

House Bill 2915

Sponsored by Representative JENSON; Representative RICHARDSON, Senator BEYER

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**.

Repeals statutory changes made to enable Department of State Lands to obtain federal authority to administer permits for discharge of dredge or fill materials under section 404 of Federal Water Pollution Control Act.

A BILL FOR AN ACT

1
2 Relating to permitting authority of the Department of State Lands; amending ORS 196.800, 196.810,
3 196.825, 196.850, 196.895, 196.905, 196.990, 390.835, 421.628 and 459.047; and repealing sections
4 11, 12, 13 and 14, chapter 516, Oregon Laws 2001.

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

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

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

13 (2) "Department" means the Department of State Lands.

14 (3) "Director" means the Director of the Department of State Lands.

15 (4) "Estuary" means a body of water semienclosed by land and connected with the open ocean
16 within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes
17 all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head
18 of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

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

21 (6) "General authorization" means a rule adopted by the director authorizing, without a permit
22 from the department, a category of activities involving removal or fill, or both, on a statewide or
23 other geographic basis.

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

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

28 (9) "Material" means rock, gravel, sand, silt and other inorganic substances removed from wa-
29 ters of this state and any materials, organic or inorganic, used to fill waters of this state.

30 (10) "Mitigation" means the reduction of adverse effects of a proposed project by considering,
31 in the following order:

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) Avoiding the impact altogether by not taking a certain action or parts of an action;
- 2 (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- 3 (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- 4 (d) Reducing or eliminating the impact over time by preservation and maintenance operations
- 5 during the life of the action by monitoring and taking appropriate corrective measures; and
- 6 (e) Compensating for the impact by replacing or providing comparable substitute wetland or
- 7 water resources.

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

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

12 (13) "Removal" means the taking of **more than 50 cubic yards or the equivalent weight in**
 13 **tons of** material in any waters of this state **in any calendar year**; or the movement by artificial
 14 means of **an equivalent amount of material on or** within the bed of such waters, including channel
 15 relocation.

16 (14) "Water resources" includes not only water itself but also aquatic life and habitats therein
 17 and all other natural resources in and under the waters of this state.

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

25 (16) "Wetland conservation plan" means a written plan providing for wetland management con-
 26 taining a detailed and comprehensive statement of policies, standards and criteria to guide public
 27 and private uses and protection of wetlands, waters and related adjacent uplands and which has
 28 specific implementing measures and which apply to designated geographic areas of the State of
 29 Oregon.

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

33 **SECTION 2.** ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, and section
 34 97, chapter 14, Oregon Laws 2003, is amended to read:

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

40 **(b) Notwithstanding the permit requirements of this section and notwithstanding the**
 41 **provisions of ORS 196.800 (5) and (13), if any removal or fill activity is proposed in essential**
 42 **indigenous anadromous salmonid habitat, except for those activities customarily associated**
 43 **with agriculture, a permit is required. "Essential indigenous anadromous salmonid habitat"**
 44 **as defined under this section shall be further defined and designated by rule by the Depart-**
 45 **ment of State Lands in consultation with the State Department of Fish and Wildlife and in**

1 **consultation with other affected parties.**

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

10 [(c)] (d) A permit is not required under paragraph [(a)] (b) of this subsection for construction
11 or maintenance of fish passage and fish screening structures [associated with irrigation ditches or the
12 maintenance of drainage ditches] that are constructed, operated or maintained under ORS 498.311,
13 498.316, 498.326 or 509.600 to 509.645.

14 [(d)] (e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

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

16 **(A) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry**
17 **gravel bar.**

18 **(B) "Essential indigenous anadromous salmonid habitat" means the habitat that is nec-**
19 **essary to prevent the depletion of indigenous anadromous salmonid species during their life**
20 **history stages of spawning and rearing.**

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

24 **(D) "Prospecting" means searching or exploring for samples of gold, silver or other pre-**
25 **cious minerals, using nonmotorized methods, from among small quantities of aggregate.**

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

29 (2) A governmental body may not issue a lease or permit contrary or in opposition to the con-
30 ditions set out in the permit issued under ORS 196.600 to 196.905.

31 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit
32 or lease with any governmental body entered into before September 13, 1967. However, a contract,
33 permit or lease may not be renewed or extended on or after September 13, 1967, unless the person
34 removing the material has obtained a permit under ORS 196.600 to 196.905.

