

# House Bill 2294

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for State Department of Fish and Wildlife)

## 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**.

Modifies tax credit requirements for fish screening and by-pass devices.

Allows State Department of Fish and Wildlife to recover actual cost of inspecting or maintaining screening or by-pass device if person responsible for water diversion fails to do so.

## A BILL FOR AN ACT

1  
2 Relating to fish screening; creating new provisions; amending ORS 196.810, 315.138, 496.303, 498.306,  
3 498.316, 498.336, 498.341, 498.346, 509.910, 540.525 and 540.532; and repealing ORS 498.311,  
4 498.331 and 509.615.

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

6 **SECTION 1.** ORS 498.306 is amended to read:

7 498.306. (1) Any person who diverts water[, *at a rate of less than 30 cubic feet per second,*] from  
8 any body of water in this state in which any fish, subject to the State Fish and Wildlife Commis-  
9 sion's regulatory jurisdiction, exist may be required to install, operate and maintain screening or  
10 by-pass devices to provide adequate protection for fish populations present at the water diversion  
11 in accordance with the provisions of this section.

12 (2)(a) The State Department of Fish and Wildlife shall establish a cost-sharing program to im-  
13 plement the installation of screening or by-pass devices on not less than [75] **150** water diversions  
14 **or 150 cubic feet per second of diverted water** [*referred to in this section*] per [year] **biennium**.  
15 The department shall select the water diversions to be screened from the priority listing of diver-  
16 sions established by the department and reviewed by the Fish Screening Task Force. The installation  
17 of a screening or by-pass device may be required only [*when*] **if**:

18 **(A) The water diversion is 30 cubic feet per second or more;**

19 **(B) A new water right is issued for the water diversion;**

20 **(C) The point of water diversion is transferred as described in ORS 540.525;**

21 [(A)] **(D) Fewer than [75] 150** persons per [year] **biennium** volunteer to request such installation  
22 on the diversions for which they are responsible; or

23 [(B)] **(E) The Fish Screening Task Force has reviewed and approved the department's request**  
24 **to require installation of screening or by-pass devices in order to complete the screening of a stream**  
25 **system or stream reach.**

26 (b) The limitations on the number of diversions **or cubic feet per second of diverted water** to  
27 be screened as provided in this section do not prevent the installation of [*fish*] screening and by-pass  
28 devices for diversions by persons responsible for diversions who are willing to pay the full cost of  
29 installing [*fish*] screening and by-pass devices.

30 **(c) Cost-sharing program funds may not be provided under this subsection for screening**

**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 **or by-pass devices on a water diversion involving water rights issued on or after July 1, 1991.**

2 (3) When selecting diversions to be equipped with screening or by-pass devices, the department  
3 shall attempt to solicit persons who may volunteer to request the installation of such devices on the  
4 diversions for which they are responsible. When selecting diversions to be equipped with screening  
5 or by-pass devices, the department shall select those diversions that will provide protection to the  
6 greatest number of indigenous naturally spawning fish possible.

7 (4) If the department constructs and installs the *[by-pass or]* screening **or by-pass** device, a fee  
8 shall be assessed against the person responsible for the diversion in an amount that does not exceed  
9 *[\$5,000 or]* 40 percent of the construction and installation *[cost of the devices, whichever amount is*  
10 *the lesser]* **costs of the device**. The fee shall be paid into the Fish Screening Subaccount. If the  
11 person responsible for the diversion constructs and installs the by-pass or screening device, the  
12 person shall be reimbursed from the Fish Screening Subaccount **or other state funds** in an amount  
13 that does not exceed *[\$10,000 or]* 60 percent of the actual construction and installation costs of the  
14 device, *whichever amount is the lesser*].

15 (5) The department's cost of major maintenance and repair of screening or by-pass devices shall  
16 be paid from the Fish Screening Subaccount.

17 (6) The department is responsible for major maintenance and repair of screening or by-pass de-  
18 vices **at water diversions of less than 30 cubic feet per second**, and if failure by the department  
19 to perform major maintenance on or repair such devices results in damage or blockage to the water  
20 diversion on which *[the devices have]* **a device has** been installed, the person responsible for the  
21 water diversion shall give written notice of such damage or blockage to the department. If within  
22 seven days of the notice, the department fails to take appropriate action to perform major mainte-  
23 nance on or repair the *[devices]* **device**, and to repair any damage that has occurred, the person  
24 responsible for the water diversion may remove the device. If an emergency exists that will result  
25 in immediate damage to livestock or crops, the person responsible for the water diversion may re-  
26 move the screening or by-pass device. A person required to comply with this section is responsible  
27 for minor maintenance and shall, in a timely manner, notify the department of the need for activities  
28 associated with major maintenance.

29 (7) A person required to comply with this section may design, construct and install screening  
30 or by-pass devices adequate to prevent fish from leaving the body of water and entering the diver-  
31 sion or may request the department to design, construct and install such devices. However, if a  
32 person required to comply with this section fails to comply within 180 days after notice to comply  
33 by the department, the department shall design, install, *[and]* operate **and maintain** on that person's  
34 water diversion appropriate screening or by-pass devices and shall charge and collect from the  
35 person the actual costs thereof in an amount not to exceed the average cost for diversions of that  
36 size.

