

**A-Engrossed**  
**House Bill 2436**

Ordered by the House April 16  
Including House Amendments dated April 16

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

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Directs Department of State Lands to *[conduct study on potential changes to laws, or implementation of law, regulating removal or fill activities. Requires department to submit report regarding study to interim committees of Legislative Assembly related to environment and natural resources no later than September 15, 2021.] collaborate with certain entities to develop proposal, including recommended legislation for introduction in 2020 regular session, for department to assume partial authority to administer federal wetland dredge and fill permits.* Sunsets January 2, *[2022] 2021. Appropriates moneys to department for proposal purposes.*

**Allows payment for off-site compensatory mitigation to be made to Oregon Removal-Fill Mitigation Fund even if mitigation bank credits are available.**

**Declares emergency, effective on passage.**

**A BILL FOR AN ACT**

1  
2 Relating to removal-fill laws; creating new provisions; amending ORS 196.643; and declaring an  
3 emergency.

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

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

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

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

11 **(i) Farming, ranching or forestry activities; or**

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

15 **(b) "Mining and activities associated with mining" includes any activity involving ex-**  
16 **traction of materials from the ground that is subject to regulation by the State Department**  
17 **of Geology and Mineral Industries, the processing or manufacturing of the materials, mining**  
18 **reclamation activities and voluntary restoration activities associated with a mining opera-**  
19 **tion.**

20 **(2) The Department of State Lands shall develop a proposal, including recommendations**  
21 **for legislation to be introduced during the 2020 regular session of the Legislative Assembly,**  
22 **for partial assumption by the department of the authority to administer permits for the**  
23 **discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 Act (P.L. 92-500, as amended).

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

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

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

14 (b) Mining and activities associated with mining; and

15 (c) The creation and operation of mitigation banks.

16 (5)(a) The proposal shall include:

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

24 (B) Any other provisions that the department determines are necessary to provide the  
25 Legislative Assembly the opportunity, during the 2020 regular session of the Legislative As-  
26 sembly, to take all actions necessary to allow for the department to formally submit to the  
27 United States Environmental Protection Agency a complete application for partial assump-  
28 tion, such that the United States Environmental Protection Agency may have the opportu-  
29 nity to review and consider approval of the application before the convening of the 2021  
30 regular session of the Legislative Assembly.

31 (b) The recommendations required under paragraph (a) of this subsection must include  
32 recommendations on the amendments to statutes and session laws necessary to ensure that,  
33 if any of the amendments to ORS 196.800, 196.810, 196.825, 196.850, 196.895, 196.905, 196.990,  
34 390.835, 421.628 and 459.047 by sections 1 to 10, chapter 516, Oregon Laws 2001, or the repeal  
35 of section 2, chapter 45, Oregon Laws 1989, by section 13, chapter 516, Oregon Laws 2001,  
36 become operative, the operation will not result in permitting or regulatory requirements  
37 pursuant to ORS 196.600 to 196.905 on and after the operative date that exceed the permitting  
38 or regulatory requirements pursuant to ORS 196.600 to 196.905 (2018 Edition) for activities  
39 for which the Department of State Lands is not directed to propose assumption of authority  
40 to administer permits as described in subsection (4) of this section.

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

42 **SECTION 3.** ORS 196.643 is amended to read:

43 196.643. (1) A person who provides off-site compensatory mitigation in order to comply with a  
44 condition imposed on a permit in accordance with ORS 196.825 (5), an authorization issued in ac-  
45 cordance with ORS 196.800 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905 may

1 make a payment for credits to **an approved mitigation bank with available credits or to the**  
2 **Oregon Removal-Fill Mitigation Fund.** [*when:*]

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

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

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

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

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

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

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

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

29 (b) Efforts undertaken by the department to reduce the costs and expenses specified in para-  
30 graph (a) of this subsection.

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

33 (d) The effectiveness of the July 2010 "Oregon Rapid Wetland Assessment Protocol" of the de-  
34 partment in protecting the functions and values of wetlands through off-site compensatory miti-  
35 gation.

36 **SECTION 4. In addition to and not in lieu of any other appropriation, there is appropri-**  
37 **ated to the Department of State Lands, for the biennium beginning July 1, 2019, out of the**  
38 **General Fund, the amount of \$\_\_\_\_\_, which may be expended for the purposes of carrying**  
39 **out section 1 of this 2019 Act.**

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