

# House Bill 4106

Sponsored by Representative JAVADI, Senator WEBER, Representative OWENS; Senator SMITH DB (Presession filed.)

## 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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act directs the State Forester to create harvest levels for cutting timber on state forestland. The Act directs the State Forester to develop a timber inventory model. The Act directs the State Forester to sell timber at the harvest level. The Act gives moneys to the State Forester. (Flesch Readability Score: 61.4).

Directs the State Forester to establish sustainable harvest levels for harvesting timber on state forestland and develop a timber inventory model to inform sustainable harvest levels.

Directs the State Forester to offer timber for sale at the sustainable harvest level, annually report on sales of timber relative to the sustainable harvest level and address any shortfall in timber sales. Confers standing on certain persons to challenge a failure to address a shortfall.

Directs the State Forester to adopt sustainable harvest levels, forest management plans and related significant policy documents by rule. Establishes certain requirements for judicial review of the rules.

Makes certain changes concerning forest management reports by the State Forester.

Appropriates moneys to the State Forester out of the General Fund for developing a timber inventory model and a sustainable harvest level.

Takes effect on the 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to reliable forest management outcomes; creating new provisions; amending ORS 183.480,  
3 526.041, 526.060, 526.255, 526.265 and 526.990; and prescribing an effective date.

4 Whereas over the last 50 years, the State Forester and the State Forestry Department have  
5 managed state-owned forestlands with an increasing emphasis on habitat conservation; and

6 Whereas under the department's management, setting aside habitat for conservation purposes  
7 has resulted in various ecological successes but has imposed negative impacts on rural economies,  
8 counties and local taxing districts; and

9 Whereas the department is currently continuing development of the Western Oregon State For-  
10 ests Habitat Conservation Plan; and

11 Whereas the department is developing, in concurrence with the Western Oregon State Forests  
12 Habitat Conservation Plan, an associated new Western Oregon State Forest Management Plan that  
13 prioritizes ecological outcomes in its approach to forest management; and

14 Whereas ecologically sustainable forest management is intended to provide a balance of social  
15 services, economic services and environmental ecosystem services; and

16 Whereas a crucial economic service provided through ecologically sustainable forest manage-  
17 ment is ensuring sustainable and predictable production of forest products that generate revenues  
18 for the benefit of the state, counties and local taxing districts; and

19 Whereas to achieve that crucial economic service, which is particularly important to communi-  
20 ties negatively impacted by previous forest management practices, the department must ensure the  
21 productive management of all state-owned forestlands that are not encumbered by habitat re-  
22 strictions, and must ensure that, before the department commits more state-owned forestlands to

**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 conservation, the public has a complete understanding of the direct and indirect social and economic  
2 impacts of doing so; and

3 Whereas using advanced forest modeling techniques to calculate sustainable harvest levels, en-  
4 gaging the public in a transparent process for developing inputs to forest models and regularly up-  
5 dating forest management plans in line with the outputs of forest models will result in greater  
6 predictability in the production of forest products, thus better supporting the economy; now, there-  
7 fore,

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

9  
10 **CALCULATION OF SUSTAINABLE HARVEST LEVELS**

11  
12 **SECTION 1. Sections 2 to 10 of this 2024 Act are added to and made a part of ORS**  
13 **chapter 526.**

14 **SECTION 2. As used in sections 2 to 10 of this 2024 Act:**

15 (1) **“Available land” means all state forestland on which the State Forester has legal**  
16 **discretion to harvest timber, taking into account any applicable requirements of any habitat**  
17 **conservation plan approved by the National Marine Fisheries Service or the United States**  
18 **Fish and Wildlife Service, pursuant to the federal Endangered Species Act (16 U.S.C. 1531 to**  
19 **1544).**

20 (2) **“State forestland” means:**

21 (a) **Forestland acquired under ORS 530.010 to 530.040; and**

22 (b) **Common School Forest Lands managed under ORS 530.490.**

23 (3) **“Sustainable harvest level” means a planned volume of timber to be:**

24 (a) **Harvested from available land in each year during a five-year period; and**

