

Senate Bill 319

Sponsored by Senator ROBLAN; Senators JOHNSON, KRUSE, WHITSETT, Representatives BOONE, GOMBERG, MCKEOWN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires proprietary authorization from Department of State Lands to construct or operate ocean renewable energy facility in Oregon's territorial sea. Requires Director of Department of State Lands to adopt rules necessary to implement proprietary authorization program for ocean renewable energy facilities. Authorizes director to adopt by rule certain fees.

Requires permit for removal or fill activities in territorial sea related to ocean renewable energy facility. Requires department to coordinate issuance of proprietary authorization decision and removal or fill permit decision for ocean renewable energy facility.

Imposes civil penalties for violation of authorization requirements.

Exempts ocean renewable energy facilities from regulation as hydroelectric projects under certain conditions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to ocean renewable energy; creating new provisions; amending ORS 196.810, 196.815,
3 196.825, 274.040, 274.867, 274.992 and 274.994; repealing ORS 543.014 and sections 1, 2, 3 and 4,
4 chapter 152, Oregon Laws 2011; and declaring an emergency.

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

OCEAN RENEWABLE ENERGY FACILITY SITING

SECTION 1. As used in sections 1 to 4 of this 2015 Act:

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10 (1) **"Commercial operation" means a project undertaken to generate ocean renewable**
11 **energy for a purposes other than research, demonstration or personal use and that has fi-**
12 **ancial profit as a goal.**

13 (2) **"Ocean renewable energy" means electricity that is generated through:**

14 (a) **The conversion of energy contained in the natural properties of the ocean, including**
15 **but not limited to energy contained in waves and swells, the tides and currents, ocean tem-**
16 **perature and salinity gradients; and**

17 (b) **Ocean offshore wind power.**

18 (3) **"Ocean renewable energy facility" means any energy conversion technology or device**
19 **that is used as a necessary component of a research project, demonstration project or com-**
20 **mercial operation to generate ocean renewable energy, including but not limited to all buoys,**
21 **anchors, energy collectors, cables, control and transmission lines, and other equipment nec-**
22 **essary or useful to the project or operation.**

23 (4) **"Person" means a person as defined in ORS 174.100, a public body as defined in ORS**
24 **174.109, the federal government, when operating in any capacity other than navigational**
25 **servitude, or any other legal entity.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (5) “Territorial sea” has the meaning given that term in ORS 196.405.

2 (6) “Territorial Sea Plan” has the meaning given that term in ORS 196.405.

3 **SECTION 2.** The Legislative Assembly declares that it is the policy of the State of
4 Oregon:

5 (1) To protect the natural resources of this state from possible adverse impacts caused
6 by the use of the ocean resources of this state for the development of ocean renewable en-
7 ergy facilities.

8 (2) To permit the siting of ocean renewable energy facilities subject to standards that are
9 protective of the ocean resources of this state and consistent with the Oregon Ocean Re-
10 sources Management Plan and Territorial Sea Plan adopted under ORS 196.405 to 196.515.

11 (3) To cooperate with local and federal authorities to administer a streamlined process
12 for the siting and regulation of ocean renewable energy facilities.

13 **SECTION 3.** (1) Acting subject to the approval of the State Land Board and in compliance
14 with ORS chapter 183, the Director of the Department of State Lands shall adopt rules nec-
15 essary to implement the provisions of sections 1 to 4 of this 2015 Act. Rules adopted under
16 this section must include but need not be limited to:

17 (a) Proprietary authorization requirements for the construction and operation of ocean
18 renewable energy facilities in Oregon’s territorial sea;

19 (b) The maximum period for which a proprietary authorization may be issued under
20 section 4 of this 2015 Act; and

21 (c) Provisions to coordinate the issuance of a proprietary authorization decision under
22 section 4 of this 2015 Act with the issuance of a removal or fill permit decision under ORS
23 196.800 to 196.905 for an ocean renewable energy facility in the territorial sea.

24 (2)(a) The director may adopt rules establishing application fees related to:

25 (A) Proprietary authorizations to construct or operate ocean renewable energy facilities
26 within Oregon’s territorial sea; or

27 (B) Removal or fill permits required under ORS 196.810 to conduct removal or fill activ-
28 ities related to ocean renewable energy facilities in Oregon’s territorial sea.