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

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

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

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

45 [(5) As used in this section:]

1 *[(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel*
 2 *bar.]*

3 *[(b) "Prospecting" means searching or exploring for samples of gold, silver or other precious min-*
 4 *erals, using nonmotorized methods, from among small quantities of aggregate.]*

5 *[(c) "Wet perimeter" means the area of the stream that is under water or is exposed as a nonveg-*
 6 *etated dry gravel bar island surrounded on all sides by actively moving water at the time the activity*
 7 *occurs.]*

8 **SECTION 3.** ORS 196.825, as amended by section 3, chapter 516, Oregon Laws 2001, section 10,
 9 chapter 253, Oregon Laws 2003, and section 18a, chapter 738, Oregon Laws 2003, is amended to 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 di-
 12 rector determines that the removal described in the application is consistent with the protection,
 13 conservation and best use of the water resources of this state as specified in ORS ~~[196.600 to~~
 14 ~~196.905]~~ **196.805**.

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) Would not unreasonably interfere with the paramount policy of this state to preserve the use*
 18 *of its waters for navigation, fishing and public recreation; and]*

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

20 **(2) The director shall issue a permit applied for under ORS 196.815 for filling waters of**
 21 **this state if the director determines that the proposed fill would not unreasonably interfere**
 22 **with the paramount policy of this state to preserve the use of its waters for navigation,**
 23 **fishing and public recreation.**

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

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

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

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

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

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

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

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

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

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

44 (4) The director may issue a permit for a substantial fill in an estuary for a nonwater dependent
 45 use only if the fill is for a public use and would satisfy a public need that outweighs harm to navi-

1 gation, fishery and recreation and if the proposed fill meets all other criteria contained in ORS
 2 196.600 to 196.905.

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

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

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

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

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

- 36 (A) An extension of time is granted under subsection (9)(b) of this section; or
- 37 (B) The applicant and the director agree to a longer time period.

38 (8) Permits issued under this section shall be in lieu of any permit that might be required for
 39 the same operation under ORS 164.775, 164.785, 468.010, 468.030 to 468.045, 468.055, 468.060, 468.075,
 40 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

- 41 (a) The operation is that for which the permit is issued; and
- 42 (b) The standards for granting such permits are substantially the same as those established
 43 pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468B.005 to
 44 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

45 (9)(a) Any agency or other unit of government requested by the director to comment on an ap-

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

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

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

10 (11) As used in this section:

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

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

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

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

18 (C) The fee required under ORS 196.815;

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

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

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

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

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

30 **SECTION 4.** ORS 196.850, as amended by section 4, chapter 516, Oregon Laws 2001, and section
31 12, chapter 253, Oregon Laws 2003, is amended to read:

32 196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
33 general authorization for removal of material from the bed or banks or the filling of any waters of
34 the state without a permit from the department if the department finds that those activities subject
35 to the general authorization are substantially similar in nature and would cause only minimal indi-
36 vidual and cumulative environmental impacts, and would not result in long-term harm to water re-
37 sources of the state. The department shall condition any such general authorization upon actions
38 necessary to minimize environmental impacts.

39 (2) The department shall provide notice of any proposed general authorization to affected federal
40 and state agencies, local governments and the public. The notice shall include:

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

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

43 (3) Any person proposing to conduct an action under a general authorization shall notify the
44 department in writing prior to conducting the action. [*The person may not commence the action until*
45 *the person receives a letter of authorization from the department.*]

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

3 *[(a) Involves less than 50 cubic yards of material;]*

4 *[(b) Will be conducted during periods that minimize adverse effects to fish and wildlife in accord-*
 5 *ance with guidance provided by the State Department of Fish and Wildlife;]*

6 *[(c) Will not dam or divert a waterway in a manner that obstructs fish passage or vessel naviga-*
 7 *tion; and]*

8 *[(d) Will not violate water quality standards as established by the Department of Environmental*
 9 *Quality.]*

10 *[(5)] (4)* The Department of State Lands shall amend or rescind any general authorization upon
 11 a determination that the activities conducted under the authorization have resulted in or would re-
 12 sult in more than minimal environmental impacts or long-term harm to the water resources of this
 13 state.

14 *[(6)] (5)* The department shall review each general authorization adopted pursuant to this section
 15 every five years. The review shall include public notice and opportunity for public hearing. After
 16 such review, the department may either modify, reissue or rescind the general authorization.

