

House Bill 2130

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor Theodore R. Kulongoski for Department of State Lands)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows person to submit preliminary wetland jurisdictional determination report to Department of State Lands for review and approval. Defines terms.

Requires person removing material from beds and banks or filling waters of this state under emergency authorization to submit fee to department.

Revises base fee and volume fee for permits to remove or fill material. Provides for annual increase of permit fees.

Allows department to assess fee for persons conducting certain actions under general authorization.

Declares emergency, effective July 1, 2005.

A BILL FOR AN ACT

1
2 Relating to waters of this state; creating new provisions; amending ORS 196.682, 196.686, 196.692,
3 196.800, 196.810, 196.815, 196.825, 196.850, 196.860, 196.865 and 196.875; and declaring an emer-
4 gency.

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

6 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 196.800 to**
7 **196.825.**

8 **SECTION 2. (1) As used in this section:**

9 (a) **"Preliminary wetland jurisdictional determination report" means a report prepared**
10 **in accordance with the United States Army Corps of Engineers Wetlands Delineation Manual**
11 **of 1987, or subsequent federal manual as adopted by rule by the Director of the Department**
12 **of State Lands, and rules of the Department of State Lands that describes, with accuracy**
13 **and detail, the boundaries, extent, function and quality of the hydric soils at a specified site.**

14 (b) **"Wetland jurisdictional determination" means a written decision by the department**
15 **as to whether the soils at the site described in the preliminary wetland jurisdictional deter-**
16 **mination report are subject to regulation under ORS 196.600 to 196.905.**

17 (2) **A person may submit a preliminary wetland jurisdictional determination report to the**
18 **department for review. The department may request additional information from the person**
19 **submitting a report and may require that the department be given access to the site to**
20 **which the report applies for a direct inspection.**

21 (3) **A person shall submit a nonrefundable fee of \$325 with the report. However:**

22 (a) **The department may waive the fee requirement and return all or part of the fee if**
23 **the report is not reviewed in a timely manner by the department.**

24 (b) **The person may request an expedited review of the report. If the person requests**
25 **an expedited review, the person shall pay an additional fee in an amount determined annually**
26 **by rule by the department, based on:**

27 (A) **The cost to the department of providing expedited reviews during the prior year, in-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **cluding site visit costs; and**

2 **(B) The estimated cost of expedited reviews that the department expects to conduct in**
 3 **the current year.**

4 **(4) The department shall review all reports submitted to the department. The department**
 5 **shall assign a priority to each report submitted to the department and review reports based**
 6 **on the priority schedule.**

7 **(5) The department shall approve a report and issue a wetland jurisdictional determi-**
 8 **nation if the report meets the requirements established by rule by the department. A**
 9 **wetland jurisdictional determination is a final order in a contested case for purposes of ORS**
 10 **chapter 183.**

11 **(6) Fees received by the department under this section shall be credited to the Common**
 12 **School Fund for use by the department in administration of ORS 196.600 to 196.905.**

13 **SECTION 3.** ORS 196.800 is amended to read:

14 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

15 (1) "Channel relocation" means a change in location of a channel in which a new channel is dug
 16 and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of
 17 material is removed in constructing the new channel or if it would require more than 50 cubic yards
 18 of material to completely fill the old channel.

19 [(2) "Department" means the Department of State Lands.]

20 [(3) "Director" means the Director of the Department of State Lands.]

21 [(4)] **(2) "Estuary" means a body of water [semienclosed] and associated estuarine waters,**
 22 **tidelands, tidal marshes and submerged lands extending upstream to the head of the**
 23 **tidewater that are partially enclosed** by land and connected with the open ocean within which
 24 salt water is usually diluted by fresh water derived from the land. [*"Estuary" includes all estuarine*
 25 *waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater.*
 26 *However,*] **Notwithstanding this definition,** the Columbia River Estuary extends to the western
 27 edge of Puget Island.

28 [(5)] **(3) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic**
 29 **yards or more of material at one location in any waters of this state.**

30 [(6)] **(4) "General authorization" means a rule adopted by the Director of the Department of**
 31 **State Lands** authorizing, without a permit from the Department **of State Lands**, a category of ac-
 32 tivities involving removal or fill, or both, on a statewide or other geographic basis.

33 [(7) "Governmental body" includes the federal government when operating in any capacity other
 34 than navigational servitude, the State of Oregon and every political subdivision therein.]

35 [(8)] **(5) "Intermittent stream" means any stream which flows during a portion of every year and**
 36 **which provides spawning, rearing or food-producing areas for food and game fish.**

37 [(9)] **(6) "Material" means rock, gravel, sand, silt and other inorganic substances removed from**
 38 **waters of this state and any materials, organic or inorganic, used to fill waters of this state.**

39 [(10)] **(7) "Mitigation" means the reduction of adverse effects of a proposed project by consid-**
 40 **ering, in the following order:**

41 (a) Avoiding the [*impact*] **effect** altogether by not taking a certain action or parts of an action;

42 (b) Minimizing [*impacts*] **the effect** by limiting the degree or magnitude of the action and its
 43 implementation;

44 (c) Rectifying the [*impact*] **effect** by repairing, rehabilitating or restoring the affected environ-
 45 ment;

1 (d) Reducing or eliminating the [impact] **effect** over time by preservation and maintenance op-
 2 erations during the life of the action by monitoring and taking appropriate corrective measures; and

3 (e) Compensating for the [impact] **effect** by replacing or providing comparable substitute wetland
 4 or water resources.

5 **(8) “Person” means a person, a public body, as defined in ORS 174.109, the federal gov-**
 6 **ernment when operating in any capacity other than navigational servitude or any other legal**
 7 **entity.**

8 [(11)] **(9)** “Practicable” means capable of being accomplished after taking into consideration the
 9 cost, existing technology and logistics with respect to the overall project purpose.

10 [(12)] **(10)** “Public use” means a publicly owned project or a privately owned project that is
 11 available for use by the public.

12 [(13)] **(11)** “Removal” means:

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

15 **(b)** The movement by artificial means of an equivalent amount of material on or within the bed
 16 of such waters, including channel relocation.

17 [(14)] **(12)** “Water resources” includes not only water itself but also aquatic life and habitats
 18 therein and all other natural resources in and under the waters of this state.

19 [(15)] **(13)** “Waters of this state” means **all** natural waterways [including all], tidal and nontidal
 20 bays, intermittent streams, constantly flowing streams, lakes, wetlands [and other bodies of water in
 21 this state, navigable and nonnavigable, including], that portion of the Pacific Ocean [which] **that** is
 22 in the boundaries of this state[. “Waters of this state” does not include], **all other navigable and**
 23 **nonnavigable bodies of water in this state and those portions of** the ocean shore, as defined in
 24 ORS 390.605, [with the exception of those areas] where removal or fill activities are regulated under
 25 a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution
 26 Control Act, as amended.

