

Requested by SENATE COMMITTEE ON NATURAL RESOURCES

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2238**

1 On page 1 of the printed A-engrossed bill, line 2, after “Lands” insert “;
2 creating new provisions; amending ORS 196.800, 196.810, 196.815, 196.816,
3 196.818, 196.850 and 274.043”.

4 After line 3, insert:

5

6 **“DISPOSAL OF PERSONAL PROPERTY”.**

7

8 On page 2, delete lines 35 and 36 and insert:

9

10 **“ADOPTION OF FEES BY RULE**

11

12 **“SECTION 4. (1) In accordance with ORS chapter 183, the Director**
13 **of the Department of State Lands shall adopt rules to establish fees**
14 **for:**

15 **“(a) Applications for, and renewal of, removal or fill permits re-**
16 **quired under ORS 196.810;**

17 **“(b) The review of wetland delineation reports under ORS 196.818;**

18 **or**

19 **“(c) General authorizations under ORS 196.850.**

20 **“(2)(a) In establishing fees under subsection (1) of this section, the**
21 **director shall evaluate the impact of fully recovering, through fees,**

1 the costs to the Department of State Lands of administering the re-
2 moval and fill program provided for under ORS 196.600 to 196.921.

3 “(b) The director shall establish project tiers for fees established
4 under subsection (1)(a) of this section. In establishing project tiers, the
5 director shall consider the administrative costs to the department, and
6 the impacts on the waters of this state, associated with different
7 project types.

8 “(c) The director shall establish project tiers for fees established
9 under subsection (1)(b) of this section. In establishing project tiers, the
10 director shall consider the administrative costs to the department as-
11 sociated with the review of wetland delineation reports for land parcels
12 of different sizes.

13 “(d) A fee established under subsection (1)(c) of this section for a
14 general authorization shall be based on the cost of processing the
15 general authorization.

16 “SECTION 4a. No later than February 15, 2025, the Department of
17 State Lands shall submit a report in the manner provided by ORS
18 192.245 to the committees of the Legislative Assembly related to the
19 environment, land use and natural resources that describes the
20 department’s progress in implementing section 4 of this 2023 Act.

21 “SECTION 5. ORS 196.815 is amended to read:

22 “196.815. (1) A person who is required to have a permit to remove material
23 from the bed or banks or fill any waters of this state shall file a written
24 application with the Director of the Department of State Lands **and pay a**
25 **fee established by the director by rule under section 4 of this 2023 Act**
26 for each individual project before performing any removal or fill.

27 “[2)(a) *Except as otherwise may be provided by the rules of the Department*
28 *of State Lands for removal or fill permits related to ocean renewable energy*
29 *facilities as defined in ORS 274.870, each application under subsection (1) of*
30 *this section must be accompanied by a base fee in accordance with the follow-*

1 *ing schedule:]*

2 *“(A) For a removal by a private operator, or a person contracting to per-*
3 *form services for a private operator, \$85.]*

4 *“(B) For a removal by a public body, \$250.]*

5 *“(C) For a removal by a commercial operator, \$250.]*

6 *“(D) For a fill by a private operator, or a person contracting to perform*
7 *services for a private operator, \$250.]*

8 *“(E) For a fill by a public body, \$620.]*

9 *“(F) For a fill by a commercial operator, \$620.]*

10 *“(G) For erosion-flood repair, including riprap, no fee.]*

11 *“(b) In addition to the base fee for removal established under paragraph*
12 *(a) of this subsection, each applicant shall also pay as part of the application*
13 *fee the following fee based on the volume of removal material:]*

14 *“(A) Less than 500 cubic yards, no volume fee.]*

15 *“(B) 500 to less than 5,000 cubic yards, \$125.]*

16 *“(C) 5,000 to less than or equal to 50,000 cubic yards, \$250.]*

17 *“(D) Over 50,000 cubic yards, \$375.]*

18 *“(c) In addition to the base fee for fill established under paragraph (a) of*
19 *this subsection, each applicant shall also pay as part of the application fee the*
20 *following fee based on the volume of fill material:]*

21 *“(A) Less than 500 cubic yards, no volume fee.]*

22 *“(B) 500 to less than 3,000 cubic yards, \$125.]*

23 *“(C) 3,000 to less than or equal to 10,000 cubic yards, \$250.]*

24 *“(D) Over 10,000 cubic yards, \$375.]*

25 *“(d) The department may establish by rule a volume-based fee for the*
26 *commercial removal of sand and gravel from the waters of this state for use*
27 *in administering the provisions of the fill and removal law in this state.]*

28 *“(e) For the purposes of this subsection:]*

29 *“(A) ‘Private operator’ means any person undertaking a project for exclu-*
30 *sively a nonincome-producing and nonprofit purpose;]*

1 “[*B*] ‘Public body’ means federal, state, and local governmental bodies,
2 unless specifically exempted by law, engaged in projects for the purpose of
3 providing free public services;]

4 “[*C*] ‘Commercial operator’ means any person undertaking a project having
5 financial profit as a goal;]

6 “[*D*] ‘Riprap’ means the facing of a streambank with rock or similar sub-
7 stance to control erosion in accordance with rules adopted by the department;
8 and]

9 “[*E*] ‘Erosion-flood repair’ means riprap or any other work necessary to
10 preserve existing facilities and land from flood and high streamflows, in ac-
11 cordance with regulations promulgated by the department.]

