

B-Engrossed
Senate Bill 1517

Ordered by the House February 25
Including Senate Amendments dated February 15 and House Amendments
dated February 25

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Environment 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.

[Requires] **Authorizes** governing body of Tillamook County to, by ordinance or regulation, adopt pilot program for establishing, subject to provisions related to conditional uses of areas zoned for exclusive farm use, creation, restoration or enhancement of wetlands. Exempts certain wetland projects from pilot program.

Requires governing body to adopt, as part of pilot program, process by which applicants subject to pilot program may request to enter into **project-specific** collaborative process for settling disputes concerning application.

[Allows] **Requires, subject to available funds,** governing body to initiate planning process as part of pilot program to identify areas zoned for exclusive farm use suitable for wetland creation, restoration or enhancement programs and designate areas zoned for exclusive farm use as priority areas for maintenance of agricultural use. Requires governing body to consider certain factors as part of planning process. **Authorizes, if planning process results in acknowledged plan, governing body to adopt certain ordinances consistent with priorities identified in plan.**

Requires governing body to provide for production of progress reports on pilot program to interim committees of Legislative Assembly no later than September 15 of each odd-numbered year during pilot program.

Sunsets *[June 30, 2026]* **January 2, 2027.**

Allows Department of State Lands to issue permits to fill Smith Lake or Bybee Lake if fill is to support recreational use or public access.

A BILL FOR AN ACT

1
2 Relating to land improvement projects; creating new provisions; and amending ORS 196.820.

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

4 **SECTION 1. Sections 2 to 6 of this 2016 Act are added to and made a part of ORS chapter**
5 **215.**

6 **SECTION 2. The Legislative Assembly finds and declares that Tillamook County experi-**
7 **ences unique challenges related to the creation, restoration or enhancement of wetlands on**
8 **lands zoned for exclusive farm use, including regularly occurring and devastating flood**
9 **events and landowner conflicts. It is therefore in the public interest to establish a pilot**
10 **program in Tillamook County that applies conditional use review for the creation, restoration**
11 **or enhancement of wetlands on lands zoned for exclusive farm use, and that incorporates a**
12 **means for stakeholders to engage in a collaborative process for ensuring the protection and**
13 **enhancement of agricultural land uses and wetlands.**

14 **SECTION 3. As used in sections 2 to 6 of this 2016 Act:**

15 (1) **"Mitigation bank"** has the meaning given that term in ORS 196.600.

16 (2) **"Permit"** has the meaning given that term in ORS 215.402.

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 (3) "Reclamation" has the meaning given that term in ORS 517.750.

2 (4) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial
3 ecosystem, dependent upon surface or subsurface water, in which existing or potential ele-
4 ments of the soil-vegetation complex are influenced by the surface or subsurface water that
5 the zone is dependent upon.

6 (5) "Surface mining" has the meaning given that term in ORS 517.750.

7 (6) "Wetlands" has the meaning given that term in ORS 196.800.

8 **SECTION 4.** (1) Notwithstanding ORS 215.283 (1)(m), the governing body of Tillamook
9 County may, by ordinance or regulation, adopt a pilot program for reviewing, subject to ORS
10 215.296, the creation, restoration or enhancement of wetlands in any area zoned for exclusive
11 farm use.

12 (2) Notwithstanding ORS 215.296 (10), ordinances or regulations adopted by the governing
13 body under the pilot program may not establish standards in addition to the standards de-
14 scribed in ORS 215.296 (1) for approving the creation, restoration or enhancement of wetlands
15 in areas zoned for exclusive farm use.

16 (3) Notwithstanding any contrary provision of ORS 215.416, the ordinances or regulations
17 adopted as part of the pilot program shall provide for a mechanism by which, upon request
18 by the applicant and prior to the approval or denial of a permit under the procedures re-
19 quired by ORS 215.402 to 215.438, the following parties may enter into a project-specific
20 collaborative process for settling disputes concerning the application:

21 (a) The applicant;

22 (b) Any person whose use of the person's property may be adversely affected by the
23 proposed use;

24 (c) Any person who is entitled to notice under ORS 215.416 (11)(c);

25 (d) Representatives of any state or federal agency that is involved in the project for
26 which the application for the use was submitted or that has expertise related to issues raised
27 by the application or by comments received by the governing body; and

28 (e) For the purpose of assisting in the project-specific collaborative process, any person
29 with technical expertise in:

30 (A) Creating, restoring or enhancing wetlands in Tillamook County;

31 (B) Creating, restoring or enhancing wetlands in areas with site characteristics similar
32 to those identified in the application for the use; or

33 (C) The impacts of wetlands on agricultural operations.

34 (4) If an applicant requests to enter into a project-specific collaborative process adopted
35 under subsection (3) of this section, the periods set forth in ORS 215.427 (1) and (5) for the
36 governing body of a county or its designee to take final action on the application shall be
37 extended in the manner provided for in ORS 215.427 (10).

38 (5) If the parties to a project-specific collaborative process requested under subsection
39 (3) of this section agree to conditions that, if imposed on the proposed use, would satisfy the
40 standards for approval set forth in ORS 215.296 (1) in a manner that is acceptable to all
41 parties, an approval of the application for the permit shall include the conditions agreed to
42 by the parties.

43 (6) The governing body shall discontinue a project-specific collaborative process requested
44 under subsection (3) of this section if, at any time during the process, the applicant requests
45 that the governing body resume processing the permit application under the procedures re-

1 required by ORS 215.402 to 215.438.

