

A-Engrossed
House Bill 2265

Ordered by the House June 2
Including House Amendments dated June 2

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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.

[Specifies that state agencies that request closure of waters of state to removal and filling must make request to Department of State Lands instead of Water Resources Commission.]

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 the Department of State Lands; creating new provisions; amending ORS 196.620, 196.643,
3 196.682, 196.686, 196.692, 196.800, 196.810, 196.815, 196.825, 196.840, 196.850, 196.860, 196.865,
4 196.875 and 274.040; and declaring an emergency.

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) **“Jurisdictional determination” means a written decision by the Department of State**
10 **Lands that wetlands or other waters of this state are or are not subject to ORS 196.600 to**
11 **196.905.**

12 (b) **“Preliminary wetland determination or delineation report” means a report that is:**

13 (A) **Prepared by a person other than the department and that identifies and maps the**
14 **presence and extent of wetlands and other waters of this state; and**

15 (B) **Prepared in accordance with the United States Army Corps of Engineers Wetlands**
16 **Delineation Manual of 1987, or subsequent federal manual as adopted by rule by the Director**
17 **of the Department of State Lands, and rules of the department that pertain to such reports.**

18 (2) **A person may submit a preliminary wetland determination or delineation report to**
19 **the department for review, approval and a jurisdictional determination. The department may**
20 **request additional information from the person submitting a report and may require that the**
21 **department be given permission to access and inspect the site to which the report applies.**

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

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 (a) The department shall waive the fee requirement and return the fee if the report is
2 not reviewed in a timely manner by the department.

3 (b) The person may request an expedited review of the report or an expedited jurisdic-
4 tional determination. The department shall, by rule, establish the procedure for requesting
5 expedited action and any additional fee. The department shall base the amount of any addi-
6 tional fee on the cost of providing the expedited actions.

7 (4) The department shall assign a priority to each report submitted to the department
8 and process reports based on their priority.

9 (5) After reviewing a report, the department:

10 (a) Shall approve the report and issue a jurisdictional determination if the report meets
11 the requirements established by rule by the department;

12 (b) May modify the report in order to issue a jurisdictional determination; or

13 (c) May reject the report if it does not meet the requirements established by rule.

14 (6) A rejected report may be revised by the person that submitted the report to meet the
15 requirements established by rule and may be resubmitted to the department. A person re-
16 submitting a report to the department shall pay an additional nonrefundable fee of \$325.

17 (7) A jurisdictional determination is a final order in a contested case for purposes of ORS
18 chapter 183.

19 (8) Fees received by the department under this section shall be credited to the Common
20 School Fund for use by the department in administration of ORS 196.600 to 196.905.

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

22 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

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

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

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

29 [(4)] (2) "Estuary" means a body of water [*semienclosed*] **and associated estuarine waters,**
30 **tidelands, tidal marshes and submerged lands extending upstream to the head of the**
31 **tidewater that are partially enclosed** by land and connected with the open ocean within which
32 salt water is usually diluted by fresh water derived from the land. [*"Estuary" includes all estuarine*
33 *waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater.*
34 *However,*] **Notwithstanding this definition,** the Columbia River Estuary extends to the western
35 edge of Puget Island.

36 [(5)] (3) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic
37 yards or more of material at one location in any waters of this state.

38 [(6)] (4) "General authorization" means a rule adopted by the Director **of the Department of**
39 **State Lands** authorizing, without a permit from the Department **of State Lands,** a category of ac-
40 tivities involving removal or fill, or both, on a statewide or other geographic basis.

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

43 [(8)] (5) "Intermittent stream" means any stream which flows during a portion of every year and
44 which provides spawning, rearing or food-producing areas for food and game fish.

45 [(9)] (6) "Material" means rock, gravel, sand, silt and other inorganic substances removed from

1 waters of this state and any materials, organic or inorganic, used to fill waters of this state.

2 [(10)] (7) “Mitigation” means the reduction of adverse effects of a proposed project by consid-
3 ering, in the following order:

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

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

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

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

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

13 **(8) “Person” means a person, a public body, as defined in ORS 174.109, the federal gov-**
14 **ernment, when operating in any capacity other than navigational servitude, or any other le-**
15 **gal entity.**

16 [(11)] (9) “Practicable” means capable of being accomplished after taking into consideration the
17 cost, existing technology and logistics with respect to the overall project purpose.

18 [(12)] (10) “Public use” means a publicly owned project or a privately owned project that is
19 available for use by the public.

20 [(13)] (11) “Removal” means:

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

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

25 [(14)] (12) “Water resources” includes not only water itself but also aquatic life and habitats
26 therein and all other natural resources in and under the waters of this state.

