

A-Engrossed
Senate Bill 600

Ordered by the Senate April 25
Including Senate Amendments dated April 25

Sponsored by Senator JOHNSON

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.

Modifies provisions related to lease of submersible lands. Modifies provisions related to easements over submersible lands. Modifies provisions related to certain privately owned floats and docks. [*Creates new exemptions related to*] **Allows Department of State Lands to authorize, without charge, certain uses of** submerged and submersible lands. Modifies provisions related to help fields.

A BILL FOR AN ACT

1
2 Relating to the Department of State Lands; creating new provisions; and amending ORS 274.040,
3 274.043, 274.060, 274.885 and 274.895.

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

5
6 **LEASES AND EASEMENTS**

7
8 **SECTION 1.** ORS 274.040 is amended to read:

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

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 [does] do not apply to any lease offered or issued by the department under ORS 274.705 to 274.860.
2 **The preference for the owner of lands provided in this subsection does not apply to the re-**
3 **newal of an existing lease where the lessee is in compliance with all the terms and conditions**
4 **of the lease.**

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

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

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

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

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

20 (b) In addition to the authority of the department under paragraph (a) of this subsection to grant
21 easements over **submerged and** submersible lands, a person holding a water right permit, water
22 right certificate, proposed or final order approving a water right permit or court decree evidencing
23 a water right may occupy state-owned **submerged and** submersible lands for the construction,
24 maintenance and operation of any structure or facility necessary for the use of water if the proposed
25 use under the permit, certificate, order or decree is for irrigation or domestic use. The department
26 may not charge for the occupation of state-owned **submerged and** submersible lands pursuant to
27 this paragraph, nor may the department require that a person obtain written documentation to
28 substantiate the permission granted under this paragraph. Upon request by the Department of State
29 Lands, the Water Resources Department shall provide information to the Department of State Lands
30 regarding any change of use of the water right. A person may continue to occupy state-owned
31 **submerged and** 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 **submerged and** submersible lands within the meaning of subsections (1) and (2)
37 of this section.

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

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

45 (5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806,

1 622.270 or 622.320 to 622.350.

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

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

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

11 **SECTION 2.** ORS 274.043 is amended to read:

12 274.043. (1) A privately owned float or dock occupying an area of 200 square feet or less is ex-
13 empt from the leasing requirements of ORS 274.040 if:

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

15 (b) The float or dock is uncovered, unenclosed and open on all sides.

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

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

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

22 **(3) Any float or dock described in subsections (1) and (2) of this section shall be regis-**
23 **tered with the Department of State Lands.**

24 **(4) The department may authorize the following uses of state-owned submerged and**
25 **submersible lands without charge:**

26 **(a) Structures on state-owned submerged and submersible lands maintained by a drainage**
27 **district organized under the provisions of ORS chapter 547.**

28 **(b) Riprap, as defined in ORS 196.815, used to stabilize the banks along state-owned sub-**
29 **merged and submersible lands.**

30 **(c) Voluntary habitat restoration work on state-owned submerged and submersible lands.**
31 **For purposes of this paragraph, voluntary habitat restoration work does not include:**

32 **(A) Activities undertaken to satisfy any actual or potential legal obligation, or for which**
33 **the entity completing the habitat restoration work receives compensation of any kind.**

34 **(B) Habitat restoration work completed by an entity to satisfy an environmental miti-**
35 **gation obligation, or to generate, sell or obtain credit as an offset against actual or potential**
36 **natural resource damages liability.**

37 **(5) The department is entitled to charge, in accordance with rules adopted by the de-**
38 **partment, for the use of state-owned submerged and submersible lands for any environ-**
39 **mental mitigation credit, or settlement of or credit obtained as an offset against natural**
40 **resource damages liability, acquired by any party for habitat restoration work on state-**
41 **owned land.**

42 **(6) The uses described in subsections (4) and (5) of this section must be registered in**
43 **accordance with rules adopted by the department. Any person issued a registration to use**
44 **or occupy state-owned submerged and submersible lands under subsections (4) and (5) of this**
45 **section shall indemnify and hold harmless the state from all liability and claims arising from**

1 or attributable to the use or occupation.

2 (7) The department by rule may authorize the use of specific state-owned submerged or
3 submersible lands without charge if the department determines that the use is minimally
4 intrusive to any public rights of navigation, fishery or recreation.