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

21 **SECTION 5.** ORS 196.895, as amended by section 5, chapter 516, Oregon Laws 2001, is amended
 22 to read:

23 196.895. (1) *[Except as provided in subsection (4) of this section,]* Civil penalties under ORS
 24 196.890 shall be imposed as provided in ORS 183.745.

25 (2) The provisions of this section are in addition to and not in lieu of any other penalty or
 26 sanction provided by law. An action taken by the Director of the Department of State Lands under
 27 this section may be joined by the director with any other action taken against the same person
 28 under ORS 196.860 (1)(f).

29 (3) Any civil penalty recovered under this section shall be deposited in the Common School Fund
 30 for use by the Department of State Lands in administration of ORS 196.600 to 196.905, 196.990 and
 31 541.990 and as otherwise required by law.

32 *[(4) Notwithstanding any provision of ORS 183.745, any person having an interest that is adversely*
 33 *affected or aggrieved by an alleged violation for which civil penalties are imposed under ORS 196.890*
 34 *may intervene in a contested case proceeding pertaining to the imposition of civil penalties under this*
 35 *section.]*

36 **SECTION 6.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, and section
 37 13, chapter 253, Oregon Laws 2003, is amended to read:

38 196.905. *[(1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit under*
 39 *ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters of this*
 40 *state when:]*

41 *[(a) The fill or removal is a part of an activity whose purpose is to bring an area of state waters*
 42 *into a use to which it was not previously subject; and]*

43 *[(b)(A) The flow or circulation of the waters of this state may be impaired; or]*

44 *[(B) The reach of the waters may be reduced.]*

45 *[(2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks or*

1 *filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:]*

2 *[(a) Such waterway or portion is situated within forestland; and]*

3 *[(b) Such removal or filling is directly connected with a forest management practice conducted in*
4 *accordance with ORS 527.610 to 527.770, 527.990 and 527.992.]*

5 *[(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted wetlands*
6 *for normal farming and ranching activities such as plowing, grazing, seeding, cultivating, conventional*
7 *crop rotation, harvesting for the production of food and fiber, upland soil and water conservation*
8 *practices or reestablishment of crops under federal conservation reserve program provisions.]*

9 *[(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the following*
10 *activities on exclusive farm use zoned lands:]*

11 *[(a) Drainage or maintenance of farm or stock ponds;]*

12 *[(b) Subsurface drainage, by deep ripping, tiling or moling, on converted wetlands;]*

13 *[(c) Maintenance of farm roads, provided that:]*

14 *[(A) The farm roads are constructed and maintained in accordance with construction practices de-*
15 *signed to minimize any adverse effects to the aquatic environment;]*

16 *[(B) Borrow material for farm road maintenance does not come from waters of this state unless*
17 *authorized by the Department of State Lands; and]*

18 *[(C) Maintenance activities are confined to the scope of construction for the original project; and]*

19 *[(d) Any activity described as a farm use in ORS 215.203 that is conducted on prior converted*
20 *cropland as described in subsection (10)(a) of this section, so long as agricultural management of the*
21 *land has not been abandoned for five or more years.]*

22 *[(5) The exemption in subsections (3) and (4) of this section may not apply to any fill or removal*
23 *which involves changing an area of wetlands or converted wetlands to a nonfarm use.]*

24 *[(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance*
25 *or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches,*
26 *irrigation ditches and tile drain systems, provided that:]*

27 *[(a) The structure was serviceable within the past five years; and]*

28 *[(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other*
29 *waters of this state to a greater extent than the wetlands or waters of this state were affected as a result*
30 *of the original construction of those structures.]*

31 *[(7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams*
32 *constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the fol-*
33 *lowing conditions are satisfied:]*

34 *[(a) The removal or filling is conducted during periods that minimize adverse effects to fish and*
35 *wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;]*

36 *[(b) The removal or filling does not jeopardize a threatened or endangered species or adversely*
37 *modify or destroy the habitat of a threatened or endangered species listed under federal or state law;*
38 *and]*

39 *[(c) Temporary fills are removed in their entirety and the area is restored to its approximate ori-*
40 *ginal elevation.]*

41 *[(8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance, in-*
42 *cluding emergency reconstruction of recently damaged parts, of currently serviceable roads or trans-*
43 *portation structures such as groins and riprap protecting roads, causeways and bridge abutments or*
44 *approaches.]*

45 *[(9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance*

1 of access roads constructed to move mining equipment, subject to the following conditions:]

2 [(a) The access roads are constructed and maintained in accordance with construction practices
3 that minimize adverse effects to the aquatic environment;]

4 [(b) Borrow material for access road maintenance does not come from waters of this state unless
5 authorized by the Department of State Lands; and]

6 [(c) Maintenance activities are confined to the scope of construction for the original project.]

