

## HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2436

By JOINT COMMITTEE ON WAYS AND MEANS

June 21

- 1 On page 1 of the printed A-engrossed bill, line 2, after “196.643” insert “and 196.825”.
- 2 On page 2, line 38, delete “(2018 Edition)” and insert “, as in effect on the effective date of this  
3 2019 Act,”.
- 4 On page 3, delete lines 36 through 39 and insert:
- 5 “**SECTION 4.** 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  
7 under 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  
11 use of its waters for navigation, fishing and public recreation.
- 12 “(2) If the director issues a permit applied for under ORS 196.815 to a person that proposes a  
13 removal or fill activity for construction or maintenance of a linear facility, and if that person is not  
14 a landowner or a person authorized by a landowner to conduct the proposed removal or fill activity  
15 on a property, then the person may not conduct removal or fill activity on that property until the  
16 person obtains:
- 17 “(a) The landowner’s consent;
- 18 “(b) A right, title or interest with respect to the property that is sufficient to undertake the  
19 removal or fill activity; or
- 20 “(c) A court order or judgment authorizing the use of the property.
- 21 “(3)(a) In determining whether to issue a permit, the director shall consider [*all of*] the follow-  
22 ing:
- 23 “[*a*] (A) The public need for the proposed fill or removal and the social, economic or other  
24 public benefits likely to result from the proposed fill or removal. When the applicant for a permit  
25 is a public body, the director may accept and rely upon the public body’s findings as to local public  
26 need and local public benefit.
- 27 “[*b*] (B) The economic [*cost*] **impact** to the public if the proposed fill or removal is not ac-  
28 complished.
- 29 “[*c*] (C) The availability of alternatives to the project for which the fill or removal is proposed.
- 30 “[*d*] (D) The availability of alternative sites for the proposed fill or removal.
- 31 “[*e*] (E) Whether the proposed fill or removal conforms to sound policies of conservation and  
32 would not interfere with public health and safety.
- 33 “[*f*] (F) Whether the proposed fill or removal is in conformance with existing public uses of the  
34 waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land  
35 use regulations.

1       “[(g)] (G) Whether the proposed fill or removal is compatible with the acknowledged compre-  
2       hensive plan and land use regulations for the area where the proposed fill or removal is to take  
3       place or can be conditioned on a future local approval to meet this criterion.

4       “[(h)] (H) Whether the proposed fill or removal is for streambank protection.

5       “[(i)] (I) Whether the applicant has provided all practicable mitigation to reduce the adverse  
6       effects of the proposed fill or removal in the manner set forth in ORS 196.800. In determining  
7       whether the applicant has provided all practicable mitigation, the director shall consider the  
8       findings regarding wetlands set forth in ORS 196.668 and whether the proposed mitigation advances  
9       the policy objectives for the protection of wetlands set forth in ORS 196.672.

10       **“(J) Any other standard that the director may determine to be relevant to the specific  
11       proposed fill or removal.**

12       **“(b) Nothing in this subsection limits the director’s authority to determine that a pro-  
13       posed fill or removal is consistent or inconsistent with the purposes set forth in subsection  
14       (1) of this section.**

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

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

28       “(6)(a) The director may request comment from interested parties and adjacent property owners  
29       on any application for a permit.

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

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

38       “(7) Any applicant whose application for a permit or authorization has been deemed incomplete  
39       or has been denied, or who objects to any of the conditions imposed under this section by the di-  
40       rector, may, within 21 days of the denial of the permit or authorization or the imposition of any  
41       condition, request a hearing from the director. Thereupon the director shall set the matter down for  
42       hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430,  
43       183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing  
44       findings of fact and conclusions of law. The order shall rescind, affirm or modify the director’s initial  
45       order. Appeals from the director’s final order may be taken to the Court of Appeals in the manner

1 provided by ORS 183.482.

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

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

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

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

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

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

16 “(9) Permits issued under this section shall be in lieu of any permit or authorization that might  
17 be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055,  
18 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

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

20 “(b) The standards for granting the permit or authorization are substantially the same as those  
21 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,  
22 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

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

28 “(b) The Department of Environmental Quality shall provide comments to the director within  
29 75 days after receiving notice under subsection (5) of this section if the permit action requires cer-  
30 tification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

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

33 “(12) As used in this section:

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

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

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

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

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

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

45 “(E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within

1 this state, documentation of existing conditions and resources and identification of the potential  
2 impact if the project is completed;

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

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

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

9 “(c) ‘Linear facility’ includes any railway, highway, road, pipeline, water or sewer line, commu-  
10 nication line, overhead or underground electrical transmission or distribution line or similar facility.

11 **“SECTION 5. Notwithstanding any other law limiting expenditures, the limitation on**  
12 **expenditures established by section 1 (1), chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House**  
13 **Bill 5035), for the biennium beginning July 1, 2019, as the maximum limit for payment of ex-**  
14 **penses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding**  
15 **lottery funds, federal funds and funds described in section 2, chapter \_\_\_\_\_, Oregon Laws**  
16 **2019 (Enrolled House Bill 5035), collected or received by the Department of State Lands, for**  
17 **Common School Fund programs, is increased by \$355,776.”.**

18 In line 40, delete “5” and insert “6”.

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