

Requested by SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

**PROPOSED AMENDMENTS TO
SENATE BILL 958**

1 On page 1 of the printed bill, line 2, delete “and”.

2 In line 3, delete “and 196.825” and insert “, 196.825, 274.710, 367.082,
3 468B.300, 468B.390, 780.040; and prescribing an effective date”.

4 Delete lines 5 through 31 and delete pages 2 through 6 and insert:
5

6 **“FINANCIAL RESPONSIBILITY STATEMENTS**
7

8 **“SECTION 1.** ORS 468B.300 is amended to read:

9 “468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to
10 468B.500:

11 “(1) ‘Bulk’ means material stored or transported in loose, unpackaged
12 liquid, powder or granular form capable of being conveyed by a pipe, bucket,
13 chute or belt system.

14 **“(2) ‘Bulk oil terminal’ includes:**

15 **“(a) A facility that stores, handles or transports crude oil in bulk,**
16 **that has specialized equipment or infrastructure used for transferring**
17 **crude oil between transport modes and that has storage capacity for**
18 **one million gallons of crude oil or more.**

19 **“(b) Two or more facilities that store, handle or transport crude oil**
20 **in bulk and that each have an individual storage capacity of less than**
21 **one million gallons of crude oil, if the cumulative storage capacity of**

1 **the facilities is more than one million gallons of crude oil, the facili-**
2 **ties each have or share specialized equipment or infrastructure used**
3 **for transferring crude oil between transport modes and the facilities**
4 **are either:**

5 **“(A) Located on one or more adjacent parcels of land, where adja-**
6 **cent parcels include parcels that are separated by a shared right of**
7 **way; or**

8 **“(B) Owned or operated by the same person.**

9 “[2] (3) ‘Cargo vessel’ means a self-propelled ship in commerce, other
10 than a tank vessel, of 300 gross tons or more. ‘Cargo vessel’ does not include
11 a vessel used solely for commercial fish harvesting.

12 “[3] (4) ‘Commercial fish harvesting’ means taking food fish with any
13 gear unlawful for angling under ORS 506.006, or taking food fish in excess
14 of the limits permitted for personal use, or taking food fish with the intent
15 of disposing of such food fish or parts thereof for profit, or by sale, barter
16 or trade, in commercial channels.

17 “[4] (5) ‘Contingency plan’ means an oil spill prevention and emergency
18 response plan required under ORS 468B.345.

19 “[5] (6) ‘Covered vessel’ means a tank vessel, cargo vessel, passenger
20 vessel or dredge vessel.

21 “[6] (7) ‘Damages’ includes damages, costs, losses, penalties or attorney
22 fees of any kind for which liability may exist under the laws of this state
23 resulting from, arising out of or related to the discharge or threatened dis-
24 charge of oil.

25 “[7] (8) ‘Discharge’ means any emission other than natural seepage of
26 oil, whether intentional or unintentional. ‘Discharge’ includes but is not
27 limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping
28 oil.

29 “[8] (9) ‘Dredge vessel’ means a self-propelled vessel of 300 or more gross
30 tons that is equipped for regularly engaging in dredging of submerged and

1 submersible lands.

2 “[9] (10) ‘Exploration facility’ means a platform, vessel or other offshore
3 facility used to explore for oil in the navigable waters of the state. ‘Explo-
4 ration facility’ does not include platforms or vessels used for stratigraphic
5 drilling or other operations that are not authorized or intended to drill to
6 a producing formation.

7 “[10] (11) ‘Facility’ means a pipeline or any structure, group of struc-
8 tures, equipment or device, other than a vessel that transfers oil over
9 navigable waters of the state, that is used for producing, storing, handling,
10 transferring, processing or transporting oil in bulk and that is capable of
11 storing or transporting 10,000 or more gallons of oil. ‘Facility’ does not in-
12 clude:

13 “(a) A railroad car, motor vehicle or other rolling stock while transport-
14 ing oil over the highways or rail lines of this state;

15 “(b) An underground storage tank regulated by the Department of Envi-
16 ronmental Quality or a local government under ORS 466.706 to 466.882 and
17 466.994; or

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

21 “[11] (12) ‘Federal on-scene coordinator’ means the federal official pre-
22 designated by the United States Environmental Protection Agency or the
23 United States Coast Guard to coordinate and direct federal responses or the
24 official designated by the lead agency to coordinate and direct removal under
25 the National Contingency Plan.

