

A-Engrossed
Senate Bill 1582

Ordered by the Senate February 15
Including Senate Amendments dated February 15

Sponsored by Senator MORSE (Presession filed.)

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.

[Creates process by which applicant for permit to remove material from beds or banks of waters of this state, or for permit to fill waters of this state, may request arbitration of final order issued by Director of Department of State Lands.]

Creates process by which person may request independent review of determinations made by Department of State Lands that are related to wetlands delineation. Sunsets on January 2, 2022.

Changes certain processes related to wetlands delineation.

[Declares emergency, effective on passage.]

A BILL FOR AN ACT

1
2 Relating to the Department of State Lands; creating new provisions; and amending ORS 196.805 and
3 196.818.

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

5
6 **INDEPENDENT REVIEW OF WETLAND**
7 **DELINEATION DETERMINATIONS**
8

9 **SECTION 1.** Section 2 of this 2012 Act is added to and made a part of ORS 196.600 to
10 **196.905.**

11 **SECTION 2.** (1)(a) A person may request an independent review of a determination made
12 **under:**

13 **(A) ORS 196.818 (1)(a), if the Department of State Lands determines that wetlands are**
14 **present on a land parcel owned by the person; or**

15 **(B) ORS 196.818 (1)(b), if the department determines where the boundaries of a wetland**
16 **are located on a land parcel owned by the person.**

17 **(b) Notwithstanding paragraph (a) of this subsection, a person may not request an inde-**
18 **pendent review of a determination made under ORS 196.818 (1)(a) or (b) unless the person**
19 **first applies to the department for reconsideration of the determination, as required by the**
20 **department by rule.**

21 **(2)(a) Upon receiving a request for independent review under subsection (1) of this sec-**
22 **tion, the department shall enter into an agreement with the person making the request un-**
23 **der which a panel of independent reviewers may modify a determination made under ORS**
24 **196.818 (1)(a) or (b).**

25 **(b) Notwithstanding paragraph (a) of this subsection, the department is not required to**

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 enter into an agreement with the person making the request if the person does not agree to
2 make the decision of the panel of independent reviewers final and binding.

3 (3)(a) Review under this section must be conducted by a panel of three individuals who
4 are well informed on matters relating to waters of this state. A reviewer:

5 (A) Shall disclose all prior knowledge of the land parcel that is the subject of the review
6 and any potential or actual conflicts of interest;

7 (B) Must have no interest in the land parcel that is the subject of the review;

8 (C) Must have five years of experience with wetland plant identification, hydric soil de-
9 terminations, wetland hydrology monitoring, wetland boundary mapping and related data
10 analysis; and

11 (D) Must have been a principal investigator for four wetland delineation reports submit-
12 ted under ORS 196.818 and approved by the department within the five years preceding the
13 date on which review is requested.

14 (b) As used in this subsection, “principal investigator” means an individual who has been
15 responsible for collecting more than 33 percent of the field data for a wetland delineation
16 report and for mapping at least 33 percent of the wetland boundary for a wetland delineation
17 report.

18 (4) The panel of independent reviewers shall be selected in the following manner:

19 (a) The Department of State Lands shall select one reviewer;

20 (b) The person requesting the review under subsection (1) of this section shall select one
21 reviewer; and

22 (c) The reviewers selected under paragraphs (a) and (b) of this subsection shall jointly
23 select one reviewer.

24 (5) A person must request a review under this section no more than 21 days after the
25 date on which the department reconsiders a determination made under ORS 196.818 (1)(a)
26 or (b).

27 (6) The panel of independent reviewers must be selected no more than 30 days after the
28 date on which the person requests a review. If the reviewers selected under subsection (4)(a)
29 and (b) of this subsection do not jointly select a third reviewer under subsection (4)(c) of this
30 section on or before the 30th day, the department shall request the United States Army
31 Corps of Engineers to provide a reviewer who has experience reviewing wetland delineations.
32 A reviewer provided under this subsection is exempt from subsection (3)(a)(D) of this section.

33 (7) The panel of independent reviewers must reach a decision no more than 60 days after
34 the date on which the third reviewer is selected or provided. As part of the decision reached
35 under this subsection, the reviewers must determine the cost of the review, including the
36 reviewers’ expenses and fees. The parties to the agreement shall each pay half of the cost.

37 **SECTION 3.** Section 2 of this 2012 Act applies to determinations made by the Department
38 of State Lands under ORS 196.818 (1)(a) and (b) on or after the effective date of this 2012 Act.

39 **SECTION 4.** Sections 1 and 2 of this 2012 Act are repealed on January 2, 2022.

40
41 **AMENDMENTS TO CURRENT PROVISIONS ALLOWING**
42 **SUBMISSION OF WETLAND DELINEATION REPORT**
43

44 **SECTION 5.** ORS 196.818 is amended to read:

45 196.818. (1) A person or governmental body *[must pay to the Department of State Lands a*

1 *nonrefundable fee of \$350 when submitting*] **requesting a permit under ORS 196.810 shall submit**
2 **a wetland delineation report to the Department of State Lands for a determination of:**

3 (a) Whether waters of this state are present on a specific land parcel;

4 (b) Where the boundaries of waters of this state are located on a land parcel; or

5 (c) Whether the waters of this state or a proposed activity in the waters of this state is subject
6 to permit requirements.