29 (b) The Department of State Lands shall appoint an advisory committee in accordance
30 with ORS 183.333 to assist the director in drafting rules under this subsection.

31 (c) In developing the structure and amount of any fees under this subsection, the de-
32 partment shall take into consideration at least the following factors as they would relate to
33 a proposed ocean renewable energy facility subject to the fee:

34 (A) The size of the proposed ocean renewable energy facility.

35 (B) The distance from the ocean shore, as defined in ORS 390.605, at which the ocean
36 renewable energy facility will be sited.

37 (C) The volume of the removal or fill material that will be subject to the removal or fill
38 permit associated with the proposed ocean renewable energy facility.

39 (D) Whether the proposed ocean renewable energy facility is a research project, demon-
40 stration project or commercial operation.

41 (E) The anticipated useful life of the proposed ocean renewable energy facility.

42 (F) The expenses incurred by the department and other coordinating agencies in con-
43 nection with the processing, evaluation and issuance of the proprietary authorization or re-
44 moval or fill permit for the proposed ocean renewable energy facility.

45 **SECTION 4.** (1) A person may not construct or operate an ocean renewable energy fa-

1 cility within Oregon's territorial sea without a proprietary authorization issued by the De-
 2 partment of State Lands and as provided by the department by rule, or in a manner contrary
 3 to the conditions set out in the authorization.

4 (2) An application for a proprietary authorization under this section must include all of
 5 the information required by that part of the Territorial Sea Plan that addresses the devel-
 6 opment of ocean renewable energy facilities in the territorial sea.

7 (3) The department may not issue a proprietary authorization for an ocean renewable
 8 energy facility that does not comply with the criteria described in that part of the Territorial
 9 Sea Plan that addresses the development of ocean renewable energy facilities in the territo-
 10 rial sea.

11 (4) The department shall incorporate the terms and conditions of the removal or fill
 12 permit required for the ocean renewable energy facility into the proprietary authorization
 13 issued under this section.

14 **SECTION 5.** ORS 274.867 is added to and made a part of sections 1 to 4 of this 2015 Act.

15 **SECTION 6.** ORS 274.867 is amended to read:

16 274.867. [(1) In accordance with applicable provisions of ORS chapter 183, the Director of the De-
 17 partment of State Lands may adopt rules for the authorization of wave energy facilities or devices.]

18 [(2)] (1) An owner or operator of [a facility or device sited within Oregon's territorial sea, as de-
 19 fined in ORS 196.405, that converts the kinetic energy of waves into electricity] **an ocean renewable**
 20 **energy facility** shall maintain cost estimates of the amount of financial assurance that is necessary,
 21 and demonstrate evidence of financial assurance, for:

22 (a) The costs of closure and post-closure maintenance of the facility [or device], excluding the
 23 costs of removing anchors, cables or any other equipment that is not required to be removed from
 24 beneath the submerged lands in Oregon's territorial sea under subsection [(9)] (8) of this section;
 25 and

26 (b) Any corrective action required to be taken at the site of the facility [or device].

27 [(3)] (2) The cost estimates required by subsection [(2)] (1) of this section must be prepared by
 28 a person qualified by experience and knowledge to prepare such cost estimates.

29 [(4)] (3) The financial assurance requirements established by subsection [(2)] (1) of this section
 30 may be satisfied by any one or a combination of the following:

31 (a) Insurance;

32 (b) Establishment of a trust fund;

33 (c) A surety bond; or

34 (d) A letter of credit.

35 [(5)] (4) In adopting rules **under section 3 of this 2015 Act** to implement the provisions of this
 36 section, the Director **of the Department of State Lands** may specify policy or other contractual
 37 terms, conditions or defenses necessary to establish evidence of financial assurance.

