

**A-Engrossed**  
**House Bill 3325**

Ordered by the House April 22  
Including House Amendments dated April 22

Sponsored by Representative BARKER (at the request of Department of Justice)

**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.

*[Requires that fine imposed in certain environmental crimes cases be in form of compensatory fine. Directs court to forward payments credited to compensatory fine to Department of Justice for deposit in Department of Justice Protection and Education Revolving Account. Modifies scope of phrase "state and federal environmental laws" for purposes of account.]*

*[Modifies provisions related to imposition of civil penalties by Department of State Lands, State Parks and Recreation Department, Department of Environmental Quality, State Department of Energy, State Department of Fish and Wildlife, State Department of Geology and Mineral Industries, State Forestry Department, Water Resources Department and State Department of Agriculture.]*

*[Dedicates certain penalties to Department of Justice Protection and Education Revolving Account.]*

*[Declares emergency, effective on passage.]*

**Modifies application of provision under which Department of Environmental Quality may enter into agreement with prospective purchaser of land under which purchaser is released from potential liability for certain releases, threatened releases or spills of hazardous substances or oil. Specifies conditions of release from potential liability.**

**A BILL FOR AN ACT**

1  
2 Relating to the environment; creating new provisions; and amending ORS 465.320, 465.327, 466.640  
3 and 468B.310.

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

5 **SECTION 1.** ORS 465.327 is amended to read:

6 465.327. (1) In order to facilitate cleanup and reuse of contaminated property, the Department  
7 of Environmental Quality may, through a written agreement, provide a party with a release from  
8 potential liability *[to the state]* under ORS 465.255, **466.640 and 468B.310** if:

9 (a) The party is not currently liable under:

10 (A) ORS 465.255 for an existing release of hazardous substance at the facility;

11 (B) **ORS 466.640 for an existing spill or release of oil or hazardous material at a facility**  
12 **that is subject to ORS 465.200 to 465.545; or**

13 (C) **ORS 468B.310 for the prior entry of oil into the waters of the state from a facility that**  
14 **is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (f) A legal description of the property.

26 (4)(a)(A) Subject to the satisfactory performance by the party of its obligations under [*the*] **an**  
27 **administrative** agreement, the party shall not be liable to the State of Oregon under ORS 465.200  
28 to 465.545 and 465.900 for any release of a hazardous substance at the facility existing as of the date  
29 of acquisition of ownership or operation of the facility, **under ORS 466.640 for the spill or release**  
30 **of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as**  
31 **of the date of acquisition of ownership or operation of the facility, or under ORS 468B.310 for**  
32 **the entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to**  
33 **465.545 and 468B.300 to 468B.500 before the date of acquisition of ownership or operation of**  
34 **the facility.**

35 (B) **Subject to the satisfactory performance by the party of its obligations under a judicial**  
36 **consent judgment or an administrative consent order, the party shall not be liable to the**  
37 **State of Oregon or any person under ORS 465.200 to 465.545 and 465.900 for any release of a**  
38 **hazardous substance at the facility existing as of the date of acquisition of ownership or**  
39 **operation of the facility, under ORS 466.640 for the spill or release of oil or hazardous ma-**  
40 **terial at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of acqui-**  
41 **sition of ownership or operation of the facility, or under ORS 468B.310 for the entry of oil**  
42 **into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and**  
43 **468B.300 to 468B.500 before the date of acquisition of ownership or operation of the facility.**

44 (b) The party shall bear the burden of proving that any hazardous substance release **under ORS**  
45 **465.200 to 465.545 at the facility** existed before the date of acquisition of ownership **or operation**

1 of the facility, **that any spill or release under ORS 466.640 of oil or hazardous material at a**  
2 **facility that is subject to ORS 465.200 to 465.545 existed before the date of acquisition of**  
3 **ownership or operation of the facility, or that the entry of oil under ORS 468B.310 into the**  
4 **waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to**  
5 **468B.500 occurred before the date of acquisition of ownership or operation of the facility.**

6 (c) This release from liability shall not affect a party's liability for claims arising from any:

7 [(a)] (A)(i) Release of a hazardous substance **under ORS 465.200 to 465.545 at the facility on**  
8 **or after the date of acquisition of ownership or operation of the facility;**

9 (ii) **Spill or release under ORS 466.640 of oil or hazardous material at a facility that is**  
10 **subject to ORS 465.200 to 465.545 on or after the date of acquisition of ownership or operation**  
11 **of the facility; or**

12 (iii) **Entry of oil under ORS 468B.310 into the waters of the state from a facility that is**  
13 **subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 on or after the date of acquisition**  
14 **of ownership or operation of the facility.**

15 [(b)] (B)(i) Contribution to, or exacerbation of, **on or after the date of acquisition of owner-**  
16 **ship or operation of the facility,** a release of a hazardous substance **at the facility under ORS**  
17 **465.200 to 465.545;**

18 (ii) **Contribution to, or exacerbation of, on or after the date of acquisition of ownership**  
19 **or operation of a facility that is subject to ORS 465.200 to 465.545, a spill or release under**  
20 **ORS 466.640 of oil or hazardous material at the facility; or**

21 (iii) **Contribution to, or exacerbation of, on or after the date of acquisition of ownership**  
22 **or operation of a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500,**  
23 **any entry of oil under ORS 468B.310 into the waters of the state from the facility.**

24 [(c)] (C) Interference or failure to cooperate **on or after the date of acquisition of ownership**  
25 **or operation of the facility** with the department or other persons conducting remedial measures  
26 under the department's oversight at the facility[;].

27 [(d)] (D) Failure to exercise due care or take reasonable precautions **on or after the date of**  
28 **acquisition of ownership or operation of the facility** with respect to any hazardous substance at  
29 the facility[; *and*].

