

Enrolled Senate Bill 606

Sponsored by Senator ROBLAN; Representative GOMBERG

CHAPTER

AN ACT

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

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

SECTION 1. ORS 274.867 is amended to read:

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

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

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

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

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

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

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

- (a) Insurance;
- (b) Establishment of a trust fund;
- (c) A surety bond; **or**
- (d) A letter of credit[;].

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

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

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

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

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

- (A) Information regarding the anticipated useful life of the facility or device;
- (B) The cost estimates required by subsection (2) of this section;
- (C) The evidence of financial assurance required by subsections (2) and (4) of this section;
- (D) A description of the method and schedule for updating the costs of decommissioning the facility or device;
- (E) A description of the anticipated methods that will be used to close the facility or device, engage in post-closure maintenance and take any corrective action required at the site of the facility or device; and
- (F) Any other information required by the director by rule.

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

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

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

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

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

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

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

SECTION 2. ORS 274.992 is amended to read:

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

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

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

(4) Any civil penalty recovered under this section **for violation of ORS 274.040 or 274.867 or any rule, order or lease adopted or issued under ORS 274.040 or 274.867** shall be deposited in

the Common School Fund for use by the Department of State Lands in administration of ORS 274.040 or 274.867 and as otherwise required by law.

SECTION 3. ORS 274.994 is amended to read:

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

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

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

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

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

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

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the director determines to be proper and consistent with the policy of ORS 274.040 or 274.867. Upon the request of the person incurring the penalty, the director shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated.

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

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

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

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

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

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

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

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

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

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

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

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

Passed by Senate April 29, 2013

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 30, 2013

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

.....
Kate Brown, Secretary of State