

B-Engrossed
House Bill 2785

Ordered by the Senate June 6
Including House Amendments dated April 19 and Senate Amendments
dated June 6

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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.

Exempts from requirements of removal-fill laws removal or filling, or both, **originally intended or subsequently used** for establishment, repair, restoration, **resumption** or replacement of certain uses on lands zoned for exclusive farm use, forest use or mixed farm and forest use that were established on or before January 1, 2017.

A BILL FOR AN ACT

1
2 Relating to applicability of removal-fill laws; amending ORS 196.905.

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

4 **SECTION 1.** ORS 196.905 is amended to read:

5 196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this
6 state for the purpose of constructing, operating and maintaining dams or other diversions for which
7 permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which
8 preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

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

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

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

14 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted
15 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,
16 cultivating, conventional crop rotation or harvesting.

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

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

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

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

25 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
26 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS

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.

1 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
2 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
3 successor agency, so long as commercial agricultural production on the land has not been aban-
4 doned for five or more years.

5 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-
6 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as
7 in effect on January 1, 2010.

8 (8) The exemptions in subsections (3) to (7) of this section do not apply to any fill or removal
9 that involves changing an area of wetlands to a nonfarm use.

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

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

14 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or
15 other waters of this state to a greater extent than the wetlands or waters of this state were affected
16 as a result of the original construction of those structures.

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

21 (11) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the beds or
22 banks of any waters of this state conducted as part of a surface mining operation, that is the subject
23 of a memorandum of agreement between the Department of State Lands and the State Department
24 of Geology and Mineral Industries in which the State Department of Geology and Mineral Industries
25 is assigned sole responsibility for permitting as described in ORS 517.797.

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

29 (13) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for a change in the
30 point of diversion to withdraw surface water for beneficial use if the change in the point of diversion
31 is necessitated by a change in the location of the surface water and authorized by the Water Re-
32 sources Department.

33 **(14) Unless otherwise provided in a proposed order or in a final order issued in a con-**
34 **tested case, nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, originally**
35 **intended or subsequently used for the establishment, repair, restoration, resumption or re-**
36 **placement of the following uses, if the use was established on or before January 1, 2017, on**
37 **lands zoned for exclusive farm use, forest use or mixed farm and forest use:**

38 **(a) A dwelling:**

39 **(A) Described in ORS 215.213 (1) or (3) or 215.283 (1);**

40 **(B) Established subject to county approval under ORS 215.402 to 215.438; or**

41 **(C) Lawfully established on or before December 31, 1973;**

42 **(b) An agricultural building as defined in ORS 455.315; or**

43 **(c) Activities that:**

44 **(A) Are associated with a dwelling or agricultural building described in this subsection;**

45 **(B) Have received county approval, if necessary, under ORS 215.402 to 215.438; and**

1 **(C) Are located on the same lot or parcel as the dwelling or agricultural building.**

2 [(14)] **(15)** As used in this section:

3 (a) “Converted wetlands” means agriculturally managed wetlands that, on or before June 30,
4 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
5 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that
6 are managed for commercial agricultural purposes.

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

9 **(c) “Replacement” means the construction of a new structure that is substantially simi-**
10 **lar in size, sited in a substantially similar location and constructed in place of a previously**
11 **existing structure.**

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

15 196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit
16 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters
17 of this state when:

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

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

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

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

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

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

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

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

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

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

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

36 (B) Borrow material for farm road maintenance does not come from waters of this state unless
37 authorized by the Department of State Lands; and

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

39 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
40 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS
41 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
42 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
43 successor agency, so long as commercial agricultural production on the land has not been aban-
44 doned for five or more years.

45 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-

1 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as
2 in effect on January 1, 2010.

3 (7) The exemptions in subsections (3) to (6) of this section do not apply to any fill or removal
4 that involves changing an area of wetlands or converted wetlands to a nonfarm use.

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

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

9 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or
10 other waters of this state to a greater extent than the wetlands or waters of this state were affected
11 as a result of the original construction of those structures.

12 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams
13 constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the
14 following conditions are satisfied:

15 (a) The removal or filling is conducted during periods that minimize adverse effects to fish and
16 wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

17 (b) The removal or filling does not jeopardize a threatened or endangered species or adversely
18 modify or destroy the habitat of a threatened or endangered species listed under federal or state
19 law; and

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

22 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,
23 including emergency reconstruction of recently damaged parts, of currently serviceable roads or
24 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-
25 ments or approaches.

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

28 (a) The access roads are constructed and maintained in accordance with construction practices
29 that minimize adverse effects to the aquatic environment;

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

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

33 (12) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the beds or
34 banks of any waters of this state conducted as part of a surface mining operation that is the subject
35 of a memorandum of agreement between the Department of State Lands and the State Department
36 of Geology and Mineral Industries in which the State Department of Geology and Mineral Industries
37 is assigned sole responsibility for permitting as described in ORS 517.797.

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

41 (14) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for a change in the
42 point of diversion to withdraw surface water for beneficial use if the change in the point of diversion
43 is necessitated by a change in the location of the surface water and authorized by the Water Re-
44 sources Department.

45 **(15) Unless otherwise provided in a proposed order or in a final order issued in a con-**

1 **tested case, nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, originally**
2 **intended or subsequently used for the establishment, repair, restoration, resumption or re-**
3 **placement of the following uses, if the use was established on or before January 1, 2017, on**
4 **lands zoned for exclusive farm use, forest use or mixed farm and forest use:**

5 **(a) A dwelling:**

6 **(A) Described in ORS 215.213 (1) or (3) or 215.283 (1);**

7 **(B) Established subject to county approval under ORS 215.402 to 215.438; or**

8 **(C) Lawfully established on or before December 31, 1973;**

9 **(b) An agricultural building as defined in ORS 455.315; or**

10 **(c) Activities that:**

11 **(A) Are associated with a dwelling or agricultural building described in this subsection;**

12 **(B) Have received county approval, if necessary, under ORS 215.402 to 215.438; and**

13 **(C) Are located on the same lot or parcel as the dwelling or agricultural building.**

14 **[(15)] (16) As used in this section:**

15 **(a)(A) “Converted wetlands” means agriculturally managed wetlands that, on or before June 30,**
16 **1989, were brought into commercial agricultural production by diking, draining, leveling, filling or**
17 **any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that**
18 **are managed for commercial agricultural purposes.**

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

21 **(b) “Harvesting” means physically removing crops or other agricultural products.**

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

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

27 **(B) Rock crushing activities that result in the loss of natural drainage characteristics, the re-**
28 **duction of water storage and recharge capability, or the overburdening of natural water filtration**
29 **capacity.**

30 **(d) “Replacement” means the construction of a new structure that is substantially simi-**
31 **lar in size, sited in a substantially similar location and constructed in place of a previously**
32 **existing structure.**

33 **[(d)] (e) “Seeding” means the sowing of seed or placement of seedlings to produce crops or other**
34 **agricultural products.**

35