

CHAPTER 544

AN ACT

HB 2277

Relating to authority of drainage districts to perform flood control; creating new provisions; amending ORS 198.510, 547.060, 547.105 and 547.110; and declaring an emergency.

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

SECTION 1. The provisions of sections 2 to 12 of this 2015 Act apply to drainage districts managing federally authorized flood control projects on the effective date of this 2015 Act.

SECTION 2. As used in sections 2 to 12 of this 2015 Act:

(1) "Flood control project" means a system or method, including, but not limited to, canals, ditches, dikes, levees, revetments and floodwalls, for:

(a) The control, diversion, conservation or abatement of floodwater, or of an excessive or unusual accumulation of water, in a natural or artificial body of water; or

(b) The protection of life and property against danger, menace, injury or damage resulting from floodwater, or an excessive or unusual accumulation of water.

(2) "Obstruction" means an encroachment, improvement or trespass that substantially and adversely affects the efficient operation or maintenance of a flood control project or a ditch, lateral, drain, canal, slough, waterway or conduit.

(3) "Repair" includes replace, remove, relocate and upgrade when, in the discretion of the board of supervisors of a drainage district, replacement, removal, relocation or upgrade is necessary to comply with state or federal regulations or to protect and preserve the property of the district.

SECTION 3. (1) Before a drainage district elects to exercise the powers and duties set forth in section 4 of this 2015 Act, the board of supervisors shall hold a public hearing.

(2) At least 14 days before the date of the public hearing, the board shall give notice of the hearing in a newspaper of general circulation in the district and mail notice of the hearing to the owners of record, based on the most recent county tax assessment roll, of property within the district.

(3) Notice of the public hearing must:

(a) State the date, time and location of the hearing;

(b) State that the board is considering whether to elect to exercise the powers and duties set forth in section 4 of this 2015 Act; and

(c) Invite all interested parties to attend the hearing and present testimony.

(4) After the public hearing, the board may adopt a resolution in which the district elects to exercise the powers and duties set forth in section 4 of this 2015 Act. Following adoption of the resolution, the board may exercise the powers and duties as provided in section 4 of this 2015 Act.

SECTION 4. (1) A drainage district may acquire, construct, reconstruct, repair, improve or extend improvements to carry out the purposes of the Drainage District Act.

(2) A drainage district in a county with a population greater than 700,000 persons may adopt ordinances consistent with sanitary, agricultural, public health or public safety purposes under ORS 198.510 to 198.600 to carry out its powers and duties under the Drainage District Act, including ordinances related to:

(a) Flood protection, drainage control or management, including provisions for enforcement of the regulations;

(b) Rates, fees, fines and charges for the operation of the district and construction, maintenance, repair and improvement of the works of the district;

(c) A delegation of authority to the chief executive officer of the district to manage and administer the district; and

(d) Other matters determined by the board of supervisors to be necessary or convenient to exercise the authority granted to the district or to comply with the requirements of state and federal law.

(3) A drainage district shall provide written notice to any city in which all or a portion of the drainage district is located not more than 21 days and not less than 10 days prior to the first reading of a proposed ordinance described in subsection (2) of this section. The notice must include a brief description of the proposed ordinance and a copy of the proposed ordinance and must list the time, date and place of the public meeting at which the drainage district will consider the proposed ordinance. The date of notice shall be the date of mailing.

(4)(a) Notwithstanding subsection (2)(b) of this section, a drainage district may not impose on a city a rate, fee or charge unless the rate, fee or charge is a provision of an intergovernmental or urban services agreement between the drainage district and the city.

(b) A drainage district may levy a city an assessment, rate, fee, fine or charge as a property owner within the drainage district that is not a provision of an intergovernmental or urban services agreement, provided the drainage district levies the assessment, rate, fee, fine or charge against the city pursuant to the same terms and conditions as levied against other property owners within the drainage district.

(5) The drainage district shall consult and coordinate with all governmental units with au-

thority to exercise similar powers and duties within the boundaries of the drainage district if the exercise of those powers and duties has the potential to conflict. In the event that an exercise of powers or duties by the drainage district conflicts with the exercise of similar powers by a governmental unit, the drainage district and governmental unit shall execute an intergovernmental or urban services agreement to resolve the conflict.

