

House Bill 4004

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 **as introduced**.

Establishes Commission on Soil Research within Department of State Lands. Specifies membership and duties of commission.

Prohibits Department of State Lands from adopting rules related to wetlands delineation that specify methods that exceed those set forth in federal supplements to wetlands delineation manual.

Prohibits department from rejecting wetland delineation report prepared by two or more soil scientists certified by Soil Science Society of America.

Prohibits department from imposing on removal or fill permits and wetland conservation plans conditions that require measures beyond replacement of functions and values of impacted water resources or requirements that exceed those set forth in federal law.

Prohibits department from adopting rules that impose requirements that exceed those set forth in federal law.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the Department of State Lands; creating new provisions; amending ORS 196.630, 196.674, 196.678, 196.681, 196.682, 196.692, 196.805 and 196.825; and declaring an emergency.

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

COMMISSION ON SOIL RESEARCH

SECTION 1. (1) There is established a Commission on Soil Research within the Department of State Lands. The members of the Commission on Soil Research must be residents of this state who are well informed on land use issues and have expertise in the science of soil research. The term of office of each member is four years. A member is eligible for re-appointment one time. The membership of the commission shall consist of:

(a) One member selected by the Governor to represent the public interest;

(b) One member selected by the Speaker of the House of Representatives;

(c) One member selected by the President of the Senate;

(d) One member selected by the Director of the Department of State Lands; and

(e)(A) One member jointly selected by the Association of Oregon Counties and the League of Oregon Cities.

(B) If the Association of Oregon Counties and the League of Oregon Cities do not select the member as described in this paragraph within two months of a vacancy, the Governor shall select a member to represent the interests of cities and counties.

(2) The members of the commission selected under subsection (1) of this section may not be members of the Legislative Assembly.

(3)(a) The member of the commission selected by the director pursuant to subsection (1) of this section shall serve as chairperson.

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 (b) The commission shall select one of its members as vice chairperson.

2 (c) A majority of the members of the commission constitutes a quorum for the trans-
3 action of business.

4 (d) The commission shall meet at times and places specified by the call of the chairperson
5 or of a majority of the members of the commission.

6 (e) Members of the commission are not entitled to compensation, but in the discretion
7 of the director may be reimbursed from funds available to the department for actual and
8 necessary travel and other expenses incurred by them in the performance of their official
9 duties in the manner and amount provided in ORS 292.495.

10 (4) The commission shall review all rules adopted by the department to determine the
11 economic impact of the rules and whether economic conditions have changed since the
12 adoption of the rules thereby increasing the burdens of compliance with the rules. After
13 reviewing a rule, the commission shall prepare a report with the results of its review and
14 submit the report to the department.

15 **SECTION 2.** (1) Notwithstanding the term of office specified by section 1 of this 2012 Act,
16 of the members first appointed to the Commission on Soil Research:

17 (a) Two shall serve for terms ending July 1, 2013.

18 (b) Three shall serve for terms ending July 1, 2015.

19 (2) Section 1 (4) of this 2012 Act applies to all rules adopted by the Department of State
20 Lands:

21 (a) That are in effect on the effective date of this 2012 Act.

22 (b) On or after the effective date of this 2012 Act.

23
24 **FILL AND REMOVAL**

25
26 **SECTION 3.** ORS 196.805 is amended to read:

27 196.805. (1) The protection, conservation and best use of the water resources of this state are
28 matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in
29 this state, including not only water and materials for domestic, agricultural and industrial use but
30 also habitats and spawning areas for fish, avenues for transportation and sites for commerce and
31 public recreation, are vital to the economy and well-being of this state and its people. Unregulated
32 removal of material from the beds and banks of the waters of this state may create hazards to the
33 health, safety and welfare of the people of this state. Unregulated filling in the waters of this state
34 for any purpose, may result in interfering with or injuring public navigation, fishery and recre-
35 ational uses of the waters. In order to provide for the best possible use of the water resources of
36 this state, it is desirable to centralize authority in the Director of the Department of State Lands,
37 and implement control of the removal of material from the beds and banks or filling of the waters
38 of this state.

39 (2) The director shall take into consideration all beneficial uses of water including streambank
40 protection when administering fill and removal statutes.

41 (3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of
42 property under ORS 196.600 to 196.905 without due process of law.

