of the natural resource agencies  
 7 of the state with the State Service Center for Geographic Information Systems.

8       (2) In order to effectuate the program described in this section, the [*board*] **department** shall  
 9 establish protocols, policies and procedures necessary to integrate and organize geographic infor-  
 10 mation and make it available to persons and entities involved in implementation of the Oregon Plan.

11       (3) In working with the State Service Center for Geographic Information Systems, the [*board*]  
 12 **department** shall ensure that:

13       (a) Information received by the center is formatted in a manner that results in an integrated  
 14 geographic information system that meets the needs of all local, state, regional, tribal and federal  
 15 entities involved in implementation of the Oregon Plan; and

16       (b) The data are available to local, state and federal agencies and to any person implementing  
 17 activities under the Oregon Plan.

18       (4) The program developed under this section shall include development and implementation, in  
 19 coordination with the natural resource agencies of the state, of a statewide monitoring program for  
 20 activities conducted under the Oregon Plan.

21       **SECTION 13.** ORS 541.368 is amended to read:

22       541.368. In cooperation with other state, interstate and federal agencies, tribes, local govern-  
 23 ments, watershed councils, [*soil and water conservation districts,*] not-for-profit organizations and  
 24 volunteer groups, the [*Oregon Watershed Enhancement Board*] **State Department of Agriculture,**  
 25 **with assistance from soil and water conservation districts in awarding grants,** shall facilitate  
 26 the implementation of the **watershed improvement** grant programs established under ORS 541.351  
 27 to 541.415.

28       **SECTION 14.** ORS 541.370 is amended to read:

29       541.370. [(1)] In carrying out the watershed enhancement program, the [*Oregon Watershed En-*  
 30 *hancement Board*] **State Department of Fish and Wildlife** shall:

31       [(a)] (1) Coordinate the [*board's*] **State Department of Agriculture's** funding of **watershed**  
 32 **enhancement** projects with the activities of [*the Natural Resources Division staff and*] other agencies,  
 33 especially those agencies working together through a system of coordinated resource management  
 34 planning.

35       [(b)] (2) Use the expertise of the appropriate state agency according to the type of enhancement  
 36 project.

37       [(c)] (3) Provide educational and informational materials to promote public awareness and in-  
 38 volvement in the watershed enhancement program.

39       [(d)] (4) Coordinate and provide for or arrange for assistance in the activities of persons, agen-  
 40 cies or political subdivisions developing local watershed enhancement projects funded by the  
 41 [*board*] **State Department of Agriculture.**

42       [(e)] *Grant funds for the support of watershed councils in assessing watershed conditions, develop-*  
 43 *ing action plans, implementing projects and monitoring results and for the implementation of watershed*  
 44 *enhancement projects from such moneys as may be available to the board therefor.]*

45       [(f)] (5) Develop and maintain a centralized repository for information about the effects of

1 watershed enhancement and education projects.

2 [(g) Give priority to proposed watershed enhancement projects receiving funding or assistance from  
3 other sources.]

4 [(h)] (6) Identify gaps in research or available information about watershed health and en-  
5 hancement.

6 [(i)] (7) Cooperate with appropriate federal entities to identify the needs and interests of the  
7 State of Oregon so that federal plans and project schedules relating to watershed enhancement in-  
8 corporate the state's intent to the fullest extent practicable.

9 [(j)] (8) Encourage the use of nonstructural methods to enhance the riparian areas and associ-  
10 ated uplands of Oregon's watersheds.

11 [(k)] (9) Determine criteria for utilizing the private sector, both not-for-profit and for-profit or-  
12 ganizations, to provide landowners with technical assistance to help develop and implement conser-  
13 vation easements and resource improvement projects.

14 (10) **Establish a framework for a locally based, integrated watershed planning and man-  
15 agement process designed to assist watershed councils and soil and water conservation dis-  
16 tricts and to support the efforts of watershed councils and soil and water conservation  
17 districts to work within the requirements of state and federal laws without duplication of  
18 planning efforts. The framework shall include all of the following:**

19 (a) **Guidance and protocols for watershed assessments to encourage consistent assess-  
20 ment methods across all watersheds and agencies, including assessment of cumulative ef-  
21 fects. At a minimum, such guidance shall address the following plan components:**

22 (A) **A method to describe watersheds;**

23 (B) **An assessment of current watershed conditions and the distribution and condition  
24 of habitat; and**

25 (C) **Identification of conditions preventing watershed restoration.**

26 (b) **Guidance on how to prepare watershed action plans. At a minimum, such guidance  
27 shall address the following plan components:**

28 (A) **Applicable water quality standards and native salmonid and habitat recovery objec-  
29 tives;**

30 (B) **Proposed measures needed to restore watershed health;**

31 (C) **Timeline and budget estimates for implementation of action measures in priority or-  
32 der; and**

33 (D) **Monitoring and evaluation systems.**

34 (11) **Review plans, actions and rules of state agencies pertaining to restoration and pro-  
35 tection grants for the purpose of coordinating the State Department of Agriculture's grant  
36 program with other ongoing grant programs.**

37 (12) **Support development and implementation of a system that enables standardized col-  
38 lection, management and reporting of natural resources information in Oregon, including  
39 water data, geographic information system data and information on native fish and wildlife  
40 and habitat.**

41 (13) **Make available information on the benefits of watershed enhancement and promote  
42 the availability of such information.**

43 [(2) In accordance with ORS 541.351 to 541.415, the Oregon Watershed Enhancement Board shall  
44 administer a watershed improvement grant program using funds from the Watershed Improvement  
45 Grant Fund established under ORS 541.397, from the Restoration and Protection Subaccount estab-

1 lished under ORS 541.377 and from the Flexible Incentives Account established under ORS 541.381.]

2 [(3) To aid and advise the board in the performance of the functions of the board, the board may  
3 establish such advisory and technical committees as the board considers necessary. These committees  
4 may be continuing or temporary. The board shall determine the representation, membership, terms and  
5 organization of the committees and shall appoint their members. The chairperson is ex officio a member  
6 of each committee.]

7 **SECTION 15.** ORS 541.371 is amended to read:

8 541.371. [(1) In addition to the duties set forth in ORS 541.370, in carrying out the provisions of  
9 ORS 541.351 to 541.415, the Oregon Watershed Enhancement Board:]

10 [(a) Shall establish a framework for a locally based integrated watershed planning and manage-  
11 ment process designed to assist watershed councils and soil and water conservation districts and to  
12 support the efforts of watershed councils and soil and water conservation districts to work within the  
13 requirements of state and federal laws without duplication of planning effort. The framework shall in-  
14 clude all of the following:]

15 [(A) Guidance and protocols for watershed assessments to encourage consistent assessment methods  
16 across all watersheds and agencies, including assessment of cumulative effects. At a minimum, such  
17 guidance shall address the following plan components:]

18 [(i) A description of the watershed;]

19 [(ii) An assessment of current watershed conditions and the distribution and condition of habitat;  
20 and]

21 [(iii) Identification of conditions preventing watershed restoration.]

22 [(B) Guidance on how to prepare watershed action plans. At a minimum, such guidance shall ad-  
23 dress the following plan components:]

24 [(i) Applicable water quality standards and native salmonid and habitat recovery objectives;]

25 [(ii) Proposed measures needed to restore watershed health;]

26 [(iii) Timeline and budget estimates for implementation of action measures in priority order; and]

27 [(iv) Monitoring and evaluation systems.]

28 [(b) May review plans, actions and rules of state agencies pertaining to restoration and protection  
29 grants for the purpose of coordinating the board's grant program with other ongoing grant  
30 programs.]

31 [(c) Shall establish statewide and regional goals and priorities that shall become the basis for  
32 funding decisions by the board. In adopting such goals and priorities, the board shall adopt priorities  
33 for grant funding based on the Oregon Plan and on measurable goals. In carrying out this function,  
34 the board shall consider local economic and social impacts among the criteria.]

35 [(d) Shall support development and implementation of a system that enables standardized collection,  
36 management and reporting of natural resources information in Oregon, including water data, ge-  
37 ographic information system data and information on native fish and wildlife and habitat.]

38 [(e) Shall promote the availability of information on the effects of watershed enhancement.]

39 [(f) May not have regulatory or enforcement authority except for the fiscal responsibilities described  
40 in ORS 541.351 to 541.415.]

