

Requested by SENATE COMMITTEE ON NATURAL RESOURCES

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2238**

1 On page 1 of the printed A-engrossed bill, line 2, after “Lands” insert “;  
2 creating new provisions; amending ORS 196.800, 196.810, 196.815, 196.816,  
3 196.818, 196.850 and 274.043”.

4 After line 3, insert:

5

6 **“DISPOSAL OF PERSONAL PROPERTY”.**

7

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

9

10 **“ADOPTION OF FEES BY RULE**

11

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

14 **“(a) Applications for, and renewal of, removal or fill permits re-**  
15 **quired under ORS 196.810;**

16 **“(b) The review of wetland delineation reports under ORS 196.818;**  
17 **or**

18 **“(c) General authorizations under ORS 196.850.**

19 **“(2) A fee established under subsection (1)(c) of this section for a**  
20 **general authorization shall be based on the cost of processing the**  
21 **general authorization.**

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

2       “196.815. (1) A person who is required to have a permit to remove material  
3 from the bed or banks or fill any waters of this state shall file a written  
4 application with the Director of the Department of State Lands **and pay a**  
5 **fee established by the director by rule under section 4 of this 2023 Act**  
6 for each individual project before performing any removal or fill.

7       “(2)(a) *Except as otherwise may be provided by the rules of the Department*  
8 *of State Lands for removal or fill permits related to ocean renewable energy*  
9 *facilities as defined in ORS 274.870, each application under subsection (1) of*  
10 *this section must be accompanied by a base fee in accordance with the follow-*  
11 *ing schedule:]*

12       “(A) *For a removal by a private operator, or a person contracting to per-*  
13 *form services for a private operator, \$85.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5       “[(d) *The department may establish by rule a volume-based fee for the*

6 *commercial removal of sand and gravel from the waters of this state for use*

7 *in administering the provisions of the fill and removal law in this state.*]

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

9       “[(A) *‘Private operator’ means any person undertaking a project for exclu-*

10 *sively a nonincome-producing and nonprofit purpose;*]

11       “[(B) *‘Public body’ means federal, state, and local governmental bodies,*

12 *unless specifically exempted by law, engaged in projects for the purpose of*

13 *providing free public services;*]

14       “[(C) *‘Commercial operator’ means any person undertaking a project having*

15 *financial profit as a goal;*]

16       “[(D) *‘Riprap’ means the facing of a streambank with rock or similar sub-*

17 *stance to control erosion in accordance with rules adopted by the department;*

18 *and]*

19       “[(E) *‘Erosion-flood repair’ means riprap or any other work necessary to*

20 *preserve existing facilities and land from flood and high streamflows, in ac-*

21 *cordance with regulations promulgated by the department.*]

22       “[(3) *For each application that involves both removal and filling, the ap-*

23 *plication fee assessed shall be either for removal or filling, whichever is higher*

24 *according to the fee schedule in subsection (2) of this section.*]

25       “[(4)] **(2)** The Department **of State Lands** may waive the fees [*specified*

26 *in subsection (2) of this section]* **established by rule under section 4 of this**

27 **2023 Act** for a permit that will be used to perform a voluntary habitat res-

28 toration project.

29       “[(5)] **(3)** A person who receives an emergency authorization under ORS

30 196.810 to remove material from the beds or banks of any waters of this state

1 or to fill any waters of this state shall, within 45 days after receiving the  
2 authorization, submit a fee to the department calculated in the manner pro-  
3 vided **by rules adopted by the director** under *[this section]* **section 4 of**  
4 **this 2023 Act** for **removal or fill** permit applications.

5 “~~[(6)]~~ **(4)** *[Each holder of a material removal or fill permit shall pay a fee*  
6 *during the term of the permit in accordance with the schedule set forth in*  
7 *subsection (2) of this section, except that the applicant shall pay only the base*  
8 *fee. For multiyear permits valid over a period of more than one year, the de-*  
9 *partment may assess a one-time fee that covers all fees due under subsection*  
10 *(2) of this section for the period of the permit. The permit shall be suspended*  
11 *during any period of delinquency of payment as though no permit was applied*  
12 *for. Notwithstanding this subsection]* The director may, before granting a re-  
13 newal of *[the]* **a removal or fill** permit, require the permittee to show that  
14 the continued exercise of the permit is consistent with the protection, con-  
15 servation and best use of the water resources of this state.

16 “[~~(7)~~] **(5)** Fees received under this section shall be credited to the Common  
17 School Fund for use by the department in administration of ORS 196.600 to  
18 196.921.