12 “[*3*] For each application that involves both removal and filling, the ap-
13 plication fee assessed shall be either for removal or filling, whichever is higher
14 according to the fee schedule in subsection (2) of this section.]

15 “[*4*] **(2)** The Department of State Lands may waive the fees [*specified*
16 *in subsection (2) of this section*] **established by rule under section 4 of this**
17 **2023 Act** for a permit that will be used to perform a voluntary habitat res-
18 toration project.

19 “[*5*] **(3)** A person who receives an emergency authorization under ORS
20 196.810 to remove material from the beds or banks of any waters of this state
21 or to fill any waters of this state shall, within 45 days after receiving the
22 authorization, submit a fee to the department calculated in the manner pro-
23 vided **by rules adopted by the director** under [*this section*] **section 4 of**
24 **this 2023 Act** for **removal or fill** permit applications.

25 “[*6*] **(4)** [*Each holder of a material removal or fill permit shall pay a fee*
26 *during the term of the permit in accordance with the schedule set forth in*
27 *subsection (2) of this section, except that the applicant shall pay only the base*
28 *fee. For multiyear permits valid over a period of more than one year, the de-*
29 *partment may assess a one-time fee that covers all fees due under subsection*
30 *(2) of this section for the period of the permit. The permit shall be suspended*

1 *during any period of delinquency of payment as though no permit was applied*
2 *for. Notwithstanding this subsection]* The director may, before granting a re-
3 newal of [*the*] **a removal or fill** permit, require the permittee to show that
4 the continued exercise of the permit is consistent with the protection, con-
5 servation and best use of the water resources of this state.

6 “[~~(7)~~] **(5)** Fees received under this section shall be credited to the Common
7 School Fund for use by the department in administration of ORS 196.600 to
8 196.921.

9 “[~~(8)~~] *The director shall issue an order revising the fees specified in this*
10 *section on January 1 of each year, beginning in 2009, based on changes in the*
11 *Consumer Price Index for All Urban Consumers, West Region (All Items), as*
12 *published by the Bureau of Labor Statistics of the United States Department*
13 *of Labor. The director shall round the amount of each fee to the nearest dollar.*
14 *The revised fees shall take effect January 1 and apply for that calendar*
15 *year.]*

16 **“SECTION 6.** ORS 196.810 is amended to read:

17 “196.810. (1)(a) Except as otherwise specifically permitted under ORS
18 196.600 to 196.921, a person may not remove any material from the beds or
19 banks of any waters of this state or fill any waters of this state without a
20 permit issued under authority of the Director of the Department of State
21 Lands, or in a manner contrary to the conditions set out in the permit, or
22 in a manner contrary to the conditions set out in an order approving a
23 wetland conservation plan.

24 “(b) Notwithstanding the permit requirements of this section and not-
25 withstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill
26 activity is proposed in essential indigenous anadromous salmonid habitat,
27 except for those activities customarily associated with agriculture, a permit
28 is required. ‘Essential indigenous anadromous salmonid habitat’ as defined
29 under this section shall be further defined and designated by rule by the
30 Department of State Lands in consultation with the State Department of

1 Fish and Wildlife and in consultation with other affected parties.

2 “(c) A person is not required to obtain a permit under paragraph (b) of
3 this subsection for prospecting or other nonmotorized activities resulting in
4 the removal from or fill of less than one cubic yard of material at any one
5 individual site and, cumulatively, not more than five cubic yards of material
6 within a designated essential indigenous anadromous salmonid habitat seg-
7 ment in a single year. Prospecting or other nonmotorized activities may be
8 conducted only within the bed or wet perimeter of the waterway and may
9 not occur at any site where fish eggs are present. Removal or filling activ-
10 ities customarily associated with mining require a permit under paragraph
11 (b) of this subsection.

12 “(d) A permit is not required under paragraph (b) of this subsection for
13 construction or maintenance of fish passage and fish screening structures
14 that are constructed, operated or maintained under ORS 498.306, 498.316,
15 498.326 or 509.600 to 509.645.

16 “(e)(A) Notwithstanding the permit requirements of this section and not-
17 withstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill
18 activity is proposed in Oregon’s territorial sea that is related to an ocean
19 renewable energy facility as defined in ORS 274.870, a permit is required.

20 “(B) An application for a permit related to an ocean renewable energy
21 facility in the territorial sea must include all of the information required by
22 that part of the Territorial Sea Plan that addresses the development of ocean
23 renewable energy facilities in the territorial sea.

24 “(C) The Department of State Lands may not issue a removal or fill per-
25 mit for an ocean renewable energy facility that does not comply with the
26 criteria described in that part of the Territorial Sea Plan that addresses the
27 development of ocean renewable energy facilities in the territorial sea.

28 “(f) Nothing in this section limits or otherwise changes the exemptions
29 under ORS 196.921.

30 “(g) As used in paragraphs (b) and (c) of this subsection:

1 “(A) ‘Bed’ means the land within the wet perimeter and any adjacent
2 nonvegetated dry gravel bar.

