



Date: February 16, 2026

To: House Committee on Agriculture, Land Use, Natural Resources and Water

From: Nick Cady, Legal Director, Cascadia Wildlands

Re: HB 4105 Litigation Avenues

Co-Chairs Helm and Owens, Vice Chair McDonald, and Members of the Committee,

Below is an outline of potential litigation avenues for [House Bill 4105](#).

- 1) HB 4105 requires the mandatory adoption of an administrative rule to set a sustainable harvest level.

This requirement tees up dueling litigation by both timber interests and conservation interests over this sustainable harvest level.

Adoption of a rule is a somewhat arduous task (generally takes at least a year, mandatory public hearings, etc.) by a state agency, the requirements of which are laid out in ORS 183.325-410. Rules can be challenged for not following a host of procedural requirements, ORS 183.400(4)(c), and for violations of relevant provisions of law or the Oregon Constitution.

HB 4105 has a number of legal provisions that the Oregon Department of Forestry (ODF) “must take into consideration” including: a) The condition of the available state forestland; b) Policies and directives lawfully issued by the State Forester including; c) All applicable federal and state legal requirements, including any applicable requirements including 1) any Habitat Conservation Plan (HCP); 2) the Oregon Forest Practices Act (OFPA); and Rules adopted by the board that relate to the management of state forestland.

Also, the rule setting the sustainable harvest level “must include any amount of timber that was expected to be harvested under any previous sustainable timber harvest level and that was not harvested, unless exigent circumstances such as disease, wildfire or storm damage prevented the harvest of the timber.” This requirement coupled with the requirement that ODF set a sustainable harvest level on or before January 1, 2027, intentionally creates a situation where ODF will have to set a pre-HCP sustainable harvest level that will inevitably be reduced by the HCP; however, ODF will be obligated to carry this prior harvest level over, setting up a situation where ODF is unable to achieve this compounding harvest level without violating federal law (more on this below).

Any failure on the part of ODF to properly consider one of these factors would allow litigation from timber interests or conservation interests over this rule. And clearly the HCP, OFPA, previous harvest levels and all pertinent state forest rules involve conflicting policies and requirements and includes a substantial gray area that would invite litigation.



- 2) HB 4105 requires this rulemaking process to set a sustainable harvest level every time there is 1) a material change in management; 2) the condition of available state forestland has changed materially; or 3) every 10 years.

This requirement means there will likely be litigation over whether “management changes” or changes to the condition of state forest land have or have not occurred that are “material” enough to invoke the law.

If ODF decides to lower the harvest level in response to fires changing the “condition” of state forest land, timber interests will likely sue arguing the change is not “material.”

Given that “material” is not defined in the statute, this provision creates an enormous gray area that could precipitate lawsuits every time there is a fire that affects state forest land or upon any change in forest management by ODF. Both timber and conservation interests could sue arguing a change has been “material” or not.

- 3) HB 4105 gives “any individual or entity entitled to the receipt of revenues derived from state forestland” the right to sue ODF for not meeting this sustainable harvest level.

This requirement will result in timber interest led litigation any time ODF does not meet its quota. There are no exceptions in the statute to this right of action, and the statute provides a remedy – an “order” to “promptly manage available state forestland in a manner that produces the sustainable timber harvest.”

This remedy is unusual for Oregon Administrative Procedures Act which generally only vests Courts with the authority to “affirm, reverse or remand the order.” ORS 183.482. HB 4105 will create an unusual situation where a circuit court judge is ordering ODF to take specific actions and will have ongoing jurisdiction over ODF’s forest management to ensure these actions are taken or otherwise held in contempt. It is unclear whether this remedy provision runs afoul of Constitutional provisions pertaining to the management of Oregon’s forests. In any case, it creates a situation where ODF, to meet this court ordered quota, could be forced to log in areas where federal or state law prohibits logging, like the Endangered Species Act or Habitat Conservation Plan or ODF’s own forest plan. This would likely lead to dueling lawsuits in federal and state Court over ODF’s action, with ODF the Defendant in both cases and caught in the middle.

HB 4105 gives this right to sue over the agency’s failure to meet this quota only to a select class of business entities, those that receive receipts from timber harvest.

The Oregon Constitution’s Equal Privileges and Immunities Clause (ORPIC), found in Article I, Section 20 states: “No law shall be passed granting to any citizen or class of citizens privileges, or immunities which, upon the same terms, shall not equally belong to all citizens.” Passage of this law will likely result in litigation over its constitutionality based on this provision and the way HB 4105 vests control of the management of state forest land with state circuit court judges.



In order to defend itself from all litigation stemming from HB 4105, ODF will have to pay Oregon DOJ hourly. Additionally, all these potential lawsuits (whether in state or federal court) will entitle prevailing plaintiffs to their costs and attorney fees. ORS 183.497; 16 U.S.C. § 1540(g). Generally, for complex litigation like this each party will expend a minimum of 800-1000 hours of attorney time (assuming there is no appeal). Timber industry lawyers in cases against the state of Oregon have billed upwards of \$1,000/hr. ODF will be on the hook for these expenses.

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