43 [(4) The director shall delineate wetlands in accordance with the United States Army Corps of
44 Engineers Wetlands Delineation Manual of 1987, or subsequent federal manual as adopted by rule by
45 the director, and applicable guidance issued by the United States Army Corps of Engineers for the area

1 *in which the wetlands are located.]*

2 **(4) The Department of State Lands shall delineate wetlands and review wetland delineation reports under ORS 196.818 in accordance with:**

3 **(a) The United States Army Corps of Engineers Wetlands Delineation Manual of 1987; and**

4 **(b) Any subsequent federal supplements to the manual or applicable guidance documents issued by the United States Army Corps of Engineers, including guidance documents for the area in which a delineation will take place, as adopted by rule of the director, provided that in no event may any rule specify guidelines or methods that exceed those specified in federal supplements to the manual or applicable guidance documents issued by the United States Army Corps of Engineers.**

5 **(5)(a) The Department of State Lands shall give priority to the review of wetland delineation reports submitted with or in advance of an application for fill or removal of material from the waters of this state.**

6 **(b) The department may not reject a wetland delineation report that was prepared by two or more soil scientists who are certified by and in good standing with the Soil Science Society of America.**

7 **(c) If the department approves a wetland delineation report, the person or governmental body that submitted the wetland delineation report under ORS 196.818 may transfer the approval for the wetland delineation report to another person or governmental body anytime within 10 years of the date the department approves the wetland delineation report.**

8 **SECTION 4.** ORS 196.674 is amended to read:

9 196.674. (1) The Department of State Lands shall compile and maintain a comprehensive State-wide Wetlands Inventory.

10 (2) In compiling the Statewide Wetlands Inventory, the department shall develop, by rule, a system for uniform wetland identification, delineation and comprehensive mapping. Initial inventories shall be based upon the National Wetlands Inventory prepared by the United States Department of the Interior, Fish and Wildlife Service. The Department of State Lands shall consult with the public, local governments and affected state and federal agencies concerning the accuracy of the inventory.

11 **(3) A system for delineating wetlands adopted by the Department of State Lands under this section must comport with:**

12 **(a) The United States Army Corps of Engineers Wetlands Delineation Manual of 1987; and**

13 **(b) Any subsequent federal supplements to the manual or applicable guidance documents issued by the United States Army Corps of Engineers, including guidance documents for the area in which a delineation will take place, as adopted by rule of the Director of the Department of State Lands, provided that in no event may any rule specify guidelines or methods that exceed those specified in federal supplements to the manual or applicable guidance documents issued by the United States Army Corps of Engineers.**

14 [(3)] (4) The Department of State Lands shall revise the **Statewide Wetlands** Inventory [*maps*] as new or more complete information becomes available.

15 [(4)] (5) The Department of State Lands shall provide each city and county planning office with copies of the Statewide Wetlands Inventory covering the local jurisdiction.

16 [(5)] (6) The Department of State Lands shall provide each state agency with a copy of the inventory upon request.

17 [(6)] (7) Copies of the Statewide Wetlands Inventory shall be made available to the general

1 public, through the Department of State Lands, upon payment of a fee to offset administrative and
 2 reproduction costs.

3 [(7)] (8) A wetland inventory developed by another party may be utilized by the Department of
 4 State Lands if it is consistent with standards adopted pursuant to this section, after consulting with
 5 the affected local government, and is reviewed and approved by the Department of State Lands as
 6 complying with the standards adopted pursuant to subsection (2) of this section.

7 [(8)] (9) Nothing in this section shall restrict the regulatory jurisdiction of the Department of
 8 State Lands under ORS 196.800 to 196.905.

9 [(9)] (10) In compiling and updating the Statewide Wetlands Inventory, the Department of State
 10 Lands shall identify opportunities for wetland creation, restoration and enhancement when the in-
 11 formation is available.

12 **SECTION 5.** ORS 196.825 is amended to read:

13 196.825. (1) The Director of the Department of State Lands shall issue a permit applied for under
 14 ORS 196.815 if the director determines that the project described in the application:

15 (a) Is consistent with the protection, conservation and best use of the water resources of this
 16 state as specified in ORS 196.600 to 196.905; and

17 (b) Would not unreasonably interfere with the paramount policy of this state to preserve the use
 18 of its waters for navigation, fishing and public recreation.

19 (2) If the director issues a permit applied for under ORS 196.815 to a person that proposes a
 20 removal or fill activity for construction or maintenance of a linear facility, and if that person is not
 21 a landowner or a person authorized by a landowner to conduct the proposed removal or fill activity
 22 on a property, then the person may not conduct removal or fill activity on that property until the
 23 person obtains:

24 (a) The landowner's consent;

25 (b) A right, title or interest with respect to the property that is sufficient to undertake the re-
 26 moval or fill activity; or

27 (c) A court order or judgment authorizing the use of the property.

