

**A-Engrossed**  
**House Bill 2156**

Ordered by the House April 30  
Including House Amendments dated April 30

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**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Authorizes Department of State Lands to allow mitigation banks *[for]* **to offset adverse** effects on waters of state. Changes name of Oregon Wetlands Mitigation Bank Revolving Fund Account to Oregon *[Mitigation Bank Account]* **Removal-Fill Mitigation Fund**. Clarifies *[certain references to mitigation]* **and modifies provisions relating to mitigation**.

**A BILL FOR AN ACT**

1  
2 Relating to mitigation for water resources; amending ORS 196.600, 196.605, 196.610, 196.615, 196.620,  
3 196.623, 196.625, 196.640, 196.643, 196.645, 196.650, 196.655, 196.660, 196.665, 196.682, 196.686,  
4 196.800, 196.825 and 196.885.

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

6 **SECTION 1.** ORS 196.600 is amended to read:

7 196.600. As used in ORS 196.600 to 196.655:

8 (1) "Compensatory *[wetland]* mitigation" means activities conducted by a permittee or third  
9 party to create, restore, *[or]* enhance *[wetland functional attributes]* **or preserve the functions and**  
10 **values of the water resources of this state** to compensate for the **removal-fill related** adverse  
11 effects of project development **to waters of this state** or to resolve violations of ORS 196.800 to  
12 196.905. **Compensatory mitigation for removal-fill activities does not affect permit require-**  
13 **ments of other state departments.**

14 (2) "Credit" means the measure of the increase in *[wetland functional attributes]* **the functions**  
15 **and values of the water resources of this state** achieved at a mitigation bank site.

16 (3) "Mitigation bank" means a *[wetland]* site[,] created, restored, *[or]* enhanced **or preserved in**  
17 accordance with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts **to waters**  
18 **of this state** due to activities which otherwise comply with the requirements of ORS 196.600 to  
19 196.905.

20 (4) "Mitigation bank instrument" means the legally binding and enforceable agreement between  
21 the Director of the Department of State Lands and a mitigation bank sponsor that formally estab-  
22 lishes the mitigation bank and stipulates the terms and conditions of the mitigation bank's con-  
23 struction, operation and long-term management.

24 (5) "Off-site compensatory *[wetland]* mitigation" means activities conducted away from the  
25 project site that *[restore, create or enhance wetland functional attributes]* **create, restore, enhance**  
26 **or preserve the functions and values of the water resources of this state** in order to compen-

**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 sate for the adverse impacts to *[wetlands]* **waters of this state** from project development.

2 (6) "On-site compensatory *[wetland]* mitigation" means activities conducted at the project site  
3 to *[restore, create or enhance wetland functional attributes]* **create, restore, enhance or preserve**  
4 **the functions and values of the water resources of this state** in order to compensate for the  
5 adverse impacts to *[wetlands]* **waters of this state** from project development.

6 (7) "Permit action" means activity under a specific removal or fill permit or other authorization  
7 requested or issued under ORS 196.600 to 196.905.

8 (8) "Service area" means the boundaries set forth in a mitigation bank instrument that include  
9 one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map -  
10 1974, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects  
11 from project developments **to waters of this state**. Service areas for mitigation banks are not mu-  
12 tually exclusive.

13 (9) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State  
14 Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act  
15 of 1965, as amended (16 U.S.C. 460-L et seq.).

16 **SECTION 2.** ORS 196.605 is amended to read:

17 196.605. It is the purpose of ORS 196.600 to 196.655 to:

18 (1) Promote, in concert with other federal and state programs as well as interested parties, the  
19 maintenance and conservation of *[wetlands]* **the water resources of this state**;

20 (2) Improve cooperative efforts among private, nonprofit and public entities for the management  
21 and protection of *[wetlands]* **the waters of this state**;

22 (3) Offset losses of *[wetland functional attributes]* **the functions and values of the water re-**  
23 **sources of this state** caused by activities *[which]* **that** otherwise comply with state and federal law  
24 in order to create, restore, *[or]* enhance *[wetland functional attributes]* **or preserve those functions**  
25 **and values**;

26 (4) Maintain and encourage a predictable, efficient regulatory framework for environmentally  
27 acceptable development; *[and]*

28 (5) Provide an option for accomplishing off-site compensatory *[wetland]* mitigation when on-site  
29 compensatory *[wetland]* mitigation is not practicable*[,]*; **and**

30 **(6) Allow the use of mitigation banks to offset adverse effects from removal or fill ac-**  
31 **tivities on the waters of this state.**

32 **SECTION 3.** ORS 196.610 is amended to read:

33 196.610. Subject to approval by the State Land Board, the Director of the Department of State  
34 Lands may:

35 (1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to  
36 196.655.

