

**Enrolled**  
**Senate Bill 600**

Sponsored by Senator JOHNSON

CHAPTER .....

AN ACT

Relating to the Department of State Lands; creating new provisions; and amending ORS 274.040, 274.043, 274.060, 274.885 and 274.895.

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

**LEASES AND EASEMENTS**

**SECTION 1.** ORS 274.040 is amended to read:

274.040. (1) Except as provided in ORS 274.043 [(1) to (3)], in ORS 274.085 for leases of submersible lands acquired as an investment for the Common School Fund, in ORS 274.530 (1) for leases of submersible lands of less than one year's duration, in ORS 274.530 (3) for licenses of less than three years' duration and in subsections (2) and (3) of this section, submersible lands owned by the State of Oregon may be leased only to the highest bidder, bidding at least the minimum amount designated by the Department of State Lands under subsection (6) of this section for the lease of any such lands, after being advertised not less than once each week for two successive weeks in one or more newspapers of general circulation in the county in which the lands are situated. However, any owner of lands abutting or fronting on such submersible lands shall have the preference right to lease the lands unless the submersible lands are occupied by a person claiming the right of occupancy under a conveyance recorded before January 1, 1981, from the present owner or predecessor in interest of lands abutting or fronting the submersible lands. If so, the occupant of the submersible lands shall have the preference right to lease the lands. An easement or license related to utility service on the submersible lands does not establish a preference right under this subsection. The lands shall be leased for the amount designated by the department under subsection (6) of this section as the minimum amount for the lease of any such lands. The [preference] **preferences** provided in this subsection [applies] **apply** to any lease of submersible land for one year or more offered or issued under ORS 274.530. The [preference] **preferences** provided in this subsection [does] **do** not apply to any lease offered or issued by the department under ORS 274.705 to 274.860. **The preference for the owner of lands provided in this subsection does not apply to the renewal of an existing lease where the lessee is in compliance with all the terms and conditions of the lease.**

(2) Submersible lands owned by the State of Oregon that are determined by the State Land Board to be available for sale may be sold only to the highest bidder, after being advertised not less than once each week for two successive weeks in one or more newspapers of general circulation in the county in which the lands are situated. However:

(a) No such lands shall be sold for less than for a fair appraised value as determined by an appraiser appointed by the department.

(b) All sales of such submersible lands shall be approved by the State Land Board.

(c) Any owner of lands abutting or fronting on such submersible lands shall have the preference right to purchase such lands for the fair appraised value provided that the sale of such lands be approved by the State Land Board.

(3)(a) The department may grant, to any person holding a permit from the Water Resources Director authorizing the impoundment for beneficial use of the waters of any lake or stream, easements over **submerged and** submersible lands for flowage and storage of waters, and for the construction, maintenance and operation of any structures or facilities necessary for the use of the water under the terms of the permit upon payment of just compensation by the grantee.

(b) In addition to the authority of the department under paragraph (a) of this subsection to grant easements over **submerged and** submersible lands, a person holding a water right permit, water right certificate, proposed or final order approving a water right permit or court decree evidencing a water right may occupy state-owned **submerged and** submersible lands for the construction, maintenance and operation of any structure or facility necessary for the use of water if the proposed use under the permit, certificate, order or decree is for irrigation or domestic use. The department may not charge for the occupation of state-owned **submerged and** submersible lands pursuant to this paragraph, nor may the department require that a person obtain written documentation to substantiate the permission granted under this paragraph. Upon request by the Department of State Lands, the Water Resources Department shall provide information to the Department of State Lands regarding any change of use of the water right. A person may continue to occupy state-owned **submerged and** submersible lands pursuant to this paragraph until:

(A) The water right permit is canceled pursuant to ORS 537.260;

(B) The water right is canceled pursuant to ORS 540.641; or

(C) The water is no longer being applied to irrigation or domestic use.

(c) An easement or the permission granted under this subsection may not be construed to be a sale or lease of the **submerged and** submersible lands within the meaning of subsections (1) and (2) of this section.

(d) A person granted an easement or permission to use or occupy state-owned **submerged and** submersible lands under this subsection shall indemnify and hold harmless the state from all liability and claims arising from or attributable to the use or occupation.

