

# House Bill 2437

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim 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**.

Authorizes maintenance activities in dry, traditionally maintained channels to be conducted without removal or fill permit subject to certain conditions. Requires Department of State Lands and State Department of Agriculture to enter memorandum of understanding for State Department of Agriculture to implement and enforce provisions for maintenance of dry, traditionally maintained channels.

Requires Department of State Lands to adopt by rule general permit for maintenance activities in wet, traditionally maintained channels. Requires department to adopt rules no later than January 1, 2028.

Directs College of Agricultural Sciences of Oregon State University to conduct study of impacts of maintenance activities in traditionally maintained channels on habitat complexity and other biological parameters. Requires college to submit results of study to Legislative Assembly, Department of State Lands and State Department of Agriculture no later than January 1, 2025. Requires State Department of Agriculture to conduct evaluation based on results of study.

Requires State Department of Agriculture, Department of State Lands and State Department of Fish and Wildlife to jointly prepare biennial report on maintenance activities in traditionally maintained channels. Reporting requirement sunsets January 2, 2030.

Becomes operative January 1, 2020.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to removal-fill laws; creating new provisions; amending ORS 196.816; and declaring an  
3 emergency.

4 Whereas maintenance of channels used for agricultural drainage is critical to the operational  
5 and economic viability of Oregon's farm and ranch lands; and

6 Whereas there is a need for maintenance of channels used for agricultural drainage to be con-  
7 ducted in a manner that protects, maintains or improves ecological function of the channels and that  
8 upholds state objectives for fish recovery; and

9 Whereas channels used for agricultural drainage, in conjunction with wetlands, provide valuable  
10 flood and storm damage protection and habitat for Oregon's fish and wildlife and act as accumu-  
11 lation areas for sediments, which retain nutrients and other pollutants and may prevent entry of the  
12 pollutants into other waterways; and

13 Whereas the current permit process administered by the Department of State Lands for main-  
14 tenance of channels used for agricultural drainage can be complex, burdensome and unclear for the  
15 agricultural community; and

16 Whereas agricultural landowners are often faced with competing and sometimes contradictory  
17 state policies, goals or requirements that apply to channels used for agricultural drainage; and

18 Whereas the State of Oregon has not achieved the desired goals of the people of this state for  
19 maintaining channels used for agricultural drainage while providing for habitat protection; now,  
20 therefore,

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

**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       **SECTION 1.** Sections 2 to 6 of this 2019 Act are added to and made a part of ORS 196.600  
 2 to 196.905.

3       **SECTION 2.** (1) The Legislative Assembly finds and declares that:

4       (a) It is in the best interest of the state to create a simple, function-based regulatory  
 5 approach for the maintenance of channels used for agricultural drainage and to improve  
 6 awareness of, and compliance with, the removal and fill program provided for under ORS  
 7 196.600 to 196.905.

8       (b) The provisions of sections 2 to 6 of this 2019 Act are designed to protect the economic  
 9 viability of Oregon’s farmers and ranchers by allowing for the maintenance of channels used  
 10 for agricultural drainage to be conducted in a manner that protects, maintains or improves  
 11 ecological function of the channels.

12       (2) The Legislative Assembly declares that it is policy of this state:

13       (a) To adaptively manage implementation of sections 2 to 6 of this 2019 Act to allow for  
 14 a workable process for persons to maintain traditionally maintained channels while protect-  
 15 ing the ecological and life history functions of fish and wildlife that inhabit the channels; and

16       (b) To place a high priority on and to encourage the identification and development of  
 17 opportunities for voluntary actions to restore, improve or enhance the ecological health or  
 18 benefits of traditionally maintained channels.

19       **SECTION 3.** As used in sections 2 to 6 of this 2019 Act:

20       (1) “Adaptive management” has the meaning given that term in ORS 541.890.

21       (2) “Channel” means the defined bed and bank that serve to confine where a stream of  
 22 water runs.

23       (3) “Dry” means:

24       (a) Channel conditions where no flowing or standing water is present, other than small  
 25 quantities of water that may become retained in low areas of the channel incidental to  
 26 maintenance activities; and

27       (b) For the channel of a waterway that is subject to tidal influence, the existence of  
 28 channel conditions described in paragraph (a) of this subsection above the line of mean  
 29 higher high water.

30       (4) “Traditionally maintained channel” means the channel of a segment, set of segments  
 31 or the entirety of a drainage ditch, an intermittent stream or a perennial stream that:

32       (a) Has been routinely maintained over time to facilitate drainage related to farming or  
 33 ranching operations; and

34       (b) Has been serviceable for facilitating drainage within the past five years.

