

## SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2233

By COMMITTEE ON RULES

June 24

1 On page 1 of the printed A-engrossed bill, delete lines 8 through 23.

2 On page 2, delete lines 1 through 19 and insert:

3 **“SECTION 2. Definitions. As used in sections 2 to 12 of this 2013 Act:**

4 **“(1) ‘Abandoned vessel’ means a vessel that has been left without authorization on public**  
5 **or private land, the waters of this state, or any other water.**

6 **“(2) ‘Business day’ means any day other than a Saturday, a Sunday or a legal holiday as**  
7 **described in ORS 187.010.**

8 **“(3) ‘Derelict vessel’ means a vessel that is on the waters of this state and that is:**

9 **“(a) Sunk or in imminent danger of sinking;**

10 **“(b) Obstructing a waterway;**

11 **“(c) Endangering life or property; or**

12 **“(d) In such dilapidated condition that it is in danger of becoming a significant environ-**  
13 **mental hazard as evidenced by repeated and documented instances of leaking fuel, sewage**  
14 **or other pollutants.**

15 **“(4) ‘Enforcement agency’ means a law enforcement agency, a federal agency, the State**  
16 **Marine Board or any other public body, as defined in ORS 174.109, that has responsibility for**  
17 **land or water on which an abandoned vessel or a derelict vessel is located.**

18 **“(5) ‘Owner’ means a person who has a property interest in a vessel.**

19 **“(6)(a) ‘Vessel’ means a boat, a boathouse as defined in ORS 830.700, a floating home as**  
20 **defined in ORS 830.700, or any other floating structure that is normally secured to a pier or**  
21 **pilings.**

22 **“(b) ‘Vessel’ does not include a dock as defined in ORS 307.120.**

23 **“SECTION 3. Authority to seize abandoned vessel or derelict vessel. (1) An enforcement**  
24 **agency may seize a vessel as an abandoned vessel if:**

25 **“(a) The enforcement agency has probable cause to believe the vessel is an abandoned**  
26 **vessel; and**

27 **“(b) An owner does not move the vessel to a place where the vessel can be lawfully kept**  
28 **within the time specified in the notice given under section 4 of this 2013 Act, or within such**  
29 **additional time as may be specified in an order issued under section 7 (6) of this 2013 Act.**

30 **“(2) An enforcement agency may seize a vessel as a derelict vessel if:**

31 **“(a) The State Marine Director, or other person designated by the State Marine Director,**  
32 **has probable cause to believe the vessel is a derelict vessel, the director or designated person**  
33 **documented the facts supporting that belief as required by subsection (3) of this section, and**  
34 **the director or designated person has notified the enforcement agency that the vessel is**  
35 **subject to seizure; and**

1           “(b) The owner does not correct the problems identified in the notice given under section  
2 4 of this 2013 Act within the time specified in the notice, or within such additional time as  
3 may be specified in an order issued under section 7 (6) of this 2013 Act.

4           “(3) A vessel may be seized as a derelict vessel by reason of an imminent danger of  
5 sinking only if the State Marine Director, or other person designated by the State Marine  
6 Director, has documented the facts supporting the belief that the vessel is in imminent  
7 danger of sinking.

8           “(4) If an enforcement agency has probable cause to believe a vessel is an abandoned  
9 vessel or a derelict vessel, the enforcement agency may:

10           “(a) Secure the vessel in such a manner as to prevent harm to life or damage to property  
11 or to prevent the vessel from becoming a hazard to navigation.

12           “(b) Take action to mitigate any imminent environmental threat the vessel poses.

13           “(c) Salvage, tow and store the vessel.

14           “(5) If an enforcement agency has probable cause to believe a vessel is an abandoned  
15 vessel, the enforcement agency may enter and inspect the interior of the vessel, and objects  
16 in plain view within the interior of the vessel, only to the extent necessary to identify the  
17 owners of the vessel.