37 (2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to  
38 *[protect]* **preserve** sensitive or unique *[wetlands]* habitat **in or near the waters of this state**.

39 (3) Pay costs incurred for alterations needed to create, restore, *[or]* enhance *[wetland areas]* **or**  
40 **preserve waters of this state** for purposes of carrying out the provisions of ORS 196.600 to 196.655  
41 or 196.800 to 196.905.

42 (4) Authorize payment of administrative, research or scientific monitoring expenses of the De-  
43 partment of State Lands in carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to  
44 196.905.

45 (5) Disburse funds received under the federal Coastal Zone Management Act of 1972, as amended

1 (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

2 (6) Receive funds under the federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, for  
3 the voluntary acquisition of wetlands and interests therein according to the wetlands provisions of  
4 the Statewide Comprehensive Outdoor Recreation Plan. Funds received under the federal Emer-  
5 gency Wetlands Resources Act of 1986, P.L. 99-645, shall be used for nonmitigation complementary  
6 purposes and programs of ORS 196.600 to 196.655.

7 **SECTION 4.** ORS 196.615 is amended to read:

8 196.615. (1) In accordance with the provisions of ORS 196.600 to 196.655, upon the approval of  
9 the State Land Board, the Director of the Department of State Lands shall initiate and implement  
10 a program for [*wetlands*] mitigation banks. The director shall encourage the development of and the  
11 expeditious approval of mitigation banks and other types of compensatory [*wetland*] mitigation.

12 (2) Subject to the approval of the State Land Board, the Department of State Lands shall adopt,  
13 by rule, standards and criteria for the site selection process, operation and evaluation of mitigation  
14 banks. Criteria to be considered shall include but need not be limited to:

15 (a) Historical [*wetland*] trends **relating to the waters of this state**, including the estimated  
16 rate of current and future losses of the respective types of [*wetlands*] **waters of this state**.

17 (b) The contributions of the [*wetlands*] **waters of this state** to:

18 (A) Wildlife, migratory birds and resident species;

19 (B) Commercial and sport fisheries;

20 (C) Surface and ground water quality and quantity, and flood moderation;

21 (D) Outdoor recreation including enhancement of scenic waterways; and

22 (E) Scientific and research values.

23 (c) Regional economic needs.

24 **(3) The rules adopted by the department under this section must also include:**

25 **(a) Guidelines for the use of mitigation banks to compensate for adverse effects of**  
26 **project development or to resolve violations of ORS 196.800 to 196.905 related to waters of**  
27 **this state; and**

28 **(b) Guidelines for allowing a permittee or third party to create a mitigation bank or to**  
29 **conduct compensatory mitigation in order to create, restore, enhance or preserve water re-**  
30 **sources of this state.**

31 [(3)] (4) For each mitigation bank, the department shall establish a well-defined plan, including  
32 preliminary objectives, inventory of resource values and an evaluation and monitoring program.

33 **SECTION 5.** ORS 196.620 is amended to read:

34 196.620. (1) For each mitigation bank, the Department of State Lands shall establish a system  
35 of resource values and credits.

36 (2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in  
37 accordance with ORS 196.825 (4), for any other authorization issued in accordance with ORS 196.800  
38 to 196.905 or to resolve a violation of ORS 196.800 to 196.905. At the request of a mitigation bank  
39 sponsor, the Director of the Department of State Lands may authorize the withdrawal of mitigation  
40 bank credits by a public benefit corporation as defined in ORS 65.001 or a public body as defined  
41 by ORS 174.109 designated by the director for the purpose of reserving credits for future use in  
42 accordance with this subsection. The director shall manage such transactions to ensure that each  
43 credit is used no more than one time to satisfy a use in accordance with this section.

44 (3) Credits from a [*freshwater*] mitigation bank may be used only as described in subsection (2)  
45 of this section for permits, authorizations or resolutions of violations approved within the service

1 area of the mitigation bank, consistent with the mitigation bank instrument, unless the [Director of  
2 the Department of State Lands] **director** determines[, in exceptional circumstances,] that it is envi-  
3 ronmentally preferable to exceed this limitation.

