

# House Bill 2543

Sponsored by Representative KRUMMEL (at the request of David A. Smith)

## 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**.

Creates additional exemption from leasing requirements for submersible lands.

## A BILL FOR AN ACT

Relating to leases of submersible lands; amending ORS 274.040 and 274.043.

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

**SECTION 1.** ORS 274.043 is amended to read:

274.043. (1) A privately owned float or dock [*occupying an area of 200 square feet or less*] is exempt from the leasing requirements of ORS 274.040 if:

(a) The structure belongs to the immediately adjacent riparian landowner; [*and*]

(b) The float or dock is uncovered, unenclosed and open on all sides[.]; **and**

**(c) The float or dock occupies an area of 200 square feet or less.**

**(2) A privately owned float or dock is exempt from the leasing requirements of ORS 274.040 if:**

**(a) The structure belongs to the immediately adjacent riparian landowner;**

**(b) The float or dock is unenclosed and open on all sides, and has a deck above the float or dock; and**

**(c) The float or dock and the deck occupy a combined total area of 1,000 square feet or less.**

[(2)] **(3)** A privately owned float or dock constructed prior to September 29, 1991, and exempted under ORS 274.042 (1989 Edition) is exempt from the provisions of ORS 274.040.

[(3)] **(4)** The Department of State Lands may, by rule, provide for additional exemptions to the leasing requirements of ORS 274.040.

[(4)] **(5)** Any float or dock described in subsections (1) to [(3)] **(4)** of this section shall be registered with the department.

**SECTION 2.** ORS 274.040 is amended to read:

274.040. (1) Except as provided in ORS 274.043 (1) to [(3)] **(4)**, in ORS 274.085 for leases of submersible lands acquired as an investment for the Common School Fund, in ORS 274.530 (1) for leases of submersible lands of less than one year's duration, in ORS 274.530 (3) for licenses of less than three years' duration and in subsections (2) and (3) of this section, submersible lands owned by the State of Oregon may be leased only to the highest bidder, bidding at least the minimum amount designated by the Department of State Lands under subsection (6) of this section for the lease of any such lands, after being advertised not less than once each week for two successive weeks in one or more newspapers of general circulation in the county in which the lands are situated. However, any owner of lands abutting or fronting on such submersible lands shall have the

**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 preference right to lease the lands unless the submersible lands are occupied by a person claiming  
 2 the right of occupancy under a conveyance recorded before January 1, 1981, from the present owner  
 3 or predecessor in interest of lands abutting or fronting the submersible lands. If so, the occupant  
 4 of the submersible lands shall have the preference right to lease the lands. An easement or license  
 5 related to utility service on the submersible lands does not establish a preference right under this  
 6 subsection. The lands shall be leased for the amount designated by the department under subsection  
 7 (6) of this section as the minimum amount for the lease of any such lands. The preference provided  
 8 in this subsection applies to any lease of submersible land for one year or more offered or issued  
 9 under ORS 274.530. The preference provided in this subsection does not apply to any lease offered  
 10 or issued by the department under ORS 274.705 to 274.860.

11 (2) Submersible lands owned by the State of Oregon that are determined by the State Land  
 12 Board to be available for sale may be sold only to the highest bidder, after being advertised not less  
 13 than once each week for two successive weeks in one or more newspapers of general circulation in  
 14 the county in which the lands are situated. However:

15 (a) No such lands shall be sold for less than for a fair appraised value as determined by an ap-  
 16 praiser appointed by the department.

17 (b) All sales of such submersible lands shall be approved by the State Land Board.

18 (c) Any owner of lands abutting or fronting on such submersible lands shall have the preference  
 19 right to purchase such lands for the fair appraised value provided that the sale of such lands be  
 20 approved by the State Land Board.

21 (3)(a) The department may grant, to any person holding a permit from the Water Resources Di-  
 22 rector authorizing the impoundment for beneficial use of the waters of any lake or stream, ease-  
 23 ments over submersible lands for flowage and storage of waters, and for the construction,  
 24 maintenance and operation of any structures or facilities necessary for the use of the water under  
 25 the terms of the permit upon payment of just compensation by the grantee.

26 (b) In addition to the authority of the department under paragraph (a) of this subsection to grant  
 27 easements over submersible lands, a person holding a water right permit, water right certificate,  
 28 proposed or final order approving a water right permit or court decree evidencing a water right  
 29 may occupy state-owned submersible lands for the construction, maintenance and operation of any  
 30 structure or facility necessary for the use of water if the proposed use under the permit, certificate,  
 31 order or decree is for irrigation or domestic use. The department may not charge for the occupation  
 32 of state-owned submersible lands pursuant to this paragraph, nor may the department require that  
 33 a person obtain written documentation to substantiate the permission granted under this paragraph.  
 34 Upon request by the Department of State Lands, the Water Resources Department shall provide in-  
 35 formation to the Department of State Lands regarding any change of use of the water right. A per-  
 36 son may continue to occupy state-owned submersible lands pursuant to this paragraph until:

37 (A) The water right permit is canceled pursuant to ORS 537.260;

38 (B) The water right is canceled pursuant to ORS 540.641; or

39 (C) The water is no longer being applied to irrigation or domestic use.

40 (c) An easement or the permission granted under this subsection may not be construed to be a  
 41 sale or lease of the submersible lands within the meaning of subsections (1) and (2) of this section.

42 (d) A person granted an easement or permission to use or occupy state-owned submersible lands  
 43 under this subsection shall indemnify and hold harmless the state from all liability and claims aris-  
 44 ing from or attributable to the use or occupation.

45 (4) All easements or the permission granted pursuant to subsection (3) of this section shall be

1 subject to conditions that will ensure the safety of the public and the preservation of economic,  
2 scenic and recreational values and to lawful rules promulgated by state agencies affected by the  
3 activities of the grantee.

4 (5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806,  
5 622.270 or 622.320 to 622.350.

6 (6) The Department of State Lands shall designate the minimum acceptable amount for the lease  
7 of any submersible lands otherwise authorized by law, other than any lease offered or issued by the  
8 department under ORS 274.705 to 274.860.

9 (7) For the purpose of sale, the value of state-owned submersible lands shall be determined by  
10 an appraiser appointed by the department.

11 (8) The act of any person entering into an agreement with the department under this section  
12 or ORS 274.530 for the lease of submersible lands shall not be considered a waiver by such person  
13 of any claim of ownership in the submersible lands described in the agreement.

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