

House Bill 2277

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Transportation and Economic Development for Multnomah County Drainage District)

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 authority of drainage districts to perform flood control activity.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to authority of drainage districts to perform flood control; creating new provisions;
3 amending ORS 198.510, 547.005, 547.060, 547.105, 547.110, 547.305, 547.310, 547.355, 547.405,
4 547.410, 547.415 and 547.420; and declaring an emergency.

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

6 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 547.005 to**
7 **547.030.**

8 **SECTION 2. As used in the Drainage District Act:**

9 (1) **“Flood control project” means a system or method, including, but not limited to,**
10 **dams, storage reservoirs, canals, ditches, dikes, levees, revetments and floodwalls, for:**

11 (a) **The control, diversion, conservation or abatement of floodwater, or of an excessive**
12 **or unusual accumulation of water, in a natural or artificial body of water;**

13 (b) **The protection of life and property against danger, menace, injury or damage result-**
14 **ing from floodwater, or an excessive or unusual accumulation of water.**

15 (2) **“Obstruction” means an excavation, structure or other encroachment that impairs**
16 **the function of a flood control project.**

17 (3) **“Repair” includes replace, remove, relocate and upgrade when, in the discretion of the**
18 **board of supervisors of the drainage district, replacement, removal, relocation or upgrade is**
19 **necessary to comply with regulations or to implement the best practices in effect at the**
20 **time.**

21 **SECTION 3. ORS 547.060 is amended to read:**

22 547.060. As used in this chapter, “Drainage District Act” means ORS 547.005 to 547.030, 547.105
23 to 547.150, 547.205 to 547.240, 547.250 to 547.265, [*547.310, 547.315,*] 547.455 to 547.475, and 547.555
24 to 547.580 **and sections 5 to 7 of this 2015 Act.**

25 **SECTION 4. ORS 547.305, 547.310 and 547.315 are added to and made a part of sections 5**
26 **to 7 of this 2015 Act.**

27 **SECTION 5. (1) Before a drainage district elects to construct, operate, maintain or im-**
28 **prove a flood control project, the board of supervisors shall hold a public hearing.**

29 (2) **At least 14 days before the date of the public hearing, the board shall give notice of**
30 **the hearing in a newspaper of general circulation in the district and mail notice of the**
31 **hearing to owners of record, based on the most recent county tax assessment roll, of prop-**

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.

erty within the district.

(3) Notice of the public hearing must:

(a) State the date, location and time of the hearing;

(b) State that the board is considering whether to construct, operate, maintain or improve a flood control project; and

(c) Invite all interested parties to attend the hearing and present testimony.

(4) After the public hearing, the board may adopt a resolution in which the district elects to construct, operate, maintain or improve a flood control project.

SECTION 6. (1) A drainage district may acquire, construct, reconstruct, repair, improve or extend improvements to carry out the purposes of the Drainage District Act.

(2) When a drainage district elects to construct, operate, maintain or improve a flood control project, the district may adopt ordinances under ORS 198.510 to 198.600 to carry out its powers and duties, including, but not limited to, ordinances related to:

(a) Flood protection, drainage control or management, including provisions for enforcement of the regulations;

(b) Rates, fees, fines and charges for the operation of the district and construction, maintenance, repair and improvement of the works of the district;

(c) A delegation of authority to the chief executive officer of the district to manage and administer the district; and

(d) Other matters determined by the board of supervisors to be necessary or convenient to exercise the authority granted to the district or to comply with the requirements of state and federal law.

SECTION 7. The activity of a drainage district is not deemed to be an urban service, as defined in ORS 195.065, unless the drainage district:

(1) Is located in a county that has a population greater than 700,000; and

(2) Operates a flood control project located within the urban growth boundary established by Metro or within the incorporated boundary of a city.

SECTION 8. Section 9 of this 2015 Act is added to and made a part of ORS 554.005 to 554.340.

SECTION 9. The activity of an improvement district or a district improvement company organized under ORS 554.005 to 554.340 is not deemed to be an urban service, as defined in ORS 195.065, unless the drainage district:

(1) Is located in a county that has a population greater than 700,000; and

(2) Operates a flood control project located within the urban growth boundary established by Metro or within the incorporated boundary of a city.

SECTION 10. ORS 198.510 is amended to read:

198.510. As used in ORS 198.510 to 198.600, unless the context requires otherwise:

(1) "County" means the county in which the district, or the greater portion of the assessed value of the district, is located.

(2) "County board" means the board of county commissioners or the county court of the county.

(3) "County clerk" means the county clerk of the county.

