

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: HB 2202 - A6**Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office***Only Impacts on Original or Engrossed
Versions are Considered Official***Prepared by: Krista McDowell
Reviewed by: Linda Gilbert, Susie Jordan
Date: 6/18/2013**Measure Description:**

Prohibits conditional approval of mining permits for mining of tracts of land in Willamette Valley that are zoned for exclusive farm use and include five acres or more composed of Class I and Class II soils.

Government Unit(s) Affected:

Department of Geology and Mineral Industries (DOGAMI), Department of Land Conservation and Development

Summary of Expenditure Impact:

Summary of Expenditure Impact		
	2013-15 Biennium	2015-17 Biennium
General Fund	\$220,000	\$80,000
Lottery Funds		
Other Funds		
Federal Funds		
Total Funds	\$220,000	\$80,000
Positions	1	1
FTE	0.50	0.50

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis: The bill, as amended, prohibits conditional approval of mining permits for mining of tracts of land in Willamette Valley that are zoned for exclusive farm use and include five acres or more composed of Class I and Class II soils. A number of findings would be required to be demonstrated by an applicant for a permit for mining. Additionally, the Department of Geology and Mineral Industries (DOGAMI) would be required to make findings in regards to full recovery of the resource, site reclamation and bonding requirements. The amendment would also require the operator to demonstrate to DOGAMI that all reserves have been mined before completing reclamation.

Suggested rule re-writes for DOGAMI are estimated at a one-time expense of \$100,000 General Fund (GF) in the 2013-15 biennium. DOGAMI would also have to make initial determinations in the first year of implementation; conducting additional on-site inspections and aerial photos for every impacted site at an estimated one-time expense of \$80,000 GF in the 2013-15 biennium. Continued additional on-site inspections and aerial photos would cost approximately \$80,000 GF per biennium. This work would be completed by a permanent half-time (.50 FTE) Natural Resource Specialist 2 position; personal services as well as service and supplies estimates have been included in previously stated cost estimates.

The fiscal impact to the Department of Land Conservation and Development is estimated to be minimal. Calculations are based on an assumed effective date of January 1, 2014

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2202**

1 On page 1 of the printed A-engrossed bill, line 2, after “215.298” insert “,
2 517.750 and 517.862”.

3 Delete lines 4 through 28 and delete page 2 and insert:

4 **“SECTION 1.** ORS 215.298 is amended to read:

5 “215.298. (1) For purposes of ORS 215.213 (2) and 215.283 (2), a land use
6 permit is required for mining more than 1,000 cubic yards of material or ex-
7 cavation preparatory to mining of a surface area of more than one acre. A
8 county may set standards for a lower volume or smaller surface area than
9 that set forth in this subsection.

10 “(2) A permit for mining of aggregate shall be issued only for a site in-
11 cluded on an inventory in an acknowledged comprehensive plan.

12 **“(3) A permit for mining may not be issued under ORS 215.213 (2)
13 or 215.283 (2) unless the applicant demonstrates that:**

14 **“(a) The site meets the soil classification requirements set forth in
15 subsection (4) of this section;**

16 **“(b) The site contains the volume of material required by subsection
17 (4) of this section;**

18 **“(c) The applicant intends to make all reasonable efforts to mine
19 the entire volume of aggregate necessary for approval of the permit
20 as set forth in subsection (4) of this section; and**

21 **“(d) The applicant has the equipment and mechanical ability to
22 mine the volume necessary for receiving a permit as set forth in sub-**

1 section (4) of this section.

2 “(4) A permit for mining aggregate may not be issued under ORS
3 215.213 (2) or 215.283 (2) for a proposed site:

4 “(a) On which more than 35 percent of the proposed mining area
5 consists of soils classified on maps of the Natural Resources Conser-
6 vation Service of the United States Department of Agriculture that
7 were available on June 11, 2004, as Class I soils.

8 “(b) Not described in paragraph (a) of this subsection and on which
9 more than 35 percent of the proposed mining area consists of soils
10 classified on maps of the Natural Resources Conservation Service of
11 the United States Department of Agriculture that were available on
12 June 11, 2004, as Class I and II soils, or as unique soils, unless the
13 volume of quality aggregate available in the mining area exceeds:

14 “(A) Sixty acre-feet if the mining area is in Columbia County, Lane
15 County, Marion County, Multnomah County or Washington County;

16 “(B) Twenty-five acre-feet if the mining area is in Clackamas
17 County, Polk County or Yamhill County; or

18 “(C) Seventeen acre-feet if the mining area is in Benton County or
19 Linn County.

