

# Senate Bill 711

Sponsored by Senator KRUSE

## 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**.

Transfers functions relating to management of wetlands, removal of materials from beds or banks of waters of state and filling of waters of state from Department of State Lands to State Department of Agriculture.

## A BILL FOR AN ACT

1  
2 Relating to transfer of agency functions; creating new provisions; and amending ORS 183.457,  
3 183.700, 196.600, 196.610, 196.615, 196.620, 196.623, 196.625, 196.630, 196.635, 196.640, 196.645,  
4 196.650, 196.655, 196.674, 196.676, 196.678, 196.681, 196.682, 196.684, 196.686, 196.687, 196.688,  
5 196.692, 196.795, 196.800, 196.805, 196.810, 196.815, 196.820, 196.825, 196.830, 196.835, 196.845,  
6 196.850, 196.860, 196.865, 196.870, 196.875, 196.880, 196.885, 196.890, 196.895, 196.900, 196.905,  
7 196.910, 197.279, 215.418, 227.350, 273.141, 274.525, 274.550, 284.585, 293.701, 390.725, 390.835,  
8 421.628, 459.047, 527.710, 536.007, 536.025, 536.026 and 537.025 and section 2, chapter 45, Oregon  
9 Laws 1989, sections 3 and 4, chapter 499, Oregon Laws 2001, sections 11, 12 and 14, chapter 516,  
10 Oregon Laws 2001, and sections 15 and 20, chapter 800, Oregon Laws 2003.

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

12 **SECTION 1. The duties, functions and powers of the Department of State Lands relating**  
13 **to the management of wetlands, removal of materials from the beds or banks of any waters**  
14 **of this state and filling of the waters of this state are imposed upon, transferred to and**  
15 **vested in the State Department of Agriculture.**

16 **SECTION 2. (1) The Director of the Department of State Lands shall:**

17 **(a) Deliver to the State Department of Agriculture all records and property within the**  
18 **jurisdiction of the director that relate to the duties, functions and powers transferred by**  
19 **section 1 of this 2005 Act; and**

20 **(b) Transfer to the State Department of Agriculture those employees engaged primarily**  
21 **in the exercise of the duties, functions and powers transferred by section 1 of this 2005 Act.**

22 **(2) The Director of Agriculture shall take possession of the records and property, and**  
23 **shall take charge of the employees and employ them in the exercise of the duties, functions**  
24 **and powers transferred by section 1 of this 2005 Act, without reduction of compensation but**  
25 **subject to change or termination of employment or compensation as provided by law.**

26 **(3) The Governor shall resolve any dispute between the Department of State Lands and**  
27 **the State Department of Agriculture relating to transfers of records, property and employees**  
28 **under this section, and the Governor's decision is final.**

29 **SECTION 3. (1) The unexpended balances of amounts authorized to be expended by the**  
30 **Department of State Lands for the biennium beginning July 1, 2005, from revenues dedicated,**  
31 **continuously appropriated, appropriated or otherwise made available for the purpose of ad-**

**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 ministering and enforcing the duties, functions and powers transferred by section 1 of this  
2 2005 Act are appropriated and transferred to and are available for expenditure by the State  
3 Department of Agriculture for the biennium beginning July 1, 2005, for the purpose of ad-  
4 ministering and enforcing the duties, functions and powers transferred by section 1 of this  
5 2005 Act.

6 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
7 expenditures by the Department of State Lands remain applicable to expenditures by the  
8 State Department of Agriculture under this section.

9 **SECTION 4.** The transfer of duties, functions and powers to the State Department of  
10 Agriculture by section 1 of this 2005 Act does not affect any action, proceeding or prose-  
11 cution involving or with respect to such duties, functions and powers begun before and  
12 pending at the time of the transfer, except that the State Department of Agriculture is  
13 substituted for the Department of State Lands in the action, proceeding or prosecution.

14 **SECTION 5.** (1) Nothing in sections 1 to 7 of this 2005 Act relieves a person of a liability,  
15 duty or obligation accruing under or with respect to the duties, functions and powers  
16 transferred by section 1 of this 2005 Act. The State Department of Agriculture may under-  
17 take the collection or enforcement of any such liability, duty or obligation.

18 (2) The rights and obligations of the Department of State Lands legally incurred under  
19 contracts, leases and business transactions executed, entered into or begun before the op-  
20 erative date of section 1 of this 2005 Act accruing under or with respect to the duties, func-  
21 tions and powers transferred by section 1 of this 2005 Act are transferred to the State  
22 Department of Agriculture. For the purpose of succession to these rights and obligations, the  
23 State Department of Agriculture is a continuation of the Department of State Lands and not  
24 a new authority.

25 **SECTION 6.** Notwithstanding the transfer of duties, functions and powers by section 1  
26 of this 2005 Act, the rules of the Department of State Lands with respect to such duties,  
27 functions or powers that are in effect on the operative date of section 1 of this 2005 Act  
28 continue in effect until superseded or repealed by rules of the State Department of Agricul-  
29 ture. References in such rules of the Department of State Lands to the Department of State  
30 Lands or an officer or employee of the Department of State Lands are considered to be ref-  
31 erences to the State Department of Agriculture or an officer or employee of the State De-  
32 partment of Agriculture.

33 **SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly  
34 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in  
35 the context of the duties, functions and powers transferred by section 1 of this 2005 Act,  
36 reference is made to the Department of State Lands, or an officer or employee of the De-  
37 partment of State Lands, whose duties, functions or powers are transferred by section 1 of  
38 this 2005 Act, the reference is considered to be a reference to the State Department of Ag-  
39 riculture or an officer or employee of the State Department of Agriculture who by this 2005  
40 Act is charged with carrying out such duties, functions and powers.

41 **SECTION 8.** For the purpose of harmonizing and clarifying statute sections published in  
42 Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the  
43 Department of State Lands or its officers, wherever they occur in Oregon Revised Statutes  
44 in reference to the management of wetlands, removal of materials from the beds or banks  
45 of the waters of the state or filling of the waters of the state, words designating the State

1 **Department of Agriculture, as appropriate.**

2 **SECTION 9.** ORS 183.457 is amended to read:

3 183.457. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, [*and unless otherwise authorized by an-*  
4 *other law,*] a person participating in a contested case hearing conducted by an agency described in  
5 this subsection may be represented by an attorney or by an authorized representative subject to the  
6 provisions of subsection (2) of this section. The Attorney General shall prepare model rules for  
7 proceedings with lay representation that do not have the effect of precluding lay representation.  
8 No rule adopted by a state agency shall have the effect of precluding lay representation. The  
9 agencies before which an authorized representative may appear are:

10 (a) The State Landscape Contractors Board in the administration of the Landscape Contractors  
11 Law.

12 (b) The State Department of Energy and the Energy Facility Siting Council.

13 (c) The Environmental Quality Commission and the Department of Environmental Quality.

14 (d) The Department of Consumer and Business Services for proceedings in which an insured  
15 appears pursuant to ORS 737.505.

16 (e) The Department of Consumer and Business Services and any other agency for the purpose  
17 of proceedings to enforce the state building code, as defined by ORS 455.010.

18 (f) The State Fire Marshal in the Department of State Police.

19 [(g) *The Department of State Lands for proceedings regarding the issuance or denial of fill or re-*  
20 *moval permits under ORS 196.800 to 196.825.*]

21 [(h)] (g) The Public Utility Commission.

22 [(i)] (h) The Water Resources Commission and the Water Resources Department.

23 [(j)] (i) The Land Conservation and Development Commission and the Department of Land Con-  
24 servation and Development.

25 [(k)] (j) The State Department of Agriculture, for purposes of hearings under ORS 215.705 **and**  
26 **for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800**  
27 **to 196.825.**

28 [(L)] (k) The Bureau of Labor and Industries.

29 (2) A person participating in a contested case hearing as provided in subsection (1) of this sec-  
30 tion may appear by an authorized representative if:

31 (a) The agency conducting the contested case hearing has determined that appearance of such  
32 a person by an authorized representative will not hinder the orderly and timely development of the  
33 record in the type of contested case hearing being conducted;

34 (b) The agency conducting the contested case hearing allows, by rule, authorized representatives  
35 to appear on behalf of such participants in the type of contested case hearing being conducted; and

36 (c) The officer presiding at the contested case hearing may exercise discretion to limit an au-  
37 thorized representative's presentation of evidence, examination and cross-examination of witnesses,  
38 or presentation of factual arguments to ensure the orderly and timely development of the hearing  
39 record, and shall not allow an authorized representative to present legal arguments except to the  
40 extent authorized under subsection (3) of this section.

41 (3) The officer presiding at a contested case hearing in which an authorized representative ap-  
42 pears under the provisions of this section may allow the authorized representative to present evi-  
43 dence, examine and cross-examine witnesses, and make arguments relating to the:

44 (a) Application of statutes and rules to the facts in the contested case;

45 (b) Actions taken by the agency in the past in similar situations;

- 1 (c) Literal meaning of the statutes or rules at issue in the contested case;
- 2 (d) Admissibility of evidence; and
- 3 (e) Proper procedures to be used in the contested case hearing.

4 (4) Upon judicial review, no limitation imposed by an agency presiding officer on the partic-  
 5 ipation of an authorized representative shall be the basis for reversal or remand of agency action  
 6 unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the  
 7 agency action.

8 (5) For the purposes of this section, “authorized representative” means a member of a partic-  
 9 ipating partnership, an authorized officer or regular employee of a participating corporation, asso-  
 10 ciation or organized group, or an authorized officer or employee of a participating governmental  
 11 authority other than a state agency.

12 **SECTION 10.** ORS 183.700 is amended to read:

13 183.700. (1) As used in this section and ORS 183.702, “permit” means an individual and  
 14 particularized license, permit, certificate, approval, registration or similar form of permission re-  
 15 quired by law to pursue any activity specified in this section, for which an agency must weigh in-  
 16 formation, make specific findings and make determinations on a case-by-case basis for each  
 17 applicant.

18 (2) The requirements of this section and ORS 183.702 apply to [*the following*] permits granted  
 19 by:

20 (a) The Department of Environmental Quality under ORS 448.415, 454.655, 454.695, 454.790,  
 21 454.800, 459.205, 465.315, 465.325, 466.140, 466.145, 466.706 to 466.882, 468A.040, 468A.310, 468B.035,  
 22 468B.040, 468B.045, 468B.050 and 468B.095.

23 [*b*] *The Department of State Lands under ORS 196.800 to 196.900 and 390.805 to 390.925.*]

24 [*c*] (b) The Water Resources Department under ORS chapters 537 and 540, except those permits  
 25 issued under ORS 537.747 to 537.765.

26 [*d*] (c) The State Department of Agriculture pursuant to ORS **196.800 to 196.900, 390.805 to**  
 27 **390.925**, 468B.200 to 468B.230 and 622.250.

28 [*e*] (d) The State Department of Fish and Wildlife pursuant to ORS 497.142, 497.218, 497.228,  
 29 497.238, 497.248, 497.252, 497.298, 497.308, 498.019, 498.279, 508.106, 508.300, 508.760, 508.775, 508.801,  
 30 508.840, 508.880, 508.926 and 509.140.

31 [*f*] (e) The Department of Transportation pursuant to ORS 374.312.

32 **SECTION 11.** ORS 196.600 is amended to read:

33 196.600. As used in ORS 196.600 to 196.655:

34 (1) “Compensatory wetland mitigation” means activities conducted by a permittee or third party  
 35 to create, restore or enhance wetland functional attributes to compensate for the adverse effects of  
 36 project development or to resolve violations of ORS 196.800 to 196.905.

37 (2) “Credit” means the measure of the increase in wetland functional attributes achieved at a  
 38 mitigation bank site.

39 (3) “Mitigation bank” means a wetland site, created, restored or enhanced in accordance with  
 40 ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts due to activities which oth-  
 41 erwise comply with the requirements of ORS 196.600 to 196.905.

42 (4) “Mitigation bank instrument” means the legally binding and enforceable agreement between  
 43 the [*Director of the Department of State Lands*] **Director of Agriculture** and a mitigation bank  
 44 sponsor that formally establishes the mitigation bank and stipulates the terms and conditions of the  
 45 mitigation bank’s construction, operation and long-term management.

1 (5) "Off-site compensatory wetland mitigation" means activities conducted away from the project  
2 site that restore, create or enhance wetland functional attributes in order to compensate for the  
3 adverse impacts to wetlands from project development.

4 (6) "On-site compensatory wetland mitigation" means activities conducted at the project site to  
5 restore, create or enhance wetland functional attributes in order to compensate for the adverse im-  
6 pacts to wetlands from project development.

7 (7) "Permit action" means activity under a specific removal or fill permit or other authorization  
8 requested or issued under ORS 196.600 to 196.905.

9 (8) "Service area" means the boundaries set forth in a mitigation bank instrument that include  
10 one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map -  
11 1974, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects  
12 from project developments. Service areas for mitigation banks are not mutually exclusive.

13 (9) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State  
14 Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act  
15 of 1965, as amended (16 U.S.C. 460-L et seq.).

16 **SECTION 12.** ORS 196.610 is amended to read:

17 196.610. Subject to approval by the State Land Board, the [*Director of the Department of State*  
18 *Lands*] **Director of Agriculture** may:

19 (1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to  
20 196.655.

21 (2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to protect  
22 sensitive or unique wetlands habitat.

23 (3) Pay costs incurred for alterations needed to create, restore or enhance wetland areas for  
24 purposes of carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to 196.905.

25 (4) Authorize payment of administrative, research or scientific monitoring expenses of the [*De-*  
26 *partment of State Lands*] **State Department of Agriculture** in carrying out the provisions of ORS  
27 196.600 to 196.655 or 196.800 to 196.905.

28 (5) Disburse funds received under the Federal Coastal Zone Management Act of 1972, as  
29 amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

30 (6) Receive funds under the Federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, for  
31 the voluntary acquisition of wetlands and interests therein according to the wetlands provisions of  
32 the Statewide Comprehensive Outdoor Recreation Plan. Funds received under the Federal Emer-  
33 gency Wetlands Resources Act of 1986, P.L. 99-645, shall be used for nonmitigation complementary  
34 purposes and programs of ORS 196.600 to 196.655.

35 **SECTION 13.** ORS 196.615 is amended to read:

36 196.615. (1) In accordance with the provisions of ORS 196.600 to 196.655, upon the approval of  
37 the State Land Board, the [*Director of the Department of State Lands*] **Director of Agriculture** shall  
38 initiate and implement a program for wetlands mitigation banks. The director shall encourage the  
39 development of and the expeditious approval of mitigation banks and other types of compensatory  
40 wetland mitigation.

41 (2) Subject to the approval of the State Land Board, the [*Department of State Lands*] **State De-**  
42 **partment of Agriculture** shall adopt, by rule, standards and criteria for the site selection process,  
43 operation and evaluation of mitigation banks. Criteria to be considered shall include but need not  
44 be limited to:

45 (a) Historical wetland trends, including the estimated rate of current and future losses of the

1 respective types of wetlands.