35       **SECTION 4.** (1) Notwithstanding the permit requirements of ORS 196.810, a person may  
 36 engage in removal activities or fill activities, or both, for conducting maintenance of a tra-  
 37 ditionally maintained channel without a permit from the Department of State Lands if the  
 38 person complies this section.

39       (2) A person shall have a notice of maintenance activities on file with the State Depart-  
 40 ment of Agriculture prior to initiating activities for the maintenance of a traditionally  
 41 maintained channel. A notice filed with the State Department of Agriculture under this  
 42 subsection:

43       (a) Must identify the traditionally maintained channel in which maintenance activities  
 44 will occur; and

45       (b) Is valid for a period of five years from the date that the notice is filed.

1       (3)(a) Pursuant to the requirements of this section, a drainage district organized under  
2 ORS chapter 547 may conduct maintenance of a traditionally maintained channel without a  
3 permit as required by ORS 196.810 if the board of supervisors of the drainage district agrees,  
4 as part of the notice required under subsection (2) of this section, to submit to the jurisdic-  
5 tion of the Department of State Lands and the State Department of Agriculture for purposes  
6 of enforcement of sections 2 to 6 of this 2019 Act.

7       (b) If activities for the maintenance of a traditionally maintained channel will be under-  
8 taken in part by a drainage district and in part by persons subject to the jurisdiction of the  
9 drainage district, the drainage district shall clearly indicate in the notice required under  
10 subsection (2) of this section which activities will be undertaken by the drainage district. A  
11 drainage district shall endeavor to submit the notice required under subsection (2) of this  
12 section in coordination with submission of notices by persons subject to the jurisdiction of  
13 the drainage district.

14       (4) Maintenance activities pursuant to a notice submitted under this section may not  
15 result in:

16       (a) The removal of more than 3,000 cubic yards per linear mile of traditionally maintained  
17 channel over the course of the five-year period for which the notice is valid; or

18       (b) The spreading of material in a wetland or converted wetland pursuant to subsection  
19 (5)(i) of this section in a volume greater than 3,000 cubic yards per linear mile of traditionally  
20 maintained channel over the course of the five-year period for which the notice is valid.

21       (5) In addition to complying with all applicable laws related to water quality or fish pas-  
22 sage administered by the State Department of Agriculture or the State Department of Fish  
23 and Wildlife, activities for the maintenance of a traditionally maintained channel pursuant  
24 to a notice submitted under this section must comply with the following conditions:

25       (a) A traditionally maintained channel must be dry before the commencement of any  
26 removal activities in the channel.

27       (b) A person must complete removal activities during the applicable regional dry main-  
28 tenance time period established by the State Department of Fish and Wildlife for the region  
29 where the traditionally maintained channel is located. If it is necessary for a person to en-  
30 gage in removal activities during a time period outside the applicable regional dry mainte-  
31 nance time period, the person may apply to the State Department of Agriculture for a  
32 variance.

33       (c) The body of motorized equipment used to conduct removal or fill activities must be  
34 operated from the bank of the channel, with only the bucket or portion of the motorized  
35 equipment that actively removes material operating within the channel.

36       (d) Maintenance activities must be conducted in a manner that minimizes new erosion  
37 into the channel.

38       (e) Removal of woody vegetation must be limited to the minimum amount needed to  
39 complete the maintenance activity.

40       (f) Revegetation must occur for any riparian areas that serve as a buffer adjacent to the  
41 channel and that experience vegetation loss as a result of the maintenance activity. This  
42 condition is satisfied whether revegetation occurs naturally or after seeding.

43       (g) Work related to the maintenance activity must be conducted only from one bank of  
44 the channel, on either the north or east side, when practicable, in order to minimize the  
45 ecological impacts of the maintenance activity. A person shall consult with the State De-

1 partment of Agriculture when it is necessary for maintenance activities to occur in a man-  
 2 ner other than specified in this paragraph.

3 (h) A person must conduct maintenance activities beginning at the most upstream lo-  
 4 cation of the traditionally maintained channel and progressing downstream.

5 (i) Material that is removed from the channel may be temporarily placed in a wetland  
 6 or converted wetland in order to dry, provided that the material must, no later than one year  
 7 after the date that the maintenance activity was completed, be moved to uplands or be  
 8 spread in a thin layer outside the riparian area that serves as a buffer adjacent to the  
 9 channel. Fill activities related to the maintenance of a traditionally maintained channel must  
 10 be limited to fill pursuant to this paragraph.

11 (j) Maintenance activities may not result in converting wetlands to uplands.

