

Enrolled House Bill 2238

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of State Land Board)

CHAPTER

AN ACT

Relating to the Department of State Lands; creating new provisions; amending ORS 196.800, 196.810, 196.815, 196.816, 196.818, 196.850 and 274.043; and prescribing an effective date.

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

DISPOSAL OF PERSONAL PROPERTY

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 273.

SECTION 2. (1) As used in this section:

(a) "Personal property" includes any item that is reasonably recognizable as belonging to an individual, including books, photographs, personal documents such as identification and Social Security cards, camping equipment, sleeping bags, blankets, bicycles and clothing.

(b) "Personal property" does not include items that the Department of State Lands determines are not in a sanitary condition or that lack any apparent value or utility.

(2) Notwithstanding ORS 98.302 to 98.436, and except as provided under ORS 274.376 to 274.388, the department may remove, store and dispose of personal property that the department has determined to have been left on state lands without authorization of the department or by law as provided under this section. The authority under this section is in addition to any other authority of the department.

(3) Prior to the removal of personal property, the department shall post written notice in the manner provided in this subsection. The written notice must:

(a) Be laminated or weather resistant.

(b) Be conspicuously posted and easily viewable from the site where the personal property to be removed is located.

(c) Include the following dates:

(A) The date the notice is posted;

(B) The date by which the property owner must remove the personal property; and

(C) The time frame within which the department may remove the personal property pursuant to subsection (4) of this section.

(d) Provide information about the storage of the personal property, including how long the department will store the personal property, and a telephone number at which the property owner can contact the department to claim and retrieve the personal property.

(e) Be written in both English and Spanish.

(4) No less than 24 hours and no more than 10 days after posting written notice under subsection (3) of this section, the department may remove personal property. If the written notice is removed during the posting period, the department may proceed with the removal of the personal property but shall replace the written notice at the site for the purpose of informing property owners about how to claim the personal property.

(5) The department shall store personal property removed under this section:

(a) In a manner that is reasonably likely to protect the personal property from harm;

(b) In a location that is reasonably secure; and

(c) In a location that is reasonably accessible to the site where the personal property was found.

(6) After storing personal property for 30 days, the department may donate or otherwise dispose of the personal property if it has not been claimed by the property owner. Any personal identification, as defined in ORS 165.800, including a Social Security or other identification card, must be destroyed at the end of the 30 day storage period.

(7) The department is not liable for any conversion of personal property removed, stored, returned, donated or disposed of under this section.

(8) The department may collect the costs of removing, storing, returning, donating or disposing of the personal property from the property owner.

(9) The department may immediately, and without providing notice, remove and dispose of property that:

(a) Is not personal property;

(b) Creates an exceptional emergency, including, but not limited to, possible site contamination by hazardous materials, a public health emergency or a situation where personal property may enter a waterway due to flooding or seasonal increases in water levels; or

(c) Presents an immediate danger to human life or safety.

(10) The department may adopt rules implementing this section.

SECTION 3. (1) Section 2 of this 2023 Act becomes operative on January 1, 2024.

(2) The Department of State Lands may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by section 2 of this 2023 Act.

ADOPTION OF FEES BY RULE

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

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

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

(c) General authorizations under ORS 196.850.

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

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

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

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

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

SECTION 5. ORS 196.815 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(B) "Public body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services;]

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

[(D) "Riprap" means the facing of a streambank with rock or similar substance to control erosion in accordance with rules adopted by the department; and]

[(E) "Erosion-flood repair" means riprap or any other work necessary to preserve existing facilities and land from flood and high streamflows, in accordance with regulations promulgated by the department.]

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

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

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

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

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

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

SECTION 6. ORS 196.810 is amended to read:

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

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

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

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

(e)(A) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's territorial

sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d)(A) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's territorial sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is required.

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

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

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

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

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

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

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

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

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

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

(5) As used in this section:

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

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

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

SECTION 8. ORS 196.816 is amended to read:

196.816. (1) As used in this section, "traditionally maintained channel" has the meaning given that term in ORS 196.909.

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

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

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

SECTION 9. ORS 196.818 is amended to read:

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

- (a) Whether waters of this state are present on a specific land parcel;
- (b) Where the boundaries of waters of this state are located on a land parcel; or
- (c) Whether the waters of this state or a proposed activity in the waters of this state is subject to permit requirements.

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

(3) The department shall:

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

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

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

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

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

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

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

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

[(8)] (7) Delineations made pursuant to this section, and determinations made under this section, must comport with:

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

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

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

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

SECTION 10. ORS 196.850 is amended to read:

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

(a) Are substantially similar in nature;

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

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

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

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

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

(a) A clear description of the proposal; and

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

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

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

(b) Pay the applicable fee to the department as determined under *[subsection (9) of this section]*

rules adopted by the Director of the Department of State Lands under section 4 of this 2023 Act.

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

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

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

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

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

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

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

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

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

- (a) Are substantially similar in nature;
- (b) Would cause only minimal individual and cumulative environmental impacts; and
- (c) Would not result in long-term harm to water resources of the state.

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

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

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

- (a) A clear description of the proposal; and
- (b) Draft findings and any proposed conditions pursuant to this section.

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

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

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

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

- (a) Involves less than 50 cubic yards of material;
- (b) Will be conducted during periods that minimize adverse effects to fish and wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;
- (c) Will not dam or divert a waterway in a manner that obstructs fish passage or vessel navigation; and
- (d) Will not violate water quality standards as established by the Department of Environmental Quality.

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

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

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

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

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

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

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

SECTION 12. ORS 274.043 is amended to read:

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

- (a) The structure belongs to the immediately adjacent riparian landowner; and
- (b) The float or dock is uncovered, unenclosed and open on all sides.

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

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

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

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

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

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

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

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

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

(B) Habitat restoration work completed by an entity to satisfy an environmental mitigation obligation, or to generate, sell or obtain credit as an offset against actual or potential natural resource damages liability.

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

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

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

SECTION 13. ORS 196.800 is amended to read:

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

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

(2) "Estuary" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) “Removal” means:

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

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

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

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

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

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

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

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

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

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

(2) “Estuary” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) “Removal” means:

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

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

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

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

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

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

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

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

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

(b) January 1, 2026.

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

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

CAPTIONS

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

EFFECTIVE DATE

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

Passed by House April 13, 2023

Repassed by House June 22, 2023

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Dan Rayfield, Speaker of House

Passed by Senate June 21, 2023

.....
Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

.....
Secretary of State