

D R A F T

SUMMARY

Exempts from requirements of removal-fill laws removal or fill, or both, of any lot or parcel not shown as having wetlands on Statewide Wetland Inventory.

A BILL FOR AN ACT

Relating to applicability of removal-fill laws; amending ORS 196.674 and 196.905.

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

SECTION 1. ORS 196.905 is amended to read:

196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

(2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forestland; and

(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted wetlands for normal farming and ranching activities such

1 as plowing, grazing, seeding, planting, cultivating, conventional crop rota-
2 tion or harvesting.

3 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
4 both, on lands zoned for exclusive farm use as described in ORS 215.203 for
5 the following activities:

6 (a) Drainage or maintenance of farm or stock ponds; or

7 (b) Maintenance of farm roads in such a manner as to not significantly
8 adversely affect wetlands or any other waters of this state.

9 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
10 both, for subsurface drainage by deep ripping, tiling or moling on converted
11 wetlands that are zoned for exclusive farm use pursuant to ORS 215.203.

12 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
13 both, for any activity defined as a farm use in ORS 215.203, on lands zoned
14 for exclusive farm use pursuant to ORS 215.203, if the lands are converted
15 wetlands that are also certified as prior converted cropland by the Natural
16 Resources Conservation Service of the United States Department of Agri-
17 culture, or its successor agency, so long as commercial agricultural pro-
18 duction on the land has not been abandoned for five or more years.

19 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
20 both, for the reestablishment of crops under federal conservation reserve
21 program provisions set forth in 16 U.S.C. 3831 as in effect on January 1,
22 2010.

23 (8) The exemptions in subsections (3) to (7) of this section do not apply
24 to any fill or removal that involves changing an area of wetlands to a non-
25 farm use.

26 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
27 both, for the maintenance or reconstruction of structures such as dikes,
28 dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches
29 and tile drain systems, provided that:

30 (a) The structure was serviceable within the past five years; and

31 (b) Such maintenance or reconstruction would not significantly adversely

1 affect wetlands or other waters of this state to a greater extent than the
2 wetlands or waters of this state were affected as a result of the original
3 construction of those structures.

4 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
5 both, for maintenance, including emergency reconstruction of recently dam-
6 aged parts, of currently serviceable roads or transportation structures such
7 as groins and riprap protecting roads, causeways and bridge abutments or
8 approaches.

9 (11) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or
10 both, within the beds or banks of any waters of this state conducted as part
11 of a surface mining operation, that is the subject of a memorandum of
12 agreement between the Department of State Lands and the State Department
13 of Geology and Mineral Industries in which the State Department of Geology
14 and Mineral Industries is assigned sole responsibility for permitting as de-
15 scribed in ORS 517.797.

16 (12) The Department of State Lands may adopt a rule that exempts from
17 the requirement to obtain a permit under ORS 196.800 to 196.900 voluntary
18 habitat restoration projects that have only minimal adverse impact on waters
19 of this state.

20 (13) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
21 both, for a change in the point of diversion to withdraw surface water for
22 beneficial use if the change in the point of diversion is necessitated by a
23 change in the location of the surface water and authorized by the Water
24 Resources Department.

25 **(14) Nothing in ORS 196.800 to 196.900 applies to removal or filling,**
26 **or both, on a lot or parcel that is not identified as wetlands, or as in-**
27 **cluding wetlands, in the Statewide Wetlands Inventory.**

28 [(14)] (15) As used in this section:

29 (a) "Converted wetlands" means agriculturally managed wetlands that,
30 on or before June 30, 1989, were brought into commercial agricultural pro-
31 duction by diking, draining, leveling, filling or any similar hydrologic ma-

1 nipulation and by removal or manipulation of natural vegetation, and that
2 are managed for commercial agricultural purposes.

3 (b) "Converted wetlands" does not include any stream, slough, ditched
4 creek, spring, lake or any other waters of this state that are located within
5 or adjacent to a converted wetland area.