4 (4) Credits from an estuarine mitigation bank may be used only as described in subsection (2)  
5 of this section for permits, authorizations or resolutions of violations approved within the same  
6 estuarine ecological system **unless the director determines that it is environmentally prefera-  
7 ble to exceed this limitation.**

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 **or preservation** actions to es-  
11 tablish other [wetland] 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] **impacted or that the functions  
15 and values of the mitigation bank compensate for unavoidable adverse effects on the waters  
16 of this state due to the activities otherwise allowed under ORS 196.600 to 196.905.**

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

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

22 (8) The director annually shall:

23 (a) Evaluate the [wetlands] functions and values created within each [wetland] mitigation bank  
24 site; and

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

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

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

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

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

34 (b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently  
35 similar in [wetland] functions and values to the [wetland] area to be [damaged or destroyed] **im-  
36 pacted; or**

37 **(c) The functions and values of the mitigation bank do not compensate for unavoidable  
38 adverse effects on the waters of this state due to the activities otherwise allowed under ORS  
39 196.600 to 196.905.**

40 **SECTION 6.** ORS 196.623 is amended to read:

41 196.623. (1) The Department of State Lands may approve a watershed enhancement program and  
42 certify the project as a [wetlands] mitigation bank under ORS 196.600 to 196.655 if the watershed  
43 enhancement program complies with the rules adopted by the department under ORS 196.615 for  
44 certification of a program as a [wetlands] mitigation bank.

45 (2) A person, state agency, federal agency, federally recognized Indian tribe, watershed council

1 or political subdivision in this state that owns land upon which is located a watershed enhancement  
2 program that qualifies as a *[wetlands]* mitigation bank under subsection (1) of this section may sell  
3 mitigation credit from the mitigation bank subject to ORS 196.600 to 196.655 and the rules of the  
4 Department of State Lands adopted under ORS 196.600 to 196.655.

5 **SECTION 7.** ORS 196.625 is amended to read:

6 196.625. (1) The Director of the Department of State Lands shall maintain a record of fill and  
7 removal activities and actions for each mitigation bank implemented and conduct monitoring of  
8 mitigation banks with moneys from the Oregon *[Wetlands Mitigation Bank Revolving Fund*  
9 *Account]* **Removal-Fill Mitigation Fund**.

10 (2) The director shall provide annual reports to the State Land Board on moneys spent and re-  
11 ceived for each *[wetland]* mitigation bank.

12 **NOTE:** Section 8 was deleted by amendment. Subsequent sections were not renumbered.

13 **SECTION 9.** ORS 196.640 is amended to read:

14 196.640. (1) The Oregon *[Wetlands Mitigation Bank Revolving Fund Account]* **Removal-Fill**  
15 **Mitigation Fund** is established, separate and distinct from the General Fund. All moneys received  
16 under ORS 196.645 shall be paid into the State Treasury and credited to the *[account]* **Oregon**  
17 **Removal-Fill Mitigation Fund**. All moneys in the *[account]* **fund** are appropriated continuously to  
18 the Department of State Lands to be used by the department as set forth in ORS 196.650. The  
19 moneys in the *[account]* **fund** may be invested and reinvested as provided in ORS 293.701 to 293.820.  
20 Interest earned by the *[account]* **fund** shall be credited to the *[account]* **fund**.

21 (2) The department shall keep a record of all moneys deposited in the *[account]* **fund**. The record  
22 shall indicate by separate cumulative accounts the source from which the moneys are derived and  
23 the individual activity or program against which each withdrawal is charged.

24 (3) The department shall publish annually the record of moneys deposited in and removed from  
25 the *[account]* **fund**.

26 (4) The *[Director of the]* department *[of State Lands]* may adopt rules for prioritizing expenditures  
27 from the *[account]* **fund** for the purposes specified in ORS 196.650.

28 **SECTION 10.** ORS 196.643 is amended to read:

29 196.643. A person who provides off-site compensatory *[wetland]* mitigation in order to comply  
30 with a condition imposed on a permit in accordance with ORS 196.825 (4), an authorization issued  
31 in accordance with ORS 196.800 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905  
32 may make a payment for credits to an approved mitigation bank with available credits, or to the  
33 Oregon *[Wetlands Mitigation Bank Revolving Fund Account]* **Removal-Fill Mitigation Fund**, if  
34 credits from a mitigation bank are not available. If the person is making a payment to the Oregon  
35 *[Wetlands Mitigation Bank Revolving Fund Account]* **Removal-Fill Mitigation Fund**, the payment  
36 shall be equal to the average cost of credits available from all active mitigation banks in the state.

