

## HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 600

By COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

June 6

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert “196.905.”.

2 On page 3, after line 29, insert:

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

6 In line 30, delete “(c)” and insert “(d)”.

7 On page 4, after line 32, insert:

8

9

### “DRAINAGE MAINTENANCE

10

11 “**SECTION 6.** ORS 196.905 is amended to read:

12 “196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this  
13 state for the purpose of constructing, operating and maintaining dams or other diversions for which  
14 permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which  
15 preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

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

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

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

21 “(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted  
22 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,  
23 cultivating, conventional crop rotation or harvesting.

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

26 “(a) Drainage or maintenance of farm or stock ponds; or

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

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

32 “(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity  
33 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS  
34 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by  
35 the Natural Resources Conservation Service of the United States Department of Agriculture, or its

1 successor agency, [so] as long as commercial agricultural production on the land has not been  
2 abandoned for five or more years.

3 “(7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestab-  
4 lishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831  
5 as in effect on January 1, 2010.

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

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

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

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

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

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

22 “(12) **The Department of State Lands may adopt a rule that exempts from the require-**  
23 **ment to obtain a permit under ORS 196.800 to 196.900 removal of no more than 100 cubic**  
24 **yards of material from waters of this state for the purpose of maintaining drainage and**  
25 **protecting agricultural land. The department may apply this exemption in essential**  
26 **indigenous anadromous salmonid habitat defined and designated pursuant to ORS 196.810**  
27 **(1)(b).**

28 “[12] (13) As used in this section:

29 “(a) ‘Converted wetlands’ means agriculturally managed wetlands that, on or before June 30,  
30 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or  
31 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that  
32 are managed for commercial agricultural purposes.

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

35 “**SECTION 7.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, section  
36 13, chapter 253, Oregon Laws 2003, and section 4, chapter 342, Oregon Laws 2009, is amended to  
37 read:

38 “196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit  
39 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters  
40 of this state when:

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

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

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

45 “(2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks

1 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:  
2       “(a) Such waterway or portion is situated within forestland; and  
3       “(b) Such removal or filling is directly connected with a forest management practice conducted  
4 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.  
5       “(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted  
6 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,  
7 cultivating, conventional crop rotation or harvesting.  
8       “(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for  
9 exclusive farm use as described in ORS 215.203 for the following activities:  
10       “(a) Drainage or maintenance of farm or stock ponds; or  
11       “(b) Maintenance of farm roads, provided that:  
12           “(A) The farm roads are constructed and maintained in accordance with construction practices  
13 designed to minimize any adverse effects to the aquatic environment;  
14           “(B) Borrow material for farm road maintenance does not come from waters of this state unless  
15 authorized by the Department of State Lands; and  
16           “(C) Maintenance activities are confined to the scope of construction for the original project.  
17       “(5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity  
18 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS  
19 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by  
20 the Natural Resources Conservation Service of the United States Department of Agriculture, or its  
21 successor agency, [so] as long as commercial agricultural production on the land has not been  
22 abandoned for five or more years.  
23       “(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestab-  
24 lishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831  
25 as in effect on January 1, 2010.  
26       “(7) The exemptions in subsections (3) to (6) of this section do not apply to any fill or removal  
27 that involves changing an area of wetlands or converted wetlands to a nonfarm use.  
28       “(8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance  
29 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage  
30 ditches, irrigation ditches and tile drain systems, provided that:  
31       “(a) The structure was serviceable within the past five years; and  
32       “(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or  
33 other waters of this state to a greater extent than the wetlands or waters of this state were affected  
34 as a result of the original construction of those structures.  
35       “(9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams  
36 constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the  
37 following conditions are satisfied:  
38       “(a) The removal or filling is conducted during periods that minimize adverse effects to fish and  
39 wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;  
40       “(b) The removal or filling does not jeopardize a threatened or endangered species or adversely  
41 modify or destroy the habitat of a threatened or endangered species listed under federal or state  
42 law; and  
43       “(c) Temporary fills are removed in their entirety and the area is restored to its approximate  
44 original elevation.  
45       “(10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,

1 including emergency reconstruction of recently damaged parts, of currently serviceable roads or  
2 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-  
3 ments or approaches.

4 “(11) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the mainte-  
5 nance of access roads constructed to move mining equipment, subject to the following conditions:

6 “(a) The access roads are constructed and maintained in accordance with construction practices  
7 that minimize adverse effects to the aquatic environment;

8 “(b) Borrow material for access 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 “(12) The Department of State Lands may adopt a rule that exempts from the requirement to  
12 obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only  
13 minimal adverse impact on waters of this state.

14 “(13) **The Department of State Lands may adopt a rule that exempts from the require-**  
15 **ment to obtain a permit under ORS 196.800 to 196.900 removal of no more than 100 cubic**  
16 **yards of material from waters of this state for the purpose of maintaining drainage and**  
17 **protecting agricultural land. The department may apply this exemption in essential**  
18 **indigenous anadromous salmonid habitat defined and designated pursuant to ORS 196.810**  
19 **(1)(b).**

20 “[13] (14) As used in this section:

21 “(a)(A) ‘Converted wetlands’ means agriculturally managed wetlands that, on or before June 30,  
22 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or  
23 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that  
24 are managed for commercial agricultural purposes.

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

27 “(b) ‘Harvesting’ means physically removing crops or other agricultural products.

28 “(c) ‘Plowing’ includes all forms of primary tillage, including moldboard, chisel or wide-blade  
29 plowing, disking, harrowing or similar means of breaking up, cutting, turning over or stirring soil  
30 to prepare it for planting crops or other agricultural products. ‘Plowing’ does not include:

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

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

36 “(d) ‘Seeding’ means the sowing of seed or placement of seedlings to produce crops or other  
37 agricultural products.”.

38 In line 36, delete “6” and insert “8”.

39 On page 5, after line 20, insert:

40 “(C) Rights of way established prior to November 1, 1981, for any county road over state-owned  
41 submerged and submersible lands, and rights of way established prior to November 1, 1981, for any  
42 city street over state-owned submerged and submersible lands, need not be renewed, or may be ter-  
43 minated before the date of renewal, by the grantee or lessee on or after the effective date of this  
44 2011 Act.”.

45 In line 21, delete “(C)” and insert “(D)”.

1 After line 30, insert:

2 “(6) The amendments to ORS 196.905 by sections 6 and 7 of this 2011 Act apply to permits first  
3 applied for, or permits renewed, on or after the effective date of this 2011 Act.”.

4 In line 31, delete “7” and insert “9”.

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