27 [(15)] (13) “Waters of this state” means **all** natural waterways [*including all*], tidal and nontidal
28 bays, intermittent streams, constantly flowing streams, lakes, wetlands [*and other bodies of water in*
29 *this state, navigable and nonnavigable, including*], that portion of the Pacific Ocean [*which*] **that** is
30 in the boundaries of this state. “*Waters of this state*” *does not include*, **all other navigable and**
31 **nonnavigable bodies of water in this state and those portions of** the ocean shore, as defined in
32 ORS 390.605, [*with the exception of those areas*] where removal or fill activities are regulated under
33 a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution
34 Control Act, as amended.

35 [(16)] (14) “Wetland conservation plan” means a written plan providing for wetland management
36 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
37 and private uses and protection of wetlands, waters and related adjacent uplands and which has
38 specific implementing measures and which apply to designated geographic areas of the State of
39 Oregon.

40 [(17)] (15) “Wetlands” means those areas that are inundated or saturated by surface or ground
41 water at a frequency and duration sufficient to support, and that under normal circumstances do
42 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

43 **SECTION 4.** ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section 8,
44 chapter 253, Oregon Laws 2003, and section 15, chapter 738, Oregon Laws 2003, is amended to read:
45 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

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

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

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

5 [(4) (2) "Estuary" means a body of water [*semienclosed*] **and associated estuarine waters,**
6 **tidelands, tidal marshes and submerged lands extending upstream to the head of the**
7 **tidewater that are partially enclosed** by land and connected with the open ocean within which
8 salt water is usually diluted by fresh water derived from the land. [*"Estuary" includes all estuarine*
9 *waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater.*
10 *However,*] **Notwithstanding this definition,** the Columbia River Estuary extends to the western
11 edge of Puget Island.

12 [(5) (3) "Fill" means the deposit by artificial means of material at one location in any waters
13 of this state.

14 [(6) (4) "General authorization" means a rule adopted by the Director **of the Department of**
15 **State Lands** authorizing, without a permit from the Department **of State Lands,** a category of ac-
16 tivities involving removal or fill, or both, on a statewide or other geographic basis.

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

19 [(8) (5) "Intermittent stream" means any stream which flows during a portion of every year and
20 which provides spawning, rearing or food-producing areas for food and game fish.

21 [(9) (6) "Material" means rock, gravel, sand, silt and other inorganic substances removed from
22 waters of this state and any materials, organic or inorganic, used to fill waters of this state.

23 [(10) (7) "Mitigation" means the reduction of adverse effects of a proposed project by consid-
24 ering, in the following order:

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

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

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

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

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

34 (8) **"Person" means a person, a public body, as defined in ORS 174.109, the federal gov-**
35 **ernment, when operating in any capacity other than navigational servitude, or any other le-**
36 **gal entity.**

37 [(11) (9) "Practicable" means capable of being accomplished after taking into consideration the
38 cost, existing technology and logistics with respect to the overall project purpose.

39 [(12) (10) "Public use" means a publicly owned project or a privately owned project that is
40 available for use by the public.

41 [(13) (11) "Removal" means:

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

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

45 [(14) (12) "Water resources" includes not only water itself but also aquatic life and habitats

1 therein and all other natural resources in and under the waters of this state.

2 [(15)] (13) "Waters of this state" means **all** natural waterways [*including all*], tidal and nontidal
3 bays, intermittent streams, constantly flowing streams, lakes, wetlands [*and other bodies of water in*
4 *this state, navigable and nonnavigable, including*], that portion of the Pacific Ocean [*which*] **that is**
5 in the boundaries of this state. "*Waters of this state*" *does not include*, **all other navigable and**
6 **nonnavigable bodies of water in this state and those portions of** the ocean shore, as defined in
7 ORS 390.605, [*with the exception of those areas*] where removal or fill activities are regulated under
8 a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution
9 Control Act, as amended.

10 [(16)] (14) "Wetland conservation plan" means a written plan providing for wetland management
11 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
12 and private uses and protection of wetlands, waters and related adjacent uplands and which has
13 specific implementing measures and which apply to designated geographic areas of the State of
14 Oregon.

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

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

19 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, [*no per-*
20 *son or governmental body may*] **a person may not** remove any material from the beds or banks or
21 fill any waters of this state without a permit issued under authority of the Director of the Depart-
22 ment of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner
23 contrary to the conditions set out in an order approving a [*wetlands*] **wetland** conservation plan.

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

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

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

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

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

44 (A) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel
45 bar.

1 (B) "Essential indigenous anadromous salmonid habitat" means the habitat that is necessary to
2 prevent the depletion of indigenous anadromous salmonid species during their life history stages of
3 spawning and rearing.