37 **SECTION 11.** ORS 196.645 is amended to read:

38 196.645. The following moneys shall be paid into the Oregon *[Wetlands Mitigation Bank Revolu-*  
39 *ing Fund Account]* **Removal-Fill Mitigation Fund**:

40 (1) Any moneys appropriated for that purpose by the Legislative Assembly;

41 (2) Moneys received from conditions imposed on a permit, authorizations or resolutions of vio-  
42 lations, except civil penalties, involving compensatory *[wetland]* mitigation in which the Department  
43 of State Lands is the party responsible for the compensatory *[wetland]* mitigation;

44 (3) Moneys awarded for such purposes as specifically stipulated under grants through the federal  
45 Emergency Wetlands Resources Act of 1986, P.L. 99-645, or the federal Coastal Zone Management

1 Act of 1972, 16 U.S.C. 1451 et seq., as amended;

2 (4) Moneys obtained by gift, bequest, donation or grant from any other public or private source  
3 for the purposes of ORS 196.600 to 196.655 or 196.800 to 196.905;

4 (5) Repayment of moneys from the *[account]* **fund**, including interest on such moneys; and

5 (6) Moneys obtained from interest or other earnings from investments of moneys in the  
6 *[account]* **fund**.

7 **SECTION 12.** ORS 196.650 is amended to read:

8 196.650. The Department of State Lands may use the moneys in the Oregon *[Wetlands Mitigation*  
9 *Bank Revolving Fund Account]* **Removal-Fill Mitigation Fund** for the following purposes:

10 (1) For the voluntary acquisition of land **or interests therein** suitable for use in mitigation  
11 banks.

12 (2) To pay for specific projects to create, restore, *[or]* enhance *[wetland areas]* **or preserve**  
13 **water resources of this state** for purposes of carrying out the provisions of ORS 196.600 to  
14 196.905. Moneys deposited in the *[account]* **fund** for *[wetland]* impacts **to the waters of this state**  
15 may be used only for *[wetland creation, restoration and enhancement]* **projects that create, restore,**  
16 **enhance or preserve water resources of this state.**

17 **(3) For the implementation of long-term protection measures related to projects that**  
18 **create, restore, enhance or preserve water resources of this state.**

19 *[(3)]* (4) For purchase of credits from approved mitigation banks.

20 *[(4)]* (5) For payment of administrative, research or scientific monitoring expenses of the de-  
21 partment in carrying out the provisions of ORS 196.600 to 196.655.

22 *[(5)]* (6) For the disbursement of funds received under the federal Coastal Zone Management Act of  
23 1972, as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant  
24 award.

25 *[(6)]* (7) For the disbursement of funds received under the federal Emergency Wetlands Resources  
26 Act of 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein as identified  
27 in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan.

28 **SECTION 13.** ORS 196.655 is amended to read:

29 196.655. As part of the report to the State Land Board required under ORS 196.885, the Director  
30 of the Department of State Lands shall prepare an annual report on the Oregon *[Wetlands Mitigation*  
31 *Bank Revolving Fund Account]* **Removal-Fill Mitigation Fund**. The report shall include, but need  
32 not be limited to:

33 (1) The financial status of the *[account]* **fund**;

34 (2) Creation, restoration, *[or]* enhancement **or preservation** activities and credits sold, granted  
35 or otherwise disposed of or remaining in mitigation banks established under ORS 196.600 to 196.655;

36 (3) **Portions of the waters of this state, including but not limited to** wetlands, acquired with  
37 moneys in the *[account]* **fund**;

38 (4) Compensatory *[wetland]* mitigation projects financed with moneys in the *[account]* **fund**; and

39 (5) For each mitigation bank, a summary of activities, including but not limited to:

40 (a) A description of the location, size, number of potential credits and credits withdrawn for  
41 each specific permit action; and

42 (b) The status of all mitigation bank activities pending or completed during the past year.

