

**Minority Report**  
**A-Engrossed**  
**Senate Bill 867**

Ordered by the Senate April 21  
Including Senate Minority Report Amendments dated April 21

Sponsored by nonconcurring members of the Senate Committee on Judiciary: Senators KRUSE, WHITSETT

**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.

*[Specifies that Department of Environmental Quality may enter into agreements to implement institutional controls for purposes related to reducing exposure to hazardous substances. Makes all conditions imposed under those agreements valid and enforceable with any conveyance or assignment of interest in real property.]*

**Deletes provision that specifies that agreement between Department of Environmental Quality and prospective purchaser of land, under which prospective purchaser is released from potential liability for reasons related to release or threatened release of hazardous substances and department may perform remedial action, "runs with the land."**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

Relating to agreements that implement institutional controls on real property; creating new provisions; amending ORS 465.327; and declaring an emergency.

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

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

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

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

(b) Removal or remedial action is necessary at the facility to protect human health or the environment;

(c) The proposed redevelopment or reuse of the facility will not contribute to or exacerbate existing contamination, increase health risks or interfere with remedial measures necessary at the facility; and

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

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

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

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

(D) Development of a facility by a governmental entity or nonprofit organization to address an

**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 important public purpose.

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

5 (3) An agreement under this section may be set forth in an administrative consent order or other  
6 administrative agreement or in a judicial consent judgment entered in accordance with ORS 465.325.  
7 Any such agreement may include provisions considered necessary by the department, and shall in-  
8 clude:

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

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

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

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

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

18 (f) A legal description of the property.

19 (4) Subject to the satisfactory performance by the party of its obligations under the agreement,  
20 the party shall not be liable to the State of Oregon under ORS 465.200 to 465.545 and 465.900 for  
21 any release of a hazardous substance at the facility existing as of the date of acquisition of owner-  
22 ship or operation of the facility. The party shall bear the burden of proving that any hazardous  
23 substance release existed before the date of acquisition of ownership of the facility. This release  
24 from liability shall not affect a party's liability for claims arising from any:

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

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

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

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

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

33 (5) Any agreement entered under this section shall be recorded in the real property records from  
34 the county in which the facility is located. *[The benefits and burdens of the agreement, including the*  
35 *release from liability, shall run with the land, but the release from liability shall limit or otherwise*  
36 *affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of a*  
37 *hazardous substance at the facility as of the date of acquisition of ownership or operation of the facility*  
38 *and who assume and are bound by terms of the agreement applicable to the facility as of the date of*  
39 *acquisition of ownership or operation.]*

40 **SECTION 2. The amendments to ORS 465.327 by section 1 of this 2011 Act apply to**  
41 **agreements entered into on and after the effective date of this 2011 Act.**

42 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**  
43 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
44 **on its passage.**