

House Bill 3344

Sponsored by Representative HELM

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**.

Prohibits Legislative Assembly from funding new bulk coal or oil terminals for biennium beginning July 1, 2017.

Requires certain railroad carriers to submit financial responsibility statement to Department of Environmental Quality.

Conditions issuance of certain Department of State Lands permits on balancing test that weighs potential environmental harm of proposed project against public need. Requires Department of State Lands to consider risks of oil spill when issuing or amending certain leases.

Prohibits construction, extension or use of wharf for receipt and discharge of crude oil.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to state transport of hazardous materials; creating new provisions; amending ORS 196.620, 196.643, 196.825, 274.710, 468B.300 and 780.040; and prescribing an effective date.

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

PROHIBITION ON FUNDING BULK COAL OR OIL TERMINAL

SECTION 1. (1) **As used in this section:**

(a)(A) **“New bulk coal or oil terminal” means a terminal that stores, handles or transports coal or petroleum oil in bulk to a degree or significance that is categorized as having the potential for significant impacts, as defined by the Department of Environmental Quality by rule, as a result of the storage, handling or transport of coal or petroleum oil in bulk.**

(B) **“New bulk coal or oil terminal” does not include a project that is designed for safety, rehabilitation, congestion reduction, modernization, maintenance or repair of an existing operation or facility, including rail terminals, rail yards, rail facilities, rail infrastructure and rail right-of-way.**

(b)(A) **“Terminal project” or “terminal” means a yard, depot or off-road or other facility that exchanges freight in bulk between transportation modes.**

(B) **“Terminal project” does not include a project that is designed for safety, rehabilitation, congestion reduction, modernization, maintenance or repair of an existing operation or facility, including rail terminals, rail yards, rail facilities, rail infrastructure and rail right-of-way.**

(2) **The Legislative Assembly, for the biennium beginning July 1, 2017, may not appropriate, allocate, authorize the expenditure of or otherwise make available moneys for the purpose of funding any new bulk coal or oil terminal project proposed on or after July 1, 2017.**

FINANCIAL RESPONSIBILITY STATEMENTS

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.

SECTION 2. ORS 468B.300 is amended to read:

468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500:

(1) “Applicable rail carrier” means a railroad operating in this state that is classified as Class I or Class II under 49 C.F.R. 1201 and that owns or operates high hazard train routes.

[(1)] **(2) “Bulk” means material stored or transported in loose, unpackaged liquid, powder or granular form capable of being conveyed by a pipe, bucket, chute or belt system.**

[(2)] **(3) “Cargo vessel” means a self-propelled ship in commerce, other than a tank vessel, of 300 gross tons or more. “Cargo vessel” does not include a vessel used solely for commercial fish harvesting.**

[(3)] **(4) “Commercial fish harvesting” means taking food fish with any gear unlawful for angling under ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.**

[(4)] **(5) “Contingency plan” means an oil spill prevention and emergency response plan required under ORS 468B.345.**

[(5)] **(6) “Covered vessel” means a tank vessel, cargo vessel, passenger vessel or dredge vessel.**

[(6)] **(7) “Damages” includes damages, costs, losses, penalties or attorney fees of any kind for which liability may exist under the laws of this state resulting from, arising out of or related to the discharge or threatened discharge of oil.**

[(7)] **(8) “Discharge” means any emission other than natural seepage of oil, whether intentional or unintentional. “Discharge” includes but is not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.**

[(8)] **(9) “Dredge vessel” means a self-propelled vessel of 300 or more gross tons that is equipped for regularly engaging in dredging of submerged and submersible lands.**

[(9)] **(10) “Exploration facility” means a platform, vessel or other offshore facility used to explore for oil in the navigable waters of the state. “Exploration facility” does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation.**

[(10)] **(11) “Facility” means a pipeline or any structure, group of structures, equipment or device, other than a vessel that transfers oil over navigable waters of the state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil. “Facility” does not include:**

(a) A railroad car, motor vehicle or other rolling stock while transporting oil over the highways or rail lines of this state;

(b) An underground storage tank regulated by the Department of Environmental Quality or a local government under ORS 466.706 to 466.882 and 466.994; or

(c) A marina, or a public fueling station, that is engaged exclusively in the direct sale of fuel, or any other product used for propulsion, to a final user of the fuel or other product.