41 **(1) In accordance with ORS 541.351 to 541.415, the State Department of Agriculture shall**  
42 **administer a watershed improvement grant program using funds from the Watershed Im-**  
43 **provement Grant Fund established under ORS 541.397, from the Restoration and Protection**  
44 **Subaccount established under ORS 541.377 and from the Flexible Incentives Account created**  
45 **under ORS 541.381. In administering the watershed improvement grant program, the de-**

1 **partment shall:**

2 (a) **Grant funds for the:**

3 (A) **Support of watershed councils in assessing watershed conditions, developing action**  
 4 **plans, implementing projects and monitoring results; and**

5 (B) **Implementation of watershed projects;**

6 (b) **Give priority to proposed watershed enhancement projects receiving funding or as-**  
 7 **sistance from other sources; and**

8 (c) **Establish statewide and regional goals and priorities that shall become the basis for**  
 9 **funding decisions by the department. In establishing the goals and priorities, the department**  
 10 **shall adopt priorities for grant funding based on the Oregon Plan and on measurable goals**  
 11 **and shall consider local economic and social impacts of the goals and priorities.**

12 (2) In addition to the uses of grant funds described in ORS 541.399, in allocating grant funds  
 13 under ORS 541.351 to 541.415 that are derived from the Restoration and Protection Subaccount, the  
 14 [board] **State Department of Agriculture:**

15 (a) May allocate funds to be used for staff for soil and water conservation districts and  
 16 watershed councils.

17 (b) May award funds for a specific project or program application or for implementation of an  
 18 approved action plan.

19 (3) To the maximum extent practicable, soil and water conservation districts and watershed  
 20 councils shall share technical staff.

21 **SECTION 16.** ORS 541.372 is amended to read:

22 541.372. (1) The [Oregon Watershed Enhancement Board] **State Department of Agriculture** may  
 23 accept moneys from any public or private source, including the federal government, made available  
 24 for the purpose of encouraging, promoting and securing watershed enhancement or to facilitate and  
 25 assist in carrying out the functions of the [board] **department relative to the watershed im-**  
 26 **provement grant program**, including administrative expenses, as provided by law.

27 (2) All moneys received by the [board] **department** under this section shall be deposited in the  
 28 State Treasury and kept in separate accounts in the General Fund designated according to the  
 29 purposes for which moneys were made available.

30 (3) Notwithstanding the provisions of ORS 291.238, all moneys received under this section are  
 31 continuously appropriated to the [board] **department** for the purpose for which they were made  
 32 available and shall be expended in accordance with the terms and conditions upon which they were  
 33 made available.

34 **SECTION 17.** ORS 541.375 is amended to read:

35 541.375. (1) Any person, tribe, watershed council, soil and water conservation district, commu-  
 36 nity college, state institution of higher education, independent not-for-profit institution of higher  
 37 education or political subdivision of this state that is not a state agency may submit a request for  
 38 funding for or for advice and assistance in developing a project under ORS 541.351 to 541.415. A  
 39 state agency or federal agency may apply for funding under this section only as a coapplicant with  
 40 one of the other eligible entities.

41 (2) The request under subsection (1) of this section shall be filed in the manner, be in the form  
 42 and contain the information required by the [Oregon Watershed Enhancement Board] **State De-**  
 43 **partment of Agriculture.**

44 (3) The [board may] **department shall** establish a grant program through soil and water con-  
 45 servation districts organized under ORS 568.210 to 568.808 and 568.900 to 568.933 that provides funds

1 for local implementation of watershed enhancement, education and monitoring efforts.

2 (4) The *[board]* **department** may fund implementation of action plans based on a watershed as-  
3 sessment that addresses water quality and aquatic resources of the watershed.

4 (5) A project may use mechanical, vegetative or structural methods including, but not limited  
5 to, management techniques, erosion control, streambank stabilization, forest, range or crop land  
6 treatment, site specific in-stream structures, acquisitions or leases of land or water rights from a  
7 willing owner, watershed assessments, landowner incentives and action plan development, imple-  
8 mentation and monitoring.

9 *[(6) The actions of a soil and water conservation district carried out pursuant to a grant program*  
10 *established by the board under subsection (3) of this section shall not be subject to review and approval*  
11 *by the Natural Resources Division under ORS 561.400.]*

12 *[(7)]* (6) The *[Oregon Watershed Enhancement Board]* **department** shall approve for funding only  
13 those projects that:

14 (a) Are based on sound principles of watershed management;

15 (b) Use methods most adapted to the project locale;

16 (c) Meet the criteria established by the *[board]* **department** under ORS 541.396; and

17 (d) Contribute to either:

18 (A) The improved health of a stream, lake or reservoir and toward the achievement of standards  
19 that satisfy the requirements of the Federal Water Pollution Control Act (P.L. 92-500), as amended;  
20 or

21 (B) The restoration of wildlife, habitat or native fish.

22 *[(8)]* (7) The *[Oregon Watershed Enhancement Board]* **department** may fund a project for the  
23 restoration of a riparian area or associated upland that is carried out in conjunction with a storage  
24 structure. However, the *[board shall]* **department may** not approve funding for any proposed  
25 project that consists solely of construction of a storage structure for out-of-stream use.

26 *[(9)]* (8) The *[Oregon Watershed Enhancement Board]* **department** may fund projects involving  
27 the acquisition of lands and waters, or interests therein from willing sellers, for the purpose of  
28 maintaining or restoring watersheds, habitat and native salmonids. Interests in these lands and  
29 waters may be held by local, state and federal agencies, tribes, not-for-profit land conservation or-  
30 ganizations and trusts, state institutions of higher education, independent not-for-profit institutions  
31 of higher education or political subdivisions of this state, as long as the entity continues to use the  
32 land or water for the purposes specified under section 4b, Article XV of the Oregon Constitution.

33 *[(10)]* (9) If the *[Oregon Watershed Enhancement Board]* **department** approves funding for a  
34 project under this section that requires the applicant to obtain a permit or license from a local,  
35 state or federal agency or governing body, the *[board shall]* **department may** not disburse any funds  
36 to the applicant until the applicant presents evidence that the agency has granted the permit or li-  
37 cense.

38 **SECTION 18.** ORS 541.376 is amended to read:

39 541.376. (1) Land purchased through a grant agreement with the *[Oregon Watershed Enhancement*  
40 *Board]* **State Department of Agriculture** shall be subject to title restrictions that give the  
41 *[board]* **department** the authority to approve, approve with conditions or deny the sale or transfer  
42 of the land. Specifically, the *[board]* **department** may require conditions on the sale or transfer to:

43 (a) Ensure consistency with the intent of the original grant;

44 (b) Ensure the ability of the party receiving the land through the sale or transfer to carry out  
45 the obligations under the grant agreement; and

1 (c) Address the disposition of proceeds from the sale or transfer, including any provisions for  
2 repayment, with interest, of any grant funds.

3 (2) The *[board]* **department** may not allow a sale or transfer that results in any profit to any  
4 person.

5 (3) The *[board]* **department** shall, by rule, define “profit” for the purpose of not allowing sales  
6 or transfers and shall specify the process and criteria that the *[board]* **department** will use in  
7 considering whether to approve, approve with conditions or deny a sale or transfer.

8 **SECTION 19.** ORS 541.377 is amended to read:

9 541.377. (1) There is established in the State Treasury, separate and distinct from the General  
10 Fund, the Parks and Natural Resources Fund to be administered by the Oregon Department of Ad-  
11 ministrative Services. All moneys transferred from the State Lottery Fund and all other moneys  
12 authorized to be transferred to the Parks and Natural Resources Fund from whatever source are  
13 appropriated continuously for the public purposes of restoring and protecting Oregon’s parks,  
14 beaches, watersheds and critical fish and wildlife habitats. Fifteen percent of the net proceeds from  
15 the Oregon State Lottery shall be deposited in the Parks and Natural Resources Fund created under  
16 this subsection.

17 (2) Of the moneys deposited into the Parks and Natural Resources Fund from the Oregon State  
18 Lottery, 50 percent shall be deposited into a Parks Subaccount for the public purpose of financing  
19 the protection, repair, operation, creation and development of state parks, ocean shores, public  
20 beach access areas, historic sites and recreation areas. The State Treasurer may invest and reinvest  
21 the moneys in the Parks Subaccount as provided in ORS 293.701 to 293.820. Interest from the moneys  
22 deposited in the subaccount and earnings from investment of the moneys in the subaccount shall be  
23 credited to the subaccount.

24 (3) All moneys in the Parks Subaccount for financing the protection, repair, operation, creation  
25 and development of state parks, ocean shores, public beach access areas, historic sites and recre-  
26 ation areas shall be allocated to the State Parks and Recreation Department. Such moneys shall be  
27 deposited into the State Parks and Recreation Department Fund established under ORS 390.134 and  
28 shall be used for the following purposes:

29 (a) Maintaining, constructing, improving, developing, managing and operating state park and  
30 recreation facilities, programs and areas.

31 (b) Acquiring real property, or interest therein, deemed necessary for the creation and operation  
32 of state parks, ocean shores, public beach access areas, recreation areas and historic sites or be-  
33 cause of natural, scenic, cultural, historic and recreational values.

34 (c) Operating grant programs for local government entities deemed necessary to accomplish the  
35 public purposes of the Parks and Natural Resources Fund.

