



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

To: Representative Brad Witt, Chair, House Committee on Agriculture and Natural Resources
Representative Vikki Breese-Iverson, Vice-Chair, House Committee on Agriculture and Natural Resources
Representative Zach Hudson, Vice-Chair, House Committee on Agriculture and Natural Resources

Kate Brown
Governor

Shemia Fagan
Secretary of State

From: Bill Ryan, Deputy Director, Oregon Department of State Lands

Tobias Read

State Treasurer

Re: Testimony on House Bill 2246

Chair Witt, Vice-Chair Breese-Iverson, Vice-Chair Hudson, my name is Bill Ryan and I am the Deputy Director of the Oregon Department of State Lands. I appreciate the opportunity to speak with you today regarding HB 2246. The Department has no position on this bill.

My testimony will provide an overview of the state's current requirements for wetland restoration following removal-fill law violations, the Department's approach to ensuring successful wetland restoration efforts, and the increase in restoration costs that would likely result from this bill.

Oregon's wetlands provide important ecological and societal benefits, called functions and values. Some examples include habitat for fish and wildlife, water quality improvement, and retention of water to reduce flood damage.

The Department *does not* require wetlands damaged by removal-fill law violations to be restored or mitigated to create functions and values that did not exist prior to the removal-fill activity. To do so would be outside our compensatory mitigation authority in ORS 196.825(5).

The Department does take steps to ensure wetland restoration is successful. Common requirements for restoration include grading, erosion control, revegetation, and weed abatement. The planting of native vegetation commonly found in the disturbed wetland or nearby reference wetlands is often necessary to prevent erosion and limit the spread of weeds.

When a violation occurs, DSL typically works collaboratively with the property owner to determine the extent of the impact and restore the wetland. This is often done through a consent order voluntarily agreed to by both parties.

Current practice is to use aerial photographs, available wetland inventories, information from the property owner, and data collected at a site visit to determine the extent of the wetlands affected. The information is then used to develop a restoration plan that roughly replaces lost

functions and values. This is usually a cooperative process, and in many cases does not require a consultant's expertise.

This bill may result in the Department needing to require a specific evaluation of the condition, functions, and values of the wetland immediately prior to the removal-fill activity to ensure any restoration proposal does not exceed what the Department could require. For example, this would be necessary if the Department and the responsible party were unable to come to agreement regarding the restoration plan.

Such an evaluation would be accomplished by having the responsible party, or more likely a hired wetland consultant, conduct a forensic assessment. A forensic assessment would include requirement for a condition, function and value assessment of the wetland prior to the disturbance and a second condition, function and value assessment of the restored site or the mitigation site to ensure that the intent of this statute was met.

Should the bill become law, the Department anticipates the additional process and review and analysis of functional assessments would require increased staff time. This would result in impacts to customer service unless additional staff was requested. It is not possible for the Department to quantify those costs as we cannot predict how often this would be necessary or the size or complexity of future enforcement actions.

Hiring a consultant to perform the necessary evaluation process would also likely significantly increase the cost of compliance for responsible parties.

The bill may also limit a responsible party's options for mitigating the damage, particularly compensatory mitigation that occurs somewhere other than the violation site, if that mitigation involves enhancing a wetland.

Thank you for the opportunity to provide this testimony. I am happy to answer any questions.