

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2238

By COMMITTEE ON NATURAL RESOURCES

June 5

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

3 After line 3, insert:
4

“DISPOSAL OF PERSONAL PROPERTY”.

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

“ADOPTION OF FEES BY RULE

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10

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

13 “(a) Applications for, and renewal of, removal or fill permits required under ORS 196.810;

14 “(b) The review of wetland delineation reports under ORS 196.818; or

15 “(c) General authorizations under ORS 196.850.

16 “(2)(a) In establishing fees under subsection (1) of this section, the director shall evaluate
17 the impact of fully recovering, through fees, the costs to the Department of State Lands of
18 administering the removal and fill program provided for under ORS 196.600 to 196.921.

19 “(b) The director shall establish project tiers for fees established under subsection (1)(a)
20 of this section. In establishing project tiers, the director shall consider the administrative
21 costs to the department, and the impacts on the waters of this state, associated with dif-
22 ferent project types.

23 “(c) The director shall establish project tiers for fees established under subsection (1)(b)
24 of this section. In establishing project tiers, the director shall consider the administrative
25 costs to the department associated with the review of wetland delineation reports for land
26 parcels of different sizes.

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

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

33 “**SECTION 5. ORS 196.815 is amended to read:**

34 “196.815. (1) A person who is required to have a permit to remove material from the bed or
35 banks or fill any waters of this state shall file a written application with the Director of the De-

1 partment of State Lands **and pay a fee established by the director by rule under section 4 of**
2 **this 2023 Act** for each individual project before performing any removal or fill.

3 “(2)(a) *Except as otherwise may be provided by the rules of the Department of State Lands for*
4 *removal or fill permits related to ocean renewable energy facilities as defined in ORS 274.870, each*
5 *application under subsection (1) of this section must be accompanied by a base fee in accordance with*
6 *the following schedule:*]

7 “(A) *For a removal by a private operator, or a person contracting to perform services for a private*
8 *operator, \$85.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 “(A) *‘Private operator’ means any person undertaking a project for exclusively a nonincome-*
35 *producing and nonprofit purpose;*]

36 “(B) *‘Public body’ means federal, state, and local governmental bodies, unless specifically ex-*
37 *empted by law, engaged in projects for the purpose of providing free public services;*]

38 “(C) *‘Commercial operator’ means any person undertaking a project having financial profit as a*
39 *goal;*]

40 “(D) *‘Riprap’ means the facing of a streambank with rock or similar substance to control erosion*
41 *in accordance with rules adopted by the department; and]*

42 “(E) *‘Erosion-flood repair’ means riprap or any other work necessary to preserve existing facilities*
43 *and land from flood and high streamflows, in accordance with regulations promulgated by the depart-*
44 *ment.]*

45 “(3) *For each application that involves both removal and filling, the application fee assessed shall*

1 *be either for removal or filling, whichever is higher according to the fee schedule in subsection (2) of*
2 *this section.]*

3 “[(4)] **(2) The Department of State Lands** may waive the fees [*specified in subsection (2) of this*
4 *section*] **established by rule under section 4 of this 2023 Act** for a permit that will be used to
5 perform a voluntary habitat restoration project.

6 “[(5)] **(3) A person** who receives an emergency authorization under ORS 196.810 to remove ma-
7 terial from the beds or banks of any waters of this state or to fill any waters of this state shall,
8 within 45 days after receiving the authorization, submit a fee to the department calculated in the
9 manner provided **by rules adopted by the director** under [*this section*] **section 4 of this 2023 Act**
10 **for removal or fill** permit applications.

11 “[(6)] **(4)** [*Each holder of a material removal or fill permit shall pay a fee during the term of the*
12 *permit in accordance with the schedule set forth in subsection (2) of this section, except that the appli-*
13 *cant shall pay only the base fee. For multiyear permits valid over a period of more than one year, the*
14 *department may assess a one-time fee that covers all fees due under subsection (2) of this section for*
15 *the period of the permit. The permit shall be suspended during any period of delinquency of payment*
16 *as though no permit was applied for. Notwithstanding this subsection*] **The director** may, before
17 granting a renewal of [*the*] **a removal or fill** permit, require the permittee to show that the con-
18 tinued exercise of the permit is consistent with the protection, conservation and best use of the
19 water resources of this state.

