

House Bill 2105

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of State Lands)

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**.

Increases base fee and volume fee for permits to remove or fill material. Provides for annual increase of permit fee. Requires person removing material from beds or banks of waters of this state or filling waters of this state under emergency authorization to submit fee to Department of State Lands. Allows department to assess fee for persons conducting certain actions under general authorization.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

1
2 Relating to Department of State Lands; creating new provisions; amending ORS 196.620, 196.643,
3 196.682, 196.686, 196.800, 196.810, 196.815, 196.825, 196.850, 196.860, 196.865 and 196.875; and de-
4 claring an emergency.

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

FEES

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9 **SECTION 1.** ORS 196.815 is amended to read:

10 196.815. (1) *[Each applicant for a]* **A person who is required to have a permit** to remove ma-
11 terial from the bed or banks or fill any waters of this state *[first]* shall file a written application
12 with the Director of the Department of State Lands *[, specifying the nature and amount of material*
13 *to be removed or the amount of fill, the waters and the specific location from which it is to be removed*
14 *or where the fill will be placed, the method of removal or filling and the times during which removal*
15 *or filling is to be conducted. The director may require additional information as is necessary to enable*
16 *the director to determine whether the granting of the permit applied for is consistent with the protection,*
17 *conservation and best use of the water resources of this state. For the purposes of this subsection, fills*
18 *or removals of material at locations not more than one mile apart may be combined in one*
19 *application]* **for each individual project before performing any removal or fill.**

20 *[(2) The Director of the Department of State Lands shall furnish to any member of the public upon*
21 *written request and at the expense of the member of the public a copy of any application for a permit*
22 *pursuant to subsection (1) of this section.]*

23 *[(3)(a)]* **(2)(a)** Each application under subsection (1) of this section must be accompanied by a
24 base fee in accordance with the following schedule:

25 (A) For a removal by a private operator, or a person contracting to perform services for a pri-
26 vate operator, *[\$50]* **\$85.**

27 (B) For a removal by a public body, *[\$150]* **\$250.**

28 (C) For a removal by a commercial operator, *[\$150]* **\$250.**

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 (D) For a fill by a private operator, or a person contracting to perform services for a private
 2 operator, [~~\$150~~] **\$250**.

3 (E) For a fill by a public body, [~~\$375~~] **\$620**.

4 (F) For a fill by a commercial operator, [~~\$375~~] **\$620**.

5 (G) For erosion-flood repair, including riprap, [~~by a private landowner or public body, or a person~~
 6 ~~contracting to perform services for such persons,~~] no fee.

7 (b) In addition to the base fee for removal established under paragraph (a) of this subsection,
 8 each applicant shall also pay as part of the application fee the following fee based on the volume
 9 of removal material:

10 (A) Less than 500 cubic yards, no volume fee.

11 (B) 500 to [~~4,999~~] **less than 5,000** cubic yards, [~~\$75 for private operator, \$75 for public body and~~
 12 ~~\$75 for commercial operator~~] **\$125**.

13 (C) 5,000 to **less than or equal to** 50,000 cubic yards, [~~\$150 for private operator, \$150 for public~~
 14 ~~body and \$150 for commercial operator~~] **\$250**.

15 (D) Over 50,000 cubic yards, [~~\$225 for private operator, \$225 for public body and \$225 for com-~~
 16 ~~mmercial operator~~] **\$375**.

17 (c) In addition to the base fee for fill established under paragraph (a) of this subsection, each
 18 applicant shall also pay as part of the application fee the following fee based on the volume of fill
 19 material:

20 (A) Less than 500 cubic yards, no volume fee.

21 (B) 500 to [~~2,999~~] **less than 3,000** cubic yards, [~~\$75 for private operator, \$75 for public body and~~
 22 ~~\$75 for commercial operator~~] **\$125**.

23 (C) 3,000 to **less than or equal to** 10,000 cubic yards, [~~\$150 for private operator, \$150 for public~~
 24 ~~body and \$150 for commercial operator~~] **\$250**.

25 (D) Over 10,000 cubic yards, [~~\$225 for private operator, \$225 for public body and \$225 for com-~~
 26 ~~mmercial operator~~] **\$375**.

27 (d) For the purposes of this subsection[, *the following terms shall have the following meanings*]:

28 (A) "Private operator" means any person undertaking a project for exclusively a nonincome-
 29 producing and nonprofit purpose;

30 (B) "Public body" means federal, state, and local governmental bodies, unless specifically ex-
 31 empted by law, engaged in projects for the purpose of providing free public services;

32 (C) "Commercial operator" means any person undertaking a project having financial profit as
 33 a goal;

34 (D) "Riprap" means the facing of a streambank with rock or similar substance to control erosion
 35 in accordance with regulations promulgated by the Department of State Lands; and

36 (E) "Erosion-flood repair" means riprap or any other work necessary to preserve existing facil-
 37 ities and land from flood and high streamflows, in accordance with regulations promulgated by the
 38 department.

39 [(4)] **(3)** For each application that involves both removal and filling, the application fee assessed
 40 shall be either for removal or filling, whichever is higher according to the fee schedule in subsection
 41 [(3)] **(2)** of this section.

42 **(4) The department may waive the fees specified in subsection (2) of this section for a**
 43 **permit that will be used to perform a voluntary habitat restoration project.**

44 **(5) A person who receives an emergency authorization under ORS 196.810 to remove**
 45 **material from the beds or banks of any waters of this state or to fill any waters of this state**

1 **shall, within 45 days after receiving the authorization, submit a fee to the department cal-**
 2 **culated in the manner provided under this section for permit applications.**

3 [(5)] (6) *Annually* **Prior to or** on the anniversary date of the permit, each holder of a material
 4 removal or fill permit shall pay a fee during the term of the permit in accordance with the schedule
 5 set forth in subsection [(3)] (2) of this section, except that the applicant shall pay only the base fee.
 6 The permit shall be suspended during any period of delinquency of payment as though no permit
 7 was applied for. Notwithstanding this subsection the director may, before granting *any extension*
 8 **a renewal** of the permit, require the permittee to show that the continued exercise of the permit is
 9 consistent with the protection, conservation and best use of the water resources of this state.

10 [(6)] (7) Fees received under this section shall be credited to the Common School Fund for use
 11 by the department in administration of ORS 196.600 to 196.905[, 196.990 and 541.990 and as otherwise
 12 required by law].

13 **(8) Beginning on January 1, 2009, and each year thereafter, the department shall increase**
 14 **all fees set forth in this section by three percent.**

15
 16 **DEFINITIONS**
 17

18 **SECTION 2.** ORS 196.800 is amended to read:

19 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

20 (1) "Channel relocation" means a change in location of a channel in which a new channel is dug
 21 and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of
 22 material is removed in constructing the new channel or if it would require more than 50 cubic yards
 23 of material to completely fill the old channel.

