

Requested by Representative JAVADI

**PROPOSED AMENDMENTS TO
HOUSE BILL 4106**

1 On page 2 of the printed bill, delete lines 9 through 45 and delete pages
2 3 through 9 and insert:

3

4 **“CALCULATION OF SUSTAINABLE HARVEST LEVELS**

5

6 **“SECTION 1. Sections 2 to 10 of this 2024 Act are added to and made**
7 **a part of ORS chapter 526.**

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

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

15 **“(2) ‘Harvest period’ means a five-year period following the adoption**
16 **of a sustainable harvest level.**

17 **“(3) ‘Management change affecting harvest levels’ means the**
18 **adoption or amendment of any forest management plan or a rule, or-**
19 **der or policy that alters management of available land in a manner**
20 **that may materially change the amount of wood to be harvested from**
21 **available land.**

1 “(4) ‘State forestland’ means:

2 “(a) Forestland acquired under ORS 530.010 to 530.040; and

3 “(b) Common School Forest Lands managed under ORS 530.490.

4 “(5) ‘Sustainable harvest level’ means a planned volume of timber
5 to be sold from available land and harvested thereafter, calculated in
6 five-year increments over a one hundred-year period.

7 “SECTION 3. (1) The State Board of Forestry shall adopt by rule a
8 sustainable harvest level that is calculated and recommended by the
9 State Forester:

10 “(a) Immediately before the board or the State Forester makes any
11 management change affecting harvest levels; and

12 “(b) At least once every five years.

13 “(2) Neither the board nor the State Forester may make a man-
14 agement change affecting harvest levels without first adopting a
15 sustainable harvest level pursuant to subsection (1) of this section.

16 “(3) To calculate a sustainable harvest level, the State Forester
17 shall:

18 “(a) Identify available land by harvest unit;

19 “(b) Develop a timber inventory model that:

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

24 “(B) Projects the yield and growth of the inventory of the timber
25 for 100 years under anticipated management; and

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

30 “SECTION 4. (1) Notwithstanding ORS 183.325 to 183.410, the

1 adoption of a sustainable harvest level by rule, pursuant to section 3
2 of this 2024 Act and ORS 526.041 (2), shall be as provided in this section.

3 “(2) At least 120 days before recommending a sustainable harvest
4 level to the State Board of Forestry, the State Forester shall publish:

5 “(a) A draft of the recommended sustainable harvest level;

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

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

10 “(A) The inputs and methodology used to determine the inventory
11 of timber on the available land and the projected yield and growth of
12 the inventory of the timber;

13 “(B) Any constraints on harvesting timber on the available land
14 that were used as inputs for the timber inventory model, including
15 stream buffers, wildlife setbacks, inoperable land or other physical
16 constraints, and any cases, laws or rules that constrain the harvest
17 of timber on the available land;

18 “(C) How the constraints were determined, including the State
19 Forester’s interpretation of any applicable case, law or rule;

20 “(D) Any financial or economic assumptions that were used as in-
21 puts; and

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

23 “(d) A description of how tax revenues and revenues from timber
24 sales that would accrue to counties and the Common School Fund will
25 likely be affected by the sustainable harvest level;

26 “(e) A description of how local communities and direct consumers
27 of wood products from state forestland will likely be economically af-
28 fected, including any economic multiplier effects, by the sustainable
29 harvest level; and

30 “(f) A detailed explanation as to why any harvest unit of available

1 land was removed from or added to the total harvest units of available
2 land underlying the timber inventory model, relative to the total har-
3 vest units of available land underlying the timber inventory model for
4 the immediately prior sustainable harvest level.

5 “(3) After publishing the documents and information described in
6 subsection (2) of this section, the State Forester shall:

7 “(a) Hold a public hearing on the documents and information; and

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

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

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

16 “(b) May incorporate any of the suggestions or information de-
17 scribed in paragraph (a) of this subsection into a final recommended
18 sustainable harvest level without providing an additional opportunity
19 for a hearing or public comment;

20 “(c) Shall make publicly available on a website of the State Forestry
21 Department a detailed explanation of:

22 “(A) The State Forester’s response to the suggestions and informa-
23 tion described in paragraph (a) of this subsection; and

24 “(B) Why the suggestions and information were or were not incor-
25 porated into the final recommended sustainable harvest level; and

26 “(d) Shall publish a final recommended sustainable harvest level.

27 “(5) Not more than 30 days after the State Forester publishes a final
28 recommended sustainable harvest level, the board shall adopt the final
29 recommended sustainable harvest level by rule, pursuant to section 3
30 of this 2024 Act and ORS 526.041 (2).