37 (8) If the diversion requiring screening or by-pass devices is located on public property, the de-  
38 partment shall obtain from the property owner approval or permits necessary for such devices.  
39 Activities of the department pursuant to this section *[shall]* **may** not interfere with existing rights  
40 of way or easements of the person responsible for the diversion.

41 (9)(a) The department or its agent has the right of ingress and egress to and from those places  
42 where screening or by-pass devices are required, doing no unnecessary injury to the property of the  
43 landowner, for the purpose of designing, installing, inspecting, performing major maintenance on or  
44 repairing such devices.

45 (b) If a screening or by-pass device installed by the department must be removed or replaced

1 due to inadequate design or faulty construction, the person responsible for the diversion shall bear  
 2 no financial responsibility for its replacement or reconstruction.

3 (c) If a screening or by-pass device installed by the person responsible for the diversion must  
 4 be removed or replaced due to faulty construction, the person shall bear full financial responsibility  
 5 for its replacement or reconstruction.

6 (d) If the person responsible for a diversion on which a screening or by-pass device is installed  
 7 fails to conduct appropriate inspection and [*minor*] maintenance, the department may perform such  
 8 activities and charge and collect from the person responsible [*a fee not to exceed \$25*] **the actual**  
 9 **cost** for each required visit to the location of the screening or by-pass device.

10 (e) **If the department determines that a person must install, operate, maintain, repair**  
 11 **or replace a screening or by-pass device under this section, the department shall notify the**  
 12 **person, by registered mail, of the specific action the person is required to take. The person**  
 13 **may request a contested case hearing before the State Fish and Wildlife Commission, to be**  
 14 **conducted as provided in ORS chapter 183.**

15 (10) [*No*] A person [*shall*] **may not** interfere with, tamper with, damage, destroy or remove in  
 16 any manner not associated with regular and necessary maintenance procedures any screening or  
 17 by-pass devices installed pursuant to this section.

18 (11) The department may maintain an action to cover any costs incurred by the department  
 19 when a person who is required to comply with this section fails to comply. Such action shall be  
 20 brought in the circuit court for the county in which the [*water diversion is*] **screening or by-pass**  
 21 **device is** located.

22 (12) Upon receiving notice from the department to comply with this section, a person responsible  
 23 for a water diversion may be excused from compliance if the person demonstrates to the Fish  
 24 Screening Task Force that:

25 (a) The installation and operation of screening or by-pass devices would not prevent appreciable  
 26 damage to the fish populations in the body of water from which water is being diverted.

27 (b) Installation and operation of screening or by-pass devices would not be technically feasible.

28 (c) Installation of screening or by-pass devices would result in undue financial hardship.

29 (13)(a) Not later than January 1, 1996, the department, with the assistance of the Fish Screening  
 30 Task Force and the Water Resources Department, shall establish and publish an updated priority  
 31 listing of 3,500 water diversions in the state that should be equipped with screening or by-pass de-  
 32 vices. Changes may be made to the list whenever deletions are made for any reason. The priority  
 33 listing shall include the name and address of the person currently responsible for the water diver-  
 34 sion, the location of the diversion, size of the diversion, type of screening or by-pass device required,  
 35 estimated costs for construction and [*the*] installation of screening or by-pass devices for the indi-  
 36 vidual diversion and species of fish present in the water body. When developing the priority listing,  
 37 the department shall base priorities for the installation of screening or by-pass devices on un-  
 38 screened diversions on the following criteria:

39 (A) Fish species status.

40 (B) Fish numbers.

41 (C) Fish migration.

42 (D) Diversion size.

43 (E) Diversion amount.

44 (F) Any other criteria that the department, in consultation with the Fish Screening Task Force,  
 45 considers appropriate.

1 (b) Criteria identified in this subsection shall be given appropriate consideration by the depart-  
 2 ment when updating its priority listing. The priority [*list*] **listing** will be updated to give the highest  
 3 priority to those diversions that save the greatest number of fish and simultaneously protect the  
 4 greatest number of threatened or endangered fish species.

5 (c) After the priority [*list*] **listing** has been updated, the persons responsible for the diversions  
 6 on the list shall be notified that their diversions appear on the list. Such persons also shall be fur-  
 7 nished a description of the fish screening **cost-sharing** program.

8 (d)(A) The department shall notify, by means of registered mail, each person responsible for the  
 9 first 250 diversions on the priority listing on or before January 1, 1996. The department shall furnish  
 10 information regarding the fish screening **cost-sharing** program to each person responsible for a di-  
 11 version included in the first 250 diversions on the priority listing on or before January 1, 1996.  
 12 [*No*] **A** person [*shall*] **may not** be required to install a screening or by-pass device unless previously  
 13 notified by the department of the requirement to install such devices.