24 [(2) "Department" means the Department of State Lands.]

25 [(3) "Director" means the Director of the Department of State Lands.]

26 [(4)] (2) "Estuary" means:

27 **(a) For waters other than the Columbia River, the** [a] body of water [*semienclosed*] **from the**
 28 **ocean to the head of tidewater that is partially enclosed** by land and [*connected with the open*
 29 *ocean*] within which salt water is usually diluted by fresh water [*derived*] from the land[. "*Estuary*"
 30 *includes*], **including all associated** estuarine waters, tidelands, tidal marshes and submerged lands
 31 [*extending upstream to the head of tidewater.*]; **and**

32 **(b) [However,] For the Columbia River [Estuary extends], all waters from the mouth of the**
 33 **river up** to the western edge of Puget Island, **including all associated estuarine waters,**
 34 **tidelands, tidal marshes and submerged lands.**

35 [(5)] (3) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic
 36 yards or more of material at one location in any waters of this state.

37 [(6)] (4) "General authorization" means [*a rule adopted by the director authorizing, without a*
 38 *permit from the department,*] **an authorization granted under ORS 196.850 for** a category of ac-
 39 tivities involving removal or fill, or both, [*on a statewide or other geographic basis*] **without a per-**
 40 **mit.**

41 [(7) "Governmental body" includes the federal government when operating in any capacity other
 42 than navigational servitude, the State of Oregon and every political subdivision therein.]

43 [(8)] (5) "Intermittent stream" means any stream which flows during a portion of every year and
 44 which provides spawning, rearing or food-producing areas for food and game fish.

45 [(9)] (6) "Material" means rock, gravel, sand, silt and other inorganic substances removed from

1 waters of this state and any materials, organic or inorganic, used to fill waters of this state.

2 [(10)] (7) “Mitigation” means the reduction of adverse effects of a proposed project by consid-
3 ering, in the following order:

4 (a) Avoiding the [impact] **effect** altogether by not taking a certain action or parts of an action;

5 (b) Minimizing [impacts] **the effect** by limiting the degree or magnitude of the action and its
6 implementation;

7 (c) Rectifying the [impact] **effect** by repairing, rehabilitating or restoring the affected environ-
8 ment;

9 (d) Reducing or eliminating the [impact] **effect** over time by preservation and maintenance op-
10 erations during the life of the action by monitoring and taking appropriate corrective measures; and

11 (e) Compensating for the [impact] **effect** by replacing or providing comparable substitute wetland
12 or water resources.

13 **(8) “Person” means a person, a public body as defined in ORS 174.109, the federal gov-**
14 **ernment, when operating in any capacity other than navigational servitude, or any other le-**
15 **gal entity.**

16 [(11)] (9) “Practicable” means capable of being accomplished after taking into consideration the
17 cost, existing technology and logistics with respect to the overall project purpose.

18 [(12)] (10) “Public use” means a publicly owned project or a privately owned project that is
19 available for use by the public.

20 [(13)] (11) “Removal” means:

21 (a) The taking of more than 50 cubic yards or the equivalent weight in tons of material in any
22 waters of this state in any calendar year; or

23 (b) The movement by artificial means of an equivalent amount of material on or within the bed
24 of such waters, including channel relocation.

25 [(14)] (12) “Water resources” includes not only water itself but also aquatic life and habitats
26 therein and all other natural resources in and under the waters of this state.

27 [(15)] (13) “Waters of this state” means **all** natural waterways [*including all*], tidal and nontidal
28 bays, intermittent streams, constantly flowing streams, lakes, wetlands [*and other bodies of water in*
29 *this state, navigable and nonnavigable, including*], that portion of the Pacific Ocean [*which*] **that**
30 **is** in the boundaries of this state[. “*Waters of this state*” *does not include*], **all other navigable and**
31 **nonnavigable bodies of water in this state and those portions of** the ocean shore, as defined in
32 ORS 390.605, [*with the exception of those areas*] where removal or fill activities are regulated under
33 a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution
34 Control Act, as amended.

35 [(16)] (14) “Wetland conservation plan” means a written plan providing for wetland management
36 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
37 and private uses and protection of wetlands, waters and related adjacent uplands and which has
38 specific implementing measures and which apply to designated geographic areas of the State of
39 Oregon.

40 [(17)] (15) “Wetlands” means those areas that are inundated or saturated by surface or ground
41 water at a frequency and duration sufficient to support, and that under normal circumstances do
42 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

43 **SECTION 3.** ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section 8,
44 chapter 253, Oregon Laws 2003, and section 15, chapter 738, Oregon Laws 2003, is amended to read:
45 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

1 (1) "Channel relocation" means a change in location of a channel in which a new channel is dug
 2 and the flow is diverted from the old channel into the new channel.

3 [(2) "Department" means the Department of State Lands.]

4 [(3) "Director" means the Director of the Department of State Lands.]

5 [(4)] (2) "Estuary" means:

6 (a) **For waters other than the Columbia River, the** [a] body of water [semienclosed] **from the**
 7 **ocean to the head of tidewater that is partially enclosed** by land and [connected with the open
 8 ocean] within which salt water is usually diluted by fresh water [derived] from the land[. "Estuary"
 9 includes], **including all associated** estuarine waters, tidelands, tidal marshes and submerged lands
 10 [extending upstream to the head of tidewater. However,]; **and**

11 (b) **For the Columbia River** [Estuary extends], **all waters from the mouth of the river up to**
 12 **the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal**
 13 **marshes and submerged lands.**

14 [(5)] (3) "Fill" means the deposit by artificial means of material at one location in any waters
 15 of this state.

16 [(6)] (4) "General authorization" means [a rule adopted by the director authorizing, without a
 17 permit from the department,] **an authorization granted under ORS 196.850 for** a category of ac-
 18 tivities involving removal or fill, or both, [on a statewide or other geographic basis] **without a per-**
 19 **mit.**

20 [(7) "Governmental body" includes the federal government when operating in any capacity other
 21 than navigational servitude, the State of Oregon and every political subdivision therein.]

22 [(8)] (5) "Intermittent stream" means any stream which flows during a portion of every year and
 23 which provides spawning, rearing or food-producing areas for food and game fish.

24 [(9)] (6) "Material" means rock, gravel, sand, silt and other inorganic substances removed from
 25 waters of this state and any materials, organic or inorganic, used to fill waters of this state.

26 [(10)] (7) "Mitigation" means the reduction of adverse effects of a proposed project by consid-
 27 ering, in the following order:

28 (a) Avoiding the [impact] **effect** altogether by not taking a certain action or parts of an action;

29 (b) Minimizing [impacts] **the effect** by limiting the degree or magnitude of the action and its
 30 implementation;

31 (c) Rectifying the [impact] **effect** by repairing, rehabilitating or restoring the affected environ-
 32 ment;

33 (d) Reducing or eliminating the [impact] **effect** over time by preservation and maintenance op-
 34 erations during the life of the action by monitoring and taking appropriate corrective measures; and

35 (e) Compensating for the [impact] **effect** by replacing or providing comparable substitute wetland
 36 or water resources.