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

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

27 “196.810. (1)(a) Except as otherwise specifically permitted under ORS  
28 196.600 to 196.921, a person may not remove any material from the beds or  
29 banks of any waters of this state or fill any waters of this state without a  
30 permit issued under authority of the Director of the Department of State

1 Lands, or in a manner contrary to the conditions set out in the permit, or  
2 in a manner contrary to the conditions set out in an order approving a  
3 wetland conservation plan.

4 “(b) Notwithstanding the permit requirements of this section and not-  
5 withstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill  
6 activity is proposed in essential indigenous anadromous salmonid habitat,  
7 except for those activities customarily associated with agriculture, a permit  
8 is required. ‘Essential indigenous anadromous salmonid habitat’ as defined  
9 under this section shall be further defined and designated by rule by the  
10 Department of State Lands in consultation with the State Department of  
11 Fish and Wildlife and in consultation with other affected parties.

12 “(c) A person is not required to obtain a permit under paragraph (b) of  
13 this subsection for prospecting or other nonmotorized activities resulting in  
14 the removal from or fill of less than one cubic yard of material at any one  
15 individual site and, cumulatively, not more than five cubic yards of material  
16 within a designated essential indigenous anadromous salmonid habitat seg-  
17 ment in a single year. Prospecting or other nonmotorized activities may be  
18 conducted only within the bed or wet perimeter of the waterway and may  
19 not occur at any site where fish eggs are present. Removal or filling activ-  
20 ities customarily associated with mining require a permit under paragraph  
21 (b) of this subsection.

22 “(d) A permit is not required under paragraph (b) of this subsection for  
23 construction or maintenance of fish passage and fish screening structures  
24 that are constructed, operated or maintained under ORS 498.306, 498.316,  
25 498.326 or 509.600 to 509.645.

26 “(e)(A) Notwithstanding the permit requirements of this section and not-  
27 withstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill  
28 activity is proposed in Oregon’s territorial sea that is related to an ocean  
29 renewable energy facility as defined in ORS 274.870, a permit is required.

30 “(B) An application for a permit related to an ocean renewable energy

1 facility in the territorial sea must include all of the information required by  
2 that part of the Territorial Sea Plan that addresses the development of ocean  
3 renewable energy facilities in the territorial sea.

4 “(C) The Department of State Lands may not issue a removal or fill per-  
5 mit for an ocean renewable energy facility that does not comply with the  
6 criteria described in that part of the Territorial Sea Plan that addresses the  
7 development of ocean renewable energy facilities in the territorial sea.

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

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

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

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

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

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

23 “(E) ‘Wet perimeter’ means the area of the stream that is under water or  
24 is exposed as a nonvegetated dry gravel bar island surrounded on all sides  
25 by actively moving water at the time the activity occurs.

26 “(2) A public body, as defined in ORS 174.109, may not issue a lease or  
27 permit contrary or in opposition to the conditions set out in the permit is-  
28 sued under ORS 196.600 to 196.921.

29 “(3) Subsection (1) of this section does not apply to removal of material  
30 under a contract, permit or lease with any public body, as defined in ORS

1 174.109, entered into before September 13, 1967. However, no such contract,  
2 permit or lease may be renewed or extended on or after September 13, 1967,  
3 unless the person removing the material has obtained a permit under ORS  
4 196.600 to 196.921.

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

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

13 “(b) Shall be based, whenever practicable, on the recommendations con-  
14 tained in an on-site evaluation by an employee or representative of the de-  
15 partment.

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

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

21 **“SECTION 7.** ORS 196.810, as amended by section 2, chapter 516, Oregon  
22 Laws 2001, section 97, chapter 14, Oregon Laws 2003, section 64, chapter 71,  
23 Oregon Laws 2007, section 5, chapter 625, Oregon Laws 2007, section 15,  
24 chapter 849, Oregon Laws 2007, and section 11, chapter 386, Oregon Laws  
25 2015, is amended to read:

26 “196.810. (1)(a) Except as otherwise specifically permitted under ORS  
27 196.600 to 196.921, a person may not remove any material from the beds or  
28 banks of any waters of this state or fill any waters of this state without a  
29 permit issued under authority of the Director of the Department of State  
30 Lands, or in a manner contrary to the conditions set out in the permit, or

1 in a manner contrary to the conditions set out in an order approving a  
2 wetland conservation plan.