38 [(6)(a)] (5)(a) Prior to the time that operation of [a facility or device described in subsection (2)
 39 of this section] **an ocean renewable energy facility** is authorized, the owner or operator of the fa-
 40 cility [or device] must provide the director with a plan for decommissioning the facility [or device]
 41 after the permanent cessation of use of that facility [or device for the conversion of the kinetic energy
 42 of waves into electricity] **for generating ocean renewable energy**. The plan for decommissioning the
 43 facility [or device] must include, but need not be limited to:

44 (A) Information regarding the anticipated useful life of the facility [or device];

45 (B) The cost estimates required by subsection [(2)] (1) of this section;

1 (C) The evidence of financial assurance required by subsections [(2) and (4)] **(1) and (3)** of this
2 section;

3 (D) A description of the method and schedule for updating the costs of decommissioning the fa-
4 cility [*or device*];

5 (E) A description of the anticipated methods that will be used to close the facility [*or device*],
6 engage in post-closure maintenance and take any corrective action required at the site of the facility
7 [*or device*]; and

8 (F) Any other information required by the director by rule.

9 (b) By January 31 of each subsequent calendar year, the owner or operator of the facility [*or*
10 *device*] must update the information required under this subsection with the Department of State
11 Lands.

12 [(7)] **(6)** An owner or operator shall provide evidence of financial assurance before beginning
13 corrective action at the site of [*a facility or device described in subsection (2) of this section*] **an**
14 **ocean renewable energy facility**.

15 [(8)] **(7)** An owner or operator shall establish provisions satisfactory to the director for disposing
16 of any excess moneys received or interest earned on moneys received for financial assurance.

17 [(9)(a)] **(8)(a)** An owner or operator of [*a facility or device described in subsection (2) of this sec-*
18 *tion*] **an ocean renewable energy facility** must initiate removal of all equipment related to that
19 facility [*or device*], excluding anchors, cables and any other equipment that lies at least one meter
20 beneath submerged lands in Oregon's territorial sea, within 12 months after the permanent cessation
21 of use of that facility [*or device for the conversion of the kinetic energy of waves into electricity*] **for**
22 **generating ocean renewable energy**.

23 (b) Notwithstanding paragraph (a) of this subsection, an owner or operator of [*a facility or device*
24 *described in subsection (2) of this section*] **an ocean renewable energy facility** may be required to
25 remove anchors, cables or any other equipment that lies at least one meter beneath submerged lands
26 in Oregon's territorial sea if removal is deemed necessary by the director, in consultation with the
27 owner or operator, and is permitted by the applicable requirements of federal regulatory agencies.

28 (c) All equipment required to be removed under this subsection must be removed within two
29 years after the permanent cessation of use of the facility [*or device for the conversion of the kinetic*
30 *energy of waves into electricity*] **for generating ocean renewable energy**.

31 (d) The director may extend the deadlines under this subsection if the owner or operator of the
32 facility [*or device*] can show good cause and has undertaken a good faith effort to remove the
33 equipment as required by this subsection.

34 **SECTION 7.** ORS 274.040 is amended to read:

35 274.040. (1) Except as provided in ORS 274.043, in ORS 274.085 for leases of submersible lands
36 acquired as an investment for the Common School Fund, in ORS 274.530 (1) for leases of submersible
37 lands of less than one year's duration, in ORS 274.530 (3) for licenses of less than three years' du-
38 ration, **in section 4 of this 2015 Act for proprietary authorizations within Oregon's territorial**
39 **sea as defined in ORS 196.405** and in subsections (2) and (3) of this section, submersible lands
40 owned by the State of Oregon may be leased only to the highest bidder, bidding at least the mini-
41 mum amount designated by the Department of State Lands under subsection (6) of this section for
42 the lease of any such lands, after being advertised not less than once each week for two successive
43 weeks in one or more newspapers of general circulation in the county in which the lands are situ-
44 ated. However, any owner of lands abutting or fronting on such submersible lands shall have the
45 preference right to lease the lands unless the submersible lands are occupied by a person claiming

1 the right of occupancy under a conveyance recorded before January 1, 1981, from the present owner
2 or predecessor in interest of lands abutting or fronting the submersible lands. If so, the occupant
3 of the submersible lands shall have the preference right to lease the lands. An easement or license
4 related to utility service on the submersible lands does not establish a preference right under this
5 subsection. The lands shall be leased for the amount designated by the department under subsection
6 (6) of this section as the minimum amount for the lease of any such lands. The preferences provided
7 in this subsection apply to any lease of submersible land for one year or more offered or issued
8 under ORS 274.530. The preferences provided in this subsection do not apply to any lease offered
9 or issued by the department under ORS 274.705 to 274.860. The preference for the owner of lands
10 provided in this subsection does not apply to the renewal of an existing lease where the lessee is
11 in compliance with all the terms and conditions of the lease.