7 [(10) For the purposes of this section:]

8 [(a) "Converted wetland" means:]

9 [(A) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled
10 or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose
11 of producing an agricultural product and are managed for that purpose; or]

12 [(B) Those areas that the Natural Resources Conservation Service of the United States Department
13 of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetlands, so
14 long as agricultural management of the land has not been abandoned for five or more years.]

15 [(b) "Harvesting" means physically removing crops or other agricultural products.]

16 [(c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade
17 plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil to
18 prepare it for planting crops or other agricultural products. "Plowing" does not include:]

19 [(A) The redistribution of soil, rock, sand or other surface materials in a manner that changes
20 areas of waters of this state into dry land; or]

21 [(B) Rock crushing activities that result in the loss of natural drainage characteristics, the re-
22 duction of water storage and recharge capability, or the overburdening of natural water filtration ca-
23 pacity.]

24 [(d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other agri-
25 cultural products.]

26 **(1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this state
27 for the purpose of constructing, operating and maintaining dams or other diversions for
28 which permits or certificates have been or shall be issued under ORS chapter 537 or 539 and
29 for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to
30 543.610.**

31 **(2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or
32 banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in
33 this state, if:**

34 **(a) Such waterway or portion is situated within forestland; and**

35 **(b) Such removal or filling is directly connected with a forest management practice con-
36 ducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.**

37 **(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted
38 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, cul-
39 tivating, conventional crop rotation, harvesting for the production of food and fiber, upland
40 soil and water conservation practices or reestablishment of crops under federal conservation
41 reserve program provisions.**

42 **(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the fol-
43 lowing activities on exclusive farm use zoned lands:**

44 **(a) Drainage or maintenance of farm or stock ponds;**

45 **(b) Maintenance of farm roads in such a manner as to not significantly adversely affect**

1 wetlands;

2 (c) Subsurface drainage, by deep ripping, tiling or moling, on converted wetlands; and

3 (d) Any activity described as a farm use in ORS 215.203 that is conducted on prior con-
4 verted cropland as described in subsection (8) of this section, as long as agricultural man-
5 agement of the land has not been abandoned for five or more years.

6 (5) The exemption in subsections (3) and (4) of this section may not apply to any fill or
7 removal which involves changing an area of wetlands to a nonfarm use.

8 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the main-
9 tenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates,
10 drainage ditches, irrigation ditches and tile drain systems, provided that:

11 (a) The structure was serviceable within the past five years; and

12 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands
13 or other waters of this state to a greater extent than the wetlands or waters of this state
14 were affected as a result of the original construction of those structures.

15 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for mainte-
16 nance, including emergency reconstruction of recently damaged parts, of currently service-
17 able roads or transportation structures such as groins and riprap protecting roads,
18 causeways and bridge abutments or approaches.

19 (8) For the purposes of this section, "converted wetland":

20 (a) Means wetlands that on or before June 30, 1989, have been diked, drained, dredged,
21 filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of
22 water for the purpose of enabling production of an agricultural commodity and are managed
23 for that purpose; and

24 (b) Includes land that the Natural Resources Conservation Service of the United States
25 Department of Agriculture, or its successor agency, certifies as prior converted cropland or
26 farmed wetlands, so long as agricultural management of the land has not been abandoned for
27 five or more years.

28 **SECTION 7.** ORS 196.990, as amended by section 7, chapter 516, Oregon Laws 2001, is amended
29 to read:

30 196.990. [(1) A person commits the offense of unlawful removal from or filling of waters of this state
31 if the person knowingly violates ORS 196.810 or an order issued thereunder, or any rule or condition
32 of a permit issued under ORS 196.600 to 196.905.]

