

House Bill 2951

Sponsored by COMMITTEE ON TRANSPORTATION AND ECONOMIC DEVELOPMENT

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**.

Authorizes conditional approval, in exclusive farm use zones, of industrial uses that are not otherwise authorized in exclusive farm use zones.

A BILL FOR AN ACT

1
2 Relating to industrial uses in exclusive farm use zones; creating new provisions; and amending ORS
3 196.684, 196.692, 215.203, 215.296 and 459.109.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 215.203 to**
6 **215.311.**

7 **SECTION 2. (1) Notwithstanding statewide land use planning goals relating to agricul-**
8 **tural lands or forest lands, industrial uses not specifically allowable under ORS 215.213 or**
9 **215.283 or another provision of law may be allowed in an area zoned for exclusive farm use**
10 **subject to the requirements of this section and the approval of the governing body or its**
11 **designee under ORS 215.296.**

12 **(2) An industrial use allowed under subsection (1) of this section must be established on**
13 **a tract of land that is adjacent to the boundary of a city or an urban growth boundary.**
14 **However, a permit for an industrial use must include a buffer zone between the industrial**
15 **use and the boundary of a city or an urban growth boundary if the industrial use produces**
16 **industrial waste as defined in ORS 468B.005.**

17 **(3) Notwithstanding statewide land use planning goals relating to urbanization or to**
18 **public facilities and services and subject to approval under ORS 215.296:**

19 **(a) A county or its designee may authorize on-site sewer facilities to serve the industrial**
20 **use authorized under this section, including accessory uses subordinate to the industrial use;**
21 **or**

22 **(b) A provider of sanitary sewer or water services may connect the tract of land for**
23 **which an industrial use is approved under subsection (1) of this section to the sewer and**
24 **water facilities of the provider.**

25 **(4) When a county or its designee considers action on a proposal to establish an indus-**
26 **trial use under subsection (1) of this section:**

27 **(a) The county shall notify the city whose boundary or urban growth boundary is adja-**
28 **cent to the tract of land for which the industrial use is proposed at least 21 days before**
29 **taking action.**

30 **(b) If the city objects to the authorization of industrial use, the city and county shall**
31 **negotiate to establish conditions on the industrial use or changes in the industrial use nec-**

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 **essary to mitigate concerns raised in the city’s objection.**

2 **(5) A county or its designee may not authorize under this section an industrial use that**
 3 **may be allowed under ORS 215.213 or 215.283 or another provision of law.**

4 **SECTION 3.** ORS 215.203, as amended by section 1, chapter 74, Oregon Laws 2012, is amended
 5 to read:

6 215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the
 7 county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use
 8 except as otherwise provided in ORS 215.213, 215.283, [or] 215.284 **or 215.294 or section 2 of this**
 9 **2013 Act.** Farm use zones shall be established only when such zoning is consistent with the com-
 10 prehensive plan.

11 (2)(a) As used in this section, “farm use” means the current employment of land for the primary
 12 purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding,
 13 breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or
 14 honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural
 15 use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage
 16 and disposal by marketing or otherwise of the products or by-products raised on such land for hu-
 17 man or animal use. “Farm use” also includes the current employment of land for the primary pur-
 18 pose of obtaining a profit in money by stabling or training equines including but not limited to
 19 providing riding lessons, training clinics and schooling shows. “Farm use” also includes the propa-
 20 gation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under
 21 the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules
 22 adopted by the commission. “Farm use” includes the on-site construction and maintenance of
 23 equipment and facilities used for the activities described in this subsection. “Farm use” does not
 24 include the use of land subject to the provisions of ORS chapter 321, except land used exclusively
 25 for growing cultured Christmas trees as defined in subsection (3) of this section or land described
 26 in ORS 321.267 (3) or 321.824 (3).

27 (b) “Current employment” of land for farm use includes:

28 (A) Farmland, the operation or use of which is subject to any farm-related government program;

29 (B) Land lying fallow for one year as a normal and regular requirement of good agricultural
 30 husbandry;

31 (C) Land planted in orchards or other perennials, other than land specified in subparagraph (D)
 32 of this paragraph, prior to maturity;

33 (D) Land not in an exclusive farm use zone which has not been eligible for assessment at special
 34 farm use value in the year prior to planting the current crop and has been planted in orchards,
 35 cultured Christmas trees or vineyards for at least three years;

36 (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically
 37 tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and
 38 which is not currently being used for any economic farm use;

39 (F) Except for land under a single family dwelling, land under buildings supporting accepted
 40 farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r)
 41 and the processing of farm crops into biofuel as commercial activities in conjunction with farm use
 42 under ORS 215.213 (2)(c) and 215.283 (2)(a);

43 (G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

44 (H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the
 45 owner of land specially valued for farm use even if the land constituting the woodlot is not utilized

1 in conjunction with farm use;

2 (I) Land lying idle for no more than one year where the absence of farming activity is due to
 3 the illness of the farmer or member of the farmer’s immediate family. For purposes of this paragraph,
 4 illness includes injury or infirmity whether or not such illness results in death;

5 (J) Any land described under ORS 321.267 (3) or 321.824 (3); and

6 (K) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

7 (i) Only the crops of the landowner are being processed;

8 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm
 9 of the landowner; or

10 (iii) The landowner is custom processing crops into biofuel from other landowners in the area
 11 for their use or sale.