14 (B) On January 1 of each even-numbered year, the department [*will*] **shall** notify each person  
 15 responsible for a diversion included in the first 250 diversions on the priority listing. However, the  
 16 department is not required to notify in a subsequent year any person previously notified. The de-  
 17 partment shall include with such notification[,] information regarding the fish screening **cost-**  
 18 **sharing** program [*to each person responsible for a diversion included in the first 250 diversions on the*  
 19 *priority listing*].

20 (C) Before any person is required to install a screening or by-pass device [*on a diversion of less*  
 21 *than 30 cubic feet per second*], the department shall confirm the need for the [*screening*] device  
 22 through a visual, on-site inspection by appropriate staff of the fish screening division of the depart-  
 23 ment, or a district biologist of the department.

24 (14) As used in this section:

25 (a) “Behavioral barrier” means a system that utilizes a stimulus to take advantage of natural  
 26 fish behavior to attract or repel fish. A behavioral barrier does not offer a physical impediment to  
 27 fish movement, but uses such means as electricity, light, sound or hydraulic disturbance to move or  
 28 guide fish.

29 (b) “Body of water” includes but is not limited to irrigation ditches, reservoirs, stock ponds and  
 30 other artificially created structures or impoundments.

31 (c) “By-pass device” means any pipe, flume, open channel or other means of conveyance that  
 32 transports fish back to the body of water from which the fish were diverted but does not include  
 33 fishways or other passages around a dam.

34 (d) “Fish screen” means a screen, bar, rack or other barrier, including related improvements  
 35 necessary to ensure its effective operation, to provide adequate protection for fish populations  
 36 present at a water diversion.

37 (e) “Major maintenance” means all maintenance work done on a [*fish*] screening or by-pass de-  
 38 vice other than minor maintenance.

39 (f) “Minor maintenance” means periodic inspection, cleaning and servicing of [*fish*] screening  
 40 or by-pass devices at such times and in such manner as to ensure proper operation of the screening  
 41 or by-pass device.

42 [(*g*) “Screening device” means a fish screen or behavioral barrier.]

43 [(*h*)] (g) “Person” means any person, partnership, corporation, association, municipal corpo-  
 44 ration, political subdivision or governmental agency.

45 (h) “Screening device” means a fish screen or behavioral barrier.

**SECTION 2.** ORS 315.138 is amended to read:

315.138. (1) There shall be allowed a credit against tax due under ORS chapter 316, or if the taxpayer is a corporation, under ORS chapter 317, for taxpayers that install [*fish*] screening devices, by-pass devices or fishways, [*when required to do so by*] **pursuant to ORS 498.306[**, **498.311 (1),] or 509.585 [or 509.615 (1)]**, and the diversion is not part of a hydroelectric project required to be licensed under the Federal Energy Regulatory Commission. Except as allowed in subsection (4) of this section, the credit shall be taken in the tax year in which the final certification is issued under subsection (10) of this section.

(2) The credit shall be equal to 50 percent of the taxpayer's net certified costs of installing a [*fish*] screening device, by-pass device or fishway. The total credit allowed shall not exceed \$5,000 per device installed.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in such second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

(5) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the installation of a [*fish*] screening device, by-pass device or fishway. The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

(6) In the case of a credit allowed under this section for purposes of ORS chapter 316:

(a) A nonresident shall be allowed the credit in the same manner and subject to the same limitations as a resident. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(7) To qualify for the credit the taxpayer must be issued a certificate by the State Department of Fish and Wildlife.

(8) To obtain credit under subsection (1) of this section, any person proposing to apply for certification of a [*fish*] screening device, by-pass device or fishway, before installing the [*fish*] screening device, by-pass device or fishway, shall file a request for preliminary certification with the State Department of Fish and Wildlife. The request shall be in a form prescribed by the State Department of Fish and Wildlife. The following conditions shall apply:

(a) Within 30 days of the receipt of a request for preliminary certification, the State Department of Fish and Wildlife may require, as a condition precedent to issuance of a preliminary certificate

1 of approval, the submission of plans and specifications. After examination thereof, the State De-  
2 partment of Fish and Wildlife may request corrections and revisions to the plans and specifications.  
3 The State Department of Fish and Wildlife may also require any pertinent information necessary to  
4 determine whether the proposed [*fish*] screening device, by-pass device or fishway is in accordance  
5 with State Department of Fish and Wildlife requirements.

6 (b) If the State Department of Fish and Wildlife determines that the proposed [*fish*] screening  
7 device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife re-  
8 quirements, it shall issue a preliminary certificate approving the [*fish*] screening device, by-pass de-  
9 vice or fishway. If the State Department of Fish and Wildlife determines that the [*fish*] screening  
10 device, by-pass device or fishway does not comply with State Department of Fish and Wildlife re-  
11 quirements, the State Department of Fish and Wildlife shall issue an order denying certification.

