

Enrolled
Senate Bill 1582

Sponsored by Senator MORSE, Representative OLSON (Pre-session filed.)

CHAPTER

AN ACT

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

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

**INDEPENDENT REVIEW OF WETLAND
DELINEATION DETERMINATIONS**

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

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

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

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

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

(2)(a) Upon receiving a request for independent review under subsection (1) of this section, the department shall enter into an agreement with the person making the request under which a panel of independent reviewers may modify a determination made under ORS 196.818 (1)(a) or (b).

(b) Notwithstanding paragraph (a) of this subsection, the department is not required to enter into an agreement with the person making the request if the person does not agree to make the decision of the panel of independent reviewers final and binding.

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

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

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

(C) Must have five years of experience with wetland plant identification, hydric soil determinations, wetland hydrology monitoring, wetland boundary mapping and related data analysis; and

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

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

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

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

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

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

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

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

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

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

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

AMENDMENTS TO CURRENT PROVISIONS ALLOWING SUBMISSION OF WETLAND DELINEATION REPORT

SECTION 5. ORS 196.818 is amended to read:

196.818. (1) A person or governmental body [*must pay to the Department of State Lands a nonrefundable fee of \$350 when submitting*] **requesting a permit under ORS 196.810 shall submit** a wetland delineation report to the Department of State Lands for a determination of:

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

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

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

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

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

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

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

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

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

(b) Expire five years after the date on which a final determination is made.

(5) Five years after the date on which a final determination has been made under subsection (1)(a) or (b) of this section, if the owner of the land parcel that is the subject of the determination is conducting activities that require a permit under ORS 196.810, the landowner shall conduct a review of the land parcel. If the baseline conditions leading to the final determination have sufficiently changed to require a new determination, then the landowner shall submit a new wetland delineation report under subsection (1) of this section. If the baseline conditions leading to the final determination have not sufficiently changed to require a new determination, then the final determination of the department, notwithstanding subsection (4)(b) of this section, may be extended by five years.

(6) The department may waive or suspend the requirements of this section for the purpose of issuing an emergency authorization under ORS 196.810.

[(3)] (7) The fee described in subsection [(1)] (2) of this section is in addition to any permit application fee required under ORS 196.815. A person or governmental body submitting a revised report to replace a previously rejected report must pay an additional nonrefundable fee of \$100.

(8) Delineations made pursuant to this section, and determinations made under this section, must comport with:

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

(b) Any subsequent federal supplements to the manual or applicable guidance documents issued by the United States Army Corps of Engineers, including guidance documents for the area in which a delineation will take place, as adopted by rule of the Director of the Department of State Lands. Such rules must comply with those federal supplements and guidance documents.

[(4)] (9) The director [*of the Department of State Lands*] shall issue an order revising the fee specified in subsection [(1)] (2) of this section on January 1 of each year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. The director shall round the amount to the nearest dollar. The revised fee shall take effect January 1 and apply for that calendar year.

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

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

CONFORMING AMENDMENTS

SECTION 7. ORS 196.805 is amended to read:

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

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

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

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

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

UNIT CAPTIONS

SECTION 8. The unit captions used in this 2012 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2012 Act.

Passed by Senate March 5, 2012

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 5, 2012

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

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Kate Brown, Secretary of State