36 (4) Of the moneys deposited into the Parks and Natural Resources Fund from the Oregon State  
37 Lottery, 50 percent shall be deposited into a Restoration and Protection Subaccount for the public  
38 purpose of financing the restoration and protection of native salmonid populations, watersheds, fish  
39 and wildlife habitats and water quality in Oregon. The State Treasurer may invest and reinvest the  
40 moneys in the Restoration and Protection Subaccount as provided in ORS 293.701 to 293.820. Inter-  
41 est from the moneys deposited in the subaccount and earnings from investment of the moneys in the  
42 subaccount shall be credited to the Restoration and Protection Research Fund created under ORS  
43 541.378.

44 (5) The **State Department of Agriculture shall administer the** moneys in the Restoration and  
45 Protection Subaccount for financing the restoration and protection of native salmonid populations,

1 watersheds, fish and wildlife habitats and water quality [*shall be administered by the Oregon*  
 2 *Watershed Enhancement Board and shall be used*]. **The department shall use the moneys** for all  
 3 of the following purposes:

4 (a) Restoration and protection of watersheds and fish, wildlife, riparian and native species and  
 5 for habitat conservation activities, including but not limited to planning, coordination, assessment,  
 6 implementation, restoration, inventory, information management and monitoring activities.

7 (b) Watershed and riparian education efforts.

8 (c) Development and implementation of watershed and water quality enhancement plans.

9 (d) Entering into agreements to obtain from willing owners determinate interests in lands and  
 10 waters that protect watershed resources, including but not limited to fee simple interests in land,  
 11 leases of land or water or conservation easements.

12 (e) Enforcement of fish and wildlife and habitat protection laws and regulations.

13 (6) Of the moneys deposited into the Restoration and Protection Subaccount from the Oregon  
 14 State Lottery, the [*Oregon Watershed Enhancement Board*] **State Department of Agriculture** shall  
 15 deposit:

16 (a) Sixty-five percent [*of the funds*] into the Watershed Improvement Grant Fund established  
 17 under ORS 541.397 to be used only for funding capital expenditure projects; and

18 (b) Thirty-five percent [*of the funds*] into the Watershed Improvement Operating Fund estab-  
 19 lished under ORS 541.379 to be used for the purposes set forth in ORS 541.379 (1).

20 (7) The Legislative Assembly [*shall*] **may** not limit expenditures from the Parks and Natural  
 21 Resources Fund. The Legislative Assembly may appropriate other moneys or revenues to the Parks  
 22 and Natural Resources Fund.

23 **SECTION 20.** ORS 541.378 is amended to read:

24 541.378. (1) There is created in the General Fund of the State Treasury the Restoration and  
 25 Protection Research Fund. Interest earned by the Restoration and Protection Research Fund shall  
 26 be credited to the fund. Moneys credited to the fund are continuously appropriated to the [*Oregon*  
 27 *Watershed Enhancement Board*] **State Department of Agriculture** for the purpose of funding re-  
 28 search and other activities related to the restoration and protection of native salmonid populations,  
 29 watersheds, fish and wildlife habitats and water quality, including but not limited to research,  
 30 monitoring, evaluation and assessment related to the Oregon Plan.

31 (2) All moneys received by the [*Oregon Watershed Enhancement Board*] **department** from inter-  
 32 est earned on the Restoration and Protection Subaccount of the Parks and Natural Resources Fund  
 33 created under ORS 541.377, from the Watershed Improvement Operating Fund created under ORS  
 34 541.379 and from the Watershed Improvement Grant Fund created under ORS 541.397 shall be  
 35 credited to the Restoration and Protection Research Fund. Moneys credited to the fund and not  
 36 expended by the completion of a biennium shall remain in the fund.

37 **SECTION 21.** ORS 541.379 is amended to read:

38 541.379. (1) The Watershed Improvement Operating Fund is established in the State Treasury  
 39 separate and distinct from the General Fund. The Watershed Improvement Operating Fund shall  
 40 consist of all moneys placed in the fund as provided by law. All moneys in the Watershed Improve-  
 41 ment Operating Fund are continuously appropriated for the following purposes:

42 (a) Operational activities of the [*Oregon Watershed Enhancement Board*] **State Department of**  
 43 **Agriculture relating to the administration of the watershed improvement grant program;**

44 (b) Activities of state and local agencies and other public entities related to the restoration and  
 45 protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality,

1 including but not limited to activities under the Oregon Plan;

2 (c) Watershed improvement grants described in ORS 541.399 and 541.401 that are not capital  
3 expenditures; and

4 (d) Watershed improvement grants described in ORS 541.399 and 541.401 that are capital  
5 expenditures.

6 (2) Interest accruing to the Watershed Improvement Operating Fund shall be credited to the  
7 Restoration and Protection Research Fund created under ORS 541.378. Funds appropriated and not  
8 expended by the completion of a biennium shall remain in the Watershed Improvement Operating  
9 Fund.

10 (3) The [*Oregon Watershed Enhancement Board created under ORS 541.360*] **department** shall  
11 administer the Watershed Improvement Operating Fund.

12 (4) In addition to the funds made available for the purposes of ORS 541.351 to 541.415 under ORS  
13 541.399, the [*board*] **department** also may accept gifts and grants from any public or private source  
14 for the purposes described in subsection (1) of this section.

15 **SECTION 22.** ORS 541.381 is amended to read:

16 541.381. (1) There is created a Flexible Incentives Account in the State Treasury, separate and  
17 distinct from the General Fund. Interest earned by the account shall be credited to the account. The  
18 moneys in the account are continuously appropriated to the [*Oregon Watershed Enhancement*  
19 *Board*] **State Department of Agriculture** for the purposes specified in this section.

20 (2) The [*Oregon Watershed Enhancement Board*] **department** shall use the account to assist  
21 landowners in the implementation of strategies intended to protect and restore native species of fish,  
22 wildlife and plants and to maintain long-term ecological health, diversity and productivity in a  
23 manner consistent with statewide, regional or local conservation plans. The [*board*] **department**  
24 shall seek to fund those strategies that offer the greatest public benefit at the lowest cost.

25 (3) The account shall consist of moneys appropriated to it by the Legislative Assembly and  
26 moneys provided to the [*board*] **department** by federal, state, regional or local governments for the  
27 purposes specified in this section. The [*board*] **department** may accept private moneys in the form  
28 of gifts, grants and bequests for deposit into the account.

29 **SECTION 23.** ORS 541.384 is amended to read:

30 541.384. (1) The [*Oregon Watershed Enhancement Board*] **State Department of Fish and**  
31 **Wildlife** shall initiate a watershed management program that relies on the establishment of volun-  
32 tary local watershed councils comprised of residents, state and federal agency staff, members of  
33 federally recognized Indian tribes and other citizens interested in the management of watersheds and  
34 that provides for the development by these partnerships of local plans that may include but are not  
35 limited to the assessment of the watershed condition, the creation of a watershed action plan and  
36 a strategy for implementing the action plan. The program shall focus state resources on the  
37 achievement of sustainable watershed health, including **improving access to funding for** major  
38 projects that contribute to the overall health of a watershed. In addition, the [*board shall fund*]  
39 **department may assist persons implementing** smaller, voluntary projects for watershed en-  
40 hancement and for restoration of riparian areas and associated uplands.

41 (2) In carrying out the program under subsection (1) of this section, the [*board*] **department**  
42 may designate high priority watersheds. However, the designation of high priority watersheds is  
43 intended only as a management tool for state agencies in allocating resources to support coordi-  
44 nated watershed management activities. Such designation is not intended to establish or confer any  
45 right, duty or authority, nor to have any legal significance beyond that described in this section,

1 nor to discourage or prohibit the formation and function of voluntary local watershed councils in  
2 other watersheds.

3 (3) The elected officials representing the appropriate local government groups containing or  
4 within a proposed watershed council area shall determine whether to participate in the voluntary  
5 formation of a local watershed council. When multiple local government groups are involved within  
6 an area that would be served by a watershed council, the affected local government groups shall  
7 together determine their respective roles and the appropriate method for appointing members to a  
8 local watershed council.

9 **SECTION 24.** ORS 541.388 is amended to read:

10 541.388. (1) Local government groups [*are encouraged to*] **may** form voluntary local watershed  
11 councils in accordance with the guidelines set forth in subsection (2) of this section. The [*Oregon*  
12 *Watershed Enhancement Board*] **State Department of Fish and Wildlife** may work cooperatively  
13 with any local watershed council that may be formed. **The department shall evaluate** requests  
14 from local watershed councils for state assistance [*shall be evaluated*] on the basis of whether the  
15 requesting organization reflects the interests of the affected watershed and the potential to protect  
16 and enhance the quality of the watershed in question.

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

- 24 (a) Representatives of local and regional boards, commissions, districts and agencies;
- 25 (b) Representatives of federally recognized Indian tribes;
- 26 (c) Public interest group representatives;
- 27 (d) Private landowners;
- 28 (e) Industry representatives;
- 29 (f) Members of academic, scientific and professional communities; and
- 30 (g) Representatives of state and federal agencies.