2 (b) The contributions of the wetlands to:

3 (A) Wildlife, migratory birds and resident species;

4 (B) Commercial and sport fisheries;

5 (C) Surface and ground water quality and quantity, and flood moderation;

6 (D) Outdoor recreation including enhancement of scenic waterways; and

7 (E) Scientific and research values.

8 (c) Regional economic needs.

9 (3) For each mitigation bank, the department shall establish a well-defined plan, including pre-  
 10 liminary objectives, inventory of resource values and an evaluation and monitoring program.

11 **SECTION 14.** ORS 196.620 is amended to read:

12 196.620. (1) For each mitigation bank, the [*Department of State Lands*] **State Department of**  
 13 **Agriculture** shall establish a system of resource values and credits.

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

17 (3) Credits from a freshwater mitigation bank may be used only as described in subsection (2)  
 18 of this section for permits, authorizations or resolutions of violations approved within the service  
 19 area of the mitigation bank, consistent with the mitigation bank instrument, unless the [*Director of*  
 20 *the Department of State Lands*] **Director of Agriculture** determines, in exceptional circumstances,  
 21 that it is environmentally preferable to exceed this limitation.

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

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

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

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

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

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

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

37 (8) The director annually shall:

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

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

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

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

45 (9) The director may not withdraw credits from the mitigation bank for a specific permit, au-

1 thORIZATION or resolution of a violation if the director determines that:

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

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

6 **SECTION 15.** ORS 196.623 is amended to read:

7 196.623. (1) The [*Department of State Lands*] **State Department of Agriculture** may approve a  
8 watershed enhancement program and certify the project as a wetlands mitigation bank under ORS  
9 196.600 to 196.655 if the watershed enhancement program complies with the rules adopted by the  
10 department under ORS 196.615 for certification of a program as a wetlands mitigation bank.

11 (2) A person, state agency, federal agency, federally recognized Indian tribe, watershed council  
12 or political subdivision in this state that owns land upon which is located a watershed enhancement  
13 program that qualifies as a wetlands mitigation bank under subsection (1) of this section may sell  
14 mitigation credit from the mitigation bank subject to ORS 196.600 to 196.655 and the rules of the  
15 [*Department of State Lands*] **State Department of Agriculture** adopted under ORS 196.600 to  
16 196.655.

17 **SECTION 16.** ORS 196.625 is amended to read:

18 196.625. (1) The [*Director of the Department of State Lands*] **Director of Agriculture** shall  
19 maintain a record of fill and removal activities and actions for each mitigation bank implemented  
20 and conduct monitoring of mitigation banks with moneys from the Oregon Wetlands Mitigation Bank  
21 Revolving Fund Account.

22 (2) The director shall provide annual reports to the State Land Board on moneys spent and re-  
23 ceived for each wetland mitigation bank.

24 **SECTION 17.** ORS 196.630 is amended to read:

25 196.630. Subject to the approval of the State Land Board, the [*Director of the Department of State*  
26 *Lands*] **Director of Agriculture** shall adopt rules according to the provisions of ORS chapter 183  
27 to carry out the provisions of ORS 196.600 to 196.655.

28 **SECTION 18.** ORS 196.635 is amended to read:

29 196.635. (1) The provisions of ORS 196.600 to 196.655 shall be carried out by the [*Director of the*  
30 *Department of State Lands*] **Director of Agriculture**. The [*Department of State Lands*] **State De-**  
31 **partment of Agriculture** shall solicit, but not be bound by, comments from the State Department  
32 of Fish and Wildlife, Department of Transportation, Department of Land Conservation and Devel-  
33 opment, Department of Environmental Quality, Economic and Community Development Department,  
34 federal natural resources and regulatory agencies, affected local governments and special districts,  
35 conservation organizations and other interested parties. All comments shall be in writing and pro-  
36 vided to the [*Department of State Lands*] **State Department of Agriculture** and mitigation bank  
37 sponsor within 30 days of solicitation by the [*Department of State Lands*] **State Department of**  
38 **Agriculture**. If comments are not received by the [*Department of State Lands*] **State Department**  
39 **of Agriculture** from a state agency or from an affected local government or special district within  
40 30 days of solicitation, the director shall assume that the state agency, local government or special  
41 district does not desire to provide comments.

42 (2) In cooperation with the parties in subsection (1) of this section, the director, in consultation  
43 with the State Land Board, shall:

44 (a) Review opportunities for inclusion of appropriate wetlands in the Statewide Comprehensive  
45 Outdoor Recreation Plan.

1 (b) Develop and recommend a wetlands priority plan for inclusion in the Statewide Comprehen-  
2 sive Outdoor Recreation Plan. The wetlands priority plan shall be complementary to the purposes  
3 and programs under ORS 196.600 to 196.655.

4 (3) The director shall confer with the Oregon Watershed Enhancement Board to develop criteria  
5 to certify watershed enhancement projects as mitigation banks.

6 **SECTION 19.** ORS 196.640 is amended to read:

7 196.640. (1) The Oregon Wetlands Mitigation Bank Revolving Fund Account is established, sep-  
8 arate and distinct from the General Fund. All moneys received under ORS 196.645 shall be paid into  
9 the State Treasury and credited to the account. All moneys in the account are appropriated con-  
10 tinuously to the [*Department of State Lands*] **State Department of Agriculture** to be used by the  
11 department as set forth in ORS 196.650. The moneys in the account may be invested and reinvested  
12 as provided in ORS 293.701 to 293.820. Interest earned by the account shall be credited to the ac-  
13 count.

14 (2) The department shall keep a record of all moneys deposited in the account. The record shall  
15 indicate by separate cumulative accounts the source from which the moneys are derived and the  
16 individual activity or program against which each withdrawal is charged.

17 (3) The department shall publish annually the record of moneys deposited in and removed from  
18 the account.

19 (4) The [*Director of the Department of State Lands*] **Director of Agriculture** may adopt rules for  
20 prioritizing expenditures from the account for the purposes specified in ORS 196.650.

21 **SECTION 20.** ORS 196.645 is amended to read:

22 196.645. The following moneys shall be paid into the Oregon Wetlands Mitigation Bank Revolv-  
23 ing Fund Account:

24 (1) Any moneys appropriated for that purpose by the Legislative Assembly;

25 (2) Moneys received from conditions imposed on a permit, authorizations or resolutions of vio-  
26 lations, except civil penalties, involving compensatory wetland mitigation in which the [*Department*  
27 *of State Lands*] **State Department of Agriculture** is the party responsible for the compensatory  
28 wetland mitigation;

29 (3) Moneys awarded for such purposes as specifically stipulated under grants through the Fed-  
30 eral Emergency Wetlands Resources Act of 1986, P.L. 99-645, or the Federal Coastal Zone Manage-  
31 ment Act of 1972, 16 U.S.C. 1451 et seq., as amended;

32 (4) Moneys obtained by gift, bequest, donation or grant from any other public or private source  
33 for the purposes of ORS 196.600 to 196.655 or 196.800 to 196.905;

34 (5) Repayment of moneys from the account, including interest on such moneys; and

35 (6) Moneys obtained from interest or other earnings from investments of moneys in the account.

36 **SECTION 21.** ORS 196.650 is amended to read:

37 196.650. The [*Department of State Lands*] **State Department of Agriculture** may use the mon-  
38 eys in the Oregon Wetlands Mitigation Bank Revolving Fund Account for the following purposes:

39 (1) For the voluntary acquisition of land suitable for use in mitigation banks.

40 (2) To pay for specific projects to create, restore or enhance wetland areas for purposes of  
41 carrying out the provisions of ORS 196.600 to 196.905. Moneys deposited in the account for wetland  
42 impacts may be used only for wetland creation, restoration and enhancement.

43 (3) For purchase of credits from approved mitigation banks.

44 (4) For payment of administrative, research or scientific monitoring expenses of the department  
45 in carrying out the provisions of ORS 196.600 to 196.655.



1 (5) For the disbursal of funds received under the Federal Coastal Zone Management Act of 1972,  
2 as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

3 (6) For the disbursal of funds received under the Federal Emergency Wetlands Resources Act  
4 of 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein as identified in  
5 the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan.

6 **SECTION 22.** ORS 196.655 is amended to read:

7 196.655. As part of the report to the State Land Board required under ORS 196.885, the [*Director*  
8 *of the Department of State Lands*] **Director of Agriculture** shall prepare an annual report on the  
9 Oregon Wetlands Mitigation Bank Revolving Fund Account. The report shall include, but need not  
10 be limited to:

11 (1) The financial status of the account;

12 (2) Creation, restoration or enhancement activities and credits sold, granted or otherwise dis-  
13 posed of or remaining in mitigation banks established under ORS 196.600 to 196.655;

14 (3) Wetlands acquired with moneys in the account;

15 (4) Compensatory wetland mitigation projects financed with moneys in the account; and

16 (5) For each mitigation bank, a summary of activities, including but not limited to:

17 (a) A description of the location, size, number of potential credits and credits withdrawn for  
18 each specific permit action; and

19 (b) The status of all mitigation bank activities pending or completed during the past year.

20 **SECTION 23.** ORS 196.674 is amended to read:

21 196.674. (1) The [*Department of State Lands*] **State Department of Agriculture** shall compile  
22 and maintain a comprehensive Statewide Wetlands Inventory.

23 (2) In compiling the Statewide Wetlands Inventory, the **State Department of Agriculture** shall  
24 develop, by rule, a system for uniform wetland identification, delineation and comprehensive map-  
25 ping. Initial inventories shall be based upon the National Wetlands Inventory prepared by the  
26 United States Department of the Interior, Fish and Wildlife Service. The [*Department of State*  
27 *Lands*] **State Department of Agriculture** shall consult with the public, local governments and af-  
28 fected state and federal agencies concerning the accuracy of the inventory.

29 (3) The [*Department of State Lands*] **State Department of Agriculture** shall revise the inven-  
30 tory maps as new or more complete information becomes available.

31 (4) The [*Department of State Lands*] **State Department of Agriculture** shall provide each city  
32 and county planning office with copies of the Statewide Wetlands Inventory covering the local ju-  
33 risdiction.

34 (5) The [*Department of State Lands*] **State Department of Agriculture** shall provide each state  
35 agency with a copy of the inventory upon request.

36 (6) Copies of the Statewide Wetlands Inventory shall be made available to the general public,  
37 through the [*Department of State Lands*] **State Department of Agriculture**, upon payment of a fee  
38 to offset administrative and reproduction costs.

39 (7) A wetland inventory developed by another party may be utilized by the [*Department of State*  
40 *Lands*] **State Department of Agriculture** if it is consistent with standards adopted pursuant to this  
41 section, after consulting with the affected local government, and is reviewed and approved by the  
42 [*Department of State Lands*] **State Department of Agriculture** as complying with the standards  
43 adopted pursuant to subsection (2) of this section.

44 (8) Nothing in this section shall restrict the regulatory jurisdiction of the [*Department of State*  
45 *Lands*] **State Department of Agriculture** under ORS 196.800 to 196.905.

1 (9) In compiling and updating the Statewide Wetlands Inventory, the [*Department of State*  
2 *Lands*] **State Department of Agriculture** shall identify opportunities for wetland creation, resto-  
3 ration and enhancement when the information is available.

4 **SECTION 24.** ORS 196.676 is amended to read:

5 196.676. The [*Department of State Lands*] **State Department of Agriculture** shall respond to the  
6 notice received from local governments pursuant to ORS 215.418 (1) and 227.350 (1) within 30 days  
7 of receipt of the notice. The response shall state whether a permit is or in the future will be re-  
8 quired or whether a permit has been issued by the department for the activity which is subject to  
9 notice.

10 **SECTION 25.** ORS 196.678 is amended to read:

11 196.678. (1) Any city or county may develop and submit to the [*Department of State Lands*] **State**  
12 **Department of Agriculture** a wetland conservation plan for review pursuant to the provisions of  
13 ORS 196.678 to 196.684.

14 (2) A wetland conservation plan shall include the following elements:

15 (a) A description and maps of the area to be covered by the plan;

16 (b) A detailed inventory of the wetlands, identifying the location, quality and quantity of the  
17 wetland resource and the source of the water for the wetlands within the area covered by the plan;

18 (c) An assessment of wetland functions and values, including an historical analysis of wetland  
19 degradation, alterations and losses;

20 (d) Designation of wetland areas for protection, conservation or development. Wetlands within  
21 areas designated for development shall be delineated to determine regulatory boundaries;

22 (e) A mitigation plan, including a program for replacement of planned wetland losses and res-  
23 toration of lost functions and values through creation of new wetlands or enhancement of existing  
24 wetland areas which designates specific sites within the plan area and actions for restoration and  
25 enhancement;

26 (f) Policies and implementing measures establishing protection, conservation and best use of the  
27 wetlands in the plan area;

28 (g) Specification of sites for fill or removal, or both, and the conditions and procedures under  
29 which fill or removal, or both, may occur;

30 (h) Monitoring provisions that insure the wetland mitigation measures are implemented and  
31 mitigation goals are achieved;

32 (i) Identification of public uses of the wetlands and waters and conflicting planned uses; and

33 (j) Specification of buffer areas and uses allowed on lands which are adjacent to wetlands and  
34 which are necessary to maintain, protect or restore wetland functions and values.

35 (3) The proposed wetland conservation plan shall be adopted by the affected local government  
36 according to the procedures set forth in ORS 197.610 to 197.625.

37 **SECTION 26.** ORS 196.681 is amended to read:

38 196.681. (1) In accordance with rules adopted pursuant to this chapter, the [*Department of State*  
39 *Lands*] **State Department of Agriculture** shall:

40 (a) Review any proposed wetland conservation plan or proposed amendment to an approved  
41 wetland conservation plan against the standards in this section;

42 (b) Prepare a proposed order that approves, approves with conditions or denies the proposed  
43 wetland conservation plan or proposed amendment to an approved wetland conservation plan;

44 (c) Provide notice and the opportunity for public hearing and comment on the proposed order;

45 (d) Consult with affected local, state and federal agencies; and

1 (e) Consider the applicable findings made in the order of acknowledgment issued by the Land  
2 Conservation and Development Commission.

3 (2) The [*Director of the Department of State Lands*] **Director of Agriculture** may approve by  
4 order a wetland conservation plan that includes the necessary elements of ORS 196.678 (2) and  
5 meets the standards of subsections (3) and (4) of this section.

6 (3) A wetland conservation plan shall comply with the following standards:

7 (a) Uses and activities permitted in the plan including fill or removal, or both, conform to sound  
8 policies of conservation and will not interfere with public health and safety;

9 (b) Uses and activities permitted in the plan including fill or removal, or both, are not incon-  
10 sistent with the protection, conservation and best use of the water resources of this state and the  
11 use of state waters for navigation, fishing and public recreation; and

12 (c) Designation of wetlands for protection, conservation and development is consistent with the  
13 resource functions and values of the area and the capability of the wetland area to withstand al-  
14 terations and maintain important functions and values.

15 (4) Wetland areas may be designated for development including fill or removal, or both, only if  
16 they meet the following standards:

17 (a) There is a public need for the proposed uses set forth in the acknowledged comprehensive  
18 plan for the area;

19 (b) Any planned wetland losses shall be fully offset by creation, restoration or enhancement of  
20 wetland functions and values or in an estuarine area, estuarine resource replacement is consistent  
21 with ORS 196.830; and

22 (c) Practicable, less damaging alternatives, including alternative locations for the proposed use  
23 are not available.

