

# DRAFT

## SUMMARY

Creates temporal distinction between “historically filled lands” and “new lands” for purposes of determining ownership and transfer of ownership of lands created upon submersible or submerged lands by artificial fill or deposit. Authorizes State Land Board to adopt by rule process for Department of State Lands to sell, lease or trade historically filled lands owned by state.

Repeals provisions related to study of formerly submerged or submersible lands.

Establishes process for State Land Board to identify and declare state’s interest in historically filled lands and to provide notice of declaration. Prohibits board from asserting title in historically filled lands unless certain procedures met prior to December 31, 2025. Directs Department of State Lands to provide progress report on identification and declaration process to interim committees of Legislative Assembly related to environment and natural resources on or before September 15, 2017.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to land that was formerly submerged or submersible land; creating  
3 new provisions; amending ORS 274.905, 274.910, 274.915, 274.929 and  
4 274.940; repealing ORS 274.960, 274.963, 274.965, 274.967, 274.970, 274.975,  
5 274.977, 274.980, 274.983 and 274.985; and declaring an emergency.

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

## 7 8 AMENDMENTS TO NEW LANDS STATUTES

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10 **SECTION 1.** ORS 274.905 is amended to read:

11 274.905. As used in ORS 274.905 to 274.940, unless the context requires

1 otherwise:

2 (1)(a) **“Historically filled lands” means those lands protruding above**  
3 **the line of ordinary high water, whether or not connected with the**  
4 **adjoining or opposite upland or riparian lands on the same side of the**  
5 **body of water, that were created upon submersible or submerged lands**  
6 **by artificial fill or deposit before May 28, 1963.**

7 (b) **“Historically filled lands” does not include bridges, wharves and**  
8 **similar structures constructed upon submersible or submerged lands**  
9 **by other than artificial fill or deposit.**

10 [(1)] (2)(a) “New lands” means those lands protruding above the line of  
11 ordinary high water, whether or not connected with the adjoining or opposite  
12 upland or riparian lands on the same side of the body of water[, *which have*  
13 *been*] **that were** created upon submersible or submerged lands by artificial  
14 fill or deposit **on or after May 28, 1963.**

15 (b) “New lands” does not include bridges, wharves and similar structures  
16 constructed upon submersible or submerged lands by other than artificial fill  
17 or deposit.

18 [(2)] (3) “Public body” means the State of Oregon or any port organized  
19 under the laws of this state or any dock commission of any city of this state.

20 **SECTION 2.** ORS 274.910 is amended to read:

21 274.910. (1) ORS 274.905 to 274.940 [*shall*] **do** not apply to submersible,  
22 submerged or new lands fronting upon the Pacific Ocean.

23 [(2) *The provisions of ORS 274.905 to 274.940 apply to new lands created*  
24 *before, on or after May 28, 1963.*]

25 [(3)] (2) Nothing contained in ORS 274.905 to 274.940 shall divest the State  
26 of Oregon of its rights to minerals, oil, gas and sulfur.

27 **SECTION 3.** ORS 274.915 is amended to read:

28 274.915. (1) Except as otherwise provided in ORS 274.905 to 274.940, the  
29 Department of State Lands may sell, lease or trade submersible or submerged  
30 lands owned by the state in the same manner as provided for submersible  
31 lands in this chapter or ORS chapter 273.

1 (2) Except as otherwise provided in ORS 274.905 to 274.940, the depart-  
2 ment may sell, lease or trade new lands created upon submersible or sub-  
3 merged lands owned by the state in the same manner as provided for lands  
4 acquired as an investment for the Common School Fund in ORS 274.085 or  
5 ORS chapter 273.

6 **(3) Except as otherwise provided in ORS 274.905 to 274.940 and**  
7 **sections 7 to 11 of this 2015 Act, the State Land Board shall adopt rules**  
8 **under which the department may sell, lease or trade historically filled**  
9 **lands owned by the state.**

10 **SECTION 4.** ORS 274.929 is amended to read:

11 274.929. (1) Whenever the United States, while engaged in the promotion  
12 of navigation, creates new lands upon submersible or submerged lands owned  
13 by the state and the adjoining or opposite upland or riparian land on the  
14 same side of the body of water is owned by other than a public body, the  
15 nonpublic riparian owner has the right to purchase the new lands as pro-  
16 vided in this section.

17 (2) A nonpublic riparian owner entitled to purchase the new lands under  
18 subsection (1) of this section shall pay to the Department of State Lands for  
19 the new lands a sum equal to the difference between the value of the tract,  
20 consisting of the new lands and the adjoining or opposite upland on the same  
21 side of the body of water, and the value of the adjoining or opposite upland  
22 before the creation of the new lands and an amount prescribed by the de-  
23 partment to pay its administrative costs incurred with respect to the new  
24 lands. Such payment shall be made by the nonpublic riparian owner within  
25 six months after the date of the receipt by the nonpublic riparian owner of  
26 actual official notice by the department of the creation of the new lands, the  
27 sum equal to the difference between the value of the tract, consisting of the  
28 new lands and the adjoining or opposite upland on the same side of the body  
29 of water, and the value of the adjoining or opposite upland before the cre-  
30 ation of the new lands and administrative costs incurred by the department  
31 with respect to the new lands. If the nonpublic riparian owner fails to make

1 payment for the new lands as provided in this subsection, the department,  
2 after the expiration of the six-month period, may dispose of the new lands  
3 as provided in ORS 274.915.