20 “[(7)] **(5) Fees** received under this section shall be credited to the Common School Fund for use
21 by the department in administration of ORS 196.600 to 196.921.

22 “[(8)] *The director shall issue an order revising the fees specified in this section on January 1 of*
23 *each year, beginning in 2009, based on changes in the Consumer Price Index for All Urban Consumers,*
24 *West Region (All Items), as published by the Bureau of Labor Statistics of the United States Depart-*
25 *ment of Labor. The director shall round the amount of each fee to the nearest dollar. The revised fees*
26 *shall take effect January 1 and apply for that calendar year.]*

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

28 “196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.921, a per-
29 son may not remove any material from the beds or banks of any waters of this state or fill any
30 waters of this state without a permit issued under authority of the Director of the Department of
31 State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner con-
32 trary to the conditions set out in an order approving a wetland conservation plan.

33 “(b) Notwithstanding the permit requirements of this section and notwithstanding the provisions
34 of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in essential indigenous
35 anadromous salmonid habitat, except for those activities customarily associated with agriculture, a
36 permit is required. ‘Essential indigenous anadromous salmonid habitat’ as defined under this section
37 shall be further defined and designated by rule by the Department of State Lands in consultation
38 with the State Department of Fish and Wildlife and in consultation with other affected parties.

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

1 subsection.

2 “(d) A permit is not required under paragraph (b) of this subsection for construction or mainte-
3 nance of fish passage and fish screening structures that are constructed, operated or maintained
4 under ORS 498.306, 498.316, 498.326 or 509.600 to 509.645.

5 “(e)(A) Notwithstanding the permit requirements of this section and notwithstanding the pro-
6 visions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon’s territorial
7 sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is re-
8 quired.

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

12 “(C) The Department of State Lands may not issue a removal or fill permit for an ocean
13 renewable energy facility that does not comply with the criteria described in that part of the Ter-
14 ritorial Sea Plan that addresses the development of ocean renewable energy facilities in the terri-
15 torial sea.

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

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

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

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

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

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

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

31 “(2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in
32 opposition to the conditions set out in the permit issued under ORS 196.600 to 196.921.

33 “(3) Subsection (1) of this section does not apply to removal of material under a contract, permit
34 or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967.
35 However, no such contract, permit or lease may be renewed or extended on or after September 13,
36 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.921.

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

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

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

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

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

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

8 “196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.921, a per-
9 son may not remove any material from the beds or banks of any waters of this state or fill any
10 waters of this state without a permit issued under authority of the Director of the Department of
11 State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner con-
12 trary to the conditions set out in an order approving a wetland conservation plan.

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

20 “(c) A permit is not required under paragraph (a) of this subsection for construction or mainte-
21 nance of fish passage and fish screening structures associated with irrigation ditches or the main-
22 tenance of drainage ditches that are constructed, operated or maintained under ORS 498.306,
23 498.316, 498.326 or 509.600 to 509.645.

24 “(d)(A) Notwithstanding the permit requirements of this section and notwithstanding the pro-
25 visions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon’s territorial
26 sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is re-
27 quired.

28 “(B) An application for a permit related to an ocean renewable energy facility in the territorial
29 sea must include all of the information required by that part of the Territorial Sea Plan that ad-
30 dresses the development of ocean renewable energy facilities in the territorial sea.

31 “(C) The Department of State Lands may not issue a removal or fill permit for an ocean
32 renewable energy facility that does not comply with the criteria described in that part of the Ter-
33 ritorial Sea Plan that addresses the development of ocean renewable energy facilities in the terri-
34 torial sea.

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

36 “(2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in
37 opposition to the conditions set out in the permit issued under ORS 196.600 to 196.921.

38 “(3) Subsection (1) of this section does not apply to removal of material under a contract, permit
39 or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967.
40 However, a contract, permit or lease may not be renewed or extended on or after September 13,
41 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.921.

42 “(4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue,
43 orally or in writing, an emergency authorization to a person for the removal of material from the
44 beds or banks or filling of any waters of this state in an emergency, for the purpose of making re-
45 pairs or for the purpose of preventing irreparable harm, injury or damage to persons or property.