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

12 “(c) A permit is not required under paragraph (a) of this subsection for  
13 construction or maintenance of fish passage and fish screening structures  
14 associated with irrigation ditches or the maintenance of drainage ditches  
15 that are constructed, operated or maintained under ORS 498.306, 498.316,  
16 498.326 or 509.600 to 509.645.

17 “(d)(A) Notwithstanding the permit requirements of this section and not-  
18 withstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill  
19 activity is proposed in Oregon’s territorial sea that is related to an ocean  
20 renewable energy facility as defined in ORS 274.870, a permit is required.

21 “(B) An application for a permit related to an ocean renewable energy  
22 facility in the territorial sea must include all of the information required by  
23 that part of the Territorial Sea Plan that addresses the development of ocean  
24 renewable energy facilities in the territorial sea.

25 “(C) The Department of State Lands may not issue a removal or fill per-  
26 mit for an ocean renewable energy facility that does not comply with the  
27 criteria described in that part of the Territorial Sea Plan that addresses the  
28 development of ocean renewable energy facilities in the territorial sea.

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



1 “(2) A public body, as defined in ORS 174.109, may not issue a lease or  
2 permit contrary or in opposition to the conditions set out in the permit is-  
3 sued under ORS 196.600 to 196.921.

4 “(3) Subsection (1) of this section does not apply to removal of material  
5 under a contract, permit or lease with any public body, as defined in ORS  
6 174.109, entered into before September 13, 1967. However, a contract, permit  
7 or lease may not be renewed or extended on or after September 13, 1967,  
8 unless the person removing the material has obtained a permit under ORS  
9 196.600 to 196.921.

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

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

18 “(b) Shall be based, whenever practicable, on the recommendations con-  
19 tained in an on-site evaluation by an employee or representative of the de-  
20 partment.

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

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

26 “(5) As used in this section:

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

29 “(b) ‘Prospecting’ means searching or exploring for samples of gold, silver  
30 or other precious minerals, using nonmotorized methods, from among small

1 quantities of aggregate.

2 “(c) ‘Wet perimeter’ means the area of the stream that is under water or  
3 is exposed as a nonvegetated dry gravel bar island surrounded on all sides  
4 by actively moving water at the time the activity occurs.

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

6 “196.816. (1) As used in this section, ‘traditionally maintained channel’  
7 has the meaning given that term in ORS 196.909.

8 “(2) Notwithstanding ORS 196.810, the Department of State Lands may  
9 establish by rule a general permit that allows the removal of no more than  
10 100 cubic yards of material from waters of this state, including in essential  
11 indigenous anadromous salmonid habitat, for the purpose of maintaining  
12 drainage and protecting agricultural land.

13 “(3) Notwithstanding ORS 196.810, the department shall establish by rule  
14 one or more general permits that allow the removal of material from waters  
15 of this state, including in essential indigenous anadromous salmonid habitat,  
16 to conduct maintenance of traditionally maintained channels during channel  
17 conditions where flowing or standing water is present. The general permits  
18 must require the maintenance to be conducted in a manner that protects,  
19 maintains or improves existing agricultural and ecological functions of the  
20 channels, including the life history functions of fish and wildlife that inhabit  
21 the channels. In establishing a general permit under this subsection, the de-  
22 partment shall utilize best available science and shall consult with the State  
23 Department of Agriculture, the State Department of Fish and Wildlife, other  
24 relevant state or federal agencies and representatives of agricultural inter-  
25 ests and conservation interests.

26 “(4) The Department of State Lands may waive the fees [*specified in ORS*  
27 *196.815*] **established by the Director of the Department of State Lands**  
28 **by rule under section 4 of this 2023 Act** for removal taking place under  
29 the provisions of this section.

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

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

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

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

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

9 “(2) A person or governmental body must pay a nonrefundable fee [*of*  
10 *\$350*] to the department, **as provided in rules adopted by the Director of**  
11 **the Department of State Lands under section 4 of this 2023 Act**, when  
12 submitting a wetland delineation report under subsection (1) of this section.