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

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

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

12 (2) [No governmental body may] **A public body, as defined in ORS 174.109, may not** issue a
13 lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS
14 196.600 to 196.905.

15 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit
16 or lease with any [governmental] **public body, as defined in ORS 174.109**, entered into before Sep-
17 tember 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after
18 September 13, 1967, unless the person removing the material has obtained a permit under ORS
19 196.600 to 196.905.

20 (4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue,
21 orally or in writing, an emergency authorization **to a person** for the removal of material from the
22 beds or banks or filling of any waters of this state in an emergency, for the purpose of making re-
23 pairs or for the purpose of preventing irreparable harm, injury or damage to persons or property.
24 The emergency authorization issued under this subsection:

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

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

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

30 (d) **Does not relieve the person from payment of a fee calculated in the manner provided**
31 **in ORS 196.815.**

32 **SECTION 6.** ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, and section
33 97, chapter 14, Oregon Laws 2003, is amended to read:

34 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person
35 [or governmental body] may not remove any material from the beds or banks or fill any waters of
36 this state without a permit issued under authority of the Director of the Department of State Lands,
37 or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the
38 conditions set out in an order approving a [wetlands] **wetland** conservation plan.

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

1 (c) A permit is not required under paragraph (a) of this subsection for construction or mainte-
2 nance of fish passage and fish screening structures associated with irrigation ditches or the main-
3 tenance of drainage ditches that are constructed, operated or maintained under ORS 498.311,
4 498.316, 498.326 or 509.600 to 509.645.

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

6 (2) A *[governmental]* **public** body, **as defined in ORS 174.109**, may not issue a lease or permit
7 contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to
8 196.905.

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

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

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

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

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

24 **(d) Does not relieve the person from payment of a fee calculated in the manner provided**
25 **in ORS 196.815.**

26 (5) As used in this section:

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

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

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

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

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

45 *[(2) The Director of the Department of State Lands shall furnish to any member of the public upon*

1 *written request and at the expense of the member of the public a copy of any application for a permit*
2 *pursuant to subsection (1) of this section.]*

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

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

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

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

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

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

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

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

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

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

19 (B) 500 to [~~4,999~~] **less than 5,000** cubic yards, [~~\$75 for private operator, \$75 for public body and~~
20 ~~\$75 for commercial operator~~] **\$125**.

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

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

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

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

29 (B) 500 to [~~2,999~~] **less than 3,000** cubic yards, [~~\$75 for private operator, \$75 for public body and~~
30 ~~\$75 for commercial operator~~] **\$125**.

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

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

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

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

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

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

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

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

1 department.

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

5 (4) **The department may waive the fees specified in subsection (2) of this section if the**
6 **permit applied for will be used to perform a habitat restoration project.**

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

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

18 [(6)] (7) Fees received under this section shall be credited to the Common School Fund for use
19 by the department in administration of ORS 196.600 to 196.905[, 196.990 and 541.990 and as otherwise
20 required by law].

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

22 196.815. (1) A person who is required to have a permit to remove material from the bed or banks
23 or fill any waters of this state shall file a written application with the Director of the Department
24 of State Lands for each discrete project.

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

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

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

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

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

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

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

35 (G) For erosion-flood repair, including riprap, no fee.

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

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

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

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

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

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

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

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

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

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

5 (d) For the purposes of this subsection:

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

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

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

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

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

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

20 (4) The department may waive the fees specified in subsection (2) of this section if the permit
21 applied for will be used to perform a habitat restoration project.

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

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

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

35 [(7)] (8) Fees received under this section shall be credited to the Common School Fund for use
36 by the department in administration of ORS 196.600 to 196.905.

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

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

40 196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
41 general authorization for removal of material from the bed or banks or the filling of any waters of
42 the state without a permit from the department if the department finds that [*those*] **the** activities
43 subject to the general authorization:

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

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

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

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

4 [(2)] (3) The department shall provide notice of any proposed general authorization to affected
5 federal and state agencies, local governments and the public. The notice shall include:

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

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

8 [(3)] (4) Any person proposing to conduct an action under a general authorization shall:

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

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

12 [(4)] (5) The department shall amend or rescind any general authorization upon a determination
13 that the activities conducted under the authorization have resulted in or would result in more than
14 minimal environmental impacts or long-term harm to the water resources of this state.

