

Chapter 274

2017 EDITION

Submersible and Submerged Lands

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GENERAL PROVISIONS

274.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) “Department” means the Department of State Lands.

(2) “Director” means the Director of the Department of State Lands.

(3) “Line of ordinary high water” means the line on the bank or shore to which the high water ordinarily rises annually in season.

(4) “Line of ordinary low water” means the line on the bank or shore to which the low water ordinarily recedes annually in season.

(5) “Land” includes water, water rights, easements of every nature and all appurtenances to land.

(6) “Material” includes gravel, rock, sand and silt, but does not include hard minerals subject to ORS 274.610, or oil, gas and sulfur subject to ORS 274.705 to 274.860.

(7) “Submerged lands,” except as provided in ORS 274.705, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.

(8) “Submersible lands,” except as provided in ORS 274.705 means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal. [1967 c.421 §98 and 1967 c.616 §13; 1969 c.594 §31; 1991 c.217 §3; 2003 c.253 §20]

274.010 [Amended by 1961 c.619 §41; renumbered 274.885]

274.015 Determination of ordinary high and low water. For purposes of this chapter, when the lines of ordinary high or low water cannot be determined by survey or inspection, then such lines shall be determined by the use of the annual mean high or mean low water for the preceding year. [1967 c.421 §99]

274.020 [Renumbered 274.890]

274.025 Jurisdiction over submersible and submerged lands generally. (1) The title to the submersible and submerged lands of all navigable streams and lakes in this state now existing or which may have been in existence in 1859 when the state was admitted to the Union, or at any time since admission, and which has not become vested

in any person, is vested in the State of Oregon. The State of Oregon is the owner of the submersible and submerged lands of such streams and lakes, and may use and dispose of the same as provided by law.

(2) No person shall acquire any right, title or interest in or to the submersible and submerged lands of any such navigable lakes, or any part thereof, by reliction or otherwise, or by reason of the lowering or drainage of the waters of such lakes, except as provided by statute. [Formerly 274.420]

274.029 [1973 c.496 §1; 1977 c.471 §1; 1981 c.219 §1; repealed by 1983 c.566 §1]

274.030 [Amended by 1961 c.619 §42; renumbered 274.895]

274.031 [Formerly 274.034; 1981 c.219 §2; repealed by 1983 c.566 §1]

274.032 [1977 c.471 §2; repealed by 1983 c.566 §1]

274.034 [1973 c.496 §2; 1977 c.637 §1; renumbered 274.031]

274.035 [Formerly 274.570; repealed by 1969 c.594 §63]

NAVIGABILITY OF STREAMS

274.036 Status of channel of Willamette River; approval of dam; state maintenance of river location. The Willamette River at mile 176.5 has been returned to its pre-1971 channel. The Legislative Assembly finds that in the interests of the state’s ownership in the bed of the Willamette River and protecting the public rights of navigation, fisheries, recreation and wildlife habitat, the river at that point should be allowed to remain at its present location. The Legislative Assembly further finds that the construction of the dike at river mile 176.5 which returned the river to its pre-1971 channel is hereby approved as being in accordance with the intent and purposes of ORS 780.010. Nothing in this section is intended to imply a continuing obligation by the state to maintain the river in any location or waive the requirements of ORS 196.600 to 196.905. [1975 c.412 §2]

SALE, LEASE OR USE WITHOUT CHARGE

274.040 Sale or lease of submersible lands; easements; occupation of submerged and submersible lands for water works. (1) Except as provided in ORS 274.043, 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, in ORS 274.873 for proprietary authorizations within Oregon’s territorial sea as defined in ORS 196.405 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 preferences provided in this subsection apply to any lease of submersible land for one year or more offered or issued under ORS 274.530. The preferences provided in this subsection 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. [Amended by 1961 c.37 §1; subsection (3) enacted as 1961 c.37 §2; 1967 c.421 §104; 1969 c.594 §32; subsection (4) enacted as 1969 c.675 §17; 1975 c.547 §1; 1975 c.765 §2; 1979 c.793 §3; 1981 c.158 §1; 1981 c.432 §1; 1991 c.217 §5; 1995 c.113 §2; 2003 c.350 §1; 2011 c.713 §1; 2015 c.386 §7]

274.042 [1979 c.793 §2; repealed by 1991 c.521 §1 (274.043 (1) to (3) enacted in lieu of 274.042)]

274.043 Exemptions from leasing requirements; rules; registration; use without charge; use with charge; indemnification. (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 by rule may 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.

(5) 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.

(6) 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.

(7) The uses described in subsections (5) and (6) 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 (5) and (6) of this section shall indemnify and hold harmless the state from all liability and claims arising from or attributable to the use or occupation.

(8) 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. [Subsections (1) to (3) enacted as 1991 c.521 §2 in lieu of 274.042; subsection (4) enacted as 1991 c.521 §6; 2011 c.713 §2; 2015 c.205 §1]

274.045 [Subsection (1) of 1965 Replacement Part enacted as 1961 c.703 §9; subsection (2) of 1965 Replacement Part enacted as 1961 c.619 §35; repealed by 1967 c.421 §206]

274.050 [Renumbered 273.900]

HARBOR IMPROVEMENTS

274.060 Regulation of harbor improvements; oyster beds; public easement in submerged and submersible lands. (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 shellfish therefrom. [Amended by 1967 c.421 §105; 1969 c.594 §§33,33a; 2011 c.713 §3]

274.064 Portland Harbor Cleanup Fund. (1) The Portland Harbor Cleanup Fund is established in the State Treasury, separate and distinct from the General Fund. The Portland Harbor Cleanup Fund consists of moneys deposited in the fund under section 10, chapter 748, Oregon Laws 2017, and may include moneys appropriated, allocated, deposited or transferred to the fund by the Legislative Assembly or otherwise and interest earned on moneys in the fund.

(2) Moneys in the fund are continuously appropriated to the Department of State Lands for disbursement for the purposes set forth in section 10, chapter 748, Oregon Laws 2017.

(3) Nothing in this section or section 10, chapter 748, Oregon Laws 2017, waives or limits the department's ability to recover, by way of insurance, cost recovery, contribution, or claim or action relating to or arising out of the Portland Harbor Superfund Site, moneys from other parties, including claims for costs incurred by the department. In no event shall anything in this section or section 10, chapter 748, Oregon Laws 2017, be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. [2017 c.748 §11]

Note: 274.064 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 274 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 10, chapter 748, Oregon Laws 2017, provides:

Sec. 10. (1) For the biennium beginning July 1, 2017, at the request of the Oregon Department of Administrative Services, after the department consults with the Department of State Lands, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286A.560 to 286A.585 in an amount that produces \$3 million in net proceeds and interest earnings for the purposes described in subsection (2) of this section, plus an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs.

(2) Net proceeds of lottery bonds issued under this section in an amount sufficient to provide \$3 million in net proceeds and interest earnings must be transferred to the Department of State Lands for deposit in the Portland Harbor Cleanup Fund, established in section 11 of this 2017 Act [274.064], to provide financial assistance to the department for coordination and participation in any contracts or agreements relating to or arising out of the Portland Harbor Superfund Site. The purposes of the contracts or agreements may include, but are not limited to:

(a) Investigation necessary to characterize existing baseline conditions throughout the Portland Harbor Superfund Site, as well as conditions upstream and downstream that may be impacting the Portland Harbor Superfund Site;

(b) Investigation of key sediment management areas to update the extent of areas of higher contamination in the Portland Harbor Superfund Site;

(c) Investigation of potential infrastructure needs related to contaminated sediments in the Portland Harbor Superfund Site;

(d) Development and administration of a comprehensive data management system for the Portland Harbor Superfund Site;

(e) Satisfaction of some or all of the department's obligations under any administrative settlement or administrative order on consent in connection with the Portland Harbor Superfund Site; and

(f) Work required by the United States Environmental Protection Agency in connection with the Portland Harbor Superfund Site.

(3) In executing contracts for the work described in subsection (2) of this section, the Department of State Lands shall, when practicable, contract with regional contractors employing individuals from communities disproportionately impacted by contamination in the Portland Harbor.

(4) The Legislative Assembly finds that the use of lottery bond proceeds will create jobs, further economic development, finance public education or restore and protect parks, beaches, watersheds and native fish and wildlife, and is authorized based on the following findings:

(a) Having healthy ecosystems supports Oregon's economic growth and restores watersheds and habitat for native fish.

(b) The future cleanup of the Portland Harbor will enhance community efforts to facilitate and promote economic growth. [2017 c.748 §10]

274.065 [1965 c.368 §1; 1967 c.421 §114; renumbered 390.710]

274.070 [Amended by 1965 c.368 §2; 1967 c.421 §115; renumbered 390.720]

274.075 [1961 c.36 §§1,2,3,4; 1967 c.421 §116; 1969 c.594 §34; repealed by 1969 c.601 §30]

274.080 [Amended by 1955 c.257 §1; 1965 c.368 §3; 1967 c.421 §117; repealed by 1969 c.601 §30]

COMMON SCHOOL FUND INVESTMENTS

274.085 Acquisition for Common School Fund investment; lease of lands.

Whenever it appears to the State Land Board to be prudent and to the financial benefit of the Common School Fund, the State Land Board may acquire as an investment for the Common School Fund any parcel of land, whether or not submerged, and submersible lands or formerly submerged and submersible lands. The consideration for such acquisition may be an exchange of other lands under the jurisdiction of the State Land Board including submerged and submersible lands or formerly submerged and submersible lands or cash or a combination of such lands and cash. In leasing any lands acquired as an investment for the Common School Fund, the board may use negotiation, competitive bid-

ding, solicitation of proposals or whatever procedure or combination of procedures the board determines will maximize the financial benefit to the Common School Fund. The board may determine on a case-by-case basis what notice, publication or bidding procedures, if any, it wishes to use in implementing its authority under this section. [1979 c.546 §1; 1981 c.158 §2]

Note: 274.085 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 274 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

274.090 [Amended by 1959 c.237 §1; 1965 c.368 §4; 1967 c.421 §118; renumbered 390.730]

274.100 [Amended by 1965 c.368 §5; 1967 c.421 §119; renumbered 390.740]

274.110 [Amended by 1967 c.421 §120; renumbered 390.750]

274.120 [Renumbered 273.902]

274.130 [Renumbered 273.903]

DRAINAGE AND RECLAMATION

274.205 Definition for ORS 274.210 to 274.290. As used in ORS 274.210 to 274.290, "reclamation" includes, but is not limited to, irrigation. [1969 c.594 §36]

274.210 Authority of department to contract for drainage and reclamation of certain lands. The Department of State Lands on behalf of the State of Oregon may enter into contracts for:

(1) The drainage of submersible and submerged lands adjoining or underlying any lakes, marshes or swamps in this state, or for the drainage of that part which is in this state of submersible and submerged lands adjoining or underlying any lake, marsh or swamp lying partly in this state and partly in another state, and for the reclamation of any such lands; and

(2) The sale or disposal of such drained and reclaimed lands as provided for in ORS 274.210 to 274.260. [Amended by 1967 c.421 §121; 1969 c.594 §37; 2001 c.104 §82]

274.220 Application for drainage and reclamation of lands. (1) Any person desiring to enter into a contract to drain submersible and submerged lands under ORS 274.210 to 274.260 and reclaim such lands shall file with the Department of State Lands an application.

