

A-Engrossed Senate Bill 74

Ordered by the Senate April 16
Including Senate Amendments dated April 16

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Natural Resources and Wildfire)

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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: This Act makes changes to how DSL can find the state's interest in waterways that are navigable. (Flesch Readability Score: 60.1).

[Digest: This Act tells the DSL to study how to determine that a waterway is navigable. (Flesch Readability Score: 61.8).]

[Requires the Department of State Lands to study determinations of navigability on Oregon waterways. Directs the department to submit findings to the interim committees of the Legislative Assembly related to natural resources not later than September 15, 2026.]

[Sunsets on January 2, 2027.]

Authorizes the Department of State Lands to find in a navigability determination draft report that the state's interest in the waterway extends to the current submerged and submersible lands within the waterway. Authorizes the department to negotiate with property owners affected by the finding and convey mineral and geothermal resource rights in a negotiated exchange of deeds. Requires the department to determine the state's interest in portions of the waterway according to principles of accretion and avulsion if the department is unable to reach an agreement with affected property owners.

A BILL FOR AN ACT

1
2 Relating to determinations of navigability on Oregon waterways; amending ORS 274.404, 274.406 and
3 274.408.

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

5 **SECTION 1.** ORS 274.404 is amended to read:

6 274.404. (1) On or before July 1, 1996, the State Land Board shall adopt by rule a procedure that
7 is consistent with ORS 274.400 to 274.412 by which the board and the Department of State Lands
8 shall make a final administrative determination as to whether a waterway or part of a waterway is
9 navigable, and if so, the extent of the interest claimed by the State of Oregon in the navigable
10 portion of the waterway.

11 (2) The rules adopted under subsection (1) of this section shall incorporate the following proce-
12 dures that the board and the department shall follow:

13 (a) The board may direct the department to make a determination of navigability if there is
14 sufficient economic justification or if there is a broad and substantial public interest. If the board
15 so directs, the department shall conduct a study to make the determination.

16 (b) The department shall provide prompt public notice to affected property owners that the de-
17 partment is beginning the study.

18 (c) Upon completion of a study directed under paragraph (a) of this subsection, the department
19 shall prepare and submit to the board a draft report setting forth the department's findings and

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 conclusions as to whether the waterway or part of the waterway under study is navigable and, if
2 so, the extent of the State of Oregon's interest in the waterway or part of the waterway.

3 (d) The department shall provide appropriate prior public notice to affected property owners and
4 other interested parties concerning the draft report. The notice shall provide an opportunity for a
5 public hearing in the area of the affected waterway and an opportunity for the public to submit
6 written comments on the draft report and to submit testimony or other evidence concerning the
7 navigability of the affected waterway or part of the waterway or the State of Oregon's interest in
8 the waterway or part of the waterway.

9 (e) Following the public hearing, the board may adopt the draft report submitted by the de-
10 partment if substantial evidence in the record supports the report's findings and conclusions, or the
11 board may refer the report to the department for further action as determined by the board.

12 **(3)(a) Notwithstanding common law principles of accretion and avulsion, the department**
13 **may find in a draft report under this section that the state's interest in a waterway should**
14 **extend to the current submerged and submersible lands within the waterway.**

15 **(b) At any point after the beginning of the study and before the board adopts a draft re-**
16 **port under subsection (2) of this section, the department may negotiate an exchange of deeds**
17 **with any property owner that would be affected by a finding that the state's interest in the**
18 **waterway should extend to the current submerged and submersible lands within the**
19 **waterway. In any negotiation with an affected property owner, the department shall prior-**
20 **itize the goal of state ownership of the current waterway and need not seek an equal ex-**
21 **change of property values.**

22 **(c) Notwithstanding ORS 273.780, the department may convey the mineral and geothermal**
23 **resource rights of property exchanged by the department pursuant to this subsection.**

24 **(d) If the department is unable to reach an agreement with any affected property owner**
25 **described in this subsection, the department shall determine the extent of the state's inter-**
26 **est in the applicable portion of the waterway in accordance with common law principles of**
27 **accretion and avulsion.**

28 **(e) If a report adopted by the board includes a finding that the state's interest in the**
29 **waterway extends to the current submerged and submersible lands within the waterway, the**
30 **board may find in a declaration under ORS 274.406 that the boundary of the waterway should**
31 **remain ambulatory and change with future accretion.**

32 **(f) This subsection does not apply to a meandered lake.**

33 **(g) As used in this subsection:**

34 **(A) "Geothermal resource" has the meaning given that term in ORS 522.005.**

35 **(B) "Meandered lake" has the meaning given that term in ORS 274.425.**

36 **(C) "Mineral" has the meaning given that term in ORS 273.775.**

37 **SECTION 2.** ORS 274.406 is amended to read:

38 274.406. (1) Upon the adoption of a report by the State Land Board under ORS 274.404 (2)(e), the
39 board shall declare the nature and extent of the state's claim to any interest that remains or is
40 vested in the State of Oregon with respect to any land or waterway described in the report.

41 (2) Except as it may be modified upon review pursuant to ORS 274.412, a declaration made by
42 the board pursuant to subsection (1) of this section shall be binding upon the State of Oregon with
43 respect to the interest, if any, of the State of Oregon in any land or waterway described in the
44 declaration.

45 **(3) If a declaration made by the board under subsection (1) of this section is filed with**

1 **the county clerk for recording, the county clerk shall record the declaration in the deed re-**
2 **ords of the county where the waterway is located.**

3 [(3)] (4) Nothing contained in this section is intended to affect the ability of a court of competent
4 jurisdiction to make a determination with respect to a private claim to or interest in real property.

5 **SECTION 3.** ORS 274.408 is amended to read:

6 274.408. Immediately following a declaration made by the State Land Board pursuant to ORS
7 274.406, the board shall:

8 (1) Cause reasonable public notice of the declaration to be given to interested parties. The no-
9 tice shall:

10 (a) Describe the land or waterway affected and the nature and extent of the state's claim. Such
11 notice need not describe the land or waterway in legal terms, but by the use of common descriptions
12 or maps shall be designed to identify the land or waterway in a manner intelligible to the layperson
13 and useful in establishing the [*exact*] location of the state claim [*in relation to existing legal de-*
14 *scriptions*].

15 (b) Advise that any person aggrieved by the declaration may seek judicial review of the decla-
16 ration pursuant to ORS 274.412.

17 (2) Send to each owner of record of land described in the declaration a copy of the declaration
18 made with respect to the land and a statement advising such owner that any aggrieved party may
19 seek judicial review of the declaration pursuant to ORS 274.412.

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