15 [(5)] (6) 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 [(6)] (7) 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 (8) **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 (9) **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 11.** ORS 196.850, as amended by section 4, chapter 516, Oregon Laws 2001, and sec-
32 tion 12, chapter 253, Oregon Laws 2003, is amended to read:

33 196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
34 general authorization for removal of material from the bed or banks or the filling of any waters of
35 the state without a permit from the department if the department finds that *[those]* **the** activities
36 subject to the general authorization:

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

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

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

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

42 [(2)] (3) The department shall provide notice of any proposed general authorization to affected
43 federal and state agencies, local governments and the public. The notice shall include:

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

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

1 [(3)] (4) Any person proposing to conduct an action under a general authorization shall:

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

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

6 [(4)] (5) **The Director of the Department of State Lands shall waive** the requirements of
7 subsection [(3)] (4) of this section [*shall be waived*] if the director [*of the Department of State*
8 *Lands*] issues a general authorization and the authorized activity:

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

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

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

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

16 [(5)] (6) The Department of State Lands shall amend or rescind any general authorization upon
17 a determination that the activities conducted under the authorization have resulted in or would re-
18 sult in more than minimal environmental impacts or long-term harm to the water resources of this
19 state.

20 [(6)] (7) The department shall review each general authorization adopted pursuant to this section
21 every five years. The review shall include public notice and opportunity for public hearing. After
22 [*such*] **the** review, the department may either modify, reissue or rescind the general authorization.

23 [(7)] (8) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review
24 of the validity of a rule adopted under this section, the rule shall be reviewable for substantial ev-
25 idence in the rulemaking record. The record shall include copies of all documents before the agency
26 relevant to [*whether the requirement of*] **the findings required by** subsection (1) of this section [*has*
27 *been met*].

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

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

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

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

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

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

1 (a) Is properly designed or configured to minimize the need for alterations to waters of *[the]* **this**
2 state;

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

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

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

7 (e) Is conditioned to *[insure]* **ensure** wetland creation, restoration or enhancement measures are
8 implemented to fully replace impacted resources.

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

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

14 196.686. (1) For the purposes of this section, an acknowledged estuary management plan includes
15 the comprehensive plan and land use regulations adopted by cities and counties to satisfy the re-
16 quirement of statewide planning goals related to estuarine resources including shoreland portions
17 of estuarine sites designated for development as those plans and regulations existed on January 1,
18 1989.

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

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

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

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

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

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

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

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

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

44 (a) The director determines there is probable cause to believe that the estuary management plan
45 does not meet the standards for approving wetland conservation plans or unreasonably interferes

1 with the use of the estuary for navigation, fisheries or public recreation; or

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

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

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

5 (C) Provides sufficient information for the director to determine that there is probable cause to
6 believe that the estuary management plan does not meet the standards for approving wetland con-
7 servation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or
8 public recreation.

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

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

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

22 (14) Individual permit applications shall be required for removal or fill, or both, in areas subject
23 to an approved estuary management plan. Individual permit applications shall be reviewed in ac-
24 cordance with ORS 196.815, 196.825 [(5) and (6)], 196.830 and 196.835. In lieu of the substantive
25 standards for permit issuance in ORS [196.815 (1) and] 196.825 [(1), (2) and (3)] (2), the department
26 shall issue a permit if the removal or fill, or both, is determined by the director to be consistent
27 with the estuary management plan or can be conditioned to be consistent with the plan. The de-
28 partment shall condition any such permit as necessary to [insure] **ensure** that the project:

29 (a) Is designed or configured to minimize alterations to waters of [the] **this** state;

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

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

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

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

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

38 (16) Following approval by the director of an estuary management plan, the requirements of ORS
39 196.684 shall apply to the approved estuary management plan.

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

41 196.692. (1) The Department of State Lands shall adopt rules to carry out the provisions of ORS
42 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015,
43 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350 **and section 2 of this 2005 Act.**

44 (2) Rules adopted pursuant to subsection (1) of this section shall include rules governing the
45 application for and issuance of permits to remove material from the beds or banks of any waters of

1 this state or to fill any waters of this state including, but not limited to, clear and objective stan-
2 dards and criteria for determining whether to grant or deny a permit.

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

4 196.865. If the Director of the Department of State Lands finds that a person [*or governmental*
5 *body*] holding a permit issued under ORS 196.825 is removing material from the bed or banks or
6 filling any of the waters of this state contrary to the conditions set out in the permit, the director
7 may revoke, suspend or refuse to renew such permit. The director may revoke a permit only after
8 giving notice and opportunity for a hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460
9 and 183.470.

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

11 196.875. (1) If any person [*or governmental body*], through negligence, violates ORS 196.810, the
12 Director of the Department of State Lands, in a proceeding brought pursuant to ORS 196.870, may
13 seek and the court may award double a sum of money sufficient to compensate the public for any
14 destruction or infringement of any public right of navigation, fishery or recreation resulting from
15 such violation.

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

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

22 (4) In any action brought under ORS 196.870, the court shall award to the prevailing party the
23 costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS
24 20.140, any costs and attorney fees so awarded to the director shall be deposited in the Common
25 School Fund to offset the director's expenses of bringing such action.

