



Oregon

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**TESTIMONY OF
MARY ABRAMS
DIRECTOR
DEPARTMENT OF STATE LANDS
On Senate Bill 479
Before the Senate and House Judiciary Committees
June 12, 2013**

Good afternoon Chair Prozanski, Chair Barker and members of the House and Senate Judiciary Committees. I am Mary Abrams, Director of the Department of State Lands. Thank you for the opportunity to testify today on the proposed interim workgroup for Senate Bill 479. Senate Bill 479 proposes to divest the State of Oregon from its ownership interest in lands created by filling state-owned submerged or submersible lands 50 or more years ago. The department believes adopting the bill as written would not be in the best interest of the state but does believe the underlying issue is important to resolve and hopes that an interim workgroup can help in that regard.

Under the Equal Footing Doctrine, the State of Oregon was granted ownership of submerged and submersible lands on tidally influenced and navigable waterways at statehood. Since the time of statehood, some of these lands have been filled – often as disposal sites for the U.S. Army Corps of Engineers or various port authorities as they dredged waterways for navigation and commerce purposes.

In the mid 1900s, the State Land Board recognized that unregulated filling of waterways had a negative environmental impact and that the state ownership of the newly created lands sometimes caused confusion for adjacent upland land owners. In 1963 the state legislature addressed the need to regulate the filling of its waters by passing the New Lands Act (ORS 274.905 to ORS 274.940). This legislation not only gave the State Land Board authority to sell, lease, or trade state-owned filled lands, but established a procedure for the Department of State Lands to follow when establishing the value of selling such lands.

In the 2009 legislative session HB 2573 was adopted which further clarified the mechanism for establishing the value of these lands and provided for their sale, with State Land Board approval, to adjacent landowners. The Department has since been implementing this mechanism in resolving historical filled land disputes. Any revenue derived from these Waters or the derived new lands are

considered “statutory” revenues. When statutory revenues exceed statutory expenditures by the agency, those net revenues accrue to the Common School Fund, from which annual distributions are made to the State’s K-12 public schools.

While there currently is not a comprehensive map and full appraisals on all these historically filled lands, their estimated fair market value may be in the millions of dollars. However the mechanism for establishing the value of these lands provided by HB 2573 in 2009 makes the ultimate value to that the state would realize from these lands uncertain. Regardless, given how much is potentially at stake with these lands for the State of Oregon, the department believes it would not be prudent to resolve these lands as proposed in SB 479 without a thorough and deliberative public process. The intent of the proposed interim workgroup would be to work with the representatives of the various interested parties to develop a recommendation to address these ownership issues.

The department would like to propose the following process for the work group. The workgroup members would represent a balance of the interests affected by the issue of historically filled lands which would include representatives from:

- The upland landowner community and/or their counsel (including representatives from the ports)
- The public education beneficiaries
- Public trust uses, i.e. fisheries and recreation, these are the uses not already extinguished by the fill or not already represented by other workgroup members
- Legislators
- Department staff and its counsel

The workgroup would meet monthly for about 5 months starting in September 2013. Their objective would be to advise the department on a report including recommendations that would be jointly presented to the State Land Board and the 2014 Legislature. The workgroup would be supported by a professional facilitator to allow full participation of the department staff

Thank you for your time and I will be happy to answer any questions you might have.