

A-Engrossed
Senate Bill 606

Ordered by the Senate April 24
Including Senate Amendments dated April 24

Sponsored by Senator ROBLAN

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 owners and operators of wave energy facilities and devices to remove equipment related to wave energy facilities and devices within certain period.]

[Requires Department of State Lands to remove equipment within certain period if owner or operator fails to remove equipment.]

[Requires department to pay certain compensation to commercial fishermen.]

[Requires department to establish program by rule to provide certain compensation to commercial fishermen.]

[Establishes Wave Energy Fund. Continuously appropriates moneys in fund to department. Specifies uses of moneys.]

Requires owners or operators of wave energy facilities and devices to demonstrate evidence of financial assurance for costs of closure and post-closure maintenance of facilities or devices. Requires cost estimates to be prepared by qualified person.

Requires owners or operators of wave energy facilities and devices to provide decommissioning plan for facility or device prior to authorization of facility or device. Sets requirements for decommissioning plan.

Requires owners or operators of wave energy facilities and devices to initiate removal of facility or device within 12 months after permanent cessation of use of facility or device and to complete removal within two years after permanent cessation of use, subject to certain exceptions.

Allows Director of Department of State Lands to extend deadlines for removing facility or device after permanent cessation of use in certain circumstances.

Imposes civil penalties for violation of statutory law or any rule, order or lease adopted or issued under statutory law.

Directs State Department of Energy to study issues related to transmission of electricity from wave energy facilities and devices.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to wave energy; creating new provisions; amending ORS 274.867, 274.992 and 274.994; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 274.867 is amended to read:

6 274.867. (1) In accordance with applicable provisions of ORS chapter 183, the Director of the
7 Department of State Lands may adopt rules for the authorization of wave energy facilities or de-
8 vices.

9 (2) *[Unless exempted under rules adopted by the director under this section,]* An owner or operator
10 of a facility or device sited within Oregon's territorial sea, as defined in ORS 196.405, that converts
11 the kinetic energy of waves into electricity shall maintain cost estimates of the amount of financial
12 assurance that is necessary, and demonstrate evidence of financial assurance, for:

13 *[(a) The costs of closure and post-closure maintenance, excluding the removal of anchors that lie*
14 *beneath submerged lands in Oregon's territorial sea, of the facility or device; and]*

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 costs of closure and post-closure maintenance of the facility or device, excluding**
2 **the costs of removing anchors, cables or any other equipment that is not required to be re-**
3 **moved from beneath the submerged lands in Oregon’s territorial sea under subsection (9) of**
4 **this section; and**

5 (b) Any corrective action required to be taken at the site of the facility or device.

6 **(3) The cost estimates required by subsection (2) of this section must be prepared by a**
7 **person qualified by experience and knowledge to prepare such cost estimates.**

8 [(3)] (4) The financial assurance requirements established by subsection (2) of this section may
9 be satisfied by any one or a combination of the following:

10 (a) Insurance;

11 (b) Establishment of a trust fund;

12 (c) A surety bond; **or**

13 (d) A letter of credit[;].

14 [(e) *Qualification as a self-insurer; or*]

15 [(f) *Any other method set forth in rules adopted by the director.*]

16 [(4)] (5) In adopting rules to implement the provisions of this section, the director may specify
17 policy or other contractual terms, conditions or defenses necessary to establish evidence of financial
18 assurance.

19 [(5)(a) *The owner or operator of a facility or device described in subsection (2) of this section must*
20 *provide the evidence of financial assurance required under this section for closure, post-closure main-*
21 *tenance and corrective action at the time operation of the facility or device is authorized.*]

22 **(6)(a) Prior to the time that operation of a facility or device described in subsection (2)**
23 **of this section is authorized, the owner or operator of the facility or device must provide the**
24 **director with a plan for decommissioning the facility or device after the permanent cessation**
25 **of use of that facility or device for the conversion of the kinetic energy of waves into elec-**
26 **tricity. The plan for decommissioning the facility or device must include, but need not be**
27 **limited to:**

28 **(A) Information regarding the anticipated useful life of the facility or device;**

29 **(B) The cost estimates required by subsection (2) of this section;**

30 **(C) The evidence of financial assurance required by subsections (2) and (4) of this section;**

31 **(D) A description of the method and schedule for updating the costs of decommissioning**
32 **the facility or device;**

33 **(E) A description of the anticipated methods that will be used to close the facility or**
34 **device, engage in post-closure maintenance and take any corrective action required at the**
35 **site of the facility or device; and**

36 **(F) Any other information required by the director by rule.**

37 (b) By January 31 of each subsequent calendar year, the owner or operator of the facility or
38 device must update the information required under this subsection with the Department of State
39 Lands.

