

A-Engrossed
Senate Bill 64

Ordered by the Senate March 28
Including Senate Amendments dated March 28

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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.

Requires persons conducting certain archaeological activities on private lands to obtain permit from State Parks and Recreation Department. **Defines "archaeological investigation."** Specifies that landowner must be deprived of lawful use of property under archaeological permit to receive compensation under eminent domain process.

A BILL FOR AN ACT

1
2 Relating to archaeological permit issuance on private lands; creating new provisions; and amending
3 ORS 358.945, 358.953 and 390.235.

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

5 **SECTION 1.** ORS 358.945 is amended to read:

6 358.945. (1) If a person who is conducting an archaeological investigation on public **or private**
7 lands according to the provisions of ORS 390.235 [*or on private land with the owner's written per-*
8 *mission*] finds a sacred object or object of cultural patrimony, the person conducting the
9 archaeological investigation shall notify in writing:

10 (a) The State Historic Preservation Officer; and

11 (b) The appropriate ethnic group, religious group or Indian tribe with which the object is asso-
12 ciated.

13 (2) If a sacred object or object of cultural patrimony is recovered on any land, the State Historic
14 Preservation Officer shall assist the appropriate group to repossess the object.

15 (3) This section does not apply to the contents of an Indian cairn or burial regulated under ORS
16 97.740 to 97.760.

17 (4) Failure to notify the appropriate Indian tribe as required by subsection (1)(b) of this section
18 is a Class B misdemeanor.

19 (5) **As used in this section, "archaeological investigation" means the physical assessment**
20 **of an archaeological site, using subsurface probes or excavation, conducted in order to de-**
21 **termine the boundaries of the site, the integrity of the site or the historical significance of**
22 **the site or to mitigate unavoidable disturbances to the site.**

23 **SECTION 2.** ORS 358.953 is amended to read:

24 358.953. [(1) *Under the provisions of ORS 358.905 to 358.961, if a property owner is deprived of*
25 *an otherwise lawful use of private property, the state shall compensate the property owner for the loss*
26 *in value under the procedures set forth in ORS chapter 35.*]

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 **(1) The state shall compensate a property owner, under the procedures provided in ORS**
2 **chapter 35, for the loss in value to the property if:**

3 **(a) The State Parks and Recreation Department denies or is precluded from issuing to**
4 **the owner or agent of the owner a permit under ORS 390.235; and**

5 **(b) The denial or preclusion prevents the owner or agent of the owner from engaging in**
6 **conduct otherwise allowed under ORS 358.920.**

7 (2) Notwithstanding any other provision of law, if human remains, funerary objects, sacred ob-
8 jects or objects of cultural patrimony are removed from private property at a tribe's request, the
9 tribe shall pay the expenses of removal and, at its expense, restore the private property to its con-
10 dition prior to the removal.

11 **SECTION 3.** ORS 390.235 is amended to read:

12 390.235. (1)(a) A person may not, **without a permit issued by the State Parks and Recreation**
13 **Department:**

14 **(A)** Excavate or alter an archaeological site on public **or private** lands[.];

15 **(B)** Make an exploratory excavation on public lands to determine the presence of an
16 archaeological site; or

17 **(C)** Remove from public **or private** lands any material of an archaeological, historical, prehis-
18 torical or anthropological nature [*without first obtaining a permit issued by the State Parks and Re-*
19 *creation Department*].

20 (b) If a person who obtains a permit under this section intends to curate or arrange for alternate
21 curation of an archaeological object that is uncovered during an archaeological investigation, the
22 person must submit evidence to the State Historic Preservation Officer that the Oregon State Mu-
23 seum of Anthropology and the appropriate Indian tribe have approved the applicant's curatorial fa-
24 cilities.

25 (c) No permit shall be effective without the approval of the state agency or local governing body
26 charged with management of the public land on which the excavation is to be made, and without the
27 approval of the appropriate Indian tribe.

28 (d) The State Parks and Recreation Director, with the advice of the Oregon Indian tribes and
29 Executive Officer of the Commission on Indian Services, shall adopt rules governing the issuance
30 of permits.

