House Bill 2437

Introduced and printed pursuant to House Rule 12.00. Presession 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.


Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

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

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

Whereas the current permit process administered by the Department of State Lands for maintenance of channels used for agricultural drainage can be complex, burdensome and unclear for the agricultural community; and

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

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

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.

LC 2728
SECTION 1. Sections 2 to 6 of this 2019 Act are added to and made a part of ORS 196.600 to 196.905.

SECTION 2. (1) The Legislative Assembly finds and declares that:
   (a) It is in the best interest of the state to create a simple, function-based regulatory approach for the maintenance of channels used for agricultural drainage and to improve awareness of, and compliance with, the removal and fill program provided for under ORS 196.600 to 196.905.
   (b) The provisions of sections 2 to 6 of this 2019 Act are designed to protect the economic viability of Oregon’s farmers and ranchers by allowing for the maintenance of channels used for agricultural drainage to be conducted in a manner that protects, maintains or improves ecological function of the channels.

   (2) The Legislative Assembly declares that it is policy of this state:
   (a) To adaptively manage implementation of sections 2 to 6 of this 2019 Act to allow for a workable process for persons to maintain traditionally maintained channels while protecting the ecological and life history functions of fish and wildlife that inhabit the channels; and
   (b) To place a high priority on and to encourage the identification and development of opportunities for voluntary actions to restore, improve or enhance the ecological health or benefits of traditionally maintained channels.

SECTION 3. As used in sections 2 to 6 of this 2019 Act:
(1) “Adaptive management” has the meaning given that term in ORS 541.890.
(2) “Channel” means the defined bed and bank that serve to confine where a stream of water runs.
(3) “Dry” means:
   (a) Channel conditions where no flowing or standing water is present, other than small quantities of water that may become retained in low areas of the channel incidental to maintenance activities; and
   (b) For the channel of a waterway that is subject to tidal influence, the existence of channel conditions described in paragraph (a) of this subsection above the line of mean higher high water.
(4) “Traditionally maintained channel” means the channel of a segment, set of segments or the entirety of a drainage ditch, an intermittent stream or a perennial stream that:
   (a) Has been routinely maintained over time to facilitate drainage related to farming or ranching operations; and
   (b) Has been serviceable for facilitating drainage within the past five years.

SECTION 4. (1) Notwithstanding the permit requirements of ORS 196.810, a person may engage in removal activities or fill activities, or both, for conducting maintenance of a traditionally maintained channel without a permit from the Department of State Lands if the person complies this section.
(2) A person shall have a notice of maintenance activities on file with the State Department of Agriculture prior to initiating activities for the maintenance of a traditionally maintained channel. A notice filed with the State Department of Agriculture under this subsection:
   (a) Must identify the traditionally maintained channel in which maintenance activities will occur; and
   (b) Is valid for a period of five years from the date that the notice is filed.
(3)(a) Pursuant to the requirements of this section, a drainage district organized under ORS chapter 547 may conduct maintenance of a traditionally maintained channel without a permit as required by ORS 196.810 if the board of supervisors of the drainage district agrees, as part of the notice required under subsection (2) of this section, to submit to the jurisdiction of the Department of State Lands and the State Department of Agriculture for purposes of enforcement of sections 2 to 6 of this 2019 Act.

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

(4) Maintenance activities pursuant to a notice submitted under this section may not result in:
   (a) The removal of more than 3,000 cubic yards per linear mile of traditionally maintained channel over the course of the five-year period for which the notice is valid; or
   (b) The spreading of material in a wetland or converted wetland pursuant to subsection (5)(i) of this section in a volume greater than 3,000 cubic yards per linear mile of traditionally maintained channel over the course of the five-year period for which the notice is valid.

(5) In addition to complying with all applicable laws related to water quality or fish passage administered by the State Department of Agriculture or the State Department of Fish and Wildlife, activities for the maintenance of a traditionally maintained channel pursuant to a notice submitted under this section must comply with the following conditions:
   (a) A traditionally maintained channel must be dry before the commencement of any removal activities in the channel.
   (b) A person must complete removal activities during the applicable regional dry maintenance time period established by the State Department of Fish and Wildlife for the region where the traditionally maintained channel is located. If it is necessary for a person to engage in removal activities during a time period outside the applicable regional dry maintenance time period, the person may apply to the State Department of Agriculture for a variance.
   (c) The body of motorized equipment used to conduct removal or fill activities must be operated from the bank of the channel, with only the bucket or portion of the motorized equipment that actively removes material operating within the channel.
   (d) Maintenance activities must be conducted in a manner that minimizes new erosion into the channel.
   (e) Removal of woody vegetation must be limited to the minimum amount needed to complete the maintenance activity.
   (f) Revegetation must occur for any riparian areas that serve as a buffer adjacent to the channel and that experience vegetation loss as a result of the maintenance activity. This condition is satisfied whether revegetation occurs naturally or after seeding.
   (g) Work related to the maintenance activity must be conducted only from one bank of the channel, on either the north or east side, when practicable, in order to minimize the ecological impacts of the maintenance activity. A person shall consult with the State De-
department of Agriculture when it is necessary for maintenance activities to occur in a manner other than specified in this paragraph.