27 [(16)] **(14)** “Wetland conservation plan” means a written plan providing for wetland management
 28 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
 29 and private uses and protection of wetlands, waters and related adjacent uplands and which has
 30 specific implementing measures and which apply to designated geographic areas of the State of
 31 Oregon.

32 [(17)] **(15)** “Wetlands” means those areas that are inundated or saturated by surface or ground
 33 water at a frequency and duration sufficient to support, and that under normal circumstances do
 34 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

35 **SECTION 4.** ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section 8,
 36 chapter 253, Oregon Laws 2003, and section 15, chapter 738, Oregon Laws 2003, is amended to read:
 37 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

38 (1) “Channel relocation” means a change in location of a channel in which a new channel is dug
 39 and the flow is diverted from the old channel into the new channel.

40 [(2)] “Department” means the Department of State Lands.]

41 [(3)] “Director” means the Director of the Department of State Lands.]

42 [(4)] **(2)** “Estuary” means a body of water [semienclosed] **and associated estuarine waters,**
 43 **tidelands, tidal marshes and submerged lands extending upstream to the head of the**
 44 **tidewater that are partially enclosed** by land and connected with the open ocean within which
 45 salt water is usually diluted by fresh water derived from the land. [“Estuary” includes all estuarine

1 *waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater.*
 2 *However,]* **Notwithstanding this definition**, the Columbia River Estuary extends to the western
 3 edge of Puget Island.

4 [(5)] (3) “Fill” means the deposit by artificial means of material at one location in any waters
 5 of this state.

6 [(6)] (4) “General authorization” means a rule adopted by the Director **of the Department of**
 7 **State Lands** authorizing, without a permit from the Department **of State Lands**, a category of ac-
 8 tivities involving removal or fill, or both, on a statewide or other geographic basis.

9 [(7) “Governmental body” includes the federal government when operating in any capacity other
 10 than navigational servitude, the State of Oregon and every political subdivision therein.]

11 [(8)] (5) “Intermittent stream” means any stream which flows during a portion of every year and
 12 which provides spawning, rearing or food-producing areas for food and game fish.

13 [(9)] (6) “Material” means rock, gravel, sand, silt and other inorganic substances removed from
 14 waters of this state and any materials, organic or inorganic, used to fill waters of this state.

15 [(10)] (7) “Mitigation” means the reduction of adverse effects of a proposed project by consid-
 16 ering, in the following order:

17 (a) Avoiding the [*impact*] **effect** altogether by not taking a certain action or parts of an action;

18 (b) Minimizing [*impacts*] **the effect** by limiting the degree or magnitude of the action and its
 19 implementation;

20 (c) Rectifying the [*impact*] **effect** by repairing, rehabilitating or restoring the affected environ-
 21 ment;

22 (d) Reducing or eliminating the [*impact*] **effect** over time by preservation and maintenance op-
 23 erations during the life of the action by monitoring and taking appropriate corrective measures; and

24 (e) Compensating for the [*impact*] **effect** by replacing or providing comparable substitute wetland
 25 or water resources.

26 (8) **“Person” means a person, a public body, as defined in ORS 174.109, the federal gov-**
 27 **ernment when operating in any capacity other than navigational servitude or any other legal**
 28 **entity.**

29 [(11)] (9) “Practicable” means capable of being accomplished after taking into consideration the
 30 cost, existing technology and logistics with respect to the overall project purpose.

31 [(12)] (10) “Public use” means a publicly owned project or a privately owned project that is
 32 available for use by the public.

33 [(13)] (11) “Removal” means:

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

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

37 [(14)] (12) “Water resources” includes not only water itself but also aquatic life and habitats
 38 therein and all other natural resources in and under the waters of this state.

39 [(15)] (13) “Waters of this state” means **all** natural waterways [*including all*], tidal and nontidal
 40 bays, intermittent streams, constantly flowing streams, lakes, wetlands [*and other bodies of water in*
 41 *this state, navigable and nonnavigable, including*], that portion of the Pacific Ocean [*which*] **that** is
 42 in the boundaries of this state[. “*Waters of this state*” does not include], **all other navigable and**
 43 **nonnavigable bodies of water in this state and those portions of** the ocean shore, as defined in
 44 ORS 390.605, [*with the exception of those areas*] where removal or fill activities are regulated under
 45 a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution

1 Control Act, as amended.

2 [(16)] (14) “Wetland conservation plan” means a written plan providing for wetland management
 3 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
 4 and private uses and protection of wetlands, waters and related adjacent uplands and which has
 5 specific implementing measures and which apply to designated geographic areas of the State of
 6 Oregon.

7 [(17)] (15) “Wetlands” means those areas that are inundated or saturated by surface or ground
 8 water at a frequency and duration sufficient to support, and that under normal circumstances do
 9 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

10 **SECTION 5.** ORS 196.810 is amended to read:

11 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, [*no per-*
 12 *son or governmental body may*] **a person may not** remove any material from the beds or banks or
 13 fill any waters of this state without a permit issued under authority of the Director of the Depart-
 14 ment of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner
 15 contrary to the conditions set out in an order approving a [*wetlands*] **wetland** conservation plan.

16 (b) Notwithstanding the permit requirements of this section and notwithstanding the provisions
 17 of ORS 196.800 [(5) and (13)] (3) and (11), if any removal or fill activity is proposed in essential
 18 indigenous anadromous salmonid habitat, except for those activities customarily associated with
 19 agriculture, a permit is required. “Essential indigenous anadromous salmonid habitat” as defined
 20 under this section shall be further defined and designated by rule by the Department of State Lands
 21 in consultation with the State Department of Fish and Wildlife and in consultation with other af-
 22 fected parties.

23 (c) [*No person may be*] **A person is not** required to obtain a permit under paragraph (b) of this
 24 subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of
 25 less than one cubic yard of material at any one individual site and, cumulatively, not more than five
 26 cubic yards of material within a designated essential indigenous anadromous salmonid habitat seg-
 27 ment in a single year. Prospecting or other nonmotorized activities may be conducted only within
 28 the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present.
 29 Removal or filling activities customarily associated with mining require a permit under paragraph
 30 (b) of this subsection.

31 (d) [*No permit may be*] **A permit is not** required under paragraph (b) of this subsection for
 32 construction or maintenance of fish passage and fish screening structures that are constructed, op-
 33 erated or maintained under ORS 498.311, 498.316, 498.326 or 509.600 to 509.645.

34 (e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

35 (f) As used in paragraphs (b) and (c) of this subsection:

36 (A) “Bed” means the land within the wet perimeter and any adjacent nonvegetated dry gravel
 37 bar.

38 (B) “Essential indigenous anadromous salmonid habitat” means the habitat that is necessary to
 39 prevent the depletion of indigenous anadromous salmonid species during their life history stages of
 40 spawning and rearing.

