

House Bill 3601

Sponsored by Representative SCHAUFLER (at the request of Oregon Concrete and Aggregate Producers Association)

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**.

Provides that Department of State Lands and State Department of Geology and Mineral Industries may enter into memorandum of agreement in certain cases involving surface mining so that sole responsibility for permitting is assigned to State Department of Geology and Mineral Industries.

A BILL FOR AN ACT

1
2 Relating to mining; creating new provisions; and amending ORS 196.905 and 517.750.

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

4 **SECTION 1. (1) As used in this section, "surface mining" has the meaning given that**
5 **term in ORS 517.750 and "waters of this state" has the meaning given that term in ORS**
6 **196.800.**

7 **(2) The Department of State Lands and the State Department of Geology and Mineral**
8 **Industries may enter into a memorandum of agreement concerning surface mining as de-**
9 **scribed in subsection (3) of this section.**

10 **(3) The memorandum described in subsection (2) of this section may assign sole respon-**
11 **sibility for permitting to the State Department of Geology and Mineral Industries when the**
12 **surface mining would otherwise be under the permitting jurisdiction of both the Department**
13 **of State Lands and the State Department of Geology and Mineral Industries because:**

14 **(a) Part of the surface mining is located within the beds or banks of any waters of this**
15 **state; and**

16 **(b) Part of the surface mining is located upland from the beds or banks of any waters**
17 **of this state.**

18 **(4) Prior to any permitting pursuant to the provisions of subsection (3) of this section,**
19 **the State Department of Geology and Mineral Industries shall consult with the Department**
20 **of State Lands regarding any conditions necessary to protect the waters of this state.**

21 **SECTION 2. ORS 517.750 is amended to read:**

22 517.750. As used in ORS 517.702 to 517.989, unless the context requires otherwise:

23 (1) "Board" means the governing board of the State Department of Geology and Mineral Indus-
24 tries.

25 (2) "Completion" means termination of surface mining activities including reclamation of the
26 surface-mined land in accordance with the approved reclamation plan and operating permit.

27 (3) "Department" means the State Department of Geology and Mineral Industries.

28 (4) "Exploration" means all activities conducted on or beneath the surface of the earth for the
29 purpose of determining presence, location, extent, grade or economic viability of a deposit. "Explo-
30 ration" does not include prospecting or chemical processing of minerals.

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 (5) "Explorer" means, notwithstanding the provisions of ORS 517.810 (2), any individual, public
2 or private corporation, political subdivision, agency, board or department of this state, any municipi-
3 pality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is en-
4 gaged in exploration.

5 (6) "Landowner" means:

6 (a) The person possessing fee title to the natural mineral deposit being surface mined or ex-
7 plored; and

8 (b) The owner of an equitable interest in land that is subject to a deed of trust.

9 (7) "Minerals" includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid
10 material or substance excavated for commercial, industrial or construction use from natural deposits
11 situated within or upon lands in this state.

12 (8) "Operator" means any individual, public or private corporation, political subdivision, agency,
13 board or department of this state, any municipality, partnership, association, firm, trust, estate or
14 any other legal entity whatsoever that is engaged in surface mining operations.

15 (9) "Overburden" means the soil, rock and similar materials that lie above natural deposits of
16 minerals.

17 (10) "Person" means any person, any federal agency or any public body, as defined in ORS
18 174.109.

19 (11) "Processing" includes, but is not limited to, crushing, washing, milling and screening as well
20 as the batching and blending of mineral aggregate into asphalt and portland cement concrete located
21 within the operating permit area.

22 (12) "Reclamation" means the employment in a surface mining operation or exploration of pro-
23 cedures reasonably designed to:

24 (a) Minimize, as much as practicable, the adverse effects of the surface mining operation or ex-
25 ploration on land, air and water resources; and

26 (b) Provide for the rehabilitation of surface resources adversely affected by the surface mining
27 operations or exploration through the rehabilitation of plant cover, soil stability and water re-
28 sources and through other measures that contribute to the subsequent beneficial use of the explored,
29 mined or reclaimed lands.

30 (13) "Reclamation plan" means a written proposal, submitted to the department as required by
31 ORS 517.702 to 517.989 and subsequently approved by the department as provided in ORS 517.702
32 to 517.989, for the reclamation of the land area adversely affected by a surface mining operation or
33 exploration and including, but not limited to the following information:

34 (a) Proposed measures to be undertaken by the operator in protecting the natural resources of
35 adjacent lands.

36 (b) Proposed measures for the rehabilitation of the explored or surface-mined lands and the
37 procedures to be applied.

38 (c) The procedures to be applied in the surface mining operation or exploration to control the
39 discharge of contaminants and the disposal of surface mining refuse.