12 (c) If within 90 days of the receipt of plans, specifications or any subsequently requested re-  
13 visions or corrections to the plans and specifications or any other information required pursuant to  
14 this section, the State Department of Fish and Wildlife fails to issue a preliminary certificate of  
15 approval and the State Department of Fish and Wildlife fails to issue an order denying certification,  
16 the preliminary certificate shall be considered to have been issued. The capital investment must  
17 comply with the plans, specifications and any corrections or revisions thereto, if any, previously  
18 submitted.

19 (d) Within 30 days from the date of mailing of the order, any person against whom an order is  
20 directed pursuant to paragraph (b) of this subsection may demand a hearing. The demand shall be  
21 in writing, shall state the grounds for hearing and shall be mailed to the State Fish and Wildlife  
22 Director. The hearing shall be conducted in accordance with the applicable provisions of ORS  
23 chapter 183.

24 (9) [*Any fish*] **A screening device, by-pass device or fishway that is installed by the State De-**  
25 **partment of Fish and Wildlife pursuant to [ORS 498.311 (2)] ORS 498.306 (7) in response to**  
26 **noncompliance by the person responsible for the water diversion** is not eligible for the credit  
27 provided in subsection (1) of this section.

28 (10) Upon completion and pursuant to application for final certification, final certification shall  
29 be issued by the State Department of Fish and Wildlife if the [*fish*] screening device, by-pass device  
30 or fishway was constructed and installed in accordance with State Department of Fish and Wildlife  
31 requirements. Final certification shall include a statement of the costs of installation as verified by  
32 the State Department of Fish and Wildlife. The credit allowed under this section shall be claimed  
33 first for the tax year of the taxpayer in which final certification is issued.

34 (11) Pursuant to the procedures for a contested case under ORS chapter 183, the State Depart-  
35 ment of Fish and Wildlife may order the revocation of the certificate issued under this section of  
36 any taxpayer, if it finds that:

37 (a) The certificate was obtained by fraud or misrepresentation; or

38 (b) The holder of the certificate fails to meet State Department of Fish and Wildlife require-  
39 ments.

40 (12) As soon as the order of revocation under this section has become final the State Depart-  
41 ment of Fish and Wildlife shall notify the Department of Revenue of such order.

42 (13) If the certificate of a [*fish*] screening device, by-pass device or fishway is ordered revoked  
43 pursuant to subsection (11) of this section, all prior tax relief provided to the holder of the certif-  
44 icate by virtue of the certificate shall be forfeited and the Department of Revenue shall proceed to  
45 collect those taxes not paid by the certificate holder as a result of the tax relief provided to the

1 holder.

2 (14) If the certificate of a [*fish*] screening device, by-pass device or fishway is ordered revoked  
3 pursuant to subsection (11) of this section, the certificate holder shall be denied any further relief  
4 provided under this section in connection with the [*fish*] screening device, by-pass device or fishway,  
5 as the case may be, from and after the date that the order of revocation becomes final.

6 (15) In the event that the [*fish*] screening device, by-pass device or fishway is destroyed by flood,  
7 natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless  
8 claim the credit as if no destruction had taken place.

9 (16) [*Fish*] Screening devices, by-pass devices or fishways that are financed by funds obtained  
10 from the Water Development Fund, pursuant to ORS 541.700 to 541.855, shall not be eligible for the  
11 credit under any circumstances.

12 (17) The State Department of Fish and Wildlife shall adopt rules for carrying out the provisions  
13 of this section and report to the interim committee created under ORS 171.605 to 171.640 to make  
14 studies of and inquiries into state revenue matters.

15 **SECTION 3.** ORS 496.303 is amended to read:

16 496.303. (1) The Fish and Wildlife Account is established in the State Treasury, separate and  
17 distinct from the General Fund. All moneys in the account are continuously appropriated to the  
18 State Fish and Wildlife Commission. The Fish and Wildlife Account shall consist of the moneys in  
19 its various subaccounts and any moneys transferred to the account by the Legislative Assembly.  
20 Unless otherwise specified by law, interest earnings on moneys in the account shall be paid into the  
21 State Treasury and credited to the State Wildlife Fund.

22 (2)(a) The Fish Screening Subaccount is established in the Fish and Wildlife Account. The sub-  
23 account shall consist of:

24 (A) All penalties recovered under ORS 536.900 to 536.920.

25 (B) All moneys received pursuant to ORS 498.306.

26 (C) All gifts, grants and other moneys from whatever source that may be used to carry out the  
27 provisions of ORS 498.306[, 498.311 and 509.615].

28 (D) All moneys received from the surcharge on angling licenses imposed by ORS 497.124.

29 (b) All moneys in the subaccount shall be used to carry out the provisions of ORS 315.138,  
30 498.306[, 498.311, 509.615] and 509.620. However, moneys received from the surcharge on angling li-  
31 censes imposed by ORS 497.124 shall be expended only to carry out the provisions of law relating  
32 to the screening of water diversions [*at a rate less than 30 cubic feet per second*].