41 (C) “Indigenous anadromous salmonid” means chum, sockeye, Chinook and Coho salmon, and
 42 steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive,
 43 threatened or endangered by a state or federal authority.

44 (D) “Prospecting” means searching or exploring for samples of gold, silver or other precious
 45 minerals, using nonmotorized methods, from among small quantities of aggregate.

1 (E) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-
 2 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the
 3 activity occurs.

4 (2) [No governmental body may] **A public body, as defined in ORS 174.109, may not** issue a
 5 lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS
 6 196.600 to 196.905.

7 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit
 8 or lease with any [governmental] **public body, as defined in ORS 174.109,** entered into before Sep-
 9 tember 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after
 10 September 13, 1967, unless the person removing the material has obtained a permit under ORS
 11 196.600 to 196.905.

12 (4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue,
 13 orally or in writing, an emergency authorization for the removal of material from the beds or banks
 14 or filling of any waters of this state in an emergency, for the purpose of making repairs or for the
 15 purpose of preventing irreparable harm, injury or damage to persons or property. The emergency
 16 authorization issued under this subsection:

17 (a) Shall contain conditions of operation that the department determines are necessary to mini-
 18 mize impacts to water resources or adjoining properties.

19 (b) Shall be based, whenever practicable, on the recommendations contained in an on-site eval-
 20 uation by an employee or representative of the department.

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

22 **(d) Does not relieve a person removing material from the beds or banks or filling any**
 23 **waters of this state under the emergency authorization from payment of a fee calculated in**
 24 **the manner provided in ORS 196.815.**

25 **SECTION 6.** ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, and section
 26 97, chapter 14, Oregon Laws 2003, is amended to read:

27 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person
 28 [or governmental body] may not remove any material from the beds or banks or fill any waters of
 29 this state without a permit issued under authority of the Director of the Department of State Lands,
 30 or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the
 31 conditions set out in an order approving a [wetlands] **wetland** conservation plan.

32 (b) A permit is not required under paragraph (a) of this subsection for prospecting or other
 33 nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material
 34 at any one individual site and, cumulatively, not more than five cubic yards of material within a
 35 particular stream segment in a single year. Prospecting or other nonmotorized activities may be
 36 conducted only within the bed or wet perimeter of the waterway and may not occur at any site
 37 where fish eggs are present. Removal or filling activities customarily associated with mining require
 38 a permit under paragraph (a) of this subsection.

39 (c) A permit is not required under paragraph (a) of this subsection for construction or mainte-
 40 nance of fish passage and fish screening structures associated with irrigation ditches or the main-
 41 tenance of drainage ditches that are constructed, operated or maintained under ORS 498.311,
 42 498.316, 498.326 or 509.600 to 509.645.

43 (d) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

44 (2) A [governmental] **public body, as defined in ORS 174.109,** may not issue a lease or permit
 45 contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to

1 196.905.

2 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit
 3 or lease with any [governmental] **public** body, **as defined in ORS 174.109**, entered into before Sep-
 4 tember 13, 1967. However, a contract, permit or lease may not be renewed or extended on or after
 5 September 13, 1967, unless the person removing the material has obtained a permit under ORS
 6 196.600 to 196.905.

7 (4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue,
 8 orally or in writing, an emergency authorization for the removal of material from the beds or banks
 9 or filling of any waters of this state in an emergency, for the purpose of making repairs or for the
 10 purpose of preventing irreparable harm, injury or damage to persons or property. The emergency
 11 authorization issued under this subsection:

12 (a) Shall contain conditions of operation that the department determines are necessary to mini-
 13 mize impacts to water resources or adjoining properties.

14 (b) Shall be based, whenever practicable, on the recommendations contained in an on-site eval-
 15 uation by an employee or representative of the department.

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

17 **(d) Does not relieve a person removing material from the beds or banks or filling any**
 18 **waters of this state under the emergency authorization from payment of a fee calculated in**
 19 **the manner provided in ORS 196.815.**

20 (5) As used in this section:

21 (a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel
 22 bar.

23 (b) "Prospecting" means searching or exploring for samples of gold, silver or other precious
 24 minerals, using nonmotorized methods, from among small quantities of aggregate.

25 (c) "Wet perimeter" means the area of the stream that is under water or is exposed as a non-
 26 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the
 27 activity occurs.

28 **SECTION 7.** ORS 196.815 is amended to read:

29 196.815. (1) *[Each applicant for a]* **A person who is required to have a permit to remove ma-**
 30 **terial from the bed or banks or fill any waters of this state** *[first]* shall file a written application
 31 with the Director of the Department of State Lands, *specifying the nature and amount of material*
 32 *to be removed or the amount of fill, the waters and the specific location from which it is to be removed*
 33 *or where the fill will be placed, the method of removal or filling and the times during which removal*
 34 *or filling is to be conducted. The director may require additional information as is necessary to enable*
 35 *the director to determine whether the granting of the permit applied for is consistent with the protection,*
 36 *conservation and best use of the water resources of this state. For the purposes of this subsection, fills*
 37 *or removals of material at locations not more than one mile apart may be combined in one*
 38 *application] for each discrete project.*

39 *[(2) The Director of the Department of State Lands shall furnish to any member of the public upon*
 40 *written request and at the expense of the member of the public a copy of any application for a permit*
 41 *pursuant to subsection (1) of this section.]*

42 *[(3)(a)]* **(2)(a)** Each application under subsection (1) of this section must be accompanied by a
 43 base fee in accordance with the following schedule:

44 (A) For a removal by a private operator, or a person contracting to perform services for a pri-
 45 vate operator, *[\$50]* **\$85.**

1 (B) For a removal by a public body, [~~\$150~~] **\$250**.

2 (C) For a removal by a commercial operator, [~~\$150~~] **\$250**.

3 (D) For a fill by a private operator, or a person contracting to perform services for a private
4 operator, [~~\$150~~] **\$250**.

5 (E) For a fill by a public body, [~~\$375~~] **\$620**.

6 (F) For a fill by a commercial operator, [~~\$375~~] **\$620**.

7 (G) For erosion-flood repair, including riprap, by a private landowner or public body, or a person
8 contracting to perform services for such persons, no fee.

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

12 (A) Less than 500 cubic yards, no volume fee.

13 (B) 500 to [~~4,999~~] **less than 5,000** cubic yards, [~~\$75 for private operator, \$75 for public body and~~
14 ~~\$75 for commercial operator~~] **\$125**.

15 (C) 5,000 to **less than or equal to** 50,000 cubic yards, [~~\$150 for private operator, \$150 for public~~
16 ~~body and \$150 for commercial operator~~] **\$250**.

17 (D) Over 50,000 cubic yards, [~~\$225 for private operator, \$225 for public body and \$225 for com-~~
18 ~~mmercial operator~~] **\$375**.

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

22 (A) Less than 500 cubic yards, no volume fee.

