

B-Engrossed
House Bill 3217

Ordered by the Senate June 17
Including House Amendments dated April 24 and Senate Amendments
dated June 17

Sponsored by COMMITTEE ON RURAL COMMUNITIES, LAND USE, 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.

Requires Department of State Lands to adopt pilot program [*for providing general authorization*] for voluntary stream restoration and beaver recovery through construction of artificial beaver dams. **Requires department to establish by rule removal or fill general permit for participants to construct artificial beaver dams.** Prescribes requirements for pilot program. Requires department to report on program to Legislative Assembly on or before January 1, 2025.

Sunsets program January 2, 2027.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to artificial beaver dams; and declaring an emergency.

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

4 **SECTION 1. The Legislative Assembly finds and declares that:**

5 (1) **Many small streams in eastern Oregon were historically inhabited by beaver popu-**
6 **lations and strongly influenced by beavers' unique ability to modify their physical sur-**
7 **roundings. Beaver dams had the effect of slowing the flow of water, allowing for natural**
8 **overflow onto surrounding floodplains and providing many positive benefits to stream**
9 **ecosystems and to the hydrologic functioning of streams.**

10 (2) **Due, in part, to the near eradication of the once-prevalent beaver populations, many**
11 **stream systems have become severely degraded during the past century, developing deeply**
12 **eroded and incised stream channels that have lost connectivity with the natural historic**
13 **floodplain. These changes to the stream systems have resulted in adverse environmental and**
14 **economic impacts.**

15 (3) **The public policy of the State of Oregon is to encourage and support voluntary stream**
16 **restoration actions by private landowners through a pilot program in the Malheur Lake**
17 **Drainage Basin. The purpose of the pilot program shall be to determine whether construction**
18 **of artificial beaver dams can help improve environmental and economic health in the basin**
19 **by supporting natural stream functions through:**

20 (a) **Rebuilding connections with historic floodplains;**

21 (b) **Increasing channel complexity, sediment transport and disposition; and**

22 (c) **Promoting restoration of stream and habitat conditions suitable for beaver recovery**
23 **and native fish.**

24 **SECTION 2. (1) As used in this section:**

25 (a) **"Artificial beaver dam" means a low-profile structure constructed in a series for the**

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 purpose of delaying or slowing, but not preventing, water flow to raise the water table and
2 water surface elevations within incised or eroded streams to the level of the historic
3 floodplain, and to promote restoration of stream and habitat conditions suitable for beaver
4 recovery.

5 (b) "Historic floodplain" means channel-adjacent areas and surfaces constructed by
6 fluvial processes that functioned as floodplains or areas for overbank deposition prior to
7 channel incision.

8 (c) "Incised or eroded stream" means a stream that has been scoured by erosion to the
9 extent that the channel bed elevation has lowered relative to its historic floodplain and the
10 stream has lost connectivity with the historic floodplain, as characterized by the loss of na-
11 tural wetland, riparian and meadow conditions in the adjacent surfaces, the absence of
12 overbank flooding or deposition, the loss of diversity of fish and animal species or the pres-
13 ence of dry land species, including but not limited to sagebrush, bunch grass, juniper and
14 pine, that have encroached from adjacent uplands.

15 (d) "Malheur Lake Drainage Basin" means the area identified as the Malheur Lake
16 Drainage Basin on Water Resources Department map number 12.6 dated January 1, 1966.

17 (e) "Native migratory fish" has the meaning given that term in ORS 509.580.

18 (f) "Qualifying stream" means an incised or eroded stream, or an incised or eroded reach
19 of a stream that, as determined by the State Department of Fish and Wildlife:

20 (A) Is not inhabited by native migratory fish or beavers; and

21 (B) Is not known or likely to have been inhabited by native migratory fish within the 20
22 years prior to the commencement of a restoration project.

23 (2)(a) The Department of State Lands shall by rule establish a pilot program for volun-
24 tary stream restoration projects that involve participating landowners constructing artificial
25 beaver dams on qualifying streams located in the Malheur Lake Drainage Basin.

26 (b) The pilot program adopted under this subsection shall:

27 (A) Be limited to providing authorization for artificial beaver dams to be constructed on
28 qualifying streams comprising no more than 20 percent of streams located in the Malheur
29 Lake Drainage Basin;

30 (B) Notwithstanding ORS 196.810 and 196.817 (1)(b), include the establishment by rule of
31 a removal or fill general permit under ORS 196.817 for participants to construct artificial
32 beaver dams in accordance with the provisions of this section;

33 (C) Include criteria for evaluating the effectiveness of the program;

34 (D) Require economically reasonable monitoring and reporting by participants in order
35 to provide information necessary for evaluating the program;

36 (E) Require participants to provide information about proposed projects, including but
37 not limited to information on the number and specific locations of artificial beaver dams to
38 be constructed and the materials to be used; and

39 (F) Require that a participant must maintain a project for at least 10 years unless:

40 (i) The stream where the project is located is restored to the point that it naturally
41 supports beavers or native migratory fish sooner; or

42 (ii) The department determines that a stream restoration project has not provided any
43 stream restoration benefits by the fifth year after the date that the project was completed.

44 (c) If the department makes a determination under paragraph (b)(F)(ii) of this sub-
45 section, the participant shall be required, upon request by the department, to take econom-

1 ically reasonable steps to lower, breach or modify the artificial beaver dams that are part
2 of the project for which the determination is made.

3 (3)(a) Except as provided for under paragraph (b) of this subsection, artificial beaver
4 dams constructed on qualifying streams and authorized pursuant to subsection (2) of this
5 section may not be considered artificial obstructions, as defined in ORS 509.580, and are ex-
6 empt from fish passage requirements under ORS 509.585.

7 (b) The department shall require by rule that artificial beaver dams proposed to be con-
8 structed on qualifying streams that were historically inhabited by native migratory fish be
9 constructed in a manner that:

10 (A) Would provide fish passage in a qualifying stream if the stream were restored as a
11 result of the voluntary restoration project; or

12 (B) Could be readily modified to provide fish passage in a qualifying stream if the stream
13 were restored and native migratory fish return as a result of the voluntary restoration
14 project.

15 (c) If monitoring or other data available to the department indicate that native migratory
16 fish have returned to a qualifying stream where an artificial beaver dam has been con-
17 structed by a participant in the pilot program and that fish passage is not occurring, the
18 department shall work collaboratively with the participating landowner and, where appro-
19 priate, other persons involved in stream restoration activities, to provide fish passage. A
20 participating landowner may not be required under this paragraph to expend additional funds
21 for fish passage beyond the amount expended by the participant to construct and maintain
22 the artificial beaver dams in accordance with the pilot program rules.

23 (4) Nothing in this section is intended or shall be construed to modify, in any manner,
24 any requirement under the Water Rights Act as defined in ORS 537.010.

25 **SECTION 3.** The Department of State Lands shall adopt rules and begin administration
26 of the pilot program required under section 2 of this 2015 Act no later than one year after
27 the effective date of this 2015 Act and shall provide a preliminary report to the Legislative
28 Assembly regarding program implementation no later than January 1, 2017.

29 **SECTION 4.** The Department of State Lands shall report to the Legislative Assembly on
30 the identified environmental and economic impacts resulting from the pilot program required
31 under section 2 of this 2015 Act no later than January 1, 2025.

32 **SECTION 5.** Sections 1 and 2 of this 2015 Act are repealed on January 2, 2027.

33 **SECTION 6.** This 2015 Act being necessary for the immediate preservation of the public
34 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
35 on its passage.

36