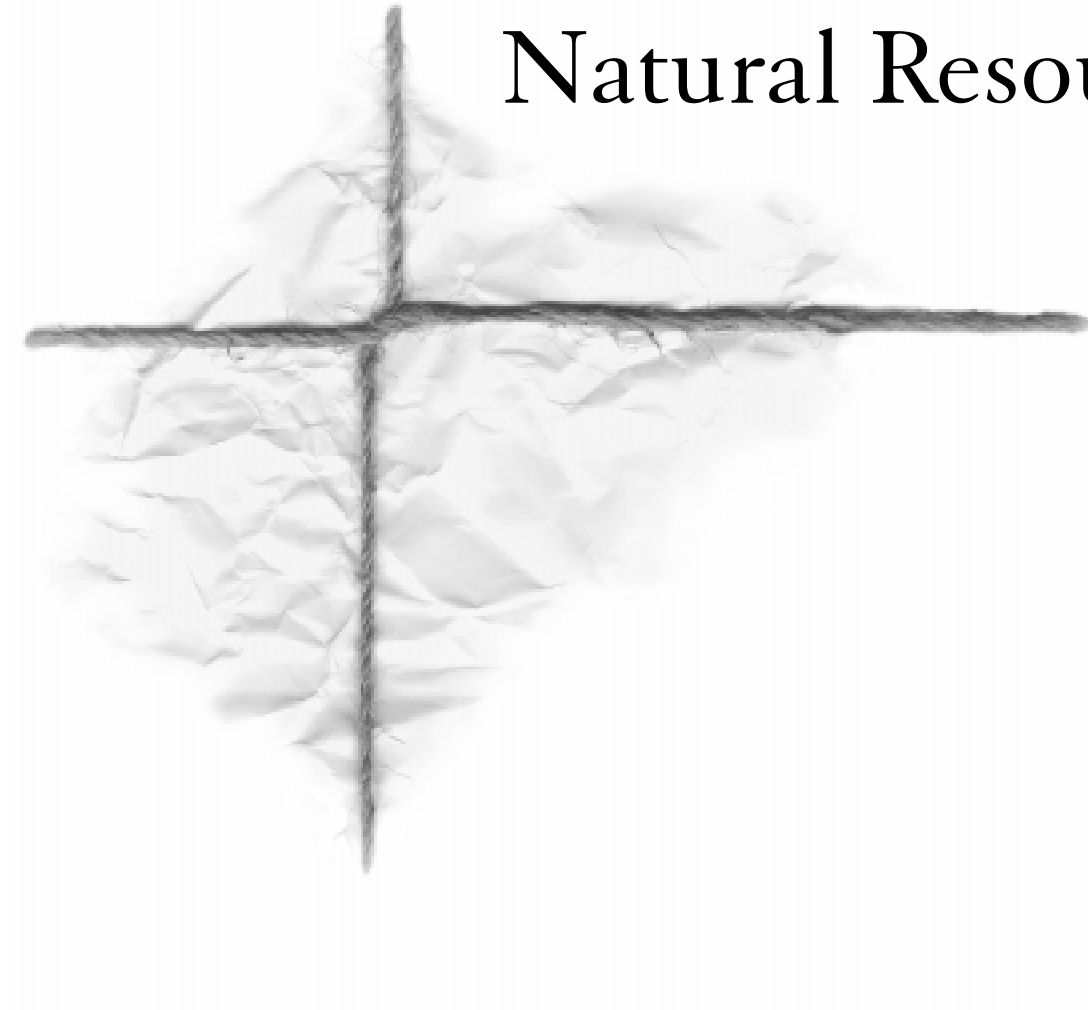


Agriculture and Natural Resources



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Summary
of Major
Legislation

Senate Bill 109

Relating to forest stewardship agreements.