37 (8) **"Person" means a person, a public body, as defined in ORS 174.109, the federal gov-**
 38 **ernment, when operating in any capacity other than navigational servitude, or any other le-**
 39 **gal entity.**

40 [(11)] (9) "Practicable" means capable of being accomplished after taking into consideration the
 41 cost, existing technology and logistics with respect to the overall project purpose.

42 [(12)] (10) "Public use" means a publicly owned project or a privately owned project that is
 43 available for use by the public.

44 [(13)] (11) "Removal" means:

45 (a) The taking of material in any waters of this state; or

1 (b) The movement by artificial means of material within the bed of such waters, including
 2 channel relocation.

3 [(14)] (12) “Water resources” includes not only water itself but also aquatic life and habitats
 4 therein and all other natural resources in and under the waters of this state.

5 [(15)] (13) “Waters of this state” means **all** natural waterways *[including all]*, tidal and nontidal
 6 bays, intermittent streams, constantly flowing streams, lakes, wetlands *[and other bodies of water in
 7 this state, navigable and nonnavigable, including]*, that portion of the Pacific Ocean *[which]* **that** is
 8 in the boundaries of this state. *“Waters of this state” does not include*, **all other navigable and
 9 nonnavigable bodies of water in this state and those portions of** the ocean shore, as defined in
 10 ORS 390.605, *[with the exception of those areas]* where removal or fill activities are regulated under
 11 a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution
 12 Control Act, as amended.

13 [(16)] (14) “Wetland conservation plan” means a written plan providing for wetland management
 14 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
 15 and private uses and protection of wetlands, waters and related adjacent uplands and which has
 16 specific implementing measures and which apply to designated geographic areas of the State of
 17 Oregon.

18 [(17)] (15) “Wetlands” means those areas that are inundated or saturated by surface or ground
 19 water at a frequency and duration sufficient to support, and that under normal circumstances do
 20 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

21
 22 **PERMITS AND GENERAL AUTHORIZATIONS**
 23

24 **SECTION 4.** ORS 196.825 is amended to read:

25 196.825. (1) The Director of the Department of State Lands shall issue a permit *[to remove ma-*
 26 *terial from the beds or banks of any waters of this state]* applied for under ORS 196.815 if the director
 27 determines that the *[removal]* **project** described in the application *[will not be inconsistent]*:

28 (a) **Is consistent** with the protection, conservation and best use of the water resources of this
 29 state as specified in ORS *[196.805.]* **196.600 to 196.905; and**

30 [(2)] (b) *[The director shall issue a permit applied for under ORS 196.815 for filling waters of this
 31 state if the director determines that the proposed fill]* Would not unreasonably interfere with the par-
 32 amount policy of this state to preserve the use of its waters for navigation, fishing and public re-
 33 creation.

34 [(3)] (2) In determining whether *[or not]* **to issue** a permit *[shall be issued]*, the director shall
 35 consider all of the following:

36 (a) The public need for the proposed fill **or removal** and the social, economic or other public
 37 benefits likely to result from the proposed fill **or removal**. When the applicant for a *[fill]* permit is
 38 a public body, the director may accept and rely upon the public body’s findings as to local public
 39 need and local public benefit.

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

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

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

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

45 (f) Whether the proposed fill **or removal** is in conformance with existing public uses of the

1 waters and with uses designated for adjacent land in an acknowledged comprehensive plan and
2 [zoning ordinances] **land use regulations**.

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

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

7 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
8 of the proposed fill **or removal** in the manner set forth in ORS 196.800 [(10)]. If off-site compensatory
9 wetland mitigation is proposed, the applicant shall document the impracticability of on-site
10 compensatory wetland mitigation.

11 [(4)] (3) The director may issue a permit for a **project that results in a** substantial fill in an
12 estuary for a nonwater dependent use only if the [fill] **project** is for a public use and would satisfy
13 a public need that outweighs harm to navigation, fishery and recreation and if the proposed fill
14 meets all other criteria contained in ORS 196.600 to 196.905.

15 [(5)] (4) If the director issues a permit, the director may impose such conditions as the director
16 considers necessary to carry out the purposes of ORS 196.805[,] **and** 196.830 and [subsections (1) and
17 (2)] **subsection (1)** of this section and to provide mitigation for the reasonably expected adverse
18 [impacts from] **effects of** project development. In formulating such conditions the director may re-
19 quest comment from [the State Geologist, the State Fish and Wildlife Director, the State Forester, the
20 Director of the Department of Environmental Quality, the administrative officer of the Soil and Water
21 Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the
22 State Marine Director, the Director of Transportation, the Director of the Economic and Community
23 Development Department, the Water Resources Director and affected local governmental units] **public**
24 **bodies, as defined in ORS 174.109, federal agencies and tribal governments affected by the**
25 **permit**. Each permit is valid only for the time specified therein. [Obtaining a lease from the De-
26 partment of State Lands may not be one of the conditions to be considered in granting a permit under
27 ORS 196.815.] The director [of the Department of State Lands] shall impose, as conditions to any
28 permit, general authorization or wetland conservation plan, measures to provide mitigation for the
29 reasonably expected adverse [impacts from] **effects of** project development. Compensatory wetland
30 mitigation shall be limited to replacement of the functional attributes of the lost wetland.

31 (5) **The director may request comment from interested parties and adjacent property**
32 **owners on any application for a permit. The director shall furnish to any person, upon writ-**
33 **ten request and at the expense of the person who requests the copy, a copy of any application**
34 **for a permit or authorization under this section or ORS 196.850.**

35 (6) Any applicant whose application for a permit **or authorization** has been deemed incomplete
36 or has been denied, or who objects to any of the conditions imposed under [subsections (1), (2) and
37 (5) of] this section by the director [of the Department of State Lands], may, within 21 days of the
38 denial of the permit **or authorization** or the imposition of any condition, request a hearing from the
39 director. Thereupon the director shall set the matter down for hearing, which shall be conducted
40 as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After
41 such hearing, the director shall enter an order containing findings of fact and conclusions of law.
42 The order shall rescind, affirm or modify the director's initial order. Appeals from the director's final
43 order may be taken to the Court of Appeals in the manner provided by ORS 183.482.

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

1 (a) Determine whether an application is complete within 30 days from the date the Department
 2 of State Lands receives the application. If the director determines that an application is complete,
 3 the director shall distribute the application for comment pursuant to subsection [(5)] (4) of this
 4 section. If the director determines that the application is not complete, the director shall notify the
 5 applicant in writing that the application is deficient and explain, in the same notice, the deficiencies.