2 **SECTION 5.** (1) As part of a pilot program authorized by section 4 of this 2016 Act, the
3 governing body of Tillamook County shall, subject to subsection (4) of this section, initiate
4 a planning process to:

5 (a) Identify areas zoned for exclusive farm use that are suitable for future wetland cre-
6 ation, restoration or enhancement projects; and

7 (b) Designate areas zoned for exclusive farm use as priority areas for maintenance of
8 agricultural use.

9 (2) The governing body shall engage stakeholders in the planning process, including, but
10 not limited to, representatives of conservation interests and agricultural interests, state and
11 federal agencies and Indian tribes.

12 (3) A planning process initiated under this section shall include consideration of:

13 (a) The historic location and quantity of wetlands within the county;

14 (b) The location and quantity of wetlands within the county at the time the planning
15 process is initiated;

16 (c) Agricultural interests within the county, and the land use patterns necessary for the
17 stability of agricultural and associated farming practices;

18 (d) The amount and location of potential wetland projects that would provide the greatest
19 benefits to fish recovery, fish and wildlife habitat, flood mitigation and other values;

20 (e) Locations where future wetland projects would be most likely to provide the greatest
21 benefits to fish recovery, fish and wildlife habitat, flood mitigation and other values while
22 remaining compatible with the land use patterns necessary for the stability of agricultural
23 and associated farming practices;

24 (f) Locations where the creation, restoration or enhancement of wetlands is likely to
25 materially alter the stability of the agricultural land use patterns or cause a significant
26 change to farming practice, alone or in combination with other wetlands in the area; and

27 (g) Locations or land-use arrangements, opportunities, conditions or approaches that
28 could best enable benefits to fish recovery, fish and wildlife habitat, flood mitigation and
29 other values in a manner that complements the land use patterns necessary for the stability
30 of agricultural and associated farming practices.

31 (4) The governing body is not required to initiate the planning process provided for in this
32 section if the governing body determines that adequate funding, which may include funding
33 from any combination of local, state, federal or other sources, is not reasonably available.

34 (5) If a plan developed under this section is acknowledged pursuant to ORS 197.625, the
35 governing body may, by ordinance, adopt a process for denying permits or streamlining the
36 permitting process for permit applications subject to the pilot program under section 4 of
37 this 2016 Act. Ordinances adopted under this section must provide for a process that is
38 consistent with the priorities identified in the plan.

39 **SECTION 6.** Sections 4 and 5 of this 2016 Act and ordinances and regulations adopted
40 pursuant to sections 4 and 5 of this 2016 Act do not apply to the creation, restoration or
41 enhancement of wetlands:

42 (1) For purposes related to a mitigation bank;

43 (2) For reclamation of lands affected by surface mining;

44 (3) If the wetlands are created, restored or enhanced for the purpose of meeting condi-
45 tions necessary to comply with a National Pollutant Discharge Elimination System permit

1 or water pollution control facility permit issued by the Department of Environmental Quality
2 pursuant to ORS 468B.050;

3 (4) For which construction had commenced, or required permits had been issued, prior
4 to the adoption of ordinances or regulations by the governing body of Tillamook County un-
5 der section 4 of this 2016 Act; and

6 (5) If the creation, restoration or enhancement of the wetlands only involves planting
7 vegetation in a wetland or riparian area.

8 **SECTION 7.** (1) The governing body of Tillamook County shall provide for the production
9 and filing of a report on the progress of a pilot program adopted under section 4 of this 2016
10 Act in the manner provided in ORS 192.245, to the interim committees of the Legislative
11 Assembly related to environment and natural resources no later than September 15 of each
12 odd-numbered year following the effective date of this 2016 Act, until and including Septem-
13 ber 15, 2025.

14 (2) In developing a report required by this section, the governing body must consult with
15 stakeholders including, but not limited to, representatives of conservation interests and ag-
16 ricultural interests, state and federal agencies and Indian tribes.

17 (3) A report required by this section must include, but need not be limited to:

18 (a) Information on whether and to what extent the governing body has taken action as
19 provided for in sections 4 and 5 of this 2016 Act and the form of the action taken;

20 (b) The number of permit applications received under the pilot program adopted under
21 section 4 of this 2016 Act, the number of applicants that have requested entering into a
22 project-specific collaborative process to settle disputes concerning their applications and the
23 disposition of applications received under the pilot program; and

24 (c) Any significant successes, challenges or recommendations for legislation related to
25 the pilot program.

26 (4) The report that is required to be filed under this section no later than September 15,
27 2025, shall include information detailing the success of the pilot program and recommen-
28 dations on whether the pilot program should be made permanent.

29 **SECTION 8.** Sections 2 to 7 of this 2016 Act are repealed on January 2, 2027.

30 **SECTION 9.** ORS 196.820 is amended to read:

31 196.820. (1) Notwithstanding any provision of ORS 196.600 to 196.905 to the contrary, except as
32 provided in subsection (2) of this section, the Director of the Department of State Lands shall not
33 issue any permit to fill Smith Lake or Bybee Lake, located in Multnomah County, below the contour
34 line which lies 11 feet above mean sea level as determined by the 1947 adjusted United States
35 Coastal Geodetic Survey Datum.

36 (2) *[Notwithstanding the provision of subsection (1) of this section,]* The Director of the Depart-
37 ment of State Lands may issue a permit to fill Smith Lake or Bybee Lake, located in Multnomah
38 County, if such fill is to enhance or maintain fish and wildlife habitat **or support recreational use**
39 **or public access** at or near Smith Lake or Bybee Lake. A fill shall be considered to be for the
40 purpose of enhancing or maintaining fish and wildlife habitat if the proposed fill is approved by the
41 State Department of Fish and Wildlife.