SB 109 authorizes the Board of Forestry to enter into voluntary stewardship agreements with landowners in lieu of written compliance plans under the Oregon Forest Practices Act. SB 109 offers forest landowners with a good compliance record an incentive to provide for enhancement and restoration of fish and wildlife habitat, water quality, and other forest resources by reducing department oversight. The Board of Forestry will consider agreements on an individual case basis. The voluntary stewardship agreement must meet or exceed the purposes of the Oregon Forest Practices Act. The measure requires identification of geotechnical expertise and methods to be applied to lands containing high risk sites such as those with landslide potential. Stewardship agreement audits will occur, at a minimum, every three years.

Effective Date: October 4, 1997

Senate Bill 360

Relating to protection of land from fire.

SB 360 directs the Board of Forestry to set base standards to minimize and mitigate fire hazards within forestland-urban interface areas. The measure addresses concerns regarding fire hazard education, fire protection for structures, fire suppression, and cost-recovery. SB 360 establishes a \$100,000 liability limit for the cost of suppressing fires if specified requirements are met.

SB 360 creates a forestland-urban interface committee at the county level to establish land classification standards. The measure requires maps identifying classified areas to be made public, and requires public hearings and mailings to affected property owners on proposed property classifications. Property owners may appeal classification designations.

Effective Date: October 4, 1997

Senate Bill 791

Relating to wildlife habitat conservation plans.

SB 791 allows a county to approve wildlife habitat conservation and management plans in areas zoned for exclusive farm use or mixed farm and forest use. The measure prohibits establishment of a dwelling in conjunction with a plan on lands composed primarily of Class I, Class II, prime or unique soils. A county may

approve a dwelling on other land subject to the plan. SB 791 further allows land managed under an approved conservation plan to be assessed at its farm use value for tax purposes.

The 1993 legislature approved pilot programs in Polk and Marion counties to accept wildlife conservation designations as an appropriate use in exclusive farm use zones. SB 791 repeals the December 31, 1997 sunset date for the pilot programs.

Effective Date: October 4, 1997

Senate Bill 814

Relating to a State Flood Control Plan.

SB 814 creates an interim task force to review the need for a State Flood Control Plan. The task force is to consist of eight members, three state senators appointed by the Senate President, three state representatives appointed by the Speaker of the House, and two members appointed by the Governor. In addition to determining the need for a Flood Control Plan, the measure specifies that the task force is to determine the appropriate state agency to be responsible for the plan and to develop any proposed legislation necessary to implement the plan. Task force staff is to be provided by the Legislative Administrator and assistance provided by appropriate agencies.

Effective Date: October 4, 1997

Senate Bill 1002

Relating to damage by wildlife.

SB 1002 directs the Oregon Department of Agriculture to conduct a study of land and crop damage by wildlife and report to the Seventieth Legislative Assembly. The department reports that Oregon farmers are wintering more geese in Oregon's fields than anytime in recorded history, with estimates of 165,000 in 1997 and 250,000 predicted by the year 2000. The U.S. Department of Agriculture estimates \$2.5 million in annual losses to the livestock industry, but there has never been a statewide survey to determine the total damage done by wildlife. The State Board of Agriculture requested this survey so they may seek solutions while preserving wildlife.

Effective Date: July 1, 1997

Senate Bill 1211

Relating to public safety in high risk areas.

Under SB 1211, the State Forester may prohibit timber harvest and road construction operations in order to prevent risk to human life from landslides. The measure permits road authorities to close roads to public use during extreme storms. SB 1211 also requires the State Forestry Department to develop general information on the hazards of construction on sites that could be affected by landslides or debris torrents. The information will be distributed to building and planning officials, who are required to make hazard information available to landowners applying for construction permits in areas outside an urban growth boundary.

SB 1211 creates the Task Force on Landslides and Public Safety to assess risks and develop solutions to public safety issues, including damage resulting from landslides. Task force membership consists of two Senators, two Representatives, one member each from the Board of Forestry, the Department of Geology and Mineral Industries, the Transportation Commission, the Land Conservation and Development Commission and local government, and one public member selected by the other members to act as chair.