23 (B) 500 to [~~2,999~~] **less than 3,000** cubic yards, [~~\$75 for private operator, \$75 for public body and~~
24 ~~\$75 for commercial operator~~] **\$125**.

25 (C) 3,000 to **less than or equal to** 10,000 cubic yards, [~~\$150 for private operator, \$150 for public~~
26 ~~body and \$150 for commercial operator~~] **\$250**.

27 (D) Over 10,000 cubic yards, [~~\$225 for private operator, \$225 for public body and \$225 for com-~~
28 ~~mmercial operator~~] **\$375**.

29 (d) For the purposes of this subsection[, *the following terms shall have the following meanings*]:

30 (A) "Private operator" means any person undertaking a project for exclusively a nonincome-
31 producing and nonprofit purpose;

32 (B) "Public body" means federal, state, and local governmental bodies, unless specifically ex-
33 empted by law, engaged in projects for the purpose of providing free public services;

34 (C) "Commercial operator" means any person undertaking a project having financial profit as
35 a goal;

36 (D) "Riprap" means the facing of a streambank with rock or similar substance to control erosion
37 in accordance with regulations promulgated by the Department of State Lands; and

38 (E) "Erosion-flood repair" means riprap or any other work necessary to preserve existing facil-
39 ities and land from flood and high stream flows, in accordance with regulations promulgated by the
40 department.

41 [~~(4)~~] **(3)** For each application that involves both removal and filling, the application fee assessed
42 shall be either for removal or filling, whichever is higher according to the fee schedule in subsection
43 [~~(3)~~] **(2)** of this section.

44 **(4) The Department of State Lands may waive the fees specified in subsection (2) of this**
45 **section if the permit applied for will be used to perform a habitat restoration project.**

1 **(5) A person who receives an emergency authorization under ORS 196.810 to remove**
 2 **material from the beds or banks or to fill any waters of this state shall, within 45 days after**
 3 **receiving the authorization, submit a fee to the department calculated in the manner pro-**
 4 **vided for applications under this section.**

5 [(5)] **(6) [Annually] Prior to or** on the anniversary date of the permit, each holder of a material
 6 removal or fill permit shall pay a fee during the term of the permit in accordance with the schedule
 7 set forth in subsection [(3)] **(2)** of this section, except that the applicant shall pay only the base fee.
 8 The permit shall be suspended during any period of delinquency of payment as though no permit
 9 was applied for. Notwithstanding this subsection, the director may, before granting *[any extension]*
 10 **a renewal** of the permit, require the permittee to show that the continued exercise of the permit is
 11 consistent with the protection, conservation and best use of the water resources of this state.

12 [(6)] **(7)** Fees received under this section shall be credited to the Common School Fund for use
 13 by the department in administration of ORS 196.600 to 196.905[, 196.990 and 541.990 and as otherwise
 14 *required by law*].

15 **SECTION 8.** ORS 196.815, as amended by section 7 of this 2005 Act, is amended to read:

16 196.815. (1) A person who is required to have a permit to remove material from the bed or banks
 17 or fill any waters of this state shall file a written application with the Director of the Department
 18 of State Lands for each discrete project.

19 (2)(a) Each application under subsection (1) of this section must be accompanied by a base fee
 20 in accordance with the following schedule:

21 (A) For a removal by a private operator, or a person contracting to perform services for a pri-
 22 vate operator, \$85.

23 (B) For a removal by a public body, \$250.

24 (C) For a removal by a commercial operator, \$250.

25 (D) For a fill by a private operator, or a person contracting to perform services for a private
 26 operator, \$250.

27 (E) For a fill by a public body, \$620.

28 (F) For a fill by a commercial operator, \$620.

29 (G) For erosion-flood repair, including riprap, by a private landowner or public body, or a person
 30 contracting to perform services for such persons, no fee.

31 (b) In addition to the base fee for removal established under paragraph (a) of this subsection,
 32 each applicant shall also pay as part of the application fee the following fee based on the volume
 33 of removal material:

34 (A) Less than 500 cubic yards, no volume fee.

35 (B) 500 to less than 5,000 cubic yards, \$125.

36 (C) 5,000 to less than or equal to 50,000 cubic yards, \$250.

37 (D) Over 50,000 cubic yards, \$375.

38 (c) In addition to the base fee for fill established under paragraph (a) of this subsection, each
 39 applicant shall also pay as part of the application fee the following fee based on the volume of fill
 40 material:

41 (A) Less than 500 cubic yards, no volume fee.

42 (B) 500 to less than 3,000 cubic yards, \$125.

43 (C) 3,000 to less than or equal to 10,000 cubic yards, \$250.

44 (D) Over 10,000 cubic yards, \$375.

45 (d) For the purposes of this subsection:

1 (A) "Private operator" means any person undertaking a project for exclusively a nonincome-
 2 producing and nonprofit purpose;

3 (B) "Public body" means federal, state, and local governmental bodies, unless specifically ex-
 4 empted by law, engaged in projects for the purpose of providing free public services;

5 (C) "Commercial operator" means any person undertaking a project having financial profit as
 6 a goal;

7 (D) "Riprap" means the facing of a streambank with rock or similar substance to control erosion
 8 in accordance with regulations promulgated by the Department of State Lands; and

9 (E) "Erosion-flood repair" means riprap or any other work necessary to preserve existing facil-
 10 ities and land from flood and high stream flows, in accordance with regulations promulgated by the
 11 department.

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

15 (4) The Department of State Lands may waive the fees specified in subsection (2) of this section
 16 if the permit applied for will be used to perform a habitat restoration project.

17 (5) A person who receives an emergency authorization under ORS 196.810 to remove material
 18 from the beds or banks or to fill any waters of this state shall, within 45 days after receiving the
 19 authorization, submit a fee to the department calculated in the manner provided for applications
 20 under this section.

21 (6) Prior to or on the anniversary date of the permit, each holder of a material removal or fill
 22 permit shall pay a fee during the term of the permit in accordance with the schedule set forth in
 23 subsection (2) of this section, except that the applicant shall pay only the base fee. The permit shall
 24 be suspended during any period of delinquency of payment as though no permit was applied for.
 25 Notwithstanding this subsection, the director may, before granting a renewal of the permit, require
 26 the permittee to show that the continued exercise of the permit is consistent with the protection,
 27 conservation and best use of the water resources of this state.

28 **(7) On January 1 of each year, the department shall increase all fees set forth in this**
 29 **section by three percent of the existing fee per annum.**

30 [(7)] (8) Fees received under this section shall be credited to the Common School Fund for use
 31 by the department in administration of ORS 196.600 to 196.905.