12 (k) Impacts to wetlands by the maintenance activities must be temporary, and must be  
 13 limited to impacts related to accessing the site for conducting removal activities in the  
 14 channel, the removal of material and the disposal of removed material.

15 (L) Notwithstanding the provisions of ORS 196.800 (1), the maintenance activities may  
 16 not result in channel relocation or in increasing the width or depth of the channel beyond  
 17 the width or depth to which the channel has routinely been maintained over time to facilitate  
 18 drainage.

19 (m) The maintenance activities must not alter any existing inlet or outlet connections  
 20 with other waterways.

21 (6)(a) The State Department of Agriculture or the Department of State Lands may, by  
 22 rule:

23 (A) Modify the volume limits for removal or fill set forth in subsection (4) of this section  
 24 or apply different volume limits to certain traditionally maintained channels; or

25 (B) Modify the conditions that apply for maintenance of a traditionally maintained  
 26 channel set forth in subsection (5) of this section.

27 (b) Any rules adopted under this subsection must be based on available information  
 28 identifying that the rule will result in appropriate changes to the conditions required for  
 29 conducting maintenance activities, under an adaptive management approach, for carrying  
 30 out the state policy stated in section 2 of this 2019 Act.

31 **SECTION 5.** Upon finding that a person has engaged in removal activities or fill activities  
 32 for the maintenance of a traditionally maintained channel without a permit required under  
 33 ORS 196.810 and in violation of section 4 of this 2019 Act, the State Department of Agricul-  
 34 ture or the Department of State Lands shall notify the person and direct the person to take  
 35 any actions as necessary to bring the maintenance activities into compliance with ORS  
 36 196.600 to 196.905 within a reasonable period of time. In all cases, the State Department of  
 37 Agriculture or the Department of State Lands shall make reasonable efforts to induce vol-  
 38 untary compliance, prior to the assessment of any civil penalty for violation of section 4 of  
 39 this 2019 Act.

40 **SECTION 6.** (1) The Department of State Lands and the State Department of Agriculture  
 41 shall enter into a memorandum of understanding providing for the State Department of Ag-  
 42 riculture to implement sections 2 to 6 of this 2019 Act.

43 (2) Subject to the terms of the memorandum of understanding required by subsection (1)  
 44 of this section, the State Department of Agriculture:

45 (a) May perform any function of the Department of State Lands relating to the imple-

1 **mentation and enforcement of sections 2 to 6 of this 2019 Act.**

2 **(b) May, in consultation with the State Department of Fish and Wildlife and at any rea-**  
 3 **sonable time after making a reasonable attempt to notify the landowner, enter onto and in-**  
 4 **spect lands for which persons have submitted notices to the State Department of Agriculture**  
 5 **under section 4 of this 2019 Act to ascertain compliance with sections 2 to 6 of this 2019 Act**  
 6 **or any rules adopted pursuant to section 4 (6) of this 2019 Act.**

7 **(c) Shall, in coordination with soil and water conservation districts, work to provide ed-**  
 8 **ucation on the requirements of sections 2 to 6 of this 2019 Act.**

9 **(3) The State Department of Agriculture, in consultation with the Department of State**  
 10 **Lands and the State Department of Fish and Wildlife, shall biennially conduct an adaptive**  
 11 **management review of the implementation of sections 2 to 6 of this 2019 Act to determine**  
 12 **whether implementation changes are required to best carry out the policy stated in section**  
 13 **2 of this 2019 Act.**

14 **SECTION 7.** ORS 196.816 is amended to read:

15 196.816. (1) Notwithstanding ORS 196.810, the Department of State Lands:

16 **(a) May establish by rule a general permit that allows the removal of no more than 100 cubic**  
 17 **yards of material from waters of this state, including in essential indigenous anadromous salmonid**  
 18 **habitat, for the purpose of maintaining drainage and protecting agricultural land[.]; and**

19 **(b) Shall establish by rule a general permit that allows the removal of material, for the**  
 20 **purpose of conducting maintenance, from traditionally maintained channels during channel**  
 21 **conditions where flowing or standing water is present. For purposes of this paragraph,**  
 22 **“traditionally maintained channel” has the meaning given that term in section 3 of this 2019**  
 23 **Act.**

24 **(2) The department may waive the fees specified in ORS 196.815 for removal taking place under**  
 25 **the provisions of this section.**

26 **SECTION 8.** (1) **The College of Agricultural Sciences of Oregon State University shall**  
 27 **conduct a study of the impacts of maintenance activities in traditionally maintained channels**  
 28 **on habitat complexity and other biological parameters. In conducting the study, the college**  
 29 **shall assess the impacts of maintenance activities at a variety of geographic locations, in a**  
 30 **variety of channel types and on a variety of channel conditions.**