13 “(3) The department shall:

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

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

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

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

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

27 “(5) Five years after the date on which a final determination has been  
28 made under subsection (1)(a) or (b) of this section, if the owner of the land  
29 parcel that is the subject of the determination is conducting activities that  
30 require a permit under ORS 196.810, the landowner shall conduct a review

1 of the land parcel. If the baseline conditions leading to the final determi-  
2 nation have sufficiently changed to require a new determination, then the  
3 landowner shall submit a new wetland delineation report under subsection  
4 (1) of this section. If the baseline conditions leading to the final determi-  
5 nation have not sufficiently changed to require a new determination, then  
6 the final determination of the department, notwithstanding subsection (4)(b)  
7 of this section, may be extended by five years, **after payment of the ap-  
8 plicable fee established by the director by rule under section 4 of this  
9 2023 Act.**

10 “(6) The department may waive or suspend the requirements of this sec-  
11 tion for the purpose of issuing an emergency authorization under ORS  
12 196.810.

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

17 “[~~(8)~~ **(7)** Delineations made pursuant to this section, and determinations  
18 made under this section, must comport with:

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

21 “(b) Any subsequent federal supplements to the manual or applicable  
22 guidance documents issued by the United States Army Corps of Engineers,  
23 including guidance documents for the area in which a delineation will take  
24 place, as adopted by rule of the Director of the Department of State Lands.  
25 Such rules must comply with those federal supplements and guidance docu-  
26 ments.

27 “[~~(9)~~ *The director shall issue an order revising the fee specified in sub-*  
28 *section (2) of this section on January 1 of each year, based on changes in the*  
29 *Consumer Price Index for All Urban Consumers, West Region (All Items), as*  
30 *published by the Bureau of Labor Statistics of the United States Department*

1 of Labor. The director shall round the amount to the nearest dollar. The re-  
2 vised fee shall take effect January 1 and apply for that calendar year.]

3 “[~~(10)~~] (8) Fees received under this section shall be credited to the Com-  
4 mon School Fund for use by the department in administration of ORS 196.600  
5 to 196.921.

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

7 “196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands  
8 may, by rule, grant general authorization for removal of material from the  
9 bed or banks of any waters of this state or the filling of any waters of this  
10 state without a permit from the department if the department finds that the  
11 activities subject to the general authorization:

12 “(a) Are substantially similar in nature;

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

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

16 “(2) A general authorization may be granted on a statewide or other ge-  
17 ographic basis.

18 “(3) The department shall condition any general authorization upon  
19 actions necessary to minimize environmental impacts.

20 “(4) The department shall provide notice of any proposed general author-  
21 ization to affected federal and state agencies, local governments, tribal gov-  
22 ernments and the public. The notice shall include:

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

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

25 “(5) Any person proposing to conduct an action under a general authori-  
26 zation shall:

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

28 “(b) Pay the applicable fee to the department as determined under [*sub-*  
29 *section (9) of this section*] **rules adopted by the Director of the Depart-**  
30 **ment of State Lands under section 4 of this 2023 Act.**

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

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

9 “(8) In addition to the grounds for review set forth in ORS 183.400 (4),  
10 on judicial review of the validity of a rule adopted under this section, the  
11 rule shall be reviewable for substantial evidence in the rulemaking record.  
12 The record shall include copies of all documents before the agency relevant  
13 to the findings required by subsection (1) of this section.

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

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

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

21 “[*(10)*] **(9)** The department shall credit any fee collected under this section  
22 to the Common School Fund for use by the department in administration of  
23 ORS 196.600 to 196.921.

24 “**SECTION 11.** ORS 196.850, as amended by section 4, chapter 516, Oregon  
25 Laws 2001, section 12, chapter 253, Oregon Laws 2003, and section 7, chapter  
26 849, Oregon Laws 2007, is amended to read:

27 “196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands  
28 may, by rule, grant general authorization for removal of material from the  
29 bed or banks of any waters of this state or the filling of any waters of this  
30 state without a permit from the department if the department finds that the

1 activities subject to the general authorization:

2 “(a) Are substantially similar in nature;

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

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

6 “(2) A general authorization may be granted on a statewide or other ge-  
7 ographic basis.

8 “(3) The department shall condition any general authorization upon  
9 actions necessary to minimize environmental impacts.

10 “(4) The department shall provide notice of any proposed general author-  
11 ization to affected federal and state agencies, local governments, tribal gov-  
12 ernments and the public. The notice shall include:

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

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

15 “(5) Any person proposing to conduct an action under a general authori-  
16 zation shall:

17 “(a) Notify the department in writing prior to conducting the action. The  
18 person may not commence the action until the person receives a letter of  
19 authorization from the department.

