

A-Engrossed
House Bill 3185

Ordered by the House April 19
Including House Amendments dated April 19

Sponsored by Representatives MCLAIN, SMITH DB

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.

Prohibits spreading of material in undisturbed wetlands during maintenance of agricultural channels. Directs Department of State Lands to further define [*“farmed wetlands,” “previously impacted wetlands”* and] “undisturbed wetlands” for purposes of agricultural channel maintenance program.

A BILL FOR AN ACT

1
2 Relating to the protection of undisturbed wetlands during agricultural channel maintenance;
3 amending ORS 196.909 and 196.913.

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

5 **SECTION 1.** ORS 196.909 is amended to read:

6 196.909. As used in ORS 196.906 to 196.919:

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

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

10 (3) “Dry” means:

11 (a) Channel conditions where no flowing or standing water is present, other than small quanti-
12 ties of water that may occur in low areas of the channel as a direct result of active maintenance
13 activities; and

14 (b) For the channel of a waterway that is subject to tidal influence, the existence of channel
15 conditions described in paragraph (a) of this subsection during all tidal conditions.

16 (4) “Maintenance” means channel upkeep and removal from the channel of sediment, vegetation
17 or debris, in the minimum amount necessary to restore the serviceability of the channel for facili-
18 tating drainage.

19 (5) “Traditionally maintained channel” means the channel of a segment, set of segments or the
20 entirety of a drainage ditch, intermittent stream or perennial stream that:

21 (a) Has been routinely subject to maintenance to facilitate drainage related to farming or
22 ranching operations; and

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

24 **(6) “Undisturbed wetland” means a wetland that has not been materially affected by hu-
25 man activity and as further defined by the Department of State Lands by rule.**

26 **SECTION 2.** ORS 196.913 is amended to read:

27 196.913. (1) Activities for conducting maintenance of a traditionally maintained channel pursuant

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 to a notice submitted under ORS 196.911 may not result in:

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

4 (b) The spreading of material in:

5 (A) A wetland or converted wetland pursuant to subsection (2)(k) of this section in a volume
6 greater than 3,000 cubic yards per linear mile of traditionally maintained channel over the course
7 of the five-year period for which the notice is valid; **or**

8 **(B) An undisturbed wetland;**

9 (c) The removal or fill of material, or any other maintenance, occurring in a channel that has
10 been designated by rule and mapped by the Department of State Lands as essential indigenous
11 anadromous salmonid habitat as defined in ORS 196.810; or

12 (d) The enlargement of a water right or in otherwise causing injury to another existing water
13 right.

14 (2) In addition to complying with all applicable laws related to fish passage as described in ORS
15 509.585 and all applicable laws related to water quality, maintenance activities conducted pursuant
16 to a notice submitted under ORS 196.911 must comply with the following conditions:

17 (a) A traditionally maintained channel must be dry before the commencement of any removal
18 activities in the channel. If there is standing water in the channel that is due to a rain event and
19 not indicative of a perennial stream, a person must request a variance under ORS 196.915 (5) prior
20 to initiation of maintenance activities.

21 (b) A person must complete removal activities during the applicable regional dry maintenance
22 time period established by the State Department of Fish and Wildlife for the region where the tra-
23 ditionally maintained channel is located.

24 (c) The body of motorized equipment used to conduct removal or fill activities must be operated
25 from the bank of the channel, with only the bucket or portion of the motorized equipment that ac-
26 tively removes material operating within the channel.

27 (d) The bottom of the channel bed must be excavated on a smooth grade, in a manner that
28 avoids creating depressions or grade changes within the channel.

29 (e) Maintenance activities must be conducted in a manner that minimizes new erosion into the
30 channel.

31 (f) Removal of woody vegetation must be limited to the minimum amount needed to complete the
32 maintenance activity.

33 (g) Revegetation must occur for any riparian areas that serve as a buffer adjacent to the chan-
34 nel and that experience vegetation loss as a result of the maintenance activity. This condition is
35 satisfied whether revegetation occurs naturally or after seeding.

36 (h) Work related to the maintenance activity must be conducted only from one bank of the
37 channel, on either the north or east side, when practicable, to minimize the ecological impacts of
38 the maintenance activity.

39 (i) Motorized equipment used for maintenance activities must utilize existing crossings, if
40 crossing the channel is necessary to complete maintenance activities.

41 (j) Maintenance activities must begin at the most upstream location of the traditionally main-
42 tained channel and progress downstream.

43 (k) Material that is removed from the channel may be temporarily placed in a wetland or con-
44 verted wetland to dry, provided that the material must, no later than one year after the date that
45 the maintenance activity was completed, be moved to uplands or be spread in a thin layer outside

1 the riparian area that serves as a buffer adjacent to the channel. Fill activities related to the
2 maintenance of a traditionally maintained channel must be limited to fill pursuant to this paragraph.

3 (L) Maintenance activities may not result in converting wetlands to uplands and may not
4 materially change the depth or functionality of a wetland.

5 (m) Impacts to wetlands by the maintenance activities must be temporary and must be limited
6 to impacts related to accessing the site to conduct removal activities in the channel, the removal
7 of material and the disposal of removed material.

8 (n) Maintenance activities may not result in a change in location of a channel through the dig-
9 ging of a new channel and the diversion of the flow from the old channel into the new channel or
10 in increasing the width or depth of the channel beyond the width or depth to which the channel has
11 routinely been maintained to facilitate drainage.

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

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