(2) The applicant, at the expense of the applicant and without any cost or charge to the state, shall make the necessary surveys and prepare a map of the lands proposed to be reclaimed. The map shall exhibit a plan showing the area that is submersible or submerged and the mode of the contemplated drainage and reclamation, and shall be accompanied by a list of the lands proposed to be drained, with sufficient description to

identify the lands in accordance with rules promulgated by the department.

(3) The application shall contain an estimate of the cost of the construction of the proposed system of drainage and reclamation. [Amended by 1967 c.421 §122; 1969 c.594 §38]

274.230 Investigation and report by Water Resources Director; terms of contract; bond. (1) Upon receipt of the application, map and plan of drainage and reclamation under ORS 274.220, the Department of State Lands may require the Water Resources Director to make an investigation and report at the expense of the applicant. If the project appears feasible and desirable and such applicant responsible, the department may enter into a contract with the applicant for construction of the drainage and reclamation works.

(2) The applicant shall agree:

(a) To drain the submersible and submerged lands substantially in accordance with the plans set forth in the contract;

(b) To make such proofs of reclamation as are required by the department;

(c) To pay all costs incident to the contract and making of the proof and any other expense connected therewith;

(d) That work will be commenced upon the ditches or other works necessary for such drainage and reclamation at a time fixed by the department and agreed upon in the contract;

(e) That by the end of the first year after the time fixed in the contract for beginning such work, 10 percent of the necessary expenditure will be made; and

(f) That this work will be prosecuted with due diligence until complete and the required proof of reclamation is made.

(3) The department shall require a bond subject to its approval in any sum it finds necessary to insure the faithful performance of the contract. [Amended by 1967 c.421 §123; 1969 c.594 §39]

274.240 Performance by contractor; disposal of lands; rules. (1) Immediately upon execution of the contract, the contractor undertaking the drainage and reclamation may enter upon the lands for the purpose of reclaiming the same.

(2) The Department of State Lands shall fix the amount to which the contractor is entitled for reclaiming the lands and shall also fix the amount to be paid to the state for such lands. The department may permit the contractor to sell or dispose of the lands at such price and upon such terms as the department may fix in tracts not to exceed 640 acres to any one person under such rules

as the department may promulgate governing disposal.

(3) Upon proof satisfactory to the department that the amount fixed by the department as due for reclamation and the amount due the State of Oregon has been fully paid, the department shall issue a quitclaim deed for not more than 640 acres to the purchaser of such land. [Amended by 1967 c.421 §124; 1969 c.594 §40]

274.250 Nonperformance; action by department; appeal from decision of department. (1) Upon failure of any parties having contracts with the state for construction of drainage and reclamation works to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract, the Department of State Lands shall give such parties written notice of such failure. If the parties have failed to proceed with the work or to conform to the specifications of the contract on or before the 60th day after the sending of such notice, the contract and all work constructed thereunder is forfeited to the state.

(2) Upon forfeiture, the department shall immediately give notice once every week for a period of four weeks in some newspaper of general circulation in the county in which the work is situated, and in one newspaper of general circulation in this state, declaring the forfeiture of the contract, and that upon a day stated in the notice proposals will be received at the office of the department for the purchase of incomplete works and for the completion of the contract, the time for receiving such bids to be not earlier than the 60th day after issuance of the last notice of the forfeiture. The sales shall be for cash to the highest responsible bidder. The money received from the sale of the partially completed works under this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, and any surplus shall be paid into the State Treasury and become a part of the Common School Fund.

(3) The contractors may appeal from the decision of the department. The appeal shall be heard in chambers by the circuit court of the district wherein the head works of the drainage system are situated. [Amended by 1967 c.421 §125]

274.260 Title of riparian owners. (1) The title of owners of land riparian to lakes and ponds drained under ORS 274.210 to 274.260 extends to only so much of the submersible or submerged lands adjoining or underlying such lake or pond which may be reclaimed by such drainage as is required to fill up the fractional subdivision or subdivisions of a section which the owner owns

and which are rendered fractional by such lake or pond, and the title of such owner is so limited when the waters of such lake or pond receding, because of such drainage, uncover the submersible or submerged lands adjoining or underlying such lake or pond.

(2) This section shall not affect the right of riparian owners to land acquired by natural accretion or reliction because of the gradual and natural recession of the waters of the lake or pond to which the lands of such owners are riparian. [Amended by 1967 c.421 §126; 1969 c.594 §41]

274.270 [Repealed by 1967 c.421 §206]

SWAMP AND SUBMERSIBLE LANDS

274.280 Surveys and plans for reclamation of lands. In addition to its powers under ORS 274.210 to 274.260, the Department of State Lands may cause reclamation surveys, plans and specifications to be made for the reclaiming of any unsold swamp lands and submersible lands under the control of the department. [Amended by 1967 c.421 §127; 1969 c.594 §42]

274.290 Execution of plan. The Department of State Lands may direct the Water Resources Director to submit an estimate of the probable cost of any survey, plan or specification of any contemplated reclamation project under ORS 274.280. On consideration thereof, if the department finds it to be in the interest of the state, the department shall direct the Water Resources Director to cause such survey and plans and specifications to be made and prepared. Upon receipt thereof the department may proceed under the plan to the extent and in such manner as it considers advisable. [Amended by 1967 c.421 §128]

274.300 [Amended by 1967 c.421 §22; renumbered 273.111]

274.310 [Amended by 1967 c.421 §129; 1969 c.594 §14; repealed by 2005 c.755 §59]

274.355 [1961 c.479 §1; 1967 c.421 §109; repealed by 1967 c.567 §14]

274.360 [1961 c.479 §§2,3; 1967 c.421 §110; repealed by 1967 c.567 §14]

274.365 [1961 c.479 §§4,6; 1967 c.421 §111; repealed by 1967 c.567 §14]

274.370 [1961 c.479 §5; 1967 c.421 §112; repealed by 1967 c.567 §14]

274.375 [1961 c.479 §7; 1967 c.421 §113; repealed by 1967 c.567 §14]

ABANDONED AND DERELICT STRUCTURES

274.376 Definitions for ORS 274.376 to 274.388. As used in ORS 274.376 to 274.388:

(1) "Abandoned structure" means a structure that has been left without authorization on, under or over state-owned submersible or submerged lands.

(2) “Abandoned vessel” has the meaning given that term in ORS 830.908.

(3) “Derelict structure” means a structure that is on, under or over state-owned submerged or submersible lands and that is:

(a) Sunk or in imminent danger of sinking due to its dilapidated condition;

(b) Obstructing a waterway;

(c) Endangering life or property; or

(d) In dilapidated condition such that it is in danger of becoming an environmental hazard as evidenced by instances of leaking fuel, sewage or other pollutants.

(4) “Derelict vessel” has the meaning given that term in ORS 830.908.

(5) “Marine debris” means any manufactured or processed solid material that:

(a) Persists in the marine environment; and

(b) Is disposed of or abandoned, either with intention or unintentionally, in any waters of which the submersible or submerged lands belong to the State of Oregon.

(6) “Owner” means a person who has a property interest in a structure or vessel. [2015 c.715 §1]

274.379 Authority to seize abandoned structure or derelict structure; notice. (1) The Department of State Lands is authorized to seize a structure on, under or over state-owned submerged or submersible lands if:

(a) The department determines, after providing notice and opportunity for a hearing, that the structure is an abandoned structure or a derelict structure; and

(b) The owner of the structure has failed to correct the problems identified in the notice within 20 days or a longer reasonable time as specified in the notice provided under the rules adopted under ORS 274.385 or within any additional time that may be granted by the department.

(2)(a) The notice required under subsection (1) of this section must:

(A) Identify, with specificity, the department’s proprietary interest in and jurisdiction over the state-owned submerged or submersible lands that the structure is on, under or over;

(B) Identify any person that the department has determined may have a potential interest in the structure or the land upon which the structure is located; and

(C) Be delivered by certified mail, return receipt requested, to any person with a potential interest in the structure or the land upon which the structure is located, as determined by the department after diligent investigation.

(b) As used in this subsection, “diligent investigation” includes but is not limited to a search of the county property records.

(3) The department may remove, salvage, store and dispose of structures seized under this section.

(4)(a) Nothing in this section affects the ability of the department to:

(A) Investigate and prosecute trespasses on and damage to state lands under ORS 273.185; or

(B) Immediately seize without notice a structure that presents a hazard to navigation or an imminent threat to public health or safety.

(b) If the department seizes a structure without notice under this subsection and the department wishes to salvage or dispose of the structure, the department shall provide notice as provided for in the rules adopted under ORS 274.385. [2015 c.715 §2]

274.382 Liability for costs of removal, salvage, storage and disposal. (1) Except as may otherwise be provided by the Department of State Lands by rule, the owner of an abandoned structure or derelict structure is liable to the department for all costs arising out of removal, salvage, storage and disposal of a structure seized under ORS 274.376 to 274.388. Any order imposing liability for the costs is an order other than a contested case and is subject to review under ORS 183.484.

(2) If the department sells a structure seized under ORS 274.376 to 274.388, the liability imposed under this section shall be reduced by the net proceeds of the sale.

(3) Except as may otherwise be provided by the department by rule, an owner of a structure whose only interest in the structure is a security interest is not liable for costs arising out of removal, salvage, storage and disposal of a structure under ORS 274.376 to 274.388. [2015 c.715 §3]

274.385 Rules. The Department of State Lands shall adopt rules to carry out the provisions of ORS 274.376 to 274.388. The rules shall, at a minimum, include procedures:

(1) For providing notice and opportunity for a hearing prior to the seizure of abandoned or derelict structures under ORS 274.376 to 274.388; and

(2) Related to the manner by which requests to the department for the use of moneys in the Submerged Lands Enhancement Fund may be made and evaluated by the department. [2015 c.715 §5]

274.388 Submerged Lands Enhancement Fund. (1) The Submerged Lands Enhancement Fund is established in the State Treasury, separate and distinct from the

General Fund. Interest earned by the Submerged Lands Enhancement Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of State Lands for the purposes specified in this section.

