

HB 3309-4  
(LC 3481)  
4/8/19 (RLM/ps)

Requested by HOUSE COMMITTEE ON NATURAL RESOURCES (at the request of Representatives David Gomberg and David Brock Smith)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3309**

1 In line 2 of the printed bill, before the period insert “; amending ORS  
2 401.950, 455.446, 455.447 and 517.750”.

3 Delete lines 4 through 8 and insert:

4 **“SECTION 1.** ORS 517.750 is amended to read:

5 “517.750. As used in ORS 517.702 to 517.989, unless the context requires  
6 otherwise:

7 “(1) ‘Board’ means the governing board of the State Department of  
8 Geology and Mineral Industries.

9 “(2) ‘Completion’ means termination of surface mining activities including  
10 reclamation of the surface-mined land in accordance with the approved rec-  
11 lamation plan and operating permit.

12 “(3) ‘Cooperating agency’ means the State Department of Agriculture, the  
13 State Department of Fish and Wildlife or any agency that has statutory re-  
14 sponsibility related to a mining operation but that does not issue a permit  
15 for the mining operation.

16 “(4) ‘Department’ means the State Department of Geology and Mineral  
17 Industries.

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

1 “(6) ‘Explorer’ means[, *notwithstanding the provisions of ORS 517.810 (2),*  
2 *any individual, public or private corporation, political subdivision, agency,*  
3 *board or department of this state, any municipality, partnership, association,*  
4 *firm, trust, estate or any other legal entity whatsoever]* **a person** that is en-  
5 gaged in exploration.

6 “(7) ‘Landowner’ means:

7 “(a) The person possessing fee title to the natural mineral deposit being  
8 surface mined or explored; and

9 “(b) The owner of an equitable interest in land that is subject to a deed  
10 of trust.

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

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

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

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

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

27 “(13) ‘Reclamation’ means the employment in a surface mining operation  
28 or exploration of procedures reasonably designed to:

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

1       “(b) Provide for the rehabilitation of surface resources adversely affected  
2 by the surface mining operations or exploration through the rehabilitation  
3 of plant cover, soil stability and water resources and through other measures  
4 that contribute to the subsequent beneficial use of the explored, mined or  
5 reclaimed lands.

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

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

13       “(b) Proposed measures for the rehabilitation of the explored or surface-  
14 mined lands and the procedures to be applied.

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

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

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

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

26       “(g) Requirements of the exploration permit.

27       “(15) ‘Surface impacts of underground mining’ means all waste materials  
28 produced by underground mining and placed upon the surface including, but  
29 not limited to, waste dumps, mill tailings, washing plant fines and all surface  
30 subsidence related to underground mining.

1 “(16)(a) ‘Surface mining’ includes:

2 “(A) All or any part of the process of mining minerals by the removal of  
3 overburden and the extraction of natural mineral deposits thereby exposed  
4 by any method by which more than 5,000 cubic yards of minerals are ex-  
5 tracted or by which at least one acre of land is affected within a period of  
6 12 consecutive calendar months, including open-pit mining operations, auger  
7 mining operations, processing, surface impacts of underground mining, pro-  
8 duction of surface mining refuse and the construction of adjacent or off-site  
9 borrow pits, [(except those constructed for use as access roads)].

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

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

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

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

22 “(C) Nonsurface effects of underground mining;

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

26 “(E) Excavations or reprocessing of aggregate material, or grading oper-  
27 ations, within the highway right of way reasonably necessary for the con-  
28 struction, reconstruction or maintenance of a highway as defined in ORS  
29 801.305;

30 “(F) Excavation or movement of materials on site at a landfill, as defined

1 in ORS 459.005, for the primary purpose of construction, reconstruction or  
2 maintenance of access roads or for landfill operations, including but not  
3 limited to landfill cell construction and daily, interim and final cover oper-  
4 ations, if the excavation or movement of materials is covered by a permit  
5 issued by the Department of Environmental Quality under ORS 459.205 to  
6 459.385; [or]

7 “(G) Excavation or grading operations necessary for construction and  
8 maintenance of utilities or drainage facilities, where the excavated material  
9 is used on site and is not sold into the commercial market as aggregate  
10 material[.]; or

11 “(H) Excavation or grading operations that:

12 “(i) Are associated with on-site construction activities; and

13 “(ii) Do not result in any excavated materials being sold into the  
14 commercial market.

