

**2009 Regular Legislative Session**  
**FISCAL ANALYSIS OF PROPOSED LEGISLATION**  
**Prepared by the Oregon Legislative Fiscal Office**

---

**MEASURE NUMBER:** HB 2185                      **STATUS:** Original  
**SUBJECT:** Section 401 certification fees under the Federal Water Pollution Control Act  
**GOVERNMENT UNIT AFFECTED:** Department of Environmental Quality  
**PREPARED BY:** Dawn Farr  
**REVIEWED BY:** Paul Siebert  
**DATE:** February 11, 2009

---

	<u>2009-2011</u>	<u>2011-2013</u>
<b>EXPENDITURES:</b>		
See comments below.		
<b>REVENUES:</b>		
401 Certification Fees – Other Funds	\$ 809,885	\$ 1,079,846

**POSITIONS / FTE:**  
See comments below.

**EFFECTIVE DATE:** January 1, 2010

**GOVERNOR’S BUDGET:** This bill is anticipated by the Governor’s recommended budget.

**LOCAL GOVERNMENT MANDATE:** This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**ANALYSIS:** The bill establishes a fee structure for section 401 certification under the Federal Water Pollution Control Act, and allows the Environmental Quality Commission to establish by rule a different schedule of fees on or after January 1, 2012.

The Department of Environmental Quality (DEQ) issues over 100 individual 401 certifications annually for federal actions involving removal-fill projects such as dredging, filling of wetlands for development, decommissions of dams, transportation projects and stream and wetland restoration. The current fee structure assesses fees based on proposed fill or removal amounts, without considering project complexity and resulting DEQ workload. Further, no fees are charged for projects that propose to fill less than 2 acres of wetlands or remove less than 500 cubic yards of materials, and for other kinds of exempt projects. Currently 52% of projects receiving a 401 certification do not pay a fee. Biennial Other Fund revenues generated from individual 401 certification fees are approximately \$190,000.

The bill would establish a new fee structure for 401 certification based on estimated staff hours required to complete certification processing. This new fee structure would result in 100% of individual 401 certification projects being assessed a fee. DEQ estimates that they will receive an additional \$1,079,856 in Other Fund revenues per biennium under the new fee schedule. Revenues will be less during the 2009-11 biennium because of the January 1, 2010 effective date.

Under the Governor’s Recommended Budget, revenues generated by the bill would be used to restore funding for an existing 1.40 FTE that is unsupported with current revenues and to fund an additional 1.50 FTE to cover contract services for database and web page work.