(2) Notwithstanding ORS 273.105, the fund shall consist of:

(a) No more than 20 percent of the moneys collected by the department per biennium pursuant to the department's granting of leases, easements, registrations and other permissions to use or occupy state-owned submerged or submersible lands; and

(b) Moneys collected by the department under subsection (5) of this section.

(3) Moneys in the Submerged Lands Enhancement Fund may be used to pay the expenses of the department associated with management and enhancement activities on state-owned submerged and submersible lands, including but not limited to:

(a) Removal, salvage, storage and disposal of abandoned or derelict structures under ORS 274.379;

(b) Removal and disposal of marine debris;

(c) Assistance with the salvage, towing, storage and disposal of abandoned or derelict vessels pursuant to ORS 830.908 to 830.948; and

(d) Engagement in activities to improve water quality, watershed enhancement and fish and wildlife habitat on submerged and submersible lands.

(4) The department may use moneys in the fund to provide funding to a state agency, county, city, water improvement district, watershed council, park and recreation district, port district, federally recognized Indian tribe or nonprofit organization to assist the department in completing any of the management and enhancement activities provided for in subsection (3) of this section.

(5) The department may recover payments made from the fund from an owner of a structure or vessel who is liable for the costs of removal, salvage, storage and disposal of a structure under ORS 274.382. The department shall deposit all moneys recovered under this subsection into the fund. [2015 c.715 §4]

BEDS OF STREAMS, LAKES AND BAYS (Ownership)

274.400 Definition for ORS 274.400 to 274.412. As used in ORS 274.400 to 274.412, "board" means the State Land Board. [1995 c.471 §2]

274.402 Exclusive jurisdiction to assert title to submerged or submersible lands in navigable waterway. (1) The State Land Board has exclusive jurisdiction to assert title to submerged or submersible lands in navigable waterways on behalf of the State of Oregon.

(2) The board shall not in any manner assert title to submerged or submersible lands in any waterway in this state unless either:

(a) A court having jurisdiction to determine title to real property in Oregon has determined that the waterway or part of the waterway is navigable and that determination is final; or

(b) The board has made a declaration under ORS 274.406 that contemplates the assertion of such title. [1995 c.471 §3]

274.404 Administrative determination of navigable waterway; rules; procedure.

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

(2) The rules adopted under subsection (1) of this section shall incorporate the following procedures that the board and the department shall follow:

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

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

(c) Upon completion of a study directed under paragraph (a) of this subsection, the department shall prepare and submit to the board a draft report setting forth the department's findings and conclusions as to whether the waterway or part of the waterway under study is navigable and, if so, the extent of the State of Oregon's interest in the waterway or part of the waterway.

(d) The department shall provide appropriate prior public notice to affected property owners and other interested parties concerning the draft report. The notice shall provide an opportunity for a public hearing in the area of the affected waterway and an opportunity for the public to submit written comments on the draft report and to submit

testimony or other evidence concerning the navigability of the affected waterway or part of the waterway or the State of Oregon's interest in the waterway or part of the waterway.

(e) Following the public hearing, the board may adopt the draft report submitted by the department if substantial evidence in the record supports the report's findings and conclusions, or the board may refer the report to the department for further action as determined by the board. [1995 c.471 §4]

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

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

(3) Nothing contained in this section is intended to affect the ability of a court of competent jurisdiction to make a determination with respect to a private claim to or interest in real property. [1995 c.471 §5]

274.408 Public notice of claim; content. Immediately following a declaration made by the State Land Board pursuant to ORS 274.406, the board shall:

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

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

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

(2) Send to each owner of record of land described in the declaration a copy of the declaration made with respect to the land and a statement advising such owner that any aggrieved party may seek judicial review of the declaration pursuant to ORS 274.412. [1995 c.471 §6]

274.410 [Renumbered 274.525]

274.412 Judicial review of declaration of state's claim. Any person who is aggrieved by a declaration of the State Land Board made pursuant to ORS 274.406 may seek judicial review of the declaration in the manner provided in ORS chapter 183 for judicial review of final orders in other than contested cases. For purposes of ORS 183.484 (2), the date three days after the date of mailing of notice under ORS 274.408 (2) shall be considered the date the order is served on the owner. [1995 c.471 §7]

274.420 [Amended by 1967 c.421 §100; renumbered 274.025]

274.425 Definition for ORS 274.430 to 274.520. As used in ORS 274.430 to 274.520, "meandered lake" means a lake wholly or partly within this state that has been meandered by the United States surveys. [1967 c.421 §131]

274.430 State ownership of meandered lakes; status as navigable and public waters. (1) All meandered lakes are declared to be navigable and public waters. The waters thereof are declared to be of public character. The title to the submersible and submerged lands of such meandered lakes, which are not included in the valid terms of a grant or conveyance from the State of Oregon, is vested in the State of Oregon.

(2) ORS 274.430 to 274.450 shall not apply to any nonnavigable lakes lying within the boundaries of any duly organized and incorporated drainage district which was in existence on January 1, 1921.

(3) Nothing in this section impairs the title of any upland or riparian owner to or any vested rights in land which was added prior to May 25, 1921, by natural accretion or reliction to the lands of such upland owner. [Amended by 1967 c.421 §132]

274.440 Acquisition of future rights to meandered lakes denied; extension of riparian ownership; lands overflowed by high water. (1) There are no vested rights in or to any future accretion or reliction to the lands of any upland or riparian owner on any meandered lake. No person shall acquire any right, title or interest in or to the submerged or submersible lands of any such lakes, or any part thereof, by reliction, accretion or otherwise, or by reason of the lowering or drainage of the waters of such lakes, except as provided by statute.

(2) Upon drainage of meandered lakes, the title of owners of land riparian to such lakes drained under any law shall extend to so much of the submersible and submerged lands reclaimed by such drainage as is required to fill out the least fractional subdivision or subdivisions of any section owned by such riparian owners and which is rendered

fractional by the meander line of such lake; and the title of such owners shall be so limited when the receding lake waters, because of such drainage, uncover the submersible and submerged lands. Where by reason of natural accretion or reliction such fractional subdivision or subdivisions of such upland owners were filled out thereby prior to May 25, 1921, such upland owners shall hold to the line of such lands as extended by the natural accretion or reliction.

(3) Submersible and submerged lands covered at ordinary high water at ordinarily recurring seasons by the waters of meandered lakes, or from which the waters of any such lakes have not at ordinarily high water permanently receded, are not considered to be accreted or relict lands, but the same and all accretions and relictions occurring or formed over any of the lands of the State of Oregon, as provided by ORS 274.430, are the property of the State of Oregon, and may be by it leased, sold or managed in the manner provided by law. [Amended by 1967 c.421 §133]

274.450 Acquisition of riparian rights by department. The Department of State Lands may acquire by purchase, gift, condemnation or otherwise, any riparian rights which may, by any court of competent jurisdiction, be held to be owned by or vested in any upland or riparian owner on any meandered lakes, and may institute such suits or actions as may be necessary in such condemnation proceedings. [Amended by 1967 c.421 §134]

274.460 Settler's and riparian owner's preferential right to purchase land within meander lines. All persons qualified to become entrymen and to secure land patents under the homestead laws of the United States and who prior to January 1, 1921, in good faith settled upon lands within the meander lines of lakes returned as navigable by the United States surveys and who, on January 1, 1921, by reason of settlement, cultivation and improvements on any such lands would be entitled to patent from the United States if such lands were open or subject to homestead entry are given a preference right to purchase from the State of Oregon such lands so settled upon by them, not exceeding 160 acres for any one person, upon such terms and at such prices and within such times as shall be fixed by the Department of State Lands. However, owners of the upland bordering upon such ordinary high water mark have a preference right to purchase, at the best price bid, state lands described in ORS 274.430 and riparian to their lands, and not exceeding 160 acres, in addition to the lands granted them by ORS 274.430 and 274.440. [Amended by 1967 c.421 §135]

274.470 Settler's right to deed to land within meander lines; preferential right to additional land; tacking by successive settlers. (1) Any person who in good faith settled upon lands within the meander lines of any meandered lake and who, on January 1, 1921, actually resided thereon, who maintained residence thereon for at least five years immediately prior to such date, and who complied with the requirements of settlement, residence, cultivation and improvement, specified for homestead entrymen under the homestead laws of the United States, and which would be sufficient to acquire title by patent if such lands were subject to homestead entry by qualified entrymen, upon proof of such facts to the satisfaction of the Department of State Lands:

(a) Is entitled to a deed from the state, conveying and granting such lands not exceeding 160 acres without cost; and

(b) Has a preferential right to purchase from the State of Oregon 160 acres of additional lands, chiefly valuable for agricultural purposes.

(2) Any person who did not reside on any lands described in subsection (1) of this section for five years immediately prior to January 1, 1921, but who purchased the improvement or possessory rights or claims of a prior occupant, and whose residence and possession when tacked to that of such prior occupant extended for a period of not less than five years immediately prior to such date, shall have a preferential right to purchase such lands, not exceeding 160 acres, the price of which shall be fixed without reference to the value of the improvements thereon.

[Amended by 1967 c.421 §136]

274.480 Rights of riparian owners on Malheur and Mud Lakes. The owners of lands riparian to Malheur and Mud Lakes, in Harney County, Oregon, shall be granted title to so much of the lands within the meander lines of such lakes as is required to fill out the least fractional subdivision or subdivisions of any section owned by such upland owners, and which is rendered fractional by the meander line of such lakes, in addition to the rights recognized by ORS 274.430 to 274.460 to any natural accretion or reliction added to the lands of such upland owners prior to May 24, 1923. Owners of any upland bordering upon such meander lines shall have a preferential right to purchase, in addition, 160 acres of such state lands, chiefly valuable for agricultural purposes. [Amended by 1967 c.421 §137]

274.490 Settlement of conflicting preferential rights. Settlers within the meander line of any meandered lake have the first preferential right, and the Department of State Lands shall, so far as practicable, work out the various preferential rights by securing to each, all the lands which would be most advantageously used by such several persons. In case of conflict, the department shall give the parties a reasonable time in which to agree, and if they cannot agree, the department shall decide the matter and make conveyances as it considers equitable, and its decision in the matter shall be final. The department shall fix the time within which such preferential rights shall be exercised. [Amended by 1967 c.421 §138]

274.500 Conveyance of compact area; prices; maximum acreage. (1) All of the lands referred to in ORS 274.470 and 274.480 granted or conveyed by the state, shall be granted and conveyed in a reasonably compact area, to be determined by the Department of State Lands.