31 **(2) In designing and implementing the study, the college shall consult with agricultural**  
 32 **and conservation stakeholders and the Department of State Lands, the State Department of**  
 33 **Agriculture, the State Department of Fish and Wildlife and any other interested agencies of**  
 34 **state government, as defined in ORS 174.111, as necessary to develop study questions and to**  
 35 **design the study in a manner that will best align with the needs of the Department of State**  
 36 **Lands and the State Department of Agriculture in applying adaptive management to the**  
 37 **implementation of sections 2 to 6 of this 2019 Act and ORS 196.816 (1)(b).**

38 **(3) The college shall submit a report on the study required by this section, and may in-**  
 39 **clude recommendations for legislation, to the interim committees of the Legislative Assem-**  
 40 **bly related to agriculture in the manner provided under ORS 192.245, and to the Department**  
 41 **of State Lands and the State Department of Agriculture, no later than January 1, 2025.**

42 **SECTION 9.** Section 8 of this 2019 Act is repealed on January 2, 2025.

43 **SECTION 10.** (1) **Upon receipt of and taking into account the study results contained in**  
 44 **the report required under section 8 of this 2019 Act, the State Department of Agriculture**  
 45 **shall evaluate:**

1 (a) Whether the volume limits for removal or fill set forth in section 4 (4) of this 2019  
 2 Act should be modified or repealed; and

3 (b) Whether volume limits, if necessary, should apply on a quantitative, qualitative or  
 4 outcomes and functions-based basis.

5 (2) The State Department of Agriculture shall consult with the Department of State  
 6 Lands and the State Department of Fish and Wildlife in carrying out subsection (1) of this  
 7 section.

8 SECTION 11. Section 10 of this 2019 Act is repealed on January 2, 2027.

9 SECTION 12. (1) The State Department of Agriculture, the Department of State Lands  
 10 and the State Department of Fish and Wildlife shall jointly prepare a report on activities in  
 11 this state for the maintenance of traditionally maintained channels. The report shall de-  
 12 scribe activities related to the implementation of sections 2 to 6, 8 and 10 of this 2019 Act  
 13 and the amendments to ORS 196.816 by section 7 of this 2019 Act, including methods of im-  
 14 plementation, compliance information and outcomes, and may include recommendations for  
 15 legislation.

16 (2) The report required by subsection (1) of this section shall be submitted to the interim  
 17 committees of the Legislative Assembly related to agriculture in the manner provided under  
 18 ORS 192.245 no later than December 15 of each odd-numbered year.

19 SECTION 13. Section 12 of this 2019 Act is repealed on January 2, 2030.

20 SECTION 14. (1) In addition to and not in lieu of any other appropriation, there is ap-  
 21 propriated to the State Department of Agriculture, for the biennium beginning July 1, 2019,  
 22 out of the General Fund, the amount of \$\_\_\_\_\_, which may be expended for the department  
 23 to carry out implementation of sections 2 to 6 of this 2019 Act pursuant to the memorandum  
 24 of understanding required under section 6 of this 2019 Act.

25 (2) In addition to and not in lieu of any other appropriation, there is appropriated to the  
 26 Higher Education Coordinating Commission, for distribution to the College of Agricultural  
 27 Sciences of Oregon State University, for the biennium beginning July 1, 2019, out of the  
 28 General Fund, the amount of \$\_\_\_\_\_, which may be expended by the college to conduct the  
 29 study required under section 8 of this 2019 Act.

30 SECTION 15. Rules adopted by the Department of State Lands under ORS 196.816 (1)(b)  
 31 shall become operative no later than January 1, 2028.

32 SECTION 16. (1) Sections 2 to 6 of this 2019 Act become operative on January 1, 2020.

33 (2) The State Department of Agriculture, the Department of State Lands and the State  
 34 Department of Fish and Wildlife may take any action before the operative date specified in  
 35 subsection (1) of this section that is necessary to enable the State Department of Agricul-  
 36 ture, the Department of State Lands and the State Department of Fish and Wildlife, on and  
 37 after the operative date specified in subsection (1) of this section, to exercise all of the du-  
 38 ties, powers and functions conferred on the State Department of Agriculture, the Depart-  
 39 ment of State Lands and the State Department of Fish and Wildlife by sections 2 to 6 of this  
 40 2019 Act.

41 SECTION 17. This 2019 Act being necessary for the immediate preservation of the public  
 42 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect  
 43 on its passage.