[(11)] **(12) “Federal on-scene coordinator” means the federal official predesignated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct federal responses or the official designated by the lead agency to coordinate and direct removal under the National Contingency Plan.**

[(12)] **(13) “Hazardous material” has the meaning given that term in ORS 466.605.**

(14) “High hazard train route” means a section of rail lines in this state:

(a) That abuts or travels over navigable waters of the state, an inland watershed or a

1 **drinking water intake; and**

2 **(b) Over which trains operate that consist of multiple tanker railroad cars transporting**
3 **oil or hazardous material as cargo.**

4 [(13)] (15) “Maritime association” means an association or cooperative of marine terminals, fa-
5 cilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that pro-
6 vides oil spill response planning and spill related communications services within the state.

7 [(14)] (16) “Maximum probable spill” means the maximum probable spill for a vessel operating
8 in the navigable waters of the state considering the history of spills of vessels of the same class
9 operating on the west coast of the United States.

10 [(15)] (17) “Navigable waters” means the Columbia River, the Willamette River up to Willamette
11 Falls, the Pacific Ocean and estuaries to the head of tidewater.

12 [(16)] (18) “National Contingency Plan” means the plan prepared and published under section
13 311(d) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution
14 Act of 1990 (P.L. 101-380).

15 [(17)] (19) “Offshore facility” means any facility located in, on or under any of the navigable
16 waters of the state.

17 [(18)] (20) “Oils” or “oil” means oil, including gasoline, crude oil, **bitumen, synthetic crude**
18 **oil, natural gas condensate**, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other
19 petroleum related product and liquefied natural gas.

20 [(19)] (21) “Onshore facility” means any facility located in, on or under any land of the state,
21 other than submerged land, that, because of its location, could reasonably be expected to cause
22 substantial harm to the environment by discharging oil into or on the navigable waters of the state
23 or adjoining shorelines.

24 [(20)] (22) “Passenger vessel” means a ship of 300 or more gross tons carrying passengers for
25 compensation.

26 [(21)] (23) “Person” has the meaning given the term in ORS 468.005.

27 [(22)] (24) “Person having control over oil” includes but is not limited to any person using,
28 storing or transporting oil immediately prior to entry of such oil into the navigable waters of the
29 state, and shall specifically include carriers and bailees of such oil.

30 [(23)] (25) “Pipeline” means a facility, including piping, compressors, pump stations and storage
31 tanks, used to transport oil between facilities or between facilities and tank vessels.

32 [(24)] (26) “Region of operation” with respect to the holder of a contingency plan means the area
33 where the operations of the holder that require a contingency plan are located.

34 [(25)] (27) “Removal costs” means the costs of removal that are incurred after a discharge of
35 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs
36 to prevent, minimize or mitigate oil pollution from the incident.

37 [(26)] (28) “Responsible party” has the meaning given under section 1001 of the Oil Pollution
38 Act of 1990 (P.L. 101-380).

39 [(27)] (29) “Ship” means any boat, ship, vessel, barge or other floating craft of any kind.

40 [(28)(a)] (30)(a) “State on-scene coordinator” means the state official appointed by the Depart-
41 ment of Environmental Quality to represent the department and the State of Oregon in response to
42 an oil or hazardous material spill or release or threatened spill or release and to coordinate cleanup
43 response with state and local agencies.

44 (b) For purposes of this subsection:

45 (A) “Spill or release” means the discharge, deposit, injection, dumping, spilling, emitting, re-

1 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or
 2 waters of this state except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468,
 3 468A, 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law, or except
 4 when being stored or used for its intended purpose.

5 (B) "Threatened spill or release" means oil or hazardous material is likely to escape or be car-
 6 ried into the air or into or on any land or waters of the state, including from a ship as defined in
 7 this section that is in imminent danger of sinking.

8 [(29)] (31) "Tank vessel" means a ship that is constructed or adapted to carry oil in bulk as
 9 cargo or cargo residue. "Tank vessel" does not include:

- 10 (a) A vessel carrying oil in drums, barrels or other packages;
- 11 (b) A vessel carrying oil as fuel or stores for that vessel; or
- 12 (c) An oil spill response barge or vessel.

