

Enrolled
Senate Bill 1517

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CHAPTER

AN ACT

Relating to land improvement projects; creating new provisions; and amending ORS 196.820.

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

SECTION 1. Sections 2 to 6 of this 2016 Act are added to and made a part of ORS chapter 215.

SECTION 2. The Legislative Assembly finds and declares that Tillamook County experiences unique challenges related to the creation, restoration or enhancement of wetlands on lands zoned for exclusive farm use, including regularly occurring and devastating flood events and landowner conflicts. It is therefore in the public interest to establish a pilot program in Tillamook County that applies conditional use review for the creation, restoration or enhancement of wetlands on lands zoned for exclusive farm use, and that incorporates a means for stakeholders to engage in a collaborative process for ensuring the protection and enhancement of agricultural land uses and wetlands.

SECTION 3. As used in sections 2 to 6 of this 2016 Act:

(1) “Mitigation bank” has the meaning given that term in ORS 196.600.

(2) “Permit” has the meaning given that term in ORS 215.402.

(3) “Reclamation” has the meaning given that term in ORS 517.750.

(4) “Riparian area” means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, in which existing or potential elements of the soil-vegetation complex are influenced by the surface or subsurface water that the zone is dependent upon.

(5) “Surface mining” has the meaning given that term in ORS 517.750.

(6) “Wetlands” has the meaning given that term in ORS 196.800.

SECTION 4. (1) Notwithstanding ORS 215.283 (1)(m), the governing body of Tillamook County may, by ordinance or regulation, adopt a pilot program for reviewing, subject to ORS 215.296, the creation, restoration or enhancement of wetlands in any area zoned for exclusive farm use.

(2) Notwithstanding ORS 215.296 (10), ordinances or regulations adopted by the governing body under the pilot program may not establish standards in addition to the standards described in ORS 215.296 (1) for approving the creation, restoration or enhancement of wetlands in areas zoned for exclusive farm use.

(3) Notwithstanding any contrary provision of ORS 215.416, the ordinances or regulations adopted as part of the pilot program shall provide for a mechanism by which, upon request

by the applicant and prior to the approval or denial of a permit under the procedures required by ORS 215.402 to 215.438, the following parties may enter into a project-specific collaborative process for settling disputes concerning the application:

- (a) The applicant;
- (b) Any person whose use of the person's property may be adversely affected by the proposed use;
- (c) Any person who is entitled to notice under ORS 215.416 (11)(c);
- (d) Representatives of any state or federal agency that is involved in the project for which the application for the use was submitted or that has expertise related to issues raised by the application or by comments received by the governing body; and
- (e) For the purpose of assisting in the project-specific collaborative process, any person with technical expertise in:
 - (A) Creating, restoring or enhancing wetlands in Tillamook County;
 - (B) Creating, restoring or enhancing wetlands in areas with site characteristics similar to those identified in the application for the use; or
 - (C) The impacts of wetlands on agricultural operations.

(4) If an applicant requests to enter into a project-specific collaborative process adopted under subsection (3) of this section, the periods set forth in ORS 215.427 (1) and (5) for the governing body of a county or its designee to take final action on the application shall be extended in the manner provided for in ORS 215.427 (10).

(5) If the parties to a project-specific collaborative process requested under subsection (3) of this section agree to conditions that, if imposed on the proposed use, would satisfy the standards for approval set forth in ORS 215.296 (1) in a manner that is acceptable to all parties, an approval of the application for the permit shall include the conditions agreed to by the parties.

(6) The governing body shall discontinue a project-specific collaborative process requested under subsection (3) of this section if, at any time during the process, the applicant requests that the governing body resume processing the permit application under the procedures required by ORS 215.402 to 215.438.

SECTION 5. (1) As part of a pilot program authorized by section 4 of this 2016 Act, the governing body of Tillamook County shall, subject to subsection (4) of this section, initiate a planning process to:

- (a) Identify areas zoned for exclusive farm use that are suitable for future wetland creation, restoration or enhancement projects; and
- (b) Designate areas zoned for exclusive farm use as priority areas for maintenance of agricultural use.

(2) The governing body shall engage stakeholders in the planning process, including, but not limited to, representatives of conservation interests and agricultural interests, state and federal agencies and Indian tribes.

