

House Bill 3058

Sponsored by Representative SCHAUFLER; Representative WITT

SUMMARY

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

Changes definition of "applicant" for purposes of removal-fill permitting program.

A BILL FOR AN ACT

Relating to removal-fill permitting program; amending ORS 196.825.

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

SECTION 1. ORS 196.825 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The director may issue a permit for a project that results in a substantial fill in an estuary

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 for a nonwater dependent use only if the project is for a public use and would satisfy a public need
2 that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other
3 criteria contained in ORS 196.600 to 196.905.

4 (4) If the director issues a permit, the director may impose such conditions as the director con-
5 siders necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this
6 section and to provide mitigation for the reasonably expected adverse effects of project development.
7 In formulating such conditions the director may request comment from public bodies, as defined in
8 ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid
9 only for the time specified therein. The director shall impose, as conditions to any permit, general
10 authorization or wetland conservation plan, measures to provide mitigation for the reasonably ex-
11 pected adverse effects of project development. Compensatory wetland mitigation shall be limited to
12 replacement of the functional attributes of the lost wetland.

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

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

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

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

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

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

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

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

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

41 (b) The standards for granting the permit or authorization are substantially the same as those
42 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,
43 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

44 (9)(a) Any public body, as defined in ORS 174.109, federal agency or tribal government requested
45 by the director to comment on an application for a permit must submit its comments to the director

1 not more than 30 days after receiving the request for comment. If a public body, federal agency or
 2 tribal government fails to comment on the application within 30 days, the director shall assume that
 3 the public body, federal agency or tribal government has no objection.

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

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

9 (11) As used in this section:

10 (a) "Applicant" means a landowner, [*or*] a person authorized by a landowner to conduct a re-
 11 moval or fill activity **or a person who has filed a written application with the Director of the**
 12 **Department of State Lands for a permit to remove material from the beds or banks of any**
 13 **waters of this state or fill any waters of this state.**

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

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

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

19 (C) The fee required under ORS 196.815;

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

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

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

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

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

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