13 [(30)] (32) "Worst case spill" means:

14 (a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated
 15 by adverse weather conditions; *[and]*

16 (b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather
 17 conditions; **and**

18 (c) **In the case of an applicable rail carrier, a spill of a number of barrels of oil as cal-
 19 culated by an applicable rail carrier under section 4 of this 2017 Act.**

20 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS 468B.300 to
 21 468B.500.**

22 **SECTION 4. (1) For purposes of this section:**

23 (a) **"Cost to clean up a worst case spill" means a dollar amount equal to the worst case
 24 spill calculated under paragraph (b) of this subsection multiplied by \$16,800.**

25 (b) **"Worst case spill" means a spill of an amount of barrels of oil calculated as follows:**

26 (A) **An applicable rail carrier shall calculate a percentage equal to (maximum operating
 27 speed/65)², where the maximum operating speed is the top speed that any train carrying oil
 28 travels on a high hazard train route operated by the applicable rail carrier in this state.**

29 (B) **The applicable rail carrier shall multiply the percentage calculated under subpara-
 30 graph (A) of this paragraph by the number of barrels of oil moved on the largest train load
 31 of oil that traveled on a high hazard train route operated by the applicable rail carrier in this
 32 state during the previous calendar year. The result of the calculation under this subpara-
 33 graph shall equal the worst case spill.**

34 (2) **An applicable rail carrier shall annually submit to the Department of Environmental
 35 Quality a statement that:**

36 (a) **Describes all insurance carried by the applicable rail carrier that covers any losses
 37 resulting from a worst case spill, as well as the coverage amounts, limitations and other
 38 conditions of the insurance;**

39 (b) **Identifies the capacity, measured in barrels, of the average and of the largest trains
 40 consisting of multiple tanker cars transporting oil or hazardous materials as cargo that were
 41 operated on high hazard train routes by the applicable rail carrier in the previous calendar
 42 year; and**

43 (c) **Includes additional information sufficient to demonstrate the applicable rail carrier's
 44 ability to pay the cost to clean up a worst case spill including, but not limited to, insurance,
 45 reserve accounts, letters of credit or other financial instruments or resources that the ap-**

1 **plicable rail carrier can rely on to pay the cost to clean up a worst case spill.**

2 **(3) An applicable rail carrier shall submit the statement required by this section as re-**
3 **quired by the department by rule.**

4
5 **BALANCING TEST FOR REMOVAL-FILL PERMITS**
6

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

8 196.825. (1) The Director of the Department of State Lands shall issue a permit applied for under
9 ORS 196.815 if the director determines that the project described in the application:

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

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

14 (2) If the director issues a permit applied for under ORS 196.815 to a person that proposes a
15 removal or fill activity for construction or maintenance of a linear facility, and if that person is not
16 a landowner or a person authorized by a landowner to conduct the proposed removal or fill activity
17 on a property, then the person may not conduct removal or fill activity on that property until the
18 person obtains:

19 (a) The landowner's consent;

20 (b) A right, title or interest with respect to the property that is sufficient to undertake the re-
21 moval or fill activity; or

22 (c) A court order or judgment authorizing the use of the property.

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

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

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

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

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

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

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

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

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

40 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
41 of the proposed fill or removal in the manner set forth in ORS 196.800. In determining whether the
42 applicant has provided all practicable mitigation, the director shall consider the findings regarding
43 wetlands set forth in ORS 196.668 and whether the proposed mitigation advances the policy objec-
44 tives for the protection of wetlands set forth in ORS 196.672.

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

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 **(5) The director may issue a permit for a project that facilitates the transportation of**
 5 **crude oil only if the project is for a public use and would satisfy a public need that outweighs**
 6 **harm to navigation, fishery and recreation and if the proposed fill meets all other criteria**
 7 **contained in ORS 196.600 to 196.905.**

8 [(5)] (6) If the director issues a permit, the director may impose such conditions as the director
 9 considers necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this
 10 section and to provide mitigation for the reasonably expected adverse effects of project development.
 11 In formulating such conditions the director may request comment from public bodies, as defined in
 12 ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid
 13 only for the time specified therein. The director shall impose, as conditions to any permit, general
 14 authorization or wetland conservation plan, measures to provide mitigation for the reasonably ex-
 15 pected adverse effects of project development. Compensatory mitigation shall be limited to re-
 16 placement of the functions and values of the impacted water resources of this state.

17 [(6)(a)] (7)(a) The director may request comment from interested parties and adjacent property
 18 owners on any application for a permit.