24 (5) Approval by the director of a wetland conservation plan shall be conditioned upon adoption  
25 by the affected local governments of comprehensive plan policies and land use regulations consistent  
26 with and sufficient to implement the wetland conservation plan. Appropriate implementing measures  
27 may include the following planning and zoning requirements regulating:

28 (a) Adjacent lands or buffer areas necessary to maintain, protect or restore wetland functions  
29 and values, including riparian vegetation, and the uses to be allowed in those areas;

30 (b) Sites for mitigation of impacts from development activities;

31 (c) Upland areas adjacent to wetlands; and

32 (d) Activities or location of buildings, structures and improvements which may affect wetland  
33 values or functions, such as storm water runoff.

34 (6) The director shall issue an order approving, approving with conditions or denying a wetland  
35 conservation plan, including a clear statement of findings which sets forth the basis for the approval,  
36 conditioning or denial. The order shall include:

37 (a) A clear statement of findings that the elements specified in ORS 196.678 (2) have been de-  
38 veloped;

39 (b) The findings in support of the determination of compliance or noncompliance with the stan-  
40 dards in subsections (3) and (4) of this section; and

41 (c) The conditions under which fill or removal or both may occur.

42 (7) The director may, as a part of an order approving a plan, authorize site-specific fill or re-  
43 moval without an individual permit as required by ORS 196.810 provided that:

44 (a) The director adopts findings demonstrating that fill or removal for any proposed project  
45 complies with ORS 196.682 (1)(a) to (e); or

1 (b) The director adopts findings that specific areas of fill or removal within areas designated as  
2 development in the plan meet the following standards:

3 (A) The fill or removal approved by the order will result in minimal impacts to the wetland  
4 system in the planning area;

5 (B) The public need for the proposed area of fill or removal outweighs the environmental damage  
6 likely to result from full development;

7 (C) The director conditions any such order as necessary to ensure that the fill or removal, or  
8 both, is designed to minimize impacts from implementing the project; and

9 (D) Full replacement of wetland losses is provided through creation, restoration or enhancement  
10 of wetlands with comparable functions and values.

11 (8) Upon a finding by the director that a fill or removal, or both, authorized under subsection  
12 (7)(b) of this section has caused or is likely to cause more than minimal adverse impact to the  
13 wetland system considering required mitigation conditions, the director shall revise the order to  
14 require individual permit review according to ORS 196.682 or provide additional conditions to ensure  
15 that adverse impacts are minimal. Such revision shall not be subject to ORS 196.684.

16 **SECTION 27.** ORS 196.682 is amended to read:

17 196.682. (1) Except where otherwise provided by the order approving the plan, individual permit  
18 applications shall be required for removal or fill, or both, in areas subject to an approved wetland  
19 conservation plan. If individual permit applications are to be reviewed under the authority of the  
20 [*Director of the Department of State Lands*] **Director of Agriculture**, then application fees and re-  
21 view procedures shall be in accordance with ORS 196.815, 196.825 (5) and (6) and 196.835. In lieu  
22 of the substantive standards for permit issuance in ORS 196.815 (1) and 196.825 (1), (2) and (3), the  
23 [*Department of State Lands*] **State Department of Agriculture** shall issue a permit if the removal  
24 or fill, or both, is consistent with the wetland conservation plan or can be conditioned to be con-  
25 sistent with the plan. The department shall condition any such permit as necessary to [*insure*] **en-**  
26 **sure** that the project:

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

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

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

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

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

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

38 **SECTION 28.** ORS 196.684 is amended to read:

39 196.684. (1) Local governments shall provide notice to the [*Department of State Lands*] **State**  
40 **Department of Agriculture** of any proposed amendments to the land use plan and ordinances af-  
41 fecting lands subject to a wetland conservation plan approved under this section.

42 (2) Amendments to plan policies, maps and implementing ordinances by the local government  
43 within an approved wetland conservation plan shall be reviewed by the department against the re-  
44 quirements of this section. These provisions do not exempt local governments from the provisions  
45 of ORS 197.610 to 197.625.

1 (3) The [*Director of the Department of State Lands*] **Director of Agriculture** shall provide notice  
2 and the opportunity for public comment and hearing as defined by rule on the matter of including  
3 the amendment in the wetland conservation plan.

4 (4) If the director finds that the proposed local government amendment to acknowledged com-  
5 prehensive plan and land use regulations meets the requirements of ORS 196.681, the director shall  
6 approve the plan by order, and notify the local government within 10 days of the completion of the  
7 public review provided in subsection (3) of this section.

8 (5) If the amendments to acknowledged comprehensive plan and land use regulations adopted  
9 by the local government are determined not to comply with the requirements of ORS 196.668 to  
10 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279,  
11 215.213, 215.283, 215.284, 215.418 and 227.350, the director shall revoke the approval order or amend  
12 the order to [*insure*] **ensure** compliance with the requirements of ORS 196.668 to 196.692, 196.800,  
13 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283,  
14 215.284, 215.418 and 227.350.

15 (6) The department shall review each approved wetland conservation plan every five years. After  
16 such review the director shall either modify, reissue or rescind the order approving the plan.

17 (7) In conducting the five-year review of an approved wetland conservation plan, the director  
18 shall provide notice and the opportunity for public comment and hearing on whether:

19 (a) There has been a substantial change in circumstances that would affect the wetland re-  
20 sources subject to the plan and would adversely affect the compliance of the plan with the standards  
21 in ORS 196.681;

22 (b) Changes have been made in applicable state law, statewide land use planning goals, federal  
23 law or agency rules that require the plan to be changed; and

24 (c) In the director's evaluation, the plan as implemented over the preceding five years meets the  
25 goals established in the plan.

26 (8) Wetland conservation plans approved by the [*Director of the Department of State Lands*] **di-**  
27 **rector** pursuant to ORS 196.668 to 196.692 shall be deemed to comply with the requirements of any  
28 statewide planning goals relating to wetlands, other than estuarine wetlands, for those areas, uses  
29 and activities which are regulated by the plan.

30 (9) An order by the director regarding approval, amendment or review of a wetland conservation  
31 plan shall be reviewable by the Land Use Board of Appeals as a land use decision of a state agency.  
32 For the purpose of such review, the director's order shall not become final until the local govern-  
33 ment adopts its wetland conservation plan or plan amendment. The Land Use Board of Appeals shall  
34 consolidate for review appeals of the director's order and the local government adoption. The Land  
35 Use Board of Appeals shall review such order for compliance with the requirements of ORS 196.668  
36 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279,  
37 215.213, 215.283, 215.284, 215.418 and 227.350.

38 (10) Nothing in this section shall be construed to require a contested case proceeding regarding  
39 approval, amendment or review of a wetland conservation plan.

40 (11) Nothing in this section shall be construed to affect the evaluation of a permit application  
41 in areas that do not have a wetland conservation plan.

42 (12) Upon a finding by the director, after a public hearing, that an affected local government is  
43 not enforcing the comprehensive plan provisions or land use regulations set forth in the conditions  
44 of the order, as specified in ORS 196.681 (5), and that such lack of enforcement has resulted or would  
45 result in adverse impacts to wetlands, the director shall modify, suspend or revoke approval of the

1 wetland conservation plan.

2 **SECTION 29.** ORS 196.686 is amended to read:

3 196.686. (1) For the purposes of this section, an acknowledged estuary management plan includes  
4 the comprehensive plan and land use regulations adopted by cities and counties to satisfy the re-  
5 quirement of statewide planning goals related to estuarine resources including shoreland portions  
6 of estuarine sites designated for development as those plans and regulations existed on January 1,  
7 1989.

8 (2) Any city or county may submit an acknowledged estuary management plan for review and  
9 approval by the [*Department of State Lands*] **State Department of Agriculture** pursuant to the  
10 provisions of this section. The plan shall be submitted with a written request for review.

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

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

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

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

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

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

28 (9) Except as provided in subsection (10) of this section, the [*Director of the Department of State*  
29 *Lands*] **Director of Agriculture** shall approve the acknowledged estuary management plan by order  
30 within 60 days of completion of the preliminary review.

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

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

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

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

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

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

43 (11) The director shall approve the acknowledged estuary management plan as a wetland con-  
44 servation plan by order unless the director finds by a preponderance of the evidence that the  
45 estuary management plan does not meet the standards for approving wetland conservation plans or

1 unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation or  
 2 that substantial fills proposed in an estuary management plan for nonwater dependent use are not  
 3 for a public use and would not satisfy a public need that outweighs harm to navigation, fisheries  
 4 or public recreation.

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

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

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

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

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

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

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

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

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

27 (16) Following approval by the director of an estuary management plan, the requirements of ORS  
 28 196.684 shall apply to the approved estuary management plan.

29 **SECTION 30.** ORS 196.687 is amended to read:

30 196.687. (1) Notwithstanding the provisions of ORS 196.600 to 196.905, state or local governments  
 31 shall not prohibit or restrict the alteration or fill of wetland areas up to one acre in size that have  
 32 been artificially created from upland for the purpose of controlling, storing or maintaining storm  
 33 water.

34 (2) An area that was developed as a storm water detention or retention facility as a condition  
 35 of a development approval shall not be altered or filled without acceptance by the approving au-  
 36 thority of a plan to mitigate the loss of functional capabilities of the detention or retention facility.

37 (3) Until a local government adopts an ordinance to conform its comprehensive plan and land  
 38 use regulations to the provisions of this section, the provisions of subsection (1) of this section shall  
 39 apply directly to proposed activities in wetland areas. Any portion of a goal, rule, comprehensive  
 40 plan, land use regulation or ordinance not in conformance with the provisions of this section on  
 41 September 9, 1995:

42 (a) Shall not be implemented or enforced; and

43 (b) Has no legal effect.

44 (4) The provisions of this section do not apply to land used to mitigate the loss of wetlands.

45 (5) If the [*Department of State Lands*] **State Department of Agriculture** assumes responsibility

1 under 33 U.S.C. §1344(g) of the Federal Water Pollution Control Act, ORS 196.600 to 196.905 shall  
2 apply to artificially created wetlands described in subsections (1) and (2) of this section.

3 **SECTION 31.** ORS 196.688 is amended to read:

4 196.688. (1) The [*Department of State Lands*] **State Department of Agriculture** shall develop  
5 a public information program to educate permit applicants and the general public about:

- 6 (a) Wetland functions and values.
- 7 (b) The status and trends of Oregon's wetlands.
- 8 (c) The Statewide Wetlands Inventory.
- 9 (d) Wetland regulation.

10 (2) Upon request, the department shall, within the limits of staffing ability, provide technical  
11 assistance to other state agencies and local governments and the public in identifying and deline-  
12 ating the boundaries of wetlands.

13 **SECTION 32.** ORS 196.692 is amended to read:

14 196.692. (1) The [*Department of State Lands*] **State Department of Agriculture** shall adopt rules  
15 to carry out the provisions of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to  
16 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

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

21 **SECTION 33.** ORS 196.795 is amended to read:

22 196.795. (1) The [*Department of State Lands*] **State Department of Agriculture** shall continue  
23 to pursue methods to streamline the process for administering permits for the removal of material  
24 from the bed or banks of any waters of this state or for filling the waters of this state, reducing  
25 paperwork, eliminating duplication, increasing certainty and timeliness and enhancing resource  
26 protection. The efforts of the [*Department of State Lands*] **department** shall include but need not  
27 be limited to applying to the United States Army Corps of Engineers for a state program general  
28 permit as authorized in federal regulations implementing section 404 of the Federal Water Pollution  
29 Control Act, and section 10 of the Rivers and Harbors Act of 1899, as amended. In conjunction with  
30 these activities, the [*Department of State Lands*] **department** may continue to investigate the pos-  
31 sibility of assuming the federal regulatory program under 33 U.S.C. 1344(g) of the Federal Water  
32 Pollution Control Act.

33 (2) The department shall report periodically to the Joint Legislative Committee on Land Use on  
34 the progress in implementing subsection (1) of this section.

35 **SECTION 34.** ORS 196.800 is amended to read:

36 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

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

41 (2) "Department" means the [*Department of State Lands*] **State Department of Agriculture**.

42 (3) "Director" means the [*Director of the Department of State Lands*] **Director of Agriculture**.

43 (4) "Estuary" means a body of water semienclosed by land and connected with the open ocean  
44 within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes  
45 all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head



1 of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

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

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

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

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

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

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

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

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

17 (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

18 (d) Reducing or eliminating the impact over time by preservation and maintenance operations  
19 during the life of the action by monitoring and taking appropriate corrective measures; and

20 (e) Compensating for the impact by replacing or providing comparable substitute wetland or  
21 water resources.

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

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

26 (13) "Removal" means the taking of more than 50 cubic yards or the equivalent weight in tons  
27 of material in any waters of this state in any calendar year; or the movement by artificial means  
28 of an equivalent amount of material on or within the bed of such waters, including channel relo-  
29 cation.

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

32 (15) "Waters of this state" means natural waterways including all tidal and nontidal bays, in-  
33 termittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this  
34 state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the  
35 boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS  
36 390.605, with the exception of those areas where removal or fill activities are regulated under a  
37 state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Con-  
38 trol Act, as amended.

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

44 (17) "Wetlands" means those areas that are inundated or saturated by surface or ground water  
45 at a frequency and duration sufficient to support, and that under normal circumstances do support,

1 a prevalence of vegetation typically adapted for life in saturated soil conditions.

2 **SECTION 35.** ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section  
3 8, chapter 253, Oregon Laws 2003, and section 15, chapter 738, Oregon Laws 2003, is amended to  
4 read:

5 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

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

8 (2) "Department" means the [*Department of State Lands*] **State Department of Agriculture.**

9 (3) "Director" means the [*Director of the Department of State Lands*] **Director of Agriculture.**

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

14 (5) "Fill" means the deposit by artificial means of material at one location in any waters of this  
15 state.

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

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

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

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

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

27 (a) Avoiding the impact altogether by not taking a certain action or parts of an action;

28 (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

29 (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

30 (d) Reducing or eliminating the impact over time by preservation and maintenance operations  
31 during the life of the action by monitoring and taking appropriate corrective measures; and

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

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

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

38 (13) "Removal" means the taking of material in any waters of this state or the movement by  
39 artificial means of material within the bed of such waters, including channel relocation.

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

42 (15) "Waters of this state" means natural waterways including all tidal and nontidal bays, in-  
43 termittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this  
44 state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the  
45 boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS

1 390.605, with the exception of those areas where removal or fill activities are regulated under a  
2 state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Con-  
3 trol Act, as amended.