12 (2) Submersible lands owned by the State of Oregon that are determined by the State Land
13 Board to be available for sale may be sold only to the highest bidder, after being advertised not less
14 than once each week for two successive weeks in one or more newspapers of general circulation in
15 the county in which the lands are situated. However:

16 (a) No such lands shall be sold for less than for a fair appraised value as determined by an ap-
17 praiser appointed by the department.

18 (b) All sales of such submersible lands shall be approved by the State Land Board.

19 (c) Any owner of lands abutting or fronting on such submersible lands shall have the preference
20 right to purchase such lands for the fair appraised value provided that the sale of such lands be
21 approved by the State Land Board.

22 (3)(a) The department may grant, to any person holding a permit from the Water Resources Di-
23 rector authorizing the impoundment for beneficial use of the waters of any lake or stream, ease-
24 ments over submerged and submersible lands for flowage and storage of waters, and for the
25 construction, maintenance and operation of any structures or facilities necessary for the use of the
26 water under the terms of the permit upon payment of just compensation by the grantee.

27 (b) In addition to the authority of the department under paragraph (a) of this subsection to grant
28 easements over submerged and submersible lands, a person holding a water right permit, water right
29 certificate, proposed or final order approving a water right permit or court decree evidencing a
30 water right may occupy state-owned submerged and submersible lands for the construction, mainte-
31 nance and operation of any structure or facility necessary for the use of water if the proposed use
32 under the permit, certificate, order or decree is for irrigation or domestic use. The department may
33 not charge for the occupation of state-owned submerged and submersible lands pursuant to this
34 paragraph, nor may the department require that a person obtain written documentation to substan-
35 tiate the permission granted under this paragraph. Upon request by the Department of State Lands,
36 the Water Resources Department shall provide information to the Department of State Lands re-
37 garding any change of use of the water right. A person may continue to occupy state-owned sub-
38 merged and submersible lands pursuant to this paragraph until:

39 (A) The water right permit is canceled pursuant to ORS 537.260;

40 (B) The water right is canceled pursuant to ORS 540.641; or

41 (C) The water is no longer being applied to irrigation or domestic use.

42 (c) An easement or the permission granted under this subsection may not be construed to be a
43 sale or lease of the submerged and submersible lands within the meaning of subsections (1) and (2)
44 of this section.

45 (d) A person granted an easement or permission to use or occupy state-owned submerged and

1 submersible lands under this subsection shall indemnify and hold harmless the state from all liability
2 and claims arising from or attributable to the use or occupation.

3 (4) All easements or the permission granted pursuant to subsection (3) of this section shall be
4 subject to conditions that will ensure the safety of the public and the preservation of economic,
5 scenic and recreational values and to lawful rules promulgated by state agencies affected by the
6 activities of the grantee.

7 (5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806,
8 622.270 or 622.320 to 622.350.

9 (6) The Department of State Lands shall designate the minimum acceptable amount for the lease
10 of any submerged and submersible lands otherwise authorized by law, other than any lease offered
11 or issued by the department under ORS 274.705 to 274.860.

12 (7) For the purpose of sale, the value of state-owned submerged and submersible lands shall be
13 determined by an appraiser appointed by the department.

14 (8) The act of any person entering into an agreement with the department under this section
15 or ORS 274.530 for the lease of submerged and submersible lands shall not be considered a waiver
16 by such person of any claim of ownership in the submerged and submersible lands described in the
17 agreement.