20 “(5) For purposes of reclamation under ORS 517.702 to 517.989, the
21 operator of a mining operation authorized by ORS 215.213 (2) or 215.283
22 (2) must reclaim the mining site for farm use, as defined in ORS
23 215.203, to the maximum extent practicable considering the depth of
24 the mine, the availability of fill and other necessary considerations as
25 determined by the State Department of Geology and Mineral Indus-
26 tries.

27 “(6) Before reclaiming an aggregate mining site authorized by ORS
28 215.213 (2) or 215.283 (2), the permittee or the operator shall demon-
29 strate to the department that the operator has fully developed, or will
30 fully develop, the permitted resource before completing reclamation.

1 **“(7) When a permittee or operator obtains a permit to mine aggregate under ORS 215.213 (2) or 215.283 (2) and the permittee or the operator does not fully develop the permitted resource, the department:**

2 **“(a) May not authorize a mine expansion; and**

3 **“(b) Shall revoke, terminate or refuse to renew an operating permit for the mining operation and may not adjust the bond of the operator under ORS 517.870 until the permittee or the operator fully develops the permitted resource.**

4 **“(8) For land zoned for exclusive farm use, a person is not required to obtain an exploration permit under ORS 517.705 or an operating permit under ORS 517.790 solely to remove from the land mine tailings that:**

5 **“(a) Do not involve exploration for or extraction of additional material;**

6 **“(b) Were severed from the land before July 1, 1972; and**

7 **“(c) Must be removed from the land to reclaim the land for agricultural use.**

8 **“[(3)] (9) For purposes of ORS 215.213 (2) and 215.283 (2) and this section[,]:**

9 **“(a) ‘Fully develop the permitted resource’ means that before reclamation under ORS 517.702 to 517.989 the permittee or the operator has taken all necessary and reasonable steps to mine the volume of aggregate or minerals allowed in accordance with the permit issued under ORS 215.213 (2) or 215.283 (2).**

10 **“(b) ‘Mining’ includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits except those constructed for use as access roads. ‘Mining’ does not in-**

1 clude excavations of sand, gravel, clay, rock or other similar materials con-
2 ducted by a landowner or tenant on the landowner or tenant's property for
3 the primary purpose of reconstruction or maintenance of access roads and
4 excavation or grading operations conducted in the process of farming or
5 cemetery operations, on-site road construction or other on-site construction
6 or nonsurface impacts of underground mines.

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

8 "517.750. As used in ORS 517.702 to 517.989, unless the context requires
9 otherwise:

10 "(1) 'Board' means the governing board of the State Department of
11 Geology and Mineral Industries.

12 "(2) 'Completion' means termination of surface mining activities including
13 reclamation of the surface-mined land in accordance with the approved rec-
14 lamation plan and operating permit.

15 "(3) 'Department' means the State Department of Geology and Mineral
16 Industries.

17 "(4) 'Exploration' means all activities conducted on or beneath the surface
18 of the earth for the purpose of determining presence, location, extent, grade
19 or economic viability of a deposit. 'Exploration' does not include prospecting
20 or chemical processing of minerals.

21 "(5) 'Explorer' means, notwithstanding the provisions of ORS 517.810 (2),
22 any individual, public or private corporation, political subdivision, agency,
23 board or department of this state, any municipality, partnership, association,
24 firm, trust, estate or any other legal entity whatsoever that is engaged in
25 exploration.

26 "(6) 'Landowner' means:

27 "(a) The person possessing fee title to the natural mineral deposit being
28 surface mined or explored; and

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

1 “(7) ‘Minerals’ includes soil, coal, clay, stone, sand, gravel, metallic ore
2 and any other solid material or substance excavated for commercial, indus-
3 trial or construction use from natural deposits situated within or upon lands
4 in this state.

5 “(8) ‘Operator’ means any individual, public or private corporation, poli-
6 tical subdivision, agency, board or department of this state, any municipality,
7 partnership, association, firm, trust, estate or any other legal entity what-
8 soever that is engaged in surface mining operations.

9 “(9) ‘Overburden’ means the soil, rock and similar materials that lie above
10 natural deposits of minerals.

11 “(10) ‘Person’ means any person, any federal agency or any public body,
12 as defined in ORS 174.109.

13 “(11) ‘Processing’ includes, but is not limited to, crushing, washing, mill-
14 ing and screening as well as the batching and blending of mineral aggregate
15 into asphalt and portland cement concrete located within the operating per-
16 mit area.