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

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

12 **SECTION 36.** ORS 196.805 is amended to read:

13 196.805. (1) The protection, conservation and best use of the water resources of this state are  
14 matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in  
15 this state, including not only water and materials for domestic, agricultural and industrial use but  
16 also habitats and spawning areas for fish, avenues for transportation and sites for commerce and  
17 public recreation, are vital to the economy and well-being of this state and its people. Unregulated  
18 removal of material from the beds and banks of the waters of this state may create hazards to the  
19 health, safety and welfare of the people of this state. Unregulated filling in the waters of this state  
20 for any purpose, may result in interfering with or injuring public navigation, fishery and recre-  
21 ational uses of the waters. In order to provide for the best possible use of the water resources of  
22 this state, it is desirable to centralize authority in the [*Director of the Department of State Lands*]  
23 **Director of Agriculture**, and implement control of the removal of material from the beds and banks  
24 or filling of the waters of this state.

25 (2) The director shall take into consideration all beneficial uses of water including streambank  
26 protection when administering fill and removal statutes.

27 (3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of  
28 property under ORS 196.600 to 196.905 without due process of law.

29 (4) The director shall delineate wetlands in accordance with the United States Army Corps of  
30 Engineers Wetlands Delineation Manual of 1987, or subsequent federal manual as adopted by rule  
31 by the director, and applicable guidance issued by the United States Army Corps of Engineers for  
32 the area in which the wetlands are located.

33 (5) The [*Department of State Lands*] **State Department of Agriculture** shall give priority to the  
34 review of wetland delineation reports submitted with or in advance of an application for fill or re-  
35 moval of material from the waters of this state.

36 **SECTION 37.** ORS 196.810 is amended to read:

37 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, no per-  
38 son or governmental body may remove any material from the beds or banks or fill any waters of this  
39 state without a permit issued under authority of the [*Director of the Department of State Lands*]  
40 **Director of Agriculture**, or in a manner contrary to the conditions set out in the permit, or in a  
41 manner contrary to the conditions set out in an order approving a wetlands conservation plan.

42 (b) Notwithstanding the permit requirements of this section and notwithstanding the provisions  
43 of ORS 196.800 (5) and (13), if any removal or fill activity is proposed in essential indigenous  
44 anadromous salmonid habitat, except for those activities customarily associated with agriculture, a  
45 permit is required. "Essential indigenous anadromous salmonid habitat" as defined under this sec-

1 tion shall be further defined and designated by rule by the [*Department of State Lands*] **State De-**  
2 **partment of Agriculture** in consultation with the State Department of Fish and Wildlife and in  
3 consultation with other affected parties.

4 (c) No person may be required to obtain a permit under paragraph (b) of this subsection for  
5 prospecting or other nonmotorized activities resulting in the removal from or fill of less than one  
6 cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards  
7 of material within a designated essential indigenous anadromous salmonid habitat segment in a sin-  
8 gle year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet  
9 perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or  
10 filling activities customarily associated with mining require a permit under paragraph (b) of this  
11 subsection.

12 (d) No permit may be required under paragraph (b) of this subsection for construction or main-  
13 tenance of fish passage and fish screening structures that are constructed, operated or maintained  
14 under ORS 498.311, 498.316, 498.326 or 509.600 to 509.645.

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

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

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

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

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

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

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

30 (2) No governmental body may issue a lease or permit contrary or in opposition to the condi-  
31 tions set out in the permit issued under ORS 196.600 to 196.905.

32 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit  
33 or lease with any governmental body entered into before September 13, 1967. However, no such  
34 contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the  
35 person removing the material has obtained a permit under ORS 196.600 to 196.905.

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

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

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

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

1        **SECTION 38.** ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, and sec-  
2 tion 97, chapter 14, Oregon Laws 2003, is amended to read:

3        196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person  
4 or governmental body may not remove any material from the beds or banks or fill any waters of this  
5 state without a permit issued under authority of the [*Director of the Department of State Lands*]  
6 **Director of Agriculture**, or in a manner contrary to the conditions set out in the permit, or in a  
7 manner contrary to the conditions set out in an order approving a wetlands conservation plan.

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

15        (c) A permit is not required under paragraph (a) of this subsection for construction or mainte-  
16 nance of fish passage and fish screening structures associated with irrigation ditches or the main-  
17 tenance of drainage ditches that are constructed, operated or maintained under ORS 498.311,  
18 498.316, 498.326 or 509.600 to 509.645.

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

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

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

26        (4) Notwithstanding subsection (1) of this section, the [*Department of State Lands*] **State De-**  
27 **partment of Agriculture** may issue, orally or in writing, an emergency authorization for the re-  
28 moval of material from the beds or banks or filling of any waters of this state in an emergency, for  
29 the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage  
30 to persons or property. The emergency authorization issued under this subsection:

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

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

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

36        (5) As used in this section:

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

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

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

44        **SECTION 39.** ORS 196.815 is amended to read:

45        196.815. (1) Each applicant for a permit to remove material from the bed or banks or fill any

1 waters of this state first shall file a written application with the [*Director of the Department of State*  
2 *Lands*] **Director of Agriculture**, specifying the nature and amount of material to be removed or the  
3 amount of fill, the waters and the specific location from which it is to be removed or where the fill  
4 will be placed, the method of removal or filling and the times during which removal or filling is to  
5 be conducted. The director may require additional information as is necessary to enable the director  
6 to determine whether the granting of the permit applied for is consistent with the protection, con-  
7 servation and best use of the water resources of this state. For the purposes of this subsection, fills  
8 or removals of material at locations not more than one mile apart may be combined in one appli-  
9 cation.

10 (2) The [*Director of the Department of State Lands*] **director** shall furnish to any member of the  
11 public upon written request and at the expense of the member of the public a copy of any applica-  
12 tion for a permit pursuant to subsection (1) of this section.

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

15 (A) For a removal by a private operator, or a person contracting to perform services for a pri-  
16 vate operator, \$50.

17 (B) For a removal by a public body, \$150.

18 (C) For a removal by a commercial operator, \$150.

19 (D) For a fill by a private operator, or a person contracting to perform services for a private  
20 operator, \$150.

21 (E) For a fill by a public body, \$375.

22 (F) For a fill by a commercial operator, \$375.

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

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

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

29 (B) 500 to 4,999 cubic yards, \$75 for private operator, \$75 for public body and \$75 for commercial  
30 operator.

31 (C) 5,000 to 50,000 cubic yards, \$150 for private operator, \$150 for public body and \$150 for  
32 commercial operator.

33 (D) Over 50,000 cubic yards, \$225 for private operator, \$225 for public body and \$225 for com-  
34 mercial operator.

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

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

39 (B) 500 to 2,999 cubic yards, \$75 for private operator, \$75 for public body and \$75 for commercial  
40 operator.

41 (C) 3,000 to 10,000 cubic yards, \$150 for private operator, \$150 for public body and \$150 for  
42 commercial operator.

43 (D) Over 10,000 cubic yards, \$225 for private operator, \$225 for public body and \$225 for com-  
44 mercial operator.

45 (d) For the purposes of this subsection, the following terms shall have the following meanings:

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

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

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

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

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

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

16 (5) Annually on the anniversary date of the permit, each holder of a material removal or fill  
17 permit shall pay a fee during the term of the permit in accordance with the schedule set forth in  
18 subsection (3) of this section, except that the applicant shall pay only the base fee. The permit shall  
19 be suspended during any period of delinquency of payment as though no permit was applied for.  
20 Notwithstanding this subsection the director may, before granting any extension of the permit, re-  
21 quire the permittee to show that the continued exercise of the permit is consistent with the pro-  
22 tection, conservation and best use of the water resources of this state.

23 (6) Fees received under this section shall be credited to the [*Common School Fund*] **Department**  
24 **of Agriculture Account as described in ORS 561.150**, for use by the department in administration  
25 of ORS 196.600 to 196.905[,] **and** 196.990 [*and 541.990*] and as otherwise required by law.

26 **SECTION 40.** ORS 196.820 is amended to read:

27 196.820. (1) Notwithstanding any provision of ORS 196.600 to 196.905 to the contrary, except as  
28 provided in subsection (2) of this section, the [*Director of the Department of State Lands*] **Director**  
29 **of Agriculture** shall not issue any permit to fill Smith Lake or Bybee Lake, located in Multnomah  
30 County, below the contour line which lies 11 feet above mean sea level as determined by the 1947  
31 adjusted United States Coastal Geodetic Survey Datum.

32 (2) Notwithstanding the provision of subsection (1) of this section, the [*Director of the Depart-*  
33 *ment of State Lands*] **director** may issue a permit to fill Smith Lake or Bybee Lake, located in  
34 Multnomah County, if such fill is to enhance or maintain fish and wildlife habitat at or near Smith  
35 Lake or Bybee Lake. A fill shall be considered to be for the purpose of enhancing or maintaining  
36 fish and wildlife habitat if the proposed fill is approved by the State Department of Fish and Wildlife.

37 **SECTION 41.** ORS 196.825 is amended to read:

38 196.825. (1) The [*Director of the Department of State Lands*] **Director of Agriculture** shall issue  
39 a permit to remove material from the beds or banks of any waters of this state applied for under  
40 ORS 196.815 if the director determines that the removal described in the application will not be in-  
41 consistent with the protection, conservation and best use of the water resources of this state as  
42 specified in ORS 196.805.

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

1 ation.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

18 (8) Permits issued under this section shall be in lieu of any permit that might be required for  
 19 the same operation under ORS 164.775, 164.785, 468.010, 468.030 to 468.045, 468.055, 468.060, 468.075,  
 20 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

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

22 (b) The standards for granting such permits are substantially the same as those established  
 23 pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468B.005 to  
 24 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

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

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

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

35 (11) As used in this section:

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

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

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

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

43 (C) The fee required under ORS 196.815;

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

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

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

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

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

10 **SECTION 42.** ORS 196.825, as amended by section 3, chapter 516, Oregon Laws 2001, section  
11 10, chapter 253, Oregon Laws 2003, and section 18a, chapter 738, Oregon Laws 2003, is amended to  
12 read:

13 196.825. (1) The [*Director of the Department of State Lands*] **Director of Agriculture** shall issue  
14 a permit to remove material from the beds or banks of any waters of this state applied for under  
15 ORS 196.815 if the director determines that the removal described in the application is consistent  
16 with the protection, conservation and best use of the water resources of this state as specified in  
17 ORS 196.600 to 196.905.

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

20 (a) Would not unreasonably interfere with the paramount policy of this state to preserve the use  
21 of its waters for navigation, fishing and public recreation; and

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

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

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

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

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

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

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

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

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

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

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

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

1 196.600 to 196.905.

2 (5) If the director issues a permit, the director may impose such conditions as the director con-  
3 siders necessary to carry out the purposes of ORS 196.805, 196.830 and subsections (1) and (2) of this  
4 section and to provide mitigation for the reasonably expected adverse impacts from project devel-  
5 opment. In formulating such conditions the director may request comment from the State Geologist,  
6 the State Fish and Wildlife Director, the State Forester, the Director of the Department of Envi-  
7 ronmental Quality, the administrative officer of the Soil and Water Conservation Commission, the  
8 *[Director of Agriculture]* **Director of the Department of State Lands**, the State Parks and Recre-  
9 ation Director, the State Marine Director, the Director of Transportation, the Director of the Eco-  
10 nomic and Community Development Department, the Water Resources Director and affected local  
11 governmental units. Each permit is valid only for the time specified therein. Obtaining a lease from  
12 the Department of State Lands may not be one of the conditions to be considered in granting a  
13 permit under ORS 196.815. The *[Director of the Department of State Lands]* **Director of Agriculture**  
14 shall impose, as conditions to any permit, general authorization or wetland conservation plan,  
15 measures to provide mitigation for the reasonably expected adverse impacts from project develop-  
16 ment. Compensatory wetland mitigation shall be limited to replacement of the functional attributes  
17 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 **of Agriculture**, may, within 21 days of the denial of the permit or the imposition  
21 of any condition, request a hearing from the director. Thereupon the director shall set the matter  
22 down for hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to  
23 183.430, 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order con-  
24 taining findings of fact and conclusions of law. The order shall rescind, affirm or modify the direc-  
25 tor's initial order. Appeals from the director's final order may be taken to the Court of Appeals in  
26 the manner provided 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]* **State Department of Agriculture** receives the application. If the director deter-  
31 mines that an application is complete, the director shall distribute the application for comment  
32 pursuant to subsection (5) of this section. If the director determines that the application is not  
33 complete, the director shall notify the applicant in writing that the application is deficient and ex-  
34 plain, in the same notice, the deficiencies.

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

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

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

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

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

43 (b) The standards for granting such permits are substantially the same as those established  
44 pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468B.005 to  
45 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

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

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

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

11 (11) As used in this section:

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

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

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

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

19 (C) The fee required under ORS 196.815;

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

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

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

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

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

31 **SECTION 43.** ORS 196.830 is amended to read:

32 196.830. (1) As used in this section, "estuarine resource replacement" means the creation, res-  
 33 toration or enhancement of an estuarine area to maintain the functional characteristics and pro-  
 34 cesses of the estuary, such as its natural biological productivity, habitats and species diversity,  
 35 unique features and water quality.

36 (2) Except as provided in subsection (4) of this section, the [*Director of the Department of State*  
 37 *Lands*] **Director of Agriculture** shall require estuarine resource replacement as a condition of any  
 38 permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

39 (3) If the director requires estuarine resource replacement, the director shall consider:

40 (a) The identified adverse impacts of the proposed activity;

41 (b) The availability of areas in which replacement activities could be performed;

42 (c) The provisions of land use plans for the area adjacent to or surrounding the area of the  
 43 proposed activity;

44 (d) The recommendations of any interested or affected state or local agencies; and

45 (e) The extent of compensating activity inherent in the proposed activity.

1 (4) Notwithstanding any provisions of this chapter and ORS chapter 195, 197 or the statewide  
2 planning goals adopted thereunder to the contrary, the director may:

3 (a) Waive estuarine resource replacement in part for an activity for which replacement would  
4 otherwise be required if, after consultation with appropriate state and local agencies the director  
5 determines that:

6 (A) There is no alternative manner in which to accomplish the purpose of the project;

7 (B) There is no feasible manner in which estuarine resource replacement could be accomplished;

8 (C) The economic and public need for the project and the economic and public benefits resulting  
9 from the project clearly outweigh the potential degradation of the estuary;

10 (D) The project is for a public use; and

11 (E) The project is water dependent or the project is publicly owned and water related; or

12 (b) Waive estuarine resource replacement wholly or in part for an activity for which replace-  
13 ment would otherwise be required if the activity is:

14 (A) Filling for repair and maintenance of existing functional dikes and negligible physical or  
15 biological damage to the tidal marsh or intertidal areas of the estuary will result;

16 (B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant ma-  
17 terial when a need for riprap protection is demonstrated that cannot be met with natural vegetation  
18 and no appreciable increase in existing upland will occur;

19 (C) Filling for repair and maintenance of existing roads and negligible physical or biological  
20 damage to the tidal marsh or intertidal areas of the estuary will result;

21 (D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair  
22 or maintenance conducted by or under contract with the Army Corps of Engineers;

23 (E) Dredging or filling required as part of an estuarine resource restoration or enhancement  
24 project agreed to by local, state and federal agencies; or

25 (F) A proposed alteration that would have negligible adverse physical or biological impact on  
26 estuarine resources.

27 (5) Nothing in this section is intended to limit the authority of the director to impose conditions  
28 on a permit under ORS 196.825 (4).