1 The emergency authorization issued under this subsection:

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

4 “(b) Shall be based, whenever practicable, on the recommendations contained in an on-site
5 evaluation by an employee or representative of the department.

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

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

9 “(5) As used in this section:

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

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

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

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

18 “196.816. (1) As used in this section, ‘traditionally maintained channel’ has the meaning given
19 that term in ORS 196.909.

20 “(2) Notwithstanding ORS 196.810, the Department of State Lands may establish by rule a gen-
21 eral permit that allows the removal of no more than 100 cubic yards of material from waters of this
22 state, including in essential indigenous anadromous salmonid habitat, for the purpose of maintaining
23 drainage and protecting agricultural land.

24 “(3) Notwithstanding ORS 196.810, the department shall establish by rule one or more general
25 permits that allow the removal of material from waters of this state, including in essential
26 indigenous anadromous salmonid habitat, to conduct maintenance of traditionally maintained chan-
27 nels during channel conditions where flowing or standing water is present. The general permits must
28 require the maintenance to be conducted in a manner that protects, maintains or improves existing
29 agricultural and ecological functions of the channels, including the life history functions of fish and
30 wildlife that inhabit the channels. In establishing a general permit under this subsection, the de-
31 partment shall utilize best available science and shall consult with the State Department of Agri-
32 culture, the State Department of Fish and Wildlife, other relevant state or federal agencies and
33 representatives of agricultural interests and conservation interests.

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

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

38 “196.818. (1) A person or governmental body requesting a permit under ORS 196.810 shall submit
39 a wetland delineation report to the Department of State Lands for a determination of:

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

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

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

44 “(2) A person or governmental body must pay a nonrefundable fee [*of \$350*] to the department,
45 **as provided in rules adopted by the Director of the Department of State Lands under section**

1 **4 of this 2023 Act**, when submitting a wetland delineation report under subsection (1) of this sec-
2 tion.

3 “(3) The department shall:

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

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

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

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

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

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

23 “(6) The department may waive or suspend the requirements of this section for the purpose of
24 issuing an emergency authorization under ORS 196.810.

25 “[7] *The fee described in subsection (2) of this section is in addition to any permit application fee*
26 *required under ORS 196.815. A person or governmental body submitting a revised report to replace a*
27 *previously rejected report must pay an additional nonrefundable fee of \$100.]*

28 “[8] (7) Delineations made pursuant to this section, and determinations made under this sec-
29 tion, must comport with:

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

31 “(b) Any subsequent federal supplements to the manual or applicable guidance documents issued
32 by the United States Army Corps of Engineers, including guidance documents for the area in which
33 a delineation will take place, as adopted by rule of the Director of the Department of State Lands.
34 Such rules must comply with those federal supplements and guidance documents.

35 “[9] *The director shall issue an order revising the fee specified in subsection (2) of this section on*
36 *January 1 of each year, based on changes in the Consumer Price Index for All Urban Consumers,*
37 *West Region (All Items), as published by the Bureau of Labor Statistics of the United States Depart-*
38 *ment of Labor. The director shall round the amount to the nearest dollar. The revised fee shall take*
39 *effect January 1 and apply for that calendar year.]*

40 “[10] (8) Fees received under this section shall be credited to the Common School Fund for use
41 by the department in administration of ORS 196.600 to 196.921.

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

43 “196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
44 general authorization for removal of material from the bed or banks of any waters of this state or
45 the filling of any waters of this state without a permit from the department if the department finds

1 that the activities subject to the general authorization:

2 “(a) Are substantially similar in nature;

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

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

5 “(2) A general authorization may be granted on a statewide or other geographic basis.

6 “(3) The department shall condition any general authorization upon actions necessary to mini-
7 mize environmental impacts.

8 “(4) The department shall provide notice of any proposed general authorization to affected fed-
9 eral and state agencies, local governments, tribal governments and the public. The notice shall in-
10 clude:

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

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

13 “(5) Any person proposing to conduct an action under a general authorization shall:

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

15 “(b) Pay the applicable fee to the department as determined under [*subsection (9) of this*
16 *section*] **rules adopted by the Director of the Department of State Lands under section 4 of**
17 **this 2023 Act.**

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

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

24 “(8) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the
25 validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence
26 in the rulemaking record. The record shall include copies of all documents before the agency rele-
27 vant to the findings required by subsection (1) of this section.

