

# Senate Bill 606

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 **as introduced**.

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.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to wave energy; creating new provisions; amending ORS 274.867, 274.990, 274.992 and  
3 274.994; appropriating money; and 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

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

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

18 (a) Insurance;

19 (b) Establishment of a trust fund;

20 (c) A surety bond;

21 (d) A letter of credit;

22 (e) Qualification as a self-insurer; or

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

24 (4) In adopting rules to implement the provisions of this section, the director may specify policy  
25 or other contractual terms, conditions or defenses necessary to establish evidence of financial as-  
26 surance.

27 (5)(a) The owner or operator of a facility or device described in subsection (2) of this section

**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 must provide the evidence of financial assurance required under this section for closure, post-closure  
2 maintenance and corrective action at the time operation of the facility or device is authorized.

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

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

9 (7) An owner or operator required to provide financial assurance under this section shall es-  
10 tablish provisions satisfactory to the director for disposing of any excess moneys received or interest  
11 earned on moneys received for financial assurance.

12 **(8)(a) An owner or operator of a facility or device sited within Oregon's territorial sea,  
13 as defined in ORS 196.405, that converts the kinetic energy of waves into electricity must  
14 remove all equipment related to that facility or device, excluding anchors that lie beneath  
15 submerged lands in Oregon's territorial sea, within six months of the cessation of use of that  
16 facility or device for the conversion of the kinetic energy of waves into electricity.**

17 **(b) Upon a violation of paragraph (a) of this subsection, the department must remove all  
18 equipment related to that facility or device, excluding anchors that lie beneath submerged  
19 lands in Oregon's territorial sea, within one year of the failure of the owner or operator to  
20 comply with paragraph (a) of this subsection. The department may seek any available fi-  
21 nancial remedies for a violation of paragraph (a) of this subsection, including but not limited  
22 to drawing upon financial assurance provided under this section, a civil action for damages  
23 or civil penalties under ORS 274.992.**

24 **SECTION 2. The Department of State Lands shall establish by rule a program to com-  
25 pensate holders of commercial fishing licenses under ORS 508.235 for damages incurred due  
26 to equipment that is not removed as required by ORS 274.867. Under the program established  
27 under this section, the department must pay mitigation compensation to holders of com-  
28 mercial fishing licenses under ORS 508.235 that reflects the estimated damages resulting  
29 from the continuing loss of fishing grounds due to the failure to remove equipment under  
30 ORS 274.867.**

31 **SECTION 3.** ORS 274.990 is amended to read:

32 274.990. Violation of ORS 274.745, **274.867** or 274.895, or any rule promulgated under such  
33 sections, is a misdemeanor.

34 **SECTION 4.** ORS 274.992 is amended to read:

35 274.992. (1) Any person who violates any provision of ORS 274.040 **or 274.867**, [or] any rule,  
36 order or lease adopted or issued under ORS 274.040 **or any rule adopted under ORS 274.867**, shall  
37 be subject to a civil penalty in an amount to be determined by the Director of the Department of  
38 State Lands of not more than \$1,000 per day of violation.

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

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

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

1       **(5) Any civil penalty recovered under this section for violation of ORS 274.867, or any rule**  
2 **adopted under ORS 274.867, shall be deposited in the Wave Energy Fund.**

3       **SECTION 5.** ORS 274.994 is amended to read:

4       274.994. (1) The Director of the Department of State Lands shall adopt by rule the amount of  
5 civil penalty that may be imposed for a particular violation of ORS 274.040 **or 274.867.**

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

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

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

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

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

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

20       **SECTION 6.** (1) **The Wave Energy Fund is established in the State Treasury, separate and**  
21 **distinct from the General Fund. Interest earned by the Wave Energy Fund shall be credited**  
22 **to the fund. Moneys in the fund are continuously appropriated to the Department of State**  
23 **Lands to carry out the provisions of ORS 274.867 and section 2 of this 2013 Act.**

24       (2) **The department may accept grants, donations, contributions or gifts from any source**  
25 **for deposit in the Wave Energy Fund.**

26       (3) **The Wave Energy Fund shall consist of:**

27       (a) **Moneys accepted by the department pursuant to subsection (2) of this section.**

28       (b) **Penalties specified in ORS 274.992.**

29       **SECTION 7.** **The amendments to ORS 274.867 by section 1 of this 2013 Act apply to all**  
30 **authorizations for wave energy facilities and devices issued on or after the effective date of**  
31 **this 2013 Act.**

32       **SECTION 8.** **This 2013 Act being necessary for the immediate preservation of the public**  
33 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
34 **on its passage.**

35