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

27 196.825. (1) The Director of the Department of State Lands shall issue a permit [*to remove ma-*
28 *terial from the beds or banks of any waters of this state*] applied for under ORS 196.815 if the director
29 determines that the [*removal*] **project** described in the application [*will not be inconsistent*]:

30 (a) **Is consistent** with the protection, conservation and best use of the water resources of this
31 state as specified in ORS [*196.805.*] **196.600 to 196.905; and**

32 [(2)] (b) [*The director shall issue a permit applied for under ORS 196.815 for filling waters of this*
33 *state if the director determines that the proposed fill*] Would not unreasonably interfere with the par-
34 amount policy of this state to preserve the use of its waters for navigation, fishing and public re-
35 creation.

36 [(3)] (2) In determining whether or not a permit shall be issued, the director shall consider all
37 of the following:

38 (a) The public need for the proposed fill **or removal** and the social, economic or other public
39 benefits likely to result from the proposed fill **or removal**. When the applicant for a [*fill*] permit is
40 a public body, the director may accept and rely upon the public body's findings as to local public
41 need and local public benefit.

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

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

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

45 (e) Whether the proposed fill **or removal** conforms to sound policies of conservation and would

1 not interfere with public health and safety.

2 (f) Whether the proposed fill **or removal** is in conformance with existing public uses of the
3 waters and with uses designated for adjacent land in an acknowledged comprehensive plan and
4 [zoning ordinances] **land use regulations**.

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

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

9 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
10 of the proposed fill **or removal** in the manner set forth in ORS 196.800 [(10)]. If off-site compensatory
11 wetland mitigation is proposed, the applicant shall document the impracticability of on-site
12 compensatory wetland mitigation.

13 [(4)] (3) The director may issue a permit for a **project that results in a** substantial fill in an
14 estuary for a nonwater dependent use only if the [fill] **project** is for a public use and would satisfy
15 a public need that outweighs harm to navigation, fishery and recreation and if the proposed fill
16 meets all other criteria contained in ORS 196.600 to 196.905.

17 [(5)] (4) If the director issues a permit, the director may impose such conditions as the director
18 considers necessary to carry out the purposes of ORS 196.805[,] **and** 196.830 and [subsections (1) and
19 (2)] **subsection (1)** of this section and to provide mitigation for the reasonably expected adverse
20 [impacts from] **effects of** project development. In formulating such conditions the director may re-
21 quest comment from [the State Geologist, the State Fish and Wildlife Director, the State Forester, the
22 Director of the Department of Environmental Quality, the administrative officer of the Soil and Water
23 Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the
24 State Marine Director, the Director of Transportation, the Director of the Economic and Community
25 Development Department, the Water Resources Director and affected local governmental units] **public**
26 **bodies, as defined in ORS 174.109, federal agencies and tribal governments affected by the**
27 **permit**. Each permit is valid only for the time specified therein. [Obtaining a lease from the De-
28 partment of State Lands may not be one of the conditions to be considered in granting a permit under
29 ORS 196.815.] The director [of the Department of State Lands] shall impose, as conditions to any
30 permit, general authorization or wetland conservation plan, measures to provide mitigation for the
31 reasonably expected adverse [impacts from] **effects of** project development. Compensatory wetland
32 mitigation shall be limited to replacement of the functional attributes of the lost wetland.

33 (5) **The director may request comment from interested parties and adjacent property**
34 **owners on any application for a permit. The director shall furnish to any member of the**
35 **public, upon written request and at the expense of the public, a copy of any application for**
36 **a permit or authorization under this section or ORS 196.850.**

37 (6) Any applicant whose application for a permit **or authorization** has been deemed incomplete
38 or has been denied, or who objects to any of the conditions imposed under [subsections (1), (2) and
39 (5) of] this section by the director [of the Department of State Lands], may, within 21 days of the
40 denial of the permit **or authorization** or the imposition of any condition, request a hearing from the
41 director. Thereupon the director shall set the matter down for hearing, which shall be conducted
42 as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After
43 such hearing, the director shall enter an order containing findings of fact and conclusions of law.
44 The order shall rescind, affirm or modify the director's initial order. Appeals from the director's final
45 order may be taken to the Court of Appeals in the manner provided by ORS 183.482.

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

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

8 (b) Issue a permit decision [*involving fill or removal of material*] within 90 days after the date
9 the director determines that the application is complete unless:

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

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

12 (8) Permits issued under this section shall be in lieu of any permit **or authorization** that might
13 be required for the same operation under ORS 164.775, 164.785, [*468.010,*] 468.030 to 468.045, 468.055,
14 468.060, 468.075, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

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

16 (b) The standards for granting [*such permits*] **the permit or authorization** are substantially the
17 same as those established pursuant to ORS 164.775, 164.785, [*468.010,*] 468.035, 468.040, 468.055,
18 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water
19 quality.