3 “(B) ‘Essential indigenous anadromous salmonid habitat’ means the
4 habitat that is necessary to prevent the depletion of indigenous anadromous
5 salmonid species during their life history stages of spawning and rearing.

6 “(C) ‘Indigenous anadromous salmonid’ means chum, sockeye, Chinook
7 and Coho salmon, and steelhead and cutthroat trout, that are members of the
8 family Salmonidae and are listed as sensitive, threatened or endangered by
9 a state or federal authority.

10 “(D) ‘Prospecting’ means searching or exploring for samples of gold, silver
11 or other precious minerals, using nonmotorized methods, from among small
12 quantities of aggregate.

13 “(E) ‘Wet perimeter’ means the area of the stream that is under water or
14 is exposed as a nonvegetated dry gravel bar island surrounded on all sides
15 by actively moving water at the time the activity occurs.

16 “(2) A public body, as defined in ORS 174.109, may not issue a lease or
17 permit contrary or in opposition to the conditions set out in the permit is-
18 sued under ORS 196.600 to 196.921.

19 “(3) Subsection (1) of this section does not apply to removal of material
20 under a contract, permit or lease with any public body, as defined in ORS
21 174.109, entered into before September 13, 1967. However, no such contract,
22 permit or lease may be renewed or extended on or after September 13, 1967,
23 unless the person removing the material has obtained a permit under ORS
24 196.600 to 196.921.

25 “(4) Notwithstanding subsection (1) of this section, the Department of
26 State Lands may issue, orally or in writing, an emergency authorization to
27 a person for the removal of material from the beds or banks or filling of any
28 waters of this state in an emergency, for the purpose of making repairs or
29 for the purpose of preventing irreparable harm, injury or damage to persons
30 or property. The emergency authorization issued under this subsection:

1 “(a) Shall contain conditions of operation that the department determines
2 are necessary to minimize impacts to water resources or adjoining properties.

3 “(b) Shall be based, whenever practicable, on the recommendations con-
4 tained in an on-site evaluation by an employee or representative of the de-
5 partment.

6 “(c) If issued orally, shall be confirmed in writing by the department
7 within five days.

8 “(d) Does not relieve the person from payment of a fee calculated in the
9 manner provided [*in ORS 196.815*] **by rules adopted by the director under**
10 **section 4 of this 2023 Act.**

11 **“SECTION 7.** ORS 196.810, as amended by section 2, chapter 516, Oregon
12 Laws 2001, section 97, chapter 14, Oregon Laws 2003, section 64, chapter 71,
13 Oregon Laws 2007, section 5, chapter 625, Oregon Laws 2007, section 15,
14 chapter 849, Oregon Laws 2007, and section 11, chapter 386, Oregon Laws
15 2015, is amended to read:

16 “196.810. (1)(a) Except as otherwise specifically permitted under ORS
17 196.600 to 196.921, a person may not remove any material from the beds or
18 banks of any waters of this state or fill any waters of this state without a
19 permit issued under authority of the Director of the Department of State
20 Lands, or in a manner contrary to the conditions set out in the permit, or
21 in a manner contrary to the conditions set out in an order approving a
22 wetland conservation plan.

23 “(b) A permit is not required under paragraph (a) of this subsection for
24 prospecting or other nonmotorized activities resulting in the removal from
25 or fill of less than one cubic yard of material at any one individual site and,
26 cumulatively, not more than five cubic yards of material within a particular
27 stream segment in a single year. Prospecting or other nonmotorized activities
28 may be conducted only within the bed or wet perimeter of the waterway and
29 may not occur at any site where fish eggs are present. Removal or filling
30 activities customarily associated with mining require a permit under para-

1 graph (a) of this subsection.

2 “(c) A permit is not required under paragraph (a) of this subsection for
3 construction or maintenance of fish passage and fish screening structures
4 associated with irrigation ditches or the maintenance of drainage ditches
5 that are constructed, operated or maintained under ORS 498.306, 498.316,
6 498.326 or 509.600 to 509.645.

7 “(d)(A) Notwithstanding the permit requirements of this section and not-
8 withstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill
9 activity is proposed in Oregon’s territorial sea that is related to an ocean
10 renewable energy facility as defined in ORS 274.870, a permit is required.

11 “(B) An application for a permit related to an ocean renewable energy
12 facility in the territorial sea must include all of the information required by
13 that part of the Territorial Sea Plan that addresses the development of ocean
14 renewable energy facilities in the territorial sea.

15 “(C) The Department of State Lands may not issue a removal or fill per-
16 mit for an ocean renewable energy facility that does not comply with the
17 criteria described in that part of the Territorial Sea Plan that addresses the
18 development of ocean renewable energy facilities in the territorial sea.

19 “(e) Nothing in this section limits or otherwise changes the exemptions
20 under ORS 196.921.

21 “(2) A public body, as defined in ORS 174.109, may not issue a lease or
22 permit contrary or in opposition to the conditions set out in the permit is-
23 sued under ORS 196.600 to 196.921.

24 “(3) Subsection (1) of this section does not apply to removal of material
25 under a contract, permit or lease with any public body, as defined in ORS
26 174.109, entered into before September 13, 1967. However, a contract, permit
27 or lease may not be renewed or extended on or after September 13, 1967,
28 unless the person removing the material has obtained a permit under ORS
29 196.600 to 196.921.