31 (3) If more than one watershed council exists in a county, each watershed council shall period-  
32 ically report the activities of the council to the county governing body.

33 (4) The Oregon Department of Administrative Services may provide to voluntary local watershed  
34 councils and their officers, employees and agents acting within the scope of their employment or  
35 duties, protection against liability as part of the insurance provided to the [*Oregon Watershed En-*  
36 *hancement Board*] **State Department of Fish and Wildlife** pursuant to ORS 278.120 to 278.215.  
37 [*The Oregon Watershed Enhancement Board, after consulting the Oregon Department of Administrative*  
38 *Services and local watershed councils, shall establish guidelines for liability coverage and limits of*  
39 *coverage.*] The Oregon Department of Administrative Services shall determine any additional con-  
40 tributions to be apportioned to the [*Oregon Watershed Enhancement Board*] **State Department of**  
41 **Fish and Wildlife under ORS 278.125** for extending insurance to voluntary local watershed coun-  
42 cils, and the [*Oregon Watershed Enhancement Board*] **State Department of Fish and Wildlife** shall  
43 pay the assessments from such moneys as may be available for those assessments.

44 **SECTION 25.** ORS 541.390 is amended to read:

45 541.390. In addition to the duties conferred on the Natural Resources Division of the State De-

1 partment of Agriculture under ORS 561.400 and 568.210 to 568.808 [*and 568.900 to 568.933*], the di-  
2 vision shall:

3 (1) In cooperation with the [*Oregon Watershed Enhancement Board*] **State Department of Fish**  
4 **and Wildlife**, provide appropriate personnel who, under the direction of the [*board*] **State Depart-**  
5 **ment of Fish and Wildlife**, shall:

6 (a) Serve as community advisors to cooperatively develop watershed enhancement projects with  
7 volunteers; and

8 (b) Cooperatively evaluate watershed enhancement projects with those responsible for project  
9 implementation.

10 (2) Provide technical assistance to individuals responsible for implementation of a watershed  
11 enhancement project.

12 (3) Work with the [*Oregon Watershed Enhancement Board*] **State Department of Fish and**  
13 **Wildlife** to coordinate the implementation of enhancement projects with the activities of other  
14 agencies, including but not limited to, those state and federal agencies participating in coordinated  
15 resource management planning.

16 **SECTION 26.** ORS 541.392 is amended to read:

17 541.392. (1) The [*Oregon Watershed Enhancement Board*] **State Department of Agriculture and**  
18 **the State Department of Fish and Wildlife jointly** shall report biennially to the Legislative As-  
19 sembly on the implementation of the **watershed** management program under ORS 541.384 and  
20 **watershed improvement** grants awarded under ORS 541.399. The report shall include but need not  
21 be limited to:

22 (a) An explanation of the effectiveness and workability of the partnership process described in  
23 ORS 541.384;

24 (b) A description of any modifications to the process that have been instituted;

25 (c) Recommendations concerning the need for future legislative action; and

26 (d) Information about the use of moneys received by and distributed by the [*board*] **State De-**  
27 **partment of Agriculture** under section 4b, Article XV of the Oregon Constitution.

28 (2) The [*board*] **State Department of Agriculture** shall include with each report under sub-  
29 section (1) of this section a copy of each audit completed pursuant to section 4c, Article XV of the  
30 Oregon Constitution.

31 **SECTION 27.** ORS 541.395 is amended to read:

32 541.395. In order to assist the [*Oregon Watershed Enhancement Board*] **State Department of**  
33 **Fish and Wildlife** in developing and maintaining a centralized repository under ORS 541.370, the  
34 following agencies shall provide the [*board*] **department** with a copy of any report produced by the  
35 agency that is related to enhancement or restoration of riparian areas or associated uplands:

36 (1) The Department of Environmental Quality.

37 [(2) *The State Department of Fish and Wildlife.*]

38 [(3)] (2) The Water Resources Department.

39 [(4)] (3) The State Forestry Department.

40 [(5)] (4) The State Department of Agriculture.

41 [(6)] (5) The agricultural extension service of Oregon State University.

42 **SECTION 28.** ORS 541.396 is amended to read:

43 541.396. (1) In accordance with the applicable provisions of ORS chapter 183, the [*Oregon*  
44 *Watershed Enhancement Board*] **State Department of Agriculture** shall adopt rules and standards  
45 to carry out the watershed [*enhancement*] **improvement grant** program.

1 (2) The rules and standards adopted by the [board] **State Department of Agriculture** under  
2 subsection (1) of this section shall include, but need not be limited to:

3 (a) Grant application requirements and review and selection criteria for projects to receive as-  
4 sistance or funding from the [board] **State Department of Agriculture**, including funding from the  
5 Flexible Incentives Account established under ORS 541.381.

6 (b) Criteria for distributing to those entities specified in ORS 541.375 those funds appropriated  
7 to the [board] **State Department of Agriculture** for funding projects. The criteria shall include a  
8 process for periodic review of the distribution by the joint legislative committee created pursuant  
9 to ORS 171.551.

10 (c) Conditions for approval by the [board] **State Department of Agriculture** for implementa-  
11 tion of a project including but not limited to:

12 (A) Provisions satisfactory to the [board] **State Department of Agriculture** for inspection and  
13 evaluation of the implementation of a project, including all necessary agreements to allow the  
14 [board] **State Department of Agriculture** and employees of any cooperating agency providing staff  
15 services for the [board] **State Department of Agriculture** access to the project area;

16 (B) Provisions satisfactory to the [board] **State Department of Agriculture** for controlling the  
17 expenditure of and accounting for any funds granted by the [board] **State Department of Agri-  
18 culture** for implementation of the project;

19 (C) An agreement that those initiating the project will submit all pertinent information and re-  
20 search gained from the project to the [board] **State Department of Fish and Wildlife** for inclusion  
21 in the centralized repository established by the [board] **State Department of Fish and Wildlife**;  
22 and

23 (D) Provisions for the continued maintenance of the portion of the riparian area or associated  
24 uplands enhanced by the project.

25 **SECTION 29.** ORS 541.397 is amended to read:

26 541.397. (1) The Watershed Improvement Grant Fund is established separate and distinct from  
27 the General Fund. The Watershed Improvement Grant Fund shall consist of all moneys placed in the  
28 fund as provided by law. All moneys in the Watershed Improvement Grant Fund are continuously  
29 appropriated to fund watershed improvement grants described in ORS 541.399 and 541.401. Interest  
30 accruing to the Watershed Improvement Grant Fund shall be credited to the Restoration and Pro-  
31 tection Research Fund created under ORS 541.378. Funds appropriated and not expended by the  
32 completion of a biennium shall remain in the Watershed Improvement Grant Fund.

33 (2) The [Oregon Watershed Enhancement Board created under ORS 541.360] **State Department  
34 of Agriculture** shall administer the Watershed Improvement Grant Fund and provide grants from  
35 the fund for the purposes described in ORS 541.399 and 541.401 in the manner described under ORS  
36 541.399 and 541.401.

37 (3) In addition to the funds made available for the purposes of ORS 541.351 to 541.415 under ORS  
38 541.399, the [board] **department** also may accept gifts and grants from any public or private source  
39 for the purpose of providing the grants described in subsection (2) of this section.

40 **SECTION 30.** ORS 541.401 is amended to read:

41 541.401. (1) The [Oregon Watershed Enhancement Board] **State Department of Agriculture**  
42 may award funds from the Watershed Improvement Grant Fund only for the purposes listed in ORS  
43 541.399. Any project that the [board] **department** approves for funding shall comply with the fol-  
44 lowing criteria:

45 [(1)] (a) There is a matching contribution from other program funds, in-kind services or other

1 investment in the project; **and**

2 [(2) *The project to be funded is reviewed and approved by a technical committee in accordance with*  
3 *ORS 541.370 (3); and*]

4 [(3) (b) The project provides a public benefit through improved:

5 [(a) (A) Water quality;

6 [(b) (B) Fish or wildlife habitat; or

7 [(c) (C) Public information or education on a watershed function.

8 **(2) In addition to the criteria required for project approval listed in subsection (1) of this**  
9 **section, the department may consider in its funding decision whether the project has been**  
10 **reviewed and approved by a technical committee established pursuant to ORS 541.363.**

11 **SECTION 31.** ORS 541.420 is amended to read:

12 541.420. (1) The [*Oregon Watershed Enhancement Board*] **State Department of Fish and**  
13 **Wildlife** shall, by January 15 of each odd-numbered year, submit a report to the Governor and to  
14 the appropriate committee or committees of the Legislative Assembly that assesses the implemen-  
15 tation and effectiveness of the Oregon Plan in the state. The report shall address each drainage  
16 basin in the state and shall include, but need not be limited to:

17 (a) A status report on watershed and key habitat conditions in the drainage basin based on  
18 available information;

19 (b) An assessment of data and information needs deemed critical to monitoring and evaluating  
20 watershed and habitat enhancement programs and efforts;

21 (c) An overview of state agency programs addressing watershed conditions;

22 (d) An overview of voluntary restoration activities addressing watershed conditions;

23 (e) A summary of investments made by the [*board*] **State Department of Agriculture** from  
24 funds received under section 4b, Article XV of the Oregon Constitution, and all other sources; and

25 (f) The recommendations of the [*board*] **State Department of Fish and Wildlife** for enhancing  
26 the effectiveness of Oregon Plan implementation in each drainage basin.