Unusually heavy rain storms during the last two years caused numerous landslides resulting in loss of life and extensive property damage. The Oregon Department of Forestry reports that landslide frequency is due to a combination of localized variation in storm intensity, geology, slope steepness, vegetation, drainage, and land management. Proponents assert further study of high-risk landslide sites and public safety is necessary to gain sufficient evidence to adopt effective timber harvest and road construction guidelines and rules.

Effective Date: July 18, 1997

Senate Joint Resolution 8

Relating to state beverage.

SJR 8 designates milk as the official beverage of the State of Oregon.

Adopted: April 13, 1997

Senate Joint Resolution 31

Relating to Christmas trees.

SJR 31 recognizes December as Oregon Christmas Tree Month.

Adopted: June 4, 1997

House Bill 2413

Relating to water used for geothermal heating.

HB 2413 directs the Department of Environmental Quality to issue a general permit for the discharge of geothermal spring water to surface water if the water use does not increase the temperature or change the chemical nature of the surface water and discharges into a water body that is the naturally occurring junction with the geothermal spring. HB 2413 directs the department to issue a general permit, instead of a National Pollutant Discharge Elimination System discharge permits, for activities utilizing geothermal waters that meet specified conditions. The specified conditions are intended to protect the quality of the receiving waters while allowing use of the geothermal heat at a reduced regulatory cost.

Effective Date: October 4, 1997

House Bill 2458

Relating to fuel-free breaks for forest dwellings.

HB 2458 limits the statutory requirement that an owner of a single family dwelling on forest land maintain fuel-free breaks surrounding the dwelling on the property. As a condition of approval of a single-family dwelling on lands zoned forestland, current law requires that the owner provide and maintain primary and secondary break areas around the dwelling. The area required for primary and secondary breaks could extend beyond the property owned or controlled by the owner of a small lot.

The Oregon Department of Forestry recommends that landowners maintain a primary safety zone of at least 30 feet around a dwelling and recommends a secondary break that extends a minimum of an additional 100 feet in all directions. These standards may be difficult to achieve on lots smaller than two acres because they lack the physical space needed to extend the secondary safety zone a full 100 feet.

HB 2458 allows small lot landowners to provide the best fire breaks they can, while making it clear that they are not required to change the conditions on their neighbor's property to meet the Oregon Department of Forestry fire break standards.

Effective Date: October 4, 1997

House Bill 2615

Relating to insect breeding.

HB 2615 authorizes the propagation of insect species as a conditional use in exclusive farm use zones. The measure excludes insect species quarantined by the state or U.S. Department of Agriculture. HB 2615 requires counties to notify the Oregon Department of Agriculture of all insect propagation applications at least 20 days prior to an administrative decision or hearing on the proposed conditional use to verify quarantine status.

Based on the a 1995 Oregon Supreme Court decision in *Brentmar vs. Jackson County*, 321 Or 481 (1995), a conditional use requires approval of the local governing body. Local jurisdictions must hold public hearings on proposed uses in exclusive farm use zones and may place conditions on insect breeding operations.

Effective Date: October 4, 1997

House Bill 2659

Relating to fishermen's associations.

HB 2659 adds fishermen's marketing and trade associations to the definition of cooperative bargaining associations, thereby exempting the associations from state antitrust regulation. Under federal law, fishermen's marketing associations are exempt from antitrust prosecution. The federal exemptions cover price fixing and group boycotts. HB 2659 mirrors federal law, specifying the availability of the same protections under state law.

Effective Date: October 4, 1997

House Bill 2784

Relating to the regulation of ginseng.

HB 2784 requires the Oregon Department of Agriculture to develop and implement a system to license operations that cultivate or sell ginseng. The United States is participating in an international treaty to ensure that wild ginseng is not harvested and exported illegally. The Northwest Ginseng Growers Association requested this measure to allow the sale of ginseng outside of the United States. While ginseng may be cultivated and sold within the United States, federal law maintains three requirements for export: state enabling legislation, Oregon Department of Agriculture approval, and acceptance of the state program by the U.S. Fish and Wildlife Service. HB 2784 provides the state enabling

legislation and directs the Oregon Department of Agriculture to develop the necessary licensing system to satisfy the U.S. Fish and Wildlife Service requirements.