25 (b) **Offered for sale.**

26 **SECTION 3. (1) The State Forester shall calculate:**

27 (a) **A new sustainable harvest level for every five-year period; and**

28 (b) **An amended sustainable harvest level under circumstances described in subsection**  
29 **(3) of this section, as described in subsection (4) of this section.**

30 (2) **To calculate a new or amended sustainable harvest level, the State Forester shall:**

31 (a) **Identify available land;**

32 (b) **Develop a timber inventory model that:**

33 (A) **Is based on an inventory of timber on the available land that is current as of not**  
34 **more than one year before a draft of the sustainable harvest level is published under section**  
35 **4 of this 2024 Act; and**

36 (B) **Projects the yield and growth of the inventory of the timber for 100 years under an-**  
37 **anticipated management; and**

38 (c) **Use the timber inventory model to derive a sustainable harvest level that maximizes**  
39 **the net present value of the available land, using a discount rate commonly used for owners**  
40 **of a size of private forestland that is similar to the size of the available land.**

41 (3) **Before the State Board of Forestry or the State Forester adopts or amends any forest**  
42 **management plan, rule, order or policy that would alter management of available land, the**  
43 **State Forester shall calculate an amended sustainable harvest level.**

44 (4) **An amended sustainable harvest level:**

45 (a) **Modifies the planned volume of timber to be harvested from available land during one**

1 or more years remaining in the five-year period for the sustainable harvest level that is being  
2 amended.

3 (b) Applies during the years remaining in the five-year period for the sustainable harvest  
4 level that is being amended.

5 (c) Does not start a new five-year period for a sustainable harvest level.

6 **SECTION 4.** (1) Notwithstanding ORS 183.325 to 183.410, the adoption of a sustainable  
7 harvest level or an amended sustainable harvest level by rule, pursuant to ORS 526.041 (2),  
8 shall be as provided in this section.

9 (2) At least 120 days before the beginning of a five-year period for a sustainable harvest  
10 level, or as soon as practicable after the State Forester calculates an amended harvest level  
11 pursuant to section 3 (3) of this 2024 Act, the State Forester shall publish:

12 (a) A draft of the sustainable harvest level or the amended sustainable harvest level;

13 (b) The timber inventory model described in section 3 of this 2024 Act;

14 (c) A thorough and detailed description of the timber inventory model that describes in  
15 detail, at minimum:

16 (A) The inputs and methodology used to determine the inventory of timber on the avail-  
17 able land and the projected yield and growth of the inventory of the timber;

18 (B) Any constraints on harvesting timber on the available land that were used as inputs  
19 for the timber inventory model, including stream buffers, wildlife setbacks, inoperable land  
20 or other physical constraints, and any cases, laws or rules that constrain the harvest of  
21 timber on the available land;

22 (C) How the constraints were determined, including the State Forester's interpretation  
23 of any applicable case, law or rule;

24 (D) Any financial or economic assumptions that were used as inputs;

25 (E) Any other data or assumptions that were used as inputs;

26 (F) How tax revenues and revenues from timber sales that would accrue to counties and  
27 the Common School Fund will likely be affected by the amendments to the sustainable har-  
28 vest level; and

29 (G) How local communities and direct consumers of wood products from state forestland  
30 will likely be economically affected, including any economic multiplier effects, by the  
31 amendments to the sustainable harvest level; and

32 (d) For a draft amended sustainable harvest level, any changes to:

33 (A) The amount of available land identified; and

34 (B) How the available land was identified.

35 (3) After publishing the documents described in subsection (2) of this section, the State  
36 Forester shall:

37 (a) Hold a public hearing on the documents; and

38 (b) Allow 60 days for the public, the State Board of Forestry and the Forest Trust Land  
39 Advisory Committee described in ORS 526.156 to comment on the documents.

40 (4) Not more than 60 days after the 60-day comment period closes, the State Forester:

41 (a) Shall consider, and provide responses to, all suggestions and information provided at  
42 the hearing or in properly submitted public comments;

43 (b) May incorporate any of the suggestions or information into a final sustainable harvest  
44 level or a final amended sustainable harvest level without providing an additional opportunity  
45 for a hearing or public comment; and

1 (c) Shall issue an order adopting a final sustainable harvest level or a final amended  
2 sustainable harvest level.