33 [*(c) Of the moneys in the subaccount budgeted for administrative expenses, up to 50 percent of that*  
34 *amount may be expended for activities associated with the screening of diversions over 30 cubic feet*  
35 *per second and for fish passages issues.*]

36 (3) The Fish Endowment Subaccount is established in the Fish and Wildlife Account. The sub-  
37 account shall consist of transfers of moneys authorized by the Legislative Assembly from the State  
38 Wildlife Fund and gifts and grants of moneys from whatever source for the purpose of paying the  
39 expense of maintaining fish hatcheries operated by the department.

40 (4) The Migratory Waterfowl Subaccount is established in the Fish and Wildlife Account. All  
41 moneys received by the commission from the sale of art works and prints related to the migratory  
42 waterfowl stamp shall be deposited in the subaccount. Moneys in the subaccount may be expended  
43 only for activities that promote the propagation, conservation and recreational uses of migratory  
44 waterfowl and for activities related to the design, production, issuance and arrangements for sale  
45 of the migratory waterfowl stamps and related art works and prints. Expenditures of moneys in the

1 subaccount may be made within this state, in other states or in foreign countries, in such amounts  
 2 as the commission determines appropriate. Expenditures in other states and foreign countries shall  
 3 be on such terms and conditions as the commission determines will benefit most directly the mi-  
 4 gratory waterfowl resources of this state.

5 (5) The Halibut Research Subaccount is established in the Fish and Wildlife Account. Based on  
 6 the annual number of recreational halibut anglers, a portion of the moneys derived from the sale  
 7 of the salmon, steelhead trout, sturgeon and halibut tag pursuant to ORS 497.121 shall be credited  
 8 to the subaccount. Moneys in the subaccount may be expended only for halibut population studies  
 9 and other research.

10 (6) The Upland Bird Subaccount is established in the Fish and Wildlife Account. All moneys  
 11 received by the State Fish and Wildlife Commission from the sale of upland bird stamps, from the  
 12 sale of any art works and prints related to the upland bird stamp and from private hunting preserve  
 13 permit fees shall be deposited in the subaccount. Moneys in the subaccount may be expended only  
 14 for promoting the propagation and conservation of upland birds and the acquisition, development,  
 15 management, enhancement, sale or exchange of upland bird habitat, and for activities related to the  
 16 design, production, issuance and arrangements for sale of the upland bird stamps and related art  
 17 works and prints. Expenditures of moneys in the subaccount shall be made for the benefit of pro-  
 18 grams within this state in such amounts and at such times as the commission determines appropriate  
 19 to most directly benefit the upland bird resources of the state.

20 (7)(a) The Fish and Wildlife Deferred Maintenance Subaccount is established in the Fish and  
 21 Wildlife Account. Interest earnings on moneys in the subaccount shall be credited to the subaccount.  
 22 The subaccount shall consist of moneys authorized by the Legislative Assembly from the State  
 23 Wildlife Fund and moneys obtained by gift, grant, bequest or donation from any other public or  
 24 private source.

25 (b) The principal in the subaccount may be utilized only as provided in paragraph (c) of this  
 26 subsection. Interest earnings on the moneys in the subaccount may be expended only for the main-  
 27 tenance of fish hatcheries and State Department of Fish and Wildlife facilities other than adminis-  
 28 trative facilities located in [*Portland*] **Salem**.

29 (c) The department may borrow funds from the principal of the subaccount to maintain adequate  
 30 cash flow requirements. However, moneys borrowed from the principal must be repaid to the sub-  
 31 account:

32 (A) Within six months from the date on which the moneys were borrowed.

33 (B) With interest at the standard rate that the State Treasurer charges to state agencies for  
 34 other loans. Interest paid under this subparagraph shall be paid to the subaccount.

35 (d) For purposes of this subsection, “principal” means moneys authorized by the Legislative  
 36 Assembly for transfer to the subaccount from the State Wildlife Fund, including any assignment of  
 37 earnings on moneys in the fund and other moneys obtained by gift, grant, bequest or donation de-  
 38 posited into the subaccount.

39 (8) The Access and Habitat Board Subaccount is established in the Fish and Wildlife Account.  
 40 The subaccount shall consist of moneys transferred to the subaccount pursuant to ORS 496.242.  
 41 Moneys in the subaccount may be used for the purposes specified in ORS 496.242.

42 (9) The Marine Shellfish Subaccount is established in the Fish and Wildlife Account. Interest  
 43 earnings on moneys in the subaccount shall be credited to the subaccount. All moneys received by  
 44 the commission from the sale of resident and nonresident shellfish licenses pursuant to ORS 497.121  
 45 shall be deposited in the subaccount. Moneys in the subaccount shall be used for the protection and



1 enhancement of shellfish for recreational purposes, including shellfish sanitation costs and the cost  
 2 of enforcement of wildlife laws pertaining to the taking of shellfish. The State Fish and Wildlife  
 3 Director, or a designee, the Director of Agriculture, or a designee, and the Superintendent of State  
 4 Police, or a designee, shall jointly make a recommendation to the Governor for inclusion in the  
 5 Governor’s budget beginning July 1 of each odd-numbered year.