30 “(4) Notwithstanding subsection (1) of this section, the Department of

1 State Lands may issue, orally or in writing, an emergency authorization to
2 a person for the removal of material from the beds or banks or filling of any
3 waters of this state in an emergency, for the purpose of making repairs or
4 for the purpose of preventing irreparable harm, injury or damage to persons
5 or property. The emergency authorization issued under this subsection:

6 “(a) Shall contain conditions of operation that the department determines
7 are necessary to minimize impacts to water resources or adjoining properties.

8 “(b) Shall be based, whenever practicable, on the recommendations con-
9 tained in an on-site evaluation by an employee or representative of the de-
10 partment.

11 “(c) If issued orally, shall be confirmed in writing by the department
12 within five days.

13 “(d) Does not relieve the person from payment of a fee calculated in the
14 manner provided [*in ORS 196.815*] **by rules adopted by the director under**
15 **section 4 of this 2023 Act.**

16 “(5) As used in this section:

17 “(a) ‘Bed’ means the land within the wet perimeter and any adjacent
18 nonvegetated dry gravel bar.

19 “(b) ‘Prospecting’ means searching or exploring for samples of gold, silver
20 or other precious minerals, using nonmotorized methods, from among small
21 quantities of aggregate.

22 “(c) ‘Wet perimeter’ means the area of the stream that is under water or
23 is exposed as a nonvegetated dry gravel bar island surrounded on all sides
24 by actively moving water at the time the activity occurs.

25 **“SECTION 8.** ORS 196.816 is amended to read:

26 “196.816. (1) As used in this section, ‘traditionally maintained channel’
27 has the meaning given that term in ORS 196.909.

28 “(2) Notwithstanding ORS 196.810, the Department of State Lands may
29 establish by rule a general permit that allows the removal of no more than
30 100 cubic yards of material from waters of this state, including in essential

1 indigenous anadromous salmonid habitat, for the purpose of maintaining
2 drainage and protecting agricultural land.

3 “(3) Notwithstanding ORS 196.810, the department shall establish by rule
4 one or more general permits that allow the removal of material from waters
5 of this state, including in essential indigenous anadromous salmonid habitat,
6 to conduct maintenance of traditionally maintained channels during channel
7 conditions where flowing or standing water is present. The general permits
8 must require the maintenance to be conducted in a manner that protects,
9 maintains or improves existing agricultural and ecological functions of the
10 channels, including the life history functions of fish and wildlife that inhabit
11 the channels. In establishing a general permit under this subsection, the de-
12 partment shall utilize best available science and shall consult with the State
13 Department of Agriculture, the State Department of Fish and Wildlife, other
14 relevant state or federal agencies and representatives of agricultural inter-
15 ests and conservation interests.

16 “(4) The Department of State Lands may waive the fees [*specified in ORS*
17 *196.815*] **established by the Director of the Department of State Lands**
18 **by rule under section 4 of this 2023 Act** for removal taking place under
19 the provisions of this section.

20 **“SECTION 9.** ORS 196.818 is amended to read:

21 “196.818. (1) A person or governmental body requesting a permit under
22 ORS 196.810 shall submit a wetland delineation report to the Department of
23 State Lands for a determination of:

24 “(a) Whether waters of this state are present on a specific land parcel;

25 “(b) Where the boundaries of waters of this state are located on a land
26 parcel; or

27 “(c) Whether the waters of this state or a proposed activity in the waters
28 of this state is subject to permit requirements.

29 “(2) A person or governmental body must pay a nonrefundable fee [*of*
30 *\$350*] to the department, **as provided in rules adopted by the Director of**

1 **the Department of State Lands under section 4 of this 2023 Act**, when
2 submitting a wetland delineation report under subsection (1) of this section.

3 “(3) The department shall:

4 “(a) Review the wetland delineation report submitted under subsection (1)
5 of this section no more than 120 days after the date on which the person or
6 governmental body submits the report; and

7 “(b) Give priority to the review of a wetland delineation report that is
8 submitted with or in advance of an application for a permit required under
9 ORS 196.810 if the permit would authorize activities on the land parcel that
10 is the subject of the wetland delineation report.

11 “(4) All determinations made by the department under subsection (1)(a)
12 and (b) of this section:

13 “(a) Must be made by a person with expertise in wetlands hydrology, soil
14 and vegetation; and

15 “(b) Expire five years after the date on which a final determination is
16 made.

17 “(5) Five years after the date on which a final determination has been
18 made under subsection (1)(a) or (b) of this section, if the owner of the land
19 parcel that is the subject of the determination is conducting activities that
20 require a permit under ORS 196.810, the landowner shall conduct a review
21 of the land parcel. If the baseline conditions leading to the final determi-
22 nation have sufficiently changed to require a new determination, then the
23 landowner shall submit a new wetland delineation report under subsection
24 (1) of this section. If the baseline conditions leading to the final determi-
25 nation have not sufficiently changed to require a new determination, then
26 the final determination of the department, notwithstanding subsection (4)(b)
27 of this section, may be extended by five years, **after payment of the ap-
28 plicable fee established by the director by rule under section 4 of this
29 2023 Act.**

30 “(6) The department may waive or suspend the requirements of this sec-

1 tion for the purpose of issuing an emergency authorization under ORS
2 196.810.