3 (5) After the State Forester issues an order under subsection (4) of this section, as  
4 needed for consistency with the order:

5 (a) The State Board of Forestry shall amend forest management plans, as defined in ORS  
6 526.455, adopted by rule pursuant to ORS 526.041 (1)(b); and

7 (b) The State Forester shall amend, and otherwise update, planning documents and poli-  
8 cies for management of state forestland.

9 **SECTION 5.** The State Forester shall first publish a draft sustainable harvest level as  
10 described in section 4 of this 2024 Act on or before December 31, 2025.

11  
12 **SALES OF TIMBER AT**  
13 **SUSTAINABLE HARVEST LEVEL**  
14

15 **SECTION 6.** During each five-year period, subject to the provisions of ORS 530.050,  
16 530.059 and 530.500, the State Forester shall offer timber for sale at the applicable sustainable  
17 harvest level.

18 **SECTION 7.** (1) As used in this section, “shortfall” means a reduction in the volume of  
19 timber offered for sale from the available land during one year as compared to the volume  
20 planned to be offered for sale that year under the sustainable harvest level.

21 (2) On or before September 15 of each year, the State Forester shall make publicly  
22 available on a State Forestry Department website:

23 (a) A calculation of the volume of timber harvested and offered for sale from the avail-  
24 able land during the previous year;

25 (b) A calculation of any shortfall;

26 (c) A description of specific reasons for any shortfall; and

27 (d) If a shortfall occurred, a plan for achieving, during any remaining years in the five-  
28 year period, the offer for sale of the difference in the volume of timber planned to be offered  
29 for sale under the sustainable harvest level and the volume of timber that was offered for  
30 sale during the year.

31 (3) Under the plan described in subsection (2)(d) of this section, to the extent feasible,  
32 the difference in the volume of timber must be offered for sale within the county or counties  
33 most affected by the shortfall.

34 **SECTION 8.** The requirements of section 7 of this 2024 Act apply on and after January  
35 1, 2026.

36 **SECTION 9.** (1) If, at the end of a five-year period for a sustainable harvest level, the  
37 volume of timber harvested from the available land and offered for sale is less than the  
38 sustainable harvest level, the State Forester shall offer for sale the additional timber during  
39 the next five-year period, in addition to the sustainable harvest level applicable during the  
40 next five-year period.

41 (2) Notwithstanding subsection (1) of this section, the State Forester may reduce the  
42 amount of additional timber to be offered for sale during the next five-year period to the  
43 degree that the additional timber was not offered for sale during the previous five-year pe-  
44 riod as a result of catastrophic wildfire or another catastrophic environmental event, after:

45 (a) Making a finding on why the additional timber was not harvested; and

1 (b) Issuing a final order that describes facts and circumstances supporting the finding.

2 **SECTION 10.** (1) Notwithstanding any contrary provision of law, a person described in  
3 subsection (2) of this section may apply to the Circuit Court for Marion County for a tem-  
4 porary or permanent injunction directing the State Forester to comply with the applicable  
5 requirement if the State Forester does not:

6 (a) Offer timber for sale as required by section 9 (1) of this 2024 Act, subject to any ap-  
7 plicable reduction under section 9 (2) of this 2024 Act; or

8 (b) Calculate an amended sustainable harvest level as required by section 3 (3) of this  
9 2024 Act.

10 (2) This section confers standing to bring an action under subsection (1) of this section  
11 on any person that demonstrates that the person has received revenue from the harvest of  
12 timber on state forestland or has purchased timber sale contracts in this state, without a  
13 further showing of individualized interest.

14 (3) The court may award costs, but not attorney fees, to a party that prevails under this  
15 section.

16  
17 **ADOPTION OF POLICIES BY RULE**

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19 **SECTION 11.** ORS 526.041 is amended to read:

20 526.041. The [*forester*] **State Forester**, under the general supervision of the State Board of  
21 Forestry, shall:

22 (1) In compliance with ORS chapter 183[,]:

23 (a) [*Promulgate*] **Adopt** rules consistent with law for the enforcement of the state forest laws  
24 relating directly to the protection of forestland and the conservation of forest resources.