33 [(2) Notwithstanding ORS 161.515, unlawful removal from or filling of waters of this state is an
34 offense punishable by a fine of up to \$10,000 per day of violation.] **Violation of ORS 196.810 is a
35 misdemeanor.**

36 **SECTION 8.** ORS 390.835, as amended by section 8, chapter 516, Oregon Laws 2001, is amended
37 to read:

38 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways
39 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained
40 in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water
41 impoundment facility may not be constructed on waters within scenic waterways. A water diversion
42 facility may not be constructed or used except by right previously established or as permitted by the
43 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in
44 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to
45 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-

1 section.

2 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of
3 scenic waterways for purposes other than recreational prospecting not requiring a permit shall be
4 prohibited, except as permitted by the Director of the Department of State Lands upon a finding that
5 such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic
6 waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and
7 196.840 to 196.870 for removal of material from the beds and banks and filling of any waters of this
8 state. The Director of the Department of State Lands shall administer and enforce the provisions
9 of this subsection.

10 (3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands
11 may issue a temporary permit for the removal, filling or alteration of the beds or banks within a
12 scenic waterway. The temporary permit shall include conditions developed after consultation with
13 the State Department of Fish and Wildlife and the State Parks and Recreation Department.

14 (b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary
15 to prevent irreparable harm, injury or damage to persons or property.

16 (4) Any person adversely affected or aggrieved by the grant or denial of a permit under sub-
17 section (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS
18 196.835.

19 (5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Com-
20 mission to construct facilities or make improvements to facilitate the passage or propagation of fish
21 or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805
22 to 390.925 affects the authority of the Water Resources Commission to construct and maintain
23 stream gauge stations and other facilities related to the commission's duties in administration of the
24 water laws.

25 (6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Com-
26 mission may issue a water right for human consumption not to exceed 0.005 cubic feet per second
27 per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second
28 per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if
29 the Water Resources Commission makes the following findings:

30 (a) That issuing the water right does not significantly impair the free-flowing character of these
31 waters in quantities necessary for recreation, fish and wildlife.

32 (b) That issuing the water right is consistent with provisions pertaining to water appropriation
33 and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

34 (c) That construction, operation and maintenance of the diversion system will be carried out in
35 a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

36 (d) If the water right is for human consumption, an additional finding that:

37 (A) The applicant cannot reasonably obtain water from any other source;

38 (B) Denial of the water right would result in loss of reasonable expectations for use of the
39 property; and

40 (C) The system installed to divert water shall include monitoring equipment to permit water use
41 measurement and reporting.

42 (e) If the water right is for livestock consumption, an additional finding that:

43 (A) The right is necessary to prevent the livestock from watering in or along the stream bed;

44 (B) The applicant cannot reasonably obtain water from any other source; and

45 (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

1 (7) In making the findings required under subsection (6) of this section, the Water Resources
 2 Commission shall consider the existing or potential cumulative impacts of issuing the water right.

3 (8) The Water Resources Commission may not allow human consumption and livestock uses au-
 4 thorized under subsection (6) of this section in excess of a combined cumulative total of one percent
 5 of the average daily flow or one cubic foot per second, whichever is less, unless:

6 (a) The Water Resources Commission, the State Parks and Recreation Department, the State
 7 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
 8 State Lands unanimously agree to exceed that amount; and

9 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
 10 ters in quantities necessary for recreation, fish and wildlife.

11 (9)(a) The provisions of this section do not apply to a water right application for the use of
 12 ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director
 13 based on a preponderance of evidence that the use of ground water will measurably reduce the
 14 surface water flows necessary to maintain the free-flowing character of a scenic waterway in quan-
 15 tities necessary for recreation, fish and wildlife.

16 (b) The Water Resources Department shall review every application for the use of ground water
 17 to determine whether to make the finding specified in paragraph (a) of this subsection. The finding
 18 shall be based upon the application of generally accepted hydrogeologic methods using relevant and
 19 available field information concerning the proposed use.

20 (c) In making the determination required by paragraph (a) of this subsection, the Water Re-
 21 sources Department shall consider the timing of projected impacts of the proposed use in relation
 22 to other factors, including but not limited to: Changing climate, recharge, incidental precipitation,
 23 out-of-stream appropriations and return flows.

24 (d) If the Water Resources Director makes the finding specified in paragraph (a) of this sub-
 25 section, the Water Resources Director shall issue an order denying the application unless:

26 (A) Mitigation is provided in accordance with subsection (10) of this section; or

27 (B) The applicant submits evidence to overcome the finding under paragraph (a) of this sub-
 28 section.