17 “(12) ‘Reclamation’ means the employment in a surface mining operation
18 or exploration of procedures reasonably designed to:

19 “(a) Minimize, as much as practicable, the adverse effects of the surface
20 mining operation or exploration on land, air and water resources; and

21 “(b) Provide for the rehabilitation of surface resources adversely affected
22 by the surface mining operations or exploration through the rehabilitation
23 of plant cover, soil stability and water resources and through other measures
24 that contribute to the subsequent beneficial use of the explored, mined or
25 reclaimed lands.

26 “(13) ‘Reclamation plan’ means a written proposal, submitted to the de-
27 partment as required by ORS 517.702 to 517.989 and subsequently approved
28 by the department as provided in ORS 517.702 to 517.989, for the reclamation
29 of the land area adversely affected by a surface mining operation or explo-
30 ration and including, but not limited to the following information:

1 “(a) Proposed measures to be undertaken by the operator in protecting the
2 natural resources of adjacent lands.

3 “(b) Proposed measures for the rehabilitation of the explored or surface-
4 mined lands [*and*], the procedures to be applied **and, if applicable, meas-
5 ures for meeting the requirements of ORS 215.298.**

6 “(c) The procedures to be applied in the surface mining operation or ex-
7 ploration to control the discharge of contaminants and the disposal of sur-
8 face mining refuse.

9 “(d) The procedures to be applied in the surface mining operation or ex-
10 ploration in the rehabilitation of affected stream channels and stream banks
11 to a condition minimizing erosion, sedimentation and other factors of pol-
12 lution.

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

15 “(f) A proposed time schedule for the completion of reclamation oper-
16 ations.

17 “(g) Requirements of the exploration permit.

18 “(14) ‘Surface impacts of underground mining’ means all waste materials
19 produced by underground mining and placed upon the surface including, but
20 not limited to, waste dumps, mill tailings, washing plant fines and all surface
21 subsidence related to underground mining.

22 “(15)(a) ‘Surface mining’ includes:

23 “(A) All or any part of the process of mining minerals by the removal of
24 overburden and the extraction of natural mineral deposits thereby exposed
25 by any method by which more than 5,000 cubic yards of minerals are ex-
26 tracted or by which at least one acre of land is affected within a period of
27 12 consecutive calendar months, including open-pit mining operations, auger
28 mining operations, processing, surface impacts of underground mining, pro-
29 duction of surface mining refuse and the construction of adjacent or off-site
30 borrow pits (except those constructed for use as access roads).

1 “(B) Removal or filling, or both, within the beds or banks of any waters
2 of this state that is the subject of a memorandum of agreement between the
3 Department of State Lands and the State Department of Geology and Mineral
4 Industries in which the State Department of Geology and Mineral Industries
5 is assigned sole responsibility for permitting as described in ORS 517.797.

6 “(b) ‘Surface mining’ does not include:

7 “(A) Excavations of sand, gravel, clay, rock or other similar materials
8 conducted by the landowner or tenant for the primary purpose of con-
9 struction, reconstruction or maintenance of access roads on the same parcel
10 or on an adjacent parcel that is under the same ownership as the parcel that
11 is being excavated;

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

13 “(C) Nonsurface effects of underground mining;

14 “(D) Removal of rock, gravel, sand, silt or other similar substances re-
15 moved from the beds or banks of any waters of this state pursuant to a
16 permit issued under ORS 196.800 to 196.900; or

17 “(E) Excavations or reprocessing of aggregate material, or grading oper-
18 ations, within the highway right of way reasonably necessary for the con-
19 struction, reconstruction or maintenance of a highway as defined in ORS
20 801.305.

21 “(16) ‘Surface mining refuse’ means all waste materials, soil, rock, min-
22 eral, liquid, vegetation and other materials resulting from or displaced by
23 surface mining operations within the operating permit area, including all
24 waste materials deposited in or upon lands within the operating permit area.

25 “(17) ‘Underground mining’ means all human-made excavations below the
26 surface of the ground through shafts or adits for the purpose of exploring for,
27 developing or producing valuable minerals.

28 **“SECTION 3.** ORS 517.862 is amended to read:

29 “517.862. (1) Except as provided in subsection (2) of this section, the State
30 Department of Geology and Mineral Industries may not revoke, terminate

1 or refuse to renew an operating permit if marketable reserves exist at the
2 permitted site and if there is a significant potential for continued mining
3 opportunities given reasonably foreseeable economic conditions.

