

D R A F T

SUMMARY

Requires Department of State Lands to adopt pilot program for voluntary stream restoration and beaver recovery through construction of artificial beaver dams. Requires department to establish by rule removal or fill general permit for participants to construct artificial beaver dams. Prescribes requirements for pilot program. Requires department to report on program to Legislative Assembly on or before January 1, 2026.

Sunsets program January 2, 2028.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to artificial beaver dams; and declaring an emergency.

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

4 **SECTION 1. The Legislative Assembly finds and declares that:**

5 **(1) Many small streams in eastern Oregon were historically inhab-**
6 **ited by beaver populations and strongly influenced by beavers' unique**
7 **ability to modify their physical surroundings. Beaver dams had the**
8 **effect of slowing the flow of water, allowing for natural overflow onto**
9 **surrounding floodplains and providing many positive benefits to**
10 **stream ecosystems and to the hydrologic functioning of streams.**

11 **(2) Due, in part, to the near eradication of the once-prevalent**
12 **beaver populations, many stream systems have become severely de-**
13 **graded during the past century, developing deeply eroded and incised**
14 **stream channels that have lost connectivity with the natural historic**
15 **floodplain. These changes to the stream systems have resulted in ad-**
16 **verse environmental and economic impacts.**

17 **(3) The public policy of the State of Oregon is to encourage and**

1 support voluntary stream restoration actions by private landowners
2 through a pilot program in the Malheur Lake Drainage Basin. The
3 purpose of the pilot program shall be to determine whether con-
4 struction of artificial beaver dams can help improve environmental
5 and economic health in the basin by supporting natural stream func-
6 tions through:

7 (a) Rebuilding connections with historic floodplains;

8 (b) Increasing channel complexity and sediment transport and de-
9 position; and

10 (c) Promoting restoration of stream and habitat conditions suitable
11 for beaver recovery and native fish.

12 **SECTION 2.** (1) As used in this section:

13 (a) “Artificial beaver dam” means a low-profile structure con-
14 structed in a series for the purpose of delaying or slowing, but not
15 preventing, water flow to raise the water table and water surface ele-
16 vations within incised or eroded streams to the level of the historic
17 floodplain and to promote restoration of stream and habitat conditions
18 suitable for beaver recovery.

19 (b) “Historic floodplain” means channel-adjacent areas and surfaces
20 constructed by fluvial processes that functioned as floodplains or areas
21 for overbank deposition prior to channel incision.

22 (c) “Incised or eroded stream” means a stream that has been
23 scoured by erosion to the extent that the channel bed elevation has
24 lowered relative to its historic floodplain and the stream has lost
25 connectivity with the historic floodplain, as characterized by the loss
26 of natural wetland, riparian and meadow conditions in the adjacent
27 surfaces, the absence of overbank flooding or deposition, the loss of
28 diversity of fish and other animal species or the presence of dry land
29 species, including but not limited to sagebrush, bunch grass, juniper
30 and pine, that have encroached from adjacent uplands.

31 (d) “Malheur Lake Drainage Basin” means the area identified as the

1 **Malheur Lake Drainage Basin on Water Resources Department map**
2 **number 12.6 dated January 1, 1966.**

3 **(e) “Native migratory fish” has the meaning given that term in ORS**
4 **509.580.**

5 **(f) “Qualifying stream” means an incised or eroded stream, or a**
6 **reach of an incised or eroded stream that, as determined by the State**
7 **Department of Fish and Wildlife:**

8 **(A) Is not inhabited by native migratory fish or beavers; and**

9 **(B) Is not known or likely to have been inhabited by native migra-**
10 **tory fish within the 20 years prior to the commencement of a resto-**
11 **ration project.**

12 **(2)(a) The Department of State Lands shall by rule establish a pilot**
13 **program for voluntary stream restoration projects that involve par-**
14 **ticipating landowners constructing artificial beaver dams on qualifying**
15 **streams located in the Malheur Lake Drainage Basin.**