6 (b) Issue a permit decision [*involving fill or removal of material*] within 90 days after the date
 7 the director determines that the application is complete unless:

8 (A) An extension of time is granted under subsection (9)(b) of this section; or

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

10 (8) Permits issued under this section shall be in lieu of any permit **or authorization** that might
 11 be required for the same operation under ORS 164.775, 164.785, [*468.010, 468.030 to 468.045,*] **468.020,**
 12 **468.035, 468.045,** 468.055, 468.060, [*468.075,*] 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to
 13 468B.085, so long as:

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

15 (b) The standards for granting [*such permits*] **the permit or authorization** are substantially the
 16 same as those established pursuant to ORS 164.775, 164.785, [*468.010,*] **468.020,** 468.035, [*468.040,*]
 17 **468.045,** 468.055, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they
 18 affect water quality.

19 (9)(a) Any [*agency or other unit of government*] **public body, as defined in ORS 174.109, federal**
 20 **agency or tribal government** requested by the director to comment on an application for a permit
 21 [*under subsection (5) of this section*] must submit its comments to the director not more than 30 days
 22 after receiving the request for comment. If [*an agency or other unit of*] **a public body, federal**
 23 **agency or tribal** government fails to comment on the application within 30 days, the director shall
 24 assume [*the agency or other unit of*] **that the public body, federal agency or tribal** government has
 25 no objection [*and shall approve or deny the application*].

26 (b) The Department of Environmental Quality shall provide comments to the director within 75
 27 days after receiving notice under subsection [(5)] (4) of this section if the permit action requires
 28 certification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

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

31 (11) As used in this section:

32 (a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal
 33 or fill activity.

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

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

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

39 (C) The fee required under ORS 196.815;

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

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

45 (F) An analysis of alternatives that evaluates practicable methods to minimize and avoid impacts

1 to waters of this state;

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

3 (H) Any other information that the director deems pertinent and necessary to make an informed
4 decision on whether the application complies with the policy and standards set forth in [subsections
5 (1) to (5) of] this section.

6 **SECTION 5.** ORS 196.825, as amended by section 3, chapter 516, Oregon Laws 2001, section 10,
7 chapter 253, Oregon Laws 2003, and section 18a, chapter 738, Oregon Laws 2003, is amended to read:

8 196.825. (1) The Director of the Department of State Lands shall issue a permit [*to remove ma-*
9 *terial from the beds or banks of any waters of this state*] applied for under ORS 196.815 if the director
10 determines that the [removal] **project** described in the application:

11 (a) Is consistent with the protection, conservation and best use of the water resources of this
12 state as specified in ORS 196.600 to 196.905[.]; **and**

13 [(2) *The director shall issue a permit applied for under ORS 196.815 for filling waters of this state*
14 *if the director determines that the proposed fill:*]

15 [(a)] (b) Would not unreasonably interfere with the paramount policy of this state to preserve
16 the use of its waters for navigation, fishing and public recreation[; *and*].

17 [(b) *Is consistent with ORS 196.600 to 196.905.*]

18 [(3)] (2) In determining whether to issue a permit [*under subsection (1) or (2) of this section*], the
19 director shall consider all of the following:

20 (a) The public need for the proposed fill **or removal** and the social, economic or other public
21 benefits likely to result from the proposed fill **or removal**. When the applicant for a [*fill*] permit is
22 a public body, the director may accept and rely upon the public body's findings as to local public
23 need and local public benefit.

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

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

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

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

29 (f) Whether the proposed fill **or removal** is in conformance with existing public uses of the
30 waters and with uses designated for adjacent land in an acknowledged comprehensive plan and
31 [*zoning ordinances*] **land use regulations**.

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

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

36 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
37 of the proposed fill **or removal** in the manner set forth in ORS 196.800 [(10)]. If off-site compensatory
38 wetland mitigation is proposed, the applicant shall document the impracticability of on-site
39 compensatory wetland mitigation.

40 [(4)] (3) The director may issue a permit for a **project that results in a** substantial fill in an
41 estuary for a nonwater dependent use only if the [*fill*] **project** is for a public use and would satisfy
42 a public need that outweighs harm to navigation, fishery and recreation and if the proposed fill
43 meets all other criteria contained in ORS 196.600 to 196.905.

44 [(5)] (4) If the director issues a permit, the director may impose such conditions as the director
45 considers necessary to carry out the purposes of ORS 196.805[,], **and** 196.830 and [*subsections (1) and*

1 (2)] **subsection (1)** of this section and to provide mitigation for the reasonably expected adverse
 2 [impacts from] **effects of** project development. In formulating such conditions the director may re-
 3 quest comment from [the State Geologist, the State Fish and Wildlife Director, the State Forester, the
 4 Director of the Department of Environmental Quality, the administrative officer of the Soil and Water
 5 Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the
 6 State Marine Director, the Director of Transportation, the Director of the Economic and Community
 7 Development Department, the Water Resources Director and affected local governmental units] **public**
 8 **bodies, as defined in ORS 174.109, federal agencies and tribal governments affected by the**
 9 **permit.** Each permit is valid only for the time specified therein. [Obtaining a lease from the De-
 10 partment of State Lands may not be one of the conditions to be considered in granting a permit under
 11 ORS 196.815.] The director [of the Department of State Lands] shall impose, as conditions to any
 12 permit, general authorization or wetland conservation plan, measures to provide mitigation for the
 13 reasonably expected adverse [impacts from] **effects of** project development. Compensatory wetland
 14 mitigation shall be limited to replacement of the functional attributes of the lost wetland.

15 **(5) The director may request comment from interested parties and adjacent property**
 16 **owners on any application for a permit. The director shall furnish to any person, upon writ-**
 17 **ten request and at the expense of the person who requests the copy, a copy of any application**
 18 **for a permit or authorization under this section or ORS 196.850.**

19 (6) Any applicant whose application for a permit **or authorization** has been deemed incomplete
 20 or has been denied, or who objects to any of the conditions imposed under [subsections (1), (2) and
 21 (5) of] this section by the director, may, within 21 days of the denial of the permit **or authorization**
 22 or the imposition of any condition, request a hearing from the director. Thereupon the director shall
 23 set the matter down for hearing, which shall be conducted as a contested case in accordance with
 24 ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After such hearing, the director shall enter
 25 an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify
 26 the director's initial order. Appeals from the director's final order may be taken to the Court of
 27 Appeals in the manner provided by ORS 183.482.

28 (7) Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the director
 29 shall:

30 (a) Determine whether an application is complete within 30 days from the date the Department
 31 of State Lands receives the application. If the director determines that an application is complete,
 32 the director shall distribute the application for comment pursuant to subsection [(5)] (4) of this
 33 section. If the director determines that the application is not complete, the director shall notify the
 34 applicant in writing that the application is deficient and explain, in the same notice, the deficiencies.