(4) All easements or the permission granted pursuant to subsection (3) of this section shall be subject to conditions that will ensure the safety of the public and the preservation of economic, scenic and recreational values and to lawful rules promulgated by state agencies affected by the activities of the grantee.

(5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806, 622.270 or 622.320 to 622.350.

(6) The Department of State Lands shall designate the minimum acceptable amount for the lease of any **submerged and** submersible lands otherwise authorized by law, other than any lease offered or issued by the department under ORS 274.705 to 274.860.

(7) For the purpose of sale, the value of state-owned **submerged and** submersible lands shall be determined by an appraiser appointed by the department.

(8) The act of any person entering into an agreement with the department under this section or ORS 274.530 for the lease of **submerged and** submersible lands shall not be considered a waiver by such person of any claim of ownership in the **submerged and** submersible lands described in the agreement.

**SECTION 2.** ORS 274.043 is amended to read:

274.043. (1) A privately owned float or dock occupying an area of 200 square feet or less is exempt from the leasing requirements of ORS 274.040 if:

(a) The structure belongs to the immediately adjacent riparian landowner; and

(b) The float or dock is uncovered, unenclosed and open on all sides.

(2) A privately owned float or dock constructed prior to September 29, 1991, and exempted under ORS 274.042 (1989 Edition) is exempt from the provisions of ORS 274.040.

*[(3) The Department of State Lands may, by rule, provide for additional exemptions to the leasing requirements of ORS 274.040.]*

*[(4) Any float or dock described in subsections (1) to (3) of this section shall be registered with the department.]*

**(3) Any float or dock described in subsections (1) and (2) of this section shall be registered with the Department of State Lands.**

**(4) The department may authorize the following uses of state-owned submerged and submersible lands without charge:**

**(a) Structures on state-owned submerged and submersible lands maintained by a drainage district organized under the provisions of ORS chapter 547.**

**(b) Riprap, as defined in ORS 196.815, used to stabilize the banks along state-owned submerged and submersible lands.**

**(c) Rights of way established prior to November 1, 1981, for any county road over state-owned submerged and submersible lands, and rights of way established prior to November 1, 1981, for any city street over state-owned submerged and submersible lands.**

**(d) Voluntary habitat restoration work on state-owned submerged and submersible lands. For purposes of this paragraph, voluntary habitat restoration work does not include:**

**(A) Activities undertaken to satisfy any actual or potential legal obligation, or for which the entity completing the habitat restoration work receives compensation of any kind.**

**(B) Habitat restoration work completed by an entity to satisfy an environmental mitigation obligation, or to generate, sell or obtain credit as an offset against actual or potential natural resource damages liability.**

**(5) The department is entitled to charge, in accordance with rules adopted by the department, for the use of state-owned submerged and submersible lands for any environmental mitigation credit, or settlement of or credit obtained as an offset against natural resource damages liability, acquired by any party for habitat restoration work on state-owned land.**

**(6) The uses described in subsections (4) and (5) of this section must be registered in accordance with rules adopted by the department. Any person issued a registration to use or occupy state-owned submerged and submersible lands under subsections (4) and (5) of this section shall indemnify and hold harmless the state from all liability and claims arising from or attributable to the use or occupation.**

**(7) The department by rule may authorize the use of specific state-owned submerged or submersible lands without charge if the department determines that the use is minimally intrusive to any public rights of navigation, fishery or recreation.**

## CONFORMING AMENDMENTS

**SECTION 3.** ORS 274.060 is amended to read:

274.060. (1) Nothing in ORS 274.040 prevents the Legislative Assembly from providing for regulation of the building of wharves or other improvements in any bay, harbor or inlet of this state, subject to ORS 780.060, or grants the exclusive right to any person to use the natural oyster beds of this state.

(2) The grantee of any **submerged or** submersible lands under ORS 274.040 shall hold the same subject to the easement of the public, under the provisions and restrictions of law, to enter thereon and remove oysters and other shell fish therefrom.

## KELP FIELDS

**SECTION 4.** ORS 274.885 is amended to read:

274.885. [(1)] The Department of State Lands may lease submerged lands owned by the State of Oregon for the purpose of harvesting kelp and other seaweed after consultation with the State Fish and Wildlife Commission.