16 **(b) The pilot program established under this subsection must:**

17 **(A) Be limited to providing authorization for artificial beaver dams**
18 **to be constructed on qualifying streams comprising no more than 20**
19 **percent of streams located in the Malheur Lake Drainage Basin;**

20 **(B) Notwithstanding ORS 196.810 and 196.817 (1)(b), include the es-**
21 **tablishment by rule of a removal or fill general permit under ORS**
22 **196.817 for participants to construct artificial beaver dams in accord-**
23 **ance with the provisions of this section;**

24 **(C) Include criteria for evaluating the effectiveness of the program;**

25 **(D) Require economically reasonable monitoring and reporting by**
26 **participants in order to provide information necessary for evaluating**
27 **the program;**

28 **(E) Require participants to provide information about proposed**
29 **projects, including but not limited to information on the number and**
30 **specific locations of artificial beaver dams to be constructed and the**
31 **materials to be used; and**

1 **(F) Require that a participant maintain a project for at least 10**
2 **years unless:**

3 **(i) The stream where the project is located is restored to the point**
4 **that it naturally supports beavers or native migratory fish; or**

5 **(ii) The department determines that a stream restoration project**
6 **has not provided any stream restoration benefits by the fifth year after**
7 **the date that the project was completed.**

8 **(c) If the department makes a determination under paragraph**
9 **(b)(F)(ii) of this subsection, the participant must be required, upon**
10 **request by the department, to take economically reasonable steps to**
11 **lower, breach or modify the artificial beaver dams that are part of the**
12 **project for which the determination is made.**

13 **(3)(a) Except as provided for under paragraph (b) of this subsection,**
14 **artificial beaver dams constructed on qualifying streams and author-**
15 **ized pursuant to subsection (2) of this section may not be considered**
16 **artificial obstructions, as defined in ORS 509.580, and are exempt from**
17 **fish passage requirements under ORS 509.585.**

18 **(b) The department shall require by rule that artificial beaver dams**
19 **proposed to be constructed on qualifying streams that were histor-**
20 **ically inhabited by native migratory fish be constructed in a manner**
21 **that:**

22 **(A) Would provide fish passage in a qualifying stream if the stream**
23 **were restored as a result of the voluntary restoration project; or**

24 **(B) Could be readily modified to provide fish passage in a qualifying**
25 **stream if the stream were restored and native migratory fish returned**
26 **as a result of the voluntary restoration project.**

27 **(c) If monitoring or other data available to the department indicate**
28 **that native migratory fish have returned to a qualifying stream where**
29 **an artificial beaver dam has been constructed by a participant in the**
30 **pilot program and that fish passage is not occurring, the department**
31 **shall work collaboratively with the participating landowner and, where**

1 appropriate, other persons involved in stream restoration activities,
2 to provide fish passage. A participating landowner may not be required
3 under this paragraph to expend additional funds for fish passage be-
4 yond the amount expended by the participant to construct and main-
5 tain the artificial beaver dams in accordance with the pilot program
6 rules.

7 (4) Nothing in this section is intended or shall be construed to
8 modify, in any manner, any requirement under the Water Rights Act
9 as defined in ORS 537.010.

10 SECTION 3. The Department of State Lands shall adopt rules and
11 begin administration of the pilot program required under section 2 of
12 this 2016 Act no later than one year after the effective date of this 2016
13 Act and shall provide a preliminary report to the Legislative Assembly
14 regarding program implementation no later than January 1, 2018.

15 SECTION 4. The Department of State Lands shall report to the
16 Legislative Assembly on the identified environmental and economic
17 impacts resulting from the pilot program required under section 2 of
18 this 2016 Act no later than January 1, 2026.

19 SECTION 5. Sections 1 and 2 of this 2016 Act are repealed on Jan-
20 uary 2, 2028.

21 SECTION 6. This 2016 Act being necessary for the immediate pres-
22 ervation of the public peace, health and safety, an emergency is de-
23 clared to exist, and this 2016 Act takes effect on its passage.

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