- (3) A planning process initiated under this section shall include consideration of:
- (a) The historic location and quantity of wetlands within the county;
 - (b) The location and quantity of wetlands within the county at the time the planning process is initiated;

(c) Agricultural interests within the county, and the land use patterns necessary for the stability of agricultural and associated farming practices;

(d) The amount and location of potential wetland projects that would provide the greatest benefits to fish recovery, fish and wildlife habitat, flood mitigation and other values;

(e) Locations where future wetland projects would be most likely to provide the greatest benefits to fish recovery, fish and wildlife habitat, flood mitigation and other values while remaining compatible with the land use patterns necessary for the stability of agricultural and associated farming practices;

(f) Locations where the creation, restoration or enhancement of wetlands is likely to materially alter the stability of the agricultural land use patterns or cause a significant change to farming practice, alone or in combination with other wetlands in the area; and

(g) Locations or land-use arrangements, opportunities, conditions or approaches that could best enable benefits to fish recovery, fish and wildlife habitat, flood mitigation and other values in a manner that complements the land use patterns necessary for the stability of agricultural and associated farming practices.

(4) The governing body is not required to initiate the planning process provided for in this section if the governing body determines that adequate funding, which may include funding from any combination of local, state, federal or other sources, is not reasonably available.

(5) If a plan developed under this section is acknowledged pursuant to ORS 197.625, the governing body may, by ordinance, adopt a process for denying permits or streamlining the permitting process for permit applications subject to the pilot program under section 4 of this 2016 Act. Ordinances adopted under this section must provide for a process that is consistent with the priorities identified in the plan.

SECTION 6. Sections 4 and 5 of this 2016 Act and ordinances and regulations adopted pursuant to sections 4 and 5 of this 2016 Act do not apply to the creation, restoration or enhancement of wetlands:

(1) For purposes related to a mitigation bank;

(2) For reclamation of lands affected by surface mining;

(3) If the wetlands are created, restored or enhanced for the purpose of meeting conditions necessary to comply with a National Pollutant Discharge Elimination System permit or water pollution control facility permit issued by the Department of Environmental Quality pursuant to ORS 468B.050;

(4) For which construction had commenced, or required permits had been issued, prior to the adoption of ordinances or regulations by the governing body of Tillamook County under section 4 of this 2016 Act; and

(5) If the creation, restoration or enhancement of the wetlands only involves planting vegetation in a wetland or riparian area.

SECTION 7. (1) The governing body of Tillamook County shall provide for the production and filing of a report on the progress of a pilot program adopted under section 4 of this 2016 Act in the manner provided in ORS 192.245, to the interim committees of the Legislative Assembly related to environment and natural resources no later than September 15 of each odd-numbered year following the effective date of this 2016 Act, until and including September 15, 2025.

(2) In developing a report required by this section, the governing body must consult with stakeholders including, but not limited to, representatives of conservation interests and agricultural interests, state and federal agencies and Indian tribes.

(3) A report required by this section must include, but need not be limited to:

(a) Information on whether and to what extent the governing body has taken action as provided for in sections 4 and 5 of this 2016 Act and the form of the action taken;

(b) The number of permit applications received under the pilot program adopted under section 4 of this 2016 Act, the number of applicants that have requested entering into a project-specific collaborative process to settle disputes concerning their applications and the disposition of applications received under the pilot program; and

(c) Any significant successes, challenges or recommendations for legislation related to the pilot program.

(4) The report that is required to be filed under this section no later than September 15, 2025, shall include information detailing the success of the pilot program and recommendations on whether the pilot program should be made permanent.

SECTION 8. Sections 2 to 7 of this 2016 Act are repealed on January 2, 2027.

SECTION 9. ORS 196.820 is amended to read:

196.820. (1) Notwithstanding any provision of ORS 196.600 to 196.905 to the contrary, except as provided in subsection (2) of this section, the Director of the Department of State Lands shall not issue any permit to fill Smith Lake or Bybee Lake, located in Multnomah County, below the contour line which lies 11 feet above mean sea level as determined by the 1947 adjusted United States Coastal Geodetic Survey Datum.

(2) [Notwithstanding the provision of subsection (1) of this section,] The Director of the Department of State Lands may issue a permit to fill Smith Lake or Bybee Lake, located in Multnomah County, if such fill is to enhance or maintain fish and wildlife habitat **or support recreational use or public access** at or near Smith Lake or Bybee Lake. A fill shall be considered to be for the purpose of enhancing or maintaining fish and wildlife habitat if the proposed fill is approved by the State Department of Fish and Wildlife.

Passed by Senate February 18, 2016

Received by Governor:

Repassed by Senate March 2, 2016

.....M.,....., 2016

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2016

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House February 29, 2016

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M.,....., 2016

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Jeanne P. Atkins, Secretary of State