35 (b) Issue a permit decision [involving fill or removal of material] within 90 days after the date
 36 the director determines that the application is complete unless:

37 (A) An extension of time is granted under subsection (9)(b) of this section; or

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

39 (8) Permits issued under this section shall be in lieu of any permit **or authorization** that might
 40 be required for the same operation under ORS 164.775, 164.785, [468.010, 468.030 to 468.045,] **468.020,**
 41 **468.035, 468.045,** 468.055, 468.060, [468.075,] 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to
 42 468B.085, so long as:

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

44 (b) The standards for granting [such permits] **the permit or authorization** are substantially the
 45 same as those established pursuant to ORS 164.775, 164.785, [468.010,] **468.020,** 468.035, [468.040,]

1 **468.045**, 468.055, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they
 2 affect water quality.

3 (9)(a) Any *[agency or other unit of government]* **public body, as defined in ORS 174.109, federal**
 4 **agency or tribal government** requested by the director to comment on an application for a permit
 5 *[under subsection (5) of this section]* must submit its comments to the director not more than 30 days
 6 after receiving the request for comment. If *[an agency or other unit of]* **a public body, federal**
 7 **agency or tribal** government fails to comment on the application within 30 days, the director shall
 8 assume *[the agency or other unit of]* **that the public body, federal agency or tribal** government has
 9 no objection *[and shall approve or deny the application]*.

10 (b) The Department of Environmental Quality shall provide comments to the director within 75
 11 days after receiving notice under subsection *[(5)]* **(4)** of this section if the permit action requires
 12 certification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

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

15 (11) As used in this section:

16 (a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal
 17 or fill activity.

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

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

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

23 (C) The fee required under ORS 196.815;

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

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

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

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

32 (H) Any other information that the director deems pertinent and necessary to make an informed
 33 decision on whether the application complies with the policy and standards set forth in *[subsections*
 34 *(1) to (5) of]* this section.

35 **SECTION 6.** ORS 196.850 is amended to read:

36 196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
 37 general authorization for removal of material from the bed or banks **of any waters of this state**
 38 or the filling of any waters of *[the]* **this** state without a permit from the department if the depart-
 39 ment finds that *[those]* **the** activities subject to the general authorization:

40 (a) Are substantially similar in nature *[and]*;

41 (b) Would cause only minimal individual and cumulative environmental impacts[,]; and

42 (c) Would not result in long-term harm to water resources of the state.

43 **(2) A general authorization may be granted on a statewide or other geographic basis.**

44 **(3) The department shall condition any *[such]* general authorization upon actions necessary to**
 45 minimize environmental impacts.

1 [(2)] (4) The department shall provide notice of any proposed general authorization to affected
 2 federal and state agencies, local governments, **tribal governments** and the public. The notice shall
 3 include:

- 4 (a) A clear description of the proposal; and
- 5 (b) Draft findings and any proposed conditions pursuant to [subsection (1) of] this section.

6 [(3)] (5) Any person proposing to conduct an action under a general authorization shall:

- 7 (a) Notify the department in writing prior to conducting [such] **the** action.
- 8 (b) **Pay the applicable fee to the department as determined under subsection (9) of this**
 9 **section.**

10 [(4)] (6) The department shall amend or rescind any general authorization upon a determination
 11 that the activities conducted under the authorization have resulted in or would result in more than
 12 minimal environmental impacts or long-term harm to the water resources of this state.

13 [(5)] (7) The department shall review each general authorization adopted pursuant to this section
 14 every five years. The review shall include public notice and opportunity for public hearing. After
 15 [such] **the** review, the department may either modify, reissue or rescind the general authorization.

16 [(6)] (8) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review
 17 of the validity of a rule adopted under this section, the rule shall be reviewable for substantial ev-
 18 idence in the rulemaking record. The record shall include copies of all documents before the agency
 19 relevant to [whether the requirement of] **the findings required by** subsection (1) of this section [has
 20 been met].

21 **(9) If the rule adopting a general authorization under this section is:**

22 (a) **For actions that result in moving less than 50 cubic yards of material, the department**
 23 **may not charge a fee for the general authorization.**

24 (b) **For actions that result in moving 50 or more cubic yards of material, the department**
 25 **may establish a fee for the general authorization. The fee may not exceed \$250 and shall be**
 26 **based on the cost of processing the general authorization.**

27 **(10) The department shall credit any fee collected under this section to the Common**
 28 **School Fund for use by the department in administration of ORS 196.600 to 196.905.**

29 **SECTION 7.** ORS 196.850, as amended by section 4, chapter 516, Oregon Laws 2001, and section
 30 12, chapter 253, Oregon Laws 2003, is amended to read:

31 196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
 32 general authorization for removal of material from the bed or banks **of any waters of this state**
 33 or the filling of any waters of [the] **this** state without a permit from the department if the depart-
 34 ment finds that [those] **the** activities subject to the general authorization:

- 35 (a) Are substantially similar in nature [and];
- 36 (b) Would cause only minimal individual and cumulative environmental impacts[.]; and
- 37 (c) Would not result in long-term harm to water resources of the state.

38 **(2) A general authorization may be granted on a statewide or other geographic basis.**

39 **(3) The department shall condition any [such] general authorization upon actions necessary to**
 40 **minimize environmental impacts.**

41 [(2)] (4) The department shall provide notice of any proposed general authorization to affected
 42 federal and state agencies, local governments, **tribal governments** and the public. The notice shall
 43 include:

- 44 (a) A clear description of the proposal; and
- 45 (b) Draft findings and any proposed conditions pursuant to [subsection (1) of] this section.

1 [(3)] (5) Any person proposing to conduct an action under a general authorization shall:

2 (a) Notify the department in writing prior to conducting the action. The person may not com-
 3 mence the action until the person receives a letter of authorization from the department.

4 (b) **Pay the applicable fee to the department as determined under subsection (10) of this**
 5 **section.**

6 [(4)] (6) The **Director of the Department of State Lands shall waive the** requirements of
 7 subsection [(3)] (5) of this section [*shall be waived*] if the director [*of the Department of State*
 8 *Lands*] issues a general authorization and the authorized activity:

9 (a) Involves less than 50 cubic yards of material;

10 (b) Will be conducted during periods that minimize adverse effects to fish and wildlife in ac-
 11 cordance with guidance provided by the State Department of Fish and Wildlife;

12 (c) Will not dam or divert a waterway in a manner that obstructs fish passage or vessel navi-
 13 gation; and

14 (d) Will not violate water quality standards as established by the Department of Environmental
 15 Quality.

16 [(5)] (7) The Department of State Lands shall amend or rescind any general authorization upon
 17 a determination that the activities conducted under the authorization have resulted in or would re-
 18 sult in more than minimal environmental impacts or long-term harm to the water resources of this
 19 state.

