

# House Bill 2996

Sponsored by Representative CLEM; Representatives GILLIAM, ROBLAN, THOMPSON (at the request of Oregon Farm Bureau)

## 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**.

Modifies applicability of removal or fill provisions to certain activities on exclusive farm use zoned lands.

## A BILL FOR AN ACT

1  
2 Relating to removal-fill permitting program; creating new provisions; and amending ORS 196.905.

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

4 **SECTION 1.** ORS 196.905 is amended to read:

5 196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this  
6 state for the purpose of constructing, operating and maintaining dams or other diversions for which  
7 permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which  
8 preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

9 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks  
10 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

11 (a) Such waterway or portion is situated within forestland; and

12 (b) Such removal or filling is directly connected with a forest management practice conducted  
13 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

14 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted  
15 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, cultivating,  
16 conventional crop rotation, harvesting for the production of food and fiber, upland soil and water  
17 conservation practices or reestablishment of crops under federal conservation reserve program pro-  
18 visions.

19 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the following  
20 activities on exclusive farm use zoned lands:

21 (a) Drainage or maintenance of farm or stock ponds;

22 (b) Maintenance of farm roads in such a manner as to not significantly adversely affect  
23 wetlands;

24 (c) Subsurface drainage, by deep ripping, tiling or moling, on converted wetlands; and

25 (d) Any activity described as a farm use in ORS 215.203 that is conducted on [*prior*] converted  
26 [*cropland*] **wetland** as described in subsection (8) of this section, so long as agricultural management  
27 of the land has not been abandoned for five or more years.

28 (5) The exemption in subsections (3) and (4) of this section shall not apply to any fill or removal  
29 which involves changing an area of wetlands to a nonfarm use.

30 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance  
31 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage

**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 ditches, irrigation ditches and tile drain systems, provided that:

2 (a) The structure was serviceable within the past five years; and

3 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or  
4 other waters of this state to a greater extent than the wetlands or waters of this state were affected  
5 as a result of the original construction of those structures.

6 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,  
7 including emergency reconstruction of recently damaged parts, of currently serviceable roads or  
8 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-  
9 ments or approaches.

10 (8) For the purposes of this section, "converted wetland":

11 (a) Means wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled,  
12 leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the  
13 purpose of enabling production of an agricultural commodity and are managed for that purpose; and

14 (b) Includes land that the Natural Resources Conservation Service of the United States De-  
15 partment of Agriculture, or its successor agency, certifies as prior converted cropland or farmed  
16 wetlands, so long as agricultural management of the land has not been abandoned for five or more  
17 years.

18 **SECTION 2.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, and section  
19 13, chapter 253, Oregon Laws 2003, is amended to read:

20 196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit  
21 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters  
22 of this state when:

23 (a) The fill or removal is a part of an activity whose purpose is to bring an area of state waters  
24 into a use to which it was not previously subject; and

25 (b)(A) The flow or circulation of the waters of this state may be impaired; or

26 (B) The reach of the waters may be reduced.

27 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks  
28 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

29 (a) Such waterway or portion is situated within forestland; and

30 (b) Such removal or filling is directly connected with a forest management practice conducted  
31 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

32 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted  
33 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, cultivating,  
34 conventional crop rotation, harvesting for the production of food and fiber, upland soil and water  
35 conservation practices or reestablishment of crops under federal conservation reserve program pro-  
36 visions.

37 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the following  
38 activities on exclusive farm use zoned lands:

39 (a) Drainage or maintenance of farm or stock ponds;

40 (b) Subsurface drainage, by deep ripping, tiling or moling, on converted wetlands;

41 (c) Maintenance of farm roads, provided that:

42 (A) The farm roads are constructed and maintained in accordance with construction practices  
43 designed to minimize any adverse effects to the aquatic environment;

44 (B) Borrow material for farm road maintenance does not come from waters of this state unless  
45 authorized by the Department of State Lands; and

- 1 (C) Maintenance activities are confined to the scope of construction for the original project; and
- 2 (d) Any activity described as a farm use in ORS 215.203 that is conducted on [*prior*] converted
- 3 [*cropland*] **wetland** as described in subsection (10)(a) of this section, so long as agricultural man-
- 4 agement of the land has not been abandoned for five or more years.
- 5 (5) The exemption in subsections (3) and (4) of this section may not apply to any fill or removal
- 6 which involves changing an area of wetlands or converted wetlands to a nonfarm use.
- 7 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
- 8 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage
- 9 ditches, irrigation ditches and tile drain systems, provided that:
- 10 (a) The structure was serviceable within the past five years; and
- 11 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or
- 12 other waters of this state to a greater extent than the wetlands or waters of this state were affected
- 13 as a result of the original construction of those structures.
- 14 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams
- 15 constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the
- 16 following conditions are satisfied:
- 17 (a) The removal or filling is conducted during periods that minimize adverse effects to fish and
- 18 wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;
- 19 (b) The removal or filling does not jeopardize a threatened or endangered species or adversely
- 20 modify or destroy the habitat of a threatened or endangered species listed under federal or state
- 21 law; and
- 22 (c) Temporary fills are removed in their entirety and the area is restored to its approximate
- 23 original elevation.
- 24 (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,
- 25 including emergency reconstruction of recently damaged parts, of currently serviceable roads or
- 26 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-
- 27 ments or approaches.
- 28 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
- 29 of access roads constructed to move mining equipment, subject to the following conditions:
- 30 (a) The access roads are constructed and maintained in accordance with construction practices
- 31 that minimize adverse effects to the aquatic environment;
- 32 (b) Borrow material for access road maintenance does not come from waters of this state unless
- 33 authorized by the Department of State Lands; and
- 34 (c) Maintenance activities are confined to the scope of construction for the original project.
- 35 (10) For the purposes of this section:
- 36 (a) "Converted wetland" means:
- 37 (A) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled
- 38 or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose
- 39 of producing an agricultural product and are managed for that purpose; or
- 40 (B) Those areas that the Natural Resources Conservation Service of the United States Depart-
- 41 ment of Agriculture, or its successor agency, certifies as prior converted cropland or farmed
- 42 wetlands, so long as agricultural management of the land has not been abandoned for five or more
- 43 years.
- 44 (b) "Harvesting" means physically removing crops or other agricultural products.
- 45 (c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade

1 plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil  
2 to prepare it for planting crops or other agricultural products. "Plowing" does not include:

3 (A) The redistribution of soil, rock, sand or other surface materials in a manner that changes  
4 areas of waters of this state into dry land; or

5 (B) Rock crushing activities that result in the loss of natural drainage characteristics, the re-  
6 duction of water storage and recharge capability, or the overburdening of natural water filtration  
7 capacity.

8 (d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other  
9 agricultural products.

10 **SECTION 3. The amendments to ORS 196.905 by sections 1 and 2 of this 2009 Act apply**  
11 **only to permits first applied for or permits renewed on or after the effective date of this 2009**  
12 **Act.**

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