3 “[~~(7)~~ *The fee described in subsection (2) of this section is in addition to any*
4 *permit application fee required under ORS 196.815. A person or governmental*
5 *body submitting a revised report to replace a previously rejected report must*
6 *pay an additional nonrefundable fee of \$100.*]

7 “[~~(8)~~ **(7)** Delineations made pursuant to this section, and determinations
8 made under this section, must comport with:

9 “(a) The United States Army Corps of Engineers Wetlands Delineation
10 Manual of 1987; and

11 “(b) Any subsequent federal supplements to the manual or applicable
12 guidance documents issued by the United States Army Corps of Engineers,
13 including guidance documents for the area in which a delineation will take
14 place, as adopted by rule of the Director of the Department of State Lands.
15 Such rules must comply with those federal supplements and guidance docu-
16 ments.

17 “[~~(9)~~ *The director shall issue an order revising the fee specified in sub-*
18 *section (2) of this section on January 1 of each year, based on changes in the*
19 *Consumer Price Index for All Urban Consumers, West Region (All Items), as*
20 *published by the Bureau of Labor Statistics of the United States Department*
21 *of Labor. The director shall round the amount to the nearest dollar. The re-*
22 *vised fee shall take effect January 1 and apply for that calendar year.*]

23 “[~~(10)~~ **(8)** Fees received under this section shall be credited to the Com-
24 mon School Fund for use by the department in administration of ORS 196.600
25 to 196.921.

26 “**SECTION 10.** ORS 196.850 is amended to read:

27 “196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands
28 may, by rule, grant general authorization for removal of material from the
29 bed or banks of any waters of this state or the filling of any waters of this
30 state without a permit from the department if the department finds that the

1 activities subject to the general authorization:

2 “(a) Are substantially similar in nature;

3 “(b) Would cause only minimal individual and cumulative environmental
4 impacts; and

5 “(c) Would not result in long-term harm to water resources of the state.

6 “(2) A general authorization may be granted on a statewide or other ge-
7 ographic basis.

8 “(3) The department shall condition any general authorization upon
9 actions necessary to minimize environmental impacts.

10 “(4) The department shall provide notice of any proposed general author-
11 ization to affected federal and state agencies, local governments, tribal gov-
12 ernments and the public. The notice shall include:

13 “(a) A clear description of the proposal; and

14 “(b) Draft findings and any proposed conditions pursuant to this section.

15 “(5) Any person proposing to conduct an action under a general authori-
16 zation shall:

17 “(a) Notify the department in writing prior to conducting the action.

18 “(b) Pay the applicable fee to the department as determined under [*sub-*
19 *section (9) of this section*] **rules adopted by the Director of the Depart-**
20 **ment of State Lands under section 4 of this 2023 Act.**

21 “(6) The department shall amend or rescind any general authorization
22 upon a determination that the activities conducted under the authorization
23 have resulted in or would result in more than minimal environmental im-
24 pacts or long-term harm to the water resources of this state.

25 “(7) The department shall review each general authorization adopted
26 pursuant to this section every five years. The review shall include public
27 notice and opportunity for public hearing. After the review, the department
28 may either modify, reissue or rescind the general authorization.

29 “(8) In addition to the grounds for review set forth in ORS 183.400 (4),
30 on judicial review of the validity of a rule adopted under this section, the

1 rule shall be reviewable for substantial evidence in the rulemaking record.
2 The record shall include copies of all documents before the agency relevant
3 to the findings required by subsection (1) of this section.

4 “[~~(9)~~ *If the rule adopting a general authorization under this section is:*]

5 “[~~(a)~~ *For actions that result in moving less than 50 cubic yards of material,*
6 *the department may not charge a fee for the general authorization.*]

7 “[~~(b)~~ *For actions that result in moving 50 or more cubic yards of material,*
8 *the department may establish a fee for the general authorization. The fee may*
9 *not exceed \$250 and shall be based on the cost of processing the general au-*
10 *thorization.*]

11 “[~~(10)~~ **(9)** The department shall credit any fee collected under this section
12 to the Common School Fund for use by the department in administration of
13 ORS 196.600 to 196.921.

14 **“SECTION 11.** ORS 196.850, as amended by section 4, chapter 516, Oregon
15 Laws 2001, section 12, chapter 253, Oregon Laws 2003, and section 7, chapter
16 849, Oregon Laws 2007, is amended to read:

17 “196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands
18 may, by rule, grant general authorization for removal of material from the
19 bed or banks of any waters of this state or the filling of any waters of this
20 state without a permit from the department if the department finds that the
21 activities subject to the general authorization:

22 “(a) Are substantially similar in nature;

23 “(b) Would cause only minimal individual and cumulative environmental
24 impacts; and

25 “(c) Would not result in long-term harm to water resources of the state.

26 “(2) A general authorization may be granted on a statewide or other ge-
27 ographic basis.

28 “(3) The department shall condition any general authorization upon
29 actions necessary to minimize environmental impacts.