26 “[12] (13) ‘Hazardous material’ has the meaning given that term in ORS
27 466.605.

28 “[13] (14) ‘Maritime association’ means an association or cooperative of
29 marine terminals, facilities, vessel owners, vessel operators, vessel agents or
30 other maritime industry groups, that provides oil spill response planning and

1 spill related communications services within the state.

2 “[14] (15) ‘Maximum probable spill’ means the maximum probable spill
3 for a vessel operating in the navigable waters of the state considering the
4 history of spills of vessels of the same class operating on the west coast of
5 the United States.

6 “[15] (16) ‘Navigable waters’ means the Columbia River, the Willamette
7 River up to Willamette Falls, the Pacific Ocean and estuaries to the head
8 of tidewater.

9 “[16] (17) ‘National Contingency Plan’ means the plan prepared and
10 published under section 311(d) of the Federal Water Pollution Control Act,
11 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (P.L. 101-380).

12 “[17] (18) ‘Offshore facility’ means any facility located in, on or under
13 any of the navigable waters of the state.

14 “[18] (19) ‘Oils’ or ‘oil’ means oil, including gasoline, crude oil, fuel oil,
15 diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related
16 product and liquefied natural gas.

17 “[19] (20) ‘Onshore facility’ means any facility located in, on or under
18 any land of the state, other than submerged land, that, because of its lo-
19 cation, could reasonably be expected to cause substantial harm to the envi-
20 ronment by discharging oil into or on the navigable waters of the state or
21 adjoining shorelines.

22 “[20] (21) ‘Passenger vessel’ means a ship of 300 or more gross tons
23 carrying passengers for compensation.

24 “[21] (22) ‘Person’ has the meaning given the term in ORS 468.005.

25 “[22] (23) ‘Person having control over oil’ includes but is not limited to
26 any person using, storing or transporting oil immediately prior to entry of
27 such oil into the navigable waters of the state, and shall specifically include
28 carriers and bailees of such oil.

29 “[23] (24) ‘Pipeline’ means a facility, including piping, compressors,
30 pump stations and storage tanks, used to transport oil between facilities or

1 between facilities and tank vessels.

2 “[24] **(25)** ‘Region of operation’ with respect to the holder of a contin-
3 gency plan means the area where the operations of the holder that require
4 a contingency plan are located.

5 “[25] **(26)** ‘Removal costs’ means the costs of removal that are incurred
6 after a discharge of oil has occurred or, in any case in which there is a
7 substantial threat of a discharge of oil, the costs to prevent, minimize or
8 mitigate oil pollution from the incident.

9 “[26] **(27)** ‘Responsible party’ has the meaning given under section 1001
10 of the Oil Pollution Act of 1990 (P.L. 101-380).

11 “[27] **(28)** ‘Ship’ means any boat, ship, vessel, barge or other floating
12 craft of any kind.

13 “[28)(a)] **(29)(a)** ‘State on-scene coordinator’ means the state official ap-
14 pointed by the Department of Environmental Quality to represent the de-
15 partment and the State of Oregon in response to an oil or hazardous material
16 spill or release or threatened spill or release and to coordinate cleanup re-
17 sponse with state and local agencies.

18 “(b) For purposes of this subsection:

19 “(A) ‘Spill or release’ means the discharge, deposit, injection, dumping,
20 spilling, emitting, releasing, leaking or placing of any oil or hazardous ma-
21 terial into the air or into or on any land or waters of this state except as
22 authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A,
23 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal
24 law, or except when being stored or used for its intended purpose.