18           “(6) If an enforcement agency has probable cause to believe a vessel is a derelict vessel  
19 by reason of endangering life or property, or by reason of being in danger of becoming an  
20 environmental hazard, the enforcement agency may enter and inspect the interior of the  
21 vessel, objects in plain view within the interior of the vessel, and closed compartments within  
22 the interior of the vessel, only to the extent necessary to determine whether the vessel en-  
23 dangers life or property, or is in danger of becoming an environmental hazard.

24           “(7) An Oregon State Police officer, a sheriff, a deputy sheriff or a municipal police offi-  
25 cer may enter privately owned land for the purpose of determining whether a vessel is  
26 abandoned only with the consent of the landowner.”.

27           In line 21, delete “seven days” and insert “10 business days”.

28           In line 45, delete “prosecuted for the crime of” and insert “cited for”.

29           On page 3, line 10, delete “prosecuted for the crime of” and insert “cited for”.

30           Delete lines 13 through 24 and insert:

31           “(5) An owner of a vessel may request a hearing before an enforcement agency seizes a vessel  
32 under sections 2 to 12 of this 2013 Act by submitting a request for hearing to the enforcement  
33 agency not more than 10 business days after the notice required by this section is given. The request  
34 must indicate if the owner contends that the vessel is not abandoned or derelict, or indicate such  
35 other specific grounds on which seizure of the vessel is challenged.

36           “**SECTION 5. Seizure without notice.** (1) Nothing in sections 2 to 12 of this 2013 Act af-  
37 fects the ability of an enforcement agency to immediately seize without notice a vessel that  
38 presents a hazard to navigation or an imminent threat to public health or safety.

39           “(2) If an enforcement agency seizes without notice a vessel that presents a hazard to  
40 navigation or an imminent threat to public health or safety, and the enforcement agency  
41 wishes to dispose of the vessel under sections 2 to 12 of this 2013 Act, the enforcement  
42 agency shall provide notice as described in section 6 of this 2013 Act.”.

43           Delete lines 42 through 45 and insert:

44           “(2) The notice required under this section must include the date by which the costs of salvage,  
45 towing and storage must be paid to avoid title to the vessel vesting in the enforcement agency. The

1 date may not be less than 30 days after the date on which the vessel was seized.”.

2 On page 4, delete lines 1 through 3.

3 In line 23, delete “seven”.

4 In line 24, delete “days” and insert “10 business days”.

5 In line 36, after “seven” insert “business”.

6 On page 5, after line 2, insert:

7 “(6) If the notice given under section 4 of this 2013 Act indicates that the enforcement agency  
8 proposes to seize a vessel by reason of being an abandoned vessel, and the owner of a vessel re-  
9 quests a preseizure hearing under section 4 (5) of this 2013 Act, the owner may present a plan of  
10 action for moving the vessel to a place where the vessel can be lawfully kept. If the notice given  
11 under section 4 of this 2013 Act indicates that the enforcement agency proposes to seize a vessel  
12 by reason of being a derelict vessel, and the owner of a vessel requests a preseizure hearing under  
13 section 4 (5) of this 2013 Act, the owner may present a plan of action for remedying the problems  
14 identified in the notice. If the hearing officer approves the plan of action, the hearing officer by  
15 order may establish a time for moving the vessel, or remedying the problems, that is later than the  
16 time specified in the notice. If the hearing officer issues an order under this subsection, and the  
17 owner fails to move the vessel, or to remedy the problems, within the time allowed, the enforcement  
18 agency may seize the vessel and take such other action authorized under sections 2 to 12 of this  
19 2013 Act without further notice to the owner or opportunity for hearing except:

20 “(a) Giving post-seizure notice under section 6 of this 2013 Act; and

21 “(b) If the owner requests a hearing under section 4 (5) of this 2013 Act, allowing the owner to  
22 challenge the reasonableness of salvage, towing or storage costs as provided under section 6 (5) of  
23 this 2013 Act.”.