7 **(2) A person or governmental body must pay a nonrefundable fee of \$350 to the depart-**
8 **ment when submitting a wetland delineation report under subsection (1) of this section.**

9 [(2)] **(3) The department shall:**

10 (a) Review the wetland delineation report submitted under subsection (1) of this section [*within*
11 *120 days after submission of the wetland delineation report to the department.*] **no more than 120**
12 **days after the date on which the person or governmental body submits the report; and**

13 (b) **Give priority to the review of a wetland delineation report that is submitted with or**
14 **in advance of an application for a permit required under ORS 196.810 if the permit would**
15 **authorize activities on the land parcel that is the subject of the wetland delineation report.**

16 **(4) All determinations made by the department under subsection (1)(a) and (b) of this**
17 **section:**

18 (a) **Must be made by a person with expertise in wetlands hydrology, soil and vegetation;**
19 **and**

20 (b) **Expire 10 years after the date on which the determination is made.**

21 **(5) Five years after a determination has been made under subsection (1)(a) or (b) of this**
22 **section, if the department determined that wetlands are present on a specific land parcel,**
23 **or if the department determined where the boundaries of a wetland are located on a land**
24 **parcel, the person or governmental body shall examine the land parcel for changes to**
25 **wetlands hydrology, soil and vegetation. If the person or governmental body determines that**
26 **the land parcel has sufficiently changed to require a new determination, the person or gov-**
27 **ernmental body shall submit evidence of such change to the department. If the department**
28 **determines that the land parcel has sufficiently changed to require a new determination, the**
29 **person or governmental body shall submit a new wetland delineation report as described in**
30 **subsection (1)(a) or (b) of this section.**

31 [(3)] **(6) The fee described in subsection [(1)] (2) of this section is in addition to any permit ap-**
32 **plication fee required under ORS 196.815. A person or governmental body submitting a revised re-**
33 **port to replace a previously rejected report must pay an additional nonrefundable fee of \$100.**

34 **(7) Delineations made pursuant to this section, and determinations made under this sec-**
35 **tion, must comport with:**

36 (a) **The United States Army Corps of Engineers Wetlands Delineation Manual of 1987; and**

37 (b) **Any subsequent federal supplements to the manual or applicable guidance documents**
38 **issued by the United States Army Corps of Engineers, including guidance documents for the**
39 **area in which a delineation will take place, as adopted by rule of the Director of the De-**
40 **partment of State Lands. Such rules must comply with those federal supplements and guid-**
41 **ance documents.**

42 [(4)] **(8) The director [of the Department of State Lands] shall issue an order revising the fee**
43 **specified in subsection [(1)] (2) of this section on January 1 of each year, based on changes in the**
44 **Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published**
45 **by the Bureau of Labor Statistics of the United States Department of Labor. The director shall**

1 round the amount to the nearest dollar. The revised fee shall take effect January 1 and apply for
2 that calendar year.

3 [(5)] (9) Fees received under this section shall be credited to the Common School Fund for use
4 by the department in administration of ORS 196.600 to 196.905.

5 **SECTION 6. The amendments to ORS 196.818 by section 5 of this 2012 Act apply to the**
6 **review of wetland delineation reports submitted to the Department of State Lands on or af-**
7 **ter the effective date of this 2012 Act.**

8
9 **CONFORMING AMENDMENTS**

10
11 **SECTION 7.** ORS 196.805 is amended to read:

12 196.805. (1) The protection, conservation and best use of the water resources of this state are
13 matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in
14 this state, including not only water and materials for domestic, agricultural and industrial use but
15 also habitats and spawning areas for fish, avenues for transportation and sites for commerce and
16 public recreation, are vital to the economy and well-being of this state and its people. Unregulated
17 removal of material from the beds and banks of the waters of this state may create hazards to the
18 health, safety and welfare of the people of this state. Unregulated filling in the waters of this state
19 for any purpose, may result in interfering with or injuring public navigation, fishery and recre-
20 ational uses of the waters. In order to provide for the best possible use of the water resources of
21 this state, it is desirable to centralize authority in the Director of the Department of State Lands,
22 and implement control of the removal of material from the beds and banks or filling of the waters
23 of this state.

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

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

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

32 [(5) *The Department of State Lands shall give priority to the review of wetland delineation reports*
33 *submitted with or in advance of an application for fill or removal of material from the waters of this*
34 *state.*]

35
36 **UNIT CAPTIONS**

37
38 **SECTION 8. The unit captions used in this 2012 Act are provided only for the convenience**
39 **of the reader and do not become part of the statutory law of this state or express any leg-**
40 **islative intent in the enactment of this 2012 Act.**