(2) All sales of such state lands shall be at prices fixed by the department, and no more than 320 acres shall be sold or conveyed to any one person. [Amended by 1967 c.421 §139]

274.510 Lake bed lands claimed by the United States. (1) If the federal government claims title or interest in any lands referred to in ORS 274.470 or 274.480 the same shall not be conveyed or otherwise disposed of, or preferential right therein accrue until such claim is settled. The Department of State Lands may enter into such agreements with the federal government affecting such lands as it deems best in the interest of the public, and make such deeds and conveyances to the United States in consideration of the issuance of such patents by the United States to the State of Oregon of such lands within the meander lines of any such lakes as the department and the federal government agree.

(2) Nothing in this section is a recognition of any title or interest in the United States within the meander lines of any meandered lake to any lands or waters of any such lake prior to the execution and delivery of a deed or conveyance from the State of Oregon as provided for in this section.

(3) In carrying out such agreements the department may utilize the proceeds from the sale of such lands in which title or interest is claimed by the federal government. This section does not authorize the department or any other state agency to enter into any agreement which will divest any person of any water rights acquired under the laws of this state or otherwise. [Amended by 1967 c.421 §140]

274.520 Acceptance of deed to lake bed lands as precluding any other claim. Any person who elects to take any deed from the State of Oregon under ORS 274.430 to 274.520 to any lands within the meander lines of a lake takes the same in lieu of any claim to any other lands within the meander line of such lake in which such deeded lands lie, and shall not thereafter maintain in any court any claim to any lands inside the meander line of such lake other than to the lands conveyed to such person by deed from the state under ORS 274.430 to 274.520 or which such person acquires in good faith from a grantee or purchaser from the State of Oregon under such statutes. [Amended by 1967 c.421 §141]

274.523 [1967 c.421 §143; repealed by 1969 c.594 §63]

(Removing Materials)

274.525 City use of stream bed material. (1) Any city of the State of Oregon bordering on a navigable stream may dredge out and use material from submersible and submerged lands of the stream, owned by the State of Oregon and in front of such city, for the purpose of filling in or reclaiming the submersible lands within such city, under the rules of the Department of State Lands. The consent of the appropriate agency of the United States Government shall be first obtained by such city.

(2) Any contractor who has entered into a contract with any such city to fill in or reclaim any of its submersible lands may dredge and use such material in the same manner as may be done by such city. [Formerly 274.410; 1967 c.421 §145; 1969 c.594 §43]

274.530 Lease or license of stream beds for removal of material; rules for measurement of volume removed. (1) The Department of State Lands may, after notice of competitive bidding, and following such competitive bidding, lease or license submersible and submerged lands of navigable streams owned by the State of Oregon for the purpose of removing material therefrom. Competitive bid requirements may be waived for leases of less than one year's duration. No lease shall be made for a lump sum but only on a basis of the price per cubic yard or ton for the material removed.

(2) The department may prescribe by rule the manner in which the volume in cubic yards or the weight in tons for the material removed shall be determined.

(3) Notwithstanding subsections (1) and (2) of this section, the department may enter into a license for the removal of material from submersible and submerged lands of navigable streams owned by the State of Oregon based on a competitive market rate that reflects fair market value.

(4) The department shall, prior to any competitive bidding notice, establish prebid qualifications that include but are not limited to the following:

(a) The minimum yardage amount of material that must be removed for each year for which the lease is valid.

(b) Evidence that all bidders have an established market, as provided by each bidder. [Amended by 1961 c.509 §2; 1961 c.676 §3; 1967 c.421 §144; 1967 c.567 §§15, 15a; 1971 c.509 §1; 1995 c.113 §1]

274.540 [Amended by 1953 c.181 §2; 1961 c.509 §3; 1961 c.676 §4; 1967 c.421 §45; renumbered 273.225]

274.550 Removal of material without payment of royalties; eligible material and uses. (1) A person may remove material from submersible and submerged lands owned by the State of Oregon without payment of royalties to the Department of State Lands if the material is:

(a) Removed for channel or harbor improvement or flood control;

(b) Used for filling, diking or reclaiming land owned by the state or any political subdivision as defined in ORS 271.005 and located not more than two miles from the bank of the stream;

(c) Used for the creation, maintenance or enhancement of fish or wildlife habitat;

(d) Used for the maintenance of public beaches; or

(e) Contaminated with hazardous material, as defined in ORS 466.605, provided that the person gives the department written notice of the removal at least 30 days prior to disposal.

(2) A person does not have to pay royalties to the state for the following uses of material, if the person provides at least 30 days' written notice to the department of the intended use:

(a) The filling of any property up to an elevation of one foot above the line of ordinary high water of a waterway by a state agency or political subdivision, as defined in ORS 271.005.

(b) The material is used solely for a public purpose by a political subdivision, as defined in ORS 271.005.

(3) A person may not remove any material from the place it was first deposited or use the material as an article of commerce without providing, prior to the removal of the material, written notification to the department and payment of any royalties for the material as determined by the department.

(4) In addition to the purposes enumerated in subsection (1) of this section, any person may take material for the exclusive use of the person to the extent of not more than 50 cubic yards or the equivalent weight in tons in any one year. However, before taking the material, the person shall first notify the department.

(5) Upon the removal of material from submersible or submerged lands not exempt from the payment of royalties, royalties in an amount established by the department must be paid to the department.

(6) For purposes of this section:

(a) "Article of commerce" means any material, other than material used for upland disposal or contaminated material put to beneficial use, that is bought, sold or exchanged in any manner for goods or services and that otherwise would have to be acquired from alternative sources.

(b) "Reclaiming land" means raising the elevation of a portion of land within a 100-year floodplain to not more than one foot of elevation higher than the highest elevation of the 100-year floodplain, or protecting land otherwise in the 100-year floodplain by the construction of dikes or other flood control improvements. [Amended by 1961 c.149 §1; 1961 c.676 §5; 1967 c.421 §146; 1969 c.594 §44; 1971 c.509 §3; 1981 c.787 §53; 2003 c.465 §1]

274.560 Lease terms; bond or security; prohibited lease or purchase option; monthly reports and payments; rules. (1) The Department of State Lands may enter into contract of lease for purposes of ORS 274.525 to 274.590 with such stipulations protecting the interest of the state as the department may require, and may require a bond with a surety company authorized to transact a surety business in this state, as surety, or other form of security, to be given by the lessee for performance of such stipulations, and providing for forfeiture for non-payment or failure to operate under the contract. No contract shall be entered into giving any person an option of leasing or purchasing the property of the State of Oregon. The lessee in all such contracts shall report monthly to the department the amount of material taken under the contract and pay to the department the amount of royalty thereon provided in the contract.

(2) The department shall adopt rules to establish criteria to determine when security is required. [Amended by 1965 c.375 §1; 1967 c.421 §147; 1969 c.594 §45; 1991 c.264 §1]

274.570 [Amended by 1967 c.421 §106; renumbered 274.035]

274.580 [Amended by 1961 c.509 §4; 1967 c.421 §46; renumbered 273.231]

274.590 Cooperation with Washington authorities respecting removal of material from bed of Columbia River. The Department of State Lands shall cooperate with the proper authorities of the State of Washington in contracting for, receiving and collecting royalties or other revenues for the taking of material from the submersible and submerged lands of the Columbia River and enter into such agreements as may be advisable or necessary with such officers of the State of Washington for the division of such royalties. [Amended by 1967 c.421 §148]

274.600 [Amended by 1967 c.33 §1; 1967 c.421 §47; 1967 c.567 §16; renumbered 273.235]

274.605 [Amended by 1967 c.421 §48; renumbered 273.241]

EXPLORATION FOR MINERALS

274.610 Prohibited contracts for exploration for hard minerals; scientific research. (1) The Department of State Lands shall not enter into contracts for governmental or private development or exploration for hard minerals on state-owned submersible and submerged lands within the territorial sea and navigable bays that are subject to the jurisdiction of the department.

(2) Nothing in this section shall be considered to prohibit scientific research conducted by or on behalf of an academic institution or a government agency.

(3) As used in subsection (1) of this section, "hard minerals" includes but is not limited to natural deposits or mineral sources of gold, silver, copper, lead, iron, manganese, silica, chrome, platinum, tungsten and zirconium. "Hard minerals" does not include oil, gas or sulfur deposits subject to ORS 274.705 to 274.860.

(4) As used in this section:

(a) "Exploration" means any activity the principal purpose of which is to define, characterize or evaluate hard mineral deposits for possible commercial development or production.

(b) "Scientific research" means any activity the principal purpose of which is to improve scientific or technical understanding of earth, ocean or atmospheric processes, hazards and resources and for which the data generated are nonproprietary or public. [1991 c.217 §1]

Note: 274.610 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 274 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

274.611 [1967 c.421 §150; 1987 c.300 §1; repealed by 1991 c.217 §6]

274.615 [1961 c.703 §§1,13; 1967 c.421 §151; 1987 c.300 §2; repealed by 1991 c.217 §6]

274.620 [1961 c.703 §2; 1965 c.375 §2; 1967 c.421 §152; 1969 c.594 §46; 1987 c.300 §3; repealed by 1991 c.217 §6]

274.625 [1961 c.703 §3; 1967 c.421 §153; 1987 c.300 §4; repealed by 1991 c.217 §6]

274.630 [1961 c.703 §4; 1967 c.421 §154; 1987 c.300 §5; repealed by 1991 c.217 §6]

274.635 [1961 c.703 §§5,8 and 12; 1967 c.421 §155; 1987 c.300 §6; repealed by 1991 c.217 §6]

274.640 [1961 c.703 §§7,10; 1967 c.421 §156; 1987 c.300 §8; repealed by 1991 c.217 §6]

274.645 [1961 c.703 §11; 1967 c.421 §157; repealed by 1987 c.300 §10]

274.650 [1961 c.703 §6; repealed by 1967 c.421 §206]

TIDAL SUBMERGED AND SUBMERSIBLE LANDS

(General Provisions)

274.705 Definitions for ORS 274.705 to 274.860. As used in ORS 274.705 to 274.860, unless the context requires otherwise:

(1) "Filled lands" includes submerged and submersible lands reclaimed artificially through raising such lands above the highest probable elevation of the tides to form dry land, by placement of a fill or deposit of earth, rock, sand or other solid imperishable material.

