

House Bill 2786

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 **as introduced**.

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

1
2 Relating to applicability of removal-fill laws; amending ORS 196.674 and 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
27 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
28 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
29 successor agency, so long as commercial agricultural production on the land has not been aban-
30 doned for five or more years.

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

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

5 (9) 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 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,
13 including emergency reconstruction of recently damaged parts, of currently serviceable roads or
14 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-
15 ments or approaches.

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

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

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

28 **(14) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on a lot or**
29 **parcel that is not identified as wetlands, or as including wetlands, in the Statewide Wetlands**
30 **Inventory.**

31 [(14)] (15) As used in this section:

32 (a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,
33 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
34 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that
35 are managed for commercial agricultural purposes.

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

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

41 196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit
42 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters
43 of this state when:

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
21 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS
22 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
23 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
24 successor agency, so long as commercial agricultural production on the land has not been aban-
25 doned for five or more years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 [(15)] (16) As used in this section:

30 (a)(A) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,
 31 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
 32 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that
 33 are managed for commercial agricultural purposes.

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

36 (b) "Harvesting" means physically removing crops or other agricultural products.

37 (c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade
 38 plowing, disking, harrowing or similar means of breaking up, cutting, turning over or stirring soil
 39 to prepare it for planting crops or other agricultural products. "Plowing" does not include:

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

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

45 (d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other

1 agricultural products.

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

3 196.674. (1) The Department of State Lands shall compile and maintain a comprehensive State-
4 wide Wetlands Inventory.

5 (2) In compiling the Statewide Wetlands Inventory, the department shall develop, by rule, a
6 system for uniform wetland identification, delineation and comprehensive mapping. Initial invento-
7 ries shall be based upon the National Wetlands Inventory prepared by the United States Department
8 of the Interior, Fish and Wildlife Service. The Department of State Lands shall consult with the
9 public, local governments and affected state and federal agencies concerning the accuracy of the
10 inventory.

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

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

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

17 (6) Copies of the Statewide Wetlands Inventory shall be made available to the general public,
18 through the Department of State Lands, upon payment of a fee to offset administrative and repro-
19 duction costs.

20 (7) A wetland inventory developed by another party may be utilized by the Department of State
21 Lands if it is consistent with standards adopted pursuant to this section, after consulting with the
22 affected local government, and is reviewed and approved by the Department of State Lands as
23 complying with the standards adopted pursuant to subsection (2) of this section.

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

26 *[(9)]* (8) In compiling and updating the Statewide Wetlands Inventory, the Department of State
27 Lands shall identify opportunities for wetland creation, restoration and enhancement when the in-
28 formation is available.

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