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# MEMORANDUM

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**To:** *Capital Construction Subcommittee*

**From:** *Susie Jordan, Legislative Fiscal Office*  
(503) 986-1835

**Date:** July 2, 2013

**Subject:** *HB 2202 Relating to Mining*  
Work Session Recommendations

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HB 2202 establishes conditions for mining on high value farmland. The measure becomes effective January 1, 2014.

The measure, the original staff measure summary, preliminary Joint Committee on Ways and Means staff measure summary and fiscal impact statement are available on the Oregon Legislative Information System (OLIS).

The measure previously had public hearings and work sessions in the House Committee on Land Use in February, March, and April 2013.

The legislation will result in rulemaking for the Department of Land Conservation and Development (DLCD). Total expense is estimated at \$35,000 General Fund in the 2013-15 biennium for DLCD staff time, attorney general time billed to this department, and supplies and services costs such as public hearings, printing, and public notices. The Department of Geology and Mineral Industries (DOGAMI) anticipate a minimal fiscal impact that can be absorbed by existing resources of the agency for rule amendments and administering provisions of the measure.

## Amendment

The - **A16** Amendment prohibits approval of aggregate mining permits on high-value farmland composed predominantly of Class I and Class II soils in the Willamette Valley; unless there is a significant volume of high-quality aggregate and other minerals available. The Land Conservation and Development Commission (LCDC) is directed to establish by rule 'significant aggregate resource' standards for the removal of aggregate and other minerals present in a mining site. The bill also specifies additional requirements that the Department of Geology and Minerals Industries (DOGAMI) will require for an operating permit or transfer of a mining permit on or after the effective date of this Act, in the Willamette Valley on Class I or Class II soils.

**Motion #2: Move the –A16 amendment to HB 2202-A to be combined with a conceptual amendment to add an appropriation of**

**\$35,000 General Fund to the Department of Land Conservation and Development for expenses in carrying out provisions of the measure.**

**Measure as Modified**

The measure, as amended, is recommended to be moved to the full Committee on Joint Ways and Means.

**Motion #3: Move HB 2202-A to the full committee with a “do pass” recommendation, as amended.**

**Assignment of Carriers**

Full: \_\_\_\_\_  
2nd Chamber: \_\_\_\_\_

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

1 On page 1 of the printed A-engrossed bill, line 2, delete “amending ORS  
2 215.298” and insert “and declaring an emergency”.

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

4 **“SECTION 1. (1) The Legislative Assembly finds that:**

5 **“(a) The extraction of aggregate, other minerals and other subsur-**  
6 **face resources is an essential contribution to Oregon’s economic well-**  
7 **being.**

8 **“(b) Oregon has an economic and social interest in locating and**  
9 **providing affordable aggregate, other minerals and other subsurface**  
10 **resources in close proximity to the end user of the materials.**

11 **“(c) Oregon has an interest in balancing competing land use de-**  
12 **mands for lands identified as farmlands or forestlands in a manner**  
13 **that protects the economic viability of mining and other resource uses.**

14 **“(d) To balance competing resource uses, Oregon has an interest in**  
15 **providing significant volumes of high-quality aggregate, other min-**  
16 **erals and other subsurface resources that are critical to building**  
17 **Oregon’s communities and infrastructure while preserving farmland**  
18 **for agricultural production.**

19 **“(2) The Legislative Assembly declares that:**

20 **“(a) High-value farmland composed predominantly of Class I and**  
21 **Class II soils in the Willamette Valley should not be available for**  
22 **mining unless there is a significant volume of high-quality aggregate**

1 and other minerals and other subsurface resources available for ex-  
2 traction.

3 “(b) State agencies and local governments should balance compet-  
4 ing resource uses and not restrict the removal of the full depth of  
5 aggregate unless public health and safety concerns necessitate the re-  
6 striction of mining activity.