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

19 “(18) ‘Underground mining’ means all human-made excavations below the  
20 surface of the ground through shafts or adits for the purpose of exploring for,  
21 developing or producing valuable minerals.

22 “**SECTION 2.** ORS 455.446 is amended to read:

23 “455.446. [(1)(a) *New essential facilities described in ORS 455.447 (1)(a)(A),*  
24 *(B) and (G) and new special occupancy structures described in ORS 455.447*  
25 *(1)(e)(B), (C) and (E) may not be constructed in the tsunami inundation zone*  
26 *established under paragraph (c) of this subsection. The provisions of this par-*  
27 *agraph apply to buildings with a capacity greater than 50 individuals for every*  
28 *public, private or parochial school through secondary level and child care*  
29 *centers.]*

30 “[b] (1) The State Department of Geology and Mineral Industries shall

1 establish the parameters of the area of expected tsunami inundation based  
2 on scientific evidence that may include geologic field data and tsunami  
3 modeling.

4 “[(c)] (2) The governing board of the State Department of Geology and  
5 Mineral Industries, by rule, shall determine the tsunami inundation zone  
6 based on the parameters established by the department. *[The board shall  
7 adopt the zone as determined by the department under paragraph (b) of this  
8 subsection except as modified by the board under paragraph (d) of this sub-  
9 section.]*

10 “[(d) *The board may grant exceptions to restrictions in the tsunami  
11 inundation zone established under paragraph (c) of this subsection after public  
12 hearing and a determination by the board that the applicant has demonstrated  
13 that the safety of building occupants will be ensured to the maximum reason-  
14 able extent:]*

15 “[(A) *By addressing the relative risks within the zone.]*

16 “[(B) *By balancing competing interests and other considerations.]*

17 “[(C) *By considering mitigative construction strategies.]*

18 “[(D) *By considering mitigative terrain modification.]*

19 “[(e) *The provisions of paragraph (a) of this subsection do not apply:]*

20 “[(A) *To fire or police stations where there is a need for strategic location;  
21 and]*

22 “[(B) *To public schools if there is a need for the school to be within the  
23 boundaries of a school district and fulfilling that need cannot otherwise be  
24 accomplished.]*

25 “[(f) *All materials supporting an application for an exception to the  
26 tsunami inundation zone are public records under ORS 192.005 to 192.170 and  
27 must be retained in the library of the department for periods of time deter-  
28 mined by its governing board.]*

29 “[(g) *The applicant for an exception to the tsunami inundation zone estab-  
30 lished under paragraph (c) of this subsection shall pay any costs for depart-*

1 *ment review of the application and the costs, if any, of the approval process.]*

2 *“(2) The definitions in ORS 455.447 apply to this section.]*

3 *“(3) The provisions of this section do not apply to water-dependent and*  
4 *water-related facilities, including but not limited to docks, wharves, piers and*  
5 *marinas.]*

6 *“(4) Decisions made under this section are not land use decisions under*  
7 *ORS 197.015 (10).]*

8 **“SECTION 3.** ORS 455.447 is amended to read:

9 “455.447. (1) As used in this section, unless the context requires otherwise:

10 “(a) ‘Essential facility’ means:

11 “(A) Hospitals and other medical facilities having surgery and emergency  
12 treatment areas;

13 “(B) Fire and police stations;

14 “(C) Tanks or other structures containing, housing or supporting water  
15 or fire-suppression materials or equipment required for the protection of es-  
16 sential or hazardous facilities or special occupancy structures;

17 “(D) Emergency vehicle shelters and garages;

18 “(E) Structures and equipment in emergency-preparedness centers;

19 “(F) Standby power generating equipment for essential facilities; and

20 “(G) Structures and equipment in government communication centers and  
21 other facilities required for emergency response.

22 “(b) ‘Hazardous facility’ means structures housing, supporting or con-  
23 taining sufficient quantities of toxic or explosive substances to be of danger  
24 to the safety of the public if released.

25 “(c) ‘Major structure’ means a building over six stories in height with an  
26 aggregate floor area of 60,000 square feet or more, every building over 10  
27 stories in height and parking structures as determined by Department of  
28 Consumer and Business Services rule.