SECTION 5. In a contiguous body of swamp, wet or overflowed land or irrigated land from which waters contribute to the swamp or to the wet or overflowed condition of the same or different land, the owners of record of at least 50 percent of the acreage may form a drainage district for the purpose of reclaiming and protecting the land by drainage, flood control or otherwise from the effects of water:

- (1) For sanitary or agricultural purposes; or
- (2) When reclaiming and protecting the land protects life or property from the harmful effects of water or produces another public utility or benefit.

SECTION 6. (1) The officers and employees of any drainage district may:

(a) Enter upon any land in the manner provided by ORS 35.220.

(b) Locate the necessary flood control project, drainage works or irrigation works, and the necessary branches for the same, on any lands that may be deemed best for such location.

(c) Acquire, either by lease, purchase, condemnation or other legal means, all lands, rights of way, easements and other property necessary for the construction, operation or maintenance of a flood control project, drainage works or irrigation works, including the enlargement, improvement or extension of any natural or artificial waterway for such purposes.

(d) Make all necessary water filings or appropriation of water under the general laws of Oregon for irrigation of lands within such district.

(2) The property, the right to condemn which is hereby given, shall include property already devoted to public use that is less necessary than the use for which it is required by the district, whether used for drainage, irrigation or any other purpose. The right of way is hereby given, dedicated and set apart to locate, construct and maintain such drainage or irrigation works over and through any of the lands that are now or may be the property of this state.

(3) In the acquisition of property or rights by condemnation, proceedings under the provisions of this section shall be brought in the name of the district under the provisions of ORS chapter 35.

SECTION 7. (1) The board of supervisors may:

(a) Build, construct and complete any works and improvements needed to carry out the plan of reclamation.

(b) In the name of the district, make all necessary water filings and appropriations of water for the subsequent irrigation of the lands within the district.

(c) Construct, operate and maintain irrigation works for the irrigation of the lands within the district.

(d) Hire personnel and purchase machinery, equipment and supplies.

(e) Construct, operate, protect and maintain flood control projects for the protection of the lands within the district.

(2) The board may after advertising for bids, let a contract for construction of the whole or any part of the flood control project, drainage works or irrigation works to the lowest responsible bidder, which contract shall be in writing. The complete plans and specifications for the flood control, drainage or irrigation of the lands shall be attached to and made a part of each contract. Good and sufficient bond, running in favor of the district, shall be required of each contractor, conditioned that the contractor will well and truly comply with all the provisions of the contract and perform all work in accordance with the terms thereof.

(3) The chief engineer shall be superintendent of all the works and improvements and shall, whenever required, and at least once each year, make a full report to the board of all work done and improvements and make such suggestions and recommendations to the board as the chief engineer deems proper.

SECTION 8. The board of supervisors of any drainage district, whenever it is determined by the board that it is for the best interests of the district:

(1) May enter into a contract with the United States for the reclamation by drainage or irrigation of the lands within the boundaries of the district, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto, and especially the Act of Congress approved August 13, 1914, entitled, "An act extending the period of payment under reclamation projects, and for other purposes," commonly known as the "Twenty-Year Extension Act."

(2) May make contracts with a federal agency relating to flood control projects that contain terms, provisions and conditions the board of supervisors determines are necessary or appropriate to satisfy conditions on the construction of flood control projects that are imposed under federal law or that attach as a result of federal funding for the flood control project.

SECTION 9. (1) The board of supervisors of a drainage district lying west of the Cascade Mountains, whether or not organized under the Drainage District Act:

(a) Shall supervise and control flood control projects within the boundaries of their districts.

(b) May prescribe the width, grade and other specifications of flood control projects, drainage works or irrigation works described in this subsection.

(2) The board may construct and maintain flood control projects within the boundaries of their districts.

SECTION 10. (1) Whenever the engineer or secretary of a drainage district notifies the supervisors that any flood control project is less efficient, by reason of the failure of the owner of the premises upon which it is situated to prevent obstructions, repair, clean or grade the same, the board of supervisors shall serve or cause to be served upon such owner, if the owner is known and residing within the county in which the district is situate, or if not a resident of the county, then upon the occupant of the premises, a notice in writing notifying the owner or occupant of the clogged or obstructed condition of the flood control project.