25 “(B) ‘Threatened spill or release’ means oil or hazardous material is likely
26 to escape or be carried into the air or into or on any land or waters of the
27 state, including from a ship as defined in this section that is in imminent
28 danger of sinking.

29 “[29] **(30)** ‘Tank vessel’ means a ship that is constructed or adapted to
30 carry oil in bulk as cargo or cargo residue. ‘Tank vessel’ does not include:

1 “(a) A vessel carrying oil in drums, barrels or other packages;

2 “(b) A vessel carrying oil as fuel or stores for that vessel; or

3 “(c) An oil spill response barge or vessel.

4 “[~~(30)~~] **(31)** ‘Worst case spill’ means:

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

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

9 **“(c) In the case of a bulk oil terminal, a spill equal to the crude oil
10 storage capacity of the bulk oil terminal.**

11 **“SECTION 2. ORS 468B.390 is amended to read:**

12 **“468B.390. (1) [*No person shall*] **A person may not** cause or permit the
13 operation of a facility in the state unless the person has proof of compliance
14 with Section 1016 of the federal Oil Pollution Act of 1990 (P.L. 101-380), if
15 such compliance is required by federal law.**

16 **“(2) [*No person may*] **A person may not** cause or permit the operation
17 of an offshore exploration or production facility in the state unless the per-
18 son has proof of compliance with Section 1016 of the federal Oil Pollution
19 Act of 1990 (P.L. 101-380).**

20 **“(3) **A person may not cause or permit the operation of a bulk oil
21 terminal in this state unless the person has proof of financial respon-
22 sibility for the clean up of a worst case spill.****

23 **“[~~(3)~~] **(4)** Except for a barge that does not carry oil as cargo or fuel or a
24 spill response vessel or barge, the owner of any vessel over 300 gross tons
25 in the waters of this state shall have proof of financial responsibility for the
26 following vessels:**

27 **“(a) For tank vessels over 300 gross tons:**

28 **“(A) \$1,200 per gross ton or \$2 million for vessels of 3,000 gross tons or
29 less, whichever is greater; and**

30 **“(B) \$1,200 per gross ton or \$10 million for vessels over 3,000 gross tons,**

1 whichever is greater; or

2 “(b) For any other covered vessel over 300 gross tons carrying oil only for
3 use as fuel, \$600 per gross ton or \$500,000, whichever is greater.

4 “[4] (5) The Department of Environmental Quality shall enter into an
5 agreement with the United States Coast Guard to receive notification of
6 noncompliance with the provisions of this section.

7 “[5] (6) The financial [*assurance requirement*] **responsibility require-**
8 **ments** established under [*subsection (3)*] **subsections (3) and (4)** of this
9 section [*shall*] **must** meet the liability to the state for:

10 “(a) Actual costs for removal of spilled oil;

11 “(b) Civil penalties and fines imposed in connection with oil spills; and

12 “(c) Natural resource damage.

13

14 “CONNECT OREGON FUND GRANTS

15

16 “**SECTION 3.** ORS 367.082 is amended to read:

17 “367.082. (1) Except as provided in [*subsection (2)*] **subsections (2) and**
18 **(3)** of this section, the Department of Transportation may provide, from
19 moneys in the Connect Oregon Fund established by ORS 367.080, grants for
20 transportation projects to public bodies, as defined in ORS 174.109, and to
21 private entities.

22 “(2) Grants may not be made from the Connect Oregon Fund for trans-
23 portation projects that could constitutionally be funded by revenues de-
24 scribed in [*section 3a,*] Article IX, **section 3a**, of the Oregon Constitution.

25 “**(3) Grants may not be made from the Connect Oregon Fund for**
26 **transportation projects that involve the development of a new bulk oil**
27 **terminal, as that term is defined in ORS 468B.300.**

28 “[3] (4) The Department of Transportation shall adopt rules specifying
29 the process by which a public body or private entity may apply for a grant
30 under this section and prescribing the terms and conditions of grants, in-

1 cluding but not necessarily limited to a requirement that the public body or
2 private entity receiving the grant provide at least 30 percent of the moneys
3 required for the transportation project.