12 (c) As used in this subsection, “accepted farming practice” means a mode of operation that is
 13 common to farms of a similar nature, necessary for the operation of such farms to obtain a profit
 14 in money, and customarily utilized in conjunction with farm use.

15 (3) “Cultured Christmas trees” means trees:

16 (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive culti-
 17 vation methods such as plowing or turning over the soil;

18 (b) Of a marketable species;

19 (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as
 20 specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

21 (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed
 22 and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and
 23 disease control, stump culture, soil cultivation, irrigation.

24 **SECTION 4.** ORS 215.296 is amended to read:

25 215.296. (1) A use allowed under ORS 215.213 (2) or (11), [or] 215.283 (2) or (4) **or 215.294 or**
 26 **section 2 of this 2013 Act** may be approved only where the local governing body or its designee
 27 finds that the use will not:

28 (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted
 29 to farm or forest use; or

30 (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands
 31 devoted to farm or forest use.

32 (2) An applicant for a use allowed under ORS 215.213 (2) or (11), [or] 215.283 (2) or (4) **or 215.294**
 33 **or section 2 of this 2013 Act** may demonstrate that the standards for approval set forth in sub-
 34 section (1) of this section will be satisfied through the imposition of conditions. Any conditions so
 35 imposed shall be clear and objective.

36 (3) A person engaged in farm or forest practices on lands devoted to farm or forest use may file
 37 a complaint with the local governing body or its designee alleging:

38 (a) That a condition imposed pursuant to subsection (2) of this section has been violated;

39 (b) That the violation has:

40 (A) Forced a significant change in accepted farm or forest practices on surrounding lands de-
 41 voted to farm or forest use; or

42 (B) Significantly increased the cost of accepted farm or forest practices on surrounding lands
 43 devoted to farm or forest use; and

44 (c) That the complainant is adversely affected by the violation.

45 (4) Upon receipt of a complaint filed under this section or ORS 215.218, the local governing body

1 or its designee shall:

2 (a) Forward the complaint to the operator of the use;

3 (b) Review the complaint in the manner set forth in ORS 215.402 to 215.438; and

4 (c) Determine whether the allegations made in a complaint filed under this section or ORS
5 215.218 are true.

6 (5) Upon a determination that the allegations made in a complaint are true, the local governing
7 body or its designee at a minimum shall notify the violator that a violation has occurred, direct the
8 violator to correct the conditions that led to the violation within a specified time period and warn
9 the violator against the commission of further violations.

10 (6) If the conditions that led to a violation are not corrected within the time period specified
11 pursuant to subsection (5) of this section, or if there is a determination pursuant to subsection (4)
12 of this section following the receipt of a second complaint that a further violation has occurred, the
13 local governing body or its designee at a minimum shall assess a fine against the violator.

14 (7) If the conditions that led to a violation are not corrected within 30 days after the imposition
15 of a fine pursuant to subsection (6) of this section, or if there is a determination pursuant to sub-
16 section (4) of this section following the receipt of a third or subsequent complaint that a further
17 violation has occurred, the local governing body or its designee shall at a minimum order the sus-
18 pension of the use until the violator corrects the conditions that led to the violation.

19 (8) If a use allowed under ORS 215.213 (2) or (11), [or] 215.283 (2) or (4) **or 215.294 or section**
20 **2 of this 2013 Act** is initiated without prior approval pursuant to subsection (1) of this section, the
21 local governing body or its designee at a minimum shall notify the user that prior approval is re-
22 quired, direct the user to apply for approval within 21 days and warn the user against the commis-
23 sion of further violations. If the user does not apply for approval within 21 days, the local governing
24 body or its designee shall order the suspension of the use until the user applies for and receives
25 approval. If there is a determination pursuant to subsection (4) of this section following the receipt
26 of a complaint that a further violation occurred after approval was granted, the violation shall be
27 deemed a second violation and the local governing body or its designee at a minimum shall assess
28 a fine against the violator.

29 (9)(a) The standards set forth in subsection (1) of this section do not apply to farm or forest uses
30 conducted within:

31 (A) Lots or parcels with a single-family residential dwelling approved under ORS 215.213 (3),
32 215.284 (1), (2), (3), (4) or (7) or 215.705;

33 (B) An exception area approved under ORS 197.732; or

34 (C) An acknowledged urban growth boundary.

35 (b) A person residing in a single-family residential dwelling which was approved under ORS
36 215.213 (3), 215.284 (1), (2), (3), (4) or (7) or 215.705, which is within an exception area approved un-
37 der ORS 197.732 or which is within an acknowledged urban growth boundary may not file a com-
38 plaint under subsection (3) of this section.

39 (10) This section does not prevent a local governing body approving a use allowed under ORS
40 215.213 (2) or (11), [or] 215.283 (2) or (4) **or 215.294 or section 2 of this 2013 Act** from establishing
41 standards in addition to those set forth in subsection (1) of this section or from imposing conditions
42 to ensure conformance with the additional standards.

