

# Senate Bill 178

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## 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**.

Conforms statutory references related to Department of State Lands rulemaking authority. Deletes references to State Land Board in wetlands mitigation bank program to be consistent with other provisions relating to wetlands protection programs.

## A BILL FOR AN ACT

1  
2 Relating to authority of Department of State Lands; amending ORS 98.050, 98.422, 113.085, 114.520,  
3 196.610, 196.615, 196.630, 196.635, 196.640, 196.805, 196.900, 273.045 and 274.994.

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

5 **SECTION 1.** ORS 98.050 is amended to read:

6 98.050. (1) The administrator may compile information or data in the possession of the Depart-  
7 ment of State Lands into finder's reports at the request of any person to assist in finding the owners  
8 of abandoned or unclaimed property.

9 (2) The *[administrator]* **department** shall adopt by rule a fee for copies of finder's reports. The  
10 fee charged shall be commensurate with preparation costs including production, duplication and staff  
11 time involved.

12 (3) Any person requesting a copy of a finder's report shall be charged the fee.

13 (4) As used in subsections (1) to (3) of this section:

14 (a) "Administrator" has the *[same]* meaning *[as]* given *[by]* **that term in** ORS 98.302.

15 (b) "Person" includes any natural person, corporation, partnership, firm or association.

16 (c) "Finder's report" means any report prepared by the administrator for the benefit of any  
17 person to assist in finding the owners of abandoned or unclaimed property.

18 **SECTION 2.** ORS 98.422 is amended to read:

19 98.422. The *[administrator is authorized to]* **Department of State Lands may** adopt necessary  
20 rules to carry out the provisions of ORS 98.302 to 98.436 and 98.992.

21 **SECTION 3.** ORS 113.085 is amended to read:

22 113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition,  
23 if there is no will or there is a will and it has been proved, the court shall appoint a qualified person  
24 it finds suitable as personal representative, giving preference in the following order:

25 (a) To the executor named in the will.

26 (b) To the surviving spouse of the decedent or the nominee of the surviving spouse of the  
27 decedent.

28 (c) To the nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.

29 (d) To the Director of Human Services or a designee, if it appears the decedent received public  
30 assistance pursuant to ORS chapter 411 or 414 and that such assistance is a claim against the es-

**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   tate.

2       (e) To the Department of Veterans' Affairs, if the decedent was a protected person under ORS  
3 406.050 (7), and the department has joined in the petition for such appointment.

4       (f) To any other person.

5       (2) Except as provided in subsection (3) of this section, the court shall appoint the Department  
6 of State Lands as personal representative if it appears that the decedent died wholly intestate and  
7 without known heirs. The Attorney General shall represent the Department of State Lands in the  
8 administration of the estate. Any funds received by the Department of State Lands in the capacity  
9 of personal representative may be deposited in accounts, separate and distinct from the General  
10 Fund, established with the State Treasurer. Interest earned by such account shall be credited to that  
11 account.

12       (3) The court may appoint a person other than the Department of State Lands to administer the  
13 estate of a decedent who died wholly intestate and without known heirs if the person filing a peti-  
14 tion under ORS 113.035 attaches written authorization from an estate administrator of the Depart-  
15 ment of State Lands appointed under ORS 113.235 approving the filing of the petition by the person.  
16 Except as provided by rule adopted by [*the Director of*] the Department of State Lands, an estate  
17 administrator may consent to the appointment of another person to act as personal representative  
18 only if it appears after investigation that the estate is insolvent.

19       **SECTION 4.** ORS 114.520 is amended to read:

20       114.520. (1) If a decedent dies intestate and without heirs, a creditor of an estate who is a  
21 claiming successor may not file an affidavit under ORS 114.515 unless the creditor has received  
22 written authorization from an estate administrator of the Department of State Lands appointed un-  
23 der ORS 113.235. Except as provided by rule adopted by [*the Director of*] the Department of State  
24 Lands, an estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a  
25 creditor only if it appears after investigation that the estate is insolvent.

26       (2) A creditor of an estate who is subject to subsection (1) of this section may give written no-  
27 tice to an estate administrator of the Department of State Lands informing the estate administrator  
28 that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice permitted  
29 by this subsection, the estate administrator shall investigate the assets and liabilities of the estate.  
30 Within 30 days after receiving the notice required by this subsection, the estate administrator shall  
31 either:

32       (a) Give written authorization to the creditor for the filing of an affidavit by the creditor under  
33 ORS 114.515; or

34       (b) Inform the creditor that the Department of State Lands will file an affidavit as claiming  
35 successor under ORS 114.515.

36       (3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming  
37 successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that  
38 the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required  
39 by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there  
40 is attached to the affidavit written authorization for the filing of the affidavit by the creditor from  
41 an estate administrator of the Department of State Lands. The written authorization may be a copy  
42 of a memorandum of an interagency agreement between the Department of State Lands and another  
43 state agency.