30 “(4) The department shall provide notice of any proposed general author-

1 ization to affected federal and state agencies, local governments, tribal gov-
2 ernments and the public. The notice shall include:

3 “(a) A clear description of the proposal; and

4 “(b) Draft findings and any proposed conditions pursuant to this section.

5 “(5) Any person proposing to conduct an action under a general authori-
6 zation shall:

7 “(a) Notify the department in writing prior to conducting the action. The
8 person may not commence the action until the person receives a letter of
9 authorization from the department.

10 “(b) Pay the applicable fee to the department as determined under [*sub-*
11 *section (10) of this section*] **rules adopted by the Director of the Depart-**
12 **ment of State Lands under section 4 of this 2023 Act.**

13 “(6) The director [*of the Department of State Lands*] shall waive the re-
14 quirements of subsection (5) of this section if the director issues a general
15 authorization and the authorized activity:

16 “(a) Involves less than 50 cubic yards of material;

17 “(b) Will be conducted during periods that minimize adverse effects to fish
18 and wildlife in accordance with guidance provided by the State Department
19 of Fish and Wildlife;

20 “(c) Will not dam or divert a waterway in a manner that obstructs fish
21 passage or vessel navigation; and

22 “(d) Will not violate water quality standards as established by the De-
23 partment of Environmental Quality.

24 “(7) The Department of State Lands shall amend or rescind any general
25 authorization upon a determination that the activities conducted under the
26 authorization have resulted in or would result in more than minimal envi-
27 ronmental impacts or long-term harm to the water resources of this state.

28 “(8) The department shall review each general authorization adopted
29 pursuant to this section every five years. The review shall include public
30 notice and opportunity for public hearing. After the review, the department

1 may either modify, reissue or rescind the general authorization.

2 “(9) In addition to the grounds for review set forth in ORS 183.400 (4),
3 on judicial review of the validity of a rule adopted under this section, the
4 rule shall be reviewable for substantial evidence in the rulemaking record.
5 The record shall include copies of all documents before the agency relevant
6 to the findings required by subsection (1) of this section.

7 “[~~(10)~~ *If the rule adopting a general authorization under this section is:*]

8 “[~~(a)~~ *For actions that result in moving less than 50 cubic yards of material,*
9 *the department may not charge a fee for the general authorization.*]

10 “[~~(b)~~ *For actions that result in moving 50 or more cubic yards of material,*
11 *the department may establish a fee for the general authorization. The fee may*
12 *not exceed \$250 and shall be based on the cost of processing the general au-*
13 *thorization.*]

14 “[~~(11)~~ **(10)** The department shall credit any fee collected under this sec-
15 tion to the Common School Fund for use by the department in administration
16 of ORS 196.600 to 196.921.

17 **“SECTION 12.** ORS 274.043 is amended to read:

18 “274.043. (1) A privately owned float or dock occupying an area of 200
19 square feet or less is exempt from the leasing requirements of ORS 274.040
20 if:

21 “(a) The structure belongs to the immediately adjacent riparian land-
22 owner; and

23 “(b) The float or dock is uncovered, unenclosed and open on all sides.

24 “(2) A privately owned float or dock constructed prior to September 29,
25 1991, and exempted under ORS 274.042 (1989 Edition) is exempt from the
26 provisions of ORS 274.040.

27 “(3) The Department of State Lands by rule may provide for additional
28 exemptions to the leasing requirements of ORS 274.040.

29 “(4) Any float or dock described in subsections (1) to (3) of this section
30 shall be registered with the department.

1 “(5) The department may authorize the following uses of state-owned
2 submerged and submersible lands without charge:

3 “(a) Structures on state-owned submerged and submersible lands main-
4 tained by a drainage district organized under the provisions of ORS chapter
5 547.

6 “(b) Riprap, as defined in ORS [196.815] **196.800**, used to stabilize the
7 banks along state-owned submerged and submersible lands.

8 “(c) Rights of way established prior to November 1, 1981, for any county
9 road over state-owned submerged and submersible lands, and rights of way
10 established prior to November 1, 1981, for any city street over state-owned
11 submerged and submersible lands.

12 “(d) Voluntary habitat restoration work on state-owned submerged and
13 submersible lands. For purposes of this paragraph, voluntary habitat resto-
14 ration work does not include:

15 “(A) Activities undertaken to satisfy any actual or potential legal obli-
16 gation, or for which the entity completing the habitat restoration work re-
17 ceives compensation of any kind.

18 “(B) Habitat restoration work completed by an entity to satisfy an envi-
19 ronmental mitigation obligation, or to generate, sell or obtain credit as an
20 offset against actual or potential natural resource damages liability.

21 “(6) The department is entitled to charge, in accordance with rules
22 adopted by the department, for the use of state-owned submerged and
23 submersible lands for any environmental mitigation credit, or settlement of
24 or credit obtained as an offset against natural resource damages liability,
25 acquired by any party for habitat restoration work on state-owned land.

26 “(7) The uses described in subsections (5) and (6) of this section must be
27 registered in accordance with rules adopted by the department. Any person
28 issued a registration to use or occupy state-owned submerged and
29 submersible lands under subsections (5) and (6) of this section shall indem-
30 nify and hold harmless the state from all liability and claims arising from

1 or attributable to the use or occupation.