27 (2) In order to provide the [*board*] **State Department of Fish and Wildlife** with the information  
28 necessary to complete the report described in subsection (1) of this section, each natural resources  
29 agency shall provide information requested by the [*board*] **department** in the format and at the  
30 times determined by the [*board*] **department**.

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

32 (a) Department of Environmental Quality;

33 (b) State Department of Agriculture;

34 [(c) *State Department of Fish and Wildlife;*]

35 [(d) (c) State Forestry Department;

36 [(e) (d) Department of State Lands;

37 [(f) (e) Water Resources Department;

38 [(g) (f) Department of Land Conservation and Development;

39 [(h) (g) State Department of Geology and Mineral Industries;

40 [(i) *Oregon Watershed Enhancement Board;*]

41 [(j) (h) Fish and Wildlife Division of the Department of State Police;

42 [(k) (i) Department of Transportation;

43 [(L) (j) State Parks and Recreation Department;

44 [(m) (k) Economic and Community Development Department;

45 [(n) (L) State Marine Board; and

1        [(o)] (m) Any other state agency that is required to manage, allocate or protect natural re-  
 2 sources, either as the primary responsibility of the agency or in conjunction with the primary re-  
 3 sponsibilities of the agency.

4        [(4) *In addition to the report specified under subsection (1) of this section, the Oregon Watershed*  
 5 *Enhancement Board shall report regularly during the interim on the implementation of the Oregon*  
 6 *Plan to the joint legislative committee created under ORS 171.551.*]

7        **SECTION 32.** ORS 541.700 is amended to read:

8        541.700. As used in ORS 541.700 to 541.855, unless the context requires otherwise:

9        (1) "Commission" means the Water Resources Commission appointed under ORS 536.022.

10        (2) "Construction" means the construction, or improvement or rehabilitation, in whole or in part,  
 11 of a water development project, including planning and engineering work, purchasing or refinancing  
 12 directly related to such construction or improvement or rehabilitation, or any combination of such  
 13 construction or improvement or rehabilitation. As used in this subsection:

14        (a) "Purchasing" means the purchasing of materials, land or existing facilities necessary to  
 15 complete a water development project.

16        (b) "Refinancing" includes refinancing existing debt of a water developer, as defined in sub-  
 17 section (7)(f) to (m) and (o) of this section, in order to complete a water development project or to  
 18 provide adequate security for a water development loan, but does not include refinancing existing  
 19 debt only to reduce interest rates or costs to the borrower or to pay off existing debt.

20        (3) "Director" means the Water Resources Director appointed pursuant to ORS 536.032.

21        (4) "Federal water development project" means any water development project that receives  
 22 funding from the federal government, or any agency or instrumentality of the United States.

23        (5)(a) "Secondary use" means:

24        (A) Any water-related recreational use.

25        (B) Any flood control use.

26        (C) Any power generation use.

27        (D) Any water supply system utilized as a domestic water system for the benefit of an individual  
 28 residence related to the operation of the water development project.

29        (b) "Secondary use" does not include any use that is incompatible with a water development  
 30 project.

31        (6) "Water development project" means:

32        (a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including  
 33 structures for the application of water for agricultural harvest activities, dams, storage reservoirs,  
 34 wells or well systems, pumping plants, pipelines, canals, ditches, revetments, water supply systems  
 35 used for the purpose of agricultural temperature control and any other structure, facility and prop-  
 36 erty necessary or convenient for supplying lands with water for irrigation purposes.

37        (b) An undertaking, in whole or in part, in this state for the purpose of drainage, including  
 38 ditching, tiling, piping, channel improvement, pumping plants or other agronomically approved  
 39 methods of land drainage that will increase soil versatility and productivity.

40        (c) An undertaking, in whole or in part, in this state for the purpose of providing water for  
 41 municipal use, which may include safe drinking water for communities with population less than  
 42 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facili-  
 43 ties, pipelines, canals, ditches, revetments and all other structures and facilities necessary or con-  
 44 venient for supplying water. An undertaking may provide water to two or more communities with  
 45 a combined population of more than 30,000. An undertaking may be part of a project that provides

1 water to a community with a population of more than 30,000, but loans of moneys from the Water  
 2 Development Fund, including moneys in ORS 285B.563 (11) may be made only to communities served  
 3 by the project that have a population of less than 30,000.

4 (d) An undertaking, in whole or in part, in this state for the purpose of fish protection, including  
 5 fish screening or by-pass devices, fishways and all other structures and facilities necessary or con-  
 6 venient for providing fish protection.

7 (e) An undertaking, in whole or in part, in this state for the purpose of enhancing watershed  
 8 health or improving fish habitat, including methods and materials to restore, maintain and enhance  
 9 the biological, chemical and physical integrity of the riparian zones and associated uplands of the  
 10 state's rivers, lakes and estuaries systems and recommended by the [*Oregon Watershed Enhancement*  
 11 *Board established under ORS 541.360*] **State Department of Fish and Wildlife under its**  
 12 **watershed management program established pursuant to ORS 541.384.**

13 (f) Secondary uses in conjunction with projects described in paragraphs (a) to (e) of this sub-  
 14 section.

15 (7) "Water developer" means:

16 (a) Any individual resident of this state;

17 (b) Any partnership for profit subject to the provisions of ORS chapter 67 or 70, whose principal  
 18 income is from farming in Oregon;

19 (c) Any corporation for profit subject to the provisions of ORS chapter 60, whose principal in-  
 20 come is from farming in Oregon;

21 (d) Any nonprofit corporation subject to the provisions of ORS chapter 65, whose principal in-  
 22 come is from farming in Oregon;

23 (e) Any cooperative subject to the provisions of ORS chapter 62, whose principal income is from  
 24 farming in Oregon;

25 (f) Any irrigation district organized under or subject to ORS chapter 545;

26 (g) Any water improvement district organized under ORS chapter 552;

27 (h) Any water control district organized under ORS chapter 553;

28 (i) Any irrigation or drainage corporation organized under or subject to ORS chapter 554;

29 (j) Any drainage district organized under ORS chapter 547 or subject to all or part of ORS  
 30 chapter 545;

31 (k) Any corporation, cooperative, company or other association formed prior to 1917 for the  
 32 purpose of distributing water for irrigation purposes;

33 (L) Any port district organized under ORS 777.005 to 777.725, 777.915 to 777.953 and 777.990;

34 (m) Any city or county;

35 (n) Any organization formed for the purpose of distributing water for community water supply;  
 36 or

37 (o) Any local soil and water conservation district organized under ORS 568.210 to 568.808 and  
 38 568.900 to 568.933.

39 **SECTION 33.** ORS 561.020 is amended to read:

40 561.020. (1) The State Department of Agriculture shall have full responsibility and authority for  
 41 all the inspectional, regulatory and market development work provided for under the provisions of  
 42 all statutes which the department is empowered and directed to enforce.

43 (2) The department shall encourage and work toward long-range planning to develop and pro-  
 44 mote the agricultural resources of Oregon that they may contribute as greatly as possible to the  
 45 future economy of the state.

1 (3) The Director of Agriculture shall coordinate any activities of the department related to a  
 2 watershed enhancement project approved by the [*Oregon Watershed Enhancement Board*] **depart-**  
 3 **ment** under ORS 541.375 with activities of other cooperating state and federal agencies participat-  
 4 ing in the project.

5 (4) The Director of Agriculture shall conduct any activities of the department in a manner  
 6 consistent with the goal set forth in ORS 468B.155.

7 **SECTION 34.** ORS 561.080 is amended to read:

8 561.080. Oregon State University shall have full authority and responsibility:

9 (1) For resident instruction in all branches of agriculture.

10 (2) For research and experimentation in all branches and phases of agriculture as set forth in  
 11 federal and state laws creating, maintaining and defining the work of the agricultural experiment  
 12 stations.

13 (3) For educational and demonstrational work in all branches and phases of agriculture under  
 14 authority of all federal and state laws creating, maintaining and defining the work of the Agricul-  
 15 tural Extension Service.

16 (4) For collection and dissemination of statistical information bearing upon crop and market  
 17 conditions and trends of agricultural production, including agricultural outlook reports and market  
 18 news reports.

19 (5) To conduct educational work in the field of marketing, which includes information, advice  
 20 and assistance relative to organizing and operating cooperative associations and marketing agencies,  
 21 in accordance with the division of functions set forth in this chapter.

