

House Bill 3559

Sponsored by Representative WILSON

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 State Parks and Recreation Department to adopt permit program by rule for small-scale commercial hand harvesting of kelp or other seaweed from ocean shore and tidal submerged lands.

Allows State Parks and Recreation Department and Department of State Lands to enter into memorandum of agreement assigning State Parks and Recreation Department sole responsibility for permitting when kelp or seaweed harvest would occur on or over tidal submerged lands.

Repeals Department of State Lands leasing requirements for kelp harvesting.

A BILL FOR AN ACT

1
2 Relating to seaweed; creating new provisions; amending ORS 274.990, 390.605, 390.650 and 390.725;
3 and repealing ORS 274.885, 274.890 and 274.895.

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

5 6 REPEAL OF DEPARTMENT OF STATE LANDS 7 KELP FIELDS PROVISIONS

8
9 **SECTION 1. ORS 274.885, 274.890 and 274.895 are repealed.**

10 **SECTION 2. ORS 274.990 is amended to read:**

11 274.990. Violation of ORS 274.745 [*or 274.895*], or any rule promulgated under [*such sections*]
12 **that section**, is a misdemeanor.

13 14 PERMITTING FOR COMMERCIAL HARVEST 15 OF KELP AND OTHER SEAWEED

16
17 **SECTION 3. Sections 4 and 5 of this 2015 Act are added to and made a part of ORS 390.705
18 to 390.770.**

19 **SECTION 4. (1) A person may not harvest or remove kelp or other seaweed from the
20 ocean shore or tidal submerged lands owned by the State of Oregon unless the person has
21 first obtained a permit from the State Parks and Recreation Department as provided in this
22 section.**

23 **(2) The State Parks and Recreation Department, after consultation with the Department
24 of State Lands and the State Department of Fish and Wildlife, shall adopt by rule a program
25 for granting permits for the small-scale commercial hand harvesting of kelp or other
26 seaweed for the purposes of human consumption. Permits granted under this section shall
27 be consistent with the permit provisions and standards of ORS 390.650 and 390.655.**

28 **(3) Rules adopted under 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 (a) Shall provide for a single permitting process for harvesting kelp or other seaweed
 2 from the ocean shore and from tidal submerged lands.

3 (b) May include a schedule of reasonable fees for permits issued under this section.

4 (c) May include provisions for the payment of just compensation by the permittee, in
 5 addition to any fees paid for the issuance of a permit.

6 (d) May include an exemption from the permit requirements for a person to harvest kelp
 7 or other seaweed, in an amount to be determined by the State Parks and Recreation De-
 8 partment, for personal use.

9 **SECTION 5.** The State Parks and Recreation Department and the Department of State
 10 Lands may enter into a memorandum of agreement with respect to the commercial kelp and
 11 seaweed harvesting permit program provided for under section 4 of this 2015 Act. The
 12 memorandum may assign sole responsibility for permitting to the State Parks and Recre-
 13 ation Department when the harvesting of kelp or other seaweed would occur on or over tidal
 14 submerged lands subject to the jurisdiction of the Department of State Lands.

15 **SECTION 6.** ORS 390.605 is amended to read:

16 390.605. As used in ORS 390.610, 390.620 to 390.676, 390.690 and 390.705 to 390.770, unless the
 17 context requires otherwise:

18 (1) "Improvement" includes filling a portion of the ocean shore, removal of material from the
 19 ocean shore or a structure, appurtenance or other addition, modification or alteration constructed,
 20 placed or made on or to the land.

21 (2) "Ocean shore" means the land lying between extreme low tide of the Pacific Ocean and the
 22 statutory vegetation line as described by ORS 390.770 or the line of established upland shore vege-
 23 tation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS
 24 196.800.

25 (3) "State recreation area" means a land or water area, or combination thereof, under the ju-
 26 risdiction of the State Parks and Recreation Department used by the public for recreational pur-
 27 poses.

28 (4) **"Tidal submerged lands" has the meaning given that term in ORS 274.705.**

29 **SECTION 7.** ORS 390.725 is amended to read:

30 390.725. (1) Removal of natural products such as fish or wildlife, agates or small amounts of
 31 driftwood from a state recreation area [*as defined in ORS 390.605*] for personal, noncommercial use
 32 is not subject to the provisions of ORS 390.650.

33 (2) The collection of natural products for the purpose of trade, sale or resale shall be subject
 34 to the permit provisions and standards of ORS 390.650 and 390.655. Permits shall provide for the
 35 payment of just compensation by the permittee as provided by rule adopted under subsection (4) of
 36 this section.

37 (3) No archaeological object associated with an archaeological site, as those terms are defined
 38 in ORS 358.905, shall be removed from the ocean shore except as provided in ORS 358.920 and
 39 390.235.

40 (4) Rules or permits shall be made or granted by the State Parks and Recreation Department
 41 only after consultation with the State Fish and Wildlife Commission, the State Department of
 42 Geology and Mineral Industries and the Department of State Lands. Rules and permits shall contain
 43 provisions necessary to protect the areas from any use, activity or practice inimicable to the con-
 44 servation of natural resources or public recreation.

45 (5) The terms, royalty and duration of a permit under this section are at the discretion of the

1 State Parks and Recreation Department. A permit is revocable at any time in the discretion of the
 2 department without liability to the permittee.