4

5 **“BALANCING TEST FOR REMOVAL FILL PERMITS**

6

7 **“SECTION 4.** ORS 196.825 is amended to read:

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

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

13 “(b) Would not unreasonably interfere with the paramount policy of this
14 state to preserve the use of its waters for navigation, fishing and public re-
15 creation.

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

22 “(a) The landowner’s consent;

23 “(b) A right, title or interest with respect to the property that is sufficient
24 to undertake the removal or fill activity; or

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

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

28 “(a) The public need for the proposed fill or removal and the social, eco-
29 nomic or other public benefits likely to result from the proposed fill or re-
30 moval. When the applicant for a permit is a public body, the director may

1 accept and rely upon the public body’s findings as to local public need and
2 local public benefit.

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

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

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

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

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

13 “(g) Whether the proposed fill or removal is compatible with the ac-
14 knowledged comprehensive plan and land use regulations for the area where
15 the proposed fill or removal is to take place or can be conditioned on a fu-
16 ture local approval to meet this criterion.

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

18 “(i) Whether the applicant has provided all practicable mitigation to re-
19 duce the adverse effects of the proposed fill or removal in the manner set
20 forth in ORS 196.800. In determining whether the applicant has provided all
21 practicable mitigation, the director shall consider the findings regarding
22 wetlands set forth in ORS 196.668 and whether the proposed mitigation ad-
23 vances the policy objectives for the protection of wetlands set forth in ORS
24 196.672.

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

30 **“(5) The director may issue a permit for a project that facilitates**

1 **the transportation of crude oil only if the project is for a public use**
2 **and would satisfy a public need that outweighs harm to navigation,**
3 **fishery and recreation and if the proposed fill meets all other criteria**
4 **contained in ORS 196.600 to 196.905.**

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

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

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

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

28 “[7] (8) Any applicant whose application for a permit or authorization
29 has been deemed incomplete or has been denied, or who objects to any of the
30 conditions imposed under this section by the director, may, within 21 days

1 of the denial of the permit or authorization or the imposition of any condi-
2 tion, request a hearing from the director. Thereupon the director shall set
3 the matter down for hearing, which shall be conducted as a contested case
4 in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470.
5 After such hearing, the director shall enter an order containing findings of
6 fact and conclusions of law. The order shall rescind, affirm or modify the
7 director's initial order. Appeals from the director's final order may be taken
8 to the Court of Appeals in the manner provided by ORS 183.482.

9 “[8] **(9)** Except for a permit issued under the process set forth in ORS
10 517.952 to 517.989, the director shall:

11 “(a) Determine whether an application is complete within 30 days from
12 the date the Department of State Lands receives the application. If the di-
13 rector determines that an application is complete, the director shall distrib-
14 ute the application for comment pursuant to subsection [(5)] **(6)** of this
15 section. If the director determines that the application is not complete, the
16 director shall notify the applicant in writing that the application is deficient
17 and explain, in the same notice, the deficiencies.

18 “(b) Issue a permit decision within 90 days after the date the director
19 determines that the application is complete unless:

20 “(A) An extension of time is granted under subsection [(10)(b)] **(11)(b)** of
21 this section;

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

23 “(C) The director determines that an extension is necessary to coordinate
24 the issuance of a proprietary authorization decision for an ocean renewable
25 energy facility under ORS 274.873 and a removal or fill permit decision.

26 “[9] **(10)** Permits issued under this section shall be in lieu of any permit
27 or authorization that might be required for the same operation under ORS
28 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.060, 468.110, 468.120,
29 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

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

1 and

2 “(b) The standards for granting the permit or authorization are substan-
3 tially the same as those established pursuant to ORS 164.775, 164.785, 468.020,
4 468.035, 468.045, 468.055, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048
5 to 468B.085 to the extent they affect water quality.