19 (b) The director shall furnish to any person, upon written request and at the expense of the
 20 person who requests the copy, a copy of any application for a permit or authorization under this
 21 section or ORS 196.850.

22 (c) For permit applications for a removal or fill activity for construction or maintenance of a
 23 linear facility that are deemed complete by the director, the director shall notify by first-class mail,
 24 electronic mail or electronic facsimile transmission all landowners whose land is identified in the
 25 permit application and all landowners whose land is adjacent to the property of a landowner whose
 26 land is identified in the permit application.

27 [(7)] (8) Any applicant whose application for a permit or authorization has been deemed incom-
 28 plete or has been denied, or who objects to any of the conditions imposed under this section by the
 29 director, may, within 21 days of the denial of the permit or authorization or the imposition of any
 30 condition, request a hearing from the director. Thereupon the director shall set the matter down for
 31 hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430,
 32 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing
 33 findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial
 34 order. Appeals from the director's final order may be taken to the Court of Appeals in the manner
 35 provided by ORS 183.482.

36 [(8)] (9) Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the
 37 director shall:

38 (a) Determine whether an application is complete within 30 days from the date the Department
 39 of State Lands receives the application. If the director determines that an application is complete,
 40 the director shall distribute the application for comment pursuant to subsection [(5)] (6) of this
 41 section. If the director determines that the application is not complete, the director shall notify the
 42 applicant in writing that the application is deficient and explain, in the same notice, the deficiencies.

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

45 (A) An extension of time is granted under subsection [(10)(b)] (11)(b) of this section;

1 (B) The applicant and the director agree to a longer time period; or

2 (C) The director determines that an extension is necessary to coordinate the issuance of a pro-
 3 prietary authorization decision for an ocean renewable energy facility under ORS 274.873 and a re-
 4 moval or fill permit decision.

5 [(9)] (10) Permits issued under this section shall be in lieu of any permit or authorization that
 6 might be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045,
 7 468.055, 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

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

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

12 [(10)(a)] (11)(a) Any public body, as defined in ORS 174.109, federal agency or tribal government
 13 requested by the director to comment on an application for a permit must submit its comments to
 14 the director not more than 30 days after receiving the request for comment. If a public body, federal
 15 agency or tribal government fails to comment on the application within 30 days, the director shall
 16 assume that the public body, federal agency or tribal government has no objection.

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

20 [(11)] (12) In determining whether to issue a permit, the director may consider only standards
 21 and criteria in effect on the date the director receives the completed application.

22 [(12)] (13) As used in this section:

23 (a) "Applicant" means a landowner, a person authorized by a landowner to conduct a removal
 24 or fill activity or a person that proposes a removal or fill activity for construction or maintenance
 25 of a linear facility.

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 impacts
 38 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 informed
 41 decision on whether the application complies with the policy and standards set forth in this section.

42 (c) "Linear facility" includes any railway, highway, road, pipeline, water or sewer line, commu-
 43 nication line, overhead or underground electrical transmission or distribution line or similar facility.

44 **SECTION 6.** ORS 196.620 is amended to read:

45 196.620. (1) For each mitigation bank, the Department of State Lands shall establish a system

1 of resource values and credits.

2 (2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in
3 accordance with ORS 196.825 [(5)] (6), for any other authorization issued in accordance with ORS
4 196.800 to 196.905 or to resolve a violation of ORS 196.800 to 196.905. At the request of a mitigation
5 bank sponsor, the Director of the Department of State Lands may authorize the withdrawal of mit-
6 igation bank credits by a public benefit corporation as defined in ORS 65.001 or a public body as
7 defined by ORS 174.109 designated by the director for the purpose of reserving credits for future
8 use in accordance with this subsection. The director shall manage such transactions to ensure that
9 each credit is used no more than one time to satisfy a use in accordance with this section.

10 (3) Credits from a mitigation bank may be used only as described in subsection (2) of this section
11 for permits, authorizations or resolutions of violations approved within the service area of the mit-
12 igation bank, consistent with the mitigation bank instrument, unless the director determines that it
13 is environmentally preferable to exceed this limitation.

14 (4) Credits from an estuarine mitigation bank may be used only as described in subsection (2)
15 of this section for permits, authorizations or resolutions of violations approved within the same
16 estuarine ecological system unless the director determines that it is environmentally preferable to
17 exceed this limitation.