2 “(8) The department by rule may authorize the use of specific state-owned
3 submerged or submersible lands without charge if the department determines
4 that the use is minimally intrusive to any public rights of navigation, fishery
5 or recreation.

6 **“SECTION 13.** ORS 196.800 is amended to read:

7 “196.800. As used in ORS 196.600 to 196.921, unless the context requires
8 otherwise:

9 “(1) ‘Channel relocation’ means a change in location of a channel in
10 which a new channel is dug and the flow is diverted from the old channel
11 into the new channel if more than 50 cubic yards of material is removed in
12 constructing the new channel or if it would require more than 50 cubic yards
13 of material to completely fill the old channel.

14 “(2) ‘Estuary’ means:

15 “(a) For waters other than the Columbia River, the body of water from
16 the ocean to the head of tidewater that is partially enclosed by land and
17 within which salt water is usually diluted by fresh water from the land, in-
18 cluding all associated estuarine waters, tidelands, tidal marshes and sub-
19 merged lands; and

20 “(b) For the Columbia River, all waters from the mouth of the river up
21 to the western edge of Puget Island, including all associated estuarine wa-
22 ters, tidelands, tidal marshes and submerged lands.

23 “(3) ‘Fill’ means the total of deposits by artificial means equal to or ex-
24 ceeding 50 cubic yards or more of material at one location in any waters of
25 this state.

26 “(4) ‘General authorization’ means an authorization granted under ORS
27 196.850 for a category of activities involving removal or fill, or both, without
28 a permit.

29 “(5) ‘General permit’ means a permit for removal activities or fill activ-
30 ities that are substantially similar in nature, are recurring or ongoing, and

1 have predictable effects and outcomes.

2 “(6) ‘Intermittent stream’ means any stream which flows during a portion
3 of every year and which provides spawning, rearing or food-producing areas
4 for food and game fish.

5 “(7) ‘Large woody debris’ means any naturally downed wood that captures
6 gravel, provides stream stability or provides fish habitat, or any wood placed
7 into waters of this state as part of a habitat improvement or conservation
8 project.

9 “(8) ‘Material’ means rock, gravel, sand, silt and other inorganic sub-
10 stances, and large woody debris, removed from waters of this state and any
11 materials, organic or inorganic, used to fill waters of this state.

12 “(9) ‘Mitigation’ means the reduction of adverse effects of a proposed
13 project by considering, in the following order:

14 “(a) Avoiding the effect altogether by not taking a certain action or parts
15 of an action;

16 “(b) Minimizing the effect by limiting the degree or magnitude of the
17 action and its implementation;

18 “(c) Rectifying the effect by repairing, rehabilitating or restoring the af-
19 fected environment;

20 “(d) Reducing or eliminating the effect over time by preservation and
21 maintenance operations during the life of the action by monitoring and tak-
22 ing appropriate corrective measures; and

23 “(e) Compensating for the effect by creating, restoring, enhancing or
24 preserving substitute functions and values for the waters of this state.

25 “(10) ‘Person’ means a person, a public body as defined in ORS 174.109,
26 the federal government, when operating in any capacity other than naviga-
27 tional servitude, or any other legal entity.

28 “(11) ‘Practicable’ means capable of being accomplished after taking into
29 consideration the cost, existing technology and logistics with respect to the
30 overall project purpose.

1 “(12) ‘Public use’ means a publicly owned project or a privately owned
2 project that is available for use by the public.

3 “(13) ‘Removal’ means:

4 “(a) The taking of more than 50 cubic yards or the equivalent weight in
5 tons of material in any waters of this state in any calendar year; or

6 “(b) The movement by artificial means of an equivalent amount of mate-
7 rial on or within the bed of such waters, including channel relocation.

8 “(14) ‘Riprap’ means the facing of a streambank with rock or simi-
9 lar substance to control erosion in accordance with rules adopted by
10 the Department of State Lands.

11 “[14] (15) ‘Water resources’ includes not only water itself but also
12 aquatic life and habitats therein and all other natural resources in and under
13 the waters of this state.

14 “[15] (16) ‘Waters of this state’ means all natural waterways, tidal and
15 nontidal bays, intermittent streams, constantly flowing streams, lakes,
16 wetlands, that portion of the Pacific Ocean that is in the boundaries of this
17 state, all other navigable and nonnavigable bodies of water in this state and
18 those portions of the ocean shore, as defined in ORS 390.605, where removal
19 or fill activities are regulated under a state-assumed permit program as pro-
20 vided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as
21 amended.

22 “[16] (17) ‘Wetland conservation plan’ means a written plan providing
23 for wetland management containing a detailed and comprehensive statement
24 of policies, standards and criteria to guide public and private uses and pro-
25 tection of wetlands, waters and related adjacent uplands and which has spe-
26 cific implementing measures and which apply to designated geographic areas
27 of the State of Oregon.

28 “[17] (18) ‘Wetlands’ means those areas that are inundated or saturated
29 by surface or ground water at a frequency and duration sufficient to support,
30 and that under normal circumstances do support, a prevalence of vegetation

1 typically adapted for life in saturated soil conditions.