32 **SECTION 9. The amendments to ORS 196.815 by section 8 of this 2005 Act become oper-**
 33 **ative January 1, 2007.**

34 **SECTION 10.** ORS 196.850 is amended to read:

35 196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
 36 general authorization for removal of material from the bed or banks or the filling of any waters of
 37 the state without a permit from the department if the department finds that [*those*] **the** activities
 38 subject to the general authorization:

39 (a) Are substantially similar in nature [*and*];

40 (b) Would cause only minimal individual and cumulative environmental impacts[.]; and

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

42 (2) The department shall condition any [*such*] general authorization upon actions necessary to
 43 minimize environmental impacts.

44 [(2)] (3) The department shall provide notice of any proposed general authorization to affected
 45 federal and state agencies, local governments and the public. The notice shall include:

- 1 (a) A clear description of the proposal; and
- 2 (b) Draft findings and any proposed conditions pursuant to [subsection (1) of] this section.

3 [(3)] (4) Any person proposing to conduct an action under a general authorization shall:

4 (a) Notify the department in writing prior to conducting [such] **the** action.

5 **(b) Pay the applicable fee to the department as determined under subsection (8) of this**
 6 **section.**

7 [(4)] (5) The department shall amend or rescind any general authorization upon a determination
 8 that the activities conducted under the authorization have resulted in or would result in more than
 9 minimal environmental impacts or long-term harm to the water resources of this state.

10 [(5)] (6) The department shall review each general authorization adopted pursuant to this section
 11 every five years. The review shall include public notice and opportunity for public hearing. After
 12 [such] **the** review, the department may either modify, reissue or rescind the general authorization.

13 [(6)] (7) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review
 14 of the validity of a rule adopted under this section, the rule shall be reviewable for substantial ev-
 15 idence in the rulemaking record. The record shall include copies of all documents before the agency
 16 relevant to [whether the requirement of] **the findings required by** subsection (1) of this section [has
 17 been met].

18 **(8) If the rule adopting a general authorization under this section is:**

19 **(a) For actions that result in moving less than 50 cubic yards of material, the department**
 20 **may not charge a fee for the general authorization.**

21 **(b) For actions that result in moving 50 or more cubic yards of material, the department**
 22 **may establish a fee for the general authorization. The fee may not exceed \$250 and shall be**
 23 **based on the cost of processing the general authorization.**

24 **(9) The department shall credit any fee collected under this section to the Common**
 25 **School Fund for use by the department in administration of ORS 196.600 to 196.905.**

26 **SECTION 11.** ORS 196.850, as amended by section 4, chapter 516, Oregon Laws 2001, and sec-
 27 tion 12, chapter 253, Oregon Laws 2003, is amended to read:

28 196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
 29 general authorization for removal of material from the bed or banks or the filling of any waters of
 30 the state without a permit from the department if the department finds that [those] **the** activities
 31 subject to the general authorization:

32 (a) Are substantially similar in nature [and];

33 (b) Would cause only minimal individual and cumulative environmental impacts[.]; and

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

35 **(2) The department shall condition any [such] general authorization upon actions necessary to**
 36 **minimize environmental impacts.**

37 [(2)] (3) The department shall provide notice of any proposed general authorization to affected
 38 federal and state agencies, local governments and the public. The notice shall include:

39 (a) A clear description of the proposal; and

40 (b) Draft findings and any proposed conditions pursuant to [subsection (1) of] this section.

41 [(3)] (4) Any person proposing to conduct an action under a general authorization shall:

42 (a) Notify the department in writing prior to conducting the action. The person may not com-
 43 mence the action until the person receives a letter of authorization from the department.

44 **(b) Pay the applicable fee to the department as determined under subsection (9) of this**
 45 **section.**

1 [(4)] **(5) The Director of the Department of State Lands shall waive** the requirements of
 2 subsection [(3)] **(4)** of this section [*shall be waived*] if the director [*of the Department of State*
 3 *Lands*] issues a general authorization and the authorized activity:

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

5 (b) Will be conducted during periods that minimize adverse effects to fish and wildlife in ac-
 6 cordance with guidance provided by the State Department of Fish and Wildlife;

7 (c) Will not dam or divert a waterway in a manner that obstructs fish passage or vessel navi-
 8 gation; and

9 (d) Will not violate water quality standards as established by the Department of Environmental
 10 Quality.

11 [(5)] **(6)** The Department of State Lands shall amend or rescind any general authorization upon
 12 a determination that the activities conducted under the authorization have resulted in or would re-
 13 sult in more than minimal environmental impacts or long-term harm to the water resources of this
 14 state.

15 [(6)] **(7)** The department shall review each general authorization adopted pursuant to this section
 16 every five years. The review shall include public notice and opportunity for public hearing. After
 17 [*such*] **the** review, the department may either modify, reissue or rescind the general authorization.

18 [(7)] **(8)** In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review
 19 of the validity of a rule adopted under this section, the rule shall be reviewable for substantial ev-
 20 idence in the rulemaking record. The record shall include copies of all documents before the agency
 21 relevant to [*whether the requirement of*] **the findings required by** subsection (1) of this section [*has*
 22 *been met*].

23 **(9) If the rule adopting a general authorization under this section is:**

24 (a) **For actions that result in moving less than 50 cubic yards of material, the department**
 25 **may not charge a fee for the general authorization.**

26 (b) **For actions that result in moving 50 or more cubic yards of material, the department**
 27 **may establish a fee for the general authorization. The fee may not exceed \$250 and shall be**
 28 **based on the cost of processing the general authorization.**

29 **(10) The department shall credit any fee collected under this section to the Common**
 30 **School Fund for use by the department in administration of ORS 196.600 to 196.905.**

31 **SECTION 12.** ORS 196.682 is amended to read:

32 196.682. (1) Except where otherwise provided by the order approving the plan, individual permit
 33 applications shall be required for removal or fill, or both, in areas subject to an approved wetland
 34 conservation plan. If individual permit applications are to be reviewed under the authority of the
 35 Director of the Department of State Lands, then application fees and review procedures shall be in
 36 accordance with ORS 196.815, 196.825 (5) and (6) and 196.835. In lieu of the substantive standards
 37 for permit issuance in ORS [*196.815 (1) and*] 196.825 [*(1), (2) and*] (3), the Department of State Lands
 38 shall issue a permit if the removal or fill, or both, is consistent with the wetland conservation plan
 39 or can be conditioned to be consistent with the plan. The department shall condition any such per-
 40 mit as necessary to insure that the project:

41 (a) Is properly designed or configured to minimize the need for alterations to waters of the state;

42 (b) Is the minimum size necessary to reasonably provide for the proposed use;

43 (c) Complies with applicable provisions of the acknowledged comprehensive plan and land use
 44 regulations for the area;

45 (d) Is designed to minimize impacts from implementing the project; and

1 (e) Is conditioned to insure wetland creation, restoration or enhancement measures are imple-
2 mented to fully replace impacted resources.

3 (2) In any order approving a plan which authorizes any fill or removal or both, without the ne-
4 cessity of subsequently obtaining an individual permit, the director shall condition such approval
5 as necessary to insure that the project complies with the conditions of subsection (1) of this section
6 and clearly delineates the wetland area in which fill or removal, or both, is to occur.