(4) "District" has the meaning given that term in ORS 198.010 (2), (4), (5), (11), (12), (14), (16), (17), (19), (20) to (23), (25) and (26). In addition, "district" means any one of the following:

(a) A county service district organized under ORS chapter 451.

(b) The Port of Portland established by ORS 778.010.

1 (5) "District board" means the governing body of a district and the term includes a county board
 2 that is in the governing body of a district.

3 (6) "Presiding officer" means the chairperson, president or other person performing the office
 4 of presiding officer of the district board.

5 (7) "Principal Act" means the law, other than ORS 198.510 to 198.600, applicable to a district.

6 **SECTION 11.** ORS 547.005 is amended to read:

7 547.005. *[The persons shown by the records of the county to be the owners of 50 percent of the*
 8 *acreage in any contiguous body of swamp, wet or overflowed lands or irrigated lands, waters from*
 9 *which contribute to the swamp, wet or overflowed conditions of those or other lands, situated in one*
 10 *or more counties of the state, may form a drainage district for the purpose of having such lands re-*
 11 *claimed and protected by drainage or otherwise from the effects of water, for sanitary or agricultural*
 12 *purposes, or when the same may be conducive to the public health, convenience and welfare or of public*
 13 *utility or benefit.]* **In a contiguous body of swamp, wet or overflowed land or irrigated land**
 14 **from which waters contribute to the swamp or to the wet or overflowed condition of the**
 15 **same or different land, the owners of record of at least 50 percent of the acreage may form**
 16 **a drainage district for the purpose of reclaiming and protecting the land by drainage, flood**
 17 **control or otherwise from the effects of water:**

18 (1) **For sanitary or agricultural purposes; or**

19 (2) **When reclaiming and protecting the land protects life or property from the harmful**
 20 **effects of water or produces another public utility or benefit.**

21 **SECTION 12.** ORS 547.105 is amended to read:

22 547.105. (1) Within 30 days after any drainage district has been organized under the provisions
 23 of the Drainage District Act, the county clerk of the county in which the petition was filed shall
 24 call a meeting of the owners of land situated in the district for the purpose of electing a board of
 25 supervisors with three or five supervisors as determined by the owners of land within the district.

26 (2) **The county clerk shall give** notice of the meeting *[shall be given]* by publication in some
 27 newspaper published in each county in which lands of the district are situated, at least 10 days be-
 28 fore the date of the meeting.

29 (3) The supervisors *[shall]* **must** be owners of land in the district.

30 (4)(a) The *[landowners]* **owners**, assembled at the place and time required by the notice, shall
 31 organize by the election of a chairperson and secretary of the meeting who shall conduct the
 32 election. Each owner is entitled to one vote in person or by proxy for each acre of land owned by
 33 the owner in the district. **If an owner is a not a natural person, the owner may appoint a**
 34 **designee, in a writing filed with the secretary, to exercise the authority of the owner, in-**
 35 **cluding the voting and serving as a supervisor of the district. The designee shall serve as a**
 36 **representative of the owner until the designee resigns, or the owner replaces the designee,**
 37 **in a writing filed with the secretary.**

38 (b) **Notwithstanding paragraph (a) of this subsection, at or before the organizing meeting,**
 39 **an owner that is not a natural person may appoint a designee in a writing filed with the**
 40 **county clerk.**

41 (5) The three or five persons receiving the highest number of votes *[shall]* **must** be declared
 42 elected as supervisors. *[They shall immediately by lot]* **The supervisors shall** determine the terms
 43 of their *[office]* **offices by lot.** If three supervisors are elected, the supervisors shall serve, respec-
 44 tively, one, two and three years. If five supervisors are elected, one supervisor shall serve one year,
 45 two supervisors shall serve two years, and two supervisors shall serve three years. The supervisors

1 first elected shall serve until their successors are elected and qualified. *[The majority of the acreage*
 2 *represented shall be necessary to constitute a quorum for the transaction of business at all landowners'*
 3 *meetings; provided, however, that when in any year a district shall fail to have a quorum at its annual*
 4 *meeting called pursuant to ORS 547.110 then the quorum for the annual meeting for the succeeding*
 5 *year shall be at least 35 percent of the acreage represented.]*

6 **(6) At a meeting of owners, owners that represent at least a majority of the acreage in**
 7 **the district constitute a quorum for the transaction of district business. In a year in which**
 8 **a quorum of owners is not achieved at the annual meeting called under ORS 547.110, owners**
 9 **representing at least 35 percent of the acreage in the district constitute a quorum for the**
 10 **annual meeting in the succeeding year.**