6 **SECTION 2.** ORS 196.905, as amended by section 6, chapter 516, Oregon
7 Laws 2001, section 13, chapter 253, Oregon Laws 2003, section 4, chapter 342,
8 Oregon Laws 2009, section 2, chapter 16, Oregon Laws 2011, and section 4,
9 chapter 406, Oregon Laws 2011, is amended to read:

10 196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of
11 this section, a permit under ORS 196.600 to 196.905 is required for any fill
12 or removal of material in or from the waters of this state when:

13 (a) The fill or removal is a part of an activity whose purpose is to bring
14 an area of state waters into a use to which it was not previously subject;
15 and

16 (b)(A) The flow or circulation of the waters of this state may be impaired;
17 or

18 (B) The reach of the waters may be reduced.

19 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from
20 the beds or banks or filling of the waters of a nonnavigable natural
21 waterway, or any portion thereof, in this state, if:

22 (a) Such waterway or portion is situated within forestland; and

23 (b) Such removal or filling is directly connected with a forest management
24 practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and
25 527.992.

26 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
27 both, on converted wetlands for normal farming and ranching activities such
28 as plowing, grazing, seeding, planting, cultivating, conventional crop rota-
29 tion or harvesting.

30 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
31 both, on lands zoned for exclusive farm use as described in ORS 215.203 for

1 the following activities:

2 (a) Drainage or maintenance of farm or stock ponds; or

3 (b) Maintenance of farm roads, provided that:

4 (A) The farm roads are constructed and maintained in accordance with
5 construction practices designed to minimize any adverse effects to the
6 aquatic environment;

7 (B) Borrow material for farm road maintenance does not come from wa-
8 ters of this state unless authorized by the Department of State Lands; and

9 (C) Maintenance activities are confined to the scope of construction for
10 the original project.

11 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
12 both, for any activity defined as a farm use in ORS 215.203, on lands zoned
13 for exclusive farm use pursuant to ORS 215.203, if the lands are converted
14 wetlands that are also certified as prior converted cropland by the Natural
15 Resources Conservation Service of the United States Department of Agri-
16 culture, or its successor agency, so long as commercial agricultural pro-
17 duction on the land has not been abandoned for five or more years.

18 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
19 both, for the reestablishment of crops under federal conservation reserve
20 program provisions set forth in 16 U.S.C. 3831 as in effect on January 1,
21 2010.

22 (7) The exemptions in subsections (3) to (6) of this section do not apply
23 to any fill or removal that involves changing an area of wetlands or con-
24 verted wetlands to a nonfarm use.

25 (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
26 both, for the maintenance or reconstruction of structures such as dikes,
27 dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches
28 and tile drain systems, provided that:

29 (a) The structure was serviceable within the past five years; and

30 (b) Such maintenance or reconstruction would not significantly adversely
31 affect wetlands or other waters of this state to a greater extent than the

1 wetlands or waters of this state were affected as a result of the original
2 construction of those structures.

3 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
4 both, for temporary dams constructed for crop or pasture irrigation purposes
5 that are less than 50 cubic yards, provided the following conditions are sat-
6 isfied:

7 (a) The removal or filling is conducted during periods that minimize ad-
8 verse effects to fish and wildlife in accordance with guidance provided by the
9 State Department of Fish and Wildlife;

10 (b) The removal or filling does not jeopardize a threatened or endangered
11 species or adversely modify or destroy the habitat of a threatened or endan-
12 gered species listed under federal or state law; and

13 (c) Temporary fills are removed in their entirety and the area is restored
14 to its approximate original elevation.

15 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
16 both, for maintenance, including emergency reconstruction of recently dam-
17 aged parts, of currently serviceable roads or transportation structures such
18 as groins and riprap protecting roads, causeways and bridge abutments or
19 approaches.

20 (11) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
21 both, for the maintenance of access roads constructed to move mining
22 equipment, subject to the following conditions:

23 (a) The access roads are constructed and maintained in accordance with
24 construction practices that minimize adverse effects to the aquatic environ-
25 ment;

26 (b) Borrow material for access road maintenance does not come from
27 waters of this state unless authorized by the Department of State Lands; and

28 (c) Maintenance activities are confined to the scope of construction for
29 the original project.

