

Senate Bill 544

Sponsored by Senators MORSE, AVAKIAN, BEYER, JOHNSON

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**.

Allows arbitration as alternative to Court of Appeals for appeals from final orders of Director of Department of State Lands relating to permits to remove material from beds or banks of any waters of this state and permits for filling waters of this state.

A BILL FOR AN ACT

1
2 Relating to Department of State Lands; creating new provisions; and amending ORS 196.825.

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

4 **SECTION 1.** ORS 196.825 is amended to read:

5 196.825. (1) The Director of the Department of State Lands shall issue a permit to remove ma-
6 terial from the beds or banks of any waters of this state applied for under ORS 196.815 if the di-
7 rector determines that the removal described in the application will not be inconsistent with the
8 protection, conservation and best use of the water resources of this state as specified in ORS
9 196.805.

10 (2) The director shall issue a permit applied for under ORS 196.815 for filling waters of this state
11 if the director determines that the proposed fill would not unreasonably interfere with the para-
12 mount policy of this state to preserve the use of its waters for navigation, fishing and public recre-
13 ation.

14 (3) In determining whether or not a permit shall be issued, the director shall consider all of the
15 following:

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

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

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

21 (d) The availability of alternative sites for the proposed fill.

22 (e) Whether the proposed fill conforms to sound policies of conservation and would not interfere
23 with public health and safety.

24 (f) Whether the proposed fill is in conformance with existing public uses of the waters and with
25 uses designated for adjacent land in an acknowledged comprehensive plan and zoning ordinances.

26 (g) Whether the proposed fill is compatible with the acknowledged comprehensive plan and land
27 use regulations for the area where the proposed fill is to take place or can be conditioned on a fu-
28 ture local approval to meet this criterion.

29 (h) Whether the proposed fill is for streambank protection.

30 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
31 of the proposed fill in the manner set forth in ORS 196.800 (10). If off-site compensatory wetland

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 mitigation is proposed, the applicant shall document the impracticability of on-site compensatory
2 wetland mitigation.

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

7 (5) If the director issues a permit, the director may impose such conditions as the director con-
8 siders necessary to carry out the purposes of ORS 196.805, 196.830 and subsections (1) and (2) of this
9 section and to provide mitigation for the reasonably expected adverse impacts from project devel-
10 opment. In formulating such conditions the director may request comment from the State Geologist,
11 the State Fish and Wildlife Director, the State Forester, the Director of the Department of Envi-
12 ronmental Quality, the administrative officer of the Soil and Water Conservation Commission, the
13 Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the
14 Director of Transportation, the Director of the Economic and Community Development Department,
15 the Water Resources Director and affected local governmental units. Each permit is valid only for
16 the time specified therein. Obtaining a lease from the Department of State Lands may not be one
17 of the conditions to be considered in granting a permit under ORS 196.815. The Director of the De-
18 partment of State Lands shall impose, as conditions to any permit, general authorization or wetland
19 conservation plan, measures to provide mitigation for the reasonably expected adverse impacts from
20 project development. Compensatory wetland mitigation shall be limited to replacement of the func-
21 tional attributes of the lost wetland.

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

30 (a) The Court of Appeals in the manner provided by ORS 183.482[.]; or

31 (b) **Arbitration in the manner provided by ORS 36.600 to 36.740.**

32 (7)(a) **The applicant, pursuant to subsection (6) of this section, may request review of the**
33 **director's final order by three arbitrators who are well informed on matters related to the**
34 **removal of material from the beds or banks of any waters of this state and to filling the**
35 **waters of this state.**

36 (b) **The three arbitrators shall be selected in the following manner:**

37 (A) **The Department of State Lands shall select one arbitrator;**

38 (B) **The applicant shall select one arbitrator; and**

39 (C) **The department and the applicant shall jointly select one arbitrator.**

40 (c) **A request for arbitration of a final order entered by the director under this subsection**
41 **must be filed with the department within 21 days following the date the director enters the**
42 **final order. Filing a request for arbitration with the department is a condition of arbitration.**

43 (d) **The three arbitrators must be selected within 10 days following the date the applicant**
44 **files the request for arbitration.**