20 “(b) Pay the applicable fee to the department as determined under [*sub-*  
21 *section (10) of this section*] **rules adopted by the Director of the Depart-**  
22 **ment of State Lands under section 4 of this 2023 Act.**

23 “(6) The director [*of the Department of State Lands*] shall waive the re-  
24 quirements of subsection (5) of this section if the director issues a general  
25 authorization and the authorized activity:

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

27 “(b) Will be conducted during periods that minimize adverse effects to fish  
28 and wildlife in accordance with guidance provided by the State Department  
29 of Fish and Wildlife;

30 “(c) Will not dam or divert a waterway in a manner that obstructs fish

1 passage or vessel navigation; and

2 “(d) Will not violate water quality standards as established by the De-  
3 partment of Environmental Quality.

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

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

12 “(9) In addition to the grounds for review set forth in ORS 183.400 (4),  
13 on judicial review of the validity of a rule adopted under this section, the  
14 rule shall be reviewable for substantial evidence in the rulemaking record.  
15 The record shall include copies of all documents before the agency relevant  
16 to the findings required by subsection (1) of this section.

17 “[~~(10)~~ *If the rule adopting a general authorization under this section is:*]

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

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

24 “[~~(11)~~ **(10)** The department shall credit any fee collected under this sec-  
25 tion to the Common School Fund for use by the department in administration  
26 of ORS 196.600 to 196.921.

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

28 “274.043. (1) A privately owned float or dock occupying an area of 200  
29 square feet or less is exempt from the leasing requirements of ORS 274.040  
30 if:



1       “(a) The structure belongs to the immediately adjacent riparian land-  
2 owner; and

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

4       “(2) A privately owned float or dock constructed prior to September 29,  
5 1991, and exempted under ORS 274.042 (1989 Edition) is exempt from the  
6 provisions of ORS 274.040.

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

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

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

13       “(a) Structures on state-owned submerged and submersible lands main-  
14 tained by a drainage district organized under the provisions of ORS chapter  
15 547.

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

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

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

25       “(A) Activities undertaken to satisfy any actual or potential legal obli-  
26 gation, or for which the entity completing the habitat restoration work re-  
27 ceives compensation of any kind.

28       “(B) Habitat restoration work completed by an entity to satisfy an envi-  
29 ronmental mitigation obligation, or to generate, sell or obtain credit as an  
30 offset against actual or potential natural resource damages liability.

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

6 “(7) The uses described in subsections (5) and (6) of this section must be  
7 registered in accordance with rules adopted by the department. Any person  
8 issued a registration to use or occupy state-owned submerged and  
9 submersible lands under subsections (5) and (6) of this section shall indem-  
10 nify and hold harmless the state from all liability and claims arising from  
11 or attributable to the use or occupation.

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

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

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

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

24 “(2) ‘Estuary’ means:

25 “(a) For waters other than the Columbia River, the body of water from  
26 the ocean to the head of tidewater that is partially enclosed by land and  
27 within which salt water is usually diluted by fresh water from the land, in-  
28 cluding all associated estuarine waters, tidelands, tidal marshes and sub-  
29 merged lands; and

30 “(b) For the Columbia River, all waters from the mouth of the river up

1 to the western edge of Puget Island, including all associated estuarine wa-  
2 ters, tidelands, tidal marshes and submerged lands.

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

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

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

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

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

19 “(8) ‘Material’ means rock, gravel, sand, silt and other inorganic sub-  
20 stances, and large woody debris, removed from waters of this state and any  
21 materials, organic or inorganic, used to fill waters of this state.

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

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

26 “(b) Minimizing the effect by limiting the degree or magnitude of the  
27 action and its implementation;

28 “(c) Rectifying the effect by repairing, rehabilitating or restoring the af-  
29 fected environment;

30 “(d) Reducing or eliminating the effect over time by preservation and

1 maintenance operations during the life of the action by monitoring and tak-  
2 ing appropriate corrective measures; and

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

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

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

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

13 “(13) ‘Removal’ means:

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

16 “(b) The movement by artificial means of an equivalent amount of mate-  
17 rial on or within the bed of such waters, including channel relocation.

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

21 “[14] (15) ‘Water resources’ includes not only water itself but also  
22 aquatic life and habitats therein and all other natural resources in and under  
23 the waters of this state.

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

1 amended.

2 “[~~(16)~~] (17) ‘Wetland conservation plan’ means a written plan providing  
3 for wetland management containing a detailed and comprehensive statement  
4 of policies, standards and criteria to guide public and private uses and pro-  
5 tection of wetlands, waters and related adjacent uplands and which has spe-  
6 cific implementing measures and which apply to designated geographic areas  
7 of the State of Oregon.