18 **SECTION 8.** ORS 274.992 is amended to read:

19 274.992. (1) Any person who violates any provision of ORS 274.040 or 274.867 **or section 4 of**
20 **this 2015 Act**, any rule, order or lease adopted or issued under ORS 274.040 **or section 3 or 4 of**
21 **this 2015 Act** or any rule adopted under ORS 274.867 shall be subject to a civil penalty in an
22 amount to be determined by the Director of the Department of State Lands of not more than \$1,000
23 per day of violation.

24 (2) Civil penalties under this section shall be imposed in the manner provided in ORS 183.745.

25 (3) The provisions of this section are in addition to and not in lieu of any other penalty or
26 sanction provided by law.

27 (4) Any civil penalty recovered under this section for violation of ORS 274.040 or 274.867 **or**
28 **section 4 of this 2015 Act** or any rule, order or lease adopted or issued under ORS 274.040 or
29 274.867 **or section 3 or 4 of this 2015 Act** shall be deposited in the Common School Fund for use
30 by the Department of State Lands in administration of ORS 274.040 or 274.867 **or section 4 of this**
31 **2015 Act** and as otherwise required by law.

32 **SECTION 9.** ORS 274.994 is amended to read:

33 274.994. (1) The Director of the Department of State Lands shall adopt by rule the amount of
34 civil penalty that may be imposed for a particular violation of ORS 274.040 or 274.867 **or section**
35 **4 of this 2015 Act**.

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

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

40 (b) Any prior violations of statutes, rules, orders and leases pertaining to submerged and
41 submersible lands.

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

43 (d) Any other factors determined by the director to be relevant and consistent with the policy
44 of ORS 274.040 or 274.867 **or section 4 of this 2015 Act**.

45 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and

1 conditions as the director determines to be proper and consistent with the policy of ORS 274.040
 2 or 274.867 or **section 4 of this 2015 Act**. Upon the request of the person incurring the penalty, the
 3 director shall consider evidence of the economic and financial condition of the person in determining
 4 whether a penalty shall be remitted or mitigated.

5
 6 **REMOVAL OR FILL PERMIT APPLICATION PROCESS**

7
 8 **SECTION 10.** ORS 196.810 is amended to read:

9 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person
 10 may not remove any material from the beds or banks of any waters of this state or fill any waters
 11 of this state without a permit issued under authority of the Director of the Department of State
 12 Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to
 13 the conditions set out in an order approving a wetland conservation plan.

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

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

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

31 **(e)(A) Notwithstanding the permit requirements of this section and notwithstanding the**
 32 **provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's**
 33 **territorial sea that is related to an ocean renewable energy facility as defined in section 1**
 34 **this 2015 Act, a permit is required.**

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

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

43 [(e)] (f) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

44 [(f)] (g) As used in paragraphs (b) and (c) of this subsection:

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

1 bar.

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

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

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

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

13 (2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in
14 opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

15 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit
16 or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967.
17 However, no such contract, permit or lease may be renewed or extended on or after September 13,
18 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

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

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

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

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

29 (d) Does not relieve the person from payment of a fee calculated in the manner provided in ORS
30 196.815.

31 **SECTION 11.** ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, section
32 97, chapter 14, Oregon Laws 2003, section 64, chapter 71, Oregon Laws 2007, section 5, chapter 625,
33 Oregon Laws 2007, and section 15, chapter 849, Oregon Laws 2007, is amended to read:

34 196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person
35 may not remove any material from the beds or banks of any waters of this state or fill any waters
36 of this state without a permit issued under authority of the Director of the Department of State
37 Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to
38 the conditions set out in an order approving a wetland conservation plan.

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

1 (c) A permit is not required under paragraph (a) of this subsection for construction or mainte-
 2 nance of fish passage and fish screening structures associated with irrigation ditches or the main-
 3 tenance of drainage ditches that are constructed, operated or maintained under ORS 498.306,
 4 498.316, 498.326 or 509.600 to 509.645.

5 **(d)(A) Notwithstanding the permit requirements of this section and notwithstanding the**
 6 **provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's**
 7 **territorial sea that is related to an ocean renewable energy facility as defined in section 1**
 8 **this 2015 Act, a permit is required.**

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

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

17 [(d)] (e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

18 (2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in
 19 opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

20 (3) Subsection (1) of this section does not apply to removal of material under a contract, permit
 21 or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967.
 22 However, a contract, permit or lease may not be renewed or extended on or after September 13,
 23 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

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

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

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

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

34 (d) Does not relieve the person from payment of a fee calculated in the manner provided in ORS
 35 196.815.