29 **SECTION 44.** ORS 196.835 is amended to read:

30 196.835. Any person aggrieved or adversely affected by the grant of a permit by the [*Director*  
31 *of the Department of State Lands*] **Director of Agriculture** may file a written request for hearing  
32 with the director within 21 days after the date the permit was granted. If the director finds that the  
33 person making the written request has a legally protected interest which is adversely affected by  
34 the grant of the permit, the director shall set the matter down for hearing within 30 days after re-  
35 ceipt of the request. The hearing shall be conducted as a contested case in accordance with ORS  
36 183.415 to 183.430, 183.440 to 183.460 and 183.470. The permittee shall be a party to the proceeding.  
37 Within 45 days of the hearing the director shall enter an order containing findings of fact and con-  
38 clusions of law. The order shall rescind, affirm or modify the director's original order. Appeals from  
39 the director's final order may be taken to the Court of Appeals in the manner provided by ORS  
40 183.482. A permit to fill granted by the director may be suspended by the director during the  
41 pendency of the proceedings before the director and any appeal. The director shall not suspend the  
42 permit unless the person aggrieved or adversely affected by grant of permit makes a showing before  
43 the director by clear and convincing evidence that commencement or continuation of the fill would  
44 cause irreparable damage and would be inconsistent with ORS 196.600 to 196.905.

45 **SECTION 45.** ORS 196.845 is amended to read:

1 196.845. In considering applications for permits, the [*Director of the Department of State Lands*]  
 2 **Director of Agriculture** may cause investigations or surveys to be made of the location of the work  
 3 contemplated to determine whether such removal or filling is consistent with ORS 196.805 and  
 4 196.825.

5 **SECTION 46.** ORS 196.850 is amended to read:

6 196.850. (1) Notwithstanding ORS 196.810, the [*Department of State Lands*] **State Department**  
 7 **of Agriculture** may, by rule, grant general authorization for removal of material from the bed or  
 8 banks or the filling of any waters of the state without a permit from the department if the depart-  
 9 ment finds that those activities subject to the general authorization are substantially similar in na-  
 10 ture and would cause only minimal individual and cumulative environmental impacts, and would not  
 11 result in long-term harm to water resources of the state. The department shall condition any such  
 12 general authorization upon actions necessary to minimize environmental impacts.

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

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

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

17 (3) Any person proposing to conduct an action under a general authorization shall notify the  
 18 department in writing prior to conducting such action.

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

22 (5) The department shall review each general authorization adopted pursuant to this section  
 23 every five years. The review shall include public notice and opportunity for public hearing. After  
 24 such review, the department may either modify, reissue or rescind the general authorization.

25 (6) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the  
 26 validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence  
 27 in the rulemaking record. The record shall include copies of all documents before the agency rele-  
 28 vant to whether the requirement of subsection (1) of this section has been met.

29 **SECTION 47.** ORS 196.850, as amended by section 4, chapter 516, Oregon Laws 2001, and sec-  
 30 tion 12, chapter 253, Oregon Laws 2003, is amended to read:

31 196.850. (1) Notwithstanding ORS 196.810, the [*Department of State Lands*] **State Department**  
 32 **of Agriculture** may, by rule, grant general authorization for removal of material from the bed or  
 33 banks or the filling of any waters of the state without a permit from the department if the depart-  
 34 ment finds that those activities subject to the general authorization are substantially similar in na-  
 35 ture and would cause only minimal individual and cumulative environmental impacts, and would not  
 36 result in long-term harm to water resources of the state. The department shall condition any such  
 37 general authorization upon actions necessary to minimize environmental impacts.

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

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

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

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

45 (4) The requirements of subsection (3) of this section shall be waived if the [*Director of the De-*

1 *partment of State Lands*] **Director of Agriculture** issues a general authorization and the authorized  
2 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 ac-  
5 cordance 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 navi-  
7 gation; and

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

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

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

21 **SECTION 48.** ORS 196.860 is amended to read:

22 196.860. (1) If the [*Director of the Department of State Lands*] **Director of Agriculture** deter-  
23 mines that material is being removed from or filling is occurring in any of the waters of this state  
24 without a permit issued under ORS 196.825, or in a manner contrary to the conditions set out in the  
25 permit, or in a manner contrary to the conditions set out in an order approving a wetlands conser-  
26 vation plan, the director may:

27 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to  
28 196.905, as soon as possible.

29 (b) For the purpose of investigating conditions relating to such removal or filling, through the  
30 employees or the duly authorized representatives of the [*Department of State Lands*] **State Depart-**  
31 **ment of Agriculture**, enter at reasonable times upon any private or public property.

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

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

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

42 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of  
43 ORS 196.600 to 196.905 or of any rule or final order of the director under ORS 196.600 to 196.905  
44 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in  
45 any such proceedings the director may seek and the court may award a sum of money sufficient to

1 compensate the public for any destruction or infringement of any public right of navigation, fishery  
 2 or recreation resulting from such violation. Proceedings thus brought by the director shall set forth  
 3 if applicable the dates of notice and hearing and the specific rule or order of the director, together  
 4 with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the  
 5 damages to any public right of navigation, fishery or recreation, if any, resulting from such vio-  
 6 lation.

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

11 (a) An order under this subsection:

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

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

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

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

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

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

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

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

33 **SECTION 49.** ORS 196.865 is amended to read:

34 196.865. If the [*Director of the Department of State Lands*] **Director of Agriculture** finds that a  
 35 person or governmental body holding a permit issued under ORS 196.825 is removing material from  
 36 the bed or banks or filling any of the waters of this state contrary to the conditions set out in the  
 37 permit, the director may revoke, suspend or refuse to renew such permit. The director may revoke  
 38 a permit only after giving notice and opportunity for a hearing as provided in ORS 183.415 to  
 39 183.430, 183.440 to 183.460 and 183.470.

40 **SECTION 50.** ORS 196.870 is amended to read:

41 196.870. (1) In addition to any enforcement action taken under ORS 196.860, civil proceedings  
 42 to abate alleged public nuisances under ORS 196.855 may be instituted at law or in equity, in the  
 43 name of the State of Oregon, upon relation of the [*Director of the Department of State Lands*] **Di-**  
 44 **rector of Agriculture** or by any person in the person's name.

45 (2) Before beginning any action under subsection (1) of this section, a person other than the



1 director shall provide 60 days notice to the director of the intended action. A person other than the  
 2 director may not begin an action under subsection (1) of this section if the director has commenced  
 3 and is diligently prosecuting civil, criminal or administrative proceedings in the same matter.

4 (3) The director may institute an action in the name of the State of Oregon for a temporary  
 5 restraining order or preliminary injunction if a threatened or existing nuisance under ORS 196.855  
 6 creates an emergency that requires immediate action to protect the public health, safety or welfare.  
 7 The director shall not be required to furnish a bond in such proceeding.

8 (4) The State Land Board, the [*Director of the Department of State Lands*] **Director of Agricul-**  
 9 **ture** and the employees or duly authorized representatives of the [*Department of State Lands*] **State**  
 10 **Department of Agriculture** shall not be liable for any damages a defendant may sustain as a result  
 11 of an injunction, restraining order or abatement order issued under this section.

12 (5) A case filed under this section shall be given preference on the docket over all other civil  
 13 cases except those given an equal preference by statute.

14 (6) In any action brought under this section, the plaintiff may seek and the court may award a  
 15 sum of money sufficient to compensate the public for any destruction or infringement of any public  
 16 right of navigation, fishery or recreation resulting from an existing public nuisance under ORS  
 17 196.855. Any money received by the plaintiff under this subsection shall be deposited in the [*Common*  
 18 *School Fund*] **Department of Agriculture Account, as described in ORS 561.150.**

19 **SECTION 51.** ORS 196.875 is amended to read:

20 196.875. (1) If any person or governmental body, through negligence, violates ORS 196.810, the  
 21 [*Director of the Department of State Lands*] **Director of Agriculture**, in a proceeding brought pur-  
 22 suant to ORS 196.870, may seek and the court may award double a sum of money sufficient to  
 23 compensate the public for any destruction or infringement of any public right of navigation, fishery  
 24 or recreation resulting from such violation.

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

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

31 (4) In any action brought under ORS 196.870, the court shall award to the prevailing party the  
 32 costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS  
 33 20.140, any costs and attorney fees so awarded to the director shall be deposited in the [*Common*  
 34 *School Fund*] **Department of Agriculture Account, as described in ORS 561.150**, to offset the  
 35 director's expenses of bringing such action.

36 **SECTION 52.** ORS 196.880 is amended to read:

37 196.880. If the [*Director of the Department of State Lands*] **Director of Agriculture** issues a  
 38 permit to fill pursuant to ORS 196.600 to 196.905, it shall be presumed that such fill does not infringe  
 39 upon the public rights of navigation, fishery or recreation, and the public rights to lands created  
 40 by the fill shall be considered extinguished.

41 **SECTION 53.** ORS 196.885 is amended to read:

42 196.885. The [*Director of the Department of State Lands*] **Director of Agriculture** shall submit  
 43 an annual report to the State Land Board on the activities conducted under ORS 196.600 to 196.905.  
 44 The annual report shall include the following:

45 (1) The number of fill and removal permits applied for, denied and granted, organized according

1 to whether or not the permits were for waters subject to section 404 of the Federal Water Pollution  
 2 Control Act (P.L. 92-500, as amended). For all permits granted or outstanding during the prior year,  
 3 a separate summary shall be included for fills and removals, organized by river or other water body,  
 4 that shows:

5 (a) The total number of permits, the number of new permits and the number of renewal permits.

6 (b) The volume and acreage of fills and removals authorized during the past year, and the vol-  
 7 ume and acreage of fills and removals completed during the past year.

8 (2) By river or other water body, a summary of the total volume and acreage of fills and re-  
 9 movals made under a general waiver, general permit or similar authority.

10 (3) A summary of mitigation measures, including a description of each mitigation project ap-  
 11 proved during the past year including the location and size of each mitigation project and a report  
 12 on the status of all mitigation projects pending or completed during the past year.

13 (4) A summary of enforcement activities, including:

14 (a) The number of potential violations reported.

15 (b) The number of compliance investigations conducted.

16 (c) The results of compliance actions, including:

17 (A) The number of cases resolved by voluntary compliance, administrative hearings and judicial  
 18 enforcement proceedings;

19 (B) The amount of damages and penalties assessed;

20 (C) The amount of damages and penalties recovered; and

21 (D) A brief description of each after-the-fact permit issued, including the location and size by  
 22 volume and acreage.

23 (5) A description of staffing, including the number of full-time equivalent positions devoted to  
 24 the permit program and, for each position, the qualifications and job description.

25 (6) The report on the Oregon Wetlands Mitigation Bank Revolving Fund Account as required  
 26 under ORS 196.655.

27 (7) The number of and average time for responding to notices received by local governments and  
 28 the number of responses that took more than 30 days.

29 (8) The number of wetland conservation plans approved by the director and a description of  
 30 each, including the issues raised during the approval process.

31 **SECTION 54.** ORS 196.890 is amended to read:

32 196.890. Any person who violates any provision of ORS 196.600 to 196.905 or any rule, order or  
 33 permit adopted or issued under ORS 196.600 to 196.905 shall be subject to a civil penalty in an  
 34 amount to be determined by the [*Director of the Department of State Lands*] **Director of Agriculture**  
 35 of not more than \$10,000 per day of violation.

36 **SECTION 55.** ORS 196.895 is amended to read:

37 196.895. (1) Civil penalties under ORS 196.890 shall be imposed as provided in ORS 183.745.

38 (2) The provisions of this section are in addition to and not in lieu of any other penalty or  
 39 sanction provided by law. An action taken by the [*Director of the Department of State Lands*] **Di-**  
 40 **rector of Agriculture** under this section may be joined by the director with any other action taken  
 41 against the same person under ORS 196.860 (1)(f).

42 (3) Any civil penalty recovered under this section shall be deposited in the [*Common School*  
 43 *Fund*] **Department of Agriculture Account, as described in ORS 561.150**, for use by the [*De-*  
 44 *partment of State Lands*] **State Department of Agriculture** in administration of ORS 196.600 to  
 45 196.905, 196.990 and 541.990 and as otherwise required by law.

1       **SECTION 56.** ORS 196.895, as amended by section 5, chapter 516, Oregon Laws 2001, is  
2 amended to read:

3       196.895. (1) Except as provided in subsection (4) of this section, civil penalties under ORS  
4 196.890 shall be imposed as provided in ORS 183.745.

5       (2) The provisions of this section are in addition to and not in lieu of any other penalty or  
6 sanction provided by law. An action taken by the [*Director of the Department of State Lands*] **Di-**  
7 **rector of Agriculture** under this section may be joined by the director with any other action taken  
8 against the same person under ORS 196.860 (1)(f).

9       (3) Any civil penalty recovered under this section shall be deposited in the [*Common School*  
10 *Fund*] **Department of Agriculture Account, as described in ORS 561.150**, for use by the [*De-*  
11 *partment of State Lands*] **State Department of Agriculture** in administration of ORS 196.600 to  
12 196.905, 196.990 and 541.990 and as otherwise required by law.

13       (4) Notwithstanding any provision of ORS 183.745, any person having an interest that is ad-  
14 versely affected or aggrieved by an alleged violation for which civil penalties are imposed under  
15 ORS 196.890 may intervene in a contested case proceeding pertaining to the imposition of civil  
16 penalties under this section.

17       **SECTION 57.** ORS 196.900 is amended to read:

18       196.900. (1) The [*Director of the Department of State Lands*] **Director of Agriculture** shall adopt  
19 by rule the amount of civil penalty that may be imposed for a particular violation.

20       (2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the  
21 director shall consider the following factors:

22       (a) The past history of the person incurring a penalty in taking all feasible steps or procedures  
23 necessary or appropriate to correct any violation.

24       (b) Any prior violations of statutes, rules, orders and permits pertaining to waters of the state.

25       (c) The impact of the violation on public interests in fishery, navigation and recreation.

26       (d) Any other factors determined by the director to be relevant and consistent with the policy  
27 of ORS 196.805.

28       (3) The penalty imposed under this section may be remitted or mitigated upon such terms and  
29 conditions as the director determines to be proper and consistent with the policy of ORS 196.805.  
30 Upon the request of the person incurring the penalty, the director shall consider evidence of the  
31 economic and financial condition of the person in determining whether a penalty shall be remitted  
32 or mitigated.

33       **SECTION 58.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, and sec-  
34 tion 13, chapter 253, Oregon Laws 2003, is amended to read:

35       196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit  
36 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters  
37 of this state when:

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

40       (b)(A) The flow or circulation of the waters of this state may be impaired; or

41       (B) The reach of the waters may be reduced.

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

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

45       (b) Such removal or filling is directly connected with a forest management practice conducted

1 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

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

7 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the following  
8 activities on exclusive farm use zoned lands:

9 (a) Drainage or maintenance of farm or stock ponds;

10 (b) Subsurface drainage, by deep ripping, tiling or moling, on converted wetlands;

11 (c) Maintenance of farm roads, provided that:

12 (A) The farm roads are constructed and maintained in accordance with construction practices  
13 designed to minimize any adverse effects to the aquatic environment;

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

16 (C) Maintenance activities are confined to the scope of construction for the original project; and

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

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

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

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

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

29 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams  
30 constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the  
31 following conditions are satisfied:

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

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

37 (c) Temporary fills are removed in their entirety and the area is restored to its approximate  
38 original elevation.

