

Senate Bill 912

Sponsored by COMMITTEE ON JUDICIARY

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**.

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 new provisions; amend-
3 ing ORS 274.905, 274.910, 274.915, 274.929 and 274.940; repealing ORS 274.960, 274.963, 274.965,
4 274.967, 274.970, 274.975, 274.977, 274.980, 274.983 and 274.985; and declaring an emergency.

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

AMENDMENTS TO NEW LANDS STATUTES

6
7
8
9 **SECTION 1.** ORS 274.905 is amended to read:

10 274.905. As used in ORS 274.905 to 274.940, unless the context requires otherwise:

11 (1)(a) **"Historically filled lands" means those lands protruding above the line of ordinary**
12 **high water, whether or not connected with the adjoining or opposite upland or riparian lands**
13 **on the same side of the body of water, that were created upon submersible or submerged**
14 **lands by artificial fill or deposit before May 28, 1963.**

15 (b) **"Historically filled lands" does not include bridges, wharves and similar structures**
16 **constructed upon submersible or submerged lands by other than artificial fill or deposit.**

17 [(1)] (2)(a) "New lands" means those lands protruding above the line of ordinary high water,
18 whether or not connected with the adjoining or opposite upland or riparian lands on the same side
19 of the body of water[, *which have been*] **that were** created upon submersible or submerged lands by
20 artificial fill or deposit **on or after May 28, 1963.**

21 (b) "New lands" does not include bridges, wharves and similar structures constructed upon
22 submersible or submerged lands by other than artificial fill or deposit.

23 [(2)] (3) "Public body" means the State of Oregon or any port organized under the laws of this
24 state or any dock commission of any city of this state.

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

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.

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

3 [(2) *The provisions of ORS 274.905 to 274.940 apply to new lands created before, on or after May*
4 *28, 1963.*]

5 [(3)] **(2)** Nothing contained in ORS 274.905 to 274.940 shall divest the State of Oregon of its
6 rights to minerals, oil, gas and sulfur.

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

8 274.915. (1) Except as otherwise provided in ORS 274.905 to 274.940, the Department of State
9 Lands may sell, lease or trade submersible or submerged lands owned by the state in the same
10 manner as provided for submersible lands in this chapter or ORS chapter 273.

11 (2) Except as otherwise provided in ORS 274.905 to 274.940, the department may sell, lease or
12 trade new lands created upon submersible or submerged lands owned by the state in the same
13 manner as provided for lands acquired as an investment for the Common School Fund in ORS
14 274.085 or ORS chapter 273.

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

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

19 274.929. (1) Whenever the United States, while engaged in the promotion of navigation, creates
20 new lands upon submersible or submerged lands owned by the state and the adjoining or opposite
21 upland or riparian land on the same side of the body of water is owned by other than a public body,
22 the nonpublic riparian owner has the right to purchase the new lands as provided in this section.

23 (2) A nonpublic riparian owner entitled to purchase the new lands under subsection (1) of this
24 section shall pay to the Department of State Lands for the new lands a sum equal to the difference
25 between the value of the tract, consisting of the new lands and the adjoining or opposite upland on
26 the same side of the body of water, and the value of the adjoining or opposite upland before the
27 creation of the new lands and an amount prescribed by the department to pay its administrative
28 costs incurred with respect to the new lands. Such payment shall be made by the nonpublic riparian
29 owner within six months after the date of the receipt by the nonpublic riparian owner of actual of-
30 ficial notice by the department of the creation of the new lands, the sum equal to the difference
31 between the value of the tract, consisting of the new lands and the adjoining or opposite upland on
32 the same side of the body of water, and the value of the adjoining or opposite upland before the
33 creation of the new lands and administrative costs incurred by the department with respect to the
34 new lands. If the nonpublic riparian owner fails to make payment for the new lands as provided in
35 this subsection, the department, after the expiration of the six-month period, may dispose of the new
36 lands as provided in ORS 274.915.

37 (3) If a nonpublic riparian owner and the department cannot agree on the sum to be paid under
38 subsection (2) of this section, the sum to be paid shall be determined by three appraisers, one ap-
39 pointed by the nonpublic riparian owner, one by the department, and the third by the first two, and
40 their determination shall be final. The cost of the third appraiser shall be borne equally by the
41 nonpublic riparian owner and the department.