29 (e) Except as provided under subsection (13) of this section, if the Water Resources Director
 30 does not make the finding specified in paragraph (a) of this subsection, the Water Resources Direc-
 31 tor shall issue an order approving the application if the application otherwise meets the require-
 32 ments of ORS 537.505 to 537.795.

33 (f) A protest of any order issued under this subsection may be filed in the same manner as a
 34 protest on any application for a right to appropriate ground water.

35 (g) Each water right permit and certificate for appropriation of ground water issued after July
 36 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be condi-
 37 tioned to allow the regulation of the use if analysis of data available after the permit or certificate
 38 is issued discloses that the appropriation will measurably reduce the surface water flows necessary
 39 to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation,
 40 fish and wildlife in effect as of the priority date of the right or as those quantities may be subse-
 41 quently reduced.

42 (h) This subsection does not limit the use of ground water for a use exempted under ORS
 43 537.545.

44 (10) The Water Resources Commission or Water Resources Director shall consider mitigation
 45 measures and may include mitigation measures as conditions in any water right permit or certificate

1 to ensure the maintenance of the free-flowing character of the scenic waterway in quantities nec-
2 essary for recreation, fish and wildlife.

3 (11) The Water Resources Commission and the Water Resources Director shall carry out their
4 responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways
5 in conformity with the provisions of this section.

6 (12) As used in this section, “measurably reduce” means that the use authorized under sub-
7 section (9) of this section will individually or cumulatively reduce surface water flows within the
8 scenic waterway in excess of a combined cumulative total of one percent of the average daily flow
9 or one cubic foot per second, whichever is less, unless:

10 (a) The Water Resources Department, the State Parks and Recreation Department, the State
11 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
12 State Lands unanimously agree to exceed that amount; and

13 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
14 ters in quantities necessary for recreation, fish and wildlife.

15 (13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway
16 in amounts up to but not exceeding the amounts described in subsection (12) of this section, the
17 Water Resources Director shall find:

18 (a) That the appropriation will not significantly impair the free-flowing character of these waters
19 in quantities necessary for recreation, fish and wildlife.

20 (b) That the appropriation is consistent with provisions pertaining to water appropriations and
21 water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

22 (c) That construction, operation and maintenance of the appropriation will be carried out in a
23 manner consistent with the purposes set forth in ORS 390.805 to 390.925.

24 (14) Placer mining is not permitted on waters within scenic waterways, other than recreational
25 placer mining.

26 (15) A person may not be required to obtain a permit for recreational prospecting [*or other*
27 *nonmotorized recreational activity*] resulting in the fill, removal or other alteration of less than one
28 cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards
29 of material from within the bed or wet perimeter of any single scenic waterway in a single year.
30 Recreational prospecting shall not occur at any site where fish eggs are present.

31 (16) This section does not exempt recreational placer mining on a scenic waterway, other than
32 recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800
33 to 196.825 and 196.840 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.840
34 to 196.870.

35 (17) Recreational placer mining, **other than recreational prospecting not requiring a permit,**
36 may not:

37 (a) Dam or divert a waterway or obstruct fish passage;

38 (b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the
39 wet perimeter;

40 (c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter
41 other than movement by hand and nonmotorized equipment;

42 (d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, re-
43 gardless of their location;

44 (e) Include excavation from the streambank;

45 (f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon

1 leaving the site;

2 (g) Include operation of a suction dredge without a suction dredge waste discharge permit from
 3 the Department of Environmental Quality including, but not limited to, a prohibition against dredg-
 4 ing during periods when fish eggs could be in the dredging site gravel;

5 (h) Be conducted on federal lands except as allowed by agencies of the federal government;

6 (i) Impede boating;

7 (j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a
 8 residence or within 500 feet of a campground except within a federally designated recreational
 9 mining site; or

10 (k) Include operation of a dredge within the marked or posted swimming area of a designated
 11 campground or day use area except within a federally designated recreational mining site.

12 (18) As used in this section:

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

15 (b) "Prospecting" means to search or explore for samples of gold, silver or other precious min-
 16 erals, using nonmotorized methods, from among small quantities of aggregate.

17 (c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equip-
 18 ment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding
 19 four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-
 20 installed noise reduction standards. "Recreational placer mining" does not include recreational
 21 prospecting that does not require a permit.

22 (d) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a non-
 23 vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the
 24 activity occurs.