31 (e) Disputes under paragraphs (b) and (c) of this subsection shall be resolved in accordance with
32 ORS 390.240.

33 (f) Before issuing a permit, the State Parks and Recreation Director shall consult with:

34 **(A)** The landowning or land managing agency; and

35 **(B)** If the archaeological site in question is associated with a prehistoric or historic native In-
36 dian culture:

37 **(i)** The Commission on Indian Services; and

38 **(ii)** The most appropriate Indian tribe.

39 (2) The State Parks and Recreation Department may issue a permit under subsection (1) of this
40 section under the following circumstances:

41 **(a)** To a person conducting an excavation, examination or gathering of such material for the
42 benefit of a recognized scientific or educational institution with a view to promoting the knowledge
43 of archaeology or anthropology;

44 **(b)** To a qualified archaeologist to salvage such material from unavoidable destruction; or

45 **(c)** To a qualified archaeologist sponsored by a recognized institution of higher learning, private

1 firm or an Indian tribe as defined in ORS 97.740.

2 (3) Any archaeological materials, with the exception of Indian human remains, funerary objects,
3 sacred objects and objects of cultural patrimony **as defined in ORS 358.905**, recovered by a person
4 granted a permit under subsection (2) of this section shall be under the stewardship of the State of
5 Oregon to be curated by the Oregon State Museum of Anthropology unless:

6 (a) The Oregon State Museum of Anthropology with the approval from the appropriate Indian
7 tribe approves the alternate curatorial facilities selected by the permittee;

8 (b) The materials are made available for nondestructive research by scholars; and

9 (c)(A) The material is retained by a recognized scientific, educational or Indian tribal institution
10 for whose benefit a permit was issued under subsection (2)(a) of this section;

11 (B) The State Board of Higher Education with the concurrence of the appropriate Indian tribe
12 grants approval for material to be curated by an educational facility other than the institution that
13 collected the material pursuant to a permit issued under subsection (2)(a) of this section; or

14 (C) The sponsoring institution or firm under subsection (2)(c) of this section furnishes the
15 Oregon State Museum of Anthropology with a complete catalog of the material within six months
16 after the material is collected.

17 (4) The Oregon State Museum of Anthropology shall have the authority to transfer permanent
18 possessory rights in subject material to an appropriate Indian tribe.

19 (5) Except for sites containing human remains, funerary objects and objects of cultural
20 patrimony as defined in ORS 358.905, or objects associated with a prehistoric Indian tribal culture,
21 the permit required by subsection (1) of this section or by ORS 358.920 shall not be required for
22 forestry operations on private lands for which notice has been filed with the State Forester under
23 ORS 527.670.

24 (6) As used in this section:

25 (a) **“Archaeological investigation” means the physical assessment of an archaeological**
26 **site, using subsurface probes or excavation, conducted in order to determine the boundaries**
27 **of the site, the integrity of the site or the historical significance of the site or to mitigate**
28 **unavoidable disturbances to the site.**

29 [(a)] (b) “Private firm” means any legal entity that:

30 (A) Has as a member of its staff a qualified archaeologist; or

31 (B) Contracts with a qualified archaeologist who acts as a consultant to the entity and provides
32 the entity with archaeological expertise.

33 [(b)] (c) “Qualified archaeologist” means a person who has the following qualifications:

34 (A) A post-graduate degree in archaeology, anthropology, history, classics or other germane
35 discipline with a specialization in archaeology, or a documented equivalency of such a degree;

36 (B) Twelve weeks of supervised experience in basic archaeological field research, including both
37 survey and excavation and four weeks of laboratory analysis or curating; and

38 (C) Has designed and executed an archaeological study, as evidenced by a Master of Arts or
39 Master of Science thesis, or report equivalent in scope and quality, dealing with archaeological field
40 research.

41 (7) Violation of the provisions of subsection (1)(a) of this section is a Class B misdemeanor.

42 **SECTION 4. The amendments to ORS 358.945, 358.953 and 390.235 by sections 1 to 3 of this**
43 **2005 Act apply to persons initiating archaeological investigations, excavations, alterations or**
44 **removals on or after the effective date of this 2005 Act.**