30 (12) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or
31 both, within the beds or banks of any waters of this state conducted as part

1 of a surface mining operation that is the subject of a memorandum of
2 agreement between the Department of State Lands and the State Department
3 of Geology and Mineral Industries in which the State Department of Geology
4 and Mineral Industries is assigned sole responsibility for permitting as de-
5 scribed in ORS 517.797.

6 (13) The department may adopt a rule that exempts from the requirement
7 to obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration
8 projects that have only minimal adverse impact on waters of this state.

9 (14) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or
10 both, for a change in the point of diversion to withdraw surface water for
11 beneficial use if the change in the point of diversion is necessitated by a
12 change in the location of the surface water and authorized by the Water
13 Resources Department.

14 **(15) Nothing in ORS 196.800 to 196.900 applies to removal or filling,**
15 **or both, on a lot or parcel that is not identified as wetlands, or as in-**
16 **cluding wetlands, in the Statewide Wetlands Inventory.**

17 [(15)] (16) As used in this section:

18 (a)(A) “Converted wetlands” means agriculturally managed wetlands that,
19 on or before June 30, 1989, were brought into commercial agricultural pro-
20 duction by diking, draining, leveling, filling or any similar hydrologic ma-
21 nipulation and by removal or manipulation of natural vegetation, and that
22 are managed for commercial agricultural purposes.

23 (B) “Converted wetlands” does not include any stream, slough, ditched
24 creek, spring, lake or any other waters of this state that are located within
25 or adjacent to a converted wetland area.

26 (b) “Harvesting” means physically removing crops or other agricultural
27 products.

28 (c) “Plowing” includes all forms of primary tillage, including moldboard,
29 chisel or wide-blade plowing, discing, harrowing or similar means of breaking
30 up, cutting, turning over or stirring soil to prepare it for planting crops or
31 other agricultural products. “Plowing” does not include:

1 (A) The redistribution of soil, rock, sand or other surface materials in a
2 manner that changes areas of waters of this state into dry land; or

3 (B) Rock crushing activities that result in the loss of natural drainage
4 characteristics, the reduction of water storage and recharge capability, or
5 the overburdening of natural water filtration capacity.

6 (d) "Seeding" means the sowing of seed or placement of seedlings to
7 produce crops or other agricultural products.

8 **SECTION 3.** ORS 196.674 is amended to read:

9 196.674. (1) The Department of State Lands shall compile and maintain a
10 comprehensive Statewide Wetlands Inventory.

11 (2) In compiling the Statewide Wetlands Inventory, the department shall
12 develop, by rule, a system for uniform wetland identification, delineation and
13 comprehensive mapping. Initial inventories shall be based upon the National
14 Wetlands Inventory prepared by the United States Department of the Inte-
15 rior, Fish and Wildlife Service. The Department of State Lands shall consult
16 with the public, local governments and affected state and federal agencies
17 concerning the accuracy of the inventory.

18 (3) The Department of State Lands shall revise the inventory maps as new
19 or more complete information becomes available.

20 (4) The Department of State Lands shall provide each city and county
21 planning office with copies of the Statewide Wetlands Inventory covering the
22 local jurisdiction.

23 (5) The Department of State Lands shall provide each state agency with
24 a copy of the inventory upon request.

25 (6) Copies of the Statewide Wetlands Inventory shall be made available
26 to the general public, through the Department of State Lands, upon payment
27 of a fee to offset administrative and reproduction costs.

28 (7) A wetland inventory developed by another party may be utilized by the
29 Department of State Lands if it is consistent with standards adopted pursu-
30 ant to this section, after consulting with the affected local government, and
31 is reviewed and approved by the Department of State Lands as complying

1 with the standards adopted pursuant to subsection (2) of this section.

2 [(8) *Nothing in this section shall restrict the regulatory jurisdiction of the*
3 *Department of State Lands under ORS 196.800 to 196.905.*]

4 [(9)] **(8)** In compiling and updating the Statewide Wetlands Inventory, the
5 Department of State Lands shall identify opportunities for wetland creation,
6 restoration and enhancement when the information is available.

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