

HOUSE AMENDMENTS TO HOUSE BILL 2156

By COMMITTEE ON ENVIRONMENT AND WATER

April 30

- 1 On page 1 of the printed bill, line 2, delete “creating new provisions; and”.
- 2 In line 3, delete “196.630.”.
- 3 Delete lines 6 through 30 and delete pages 2 through 14 and insert:
- 4 “**SECTION 1.** ORS 196.600 is amended to read:
- 5 “196.600. As used in ORS 196.600 to 196.655:
- 6 “(1) ‘Compensatory [*wetland*] mitigation’ means activities conducted by a permittee or third
- 7 party to create, restore, [*or*] enhance [*wetland functional attributes*] **or preserve the functions and**
- 8 **values of the water resources of this state** to compensate for the **removal-fill related** adverse
- 9 effects of project development **to waters of this state** or to resolve violations of ORS 196.800 to
- 10 196.905. **Compensatory mitigation for removal-fill activities does not affect permit require-**
- 11 **ments of other state departments.**
- 12 “(2) ‘Credit’ means the measure of the increase in [*wetland functional attributes*] **the functions**
- 13 **and values of the water resources of this state** achieved at a mitigation bank site.
- 14 “(3) ‘Mitigation bank’ means a [*wetland*] site[,] created, restored, [*or*] enhanced **or preserved** in
- 15 accordance with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts **to waters**
- 16 **of this state** due to activities which otherwise comply with the requirements of ORS 196.600 to
- 17 196.905.
- 18 “(4) ‘Mitigation bank instrument’ means the legally binding and enforceable agreement between
- 19 the Director of the Department of State Lands and a mitigation bank sponsor that formally estab-
- 20 lishes the mitigation bank and stipulates the terms and conditions of the mitigation bank’s con-
- 21 struction, operation and long-term management.
- 22 “(5) ‘Off-site compensatory [*wetland*] mitigation’ means activities conducted away from the
- 23 project site that [*restore, create or enhance wetland functional attributes*] **create, restore, enhance**
- 24 **or preserve the functions and values of the water resources of this state** in order to compen-
- 25 sate for the adverse impacts to [*wetlands*] **waters of this state** from project development.
- 26 “(6) ‘On-site compensatory [*wetland*] mitigation’ means activities conducted at the project site
- 27 to [*restore, create or enhance wetland functional attributes*] **create, restore, enhance or preserve**
- 28 **the functions and values of the water resources of this state** in order to compensate for the
- 29 adverse impacts to [*wetlands*] **waters of this state** from project development.
- 30 “(7) ‘Permit action’ means activity under a specific removal or fill permit or other authorization
- 31 requested or issued under ORS 196.600 to 196.905.
- 32 “(8) ‘Service area’ means the boundaries set forth in a mitigation bank instrument that include
- 33 one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map -
- 34 1974, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects
- 35 from project developments **to waters of this state**. Service areas for mitigation banks are not mu-

1 tually exclusive.

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

5 “**SECTION 2.** ORS 196.605 is amended to read:

6 “196.605. It is the purpose of ORS 196.600 to 196.655 to:

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

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

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

15 “(4) Maintain and encourage a predictable, efficient regulatory framework for environmentally
16 acceptable development; [and]

17 “(5) Provide an option for accomplishing off-site compensatory [wetland] mitigation when on-site
18 compensatory [wetland] mitigation is not practicable[.]; **and**

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

21 “**SECTION 3.** ORS 196.610 is amended to read:

22 “196.610. Subject to approval by the State Land Board, the Director of the Department of State
23 Lands may:

24 “(1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to
25 196.655.

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

28 “(3) Pay costs incurred for alterations needed to create, restore, [or] enhance [wetland areas]
29 **or preserve waters of this state** for purposes of carrying out the provisions of ORS 196.600 to
30 196.655 or 196.800 to 196.905.

31 “(4) Authorize payment of administrative, research or scientific monitoring expenses of the De-
32 partment of State Lands in carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to
33 196.905.