[(2) *The lease may be for a term of not to exceed 50 years and shall provide for the payment to the State of Oregon of a sum to be fixed by the department for all kelp or other seaweed harvested under the lease, to be paid at the end of each year. Not more than 40 miles of coast line shall be leased to one person.*]

**SECTION 5.** ORS 274.895 is amended to read:

274.895. Except in the case of a person harvesting or removing less than 2,000 pounds of **wet** kelp each year for the purposes of human consumption **for the person's personal use**, [no person shall] **a person may not** harvest or remove any kelp or other seaweed from any submerged lands owned by the State of Oregon unless the person has first obtained a lease from the Department of State Lands.

## DRAINAGE MAINTENANCE

**SECTION 6.** Section 7 of this 2011 Act is added to and made a part of ORS 196.800 to 196.825.

**SECTION 7.** Notwithstanding ORS 196.810, the Department of State Lands may establish by rule a general permit that allows the removal of no more than 100 cubic yards of material from waters of this state, including in essential indigenous anadromous salmonid habitat, for the purpose of maintaining drainage and protecting agricultural land. The department may waive the fees specified in ORS 196.815 for removal taking place under the provisions of this section.

## MISCELLANEOUS

**SECTION 8.** (1) The amendments to ORS 274.040 (1) by section 1 of this 2011 Act apply to leases issued by the Department of State Lands before, on and after the effective date of this 2011 Act.

(2) The amendments to ORS 274.040 (3)(a) by section 1 of this 2011 Act apply to permits authorizing the impoundment of waters for beneficial use that are issued by the Water Resources Director before, on or after the effective date of this 2011 Act.

(3) The amendments to ORS 274.040 (3)(b) by section 1 of this 2011 Act apply to:

(a) Water right permits or water right certificates issued before, on or after the effective date of this 2011 Act.

(b) Proposed or final orders approving a water right permit issued before, on or after the effective date of this 2011 Act.

(c) Court decrees evidencing a water right entered before, on or after the effective date of this 2011 Act.

(4)(a) The amendments to ORS 274.043 by section 2 of this 2011 Act apply to:

(A) Structures constructed on state-owned submerged and submersible lands before, on or after the effective date of this 2011 Act by drainage districts organized under the provisions of ORS chapter 547.

(B) Riprap used to stabilize the banks along state-owned submerged and submersible lands before, on or after the effective date of this 2011 Act.

(C) Voluntary habitat restoration work conducted on state-owned submerged and submersible lands before, on or after the effective date of this 2011 Act.

(b) Any easement or lease under ORS chapter 274 entered into before the effective date of this 2011 Act related to:

(A) Structures on state-owned submerged and submersible lands maintained by drainage districts organized under the provisions of ORS chapter 547 need not be renewed, or may be

terminated before the date of renewal, by the grantee or lessee on or after the effective date of this 2011 Act.

(B) Riprap used to stabilize the banks along state-owned submerged and submersible lands need not be renewed, or may be terminated before the date of renewal, by the grantee or lessee on or after the effective date of this 2011 Act.

(C) Rights of way established prior to November 1, 1981, for any county road over state-owned submerged and submersible lands, and rights of way established prior to November 1, 1981, for any city street over state-owned submerged and submersible lands, need not be renewed, or may be terminated before the date of renewal, by the grantee or lessee on or after the effective date of this 2011 Act.

(D) Voluntary habitat restoration work conducted on state-owned submerged and submersible lands need not be renewed, or may be terminated before the date of renewal, by the grantee or lessee on or after the effective date of this 2011 Act.

(c) Any person who does not renew, or who terminates before the date of renewal, an easement or lease as described in paragraph (b) of this subsection may not claim reimbursement from the Department of State Lands for any amounts paid by the person related to the easement or lease prior to the date of nonrenewal or termination.

(5) The amendments to ORS 274.885 by section 4 of this 2011 Act apply to leases renewed, or first entered into, by the Department of State Lands on or after the effective date of this 2011 Act.

**SECTION 9.** The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

Passed by Senate April 27, 2011

Received by Governor:

Repassed by Senate June 24, 2011

.....M.,....., 2011

Approved:

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Robert Taylor, Secretary of Senate

.....M.,....., 2011

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House June 14, 2011

Filed in Office of Secretary of State:

Repassed by House June 27, 2011

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Bruce Hanna, Speaker of House

.....M.,....., 2011

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Arnie Roblan, Speaker of House

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Kate Brown, Secretary of State