25 (b) **Adopt by rule forest management plans, as defined in ORS 526.455.**

26 (2) **Adopt by rule sustainable harvest levels and any amended sustainable harvest levels,**  
27 **as described in sections 3 and 4 of this 2024 Act.**

28 [(2)] (3) Appoint and instruct fire wardens as provided in ORS chapter 477.

29 [(3)] (4) Direct the improvement and protection of forestland owned by the State of Oregon.

30 [(4)] (5) Collect data relative to forest conditions.

31 [(5)] (6) Take action authorized by law to prevent and extinguish forest, brush and grass fires.

32 [(6)] (7) Enforce all laws pertaining to forestland and prosecute violations of such laws.

33 [(7)] (8) Cooperate with landowners, political subdivisions, private associations and agencies and  
34 others in forest protection.

35 [(8)] (9) Advise and encourage reforestation.

36 [(9)] (10) Publish such information on forestry as the forester determines to be in the public in-  
37 terest.

38 [(10)] (11) Enter into contracts and cooperative agreements pertaining to experiments and re-  
39 search in forestry.

40 [(11)] (12) Sell, exchange or otherwise dispose of any real property heretofore or hereafter ac-  
41 quired by the board for administrative purposes and no longer needed.

42 [(12)] (13) Coordinate any activities of the State Forestry Department related to a watershed  
43 enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.932  
44 with activities of other cooperating state and federal agencies participating in the project.

45 [(13)] (14) Prescribe uniform state standards for certification of wildland fire training courses

1 and educational programs.

2 [(14)] (15) Serve as the Governor’s authorized representative for the purpose of initiating the fire  
 3 management assistance declaration process with the Federal Emergency Management Agency and  
 4 administering Federal Emergency Management Agency fire management assistance grants.

5 **SECTION 12.** The amendments to ORS 526.041 by section 11 of this 2024 Act apply to the  
 6 adoption of policies described in ORS 526.041 (1)(b) and (2) on and after the effective date of  
 7 this 2024 Act.

8 **SECTION 13.** ORS 526.990 is amended to read:

9 526.990. Violation of any rule [promulgated] adopted under ORS 526.041 (1)(a) is, upon con-  
 10 viction, punishable as a misdemeanor.

11  
 12 **JUDICIAL REVIEW OF RULES ADOPTING POLICIES**

13  
 14 **SECTION 14.** Section 15 of this 2024 Act is added to and made a part of ORS chapter 526.

15 **SECTION 15.** (1) Notwithstanding ORS 183.400, 183.480 (2) and (3), 183.482 and 183.484, ju-  
 16 dicial review of a final rule described in ORS 526.041 (1)(b) or (2) shall be as described in this  
 17 section.

18 (2) This section confers standing to bring an action under this section on any person that  
 19 demonstrates that the person has received revenue from the harvest of timber on state  
 20 forestland or has purchased timber sale contracts in this state, without a further showing  
 21 of individualized interest.

22 (3) A person described in subsection (2) of this section may institute a proceeding for  
 23 judicial review under this section by:

24 (a) Filing a petition in the Circuit Court for Marion County, not more than 21 days after  
 25 the rule is published, that includes:

26 (A) A statement of the rule the petitioner is challenging;

27 (B) A statement of the legal basis for the challenge; and

28 (C) A statement and supporting affidavit demonstrating how the petitioner is adversely  
 29 affected by the rule; and

30 (b) Serving a copy of the petition, by registered or certified mail, upon the State  
 31 Forester, the State Board of Forestry and the Attorney General.

32 (4)(a) At any time subsequent to the filing of a petition and prior to a date set for a  
 33 hearing, the State Forester may suspend the rule for purposes of reconsideration.

34 (b) If the State Forester suspends a rule for purposes of reconsideration, the State  
 35 Forester shall, within such time as the court may allow, readopt, amend or permanently  
 36 suspend the rule.

