

SB 1582-4
(LC 228)
2/14/12 (DLT/mbm/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 1582**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and line 3 and insert “196.805 and 196.818.”.

3 Delete lines 5 through 30 and delete pages 2 through 8 and insert:
4

5 **“INDEPENDENT REVIEW OF WETLAND**
6 **DELINEATION DETERMINATIONS**

7
8 **“SECTION 1. Section 2 of this 2012 Act is added to and made a part**
9 **of ORS 196.600 to 196.905.**

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

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

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

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

1 “(2)(a) Upon receiving a request for independent review under sub-
2 section (1) of this section, the department shall enter into an agree-
3 ment with the person making the request under which a panel of
4 independent reviewers may modify a determination made under ORS
5 196.818 (1)(a) or (b).

6 “(b) Notwithstanding paragraph (a) of this subsection, the depart-
7 ment is not required to enter into an agreement with the person
8 making the request if the person does not agree to make the decision
9 of the panel of independent reviewers final and binding.

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

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

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

17 “(C) Must have five years of experience with wetland plant iden-
18 tification, hydric soil determinations, wetland hydrology monitoring,
19 wetland boundary mapping and related data analysis; and

20 “(D) Must have been a principal investigator for four wetland de-
21 lineation reports submitted under ORS 196.818 and approved by the
22 department within the five years preceding the date on which review
23 is requested.

24 “(b) As used in this subsection, ‘principal investigator’ means an
25 individual who has been responsible for collecting more than 33 per-
26 cent of the field data for a wetland delineation report and for mapping
27 at least 33 percent of the wetland boundary for a wetland delineation
28 report.

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

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

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

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

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

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

18 “(7) The panel of independent reviewers must reach a decision no
19 more than 60 days after the date on which the third reviewer is se-
20 lected or provided. As part of the decision reached under this sub-
21 section, the reviewers must determine the cost of the review, including
22 the reviewers’ expenses and fees. The parties to the agreement shall
23 each pay half of the cost.

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

27 “SECTION 4. Sections 1 and 2 of this 2012 Act are repealed on Jan-
28 uary 2, 2022.

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30 “AMENDMENTS TO CURRENT PROVISIONS ALLOWING

1 **SUBMISSION OF WETLAND DELINEATION REPORT**

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3 **“SECTION 5.** ORS 196.818 is amended to read:

4 “196.818. (1) A person or governmental body [*must pay to the Department*
5 *of State Lands a nonrefundable fee of \$350 when submitting*] **requesting a**
6 **permit under ORS 196.810 shall submit** a wetland delineation report to the
7 Department of State Lands for a determination of:

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

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

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

13 **“(2) A person or governmental body must pay a nonrefundable fee**
14 **of \$350 to the department when submitting a wetland delineation re-**
15 **port under subsection (1) of this section.**

16 “[(2)] (3) The department shall:

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

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

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

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

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

1 **“(5) Five years after a determination has been made under sub-**
2 **section (1)(a) or (b) of this section, if the department determined that**
3 **wetlands are present on a specific land parcel, or if the department**
4 **determined where the boundaries of a wetland are located on a land**
5 **parcel, the person or governmental body shall examine the land parcel**
6 **for changes to wetlands hydrology, soil and vegetation. If the person**
7 **or governmental body determines that the land parcel has sufficiently**
8 **changed to require a new determination, the person or governmental**
9 **body shall submit evidence of such change to the department. If the**
10 **department determines that the land parcel has sufficiently changed**
11 **to require a new determination, the person or governmental body shall**
12 **submit a new wetland delineation report as described in subsection**
13 **(1)(a) or (b) of this section.**

14 **“[(3)] (6) The fee described in subsection [(1)] (2) of this section is in ad-**
15 **dition to any permit application fee required under ORS 196.815. A person**
16 **or governmental body submitting a revised report to replace a previously**
17 **rejected report must pay an additional nonrefundable fee of \$100.**

18 **“(7) Delineations made pursuant to this section, and determinations**
19 **made under this section, must comport with:**

20 **“(a) The United States Army Corps of Engineers Wetlands Deline-**
21 **ation Manual of 1987; and**

22 **“(b) Any subsequent federal supplements to the manual or applica-**
23 **ble guidance documents issued by the United States Army Corps of**
24 **Engineers, including guidance documents for the area in which a de-**
25 **lineation will take place, as adopted by rule of the Director of the**
26 **Department of State Lands. Such rules must comply with those federal**
27 **supplements and guidance documents.**

28 **“[(4)] (8) The director [of the Department of State Lands] shall issue an**
29 **order revising the fee specified in subsection [(1)] (2) of this section on**
30 **January 1 of each year, based on changes in the Portland-Salem, OR-WA**

1 Consumer Price Index for All Urban Consumers for All Items as published
2 by the Bureau of Labor Statistics of the United States Department of Labor.
3 The director shall round the amount to the nearest dollar. The revised fee
4 shall take effect January 1 and apply for that calendar year.

5 “[5] (9) Fees received under this section shall be credited to the Common
6 School Fund for use by the department in administration of ORS 196.600 to
7 196.905.

8 **“SECTION 6. The amendments to ORS 196.818 by section 5 of this**
9 **2012 Act apply to the review of wetland delineation reports submitted**
10 **to the Department of State Lands on or after the effective date of this**
11 **2012 Act.**

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“CONFORMING AMENDMENTS

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15 **“SECTION 7. ORS 196.805 is amended to read:**

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

1 “(2) The director shall take into consideration all beneficial uses of water
2 including streambank protection when administering fill and removal stat-
3 utes.

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

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

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

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“UNIT CAPTIONS

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

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