24 In line 3, delete “(6)” and insert “(7)”.

25 In line 4, delete “section” and insert “2013 Act”.

26 In line 8, delete “(7)” and insert “(8)”.

27 In line 12, delete “(8)” and insert “(9)”.

28 In line 15, delete “(9)” and insert “(10)”.

29 In line 17, delete “(10)” and insert “(11)” and delete “hearings” and insert “hearing”.

30 In line 20, delete “(11)” and insert “(12)”.

31 In line 29, delete “(11)” and insert “(12)”.

32 In line 33, after “(3)” insert “Except for costs of reclaiming a vessel under section 9 (1) of this  
33 2013 Act,”.

34 On page 6, delete lines 2 through 6 and insert:

35 “**NOTE:** Section 10 was deleted by amendment. Subsequent sections were not renumbered.”.

36 In line 13, after “notice” insert “, or within the time allowed under an order issued under sec-  
37 tion 7 (6) of this 2013 Act”.

38 In line 17, after “notice” insert “, or within the time allowed under an order issued under sec-  
39 tion 7 (6) of this 2013 Act”.

40 On page 7, line 45, delete “1 to 12” and insert “2 to 12”.

41 On page 8, delete lines 3 through 25 and insert:

42 “**SECTION 17.** ORS 830.990 is amended to read:

43 “830.990. (1)(a) Violation of ORS 830.565 by a person operating a manually propelled boat is a  
44 Class D violation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565  
45 is \$30.

1 “(b) Violation of ORS 830.565 by a person operating a motorboat is punishable as a Class D vi-  
2 olation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565 is \$50.

3 “(2) A person who violates ORS 830.050, 830.088, 830.090, 830.092, 830.094, 830.230, 830.415,  
4 830.710, 830.720, 830.770, 830.780, 830.810, 830.850 or 830.855, or rules adopted to carry out the pur-  
5 poses of those statutes, commits a Class D violation.

6 “(3) A person who violates ORS 830.220, 830.240, 830.245, 830.250, 830.375, 830.475 (4), 830.480,  
7 830.785, 830.805 or 830.825, or rules adopted to carry out the purposes of those statutes, commits a  
8 Class C violation.

9 “(4) A person who violates ORS 830.110, 830.175, 830.180, 830.185, 830.195, 830.210, 830.215,  
10 830.225, 830.235, 830.260, 830.300, 830.315 (2) and (3), 830.335, 830.340, 830.345, 830.350, 830.355,  
11 830.360, 830.362, 830.365, 830.370, 830.410, 830.420, 830.495, 830.560, 830.775, 830.795 or 830.830, or  
12 rules adopted to carry out the purposes of those statutes, commits a Class B violation.

13 “(5) A person who violates ORS 830.305 or 830.390, or rules adopted to carry out the purposes  
14 of those statutes, commits a Class A violation.

15 “(6) A person who violates ORS 830.383 or 830.909 commits a Class B misdemeanor.

16 “(7) A person who violates ORS 830.035 (2), 830.053, 830.315 (1), 830.325, 830.475 (1), 830.730 or  
17 830.955 (1) commits a Class A misdemeanor.

18 “(8) A person who violates ORS 830.475 (2) commits a Class C felony.

19 “(9) **A person who violates section 12 of this 2013 Act commits a Class A violation.**”.

20 Delete lines 32 through 45 and delete pages 9 through 11.

21 On page 12, delete lines 1 through 21 and insert:

22 “**SECTION 19.** ORS 466.605 is amended to read:

23 “466.605. As used in ORS 466.605 to 466.680 and 466.990 (3) and (4):

24 “(1) ‘Barrel’ means 42 U.S. gallons at 60 degrees Fahrenheit.

25 “(2) ‘Cleanup’ means the containment, collection, removal, treatment or disposal of oil or haz-  
26 arduous material; site restoration; and any investigations, monitoring, surveys, testing and other in-  
27 formation gathering required or conducted by the Department of Environmental Quality.