20 (9)(a) Any [*agency or other unit of government*] **public body, as defined in ORS 174.109, federal**
21 **agency or tribal government** requested by the director to comment on an application for a permit
22 [*under subsection (5) of this section*] must submit its comments to the director not more than 30 days
23 after receiving the request for comment. If [*an agency or other unit of*] **a public body, federal**
24 **agency or tribal** government fails to comment on the application within 30 days, the director shall
25 assume [*the agency or other unit of*] **that the public body, federal agency or tribal** government has
26 no objection [*and shall approve or deny the application*].

27 (b) The Department of Environmental Quality shall provide comments to the director within 75
28 days after receiving notice under subsection [(5)] (4) of this section if the permit action requires
29 certification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

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

32 (11) As used in this section:

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

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

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

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

40 (C) The fee required under ORS 196.815;

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

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

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

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

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

7 **SECTION 18.** ORS 196.825, as amended by section 3, chapter 516, Oregon Laws 2001, section
8 10, chapter 253, Oregon Laws 2003, and section 18a, chapter 738, Oregon Laws 2003, is amended to
9 read:

10 196.825. (1) The Director of the Department of State Lands shall issue a permit [to remove ma-
11 terial from the beds or banks of any waters of this state] applied for under ORS 196.815 if the director
12 determines that the [removal] **project** described in the application:

13 (a) Is consistent with the protection, conservation and best use of the water resources of this
14 state as specified in ORS 196.600 to 196.905[.]; **and**

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

17 [(a)] (b) Would not unreasonably interfere with the paramount policy of this state to preserve
18 the use of its waters for navigation, fishing and public recreation.[: and]

19 [(b) Is consistent with ORS 196.600 to 196.905.]

20 [(3)] (2) In determining whether [to issue a permit under subsection (1) or (2) of this section] **or**
21 **not a permit shall be issued**, the director shall consider all of the following:

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

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

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

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

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

31 (f) Whether the proposed fill **or removal** is in conformance with existing public uses of the
32 waters and with uses designated for adjacent land in an acknowledged comprehensive plan and
33 [zoning ordinances] **land use regulations**.

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

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

38 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
39 of the proposed fill **or removal** in the manner set forth in ORS 196.800 [(10)]. If off-site compensatory
40 wetland mitigation is proposed, the applicant shall document the impracticability of on-site
41 compensatory wetland mitigation.

42 [(4)] (3) The director may issue a permit for a **project that results in a** substantial fill in an
43 estuary for a nonwater dependent use only if the [fill] **project** is for a public use and would satisfy
44 a public need that outweighs harm to navigation, fishery and recreation and if the proposed fill
45 meets all other criteria contained in ORS 196.600 to 196.905.

1 [(5)] (4) If the director issues a permit, the director may impose such conditions as the director
 2 considers necessary to carry out the purposes of ORS 196.805[,] **and** 196.830 and [subsections (1) and
 3 (2)] **subsection (1)** of this section and to provide mitigation for the reasonably expected adverse
 4 [impacts from] **effects of** project development. In formulating such conditions the director may re-
 5 quest comment from [the State Geologist, the State Fish and Wildlife Director, the State Forester, the
 6 Director of the Department of Environmental Quality, the administrative officer of the Soil and Water
 7 Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the
 8 State Marine Director, the Director of Transportation, the Director of the Economic and Community
 9 Development Department, the Water Resources Director and affected local governmental units] **public**
 10 **bodies, as defined in ORS 174.109, federal agencies and tribal governments affected by the**
 11 **permit.** Each permit is valid only for the time specified therein. [Obtaining a lease from the De-
 12 partment of State Lands may not be one of the conditions to be considered in granting a permit under
 13 ORS 196.815.] The director [of the Department of State Lands] shall impose, as conditions to any
 14 permit, general authorization or wetland conservation plan, measures to provide mitigation for the
 15 reasonably expected adverse [impacts from] **effects of** project development. Compensatory wetland
 16 mitigation shall be limited to replacement of the functional attributes of the lost wetland.

17 (5) **The director may request comment from interested parties and adjacent property**
 18 **owners on any application for a permit. The director shall furnish to any member of the**
 19 **public, upon written request and at the expense of the public, a copy of any application for**
 20 **a permit or authorization under this section or ORS 196.850.**

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

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

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

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

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

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

41 (8) Permits issued under this section shall be in lieu of any permit **or authorization** that might
 42 be required for the same operation under ORS 164.775, 164.785, [468.010,] 468.030 to 468.045, 468.055,
 43 468.060, 468.075, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

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

45 (b) The standards for granting [such permits] **the permit or authorization** are substantially the

1 same as those established pursuant to ORS 164.775, 164.785, [468.010,] 468.035, 468.040, 468.055,
2 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water
3 quality.

