

HB 2436-2  
(LC 2678)  
4/5/19 (MAM/ps)

Requested by HOUSE COMMITTEE ON AGRICULTURE AND LAND USE (at the request of Representative Brian Clem)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2436**

1 In line 2 of the printed bill, delete the period and insert “; creating new  
2 provisions; amending ORS 196.643; and declaring an emergency.”.

3 Delete lines 4 through 13 and insert:

4 **“SECTION 1. (1) As used in this section:**

5 **“(a)(A) ‘Development activities’ includes dredging, filling, grading,**  
6 **paving, excavation and other activities related to making man-made**  
7 **changes to improved or unimproved real estate.**

8 **“(B) ‘Development activities’ does not include farming, ranching**  
9 **or forestry activities, or activities that would otherwise be considered**  
10 **development activities under subparagraph (A) of this paragraph if the**  
11 **activities are associated with:**

12 **“(i) Farming, ranching or forestry activities; or**

13 **“(ii) Activities by a district organized under ORS chapter 545, 547,**  
14 **552, 553 or 554, including activities that occur outside the district’s**  
15 **boundaries but that are related to the district’s operations.**

16 **“(b) ‘Mining and activities associated with mining’ includes any**  
17 **activity involving extraction of materials from the ground that is**  
18 **subject to regulation by the State Department of Geology and Mineral**  
19 **Industries, the processing or manufacturing of the materials, mining**  
20 **reclamation activities and voluntary restoration activities associated**  
21 **with a mining operation.**

1       **“(2) The Department of State Lands shall develop a proposal, in-**  
2 **cluding recommendations for legislation to be introduced during the**  
3 **2020 regular session of the Legislative Assembly, for partial assump-**  
4 **tion by the department of the authority to administer permits for the**  
5 **discharge of dredge or fill materials under section 404 of the Federal**  
6 **Water Pollution Control Act (P.L. 92-500, as amended).**

7       **“(3) In developing the proposal, the Department of State Lands shall**  
8 **collaborate with the Department of Justice, the Department of Envi-**  
9 **ronmental Quality, the Department of Land Conservation and Devel-**  
10 **opment, the State Department of Fish and Wildlife, the State**  
11 **Department of Agriculture, the State Forestry Department, the State**  
12 **Department of Geology and Mineral Industries, the National Marine**  
13 **Fisheries Service, the United States Fish and Wildlife Service, the**  
14 **United States Environmental Protection Agency and representatives**  
15 **of any other state or federal agency as the Department of State Lands**  
16 **determines is necessary for developing the proposal in a manner that**  
17 **will satisfy federal and state legal requirements.**

18       **“(4) The proposal shall include provisions necessary for the De-**  
19 **partment of State Lands to assume authority to administer permits**  
20 **for the discharge of dredge or fill materials under section 404 of the**  
21 **Federal Water Pollution Control Act (P.L. 92-500, as amended) only**  
22 **for:**

23       **“(a) Development activities within an acknowledged urban growth**  
24 **boundary;**

25       **“(b) Mining and activities associated with mining; and**

26       **“(c) The creation and operation of mitigation banks.**

27       **“(5)(a) The proposal shall include:**

28       **“(A) Recommendations, in both narrative form and in the form of**  
29 **requested draft statutory language, for the enactment of statutes, or**  
30 **for the amendment or repeal of ORS 196.600 to 196.905, section 2,**

1 chapter 45, Oregon Laws 1989, sections 1 to 14, chapter 516, Oregon  
2 Laws 2001, or any other statutes or session laws, as necessary to  
3 demonstrate that the statutory laws and regulations of the State of  
4 Oregon provide adequate legal authority for the state to receive a  
5 grant of authority from the United States Environmental Protection  
6 Agency to implement the program for partial assumption; and

7 “(B) Any other provisions that the department determines are nec-  
8 essary to provide the Legislative Assembly the opportunity, during the  
9 2020 regular session of the Legislative Assembly, to take all actions  
10 necessary to allow for the department to formally submit to the United  
11 States Environmental Protection Agency a complete application for  
12 partial assumption, such that the United States Environmental Pro-  
13 tection Agency may have the opportunity to review and consider ap-  
14 proval of the application before the convening of the 2021 regular  
15 session of the Legislative Assembly.

