

Requested by Representative CLEM

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2436**

1 On page 1 of the printed A-engrossed bill, line 2, after “196.643” insert  
2 “and 196.825”.

3 On page 2, line 38, delete “(2018 Edition)” and insert “, as in effect on the  
4 effective date of this 2019 Act.”.

5 On page 3, delete lines 36 through 39 and insert:

6 **“SECTION 4.** ORS 196.825 is amended to read:

7 “196.825. (1) The Director of the Department of State Lands shall issue a  
8 permit applied for under ORS 196.815 if the director determines that the  
9 project described in the application:

10 “(a) Is consistent with the protection, conservation and best use of the  
11 water resources of this state as specified in ORS 196.600 to 196.905; and

12 “(b) Would not unreasonably interfere with the paramount policy of this  
13 state to preserve the use of its waters for navigation, fishing and public re-  
14 creation.

15 “(2) If the director issues a permit applied for under ORS 196.815 to a  
16 person that proposes a removal or fill activity for construction or mainte-  
17 nance of a linear facility, and if that person is not a landowner or a person  
18 authorized by a landowner to conduct the proposed removal or fill activity  
19 on a property, then the person may not conduct removal or fill activity on  
20 that property until the person obtains:

21 “(a) The landowner’s consent;

1 “(b) A right, title or interest with respect to the property that is sufficient  
2 to undertake the removal or fill activity; or

3 “(c) A court order or judgment authorizing the use of the property.

4 “(3)(a) In determining whether to issue a permit, the director shall con-  
5 sider *[all of]* the following:

6 “[*a*] (A) The public need for the proposed fill or removal and the social,  
7 economic or other public benefits likely to result from the proposed fill or  
8 removal. When the applicant for a permit is a public body, the director may  
9 accept and rely upon the public body’s findings as to local public need and  
10 local public benefit.

11 “[*b*] (B) The economic [*cost*] **impact** to the public if the proposed fill  
12 or removal is not accomplished.

13 “[*c*] (C) The availability of alternatives to the project for which the fill  
14 or removal is proposed.

15 “[*d*] (D) The availability of alternative sites for the proposed fill or re-  
16 moval.

17 “[*e*] (E) Whether the proposed fill or removal conforms to sound policies  
18 of conservation and would not interfere with public health and safety.

19 “[*f*] (F) Whether the proposed fill or removal is in conformance with  
20 existing public uses of the waters and with uses designated for adjacent land  
21 in an acknowledged comprehensive plan and land use regulations.

22 “[*g*] (G) Whether the proposed fill or removal is compatible with the  
23 acknowledged comprehensive plan and land use regulations for the area  
24 where the proposed fill or removal is to take place or can be conditioned on  
25 a future local approval to meet this criterion.

26 “[*h*] (H) Whether the proposed fill or removal is for streambank pro-  
27 tection.

28 “[*i*] (I) Whether the applicant has provided all practicable mitigation to  
29 reduce the adverse effects of the proposed fill or removal in the manner set  
30 forth in ORS 196.800. In determining whether the applicant has provided all

1 practicable mitigation, the director shall consider the findings regarding  
2 wetlands set forth in ORS 196.668 and whether the proposed mitigation ad-  
3 vances the policy objectives for the protection of wetlands set forth in ORS  
4 196.672.

5 **“(J) Any other standard that the director may determine to be rel-  
6 evant to the specific proposed fill or removal.**

7 **“(b) Nothing in this subsection limits the director’s authority to  
8 determine that a proposed fill or removal is consistent or inconsistent  
9 with the purposes set forth in subsection (1) of this section.**

10 “(4) The director may issue a permit for a project that results in a sub-  
11 stantial fill in an estuary for a nonwater dependent use only if the project  
12 is for a public use and would satisfy a public need that outweighs harm to  
13 navigation, fishery and recreation and if the proposed fill meets all other  
14 criteria contained in ORS 196.600 to 196.905.

15 “(5) If the director issues a permit, the director may impose such condi-  
16 tions as the director considers necessary to carry out the purposes of ORS  
17 196.805 and 196.830 and subsection (1) of this section and to provide miti-  
18 gation for the reasonably expected adverse effects of project development. In  
19 formulating such conditions the director may request comment from public  
20 bodies, as defined in ORS 174.109, federal agencies and tribal governments  
21 affected by the permit. Each permit is valid only for the time specified  
22 therein. The director shall impose, as conditions to any permit, general au-  
23 thorization or wetland conservation plan, measures to provide mitigation for  
24 the reasonably expected adverse effects of project development.  
25 Compensatory mitigation shall be limited to replacement of the functions and  
26 values of the impacted water resources of this state.

27 “(6)(a) The director may request comment from interested parties and ad-  
28 jacent property owners on any application for a permit.