28 (3) In determining whether to issue a permit, the director shall consider all of the following:

29 (a) The public need for the proposed fill or removal and the social, economic or other public
 30 benefits likely to result from the proposed fill or removal. When the applicant for a permit is a
 31 public body, the director may accept and rely upon the public body's findings as to local public need
 32 and local public benefit.

33 (b) The economic cost to the public if the proposed fill or removal is not accomplished.

34 (c) The availability of alternatives to the project for which the fill or removal is proposed.

35 (d) The availability of alternative sites for the proposed fill or removal.

36 (e) Whether the proposed fill or removal conforms to sound policies of conservation and would
 37 not interfere with public health and safety.

38 (f) Whether the proposed fill or removal is in conformance with existing public uses of the wa-
 39 ters and with uses designated for adjacent land in an acknowledged comprehensive plan and land
 40 use regulations.

41 (g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive
 42 plan and land use regulations for the area where the proposed fill or removal is to take place or
 43 can be conditioned on a future local approval to meet this criterion.

44 (h) Whether the proposed fill or removal is for streambank protection.

45 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects

1 of the proposed fill or removal in the manner set forth in ORS 196.800. In determining whether the
2 applicant has provided all practicable mitigation, the director shall consider the findings regarding
3 wetlands set forth in ORS 196.668 and whether the proposed mitigation advances the policy objec-
4 tives for the protection of wetlands set forth in ORS 196.672.

5 (4) The director may issue a permit for a project that results in a substantial fill in an estuary
6 for a nonwater dependent use only if the project is for a public use and would satisfy a public need
7 that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other
8 criteria contained in ORS 196.600 to 196.905.

9 (5) If the director issues a permit, the director may impose such conditions as the director con-
10 siders necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this
11 section and to provide mitigation for the reasonably expected adverse effects of project development.
12 In formulating such conditions the director may request comment from public bodies, as defined in
13 ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid
14 only for the time specified therein. The director shall impose, as conditions to any permit, general
15 authorization or wetland conservation plan, measures to provide mitigation for the reasonably ex-
16 pected adverse effects of project development. Compensatory mitigation shall be limited to replace-
17 ment of the functions and values of the impacted water resources of this state. **Any conditions**
18 **imposed by the director under this subsection may not require any measures beyond the**
19 **replacement of the functions and values of the impacted water resources of this state or**
20 **exceed requirements set forth in federal law, regulation and guidance and technical policy**
21 **documents. Mitigation is not required if the fill or removal impacts less than one acre in size**
22 **within the urban growth boundary of a city that has an acknowledged comprehensive plan**
23 **and land use regulations with provisions regulating storm and surface water.**

24 (6)(a) The director may request comment from interested parties and adjacent property owners
25 on any application for a permit.

26 (b) The director shall furnish to any person, upon written request and at the expense of the
27 person who requests the copy, a copy of any application for a permit or authorization under this
28 section or ORS 196.850.

29 (c) For permit applications for a removal or fill activity for construction or maintenance of a
30 linear facility that are deemed complete by the director, the director shall notify by first-class mail,
31 electronic mail or electronic facsimile transmission all landowners whose land is identified in the
32 permit application and all landowners whose land is adjacent to the property of a landowner whose
33 land is identified in the permit application.

34 (7) Any applicant whose application for a permit or authorization has been deemed incomplete
35 or has been denied, or who objects to any of the conditions imposed under this section by the di-
36 rector, may, within 21 days of the denial of the permit or authorization or the imposition of any
37 condition, request a hearing from the director. Thereupon the director shall set the matter down for
38 hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430,
39 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing
40 findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial
41 order. Appeals from the director's final order may be taken to the Court of Appeals in the manner
42 provided by ORS 183.482.

43 (8) Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the director
44 shall:

45 (a) Determine whether an application is complete within 30 days from the date the Department

1 of State Lands receives the application. If the director determines that an application is complete,
2 the director shall distribute the application for comment pursuant to subsection (5) of this section.
3 If the director determines that the application is not complete, the director shall notify the applicant
4 in writing that the application is deficient and explain, in the same notice, the deficiencies.

5 (b) Issue a permit decision within 90 days after the date the director determines that the appli-
6 cation is complete unless:

7 (A) An extension of time is granted under subsection (10)(b) of this section; or

8 (B) The applicant and the director agree to a longer time period.