43 **SECTION 14.** ORS 196.660 is amended to read:

44 196.660. ORS 196.600 to 196.655 are intended to be supplementary to, and are not intended to  
45 abrogate, any state or federal law relating to *[wetlands]* **the waters of this state.**

1       **SECTION 15.** ORS 196.665 is amended to read:

2       196.665. ORS 196.600 to 196.655 may be cited as the “Oregon [*Wetlands Mitigation Bank Act of*  
3 *1987*] **Removal-Fill Mitigation Fund Act.**”

4       **SECTION 16.** ORS 196.682 is amended to read:

5       196.682. (1) Except where otherwise provided by the order approving the plan, individual permit  
6 applications shall be required for removal or fill, or both, in areas subject to an approved wetland  
7 conservation plan. If individual permit applications are to be reviewed under the authority of the  
8 Director of the Department of State Lands, then application fees and review procedures shall be in  
9 accordance with ORS 196.815, 196.825 and 196.835. In lieu of the substantive standards for permit  
10 issuance in ORS 196.825 (2), the Department of State Lands shall issue a permit if the removal or  
11 fill, or both, is consistent with the wetland conservation plan or can be conditioned to be consistent  
12 with the plan. The department shall condition any such permit as necessary to ensure that the  
13 project:

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

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

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

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

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

22       (2) In any order approving a plan [*which*] **that** authorizes any fill or removal or both, without  
23 the necessity of subsequently obtaining an individual permit, the director shall condition such ap-  
24 proval as necessary to ensure that the project complies with the conditions of subsection (1) of this  
25 section and clearly delineates the wetland area in which fill or removal, or both, is to occur.

26       **SECTION 17.** ORS 196.686 is amended to read:

27       196.686. (1) For the purposes of this section, an acknowledged estuary management plan includes  
28 the comprehensive plan and land use regulations adopted by cities and counties to satisfy the re-  
29 quirement of statewide planning goals related to estuarine resources including shoreland portions  
30 of estuarine sites designated for development as those plans and regulations existed on January 1,  
31 1989.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (14) Individual permit applications shall be required for removal or fill, or both, in areas subject  
36 to an approved estuary management plan. Individual permit applications shall be reviewed in ac-  
37 cordance with ORS 196.815, 196.825, 196.830 and 196.835. In lieu of the substantive standards for  
38 permit issuance in ORS 196.825 (2), the department shall issue a permit if the removal or fill, or  
39 both, is determined by the director to be consistent with the estuary management plan or can be  
40 conditioned to be consistent with the plan. The department shall condition any such permit as nec-  
41 essary to ensure that the project:

42 (a) Is designed or configured to minimize alterations to waters of this state;

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

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



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

2 (e) Has estuarine resource replacement measures for creation, restoration, [or] enhancement **or**  
3 **preservation** that replaces impacted resources.

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

6 (16) Following approval by the director of an estuary management plan, the requirements of ORS  
7 196.684 shall apply to the approved estuary management plan.

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

9 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

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

14 (2) "Estuary" means:

15 (a) For waters other than the Columbia River, the body of water from the ocean to the head of  
16 tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh  
17 water from the land, including all associated estuarine waters, tidelands, tidal marshes and sub-  
18 merged lands; and

19 (b) For the Columbia River, all waters from the mouth of the river up to the western edge of  
20 Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged  
21 lands.

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

24 (4) "General authorization" means an authorization granted under ORS 196.850 for a category  
25 of activities involving removal or fill, or both, without a permit.

26 (5) "General permit" means a permit for removal activities or fill activities that are substantially  
27 similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

28 (6) "Intermittent stream" means any stream which flows during a portion of every year and  
29 which provides spawning, rearing or food-producing areas for food and game fish.

30 (7) "Material" means rock, gravel, sand, silt and other inorganic substances removed from wa-  
31 ters of this state and any materials, organic or inorganic, used to fill waters of this state.

32 (8) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in  
33 the following order:

34 (a) Avoiding the effect altogether by not taking a certain action or parts of an action;

35 (b) Minimizing the effect by limiting the degree or magnitude of the action and its implementa-  
36 tion;

37 (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

38 (d) Reducing or eliminating the effect over time by preservation and maintenance operations  
39 during the life of the action by monitoring and taking appropriate corrective measures; and

40 (e) Compensating for the effect by [*replacing or providing comparable*] **creating, restoring, en-**  
41 **hancing or preserving** substitute [*wetland or water resources*] **functions and values for the wa-**  
42 **ters of this state.**

43 (9) "Person" means a person, a public body as defined in ORS 174.109, the federal government,  
44 when operating in any capacity other than navigational servitude, or any other legal entity.