7 **SECTION 13.** ORS 196.686 is amended to read:

8 196.686. (1) For the purposes of this section, an acknowledged estuary management plan includes
9 the comprehensive plan and land use regulations adopted by cities and counties to satisfy the re-
10 quirement of statewide planning goals related to estuarine resources including shoreland portions
11 of estuarine sites designated for development as those plans and regulations existed on January 1,
12 1989.

13 (2) Any city or county may submit an acknowledged estuary management plan for review and
14 approval by the Department of State Lands pursuant to the provisions of this section. The plan shall
15 be submitted with a written request for review.

16 (3) To allow timely and effective review of acknowledged estuary management plans, the de-
17 partment may limit acceptance for review to two plans but not more than one plan for a deep draft
18 development estuary at any one time.

19 (4) With the consent of the city or county submitting an estuary management plan for review
20 and approval, the department may extend any or all of the deadlines set forth in this section.

21 (5) Acknowledged estuary management plans shall be presumed to comply with requirements for
22 approval of wetland conservation plans specified in ORS 196.681.

23 (6) Within 10 days of acceptance of a request for review, the department shall provide notice to
24 affected state agencies, local governments, federal agencies and the public of receipt of the ac-
25 knowledged estuary management plan and of the request for review and approval of the acknowl-
26 edged estuary management plan as a wetland conservation plan.

27 (7) Within 30 days of acceptance of a request for review and upon provision of at least two
28 weeks' notice, the department shall hold a public informational hearing on the proposed approval
29 of the acknowledged estuary management plan as a wetland conservation plan.

30 (8) Within 60 days of acceptance of the request for review, the department shall conduct a pre-
31 liminary review of the acknowledged estuary management plan. The department shall consult with
32 the affected local government prior to finalizing the preliminary review.

33 (9) Except as provided in subsection (10) of this section, the Director of the Department of State
34 Lands shall approve the acknowledged estuary management plan by order within 60 days of com-
35 pletion of the preliminary review.

36 (10) A contested case hearing shall be held within 30 days of the completion of the preliminary
37 review or receipt of a request for hearing if:

38 (a) The director determines there is probable cause to believe that the estuary management plan
39 does not meet the standards for approving wetland conservation plans or unreasonably interferes
40 with the use of the estuary for navigation, fisheries or public recreation; or

41 (b) A hearing is requested and the request:

42 (A) Is made in writing within 60 days of the date of mailing of notice of completion of review;

43 (B) Clearly states the reasons for requesting the hearing; and

44 (C) Provides sufficient information for the director to determine that there is probable cause to
45 believe that the estuary management plan does not meet the standards for approving wetland con-

1 servation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or
2 public recreation.

3 (11) The director shall approve the acknowledged estuary management plan as a wetland con-
4 servation plan by order unless the director finds by a preponderance of the evidence that the
5 estuary management plan does not meet the standards for approving wetland conservation plans or
6 unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation or
7 that substantial fills proposed in an estuary management plan for nonwater dependent use are not
8 for a public use and would not satisfy a public need that outweighs harm to navigation, fisheries
9 or public recreation.

10 (12) The director shall prepare a proposed order for review by the parties within 30 days of any
11 contested case hearing held pursuant to subsection (10) of this section.

12 (13) A final order from the director that recommends, pursuant to subsection (8) of this section,
13 denial of an estuary management plan as a wetland conservation plan shall identify deficient ele-
14 ments and provisions of the acknowledged estuary management plan and what measures may be
15 taken to correct those deficiencies.

16 (14) Individual permit applications shall be required for removal or fill, or both, in areas subject
17 to an approved estuary management plan. Individual permit applications shall be reviewed in ac-
18 cordance with ORS 196.815, 196.825 (5) and (6), 196.830 and 196.835. In lieu of the substantive stan-
19 dards for permit issuance in ORS [196.815 (1) and] 196.825 [(1), (2) and] (3), the department shall
20 issue a permit if the removal or fill, or both, is determined by the director to be consistent with the
21 estuary management plan or can be conditioned to be consistent with the plan. The department shall
22 condition any such permit as necessary to insure that the project:

23 (a) Is designed or configured to minimize alterations to waters of the state;

24 (b) Is the minimum size necessary to reasonably provide for the proposed use;

25 (c) Is consistent with the resource capabilities of the area and the purposes of the management
26 unit, unless this has been previously determined in the approved estuary management plan;

27 (d) Is designed to minimize impacts from implementing the project; and

28 (e) Has estuarine resource replacement measures for creation, restoration or enhancement that
29 replaces impacted resources.

30 (15) Judicial review of an order granting or denying approval of an estuary management plan
31 as provided in this section shall be as provided in ORS 183.470.

32 (16) Following approval by the director of an estuary management plan, the requirements of ORS
33 196.684 shall apply to the approved estuary management plan.

34 **SECTION 14.** ORS 196.692 is amended to read:

35 196.692. (1) The Department of State Lands shall adopt rules to carry out the provisions of ORS
36 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015,
37 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350 **and section 2 of this 2005 Act.**

38 (2) Rules adopted pursuant to subsection (1) of this section shall include rules governing the
39 application for and issuance of permits to remove material from the beds or banks of any waters of
40 this state or to fill any waters of this state including, but not limited to, clear and objective stan-
41 dards and criteria for determining whether to grant or deny a permit.

42 **SECTION 15.** ORS 196.865 is amended to read:

43 196.865. If the Director of the Department of State Lands finds that a person [*or governmental*
44 *body*] holding a permit issued under ORS 196.825 is removing material from the bed or banks or
45 filling any of the waters of this state contrary to the conditions set out in the permit, the director

1 may revoke, suspend or refuse to renew such permit. The director may revoke a permit only after
2 giving notice and opportunity for a hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460
3 and 183.470.

4 **SECTION 16.** ORS 196.875 is amended to read:

5 196.875. (1) If any person [*or governmental body*], through negligence, violates ORS 196.810, the
6 Director of the Department of State Lands, in a proceeding brought pursuant to ORS 196.870, may
7 seek and the court may award double a sum of money sufficient to compensate the public for any
8 destruction or infringement of any public right of navigation, fishery or recreation resulting from
9 such violation.

10 (2) If any person [*or governmental body*] intentionally violates ORS 196.810, the director, in a
11 proceeding brought pursuant to ORS 196.870, may seek and the court may award treble a sum of
12 money sufficient to compensate the public for any destruction or infringement of any public right
13 of navigation, fishery or recreation resulting from such violation.

14 (3) An award made pursuant to this section shall be in addition to and not in lieu of any crim-
15 inal penalties imposed for a violation of ORS 196.810.