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

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

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

34 “[*(10)*] **(9)** The department shall credit any fee collected under this section to the Common
35 School Fund for use by the department in administration of ORS 196.600 to 196.921.

36 “**SECTION 11.** ORS 196.850, as amended by section 4, chapter 516, Oregon Laws 2001, section
37 12, chapter 253, Oregon Laws 2003, and section 7, chapter 849, Oregon Laws 2007, is amended to
38 read:

39 “196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant
40 general authorization for removal of material from the bed or banks of any waters of this state or
41 the filling of any waters of this state without a permit from the department if the department finds
42 that the activities subject to the general authorization:

43 “(a) Are substantially similar in nature;

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

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

1 “(2) A general authorization may be granted on a statewide or other geographic basis.

2 “(3) The department shall condition any general authorization upon actions necessary to mini-
3 mize environmental impacts.

4 “(4) The department shall provide notice of any proposed general authorization to affected fed-
5 eral and state agencies, local governments, tribal governments and the public. The notice shall in-
6 clude:

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

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

9 “(5) Any person proposing to conduct an action under a general authorization shall:

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

12 “(b) Pay the applicable fee to the department as determined under [subsection (10) of this
13 section] **rules adopted by the Director of the Department of State Lands under section 4 of**
14 **this 2023 Act.**

15 “(6) The director [of the Department of State Lands] shall waive the requirements of subsection
16 (5) of this section if the director issues a general authorization and the authorized activity:

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

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

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

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

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

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

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

34 “[10] *If the rule adopting a general authorization under this section is:*

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

37 “[b] *For actions that result in moving 50 or more cubic yards of material, the department may*
38 *establish a fee for the general authorization. The fee may not exceed \$250 and shall be based on the*
39 *cost of processing the general authorization.]*

40 “[11] (10) The department shall credit any fee collected under this section to the Common
41 School Fund for use by the department in administration of ORS 196.600 to 196.921.

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

43 “274.043. (1) A privately owned float or dock occupying an area of 200 square feet or less is
44 exempt from the leasing requirements of ORS 274.040 if:

45 “(a) The structure belongs to the immediately adjacent riparian landowner; and

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

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

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

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

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

10 “(a) Structures on state-owned submerged and submersible lands maintained by a drainage dis-
11 trict organized under the provisions of ORS chapter 547.

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

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

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

19 “(A) Activities undertaken to satisfy any actual or potential legal obligation, or for which the
20 entity completing the habitat restoration work receives compensation of any kind.

21 “(B) Habitat restoration work completed by an entity to satisfy an environmental mitigation
22 obligation, or to generate, sell or obtain credit as an offset against actual or potential natural re-
23 source damages liability.

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

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

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

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

37 “196.800. As used in ORS 196.600 to 196.921, unless the context requires otherwise:

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

42 “(2) ‘Estuary’ means:

43 “(a) For waters other than the Columbia River, the body of water from the ocean to the head
44 of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh
45 water from the land, including all associated estuarine waters, tidelands, tidal marshes and sub-

1 merged lands; and

2 “(b) For the Columbia River, all waters from the mouth of the river up to the western edge of
3 Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged
4 lands.

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

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

9 “(5) ‘General permit’ means a permit for removal activities or fill activities that are substantially
10 similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

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

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

16 “(8) ‘Material’ means rock, gravel, sand, silt and other inorganic substances, and large woody
17 debris, removed from waters of this state and any materials, organic or inorganic, used to fill waters
18 of this state.

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

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

22 “(b) Minimizing the effect by limiting the degree or magnitude of the action and its implemen-
23 tation;

24 “(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

25 “(d) Reducing or eliminating the effect over time by preservation and maintenance operations
26 during the life of the action by monitoring and taking appropriate corrective measures; and

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

29 “(10) ‘Person’ means a person, a public body as defined in ORS 174.109, the federal government,
30 when operating in any capacity other than navigational servitude, or any other legal entity.

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

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

35 “(13) ‘Removal’ means:

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

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

40 “(14) **‘Riprap’ means the facing of a streambank with rock or similar substance to control**
41 **erosion in accordance with rules adopted by the Department of State Lands.**

42 “[14] (15) ‘Water resources’ includes not only water itself but also aquatic life and habitats
43 therein and all other natural resources in and under the waters of this state.