1 **“SECTION 5. The State Board of Forestry shall adopt a sustainable**
2 **harvest level as described in section 4 of this 2024 Act on or before**
3 **December 31, 2025.**

4
5 **“SALES OF TIMBER AT**
6 **SUSTAINABLE HARVEST LEVEL**

7
8 **“SECTION 6. Each year, subject to the provisions of ORS 530.050,**
9 **530.059 and 530.500, the State Forester shall offer timber for sale at the**
10 **applicable sustainable harvest level.**

11 **“SECTION 7. (1) As used in this section, ‘shortfall’ means a re-**
12 **duction in the volume of timber harvested from the available land**
13 **during one year as compared to the volume planned to be harvested**
14 **that year under the sustainable harvest level.**

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

17 **“(a) A calculation of the volume of timber harvested from the**
18 **available land during the previous year;**

19 **“(b) A calculation of any shortfall;**

20 **“(c) A description of specific reasons for any shortfall; and**

21 **“(d) If a shortfall occurred, a plan for achieving, during any re-**
22 **maining years in the harvest period, the harvest of the difference in**
23 **the volume of timber planned to be harvested under the sustainable**
24 **harvest level and the volume of timber that was harvested during the**
25 **year.**

26 **“(3) Under the plan described in subsection (2)(d) of this section, to**
27 **the extent feasible, the harvested timber must be offered for sale**
28 **within the county or counties most affected by the shortfall.**

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

1 **“SECTION 9. (1) If, at the end of a harvest period, the average an-**
2 **nual volume of timber harvested from the available land is less than**
3 **the applicable sustainable harvest level, the State Forester shall offer**
4 **for sale the additional timber during the next harvest period, in addi-**
5 **tion to the sustainable harvest level applicable during the next harvest**
6 **period.**

7 **“(2) Notwithstanding subsection (1) of this section, the State**
8 **Forester may reduce the amount of additional timber to be offered for**
9 **sale during the next harvest period to the degree that the additional**
10 **timber was not offered for sale during the previous harvest period as**
11 **a result of catastrophic wildfire or other large-scale disturbance, after:**

12 **“(a) Making a finding on why the additional timber was not har-**
13 **vested; and**

14 **“(b) Issuing a final order that describes facts and circumstances**
15 **supporting the finding.**

16 **“SECTION 10. (1) Notwithstanding any contrary provision of law, a**
17 **person described in subsection (2) of this section may apply to the**
18 **Circuit Court for Marion County for a temporary or permanent in-**
19 **junction directing the State Forester to comply with the applicable**
20 **requirement if the State Forester does not:**

21 **“(a) Offer timber for sale as required by section 9 (1) of this 2024**
22 **Act, subject to any applicable reduction under section 9 (2) of this 2024**
23 **Act; or**

24 **“(b) Calculate a sustainable harvest level as required by section 3**
25 **of this 2024 Act.**

26 **“(2) This section confers standing to bring an action under sub-**
27 **section (1) of this section on any person that demonstrates that the**
28 **person has received revenue from the harvest of timber on state**
29 **forestland or has purchased timber sale contracts in this state, with-**
30 **out a further showing of individualized interest.**

1 **“(3) The court may award costs, but not attorney fees, to a party**
2 **that prevails under this section.**

3
4 **“ADOPTION OF POLICIES BY RULE**

5
6 **“SECTION 11.** ORS 526.041 is amended to read:

7 “526.041. The [*forester*] **State Forester**, under the general supervision of
8 the State Board of Forestry, shall:

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

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

13 **“(b) Adopt by rule forest management plans.**

14 **“(2) Adopt by rule sustainable harvest levels, as defined in section**
15 **2 of this 2024 Act.**

16 “[(2)] **(3)** Appoint and instruct fire wardens as provided in ORS chapter
17 477.

18 “[(3)] **(4)** Direct the improvement and protection of forestland owned by
19 the State of Oregon.

20 “[(4)] **(5)** Collect data relative to forest conditions.

21 “[(5)] **(6)** Take action authorized by law to prevent and extinguish forest,
22 brush and grass fires.

23 “[(6)] **(7)** Enforce all laws pertaining to forestland and prosecute vio-
24 lations of such laws.

25 “[(7)] **(8)** Cooperate with landowners, political subdivisions, private asso-
26 ciations and agencies and others in forest protection.

27 “[(8)] **(9)** Advise and encourage reforestation.

28 “[(9)] **(10)** Publish such information on forestry as the forester determines
29 to be in the public interest.

30 “[(10)] **(11)** Enter into contracts and cooperative agreements pertaining

1 to experiments and research in forestry.