9 (9) Permits issued under this section shall be in lieu of any permit or authorization that might
10 be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055,
11 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

12 (a) The operation is that for which the permit or authorization is issued; and

13 (b) The standards for granting the permit or authorization are substantially the same as those
14 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,
15 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

16 (10)(a) Any public body, as defined in ORS 174.109, federal agency or tribal government re-
17 quested by the director to comment on an application for a permit must submit its comments to the
18 director not more than 30 days after receiving the request for comment. If a public body, federal
19 agency or tribal government fails to comment on the application within 30 days, the director shall
20 assume that the public body, federal agency or tribal government has no objection.

21 (b) The Department of Environmental Quality shall provide comments to the director within 75
22 days after receiving notice under subsection (5) of this section if the permit action requires certif-
23 ication under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

24 (11) In determining whether to issue a permit, the director may consider only standards and
25 criteria in effect on the date the director receives the completed application.

26 (12) As used in this section:

27 (a) "Applicant" means a landowner, a person authorized by a landowner to conduct a removal
28 or fill activity or a person that proposes a removal or fill activity for construction or maintenance
29 of a linear facility.

30 (b) "Completed application" means a signed permit application form that contains all necessary
31 information for the director to determine whether to issue a permit, including:

32 (A) A map showing the project site with sufficient accuracy to easily locate the removal or fill
33 site;

34 (B) A project plan showing the project site and proposed alterations;

35 (C) The fee required under ORS 196.815;

36 (D) Any changes that may be made to the hydraulic characteristics of waters of this state and
37 a plan to minimize or avoid any adverse effects of those changes;

38 (E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within
39 this state, documentation of existing conditions and resources and identification of the potential
40 impact if the project is completed;

41 (F) An analysis of alternatives that evaluates practicable methods to minimize and avoid impacts
42 to waters of this state;

43 (G) If the project is to fill or remove material from wetlands, a wetlands mitigation plan; and

44 (H) Any other information that the director deems pertinent and necessary to make an informed
45 decision on whether the application complies with the policy and standards set forth in this section.

1 (c) "Linear facility" includes any railway, highway, road, pipeline, water or sewer line, commu-
 2 nication line, overhead or underground electrical transmission or distribution line or similar facility.

3 **SECTION 6.** ORS 196.678 is amended to read:

4 196.678. (1) Any city or county may develop and submit to the Department of State Lands a
 5 wetland conservation plan for review pursuant to the provisions of ORS 196.678 to 196.684.

6 (2) A wetland conservation plan shall include the following elements:

7 (a) A description and maps of the area to be covered by the plan;

8 (b) A detailed inventory of the wetlands, identifying the location, quality and quantity of the
 9 wetland resource and the source of the water for the wetlands within the area covered by the plan;

10 (c) An assessment of wetland functions and values, including an historical analysis of wetland
 11 degradation, alterations and losses;

12 (d) Designation of wetland areas for protection, conservation or development. Wetlands within
 13 areas designated for development shall be delineated to determine regulatory boundaries;

14 (e) A mitigation plan, including a program for replacement of planned wetland losses and res-
 15 toration of lost functions and values through creation of new wetlands or enhancement of existing
 16 wetland areas which designates specific sites within the plan area and actions for restoration and
 17 enhancement, **provided that the program for replacement of planned wetland losses and res-**
 18 **toration of lost function and values does not require any measures beyond the replacement**
 19 **of the functions and values of any impacted water resources of this state or impose any re-**
 20 **quirements that exceed those set forth in federal law, regulation and guidance and technical**
 21 **policy documents;**

22 (f) Policies and implementing measures establishing protection, conservation and best use of the
 23 wetlands in the plan area;

24 (g) Specification of sites for fill or removal, or both, and the conditions and procedures under
 25 which fill or removal, or both, may occur;

26 (h) Monitoring provisions that insure the wetland mitigation measures are implemented and
 27 mitigation goals are achieved;

28 (i) Identification of public uses of the wetlands and waters and conflicting planned uses; and

29 (j) Specification of buffer areas and uses allowed on lands which are adjacent to wetlands and
 30 which are necessary to maintain, protect or restore wetland functions and values.

31 (3) The proposed wetland conservation plan shall be adopted by the affected local government
 32 according to the procedures set forth in ORS 197.610 to 197.625.