39 (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,  
40 including emergency reconstruction of recently damaged parts, of currently serviceable roads or  
41 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-  
42 ments or approaches.

43 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance  
44 of access roads constructed to move mining equipment, subject to the following conditions:

45 (a) The access roads are constructed and maintained in accordance with construction practices

1 that minimize adverse effects to the aquatic environment;

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

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

5 (10) For the purposes of this section:

6 (a) "Converted wetland" means:

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

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

14 (b) "Harvesting" means physically removing crops or other agricultural products.

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

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

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

23 (d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other  
24 agricultural products.

25 **SECTION 59.** ORS 196.910 is amended to read:

26 196.910. The [*Department of State Lands*] **State Department of Agriculture** shall:

27 (1) Monitor removal and fill activities, including but not limited to prospecting and placer min-  
28 ing, within designated essential indigenous anadromous salmonid habitat areas to determine the ef-  
29 fects of such activities on salmonid spawning and rearing habitat and compile the results in an  
30 annual report.

31 (2) Cooperate with the State Department of Fish and Wildlife and other interested parties to  
32 develop and distribute public education and information materials designed to increase understand-  
33 ing and awareness of permit requirements and acceptable removal and fill practices related to  
34 prospecting and placer mining.

35 (3) Report periodically to the Joint Legislative Committee on Land Use on the progress of the  
36 [*Department of State Lands*] **State Department of Agriculture** in implementing ORS 196.810.

37 **SECTION 60.** ORS 197.279 is amended to read:

38 197.279. (1) Wetland conservation plans approved by the [*Director of the Department of State*  
39 *Lands*] **Director of Agriculture** pursuant to ORS chapter 196 shall be deemed to comply with the  
40 requirements of statewide planning goals relating to other than estuarine wetlands for those areas,  
41 uses and activities which are regulated by the wetland conservation plans.

42 (2) Wetland conservation plans shall be adopted and amended by local governments according  
43 to the procedures of ORS 197.610 to 197.625.

44 (3) The [*department*] **State Department of Agriculture** shall adopt by rule:

45 (a) Standards for cities and counties to use to inventory and identify wetlands; and

1 (b) Criteria for cities and counties to use to determine when a wetland is a significant wetland.

2 **SECTION 61.** ORS 215.418 is amended to read:

3 215.418. (1) After the [*Department of State Lands*] **State Department of Agriculture** has pro-  
4 vided the county with a copy of the applicable portions of the Statewide Wetlands Inventory, the  
5 county shall provide notice to the department, the applicant and the owner of record, within five  
6 working days of the acceptance of any complete application for the following that are wholly or  
7 partially within areas identified as wetlands on the Statewide Wetlands Inventory:

8 (a) Subdivisions;

9 (b) Building permits for new structures;

10 (c) Other development permits and approvals that allow physical alteration of the land involving  
11 excavation and grading, including permits for removal or fill, or both, or development in floodplains  
12 and floodways;

13 (d) Conditional use permits and variances that involve physical alterations to the land or con-  
14 struction of new structures; and

15 (e) Planned unit development approvals.

16 (2) The provisions of subsection (1) of this section do not apply if a permit from the department  
17 has been issued for the proposed activity.

18 (3) Approval of any activity described in subsection (1) of this section shall include one of the  
19 following notice statements:

20 (a) Issuance of a permit under ORS 196.665 and 196.800 to 196.900 by the department required  
21 for the project before any physical alteration takes place within the wetlands;

22 (b) Notice from the department that no permit is required; or

23 (c) Notice from the department that no permit is required until specific proposals to remove, fill  
24 or alter the wetlands are submitted.

25 (4) If the department fails to respond to any notice provided under subsection (1) of this section  
26 within 30 days of notice, the county approval may be issued with written notice to the applicant and  
27 the owner of record that the proposed action may require state or federal permits.

28 (5) The county may issue local approval for parcels identified as or including wetlands on the  
29 Statewide Wetlands Inventory upon providing to the applicant and the owner of record of the af-  
30 fected parcel a written notice of the possible presence of wetlands and the potential need for state  
31 and federal permits and providing the department with a copy of the notification of comprehensive  
32 plan map or zoning map amendments for specific properties.

33 (6) Notice of activities authorized within an approved wetland conservation plan shall be pro-  
34 vided to the department within five days following local approval.

35 (7) Failure by the county to provide notice as required in this section will not invalidate county  
36 approval.

37 **SECTION 62.** ORS 227.350 is amended to read:

38 227.350. (1) After the [*Department of State Lands*] **State Department of Agriculture** has pro-  
39 vided the city with a copy of the applicable portions of the Statewide Wetlands Inventory, the city  
40 shall provide notice to the department, the applicant and the owner of record, within five working  
41 days of the acceptance of any complete application for the following activities that are wholly or  
42 partially within areas identified as wetlands on the Statewide Wetlands Inventory:

43 (a) Subdivisions;

44 (b) Building permits for new structures;

45 (c) Other development permits and approvals that allow physical alteration of the land involving

1 excavation and grading, including permits for removal or fill, or both, or development in floodplains  
2 and floodways;

3 (d) Conditional use permits and variances that involve physical alterations to the land or con-  
4 struction of new structures; and

5 (e) Planned unit development approvals.

6 (2) The provisions of subsection (1) of this section do not apply if a permit from the department  
7 has been issued for the proposed activity.

8 (3) Approval of any activity described in subsection (1) of this section shall include one of the  
9 following notice statements:

10 (a) Issuance of a permit under ORS 196.600 to 196.905 by the department required for the project  
11 before any physical alteration takes place within the wetlands;

12 (b) Notice from the department that no permit is required; or

13 (c) Notice from the department that no permit is required until specific proposals to remove, fill  
14 or alter the wetlands are submitted.

15 (4) If the department fails to respond to any notice provided under subsection (1) of this section  
16 within 30 days of notice, the city approval may be issued with written notice to the applicant and  
17 the owner of record that the proposed action may require state or federal permits.

18 (5) The city may issue local approval for parcels identified as or including wetlands on the  
19 Statewide Wetlands Inventory upon providing to the applicant and the owner of record of the af-  
20 fected parcel a written notice of the possible presence of wetlands and the potential need for state  
21 and federal permits and providing the department with a copy of the notification of comprehensive  
22 plan map or zoning map amendments for specific properties.

23 (6) Notice of activities authorized within an approved wetland conservation plan shall be pro-  
24 vided to the department within five days following local approval.

25 (7) Failure by the city to provide notice as required in this section will not invalidate city ap-  
26 proval.

27 **SECTION 63.** ORS 273.141 is amended to read:

28 273.141. In order to provide the Department of State Lands with the specialized assistance nec-  
29 cessary to its operations and the transaction of its business, and in addition to other agreements that  
30 may be entered into under ORS 273.135, the department may enter into written agreements with the  
31 state agencies designated in this section for the operation of programs and activities assigned to the  
32 department. Subject to final review and approval by the State Land Board:

33 (1) The State Forestry Department may perform the functions assigned by the board that relate  
34 to forest resources.

35 (2) The State Department of Geology and Mineral Industries may perform the functions of the  
36 Department of State Lands that relate to mineral resources.

37 (3) The Director of Veterans' Affairs may perform the functions of the Department of State  
38 Lands that relate to investment of funds in mortgages secured by real property.

39 (4) The State Treasurer may perform the functions of the Department of State Lands that relate  
40 to investments of funds administered by the Department of State Lands not described in subsection  
41 (3) of this section, and that relate to escheated property.

42 (5) The State Department of Agriculture may perform the functions assigned by the board and  
43 the functions pertaining to management and regulation of grazing land and other agricultural lands  
44 **and the functions pertaining to permitting described in ORS 196.600 to 196.905.**

45 **SECTION 64.** ORS 274.525 is amended to read:

1       274.525. (1) Any city of the State of Oregon bordering on a navigable stream may dredge out  
2 and use material from submersible and submerged lands of the stream, owned by the State of Oregon  
3 and in front of such city, for the purpose of filling in or reclaiming the submersible lands within such  
4 city, under the rules of the Department of State Lands **and the State Department of**  
5 **Agriculture**. The consent of the appropriate agency of the United States Government shall be first  
6 obtained by such city.

7       (2) Any contractor who has entered into a contract with any such city to fill in or reclaim any  
8 of its submersible lands may dredge and use such material in the same manner as may be done by  
9 such city.

10       **SECTION 65.** ORS 274.550 is amended to read:

11       274.550. (1) A person may remove material from submersible and submerged lands owned by the  
12 State of Oregon without payment of royalties to the Department of State Lands if the material is:

13       (a) Removed for channel or harbor improvement or flood control;

14       (b) Used for filling, diking or reclaiming land owned by the state or any political subdivision as  
15 defined in ORS 271.005 and located not more than two miles from the bank of the stream;

16       (c) Used for the creation, maintenance or enhancement of fish or wildlife habitat;

17       (d) Used for the maintenance of public beaches; or

18       (e) Contaminated with hazardous material, as defined in ORS 466.605, provided that the person  
19 gives the department written notice of the removal at least 30 days prior to disposal.

20       (2) A person does not have to pay royalties to the state for the following uses of material, if the  
21 person provides at least 30 days' written notice to the [*department*] **Department of State Lands**  
22 **and the State Department of Agriculture** of the intended use:

23       (a) The filling of any property up to an elevation of one foot above the line of ordinary high  
24 water of a waterway by a state agency or political subdivision, as defined in ORS 271.005.

25       (b) The material is used solely for a public purpose by a political subdivision, as defined in ORS  
26 271.005.

27       (3) A person may not remove any material from the place it was first deposited or use the ma-  
28 terial as an article of commerce without providing, prior to the removal of the material, written  
29 notification to the [*department*] **Department of State Lands and the State Department of Agri-**  
30 **culture** and payment of any royalties for the material as determined by the [*department*] **Depart-**  
31 **ment of State Lands**.

32       (4) In addition to the purposes enumerated in subsection (1) of this section, any person may take  
33 material for the exclusive use of the person to the extent of not more than 50 cubic yards or the  
34 equivalent weight in tons in any one year. However, before taking the material, the person shall  
35 first notify the [*department*] **Department of State Lands and the State Department of Agricul-**  
36 **ture**.

37       (5) Upon the removal of material from submersible or submerged lands not exempt from the  
38 payment of royalties, royalties in an amount established by the [*department*] **Department of State**  
39 **Lands** must be paid to the department.

40       (6) For purposes of this section:

41       (a) "Article of commerce" means any material, other than material used for upland disposal or  
42 contaminated material put to beneficial use, that is bought, sold or exchanged in any manner for  
43 goods or services and that otherwise would have to be acquired from alternative sources.

44       (b) "Reclaiming land" means raising the elevation of a portion of land within a 100-year  
45 floodplain to not more than one foot of elevation higher than the highest elevation of the 100-year



1 floodplain, or protecting land otherwise in the 100-year floodplain by the construction of dikes or  
 2 other flood control improvements.

3 **SECTION 66.** ORS 284.585 is amended to read:

4 284.585. In furtherance of the state economic development strategy developed under ORS  
 5 284.570, the [*Department of State Lands*] **State Department of Agriculture** shall:

6 (1) Consistent with ORS 196.674, focus wetlands inventories on areas described in the state  
 7 economic development strategy. The department may provide grants and technical assistance to lo-  
 8 cal governments to conduct the inventories.

9 (2) Develop a site assessment methodology for rapidly determining the capacity of a site for  
 10 economic development. The methodology shall address site-specific impediments to development and  
 11 any costs associated with compliance with ORS 196.800 to 196.900.

12 **SECTION 67.** ORS 293.701 is amended to read:

13 293.701. As used in ORS 293.701 to 293.820, unless the context requires otherwise:

14 (1) "Council" means the Oregon Investment Council.

15 (2) "Investment funds" means:

16 (a) Public Employees Retirement Fund referred to in ORS 238.660;

17 (b) Industrial Accident Fund referred to in ORS 656.632;

18 (c) Consumer and Business Services Fund referred to in ORS 705.145;

19 (d) Employment Department Special Administrative Fund referred to in ORS 657.822;

20 (e) Insurance Fund referred to in ORS 278.425;

21 (f) Funds under the control and administration of the Department of State Lands;

22 (g) Oregon Student Assistance Fund referred to in ORS 348.570;

23 (h) Moneys made available to the Commission for the Blind under ORS 346.270 and 346.540 or  
 24 rules adopted thereunder;

25 (i) Forest rehabilitation bonds sinking fund referred to in ORS 530.280;

26 (j) Oregon War Veterans' Fund referred to in ORS 407.495;

27 (k) Oregon War Veterans' Bond Sinking Account referred to in ORS 407.515;

28 (L) World War II Veterans' Compensation Fund;

29 (m) World War II Veterans' Bond Sinking Fund;

30 (n) Savings and loan association funds in the hands of the Director of the Department of Con-  
 31 sumer and Business Services;

32 (o) Funds in the hands of the State Treasurer that are not required to meet current demands;

33 (p) State funds that are not subject to the control and administration of officers or bodies spe-  
 34 cifically designated by law;

35 (q) Funds derived from the sale of state bonds;

36 (r) Social Security Revolving Account referred to in ORS 237.490;

37 (s) Investment funds of the State Board of Higher Education lawfully available for investment  
 38 or reinvestment;

39 (t) Local Government Employer Benefit Trust Fund referred to in ORS 657.513;

40 (u) Elderly and Disabled Special Transportation Fund established by ORS 391.800;

41 (v) Education Stability Fund established by ORS 348.696;

42 (w) Deferred Compensation Fund established under ORS 243.411; [*and*]

43 (x) Trust for Cultural Development Account established under ORS 359.405[.]; **and**

44 (y) **Funds under the control and administration of the State Department of Agriculture**  
 45 **pursuant to ORS 196.640.**

1 (3) "Investment officer" means the State Treasurer in the capacity as investment officer for the  
2 council.

3 **SECTION 68.** ORS 390.725 is amended to read:

4 390.725. (1) Removal of natural products such as fish or wildlife, agates or small amounts of  
5 driftwood from a state recreation area as defined in ORS 390.605 for personal, noncommercial use  
6 is not subject to the provisions of ORS 390.650.

7 (2) The collection of natural products for the purpose of trade, sale or resale shall be subject  
8 to the permit provisions and standards of ORS 390.650 and 390.655. Permits shall provide for the  
9 payment of just compensation by the permittee as provided by rule adopted under subsection (4) of  
10 this section.

11 (3) No archaeological object associated with an archaeological site, as those terms are defined  
12 in ORS 358.905, shall be removed from the ocean shore except as provided in ORS 358.920 and  
13 390.235.