16 (4) In any action brought under ORS 196.870, the court shall award to the prevailing party the
17 costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS
18 20.140, any costs and attorney fees so awarded to the director shall be deposited in the Common
19 School Fund to offset the director's expenses of bringing such action.

20 **SECTION 17.** ORS 196.825 is amended to read:

21 196.825. (1) The Director of the Department of State Lands shall issue a permit to remove ma-
22 terial from the beds or banks of any waters of this state applied for under ORS 196.815 if the di-
23 rector determines that the removal described in the application will not be inconsistent with the
24 protection, conservation and best use of the water resources of this state as specified in ORS
25 196.805.

26 (2) The director shall issue a permit applied for under ORS 196.815 for filling waters of this state
27 if the director determines that the proposed fill would not unreasonably interfere with the para-
28 mount policy of this state to preserve the use of its waters for navigation, fishing and public recre-
29 ation.

30 (3) In determining whether or not a permit shall be issued, the director shall consider all of the
31 following:

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

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

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

37 (d) The availability of alternative sites for the proposed fill.

38 (e) Whether the proposed fill conforms to sound policies of conservation and would not interfere
39 with public health and safety.

40 (f) Whether the proposed fill is in conformance with existing public uses of the waters and with
41 uses designated for adjacent land in an acknowledged comprehensive plan and zoning ordinances.

42 (g) Whether the proposed fill is compatible with the acknowledged comprehensive plan and land
43 use regulations for the area where the proposed fill is to take place or can be conditioned on a fu-
44 ture local approval to meet this criterion.

45 (h) Whether the proposed fill is for streambank protection.

1 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
2 of the proposed fill in the manner set forth in ORS 196.800 [(10)] (7). If off-site compensatory wetland
3 mitigation is proposed, the applicant shall document the impracticability of on-site compensatory
4 wetland mitigation.

5 (4) The director may issue a permit for a substantial fill in an estuary for a nonwater dependent
6 use only if the fill is for a public use and would satisfy a public need that outweighs harm to navi-
7 gation, fishery and recreation and if the proposed fill meets all other criteria contained in ORS
8 196.600 to 196.905.

9 (5) If the director issues a permit, the director may impose such conditions as the director con-
10 siders necessary to carry out the purposes of ORS 196.805, 196.830 and subsections (1) and (2) of this
11 section and to provide mitigation for the reasonably expected adverse impacts from project devel-
12 opment. In formulating such conditions the director may request comment from the State Geologist,
13 the State Fish and Wildlife Director, the State Forester, the Director of the Department of Envi-
14 ronmental Quality, the administrative officer of the Soil and Water Conservation Commission, the
15 Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the
16 Director of Transportation, the Director of the Economic and Community Development Department,
17 the Water Resources Director and affected local governmental units. Each permit is valid only for
18 the time specified therein. Obtaining a lease from the Department of State Lands may not be one
19 of the conditions to be considered in granting a permit under ORS 196.815. The Director of the De-
20 partment of State Lands shall impose, as conditions to any permit, general authorization or wetland
21 conservation plan, measures to provide mitigation for the reasonably expected adverse impacts from
22 project development. Compensatory wetland mitigation shall be limited to replacement of the func-
23 tional attributes of the lost wetland.

24 (6) Any applicant whose application for a permit has been deemed incomplete or has been de-
25 nied, or who objects to any of the conditions imposed under subsections (1), (2) and (5) of this section
26 by the Director of the Department of State Lands, may, within 21 days of the denial of the permit
27 or the imposition of any condition, request a hearing from the director. Thereupon the director shall
28 set the matter down for hearing, which shall be conducted as a contested case in accordance with
29 ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After such hearing, the director shall enter
30 an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify
31 the director's initial order. Appeals from the director's final order may be taken to the Court of
32 Appeals in the manner provided by ORS 183.482.

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

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

40 (b) Issue a permit decision involving fill or removal of material within 90 days after the date the
41 director determines that the application is complete unless:

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

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

44 (8) Permits issued under this section shall be in lieu of any permit that might be required for
45 the same operation under ORS 164.775, 164.785, 468.010, 468.030 to 468.045, 468.055, 468.060, 468.075,

1 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

2 (a) The operation is that for which the permit is issued; and

3 (b) The standards for granting such permits are substantially the same as those established
 4 pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468B.005 to
 5 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

6 (9)(a) Any agency or other unit of government requested by the director to comment on an ap-
 7 plication for a permit under subsection (5) of this section must submit its comments to the director
 8 not more than 30 days after receiving the request for comment. If an agency or other unit of gov-
 9 ernment fails to comment on the application within 30 days, the director shall assume the agency
 10 or other unit of government has no objection and shall approve or deny the application.

11 (b) The Department of Environmental Quality shall provide comments to the director within 75
 12 days after receiving notice under subsection (5) of this section if the permit action requires certif-
 13 ication under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

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

16 (11) As used in this section:

17 (a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal
 18 or fill activity.

19 (b) "Completed application" means a signed permit application form that contains all necessary
 20 information for the director to determine whether to issue a permit, including:

21 (A) A map showing the project site with sufficient accuracy to easily locate the removal or fill
 22 site;

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

24 (C) The fee required under ORS 196.815;

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

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

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

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

33 (H) Any other information that the director deems pertinent and necessary to make an informed
 34 decision on whether the application complies with the policy and standards set forth in subsections
 35 (1) to (5) of this section.

36 **SECTION 18.** ORS 196.825, as amended by section 3, chapter 516, Oregon Laws 2001, section
 37 10, chapter 253, Oregon Laws 2003, and section 18a, chapter 738, Oregon Laws 2003, is amended to
 38 read:

39 196.825. (1) The Director of the Department of State Lands shall issue a permit to remove ma-
 40 terial from the beds or banks of any waters of this state applied for under ORS 196.815 if the di-
 41 rector determines that the removal described in the application is consistent with the protection,
 42 conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.905.

43 (2) The director shall issue a permit applied for under ORS 196.815 for filling waters of this state
 44 if the director determines that the proposed fill:

45 (a) Would not unreasonably interfere with the paramount policy of this state to preserve the use

1 of its waters for navigation, fishing and public recreation; and

2 (b) Is consistent with ORS 196.600 to 196.905.

3 (3) In determining whether to issue a permit under subsection (1) or (2) of this section, the di-
4 rector shall consider all of the following:

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

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

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

10 (d) The availability of alternative sites for the proposed fill.

11 (e) Whether the proposed fill conforms to sound policies of conservation and would not interfere
12 with public health and safety.

13 (f) Whether the proposed fill is in conformance with existing public uses of the waters and with
14 uses designated for adjacent land in an acknowledged comprehensive plan and zoning ordinances.

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

18 (h) Whether the proposed fill is for streambank protection.

19 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
20 of the proposed fill in the manner set forth in ORS 196.800 [(10)] (7). If off-site compensatory wetland
21 mitigation is proposed, the applicant shall document the impracticability of on-site compensatory
22 wetland mitigation.