4 (9)(a) Any [agency or other unit of government] **public body, as defined in ORS 174.109, federal**
5 **agency or tribal government** requested by the director to comment on an application for a permit
6 [under subsection (5) of this section] must submit its comments to the director not more than 30 days
7 after receiving the request for comment. If [an agency or other unit of] a **public body, federal**
8 **agency or tribal** government fails to comment on the application within 30 days, the director shall
9 assume [the agency or other unit of] **that the public body, federal agency or tribal** government has
10 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)] (4) of this section if the permit action requires
13 certification 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 19.** ORS 196.840 is amended to read:

37 196.840. Any [agency] **entity** listed in ORS 196.825 [(5)] (4) may request the Water Resources
38 Commission by rule to close one or more specified waters of this state to the issuance of permits.
39 After a public hearing held in conformity with ORS chapter 183, if the Water Resources Commission
40 finds that issuance of permits with respect to such water resources would be inconsistent with the
41 protection, conservation and best use of the water resources of this state as specified in ORS
42 196.805, the Water Resources Commission may by rule close such waters to the issuance of permits
43 and to any other removals or fills under ORS 196.850 for an indefinite period or during such other
44 times as are stated in the rule.

45 **SECTION 20.** ORS 196.860 is amended to read:

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

6 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to
7 196.905, as soon as possible.

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

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

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

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

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

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

35 (a) An order under this subsection:

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

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

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

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

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

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

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

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

12 **SECTION 21.** ORS 274.040 is amended to read:

13 274.040. (1) Except as provided in ORS 274.043 (1) to (3), in ORS 274.085 for leases of submersible
14 lands acquired as an investment for the Common School Fund, in ORS 274.530 (1) for leases of
15 submersible lands of less than one year's duration, in ORS 274.530 (3) for licenses of less than three
16 years' duration and in subsections (2) and (3) of this section, submersible lands owned by the State
17 of Oregon may be leased only to the highest bidder, bidding at least the minimum amount designated
18 by the Department of State Lands under subsection (6) of this section for the lease of any such
19 lands, after being advertised not less than once each week for two successive weeks in one or more
20 newspapers of general circulation in the county in which the lands are situated. However, any
21 owner of lands abutting or fronting on such submersible lands shall have the preference right to
22 lease the lands unless the submersible lands are occupied by a person claiming the right of occu-
23 pancy under a conveyance recorded before January 1, 1981, from the present owner or predecessor
24 in interest of lands abutting or fronting the submersible lands. If so, the occupant of the submersible
25 lands shall have the preference right to lease the lands. An easement or license related to utility
26 service on the submersible lands does not establish a preference right under this subsection. The
27 lands shall be leased for the amount designated by the department under subsection (6) of this sec-
28 tion as the minimum amount for the lease of any such lands. The preference provided in this sub-
29 section applies to any lease of submersible land for one year or more offered or issued under ORS
30 274.530. The preference provided in this subsection does not apply to any lease offered or issued by
31 the department under ORS 274.705 to 274.860.

32 (2) Submersible lands owned by the State of Oregon that are determined by the State Land
33 Board to be available for sale may be sold only to the highest bidder, after being advertised not less
34 than once each week for two successive weeks in one or more newspapers of general circulation in
35 the county in which the lands are situated. However:

36 (a) No such lands shall be sold for less than for a fair appraised value as determined by an ap-
37 praiser appointed by the department.

38 (b) All sales of such submersible lands shall be approved by the State Land Board.

39 (c) Any owner of lands abutting or fronting on such submersible lands shall have the preference
40 right to purchase such lands for the fair appraised value provided that the sale of such lands be
41 approved by the State Land Board.

42 (3)(a) The department may grant, to any person holding a permit from the Water Resources Di-
43 rector authorizing the impoundment for beneficial use of the waters of any lake or stream, ease-
44 ments over **submerged and** submersible lands for flowage and storage of waters, and for the
45 construction, maintenance and operation of any structures or facilities necessary for the use of the

1 water under the terms of the permit upon payment of just compensation by the grantee.