6 (10)(a) The Mountain Sheep Subaccount is established in the Fish and Wildlife Account, con-  
 7 sisting of moneys collected under ORS 497.112 (2)(a) to (c).

8 (b) All moneys in the subaccount shall be used for the propagation and conservation of mountain  
 9 sheep, for research, development, management, enhancement and sale or exchange of mountain  
 10 sheep habitat and for programs within the state that in the discretion of the commission most di-  
 11 rectly benefit mountain sheep resources of this state.

12 (11)(a) The Antelope Subaccount is established in the Fish and Wildlife Account, consisting of  
 13 moneys collected under ORS 497.112 (2)(a) to (c).

14 (b) All moneys in the subaccount shall be used for the propagation and conservation of antelope,  
 15 for research, development, management, enhancement and sale or exchange of antelope habitat and  
 16 for programs within the state that in the discretion of the commission most directly benefit antelope  
 17 resources of this state.

18 (12)(a) The Mountain Goat Subaccount is established in the Fish and Wildlife Account, consist-  
 19 ing of moneys collected under ORS 497.112 (2)(a) to (c).

20 (b) All moneys in the subaccount shall be used for the propagation and conservation of mountain  
 21 goats for research, development, management, enhancement and sale or exchange of mountain goat  
 22 habitat and for programs within the state that in the discretion of the commission most directly  
 23 benefit mountain goat resources of this state.

24 (13)(a) The commission shall keep a record of all moneys deposited in the Fish and Wildlife  
 25 Account. The record shall indicate by separate cumulative accounts the sources from which the  
 26 moneys are derived and the individual activity or programs against which each withdrawal is  
 27 charged.

28 (b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall  
 29 report, in the budget documents submitted to the Legislative Assembly, on the application of in-  
 30 vestment and interest earnings to the maintenance of fish hatcheries and other State Department  
 31 of Fish and Wildlife facilities.

32 **SECTION 4.** ORS 196.810 is amended to read:

33 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, no per-  
 34 son or governmental body may remove any material from the beds or banks **of any waters of this**  
 35 **state** or fill any waters of this state without a permit issued under authority of the Director of the  
 36 Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in  
 37 a manner contrary to the conditions set out in an order approving a wetlands conservation plan.

38 (b) Notwithstanding the permit requirements of this section and notwithstanding the provisions  
 39 of ORS 196.800 (5) and (13), if any removal or fill activity is proposed in essential indigenous  
 40 anadromous salmonid habitat, except for those activities customarily associated with agriculture, a  
 41 permit is required. “Essential indigenous anadromous salmonid habitat” as defined under this sec-  
 42 tion shall be further defined and designated by rule by the Department of State Lands in consulta-  
 43 tion with the State Department of Fish and Wildlife and in consultation with other affected parties.

44 (c) No person may be required to obtain a permit under paragraph (b) of this subsection for  
 45 prospecting or other nonmotorized activities resulting in the removal from or fill of less than one

1 cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards  
2 of material within a designated essential indigenious anadromous salmonid habitat segment in a sin-  
3 gle year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet  
4 perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or  
5 filling activities customarily associated with mining require a permit under paragraph (b) of this  
6 subsection.

7 (d) No permit may be required under paragraph (b) of this subsection for construction or main-  
8 tenance of fish passage and fish screening structures that are constructed, operated or maintained  
9 under ORS [498.311,] 498.316, 498.326 or 509.600 to 509.645.

10 (e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

11 (f) As used in paragraphs (b) and (c) of this subsection:

12 (A) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel  
13 bar.

14 (B) "Essential indigenious anadromous salmonid habitat" means the habitat that is necessary to  
15 prevent the depletion of indigenious anadromous salmonid species during their life history stages of  
16 spawning and rearing.

17 (C) "Indigenious anadromous salmonid" means chum, sockeye, Chinook and Coho salmon, and  
18 steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive,  
19 threatened or endangered by a state or federal authority.

20 (D) "Prospecting" means searching or exploring for samples of gold, silver or other precious  
21 minerals, using nonmotorized methods, from among small quantities of aggregate.

22 (E) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-  
23 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the  
24 activity occurs.

25 (2) No governmental body may issue a lease or permit contrary or in opposition to the condi-  
26 tions set out in the permit issued under ORS 196.600 to 196.905.

27 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit  
28 or lease with any governmental body entered into before September 13, 1967. However, no such  
29 contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the  
30 person removing the material has obtained a permit under ORS 196.600 to 196.905.

31 (4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue,  
32 orally or in writing, an emergency authorization for the removal of material from the beds or banks  
33 or filling of any waters of this state in an emergency, for the purpose of making repairs or for the  
34 purpose of preventing irreparable harm, injury or damage to persons or property. The emergency  
35 authorization issued under this subsection:

36 (a) Shall contain conditions of operation that the department determines are necessary to mini-  
37 mize impacts to water resources or adjoining properties.