2 **“SECTION 14.** ORS 196.800, as amended by section 1, chapter 516, Oregon
3 Laws 2001, section 8, chapter 253, Oregon Laws 2003, section 15, chapter 738,
4 Oregon Laws 2003, section 3, chapter 849, Oregon Laws 2007, section 19,
5 chapter 343, Oregon Laws 2009, and section 2, chapter 198, Oregon Laws 2013,
6 is amended to read:

7 “196.800. As used in ORS 196.600 to 196.921, unless the context requires
8 otherwise:

9 “(1) ‘Channel relocation’ means a change in location of a channel in
10 which a new channel is dug and the flow is diverted from the old channel
11 into the new channel.

12 “(2) ‘Estuary’ means:

13 “(a) For waters other than the Columbia River, the body of water from
14 the ocean to the head of tidewater that is partially enclosed by land and
15 within which salt water is usually diluted by fresh water from the land, in-
16 cluding all associated estuarine waters, tidelands, tidal marshes and sub-
17 merged lands; and

18 “(b) For the Columbia River, all waters from the mouth of the river up
19 to the western edge of Puget Island, including all associated estuarine wa-
20 ters, tidelands, tidal marshes and submerged lands.

21 “(3) ‘Fill’ means the deposit by artificial means of material at one location
22 in any waters of this state.

23 “(4) ‘General authorization’ means an authorization granted under ORS
24 196.850 for a category of activities involving removal or fill, or both, without
25 a permit.

26 “(5) ‘General permit’ means a permit for removal activities or fill activ-
27 ities that are substantially similar in nature, are recurring or ongoing, and
28 have predictable effects and outcomes.

29 “(6) ‘Intermittent stream’ means any stream which flows during a portion
30 of every year and which provides spawning, rearing or food-producing areas

1 for food and game fish.

2 “(7) ‘Large woody debris’ means any naturally downed wood that captures
3 gravel, provides stream stability or provides fish habitat, or any wood placed
4 into waters of this state as part of a habitat improvement or conservation
5 project.

6 “(8) ‘Material’ means rock, gravel, sand, silt and other inorganic sub-
7 stances, and large woody debris, removed from waters of this state and any
8 materials, organic or inorganic, used to fill waters of this state.

9 “(9) ‘Mitigation’ means the reduction of adverse effects of a proposed
10 project by considering, in the following order:

11 “(a) Avoiding the effect altogether by not taking a certain action or parts
12 of an action;

13 “(b) Minimizing the effect by limiting the degree or magnitude of the
14 action and its implementation;

15 “(c) Rectifying the effect by repairing, rehabilitating or restoring the af-
16 fected environment;

17 “(d) Reducing or eliminating the effect over time by preservation and
18 maintenance operations during the life of the action by monitoring and tak-
19 ing appropriate corrective measures; and

20 “(e) Compensating for the effect by creating, restoring, enhancing or
21 preserving substitute functions and values for the waters of this state.

22 “(10) ‘Person’ means a person, a public body, as defined in ORS 174.109,
23 the federal government, when operating in any capacity other than naviga-
24 tional servitude, or any other legal entity.

25 “(11) ‘Practicable’ means capable of being accomplished after taking into
26 consideration the cost, existing technology and logistics with respect to the
27 overall project purpose.

28 “(12) ‘Public use’ means a publicly owned project or a privately owned
29 project that is available for use by the public.

30 “(13) ‘Removal’ means:

1 “(a) The taking of material in any waters of this state; or

2 “(b) The movement by artificial means of material within the bed of such
3 waters, including channel relocation.

4 “(14) ‘Riprap’ means the facing of a streambank with rock or simi-
5 lar substance to control erosion in accordance with rules adopted by
6 the Department of State Lands.

7 “[14] (15) ‘Water resources’ includes not only water itself but also
8 aquatic life and habitats therein and all other natural resources in and under
9 the waters of this state.

10 “[15] (16) ‘Waters of this state’ means all natural waterways, tidal and
11 nontidal bays, intermittent streams, constantly flowing streams, lakes,
12 wetlands, that portion of the Pacific Ocean that is in the boundaries of this
13 state, all other navigable and nonnavigable bodies of water in this state and
14 those portions of the ocean shore, as defined in ORS 390.605, where removal
15 or fill activities are regulated under a state-assumed permit program as pro-
16 vided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as
17 amended.

18 “[16] (17) ‘Wetland conservation plan’ means a written plan providing
19 for wetland management containing a detailed and comprehensive statement
20 of policies, standards and criteria to guide public and private uses and pro-
21 tection of wetlands, waters and related adjacent uplands and which has spe-
22 cific implementing measures and which apply to designated geographic areas
23 of the State of Oregon.

24 “[17] (18) ‘Wetlands’ means those areas that are inundated or saturated
25 by surface or ground water at a frequency and duration sufficient to support,
26 and that under normal circumstances do support, a prevalence of vegetation
27 typically adapted for life in saturated soil conditions.

28 “**SECTION 15. (1) The amendments to ORS 196.800, 196.810, 196.815,**
29 **196.816, 196.818, 196.850 and 274.043 by sections 5 to 14 of this 2023 Act**
30 **become operative on the earlier of:**

