

Senate Bill 730

Sponsored by Senator FERRIOLI; Senators BAERTSCHIGER JR, BOQUIST, CLOSE, GEORGE, GIROD, HANSELL, KNOPP, KRUSE, OLSEN, THOMSEN, WHITSETT, WINTERS, Representative JOHNSON

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 **as introduced**.

Defines "vernal pool." Excludes vernal pools from definition of "waters of this state."
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to vernal pools; creating new provisions; amending ORS 196.800; and declaring an emer-
3 gency.

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

5 **SECTION 1.** ORS 196.800 is amended to read:

6 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

7 (1) "Channel relocation" means a change in location of a channel in which a new channel is dug
8 and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of
9 material is removed in constructing the new channel or if it would require more than 50 cubic yards
10 of material to completely fill the old channel.

11 (2) "Estuary" means:

12 (a) For waters other than the Columbia River, the body of water from the ocean to the head of
13 tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh
14 water from the land, including all associated estuarine waters, tidelands, tidal marshes and sub-
15 merged lands; and

16 (b) For the Columbia River, all waters from the mouth of the river up to the western edge of
17 Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged
18 lands.

19 (3) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards
20 or more of material at one location in any waters of this state.

21 (4) "General authorization" means an authorization granted under ORS 196.850 for a category
22 of activities involving removal or fill, or both, without a permit.

23 (5) "General permit" means a permit for removal activities or fill activities that are substantially
24 similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

25 (6) "Intermittent stream" means any stream which flows during a portion of every year and
26 which provides spawning, rearing or food-producing areas for food and game fish.

27 (7) "Material" means rock, gravel, sand, silt and other inorganic substances removed from wa-
28 ters of this state and any materials, organic or inorganic, used to fill waters of this state.

29 (8) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in
30 the following order:

31 (a) Avoiding the effect altogether by not taking a certain action or parts of an action;

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 (b) Minimizing the effect by limiting the degree or magnitude of the action and its implementa-
2 tion;

3 (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

4 (d) Reducing or eliminating the effect over time by preservation and maintenance operations
5 during the life of the action by monitoring and taking appropriate corrective measures; and

6 (e) Compensating for the effect by creating, restoring, enhancing or preserving substitute func-
7 tions and values for the waters of this state.

8 (9) "Person" means a person, a public body as defined in ORS 174.109, the federal government,
9 when operating in any capacity other than navigational servitude, or any other legal entity.

10 (10) "Practicable" means capable of being accomplished after taking into consideration the cost,
11 existing technology and logistics with respect to the overall project purpose.

12 (11) "Public use" means a publicly owned project or a privately owned project that is available
13 for use by the public.

14 (12) "Removal" means:

15 (a) The taking of more than 50 cubic yards or the equivalent weight in tons of material in any
16 waters of this state in any calendar year; or

17 (b) The movement by artificial means of an equivalent amount of material on or within the bed
18 of such waters, including channel relocation.

19 **(13) "Vernal pool" means a seasonal wetland found on shallow soils over an impermeable**
20 **hardpan layer or bedrock.**

21 [(13)] (14) "Water resources" includes not only water itself but also aquatic life and habitats
22 therein and all other natural resources in and under the waters of this state.

23 [(14)] (15)(a) "Waters of this state" means all natural waterways, tidal and nontidal bays, in-
24 termittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean
25 that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this
26 state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activ-
27 ities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the
28 Federal Water Pollution Control Act, as amended.

29 **(b) "Waters of this state" does not mean vernal pools.**

30 [(15)] (16) "Wetland conservation plan" means a written plan providing for wetland management
31 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
32 and private uses and protection of wetlands, waters and related adjacent uplands and which has
33 specific implementing measures and which apply to designated geographic areas of the State of
34 Oregon.

35 [(16)] (17) "Wetlands" means those areas that are inundated or saturated by surface or ground
36 water at a frequency and duration sufficient to support, and that under normal circumstances do
37 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

38 **SECTION 2.** ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section 8,
39 chapter 253, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, section 3, chapter 849,
40 Oregon Laws 2007, and section 19, chapter 343, Oregon Laws 2009, is amended to read:

41 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

42 (1) "Channel relocation" means a change in location of a channel in which a new channel is dug
43 and the flow is diverted from the old channel into the new channel.

44 (2) "Estuary" means:

45 (a) For waters other than the Columbia River, the body of water from the ocean to the head of

1 tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh
 2 water from the land, including all associated estuarine waters, tidelands, tidal marshes and sub-
 3 merged lands; and

4 (b) For the Columbia River, all waters from the mouth of the river up to the western edge of
 5 Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged
 6 lands.

7 (3) "Fill" means the deposit by artificial means of material at one location in any waters of this
 8 state.

9 (4) "General authorization" means an authorization granted under ORS 196.850 for a category
 10 of activities involving removal or fill, or both, without a permit.

11 (5) "General permit" means a permit for removal activities or fill activities that are substantially
 12 similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

13 (6) "Intermittent stream" means any stream which flows during a portion of every year and
 14 which provides spawning, rearing or food-producing areas for food and game fish.

15 (7) "Material" means rock, gravel, sand, silt and other inorganic substances removed from wa-
 16 ters of this state and any materials, organic or inorganic, used to fill waters of this state.

17 (8) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in
 18 the following order:

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20 (b) Minimizing the effect by limiting the degree or magnitude of the action and its implementa-
 21 tion;

22 (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

23 (d) Reducing or eliminating the effect over time by preservation and maintenance operations
 24 during the life of the action by monitoring and taking appropriate corrective measures; and

25 (e) Compensating for the effect by creating, restoring, enhancing or preserving substitute func-
 26 tions and values for the waters of this state.

27 (9) "Person" means a person, a public body, as defined in ORS 174.109, the federal government,
 28 when operating in any capacity other than navigational servitude, or any other legal entity.

29 (10) "Practicable" means capable of being accomplished after taking into consideration the cost,
 30 existing technology and logistics with respect to the overall project purpose.

31 (11) "Public use" means a publicly owned project or a privately owned project that is available
 32 for use by the public.

33 (12) "Removal" means:

34 (a) The taking of material in any waters of this state; or

35 (b) The movement by artificial means of material within the bed of such waters, including
 36 channel relocation.

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 38 **hardpan layer or bedrock.**

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 40 therein and all other natural resources in and under the waters of this state.

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 42 termittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean
 43 that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this
 44 state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activ-
 45 ities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the

1 Federal Water Pollution Control Act, as amended.

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3 [(15)] **(16)** “Wetland conservation plan” means a written plan providing for wetland management
4 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
5 and private uses and protection of wetlands, waters and related adjacent uplands and which has
6 specific implementing measures and which apply to designated geographic areas of the State of
7 Oregon.

8 [(16)] **(17)** “Wetlands” means those areas that are inundated or saturated by surface or ground
9 water at a frequency and duration sufficient to support, and that under normal circumstances do
10 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

11 **SECTION 3. The amendments to ORS 196.800 by sections 1 and 2 of this 2013 Act apply**
12 **only to:**

13 **(1) Applications for permits filed with the Director of the Department of State Lands**
14 **under ORS 196.815, or permits renewed, on or after the effective date of this 2013 Act.**

15 **(2) Memoranda of agreements entered into by the Department of State Lands and the**
16 **State Department of Geology and Mineral Industries under ORS 517.797 on or after the ef-**
17 **fective date of this 2013 Act.**

18 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
20 **on its passage.**

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