34 “(5) Disburse funds received under the federal Coastal Zone Management Act of 1972, as
35 amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

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

41 “**SECTION 4.** ORS 196.615 is amended to read:

42 “196.615. (1) In accordance with the provisions of ORS 196.600 to 196.655, upon the approval of
43 the State Land Board, the Director of the Department of State Lands shall initiate and implement
44 a program for [wetlands] mitigation banks. The director shall encourage the development of and the
45 expeditious approval of mitigation banks and other types of compensatory [wetland] mitigation.

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

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

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

7 “(A) Wildlife, migratory birds and resident species;

8 “(B) Commercial and sport fisheries;

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

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

11 “(E) Scientific and research values.

12 “(c) Regional economic needs.

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

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

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

20 “[3] (4) For each mitigation bank, the department shall establish a well-defined plan, including
21 preliminary objectives, inventory of resource values and an evaluation and monitoring program.

22 “**SECTION 5.** ORS 196.620 is amended to read:

23 “196.620. (1) For each mitigation bank, the Department of State Lands shall establish a system
24 of resource values and credits.

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

33 “(3) Credits from a [*freshwater*] mitigation bank may be used only as described in subsection (2)
34 of this section for permits, authorizations or resolutions of violations approved within the service
35 area of the mitigation bank, consistent with the mitigation bank instrument, unless the [*Director of*
36 *the Department of State Lands*] **director** determines[, *in exceptional circumstances,*] that it is envi-
37 ronmentally preferable to exceed this limitation.

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

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

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

44 “(b) Conducted other creation, restoration [*and*], enhancement **or preservation** actions to es-
45 tablish other [*wetland*] functions and values at the mitigation bank site; and

1 “(c) Evaluated the results of the actions and determined that a high probability exists that the
2 [wetland] functions and values of the mitigation bank site are equal to or greater than the functions
3 and [the] values of the [wetland] area to be [damaged or destroyed] **impacted or that the functions**
4 **and values of the mitigation bank compensate for unavoidable adverse effects on the waters**
5 **of this state due to the activities otherwise allowed under ORS 196.600 to 196.905.**

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

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

11 “(8) The director annually shall:

12 “(a) Evaluate the [wetlands] functions and values created within each [wetland] mitigation bank
13 site; and

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

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

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

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

21 “(a) The credits for that specific permit, authorization or resolution of a violation would not
22 adequately maintain habitat or species diversity; [or]

23 “(b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently
24 similar in [wetland] functions and values to the [wetland] area to be [damaged or destroyed] **im-**
25 **acted; or**

26 “(c) **The functions and values of the mitigation bank do not compensate for unavoidable**
27 **adverse effects on the waters of this state due to the activities otherwise allowed under ORS**
28 **196.600 to 196.905.**

29 “**SECTION 6.** ORS 196.623 is amended to read:

30 “196.623. (1) The Department of State Lands may approve a watershed enhancement program
31 and certify the project as a [wetlands] mitigation bank under ORS 196.600 to 196.655 if the watershed
32 enhancement program complies with the rules adopted by the department under ORS 196.615 for
33 certification of a program as a [wetlands] mitigation bank.

34 “(2) A person, state agency, federal agency, federally recognized Indian tribe, watershed council
35 or political subdivision in this state that owns land upon which is located a watershed enhancement
36 program that qualifies as a [wetlands] mitigation bank under subsection (1) of this section may sell
37 mitigation credit from the mitigation bank subject to ORS 196.600 to 196.655 and the rules of the
38 Department of State Lands adopted under ORS 196.600 to 196.655.

39 “**SECTION 7.** ORS 196.625 is amended to read:

40 “196.625. (1) The Director of the Department of State Lands shall maintain a record of fill and
41 removal activities and actions for each mitigation bank implemented and conduct monitoring of
42 mitigation banks with moneys from the Oregon [Wetlands Mitigation Bank Revolving Fund
43 Account] **Removal-Fill Mitigation Fund.**

44 “(2) The director shall provide annual reports to the State Land Board on moneys spent and
45 received for each [wetland] mitigation bank.