(2) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subsection (4) of this section, including condensate originally in the gaseous phase in the reservoir.

(3) "Lease" means an oil, gas and sulfur lease issued pursuant to ORS 274.705 to 274.860.

(4) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, which are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.

(5) "Person," in addition to the meanings defined by ORS 174.100, includes quasi-public corporations, political subdivisions and governmental agencies and instrumentalities.

(6) "Structure" means any construction works, including but not limited to derricks, pipelines, lines for the transmission and distribution of electricity, telephone lines, wharves, piers, slips, warehouses and units designed to act as groins, jetties, seawalls, breakwaters or bulkheads.

(7) "Tidal submerged lands" means lands lying below the line of mean low tide in the beds of all tidal waters within the boundaries of this state as heretofore or hereafter established. [1961 c.619 §1; 1967 c.421 §158]

274.710 Jurisdiction of department over tidal submerged lands; easements; leases for oil, gas and sulfur. (1) The Department of State Lands has exclusive juris-

diction over all ungranted tidal submerged lands owned by this state, whether within or beyond the boundaries of this state, heretofore or hereafter acquired by this state:

(a) By quitclaim, cession, grant, contract or otherwise from the United States or any agent thereof; or

(b) By any other means.

(2) All jurisdiction and authority remaining in the state over tidal submerged lands as to which grants have been or may be made is vested in the department.

(3) Notwithstanding ORS 273.551, the department shall administer and control all tidal submerged lands described in subsections (1) and (2) of this section under its jurisdiction, and may lease such lands and submersible lands and dispose of oil, gas and sulfur under such lands and submersible lands in the manner prescribed by ORS 274.705 to 274.860. However, submerged and submersible lands lying more than 10 miles easterly of the 124th West Meridian shall be subject to leasing for oil, gas and sulfur under ORS 273.551, rather than under ORS 274.705 to 274.860.

(4) Notwithstanding any other provision of ORS 274.705 to 274.860, the department may not permit any interference other than temporary interference with the surface of the ocean shore, as defined in ORS 390.615. The department may, however:

(a) Grant easements underlying that part of the surface of the ocean shore owned by the state at such times and at such places as the department finds necessary to permit the extraction and transportation of oil, gas or sulfur from state, federal or private lands; and

(b) Issue oil and gas leases underlying the ocean shore under the same terms and conditions as provided in ORS 274.705 to 274.860. [1961 c.619 §2; 1967 c.421 §159; 2005 c.22 §197]

Note: Sections 1 and 2, chapter 11, Oregon Laws 2010, provide:

Sec. 1. (1) Notwithstanding ORS 274.705 to 274.860 or 520.240, any form of leasing for purposes of exploration, development or production of oil, gas or sulfur is prohibited in the territorial sea.

(2) The provisions of subsection (1) of this section do not apply:

(a) To exploration for scientific or academic research purposes, or geologic survey activities of the State Department of Geology and Mineral Industries.

(b) In the event the Governor determines that an oil embargo substantially affects the supply of oil to the United States.

(3) Any exploration for oil, gas or sulfur in the territorial sea allowed under ORS 274.705 to 274.860 by the State Land Board or the Department of State Lands must conform to standards of the Oregon Ocean Resources Management Program established under ORS 196.405 to 196.515.

(4) For the purposes of this section:

(a) "Gas" means:

(A) All natural gas, gas hydrates and all fluid hydrocarbons not defined as oil in this subsection; and

(B) Condensate originally in the gaseous phase in the reservoir.

(b) "Oil" means crude petroleum oil and all other hydrocarbons produced in liquid form by ordinary production methods, regardless of gravity, other than liquid hydrocarbons originally in a gaseous phase in the reservoir.

(c) "Territorial sea" has the meaning given that term in ORS 196.405. [2010 c.11 §1]

Sec. 2. Section 1 of this 2010 Act is repealed on January 2, 2020. [2010 c.11 §2]

274.715 Sulfur leases. ORS 274.705 to 274.860 shall apply equally to the exploration and leasing of lands subject thereto for the production of sulfur. [1961 c.619 §34; 1967 c.421 §160]

274.720 Effect of ORS 274.705 to 274.860 on power to make other leases and on jurisdiction of agencies other than department. ORS 274.705 to 274.860 shall not:

(1) Affect the power of the Department of State Lands to lease mineral rights, including oil, gas and sulfur underlying state lands other than lands subject to ORS 274.705 to 274.860.

(2) Affect the power of the department to lease mineral rights, other than oil, gas and sulfur underlying lands subject to ORS 274.705 to 274.860.

(3) Affect any oil, gas and mineral lease issued before August 9, 1961, by any agency, board or commission of the State of Oregon.

(4) Deprive this state or any agency or instrumentality thereof of its jurisdiction over matters affecting the public health and safety, including but not limited to the control of air and water pollution. [1961 c.619 §§36, 37; 1967 c.421 §161]

274.725 Scope of leases and permits; persons ineligible. (1) Any interests in lands, or lands in fee simple, acquired by the Department of State Lands by purchase, donation, lease condemnation or otherwise, may be made available to any lessee of the state for the purposes contained in ORS 274.705 to 274.860 and upon such terms as may be determined by the department.

(2) No permit or lease shall be granted to any person then in violation of any laws or rules applicable to ORS 274.705 to 274.860. [1961 c.619 §§32, 38,43; 1967 c.421 §162]

(Geological and Geophysical Surveys)

274.735 Application for survey permit; effect of permit; rules. (1) The Department of State Lands upon application by any person may permit geological, geophysical and seismic surveys, including the taking of cores and other samples for purposes related to

exploration for oil, gas and sulfur on lands subject to ORS 274.705 to 274.860. However:

(a) Such permits shall be nonexclusive and shall not give any preferential rights to any oil, gas and sulfur lease.

(b) The Department of State Lands in consultation with the State Department of Geology and Mineral Industries may grant permission for the taking of cores and other samples.

(c) After consultation with the State Fish and Wildlife Commission, the Department of State Lands shall include such rules and regulations in the permit as are necessary to protect the fish and wildlife resources.

(2) Each application under this section must contain at least the following information:

(a) A description of the areas where the applicant proposes to conduct a survey.

(b) The name and address of the applicant.

(c) Such other relevant information as the Department of State Lands requires. [1961 c.619 §3; 1967 c.421 §163; 1987 c.300 §9; 2003 c.253 §21]

274.740 Issuance of survey permit; renewal; reports. (1) Upon compliance of an applicant with ORS 274.735, the Department of State Lands may issue to the applicant a permit to conduct a geological, geophysical and seismic survey, including the taking of cores and other samples, in areas of the lands subject to ORS 274.705 to 274.860 that are described on the permit. The department may prohibit such surveys on any area if, in consultation with the State Department of Geology and Mineral Industries, it determines that a lease, if applied for, should not be granted as to such areas. The Department of State Lands shall include in a permit conditions and payments proper to safeguard the interests of the state.

(2) Permits issued under this section may not exceed two years, and may be renewed for like periods upon application to the department and upon showing due compliance with applicable laws and regulations.

(3) The department shall require the permittee to provide the State Fish and Wildlife Commission with complete information with respect to the area or areas of proposed operations, type of exploration and a schedule showing the period or periods during which such explorations will be conducted. Such information shall be treated as confidential unless released by the permittee. [1961 c.619 §4; 1967 c.421 §164; 2003 c.253 §22]

274.745 Drilling logs and records. (1) Records of drilling conducted by a permittee under ORS 274.740 shall be filed by the permittee with the State Department of

Geology and Mineral Industries as prescribed by ORS 520.095.

(2) The Department of State Lands may require, as a condition to the issuance of any lease under ORS 274.705 to 274.860, that the lessee make available to the Department of State Lands, or the State Department of Geology and Mineral Industries, upon request, all factual and physical exploration results, logs and records resulting from the operations under the lease. [1961 c.619 §5; 1967 c.421 §165; 1973 c.794 §18]

(Bid Procedure)

274.755 Hearing prior to granting lease or easement. (1) Before granting any easement under ORS 274.705 to 274.860, and before offering lands for leasing under ORS 274.705 to 274.860, or whenever any person files a written application with the Department of State Lands requesting that an easement be granted for such lands or that such lands be offered for leasing under ORS 274.705 to 274.860, accompanying the same with the required fee, the department shall hold a public hearing as provided in this section.

(2) Before granting an easement or inviting bids on any lands subject to ORS 274.705 to 274.860, the department shall cause written notice describing the area under consideration and other pertinent information to be transmitted to:

- (a) State Geologist;
- (b) Director of Transportation;
- (c) Director of the Department of Environmental Quality;
- (d) State Fish and Wildlife Director;
- (e) The applicant, if any, requesting the lease;
- (f) Prospective applicants or bidders, by publication thereof in two or more publications of general circulation in the oil and gas industry; and

(g) The public, by publication thereof once each week for not less than four weeks in a newspaper of general circulation throughout the State of Oregon, and in addition in a newspaper of general circulation in the county in which the lands lie or the county or counties contiguous to the area under consideration for bidding.

(3) The notice shall set forth the place of hearing and shall set its time at not earlier than the 20th day after date of the last newspaper publication.

(4) Notwithstanding ORS 183.635, hearings under this section may be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605 or may be con-

ducted by a hearing officer designated by the State Land Board. An officer or employee of each interested state agency, board or commission named in subsection (2) of this section may question any witnesses appearing in the hearing, and any interested person may offer evidence and otherwise be heard. [1961 c.619 §6; 1965 c.375 §3; 1967 c.421 §166; 1969 c.593 §34; 1993 c.741 §25; 1999 c.849 §§57,58; 2001 c.104 §§83,84; 2003 c.75 §31]

274.760 Considerations involved in granting lease or easement. After the public hearing the Department of State Lands shall determine whether the granting of an easement or an invitation for bidding to lease the area under consideration would be in the public interest. In such determination the department shall consider whether an easement or a lease or leases of the area under consideration would:

(1) Be detrimental to the health, safety, or welfare of persons residing in, owning real property, or working in the neighborhood of such areas;

(2) Interfere with the residential or recreation areas to an extent that would render such areas unfit for recreational or residential uses or unfit for park purposes;

(3) Destroy, impair or interfere with the aesthetic and scenic values of the Oregon coast, or other affected area;

(4) Create any air, water or other pollution;

(5) Substantially endanger marine life or wildlife;

(6) Substantially interfere with commerce or navigation; and

(7) Protect state lands from drainage of oil and gas. [1961 c.619 §7]

274.765 Publishing offer to lease tidal submerged lands; bids; cash bonus; award of lease; fee. (1) The Department of State Lands may offer to lease lands subject to ORS 274.705 to 274.860 by publication of a notice of its intention to do so, once each week for not less than two weeks in two or more newspapers of general circulation in this state, one of which is published or has general circulation in the county in which the lands lie or county or counties contiguous thereto. The notice shall describe the lands so offered, and shall specify the rate of royalty, including the royalty for sulfur, and the rental, the manner in which bids may be filed with the department, the amount of the deposit that must accompany each bid, and the time and place for filing bids, which time shall not be earlier than the 30th day after the date of last publication of

such notice. Further, the notice shall state that the lease will be awarded to the bidder offering the highest cash bonus, and that the form of lease, conditions for bidding and bid form may be obtained from the department upon request.

