



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

Kate Brown
Governor

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

**Testimony of
Mary Abrams, Director
Department of State Lands
on
Senate Bill 912
Senate Committee on Judiciary
March 30, 2015**

Thank you for the opportunity to testify in support of SB 912, which clarifies the distinction between "historically filled lands" and "new lands"; re-affirms the State Land Board's authority to sell, lease or trade the newly defined "historically filled lands" (identical to their authority over "new lands"); and establishes a process for the State Land Board to identify and declare the state's interest in historically filled lands and to provide notice of declaration.

The Department of State Lands (DSL) formed the Filled Lands Advisory Group (FLAG) as a result of the 2013 Legislature's request to work with stakeholders to develop a fair, transparent and reasonable process to resolve state ownership interests in historically filled submerged and submersible lands. The State of Oregon claims an interest in historically filled lands because they were formed on state-owned submerged and submersible lands that were not conveyed to another party.

The FLAG was comprised of the following members:

- Chuck Bennett, Confederation of Oregon School Administrators
- Jim Green, Oregon School Boards Association
- Senator Floyd Prozanski
- Senator Jeff Kruse
- Maddy Sheehan, Sheehan & Sheehan LLC
- Dave Hunnicutt, Oregonians in Action
- Chris Hathaway, Lower Columbia Estuary Partnership
- Jay McCaulley, Marine Environmental & Development
- Paula Miranda, Port of St. Helens
- Martha Pagel, Schwabe, Williamson & Wyatt

The FLAG made a number of recommendations in order to:

- Provide a transparent and fair process for an applicant requesting to purchase or clear title to historically filled lands;

- Ensure the public trust, cultural resources and other stakeholder interests are assessed and taken into account before the sale or transfer of historically filled lands;
- Reduce administration, negotiation and litigation costs by offering options for clearing title provided the sale or transfer does not unreasonably interfere with recreation, fish and wildlife, and navigation. Reducing these costs is a benefit to the applicant, the agency and the Common School Fund, which DSL oversees.

DSL has submitted a copy of the full FLAG report which includes its recommendations in detail. Many of the FLAG recommendations are administrative in nature. DSL plans to submit these recommendations to the State Land Board in June and ask the Board to initiate rulemaking to address the recommendations. Members of the FLAG will be invited to serve on a rulemaking advisory committee. SB 912 addresses the statutory changes needed for the recommendations as well as the recommendation of a FLAG subgroup on identification and notification issues.

The FLAG subgroup met several times to discuss a statewide identification and notification process for historically filled lands. After much deliberation, the subgroup recommended:

“pursuing the statewide identification and notification of historically filled lands. The FLAG Subgroup notes any statutory identification and notification requirements must be contingent on funding being appropriated to DSL to complete this task, and with a time frame long enough to provide DSL every opportunity to successfully complete the task.”

As a placeholder, it was agreed that the deadline for DSL to notify affected parties of a potential claim is December 31, 2025. The subgroup believes 10 years should be sufficient to allow DSL to successfully complete the work (if the necessary resources are provided), or present evidence to the legislature outlining why additional time is needed. This deadline only pertains to DSL’s requirement to give official notice. There is no deadline on resolving claims once the landowners have been notified.

Senate Bill 912 carries forward both the recommendations of the FLAG subgroup, and the additional FLAG recommendations that require amendments to statute (such as defining “historically filled lands”).

After working successfully with the FLAG to reach a set of consensus recommendations, the Department of State Lands is pleased to support the substantive statutory changes proposed in SB 912. However, DSL notes SB 912 funding is outside the Governor’s Recommended Budget and therefore DSL must remain neutral on the appropriation request.

Thank you, and I would be happy to answer any questions you might have.