28 “(3) ‘Cleanup costs’ means all costs associated with the cleanup of a spill or release incurred  
29 by the state, its political subdivision or any person with written approval from the department when  
30 implementing ORS 466.205, 466.605 to 466.680, 466.990 (3) and (4) and 466.995 (2) or 468B.320.

31 “(4) ‘Commission’ means the Environmental Quality Commission.

32 “(5) ‘Department’ means the Department of Environmental Quality.

33 “(6) ‘Director’ means the Director of the Department of Environmental Quality.

34 “(7) ‘Hazardous material’ means one of the following:

35 “(a) A material designated by the commission under ORS 466.630.

36 “(b) Hazardous waste as defined in ORS 466.005.

37 “(c) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy  
38 Facility Siting Council under ORS 469.605 and radioactive substances as defined in ORS 453.005.

39 “(d) Communicable disease agents as regulated by the Oregon Health Authority under ORS  
40 431.035 to 431.530, 433.001 to 433.045 and 433.110 to 433.770.

41 “(e) Hazardous substances designated by the United States Environmental Protection Agency  
42 under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

43 “(8) ‘Oils’ or ‘oil’ includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse  
44 and any other petroleum related product.

45 “(9) ‘Person’ means an individual, trust, firm, joint stock company, corporation, partnership, as-

1 sociation, municipal corporation, political subdivision, interstate body, the state and any agency or  
2 commission thereof and the federal government and any agency thereof.

3 “(10) ‘Reportable quantity’ means one of the following:

4 “(a) A quantity designated by the commission under ORS 466.625.

5 “(b) The lesser of:

6 “(A) The quantity designated for hazardous substances by the United States Environmental  
7 Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act, P.L. 92-500,  
8 as amended;

9 “(B) The quantity designated for hazardous waste under ORS 466.005 to 466.385, 466.990 (1) and  
10 (2) and 466.992;

11 “(C) Any quantity of radioactive material, radioactive substance or radioactive waste;

12 “(D) If spilled into waters of the state, or escape into waters of the state is likely, any quantity  
13 of oil that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property  
14 with oil, but excluding normal discharges from properly operating marine engines; or

15 “(E) If spilled on land, any quantity of oil over one barrel.

16 “(c) Ten pounds unless otherwise designated by the commission under ORS 466.625.

17 “(11) ‘Respond’ or ‘response’ means:

18 “(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or re-  
19 lease of oil or hazardous material;

20 “(b) First aid, rescue or medical services, and fire suppression; or

21 “(c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the  
22 public health, safety, welfare or the environment which may result from a spill or release or  
23 threatened spill or release if action is not taken.

24 “(12) ‘Spill or release’ means the discharge, deposit, injection, dumping, spilling, emitting, re-  
25 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or  
26 waters of the state, as defined in ORS 468B.005, except as authorized by a permit issued under ORS  
27 chapter 454, 459, 459A, 468, 468A, 468B or 469, ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992  
28 or federal law or while being stored or used for its intended purpose.

29 “[*13) ‘Threatened spill or release’ means oil or hazardous material is likely to escape or be carried*  
30 *into the air or into or on any land or waters of the state.*]

31 “**(13) ‘Threatened spill or release’ means oil or hazardous material is likely to escape or**  
32 **be carried into the air or into or on any land or waters of the state, including from a ship**  
33 **as defined in ORS 468B.300 that is in imminent danger of sinking.**

34 “**SECTION 20.** ORS 468B.300 is amended to read:

35 “468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500:

36 “(1) ‘Bulk’ means material stored or transported in loose, unpackaged liquid, powder or granular  
37 form capable of being conveyed by a pipe, bucket, chute or belt system.

38 “(2) ‘Cargo vessel’ means a self-propelled ship in commerce, other than a tank vessel, of 300  
39 gross tons or more. ‘Cargo vessel’ does not include a vessel used solely for commercial fish har-  
40 vesting.

