

HB 2436 A STAFF MEASURE SUMMARY
House Committee On Agriculture and Land Use

Action Date: 04/09/19

Action: Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

Vote: 6-0-1-0

Yeas: 6 - Clem, Helm, McLain, Post, Smith DB, Williams

Exc: 1 - Boshart Davis

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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Meeting Dates: 3/19, 4/9

WHAT THE MEASURE DOES:

Directs the Oregon Department of State Lands (DSL) to develop a proposal, including recommendations for legislation to be introduced during the 2020 legislative session, for DSL partial assumption of the authority to administer Federal Water Pollution Control Act section 404 permits. Requires DSL collaborate with state and federal agencies to ensure the proposal satisfies state and federal legal requirements. Limits the proposal to allow DSL assumption authority for development activities within an acknowledged urban growth boundary, mining and associated activities, and mitigation banks. Defines "development activities." Requires that the proposal include narrative and draft statutory language recommendations for the enactment of new statutes, or for the amendment or repeal of existing state removal-fill laws and related session laws to provide adequate legal authority for the state to receive a federal grant of authority to implement the partial assumption program. Requires that the proposal include recommendations to ensure that if specified laws become operative, the result is not removal-fill permitting or regulatory requirements that exceed 2018 requirements for activities not included in partial assumption. Requires that the proposal also include any other recommended provisions DSL determines are necessary to provide the Legislative Assembly the opportunity during the 2020 legislative session, to take all actions necessary for DSL to submit a complete partial assumption application to the US Environmental Protection Agency (EPA), such that the EPA has the opportunity to review and consider approval of the application before the 2021 legislative session. Appropriates moneys from the General Fund to DSL for the purposes of carrying out these requirements. Eliminates certain restrictions on the purchase of credits from the Oregon Removal-Fill Mitigation Fund, and specifies that credits may be purchased when mitigation bank credits are also available in the same region. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- 2018 Interim Wetland Regulation Work Group
- Current dual permit system and overlapping US Army Corps of Engineers and DSL jurisdictions
- Timing considerations for assumption
- Staffing capacity for ensuring Endangered Species Act and Federal Historic Preservation Act compliance
- Partial assumption definition
- Farming, ranching, or forestry activities include associated roads, buildings, and infrastructure
- Intent to allow for existing removal-fill exemptions to remain intact

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

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Section 404 of the Federal Water Pollution Control Act, commonly known as the Clean Water Act, establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. The US Army Corps of Engineers administers the federal 404 permit program, and the US Environmental Protection Agency (EPA) enforces the program. The Clean Water Act contains a provision enabling states to "assume" administration of the 404 program, provided that the state has a waterways and wetlands regulatory program equivalent to the federal program.

The State of Oregon has had a regulatory program for removal and fill activities within waters of the state since 1967. It is statutorily established as Oregon's removal-fill law (ORS 196.600 to 196.905) and is administered by the Department of State Lands (DSL). The Oregon Department of Justice has determined that the state and federal programs are sufficiently equivalent for the purposes of assumption, though there are some significant differences in exceptions to and administration of the programs, and further analysis is needed to ensure statutory and session laws are in compliance with federal standards. Following EPA approval of a state application, additional legislative approval would be needed for state assumption of the 404 program to take effect.

House Bill 2436 A would direct DSL to develop a proposal, including recommendations for legislation to be introduced during the 2020 legislative session, for DSL partial assumption of the authority to administer Federal Water Pollution Control Act section 404 permits.