16 “(b) The recommendations required under paragraph (a) of this  
17 subsection must include recommendations on the amendments to  
18 statutes and session laws necessary to ensure that, if any of the  
19 amendments to ORS 196.800, 196.810, 196.825, 196.850, 196.895, 196.905,  
20 196.990, 390.835, 421.628 and 459.047 by sections 1 to 10, chapter 516,  
21 Oregon Laws 2001, or the repeal of section 2, chapter 45, Oregon Laws  
22 1989, by section 13, chapter 516, Oregon Laws 2001, become operative,  
23 the operation will not result in permitting or regulatory requirements  
24 pursuant to ORS 196.600 to 196.905 on and after the operative date that  
25 exceed the permitting or regulatory requirements pursuant to ORS  
26 196.600 to 196.905 (2018 Edition) for activities for which the Department  
27 of State Lands is not directed to propose assumption of authority to  
28 administer permits as described in subsection (4) of this section.

29 **“SECTION 2. Section 1 of this 2019 Act is repealed on January 2,**  
30 **2021.**

1       **“SECTION 3.** ORS 196.643 is amended to read:

2       “196.643. (1) A person who provides off-site compensatory mitigation in  
3 order to comply with a condition imposed on a permit in accordance with  
4 ORS 196.825 (5), an authorization issued in accordance with ORS 196.800 to  
5 196.905 or a resolution of a violation of ORS 196.800 to 196.905 may make a  
6 payment for credits to **an approved mitigation bank with available**  
7 **credits or to** the Oregon Removal-Fill Mitigation Fund. [*when:*]

8       “[(a) Credits from an approved mitigation bank are not available; or]

9       “[(b)(A) Credits from an approved mitigation bank were not available in a  
10 region at the time the first payment for credits was made to the Oregon  
11 Removal-Fill Mitigation Fund; and]

12       “[(B) The expenses associated with a Department of State Lands mitigation  
13 bank project in the region in accordance with this section and ORS 196.650  
14 have not been fully recovered by the Department of State Lands.]

15       “(2) Any payments for off-site compensatory mitigation made to the  
16 Oregon Removal-Fill Mitigation Fund under subsection (1) of this section  
17 must be sufficient to cover the costs and expenses of land acquisition, project  
18 design and engineering, construction, planting, monitoring, maintenance,  
19 long-term management and protection activities, administration and other  
20 costs and expenses related to the off-site compensatory mitigation, which  
21 may vary depending on the region of this state where the off-site  
22 compensatory mitigation is conducted, and shall be calculated by the De-  
23 partment of State Lands as follows:

24       “(a) If the off-site compensatory mitigation project and project costs and  
25 expenses are identified at the time of payment to the Oregon Removal-Fill  
26 Mitigation Fund, the department shall calculate the payment based on the  
27 actual costs and expenses of the off-site compensatory mitigation.

28       “(b) If the off-site compensatory mitigation project and project costs and  
29 expenses are not identified at the time of payment to the Oregon Removal-  
30 Fill Mitigation Fund, the department shall calculate the payment based on

1 the estimate of costs and expenses for off-site compensatory mitigation, as  
2 set forth in rules adopted by the department, for the region of this state  
3 where the department, to the greatest extent practicable, determines the  
4 off-site compensatory mitigation may be conducted.

5 “(3) No later than December 1 of each year, the Director of the Depart-  
6 ment of State Lands shall submit to the Legislative Assembly and the State  
7 Land Board a detailed report that specifies:

8 “(a) The costs and expenses related to off-site compensatory mitigation,  
9 including variations and trends in costs and expenses over time.

10 “(b) Efforts undertaken by the department to reduce the costs and ex-  
11 penses specified in paragraph (a) of this subsection.

12 “(c) Efforts undertaken by the department to improve efficiencies of the  
13 department related to off-site compensatory mitigation.

14 “(d) The effectiveness of the July 2010 ‘Oregon Rapid Wetland Assessment  
15 Protocol’ of the department in protecting the functions and values of  
16 wetlands through off-site compensatory mitigation.

17 **“SECTION 4. In addition to and not in lieu of any other appropri-  
18 ation, there is appropriated to the Department of State Lands, for the  
19 biennium beginning July 1, 2019, out of the General Fund, the amount  
20 of \$\_\_\_\_\_, which may be expended for the purposes of carrying out  
21 section 1 of this 2019 Act.**

22 **“SECTION 5. This 2019 Act being necessary for the immediate  
23 preservation of the public peace, health and safety, an emergency is  
24 declared to exist, and this 2019 Act takes effect on its passage.”.**

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