

House Bill 2189

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Environment and Water)

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**.

Exempts certain changes in points of diversion for withdrawal of surface water from removal or fill permitting requirements.

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, planting,
16 cultivating, conventional crop rotation or harvesting.

17 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for
18 exclusive farm use as described in ORS 215.203 for the following activities:

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

20 (b) Maintenance of farm roads in such a manner as to not significantly adversely affect wetlands
21 or any other waters of this state.

22 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for subsurface
23 drainage by deep ripping, tiling or moling on converted wetlands that are zoned for exclusive farm
24 use pursuant to ORS 215.203.

25 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
26 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS
27 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
28 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
29 successor agency, so long as commercial agricultural production on the land has not been aban-
30 doned for five or more years.

31 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-

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 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as
 2 in effect on January 1, 2010.

3 (8) The exemptions in subsections (3) to (7) of this section do not apply to any fill or removal
 4 that involves changing an area of wetlands to a nonfarm use.

5 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
 6 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage
 7 ditches, irrigation ditches and tile drain systems, provided that:

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

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

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

16 (11) The Department of State Lands may adopt a rule that exempts from the requirement to
 17 obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only
 18 minimal adverse impact on waters of this state.

19 **(12) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for a change**
 20 **in the point of diversion to withdraw surface water for beneficial use if the change in the**
 21 **point of diversion is necessitated by a change in the location of the surface water and au-**
 22 **thorized by the Water Resources Department.**

23 [(12)] (13) As used in this section:

24 (a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,
 25 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
 26 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that
 27 are managed for commercial agricultural purposes.

28 (b) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any
 29 other waters of this state that are located within or adjacent to a converted wetland area.

30 **SECTION 2.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, section 13,
 31 chapter 253, Oregon Laws 2003, and section 4, chapter 342, Oregon Laws 2009, is amended to read:

32 196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit
 33 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters
 34 of this state when:

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

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

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

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

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

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

44 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted
 45 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,

1 cultivating, conventional crop rotation or harvesting.

2 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for
 3 exclusive farm use as described in ORS 215.203 for the following activities:

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

5 (b) Maintenance of farm roads, provided that:

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

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

10 (C) Maintenance activities are confined to the scope of construction for the original project.

11 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
 12 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS
 13 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
 14 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
 15 successor agency, so long as commercial agricultural production on the land has not been aban-
 16 doned for five or more years.

17 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-
 18 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as
 19 in effect on January 1, 2010.

20 (7) The exemptions in subsections (3) to (6) of this section do not apply to any fill or removal
 21 that involves changing an area of wetlands or converted wetlands to a nonfarm use.

22 (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
 23 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage
 24 ditches, irrigation ditches and tile drain systems, provided that:

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

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

29 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams
 30 constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the
 31 following conditions are satisfied:

32 (a) The removal or filling is conducted during periods that minimize adverse effects to fish and
 33 wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

34 (b) The removal or filling does not jeopardize a threatened or endangered species or adversely
 35 modify or destroy the habitat of a threatened or endangered species listed under federal or state
 36 law; and

37 (c) Temporary fills are removed in their entirety and the area is restored to its approximate
 38 original elevation.

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

43 (11) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
 44 of access roads constructed to move mining equipment, subject to the following conditions:

45 (a) The access roads are constructed and maintained in accordance with construction practices

1 that minimize adverse effects to the aquatic environment;

2 (b) Borrow material for access road maintenance does not come from waters of this state unless
3 authorized by the Department of State Lands; and

4 (c) Maintenance activities are confined to the scope of construction for the original project.

5 (12) The department may adopt a rule that exempts from the requirement to obtain a permit
6 under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal adverse
7 impact on waters of this state.

8 **(13) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for a change**
9 **in the point of diversion to withdraw surface water for beneficial use if the change in the**
10 **point of diversion is necessitated by a change in the location of the surface water and au-**
11 **thorized by the Water Resources Department.**

12 [(13)] (14) As used in this section:

13 (a)(A) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,
14 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
15 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that
16 are managed for commercial agricultural purposes.

17 (B) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any
18 other waters of this state that are located within or adjacent to a converted wetland area.

19 (b) "Harvesting" means physically removing crops or other agricultural products.

20 (c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade
21 plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil
22 to prepare it for planting crops or other agricultural products. "Plowing" does not include:

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

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

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

30 **SECTION 3. The amendments to ORS 196.905 by sections 1 and 2 of this 2011 Act apply**
31 **only to permits first applied for or permits renewed on or after the effective date of this 2011**
32 **Act.**

33 _____