

## HB 2437 A STAFF MEASURE SUMMARY

### House Committee On Agriculture and Land Use

**Action Date:** 04/04/19

**Action:** Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

**Vote:** 7-0-0-0

**Yeas:** 7 - Boshart Davis, Clem, Helm, McLain, Post, Smith DB, Williams

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Laura Kentnesse, LPRO Analyst

**Meeting Dates:** 1/31, 4/4

#### WHAT THE MEASURE DOES:

Establishes legislative findings related to maintenance of channels used for agricultural drainage. **Authorizes maintenance activities** in dry, traditionally maintained channels to be conducted without a removal or fill permit if the person, district improvement company, or district improvement corporation has a valid notice of maintenance activities on file with the Oregon Department of Agriculture (ODA) prior to initiating maintenance activities, and the activities are conducted in compliance with the notice and established conditions. Requires that a person **file a notice** of maintenance activities with ODA that includes identification of the channel location and a description of the anticipated maintenance activities including linear miles of channel to be maintained and the estimated volume per linear mile of material to be removed. Specifies the notice will be valid for five years. Requires that if the maintenance activities will be undertaken in part by a person subject to the jurisdiction of a district, company, or corporation, and in part by the district, company, or corporation, they must clearly identify which activities will be undertaken by whom, and endeavor to submit the notice in coordination with one another. **Prohibits maintenance activities** from resulting in: the removal or spreading of more than 3,000 cubic yards per linear mile of channel over the five year notice period; the removal or fill of material occurring in a channel that has been designated by rule and mapped by the Department of State Lands (DSL) as essential indigenous anadromous salmonid habitat (ESH); or the enlargement of a water right or injury to another existing water right. Establishes **program conditions** related to: channel moisture, shape, and vegetation; maintenance timing; erosion; equipment usage; and wetland and waterway impact; with which maintenance activities must comply. Establishes a **notice review process**. Directs ODA to provide a copy of each filed notice to the Oregon Department of Fish and Wildlife (ODFW) within five days of notice receipt. Directs ODFW to provide a response to ODA within 30 days of receiving the notice that either indicates a review was conducted and the work may proceed, or that provides recommendations on whether the maintenance activities will meet the statutory general conditions, and whether additional conditions are needed. Requires ODA to include any additional ODFW conditions in the notice response. Authorizes DSL to make a final determination regarding whether the maintenance activities described in the notice can occur without a removal or fill permit, and which conditions if any must be added, if there is disagreement between ODA and ODFW. Requires ODA to provide a response to a notice within 45 days; allows maintenance activities to proceed if ODA does not provide a response to the notice within 45 days. Allows for expedited review at the request of the person submitting the notice, if needed. Allows a person who has a notice on file with ODA and who has not initiated maintenance, to request a variance from any condition from ODA. Requires ODA to consult with ODFW before granting a variance. Allows ODA and ODFW to enter onto and inspect lands for which notices have been filed, provided that ODA first makes a reasonable attempt to notify the landowner and the inspection takes place at a reasonable time. Prohibits ODFW from entering onto or inspecting lands unless accompanied by ODA or unless the agency has the express agreement of the notice filer. Requires ODA maintain a record of the notice and any related correspondence for 10

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years. Allows DSL to adopt **implementation rules**, following consultation with ODA and ODFW. Specifies potential permissible rules. Specifies that the costs ODFW incurs may not be charged to another state agency as recompensable assistance. Requires that ODA or DSL, in consultation with ODFW, notify a person who is in violation of these provisions, and direct the person to take actions necessary to bring the maintenance activities into compliance. Requires that ODA or DSL make reasonable effort to induce voluntary compliance prior to civil penalty assessment. Requires DSL and ODA to enter into a **memorandum of understanding** providing for ODA to implement the program. Allows ODA to perform the functions of DSL in implementing and enforcing the program. Requires ODA, in coordination with soil and water conservation districts, work to provide education on program requirements. Requires ODA, in coordination with DSL, develop and implement a process for responding to requests to review the accuracy of DSL ESH designation and mapping. Authorizes DSL to enter into any other memorandum of understanding necessary for implementation and enforcement. Directs ODA, in consultation with DSL and ODFW, to biennially conduct an **adaptive management review** of implementation, and to determine whether implementation changes are required to best carry out the stated policy objectives. Directs DSL to establish by rule, one or more **general permits** that allow for the removal of material for the purposes of maintenance during channel conditions where flowing or standing water is present, including in ESH streams. Requires that the general permits ensure maintenance is conducted in a manner that protects, maintains, or improves existing agricultural and ecological functions of the channels, including the life history functions of fish and wildlife that inhabit the channels. Requires DSL to utilize the best available science and to consult with ODA, ODFW, and other relevant agencies and representatives of agricultural and conservation interests, in the development of the general permit. Directs Oregon State University (OSU) to **conduct a study** of the benefits and impacts of maintenance activities on habitat complexity and other biological parameters in various channel types, conditions, and locations. Requires OSU to consult with representatives of agricultural and conservation interests and state agencies for study design and implementation. Requires OSU to submit a report of the study results to the Legislative Assembly and to DSL, ODA, and ODFW by January 1, 2025. Requires ODA to consider the study results in developing adaptive management recommendations. Requires ODA, DSL, and ODFW to jointly prepare **biennial report** on maintenance activities by December 15 of each odd-numbered year through 2029. Specifies report contents. **Appropriates \$\_\_\_** from the General Fund to ODA and to ODFW for implementation, and \$\_\_\_ to the Higher Education Coordinating Commission for OSU to conduct the study. Declares emergency, effective on passage.

### ISSUES DISCUSSED:

- 2018 Interim Wetland Regulation Work Group
- Maintenance needs in agricultural drainage ditches
- Protection needs for fish, wildlife, and their habitat
- Current and proposed roles for DSL, ODA, and ODFW
- Scientific study would inform program adaptive management needs

### EFFECT OF AMENDMENT:

Replaces the measure.

### BACKGROUND:

Oregon's Removal-Fill Law (ORS 196.795-990) requires any person who plans to remove or fill material within waters of this state to obtain a permit from the Department of State Lands (DSL). Agricultural waterways are considered jurisdictional "waters of the state" when they are legally defined as intermittent or perennial streams, and in some cases when they are legally defined as ditches. For those waterways, the state currently allows a 50 cubic yard exemption whereby a farmer could remove 50 cubic yards of material on a given property without a permit. If a farmer needs to remove between 51 and 100 cubic yards of material, they can apply for a streamlined general permit for drainage maintenance that authorizes the removal and fill of up to 100 cubic yards of material. If a farmer needs to remove more than 100 cubic yards of material, they need to apply for an individual permit.

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Some agricultural waterways that are legally defined as ditches are not considered jurisdictional waters of the state, and are therefore not subject to removal or fill limitations or permits.

House Bill 2437 A would establish a notice-based program for maintenance activities in dry, traditionally maintained channels.