38 (b) Shall be based, whenever practicable, on the recommendations contained in an on-site eval-  
39 uation by an employee or representative of the department.

40 (c) If issued orally, shall be confirmed in writing by the department within five days.

41 **SECTION 5.** ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, and section  
42 97, chapter 14, Oregon Laws 2003, is amended to read:

43 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person  
44 or governmental body may not remove any material from the beds or banks **of any waters of this**  
45 **state** or fill any waters of this state without a permit issued under authority of the Director of the

1 Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in  
2 a manner contrary to the conditions set out in an order approving a wetlands conservation plan.

3 (b) A permit is not required under paragraph (a) of this subsection for prospecting or other  
4 nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material  
5 at any one individual site and, cumulatively, not more than five cubic yards of material within a  
6 particular stream segment in a single year. Prospecting or other nonmotorized activities may be  
7 conducted only within the bed or wet perimeter of the waterway and may not occur at any site  
8 where fish eggs are present. Removal or filling activities customarily associated with mining require  
9 a permit under paragraph (a) of this subsection.

10 (c) A permit is not required under paragraph (a) of this subsection for construction or mainte-  
11 nance of fish passage and fish screening structures associated with irrigation ditches or the main-  
12 tenance of drainage ditches that are constructed, operated or maintained under ORS [498.311,]  
13 498.316, 498.326 or 509.600 to 509.645.

14 (d) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

15 (2) A governmental body may not issue a lease or permit contrary or in opposition to the con-  
16 ditions set out in the permit issued under ORS 196.600 to 196.905.

17 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit  
18 or lease with any governmental body entered into before September 13, 1967. However, a contract,  
19 permit or lease may not be renewed or extended on or after September 13, 1967, unless the person  
20 removing the material has obtained a permit under ORS 196.600 to 196.905.

21 (4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue,  
22 orally or in writing, an emergency authorization for the removal of material from the beds or banks  
23 or filling of any waters of this state in an emergency, for the purpose of making repairs or for the  
24 purpose of preventing irreparable harm, injury or damage to persons or property. The emergency  
25 authorization issued under this subsection:

26 (a) Shall contain conditions of operation that the department determines are necessary to mini-  
27 mize impacts to water resources or adjoining properties.

28 (b) Shall be based, whenever practicable, on the recommendations contained in an on-site eval-  
29 uation by an employee or representative of the department.

30 (c) If issued orally, shall be confirmed in writing by the department within five days.

31 (5) As used in this section:

32 (a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel  
33 bar.

34 (b) "Prospecting" means searching or exploring for samples of gold, silver or other precious  
35 minerals, using nonmotorized methods, from among small quantities of aggregate.

36 (c) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-  
37 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the  
38 activity occurs.

39 **SECTION 6.** ORS 498.316 is amended to read:

40 498.316. ORS 498.306 [and 498.311 do] **does** not require the installation of [*fish*] screening or  
41 by-pass devices in those water diversions for which the State Fish and Wildlife Commission, by  
42 contract or other form of agreement with the person diverting the water, has made such other pro-  
43 vision as the commission determines is adequate for the protection of the game fish in the body of  
44 water from which water is being diverted.

45 **SECTION 7.** ORS 498.341 is amended to read:

1 498.341. Notwithstanding the [*limitation on the number of diversions to be screened as provided*  
 2 *in*] **limitations imposed by** ORS 498.306, if sufficient funds are made available in the Fish Screening  
 3 Subaccount of the Fish and Wildlife Account, by allocation from the Administrative Services Eco-  
 4 nomic Development Fund or from other sources, the State Department of Fish and Wildlife may  
 5 provide financial assistance for construction and installation of screening or by-pass devices on  
 6 [*an*] additional [250] water diversions.

7 **SECTION 8.** ORS 498.346 is amended to read:

8 498.346. The State Fish and Wildlife Commission may maintain a suit to enjoin any person, in-  
 9 cluding governmental agencies of this state and political subdivisions of this state, from violating  
 10 the provisions of ORS 498.306 [*or 498.311*]. The circuit court for any county in which are situated  
 11 any waters in which any such violations are threatened has jurisdiction of the suit authorized by  
 12 this section.

13 **SECTION 9.** ORS 498.336 is amended to read:

14 498.336. Nothing in ORS 498.306[, 498.311,] **or** 509.585 [*or 509.615*] shall be construed:

15 (1) To limit the eligibility of a person required to install and operate [*fish*] screening or by-pass  
 16 devices to obtain funding from the Water Development Fund pursuant to ORS 541.700 to 541.855.

17 (2) To limit the acquisition or acceptance of any federal funds available for the installation,  
 18 operation, maintenance, improvement or repair of [*fish*] screening or by-pass devices on water di-  
 19 versions in this state[, *regardless of the size of the diversion*].