43 **SECTION 5.** ORS 196.684 is amended to read:

44 196.684. (1) Local governments shall provide notice to the Department of State Lands of any
45 proposed amendments to the land use plan and ordinances affecting lands subject to a wetland

1 conservation plan approved under this section.

2 (2) Amendments to plan policies, maps and implementing ordinances by the local government
 3 within an approved wetland conservation plan shall be reviewed by the department against the re-
 4 quirements of this section. These provisions do not exempt local governments from the provisions
 5 of ORS 197.610 to 197.625.

6 (3) The Director of the Department of State Lands shall provide notice and the opportunity for
 7 public comment and hearing as defined by rule on the matter of including the amendment in the
 8 wetland conservation plan.

9 (4) If the director finds that the proposed local government amendment to acknowledged com-
 10 prehensive plan and land use regulations meets the requirements of ORS 196.681, the director shall
 11 approve the plan by order, and notify the local government within 10 days of the completion of the
 12 public review provided in subsection (3) of this section.

13 (5) If the amendments to acknowledged comprehensive plan and land use regulations adopted
 14 by the local government are determined not to comply with the requirements of ORS 196.668 to
 15 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279,
 16 215.213, 215.283, 215.284, **215.294**, 215.418 and 227.350 **and section 2 of this 2013 Act**, the director
 17 shall revoke the approval order or amend the order to [*insure*] **ensure** compliance with the re-
 18 quirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885,
 19 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, **215.294**, 215.418 and 227.350 **and section 2 of this**
 20 **2013 Act**.

21 (6) The department shall review each approved wetland conservation plan every five years. After
 22 such review the director shall either modify, reissue or rescind the order approving the plan.

23 (7) In conducting the five-year review of an approved wetland conservation plan, the director
 24 shall provide notice and the opportunity for public comment and hearing on whether:

25 (a) There has been a substantial change in circumstances that would affect the wetland re-
 26 sources subject to the plan and would adversely affect the compliance of the plan with the standards
 27 in ORS 196.681;

28 (b) Changes have been made in applicable state law, statewide land use planning goals, federal
 29 law or agency rules that require the plan to be changed; and

30 (c) In the director's evaluation, the plan as implemented over the preceding five years meets the
 31 goals established in the plan.

32 (8) Wetland conservation plans approved by the Director of the Department of State Lands
 33 pursuant to ORS 196.668 to 196.692 shall be deemed to comply with the requirements of any state-
 34 wide planning goals relating to wetlands, other than estuarine wetlands, for those areas, uses and
 35 activities which are regulated by the plan.

36 (9) An order by the director regarding approval, amendment or review of a wetland conservation
 37 plan shall be reviewable by the Land Use Board of Appeals as a land use decision of a state agency.
 38 For the purpose of such review, the director's order shall not become final until the local govern-
 39 ment adopts its wetland conservation plan or plan amendment. The Land Use Board of Appeals shall
 40 consolidate for review appeals of the director's order and the local government adoption. The Land
 41 Use Board of Appeals shall review such order for compliance with the requirements of ORS 196.668
 42 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279,
 43 215.213, 215.283, 215.284, **215.294**, 215.418 and 227.350 **and section 2 of this 2013 Act**.

44 (10) Nothing in this section shall be construed to require a contested case proceeding regarding
 45 approval, amendment or review of a wetland conservation plan.

1 (11) Nothing in this section shall be construed to affect the evaluation of a permit application
2 in areas that do not have a wetland conservation plan.

3 (12) Upon a finding by the director, after a public hearing, that an affected local government is
4 not enforcing the comprehensive plan provisions or land use regulations set forth in the conditions
5 of the order, as specified in ORS 196.681 (5), and that such lack of enforcement has resulted or would
6 result in adverse impacts to wetlands, the director shall modify, suspend or revoke approval of the
7 wetland conservation plan.

8 **SECTION 6.** ORS 196.692 is amended to read:

9 196.692. (1) The Department of State Lands shall adopt rules to carry out the provisions of ORS
10 196.668 to 196.692, 196.800, 196.810, 196.818, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905,
11 197.015, 197.279, 215.213, 215.283, 215.284, **215.294**, 215.418 and 227.350 **and section 2 of this 2013**
12 **Act.**

13 (2) Rules adopted pursuant to subsection (1) of this section shall include rules governing the
14 application for and issuance of permits to remove material from the beds or banks of any waters of
15 this state or to fill any waters of this state including, but not limited to, clear and objective stan-
16 dards and criteria for determining whether to grant or deny a permit.

17 **SECTION 7.** ORS 459.109 is amended to read:

18 459.109. Nothing in ORS 215.203, 215.213, 215.283, **215.294**, 308A.056, 315.141, 315.144, 469.320
19 and 469B.403 **and section 2 of this 2013 Act:**

20 (1) Supersedes any authority under ORS chapter 459 or 459A for cities and counties to regulate
21 the collection of solid waste; or

22 (2) Authorizes the collection of solid waste within a city or county without permission of the
23 city or county.

24