22 (6) For coordinating any activities of the agricultural extension service related to a watershed  
 23 enhancement project approved by the [*Oregon Watershed Enhancement Board*] **State Department**  
 24 **of Agriculture** under ORS 541.375 with activities of other cooperating state and federal agencies  
 25 participating in the project.

26 **SECTION 35.** ORS 561.400 is amended to read:

27 561.400. (1) There is established within the State Department of Agriculture a Natural Resources  
 28 Division which shall have the duties and powers conferred by subsection (2) of this section, by ORS  
 29 568.210 to 568.808 and 568.900 to 568.933 and by the Director of Agriculture. The administrator of  
 30 the division shall be appointed by the director under ORS 561.050 after consultation with the Soil  
 31 and Water Conservation Commission.

32 (2) In addition to other duties and powers, the division is authorized:

33 (a) To review and approve or disapprove all projects, practices, budgets, contracts or regulations  
 34 of soil and water conservation districts organized under ORS 568.300 to 568.790;

35 (b) To keep the directors of the soil and water conservation districts informed of the activities  
 36 and experiences of other districts, to assist in the interchange of advice and information among the  
 37 districts, and to promote cooperation among the districts;

38 (c) To coordinate, as much as possible, the various programs of the soil and water conservation  
 39 districts;

40 (d) To solicit the cooperation and assistance of any department or agency of the United States  
 41 or other department or agency of this state;

42 (e) To disseminate information concerning the activities and programs of soil and water con-  
 43 servation districts and encourage formation of such districts in areas where they would be desirable  
 44 and feasible;

45 (f) To receive, from any source, materials, machinery and equipment and to transfer such to any

1 soil and water conservation district under terms and conditions deemed appropriate, including pay-  
2 ment by the district for costs of delivery or use;

3 (g) To receive from any public or private source, donations, gifts and grants for the furtherance  
4 of soil and water conservation, the provisions of ORS 568.225 or the protection of natural resources  
5 affecting agriculture, which moneys are continuously appropriated to the department for the ad-  
6 ministration of the Natural Resources Division and functions related thereto and for furnishing  
7 support and financial assistance for the projects and activities of soil and water conservation dis-  
8 tricts or other projects and activities relating to natural resources affecting agriculture or consist-  
9 ent with ORS 568.225;

10 (h) To establish the procedures for developing and implementing extended stream bank erosion  
11 plans under ORS 561.403;

12 (i) To review and evaluate documents and proposals of the federal government, agencies of the  
13 State of Oregon, counties, cities, other governmental bodies or subdivisions thereof relating to na-  
14 tural resources affecting agriculture or consistent with ORS 568.225; and

15 (j) To assist in the development of agricultural management procedures and practices relating  
16 to natural resources for the prevention of soil erosion and water contamination or enhancement of  
17 water quality and quantity.

18 (3) The administrator of the division shall coordinate any activities of the Natural Resources  
19 Division related to a watershed enhancement project approved by the [*Oregon Watershed Enhance-*  
20 *ment Board*] **State Department of Agriculture** under ORS 541.375 with activities of other cooper-  
21 ating state and federal agencies participating in the project.

22 (4) In addition to or in lieu of the coverage provided pursuant to ORS 30.282 (3), the Oregon  
23 Department of Administrative Services may provide to soil and water conservation districts and  
24 their officers, employees and agents acting within the scope of their employment or duties, pro-  
25 tection against liability as part of the insurance provided to the State Department of Agriculture  
26 pursuant to ORS 278.120 to 278.215. The Oregon Department of Administrative Services shall de-  
27 termine any additional contributions to be apportioned to the State Department of Agriculture under  
28 ORS 278.110 for extending insurance to soil and water conservation districts, and the State De-  
29 partment of Agriculture shall pay the assessments from such moneys as may be available therefor.

30 **SECTION 36.** ORS 805.256 is amended to read:

31 805.256. (1) After deduction of the cost of administration of the salmon registration plate pro-  
32 gram, moneys from the surcharge imposed by ORS 805.255 shall be transferred and appropriated as  
33 follows:

34 (a) Half of the moneys shall be transferred to the [*Oregon Watershed Enhancement Board estab-*  
35 *lished under ORS 541.360*] **State Department of Agriculture** and shall be continuously appropri-  
36 ated to the [*board*] **State Department of Agriculture** for watershed enhancement projects under  
37 ORS 541.375 that are designed to restore salmonid habitats and improve the health of streams that  
38 support salmonid populations; and

39 (b) Half of the moneys shall be transferred to the State Parks and Recreation Department Fund  
40 established under ORS 390.134 and continuously appropriated for the purposes described in ORS  
41 390.134 (4).

42 (2) As used in this section, “the cost of administration of the salmon registration plate  
43 program” is the sum of all Department of Transportation expenses for the issuance or transfer of  
44 salmon registration plates under ORS 805.255 that are above the normal costs of issuing, renewing  
45 and transferring registration plates in the normal course of the business of the department. These

1 expenses include, but are not limited to, the costs of collecting the salmon registration plate sur-  
2 charge and transferring salmon registration plates.

3 **SECTION 37.** ORS 171.553 is amended to read:

4 171.553. The joint legislative committee created pursuant to ORS 171.551:

5 (1) Shall be responsible for oversight and coordination of Oregon Plan activities and other  
6 stream restoration and species recovery activities;

7 (2) Shall be responsible for any additional coordination, oversight or advisory duties related to  
8 the management of natural resources in Oregon, as the President of the Senate and the Speaker of  
9 the House of Representatives may assign; and

10 (3) May:

11 (a) Receive informational reports from the Healthy Streams Partnership established under ORS  
12 541.407, from the Independent Multidisciplinary Science Team created under ORS 541.409, from the  
13 Coastal Salmon Restoration and Production Task Force established under section 2, chapter 544,  
14 Oregon Laws 1995, and from other sources and, on the basis of such informational reports, recom-  
15 mend changes to the statewide stream and fish and wildlife species enhancement efforts undertaken  
16 to prevent a species listing as threatened or endangered, or to restore a species that is listed.

17 (b) Review the activities of the individuals and state and federal agencies implementing the  
18 Oregon Plan and other programs related to species enhancement, protection and restoration of  
19 wildlife habitat, and improvement of the health of Oregon's streams.

20 (c) Review requests for and make recommendations to the Joint Legislative Committee on Ways  
21 and Means or, during the interim between legislative sessions, to the Emergency Board, regarding  
22 grant proposals and other requests for funds submitted by the [*Oregon Watershed Enhancement*  
23 *Board or other*] state agencies responsible for implementing the Oregon Plan or other species en-  
24 hancement, protection and restoration of wildlife habitat, or stream enhancement projects.

25 (d) Review any memorandum of understanding or intergovernmental agreement between a state  
26 agency and any other local, state or federal agency to implement all or any portion of a program  
27 described in ORS 541.405.

28 (e) Review rules proposed for adoption by an agency to implement the programs described in  
29 ORS 541.405.

30 (f) Review the effectiveness of existing projects and programs.

31 (g) Review research projects related to all factors that influence the health of Oregon's streams.

32 (h) Recommend implementation principles, priorities and guidance for the programs described in  
33 ORS 541.405.

34 **SECTION 38.** ORS 196.635 is amended to read:

35 196.635. (1) The provisions of ORS 196.600 to 196.655 shall be carried out by the Director of the  
36 Department of State Lands. The Department of State Lands shall solicit, but not be bound by,  
37 comments from the State Department of Fish and Wildlife, Department of Transportation, Depart-  
38 ment of Land Conservation and Development, Department of Environmental Quality, Economic and  
39 Community Development Department, federal natural resources and regulatory agencies, affected  
40 local governments and special districts, conservation organizations and other interested parties. All  
41 comments shall be in writing and provided to the Department of State Lands and mitigation bank  
42 sponsor within 30 days of solicitation by the Department of State Lands. If comments are not re-  
43 ceived by the Department of State Lands from a state agency or from an affected local government  
44 or special district within 30 days of solicitation, the director shall assume that the state agency,  
45 local government or special district does not desire to provide comments.

1 (2) In cooperation with the parties in subsection (1) of this section, the director, in consultation  
2 with the State Land Board, shall:

3 (a) Review opportunities for inclusion of appropriate wetlands in the Statewide Comprehensive  
4 Outdoor Recreation Plan.

5 (b) Develop and recommend a wetlands priority plan for inclusion in the Statewide Comprehen-  
6 sive Outdoor Recreation Plan. The wetlands priority plan shall be complementary to the purposes  
7 and programs under ORS 196.600 to 196.655.

8 (3) The director shall confer with the [*Oregon Watershed Enhancement Board*] **State Depart-**  
9 **ment of Fish and Wildlife** to develop criteria to certify watershed enhancement projects as miti-  
10 gation banks.