25 **SECTION 9.** ORS 421.628, as amended by section 9, chapter 516, Oregon Laws 2001, and section
 26 45, chapter 598, Oregon Laws 2003, is amended to read:

27 421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286 or any other
 28 provision of law, including but not limited to statutes, ordinances, regulations and charter pro-
 29 visions, [*and except for permit decisions delegated by the federal government to the Department of State*
 30 *Lands,*] the decisions of the Corrections Facilities Siting Authority, if approved by the Governor,
 31 shall bind the state and all counties, cities and political subdivisions in this state as to the approval
 32 of the sites and the construction and operation of the proposed corrections facilities. [*Except for*
 33 *those statutes and rules for which permit decisions have been delegated by the federal government to*
 34 *the Department of State Lands,*] All affected state agencies, counties, cities and political subdivisions
 35 shall issue the appropriate permits, licenses and certificates and enter into any intergovernmental
 36 agreements as necessary for construction and operation of the facilities, subject only to the condi-
 37 tions of the siting decisions.

38 (2) Each state or local governmental agency that issues a permit, license or certificate shall
 39 continue to exercise enforcement authority over the permit, license or certificate.

40 (3) Except as provided in subsections (4) to (16) of this section, nothing in ORS 421.611 to
 41 421.630 expands or alters the obligations of cities, counties and political subdivisions to pay for
 42 infrastructure improvements for the proposed corrections facilities.

43 (4) The Department of Corrections shall seek to obtain public services necessary for the con-
 44 struction and operation of corrections facilities from a public body providing such services. The
 45 department may not acquire or develop and furnish its own public services under this section that

1 could be provided by a public body unless the department concludes that the state can achieve sig-
2 nificant cost savings by doing so.

3 (5) Upon request of the Department of Corrections, a public body furnishing public services shall
4 make public services available to the department that are either necessary for the construction and
5 operation of a corrections facility or required by additions to or remodeling of a corrections facility
6 sited or constructed under ORS 421.611 to 421.630 or any other law. All rates, terms and conditions
7 of furnishing public services shall be just, fair and reasonable. A just, fair and reasonable rate shall
8 assure the public body the recovery of the additional costs of providing and maintaining the re-
9 quested service to the corrections facility, including, but not limited to, feasibility and design engi-
10 neering costs, and reasonable capacity replacement, but may not exceed the public body's actual
11 capital and operating expenses, including reasonable reserves charged to all ratepayers, for such
12 service. The public body's rates, terms and conditions shall be conclusively deemed to be just, fair
13 and reasonable if the department and public body so agree in writing.

14 (6) If the Department of Corrections and the public body cannot agree on the rates, terms and
15 conditions of furnishing necessary public services to a corrections facility, either the department or
16 the public body may deliver to the other a notice of request to mediate any disputed issues, includ-
17 ing, but not limited to, whether the department can achieve significant cost savings to the state by
18 acquiring or developing and furnishing its own public services. If either the department or the public
19 body requests mediation, the other shall participate in good faith in such mediation. Unless other-
20 wise agreed by the department and the public body, the mediation shall be concluded within 30 days
21 of delivery of the notice of request to mediate.

22 (7) If the mediation fails to resolve the issues in dispute, or if mediation is not requested by ei-
23 ther the Department of Corrections or the public body, the department and the public body may
24 agree to submit any disputed matters to arbitration. The arbitration may be either binding or non-
25 binding. If the department and the public body cannot agree on the selection of the arbitrator and
26 the arbitration rules and procedure, upon motion directed to the Court of Appeals, the Chief Judge
27 of the Court of Appeals shall select the arbitrator and decide the rules and procedure. The
28 arbitrator's decision and award shall be guided by the standards set forth in this section. The deci-
29 sion and award of the arbitrator shall be final and binding on the department and the public body
30 only if they agree to enter into binding arbitration prior to the initiation of the arbitration. If the
31 department and public body have agreed to binding arbitration of disputed issues, either the de-
32 partment or the public body, if dissatisfied with the arbitrator's decision and award, may file ex-
33 ceptions in the Court of Appeals within 21 days of the issuance of the decision and award.
34 Exceptions shall be limited to the causes set forth in ORS 36.705 (1)(a) to (d), and to the grounds for
35 modification or correction of an award under ORS 36.710. If any of the exceptions requires consid-
36 eration of facts that do not appear on the face of the arbitrator's decision and award or is not
37 stipulated to by the parties, the court may appoint a master to take evidence and make the neces-
38 sary factual findings. The Court of Appeals' decision shall be final and not subject to further review.

