

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3217**

1 On page 1 of the printed A-engrossed bill, delete lines 4 through 26 and
2 delete pages 2 and 3 and insert:

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

4 **“(1) Many small streams in eastern Oregon were historically in-**
5 **habited by beaver populations and strongly influenced by beavers’**
6 **unique ability to modify their physical surroundings. Beaver dams**
7 **had the effect of slowing the flow of water, allowing for natural over-**
8 **flow onto surrounding floodplains and providing many positive benefits**
9 **to stream ecosystems and to the hydrologic functioning of streams.**

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

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

1 “(a) Rebuilding connections with historic floodplains;

2 “(b) Increasing channel complexity, sediment transport and dispo-
3 sition; and

4 “(c) Promoting restoration of stream and habitat conditions suit-
5 able for beaver recovery and native fish.

6 “SECTION 2. (1) As used in this section:

7 “(a) ‘Artificial beaver dam’ means a low-profile structure con-
8 structed in a series for the purpose of delaying or slowing, but not
9 preventing, water flow to raise the water table and water surface ele-
10 vations within incised or eroded streams to the level of the historic
11 floodplain, and to promote restoration of stream and habitat condi-
12 tions suitable for beaver recovery.

13 “(b) ‘Historic floodplain’ means channel-adjacent areas and surfaces
14 constructed by fluvial processes that functioned as floodplains or areas
15 for overbank deposition prior to channel incision.

16 “(c) ‘Incised or eroded stream’ means a stream that has been
17 scoured by erosion to the extent that the channel bed elevation has
18 lowered relative to its historic floodplain and the stream has lost
19 connectivity with the historic floodplain, as characterized by the loss
20 of natural wetland, riparian and meadow conditions in the adjacent
21 surfaces, the absence of overbank flooding or deposition, the loss of
22 diversity of fish and animal species or the presence of dry land species,
23 including but not limited to sagebrush, bunch grass, juniper and pine,
24 that have encroached from adjacent uplands.

25 “(d) ‘Malheur Lake Drainage Basin’ means the area identified as
26 the Malheur Lake Drainage Basin on Water Resources Department
27 map number 12.6 dated January 1, 1966.

28 “(e) ‘Native migratory fish’ has the meaning given that term in
29 ORS 509.580.

30 “(f) ‘Qualifying stream’ means an incised or eroded stream, or an

1 **incised or eroded reach of a stream that, as determined by the State**
2 **Department of Fish and Wildlife:**

3 **“(A) Is not inhabited by native migratory fish or beavers; and**

4 **“(B) Is not known or likely to have been inhabited by native mi-**
5 **gratory fish within the 20 years prior to the commencement of a res-**
6 **toration project.**

7 **“(2)(a) The Department of State Lands shall by rule establish a pilot**
8 **program for voluntary stream restoration projects that involve par-**
9 **ticipating landowners constructing artificial beaver dams on qualifying**
10 **streams located in the Malheur Lake Drainage Basin.**

11 **“(b) The pilot program adopted under this subsection shall:**

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

15 **“(B) Notwithstanding ORS 196.810 and 196.817 (1)(b), include the es-**
16 **tablishment by rule of a removal or fill general permit under ORS**
17 **196.817 for participants to construct artificial beaver dams in accord-**
18 **ance with the provisions of this section;**

19 **“(C) Include criteria for evaluating the effectiveness of the pro-**
20 **gram;**

21 **“(D) Require economically reasonable monitoring and reporting by**
22 **participants in order to provide information necessary for evaluating**
23 **the program;**

24 **“(E) Require participants to provide information about proposed**
25 **projects, including but not limited to information on the number and**
26 **specific locations of artificial beaver dams to be constructed and the**
27 **materials to be used; and**

28 **“(F) Require that a participant must maintain a project for at least**
29 **10 years unless:**

30 **“(i) The stream where the project is located is restored to the point**

1 that it naturally supports beavers or native migratory fish sooner; or

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

5 “(c) If the department makes a determination under paragraph
6 (b)(F)(ii) of this subsection, the participant shall be required, upon
7 request by the department, to take economically reasonable steps to
8 lower, breach or modify the artificial beaver dams that are part of the
9 project for which the determination is made.

10 “(3)(a) Except as provided for under paragraph (b) of this sub-
11 section, artificial beaver dams constructed on qualifying streams and
12 authorized pursuant to subsection (2) of this section may not be con-
13 sidered artificial obstructions, as defined in ORS 509.580, and are ex-
14 empt from fish passage requirements under ORS 509.585.

15 “(b) The department shall require by rule that artificial beaver
16 dams proposed to be constructed on qualifying streams that were his-
17 torically inhabited by native migratory fish be constructed in a man-
18 ner that:

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

21 “(B) Could be modified to provide fish passage in a qualifying
22 stream if the stream were restored and native migratory fish return
23 as a result of the voluntary restoration project.

24 “(c) If monitoring or other data available to the department indi-
25 cate that native migratory fish have returned to a qualifying stream
26 where an artificial beaver dam has been constructed by a participant
27 in the pilot program and that fish passage is not occurring, the de-
28 partment shall work collaboratively with the participating landowner
29 and, where appropriate, other persons involved in stream restoration
30 activities, to provide fish passage. A participating landowner may not

1 be required under this paragraph to expend additional funds for fish
2 passage beyond the amount expended by the participant to construct
3 and maintain the artificial beaver dams in accordance with the pilot
4 program rules.

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

8 “(5) An artificial beaver dam may not be used for diversion of water
9 for irrigation or other out-of-stream uses except as authorized under
10 an existing water right.

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

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

20 **“SECTION 5.** Sections 1 and 2 of this 2015 Act are repealed on Jan-
21 uary 2, 2027.

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

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