44       **SECTION 5.** ORS 196.610 is amended to read:

45       196.610. [*Subject to approval by the State Land Board,*] The Director of the Department of State

1 Lands may:

2 (1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to  
3 196.655.

4 (2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to protect  
5 sensitive or unique wetlands habitat.

6 (3) Pay costs incurred for alterations needed to create, restore or enhance wetland areas for  
7 purposes of carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to 196.905.

8 (4) Authorize payment of administrative, research or scientific monitoring expenses of the De-  
9 partment of State Lands in carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to  
10 196.905.

11 (5) Disburse funds received under the federal Coastal Zone Management Act of 1972, as amended  
12 (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

13 (6) Receive funds under the federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, for  
14 the voluntary acquisition of wetlands and interests therein according to the wetlands provisions of  
15 the Statewide Comprehensive Outdoor Recreation Plan. Funds received under the federal Emer-  
16 gency Wetlands Resources Act of 1986, P.L. 99-645, shall be used for nonmitigation complementary  
17 purposes and programs of ORS 196.600 to 196.655.

18 **SECTION 6.** ORS 196.615 is amended to read:

19 196.615. (1) In accordance with the provisions of ORS 196.600 to 196.655, [*upon the approval of*  
20 *the State Land Board,*] the Director of the Department of State Lands shall initiate and implement  
21 a program for wetlands mitigation banks. The director shall encourage the development of and the  
22 expeditious approval of mitigation banks and other types of compensatory wetland mitigation.

23 (2) [*Subject to the approval of the State Land Board,*] The Department of State Lands shall adopt,  
24 by rule, standards and criteria for the site selection process, operation and evaluation of mitigation  
25 banks. Criteria to be considered shall include but need not be limited to:

26 (a) Historical wetland trends, including the estimated rate of current and future losses of the  
27 respective types of wetlands.

28 (b) The contributions of the wetlands to:

29 (A) Wildlife, migratory birds and resident species;

30 (B) Commercial and sport fisheries;

31 (C) Surface and ground water quality and quantity, and flood moderation;

32 (D) Outdoor recreation including enhancement of scenic waterways; and

33 (E) Scientific and research values.

34 (c) Regional economic needs.

35 (3) For each mitigation bank, the department shall establish a well-defined plan, including pre-  
36 liminary objectives, inventory of resource values and an evaluation and monitoring program.

37 **SECTION 7.** ORS 196.630 is amended to read:

38 196.630. [*Subject to the approval of the State Land Board, the Director of*] The Department of  
39 State Lands shall adopt rules according to the provisions of ORS chapter 183 to carry out the pro-  
40 visions of ORS 196.600 to 196.655.

41 **SECTION 8.** ORS 196.635 is amended to read:

42 196.635. (1) The provisions of ORS 196.600 to 196.655 shall be carried out by the Director of the  
43 Department of State Lands. The Department of State Lands shall solicit, but not be bound by,  
44 comments from the State Department of Fish and Wildlife, Department of Transportation, Depart-  
45 ment of Land Conservation and Development, Department of Environmental Quality, Economic and

1 Community Development Department, federal natural resources and regulatory agencies, affected  
 2 local governments and special districts, conservation organizations and other interested parties. All  
 3 comments shall be in writing and provided to the Department of State Lands and mitigation bank  
 4 sponsor within 30 days of solicitation by the Department of State Lands. If comments are not re-  
 5 ceived by the Department of State Lands from a state agency or from an affected local government  
 6 or special district within 30 days of solicitation, the director shall assume that the state agency,  
 7 local government or special district does not desire to provide comments.

8 (2) In cooperation with the parties in subsection (1) of this section, the director[, *in consultation*  
 9 *with the State Land Board,*] shall:

10 (a) Review opportunities for inclusion of appropriate wetlands in the Statewide Comprehensive  
 11 Outdoor Recreation Plan.

12 (b) Develop and recommend a wetlands priority plan for inclusion in the Statewide Comprehen-  
 13 sive Outdoor Recreation Plan. The wetlands priority plan shall be complementary to the purposes  
 14 and programs under ORS 196.600 to 196.655.

15 (3) The director shall confer with the Oregon Watershed Enhancement Board to develop criteria  
 16 to certify watershed enhancement projects as mitigation banks.

17 **SECTION 9.** ORS 196.640 is amended to read:

18 196.640. (1) The Oregon Wetlands Mitigation Bank Revolving Fund Account is established, sep-  
 19 arate and distinct from the General Fund. All moneys received under ORS 196.645 shall be paid into  
 20 the State Treasury and credited to the account. All moneys in the account are appropriated con-  
 21 tinuously to the Department of State Lands to be used by the department as set forth in ORS  
 22 196.650. The moneys in the account may be invested and reinvested as provided in ORS 293.701 to  
 23 293.820. Interest earned by the account shall be credited to the account.