36 (5) As used in this section:

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

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

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

44 **SECTION 12.** ORS 196.815 is amended to read:

45 196.815. (1) A person who is required to have a permit to remove material from the bed or banks

1 or fill any waters of this state shall file a written application with the Director of the Department
2 of State Lands for each individual project before performing any removal or fill.

3 (2)(a) **Except as otherwise may be provided by the rules of the Department of State Lands**
4 **for removal or fill permits related to ocean renewable energy facilities as defined in section**
5 **1 of this 2015 Act**, each application under subsection (1) of this section must be accompanied by a
6 base fee in accordance with the following schedule:

7 (A) For a removal by a private operator, or a person contracting to perform services for a pri-
8 vate operator, \$85.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (e) For the purposes of this subsection:

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

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

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

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

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

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

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

3 (4) The department may waive the fees specified in subsection (2) of this section for a permit
4 that will be used to perform a voluntary habitat restoration project.

5 (5) A person who receives an emergency authorization under ORS 196.810 to remove material
6 from the beds or banks of any waters of this state or to fill any waters of this state shall, within
7 45 days after receiving the authorization, submit a fee to the department calculated in the manner
8 provided under this section for permit applications.

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

18 (7) Fees received under this section shall be credited to the Common School Fund for use by the
19 department in administration of ORS 196.600 to 196.905.

20 (8) The director shall issue an order revising the fees specified in this section on January 1 of
21 each year, beginning in 2009, based on changes in the Portland-Salem, OR-WA Consumer Price Index
22 for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United
23 States Department 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 year.

25 **SECTION 13.** ORS 196.825 is amended to read:

26 196.825. (1) The Director of the Department of State Lands shall issue a permit applied for under
27 ORS 196.815 if the director determines that the project described in the application:

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

30 (b) Would not unreasonably interfere with the paramount policy of this state to preserve the use
31 of its waters for navigation, fishing and public recreation.

32 (2) If the director issues a permit applied for under ORS 196.815 to a person that proposes a
33 removal or fill activity for construction or maintenance of a linear facility, and if that person is not
34 a landowner or a person authorized by a landowner to conduct the proposed removal or fill activity
35 on a property, then the person may not conduct removal or fill activity on that property until the
36 person obtains:

37 (a) The landowner's consent;

38 (b) A right, title or interest with respect to the property that is sufficient to undertake the re-
39 moval or fill activity; or

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

41 (3) In determining whether to issue a permit, the director shall consider all of the following:

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

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

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

3 (d) The availability of alternative sites for the proposed fill or removal.

4 (e) Whether the proposed fill or removal conforms to sound policies of conservation and would
5 not interfere with public health and safety.

6 (f) Whether the proposed fill or removal is in conformance with existing public uses of the wa-
7 ters and with uses designated for adjacent land in an acknowledged comprehensive plan and land
8 use regulations.

9 (g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive
10 plan and land use regulations for the area where the proposed fill or removal is to take place or
11 can be conditioned on a future local approval to meet this criterion.

12 (h) Whether the proposed fill or removal is for streambank protection.

13 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
14 of the proposed fill or removal in the manner set forth in ORS 196.800. In determining whether the
15 applicant has provided all practicable mitigation, the director shall consider the findings regarding
16 wetlands set forth in ORS 196.668 and whether the proposed mitigation advances the policy objec-
17 tives for the protection of wetlands set forth in ORS 196.672.

18 (4) The director may issue a permit for a project that results in a substantial fill in an estuary
19 for a nonwater dependent use only if the project is for a public use and would satisfy a public need
20 that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other
21 criteria contained in ORS 196.600 to 196.905.

