

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

Memorandum on Model State Natural Resources Trust Law

Overview

The United States' natural ecosystems provide numerous benefits ranging from economic benefits like tourism and timber harvesting to environmental benefits like mitigating water pollution and acting as carbon sinks. While the size of the nation's forests have rebounded and stabilized at around 700 million acres after centuries of mismanagement, they face ongoing threats from factors such as climate change, wildfire, insect infestations, disease, and urban sprawl.¹ If the country fails to expand these areas and improve their management, the benefits obtained from forests and other natural ecosystems will decrease. For example, the annual net increase of carbon retained by forests has already declined by nearly 10% since 1990.²

The Model Natural Resource Trust Law (the "Model Law") aims to provide states a tool to improve and expand their forests and natural areas. Modeled after Oregon's Forest Resource Trust (*See Or. Rev. Stat. § 526.700, et seq.*), the Model Law establishes a trust to be administered by each state's department of natural resources in consultation with an advisory committee comprised of stakeholders. Through the trust, the department of natural resources will establish programs to:

- Expand and improve the quality of forests and other natural ecosystems;
- Improve the ability of forests and other natural ecosystems to address climate change and mitigate pollution and greenhouse gases; and
- Improve economic, societal, and recreational opportunities from the state's natural resources.

While Oregon's Forest Resource Trust primarily focuses on expanding and improving forest stands by developing programs and providing technical assistance around sustainable timber harvesting, the Model Law takes a broader approach by enumerating various goals and authorizing the department to take certain actions to achieve those goals. The Model Law takes this approach in recognition of the considerable differences between each state's forests and other natural ecosystems. With flexibility, each state's department of natural resources can tailor programs to efficiently address local challenges and concerns.

The Model Law initially appropriates funds to establish the trust. It further authorizes the department of natural resources to obtain ongoing funding through a variety of means, including charging fees, applying for grants, and participating in cap and trade programs.

While the Model Law generally provides discretion to each state's department of natural resources to develop programs tailored to that state's particular needs, it does emphasize the importance of two programs that each state should adopt. First, each department of natural resources must engage and work with private landowners to meet the Model Law's goals, because the majority of the nation's forestland is

¹ U.S. Forest Service, U.S. Department Of Agriculture, *National Report On Sustainable Forests*, I-12 to I-18 (2010).

² National Association of State Foresters (NASF), *Policy Statement: Enhancing Forest Resilience and the Role of Forests in Dealing with Climate Change*, 1 (2020).

privately owned by individuals, families, Native American tribes, corporations and nonprofit groups.³ Second, it includes a program similar to Oregon's Forest Resource Trust aimed to improve the sustainability and management of forests used for timber harvesting. In exchange for funding or technical assistance, the department would receive for deposit in the trust a share of the profits earned from the improved timber harvest while also increasing the amount and quality of forested land and providing a boost to rural economies. The Department has the ability to develop programs beyond those two.

Finally, the Model Law requires the department of natural resources to provide a report to the legislature every two years.

Need For and Important Features of the Model Law

Need for Model Natural Resource Trust Law

- The nation's forests and other natural ecosystems provide many important social, environmental, and economic benefits.
- While the size of the nation's forests have rebounded and stabilized at around 700 million acres after centuries of mismanagement, they face ongoing threats from factors such as climate change, wildfire, insect infestations, disease, and urban sprawl.⁴
- Healthy forests and other natural ecosystems are important to the country's efforts to mitigate and address climate change.
- The nation's forests sequester between 600 and 700 million metric tons of greenhouse gas equivalents every year, but that number could increase by 50 million tons per year if the country reforested an additional 19 million acres.⁵
- Maintaining healthy and sustainable forests and other natural ecosystems can help ensure vibrant rural economies through timber harvesting, tourism, and biomass harvesting.

Model Law's Important Features

- The Model Law provides the state's department of natural resources the flexibility and resources to expand and improve the state's natural ecosystems.
- The Model Law will expand the state's forests and other natural environments, helping to absorb greenhouse gases and mitigate climate change.
- The department of natural resources will be advised by an advisory committee of relevant stakeholders, ensuring that various voices and perspectives are considered in the management of the Natural Resource Trust.

³ Jocelyn Durkay and Jennifer Schultz, *The Role of Forests in Carbon Sequestration and Storage*, National Conference of State Legislatures (2016).

⁴ U.S. Forest Service, U.S. Department Of Agriculture, *National Report On Sustainable Forests*, I-12 to I-18 (2010).

⁵ National Association of State Foresters (NASF), *Policy Statement: Enhancing Forest Resilience and the Role of Forests in Dealing with Climate Change*, 3 (2020).

- While there is an initial appropriation to set up the Natural Resource Trust, the department is authorized to obtain funds through other sources. In addition, the department will provide technical assistance as part of a profit sharing system in connection with a voluntary loan program. Those actions will help to ensure minimal impact on the state's budget and sustain the trust over the long term.
- The Model Law requires the department of natural resources to engage and support private persons and entities, enabling them to take ownership and improve the health of their local environment.
- The Model Law requires the department of natural resources to establish a program to expand and improve the sustainability and management of forests used for timber harvesting. This will have positive impacts on both the environment and local economies.
- The department will have to provide a report every two years to the legislature, helping ensure proper oversight of the Natural Resource Trust.