6 “[~~(10)(a)~~] **(11)(a)** Any public body, as defined in ORS 174.109, federal
7 agency or tribal government requested by the director to comment on an
8 application for a permit must submit its comments to the director not more
9 than 30 days after receiving the request for comment. If a public body, fed-
10 eral agency or tribal government fails to comment on the application within
11 30 days, the director shall assume that the public body, federal agency or
12 tribal government has no objection.

13 “(b) The Department of Environmental Quality shall provide comments
14 to the director within 75 days after receiving notice under subsection [~~(5)~~]
15 **(6)** of this section if the permit action requires certification under the Fed-
16 eral Water Pollution Control Act (P.L. 92-500), as amended.

17 “[~~(11)~~] **(12)** In determining whether to issue a permit, the director may
18 consider only standards and criteria in effect on the date the director re-
19 ceives the completed application.

20 “[~~(12)~~] **(13)** As used in this section:

21 “(a) ‘Applicant’ means a landowner, a person authorized by a landowner
22 to conduct a removal or fill activity or a person that proposes a removal or
23 fill activity for construction or maintenance of a linear facility.

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

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

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

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

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

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

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

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

12 “(H) Any other information that the director deems pertinent and neces-
13 sary to make an informed decision on whether the application complies with
14 the policy and standards set forth in this section.

15 “(c) ‘Linear facility’ includes any railway, highway, road, pipeline, water
16 or sewer line, communication line, overhead or underground electrical
17 transmission or distribution line or similar facility.

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

19 “196.620. (1) For each mitigation bank, the Department of State Lands
20 shall establish a system of resource values and credits.

21 “(2) A credit from a mitigation bank may be withdrawn for a condition
22 imposed on a permit in accordance with ORS 196.825 [(5)] (6), for any other
23 authorization issued in accordance with ORS 196.800 to 196.905 or to resolve
24 a violation of ORS 196.800 to 196.905. At the request of a mitigation bank
25 sponsor, the Director of the Department of State Lands may authorize the
26 withdrawal of mitigation bank credits by a public benefit corporation as de-
27 fined in ORS 65.001 or a public body as defined by ORS 174.109 designated
28 by the director for the purpose of reserving credits for future use in accord-
29 ance with this subsection. The director shall manage such transactions to
30 ensure that each credit is used no more than one time to satisfy a use in

1 accordance with this section.

2 “(3) Credits from a mitigation bank may be used only as described in
3 subsection (2) of this section for permits, authorizations or resolutions of
4 violations approved within the service area of the mitigation bank, consist-
5 ent with the mitigation bank instrument, unless the director determines that
6 it is environmentally preferable to exceed this limitation.

7 “(4) Credits from an estuarine mitigation bank may be used only as de-
8 scribed in subsection (2) of this section for permits, authorizations or resol-
9 utions of violations approved within the same estuarine ecological system
10 unless the director determines that it is environmentally preferable to exceed
11 this limitation.

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

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

16 “(b) Conducted other creation, restoration, enhancement or preservation
17 actions to establish other functions and values at the mitigation bank site;
18 and

19 “(c) Evaluated the results of the actions and determined that a high
20 probability exists that the functions and values of the mitigation bank site
21 are equal to or greater than the functions and values of the area to be im-
22 pacted or that the functions and values of the mitigation bank compensate
23 for unavoidable adverse effects on the waters of this state due to the activ-
24 ities otherwise allowed under ORS 196.600 to 196.905.

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

29 “(7) The director shall not consider the availability or nonavailability of
30 mitigation bank credits in deciding whether to grant or deny any removal

1 or fill permit under ORS 196.600 to 196.905.