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

2 “**SECTION 9.** ORS 196.640 is amended to read:

3 “196.640. (1) The Oregon [*Wetlands Mitigation Bank Revolving Fund Account*] **Removal-Fill**
4 **Mitigation Fund** is established, separate and distinct from the General Fund. All moneys received
5 under ORS 196.645 shall be paid into the State Treasury and credited to the [*account*] **Oregon**
6 **Removal-Fill Mitigation Fund**. All moneys in the [*account*] **fund** are appropriated continuously to
7 the Department of State Lands to be used by the department as set forth in ORS 196.650. The
8 moneys in the [*account*] **fund** may be invested and reinvested as provided in ORS 293.701 to 293.820.
9 Interest earned by the [*account*] **fund** shall be credited to the [*account*] **fund**.

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

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

15 “(4) The [*Director of the*] department [*of State Lands*] may adopt rules for prioritizing expen-
16 ditures from the [*account*] **fund** for the purposes specified in ORS 196.650.

17 “**SECTION 10.** ORS 196.643 is amended to read:

18 “196.643. A person who provides off-site compensatory [*wetland*] mitigation in order to comply
19 with a condition imposed on a permit in accordance with ORS 196.825 (4), an authorization issued
20 in accordance with ORS 196.800 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905
21 may make a payment for credits to an approved mitigation bank with available credits, or to the
22 Oregon [*Wetlands Mitigation Bank Revolving Fund Account*] **Removal-Fill Mitigation Fund**, if
23 credits from a mitigation bank are not available. If the person is making a payment to the Oregon
24 [*Wetlands Mitigation Bank Revolving Fund Account*] **Removal-Fill Mitigation Fund**, the payment
25 shall be equal to the average cost of credits available from all active mitigation banks in the state.

26 “**SECTION 11.** ORS 196.645 is amended to read:

27 “196.645. The following moneys shall be paid into the Oregon [*Wetlands Mitigation Bank Re-*
28 *volving Fund Account*] **Removal-Fill Mitigation Fund**:

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

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

33 “(3) Moneys awarded for such purposes as specifically stipulated under grants through the fed-
34 eral Emergency Wetlands Resources Act of 1986, P.L. 99-645, or the federal Coastal Zone Manage-
35 ment Act of 1972, 16 U.S.C. 1451 et seq., as amended;

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

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

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

41 “**SECTION 12.** ORS 196.650 is amended to read:

42 “196.650. The Department of State Lands may use the moneys in the Oregon [*Wetlands Miti-*
43 *gation Bank Revolving Fund Account*] **Removal-Fill Mitigation Fund** for the following purposes:

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

1 “(2) To pay for specific projects to create, restore, [or] enhance [wetland areas] **or preserve**
2 **water resources of this state** for purposes of carrying out the provisions of ORS 196.600 to
3 196.905. Moneys deposited in the [account] **fund** for [wetland] impacts **to the waters of this state**
4 may be used only for [wetland creation, restoration and enhancement] **projects that create, restore,**
5 **enhance or preserve water resources of this state.**

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

8 “[3] (4) For purchase of credits from approved mitigation banks.

9 “[4] (5) For payment of administrative, research or scientific monitoring expenses of the de-
10 partment in carrying out the provisions of ORS 196.600 to 196.655.

11 “[5] (6) For the disbursement of funds received under the federal Coastal Zone Management Act
12 of 1972, as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant
13 award.

14 “[6] (7) For the disbursement of funds received under the federal Emergency Wetlands Resources
15 Act of 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein as identified
16 in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan.