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

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

20 (b) Conducted other creation, restoration, enhancement or preservation actions to establish
21 other functions and values at the mitigation bank site; and

22 (c) Evaluated the results of the actions and determined that a high probability exists that the
23 functions and values of the mitigation bank site are equal to or greater than the functions and val-
24 ues of the area to be impacted or that the functions and values of the mitigation bank compensate
25 for unavoidable adverse effects on the waters of this state due to the activities otherwise allowed
26 under ORS 196.600 to 196.905.

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

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

32 (8) The director annually shall:

33 (a) Evaluate the functions and values created within each mitigation bank site; and

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

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

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

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

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

43 (b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently
44 similar in functions and values to the area to be impacted; or

45 (c) The functions and values of the mitigation bank do not compensate for unavoidable adverse

1 effects on the waters of this state due to the activities otherwise allowed under ORS 196.600 to
 2 196.905.

3 **SECTION 7.** ORS 196.643 is amended to read:

4 196.643. (1) A person who provides off-site compensatory mitigation in order to comply with a
 5 condition imposed on a permit in accordance with ORS 196.825 [(5)] **(6)**, an authorization issued in
 6 accordance with ORS 196.800 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905 may
 7 make a payment for credits to the Oregon Removal-Fill Mitigation Fund when:

8 (a) Credits from an approved mitigation bank are not available; or

9 (b)(A) Credits from an approved mitigation bank were not available in a region at the time the
 10 first payment for credits was made to the Oregon Removal-Fill Mitigation Fund; and

11 (B) The expenses associated with a Department of State Lands mitigation bank project in the
 12 region in accordance with this section and ORS 196.650 have not been fully recovered by the De-
 13 partment of State Lands.

14 (2) Any payments for off-site compensatory mitigation made to the Oregon Removal-Fill Miti-
 15 gation Fund under subsection (1) of this section must be sufficient to cover the costs and expenses
 16 of land acquisition, project design and engineering, construction, planting, monitoring, maintenance,
 17 long-term management and protection activities, administration and other costs and expenses related
 18 to the off-site compensatory mitigation, which may vary depending on the region of this state where
 19 the off-site compensatory mitigation is conducted, and shall be calculated by the Department of State
 20 Lands as follows:

21 (a) If the off-site compensatory mitigation project and project costs and expenses are identified
 22 at the time of payment to the Oregon Removal-Fill Mitigation Fund, the department shall calculate
 23 the payment based on the actual costs and expenses of the off-site compensatory mitigation.

24 (b) If the off-site compensatory mitigation project and project costs and expenses are not iden-
 25 tified at the time of payment to the Oregon Removal-Fill Mitigation Fund, the department shall
 26 calculate the payment based on the estimate of costs and expenses for off-site compensatory miti-
 27 gation, as set forth in rules adopted by the department, for the region of this state where the de-
 28 partment, to the greatest extent practicable, determines the off-site compensatory mitigation may
 29 be conducted.

30 (3) No later than December 1 of each year, the Director of the Department of State Lands shall
 31 submit to the Legislative Assembly and the State Land Board a detailed report that specifies:

32 (a) The costs and expenses related to off-site compensatory mitigation, including variations and
 33 trends in costs and expenses over time.

34 (b) Efforts undertaken by the department to reduce the costs and expenses specified in para-
 35 graph (a) of this subsection.

36 (c) Efforts undertaken by the department to improve efficiencies of the department related to
 37 off-site compensatory mitigation.

38 (d) The effectiveness of the July 2010 “Oregon Rapid Wetland Assessment Protocol” of the de-
 39 partment in protecting the functions and values of wetlands through off-site compensatory miti-
 40 gation.

41
 42 **RISK ASSESSMENT FOR CERTAIN LEASES**

43
 44 **SECTION 8.** ORS 274.710 is amended to read:

45 274.710. (1) **For purposes of this section, “oil” means crude petroleum oil and all other**

1 **hydrocarbons produced in liquid form by ordinary production methods, regardless of gravity,**
 2 **other than liquid hydrocarbons originally in a gaseous phase in the reservoir.**

3 [(1)] (2) The Department of State Lands has exclusive jurisdiction over all ungranted tidal sub-
 4 merged lands owned by this state, whether within or beyond the boundaries of this state, heretofore
 5 or hereafter acquired by this state:

6 (a) By quitclaim, cession, grant, contract or otherwise from the United States or any agent
 7 thereof; or

8 (b) By any other means.

