

House Bill 2246

Sponsored by Representative BOSHART DAVIS (Presession filed.)

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 **as introduced**.

Prohibits Director of Department of State Lands from requiring enhancement of wetlands to correct violation of removal-fill law.

A BILL FOR AN ACT

1
2 Relating to violations of removal-fill laws; amending ORS 196.860.

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

4 **SECTION 1.** ORS 196.860 is amended to read:

5 196.860. (1) If the Director of the Department of State Lands determines that material is being
6 removed from or filling is occurring in any of the waters of this state without a permit issued under
7 ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner con-
8 trary to the conditions set out in an order approving a wetland conservation plan, the director may:

9 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to
10 196.921, as soon as possible.

11 (b) For the purpose of investigating conditions relating to the removal or filling, through the
12 employees or the duly authorized representatives of the Department of State Lands, enter at rea-
13 sonable times upon any private or public property.

14 (c) Conduct public hearings in accordance with ORS chapter 183.

15 (d) Publish findings and recommendations as they are developed relative to public policies and
16 procedures necessary for the correction of conditions or violations of ORS 196.600 to 196.921.

17 (e) Give notice of any proposed order relating to a violation by personal service or by mailing
18 the notice by registered or certified mail to the person affected. Any person aggrieved by a proposed
19 order of the director may request a hearing within 20 days of the date of personal service or mailing
20 of the notice. Hearings shall be conducted under the provisions of ORS chapter 183 applicable to
21 contested cases, and judicial review of final orders shall be conducted in the Court of Appeals ac-
22 cording to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall
23 be issued upon a prima facie case on the record of the agency.

24 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of
25 ORS 196.600 to 196.921 or of any rule or final order of the director under ORS 196.600 to 196.921
26 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. In any
27 such proceedings the director may seek and the court may award a sum of money sufficient to
28 compensate the public for any destruction or infringement of any public right of navigation, fishery
29 or recreation resulting from the violation. Proceedings thus brought by the director shall set forth
30 if applicable the dates of notice and hearing and the specific rule or order of the director, together
31 with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the

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 damages to any public right of navigation, fishery or recreation, if any, resulting from the violation.

2 (2)(a) In addition to the administrative action the director may take under subsection (1) of this
3 section, the director may enter an order requiring any person to cease and desist from any violation
4 if the director determines that the violation presents an imminent and substantial risk of injury, loss
5 or damage to water resources.

6 (b) An order under this subsection:

7 (A) May be entered without prior notice or hearing.

8 (B) Shall be served upon the person by personal service or by registered or certified mail.

9 (C) Shall state that a hearing will be held on the order if a written request for hearing is filed
10 by the person subject to the order within 10 days after receipt of the order.

11 (D) May not be stayed during the pendency of a hearing conducted under paragraph (c) of this
12 subsection.

13 (c) If a person subject to an order under this subsection files a timely demand for hearing, the
14 director shall hold a contested case hearing according to the applicable provisions of ORS chapter
15 183. If the person fails to request a hearing, the order shall be entered as a final order upon prima
16 facie case made on the record of the agency.

17 (d) Neither the director nor any duly authorized representative of the department shall be liable
18 for any damages a person may sustain as a result of a cease and desist order issued under this
19 subsection.

20 (e) The state and local police shall cooperate in the enforcement of any order issued under this
21 subsection and shall require no further authority or warrant in executing or enforcing the order. If
22 any person fails to comply with an order issued under this subsection, the circuit court of the county
23 in which the violation occurred or is threatened shall compel compliance with the director's order
24 in the same manner as with an order of that court.

25 **(3) The director may not issue an order under subsection (1) of this section that requires**
26 **a person to correct a violation by enhancing a wetland or otherwise creating conditions in**
27 **the wetland that did not exist immediately prior to the violation.**

28 [(3)] (4) As used in this section, "violation" means removing material from or placing fill in any
29 of the waters of this state without a permit or in a manner contrary to the conditions set out in a
30 permit issued under ORS 196.825.

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