20 **SECTION 10.** ORS 509.910 is amended to read:

21 509.910. (1) The State Fish and Wildlife Commission may maintain an action for an injunction  
 22 to enjoin and restrain any person, municipal corporation, political subdivision or governmental  
 23 agency of this state from violating any of the provisions of ORS 509.130, 509.140, 509.505, 509.585,  
 24 509.610[, 509.615] and 509.625.

25 (2) Any action authorized by this section shall be tried in the circuit court of the county in  
 26 which the violation occurs or in Marion or Multnomah County.

27 (3) If the defendant is a corporation with its principal office and place of business in a county  
 28 other than in which the waters flow or are situated, such action shall be deemed an action of local  
 29 nature and service of summons made on a corporation in any county where the corporation has its  
 30 principal office and place of business. If it is a foreign corporation, service may be made on the  
 31 statutory agent but if there is no such statutory agent then upon the Secretary of State as in other  
 32 cases provided by law.

33 **SECTION 11.** ORS 540.525 is amended to read:

34 540.525. (1) Upon receipt of an application for a change in the point of diversion under ORS  
 35 540.520, the Water Resources Department shall consult with the State Department of Fish and  
 36 Wildlife to determine whether the diversion is:

37 (a) Equipped with an appropriate fish screening or by-pass device; or

38 (b) Included on the priority list of screening projects established pursuant to section 8, chapter  
 39 933, Oregon Laws 1989.

40 (2) If the original point of diversion is included in the priority list of screening projects estab-  
 41 lished pursuant to section 8, chapter 933, Oregon Laws 1989, the department, after consulting with  
 42 the State Department of Fish and Wildlife, may require the installation of an appropriate fish  
 43 screening or by-pass device at the new point of diversion.

44 (3) When consulting with the State Department of Fish and Wildlife, the department shall de-  
 45 termine whether the installation of an appropriate fish screening or by-pass device is necessary to

1 prevent fish from leaving the body of water and entering the diversion.

2 (4) Any individual who is required to install a fish screening or by-pass device under this section  
 3 at a point of diversion [*for a diversion of under 30 cubic feet per second*] may participate in the State  
 4 Department of Fish and Wildlife's [*cost sharing*] **cost-sharing** program for the installation of  
 5 screening or by-pass devices.

6 **SECTION 12.** ORS 540.532 is amended to read:

7 540.532. (1) Notwithstanding ORS 537.797, 540.510, 540.520 and 540.530, an individual may re-  
 8 quest a change in the point of diversion to reflect the historical use of water at a point of diversion  
 9 other than that described in the water right certificate or decree if the individual complies with the  
 10 provisions of subsection (2) of this section.

11 (2) An individual may request a change in the point of diversion under subsection (1) of this  
 12 section if:

13 (a) The actual, current point of diversion has been in use for more than 10 years;

14 (b) The Water Resources Department has received no claim of injury as a result of the use of  
 15 water from the current point of diversion prior to the request for the change of diversion;

16 (c) The individual requesting the change provides written notice to any other affected water  
 17 right holder, as identified by the Water Resources Department, and the Water Resources Depart-  
 18 ment provides notice of the request in the department's public notice of water right applications;  
 19 and

20 (d) The individual provides a map of sufficient detail and clarity to identify the true point of  
 21 diversion including but not limited to:

22 (A) The county tax lot number, township, range and section, and to the nearest quarter-quarter  
 23 section or latitude and longitude as established by a global positioning system; and

24 (B) The locations of the point of diversion as specified in the water right certificate or decree  
 25 and the actual, current point of diversion.

26 (3) Upon receipt of a request for a change in the point of diversion under subsection (1) of this  
 27 section, the Water Resources Department shall consult with the State Department of Fish and  
 28 Wildlife to determine whether the historical point of diversion is:

29 (a) Equipped with an appropriate fish screening or by-pass device; or

30 (b) Included on the priority list of screening projects established pursuant to section 8, chapter  
 31 933, Oregon Laws 1989.

32 (4) If the historical point of diversion is included in the priority list of screening projects es-  
 33 tablished pursuant to section 8, chapter 933, Oregon Laws 1989, the Water Resources Department,  
 34 after consulting with the State Department of Fish and Wildlife, may require the installation of an  
 35 appropriate fish screening or by-pass device at the point of diversion.

36 (5) When consulting with the State Department of Fish and Wildlife, the Water Resources De-  
 37 partment shall determine whether the installation of an appropriate fish screening or by-pass device  
 38 is necessary to prevent fish from leaving the body of water and entering the diversion.

39 (6) Any individual who is required to install a fish screening or by-pass device under this section  
 40 at a point of diversion [*for a diversion of under 30 cubic feet per second*] may participate in the State  
 41 Department of Fish and Wildlife's cost-sharing program for the installation of screening or by-pass  
 42 devices.

43 **SECTION 13.** ORS 498.311, 498.331 and 509.615 are repealed.

44 **SECTION 14.** The amendments to ORS 315.138 by section 2 of this 2007 Act apply to tax  
 45 credits for screening devices, by-pass devices and fishways first claimed in tax years begin-

1 **ning on or after January 1, 2008.**

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