

# House Bill 2589

Sponsored by Representative SCHAUFLER (Pre-session filed.)

## 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**.

Deletes definition of "applicant" for purposes of certain provisions related to removal-fill permitting program.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the removal-fill permitting program; creating new provisions; amending ORS 196.825; and  
3 declaring an emergency.

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

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

6 196.825. (1) The Director of the Department of State Lands shall issue a permit applied for under  
7 ORS 196.815 if the director determines that the project described in the application:

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

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

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

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

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

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

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

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

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

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

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

29 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects  
30 of the proposed fill or removal in the manner set forth in ORS 196.800. In determining whether the  
31 applicant has provided all practicable mitigation, the director shall consider the findings regarding

**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 wetlands set forth in ORS 196.668 and whether the proposed mitigation advances the policy objec-  
2 tives for the protection of wetlands set forth in ORS 196.672.

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

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

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

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

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

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

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

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

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

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

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

44 (b) The standards for granting the permit or authorization are substantially the same as those  
45 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,

1 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

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

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

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

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

13 [(a) “Applicant” means a landowner or person authorized by a landowner to conduct a removal  
 14 or fill activity.]

15 [(b)] “completed application” means a signed permit application form that contains all necessary  
 16 information for the director to determine whether to issue a permit, including:

17 [(A)] (a) A map showing the project site with sufficient accuracy to easily locate the removal  
 18 or fill site;

19 [(B)] (b) A project plan showing the project site and proposed alterations;

20 [(C)] (c) The fee required under ORS 196.815;

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

23 [(E)] (e) If the project may cause substantial adverse effects on aquatic life or aquatic habitat  
 24 within this state, documentation of existing conditions and resources and identification of the po-  
 25 tential impact if the project is completed;

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

28 [(G)] (g) If the project is to fill or remove material from wetlands, a wetlands mitigation plan;  
 29 and

30 [(H)] (h) Any other information that the director deems pertinent and necessary to make an in-  
 31 formed decision on whether the application complies with the policy and standards set forth in this  
 32 section.

33 **SECTION 2. The amendments to ORS 196.825 by section 1 of this 2011 Act apply to ap-  
 34 plications for permits filed with the Director of the Department of State Lands under ORS  
 35 196.815 on or after the effective date of this 2011 Act.**

36 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public  
 37 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
 38 on its passage.**