9 [(2)] (3) All jurisdiction and authority remaining in the state over tidal submerged lands as to
 10 which grants have been or may be made is vested in the department.

11 [(3)] (4) Notwithstanding ORS 273.551, the department shall administer and control all tidal
 12 submerged lands described in subsections [(1) and (2)] (2) and (3) of this section under its jurisdic-
 13 tion, and may lease such lands and submersible lands and dispose of oil, gas and sulfur under such
 14 lands and submersible lands in the manner prescribed by ORS 274.705 to 274.860. However, sub-
 15 merged and submersible lands lying more than 10 miles easterly of the 124th West Meridian shall
 16 be subject to leasing for oil, gas and sulfur under ORS 273.551, rather than under ORS 274.705 to
 17 274.860.

18 [(4)] (5) Notwithstanding **subsection (6) of this section and** any other provision of ORS 274.705
 19 to 274.860, the department may not permit any interference other than temporary interference with
 20 the surface of the ocean shore, as defined in ORS 390.615. The department may, however:

21 (a) Grant easements underlying that part of the surface of the ocean shore owned by the state
 22 at such times and at such places as the department finds necessary to permit the extraction and
 23 transportation of oil, gas or sulfur from state, federal or private lands; and

24 (b) Issue oil and gas leases underlying the ocean shore under the same terms and conditions as
 25 provided in ORS 274.705 to 274.860.

26 (6)(a) **When issuing or amending a lease to facilitate the transportation of oil, the de-**
 27 **partment shall issue or amend the lease only after determining that the public need for the**
 28 **transportation of the oil outweighs any risks to public health and safety of the state posed**
 29 **by the transportation of oil. In making the determination under this subsection, the depart-**
 30 **ment shall analyze the risks of an oil spill as a result of issuing or amending the lease, in-**
 31 **cluding:**

32 (A) **The potential environmental impacts;**

33 (B) **The potential impacts to species listed under the federal Endangered Species Act of**
 34 **1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.); and**

35 (C) **Other factors that the department considers necessary to the determination.**

36 (b) **The department shall prepare a written statement of the determination made under**
 37 **this subsection and shall include with the written statement the materials and resources**
 38 **used in making the determination.**

39
 40 **LIMITS ON USE OF WHARFS**

41
 42 **SECTION 9.** ORS 780.040 is amended to read:

43 780.040. (1) The owner of any land lying upon any navigable stream or other like water, and
 44 within the corporate limits of any incorporated town or within the boundaries of any port, may
 45 construct a wharf upon the same, and extend the wharf into the stream or other like water beyond

1 low-water mark so far as may be necessary for the use and accommodation of any ships, boats or
2 vessels engaged exclusively in the receipt and discharge of goods or merchandise or in the per-
3 formance of governmental functions upon the stream or other like water.

4 (2) As used in this section[,]:

5 (a) “Goods and merchandise” does not include crude oil.

6 (b) “Wharf” does not include new lands created upon submersible or submerged lands by artifi-
7 cial fill or deposit.

8
9 **MISCELLANEOUS**

10
11 **SECTION 10.** (1) The amendments to ORS 196.620, 192.643 and 192.825 by sections 5 to 7
12 of this 2017 Act apply to applications for permits received by the Department of State Lands
13 on or after the effective date of this 2017 Act.

14 (2) The amendments to ORS 274.710 by section 8 of this 2017 Act apply to leases entered
15 into or amended on or after the effective date of this 2017 Act.

16 **SECTION 11.** (1) Sections 1, 3 and 4 of this 2017 Act and the amendments to ORS 196.620,
17 196.643, 196.825, 274.710, 468B.300 and 780.040 by sections 2 and 5 to 9 of this 2017 Act become
18 operative January 1, 2018.

19 (2) The Department of Environmental Quality and the Department of State Lands may
20 take any action before the operative date specified in subsection (1) of this section that is
21 necessary to enable the departments to exercise, on or after the operative date specified in
22 subsection (1) of this section, all of the duties, functions and powers conferred on the de-
23 partments by sections 1, 3 and 4 of this 2017 Act and the amendments to ORS 196.620, 196.643,
24 196.825, 274.710, 468B.300 and 780.040 by sections 2 and 5 to 9 of this 2017 Act.

25 **SECTION 12.** This 2017 Act takes effect on the 91st day after the date on which the 2017
26 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

27