Effective Date: March 26, 1997

House Bill 3110

Relating to the cultivation of shellfish.

HB 3110 declares commercial cultivation of clams and mussels an agricultural activity to be regulated by the Department of Agriculture. The Department of Agriculture currently regulates the cultivation of oysters. Native oysters, mussels, and clams remain under the jurisdiction of the Department of Fish and Wildlife.

Tidal lands underlying some estuaries are owned by the State of Oregon. The Department of Agriculture is authorized to lease those state-owned tidal lands (plats) for purposes of cultivating shellfish. Cultivation fees and use taxes are assessed for use of state lands in lieu of property taxes, lease fees, or rental charges. HB 3110 establishes fees and use taxes for the cultivation of oysters, clams, and mussels as follows: one cent per dozen oysters sold; 1/2 cent per pound of clams or mussels sold; annual cultivation fee of \$4 per acre; plat application fee of \$250; and a claim or plat transfer fee of \$100. HB 3110 is not intended to affect activities on the ocean shore.

Effective Date: October 4, 1997

House Bill 3177

Relating to public grain warehouses.

HB 3177 specifies financial statement, audit, surety bonding, and minimum asset requirements for operators of public grain warehouses. The bill increases the range of bonding requirements to \$500,000 and the maximum violation penalty to \$3,000. HB 3177 requires the Department of Agriculture to annually inspect public grain warehouses under the state program if sufficient funds are available. In order to further study warehouse regulations and related issues, the measure creates an advisory committee to advise the director of the Department of Agriculture on laws regulating grain warehouses.

Effective Date: October 4, 1997

House Bill 3302

Relating to wildlife.

HB 3302 authorizes the Department of Fish and Wild-

life to issue a resident annual sportsman's license including general season tags and stamps for black bear, cougar, elk, deer, upland bird, migratory waterfowl, turkey, salmon-steelhead and sturgeon. A fee of \$100 will be charged for the special license and tag combination. If purchased separately, the total cost of licenses and tags would be \$168.

HB 3302 requires the special license holders to participate in wildlife permit allocations limited by quota and directs a general season tag be granted to those who fail to be drawn for limited elk and deer tags. HB 3302 reduces the fee for a resident annual cougar hunting tag from \$50 to \$10.

Under the measure, a portion of the resident annual sportsman's license fee is allocated as follows: \$2 credited to the Access and Habitat Program; \$5 credited to the Restoration and Enhancement Program; and 25 cents credited to the State Wildlife Fund.

Effective Date: January 1, 1998

House Bill 3352

Relating to visually impaired hunters.

HB 3352 authorizes the Department of Fish and Wildlife to issue a special hunting designation to visually-impaired persons so that another hunter may assist them. HB 3352 defines a visually-impaired hunter as someone with central visual acuity not exceeding 20/200 or, if better than 20/200, with a limited field of vision no greater than 20 degrees at the widest diameter. The Department of Fish and Wildlife has been working with an Advisory Committee on Disabilities to review department programs and make reasonable accommodation for hunting and fishing opportunities under the federal Americans with Disabilities Act. HB 3352 allows any licensed hunter to assist a visually-impaired hunter to select game, aim a firearm, advise when to fire, shoot a game animal or bird in the presence of the visually-impaired hunter, and to tag and retrieve game.

Effective Date: October 4, 1997

House Bill 3387

Relating to allocation of hunting permits.

HB 3387 directs the Fish and Wildlife Commission to establish a system to allocate one-half of the nonresident deer and elk hunting tags to certified outfitters and guides for use by their clients. The Commission may revoke permits in the case of emergency situations or

wildlife needs. HB 3387 allows the Department of Fish and Wildlife to charge twice the nonresident deer and elk tag fee for hunting tags issued under the system. Unused tags will be returned to the Department for re-issue to residents and nonresidents.

