

Senate Bill 798

Sponsored by Senator TELFER; Senators FERRIOLI, GEORGE, KRUSE, OLSEN, THOMSEN, Representatives CONGER, WHISNANT

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**.

Specifies conditions under which mitigation credit may be sold to single state agency. Specifies conditions under which credits may be purchased by single state agency. Specifies conditions under which Director of Department of State Lands may authorize withdrawal of mitigation bank credits by single state agency for purpose of reserving credits for future use.

A BILL FOR AN ACT

1
2 Relating to mitigation; amending ORS 196.610, 196.620 and 196.623.

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

4 **SECTION 1.** ORS 196.610 is amended to read:

5 196.610. Subject to approval by the State Land Board, the Director of the Department of State
6 Lands may:

7 (1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to
8 196.655, **except that at any time when credits are purchased, a single state agency may not**
9 **purchase more than one-half of the credits that are purchased.**

10 (2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to preserve
11 sensitive or unique habitat in or near the waters of this state.

12 (3) Pay costs incurred for alterations needed to create, restore, enhance or preserve waters of
13 this state for purposes of carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to 196.905.

14 (4) Authorize payment of administrative, research or scientific monitoring expenses of the De-
15 partment of State Lands in carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to
16 196.905.

17 (5) Disburse funds received under the federal Coastal Zone Management Act of 1972, as amended
18 (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

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

24 **SECTION 2.** ORS 196.620 is amended to read:

25 196.620. (1) For each mitigation bank, the Department of State Lands shall establish a system
26 of resource values and credits.

27 (2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in
28 accordance with ORS 196.825 (4), for any other authorization issued in accordance with ORS 196.800
29 to 196.905 or to resolve a violation of ORS 196.800 to 196.905. At the request of a mitigation bank
30 sponsor, the Director of the Department of State Lands may authorize the withdrawal of mitigation

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 bank credits by a public benefit corporation as defined in ORS 65.001 or a public body as defined
2 by ORS 174.109 designated by the director for the purpose of reserving credits for future use in
3 accordance with this subsection, **except that at any time when the director authorizes the**
4 **withdrawal of mitigation bank credits by a state agency for the purpose of reserving credits**
5 **for future use, the director may not authorize the withdrawal by a single state agency of**
6 **more than one-half of the credits that are withdrawn.** The director shall manage such trans-
7 actions to ensure that each credit is used no more than one time to satisfy a use in accordance with
8 this section.

9 (3) Credits from a mitigation bank may be used only as described in subsection (2) of this section
10 for permits, authorizations or resolutions of violations approved within the service area of the mit-
11 igation bank, consistent with the mitigation bank instrument, unless the director determines that it
12 is environmentally preferable to exceed this limitation.

13 (4) Credits from an estuarine mitigation bank may be used only as described in subsection (2)
14 of this section for permits, authorizations or resolutions of violations approved within the same
15 estuarine ecological system unless the director determines that it is environmentally preferable to
16 exceed this limitation.

17 (5) The director may not withdraw any credits from any mitigation bank until the director has:

18 (a) Taken actions sufficient to establish hydrological function of the mitigation bank site;

19 (b) Conducted other creation, restoration, enhancement or preservation actions to establish
20 other functions and values at the mitigation bank site; and

21 (c) Evaluated the results of the actions and determined that a high probability exists that the
22 functions and values of the mitigation bank site are equal to or greater than the functions and val-
23 ues of the area to be impacted or that the functions and values of the mitigation bank compensate
24 for unavoidable adverse effects on the waters of this state due to the activities otherwise allowed
25 under ORS 196.600 to 196.905.

26 (6) The price for any mitigation credit shall be set at an amount that will compensate the state
27 for all of the costs and expenses the state has incurred and is expected to incur in establishing and
28 maintaining that portion of the mitigation bank.

29 (7) The director shall not consider the availability or nonavailability of mitigation bank credits
30 in deciding whether to grant or deny any removal or fill permit under ORS 196.600 to 196.905.

31 (8) The director annually shall:

32 (a) Evaluate the functions and values created within each mitigation bank site; and

33 (b) Compare the current functions and values with those that the director anticipated that the
34 mitigation bank would provide. If the director finds any significant disparity between the actual and
35 anticipated functions and values, the director shall:

36 (A) Suspend the withdrawal of credits to that mitigation site; or

37 (B) Take prompt action to ensure that the anticipated functions and values are established.

38 (9) The director may not withdraw credits from the mitigation bank for a specific permit, au-
39 thorization or resolution of a violation if the director determines that:

40 (a) The credits for that specific permit, authorization or resolution of a violation would not ad-
41 equately maintain habitat or species diversity;

42 (b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently
43 similar in functions and values to the area to be impacted; or

44 (c) The functions and values of the mitigation bank do not compensate for unavoidable adverse
45 effects on the waters of this state due to the activities otherwise allowed under ORS 196.600 to

1 196.905.

2 **SECTION 3.** ORS 196.623 is amended to read:

3 196.623. (1) The Department of State Lands may approve a watershed enhancement program and
4 certify the project as a mitigation bank under ORS 196.600 to 196.655 if the watershed enhancement
5 program complies with the rules adopted by the department under ORS 196.615 for certification of
6 a program as a mitigation bank.

7 (2) A person, state agency, federal agency, federally recognized Indian tribe, watershed council
8 or political subdivision in this state that owns land upon which is located a watershed enhancement
9 program that qualifies as a mitigation bank under subsection (1) of this section may sell mitigation
10 credit from the mitigation bank subject to ORS 196.600 to 196.655 and the rules of the Department
11 of State Lands adopted under ORS 196.600 to 196.655, **except that when mitigation credit is sold,**
12 **a single state agency may not purchase more than one-half of the mitigation credit that is**
13 **sold.**

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