4 (3) If a nonpublic riparian owner and the department cannot agree on the  
5 sum to be paid under subsection (2) of this section, the sum to be paid shall  
6 be determined by three appraisers, one appointed by the nonpublic riparian  
7 owner, one by the department, and the third by the first two, and their de-  
8 termination shall be final. The cost of the third appraiser shall be borne  
9 equally by the nonpublic riparian owner and the department.

10 (4) Notwithstanding ORS [274.910 (2)] **274.905 (2)**, this section applies only  
11 to new lands created on or after October 5, 1973.

12 **SECTION 5.** ORS 274.940 is amended to read:

13 274.940. (1) Notwithstanding [*ORS 274.905, 274.915 to 274.925, 274.929,*  
14 *274.932 and 274.937*] **any contrary provision of ORS 274.905 to 274.940**, the  
15 Department of State Lands may reserve **historically filled lands or** new  
16 lands from sale, transfer or lease where upon notice and hearing [*it*] **the**  
17 **department** determines that the public interest requires [*such*] **the** lands to  
18 be preserved for recreation, conservation of fish and wildlife or the develop-  
19 ment of navigation facilities. [, *but in case of such reservation*]

20 (2) **If lands are reserved from sale, transfer or lease under this**  
21 **section**, the adjoining or opposite upland or riparian owner shall be allowed  
22 reasonable access [*across such reserved new lands*] to navigable water **across**  
23 **the reserved historically filled lands or new lands.**

24 (3) **A determination that the public interest requires historically**  
25 **filled lands or new lands to be reserved under this section is not a final**  
26 **agency order.**

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29 **FORMERLY SUBMERGED OR SUBMERSIBLE LANDS PROVISIONS**

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31 **SECTION 6.** ORS 274.960, 274.963, 274.965, 274.967, 274.970, 274.975,

1 **274.977, 274.980, 274.983, and 274.985 are repealed.**

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3 **IDENTIFICATION AND NOTIFICATION OF STATE'S INTEREST**  
4 **IN HISTORICALLY FILLED LANDS**

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6 **SECTION 7. (1) Except as provided in subsection (2) of this section,**  
7 **the State Land Board may not in any manner assert title to histor-**  
8 **ically filled lands, as defined in ORS 274.905, unless, prior to December**  
9 **31, 2025:**

10 **(a) The board makes a declaration under section 9 of this 2015 Act**  
11 **that asserts title to the historically filled lands; and**

12 **(b) Notice of the board's declaration was given as required under**  
13 **section 10 of this 2015 Act.**

14 **(2) Subsection (1) of this section does not apply to:**

15 **(a) Historically filled lands, as defined in ORS 274.905, over which**  
16 **the State Land Board asserted title prior to January 1, 2016;**

17 **(b) Historically filled lands fronting upon the Pacific Ocean; or**

18 **(c) Lands in that portion of the Lower Willamette River that in-**  
19 **cludes the Portland Harbor Superfund Site.**

20 **(3) Nothing contained in sections 7 to 11 of this 2015 Act shall divest**  
21 **the State of Oregon of its rights to minerals, oil, gas and sulfur.**

22 **SECTION 8. (1)(a) The State Land Board shall direct the Depart-**  
23 **ment of State Lands to determine whether any interest remains or is**  
24 **vested in the State of Oregon with respect to historically filled lands,**  
25 **as defined in ORS 274.905, in:**

26 **(A) Waterways of the state subject to tidal influence;**

27 **(B) Waterways of this state that have been administratively or**  
28 **judicially determined navigable pursuant to ORS 274.400 to 274.412; and**

29 **(C) Waterways in which the state has asserted ownership prior to**  
30 **the enactment of ORS 274.402 on September 9, 1995.**

31 **(b) Nothing contained in paragraph (a)(C) of this section is intended**

1 to affect the ability of a court of competent jurisdiction to make a  
2 determination with respect to a private claim to or interest in real  
3 property.

4 (c) In directing a determination by the department under this sub-  
5 section, the board may designate a specifically described area of land  
6 within which the department shall make its determination.

7 (2) Upon direction by the board under subsection (1) of this section,  
8 the department shall conduct a study to make the determination. In  
9 completing the study, the department shall comply with the following  
10 procedures:

11 (a) The department shall provide prompt public notice to affected  
12 property owners that the department is beginning the study.

13 (b) Upon completion of a study directed under subsection (1) of this  
14 section, the department shall prepare and submit to the board a draft  
15 report setting forth the department's findings and conclusions as to  
16 whether any historically filled lands, as defined in ORS 274.905, are  
17 located within the area under study and, if so, the extent of the State  
18 of Oregon's interest in the historically filled lands.