20 [(6)] (8) The department shall review each general authorization adopted pursuant to this section
 21 every five years. The review shall include public notice and opportunity for public hearing. After
 22 [*such*] **the** review, the department may either modify, reissue or rescind the general authorization.

23 [(7)] (9) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review
 24 of the validity of a rule adopted under this section, the rule shall be reviewable for substantial ev-
 25 idence in the rulemaking record. The record shall include copies of all documents before the agency
 26 relevant to [*whether the requirement of*] **the findings required by** subsection (1) of this section [*has*
 27 *been met*].

28 (10) **If the rule adopting a general authorization under this section is:**

29 (a) **For actions that result in moving less than 50 cubic yards of material, the department**
 30 **may not charge a fee for the general authorization.**

31 (b) **For actions that result in moving 50 or more cubic yards of material, the department**
 32 **may establish a fee for the general authorization. The fee may not exceed \$250 and shall be**
 33 **based on the cost of processing the general authorization.**

34 (11) **The department shall credit any fee collected under this section to the Common**
 35 **School Fund for use by the department in administration of ORS 196.600 to 196.905.**

36
 37 **CONFORMING AMENDMENTS**

38
 39 **SECTION 8.** ORS 196.620 is amended to read:

40 196.620. (1) For each mitigation bank, the Department of State Lands shall establish a system
 41 of resource values and credits.

42 (2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in
 43 accordance with ORS 196.825 [(5)] (4), for any other authorization issued in accordance with ORS
 44 196.800 to 196.905 or to resolve a violation of ORS 196.800 to 196.905.

45 (3) Credits from a freshwater mitigation bank may be used only as described in subsection (2)

1 of this section for permits, authorizations or resolutions of violations approved within the service
 2 area of the mitigation bank, consistent with the mitigation bank instrument, unless the Director of
 3 the Department of State Lands determines, in exceptional circumstances, that it is environmentally
 4 preferable to exceed this limitation.

5 (4) Credits from an estuarine mitigation bank may be used only as described in subsection (2)
 6 of this section for permits, authorizations or resolutions of violations approved within the same
 7 estuarine ecological system.

8 (5) The director may not withdraw any credits from any mitigation bank until the director has:

9 (a) Taken actions sufficient to establish hydrological function of the mitigation bank site;

10 (b) Conducted other creation, restoration and enhancement actions to establish other wetland
 11 functions and values at the mitigation bank site; and

12 (c) Evaluated the results of the actions and determined that a high probability exists that the
 13 wetland functions and values of the mitigation bank site are equal to or greater than the functions
 14 and the values of the wetland area to be damaged or destroyed.

15 (6) The price for any mitigation credit shall be set at an amount that will compensate the state
 16 for all of the costs and expenses the state has incurred, and is expected to incur in establishing and
 17 maintaining that portion of the mitigation bank.

18 (7) The director shall not consider the availability or nonavailability of mitigation bank credits
 19 in deciding whether to grant or deny any removal or fill permit under ORS 196.600 to 196.905.

20 (8) The director annually shall:

21 (a) Evaluate the wetlands functions and values created within each wetland mitigation bank site;
 22 and

23 (b) Compare the current functions and values with those that the director anticipated that the
 24 mitigation bank would provide. If the director finds any significant disparity between the actual and
 25 anticipated functions and values, the director shall:

26 (A) Suspend the withdrawal of credits to that mitigation site; or

27 (B) Take prompt action to ensure that the anticipated functions and values are established.

28 (9) The director may not withdraw credits from the mitigation bank for a specific permit, au-
 29 thorization or resolution of a violation if the director determines that:

30 (a) The credits for that specific permit, authorization or resolution of a violation would not ad-
 31 equately maintain habitat or species diversity; or

32 (b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently
 33 similar in wetland functions and values to the wetland area to be damaged or destroyed.

34 **SECTION 9.** ORS 196.643 is amended to read:

35 196.643. A person who provides off-site compensatory wetland mitigation in order to comply with
 36 a condition imposed on a permit in accordance with ORS 196.825 [(5)] (4), an authorization issued
 37 in accordance with ORS 196.800 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905
 38 may make a payment for credits to an approved mitigation bank with available credits, or to the
 39 Oregon Wetlands Mitigation Bank Revolving Fund Account, if credits from a mitigation bank are
 40 not available. If the person is making a payment to the Oregon Wetlands Mitigation Bank Revolving
 41 Fund Account, the payment shall be equal to the average cost of credits available from all active
 42 mitigation banks in the state.

43 **SECTION 10.** ORS 196.682 is amended to read:

44 196.682. (1) Except where otherwise provided by the order approving the plan, individual permit
 45 applications shall be required for removal or fill, or both, in areas subject to an approved wetland

1 conservation plan. If individual permit applications are to be reviewed under the authority of the
2 Director of the Department of State Lands, then application fees and review procedures shall be in
3 accordance with ORS 196.815, 196.825 [(5) and (6)] and 196.835. In lieu of the substantive standards
4 for permit issuance in ORS [196.815 (1) and] 196.825 [(1),] (2) [and (3)], the Department of State Lands
5 shall issue a permit if the removal or fill, or both, is consistent with the wetland conservation plan
6 or can be conditioned to be consistent with the plan. The department shall condition any such per-
7 mit as necessary to [insure] **ensure** that the project:

8 (a) Is properly designed or configured to minimize the need for alterations to waters of [the] **this**
9 state;

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

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

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

14 (e) Is conditioned to [insure] **ensure** wetland creation, restoration or enhancement measures are
15 implemented to fully replace impacted resources.

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

20 **SECTION 11.** ORS 196.686 is amended to read:

21 196.686. (1) For the purposes of this section, an acknowledged estuary management plan includes
22 the comprehensive plan and land use regulations adopted by cities and counties to satisfy the re-
23 quirement of statewide planning goals related to estuarine resources including shoreland portions
24 of estuarine sites designated for development as those plans and regulations existed on January 1,
25 1989.

26 (2) Any city or county may submit an acknowledged estuary management plan for review and
27 approval by the Department of State Lands pursuant to the provisions of this section. The plan shall
28 be submitted with a written request for review.

29 (3) To allow timely and effective review of acknowledged estuary management plans, the de-
30 partment may limit acceptance for review to two plans but not more than one plan for a deep draft
31 development estuary at any one time.

32 (4) With the consent of the city or county submitting an estuary management plan for review
33 and approval, the department may extend any or all of the deadlines set forth in this section.

34 (5) Acknowledged estuary management plans shall be presumed to comply with requirements for
35 approval of wetland conservation plans specified in ORS 196.681.

36 (6) Within 10 days of acceptance of a request for review, the department shall provide notice to
37 affected state agencies, local governments, federal agencies and the public of receipt of the ac-
38 knowledged estuary management plan and of the request for review and approval of the acknowl-
39 edged estuary management plan as a wetland conservation plan.