39 (8) If the Department of Corrections and the public body have submitted disputed matters to
40 nonbinding arbitration or if the department and public body have chosen not to submit disputed
41 matters to arbitration, the department shall issue a preliminary order to the public body that either
42 concludes that the state can achieve significant costs savings by acquiring or developing and fur-
43 nishing its own public services, or establishes the rates, terms and conditions upon which the public
44 body shall make necessary public services available to the department for the corrections facility.
45 The public body, no later than 15 days following the department's issuance of its preliminary order,

1 may contest the preliminary order by filing a written notice to that effect with the department. The
 2 preliminary order shall become final, binding and conclusive if the public body fails to request a
 3 hearing within the time permitted in this section.

4 (9) If a hearing is requested, the department shall provide the public body with an opportunity
 5 to be heard and shall issue its final order upon conclusion of the hearing. The department shall es-
 6 tablish procedures to regulate and provide for the nature and extent of the proofs and evidence and
 7 the method of taking and furnishing the same in order to afford the public body a reasonable op-
 8 portunity for a fair hearing. The procedures shall ensure that the public body has a reasonable op-
 9 portunity to place in the record the information upon which the public body relies as a basis for its
 10 position. The department's order shall be guided by the standards set forth in this section.

11 (10) Proceedings for review of the department's final order shall be instituted when the affected
 12 public body files a petition with the Court of Appeals that meets the following requirements:

13 (a) The petition shall be filed within 21 days of issuance of the final order on which the petition
 14 is based.

15 (b) The petitioner shall serve a copy of the petition by registered or certified mail upon the
 16 Department of Corrections and the Attorney General.

17 (11) Within 30 days after service of the petition, the department shall transmit to the Court of
 18 Appeals the original or a certified copy of the entire record and any findings that may have been
 19 made.

20 (12) The Court of Appeals shall review the final order of the Department of Corrections de novo
 21 on the record created before the department. The Court of Appeals' decision shall be final and not
 22 subject to further review.

23 (13) Proceedings for review in the Court of Appeals under this section shall be given priority
 24 over all other matters before the Court of Appeals.

25 (14) The Department of Corrections or other state agency is not required to make payments to
 26 the public body for necessary public services to a corrections facility in excess of funds that are
 27 legally available for such purposes.

28 (15) This section does not require a public body to furnish public services to the Department
 29 of Corrections for a corrections facility in the event that the Legislative Assembly fails to make
 30 funds available in an amount sufficient to pay the state's share of costs of such services as deter-
 31 mined under this section.

32 (16) As used in this section, "public services" means off-site infrastructure, including, but not
 33 limited to, sewer and water systems and service, and road improvements.

34 **SECTION 10.** ORS 459.047, as amended by section 10, chapter 516, Oregon Laws 2001, is
 35 amended to read:

36 459.047. Upon request by a city or county responsible for implementing a department approved
 37 solid waste management plan which identifies a need for a landfill, and subject to policy direction
 38 by the Environmental Quality Commission, the Department of Environmental Quality shall:

39 (1) Assist the local government unit in the establishment of the landfill including assisting in
 40 planning, location, acquisition, development and operation of the site.

41 (2) Locate a site and issue a solid waste disposal permit under ORS 459.205 to 459.385 for a
 42 landfill within the boundaries of the requesting local government unit. Subject to the conditions set
 43 forth in the permit [*and except for permit decisions delegated by the federal government to the De-*
 44 *partment of State Lands*], any permit for a landfill authorized by the Environmental Quality Com-
 45 mission under this subsection shall bind the state and all counties and cities and political

1 subdivisions in this state as to the approval of the site and the construction and operation of the
2 proposed facility. [*Except for those statutes and rules for which compliance decisions have been de-*
3 *legated by the federal government to the Department of State Lands,*] All affected state agencies,
4 counties, cities and political subdivisions shall issue the appropriate permits, licenses and certifi-
5 cates necessary to construction and operation of the landfill, subject only to condition of the site
6 certificate. Each state or local government agency that issues a permit, license or certificate shall
7 continue to exercise enforcement authority over such permit, license or certificate.

8 **SECTION 11. Sections 11, 12, 13 and 14, chapter 516, Oregon Laws 2001, are repealed.**

9