44 “[15] (16) ‘Waters of this state’ means all natural waterways, tidal and nontidal bays, inter-
45 mittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that

1 is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state
2 and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities
3 are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal
4 Water Pollution Control Act, as amended.

5 “[(16)] (17) ‘Wetland conservation plan’ means a written plan providing for wetland management
6 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
7 and private uses and protection of wetlands, waters and related adjacent uplands and which has
8 specific implementing measures and which apply to designated geographic areas of the State of
9 Oregon.

10 “[(17)] (18) ‘Wetlands’ means those areas that are inundated or saturated by surface or ground
11 water at a frequency and duration sufficient to support, and that under normal circumstances do
12 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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

17 “196.800. As used in ORS 196.600 to 196.921, unless the context requires otherwise:

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

20 “(2) ‘Estuary’ means:

21 “(a) For waters other than the Columbia River, the body of water from the ocean to the head
22 of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh
23 water from the land, including all associated estuarine waters, tidelands, tidal marshes and sub-
24 merged lands; and

25 “(b) For the Columbia River, all waters from the mouth of the river up to the western edge of
26 Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged
27 lands.

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

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

32 “(5) ‘General permit’ means a permit for removal activities or fill activities that are substantially
33 similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

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

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

39 “(8) ‘Material’ means rock, gravel, sand, silt and other inorganic substances, and large woody
40 debris, removed from waters of this state and any materials, organic or inorganic, used to fill waters
41 of this state.

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

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

45 “(b) Minimizing the effect by limiting the degree or magnitude of the action and its implemen-

1 tation;

2 “(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

3 “(d) Reducing or eliminating the effect over time by preservation and maintenance operations
4 during the life of the action by monitoring and taking appropriate corrective measures; and

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

7 “(10) ‘Person’ means a person, a public body, as defined in ORS 174.109, the federal government,
8 when operating in any capacity other than navigational servitude, or any other legal entity.

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

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

13 “(13) ‘Removal’ means:

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

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

17 “(14) **‘Riprap’ means the facing of a streambank with rock or similar substance to control
18 erosion in accordance with rules adopted by the Department of State Lands.**

19 “[14] (15) ‘Water resources’ includes not only water itself but also aquatic life and habitats
20 therein and all other natural resources in and under the waters of this state.

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

27 “[16] (17) ‘Wetland conservation plan’ means a written plan providing for wetland management
28 containing a detailed and comprehensive statement of policies, standards and criteria to guide public
29 and private uses and protection of wetlands, waters and related adjacent uplands and which has
30 specific implementing measures and which apply to designated geographic areas of the State of
31 Oregon.

32 “[17] (18) ‘Wetlands’ means those areas that are inundated or saturated by surface or ground
33 water at a frequency and duration sufficient to support, and that under normal circumstances do
34 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

35 “**SECTION 15. (1) The amendments to ORS 196.800, 196.810, 196.815, 196.816, 196.818,
36 196.850 and 274.043 by sections 5 to 14 of this 2023 Act become operative on the earlier of:**

37 “(a) **The effective date of rules first adopted by the Director of the Department of State
38 Lands under section 4 of this 2023 Act; or**

39 “(b) **January 1, 2026.**

40 “(2) **The director shall adopt rules under section 4 of this 2023 Act no later than January
41 1, 2026.**

42 “(3) **The Department of State Lands may take any action before the operative date
43 specified in subsection (1) of this section that is necessary to enable the department to ex-
44 ercise, on and after the operative date specified in subsection (1) of this section, all the du-
45 ties, functions and powers conferred on the department by the amendments to ORS 196.800,**

1 196.810, 196.815, 196.816, 196.818, 196.850 and 274.043 by sections 5 to 14 of this 2023 Act.

2
3 "CAPTIONS

4
5 "SECTION 16. The unit captions used in this 2023 Act are provided only for the conven-
6 ience of the reader and do not become part of the statutory law of this state or express any
7 legislative intent in the enactment of this 2023 Act.

8
9 "EFFECTIVE DATE

10
11 "SECTION 17. This 2023 Act takes effect on the 91st day after the date on which the 2023
12 regular session of the Eighty-second Legislative Assembly adjourns sine die."
13