45 (10) "Practicable" means capable of being accomplished after taking into consideration the cost,

1 existing technology and logistics with respect to the overall project purpose.

2 (11) "Public use" means a publicly owned project or a privately owned project that is available  
3 for use by the public.

4 (12) "Removal" means:

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

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

9 (13) "Water resources" includes not only water itself but also aquatic life and habitats therein  
10 and all other natural resources in and under the waters of this state.

11 (14) "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent  
12 streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the  
13 boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those  
14 portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated  
15 under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pol-  
16 lution Control Act, as amended.

17 (15) "Wetland conservation plan" means a written plan providing for wetland management con-  
18 taining a detailed and comprehensive statement of policies, standards and criteria to guide public  
19 and private uses and protection of wetlands, waters and related adjacent uplands and which has  
20 specific implementing measures and which apply to designated geographic areas of the State of  
21 Oregon.

22 (16) "Wetlands" means those areas that are inundated or saturated by surface or ground water  
23 at a frequency and duration sufficient to support, and that under normal circumstances do support,  
24 a prevalence of vegetation typically adapted for life in saturated soil conditions.

25 **SECTION 19.** ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section  
26 8, chapter 253, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, and section 3, chapter  
27 849, Oregon Laws 2007, is amended to read:

28 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

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

31 (2) "Estuary" means:

32 (a) For waters other than the Columbia River, the body of water from the ocean to the head of  
33 tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh  
34 water from the land, including all associated estuarine waters, tidelands, tidal marshes and sub-  
35 merged lands; and

36 (b) For the Columbia River, all waters from the mouth of the river up to the western edge of  
37 Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged  
38 lands.

39 (3) "Fill" means the deposit by artificial means of material at one location in any waters of this  
40 state.

41 (4) "General authorization" means an authorization granted under ORS 196.850 for a category  
42 of activities involving removal or fill, or both, without a permit.

43 (5) "General permit" means a permit for removal activities or fill activities that are substantially  
44 similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

45 (6) "Intermittent stream" means any stream which flows during a portion of every year and

1 which provides spawning, rearing or food-producing areas for food and game fish.

2 (7) "Material" means rock, gravel, sand, silt and other inorganic substances removed from wa-  
3 ters of this state and any materials, organic or inorganic, used to fill waters of this state.

4 (8) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in  
5 the following order:

6 (a) Avoiding the effect altogether by not taking a certain action or parts of an action;

7 (b) Minimizing the effect by limiting the degree or magnitude of the action and its implementa-  
8 tion;

9 (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

10 (d) Reducing or eliminating the effect over time by preservation and maintenance operations  
11 during the life of the action by monitoring and taking appropriate corrective measures; and

12 (e) Compensating for the effect by *[replacing or providing comparable]* **creating, restoring, en-**  
13 **hancing or preserving** substitute *[wetland or water resources]* **functions and values for the wa-**  
14 **ters of this state.**

15 (9) "Person" means a person, a public body, as defined in ORS 174.109, the federal government,  
16 when operating in any capacity other than navigational servitude, or any other legal entity.

17 (10) "Practicable" means capable of being accomplished after taking into consideration the cost,  
18 existing technology and logistics with respect to the overall project purpose.

19 (11) "Public use" means a publicly owned project or a privately owned project that is available  
20 for use by the public.

21 (12) "Removal" means:

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

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

25 (13) "Water resources" includes not only water itself but also aquatic life and habitats therein  
26 and all other natural resources in and under the waters of this state.

27 (14) "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent  
28 streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the  
29 boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those  
30 portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated  
31 under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pol-  
32 lution Control Act, as amended.

33 (15) "Wetland conservation plan" means a written plan providing for wetland management con-  
34 taining a detailed and comprehensive statement of policies, standards and criteria to guide public  
35 and private uses and protection of wetlands, waters and related adjacent uplands and which has  
36 specific implementing measures and which apply to designated geographic areas of the State of  
37 Oregon.

38 (16) "Wetlands" means those areas that are inundated or saturated by surface or ground water  
39 at a frequency and duration sufficient to support, and that under normal circumstances do support,  
40 a prevalence of vegetation typically adapted for life in saturated soil conditions.

