

House Bill 2603

Sponsored by Representative GOMBERG (Presession filed.)

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 or operators of undersea fiber optic telecommunication cables to obtain financial assurances and create plan for removal of cable.

Directs Department of State Lands to study permitting processes for undersea fiber optic telecommunication cables and report results of study to interim committees of Legislative Assembly related to environment no later than September 15, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to undersea cables; creating new provisions; amending ORS 274.992 and 274.994; and pre-
3 scribing an effective date.

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

5 **SECTION 1. (1) An owner or operator of an undersea fiber optic telecommunication cable**
6 **placed on state-owned submerged or submersible lands within the territorial sea shall main-**
7 **tain cost estimates of the amount of financial assurance that is necessary, and demonstrate**
8 **evidence of financial assurance, for:**

9 (a) **The costs of removing the cable after the termination of the use of the cable or the**
10 **expiration of the easement authorizing the placement of the cable;**

11 (b) **The costs of removing cable and drilling equipment or conducting drilling fluid release**
12 **mitigation after a drilling accident; and**

13 (c) **The costs of any corrective action required to be taken along the cable route or at**
14 **the associated landing site.**

15 (2) **The cost estimates required by subsection (1) of this section must be prepared by a**
16 **person qualified by experience and knowledge to prepare such cost estimates.**

17 (3) **The financial assurance requirements established by subsection (1) of this section may**
18 **be satisfied by any one or a combination of the following:**

19 (a) **Insurance;**

20 (b) **Establishment of a trust fund;**

21 (c) **A surety bond; or**

22 (d) **A letter of credit.**

23 (4) **An owner or operator shall provide evidence of financial assurance before beginning**
24 **corrective action as described in subsection (1)(a)(C) of this section.**

25 (5) **An owner or operator shall establish provisions satisfactory to the Director of the**
26 **Department of State Lands for disposing of any excess moneys received or in interest earned**
27 **on money received for financial assurance.**

28 (6)(a) **An application for an easement to place a cable described in subsection (1) of this**
29 **section in the territorial sea must contain a plan that includes:**

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) Information regarding the anticipated useful life of the cable;

2 (B) A description of the method and schedule for updating the costs of removing the ca-
3 ble;

4 (C) A description of the anticipated methods that will be used to remove the cable and
5 take any corrective action along the cable route or at the associated landing site; and

6 (D) Any other information required by the director by rule.

7 (b) If the application described in paragraph (a) of this subsection is approved, the owner
8 or operator of the cable must annually update the information required in the plan under
9 this subsection with the Department of State Lands.

10 (7)(a) An owner or operator of a cable described in subsection (1) of this section must
11 initiate removal of all equipment related to that cable within 12 months after the permanent
12 termination of use of the cable or the expiration of the easement authorizing placement of
13 the cable, if removal is deemed necessary by the director and is permitted by the applicable
14 requirements of federal regulatory agencies.

15 (b) All cable and equipment required to be removed under this subsection must be re-
16 moved within two years after the permanent termination of the use of the cable or the ex-
17 piration of the easement.

18 (c) The director may extend the deadlines under this subsection if the owner or operator
19 of the cable can show good cause and has undertaken a good faith effort to remove the cable
20 as required by this subsection.

21 (8) In adopting rules to implement the provisions of this section, the director may specify
22 policy or other contractual terms, conditions or defenses necessary to establish evidence of
23 financial assurance.

24 **SECTION 2.** ORS 274.992 is amended to read:

25 274.992. (1) Any person who violates any provision of ORS 274.040, 274.873 or 274.879 **or section**
26 **1 of this 2021 Act**, any rule, order or lease adopted or issued under ORS 274.040, 274.873 or 274.876
27 or any rule adopted under ORS 274.879 **or section 1 of this 2021 Act** shall be subject to a civil
28 penalty in an amount to be determined by the Director of the Department of State Lands of not more
29 than \$1,000 per day of violation.

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

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

33 (4) Any civil penalty recovered under this section for violation of ORS 274.040, 274.873 or
34 274.879 **or section 1 of this 2021 Act** or any rule, order or lease adopted or issued under ORS
35 274.040, 274.873, 274.876 or 274.879 **or section 1 of this 2021 Act** shall be deposited in the Common
36 School Fund for use by the Department of State Lands in administration of ORS 274.040, 274.873 or
37 274.879 **or section 1 of this 2021 Act** and as otherwise required by law.

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

39 274.994. (1) The Director of the Department of State Lands shall adopt by rule the amount of
40 civil penalty that may be imposed for a particular violation of ORS 274.040, 274.873 or 274.879 **or**
41 **section 1 of this 2021 Act**.

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

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

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

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

4 (d) Any other factors determined by the director to be relevant and consistent with the policy
5 of ORS 274.040, 274.873 or 274.879 **or section 1 of this 2021 Act.**

6 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and
7 conditions as the director determines to be proper and consistent with the policy of ORS 274.040,
8 274.873 or 274.879 **or section 1 of this 2021 Act.** Upon the request of the person incurring the
9 penalty, the director shall consider evidence of the economic and financial condition of the person
10 in determining whether a penalty shall be remitted or mitigated.

11 **SECTION 4. (1) The Department of State Lands, in consultation with the State Parks and**
12 **Recreation Department and the Department of Land Conservation and Development, shall**
13 **study and propose changes to the permitting processes for the placement of undersea fiber**
14 **optic cables on state-owned submerged or submersible land within the territorial sea and**
15 **under the ocean shore and for the siting of associated landing sites.**

16 (2) The study must consider:

17 (a) A unified permitting process for the placement of undersea cables that allows for
18 coordination between appropriate state agencies and local governments;

19 (b) Requiring that new landing sites be sited on state-owned property or at existing
20 landing sites;

21 (c) Establishing requirements for public information meetings or other methods for en-
22 gaging communities, ocean users and industries affected by a proposed cable; and

23 (d) A permit application that includes:

24 (A) A needs analysis that takes into account the socioeconomic and environmental needs
25 of the area;

26 (B) A geological study;

27 (C) Consultation with sea floor experts; and

28 (D) A detailed drilling, mitigation and accident response plan.

29 (2) The Department of State Lands shall report the results of the study required by this
30 section to the interim committees of the Legislative Assembly related to the environment
31 no later than September 15, 2022.

32 **SECTION 5. Section 4 of this 2021 Act is repealed on January 2, 2023.**

33 **SECTION 6. Section 1 of this 2021 Act and the amendments to ORS 274.992 and 274.994**
34 **by sections 2 and 3 of this 2021 Act apply to authorizations for undersea fiber optic tele-**
35 **communication cables issued on or after the effective date of this 2021 Act.**

36 **SECTION 7. (1) Section 1 of this 2021 Act and the amendments to ORS 274.992 and 274.994**
37 **by sections 2 and 3 of this 2021 Act become operative on January 1, 2022.**

38 (2) The Department of State Lands may take any action before the operative date speci-
39 fied in subsection (1) of this section that is necessary for the department to exercise, on and
40 after the operative date specified in subsection (1) of this section, all of the duties, functions
41 and powers conferred on and the department by section 1 of this 2021 Act and the amend-
42 ments to ORS 274.992 and 274.994 by sections 2 and 3 of this 2021 Act.

43 **SECTION 8. This 2021 Act takes effect on the 91st day after the date on which the 2021**
44 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**