14 (4) Rules or permits shall be made or granted by the State Parks and Recreation Department  
15 only after consultation with the State Fish and Wildlife Commission, the State Department of  
16 Geology and Mineral Industries, **the State Department of Agriculture** and the Department of  
17 State Lands. Rules and permits shall contain provisions necessary to protect the areas from any use,  
18 activity or practice inimicable to the conservation of natural resources or public recreation.

19 (5) The terms, royalty and duration of a permit under this section are at the discretion of the  
20 State Parks and Recreation Department. A permit is revocable at any time in the discretion of the  
21 department without liability to the permittee.

22 (6) Whenever the issuance of a permit under this section will affect lands owned privately, the  
23 State Parks and Recreation Department shall withhold the issuance of such permit until such time  
24 as the permittee shall have obtained an easement, license or other written authorization from the  
25 private owner, which easement, license or other written authority must meet the approval of the  
26 department, except as to the compensation to be paid to the private owner.

27 **SECTION 69.** ORS 390.835 is amended to read:

28 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways  
29 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained  
30 in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water  
31 impoundment facility shall be constructed on waters within scenic waterways. No water diversion  
32 facility shall be constructed or used except by right previously established or as permitted by the  
33 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in  
34 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to  
35 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-  
36 section.

37 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of  
38 scenic waterways for purposes other than recreational prospecting not requiring a permit shall be  
39 prohibited, except as permitted by the [*Director of the Department of State Lands*] **Director of Ag-**  
40 **riculture** upon a finding that such activity would be consistent with the policies set forth under  
41 ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth  
42 under ORS 196.800 to 196.825 and 196.840 to 196.870 for removal of material from the beds and banks  
43 and filling of any waters of this state. The [*Director of the Department of State Lands*] **Director of**  
44 **Agriculture** shall administer and enforce the provisions of this subsection.

45 (3)(a) Upon a finding of emergency circumstances, the [*Director of the Department of State*

1 *Lands*] **Director of Agriculture** may issue a temporary permit for the removal, filling or alteration  
2 of the beds or banks within a scenic waterway. The temporary permit shall include conditions de-  
3 veloped after consultation with the State Department of Fish and Wildlife and the State Parks and  
4 Recreation Department.

5 (b) As used in this subsection, “emergency circumstances” exist if prompt action is necessary  
6 to prevent irreparable harm, injury or damage to persons or property.

7 (4) Any person adversely affected or aggrieved by the grant or denial of a permit under sub-  
8 section (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS  
9 196.835.

10 (5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Com-  
11 mission to construct facilities or make improvements to facilitate the passage or propagation of fish  
12 or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805  
13 to 390.925 affects the authority of the Water Resources Commission to construct and maintain  
14 stream gauge stations and other facilities related to the commission’s duties in administration of the  
15 water laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (a) The Water Resources Commission, the State Parks and Recreation Department, the State  
43 Department of Fish and Wildlife, the Department of Environmental Quality and the [*Department of*  
44 *State Lands*] **State Department of Agriculture** unanimously agree to exceed that amount; and

45 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-

1 ters in quantities necessary for recreation, fish and wildlife.

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

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

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

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

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

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

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

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

26 (g) Each water right permit and certificate for appropriation of ground water issued after July  
27 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be condi-  
28 tioned to allow the regulation of the use if analysis of data available after the permit or certificate  
29 is issued discloses that the appropriation will measurably reduce the surface water flows necessary  
30 to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation,  
31 fish and wildlife in effect as of the priority date of the right or as those quantities may be subse-  
32 quently reduced.

33 (h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS  
34 537.545.

35 (10) The Water Resources Commission or Water Resources Director shall consider mitigation  
36 measures and may include mitigation measures as conditions in any water right permit or certificate  
37 to ensure the maintenance of the free-flowing character of the scenic waterway in quantities nec-  
38 essary for recreation, fish and wildlife.

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

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

1 (a) The Water Resources Department, the State Parks and Recreation Department, the State  
2 Department of Fish and Wildlife, the Department of Environmental Quality and the [*Department of*  
3 *State Lands*] **State Department of Agriculture** unanimously agree to exceed that amount; and

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

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

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

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

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

15 (14) No placer mining shall be permitted on waters within scenic waterways other than recre-  
16 ational placer mining.

17 (15) No person shall be required to obtain a permit for recreational prospecting resulting in the  
18 fill, removal or other alteration of less than one cubic yard of material at any one individual site  
19 and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter  
20 of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site  
21 where fish eggs are present.

22 (16) No provision of this section shall be construed to exempt recreational placer mining on a  
23 scenic waterway, other than recreational prospecting not requiring a permit, from compliance with  
24 the provisions of ORS 196.800 to 196.825 and 196.840 to 196.870 or rules adopted pursuant to ORS  
25 196.800 to 196.825 and 196.840 to 196.870.

26 (17) Recreational placer mining, other than recreational prospecting not requiring a permit,  
27 shall not:

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

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

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

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

35 (e) Include excavation from the streambank;

36 (f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon  
37 leaving the site;

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

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

42 (i) Impede boating;

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

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

3 (18) As used in this section:

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

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

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

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

16 **SECTION 70.** ORS 390.835, as amended by section 8, chapter 516, Oregon Laws 2001, is  
17 amended to read:

18 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways  
19 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained  
20 in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water  
21 impoundment facility may not be constructed on waters within scenic waterways. A water diversion  
22 facility may not be constructed or used except by right previously established or as permitted by the  
23 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in  
24 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to  
25 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-  
26 section.

27 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of  
28 scenic waterways for purposes other than recreational prospecting not requiring a permit shall be  
29 prohibited, except as permitted by the [*Director of the Department of State Lands*] **Director of Ag-**  
30 **riculture** upon a finding that such activity would be consistent with the policies set forth under  
31 ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth  
32 under ORS 196.800 to 196.825 and 196.840 to 196.870 for removal of material from the beds and banks  
33 and filling of any waters of this state. The [*Director of the Department of State Lands*] **Director of**  
34 **Agriculture** shall administer and enforce the provisions of this subsection.

35 (3)(a) Upon a finding of emergency circumstances, the [*Director of the Department of State*  
36 *Lands*] **Director of Agriculture** may issue a temporary permit for the removal, filling or alteration  
37 of the beds or banks within a scenic waterway. The temporary permit shall include conditions de-  
38 veloped after consultation with the State Department of Fish and Wildlife and the State Parks and  
39 Recreation Department.

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

42 (4) Any person adversely affected or aggrieved by the grant or denial of a permit under sub-  
43 section (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS  
44 196.835.

45 (5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Com-

1 mission to construct facilities or make improvements to facilitate the passage or propagation of fish  
2 or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805  
3 to 390.925 affects the authority of the Water Resources Commission to construct and maintain  
4 stream gauge stations and other facilities related to the commission's duties in administration of the  
5 water laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (a) The Water Resources Commission, the State Parks and Recreation Department, the State  
33 Department of Fish and Wildlife, the Department of Environmental Quality and the [*Department of*  
34 *State Lands*] **State Department of Agriculture** unanimously agree to exceed that amount; and

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

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

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

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

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

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

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

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

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

16 (g) Each water right permit and certificate for appropriation of ground water issued after July  
17 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be condi-  
18 tioned to allow the regulation of the use if analysis of data available after the permit or certificate  
19 is issued discloses that the appropriation will measurably reduce the surface water flows necessary  
20 to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation,  
21 fish and wildlife in effect as of the priority date of the right or as those quantities may be subse-  
22 quently reduced.

23 (h) This subsection does not limit the use of ground water for a use exempted under ORS  
24 537.545.

25 (10) The Water Resources Commission or Water Resources Director shall consider mitigation  
26 measures and may include mitigation measures as conditions in any water right permit or certificate  
27 to ensure the maintenance of the free-flowing character of the scenic waterway in quantities nec-  
28 essary for recreation, fish and wildlife.

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

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

36 (a) The Water Resources Department, the State Parks and Recreation Department, the State  
37 Department of Fish and Wildlife, the Department of Environmental Quality and the [*Department of*  
38 *State Lands*] **State Department of Agriculture** unanimously agree to exceed that amount; and

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

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

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



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

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

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

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

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

16 (17) Recreational placer mining may not:

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

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

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

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

24 (e) Include excavation from the streambank;

25 (f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon  
26 leaving the site;

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

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

31 (i) Impede boating;

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

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

37 (18) As used in this section:

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

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

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

1 prospecting that does not require a permit.

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

5 **SECTION 71.** ORS 421.628, as amended by section 9, chapter 516, Oregon Laws 2001, and sec-  
6 tion 45, chapter 598, Oregon Laws 2003, is amended to read:

7 421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286 or any other  
8 provision of law, including but not limited to statutes, ordinances, regulations and charter pro-  
9 visions, and except for permit decisions delegated by the federal government to the [*Department of*  
10 *State Lands*] **State Department of Agriculture**, the decisions of the Corrections Facilities Siting  
11 Authority, if approved by the Governor, shall bind the state and all counties, cities and political  
12 subdivisions in this state as to the approval of the sites and the construction and operation of the  
13 proposed corrections facilities. Except for those statutes and rules for which permit decisions have  
14 been delegated by the federal government to the [*Department of State Lands*] **State Department**  
15 **of Agriculture**, all affected state agencies, counties, cities and political subdivisions shall issue the  
16 appropriate permits, licenses and certificates and enter into any intergovernmental agreements as  
17 necessary for construction and operation of the facilities, subject only to the conditions of the siting  
18 decisions.

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

21 (3) Except as provided in subsections (4) to (16) of this section, nothing in ORS 421.611 to  
22 421.630 expands or alters the obligations of cities, counties and political subdivisions to pay for  
23 infrastructure improvements for the proposed corrections facilities.

24 (4) The Department of Corrections shall seek to obtain public services necessary for the con-  
25 struction and operation of corrections facilities from a public body providing such services. The  
26 department may not acquire or develop and furnish its own public services under this section that  
27 could be provided by a public body unless the department concludes that the state can achieve sig-  
28 nificant cost savings by doing so.

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

40 (6) If the Department of Corrections and the public body cannot agree on the rates, terms and  
41 conditions of furnishing necessary public services to a corrections facility, either the department or  
42 the public body may deliver to the other a notice of request to mediate any disputed issues, includ-  
43 ing, but not limited to, whether the department can achieve significant cost savings to the state by  
44 acquiring or developing and furnishing its own public services. If either the department or the public  
45 body requests mediation, the other shall participate in good faith in such mediation. Unless other-

1 wise agreed by the department and the public body, the mediation shall be concluded within 30 days  
2 of delivery of the notice of request to mediate.

3 (7) If the mediation fails to resolve the issues in dispute, or if mediation is not requested by ei-  
4 ther the Department of Corrections or the public body, the department and the public body may  
5 agree to submit any disputed matters to arbitration. The arbitration may be either binding or non-  
6 binding. If the department and the public body cannot agree on the selection of the arbitrator and  
7 the arbitration rules and procedure, upon motion directed to the Court of Appeals, the Chief Judge  
8 of the Court of Appeals shall select the arbitrator and decide the rules and procedure. The  
9 arbitrator's decision and award shall be guided by the standards set forth in this section. The deci-  
10 sion and award of the arbitrator shall be final and binding on the department and the public body  
11 only if they agree to enter into binding arbitration prior to the initiation of the arbitration. If the  
12 department and public body have agreed to binding arbitration of disputed issues, either the de-  
13 partment or the public body, if dissatisfied with the arbitrator's decision and award, may file ex-  
14 ceptions in the Court of Appeals within 21 days of the issuance of the decision and award.  
15 Exceptions shall be limited to the causes set forth in ORS 36.705 (1)(a) to (d), and to the grounds for  
16 modification or correction of an award under ORS 36.710. If any of the exceptions requires consid-  
17 eration of facts that do not appear on the face of the arbitrator's decision and award or is not  
18 stipulated to by the parties, the court may appoint a master to take evidence and make the neces-  
19 sary factual findings. The Court of Appeals' decision shall be final and not subject to further review.

20 (8) If the Department of Corrections and the public body have submitted disputed matters to  
21 nonbinding arbitration or if the department and public body have chosen not to submit disputed  
22 matters to arbitration, the department shall issue a preliminary order to the public body that either  
23 concludes that the state can achieve significant costs savings by acquiring or developing and fur-  
24 nishing its own public services, or establishes the rates, terms and conditions upon which the public  
25 body shall make necessary public services available to the department for the corrections facility.  
26 The public body, no later than 15 days following the department's issuance of its preliminary order,  
27 may contest the preliminary order by filing a written notice to that effect with the department. The  
28 preliminary order shall become final, binding and conclusive if the public body fails to request a  
29 hearing within the time permitted in this section.

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

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

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

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

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

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

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

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

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

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

15 **SECTION 72.** ORS 459.047, as amended by section 10, chapter 516, Oregon Laws 2001, is  
 16 amended to read:

17 459.047. Upon request by a city or county responsible for implementing a department approved  
 18 solid waste management plan which identifies a need for a landfill, and subject to policy direction  
 19 by the Environmental Quality Commission, the Department of Environmental Quality shall:

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

22 (2) Locate a site and issue a solid waste disposal permit under ORS 459.205 to 459.385 for a  
 23 landfill within the boundaries of the requesting local government unit. Subject to the conditions set  
 24 forth in the permit and except for permit decisions delegated by the federal government to the [*De-*  
 25 *partment of State Lands*] **State Department of Agriculture**, any permit for a landfill authorized by  
 26 the Environmental Quality Commission under this subsection shall bind the state and all counties  
 27 and cities and political subdivisions in this state as to the approval of the site and the construction  
 28 and operation of the proposed facility. Except for those statutes and rules for which compliance  
 29 decisions have been delegated by the federal government to the [*Department of State Lands*] **State**  
 30 **Department of Agriculture**, all affected state agencies, counties, cities and political subdivisions  
 31 shall issue the appropriate permits, licenses and certificates necessary to construction and operation  
 32 of the landfill, subject only to condition of the site certificate. Each state or local government  
 33 agency that issues a permit, license or certificate shall continue to exercise enforcement authority  
 34 over such permit, license or certificate.

35 **SECTION 73.** ORS 527.710 is amended to read:

36 527.710. (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the  
 37 State Board of Forestry shall adopt, in accordance with applicable provisions of ORS chapter 183,  
 38 rules to be administered by the State Forester establishing standards for forest practices in each  
 39 region or subregion.

40 (2) The rules shall ensure the continuous growing and harvesting of forest tree species. Con-  
 41 sistent with ORS 527.630, the rules shall provide for the overall maintenance of the following re-  
 42 sources:

43 (a) Air quality;

44 (b) Water resources, including but not limited to sources of domestic drinking water;

45 (c) Soil productivity; and

1 (d) Fish and wildlife.

2 (3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board  
3 shall collect and analyze the best available information and establish inventories of the following  
4 resource sites needing protection:

5 (A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by  
6 rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species  
7 Act of 1973 as amended;

8 (B) Sensitive bird nesting, roosting and watering sites;

9 (C) Biological sites that are ecologically and scientifically significant; and

10 (D) Significant wetlands.

11 (b) The board shall determine whether forest practices would conflict with resource sites in the  
12 inventories required by paragraph (a) of this subsection. If the board determines that one or more  
13 forest practices would conflict with resource sites in the inventory, the board shall consider the  
14 consequences of the conflicting uses and determine appropriate levels of protection.