33 **SECTION 7.** ORS 196.681 is amended to read:

34 196.681. (1) In accordance with rules adopted pursuant to this chapter, the Department of State
 35 Lands shall:

36 (a) Review any proposed wetland conservation plan or proposed amendment to an approved
 37 wetland conservation plan against the standards in this section;

38 (b) Prepare a proposed order that approves, approves with conditions or denies the proposed
 39 wetland conservation plan or proposed amendment to an approved wetland conservation plan;

40 (c) Provide notice and the opportunity for public hearing and comment on the proposed order;

41 (d) Consult with affected local, state and federal agencies; and

42 (e) Consider the applicable findings made in the order of acknowledgment issued by the Land
 43 Conservation and Development Commission.

44 (2) The Director of the Department of State Lands may approve by order a wetland conservation
 45 plan that includes the necessary elements of ORS 196.678 (2) and meets the standards of subsections

1 (3) and (4) of this section.

2 (3) A wetland conservation plan shall comply with the following standards:

3 (a) Uses and activities permitted in the plan including fill or removal, or both, conform to sound
4 policies of conservation and will not interfere with public health and safety;

5 (b) Uses and activities permitted in the plan including fill or removal, or both, are not incon-
6 sistent with the protection, conservation and best use of the water resources of this state and the
7 use of state waters for navigation, fishing and public recreation; and

8 (c) Designation of wetlands for protection, conservation and development is consistent with the
9 resource functions and values of the area and the capability of the wetland area to withstand al-
10 terations and maintain important functions and values.

11 (4) Wetland areas may be designated for development including fill or removal, or both, only if
12 they meet the following standards:

13 (a) There is a public need for the proposed uses set forth in the acknowledged comprehensive
14 plan for the area;

15 (b) Any planned wetland losses shall be fully offset by creation, restoration or enhancement of
16 wetland functions and values or in an estuarine area, estuarine resource replacement is consistent
17 with ORS 196.830; and

18 (c) Practicable, less damaging alternatives, including alternative locations for the proposed use
19 are not available.

20 (5) Approval by the director of a wetland conservation plan shall be conditioned upon adoption
21 by the affected local governments of comprehensive plan policies and land use regulations consistent
22 with and sufficient to implement the wetland conservation plan. Appropriate implementing measures
23 may include the following planning and zoning requirements regulating:

24 (a) Adjacent lands or buffer areas necessary to maintain, protect or restore wetland functions
25 and values, including riparian vegetation, and the uses to be allowed in those areas;

26 (b) Sites for mitigation of impacts from development activities;

27 (c) Upland areas adjacent to wetlands; and

28 (d) Activities or location of buildings, structures and improvements which may affect wetland
29 values or functions, such as storm water runoff.

30 (6) The director shall issue an order approving, approving with conditions or denying a wetland
31 conservation plan, including a clear statement of findings which sets forth the basis for the approval,
32 conditioning or denial. The order shall include:

33 (a) A clear statement of findings that the elements specified in ORS 196.678 (2) have been de-
34 veloped;

35 (b) The findings in support of the determination of compliance or noncompliance with the stan-
36 dards in subsections (3) and (4) of this section; and

37 (c) The conditions under which fill or removal or both may occur.

38 (7) The director may, as a part of an order approving a plan, authorize site-specific fill or re-
39 moval without an individual permit as required by ORS 196.810 provided that:

40 (a) The director adopts findings demonstrating that fill or removal for any proposed project
41 complies with ORS 196.682 (1)(a) to (e); or

42 (b) The director adopts findings that specific areas of fill or removal within areas designated as
43 development in the plan meet the following standards:

44 (A) The fill or removal approved by the order will result in minimal impacts to the wetland
45 system in the planning area;

1 (B) The public need for the proposed area of fill or removal outweighs the environmental damage
 2 likely to result from full development;

3 (C) The director conditions any such order as necessary to ensure that the fill or removal, or
 4 both, is designed to minimize impacts from implementing the project; and

5 (D) Full replacement of wetland losses is provided through creation, restoration or enhancement
 6 of wetlands with comparable functions and values. **The full replacement of wetland losses may
 7 not require any measures beyond the replacement of the functions and values of the im-
 8 pacted water resources of this state or impose any requirements that exceed those set forth
 9 in federal law, regulation and guidance and technical policy documents.**

10 (8) Upon a finding by the director that a fill or removal, or both, authorized under subsection
 11 (7)(b) of this section has caused or is likely to cause more than minimal adverse impact to the
 12 wetland system considering required mitigation conditions, the director shall revise the order to
 13 require individual permit review according to ORS 196.682 or provide additional conditions to ensure
 14 that adverse impacts are minimal. Such revision shall not be subject to ORS 196.684.