41 “(3) ‘Commercial fish harvesting’ means taking food fish with any gear unlawful for angling un-  
42 der ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food  
43 fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or  
44 trade, in commercial channels.

45 “(4) ‘Contingency plan’ means an oil spill prevention and emergency response plan required un-

1 der ORS 468B.345.

2 “(5) ‘Covered vessel’ means a tank vessel, cargo vessel, passenger vessel or dredge vessel.

3 “(6) ‘Damages’ includes damages, costs, losses, penalties or attorney fees of any kind for which  
4 liability may exist under the laws of this state resulting from, arising out of or related to the dis-  
5 charge or threatened discharge of oil.

6 “(7) ‘Discharge’ means any emission other than natural seepage of oil, whether intentional or  
7 unintentional. ‘Discharge’ includes but is not limited to spilling, leaking, pumping, pouring, emitting,  
8 emptying or dumping oil.

9 “(8) ‘Dredge vessel’ means a self-propelled vessel of 300 or more gross tons that is equipped for  
10 regularly engaging in dredging of submerged and submersible lands.

11 “(9) ‘Exploration facility’ means a platform, vessel or other offshore facility used to explore for  
12 oil in the navigable waters of the state. ‘Exploration facility’ does not include platforms or vessels  
13 used for stratigraphic drilling or other operations that are not authorized or intended to drill to a  
14 producing formation.

15 “(10) ‘Facility’ means a pipeline or any structure, group of structures, equipment or device, other  
16 than a vessel located on or near navigable waters of a state, that is used for producing, storing,  
17 handling, transferring, processing or transporting oil in bulk and that is capable of storing or  
18 transporting 10,000 or more gallons of oil. ‘Facility’ does not include:

19 “(a) A railroad car, motor vehicle or other rolling stock while transporting oil over the high-  
20 ways or rail lines of this state;

21 “(b) An underground storage tank regulated by the Department of Environmental Quality or a  
22 local government under ORS 466.706 to 466.882 and 466.994; or

23 “(c) Any structure, group of structures, equipment or device, other than a vessel located on or  
24 near navigable waters of a state, that is used for producing, storing, handling, transferring, pro-  
25 cessing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more  
26 gallons of oil but does not receive oil from tank vessels, barges or pipelines.

27 “(11) ‘Federal on-scene coordinator’ means the federal official predesignated by the United  
28 States Environmental Protection Agency or the United States Coast Guard to coordinate and direct  
29 federal responses or the official designated by the lead agency to coordinate and direct removal  
30 under the National Contingency Plan.

31 “(12) ‘Hazardous material’ has the meaning given that term in ORS 466.605.

32 “(13) ‘Maritime association’ means an association or cooperative of marine terminals, facilities,  
33 vessel owners, vessel operators, vessel agents or other maritime industry groups, that provides oil  
34 spill response planning and spill related communications services within the state.

35 “(14) ‘Maximum probable spill’ means the maximum probable spill for a vessel operating in the  
36 navigable waters of the state considering the history of spills of vessels of the same class operating  
37 on the west coast of the United States.

38 “(15) ‘Navigable waters’ means the Columbia River, the Willamette River up to Willamette Falls,  
39 the Pacific Ocean and estuaries to the head of tidewater.

40 “(16) ‘National Contingency Plan’ means the plan prepared and published under section 311(d)  
41 of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution Act  
42 of 1990 (P.L. 101-380).

43 “(17) ‘Offshore facility’ means any facility located in, on or under any of the navigable waters  
44 of the state.

45 “(18) ‘Oils’ or ‘oil’ means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil,

1 sludge, oil refuse and any other petroleum related product and liquefied natural gas.

2 “(19) ‘Onshore facility’ means any facility located in, on or under any land of the state, other  
3 than submerged land, that, because of its location, could reasonably be expected to cause substantial  
4 harm to the environment by discharging oil into or on the navigable waters of the state or adjoining  
5 shorelines.