17 “**SECTION 13.** ORS 196.655 is amended to read:

18 “196.655. As part of the report to the State Land Board required under ORS 196.885, the Di-
19 rector of the Department of State Lands shall prepare an annual report on the Oregon [Wetlands
20 Mitigation Bank Revolving Fund Account] **Removal-Fill Mitigation Fund**. The report shall include,
21 but need not be limited to:

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

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

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

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

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

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

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

32 “**SECTION 14.** ORS 196.660 is amended to read:

33 “196.660. ORS 196.600 to 196.655 are intended to be supplementary to, and are not intended to
34 abrogate, any state or federal law relating to [wetlands] **the waters of this state.**

35 “**SECTION 15.** ORS 196.665 is amended to read:

36 “196.665. ORS 196.600 to 196.655 may be cited as the ‘Oregon [Wetlands Mitigation Bank Act of
37 1987] **Removal-Fill Mitigation Fund Act.**’

38 “**SECTION 16.** ORS 196.682 is amended to read:

39 “196.682. (1) Except where otherwise provided by the order approving the plan, individual permit
40 applications shall be required for removal or fill, or both, in areas subject to an approved wetland
41 conservation plan. If individual permit applications are to be reviewed under the authority of the
42 Director of the Department of State Lands, then application fees and review procedures shall be in
43 accordance with ORS 196.815, 196.825 and 196.835. In lieu of the substantive standards for permit
44 issuance in ORS 196.825 (2), the Department of State Lands shall issue a permit if the removal or
45 fill, or both, is consistent with the wetland conservation plan or can be conditioned to be consistent

1 with the plan. The department shall condition any such permit as necessary to ensure that the
2 project:

3 “(a) Is properly designed or configured to minimize the need for alterations to waters of this
4 state;

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

6 “(c) Complies with applicable provisions of the acknowledged comprehensive plan and land use
7 regulations for the area;

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

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

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

15 “**SECTION 17.** ORS 196.686 is amended to read:

16 “196.686. (1) For the purposes of this section, an acknowledged estuary management plan in-
17 cludes the comprehensive plan and land use regulations adopted by cities and counties to satisfy the
18 requirement of statewide planning goals related to estuarine resources including shoreland portions
19 of estuarine sites designated for development as those plans and regulations existed on January 1,
20 1989.

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

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

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

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

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

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

38 “(8) Within 60 days of acceptance of the request for review, the department shall conduct a
39 preliminary review of the acknowledged estuary management plan. The department shall consult
40 with the affected local government prior to finalizing the preliminary review.

41 “(9) Except as provided in subsection (10) of this section, the Director of the Department of
42 State Lands shall approve the acknowledged estuary management plan by order within 60 days of
43 completion of the preliminary review.

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

1 “(a) The director determines there is probable cause to believe that the estuary management
2 plan does not meet the standards for approving wetland conservation plans or unreasonably inter-
3 feres with the use of the estuary for navigation, fisheries or public recreation; or

4 “(b) A hearing is requested and the request:

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

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

7 “(C) Provides sufficient information for the director to determine that there is probable cause
8 to believe that the estuary management plan does not meet the standards for approving wetland
9 conservation plans or unreasonably interferes with the use of the estuary for navigation, fisheries
10 or public recreation.

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

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

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

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

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

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

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

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

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

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

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

42 “**SECTION 18.** ORS 196.800 is amended to read:

43 “196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

44 “(1) ‘Channel relocation’ means a change in location of a channel in which a new channel is dug
45 and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of

1 material is removed in constructing the new channel or if it would require more than 50 cubic yards
2 of material to completely fill the old channel.

3 “(2) ‘Estuary’ means:

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

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

11 “(3) ‘Fill’ means the total of deposits by artificial means equal to or exceeding 50 cubic yards
12 or more of material at one location in any waters of this state.

13 “(4) ‘General authorization’ means an authorization granted under ORS 196.850 for a category
14 of activities involving removal or fill, or both, without a permit.

15 “(5) ‘General permit’ means a permit for removal activities or fill activities that are substantially
16 similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

17 “(6) ‘Intermittent stream’ means any stream which flows during a portion of every year and
18 which provides spawning, rearing or food-producing areas for food and game fish.