23 (4) The director may issue a permit for a substantial fill in an estuary for a nonwater dependent
24 use only if the fill is for a public use and would satisfy a public need that outweighs harm to navi-
25 gation, fishery and recreation and if the proposed fill meets all other criteria contained in ORS
26 196.600 to 196.905.

27 (5) If the director issues a permit, the director may impose such conditions as the director con-
28 siders necessary to carry out the purposes of ORS 196.805, 196.830 and subsections (1) and (2) of this
29 section and to provide mitigation for the reasonably expected adverse impacts from project devel-
30 opment. In formulating such conditions the director may request comment from the State Geologist,
31 the State Fish and Wildlife Director, the State Forester, the Director of the Department of Envi-
32 ronmental Quality, the administrative officer of the Soil and Water Conservation Commission, the
33 Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the
34 Director of Transportation, the Director of the Economic and Community Development Department,
35 the Water Resources Director and affected local governmental units. Each permit is valid only for
36 the time specified therein. Obtaining a lease from the Department of State Lands may not be one
37 of the conditions to be considered in granting a permit under ORS 196.815. The Director of the De-
38 partment of State Lands shall impose, as conditions to any permit, general authorization or wetland
39 conservation plan, measures to provide mitigation for the reasonably expected adverse impacts from
40 project development. Compensatory wetland mitigation shall be limited to replacement of the func-
41 tional attributes of the lost wetland.

42 (6) Any applicant whose application for a permit has been deemed incomplete or has been de-
43 nied, or who objects to any of the conditions imposed under subsections (1), (2) and (5) of this section
44 by the director, may, within 21 days of the denial of the permit or the imposition of any condition,
45 request a hearing from the director. Thereupon the director shall set the matter down for hearing,

1 which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440
2 to 183.460 and 183.470. After such hearing, the director shall enter an order containing findings of
3 fact and conclusions of law. The order shall rescind, affirm or modify the director's initial order.
4 Appeals from the director's final order may be taken to the Court of Appeals in the manner provided
5 by ORS 183.482.

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

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

13 (b) Issue a permit decision involving fill or removal of material within 90 days after the date the
14 director determines that the application is complete unless:

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

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

17 (8) Permits issued under this section shall be in lieu of any permit that might be required for
18 the same operation under ORS 164.775, 164.785, 468.010, 468.030 to 468.045, 468.055, 468.060, 468.075,
19 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

20 (a) The operation is that for which the permit is issued; and

21 (b) The standards for granting such permits are substantially the same as those established
22 pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468B.005 to
23 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

24 (9)(a) Any agency or other unit of government requested by the director to comment on an ap-
25 plication for a permit under subsection (5) of this section must submit its comments to the director
26 not more than 30 days after receiving the request for comment. If an agency or other unit of gov-
27 ernment fails to comment on the application within 30 days, the director shall assume the agency
28 or other unit of government has no objection and shall approve or deny the application.

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

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

34 (11) As used in this section:

35 (a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal
36 or fill activity.

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 impacts
4 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 informed
7 decision on whether the application complies with the policy and standards set forth in subsections
8 (1) to (5) of this section.

9 **SECTION 19.** ORS 196.860 is amended to read:

10 196.860. (1) If the Director of the Department of State Lands determines that material is being
11 removed from or filling is occurring in any of the waters of this state without a permit issued under
12 ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner con-
13 trary to the conditions set out in an order approving a [*wetlands*] **wetland** conservation plan, the
14 director may:

15 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to
16 196.905, as soon as possible.

17 (b) For the purpose of investigating conditions relating to such removal or filling, through the
18 employees or the duly authorized representatives of the Department of State Lands, enter at rea-
19 sonable times upon any private or public property.

20 (c) Conduct public hearings in accordance with ORS chapter 183.

21 (d) Publish findings and recommendations as they are developed relative to public policies and
22 procedures necessary for the correction of conditions or violations of ORS 196.600 to 196.905.

23 (e) Give notice of any proposed order relating to a violation by personal service or by mailing
24 the notice by registered or certified mail to the person [*or governmental body*] affected. Any person
25 aggrieved by a proposed order of the director may request a hearing within 20 days of the date of
26 personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS
27 chapter 183 applicable to contested cases, and judicial review of final orders shall be conducted in
28 the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to
29 appear, a final order shall be issued upon a prima facie case on the record of the agency.

30 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of
31 ORS 196.600 to 196.905 or of any rule or final order of the director under ORS 196.600 to 196.905
32 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in
33 any such proceedings the director may seek and the court may award a sum of money sufficient to
34 compensate the public for any destruction or infringement of any public right of navigation, fishery
35 or recreation resulting from such violation. Proceedings thus brought by the director shall set forth
36 if applicable the dates of notice and hearing and the specific rule or order of the director, together
37 with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the
38 damages to any public right of navigation, fishery or recreation, if any, resulting from such vio-
39 lation.

40 (2) In addition to the administrative action the director may take under subsection (1) of this
41 section, the director may enter an order requiring any person to cease and desist from any violation
42 if the director determines that such violation presents an imminent and substantial risk of injury,
43 loss or damage to water resources.

44 (a) An order under this subsection:

45 (A) May be entered without prior notice or hearing.

1 (B) Shall be served upon the person by personal service or by registered or certified mail.

2 (C) Shall state that a hearing will be held on the order if a written request for hearing is filed
3 by the person subject to the order within 10 days after receipt of the order.

4 (D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this
5 subsection.

6 (b) If a person subject to an order under this subsection files a timely demand for hearing, the
7 director shall hold a contested case hearing according to the applicable provisions of ORS chapter
8 183. If the person fails to request a hearing, the order shall be entered as a final order upon prima
9 facie case made on the record of the agency.

10 (c) Neither the director nor any duly authorized representative of the department shall be liable
11 for any damages a person may sustain as a result of a cease and desist order issued under this
12 subsection.

13 (d) The state and local police shall cooperate in the enforcement of any order issued under this
14 subsection and shall require no further authority or warrant in executing or enforcing such order.
15 If any person fails to comply with an order issued under this subsection, the circuit court of the
16 county in which the violation occurred or is threatened shall compel compliance with the director's
17 order in the same manner as with an order of that court.

18 (3) As used in this section, "violation" means removing material from or placing fill in, any of
19 the waters of this state without a permit or in a manner contrary to the conditions set out in a
20 permit issued under ORS 196.825.

21 **SECTION 20. The amendments to ORS 196.682, 196.686, 196.692, 196.800, 196.810, 196.815,
22 196.850 and 196.865 by sections 3 to 8 and 10 to 15 of this 2005 Act apply to permits applied
23 for or permits renewed on or after the effective date of this 2005 Act.**

24 **SECTION 21. This 2005 Act being necessary for the immediate preservation of the public
25 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
26 on July 1, 2005.**

27 _____