22 (5) If the director issues a permit, the director may impose such conditions as the director con-
23 siders necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this
24 section and to provide mitigation for the reasonably expected adverse effects of project development.
25 In formulating such conditions the director may request comment from public bodies, as defined in
26 ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid
27 only for the time specified therein. The director shall impose, as conditions to any permit, general
28 authorization or wetland conservation plan, measures to provide mitigation for the reasonably ex-
29 pected adverse effects of project development. Compensatory mitigation shall be limited to replace-
30 ment of the functions and values of the impacted water resources of this state.

31 (6)(a) The director may request comment from interested parties and adjacent property owners
32 on any application for a permit.

33 (b) The director shall furnish to any person, upon written request and at the expense of the
34 person who requests the copy, a copy of any application for a permit or authorization under this
35 section or ORS 196.850.

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

41 (7) Any applicant whose application for a permit or authorization has been deemed incomplete
42 or has been denied, or who objects to any of the conditions imposed under this section by the di-
43 rector, may, within 21 days of the denial of the permit or authorization or the imposition of any
44 condition, request a hearing from the director. Thereupon the director shall set the matter down for
45 hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430,

1 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing
 2 findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial
 3 order. Appeals from the director's final order may be taken to the Court of Appeals in the manner
 4 provided by ORS 183.482.

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

7 (a) Determine whether an application is complete within 30 days from the date the Department
 8 of State Lands receives the application. If the director determines that an application is complete,
 9 the director shall distribute the application for comment pursuant to subsection (5) of this section.
 10 If the director determines that the application is not complete, the director shall notify the applicant
 11 in writing that the application is deficient and explain, in the same notice, the deficiencies.

12 (b) Issue a permit decision within 90 days after the date the director determines that the appli-
 13 cation is complete unless:

14 (A) An extension of time is granted under subsection (10)(b) of this section; [*or*]

15 (B) The applicant and the director agree to a longer time period[.]; **or**

16 (C) **The director determines that an extension is necessary to coordinate the issuance**
 17 **of a proprietary authorization decision for an ocean renewable energy facility under section**
 18 **4 of this 2015 Act and a removal or fill permit decision.**

19 (9) Permits issued under this section shall be in lieu of any permit or authorization that might
 20 be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055,
 21 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

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

23 (b) The standards for granting the permit or authorization are substantially the same as those
 24 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,
 25 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

26 (10)(a) Any public body, as defined in ORS 174.109, federal agency or tribal government re-
 27 quested by the director to comment on an application for a permit must submit its comments to the
 28 director not more than 30 days after receiving the request for comment. If a public body, federal
 29 agency or tribal government fails to comment on the application within 30 days, the director shall
 30 assume that the public body, federal agency or tribal government has no objection.

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

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

36 (12) As used in this section:

37 (a) "Applicant" means a landowner, a person authorized by a landowner to conduct a removal
 38 or fill activity or a person that proposes a removal or fill activity for construction or maintenance
 39 of a linear facility.

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

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

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

45 (C) The fee required under ORS 196.815;

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

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

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

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

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

11 (c) "Linear facility" includes any railway, highway, road, pipeline, water or sewer line, commu-
12 nication line, overhead or underground electrical transmission or distribution line or similar facility.

13
14 **EXEMPTION FROM REGULATION AS HYDROELECTRIC PROJECT**

15
16 **SECTION 14. ORS 543.014 and sections 1, 2, 3 and 4, chapter 152, Oregon Laws 2011, are**
17 **repealed.**

18 **SECTION 15. Section 16 of this 2015 Act is added to and made a part of ORS chapter 543.**

19 **SECTION 16. The provisions of this chapter and ORS chapter 543A do not apply to an**
20 **ocean renewable energy facility as defined in section 1 of this 2015 Act if:**

21 **(1) The facility is located within Oregon's territorial sea, as defined in ORS 196.405; or**

22 **(2) The facility is in an estuary, unless any part of the facility is not subject to a pro-**
23 **proprietary authorization issued by the Department of State Lands under section 4 of this 2015**
24 **Act.**

25
26 **MISCELLANEOUS**

27
28 **SECTION 17. The unit captions used in this 2015 Act are provided only for the conven-**
29 **ience of the reader and do not become part of the statutory law of this state or express any**
30 **legislative intent in the enactment of this 2015 Act.**

31 **SECTION 18. This 2015 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
33 **on its passage.**