The measure directs the State Marine Board to establish a certification process for qualified outfitters and guides no later than January 1, 1999. A fee will be charged to cover program costs. All outfitters and guides holding a valid registration are allowed to participate in the nonresident hunting permit allocation system from January 1, 1998, through December 31, 1999, by which time outfitters and guides must meet certification requirements.

Effective Date: October 4, 1997

House Bill 3558

Relating to Klamath Lake plankton fishery.

HB 3558 places a moratorium on plankton harvesting in Klamath Lake. Currently, the plankton fishery on the Upper Klamath Lake is not regulated by any local, state, or federal jurisdiction. The measure directs the appropriate legislative interim committee to study Klamath Lake plankton fishery issues and submit proposed legislation to regulate the fishery. Proposed legislation must address both environmental and economic issues. HB 3558 prohibits operation of harvesting vessels occupying an area greater than 150 feet by 200 feet of water surface and directs the State Marine Board to enforce boat safety regulations on the lake.

Effective Date: October 4, 1997

House Bill 3716

Relating to orders issued under Oregon Forest Practices Act.

HB 3716 authorizes the State Forester to issue orders preventing landowners or operators from conducting any forestland timber harvest operations when the landowner or operator has failed to comply with certain Oregon Forest Practices Act orders. Violations of the Oregon Forest Practices Act are addressed through State Board of Forestry citations and orders to repair damage and/or to pay civil penalties. Under the Act, the board may require the operator to suspend operations on parcels where the violation has occurred until the situation is remedied. In cases where an operator has failed to comply with a final board order, HB 3716 creates an additional enforcement mechanism by autho-

rizing the Board of Forestry to order the violator to cease all new operations on any forestland in the state until corrective action is taken and/or civil penalties paid. The board only has this authority when an operator fails to comply with a final order so that operators have opportunity for redress and to request a hearing on either the repair order or civil penalty.

Effective Date: October 4, 1997

Measure Vetoed by the Governor

Senate Bill 1

Relating to trespass.

SB 1 provides immunity from civil liability to a person who cuts or otherwise damages trees or shrubs at the direction of another person. The measure requires a good faith belief by the person performing the cutting that the individual requesting the tree or shrub removal owns the property or otherwise had authority to direct the cutting.

In 1996, the Department of Forestry received nearly 25,000 notices of private land timber operations. As smaller private parcels are logged, more property line disputes arise. SB 1 clarifies that action may be brought against the person who directs the cutting as well as the person who performs the cutting in cases of unlawful removal.

Governor's Veto Message (August 15, 1997):

I am returning herewith Senate Bill 1 to you unsigned and disapproved.

Senate Bill 1 is intended to relieve loggers of liability for cutting the wrong trees if directed to do so by another person. This concept is known as "good faith" trespass. I have two problems with the bill. First, it does not establish an adequate standard for loggers to ensure that their cutting operations are taking place with the permission of the legal owners. The result could leave timber owners without recourse for the losses they have suffered. Meanwhile, the logger has the option of purchasing Broad Form liability insurance as protection from the type of loss or risk anticipated by this bill. The use of this insurance has been an industry standard for many years. I believe the use of this traditional means of risk avoidance adequately protects the logger and the landowners in the event of

wrongful harvest, thereby making the statutory change unnecessary.

The second problem with Senate Bill 1 is that it applies not only to timber lands, but to farmland, urban homes, parks, and other lands. It limits the long-standing common law remedies that are currently available to landowners for trespass.

Major Legislation Not Enacted

Senate Bill 402

Relating to the taking of cougars.

SB 402 would have authorized the taking of cougars in accordance with Oregon Department of Fish and Wildlife rules in areas established by the department as public safety zones.

Senate Bill 1086

Relating to protection of endangered species.

SB 1086 would have excluded water from the definition of land for purposes of administering state laws and programs related to state designated threatened or endangered wildlife species.

House Bill 2762

Relating to road repair.

HB 2762 would have revised the Oregon Forest Practices Act by adding a requirement that individuals causing damage to public or private roads be responsible for damage repair.

House Bill 3105

Relating to indigenous plants.

HB 3105 would have required use of indigenous plants in public landscaping projects.