37 (c) If the petitioner is dissatisfied with the readoption or amendment of the rule, the  
 38 petitioner may refile the petition and judicial review shall proceed upon the readopted or  
 39 amended rule.

40 (d) An amended petition for review shall not be required if the State Forester, on re-  
 41 consideration, readopts or amends the rule with only minor changes.

42 (e) If the State Forester suspends a rule for purposes of reconsideration and amends the  
 43 rule in favor of the petitioner, the court shall allow the petitioner costs, but not attorney  
 44 fees, to be paid from funds available to the State Forester or the State Board of Forestry.

45 (5) Judicial review of a rule under this section shall be limited to an examination of:

1 (a) The rule;

2 (b) The statutory provisions authorizing the rule; and

3 (c) Copies of any documents related to notice and comment on the rule, including a  
4 timber inventory model, as described in section 3 of this 2024 Act, or a sustainable harvest  
5 level, as defined in section 2 of this 2024 Act.

6 (6) The court shall declare the rule invalid only if it finds that the rule:

7 (a) Violates a constitutional provision;

8 (b) Contravenes or exceeds the statutory authority of the State Forester;

9 (c) Was adopted without compliance with applicable rulemaking procedures;

10 (d) Is inconsistent with a different rule of the State Forester or a rule of the State Board  
11 of Forestry, with an officially stated position of the State Forester or the State Board of  
12 Forestry or with a prior practice of the State Forester or the State Board of Forestry, if the  
13 State Forester has not explained the inconsistency; or

14 (e) Is not supported by evidence, including evidence to support calculations underpinning  
15 the rule, that, taken in isolation and not in light of the whole record, a reasonable person  
16 could accept as adequate to support a conclusion.

17 (7) Notwithstanding subsection (5) of this section, in reviewing a rule under this section,  
18 the court may not:

19 (a) Consider whether the rule secures the greatest permanent value of lands, as de-  
20 scribed in ORS 530.050;

21 (b) Examine any interpretation by the State Forester, the State Board of Forestry or the  
22 State Forestry Department of the applicability or requirements of a habitat conservation  
23 plan approved by the National Marine Fisheries Services or the United States Fish and  
24 Wildlife Service, pursuant to the federal Endangered Species Act (16 U.S.C. 1531 to 1544); or

25 (c) Declare the rule invalid more than two years after the date the rule was filed in the  
26 office of the Secretary of State solely because the rule was adopted without compliance with  
27 applicable rulemaking procedures, if the State Forester attempted to comply with the pro-  
28 cedures and the failure to do so did not substantially prejudice the interests of the petitioner.

29 (8) The form and scope of the judgment of the court shall be as described in ORS 183.486.

30 (9) Notwithstanding ORS 183.497 (2), awards of costs and attorney fees to a petitioner  
31 shall be as described in ORS 183.497.

32 (10) Any party to the proceeding may appeal the judgment of the court as described in  
33 ORS 183.500.

34 **SECTION 16.** ORS 183.480 is amended to read:

35 183.480. (1) Except as provided in ORS 183.417 (3)(b), any person adversely affected or aggrieved  
36 by an order or any party to an agency proceeding is entitled to judicial review of a final order,  
37 whether such order is affirmative or negative in form. A petition for rehearing or reconsideration  
38 need not be filed as a condition of judicial review unless specifically otherwise provided by statute  
39 or agency rule.

40 (2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482,  
41 183.484, 183.490 and 183.500.

42 (3) No action or suit shall be maintained as to the validity of any agency order except a final  
43 order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon  
44 showing that the agency is proceeding without probable cause, or that the party will suffer sub-  
45 stantial and irreparable harm if interlocutory relief is not granted.

1 (4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS  
2 813.410.