15 (c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the  
16 policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the in-  
17 ventories required by paragraph (a) of this subsection.

18 (4) Before adopting rules under subsection (1) of this section, the board shall consult with other  
19 agencies of this state or any of its political subdivisions that have functions with respect to the  
20 purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs  
21 subject to consultation under this subsection include, but are not limited to:

22 (a) Air and water pollution programs administered by the Department of Environmental Quality  
23 under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532;

24 (b) Mining operation programs administered by the Department of Geology and Mineral Indus-  
25 tries under ORS 516.010 to 516.130 and ORS chapter 517;

26 (c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat  
27 improvement tax incentive programs administered by the State Department of Fish and Wildlife un-  
28 der ORS 272.060, 315.134 and ORS chapters 496, 498, 501, 506 and 509;

29 (d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs ad-  
30 ministered by the State Parks and Recreation Department under ORS 358.480 to 358.545, 390.310 to  
31 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

32 (e) The programs administered by the Columbia River Gorge Commission under Public Law  
33 99-663 and ORS 196.110 and 196.150;

34 (f) [*Removal and fill,*] Natural heritage conservation and natural heritage conservation tax in-  
35 centive programs administered by the State Land Board and the Department of State Lands under  
36 ORS [*196.800 to 196.900 and*] 273.553 to 273.591;

37 (g) Federal Safe Drinking Water Act programs administered by the Department of Human Ser-  
38 vices under ORS 448.273 to 448.990;

39 (h) Natural heritage conservation programs administered by the Natural Heritage Advisory  
40 Council under ORS 273.553 to 273.591;

41 (i) Open space land tax incentive programs administered by cities and counties under ORS  
42 308A.300 to 308A.330;

43 (j) Water resources programs administered by the Water Resources Department under ORS  
44 536.220 to 536.540; and

45 (k) **Removal and fill and** pesticide control programs administered by the State Department of

1 Agriculture under ORS **196.800 to 196.900** and chapter 634.

2 (5) In carrying out the provisions of subsection (4) of this section, the board shall consider and  
3 accommodate the rules and programs of other agencies to the extent deemed by the board to be  
4 appropriate and consistent with the purposes of ORS 527.630.

5 (6) The board shall adopt rules to meet the purposes of another agency's regulatory program  
6 where it is the intent of the board to administer the other agency's program on forestland and where  
7 the other agency concurs by rule. An operation performed in compliance with the board's rules shall  
8 be deemed to comply with the other agency's program.

9 (7)(a) The board may enter into cooperative agreements or contracts necessary in carrying out  
10 the purposes specified in ORS 527.630.

11 (b) The State Forestry Department shall enter into agreements with appropriate state agencies  
12 for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and  
13 water quality.

14 (8) If, based upon the study completed pursuant to section 15 (2)(f), chapter 919, Oregon Laws  
15 1991, the board determines that additional rules are necessary to protect forest resources pursuant  
16 to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the  
17 adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity,  
18 fish and wildlife resources and watersheds. Such rules shall include a process for determining areas  
19 where adverse impacts from cumulative effects have occurred or are likely to occur, and may re-  
20 quire that a written plan be submitted for harvests in such areas.

21 (9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall  
22 identify streams for which restoration of habitat would be environmentally beneficial. The State  
23 Forester shall select as a priority those streams where restoration efforts will provide the greatest  
24 benefits to fish and wildlife, and to streambank and streambed stability.

25 (b) For those streams identified in paragraph (a) of this subsection, the State Forester shall en-  
26 courage landowners to enter into cooperative agreements with appropriate state agencies for con-  
27 duct of restoration activities.

28 (c) The board, in consultation with appropriate state agencies, shall study and identify methods  
29 for restoring or enhancing fish and wildlife populations through restoration and rehabilitation of  
30 sites beneficial to fish and wildlife.

31 (d) The board shall adopt rules to implement the findings of this subsection.

32 (10) In addition to its responsibilities under subsections (1) to (3) of this section, the board shall  
33 adopt rules to reduce the risk of serious bodily injury or death caused by a rapidly moving landslide  
34 directly related to forest practices. The rules shall consider the exposure of the public to these  
35 safety risks and shall include appropriate practices designed to reduce the occurrence, timing or  
36 effects of rapidly moving landslides. As used in this subsection, "rapidly moving landslide" has the  
37 meaning given that term in ORS 195.250.

38 **SECTION 74.** ORS 536.007 is amended to read:

39 536.007. As used in ORS [196.600 to 196.905,] 541.010 to 541.320, [and] 541.430 to 541.545[,] **and**  
40 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543:

41 (1) "Commission" means the Water Resources Commission.

42 (2) "Department" means the Water Resources Department.

43 (3) "Director" means the Water Resources Director.

44 (4) "Existing right" or "vested right" or words of similar import include an inchoate right to the  
45 use of water to the fullest extent that the right is recognized, defined or declared by the commission,

1 the director or any court within this state.

2 (5) "Order" has the meaning given in ORS 183.310.

3 (6) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock  
4 companies, public and municipal corporations, political subdivisions, the state and any agencies  
5 thereof, and the federal government and any agencies thereof.

6 (7) "Public corporation" includes any city, county or district organized for public purposes.

7 (8) "Rule" has the meaning given in ORS 183.310.

8 (9) "State agency" includes any office, board, commission or department of a state government.

9 (10) "State water resources policy" means the water resources policy provided for in ORS  
10 536.295 to 536.350 and 537.505 to 537.534.

11 (11) "Undetermined vested right" means a water right claimed under ORS 539.010 as having  
12 vested or as having been initiated before February 24, 1909, that has not been determined in an  
13 adjudication proceeding under ORS chapter 539 nor is evidenced by a permit or certificate issued  
14 under the Water Rights Act.

15 (12) "Waters of this state" means any surface or ground waters located within or without this  
16 state and over which this state has sole or concurrent jurisdiction.

17 (13) "Water resources of this state" means waters of this state and the following auxiliary lands  
18 whose usage directly affects the development and control of the waters of this state:

19 (a) Potential reservoir sites.

20 (b) Floodplain areas forming the predictable channels of floodwater drainage of rivers and  
21 streams.

22 **SECTION 75.** ORS 536.025 is amended to read:

23 536.025. (1) It is the function of the Water Resources Commission to establish the policies for  
24 the operation of the Water Resources Department in a manner consistent with the policies and  
25 purposes of ORS [196.600 to 196.905,] 537.525, 541.010 to 541.320, 541.430 to 541.545, 541.700 to  
26 541.990 and ORS chapters 536 to 540, 542 and 543. In addition, the commission shall perform any  
27 other duty vested in it by law.

28 (2) Except for the commission's power to adopt rules, the commission may delegate to the Water  
29 Resources Director the exercise or discharge in the commission's name of any power, duty or func-  
30 tion of whatever character, vested in or imposed by law upon the commission. The official act of the  
31 director acting in the commission's name and by the commission's authority shall be considered to  
32 be an official act of the commission.

33 (3) The commission may delegate to the director the authority to conduct a public hearing re-  
34 lating to the adoption or amendment of a basin program as provided in ORS 536.300. However, the  
35 commission may not delegate to the director the authority to adopt or amend a basin program.

36 **SECTION 76.** ORS 536.026 is amended to read:

37 536.026. (1) The Water Resources Commission, its members or a person designated by and acting  
38 for the commission may:

39 (a) Conduct public hearings.

40 (b) Issue subpoenas for the attendance of witnesses and the production of books, records and  
41 documents relating to matters before the commission.

42 (c) Administer oaths.

43 (d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may  
44 be considered necessary or proper to carry out duties of the commission and Water Resources De-  
45 partment under ORS [196.600 to 196.905,] 541.010 to 541.320, 541.430 to 541.545, 541.700 to 541.990

1 and ORS chapters 536 to 540, 542 and 543.

2 (2) Subpoenas authorized by this section may be served by any person authorized by the person  
3 issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in  
4 ORS 44.415 (2).

5 **SECTION 77.** ORS 537.025 is amended to read:

6 537.025. (1) Upon receipt of an application for registration, the Water Resources Department  
7 shall determine whether the project may result in injury to existing water rights or the public in-  
8 terest.

9 (2) In consultation with the State Department of Fish and Wildlife, Department of Environmental  
10 Quality, State Department of Agriculture, [*Department of State Lands*,] Economic and Community  
11 Development Department and any other agency the department considers appropriate, the depart-  
12 ment shall determine whether the development proposed in an application for registration submitted  
13 under ORS 537.020 is reasonably expected to result in wetland, stream and riparian restoration or  
14 storm water management benefits.

15 (3) Notice of registration applications and a description of the proposed project shall be pub-  
16 lished in the department's public notice of water right applications. The public and state agencies  
17 shall have 30 days to submit written comments on the proposed project.

18 **SECTION 78.** Section 2, chapter 45, Oregon Laws 1989, is amended to read:

19 **Sec. 2.** (1) Notwithstanding any other provision of ORS [*541.605 to 541.685*] **196.800 to 196.900**:

20 (a) As used in ORS [*541.605 to 541.685*] **196.800 to 196.900**, "fill" means the deposit by artificial  
21 means of material in any waters of this state.

22 (b) In the manner provided by ORS [*541.640*] **196.850**, the [*director*] **Director of Agriculture** may  
23 provide a general exception from the application of ORS [*541.605 to 541.685*] **196.800 to 196.900** for  
24 fills that involve less than 50 cubic yards of material and will not result in substantial harm to the  
25 water resources of this state.

26 (2) This section does not become operative until the federal Environmental Protection Agency  
27 grants authority to the [*Department of State Lands*] **State Department of Agriculture** to administer  
28 permits for the discharge of dredged or fill material under section 404 of the Federal Water Pol-  
29 lution Control Act (P.L. 92-500, as amended).

30 **SECTION 79.** Section 3, chapter 499, Oregon Laws 2001, is amended to read:

31 **Sec. 3.** In order to make recommendations to better achieve the objectives and enhance the ef-  
32 fectiveness of the Oregon Scenic Waterways System, the State Parks and Recreation Department  
33 shall complete a review of the system administered under ORS 390.805 to 390.925, including a review  
34 of the studies pertaining to the effects of recreational placer mining within scenic waterways. At the  
35 request of the State Parks and Recreation Department, the [*Department of State Lands*] **State De-**  
36 **partment of Agriculture**, the Water Resources Department, the State Department of Fish and  
37 Wildlife, the State Marine Board and the Department of Environmental Quality shall assist in the  
38 review. The State Parks and Recreation Department may also request interested public parties to  
39 assist in the review.

40 **SECTION 80.** Section 4, chapter 499, Oregon Laws 2001, is amended to read:

41 **Sec. 4.** Notwithstanding ORS 390.835, a permit or temporary permit for dredging issued by the  
42 [*Department of State Lands*] **State Department of Agriculture** for the purpose of recreational  
43 placer mining within a scenic waterway is not valid after December 31, 2003, if the review described  
44 in section 3, **chapter 499, Oregon Laws 2001**, [*of this 2001 Act*] has been completed and reported  
45 to the Seventy-second Legislative Assembly or, if the review has not been completed and reported



1 to the Seventy-second Legislative Assembly, after December 31, 2005.

2 **SECTION 81.** Section 11, chapter 516, Oregon Laws 2001, is amended to read:

3 **Sec. 11.** The amendments to ORS 196.800, 196.810, 196.825, 196.850, 196.895, 196.905, 196.990,  
4 390.835, 421.628 and 459.047 by sections 1 to 10, **chapter 516, Oregon Laws 2001**, [of this 2001  
5 Act] and the repeal of section 2, chapter 45, Oregon Laws 1989, by section 13, **chapter 516, Oregon**  
6 **Laws 2001**, [of this 2001 Act] become operative on January 2 of the even-numbered year following  
7 the date the United States Environmental Protection Agency grants authority by letter to the [De-  
8 partment of State Lands] **State Department of Agriculture** to administer permits for the discharge  
9 of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500,  
10 as amended) and the Legislative Assembly approves the grant of authority.

11 **SECTION 82.** Section 12, chapter 516, Oregon Laws 2001, is amended to read:

12 **Sec. 12.** (1) The [Department of State Lands] **State Department of Agriculture** may take any  
13 action necessary, [to prepare to fully implement the provisions of this 2001 Act] prior to the operative  
14 date [of this 2001 Act] **described in section 11, chapter 516, Oregon Laws 2001, to assume the**  
15 **authority sought from the federal government to administer permits for the discharge of**  
16 **dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L.**  
17 **92-500, as amended).**

18 (2) The department shall periodically report to the appropriate committee of the Legislative  
19 Assembly on the status of its effort to assume authority to administer permits for the discharge of  
20 dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500,  
21 as amended).

22 (3) After the Legislative Assembly approves the grant of authority, the department shall notify  
23 the Legislative Assembly prior to the transfer of authority from the United States Environmental  
24 Protection Agency.

25 **SECTION 83.** Section 14, chapter 516, Oregon Laws 2001, is amended to read:

26 **Sec. 14.** If, after assuming authority to administer permits for the discharge of dredge or fill  
27 materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended),  
28 the [Department of State Lands] **State Department of Agriculture** seeks to relinquish the authority  
29 granted to the department by the federal government, the department shall, in compliance with ORS  
30 171.130 and at least two years prior to the anticipated date for relinquishing the authority, submit  
31 to the Legislative Assembly a proposed legislative measure designed to implement a state permitting  
32 program for the dredging and filling of materials in the waters of this state.

33 **SECTION 84.** Section 15, chapter 800, Oregon Laws 2003, is amended to read:

34 **Sec. 15.** (1) The [Department of State Lands] **State Department of Agriculture** shall develop  
35 and implement an expedited process for identifying and mitigating loss of wetlands or other waters  
36 of the state on sites identified for industrial or traded sector development under section 12, **chapter**  
37 **800, Oregon Laws 2003** [of this 2003 Act].

38 (2) The department shall adopt administrative rules to implement the expedited process required  
39 under this section not later than six months after [the effective date of this 2003 Act] **September 24,**  
40 **2003.**

41 **SECTION 85.** Section 20, chapter 800, Oregon Laws 2003, is amended to read:

42 **Sec. 20.** (1) With regard to compliance with ORS 196.800 to 196.900, the [Director of the De-  
43 partment of State Lands] **Director of Agriculture** may:

44 (a) Provide technical assistance to property owners, state agencies and local governments, as  
45 defined in ORS 174.116, regarding sites identified for industrial or traded sector development under

1 section 12, **chapter 800, Oregon Laws 2003** [*of this 2003 Act*]; and

2 (b) Provide technical assistance for transportation facilities related to industrial or traded sector  
3 development of a site identified under section 12, **chapter 800, Oregon Laws 2003** [*of this 2003*  
4 *Act*].

5 (2) Technical assistance provided under this section may include guiding, reviewing and ap-  
6 proving the sufficiency of the required elements of an application for a removal or fill permit under  
7 ORS 196.825, including but not limited to a site plan, jurisdictional determination, an alternatives  
8 analysis and a mitigation plan.

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