2 “[~~(11)~~] (12) Sell, exchange or otherwise dispose of any real property
3 heretofore or hereafter acquired by the board for administrative purposes and
4 no longer needed.

5 “[~~(12)~~] (13) Coordinate any activities of the State Forestry Department
6 related to a watershed enhancement project approved by the Oregon
7 Watershed Enhancement Board under ORS 541.932 with activities of other
8 cooperating state and federal agencies participating in the project.

9 “[~~(13)~~] (14) Prescribe uniform state standards for certification of wildland
10 fire training courses and educational programs.

11 “[~~(14)~~] (15) Serve as the Governor’s authorized representative for the
12 purpose of initiating the fire management assistance declaration process with
13 the Federal Emergency Management Agency and administering Federal
14 Emergency Management Agency fire management assistance grants.

15 **“SECTION 12. The amendments to ORS 526.041 by section 11 of this
16 2024 Act apply to the adoption of policies described in ORS 526.041 (1)(b)
17 and (2) on and after the effective date of this 2024 Act.**

18 **“SECTION 13. ORS 526.990 is amended to read:**

19 **“526.990. Violation of any rule [*promulgated*] adopted under ORS 526.041
20 (1)(a) is, upon conviction, punishable as a misdemeanor.**

21

22 **“JUDICIAL REVIEW OF RULES ADOPTING POLICIES**

23

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

26 **“SECTION 15. (1) Notwithstanding ORS 183.400, 183.480 (2) and (3),
27 183.482 and 183.484, judicial review of a final rule described in ORS
28 526.041 (2) shall be as described in this section.**

29 **“(2) This section confers standing to bring an action under this
30 section on any person that demonstrates that the person has received**

1 revenue from the harvest of timber on state forestland or has pur-
2 chased timber sale contracts in this state, without a further showing
3 of individualized interest.

4 “(3) A person described in subsection (2) of this section may insti-
5 tute a proceeding for judicial review under this section by:

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

8 “(A) A statement of the rule the petitioner is challenging;

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

10 “(C) A statement and supporting affidavit demonstrating how the
11 petitioner is adversely affected by the rule; and

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

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

18 “(b) If the State Forester suspends a rule for purposes of reconsid-
19 eration, the State Forester shall, within such time as the court may
20 allow, readopt, amend or permanently suspend the rule.

21 “(c) If the petitioner is dissatisfied with the readoption or amend-
22 ment of the rule, the petitioner may refile the petition and judicial
23 review shall proceed upon the readopted or amended rule.

24 “(d) An amended petition for review shall not be required if the
25 State Forester, on reconsideration, readopts or amends the rule with
26 only minor changes.

27 “(e) If the State Forester suspends a rule for purposes of reconsid-
28 eration and amends the rule in favor of the petitioner, the court shall
29 allow the petitioner costs, but not attorney fees, to be paid from funds
30 available to the State Forester or the State Board of Forestry.

1 **“(5) Judicial review of a rule under this section shall be limited to**
2 **an examination of:**

3 **“(a) The rule;**

4 **“(b) The statutory provisions authorizing the rule; and**

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

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

11 **“(a) Violates a constitutional provision;**

12 **“(b) Contravenes or exceeds the statutory authority of the State**
13 **Forester;**

14 **“(c) Was adopted without compliance with applicable rulemaking**
15 **procedures;**

16 **“(d) Is inconsistent with a different rule of the State Forester or a**
17 **rule of the State Board of Forestry, with an officially stated position**
18 **of the State Forester or the State Board of Forestry or with a prior**
19 **practice of the State Forester or the State Board of Forestry, if the**
20 **State Forester has not explained the inconsistency; or**

21 **“(e) Is not supported by evidence, including evidence to support**
22 **calculations underpinning the rule, that, taken in isolation and not in**
23 **light of the whole record, a reasonable person could accept as adequate**
24 **to support a conclusion.**

25 **“(7) Notwithstanding subsection (5) of this section, in reviewing a**
26 **rule under this section, the court may not:**

27 **“(a) Consider whether the rule secures the greatest permanent**
28 **value of lands, as described in ORS 530.050;**

29 **“(b) Examine any interpretation by the State Forester, the State**
30 **Board of Forestry or the State Forestry Department of the applicabil-**

1 **ity or requirements of a habitat conservation plan approved by the**
2 **National Marine Fisheries Services or the United States Fish and**
3 **Wildlife Service, pursuant to the federal Endangered Species Act (16**
4 **U.S.C. 1531 to 1544); or**

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

11 **“(8) The form and scope of the judgment of the court shall be as**
12 **described in ORS 183.486.**