3 (5) **Judicial review of rules described in ORS 526.041 (1)(b) and (2) shall be as provided by**  
4 **section 15 of this 2024 Act.**

5  
6 **FOREST MANAGEMENT REPORTS**  
7

8 **SECTION 17. ORS 526.255 and 526.265 are added to and made a part of sections 2 to 10**  
9 **of this 2024 Act.**

10 **SECTION 18.** ORS 526.255 is amended to read:

11 526.255. (1) The **State Forester** shall:

12 (a) Submit a biennial report **on forest management** to the Governor and to *[those]* **the com-**  
13 **mittees or interim committees** of the Legislative Assembly *[with responsibility for forestry*  
14 *matters]* **that relate to natural resources.**

15 (b) **Present orally on the report to the committees or interim committees of the Legis-**  
16 **lative Assembly that relate to natural resources, after the end of each fiscal year:**

17 (A) **On or before the following September;**

18 (B) **On or before the following January; or**

19 (C) **During the first 15 days of the following regular legislative session.**

20 (2) The report *[shall contain matters that include, but are not limited to]* **must describe, at**  
21 **minimum:**

22 *[(1)]* (a) *[The]* Long range **forest** management plans based on current resource descriptions and  
23 technical assumptions, including *[sustained yield calculations for the purpose of maintaining economic*  
24 *stability in each management region]* **the timber inventory model described in section 3 of this**  
25 **2024 Act.**

26 (b) **The applicable sustainable harvest level, as defined in section 2 of this 2024 Act.**

27 *[(2)]* (c) Marketing, reforestation and intensive **forest** management programs for the last com-  
28 pleted biennium and the current biennium, and projected programs for the ensuing biennium.

29 (d) *[The marketing report shall include]* **The** volume and value of new sales, **the** volume and  
30 value of timber harvested *[and]*, timber sales receipts distributed to counties and to the Common  
31 School Fund **and the information described in section 3 (2) of this 2024 Act.**

32 *[(3)]* (e) The programmed harvest level on federal lands or federal policy changes that would  
33 impact that level of harvest on lands in Oregon.

34 **SECTION 19.** ORS 526.265 is amended to read:

35 526.265. (1) **Before finalizing the report described in ORS 526.255,** the State Forester *[may]*  
36 **shall:**

37 (a) **Make a copy of a draft of the report publicly available;**

38 (b) **Provide the public with no less than 30 days to submit written comments on the draft**  
39 **of the report; and**

40 (c) **After the period described in paragraph (b) of this subsection,** conduct biennial public  
41 hearings in each **forest** management region **described in subsection (2) of this section to**  
42 *[report]:*

43 (A) **Describe** the matters included in *[ORS 526.255]* **the draft of the report;** and *[to]*

44 (B) **Accept public testimony on the draft of the report.**

45 (2) For the purpose of this section *[and ORS 526.255]*, the following forest management regions



1 are established:

2 (a) Northwest Region, consisting of Clatsop, Columbia, Tillamook, Washington and Yamhill  
3 Counties.

4 (b) Willamette Region, consisting of Multnomah, Clackamas, Marion, Polk, Lincoln, Benton, Linn  
5 and Lane Counties.

6 (c) Southern Region, consisting of Douglas, Coos, Curry, Josephine and Jackson Counties.

7 (d) Eastern Region, consisting of Hood River, Wasco, Gilliam, Sherman, Morrow, Umatilla, Un-  
8 ion, Wallowa, Jefferson, Wheeler, Grant, Baker, Deschutes, Crook, Klamath, Lake, Harney and  
9 Malheur Counties.

10

11

**APPROPRIATION**

12

13 **SECTION 20.** In addition to and not in lieu of any other appropriation, there is appro-  
14 priated to the State Forester, for the biennium ending June 30, 2025, out of the General  
15 Fund, the amount of \$\_\_\_\_\_, for developing:

16 (1) A timber inventory model described in section 3 of this 2024 Act; and

17 (2) A sustainable harvest level, as defined in section 2 of this 2024 Act, or an amended  
18 sustainable harvest level.

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20

**CAPTIONS**

21

22 **SECTION 21.** The unit captions used in this 2024 Act are provided only for the conven-  
23 ience of the reader and do not become part of the statutory law of this state or express any  
24 legislative intent in the enactment of this 2024 Act.

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26

**EFFECTIVE DATE**

27

28 **SECTION 22.** This 2024 Act takes effect on the 91st day after the date on which the 2024  
29 regular session of the Eighty-second Legislative Assembly adjourns sine die.

30