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6 **CONFORMING AMENDMENTS**

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8 **SECTION 3.** ORS 274.060 is amended to read:

9 274.060. (1) Nothing in ORS 274.040 prevents the Legislative Assembly from providing for regu-
10 lation of the building of wharves or other improvements in any bay, harbor or inlet of this state,
11 subject to ORS 780.060, or grants the exclusive right to any person to use the natural oyster beds
12 of this state.

13 (2) The grantee of any **submerged or** submersible lands under ORS 274.040 shall hold the same
14 subject to the easement of the public, under the provisions and restrictions of law, to enter thereon
15 and remove oysters and other shell fish therefrom.

16
17 **KELP FIELDS**

18
19 **SECTION 4.** ORS 274.885 is amended to read:

20 274.885. [(1)] The Department of State Lands may lease submerged lands owned by the State of
21 Oregon for the purpose of harvesting kelp and other seaweed after consultation with the State Fish
22 and Wildlife Commission.

23 [(2) *The lease may be for a term of not to exceed 50 years and shall provide for the payment to the*
24 *State of Oregon of a sum to be fixed by the department for all kelp or other seaweed harvested under*
25 *the lease, to be paid at the end of each year. Not more than 40 miles of coast line shall be leased to*
26 *one person.*]

27 **SECTION 5.** ORS 274.895 is amended to read:

28 274.895. Except in the case of a person harvesting or removing less than 2,000 pounds of **wet**
29 kelp each year for the purposes of human consumption **for the person's personal use**, [no person
30 shall] **a person may not** harvest or remove any kelp or other seaweed from any submerged lands
31 owned by the State of Oregon unless the person has first obtained a lease from the Department of
32 State Lands.

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34 **MISCELLANEOUS**

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36 **SECTION 6.** (1) **The amendments to ORS 274.040 (1) by section 1 of this 2011 Act apply**
37 **to leases issued by the Department of State Lands before, on and after the effective date of**
38 **this 2011 Act.**

39 (2) **The amendments to ORS 274.040 (3)(a) by section 1 of this 2011 Act apply to permits**
40 **authorizing the impoundment of waters for beneficial use that are issued by the Water Re-**
41 **sources Director before, on or after the effective date of this 2011 Act.**

42 (3) **The amendments to ORS 274.040 (3)(b) by section 1 of this 2011 Act apply to:**

43 (a) **Water right permits or water right certificates issued before, on or after the effective**
44 **date of this 2011 Act.**

45 (b) **Proposed or final orders approving a water right permit issued before, on or after the**

1 **effective date of this 2011 Act.**

2 (c) Court decrees evidencing a water right entered before, on or after the effective date
3 of this 2011 Act.

4 (4)(a) The amendments to ORS 274.043 by section 2 of this 2011 Act apply to:

5 (A) Structures constructed on state-owned submerged and submersible lands before, on
6 or after the effective date of this 2011 Act by drainage districts organized under the pro-
7 visions of ORS chapter 547.

8 (B) Riprap used to stabilize the banks along state-owned submerged and submersible
9 lands before, on or after the effective date of this 2011 Act.

10 (C) Voluntary habitat restoration work conducted on state-owned submerged and
11 submersible lands before, on or after the effective date of this 2011 Act.

12 (b) Any easement or lease under ORS chapter 274 entered into before the effective date
13 of this 2011 Act related to:

14 (A) Structures on state-owned submerged and submersible lands maintained by drainage
15 districts organized under the provisions of ORS chapter 547 need not be renewed, or may be
16 terminated before the date of renewal, by the grantee or lessee on or after the effective date
17 of this 2011 Act.

18 (B) Riprap used to stabilize the banks along state-owned submerged and submersible
19 lands need not be renewed, or may be terminated before the date of renewal, by the grantee
20 or lessee on or after the effective date of this 2011 Act.

21 (C) Voluntary habitat restoration work conducted on state-owned submerged and
22 submersible lands need not be renewed, or may be terminated before the date of renewal,
23 by the grantee or lessee on or after the effective date of this 2011 Act.

24 (c) Any person who does not renew, or who terminates before the date of renewal, an
25 easement or lease as described in paragraph (b) of this subsection may not claim re-
26 imbursement from the Department of State Lands for any amounts paid by the person re-
27 lated to the easement or lease prior to the date of nonrenewal or termination.

28 (5) The amendments to ORS 274.885 by section 4 of this 2011 Act apply to leases renewed,
29 or first entered into, by the Department of State Lands on or after the effective date of this
30 2011 Act.

31 **SECTION 7. The unit captions used in this 2011 Act are provided only for the convenience**
32 **of the reader and do not become part of the statutory law of this state or express any leg-**
33 **islative intent in the enactment of this 2011 Act.**

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