24 (2) The department shall keep a record of all moneys deposited in the account. The record shall  
 25 indicate by separate cumulative accounts the source from which the moneys are derived and the  
 26 individual activity or program against which each withdrawal is charged.

27 (3) The department shall publish annually the record of moneys deposited in and removed from  
 28 the account.

29 (4) The [*Director of the Department of State Lands*] **department** may adopt rules for prioritizing  
 30 expenditures from the account for the purposes specified in ORS 196.650.

31 **SECTION 10.** ORS 196.805 is amended to read:

32 196.805. (1) The protection, conservation and best use of the water resources of this state are  
 33 matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in  
 34 this state, including not only water and materials for domestic, agricultural and industrial use but  
 35 also habitats and spawning areas for fish, avenues for transportation and sites for commerce and  
 36 public recreation, are vital to the economy and well-being of this state and its people. Unregulated  
 37 removal of material from the beds and banks of the waters of this state may create hazards to the  
 38 health, safety and welfare of the people of this state. Unregulated filling in the waters of this state  
 39 for any purpose, may result in interfering with or injuring public navigation, fishery and recre-  
 40 ational uses of the waters. In order to provide for the best possible use of the water resources of  
 41 this state, it is desirable to centralize authority in the Director of the Department of State Lands,  
 42 and implement control of the removal of material from the beds and banks or filling of the waters  
 43 of this state.

44 (2) The director shall take into consideration all beneficial uses of water including streambank  
 45 protection when administering fill and removal statutes.

1 (3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of  
 2 property under ORS 196.600 to 196.905 without due process of law.

3 (4) The director shall delineate wetlands in accordance with the United States Army Corps of  
 4 Engineers Wetlands Delineation Manual of 1987, or subsequent federal manual as adopted by rule  
 5 by the [*director*] **Department of State Lands**, and applicable guidance issued by the United States  
 6 Army Corps of Engineers for the area in which the wetlands are located.

7 (5) The department [*of State Lands*] shall give priority to the review of wetland delineation re-  
 8 ports submitted with or in advance of an application for fill or removal of material from the waters  
 9 of this state.

10 **SECTION 11.** ORS 196.900 is amended to read:

11 196.900. (1) The [*Director of the*] Department of State Lands shall adopt by rule the amount of  
 12 civil penalty that may be imposed for a particular violation.

13 (2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the  
 14 Director **of the Department of State Lands** shall consider the following factors:

15 (a) The past history of the person incurring a penalty in taking all feasible steps or procedures  
 16 necessary or appropriate to correct any violation.

17 (b) Any prior violations of statutes, rules, orders and permits pertaining to waters of the state.

18 (c) The impact of the violation on public interests in fishery, navigation and recreation.

19 (d) Any other factors determined by the director to be relevant and consistent with the policy  
 20 of ORS 196.805.

21 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and  
 22 conditions as the director determines to be proper and consistent with the policy of ORS 196.805.  
 23 Upon the request of the person incurring the penalty, the director shall consider evidence of the  
 24 economic and financial condition of the person in determining whether a penalty shall be remitted  
 25 or mitigated.

26 **SECTION 12.** ORS 273.045 is amended to read:

27 273.045. The Department of State Lands shall establish its administrative policies in accordance  
 28 with the laws prescribing its powers and duties and the general policies formulated by the State  
 29 Land Board. Acting subject to the approval of the board and in compliance with ORS chapter 183,  
 30 the [*Director of the Department of State Lands shall promulgate*] **department shall adopt** such rules  
 31 as are necessary to carry out the policies of the department and to attain maximum efficiency in its  
 32 administration.

33 **SECTION 13.** ORS 274.994 is amended to read:

34 274.994. (1) The [*Director of the*] Department of State Lands shall adopt by rule the amount of  
 35 civil penalty that may be imposed for a particular violation of ORS 274.040.

36 (2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the  
 37 Director **of the Department of State Lands** shall consider the following factors:

38 (a) The past history of the person incurring a penalty in taking all feasible steps or procedures  
 39 necessary or appropriate to correct any violation.

40 (b) Any prior violations of statutes, rules, orders and leases pertaining to submerged and  
 41 submersible lands.

42 (c) The impact of the violation on public interests in fishery, navigation and recreation.

43 (d) Any other factors determined by the director to be relevant and consistent with the policy  
 44 of ORS 274.040.

45 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and

1 conditions as the director determines to be proper and consistent with the policy of ORS 274.040.  
2 Upon the request of the person incurring the penalty, the director shall consider evidence of the  
3 economic and financial condition of the person in determining whether a penalty shall be remitted  
4 or mitigated.

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