

House Bill 2082

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Environmental Quality)

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 Director of the Department of Environmental Quality to approve certain settlements concerning releases of hazardous substances.

Specifies that certain agreements to release parties from potential liability to state must be set forth in administrative agreements.

A BILL FOR AN ACT

1
2 Relating to releases of hazardous substances; creating new provisions; and amending ORS 465.320
3 and 465.327.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 465.200 to**
6 **465.545.**

7 **SECTION 2. (1) Notwithstanding any provision of ORS 465.325, whenever practicable and**
8 **in the public interest, as determined by the Director of the Department of Environmental**
9 **Quality, the director may approve a settlement, including but not limited to cash or in kind**
10 **settlements, with any person with respect to a release of a hazardous substance from a fa-**
11 **ility. A settlement under this section must be set forth in either a consent judgment in**
12 **accordance with the procedures specified in ORS 465.325 (4) or in an administrative agree-**
13 **ment.**

14 **(2) A party that enters into a settlement set forth in a consent judgment under sub-**
15 **section (1) of this section is not liable for any claims addressed in the consent judgment:**

16 **(a) To this state, any agency thereof or any political subdivision of the state under ORS**
17 **465.200 to 465.545 and 465.900; and**

18 **(b) To any person under ORS 465.255.**

19 **(3) A party that enters into a settlement set forth in an administrative settlement under**
20 **subsection (1) of this section is not liable to this state, any agency thereof or any political**
21 **subdivision of this state under ORS 465.200 to 465.545 and 465.900 for any claims addressed**
22 **in the administrative settlement.**

23 **SECTION 3. ORS 465.327 is amended to read:**

24 465.327. (1) In order to facilitate cleanup and reuse of contaminated property, the Department
25 of Environmental Quality may, through a written agreement, provide a party with a release from
26 potential liability to the state under ORS 465.255, if:

27 (a) The party is not currently liable under ORS 465.255 for an existing release of hazardous
28 substance at the facility;

29 (b) Removal or remedial action is necessary at the facility to protect human health or the en-
30 vironment;

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) The proposed redevelopment or reuse of the facility will not contribute to or exacerbate ex-
 2 isting contamination, increase health risks or interfere with remedial measures necessary at the fa-
 3 cility; and

4 (d) A substantial public benefit will result from the agreement, including but not limited to:

5 (A) The generation of substantial funding or other resources facilitating remedial measures at
 6 the facility in accordance with this section;

7 (B) A commitment to perform substantial remedial measures at the facility in accordance with
 8 this section;

9 (C) Productive reuse of a vacant or abandoned industrial or commercial facility; or

10 (D) Development of a facility by a governmental entity or nonprofit organization to address an
 11 important public purpose.

12 (2) In determining whether to enter an agreement under this section, the department shall con-
 13 sult with affected land use planning jurisdictions and consider reasonably anticipated future land
 14 uses at the facility and surrounding properties.

15 (3) An agreement under this section [*may be set forth in an administrative consent order or*
 16 *other*] **must, after opportunity for public notice and comment pursuant to ORS 465.320, be set**
 17 **forth as an** administrative agreement [*or in a judicial consent judgment entered in accordance with*
 18 *ORS 465.325*]. Any such agreement may include provisions considered necessary by the department,
 19 and shall include:

20 (a) A commitment to undertake the measures constituting a substantial public benefit;

21 (b) If remedial measures are to be performed under the agreement, a commitment to perform any
 22 such measures under the department's oversight;

23 (c) A waiver by the party of any claim or cause of action against the State of Oregon arising
 24 from contamination at the facility existing as of the date of acquisition of ownership or operation
 25 of the facility;

26 (d) A grant of an irrevocable right of entry to the department and its authorized representative
 27 for purposes of the agreement or for remedial measures authorized under this section;

28 (e) A reservation of rights as to an entity not a party to the agreement; and

29 (f) A legal description of the property.

30 (4) Subject to the satisfactory performance by the party of its obligations under the agreement,
 31 the party shall not be liable to [*the State of Oregon*] **any person** under ORS 465.200 to 465.545 and
 32 465.900 for any release of a hazardous substance at the facility existing as of the date of acquisition
 33 of ownership or operation of the facility. The party shall bear the burden of proving that any haz-
 34 ardous substance release existed before the date of acquisition of ownership of the facility. This
 35 release from liability shall not affect a party's liability for claims arising from any:

36 (a) Release of a hazardous substance at the facility after the date of acquisition of ownership
 37 or operation;

38 (b) Contribution to or exacerbation of a release of a hazardous substance;

39 (c) Interference or failure to cooperate with the department or other persons conducting reme-
 40 dial measures under the department's oversight at the facility;

41 (d) Failure to exercise due care or take reasonable precautions with respect to any hazardous
 42 substance at the facility; and

43 (e) Violation of federal, state or local law.

44 (5) Any agreement entered under this section shall be recorded in the real property records from
 45 the county in which the facility is located. The benefits and burdens of the agreement, including the

1 release from liability, shall run with the land, but the release from liability shall limit or otherwise
 2 affect the liability only of persons who are not potentially liable under ORS 465.255 for a release
 3 of a hazardous substance at the facility as of the date of acquisition of ownership or operation of
 4 the facility and who assume and are bound by terms of the agreement applicable to the facility as
 5 of the date of acquisition of ownership or operation.

6 **SECTION 4.** ORS 465.320 is amended to read:

7 465.320. Except as provided in ORS 465.260 (3), before approval of any remedial action to be
 8 undertaken by the Department of Environmental Quality or any other person, [*or*] adoption of a
 9 certification decision under ORS 465.325 **or providing a party with a release under ORS**
 10 **465.327**, the department shall:

11 (1) Publish a notice and brief description of the proposed action in a local paper of general
 12 circulation and in the Secretary of State's Bulletin, and make copies of the proposal available to the
 13 public.

14 (2) Provide at least 30 days for submission of written comments regarding the proposed action,
 15 and, upon written request by 10 or more persons or by a group having 10 or more members, conduct
 16 a public meeting at or near the facility for the purpose of receiving verbal comment regarding the
 17 proposed action.

18 (3) Consider any written or verbal comments before approving the removal or remedial action
 19 **or providing a party with a release under ORS 465.327.**

20 (4) Upon final approval of the remedial action **or providing a party with a release under ORS**
 21 **465.327**, publish notice, as provided under subsection (1) of this section, and make copies of the ap-
 22 proved action available to the public.

23 **SECTION 5.** (1) **Section 2 of this 2011 Act applies to settlements approved by the Director**
 24 **of the Department of Environmental Quality on or after the effective date of this 2011 Act**
 25 **for releases of hazardous substances from facilities occurring before, on or after the effec-**
 26 **tive date of this 2011 Act.**

27 (2) **The amendments to ORS 465.320 and 465.327 by sections 3 and 4 of this 2011 Act apply**
 28 **to written agreements provided by the Department of Environmental Quality to a party on**
 29 **or after the effective date of this 2011 Act for releases of hazardous substances from facili-**
 30 **ties occurring before, on or after the effective date of this 2011 Act.**