

House Bill 2573

Sponsored by Representative ROBLAN

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**.

Specifies conditions related to sale of formerly submerged and submersible lands that at time of sale are filled lands and that are owned by state. Requires that lands be sold for not less than fair market value, excluding any improvements.

A BILL FOR AN ACT

1
2 Relating to state lands; creating new provisions; and amending ORS 274.040.

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

4 **SECTION 1.** ORS 274.040 is amended to read:

5 274.040. (1) Except as provided in ORS 274.043 (1) to (3), in ORS 274.085 for leases of submersible
6 lands acquired as an investment for the Common School Fund, in ORS 274.530 (1) for leases of
7 submersible lands of less than one year's duration, in ORS 274.530 (3) for licenses of less than three
8 years' duration and in subsections (2) and [(3)] (4) of this section, submersible lands owned by the
9 State of Oregon may be leased only to the highest bidder, bidding at least the minimum amount
10 designated by the Department of State Lands under subsection [(6)] (7) of this section for the lease
11 of any such lands, after being advertised not less than once each week for two successive weeks in
12 one or more newspapers of general circulation in the county in which the lands are situated. How-
13 ever, any owner of lands abutting or fronting [on such] **the** submersible lands shall have the pref-
14 erence right to lease the lands unless the submersible lands are occupied by a person claiming the
15 right of occupancy under a conveyance recorded before January 1, 1981, from the present owner or
16 predecessor in interest of lands abutting or fronting the submersible lands. If so, the occupant of the
17 submersible lands shall have the preference right to lease the lands. An easement or license related
18 to utility service on the submersible lands does not establish a preference right under this sub-
19 section. The lands shall be leased for the amount designated by the department under subsection
20 [(6)] (7) of this section as the minimum amount for the lease of any such lands. The preference
21 provided in this subsection applies to any lease of submersible land for one year or more offered or
22 issued under ORS 274.530. The preference provided in this subsection does not apply to any lease
23 offered or issued by the department under ORS 274.705 to 274.860.

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

28 [(a) No such] **The** lands [shall] **may not** be sold for less than [for a fair appraised] **fair market**
29 value, as determined by an appraiser appointed by the department.

30 [(b) All sales of such submersible lands shall] **The sale must** be approved by the State Land
31 Board.

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 [(c)] (b) Any owner of lands abutting or fronting [on such] **the** submersible lands [shall have]
 2 **has** the preference right to purchase [such] **the** lands for the fair [appraised] **market** value provided
 3 that the sale of [such] **the** lands [be] **is** approved by the State Land Board.

4 (3)(a) **Formerly submerged and submersible lands that at the time of sale are filled lands,**
 5 **as defined in ORS 274.705, that are owned by the State of Oregon and that are determined**
 6 **by the State Land Board to be available for sale may be sold only to the highest bidder, after**
 7 **being advertised not less than once each week for two successive weeks in one or more**
 8 **newspapers of general circulation in the county in which the lands are situated. The lands**
 9 **may not be sold for less than fair market value, as determined by an appraiser appointed by**
 10 **the department, excluding any improvements, including but not limited to paving, tiling or**
 11 **any buildings, structures or facilities, to the filled lands. The sale must be approved by the**
 12 **State Land Board.**

13 (b) **Any owner of lands abutting or fronting the filled lands has the preference right to**
 14 **purchase the lands for the fair market value provided that the sale of the lands is approved**
 15 **by the State Land Board.**

16 [(3)(a)] (4)(a) The department may grant, to any person holding a permit from the Water Re-
 17 sources Director authorizing the impoundment for beneficial use of the waters of any lake or stream,
 18 easements over submersible lands for flowage and storage of waters, and for the construction,
 19 maintenance and operation of any structures or facilities necessary for the use of the water under
 20 the terms of the permit upon payment of just compensation by the grantee.

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

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

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

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

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

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

40 [(4)] (5) All easements or the permission granted pursuant to subsection [(3)] (4) of this section
 41 shall be subject to conditions that will ensure the safety of the public and the preservation of eco-
 42 nomic, scenic and recreational values and to lawful rules promulgated by state agencies affected by
 43 the activities of the grantee.

44 [(5)] (6) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806,
 45 622.270 or 622.320 to 622.350.

1 [(6)] (7) The Department of State Lands shall designate the minimum acceptable amount for the
2 lease of any submersible lands otherwise authorized by law, other than any lease offered or issued
3 by the department under ORS 274.705 to 274.860.

4 [(7) *For the purpose of sale, the value of state-owned submersible lands shall be determined by an*
5 *appraiser appointed by the department.*]

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

9 **SECTION 2. The amendments to ORS 274.040 by section 1 of this 2009 Act apply to sales**
10 **of formerly submerged and submersible lands by the State Land Board on or after the ef-**
11 **fective date of this 2009 Act.**

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