19 “(7) ‘Material’ means rock, gravel, sand, silt and other inorganic substances removed from wa-
20 ters of this state and any materials, organic or inorganic, used to fill waters of this state.

21 “(8) ‘Mitigation’ means the reduction of adverse effects of a proposed project by considering, in
22 the following order:

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

24 “(b) Minimizing the effect by limiting the degree or magnitude of the action and its implemen-
25 tation;

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

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

29 “(e) Compensating for the effect by *[replacing or providing comparable]* **creating, restoring,**
30 **enhancing or preserving** substitute *[wetland or water resources]* **functions and values for the**
31 **waters of this state.**

32 “(9) ‘Person’ means a person, a public body as defined in ORS 174.109, the federal government,
33 when operating in any capacity other than navigational servitude, or any other legal entity.

34 “(10) ‘Practicable’ means capable of being accomplished after taking into consideration the cost,
35 existing technology and logistics with respect to the overall project purpose.

36 “(11) ‘Public use’ means a publicly owned project or a privately owned project that is available
37 for use by the public.

38 “(12) ‘Removal’ means:

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

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

43 “(13) ‘Water resources’ includes not only water itself but also aquatic life and habitats therein
44 and all other natural resources in and under the waters of this state.

45 “(14) ‘Waters of this state’ means all natural waterways, tidal and nontidal bays, intermittent

1 streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the
2 boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those
3 portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated
4 under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pol-
5 lution Control Act, as amended.

6 “(15) ‘Wetland conservation plan’ means a written plan providing for wetland management con-
7 taining a detailed and comprehensive statement of policies, standards and criteria to guide public
8 and private uses and protection of wetlands, waters and related adjacent uplands and which has
9 specific implementing measures and which apply to designated geographic areas of the State of
10 Oregon.

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

14 “**SECTION 19.** ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section
15 8, chapter 253, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, and section 3, chapter
16 849, Oregon Laws 2007, is amended to read:

17 “196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

18 “(1) ‘Channel relocation’ means a change in location of a channel in which a new channel is dug
19 and the flow is diverted from the old channel into the new channel.

20 “(2) ‘Estuary’ means:

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

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

28 “(3) ‘Fill’ means the deposit by artificial means of material at one location in any waters of this
29 state.

30 “(4) ‘General authorization’ means an authorization granted under ORS 196.850 for a category
31 of activities involving removal or fill, or both, without a permit.

32 “(5) ‘General permit’ means a permit for removal activities or fill activities that are substantially
33 similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

34 “(6) ‘Intermittent stream’ means any stream which flows during a portion of every year and
35 which provides spawning, rearing or food-producing areas for food and game fish.

36 “(7) ‘Material’ means rock, gravel, sand, silt and other inorganic substances removed from wa-
37 ters of this state and any materials, organic or inorganic, used to fill waters of this state.

38 “(8) ‘Mitigation’ means the reduction of adverse effects of a proposed project by considering, in
39 the following order:

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

41 “(b) Minimizing the effect by limiting the degree or magnitude of the action and its implemen-
42 tation;

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

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

1 “(e) Compensating for the effect by [*replacing or providing comparable*] **creating, restoring,**
2 **enhancing or preserving** substitute [*wetland or water resources*] **functions and values for the**
3 **waters of this state.**

4 “(9) ‘Person’ means a person, a public body, as defined in ORS 174.109, the federal government,
5 when operating in any capacity other than navigational servitude, or any other legal entity.

6 “(10) ‘Practicable’ means capable of being accomplished after taking into consideration the cost,
7 existing technology and logistics with respect to the overall project purpose.

8 “(11) ‘Public use’ means a publicly owned project or a privately owned project that is available
9 for use by the public.

10 “(12) ‘Removal’ means:

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

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

14 “(13) ‘Water resources’ includes not only water itself but also aquatic life and habitats therein
15 and all other natural resources in and under the waters of this state.