40 (d) The procedures to be applied in the surface mining operation or exploration in the rehabili-
41 tation of affected stream channels and stream banks to a condition minimizing erosion,
42 sedimentation and other factors of pollution.

43 (e) The map required by ORS 517.790 (1)(e) and such other maps and supporting documents as
44 may be requested by the department.

45 (f) A proposed time schedule for the completion of reclamation operations.

1 (g) Requirements of the exploration permit.

2 (14) "Surface impacts of underground mining" means all waste materials produced by under-
 3 ground mining and placed upon the surface including, but not limited to, waste dumps, mill tailings,
 4 washing plant fines and all surface subsidence related to underground mining.

5 (15)(a) "Surface mining" includes:

6 (A) All or any part of the process of mining minerals by the removal of overburden and the
 7 extraction of natural mineral deposits thereby exposed by any method by which more than 5,000
 8 cubic yards of minerals are extracted or by which at least one acre of land is affected within a pe-
 9 riod of 12 consecutive calendar months, including open-pit mining operations, auger mining oper-
 10 ations, processing, surface impacts of underground mining, production of surface mining refuse and
 11 the construction of adjacent or off-site borrow pits (except those constructed for use as access
 12 roads).

13 (B) **Removal or filling, or both, within the beds or banks of any waters of this state that**
 14 **is the subject of a memorandum of agreement between the Department of State Lands and**
 15 **the State Department of Geology and Mineral Industries in which the State Department of**
 16 **Geology and Mineral Industries is assigned sole responsibility for permitting as described in**
 17 **section 1 of this 2011 Act.**

18 (b) "Surface mining" does not include:

19 (A) Excavations of sand, gravel, clay, rock or other similar materials conducted by the land-
 20 owner or tenant for the primary purpose of construction, reconstruction or maintenance of access
 21 roads on the same parcel or on an adjacent parcel that is under the same ownership as the parcel
 22 that is being excavated;

23 (B) Excavation or grading operations, reasonably necessary for farming;

24 (C) Nonsurface effects of underground mining;

25 (D) Removal of rock, gravel, sand, silt or other similar substances removed from the beds or
 26 banks of any waters of this state pursuant to a permit issued under ORS 196.800 to 196.900; or

27 (E) Excavations or reprocessing of aggregate material, or grading operations, within the high-
 28 way right of way reasonably necessary for the construction, reconstruction or maintenance of a
 29 highway as defined in ORS 801.305.

30 (16) "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vegetation and
 31 other materials resulting from or displaced by surface mining operations within the operating permit
 32 area, including all waste materials deposited in or upon lands within the operating permit area.

33 (17) "Underground mining" means all human-made excavations below the surface of the ground
 34 through shafts or adits for the purpose of exploring for, developing or producing valuable minerals.

35 **SECTION 3.** ORS 196.905 is amended to read:

36 196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this
 37 state for the purpose of constructing, operating and maintaining dams or other diversions for which
 38 permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which
 39 preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

40 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks
 41 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

42 (a) Such waterway or portion is situated within forestland; and

43 (b) Such removal or filling is directly connected with a forest management practice conducted
 44 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

45 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted

1 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,
2 cultivating, conventional crop rotation or harvesting.

3 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for
4 exclusive farm use as described in ORS 215.203 for the following activities:

5 (a) Drainage or maintenance of farm or stock ponds; or

6 (b) Maintenance of farm roads in such a manner as to not significantly adversely affect wetlands
7 or any other waters of this state.

8 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for subsurface
9 drainage by deep ripping, tiling or moling on converted wetlands that are zoned for exclusive farm
10 use pursuant to ORS 215.203.

11 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
12 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS
13 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
14 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
15 successor agency, so long as commercial agricultural production on the land has not been aban-
16 doned for five or more years.

17 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-
18 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as
19 in effect on January 1, 2010.

20 (8) The exemptions in subsections (3) to (7) of this section do not apply to any fill or removal
21 that involves changing an area of wetlands to a nonfarm use.

22 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
23 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage
24 ditches, irrigation ditches and tile drain systems, provided that:

25 (a) The structure was serviceable within the past five years; and

26 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or
27 other waters of this state to a greater extent than the wetlands or waters of this state were affected
28 as a result of the original construction of those structures.

29 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,
30 including emergency reconstruction of recently damaged parts, of currently serviceable roads or
31 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-
32 ments or approaches.

33 **(11) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the**
34 **beds or banks of any waters of this state conducted as part of a surface mining operation,**
35 **that is the subject of a memorandum of agreement between the Department of State Lands**
36 **and the State Department of Geology and Mineral Industries in which the State Department**
37 **of Geology and Mineral Industries is assigned sole responsibility for permitting as described**
38 **in section 1 of this 2011 Act.**

39 [(11)] (12) The Department of State Lands may adopt a rule that exempts from the requirement
40 to obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have
41 only minimal adverse impact on waters of this state.