41 **SECTION 20.** ORS 196.825 is amended to read:

42 196.825. (1) The Director of the Department of State Lands shall issue a permit applied for under  
43 ORS 196.815 if the director determines that the project described in the application:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (4) If the director issues a permit, the director may impose such conditions as the director con-  
29 siders necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this  
30 section and to provide mitigation for the reasonably expected adverse effects of project development.  
31 In formulating such conditions the director may request comment from public bodies, as defined in  
32 ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid  
33 only for the time specified therein. The director shall impose, as conditions to any permit, general  
34 authorization or wetland conservation plan, measures to provide mitigation for the reasonably ex-  
35 pected adverse effects of project development. Compensatory [wetland] mitigation shall be limited to  
36 replacement of the [functional attributes] **functions and values** of the [lost wetland] **impacted water**  
37 **resources of this state.**

38 (5) The director may request comment from interested parties and adjacent property owners on  
39 any application for a permit. The director shall furnish to any person, upon written request and at  
40 the expense of the person who requests the copy, a copy of any application for a permit or author-  
41 ization under this section or ORS 196.850.

42 (6) Any applicant whose application for a permit or authorization has been deemed incomplete  
43 or has been denied, or who objects to any of the conditions imposed under this section by the di-  
44 rector, may, within 21 days of the denial of the permit or authorization or the imposition of any  
45 condition, request a hearing from the director. Thereupon the director shall set the matter down for

1 hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430,  
2 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing  
3 findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial  
4 order. Appeals from the director's final order may be taken to the Court of Appeals in the manner  
5 provided by ORS 183.482.

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

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

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

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

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

17 (8) Permits issued under this section shall be in lieu of any permit or authorization that might  
18 be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055,  
19 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

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

21 (b) The standards for granting the permit or authorization are substantially the same as those  
22 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,  
23 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

24 (9)(a) Any public body, as defined in ORS 174.109, federal agency or tribal government requested  
25 by the director to comment on an application for a permit must submit its comments to the director  
26 not more than 30 days after receiving the request for comment. If a public body, federal agency or  
27 tribal government fails to comment on the application within 30 days, the director shall assume that  
28 the public body, federal agency or tribal government has no objection.

29 (b) The Department of Environmental Quality shall provide comments to the director within 75  
30 days after receiving notice under subsection (4) of this section if the permit action requires certif-  
31 ication under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

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

34 (11) As used in this section:

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

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

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

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

42 (C) The fee required under ORS 196.815;

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

45 (E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within

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

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

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

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

8 **SECTION 21.** ORS 196.885 is amended to read:

9 196.885. The Director of the Department of State Lands shall submit an annual report to the  
10 State Land Board on the activities conducted under ORS 196.600 to 196.905. The annual report shall  
11 include the following:

12 (1) The number of fill and removal permits applied for, denied and granted, organized according  
13 to whether or not the permits were for waters subject to section 404 of the Federal Water Pollution  
14 Control Act (P.L. 92-500, as amended). For all permits granted or outstanding during the prior year,  
15 a separate summary shall be included for fills and removals, organized by river or other water body,  
16 that shows:

17 (a) The total number of permits, the number of new permits and the number of renewal permits.

18 (b) The volume and acreage of fills and removals authorized during the past year, and the vol-  
19 ume and acreage of fills and removals completed during the past year.

20 (2) By river or other water body, a summary of the total volume and acreage of fills and re-  
21 movals made under a general waiver, general permit or similar authority.

22 (3) A summary of mitigation measures, including a description of each mitigation project ap-  
23 proved during the past year including the location and size of each mitigation project and a report  
24 on the status of all mitigation projects pending or completed during the past year.

25 (4) A summary of enforcement activities, including:

26 (a) The number of potential violations reported.

27 (b) The number of compliance investigations conducted.

28 (c) The results of compliance actions, including:

29 (A) The number of cases resolved by voluntary compliance, administrative hearings and judicial  
30 enforcement proceedings;

31 (B) The amount of damages and penalties assessed;

32 (C) The amount of damages and penalties recovered; and

33 (D) A brief description of each after-the-fact permit issued, including the location and size by  
34 volume and acreage.

35 (5) A description of staffing, including the number of full-time equivalent positions devoted to  
36 the permit program and, for each position, the qualifications and job description.

37 (6) The report on the Oregon [*Wetlands Mitigation Bank Revolving Fund Account*] **Removal-Fill**  
38 **Mitigation Fund** as required under ORS 196.655.

39 (7) The number of and average time for responding to notices received by local governments and  
40 the number of responses that took more than 30 days.

41 (8) The number of wetland conservation plans approved by the director and a description of  
42 each, including the issues raised during the approval process.

43