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

22 “(15) ‘Wetland conservation plan’ means a written plan providing for wetland management con-
23 taining a detailed and comprehensive statement of policies, standards and criteria to guide public
24 and private uses and protection of wetlands, waters and related adjacent uplands and which has
25 specific implementing measures and which apply to designated geographic areas of the State of
26 Oregon.

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

30 “**SECTION 20.** ORS 196.825 is amended to read:

31 “196.825. (1) The Director of the Department of State Lands shall issue a permit applied for
32 under ORS 196.815 if the director determines that the project described in the application:

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

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

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

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

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

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

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

45 “(e) Whether the proposed fill or removal conforms to sound policies of conservation and would

1 not interfere with public health and safety.

2 “(f) Whether the proposed fill or removal is in conformance with existing public uses of the
3 waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land
4 use regulations.

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

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

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

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

17 “(4) If the director issues a permit, the director may impose such conditions as the director
18 considers necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this
19 section and to provide mitigation for the reasonably expected adverse effects of project development.
20 In formulating such conditions the director may request comment from public bodies, as defined in
21 ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid
22 only for the time specified therein. The director shall impose, as conditions to any permit, general
23 authorization or wetland conservation plan, measures to provide mitigation for the reasonably ex-
24 pected adverse effects of project development. Compensatory [wetland] mitigation shall be limited
25 to replacement of the [functional attributes] **functions and values** of the [lost wetland] **impacted**
26 **water resources of this state.**

27 “(5) The director may request comment from interested parties and adjacent property owners
28 on any application for a permit. The director shall furnish to any person, upon written request and
29 at the expense of the person who requests the copy, a copy of any application for a permit or au-
30 thorization under this section or ORS 196.850.

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

40 “(7) Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the di-
41 rector shall:

42 “(a) Determine whether an application is complete within 30 days from the date the Department
43 of State Lands receives the application. If the director determines that an application is complete,
44 the director shall distribute the application for comment pursuant to subsection (4) of this section.
45 If the director determines that the application is not complete, the director shall notify the applicant

1 in writing that the application is deficient and explain, in the same notice, the deficiencies.

2 “(b) Issue a permit decision within 90 days after the date the director determines that the ap-
3 plication is complete unless:

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

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

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

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

10 “(b) The standards for granting the permit or authorization are substantially the same as those
11 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,
12 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

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

18 “(b) The Department of Environmental Quality shall provide comments to the director within
19 75 days after receiving notice under subsection (4) of this section if the permit action requires cer-
20 tification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

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

23 “(11) As used in this section:

24 “(a) ‘Applicant’ means a landowner or person authorized by a landowner to conduct a removal
25 or fill activity.

26 “(b) ‘Completed application’ means a signed permit application form that contains all necessary
27 information for the director to determine whether to issue a permit, including:

28 “(A) A map showing the project site with sufficient accuracy to easily locate the removal or fill
29 site;

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

31 “(C) The fee required under ORS 196.815;

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

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

37 “(F) An analysis of alternatives that evaluates practicable methods to minimize and avoid im-
38 pacts to waters of this state;

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

40 “(H) Any other information that the director deems pertinent and necessary to make an in-
41 formed decision on whether the application complies with the policy and standards set forth in this
42 section.

43 “**SECTION 21.** ORS 196.885 is amended to read:

44 “196.885. The Director of the Department of State Lands shall submit an annual report to the
45 State Land Board on the activities conducted under ORS 196.600 to 196.905. The annual report shall

1 include the following:

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

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

8 “(b) The volume and acreage of fills and removals authorized during the past year, and the
9 volume and acreage of fills and removals completed during the past year.

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

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

15 “(4) A summary of enforcement activities, including:

16 “(a) The number of potential violations reported.

17 “(b) The number of compliance investigations conducted.

18 “(c) The results of compliance actions, including:

19 “(A) The number of cases resolved by voluntary compliance, administrative hearings and judicial
20 enforcement proceedings;

21 “(B) The amount of damages and penalties assessed;

22 “(C) The amount of damages and penalties recovered; and

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

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

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

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

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

33