30 [(e)] (E) Violation of federal, state or local law **on or after the date of acquisition of own-**  
31 **ership or operation of the facility.**

32 (5) Any agreement entered under this section shall be recorded in the real property records from  
33 the county in which the facility is located. The benefits and burdens of the agreement, including the  
34 release from liability, shall run with the land, but the release from liability shall limit or otherwise  
35 affect the liability only of persons who are not potentially liable:

36 (a) Under ORS 465.255 for a release of a hazardous substance at the facility **existing** as of the  
37 date of acquisition of ownership or operation of the facility and who assume and are bound by terms  
38 of the agreement applicable to the facility as of the date of acquisition of ownership or  
39 operation[.];

40 (b) **Under ORS 466.640 for any spill or release of oil or hazardous material at a facility**  
41 **that is subject to ORS 465.200 to 465.545 existing as of the date of acquisition of ownership**  
42 **or operation of the facility and who assume and are bound by terms of the agreement ap-**  
43 **licable to the facility as of the date of acquisition of ownership or operation; or**

44 (c) **Under ORS 468B.310 for the entry of oil into the waters of the state from a facility**  
45 **that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the**

1 **date of acquisition of ownership or operation of the facility and who assume and are bound**  
2 **by terms of the agreement applicable to the facility as of the date of acquisition of ownership**  
3 **or operation.**

4 **SECTION 2.** ORS 465.320 is amended to read:

5 465.320. Except as provided in ORS 465.260 (3), before approval of any remedial action to be  
6 undertaken by the Department of Environmental Quality or any other person, [*or*] adoption of a  
7 certification decision under ORS 465.325 **or providing a release from liability under ORS 465.327**  
8 **to a party in a judicial consent judgment or an administrative consent order**, the department  
9 shall:

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

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

17 (3) Consider any written or verbal comments before approving the removal or remedial action  
18 **or providing a release from liability under ORS 465.327 to a party in a judicial consent judg-**  
19 **ment or an administrative consent order.**

20 (4) Upon final approval of the remedial action **or providing a release from liability under ORS**  
21 **465.327 to a party in a judicial consent judgment or an administrative consent order**, publish  
22 notice, as provided under subsection (1) of this section, and make copies of the approved action  
23 available to the public.

24 **SECTION 3.** ORS 466.640 is amended to read:

25 466.640. (1) Any person owning or having control over any oil or hazardous material spilled or  
26 released or threatening to spill or release shall be strictly liable without regard to fault for the spill  
27 or release or threatened spill or release. However, in any action to recover damages, the person  
28 shall be relieved from strict liability without regard to fault if the person can prove that the spill  
29 or release of oil or hazardous material was caused by:

30 [(1)] (a) An act of war or sabotage or an act of God.

31 [(2)] (b) Negligence on the part of the United States Government or the State of Oregon.

32 [(3)] (c) An act or omission of a third party without regard to whether any such act or omission  
33 was or was not negligent.

34 (2) **Notwithstanding the provisions of subsection (1) of this section:**

35 (a) **A person who has entered into, and is in compliance with, an administrative agree-**  
36 **ment under ORS 465.327 is not liable to the State of Oregon for any spill or release of oil or**  
37 **hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the**  
38 **date of the person's acquisition of ownership or operation of the facility, to the extent pro-**  
39 **vided in ORS 465.327.**

40 (b) **A person who has entered into, and is in compliance with, a judicial consent judgment**  
41 **or an administrative consent order under ORS 465.327 is not liable to the State of Oregon**  
42 **or any person for any spill or release of oil or hazardous material at a facility that is subject**  
43 **to ORS 465.200 to 465.545 existing as of the date of the person's acquisition of ownership or**  
44 **operation of the facility, to the extent provided in ORS 465.327.**

45 **SECTION 4.** ORS 468B.310 is amended to read:

1           468B.310. (1) Any person owning oil or having control over oil which enters the waters of the  
2 state in violation of ORS 468B.305 shall be strictly liable, without regard to fault, for the damages  
3 to persons or property, public or private, caused by such entry. However, in any action to recover  
4 damages, the person shall be relieved from strict liability without regard to fault if the person can  
5 prove that the oil to which the damages relate, entered the waters of the state by causes set forth  
6 in ORS 468B.305 (2).

7           (2) Nothing in this section shall be construed as limiting the right of a person owning or having  
8 control of oil to maintain an action for the recovery of damages against another person for an act  
9 or omission of such other person resulting in the entry of oil into the waters of the state for which  
10 the person owning or having control of such oil is liable under subsection (1) of this section.

11           **(3) Notwithstanding the provisions of subsections (1) and (2) of this section:**

12           **(a) A person who has entered into, and is in compliance with, an administrative agree-**  
13 **ment under ORS 465.327 is not liable to the State of Oregon for any entry of oil into the**  
14 **waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to**  
15 **468B.500 that occurred before the date of the person's acquisition of ownership or operation**  
16 **of the facility, to the extent provided in ORS 465.327.**

17           **(b) A person who has entered into, and is in compliance with, a judicial consent judgment**  
18 **or an administrative consent order under ORS 465.327 is not liable to the State of Oregon**  
19 **or any person for any entry of oil into the waters of the state from a facility that is subject**  
20 **to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the**  
21 **person's acquisition of ownership or operation of the facility, to the extent provided in ORS**  
22 **465.327.**

23           **SECTION 5. The amendments to ORS 465.320, 465.327, 466.640 and 468B.310 by sections 1**  
24 **to 4 of this 2011 Act apply to written agreements entered into by the Department of Envi-**  
25 **ronmental Quality with a party on or after the effective date of this 2011 Act.**

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