6 “(20) ‘Passenger vessel’ means a ship of 300 or more gross tons carrying passengers for com-  
7 pensation.

8 “(21) ‘Person’ has the meaning given the term in ORS 468.005.

9 “(22) ‘Person having control over oil’ includes but is not limited to any person using, storing or  
10 transporting oil immediately prior to entry of such oil into the navigable waters of the state, and  
11 shall specifically include carriers and bailees of such oil.

12 “(23) ‘Pipeline’ means a facility, including piping, compressors, pump stations and storage tanks,  
13 used to transport oil between facilities or between facilities and tank vessels.

14 “(24) ‘Region of operation’ with respect to the holder of a contingency plan means the area  
15 where the operations of the holder that require a contingency plan are located.

16 “(25) ‘Removal costs’ means the costs of removal that are incurred after a discharge of oil has  
17 occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to  
18 prevent, minimize or mitigate oil pollution from the incident.

19 “(26) ‘Responsible party’ has the meaning given under section 1001 of the Oil Pollution Act of  
20 1990 (P.L. 101-380).

21 “(27) ‘Ship’ means any boat, ship, vessel, barge or other floating craft of any kind.

22 “(28)(a) ‘State on-scene coordinator’ means the state official appointed by the Department of  
23 Environmental Quality to represent the department and the State of Oregon in response to an oil  
24 or hazardous material spill or release or threatened spill or release and to coordinate cleanup re-  
25 sponse with state and local agencies.

26 “(b) For purposes of this subsection:

27 “(A) ‘Spill or release’ means the discharge, deposit, injection, dumping, spilling, emitting, re-  
28 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or  
29 waters of this state except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468,  
30 468A, 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law, or except  
31 when being stored or used for its intended purpose.

32 “[*B*] ‘Threatened spill or release’ means that oil or hazardous material is likely to escape or be  
33 carried into the air or into or on any land or waters of this state.]

34 “**(B) ‘Threatened spill or release’ means oil or hazardous material is likely to escape or**  
35 **be carried into the air or into or on any land or waters of the state, including from a ship**  
36 **as defined in this section that is in imminent danger of sinking.**

37 “(29) ‘Tank vessel’ means a ship that is constructed or adapted to carry oil in bulk as cargo or  
38 cargo residue. ‘Tank vessel’ does not include:

39 “(a) A vessel carrying oil in drums, barrels or other packages;

40 “(b) A vessel carrying oil as fuel or stores for that vessel; or

41 “(c) An oil spill response barge or vessel.

42 “(30) ‘Worst case spill’ means:

43 “(a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated  
44 by adverse weather conditions; and

45 “(b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse

1 weather conditions.

2 **“SECTION 21.** ORS 468B.325 is amended to read:

3 “468B.325. (1) The Director of the Department of Environmental Quality shall have the power  
4 to enter upon any public or private property, premises, **ship** or place for the purpose of **investi-**  
5 **gating**, controlling, collecting, removing, treating, containing or dispersing **a spill or release or**  
6 **threatened spill or release of oil or hazardous material** [*which reasonably appears to the director*  
7 *to threaten imminent and unlawful entry into the waters of the state, when the person responsible for*  
8 *an oil spill or an owner of property on which oil has been spilled fails to act to restrain or to remove*  
9 *the oil*].

10 **“(2) The director may enter upon a ship under this section based on a threatened spill**  
11 **or release of oil or hazardous material only if the director has documented facts supporting**  
12 **the director’s belief that the ship represents a threat for the spill or release of oil or haz-**  
13 **ardous material.**

14 “[~~(2)~~] **(3) Damages, other than those caused by the spill or release or threatened spill or re-**  
15 **lease of oil [spill] or hazardous material, suffered from the actions of the director pursuant to**  
16 **subsection (1) of this section [shall be] are the responsibility of the state.”.**

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