29 “(d) ‘Seismic hazard’ means a geologic condition that is a potential danger  
30 to life and property that includes but is not limited to earthquake, landslide,

1 liquefaction, tsunami inundation, fault displacement, and subsidence.

2 “(e) ‘Special occupancy structure’ means:

3 “(A) Covered structures whose primary occupancy is public assembly with  
4 a capacity greater than 300 persons;

5 “(B) Buildings with a capacity greater than 250 individuals for every  
6 public, private or parochial school through secondary level or child care  
7 centers;

8 “(C) Buildings for colleges or adult education schools with a capacity  
9 greater than 500 persons;

10 “(D) Medical facilities with 50 or more resident, incapacitated patients  
11 not included in subparagraphs (A) to (C) of this paragraph;

12 “(E) Jails and detention facilities; and

13 “(F) All structures and occupancies with a capacity greater than 5,000  
14 persons.

15 “(2) The Department of Consumer and Business Services shall consult  
16 with the Seismic Safety Policy Advisory Commission and the State Depart-  
17 ment of Geology and Mineral Industries prior to adopting rules. Thereafter,  
18 the Department of Consumer and Business Services may adopt rules as set  
19 forth in ORS 183.325 to 183.410 to amend the state building code to:

20 “(a) Require new building sites for essential facilities, hazardous facili-  
21 ties, major structures and special occupancy structures to be evaluated on  
22 a site specific basis for vulnerability to seismic geologic hazards.

23 “(b) Require a program for the installation of strong motions  
24 accelerographs in or near selected major buildings.

25 “(c) Provide for the review of geologic and engineering reports for seismic  
26 design of new buildings of large size, high occupancy or critical use.

27 “(d) Provide for filing of noninterpretive seismic data from site evaluation  
28 in a manner accessible to the public.

29 “(3) For the purpose of defraying the cost of applying the regulations in  
30 subsection (2) of this section, there is hereby imposed a surcharge in the



1 amount of one percent of the total fees collected under the structural and  
2 mechanical specialty codes for essential facilities, hazardous facilities, major  
3 structures and special occupancy structures, which fees [*shall be*] **are** re-  
4 tained by the jurisdiction enforcing the particular specialty code as provided  
5 in ORS 455.150 or enforcing a building inspection program under ORS  
6 455.148.

7 “(4) Developers of new essential facilities, hazardous facilities, [*and*] ma-  
8 jor structures [*described in subsection (1)(a)(E), (b) and (c) of this section and*  
9 *new*] **and** special occupancy structures [*described in subsection (1)(e)(A), (D)*  
10 *and (F) of this section*] that are located in an identified tsunami inundation  
11 zone, **as described in ORS 455.446 (2)**, shall consult with the State De-  
12 partment of Geology and Mineral Industries for assistance in determining  
13 the impact of possible tsunamis on the proposed development and for assist-  
14 ance in preparing methods to mitigate risk at the site of a potential tsunami.  
15 Consultation [*shall*] **must** take place prior to submittal of design plans to  
16 the building official for final approval.

17 **“SECTION 4.** ORS 401.950 is amended to read:

18 “401.950. (1) As used in this section:

19 “(a) ‘Transient lodging facility’ means a hotel, motel, inn, condominium,  
20 any other dwelling unit or a public or private park that is made available  
21 for transient occupancy or vacation occupancy as those terms are defined in  
22 ORS 90.100.

23 “(b) ‘Tsunami inundation zone’ means an area of expected tsunami  
24 inundation, based on scientific evidence that may include geologic field data  
25 and tsunami modeling, determined by the governing board of the State De-  
26 partment of Geology and Mineral Industries, by rule, as required by ORS  
27 455.446 (1)[*(b)*] and [*(c)*] **(2)**.

28 “(2) The Office of Emergency Management, in consultation and cooper-  
29 ation with the State Department of Geology and Mineral Industries, shall:

30 “(a) Develop and adopt by rule tsunami warning information and evacu-

1 ation plans for distribution to transient lodging facilities located in a  
2 tsunami inundation zone; and

3 “(b) Facilitate and encourage broad distribution of the tsunami warning  
4 information and evacuation plans to transient lodging facilities and other  
5 locations within tsunami inundation zones frequented by visitors to the area.

6 “(3) The office is not required to carry out the duties assigned under  
7 subsection (2) of this section if sufficient moneys are not available under  
8 ORS 401.955.”

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