(2) Each bid shall be enclosed in a sealed envelope, shall be on the form provided by the department and shall be accompanied by duplicate lease forms executed by the bidder, and by a certified or cashier's check or checks payable to the State of Oregon in the amount fixed by the department, which sum shall be deposited as evidence of good faith and except in the case of the successful bidder shall be returned to the bidder. If the successful bidder fails to pay the balance of the cash bonus bid and the annual rental for the first year not later than the 15th day after the award of the lease, or fails to post any bond required by the lease or the rules in effect at the date of the invitation for bids within the time prescribed, the amount of the deposit shall be forfeited to the state.

(3) At the time and place specified in the notice the department shall publicly open the sealed bids and shall award the lease for each parcel to the bidder who, in addition to complying with all of the conditions for bidding, offers the highest cash bonus. The department may, however, reject any or all bids for cause.

(4) Following the award of the lease, the payment by the successful bidder of the balance of the cash bonus, the annual rental for the first year, and the fee specified in this section, and the posting of any required bonds, the department shall execute the lease in duplicate on behalf of the state and transmit one counterpart thereof to the lessee. The lease shall become effective as of the date of such execution.

(5) The department shall prescribe a reasonable fee to cover the procedures under this section, which shall be paid by the successful bidder. [1961 c.619 §27; 1967 c.421 §167]

274.770 Prohibited drilling requirements. In leasing lands subject to ORS 274.705 to 274.860, the Department of State Lands may not discriminate between bidders by requiring drilling from:

(1) Upland or littoral drill sites;

(2) Sites on filled land, whether contiguous or noncontiguous to the littoral lands or uplands; or

(3) Any pier, platform or other fixed or floating structure in, on or over lands subject to ORS 274.705 to 274.860, with respect to which this state or any other owner thereof has consented to use. [1961 c.619 §30; 1967 c.421 §168]

(Leases)

274.780 Conditions in leases and permits; execution; delivery of bonds or contracts to department. (1) The form of lease shall contain, in addition to other provisions deemed necessary and desirable by the Department of State Lands, after consultation with the State Department of Geology and Mineral Industries, the State Fish and Wildlife Commission and other interested agencies, boards and commissions, the provisions of ORS 274.780 to 274.860.

(2) The form of a permit shall contain, in addition to other provisions deemed necessary and desirable by the Department of State Lands, after consultation with the State Department of Geology and Mineral Industries, the State Fish and Wildlife Commission and other interested agencies, boards and commissions, the provisions of ORS 274.785 (3).

(3) All leases and other instruments required in carrying out ORS 274.705 to 274.860 shall be executed by the Department of State Lands. All bonds, contracts and other instruments required by ORS 274.705 to 274.860 for the protection of the interests of this state and political subdivisions, persons and property therein shall be executed and delivered to the department. [1961 c.619 §§9,28; 2003 c.253 §23]

274.785 Exclusive rights granted by lease; requirement of diligence; maximum area; assignment. (1) The lease shall grant the exclusive right to drill for and produce all oil, gas and sulfur deposits in the leased land and be for a primary term of 10 years and for so long thereafter as oil, gas or sulfur is produced in paying quantities from the leased land, or lessee is diligently conducting producing, drilling, deepening, repairing, re-drilling or other necessary lease or well maintenance operations on the leased land or is excused from conducting such operations under the terms of the lease.

(2) The maximum area which shall be included in any single lease to any person shall be 13,200 acres.

(3) No permit, easement or lease, or any portions thereof shall be assignable without the prior written consent of the Department of State Lands. [1961 c.619 §§8,10,22; 1963 c.359 §1]

274.790 Royalties. (1) The Department of State Lands shall specify in the notice described by ORS 274.765 and in the lease the rate of royalty paid under such lease which royalty shall not be less than 12-1/2 percent of gross production, or the value thereof, produced and saved from the leased lands and not used by lessee for operations thereon or for injection therein. Such royalty shall, at the department's option, be paid in kind or in value, and be computed after an allow-

ance for the actual cost of oil treatment or dehydration of not to exceed five cents per barrel of royalty oil so treated or dehydrated.

(2) The royalty for sulfur produced under ORS 274.705 to 274.860 shall not be less than \$1 per long ton.

(3) The State of Oregon shall have a lien upon all production for unpaid royalties. [1961 c.619 §§11,12; 1967 c.421 §169]

274.795 Rents. The Department of State Lands shall specify a rental payable annually in advance of not less than 50 cents for each acre of land subject to the lease at the rental date. After production has been established, rent paid shall be deducted from any royalty due under the terms of a lease during the year for which such rent has been paid. [1961 c.619 §13]

274.800 Bonds. Sufficient bonding requirements, as determined by the Department of Geology and Mineral Industries, shall be specified to secure to the State of Oregon performance and the faithful compliance by the lessee with the terms of the lease, and further to secure adjacent landowners and the public generally as to all proper claims for damages arising from operations thereunder. [1961 c.619 §14]

274.805 Drill sites. Unless otherwise determined by the Department of State Lands, each well drilled pursuant to the terms of the lease may be drilled or slant drilled to and into the subsurface of the lands covered by the lease from upland or littoral drill sites owned or controlled by the state or owned by or available to the lessee, or from drill sites located upon any filled lands heretofore or hereafter filled, whether contiguous or noncontiguous to the littoral lands or uplands, or from any pier heretofore or hereafter constructed owned by or available to the lessee and available for such purpose, or from platforms or other fixed or floating structures in, on or over the lands covered by the lease or otherwise available to the lessee. [1961 c.619 §16; 1967 c.421 §170]

274.810 Commencement of drilling; operational requirements. Subject to the lessee's right to surrender, the lessee shall commence operations for the drilling of a well within five years from date of the lease and commence production within three years of discovery of oil, gas or sulfur in paying quantities, unless the Department of State Lands shall have, for cause, granted an extension of time for such act. In addition, the lease shall have such exploratory, drilling and producing requirements as the Department of State Lands in consultation with the Department of Geology and Mineral Industries deems necessary to encourage the exercise of due diligence on the part of lessee. [1961 c.619 §20]

274.815 Extension of time when wells to be drilled from filled land or structure.

If the lessee, as disclosed by information submitted with the bid of the lessee, proposes to drill one or more wells from filled land, whether contiguous or noncontiguous to the littoral lands or uplands, or from any pier or from platforms or other fixed or floating structures to be constructed for such purpose, and if permission from any federal or state agency is legally required in order to construct any such filled lands or structures, the lessee shall be allowed a reasonable time following the execution of the lease within which to secure the necessary permission from such federal and state agencies as shall be legally required, and, upon the securing of such permission, a further reasonable time, determined with regard to the nature of the filled lands or structure or structures to be constructed within which to commence operations for the drilling of such well or wells, and if necessary, the drilling term provided for in ORS 274.810 shall be extended by the Department of State Lands to the date to which the time to commence operations for the drilling of such well or wells has been extended. [1961 c.619 §19]

274.820 Water contamination or pollution. (1) Avoidable pollution or avoidable contamination of the ocean and of the waters covering lands subject to ORS 274.705 to 274.860, avoidable pollution or avoidable contamination of the beaches or land underlying the ocean or waters covering lands subject to ORS 274.705 to 274.860, or any substantial impairment of and interference with the enjoyment and use thereof, including but not limited to bathing, boating, fishing, fish and wildlife production, and navigation, shall be prohibited, and the lessee shall exercise a high degree of care to provide that no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean, any bay or inlet thereof, or any other waters covering lands subject to ORS 274.705 to 274.860. However, this section does not apply to the deposit on or passage into such waters of water not containing any hydrocarbons or vegetable or animal matter.

(2) For the purposes of this section, “avoidable pollution” or “avoidable contamination” means pollution or contamination arising from:

(a) The acts or omissions of the lessee or its officers, employees or agents; or

(b) Events that could have been prevented by the lessee or its officers, employees or agents through the exercise of a high degree of care. [1961 c.619 §18; 1967 c.421 §171]

274.825 Nonconflicting use of leased lands. The State of Oregon reserves the right to permit reasonable nonconflicting uses, including seismic surveys but excluding core hole drilling, on lands under lease as long as:

(1) Such uses do not unreasonably impair or interfere with operations of the lessee; and

(2) Requirement is made that the permittee indemnify the lessee against any damage caused by such use. [1961 c.619 §21; 1999 c.59 §71]

274.830 Protecting lands from drainage. The lessee shall at all times proceed with due diligence to protect the leasehold from drainage by wells on lands not owned by the state. [1961 c.619 §23]

274.835 Conformance to laws and regulations; periodic negotiations. It shall be a continuing condition of such lease that the lessee shall conform to all applicable laws of the State of Oregon and all duly promulgated rules and regulations pursuant thereto in effect at the date of the invitation for bids in pursuance of which the lease was awarded. Periodic mutual negotiations between lessee and lessor may be carried out to make conditions, rules and regulations current as warranted by changes in environment or operational methods. [1961 c.619 §26]

274.840 Continuation of lease after cessation of production. In the event production on the leasehold shall cease at any time or from time to time, before or after the expiration of the primary term of the lease, the lease shall nevertheless continue in full force and effect if the lessee shall, within six months after the cessation of production or within such longer period of time as the Department of State Lands may authorize, commence and thereafter prosecute with reasonable diligence drilling, deepening, repairing, redrilling or other operations for the restoration of production of oil, gas or sulfur from the leased lands. [1961 c.619 §15]