45 (e) **The arbitrators must reach a decision within 30 days from the date of the selection**

1 **of the last arbitrator. The decision of the arbitrators is limited to:**

2 **(A) Affirming the director's final order; or**

3 **(B) Setting aside the director's final order and approving the applicant's application for**
4 **a permit.**

5 [(7)] **(8)** Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the
6 director shall:

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

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

14 (A) An extension of time is granted under subsection [(9)(b)] **(10)(b)** of this section; or

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

16 [(8)] **(9)** Permits issued under this section shall be in lieu of any permit that might be required
17 for the same operation under ORS 164.775, 164.785, [468.010,] 468.030 to 468.045, 468.055, 468.060,
18 468.075, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

19 (a) The operation is that for which the permit is issued; and

20 (b) The standards for granting such permits are substantially the same as those established
21 pursuant to ORS 164.775, 164.785, [468.010,] 468.035, 468.040, 468.055, 468.110, 468.120, 468B.005 to
22 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

23 [(9)(a)] **(10)(a)** Any agency or other unit of government requested by the director to comment
24 on an application for a permit under subsection (5) of this section must submit its comments to the
25 director not more than 30 days after receiving the request for comment. If an agency or other unit
26 of government fails to comment on the application within 30 days, the director shall assume the
27 agency or other unit of government has no objection and shall approve or deny the application.

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

31 [(10)] **(11)** In determining whether to issue a permit, the director may consider only standards
32 and criteria in effect on the date the director receives the completed application.

33 [(11)] **(12)** As used in this section:

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

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

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

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

41 (C) The fee required under ORS 196.815;

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

44 (E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within
45 this state, documentation of existing conditions and resources and identification of the potential

1 impact if the project is completed;

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

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

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

8 **SECTION 2.** ORS 196.825, as amended by section 3, chapter 516, Oregon Laws 2001, section 10,
9 chapter 253, Oregon Laws 2003, and section 18a, chapter 738, Oregon Laws 2003, is amended to read:

10 196.825. (1) The Director of the Department of State Lands shall issue a permit to remove ma-
11 terial from the beds or banks of any waters of this state applied for under ORS 196.815 if the di-
12 rector determines that the removal described in the application is consistent with the protection,
13 conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.905.

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

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

18 (b) Is consistent with ORS 196.600 to 196.905.

19 (3) In determining whether to issue a permit under subsection (1) or (2) of this section, the di-
20 rector shall consider all of the following:

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

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

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

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

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

29 (f) Whether the proposed fill is in conformance with existing public uses of the waters and with
30 uses designated for adjacent land in an acknowledged comprehensive plan and zoning ordinances.

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

34 (h) Whether the proposed fill is for streambank protection.

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

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40 use only if the fill is for a public use and would satisfy a public need that outweighs harm to navi-
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 3 ronmental Quality, the administrative officer of the Soil and Water Conservation Commission, the
 4 Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the
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 9 partment of State Lands shall impose, as conditions to any permit, general authorization or wetland
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 11 project development. Compensatory wetland mitigation shall be limited to replacement of the func-
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13 (6) Any applicant whose application for a permit has been deemed incomplete or has been de-
 14 nied, or who objects to any of the conditions imposed under subsections (1), (2) and (5) of this section
 15 by the director, may, within 21 days of the denial of the permit or the imposition of any condition,
 16 request a hearing from the director. Thereupon the director shall set the matter down for hearing,
 17 which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440
 18 to 183.460 and 183.470. After such hearing, the director shall enter an order containing findings of
 19 fact and conclusions of law. The order shall rescind, affirm or modify the director's initial order.
 20 Appeals from the director's final order may be taken to:

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

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13 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

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15 on an application for a permit under subsection (5) of this section must submit its comments to the
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18 agency or other unit of government has no objection and shall approve or deny the application.

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36 this state, documentation of existing conditions and resources and identification of the potential
37 impact if the project is completed;

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39 to waters of this state;

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

44 **SECTION 3. The amendments to ORS 196.825 by sections 1 and 2 of this 2007 Act apply**
45 **to appeals from final orders entered by the Director of the Department of State Lands on**

1 **or after the effective date of this 2007 Act.**

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