13 **“(9) Notwithstanding ORS 183.497 (2), awards of costs and attorney**
14 **fees to a petitioner shall be as described in ORS 183.497.**

15 **“(10) Any party to the proceeding may appeal the judgment of the**
16 **court as described in ORS 183.500.**

17 **“SECTION 16. ORS 183.480 is amended to read:**

18 **“183.480. (1) Except as provided in ORS 183.417 (3)(b), any person ad-**
19 **versely affected or aggrieved by an order or any party to an agency pro-**
20 **ceeding is entitled to judicial review of a final order, whether such order is**
21 **affirmative or negative in form. A petition for rehearing or reconsideration**
22 **need not be filed as a condition of judicial review unless specifically other-**
23 **wise provided by statute or agency rule.**

24 **“(2) Judicial review of final orders of agencies shall be solely as provided**
25 **by ORS 183.482, 183.484, 183.490 and 183.500.**

26 **“(3) No action or suit shall be maintained as to the validity of any agency**
27 **order except a final order as provided in this section and ORS 183.482,**
28 **183.484, 183.490 and 183.500 or except upon showing that the agency is pro-**
29 **ceeding without probable cause, or that the party will suffer substantial and**
30 **irreparable harm if interlocutory relief is not granted.**

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

3 “(5) **Judicial review of rules described in ORS 526.041 (2) shall be as**
4 **provided by 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**
9 **of sections 2 to 10 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
13 and to *[those]* **the committees or interim committees** of the Legislative
14 Assembly *[with responsibility for forestry matters]* **that relate to natural**
15 **resources.**

16 “(b) **Present orally on the report to the committees or interim**
17 **committees of the Legislative Assembly that relate to natural re-**
18 **sources, after the end of each fiscal year, during:**

19 “(A) **The following September;**

20 “(B) **The following January; or**

21 “(C) **The first 15 days of the following regular legislative session.**

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

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

29 “(b) **The applicable sustainable harvest level.**

30 “[2] (c) Marketing, reforestation and intensive **forest** management pro-

1 grams for the last completed biennium and the current biennium, and
2 projected programs for the ensuing biennium.

3 “(d) [*The marketing report shall include*] **The** volume and value of new
4 sales, **the** volume and value of timber harvested [*and*], timber sales receipts
5 distributed to counties and to the Common School Fund **and the informa-**
6 **tion described in section 3 (3) of this 2024 Act.**

7 “[~~3~~] (e) The programmed harvest level on federal lands or federal policy
8 changes that would impact that level of harvest on lands in Oregon.

9 **“SECTION 19.** ORS 526.265 is amended to read:

10 “526.265. (1) **Before finalizing the report described in ORS 526.255,** the
11 State Forester [*may*] **shall:**

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

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

15 **“(c) After the period described in paragraph (b) of this subsection,**
16 **conduct biennial public hearings in each forest management region de-**
17 **scribed in subsection (2) of this section, and before the Forest Trust**
18 **Land Advisory Committee described in ORS 526.156, to [*report*]:**

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

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

22 **“(2) For the purpose of this section [*and ORS 526.255*], the following for-**
23 **est management regions are established:**

24 **“(a) Northwest Region, consisting of Clatsop, Columbia, Tillamook,**
25 **Washington and Yamhill Counties.**

26 **“(b) Willamette Region, consisting of Multnomah, Clackamas, Marion,**
27 **Polk, Lincoln, Benton, Linn and Lane Counties.**

28 **“(c) Southern Region, consisting of Douglas, Coos, Curry, Josephine and**
29 **Jackson Counties.**

30 **“(d) Eastern Region, consisting of Hood River, Wasco, Gilliam, Sherman,**

1 Morrow, Umatilla, Union, Wallowa, Jefferson, Wheeler, Grant, Baker,
2 Deschutes, Crook, Klamath, Lake, Harney and Malheur Counties.

3

4

“APPROPRIATION

5

6 **“SECTION 20. In addition to and not in lieu of any other appropri-**
7 **ation, there is appropriated to the State Forester, for the biennium**
8 **ending June 30, 2025, out of the General Fund, the amount of \$____,**
9 **for developing:**

10 **“(1) A timber inventory model described in section 3 of this 2024**
11 **Act; and**

12 **“(2) A sustainable harvest level, as defined in section 2 of this 2024**
13 **Act.**

14

15

“CAPTIONS

16

17 **“SECTION 21. The unit captions used in this 2024 Act are provided**
18 **only for the convenience of the reader and do not become part of the**
19 **statutory law of this state or express any legislative intent in the**
20 **enactment of this 2024 Act.**

21

22

“EFFECTIVE DATE

23

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

27