274.845 Surrender of lease. The lessee may at any time file with the Department of State Lands a written surrender of all rights under the lease or any portion thereof or any separate or distinct zone or geological horizon or any portion thereof. Such surrender shall be effective as of the date of its filing subject to the continuing obligation of the lessee to pay all rentals and royalties theretofore accrued and to place all wells on the lands or in the zones or horizons surrendered in condition for suspension or abandonment in accordance with the applicable lease terms, regulations and law. Thereupon the lessee shall be released from all obligations under such lease with respect to the lands,

zones or horizons surrendered, but no such surrender shall release such lessee from any liability for breach of any monetary obligation of the lease with respect to which such lessee is in default at the time of the filing of such surrender. [1961 c.619 §24]

274.850 Cancellation of lease; partial retention of leasehold; removal of equipment. The Department of State Lands shall reserve and may exercise the authority to cancel any lease upon which oil, gas or sulfur has not been discovered in paying quantities, upon failure of the lessee after 30 days' written notice and demand for performance to exercise due diligence and care in the prosecution of the prospecting or development work in accordance with the terms of the lease. After discovery of oil, gas or sulfur in paying quantities on lands subject to any lease, such lease may be forfeited and canceled only by appropriate judicial proceedings upon failure of the lessee after 90 days' written notice and demand for performance to comply with any of the provisions of the lease or of laws or regulations applicable thereto and in force at the date of the invitation for bids in pursuance of which the lease was awarded; provided, however, that in the event of any such cancellation, the lessee shall have the right to retain under such lease any and all drilling or producing wells as to which no default exists, together with a parcel of land surrounding each such well and such rights of way through the leased lands as may be reasonably necessary to enable such lessee to drill and operate such retained well or wells. In the event of the cancellation of any lease, the lessee shall have a reasonable time within which to remove all property, equipment and facilities owned or used by the lessee in connection with operations under the lease. [1961 c.619 §25]

274.855 Restoration of leasehold to original condition. Upon any partial or total termination, surrender or forfeiture of its permit or lease, the Department of State Lands may require that the permittee or lessee, within a reasonable time, restore that portion of the premises that is visible at extreme low tide to substantially its original condition. [1961 c.619 §17]

274.860 Protection and location of filled lands. Under a lease entered into by the Department of State Lands pursuant to ORS 274.705 to 274.860, the fill constituting filled lands may be retained in place or protected by bulkheads, seawalls, revetments or similar enclosures and may be placed at any location approved by the Department of State Lands, in consultation with the Department of Geology and Mineral Industries, the State Fish and Wildlife Commission and other in-

terested agencies, boards and commissions. [1961 c.619 §31]

274.865 [1961 c.619 §29; repealed by 1967 c.421 §206]

274.867 [2007 c.591 §3; 2013 c.345 §1; 2015 c.386 §6; renumbered 274.879 in 2015]

(Ocean Renewable Energy Facility Siting)

274.870 Definitions for ORS 274.870 to 274.879. As used in ORS 274.870 to 274.879:

(1) "Commercial operation" means a project undertaken to generate ocean renewable energy for a purposes other than research, demonstration or personal use and that has financial profit as a goal.

(2) "Ocean renewable energy" means electricity that is generated through:

(a) The conversion of energy contained in the natural properties of the ocean, including but not limited to energy contained in waves and swells, the tides and currents, ocean temperature and salinity gradients; and

(b) Ocean offshore wind power.

(3) "Ocean renewable energy facility" means any energy conversion technology or device that is used as a necessary component of a research project, demonstration project or commercial operation to generate ocean renewable energy, including but not limited to all buoys, anchors, energy collectors, cables, control and transmission lines, and other equipment necessary or useful to the project or operation.

(4) "Person" means a person as defined in ORS 174.100, a public body as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(5) "Territorial sea" has the meaning given that term in ORS 196.405.

(6) "Territorial Sea Plan" has the meaning given that term in ORS 196.405. [2015 c.386 §1]

Note: 274.870 to 274.879 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 274 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

274.873 Proprietary authorizations for ocean renewable energy facilities; application; issuance; incorporation of removal or fill permits. (1) A person may not construct or operate an ocean renewable energy facility within Oregon's territorial sea without a proprietary authorization issued by the Department of State Lands and as provided by the department by rule, or in a manner contrary to the conditions set out in the authorization.

(2) An application for a proprietary authorization under this section must include all of the information required by that part

of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(3) The department may not issue a proprietary authorization for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(4) The department shall incorporate the terms and conditions of the removal or fill permit required for the ocean renewable energy facility into the proprietary authorization issued under this section. [2015 c.386 §4]

Note: See note under 274.870.

274.876 Proprietary authorization requirements; rules; fees. (1) Acting subject to the approval of the State Land Board and in compliance with ORS chapter 183, the Director of the Department of State Lands shall adopt rules necessary to implement the provisions of ORS 274.870 to 274.879. Rules adopted under this section must include but need not be limited to:

(a) Proprietary authorization requirements for the construction and operation of ocean renewable energy facilities in Oregon's territorial sea;

(b) The maximum period for which a proprietary authorization may be issued under ORS 274.873; and

(c) Provisions to coordinate the issuance of a proprietary authorization decision under ORS 274.873 with the issuance of a removal or fill permit decision under ORS 196.800 to 196.905 for an ocean renewable energy facility in the territorial sea.

(2)(a) The director may adopt rules establishing application fees related to:

(A) Proprietary authorizations to construct or operate ocean renewable energy facilities within Oregon's territorial sea; or

(B) Removal or fill permits required under ORS 196.810 to conduct removal or fill activities related to ocean renewable energy facilities in Oregon's territorial sea.

(b) The Department of State Lands shall appoint an advisory committee in accordance with ORS 183.333 to assist the director in drafting rules under this subsection.

(c) In developing the structure and amount of any fees under this subsection, the department shall take into consideration at least the following factors as they would relate to a proposed ocean renewable energy facility subject to the fee:

(A) The size of the proposed ocean renewable energy facility.

(B) The distance from the ocean shore, as defined in ORS 390.605, at which the ocean renewable energy facility will be sited.

(C) The volume of the removal or fill material that will be subject to the removal or fill permit associated with the proposed ocean renewable energy facility.

(D) Whether the proposed ocean renewable energy facility is a research project, demonstration project or commercial operation.

(E) The anticipated useful life of the proposed ocean renewable energy facility.

(F) The expenses incurred by the department and other coordinating agencies in connection with the processing, evaluation and issuance of the proprietary authorization or removal or fill permit for the proposed ocean renewable energy facility. [2015 c.386 §3]

Note: See note under 274.870.

274.879 Financial assurance; plan for decommissioning. (1) An owner or operator of an ocean renewable energy facility shall maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate evidence of financial assurance, for:

(a) The costs of closure and post-closure maintenance of the facility, excluding the costs of removing anchors, cables or any other equipment that is not required to be removed from beneath the submerged lands in Oregon's territorial sea under subsection (8) of this section; and

(b) Any corrective action required to be taken at the site of the facility.

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

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

(a) Insurance;

(b) Establishment of a trust fund;

(c) A surety bond; or

(d) A letter of credit.

(4) In adopting rules under ORS 274.876 to implement the provisions of this section, the Director of the Department of State Lands may specify policy or other contractual terms, conditions or defenses necessary to establish evidence of financial assurance.

(5)(a) Prior to the time that operation of an ocean renewable energy facility is authorized, the owner or operator of the facility must provide the director with a plan for decommissioning the facility after the permanent cessation of use of that facility for

generating ocean renewable energy. The plan for decommissioning the facility must include, but need not be limited to:

(A) Information regarding the anticipated useful life of the facility;

(B) The cost estimates required by subsection (1) of this section;

(C) The evidence of financial assurance required by subsections (1) and (3) of this section;

(D) A description of the method and schedule for updating the costs of decommissioning the facility;

(E) A description of the anticipated methods that will be used to close the facility, engage in post-closure maintenance and take any corrective action required at the site of the facility; and

(F) Any other information required by the director by rule.

(b) By January 31 of each subsequent calendar year, the owner or operator of the facility must update the information required under this subsection with the Department of State Lands.

(6) An owner or operator shall provide evidence of financial assurance before beginning corrective action at the site of an ocean renewable energy facility.

(7) An owner or operator shall establish provisions satisfactory to the director for disposing of any excess moneys received or interest earned on moneys received for financial assurance.

(8)(a) An owner or operator of an ocean renewable energy facility must initiate removal of all equipment related to that facility, excluding anchors, cables and any other equipment that lies at least one meter beneath submerged lands in Oregon's territorial sea, within 12 months after the permanent cessation of use of that facility for generating ocean renewable energy.

(b) Notwithstanding paragraph (a) of this subsection, an owner or operator of an ocean renewable energy facility may be required to remove anchors, cables or any other equipment that lies at least one meter beneath submerged lands in Oregon's territorial sea if removal is deemed necessary by the director, in consultation with the owner or operator, and is permitted by the applicable requirements of federal regulatory agencies.

(c) All equipment required to be removed under this subsection must be removed within two years after the permanent cessation of use of the facility for generating ocean renewable energy.

(d) The director may extend the deadlines under this subsection if the owner or opera-

tor of the facility can show good cause and has undertaken a good faith effort to remove the equipment as required by this subsection. [Formerly 274.867]

Note: See note under 274.870.

(Kelp Fields)

274.885 Lease of kelp fields. 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. [Formerly 274.010; 1967 c.421 §172; 1993 c.298 §1; 2011 c.713 §4]

274.890 Time allowed lessee for survey and erection of plant; filing copy of survey with department. The first lease issued to an applicant under ORS 274.885 to 274.895 with respect to any submerged lands may allow the applicant six months in which to make a practical survey of the field which the applicant has leased, and another 12 months in which to erect a plant and commence operation. The lessee shall, within six months of the time of obtaining the lease, make or cause to be made a practical survey showing the amount and condition of kelp within the territory described in the lease, and shall file a copy of the survey with the Director of the Department of State Lands within six months. Upon the failure of the lessee so to do, the lease shall be canceled by the Department of State Lands. [Formerly 274.020; 1967 c.421 §173]

274.895 Removing kelp without lease. 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, 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. [Formerly 274.030; 1967 c.421 §174; 2011 c.713 §5]

SUBMERSIBLE, SUBMERGED AND NEW LANDS

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

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

(b) "Historically filled lands" does not include bridges, wharves and similar structures constructed upon submersible or sub-

merged lands by other than artificial fill or deposit.

