Enrolled
House Bill 2436

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Agriculture and Natural Resources)

CHAPTER .....

AN ACT

Relating to removal-fill laws; creating new provisions; amending ORS 196.643; and declaring an emergency.

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

SECTION 1. (1) As used in this section:

(a)(A) "Development activities" includes dredging, filling, grading, paving, excavation and other activities related to making man-made changes to improved or unimproved real estate.

(B) "Development activities" does not include farming, ranching or forestry activities, or activities that would otherwise be considered development activities under subparagraph (A) of this paragraph if the activities are associated with:

(i) Farming, ranching or forestry activities; or

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

(b) "Mining and activities associated with mining" includes any activity involving extraction of materials from the ground that is subject to regulation by the State Department of Geology and Mineral Industries, the processing or manufacturing of the materials, mining reclamation activities and voluntary restoration activities associated with a mining operation.

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

(3) In developing the proposal, the Department of State Lands shall collaborate with the Department of Justice, the Department of Environmental Quality, the Department of Land Conservation and Development, the State Department of Fish and Wildlife, the State Department of Agriculture, the State Forestry Department, the State Department of Geology and Mineral Industries, the National Marine Fisheries Service, the United States Fish and Wildlife Service, the United States Environmental Protection Agency and representatives of any other state or federal agency as the Department of State Lands determines is necessary for developing the proposal in a manner that will satisfy federal and state legal requirements.

ED_005978A_00061168-00001 FL CWA 404 Assumption FOIA_Interim Release 8

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

(a) Development activities within an acknowledged urban growth boundary;

(b) Mining and activities associated with mining; and

(c) The creation and operation of mitigation banks.

(5)(a) The proposal shall include:

(A) Recommendations, in both narrative form and in the form of requested draft statutory language, for the enactment of statutes, or for the amendment or repeal of ORS 196.600 to 196.905, section 2, chapter 45, Oregon Laws 1989, sections 1 to 14, chapter 516, Oregon Laws 2001, or any other statutes or session laws, as necessary to demonstrate that the statutory laws and regulations of the State of Oregon provide adequate legal authority for the state to receive a grant of authority from the United States Environmental Protection Agency to implement the program for partial assumption; and

(B) Any other provisions that the department determines are necessary to provide the Legislative Assembly the opportunity, during the 2020 regular session of the Legislative Assembly, to take all actions necessary to allow for the department to formally submit to the United States Environmental Protection Agency a complete application for partial assumption, such that the United States Environmental Protection Agency may have the opportunity to review and consider approval of the application before the convening of the 2021 regular session of the Legislative Assembly.

(b) The recommendations required under paragraph (a) of this subsection must include recommendations on the amendments to statutes and session laws necessary to ensure that, if any of the amendments to ORS 196.800, 196.810, 196.825, 196.850, 196.895, 196.905, 196.990, 390.835, 421.628 and 459.047 by sections 1 to 10, chapter 516, Oregon Laws 2001, or the repeal of section 2, chapter 45, Oregon Laws 1989, by section 13, chapter 516, Oregon Laws 2001, become operative, the operation will not result in permitting or regulatory requirements pursuant to ORS 196.600 to 196.905 on and after the operative date that exceed the permitting or regulatory requirements pursuant to ORS 196.600 to 196.905, as in effect on the effective date of this 2019 Act, for activities for which the Department of State Lands is not directed to propose assumption of authority to administer permits as described in subsection (4) of this section.

SECTION 2. Section 1 of this 2019 Act is repealed on January 2, 2021.

SECTION 3. ORS 196.643 is amended to read:

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

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

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

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

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

ED_005978A_00061168-00002 FL CWA 404 Assumption FOIA_Interim Release 8

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

(b) If the off-site compensatory mitigation project and project costs and expenses are not identified at the time of payment to the Oregon Removal-Fill Mitigation Fund, the department shall calculate the payment based on the estimate of costs and expenses for off-site compensatory mitigation, as set forth in rules adopted by the department, for the region of this state where the department, to the greatest extent practicable, determines the off-site compensatory mitigation may be conducted.

(3) No later than December 1 of each year, the Director of the Department of State Lands shall submit to the Legislative Assembly and the State Land Board a detailed report that specifies:

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

(b) Efforts undertaken by the department to reduce the costs and expenses specified in paragraph (a) of this subsection.

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

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

SECTION 4. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (1), chapter _____, Oregon Laws 2019 (Enrolled House Bill 5035), for the biennium beginning July 1, 2019, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds, federal funds and funds described in section 2, chapter _____, Oregon Laws 2019 (Enrolled House Bill 5035), collected or received by the Department of State Lands, for Common School Fund programs, is increased by $355,776.

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

ED_005978A_00061168-00003 FL CWA 404 Assumption FOIA_Interim Release 8

Passed by House June 30, 2019

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 30, 2019

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

.....
Bev Clarno, Secretary of State

ED_005978A_00061168-00004 FL CWA 404 Assumption FOIA_Interim Release 8