11 **SECTION 13.** ORS 547.110 is amended to read:

12 547.110. In the same month of each year after the election of the first board of supervisors, the
 13 board shall call a meeting of the owners of land in the district, after giving notice in the manner
 14 provided for in ORS 547.105. The owners shall meet at the time and place fixed by the board and
 15 elect one or two supervisors in the manner prescribed in ORS 547.105, who shall hold office for three
 16 years and until a successor is elected and qualified. However, after the report of the commissioners
 17 has been confirmed by the court under the provisions of ORS 547.235, only the owners, **or the**
 18 **designees of the owners**, of the land having benefits attributed to the land *[shall be]* **are** entitled
 19 to vote at the annual meetings held under the provisions of this section.

20 **SECTION 14.** ORS 547.305 is amended to read:

21 547.305. (1) The officers and employees of any drainage district *[shall have the right to]* **may:**

22 (a) Enter upon any land in the manner provided by ORS 35.220.

23 (b) Locate the necessary *[drainage]* **flood control project, drainage works** or irrigation
 24 works, and the necessary branches for the same, on any lands that may be deemed best for such
 25 location.

26 (c) Acquire, either by lease, purchase, condemnation or other legal means, all lands, rights of
 27 way, easements and other property necessary for the construction, operation or maintenance of *[any*
 28 *drainage]* **a flood control project, drainage works** or irrigation works, including the enlargement,
 29 improvement or extension of any natural or artificial waterway for such purposes.

30 (d) Make all necessary water filings or appropriation of water under the general laws of Oregon
 31 for irrigation of lands within such district.

32 (2) The property, the right to condemn which is hereby given, shall include property already
 33 devoted to public use that is less necessary than the use for which it is required by the district,
 34 whether used for drainage, irrigation or any other purpose. The right of way is hereby given, dedi-
 35 cated and set apart to locate, construct and maintain such drainage or irrigation works over and
 36 through any of the lands that are now or may be the property of this state.

37 (3) In the acquisition of property or rights by condemnation, proceedings under the provisions
 38 of this section shall be brought in the name of the district under the provisions of ORS chapter 35.

39 **SECTION 15.** ORS 547.310 is amended to read:

40 547.310. (1) The board of supervisors *[shall have full power and authority to]* **may:**

41 (a) Build, construct and complete any works and improvements needed to carry out the plan of
 42 reclamation.

43 (b) In the name of the district, make all necessary water filings and appropriations of water for
 44 the subsequent irrigation of the lands within the district.

45 (c) Construct, operate and maintain irrigation works for the irrigation of the lands within the

1 district.

2 (d) Hire personnel and purchase machinery, equipment and supplies.

3 (e) **Construct, operate, protect and maintain flood control projects for the protection of**
 4 **the lands within the district.**

5 (2) The board may after advertising for bids, let a contract for construction of the whole or any
 6 part of the [*drainage*] **flood control project, drainage works** or irrigation works to the lowest re-
 7 sponsible bidder, which contract shall be in writing. The complete plans and specifications for the
 8 **flood control**, drainage or irrigation of the lands shall be attached to and made a part of each
 9 contract. Good and sufficient bond, running in favor of the district, shall be required of each con-
 10 tractor, conditioned that the contractor will well and truly comply with all the provisions of the
 11 contract and perform all work in accordance with the terms thereof.

12 (3) The chief engineer shall be superintendent of all the works and improvements and shall,
 13 whenever required, and at least once each year, make a full report to the board of all work done
 14 and improvements and make such suggestions and recommendations to the board as the chief engi-
 15 neer deems proper.

16 **SECTION 16.** ORS 547.355 is amended to read:

17 547.355. The board of supervisors of any drainage district, whenever it is determined by the
 18 board that it is for the best interests of the district[,] :

19 (1) May enter into a contract with the United States for the reclamation by drainage or irri-
 20 gation of the lands within the boundaries of the district, under the provisions of the Act of Congress
 21 of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto, and espe-
 22 cially the Act of Congress approved August 13, 1914, entitled, "An act extending the period of pay-
 23 ment under reclamation projects, and for other purposes," commonly known as the "Twenty-Year
 24 Extension Act."