(h) A person must conduct maintenance activities beginning at the most upstream location of the traditionally maintained channel and progressing downstream.

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

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

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

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

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

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

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

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

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

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

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

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

(a) May perform any function of the Department of State Lands relating to the imple-
mentation and enforcement of sections 2 to 6 of this 2019 Act.
(b) May, in consultation with the State Department of Fish and Wildlife and at any reason-}
able time after making a reasonable attempt to notify the landowner, enter onto and in-
spect lands for which persons have submitted notices to the State Department of Agriculture
under section 4 of this 2019 Act to ascertain compliance with sections 2 to 6 of this 2019 Act
or any rules adopted pursuant to section 4 (6) of this 2019 Act.
(c) Shall, in coordination with soil and water conservation districts, work to provide edu-
cation on the requirements of sections 2 to 6 of this 2019 Act.
(3) The State Department of Agriculture, in consultation with the Department of State
Lands and the State Department of Fish and Wildlife, shall biennially conduct an adaptive
management review of the implementation of sections 2 to 6 of this 2019 Act to determine
whether implementation changes are required to best carry out the policy stated in section
2 of this 2019 Act.
SECTION 7. ORS 196.816 is amended to read:
196.816. (1) Notwithstanding ORS 196.810, the Department of State Lands:
(a) May establish by rule a general permit that allows the removal of no more than 100 cubic
yards of material from waters of this state, including in essential indigenous anadromous salmonid
habitat, for the purpose of maintaining drainage and protecting agricultural land[.]; and
(b) Shall establish by rule a general permit that allows the removal of material, for the
purpose of conducting maintenance, from traditionally maintained channels during channel
conditions where flowing or standing water is present. For purposes of this paragraph,
“traditionally maintained channel” has the meaning given that term in section 3 of this 2019
Act.
(2) The department may waive the fees specified in ORS 196.815 for removal taking place under
the provisions of this section.
SECTION 8. (1) The College of Agricultural Sciences of Oregon State University shall
conduct a study of the impacts of maintenance activities in traditionally maintained channels
on habitat complexity and other biological parameters. In conducting the study, the college
shall assess the impacts of maintenance activities at a variety of geographic locations, in a
variety of channel types and on a variety of channel conditions.
(2) In designing and implementing the study, the college shall consult with agricultural
and conservation stakeholders and the Department of State Lands, the State Department of
Agriculture, the State Department of Fish and Wildlife and any other interested agencies of
state government, as defined in ORS 174.111, as necessary to develop study questions and to
design the study in a manner that will best align with the needs of the Department of State
Lands and the State Department of Agriculture in applying adaptive management to the
implementation of sections 2 to 6 of this 2019 Act and ORS 196.816 (1)(b).
(3) The college shall submit a report on the study required by this section, and may in-
clude recommendations for legislation, to the interim committees of the Legislative Assem-
ibly related to agriculture in the manner provided under ORS 192.245, and to the Department
of State Lands and the State Department of Agriculture, no later than January 1, 2025.
SECTION 9. Section 8 of this 2019 Act is repealed on January 2, 2025.
SECTION 10. (1) Upon receipt of and taking into account the study results contained in
the report required under section 8 of this 2019 Act, the State Department of Agriculture
shall evaluate:
(a) Whether the volume limits for removal or fill set forth is section 4 (4) of this 2019 Act should be modified or repealed; and

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

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

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

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

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

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

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

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

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


(2) The State Department of Agriculture, the Department of State Lands and the State Department of Fish and Wildlife may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the State Department of Agriculture, the Department of State Lands and the State Department of Fish and Wildlife, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, powers and functions conferred on the State Department of Agriculture, the Department of State Lands and the State Department of Fish and Wildlife by sections 2 to 6 of this 2019 Act.

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