40 [(6)] (7) [*When financial assurance is required for corrective action at the site of a facility or device*
41 *described in subsection (2) of this section, the]* **An** owner or operator shall provide evidence of fi-
42 nancial assurance before beginning corrective action **at the site of a facility or device described**
43 **in subsection (2) of this section.**

44 [(7)] (8) An owner or operator [*required to provide financial assurance under this section*] shall
45 establish provisions satisfactory to the director for disposing of any excess moneys received or in-

1 terest earned on moneys received for financial assurance.

2 **(9)(a) An owner or operator of a facility or device described in subsection (2) of this**
3 **section must initiate removal of all equipment related to that facility or device, excluding**
4 **anchors, cables and any other equipment that lies at least one meter beneath submerged**
5 **lands in Oregon’s territorial sea, within 12 months after the permanent cessation of use of**
6 **that facility or device for the conversion of the kinetic energy of waves into electricity.**

7 **(b) Notwithstanding paragraph (a) of this subsection, an owner or operator of a facility**
8 **or device described in subsection (2) of this section may be required to remove anchors, ca-**
9 **bles or any other equipment that lies at least one meter beneath submerged lands in**
10 **Oregon’s territorial sea if removal is deemed necessary by the director, in consultation with**
11 **the owner or operator, and is permitted by the applicable requirements of federal regulatory**
12 **agencies.**

13 **(c) All equipment required to be removed under this subsection must be removed within**
14 **two years after the permanent cessation of use of the facility or device for the conversion**
15 **of the kinetic energy of waves into electricity.**

16 **(d) The director may extend the deadlines under this subsection if the owner or operator**
17 **of the facility or device can show good cause and has undertaken a good faith effort to re-**
18 **move the equipment as required by this subsection.**

19 **SECTION 2.** ORS 274.992 is amended to read:

20 274.992. (1) Any person who violates any provision of ORS 274.040 **or 274.867**, [or] any rule,
21 order or lease adopted or issued under ORS 274.040 **or any rule adopted under ORS 274.867** shall
22 be subject to a civil penalty in an amount to be determined by the Director of the Department of
23 State Lands of not more than \$1,000 per day of violation.

24 (2) Civil penalties under this section shall be imposed in the manner provided in ORS 183.745.

25 (3) The provisions of this section are in addition to and not in lieu of any other penalty or
26 sanction provided by law.

27 (4) Any civil penalty recovered under this section **for violation of ORS 274.040 or 274.867 or**
28 **any rule, order or lease adopted or issued under ORS 274.040 or 274.867** shall be deposited in
29 the Common School Fund for use by the Department of State Lands in administration of ORS 274.040
30 **or 274.867** and as otherwise required by law.

31 **SECTION 3.** ORS 274.994 is amended to read:

32 274.994. (1) The Director of the Department of State Lands shall adopt by rule the amount of
33 civil penalty that may be imposed for a particular violation of ORS 274.040 **or 274.867**.

34 (2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the
35 director shall consider the following factors:

36 (a) The past history of the person incurring a penalty in taking all feasible steps or procedures
37 necessary or appropriate to correct any violation.

38 (b) Any prior violations of statutes, rules, orders and leases pertaining to submerged and
39 submersible lands.

40 (c) The impact of the violation on public interests in fishery, navigation and recreation.

41 (d) Any other factors determined by the director to be relevant and consistent with the policy
42 of ORS 274.040 **or 274.867**.

43 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and
44 conditions as the director determines to be proper and consistent with the policy of ORS 274.040
45 **or 274.867**. Upon the request of the person incurring the penalty, the director shall consider evi-

1 dence of the economic and financial condition of the person in determining whether a penalty shall
2 be remitted or mitigated.

3 **SECTION 4. (1) The State Department of Energy shall study issues related to the trans-**
4 **mission of electricity from wave energy facilities and devices.**

5 **(2) The scope of issues to be studied may include, but is not limited to:**

6 **(a) Opportunities for the ownership and financing of structures for the transmission of**
7 **electricity from wave energy facilities or devices;**

8 **(b) Barriers to the development of structures for the transmission of electricity from**
9 **wave energy facilities and devices;**

10 **(c) Construction and maintenance of structures for the transmission of electricity from**
11 **wave energy facilities and devices;**

12 **(d) The costs and benefits of establishing consolidated transmission capacity for multiple**
13 **wave energy projects; and**

14 **(e) Risk management and decommissioning issues related to wave energy facilities and**
15 **devices and to transmission capacity.**

16 **(3) The department shall seek public input regarding the scope of issues to be studied.**

17 **(4) The department shall report the results of the study required by this section to the**
18 **interim committees of the Legislative Assembly related to environment and natural re-**
19 **sources on or before November 1, 2014.**

20 **SECTION 5. Section 4 of this 2013 Act is repealed on January 2, 2015.**

21 **SECTION 6. The amendments to ORS 274.867 by section 1 of this 2013 Act apply to all**
22 **authorizations for wave energy facilities and devices issued on or after the effective date of**
23 **this 2013 Act.**

24 **SECTION 7. This 2013 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
26 **on its passage.**

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