11 **SECTION 39.** ORS 468.035 is amended to read:

12 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-  
13 ment of Environmental Quality:

14 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,  
15 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the  
16 waters of the state in accordance with rules and standards established by the commission.

17 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-  
18 gations, research and programs pertaining to the quality and purity of the air or the waters of the  
19 state and to the treatment and disposal of wastes.

20 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,  
21 other states or the federal government, in respect to any proceedings and all matters pertaining to  
22 control of air or water pollution or for the formation and submission to the legislature of interstate  
23 pollution control compacts or agreements.

24 (d) May employ personnel, including specialists and consultants, purchase materials and sup-  
25 plies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010  
26 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and  
27 468B.

28 (e) Shall conduct and supervise programs of air and water pollution control education, including  
29 the preparation and distribution of information regarding air and water pollution sources and con-  
30 trol.

31 (f) Shall provide advisory technical consultation and services to units of local government and  
32 to state agencies.

33 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-  
34 ernment.

35 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or  
36 other public or private agencies for the purposes of air and water pollution control, studies or re-  
37 search and to expend moneys after appropriation thereof for the purposes given.

38 (i) Shall make such determination of priority of air or water pollution control projects as may  
39 be necessary under terms of statutes enacted by the Congress of the United States.

40 (j) Shall seek enforcement of the air and water pollution laws of the state.

41 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to  
42 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,  
43 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to  
44 454.755 and ORS chapters 468, 468A and 468B.

45 (L) Shall encourage the formulation and execution of plans in conjunction with air and water

1 pollution control agencies or with associations of counties, cities, industries and other persons who  
2 severally or jointly are or may be the source of air or water pollution, for the prevention and  
3 abatement of pollution.

4 (m) May determine, by means of field studies and sampling, the degree of air or water pollution  
5 in various regions of the state.

6 (n) May perform such other and further acts as may be necessary, proper or desirable to carry  
7 out effectively the duties, powers and responsibilities of the Department of **Environmental Quality**  
8 as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to  
9 454.755 and ORS chapters 468, 468A and 468B.

10 (o) Shall coordinate any activities of the Department of **Environmental Quality** related to a  
11 watershed enhancement project approved by the [*Oregon Watershed Enhancement Board*] **State**  
12 **Department of Agriculture** under ORS 541.375 with activities of other cooperating state and fed-  
13 eral agencies participating in the project.

14 (2) Nothing in this section shall affect the authority of the Department of Human Services to  
15 make and enforce rules:

16 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115  
17 to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

18 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

19 (3) Nothing in this section shall prevent the State Department of Agriculture or the State  
20 Forestry Department from independently receiving moneys from a public or private agency for the  
21 purposes of preventing or controlling air or water pollution resulting from agricultural or  
22 silvicultural activities or soil erosion, or for research related to such purposes.

23 (4)(a) In awarding a public contract under ORS chapter 279 for a removal or remedial action  
24 pursuant to ORS 465.200 to 465.545, a corrective action or cleanup action pursuant to ORS 466.005  
25 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to ORS 468B.005 to  
26 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the  
27 Department of **Environmental Quality**, and the Oregon Department of Administrative Services,  
28 when administering the establishment of such a contract on behalf of the Department of Environ-  
29 mental Quality under ORS 279.712, shall subtract from the amount of any bid or proposal the haz-  
30 ardous waste management fees and solid waste fees that would be required by law to be paid to the  
31 Department of **Environmental Quality** for waste that would be disposed of at a solid waste disposal  
32 site or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be  
33 subtracted shall be established on the basis of reasonable preprocurement estimates of the amount  
34 of waste that would be disposed of under the contract and that would be subject to those fees.

35 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract  
36 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less  
37 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates  
38 of amounts of waste that would be disposed of in projects of this character is technically challenging  
39 and requires the application of professional discretion. Therefore, no award of a contract under this  
40 subsection shall be subject to challenge, under ORS 279.067 or otherwise, on the ground of the in-  
41 accuracy or claimed inaccuracy of any such estimate.

42 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-  
43 lishment, by or on behalf of the Department of **Environmental Quality**, of master contracts by  
44 which the Department of **Environmental Quality** engages the services of a contractor over a pe-  
45 riod of time for the purpose of issuing work orders for the performance of environmental activities

1 on a project or projects for which the amounts of waste to be disposed of were not reasonably  
2 identified at the inception of the master contracts. However, the Department of **Environmental**  
3 **Quality** shall require any contractor under a master contract to apply the subtraction for fees under  
4 paragraph (a) of this subsection in the selection of any subcontractor to perform the removal of  
5 waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.  
6 Nothing in this subsection shall be construed to prohibit the Department of **Environmental Quality**  
7 or the Oregon Department of Administrative Services from establishing contracts pursuant to this  
8 section through contracting procedures authorized by ORS chapter 279 that do not require the so-  
9 licitation of bids or proposals.

10 **SECTION 40.** ORS 468.035, as amended by section 291, chapter 794, Oregon Laws 2003, is  
11 amended to read:

12 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-  
13 ment of Environmental Quality:

14 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,  
15 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the  
16 waters of the state in accordance with rules and standards established by the commission.

17 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-  
18 gations, research and programs pertaining to the quality and purity of the air or the waters of the  
19 state and to the treatment and disposal of wastes.

20 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,  
21 other states or the federal government, in respect to any proceedings and all matters pertaining to  
22 control of air or water pollution or for the formation and submission to the legislature of interstate  
23 pollution control compacts or agreements.

24 (d) May employ personnel, including specialists and consultants, purchase materials and sup-  
25 plies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010  
26 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and  
27 468B.

28 (e) Shall conduct and supervise programs of air and water pollution control education, including  
29 the preparation and distribution of information regarding air and water pollution sources and con-  
30 trol.

31 (f) Shall provide advisory technical consultation and services to units of local government and  
32 to state agencies.

33 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-  
34 ernment.

35 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or  
36 other public or private agencies for the purposes of air and water pollution control, studies or re-  
37 search and to expend moneys after appropriation thereof for the purposes given.

38 (i) Shall make such determination of priority of air or water pollution control projects as may  
39 be necessary under terms of statutes enacted by the Congress of the United States.

40 (j) Shall seek enforcement of the air and water pollution laws of the state.

41 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to  
42 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,  
43 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to  
44 454.755 and ORS chapters 468, 468A and 468B.

45 (L) Shall encourage the formulation and execution of plans in conjunction with air and water

1 pollution control agencies or with associations of counties, cities, industries and other persons who  
2 severally or jointly are or may be the source of air or water pollution, for the prevention and  
3 abatement of pollution.

4 (m) May determine, by means of field studies and sampling, the degree of air or water pollution  
5 in various regions of the state.

6 (n) May perform such other and further acts as may be necessary, proper or desirable to carry  
7 out effectively the duties, powers and responsibilities of the Department **of Environmental Quality**  
8 as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to  
9 454.755 and ORS chapters 468, 468A and 468B.

10 (o) Shall coordinate any activities of the Department **of Environmental Quality** related to a  
11 watershed enhancement project approved by the [*Oregon Watershed Enhancement Board*] **State**  
12 **Department of Agriculture** under ORS 541.375 with activities of other cooperating state and fed-  
13 eral agencies participating in the project.

14 (2) Nothing in this section shall affect the authority of the Department of Human Services to  
15 make and enforce rules:

16 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115  
17 to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

18 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

19 (3) Nothing in this section shall prevent the State Department of Agriculture or the State  
20 Forestry Department from independently receiving moneys from a public or private agency for the  
21 purposes of preventing or controlling air or water pollution resulting from agricultural or  
22 silvicultural activities or soil erosion, or for research related to such purposes.

23 (4)(a) In awarding a public contract under ORS chapter 279, 279A, 279B or 279C for a removal  
24 or remedial action pursuant to ORS 465.200 to 465.545, a corrective action or cleanup action pur-  
25 suant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to  
26 ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300  
27 to 468B.500, the Department **of Environmental Quality**, and the Oregon Department of Adminis-  
28 trative Services, when administering the establishment of such a contract on behalf of the Depart-  
29 ment of Environmental Quality under ORS 279A.050 and 279A.140, shall subtract from the amount  
30 of any bid or proposal the hazardous waste management fees and solid waste fees that would be  
31 required by law to be paid to the Department **of Environmental Quality** for waste that would be  
32 disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on  
33 the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable  
34 preprocurement estimates of the amount of waste that would be disposed of under the contract and  
35 that would be subject to those fees.