40 (7) Within 30 days of acceptance of a request for review and upon provision of at least two
41 weeks' notice, the department shall hold a public informational hearing on the proposed approval
42 of the acknowledged estuary management plan as a wetland conservation plan.

43 (8) Within 60 days of acceptance of the request for review, the department shall conduct a pre-
44 liminary review of the acknowledged estuary management plan. The department shall consult with
45 the affected local government prior to finalizing the preliminary review.

1 (9) Except as provided in subsection (10) of this section, the Director of the Department of State
2 Lands shall approve the acknowledged estuary management plan by order within 60 days of com-
3 pletion of the preliminary review.

4 (10) A contested case hearing shall be held within 30 days of the completion of the preliminary
5 review or receipt of a request for hearing if:

6 (a) The director determines there is probable cause to believe that the estuary management plan
7 does not meet the standards for approving wetland conservation plans or unreasonably interferes
8 with the use of the estuary for navigation, fisheries or public recreation; or

9 (b) A hearing is requested and the request:

10 (A) Is made in writing within 60 days of the date of mailing of notice of completion of review;

11 (B) Clearly states the reasons for requesting the hearing; and

12 (C) Provides sufficient information for the director to determine that there is probable cause to
13 believe that the estuary management plan does not meet the standards for approving wetland con-
14 servation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or
15 public recreation.

16 (11) The director shall approve the acknowledged estuary management plan as a wetland con-
17 servation plan by order unless the director finds by a preponderance of the evidence that the
18 estuary management plan does not meet the standards for approving wetland conservation plans or
19 unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation or
20 that substantial fills proposed in an estuary management plan for nonwater dependent use are not
21 for a public use and would not satisfy a public need that outweighs harm to navigation, fisheries
22 or public recreation.

23 (12) The director shall prepare a proposed order for review by the parties within 30 days of any
24 contested case hearing held pursuant to subsection (10) of this section.

25 (13) A final order from the director that recommends, pursuant to subsection (8) of this section,
26 denial of an estuary management plan as a wetland conservation plan shall identify deficient ele-
27 ments and provisions of the acknowledged estuary management plan and what measures may be
28 taken to correct those deficiencies.

29 (14) Individual permit applications shall be required for removal or fill, or both, in areas subject
30 to an approved estuary management plan. Individual permit applications shall be reviewed in ac-
31 cordance with ORS 196.815, 196.825 [(5) and (6)], 196.830 and 196.835. In lieu of the substantive
32 standards for permit issuance in ORS [196.815 (1) and] 196.825 [(1),] (2) [and (3)], the department shall
33 issue a permit if the removal or fill, or both, is determined by the director to be consistent with the
34 estuary management plan or can be conditioned to be consistent with the plan. The department shall
35 condition any such permit as necessary to [*insure*] **ensure** that the project:

36 (a) Is designed or configured to minimize alterations to waters of [*the*] **this** state;

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

38 (c) Is consistent with the resource capabilities of the area and the purposes of the management
39 unit, unless this has been previously determined in the approved estuary management plan;

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

41 (e) Has estuarine resource replacement measures for creation, restoration or enhancement that
42 replaces impacted resources.

43 (15) Judicial review of an order granting or denying approval of an estuary management plan
44 as provided in this section shall be as provided in ORS 183.470.

45 (16) Following approval by the director of an estuary management plan, the requirements of ORS

1 196.684 shall apply to the approved estuary management plan.

2 **SECTION 12.** ORS 196.810 is amended to read:

3 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, [*no per-*
 4 *son or governmental body may*] **a person may not** remove any material from the beds or banks of
 5 **any waters of this state** or fill any waters of this state without a permit issued under authority
 6 of the Director of the Department of State Lands, or in a manner contrary to the conditions set out
 7 in the permit, or in a manner contrary to the conditions set out in an order approving a [*wetlands*]
 8 **wetland** conservation plan.

9 (b) Notwithstanding the permit requirements of this section and notwithstanding the provisions
 10 of ORS 196.800 [*(5) and (13)*] **(3) and (11)**, if any removal or fill activity is proposed in essential
 11 indigenous anadromous salmonid habitat, except for those activities customarily associated with
 12 agriculture, a permit is required. “Essential indigenous anadromous salmonid habitat” as defined
 13 under this section shall be further defined and designated by rule by the Department of State Lands
 14 in consultation with the State Department of Fish and Wildlife and in consultation with other af-
 15 fected parties.

16 (c) [*No person may be*] **A person is not** required to obtain a permit under paragraph (b) of this
 17 subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of
 18 less than one cubic yard of material at any one individual site and, cumulatively, not more than five
 19 cubic yards of material within a designated essential indigenous anadromous salmonid habitat seg-
 20 ment in a single year. Prospecting or other nonmotorized activities may be conducted only within
 21 the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present.
 22 Removal or filling activities customarily associated with mining require a permit under paragraph
 23 (b) of this subsection.

24 (d) [*No permit may be*] **A permit is not** required under paragraph (b) of this subsection for
 25 construction or maintenance of fish passage and fish screening structures that are constructed, op-
 26 erated or maintained under ORS 498.311, 498.316, 498.326 or 509.600 to 509.645.

27 (e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

28 (f) As used in paragraphs (b) and (c) of this subsection:

29 (A) “Bed” means the land within the wet perimeter and any adjacent nonvegetated dry gravel
 30 bar.

31 (B) “Essential indigenous anadromous salmonid habitat” means the habitat that is necessary to
 32 prevent the depletion of indigenous anadromous salmonid species during their life history stages of
 33 spawning and rearing.

34 (C) “Indigenous anadromous salmonid” means chum, sockeye, Chinook and Coho salmon, and
 35 steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive,
 36 threatened or endangered by a state or federal authority.

37 (D) “Prospecting” means searching or exploring for samples of gold, silver or other precious
 38 minerals, using nonmotorized methods, from among small quantities of aggregate.

39 (E) “Wet perimeter” means the area of the stream that is under water or is exposed as a non-
 40 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the
 41 activity occurs.

42 (2) [*No governmental body may*] **A public body, as defined in ORS 174.109, may not** issue a
 43 lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS
 44 196.600 to 196.905.

45 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit

1 or lease with any *[governmental]* **public body, as defined in ORS 174.109**, entered into before Sep-
2 tember 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after
3 September 13, 1967, unless the person removing the material has obtained a permit under ORS
4 196.600 to 196.905.

5 (4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue,
6 orally or in writing, an emergency authorization **to a person** for the removal of material from the
7 beds or banks or filling of any waters of this state in an emergency, for the purpose of making re-
8 pairs or for the purpose of preventing irreparable harm, injury or damage to persons or property.
9 The emergency authorization issued under this subsection:

10 (a) Shall contain conditions of operation that the department determines are necessary to mini-
11 mize impacts to water resources or adjoining properties.

12 (b) Shall be based, whenever practicable, on the recommendations contained in an on-site eval-
13 uation by an employee or representative of the department.

