

## SENATE AMENDMENTS TO SENATE BILL 867

By COMMITTEE ON JUDICIARY

April 21

1 On page 3 of the printed bill, delete lines 2 through 7 and insert:

2 “(h) As used in this subsection, ‘institutional control’ includes any of the following that is im-  
3 plemented to reduce the potential of exposure to hazardous substances:

4 “(A) A prohibition, restriction or limitation on the use of real property.

5 “(B) The installation, maintenance or monitoring of any remedial action on real property.

6 “(C) A restriction on access to real property.

7 “(D) Any other prohibition, restriction or obligation relating to access to, activities on or the  
8 use of real property.

9 “(E) Allowance of access to real property for the purpose of installing, maintaining or monitor-  
10 ing a control described in subparagraphs (A) to (D) of this paragraph.”

11 On page 4, delete lines 18 through 45 and insert:

12 “**SECTION 3. (1) As used in this section:**

13 “(a) ‘**Agreement**’ means an easement, equitable servitude, covenant, condition, re-  
14 striction or similar instrument, or any combination thereof.

15 “(b) ‘**Institutional control**’ has the meaning given that term in ORS 465.315 (1)(h).

16 “(2) **The Department of Environmental Quality may enter into an agreement, as grantee**  
17 **of an enforceable interest in real property, to implement an institutional control.**

18 “(3) **An agreement that implements an institutional control must:**

19 “(a) **Be signed by the Director of the Department of Environmental Quality or the**  
20 **director’s designee and all grantors of the enforceable interest; and**

21 “(b) **Contain a description of the real property that is subject to the agreement.**

22 “(4) **Unless otherwise specified in the agreement, a designated grantor shall file an**  
23 **agreement entered into under this section in the deed records of every county within which**  
24 **a portion of the real property that is subject to the agreement is located.**

25 “(5) **The department may require such conditions in an agreement as the department**  
26 **determines are reasonably related to carrying out any remedial action on the real property,**  
27 **including but not limited to payment of the department’s costs for monitoring and enforcing**  
28 **an institutional control.**

29 “(6) **An agreement entered into by the department for the purpose of implementing an**  
30 **institutional control:**

31 “(a) **Transfers with any conveyance or assignment of real property subject to the agree-**  
32 **ment; and**

33 “(b) **Is valid and enforceable against a grantor and against a person that has an interest**  
34 **in the real property that vests after the recording of the agreement, even if:**

35 “(A) **The agreement implements an institutional control in a manner that is not**

1 **appurtenant to an interest in real property, imposes a negative burden, creates an affirma-**  
2 **tive obligation, does not touch or concern the real property or is not otherwise recognized**  
3 **as valid or enforceable under common law; or**

4 **“(B) There is no privity of estate or contract between the department and the grantor**  
5 **or the person who has the interest in the real property that vested after the recording of the**  
6 **agreement.”.**

7 On page 5, delete lines 1 through 6.

8 On page 7, delete lines 11 and 12 and insert:

9 **“SECTION 7. The Oregon Law Commission shall post on the website maintained by the**  
10 **commission a copy of the commentary approved by the commission for the provisions of**  
11 **sections 3 and 8 of this 2011 Act and the amendments to ORS 465.315 by section 1 of this 2011**  
12 **Act.**

13 **“SECTION 8. Section 3 of this 2011 Act:**

14 **“(1) Applies to any agreement entered into on or after the effective date of this 2011 Act;**  
15 **and**

16 **“(2) Does not affect any interest in real property that involves the implementation of an**  
17 **institutional control granted before the effective date of this 2011 Act.”.**

18 In line 13, delete “8” and insert “9”.