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

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

45 274.940. (1) Notwithstanding [ORS 274.905, 274.915 to 274.925, 274.929, 274.932 and 274.937] **any**

1 **contrary provision of ORS 274.905 to 274.940**, the Department of State Lands may reserve **his-**
 2 **torically filled lands or** new lands from sale, transfer or lease where upon notice and hearing [*it*]
 3 **the department** determines that the public interest requires [*such*] **the** lands to be preserved for
 4 recreation, conservation of fish and wildlife or the development of navigation facilities. [, *but in case*
 5 *of such reservation*]

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

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

11
 12 **REPEAL OF**
 13 **FORMERLY SUBMERGED OR SUBMERSIBLE LANDS PROVISIONS**

14
 15 **SECTION 6.** ORS 274.960, 274.963, 274.965, 274.967, 274.970, 274.975, 274.977, 274.980, 274.983,
 16 **and 274.985 are repealed.**

17
 18 **IDENTIFICATION AND NOTIFICATION OF STATE’S INTEREST**
 19 **IN HISTORICALLY FILLED LANDS**

20
 21 **SECTION 7.** (1) **Except as provided in subsection (2) of this section, the State Land Board**
 22 **may not in any manner assert title to historically filled lands, as defined in ORS 274.905,**
 23 **unless, prior to December 31, 2025:**

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

26 (b) **Notice of the board’s declaration was given as required under section 10 of this 2015**
 27 **Act.**

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

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

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

32 (c) **Lands in that portion of the Lower Willamette River that includes the Portland Har-**
 33 **bor Superfund Site.**

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

36 **SECTION 8.** (1)(a) **The State Land Board shall direct the Department of State Lands to**
 37 **determine whether any interest remains or is vested in the State of Oregon with respect to**
 38 **historically filled lands, as defined in ORS 274.905, in:**

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

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

42 (C) **Waterways in which the state has asserted ownership prior to the enactment of ORS**
 43 **274.402 on September 9, 1995.**

44 (b) **Nothing contained in paragraph (a)(C) of this section is intended to affect the ability**
 45 **of a court of competent jurisdiction to make a determination with respect to a private claim**

1 to or interest in real property.

2 (c) In directing a determination by the department under this subsection, the board may
3 designate a specifically described area of land within which the department shall make its
4 determination.

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

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

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

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

21 (3) Following the public hearing under subsection (2) of this section, the board may adopt
22 the draft report submitted by the department as final if substantial evidence in the record
23 supports the report's findings and conclusions, or the board may refer the report to the de-
24 partment for further action as determined by the board.

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

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

33 (3) Nothing contained in this section is intended to affect the ability of a court of com-
34 petent jurisdiction to make a determination with respect to a private claim to or interest in
35 real property.

36 **SECTION 10.** Immediately following a declaration made by the State Land Board pursu-
37 ant to section 9 of this 2015 Act, the board shall:

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

40 (a) Describe the land or waterway affected and the nature and extent of the state's claim.
41 Notice under this section need not describe the land or waterway in legal terms, but by the
42 use of common descriptions or maps shall be designed to identify the land or waterway in a
43 manner intelligible to the layperson and useful in establishing the exact location of the state
44 claim in relation to existing legal descriptions.

45 (b) Advise that any person aggrieved by the declaration may seek judicial review of the

1 declaration pursuant to section 11 of this 2015 Act.

2 (2) Give notice to each owner of record of land described in the declaration by transmit-
3 ting by registered mail or by certified mail, return receipt requested, a copy of the declara-
4 tion made with respect to the land and a statement advising the owner of record that any
5 aggrieved party may seek judicial review of the declaration pursuant to section 11 of this 2015
6 Act.

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

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

18 **SECTION 13.** In addition to and not in lieu of any other appropriation, there is approp-
19 riated to the Department of State Lands, out of the General Fund, the amount of _____
20 for the purpose of carrying out the duties, functions and powers conferred on the department
21 by sections 7 to 11 of this 2015 Act. This appropriation is available continuously until ex-
22 pended for the purpose specified in this section. On January 1, 2026, any unobligated balance
23 of the appropriation made by this section reverts to the General Fund.

24
25 **MISCELLANEOUS**

26
27 **SECTION 14.** The unit captions used in this 2015 Act are provided only for the conven-
28 ience of the reader and do not become part of the statutory law of this state or express any
29 legislative intent in the enactment of this 2015 Act.

30 **SECTION 15.** Sections 7 to 13 of this 2015 Act and the amendments to ORS 274.905,
31 274.910, 274.915, 274.929 and 274.940 by sections 1 to 5 of this 2015 Act become operative on
32 January 1, 2016.

33 **SECTION 16.** The Department of State Lands, under the direction of the State Land
34 Board, may take any action before the operative date specified in section 15 of this 2015 Act
35 that is necessary for the department to exercise, on and after the operative date specified
36 in section 15 of this 2015 Act, all of the duties, functions and powers conferred on the de-
37 partment by sections 7 to 13 of this 2015 Act and the amendments to ORS 274.905, 274.910,
38 274.915, 274.929 and 274.940 by sections 1 to 5 of this 2015 Act.

39
40 **EMERGENCY CLAUSE**

41
42 **SECTION 17.** This 2015 Act being necessary for the immediate preservation of the public
43 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
44 on its passage.