42 [(12)] (13) As used in this section:

43 (a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,
44 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
45 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that

1 are managed for commercial agricultural purposes.

2 (b) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any
3 other waters of this state that are located within or adjacent to a converted wetland area.

4 **SECTION 4.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, section 13,
5 chapter 253, Oregon Laws 2003, and section 4, chapter 342, Oregon Laws 2009, is amended to read:

6 196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit
7 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters
8 of this state when:

9 (a) The fill or removal is a part of an activity whose purpose is to bring an area of state waters
10 into a use to which it was not previously subject; and

11 (b)(A) The flow or circulation of the waters of this state may be impaired; or

12 (B) The reach of the waters may be reduced.

13 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks
14 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

15 (a) Such waterway or portion is situated within forestland; and

16 (b) Such removal or filling is directly connected with a forest management practice conducted
17 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

18 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted
19 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,
20 cultivating, conventional crop rotation or harvesting.

21 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for
22 exclusive farm use as described in ORS 215.203 for the following activities:

23 (a) Drainage or maintenance of farm or stock ponds; or

24 (b) Maintenance of farm roads, provided that:

25 (A) The farm roads are constructed and maintained in accordance with construction practices
26 designed to minimize any adverse effects to the aquatic environment;

27 (B) Borrow material for farm road maintenance does not come from waters of this state unless
28 authorized by the Department of State Lands; and

29 (C) Maintenance activities are confined to the scope of construction for the original project.

30 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
31 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS
32 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
33 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
34 successor agency, so long as commercial agricultural production on the land has not been aban-
35 doned for five or more years.

36 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-
37 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as
38 in effect on January 1, 2010.

39 (7) The exemptions in subsections (3) to (6) of this section do not apply to any fill or removal
40 that involves changing an area of wetlands or converted wetlands to a nonfarm use.

41 (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
42 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage
43 ditches, irrigation ditches and tile drain systems, provided that:

44 (a) The structure was serviceable within the past five years; and

45 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or

1 other waters of this state to a greater extent than the wetlands or waters of this state were affected
 2 as a result of the original construction of those structures.

3 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams
 4 constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the
 5 following conditions are satisfied:

6 (a) The removal or filling is conducted during periods that minimize adverse effects to fish and
 7 wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

8 (b) The removal or filling does not jeopardize a threatened or endangered species or adversely
 9 modify or destroy the habitat of a threatened or endangered species listed under federal or state
 10 law; and

11 (c) Temporary fills are removed in their entirety and the area is restored to its approximate
 12 original elevation.

13 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,
 14 including emergency reconstruction of recently damaged parts, of currently serviceable roads or
 15 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-
 16 ments or approaches.

17 (11) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
 18 of access roads constructed to move mining equipment, subject to the following conditions:

19 (a) The access roads are constructed and maintained in accordance with construction practices
 20 that minimize adverse effects to the aquatic environment;

21 (b) Borrow material for access road maintenance does not come from waters of this state unless
 22 authorized by the Department of State Lands; and

23 (c) Maintenance activities are confined to the scope of construction for the original project.

24 **(12) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the**
 25 **beds or banks of any waters of this state conducted as part of a surface mining operation**
 26 **that is the subject of a memorandum of agreement between the Department of State Lands**
 27 **and the State Department of Geology and Mineral Industries in which the State Department**
 28 **of Geology and Mineral Industries is assigned sole responsibility for permitting as described**
 29 **in section 1 of this 2011 Act.**

30 [(12)] (13) The department may adopt a rule that exempts from the requirement to obtain a
 31 permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal
 32 adverse impact on waters of this state.

33 [(13)] (14) As used in this section:

34 (a)(A) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,
 35 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
 36 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that
 37 are managed for commercial agricultural purposes.

38 (B) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any
 39 other waters of this state that are located within or adjacent to a converted wetland area.

40 (b) "Harvesting" means physically removing crops or other agricultural products.

41 (c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade
 42 plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil
 43 to prepare it for planting crops or other agricultural products. "Plowing" does not include:

44 (A) The redistribution of soil, rock, sand or other surface materials in a manner that changes
 45 areas of waters of this state into dry land; or

1 (B) Rock crushing activities that result in the loss of natural drainage characteristics, the re-
2 duction of water storage and recharge capability, or the overburdening of natural water filtration
3 capacity.

4 (d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other
5 agricultural products.

6 **SECTION 5. Section 1 of this 2011 Act and the amendments to ORS 196.905 and 517.750**
7 **by sections 2 to 4 of this 2011 Act apply to permits first applied for under ORS 517.790, or**
8 **renewed, on or after the effective date of this 2011 Act.**

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