

HB 2277 AS AMENDED [DRAFT]

PURPOSE OF THE LEGISLATION

The current drainage district statute (ORS Chapter 547)¹ dates from 1917. It was originally enacted so that property owners could form a special district to construct works to drain agricultural land. Since the 1930s, the four Columbia River drainage entities—Peninsula Drainage District #1, Peninsula Drainage District #2, Multnomah County Drainage District #1 ("MCDD"), and Sandy Drainage Improvement Company ("SDIC") (collectively, the "Districts")²—have also been responsible for managing the Columbia River levee system, constructed in part by the United States Army Corps of Engineers ("USACE"). A changing land use landscape, including substantial development on and behind the levees, new federal regulations enacted after Hurricane Katrina, and the commencement of the Federal Emergency Management Agency ("FEMA") levee recertification process have made the management of this system dramatically more complicated. The current drainage district statute barely mentions flood control and provides very limited tools to address these changes. The proposed amendments clarify that the Districts have the authority to do the job that they have been doing for eighty years and provide additional legislative flexibility to address evolving changes to district responsibilities.

OUTLINE OF THE PROPOSED LEGISLATION

Section 1: Makes Section 2 part of ORS 547.005 to ORS 547.030.

Section 2: This section adds the definitions of and "Flood Control Project," "Obstruction," and "Repair." The term "repair" is broadened to reflect that regulations or best-engineering practices may have changed since the structure was originally installed and that such new standards and practices may require an upgrade when an aging facility is repaired.

Section 3: Amends the definition of "Drainage District Act" (ORS 547.060) so that it includes sections 4 to 6 of the 2015 Act.

Section 4: Sets forth the process that a drainage district must follow to exercise the authorities set forth in Section 5 of the Act. Once a district has elected to exercise the authorities, it may continue to do so. The purpose of this provision is to allow individual districts to decide whether to exercise the authorities in Section 5. Many smaller districts may not wish or need to do so.

Section 5: This section outlines the authority that a drainage district can elect to exercise in carrying out its obligations under the statute. Subsection (1) authorizes the Districts to construct local improvement, thereby empowering the

¹ "Drainage District Act" as it is referred to in ORS Chapter 547 is defined in ORS 547.060.

² The Districts are jointly administered by MCDD pursuant to intergovernmental agreements.

Districts to form local improvement districts pursuant to ORS Chapter 223. Subsection (2) is the most significant change in the statute; it authorizes the district board of supervisors of districts situated in a county with a population over 700,000 persons to enact ordinances in order to carry out its responsibilities under ORS Chapter 547 and to address applicable state or federal requirements. Such ordinances must be consistent with sanitary, agricultural, public health, or public safety purposes. This will give the districts the legislative flexibility to address the evolving federal regulations. This section allows districts to charge fees for certain operations within the district. Subsection (3) requires a district to provide written notice to affected cities between 10 and 21 days prior to the first reading of an ordinance. Subsection (4)(a) and (b) provide that a district shall not impose rates, fees, fines or charges on a city unless pursuant to an intergovernmental or urban services agreement with that city, but that assessments, rates, fees, fines, or charges may be levied against a city as a landowner within the district. Subsection (5) provides that if a drainage district's exercise of authority under Section 5 has the potential to conflict with similar authority of another governmental unit, the district will consult and coordinate with that government; where actual conflict exists, the drainage district and governmental unit must create an intergovernmental or urban services agreement to resolve the conflict. For example, both the Districts and the City of Portland operate storm drainage facilities within the same territory. The Districts and the City have an intergovernmental agreement to allocate duties.

Section 6: This section defines drainage district activities in counties over 700,000 in population and within an urban growth boundary or city to be "urban services" within the meaning of ORS 195.005 to 195.085. This change will require cities and counties to coordinate with such drainage districts with regard to comprehensive land use planning and development approval. The limitations basically limit the applicability to the Columbia River Levee Districts. The reason for this provision is that a flood-control project located within an urban area is much more likely to be negatively impacted by incompatible development than a project in a rural area primarily protecting farmland. The current lack of coordination has resulted in noncompliant encroachments and litigation that could have been avoided if coordination procedures had been in place.

Section 7: This section adds the Section 8 to ORS Chapter 554 pertaining to drainage improvement companies.

Section 8: This section makes the same change as Section 6 for similarly situated drainage improvement corporations (such as Sandy Drainage Improvement Company).

Section 9: This section amends ORS 198.510 to add drainage districts to the list of special districts that can adopt ordinances pursuant to ORS 198.510 to 198.600. This conforms the statute to the amendment in Section 5 and provides a public process for adopting such regulations.

Section 10: Clarifies language regarding when landowners may form a drainage district and the purposes for which a district can be created.

Section 11: Amends ORS 547.105 to require the county clerk to provide notice of the initial landowner meeting of newly formed drainage districts. Also clarifies that a landowner that is not a natural person can appoint a designee to serve as its representative for the purposes of voting and serve on the board of supervisors, codifying current practice. This section also reorganizes and clarifies the language in ORS 547.105.

Section 12: Includes owner designees as eligible voters at annual meetings. It also clarifies that notice of annual meetings is giving by the district board.

Sections 13, 14, 16, 17, 19: These sections amend existing statutes to clarify that flood protection and management of flood-control projects are within a drainage district's statutory authority in the same manner as drainage facilities.

Section 15: This section authorizes contracts with the federal government for flood control, such as the existing contracts between the Districts and USACE.

Section 18: Amends statute to clarify that flood control is within a drainage district's authority. Also provides a process for an owner or occupant of land which has become clogged or obstructed to submit a plan and schedule for repair of the drainage or flood control works to be approved by the drainage district and carried out by the owner or occupant. Authorizes the board of supervisors to act when the owner or occupant fails to do so pursuant to the plan and schedule or in cases of emergency. This amendment recognizes the some repairs may take longer than the ten days currently provided for in the existing statute.

Section 20: This section adds an emergency clause so that the legislation will go into effect on passage.