4 “(2) The department may revoke, terminate or refuse to renew an operat-
5 ing permit if the operator:

6 “(a) Requests termination, provided that all reclamation requirements in
7 the operating permit and reclamation plan have been satisfied;

8 “(b) [*Fails to*] **Does not** pay a fee as required by ORS 517.800 within 60
9 days of the due date;

10 “(c) [*Fails to*] **Does not** provide or maintain a bond or security as re-
11 quired by ORS 517.810;

12 “(d) [*Fails to*] **Does not** comply with an order issued under ORS 517.860;
13 [*or*]

14 “(e) [*Fails to*] **Does not** comply with a suspension order issued under ORS
15 517.880; **or**

16 “(f) **Does not make all reasonable efforts to fully develop the per-**
17 **mitted resource as required by ORS 215.298.**

18 “(3) If an operating permit is revoked, terminated or not renewed, the
19 operator may not perform any actions at the permitted site, except that the
20 operator may, after receiving written approval from the department:

21 “(a) Perform actions at the permitted site that are necessary to comply
22 with reclamation requirements in the operating permit or reclamation plan,
23 including but not limited to removal of mining-related stockpiles;

24 “(b) Excavate materials at the permitted site that are necessary for rec-
25 lamation; and

26 “(c) Remove any excavated materials from buffers, setbacks or other areas
27 not approved for disturbance and restore the areas to the approximate pre-
28 mining contours with materials approved by the department.

29 “(4) The department, in lieu of or in addition to revoking, terminating or
30 refusing to renew an operating permit for the reasons specified in subsection

1 (2) of this section, may recover against the bond or security filed pursuant
2 to ORS 517.810 and reclaim the area affected by surface mining.”.

3

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means
Vote:	4 - 3 - 0
Yeas:	Cameron, Frederick, Unger, Clem
Nays:	Davis, Holvey, Thatcher
Exc.:	0
Prepared By:	Lynn Beaton, Administrator
Meeting Dates:	2/26, 2/28, 3/28, 4/18

WHAT THE MEASURE DOES: Prohibits issuing permit for aggregate mining in Willamette Valley on any tract of land that includes five acres or more of combination of Class I and Class II soils unless applicant demonstrates that the use cannot be accommodated reasonably on land that is: identified in comprehensive plan as exception or nonresource land; irrevocably committed to nonresource use; within urban growth boundary; or is tract of land that does not include five acres or more of combination of Class I and Class II soils. Prohibits Act from applying to any land owned by applicant and operator of mining operation on January 1, 2013, and from affecting authority to continue or alter mining operation, or restore or expand mining area, on tract of land on which mining operation was permitted on effective date of Act.

ISSUES DISCUSSED:

- Concern over loss of top quality farm land
- Question of impact of aggregate mining on Class I and Class II soils
- Short-term work group effort to resolve issues

EFFECT OF COMMITTEE AMENDMENT: Prohibits Act from applying to any land owned by applicant and operator of mining operation on January 1, 2013, and from affecting authority to continue or alter mining operation, or restore or expand mining area, on tract of land on which mining operation was permitted on effective date of Act.

BACKGROUND: Class I and Class II soils are the best farm lands in the Willamette Valley and typically yield high value crops such as vegetables, berries, filberts, nursery stock, and orchard fruits. Rock aggregate is essential for construction of highways, buildings, bridges and railroads. Quarrying aggregate from the Willamette Valley is less labor intensive and expensive than quarrying the material from the surrounding hills. Nearly half of Willamette Valley aggregate comes from sand and gravel pits on the floodplain of the Willamette River and its tributaries.

Statewide Planning Goal 5 requires local governments to inventory and protect, among other natural resources, mineral and aggregate resources. In 1996, gravel companies, farmers and the state came to a compromise allowing mining on Willamette Valley agricultural land. That compromise was codified in a Land Conservation and Development Commission rule (OAR 660-023). Specifically, local governments are required to determine whether an aggregate resource site is “significant” before adding that site to its inventory. “Significant” is defined by certain quality and quantity determinations set by the Oregon Department of Transportation for sites in the Willamette Valley. Further restrictions are in place if more than 35 percent of the proposed mining area consists of Class I or Class II soils.

House Bill 2202 A prohibits mining on any five or more acre tract of Class I and Class II soil in the Willamette Valley unless the applicant can show the proposed mining could not be accommodated on other sites. House Bill 2202 A does not affect a mining operation owned by the applicant and mine operator on January 1, 2013, or a mining operation that was permitted on the effective date of the Act.

4/25/2013 11:52:00 AM

This summary has not been adopted or officially endorsed by action of the committee.