7 “SECTION 2. Section 3 of this 2013 Act is added to and made a part  
8 of ORS 517.750 to 517.901.

9 “SECTION 3. (1) As used in this section, ‘significant aggregate re-  
10 source’ means the average minimum depth of aggregate, determined  
11 by rule of the Land Conservation and Development Commission, that  
12 is required for a local government to find that the aggregate resource  
13 is significant pursuant to a statewide land use planning goal that  
14 protects natural resources and conserves scenic, historic and open  
15 space resources.

16 “(2) When the State Department of Geology and Mineral Industries  
17 issues an operating permit under ORS 517.790 for mining aggregate on  
18 high-value farm land composed predominantly of Class I and Class II  
19 soils in the Willamette Valley, the department shall require:

20 “(a) An operator or owner to excavate substantially all of the sig-  
21 nificant aggregate resource within the operating permit boundary, not  
22 including any buffer, setback and sloping areas:

23 “(A) To the extent that the removal of the significant aggregate  
24 resource can be done in a manner that is consistent with operating  
25 permit conditions imposed by the department; and

26 “(B) Subject to limitations imposed by other federal, state or local  
27 regulatory requirements.

28 “(b) An applicant to demonstrate to the satisfaction of the depart-  
29 ment that the operator or owner has the mechanical ability to comply  
30 with paragraph (a) of this subsection.

1       “(c) Performance of the requirements of paragraph (a) of this sub-  
2 section before approving final reclamation and closure of the mining  
3 operation, unless:

4       “(A) The operator or owner defaults as described in ORS 517.860; or

5       “(B) Performance is not required due to changed conditions or new  
6 information that justify a permit modification under ORS 517.831.

7       “(3) The acceptance by the department of a plan to mine in com-  
8 pliance with subsection (2)(a) of this section does not establish a depth  
9 standard for purposes of land use permits or authorizations.

10       “(4) The time limitations imposed on the department under ORS  
11 517.830 do not apply to an application for an operating permit, or the  
12 transfer of a permit under ORS 517.833, that is subject to this section.

13       “(5) This section does not require the operator or owner to provide  
14 bond or security to excavate to the permitted depth.

15       “SECTION 4. Section 3 of this 2013 Act applies to an application  
16 that is submitted on or after the operative date specified in section 5  
17 of this 2013 Act for an exploration permit under ORS 517.705, an oper-  
18 ating permit under ORS 517.790 or a necessary land use permit or au-  
19 thorization.

20       “SECTION 5. Sections 1, 3 and 4 of this 2013 Act become operative  
21 January 1, 2014.

22       “SECTION 6. This 2013 Act being necessary for the immediate  
23 preservation of the public peace, health and safety, an emergency is  
24 declared to exist, and this 2013 Act takes effect July 1, 2013.”.

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**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: HB 2202 - A16**

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: 7/3/2013

**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:**

	2013-15 Biennium	2015-17 Biennium
General Fund	\$75,116	
Lottery Funds		
Other Funds		
Federal Funds		
<b>Total Funds</b>	<b>\$75,116</b>	<b>\$0</b>

**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, would prohibit approval of aggregate mining permits on high-value farmland composed predominantly of Class I and Class II soils in the Willamette Valley; unless there is a significant volume of high-quality aggregate and other minerals available. The Land Conservation and Development Commission (LCDC) is directed to establish by rule 'significant aggregate resource' standards for the removal of aggregate and other minerals present in a mining site. The bill also specifies additional requirements that the Department of Geology and Minerals (DOGAMI) will require for an operating permit or transfer of a mining permit on or after the effective date of this Act, in the Willamette Valley on Class I or Class II soils.

The measure requires the LCDC and DOGAMI to amend rules. The one-time estimated costs to the rules revisions are estimated at \$35,116 General Fund and \$40,000 General Fund respectively for each affected department; for staff time, attorney general time as well as supplies and services costs associated with public hearings and printing notices.