2 “(8) The director annually shall:

3 “(a) Evaluate the functions and values created within each mitigation
4 bank site; and

5 “(b) Compare the current functions and values with those that the direc-
6 tor anticipated that the mitigation bank would provide. If the director finds
7 any significant disparity between the actual and anticipated functions and
8 values, the director shall:

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

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

12 “(9) The director may not withdraw credits from the mitigation bank for
13 a specific permit, authorization or resolution of a violation if the director
14 determines that:

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

17 “(b) The mitigation bank site for which credits are proposed to be with-
18 drawn is not sufficiently similar in functions and values to the area to be
19 impacted; or

20 “(c) The functions and values of the mitigation bank do not compensate
21 for unavoidable adverse effects on the waters of this state due to the activ-
22 ities otherwise allowed under ORS 196.600 to 196.905.

23 **“SECTION 6.** ORS 196.643 is amended to read:

24 “196.643. (1) A person who provides off-site compensatory mitigation in
25 order to comply with a condition imposed on a permit in accordance with
26 ORS 196.825 [(5)] (6), an authorization issued in accordance with ORS 196.800
27 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905 may make
28 a payment for credits to the Oregon Removal-Fill Mitigation Fund when:

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

30 “(b)(A) Credits from an approved mitigation bank were not available in

1 a region at the time the first payment for credits was made to the Oregon
2 Removal-Fill Mitigation Fund; and

3 “(B) The expenses associated with a Department of State Lands mitigation
4 bank project in the region in accordance with this section and ORS 196.650
5 have not been fully recovered by the Department of State Lands.

6 “(2) Any payments for off-site compensatory mitigation made to the
7 Oregon Removal-Fill Mitigation Fund under subsection (1) of this section
8 must be sufficient to cover the costs and expenses of land acquisition, project
9 design and engineering, construction, planting, monitoring, maintenance,
10 long-term management and protection activities, administration and other
11 costs and expenses related to the off-site compensatory mitigation, which
12 may vary depending on the region of this state where the off-site
13 compensatory mitigation is conducted, and shall be calculated by the De-
14 partment of State Lands as follows:

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

19 “(b) If the off-site compensatory mitigation project and project costs and
20 expenses are not identified at the time of payment to the Oregon Removal-
21 Fill Mitigation Fund, the department shall calculate the payment based on
22 the estimate of costs and expenses for off-site compensatory mitigation, as
23 set forth in rules adopted by the department, for the region of this state
24 where the department, to the greatest extent practicable, determines the
25 off-site compensatory mitigation may be conducted.

26 “(3) No later than December 1 of each year, the Director of the Depart-
27 ment of State Lands shall submit to the Legislative Assembly and the State
28 Land Board a detailed report that specifies:

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

1 “(b) Efforts undertaken by the department to reduce the costs and ex-
2 penses specified in paragraph (a) of this subsection.

3 “(c) Efforts undertaken by the department to improve efficiencies of the
4 department related to off-site compensatory mitigation.

5 “(d) The effectiveness of the July 2010 ‘Oregon Rapid Wetland Assessment
6 Protocol’ of the department in protecting the functions and values of
7 wetlands through off-site compensatory mitigation.

8
9 **“RISK ASSESSMENT FOR CERTAIN LEASES**

10
11 **“SECTION 7.** ORS 274.710 is amended to read:

12 “274.710. (1) The Department of State Lands has exclusive jurisdiction
13 over all ungranted tidal submerged lands owned by this state, whether within
14 or beyond the boundaries of this state, heretofore or hereafter acquired by
15 this state:

16 “(a) By quitclaim, cession, grant, contract or otherwise from the United
17 States or any agent thereof; or

18 “(b) By any other means.

19 “(2) All jurisdiction and authority remaining in the state over tidal sub-
20 merged lands as to which grants have been or may be made is vested in the
21 department.

22 “(3) Notwithstanding ORS 273.551, the department shall administer and
23 control all tidal submerged lands described in subsections (1) and (2) of this
24 section under its jurisdiction, and may lease such lands and submersible
25 lands and dispose of oil, gas and sulfur under such lands and submersible
26 lands in the manner prescribed by ORS 274.705 to 274.860. However, sub-
27 merged and submersible lands lying more than 10 miles easterly of the 124th
28 West Meridian shall be subject to leasing for oil, gas and sulfur under ORS
29 273.551, rather than under ORS 274.705 to 274.860.