36 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract  
37 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less  
38 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates  
39 of amounts of waste that would be disposed of in projects of this character is technically challenging  
40 and requires the application of professional discretion. Therefore, no award of a contract under this  
41 subsection shall be subject to challenge, under ORS 279B.410, 279B.415 or 279C.460 or otherwise,  
42 on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

43 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-  
44 lishment, by or on behalf of the Department **of Environmental Quality**, of master contracts by  
45 which the Department **of Environmental Quality** engages the services of a contractor over a pe-

1 rioid of time for the purpose of issuing work orders for the performance of environmental activities  
 2 on a project or projects for which the amounts of waste to be disposed of were not reasonably  
 3 identified at the inception of the master contracts. However, the Department **of Environmental**  
 4 **Quality** shall require any contractor under a master contract to apply the subtraction for fees under  
 5 paragraph (a) of this subsection in the selection of any subcontractor to perform the removal of  
 6 waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.  
 7 Nothing in this subsection shall be construed to prohibit the Department **of Environmental Quality**  
 8 or the Oregon Department of Administrative Services from establishing contracts pursuant to this  
 9 section through contracting procedures authorized by ORS chapters 279, 279A, 279B and 279C that  
 10 do not require the solicitation of bids or proposals.

11 **SECTION 41.** ORS 496.118 is amended to read:

12 496.118. (1) Subject to policy direction by the State Fish and Wildlife Commission, the State Fish  
 13 and Wildlife Director shall:

14 (a) Be the administrative head of the State Department of Fish and Wildlife;

15 (b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter  
 16 240, to hire, assign, reassign and coordinate personnel of the **State Department of Fish and**  
 17 **Wildlife;**

18 (c) Administer and enforce the wildlife laws of the state;

19 (d) Be authorized to participate in any proceeding before any public officer, commission or body  
 20 of the United States or any state for the purpose of representing the citizens of Oregon concerning  
 21 the wildlife resources of this state;

22 (e) Establish such sections and divisions as are necessary to properly carry out the work of the  
 23 commission;

24 (f) Be responsible for the collection, application and dissemination of information pertinent to  
 25 the management of the wildlife resources, and to the regulation of the uses of such resources; and

26 (g) Coordinate any activities of the **State Department of Fish and Wildlife** related to a  
 27 watershed enhancement project approved by the [*Oregon Watershed Enhancement Board*] **State**  
 28 **Department of Agriculture** under ORS 541.375 with activities of other cooperating state and fed-  
 29 eral agencies participating in the project.

30 (2) In addition to duties otherwise required by law, the director shall prescribe internal policies  
 31 and procedures for the government of the **State Department of Fish and Wildlife**, the conduct of  
 32 its employees, the assignment and performance of its business and the custody, use and preservation  
 33 of its records, papers and property in a manner consistent with applicable law.

34 (3) In addition to any other duties assigned to the director, the director shall report quarterly  
 35 on the activities of the **State Department of Fish and Wildlife** to the joint legislative committee  
 36 established pursuant to ORS 171.551.

37 (4) The director may delegate to any employee of the **State Department of Fish and Wildlife**  
 38 the exercise or discharge in the director's name of any power, duty or function of whatever char-  
 39 acter, vested in or imposed by law upon the director. The official act of a person so acting in the  
 40 director's name and by the director's authority shall be considered to be an official act of the di-  
 41 rector.

42 (5) The director may restrict or otherwise limit the participation of an employee of the **State**  
 43 **Department of Fish and Wildlife** in any program administered by the **State Department of Fish**  
 44 **and Wildlife** to ensure that the programs of the **State Department of Fish and Wildlife** are ad-  
 45 ministered in a fair and equitable manner and that no employee of the **State Department of Fish**

1 **and Wildlife** gains an advantage over the public.

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

5 **SECTION 42.** ORS 496.270 is amended to read:

6 496.270. (1) The Legislative Assembly declares that it is the policy of the State of Oregon to  
7 encourage operators, timber owners and landowners to voluntarily improve fish and wildlife habitat.  
8 In order to carry out this policy, the Legislative Assembly encourages cooperation among operators,  
9 timber owners and landowners and other volunteers.

10 (2) Consistent with the limitations of ORS 105.672 to 105.696, a landowner is not liable in con-  
11 tract or tort for any personal injury, death or property damage that arises out of the use of the land  
12 by:

13 (a) A volunteer conducting a fish and wildlife habitat improvement project; or

14 (b) A participant of a state-funded or federally funded watershed or stream restoration or en-  
15 hancement program.

16 (3) An operator, timber owner or landowner [*shall*] **may** not be held liable for any damages re-  
17 sulting from:

18 (a) A fish and wildlife habitat improvement project done in cooperation and consultation with  
19 the State Department of Fish and Wildlife [*or the Oregon Watershed Enhancement Board*], or con-  
20 ducted as part of a forest management practice in accordance with ORS 527.610 to 527.770, 527.990  
21 and 527.992; or

22 (b) Leaving large woody debris within the waters of this state to protect, retain and recruit  
23 large woody debris for the purposes of fish habitat and water quality improvement.

24 (4) The limitations to liability provided by subsections (2) and (3) of this section do not apply if  
25 the damages, injury or death was caused by willful, wanton or intentional conduct on the part of the  
26 operator, timber owner or landowner or by the gross negligence of the operator, timber owner or  
27 landowner. As used in this subsection "gross negligence" means negligence [*which*] **that** is mate-  
28 rially greater than the mere absence of reasonable care under the circumstances, and [*which*] **that**  
29 is characterized by indifference to or reckless disregard of the rights of others.

30 (5) The limitation on liability provided by subsection (3) of this section does not apply to claims  
31 for death or personal injuries.

32 **SECTION 43.** ORS 526.041 is amended to read:

33 526.041. The forester, under the general supervision of the State Board of Forestry, shall:

34 (1) In compliance with ORS chapter 183, promulgate rules consistent with law for the enforce-  
35 ment of the state forest laws relating directly to the protection of forestland and the conservation  
36 of forest resources.

37 (2) Appoint and instruct fire wardens as provided in ORS chapter 477.

38 (3) Direct the improvement and protection of forestland owned by the State of Oregon.

39 (4) Collect data relative to forest conditions.

40 (5) Take action authorized by law to prevent and extinguish forest, brush and grass fires.

41 (6) Enforce all laws pertaining to forestland and prosecute violations of such laws.

42 (7) Cooperate with landowners, political subdivisions, private associations and agencies and  
43 others in forest protection.

44 (8) Advise and encourage reforestation.

45 (9) Publish such information on forestry as the forester determines to be in the public interest.

1 (10) Enter into contracts and cooperative agreements pertaining to experiments and research in  
2 forestry.

3 (11) Sell, exchange or otherwise dispose of any real property heretofore or hereafter acquired  
4 by the board for administrative purposes and no longer needed.

5 (12) Coordinate any activities of the State Forestry Department related to a watershed en-  
6 hancement project approved by the [*Oregon Watershed Enhancement Board*] **State Department of**  
7 **Agriculture** under ORS 541.375 with activities of other cooperating state and federal agencies par-  
8 ticipating in the project.

9 (13) Prescribe uniform state standards for certification of wildland fire training courses and ed-  
10 ucational programs.

11 **SECTION 44.** ORS 536.037 is amended to read:

12 536.037. (1) Subject to policy direction by the Water Resources Commission, the Water Re-  
13 sources Director shall:

14 (a) Be administrative head of the Water Resources Department;

15 (b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter  
16 240, to hire, assign, reassign and coordinate personnel of the **Water Resources** Department;

17 (c) Administer and enforce the laws of the state concerning the water resources of this state;

18 (d) Be authorized to participate in any proceeding before any public officer, commission or body  
19 of the United States or any state for the purpose of representing the citizens of Oregon concerning  
20 the water resources of this state;

21 (e) Have power to enter upon any private property in the performance of the duties of the di-  
22 rector, doing no unnecessary injury to the private property; and

23 (f) Coordinate any activities of the **Water Resources** Department related to a watershed en-  
24 hancement project approved by the [*Oregon Watershed Enhancement Board*] **State Department of**  
25 **Agriculture** under ORS 541.375 with activities of other cooperating state and federal agencies par-  
26 ticipating in the project.

27 (2) In addition to duties otherwise required by law, the director shall prescribe internal policies  
28 and procedures for the government of the **Water Resources** Department, the conduct of its em-  
29 ployees, the assignment and performance of its business and the custody, use and preservation of its  
30 records, papers and property in a manner consistent with applicable law.

31 (3) The director may delegate to any employee of the **Water Resources** Department the exer-  
32 cise or discharge in the director's name of any power, duty or function of whatever character, vested  
33 in or imposed by law upon the director. The official act of a person so acting in the director's name  
34 and by the director's authority shall be considered to be an official act of the director.

35 **SECTION 45.** Except as specifically provided in section 8 of this 2005 Act, sections 1 to 7  
36 of this 2005 Act, the amendments to statutes by sections 10 to 44 of this 2005 Act and the  
37 repeal of ORS 541.360 and 541.362 by section 46 of this 2005 Act become operative on January  
38 1, 2006.

39 **SECTION 46.** ORS 541.360 and 541.362 are repealed.

40 **SECTION 47.** This 2005 Act being necessary for the immediate preservation of the public  
41 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect  
42 on its passage.