25 (2) **May make contracts with a federal agency relating to flood control projects that**
 26 **contain terms, provisions and conditions the board of supervisors determines are necessary**
 27 **or appropriate to satisfy conditions on the construction of flood control projects that are**
 28 **imposed under federal law or that attach as a result of federal funding for the flood control**
 29 **project.**

30 **SECTION 17.** ORS 547.405 is amended to read:

31 547.405. (1) [*The boards of supervisors of all drainage districts lying west of the Cascade Moun-*
 32 *tains, whether or not organized under the Drainage District Act, shall have supervision and control*
 33 *of all]* **The board of supervisors of a drainage districts lying west of the Cascade Mountains,**
 34 **whether or not organized under the Drainage District Act:**

35 (a) **Shall supervise and control flood control projects,** drainage ditches, laterals, drains,
 36 canals, sloughs, waterways or conduits within the boundaries of their districts[*and*].

37 (b) May prescribe the width[*and grade thereof*], **grade and other specifications of flood**
 38 **control projects, drainage works or irrigation works described in this subsection.** [*They*]

39 (2) **The boards** may construct and maintain **flood control projects,** ditches, laterals, drains,
 40 canals, sloughs, waterways or conduits within the boundaries of their districts.

41 **SECTION 18.** ORS 547.410 is amended to read:

42 547.410. (1) Whenever the engineer or secretary of [*such*] a drainage district notifies the super-
 43 visors that any **flood control project,** ditch, lateral, drain, canal, slough, waterway or conduit is
 44 less efficient, by reason of the failure of the owner of the premises upon which it is situated to
 45 **prevent obstructions,** repair, clean or grade the same, the board of supervisors shall serve or

1 cause to be served upon such owner, if the owner is known and residing within the county in which
 2 the district is situate, or if not a resident of the county, then upon the occupant of the premises, a
 3 notice in writing notifying the owner or occupant of the **impaired**, clogged or obstructed condition
 4 of the **flood control project**, ditch, lateral, drain, canal, slough, waterway or conduit.

5 (2) The notice shall be served by delivering to the owner, occupant or person in charge of the
 6 premises a copy thereof certified to be such by the person serving it, or if there is no occupant or
 7 the owner is not a resident of the county, then the notice shall be served by posting a copy of it in
 8 a conspicuous place upon the premises. Immediately after serving or posting the notice, the person
 9 serving it, by authority of the board of supervisors, shall file the original notice with the county
 10 clerk of the county in which service is made, together with a return on the notice stating the time
 11 and manner of making service. The notice and return, when so filed, shall be retained as a public
 12 record of the county.

13 **SECTION 19.** ORS 547.415 is amended to read:

14 547.415. If the owner or occupant of the premises upon which the **impaired**, clogged or ob-
 15 structed **flood control project**, ditch, lateral, drain, canal, slough, waterway or conduit is situated
 16 fails for 10 days after being notified of the existence of [*such*] **the impaired**, clogged or obstructed
 17 condition, to repair, clean or grade the **flood control project**, ditch, lateral, drain, canal, slough,
 18 waterway or conduit or remove the obstruction therefrom, the board of supervisors shall imme-
 19 diately repair, clean or grade the same and cause it to be promptly placed in a proper and efficient
 20 condition.

21 **SECTION 20.** ORS 547.420 is amended to read:

22 547.420. (1) Upon completion of the work the board of supervisors shall bill the owner or occu-
 23 pant of the premises for the expense necessarily incurred in the repair, grading or cleaning of the
 24 **flood control project**, canal, ditch, lateral, drain, slough, waterway or conduit.

25 (2) If any charge remains unpaid beyond the due date thereof, the secretary of the district may
 26 file a notice of claim of lien with the county clerk of the county in which the lands for which the
 27 charges were billed are situated. The notice of lien shall be in writing and must contain:

- 28 (a) The name of the landowner or occupier who was billed.
- 29 (b) A statement of the amount claimed past due.
- 30 (c) A description of the land upon which the work was completed sufficient for identification.

31 (3) The county clerk shall cause the notice of lien to be recorded in the County Clerk Lien
 32 Record maintained under ORS 205.125. The amount of the charges and expense, as of the date the
 33 notice of lien is filed, shall constitute a first lien upon the lands or premises, except as to taxes. If
 34 the charges and expenses are not paid and the lien discharged by the owner or occupant within 30
 35 days from the date the notice is filed, suit or action may be brought in the name of the drainage
 36 district for the foreclosure of the lien. The suit or action shall be brought by the district attorney,
 37 or, at the option of the board, by an attorney employed by the board. The lands affected thereby
 38 shall be sold under execution for the payment and satisfaction of the lien and of the costs and dis-
 39 bursements incurred in connection with the prosecution of the suit or action.

40 **SECTION 21. This 2015 Act being necessary for the immediate preservation of the public**
 41 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 42 **on its passage.**