14 (c) If issued orally, shall be confirmed in writing by the department within five days.

15 **(d) Does not relieve the person from payment of a fee calculated in the manner provided**
16 **in ORS 196.815.**

17 **SECTION 13.** ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, and sec-
18 tion 97, chapter 14, Oregon Laws 2003, is amended to read:

19 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person
20 *[or governmental body]* may not remove any material from the beds or banks **of any waters of this**
21 **state** or fill any waters of this state without a permit issued under authority of the Director of the
22 Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in
23 a manner contrary to the conditions set out in an order approving a *[wetlands]* **wetland** conserva-
24 tion plan.

25 (b) A permit is not required under paragraph (a) of this subsection for prospecting or other
26 nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material
27 at any one individual site and, cumulatively, not more than five cubic yards of material within a
28 particular stream segment in a single year. Prospecting or other nonmotorized activities may be
29 conducted only within the bed or wet perimeter of the waterway and may not occur at any site
30 where fish eggs are present. Removal or filling activities customarily associated with mining require
31 a permit under paragraph (a) of this subsection.

32 (c) A permit is not required under paragraph (a) of this subsection for construction or mainte-
33 nance of fish passage and fish screening structures associated with irrigation ditches or the main-
34 tenance of drainage ditches that are constructed, operated or maintained under ORS 498.311,
35 498.316, 498.326 or 509.600 to 509.645.

36 (d) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

37 (2) A *[governmental]* **public body, as defined in ORS 174.109**, may not issue a lease or permit
38 contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to
39 196.905.

40 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit
41 or lease with any *[governmental]* **public body, as defined in ORS 174.109**, entered into before Sep-
42 tember 13, 1967. However, a contract, permit or lease may not be renewed or extended on or after
43 September 13, 1967, unless the person removing the material has obtained a permit under ORS
44 196.600 to 196.905.

45 (4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue,

1 orally or in writing, an emergency authorization **to a person** for the removal of material from the
 2 beds or banks or filling of any waters of this state in an emergency, for the purpose of making re-
 3 pairs or for the purpose of preventing irreparable harm, injury or damage to persons or property.
 4 The emergency authorization issued under this subsection:

5 (a) Shall contain conditions of operation that the department determines are necessary to mini-
 6 mize impacts to water resources or adjoining properties.

7 (b) Shall be based, whenever practicable, on the recommendations contained in an on-site eval-
 8 uation by an employee or representative of the department.

9 (c) If issued orally, shall be confirmed in writing by the department within five days.

10 (d) **Does not relieve the person from payment of a fee calculated in the manner provided**
 11 **in ORS 196.815.**

12 (5) As used in this section:

13 (a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel
 14 bar.

15 (b) "Prospecting" means searching or exploring for samples of gold, silver or other precious
 16 minerals, using nonmotorized methods, from among small quantities of aggregate.

17 (c) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-
 18 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the
 19 activity occurs.

20 **SECTION 14.** ORS 196.860 is amended to read:

21 196.860. (1) If the Director of the Department of State Lands determines that material is being
 22 removed from or filling is occurring in any of the waters of this state without a permit issued under
 23 ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner con-
 24 trary to the conditions set out in an order approving a [*wetlands*] **wetland** conservation plan, the
 25 director may:

26 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to
 27 196.905, as soon as possible.

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

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

32 (d) Publish findings and recommendations as they are developed relative to public policies and
 33 procedures necessary for the correction of conditions or violations of ORS 196.600 to 196.905.

34 (e) Give notice of any proposed order relating to a violation by personal service or by mailing
 35 the notice by registered or certified mail to the person [*or governmental body*] affected. Any person
 36 aggrieved by a proposed order of the director may request a hearing within 20 days of the date of
 37 personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS
 38 chapter 183 applicable to contested cases, and judicial review of final orders shall be conducted in
 39 the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to
 40 appear, a final order shall be issued upon a prima facie case on the record of the agency.

41 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of
 42 ORS 196.600 to 196.905 or of any rule or final order of the director under ORS 196.600 to 196.905
 43 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in
 44 any such proceedings the director may seek and the court may award a sum of money sufficient to
 45 compensate the public for any destruction or infringement of any public right of navigation, fishery

1 or recreation resulting from such violation. Proceedings thus brought by the director shall set forth
2 if applicable the dates of notice and hearing and the specific rule or order of the director, together
3 with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the
4 damages to any public right of navigation, fishery or recreation, if any, resulting from such vio-
5 lation.

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

10 (a) An order under this subsection:

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

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

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

15 (D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this
16 subsection.

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

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

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

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

32 **SECTION 15.** ORS 196.865 is amended to read:

33 196.865. If the Director of the Department of State Lands finds that a person [*or governmental*
34 *body*] holding a permit issued under ORS 196.825 is removing material from the bed or banks or
35 filling any of the waters of this state contrary to the conditions set out in the permit, the director
36 may revoke, suspend or refuse to renew such permit. The director may revoke a permit only after
37 giving notice and opportunity for a hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460
38 and 183.470.

39 **SECTION 16.** ORS 196.875 is amended to read:

40 196.875. (1) If any person [*or governmental body*], through negligence, violates ORS 196.810, the
41 Director of the Department of State Lands, in a proceeding brought pursuant to ORS 196.870, may
42 seek and the court may award double a sum of money sufficient to compensate the public for any
43 destruction or infringement of any public right of navigation, fishery or recreation resulting from
44 such violation.

45 (2) If any person [*or governmental body*] intentionally violates ORS 196.810, the director, in a

1 proceeding brought pursuant to ORS 196.870, may seek and the court may award treble a sum of
2 money sufficient to compensate the public for any destruction or infringement of any public right
3 of navigation, fishery or recreation resulting from such violation.

4 (3) An award made pursuant to this section shall be in addition to and not in lieu of any crim-
5 inal penalties imposed for a violation of ORS 196.810.

6 (4) In any action brought under ORS 196.870, the court shall award to the prevailing party the
7 costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS
8 20.140, any costs and attorney fees so awarded to the director shall be deposited in the Common
9 School Fund to offset the director's expenses of bringing such action.

10
11 **MISCELLANEOUS PROVISIONS**
12

13 **SECTION 17. The amendments to ORS 196.620, 196.643, 196.682, 196.686, 196.800, 196.810,**
14 **196.815, 196.825, 196.850 and 196.865 by sections 1 to 13 and 15 of this 2007 Act apply only to**
15 **permits applied for or permits renewed on or after the effective date of this 2007 Act.**

16 **SECTION 18. The unit captions used in this 2007 Act are provided only for the conven-**
17 **ience of the reader and do not become part of the statutory law of this state or express any**
18 **legislative intent in the enactment of this 2007 Act.**

19 **SECTION 19. This 2007 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
21 **on July 1, 2007.**
22