30 “(4) Notwithstanding **subsection (5) of this section and** any other pro-

1 vision of ORS 274.705 to 274.860, the department may not permit any inter-
2 ference other than temporary interference with the surface of the ocean
3 shore, as defined in ORS 390.615. The department may, however:

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

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

10 **“(5)(a) When issuing or amending a lease to facilitate the trans-
11 portation of crude oil, the department shall issue or amend the lease
12 only after determining that the public need for the transportation of
13 the crude oil outweighs any risks to public health and safety of the
14 state posed by the transportation of crude oil. In making the deter-
15 mination under this subsection, the department shall analyze the risks
16 of an oil spill as a result of issuing or amending the lease, including:**

17 **“(A) The potential environmental impacts;**

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

20 **“(C) Other factors that the department considers necessary to the
21 determination.**

22 **“(b) The department shall prepare a written statement of the de-
23 termination made under this subsection and shall include with the
24 written statement the materials and resources used in making the
25 determination.**

26

27 **“LIMITS ON USE OF WHARFS**

28

29 **“SECTION 8.** ORS 780.040 is amended to read:

30 **“780.040. (1) The owner of any land lying upon any navigable stream or**

1 other like water, and within the corporate limits of any incorporated town
2 or within the boundaries of any port, may construct a wharf upon the same,
3 and extend the wharf into the stream or other like water beyond low-water
4 mark so far as may be necessary for the use and accommodation of any ships,
5 boats or vessels engaged exclusively in the receipt and discharge of goods
6 or merchandise or in the performance of governmental functions upon the
7 stream or other like water.

8 “(2) As used in this section[,]:

9 **“(a) ‘Goods and merchandise’ does not include crude oil.**

10 **“(b) ‘Wharf’ does not include new lands created upon submersible or**
11 **submerged lands by artificial fill or deposit.**

12

13 **“MISCELLANEOUS**

14

15 **“SECTION 9. (1) The amendments to ORS 468B.300 and 468B.390 by**
16 **sections 1 and 2 of this 2017 Act apply to bulk oil terminals in this**
17 **state in existence before, on and after the operative date specified in**
18 **section 10 of this 2017 Act. A bulk oil terminal subject to 468B.390 must**
19 **first submit to the Department of Environmental Quality proof of fi-**
20 **nancial responsibility no later than January 1, 2019.**

21 **“(2) The amendments to ORS 196.620, 192.643 and 192.825 by sections**
22 **4 to 6 of this 2017 Act apply to applications for permits received by the**
23 **Department of State Lands on or after the operative date specified in**
24 **section 10 of this 2017 Act.**

25 **“(4) The amendments to ORS 274.710 by section 7 of this 2017 Act**
26 **apply to leases entered into or amended on or after the operative date**
27 **specified in section 10 of this 2017 Act.**

28 **“SECTION 10. (1) The amendments to ORS 196.620, 196.643, 196.825,**
29 **274.710, 367.082, 468B.300, 468B.390 and 780.040 by sections 1 to 8 of this**
30 **2017 Act become operative on January 1, 2018.**

1 **“(2) The Department of Environmental Quality, the Department of**
2 **Transportation and the Department of State Lands may take any**
3 **action before the operative date specified in subsection (1) of this sec-**
4 **tion that is necessary to enable the departments to exercise, on or**
5 **after the operative date specified in subsection (1) of this section, all**
6 **of the duties, functions and powers conferred on the departments by**
7 **the amendments to ORS 196.620, 196.643, 196.825, 274.710, 367.082,**
8 **468B.300, 468B.390 and 780.040 by sections 1 to 8 of this 2017 Act.**

9 **“SECTION 11. The unit captions used in this 2017 Act are provided**
10 **only for the convenience of the reader and do not become part of the**
11 **statutory law of this state or express any legislative intent in the**
12 **enactment of this 2017 Act.**

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

16
