

# House Bill 3337

Sponsored by Representative BENTZ; Representatives CAMERON, FREEMAN, GARRARD, GILLIAM, GILMAN, HUFFMAN, JENSON, KRIEGER, MAURER, G SMITH, SPRENGER, WEIDNER, WHISNANT, WINGARD, Senator MORRISETTE (at the request of Oregon Farm Bureau)

## 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**.

Allows person to occupy state-owned submersible or submerged lands, without fee, to operate and maintain streambank and stabilization structures.

## A BILL FOR AN ACT

1  
2 Relating to streambank stabilization structures; 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) of this section, submersible lands owned by the State  
9 of Oregon may be leased only to the highest bidder, bidding at least the minimum amount designated  
10 by the Department of State Lands under subsection (6) of this section for the lease of any such  
11 lands, after being advertised not less than once each week for two successive weeks in one or more  
12 newspapers of general circulation in the county in which the lands are situated. However, any  
13 owner of lands abutting or fronting on such submersible lands shall have the preference right to  
14 lease the lands unless the submersible lands are occupied by a person claiming the right of occu-  
15 pancy under a conveyance recorded before January 1, 1981, from the present owner or predecessor  
16 in interest of lands abutting or fronting the submersible lands. If so, the occupant of the submersible  
17 lands shall have the preference right to lease the lands. An easement or license related to utility  
18 service on the submersible lands does not establish a preference right under this subsection. The  
19 lands shall be leased for the amount designated by the department under subsection (6) of this sec-  
20 tion as the minimum amount for the lease of any such lands. The preference provided in this sub-  
21 section applies to any lease of submersible land for one year or more offered or issued under ORS  
22 274.530. The preference provided in this subsection does not apply to any lease offered or issued by  
23 the department under ORS 274.705 to 274.860.

24 (2) 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 lands shall be sold for less than for a fair appraised value as determined by an ap-  
29 praiser appointed by the department.

30 (b) All sales of such submersible lands shall be approved by the State Land 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) Any owner of lands abutting or fronting on such submersible lands shall have the preference  
 2 right to purchase such lands for the fair appraised value provided that the sale of such lands be  
 3 approved by the State Land Board.

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

9 (b) In addition to the authority of the department under paragraph (a) of this subsection to grant  
 10 easements over submersible lands, a person holding a water right permit, water right certificate,  
 11 proposed or final order approving a water right permit or court decree evidencing a water right  
 12 may occupy state-owned submersible **or submerged** lands for the construction, maintenance and  
 13 operation of any structure or facility necessary for the use of water if the proposed use under the  
 14 permit, certificate, order or decree is for irrigation or domestic use. The department may not charge  
 15 for the occupation of state-owned submersible **or submerged** lands pursuant to this paragraph, nor  
 16 may the department require that a person obtain written documentation to substantiate the per-  
 17 mission granted under this paragraph. Upon request by the Department of State Lands, the Water  
 18 Resources Department shall provide information to the Department of State Lands regarding any  
 19 change of use of the water right. A person may continue to occupy state-owned submersible lands  
 20 pursuant to this paragraph until:

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

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

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

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

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

29 (4) All easements or the permission granted pursuant to subsection (3) of this section shall be  
 30 subject to conditions that will ensure the safety of the public and the preservation of economic,  
 31 scenic and recreational values and to lawful rules promulgated by state agencies affected by the  
 32 activities of the grantee.

33 (5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806,  
 34 622.270 or 622.320 to 622.350.

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

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

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

43 **(9)(a) A person may occupy state-owned submersible or submerged lands for the opera-**  
 44 **tion and maintenance of streambank stabilization structures.**

45 **(b) The department may not charge a fee for the occupation of state-owned submersible**

1 or submerged lands under this subsection.

2 SECTION 2. The amendments to ORS 274.040 by section 1 of this 2009 Act apply only to  
3 streambank stabilization structures in existence before the effective date of this 2009 Act.

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