15 **SECTION 8.** ORS 196.682 is amended to read:

16 196.682. (1) Except where otherwise provided by the order approving the plan, individual permit
 17 applications shall be required for removal or fill, or both, in areas subject to an approved wetland
 18 conservation plan. If individual permit applications are to be reviewed under the authority of the
 19 Director of the Department of State Lands, then application fees and review procedures shall be in
 20 accordance with ORS 196.815, 196.825 and 196.835. In lieu of the substantive standards for permit
 21 issuance in ORS 196.825 (3), the Department of State Lands shall issue a permit if the removal or
 22 fill, or both, is consistent with the wetland conservation plan or can be conditioned to be consistent
 23 with the plan. The department shall condition any such permit as necessary to ensure that the
 24 project:

25 (a) Is properly designed or configured to minimize the need for alterations to waters of this
 26 state;

27 (b) Is the minimum size necessary to reasonably provide for the proposed use;

28 (c) Complies with applicable provisions of the acknowledged comprehensive plan and land use
 29 regulations for the area;

30 (d) Is designed to minimize impacts from implementing the project; and

31 (e) Is conditioned to ensure wetland creation, restoration, enhancement or preservation meas-
 32 ures are implemented to fully replace impacted resources. **Any conditions imposed under this
 33 paragraph may not require any measures beyond the replacement of the functions and values
 34 of the impacted water resources of this state or impose any requirements that exceed those
 35 set forth in federal law, regulation and guidance and technical policy documents.**

36 (2) In any order approving a plan that authorizes any fill or removal or both, without the ne-
 37 cessity of subsequently obtaining an individual permit, the director shall condition such approval
 38 as necessary to ensure that the project complies with the conditions of subsection (1) of this section
 39 and clearly delineates the wetland area in which fill or removal, or both, is to occur.

40 **SECTION 9.** ORS 196.630 is amended to read:

41 196.630. Subject to the approval of the State Land Board, the Director of the Department of
 42 State Lands shall adopt rules according to the provisions of ORS chapter 183 to carry out the pro-
 43 visions of ORS 196.600 to 196.655, **provided that any rules adopted under this section may not
 44 impose requirements that exceed those set forth in federal law, regulation and guidance and
 45 technical policy documents.**

SECTION 10. ORS 196.692 is amended to read:

196.692. (1) The Department of State Lands shall adopt rules to carry out the provisions of ORS 196.668 to 196.692, 196.800, 196.810, 196.818, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

(2) Rules adopted pursuant to subsection (1) of this section shall include rules governing the application for and issuance of permits to remove material from the beds or banks of any waters of this state or to fill any waters of this state including, but not limited to, clear and objective standards and criteria for determining whether to grant or deny a permit, **provided that any rules adopted under this section may not impose requirements that exceed those set forth in federal law, regulation and guidance and technical policy documents.**

MISCELLANEOUS

SECTION 11. (1) The amendments to ORS 196.805 by section 3 of this 2012 Act apply only to the delineation of wetlands by, and the review of wetland delineation reports submitted to, the Department of State Lands on or after the effective date of this 2012 Act.

(2) The amendments to ORS 196.825 by section 5 of this 2012 Act apply only to permits first issued on or after the effective date of this 2012 Act and to the renewal of permits first issued on or after the effective date of this 2012 Act.

(3) The amendments to ORS 196.678 by section 6 of this 2012 Act apply only to wetland conservation plans first submitted for review to the Department of State Lands on or after the effective date of this 2012 Act.

(4) The amendments to ORS 196.681 by section 7 of this 2012 Act apply only to orders approving wetland conservation plans issued by the Director of the Department of State Lands on or after the effective date of this 2012 Act for wetland conservation plans first submitted for review to the Department of State Lands under ORS 196.678 on or after the effective date of this 2012 Act.

(5) The amendments to ORS 196.682 by section 8 of this 2012 Act apply only to permits first issued on or after the effective date of this 2012 Act, and to the renewal of permits first issued on or after the effective date of this 2012 Act, for areas subject to wetland conservation plans first submitted for review under ORS 196.678, and approved pursuant to ORS 196.681, on or after the effective date of this 2012 Act.

(4) The amendments to ORS 196.630 and 196.692 by sections 9 and 10 of this 2012 Act apply to rules adopted by the Department of State Lands on or after the effective date of this 2012 Act.

SECTION 12. The unit captions used in this 2012 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2012 Act.

EMERGENCY CLAUSE

SECTION 13. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.