3 (6) Whenever the issuance of a permit under this section will affect lands owned privately, the
 4 State Parks and Recreation Department shall withhold the issuance of such permit until such time
 5 as the permittee shall have obtained an easement, license or other written authorization from the
 6 private owner, which easement, license or other written authority must meet the approval of the
 7 department, except as to the compensation to be paid to the private owner.

8 **(7) This section does not apply to a person engaging in small-scale commercial hand**
 9 **harvesting of kelp or other seaweed if the person has obtained a permit under section 4 of**
 10 **this 2015 Act.**

11 **SECTION 8.** ORS 390.650 is amended to read:

12 390.650. (1) Any person who desires a permit to make an improvement on any property subject
 13 to ORS 390.640 shall apply in writing to the State Parks and Recreation Department on a form and
 14 in a manner prescribed by the department, stating the kind of and reason for the improvement.

15 (2) Upon receipt of a properly completed application, the State Parks and Recreation Depart-
 16 ment shall provide notice of the proposal by causing notice of the application to be posted at or near
 17 the location of the proposed improvement. The notice shall include the name of the applicant, a
 18 description of the proposed improvement and its location and a statement of the time within which
 19 interested persons may file a request with the department for a hearing on the application. The de-
 20 partment shall give notice of any application, hearing or decision to any person who files a written
 21 request with the department for such notice.

22 (3) Within 30 days after the date of posting the notice required in subsection (2) of this section,
 23 the applicant or 10 or more other interested persons may file a written request with the State Parks
 24 and Recreation Department for a hearing on the application. If such a request is filed, the depart-
 25 ment shall set a time for a hearing to be held by the department. The department shall cause notice
 26 of the hearing to be posted in the manner provided in subsection (2) of this section. The notice shall
 27 include the time and place of the hearing. After the hearing on an application or, if a hearing is not
 28 requested, after the time for requesting a hearing has expired, the department shall grant the permit
 29 if approval would not be adverse to the public interest. ORS chapter 183 does not apply to a
 30 hearing or decision under this section.

31 (4) In acting on an application, the State Parks and Recreation Department shall take into
 32 consideration the matters described by ORS 390.655. The department shall act on an application
 33 within 60 days after the date of receipt or, if a hearing is held, within 45 days after the date of the
 34 hearing.

35 (a) The decision of the department shall include written findings setting forth the specific rea-
 36 sons for the approval or denial and, if the application is approved, any conditions the department
 37 considers necessary to maintain the standards established under ORS 390.655.

38 (b) A copy of the written findings shall be furnished to the applicant at the time of approval or
 39 denial of the application by the department as provided in this subsection.

40 (5) Subsections (2) and (3) of this section do not apply to an application for a permit for the
 41 repair, replacement or restoration, in the same location, of an authorized improvement or improve-
 42 ment existing on or before May 1, 1967, if the repair, replacement or restoration is commenced
 43 within three years after the damage to or destruction of the improvement being repaired, replaced
 44 or restored occurs.

45 (6) The State Parks and Recreation Department may, upon application therefor, either written

1 or oral, grant an emergency permit for a new improvement, dike, revetment, or for the repair, re-
 2 placement or restoration of an existing, or authorized improvement where property or property
 3 boundaries are in imminent peril of being destroyed or damaged by action of the Pacific Ocean or
 4 the waters of any bay or river of this state. Said permit may be granted by the department without
 5 regard to the provisions of subsections (1), (2), (3), (4) and (5) of this section. Any emergency permit
 6 granted hereunder shall be reduced to writing by the department within 10 days after granting the
 7 same with a copy thereof furnished to the applicant.

8 (7) Except as provided by [subsection (8)] **subsections (8) and (9)** of this section, each applica-
 9 tion under subsection (1) of this section shall be accompanied by a fee to cover, in part, the expenses
 10 of the department in investigating, reviewing and issuing the improvement permits. The application
 11 fee for each permit shall be:

12 (a) \$400 for any project for which the construction value is less than \$2,500.

13 (b) \$400 for any project for which the construction value is equal to or greater than \$2,500, plus
 14 an additional amount equal to three percent of the construction value over \$2,500.

15 (8) The department may waive or reduce the fee required by subsection (7) of this section for
 16 an application submitted by a public body, as that term is defined by ORS 174.109, or tribal gov-
 17 ernment if the primary purpose of the improvement is:

18 (a) Restoring, conserving or protecting the natural, resource, scenic, recreational, cultural or
 19 economic values of the ocean shore;

20 (b) Restoring native beach or dune habitat contributing to the recovery of sensitive species, in-
 21 cluding state and federally listed threatened or endangered species; or

22 (c) Improving native biological values of the ocean shore.

23 **(9) Subsections (7) and (8) of this section do not apply to an application for a permit un-
 24 der section 4 of this 2015 Act for small-scale commercial hand harvesting of kelp or other
 25 seaweed.**

26 [(9)] (10) Fees received under this section shall be deposited into a subaccount of the State
 27 Parks and Recreation Department Fund. Such fees are continuously appropriated to the department
 28 for the purpose of carrying out the ocean shore program.

29 [(10)] (11) As used in this section, "construction value" includes but is not limited to the costs
 30 of labor and equipment rental. For a project involving only the movement of sand or similar material
 31 on the ocean shore, "construction value" shall equal the costs of labor, fees and equipment rental.

32 **SECTION 9. The unit captions used in this 2015 Act are provided only for the convenience
 33 of the reader and do not become part of the statutory law of this state or express any leg-
 34 islative intent in the enactment of this 2015 Act.**