8 “[~~(17)~~] (18) ‘Wetlands’ means those areas that are inundated or saturated  
9 by surface or ground water at a frequency and duration sufficient to support,  
10 and that under normal circumstances do support, a prevalence of vegetation  
11 typically adapted for life in saturated soil conditions.

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

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

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

22 “(2) ‘Estuary’ means:

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

28 “(b) For the Columbia River, all waters from the mouth of the river up  
29 to the western edge of Puget Island, including all associated estuarine wa-  
30 ters, tidelands, tidal marshes and submerged lands.

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

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

6       “(5) ‘General permit’ means a permit for removal activities or fill activ-  
7 ities that are substantially similar in nature, are recurring or ongoing, and  
8 have predictable effects and outcomes.

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

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

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

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

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

23       “(b) Minimizing the effect by limiting the degree or magnitude of the  
24 action and its implementation;

25       “(c) Rectifying the effect by repairing, rehabilitating or restoring the af-  
26 fected environment;

27       “(d) Reducing or eliminating the effect over time by preservation and  
28 maintenance operations during the life of the action by monitoring and tak-  
29 ing appropriate corrective measures; and

30       “(e) Compensating for the effect by creating, restoring, enhancing or

1 preserving substitute functions and values for the waters of this state.

2 “(10) ‘Person’ means a person, a public body, as defined in ORS 174.109,  
3 the federal government, when operating in any capacity other than naviga-  
4 tional servitude, or any other legal entity.

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

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

10 “(13) ‘Removal’ means:

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

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

14 “(14) **‘Riprap’ means the facing of a streambank with rock or simi-**  
15 **lar substance to control erosion in accordance with rules adopted by**  
16 **the Department of State Lands.**

17 “[~~(14)~~] (15) ‘Water resources’ includes not only water itself but also  
18 aquatic life and habitats therein and all other natural resources in and under  
19 the waters of this state.

20 “[~~(15)~~] (16) ‘Waters of this state’ means all natural waterways, tidal and  
21 nontidal bays, intermittent streams, constantly flowing streams, lakes,  
22 wetlands, that portion of the Pacific Ocean that is in the boundaries of this  
23 state, all other navigable and nonnavigable bodies of water in this state and  
24 those portions of the ocean shore, as defined in ORS 390.605, where removal  
25 or fill activities are regulated under a state-assumed permit program as pro-  
26 vided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as  
27 amended.

28 “[~~(16)~~] (17) ‘Wetland conservation plan’ means a written plan providing  
29 for wetland management containing a detailed and comprehensive statement  
30 of policies, standards and criteria to guide public and private uses and pro-

1 tection of wetlands, waters and related adjacent uplands and which has spe-  
2 cific implementing measures and which apply to designated geographic areas  
3 of the State of Oregon.

4 “[~~(17)~~] (18) ‘Wetlands’ means those areas that are inundated or saturated  
5 by surface or ground water at a frequency and duration sufficient to support,  
6 and that under normal circumstances do support, a prevalence of vegetation  
7 typically adapted for life in saturated soil conditions.

8 **“SECTION 15. (1) The amendments to ORS 196.800, 196.810, 196.815,  
9 196.816, 196.818, 196.850 and 274.043 by sections 5 to 14 of this 2023 Act  
10 become operative on the earlier of:**

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

13 **“(b) July 1, 2025.**

14 **“(2) The director shall adopt rules under section 4 of this 2023 Act  
15 no later than July 1, 2025.**

16 **“(3) The Department of State Lands may take any action before the  
17 operative date specified in subsection (1) of this section that is neces-  
18 sary to enable the department to exercise, on and after the operative  
19 date specified in subsection (1) of this section, all the duties, functions  
20 and powers conferred on the department by the amendments to ORS  
21 196.800, 196.810, 196.815, 196.816, 196.818, 196.850 and 274.043 by sections  
22 5 to 14 of this 2023 Act.**

23

24 **“CAPTIONS**

25

26 **“SECTION 16. The unit captions used in this 2023 Act are provided  
27 only for the convenience of the reader and do not become part of the  
28 statutory law of this state or express any legislative intent in the  
29 enactment of this 2023 Act.**

30



1   **“EFFECTIVE DATE**

2

3           **“SECTION 17. This 2023 Act takes effect on the 91st day after the**  
4 **date on which the 2023 regular session of the Eighty-second Legislative**  
5 **Assembly adjourns sine die.”.**

6   \_\_\_\_\_