19 (c) The department shall provide appropriate prior public notice to  
20 affected property owners and other interested parties concerning the  
21 draft report. The notice shall provide an opportunity for a public  
22 hearing in the area of the affected lands and an opportunity for the  
23 public to submit written comments on the draft report and to submit  
24 testimony or other evidence concerning the presence of historically  
25 filled lands, as defined in ORS 274.905, or the State of Oregon's interest  
26 in the historically filled lands.

27 (3) Following the public hearing under subsection (2) of this section,  
28 the board may adopt the draft report submitted by the department as  
29 final if substantial evidence in the record supports the report's  
30 findings and conclusions, or the board may refer the report to the  
31 department for further action as determined by the board.

1       **SECTION 9.** (1) Upon the adoption of a final report by the State  
2 Land Board under section 8 of this 2015 Act, the board shall declare  
3 the nature and extent of the state's claim to any interest that remains  
4 or is vested in the State of Oregon with respect to historically filled  
5 lands described in the report.

6       (2) Except as it may be modified upon judicial review pursuant to  
7 section 11 of this 2015 Act, a declaration made by the board pursuant  
8 to subsection (1) of this section shall be binding upon the State of  
9 Oregon with respect to the interest, if any, of the State of Oregon in  
10 historically filled lands described in the declaration.

11       (3) Nothing contained in this section is intended to affect the ability  
12 of a court of competent jurisdiction to make a determination with re-  
13 spect to a private claim to or interest in real property.

14       **SECTION 10.** Immediately following a declaration made by the  
15 State Land Board pursuant to section 9 of this 2015 Act, the board  
16 shall:

17       (1) Cause reasonable public notice of the declaration to be given to  
18 interested parties. The notice shall:

19       (a) Describe the land or waterway affected and the nature and ex-  
20 tent of the state's claim. Notice under this section need not describe  
21 the land or waterway in legal terms, but by the use of common de-  
22 scriptions or maps shall be designed to identify the land or waterway  
23 in a manner intelligible to the layperson and useful in establishing the  
24 exact location of the state claim in relation to existing legal de-  
25 scriptions.

26       (b) Advise that any person aggrieved by the declaration may seek  
27 judicial review of the declaration pursuant to section 11 of this 2015  
28 Act.

29       (2) Give notice to each owner of record of land described in the  
30 declaration by transmitting by registered mail or by certified mail,  
31 return receipt requested, a copy of the declaration made with respect

1 to the land and a statement advising the owner of record that any  
2 aggrieved party may seek judicial review of the declaration pursuant  
3 to section 11 of this 2015 Act.

4 SECTION 11. Any person that is aggrieved by a declaration of the  
5 State Land Board made pursuant to section 9 of this 2015 Act may seek  
6 judicial review of the declaration in the manner provided in ORS  
7 chapter 183 for judicial review of final orders in other than contested  
8 cases. For purposes of ORS 183.484 (2), the date three days after the  
9 date of mailing of notice under section 10 (2) of this 2015 Act shall be  
10 considered the date the order is served on the owner.

11 SECTION 12. The Department of State Lands shall submit a report  
12 on the department's progress in implementing sections 7 to 11 of this  
13 2015 Act, and may include recommendations for legislation, to the in-  
14 terim committees of the Legislative Assembly related to the environ-  
15 ment and natural resources in the manner provided under ORS 192.245  
16 on or before September 15, 2017.

17 SECTION 13. In addition to and not in lieu of any other appropri-  
18 ation, there is appropriated to the Department of State Lands, out of  
19 the General Fund, the amount of \_\_\_\_\_ for the purpose of carrying  
20 out the duties, functions and powers conferred on the department by  
21 sections 7 to 11 of this 2015 Act. This appropriation is available con-  
22 tinuously until expended for the purpose specified in this section. On  
23 January 1, 2026, any unobligated balance of the appropriation made by  
24 this section reverts to the General Fund.

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26

#### MISCELLANEOUS

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28 SECTION 14. The unit captions used in this 2015 Act are provided  
29 only for the convenience of the reader and do not become part of the  
30 statutory law of this state or express any legislative intent in the  
31 enactment of this 2015 Act.



1       **SECTION 15.** Sections 7 to 13 of this 2015 Act and the amendments  
2 to ORS 274.905, 274.910, 274.915, 274.929 and 274.940 by sections 1 to 5 of  
3 this 2015 Act become operative on January 1, 2016.

4       **SECTION 16.** The Department of State Lands, under the direction  
5 of the State Land Board, may take any action before the operative  
6 date specified in section 15 of this 2015 Act that is necessary for the  
7 department to exercise, on and after the operative date specified in  
8 section 15 of this 2015 Act, all of the duties, functions and powers  
9 conferred on the department by sections 7 to 13 of this 2015 Act and  
10 the amendments to ORS 274.905, 274.910, 274.915, 274.929 and 274.940 by  
11 sections 1 to 5 of this 2015 Act.

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**EMERGENCY CLAUSE**

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15       **SECTION 17.** This 2015 Act being necessary for the immediate  
16 preservation of the public peace, health and safety, an emergency is  
17 declared to exist, and this 2015 Act takes effect on its passage.

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