(2) The notice shall be served by delivering to the owner, occupant or person in charge of the premises a copy thereof certified to be such by the person serving it, or if there is no occupant or the owner is not a resident of the county, then the notice shall be served by posting a copy of it in a conspicuous place upon the premises. Immediately after serving or posting the notice, the person serving it, by authority of the board of supervisors, shall file the original notice with the county clerk of the county in which service is made, together with a return on the notice stating the time and manner of making service. The notice and return, when so filed, shall be retained as a public record of the county.

SECTION 11. (1) If the owner or occupant of the premises upon which the clogged or obstructed flood control project is situated fails for 10 days after being notified of the existence of the clogged or obstructed condition, to submit to the drainage district a plan and schedule to repair, clean or grade the flood control project or remove the obstruction therefrom, the board of supervisors shall immediately repair, clean or grade the same and cause it to be promptly placed in a proper and efficient condition.

(2) The drainage district shall review a plan and schedule submitted by an owner or occupant to determine whether the plan and schedule adequately address the clogged or obstructed condition in an effective and timely manner. If the drainage district approves the plan and schedule, the owner or occupant shall repair,

clean or grade the flood control project or remove the obstruction therefrom pursuant to the plan and schedule. If the owner or occupant fails to do so pursuant to the plan and schedule, the board of supervisors shall immediately repair, clean or grade the same and cause it to be promptly placed in a proper and efficient condition.

(3) Nothing in this section precludes the board of supervisors from immediately repairing, cleaning or grading the clogged or obstructed flood control project in cases of emergency.

SECTION 12. (1) Upon completion of the work the board of supervisors shall bill the owner or occupant of the premises for the expense necessarily incurred in the repair, grading or cleaning of the flood control project.

(2) If any charge remains unpaid beyond the due date thereof, the secretary of the district may file a notice of claim of lien with the county clerk of the county in which the lands for which the charges were billed are situated. The notice of lien shall be in writing and must contain:

(a) The name of the landowner or occupier who was billed.

(b) A statement of the amount claimed past due.

(c) A description of the land upon which the work was completed sufficient for identification.

(3) The county clerk shall cause the notice of lien to be recorded in the County Clerk Lien Record maintained under ORS 205.125. The amount of the charges and expense, as of the date the notice of lien is filed, shall constitute a first lien upon the lands or premises, except as to taxes. If the charges and expenses are not paid and the lien discharged by the owner or occupant within 30 days from the date the notice is filed, suit or action may be brought in the name of the drainage district for the foreclosure of the lien. The suit or action shall be brought by the district attorney, or, at the option of the board, by an attorney employed by the board. The lands affected thereby shall be sold under execution for the payment and satisfaction of the lien and of the costs and disbursements incurred in connection with the prosecution of the suit or action.

SECTION 13. ORS 547.060 is amended to read: 547.060. As used in this chapter, "Drainage District Act" means ORS 547.005 to 547.030, 547.105 to 547.150, 547.205 to 547.240, 547.250 to 547.265, 547.310, 547.315, 547.455 to 547.475, and 547.555 to 547.580 and section 14 of this 2015 Act.

SECTION 14. (1) An activity of a drainage district is deemed to be an urban service, as defined in ORS 195.065, if the drainage district:

(a) Is located in a county that has a population greater than 700,000; and

(b) Operates a flood control project located within the urban growth boundary established by Metro or within the incorporated boundary of a city.

(2) As used in this section, “flood control project” means a system or method, including, but not limited to, canals, ditches, dikes, levees, revetments and floodwalls, for:

(a) The control, diversion, conservation or abatement of floodwater, or of an excessive or unusual accumulation of water, in a natural or artificial body of water; or

(b) The protection of life and property against danger, menace, injury or damage resulting from floodwater, or an excessive or unusual accumulation of water.

SECTION 15. Section 16 of this 2015 Act is added to and made a part of ORS 554.005 to 554.340.