2 (b) In addition to the authority of the department under paragraph (a) of this subsection to grant
3 easements over **submerged and** submersible lands, a person holding a water right permit, water
4 right certificate, proposed or final order approving a water right permit or court decree evidencing
5 a water right may occupy state-owned **submerged and** submersible lands for the construction,
6 maintenance and operation of any structure or facility necessary for the use of water if the proposed
7 use under the permit, certificate, order or decree is for irrigation or domestic use. The department
8 may not charge for the occupation of state-owned **submerged and** submersible lands pursuant to
9 this paragraph, nor may the department require that a person obtain written documentation to
10 substantiate the permission granted under this paragraph. Upon request by the Department of State
11 Lands, the Water Resources Department shall provide information to the Department of State Lands
12 regarding any change of use of the water right. A person may continue to occupy state-owned
13 **submerged and** submersible lands pursuant to this paragraph until:

14 (A) The water right permit is canceled pursuant to ORS 537.260;

15 (B) The water right is canceled pursuant to ORS 540.641; or

16 (C) The water is no longer being applied to irrigation or domestic use.

17 (c) An easement or the permission granted under this subsection may not be construed to be a
18 sale or lease of the **submerged and** submersible lands within the meaning of subsections (1) and (2)
19 of this section.

20 (d) A person granted an easement or permission to use or occupy state-owned **submerged and**
21 submersible lands under this subsection shall indemnify and hold harmless the state from all liability
22 and claims arising from or attributable to the use or occupation.

23 (4) All easements or the permission granted pursuant to subsection (3) of this section shall be
24 subject to conditions that will ensure the safety of the public and the preservation of economic,
25 scenic and recreational values and to lawful rules promulgated by state agencies affected by the
26 activities of the grantee.

27 (5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806,
28 622.270 or 622.320 to 622.350.

29 (6) The Department of State Lands shall designate the minimum acceptable amount for the lease
30 of any submersible lands otherwise authorized by law, other than any lease offered or issued by the
31 department under ORS 274.705 to 274.860.

32 (7) For the purpose of sale, the value of state-owned submersible lands shall be determined by
33 an appraiser appointed by the department.

34 (8) The act of any person entering into an agreement with the department under this section
35 or ORS 274.530 for the lease of submersible lands shall not be considered a waiver by such person
36 of any claim of ownership in the submersible lands described in the agreement.

37 **SECTION 22.** ORS 196.620 is amended to read:

38 196.620. (1) For each mitigation bank, the Department of State Lands shall establish a system
39 of resource values and credits.

40 (2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in
41 accordance with ORS 196.825 [(5)] (4), for any other authorization issued in accordance with ORS
42 196.800 to 196.905 or to resolve a violation of ORS 196.800 to 196.905.

43 (3) Credits from a freshwater mitigation bank may be used only as described in subsection (2)
44 of this section for permits, authorizations or resolutions of violations approved within the service
45 area of the mitigation bank, consistent with the mitigation bank instrument, unless the Director of

1 the Department of State Lands determines, in exceptional circumstances, that it is environmentally
2 preferable to exceed this limitation.

3 (4) Credits from an estuarine mitigation bank may be used only as described in subsection (2)
4 of this section for permits, authorizations or resolutions of violations approved within the same
5 estuarine ecological system.

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

7 (a) Has taken actions sufficient to establish hydrological function of the mitigation bank site;

8 (b) Has conducted other creation, restoration and enhancement actions to establish other
9 wetland functions and values at the mitigation bank site; and

10 (c) Evaluated the results of the actions and determined that a high probability exists that the
11 wetland functions and values of the mitigation bank site are equal to or greater than the functions
12 and the values of the wetland area to be damaged or destroyed.

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

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

18 (8) The director annually shall:

19 (a) Evaluate the wetlands functions and values created within each wetland mitigation bank site;
20 and

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

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

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

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

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

30 (b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently
31 similar in wetland functions and values to the wetland area to be damaged or destroyed.

32 **SECTION 23.** ORS 196.643 is amended to read:

33 196.643. A person who provides off-site compensatory wetland mitigation in order to comply with
34 a condition imposed on a permit in accordance with ORS 196.825 [(5)] (4), an authorization issued
35 in accordance with ORS 196.800 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905
36 may make a payment for credits to an approved mitigation bank with available credits, or to the
37 Oregon Wetlands Mitigation Bank Revolving Fund Account, if credits from a mitigation bank are
38 not available. If the person is making a payment to the Oregon Wetlands Mitigation Bank Revolving
39 Fund Account, the payment shall be equal to the average cost of credits available from all active
40 mitigation banks in the state.

41 **SECTION 24.** The amendments to ORS 196.620, 196.643, 196.682, 196.686, 196.692, 196.800,
42 196.810, 196.815, 196.825, 196.850 and 196.865 by sections 3 to 8, 10 to 15, 17, 18, 22 and 23 of this
43 2005 Act apply to permits applied for or permits renewed on or after the effective date of this
44 2005 Act.

45 **SECTION 25.** This 2005 Act being necessary for the immediate preservation of the public

1 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
2 **on July 1, 2005.**

3