29 “(b) The director shall furnish to any person, upon written request and  
30 at the expense of the person who requests the copy, a copy of any application

1 for a permit or authorization under this section or ORS 196.850.

2 “(c) For permit applications for a removal or fill activity for construction  
3 or maintenance of a linear facility that are deemed complete by the director,  
4 the director shall notify by first-class mail, electronic mail or electronic  
5 facsimile transmission all landowners whose land is identified in the permit  
6 application and all landowners whose land is adjacent to the property of a  
7 landowner whose land is identified in the permit application.

8 “(7) Any applicant whose application for a permit or authorization has  
9 been deemed incomplete or has been denied, or who objects to any of the  
10 conditions imposed under this section by the director, may, within 21 days  
11 of the denial of the permit or authorization or the imposition of any condi-  
12 tion, request a hearing from the director. Thereupon the director shall set  
13 the matter down for hearing, which shall be conducted as a contested case  
14 in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470.  
15 After such hearing, the director shall enter an order containing findings of  
16 fact and conclusions of law. The order shall rescind, affirm or modify the  
17 director’s initial order. Appeals from the director’s final order may be taken  
18 to the Court of Appeals in the manner provided by ORS 183.482.

19 “(8) Except for a permit issued under the process set forth in ORS 517.952  
20 to 517.989, the director shall:

21 “(a) Determine whether an application is complete within 30 days from  
22 the date the Department of State Lands receives the application. If the di-  
23 rector determines that an application is complete, the director shall distrib-  
24 ute the application for comment pursuant to subsection (5) of this section.  
25 If the director determines that the application is not complete, the director  
26 shall notify the applicant in writing that the application is deficient and  
27 explain, in the same notice, the deficiencies.

28 “(b) Issue a permit decision within 90 days after the date the director  
29 determines that the application is complete unless:

30 “(A) An extension of time is granted under subsection (10)(b) of this sec-

1 tion;

2 “(B) The applicant and the director agree to a longer time period; or

3 “(C) The director determines that an extension is necessary to coordinate  
4 the issuance of a proprietary authorization decision for an ocean renewable  
5 energy facility under ORS 274.873 and a removal or fill permit decision.

6 “(9) Permits issued under this section shall be in lieu of any permit or  
7 authorization that might be required for the same operation under ORS  
8 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.060, 468.110, 468.120,  
9 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

10 “(a) The operation is that for which the permit or authorization is issued;  
11 and

12 “(b) The standards for granting the permit or authorization are substan-  
13 tially the same as those established pursuant to ORS 164.775, 164.785, 468.020,  
14 468.035, 468.045, 468.055, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048  
15 to 468B.085 to the extent they affect water quality.

16 “(10)(a) Any public body, as defined in ORS 174.109, federal agency or  
17 tribal government requested by the director to comment on an application  
18 for a permit must submit its comments to the director not more than 30 days  
19 after receiving the request for comment. If a public body, federal agency or  
20 tribal government fails to comment on the application within 30 days, the  
21 director shall assume that the public body, federal agency or tribal govern-  
22 ment has no objection.

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

27 “(11) In determining whether to issue a permit, the director may consider  
28 only standards and criteria in effect on the date the director receives the  
29 completed application.

30 “(12) As used in this section:

1       “(a) ‘Applicant’ means a landowner, a person authorized by a landowner  
2 to conduct a removal or fill activity or a person that proposes a removal or  
3 fill activity for construction or maintenance of a linear facility.

4       “(b) ‘Completed application’ means a signed permit application form that  
5 contains all necessary information for the director to determine whether to  
6 issue a permit, including:

7       “(A) A map showing the project site with sufficient accuracy to easily  
8 locate the removal or fill site;

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

10       “(C) The fee required under ORS 196.815;

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

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

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

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

22       “(H) Any other information that the director deems pertinent and neces-  
23 sary to make an informed decision on whether the application complies with  
24 the policy and standards set forth in this section.

25       “(c) ‘Linear facility’ includes any railway, highway, road, pipeline, water  
26 or sewer line, communication line, overhead or underground electrical  
27 transmission or distribution line or similar facility.

28       **“SECTION 5. Notwithstanding any other law limiting expenditures,  
29 the limitation on expenditures established by section 1 (1), chapter  
30 \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 5035), for the biennium**

1 **beginning July 1, 2019, as the maximum limit for payment of expenses**  
2 **from fees, moneys or other revenues, including Miscellaneous Re-**  
3 **ceipts, but excluding lottery funds, federal funds and funds described**  
4 **in section 2, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill**  
5 **5035), collected or received by the Department of State Lands, for**  
6 **Common School Fund programs, is increased by \$355,776.”.**

7 In line 40, delete “5” and insert “6”.

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