SECTION 16. The activity of a corporation for drainage or flood control organized under ORS 554.005 to 554.340 is deemed to be an urban service, as defined in ORS 195.065, if the corporation:

(1) Is located in a county that has a population greater than 700,000; and

(2) Operates a flood control project as defined in section 14 of this 2015 Act located within the urban growth boundary established by Metro or within the incorporated boundary of a city.

SECTION 17. ORS 198.510 is amended to read:

198.510. As used in ORS 198.510 to 198.600, unless the context requires otherwise:

(1) “County” means the county in which the district, or the greater portion of the assessed value of the district, is located.

(2) “County board” means the board of county commissioners or the county court of the county.

(3) “County clerk” means the county clerk of the county.

(4) “District” has the meaning given that term in ORS 198.010 (2), (4), (5), (11), (12), (14), (16), (17), (19), (20) to (23), (25) and (26). In addition, “district” means any one of the following:

(a) A county service district organized under ORS chapter 451.

(b) The Port of Portland established by ORS 778.010.

(5) “District board” means the governing body of a district and the term includes a county board that is in the governing body of a district.

(6) “Presiding officer” means the chairperson, president or other person performing the office of presiding officer of the district board.

(7) “Principal Act” means the law, other than ORS 198.510 to 198.600, applicable to a district.

SECTION 18. ORS 547.105 is amended to read:

547.105. (1) Within 30 days after any drainage district has been organized under the provisions of the Drainage District Act, the county clerk of the county in which the petition was filed shall call a meeting of the owners of land situated in the district for the purpose of electing a board of supervisors with three or five supervisors as determined by the owners of land within the district.

(2) The county clerk shall give notice of the meeting *[shall be given]* by publication in some newspaper published in each county in which lands of the district are situated, at least 10 days before the date of the meeting.

(3) The supervisors *[shall]* **must** be owners of land in the district.

(4)(a) The *[landowners]* **owners**, assembled at the place and time required by the notice, shall organize by the election of a chairperson and secretary of the meeting who shall conduct the election. Each owner is entitled to one vote in person or by proxy for each acre of land owned by the owner in the district. **If an owner is a not a natural person, the owner may appoint a designee, in a writing filed with the secretary, to exercise the authority of the owner, including the voting and serving as a supervisor of the district. The designee shall serve as a representative of the owner until the designee resigns, or the owner replaces the designee, in a writing filed with the secretary.**

(b) Notwithstanding paragraph (a) of this subsection, at or before the organizing meeting, an owner that is not a natural person may appoint a designee in a writing filed with the county clerk.

(5) The three or five persons receiving the highest number of votes *[shall]* **must** be declared elected as supervisors. *[They shall immediately by lot]* **The supervisors shall determine the terms of their *[office]* offices by lot.** If three supervisors are elected, the supervisors shall serve, respectively, one, two and three years. If five supervisors are elected, one supervisor shall serve one year, two supervisors shall serve two years, and two supervisors shall serve three years. The supervisors first elected shall serve until their successors are elected and qualified. *[The majority of the acreage represented shall be necessary to constitute a quorum for the transaction of business at all landowners’ meetings; provided, however, that when in any year a district shall fail to have a quorum at its annual meeting called pursuant to ORS 547.110 then the quorum for the annual meeting for the succeeding year shall be at least 35 percent of the acreage represented.]*

(6) **At a meeting of owners, owners that represent at least a majority of the acreage in the district constitute a quorum for the transaction of district business. In a year in which a quorum of owners is not achieved at the annual meeting called under ORS 547.110, owners representing at least 35 percent of the acreage in the district constitute a quorum for the annual meeting in the succeeding year.**

SECTION 19. ORS 547.110 is amended to read:

547.110. In the same month of each year after the election of the first board of supervisors, the board shall call a meeting of the owners of land in the district[, *after giving*]. **The board shall give** notice in the manner provided for in ORS 547.105. The owners shall meet at the time and place fixed by the board and elect one or two supervisors in the manner prescribed in ORS 547.105, who shall hold office for three years and until a successor is elected and qualified. However, after the report of the commissioners has been confirmed by the court under the provisions of ORS 547.235, only the owners, **or the**

designees of the owners, of the land having benefits attributed to the land [*shall be*] **are** entitled to vote at the annual meetings held under the provisions of this section.

SECTION 20. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Approved by the Governor June 25, 2015
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