(2)(a) “New lands” means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water that were created upon submersible or submerged lands by artificial fill or deposit on or after May 28, 1963.

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

(3) “Public body” means the State of Oregon or any port organized under the laws of this state or any dock commission of any city of this state. [1963 c.376 §1; 1967 c.421 §175; 1973 c.328 §1; 2015 c.804 §1]

274.910 Application and effect. (1) ORS 274.905 to 274.940 do not apply to submersible, submerged or new lands fronting upon the Pacific Ocean.

(2) Nothing contained in ORS 274.905 to 274.940 shall divest the State of Oregon of its rights to minerals, oil, gas and sulfur. [1963 c.376 §§2,9; 1967 c.421 §176; 2015 c.804 §2]

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

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

(3) Except as otherwise provided in ORS 274.905 to 274.940 and 274.950 to 274.956, the State Land Board shall adopt rules under which the department may sell, lease or trade historically filled lands owned by the state. [1963 c.376 §3; 1967 c.421 §177; 1969 c.594 §47; 1973 c.203 §3; 1989 c.64 §1; 2015 c.804 §3]

274.920 Creation of new lands upon submersible or submerged lands. No one other than the United States, while engaged in the promotion of navigation, shall artificially create new lands by fill or deposit upon submersible or submerged lands without the approval of the owner of such lands and the owner of the adjoining or opposite upland on the same side of the body of water. [1963 c.376 §4; 1973 c.203 §7]

274.925 Right of public riparian owner to purchase new lands; price determination. (1) Whenever the United States, while engaged in the promotion of navigation, creates new lands upon submersible or submerged lands owned by the state and the adjoining or opposite upland or riparian land on the same side of the body of water is owned by a public body, the public body has the right to purchase the new lands as provided in this section. The public body shall pay to the Department of State Lands for the new lands a sum equal to the difference between the value of the tract, consisting of the new lands and the adjoining or opposite upland on the same side of the body of water, and the value of the adjoining or opposite upland before the creation of the new lands and an amount prescribed by the department to pay its administrative costs incurred with respect to the new lands. Such payment shall be made by the public body within one year after the date of the receipt by it of actual notice by the department of the creation of the new lands, the sum equal to the difference between the value of the tract, consisting of the new lands and the adjoining or opposite upland on the same side of the body of water, and the value of the adjoining or opposite upland before the creation of the new lands and the administrative costs incurred by the department with respect to new lands. If the public body fails to make payment for the new lands as provided in this subsection within one year after the date of such notice, the department may dispose of the new lands as provided in ORS 274.915.

(2) If a public body and the department cannot agree on the sum to be paid under subsection (1) of this section, the sum to be paid shall be determined by three appraisers, one appointed by the public body, one by the department, and the third by the first two, and their determination shall be final. The cost of the third appraiser shall be borne equally by the public body and the department. [1963 c.376 §5; 1965 c.375 §4; 1967 c.82 §1; 1973 c.203 §4]

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

(2) A nonpublic riparian owner entitled to purchase the new lands under subsection (1) of this section shall pay to the Depart-

ment of State Lands for the new lands a sum equal to the difference between the value of the tract, consisting of the new lands and the adjoining or opposite upland on the same side of the body of water, and the value of the adjoining or opposite upland before the creation of the new lands and an amount prescribed by the department to pay its administrative costs incurred with respect to the new lands. Such payment shall be made by the nonpublic riparian owner within six months after the date of the receipt by the nonpublic riparian owner of actual official notice by the department of the creation of the new lands, the sum equal to the difference between the value of the tract, consisting of the new lands and the adjoining or opposite upland on the same side of the body of water, and the value of the adjoining or opposite upland before the creation of the new lands and administrative costs incurred by the department with respect to the new lands. If the nonpublic riparian owner fails to make payment for the new lands as provided in this subsection, the department, after the expiration of the six-month period, may dispose of the new lands as provided in ORS 274.915.

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

(4) Notwithstanding ORS 274.905 (2), this section applies only to new lands created on or after October 5, 1973. [1973 c.203 §2; 2015 c.804 §4]

274.930 [1963 c.376 §6; 1965 c.375 §5; repealed by 1973 c.203 §11]

274.932 Right of public body to purchase new lands created by it; price determination. (1) Whenever a public body, in accordance with ORS 274.920, creates new lands upon submersible or submerged lands owned by the state, the public body has the right to purchase the new lands as provided in this section. The public body shall pay to the Department of State Lands for the new lands the value of the state-owned submersible or submerged lands upon which the new lands were created immediately prior to the creation of the new lands thereon and an amount prescribed by the department to pay its administrative costs incurred with respect to the new lands. Such payment shall be made by the public body within one year after the date of the receipt by it of actual notice by the department of the creation of the new lands, the value of the state-owned

submersible or submerged lands upon which the new lands were created and the administrative costs incurred by the department with respect to the new lands. If the public body fails to make payment for the new lands as provided in this subsection within one year after the date of the notice by the department, the department may dispose of the new lands as provided in ORS 274.915.

(2) If a public body and the department cannot agree on the value of the state-owned submersible or submerged lands upon which the new lands were created under subsection (1) of this section, the value shall be determined by three appraisers, one appointed by the public body, one appointed by the department and the third appointed by the first two. The determination of the appraisers shall be final. The cost of the third appraiser shall be borne equally by the public body and the department. [1973 c.203 §5]

274.935 Ownership, by nonpublic owner of submersible or submerged lands, of new lands created thereon. Whenever new lands are created upon submersible or submerged lands owned by other than a public body, such new lands shall be owned by the owner of the submersible or submerged lands upon which the new lands are created. [1963 c.376 §8]

274.937 Right of individual to purchase new lands created by individual; price determination. (1) Whenever an individual, in accordance with ORS 274.920, creates new lands upon submersible or submerged lands owned by the state, such individual has the right to purchase the new lands as provided in this section. The individual shall pay to the Department of State Lands for the new lands the value of the state-owned submersible or submerged lands upon which the new lands were created immediately prior to the creation of the new lands thereon and a reasonable portion of the private benefit realized from the creation of the new lands as an addition to the adjoining or opposite upland in front of which the new lands were created. The individual shall also pay to the department for the new lands the administrative costs incurred by the department with respect to the new lands. If the individual fails to make payment for the new lands as provided in this subsection within six months after the date of the notice by the department, the department may dispose of the new lands as provided in ORS 274.915.

(2) If an individual and the department cannot agree on the sum to be paid for new lands under subsection (1) of this section, the sum to be paid shall be determined by three appraisers, one appointed by the individual, one appointed by the department and the third appointed by the first two. The deter-

mination of the appraisers shall be final. The cost of the third appraiser shall be borne equally by the individual and the department. [1973 c.203 §6]

274.940 Reservation of historically filled lands or new lands. (1) Notwithstanding any contrary provision of ORS 274.905 to 274.940, the Department of State Lands may reserve historically filled lands or new lands from sale, transfer or lease where upon notice and hearing the department determines that the public interest requires the lands to be preserved for recreation, conservation of fish and wildlife or the development of navigation facilities.

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

(3) A determination that the public interest requires historically filled lands or new lands to be reserved under this section is not a final agency order. [1963 c.376 §7; 1967 c.421 §178; 1973 c.203 §8; 2015 c.804 §5]

HISTORICALLY FILLED LANDS

274.950 Jurisdiction to assert title to historically filled lands; requirements. (1) Except as provided in subsection (2) of this section, the State Land Board may not in any manner assert title to historically filled lands, as defined in ORS 274.905, unless, prior to December 31, 2025:

(a) The board makes a declaration under ORS 274.954 that asserts title to the historically filled lands; and

(b) Notice of the board's declaration was given as required under ORS 274.956.

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

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

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

(c) Lands in that portion of the Lower Willamette River that includes the Portland Harbor Superfund Site.

(3) Nothing contained in ORS 274.950 to 274.956 shall divest the State of Oregon of its rights to minerals, oil, gas and sulfur. [2015 c.804 §7]

Note: 274.950 to 274.956 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 274 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

274.952 Determination of state interest in historically filled lands; study; procedures. (1)(a) The State Land Board shall direct the Department of State Lands to determine whether any interest remains or is vested in the State of Oregon with respect to historically filled lands, as defined in ORS 274.905, in:

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

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

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

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

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

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

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

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

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

(3) Following the public hearing under subsection (2) of this section, the board may adopt the draft report submitted by the de-

partment as final if substantial evidence in the record supports the report's findings and conclusions, or the board may refer the report to the department for further action as determined by the board. [2015 c.804 §8]

Note: See note under 274.950.

274.954 Declaration of state's claim; effect. (1) Upon the adoption of a final report by the State Land Board under ORS 274.952, the board shall declare the nature and extent of the state's claim to any interest that remains or is vested in the State of Oregon with respect to historically filled lands described in the report.

(2) A declaration made by the board pursuant to subsection (1) of this section shall be binding upon the State of Oregon with respect to the interest, if any, of the State of Oregon in historically filled lands described in the declaration.

(3) A declaration under this section is not a final order as defined in ORS 183.310.

(4) Nothing contained in this section is intended to affect the ability of a court of competent jurisdiction to make a determination with respect to a private claim to or interest in real property. [2015 c.804 §9]

Note: See note under 274.950.

274.956 Public notice of claim; content. Immediately following a declaration made by the State Land Board pursuant to ORS 274.954, the board shall:

(1) Cause reasonable public notice of the declaration to be given to interested parties. The notice shall describe the land or waterway affected and the nature and extent of the state's claim. Notice under this section need not describe the land or waterway in legal terms, but by the use of common descriptions or maps shall be designed to identify the land or waterway in a manner intelligible to the layperson and useful in establishing the exact location of the state claim in relation to existing legal descriptions.

(2) Give notice to each owner of record of land described in the declaration by transmitting by registered mail or by certified mail, return receipt requested, a copy of the declaration made with respect to the land and a statement informing the owner of record of a point of contact at the Department of State Lands, and of options available to the owner of record based on the notice. [2015 c.804 §10]

Note: See note under 274.950.

274.960 [1973 c.329 §2; 2003 c.253 §24; repealed by 2015 c.804 §6]

274.963 [1973 c.329 §1; repealed by 2015 c.804 §6]

274.965 [1973 c.329 §3; 1977 c.757 §1; repealed by 2015 c.804 §6]

274.967 [1973 c.329 §§4,5; 1977 c.757 §2; repealed by 2015 c.804 §6]

274.970 [1973 c.329 §6; repealed by 2015 c.804 §6]

274.973 [1973 c.329 §7; repealed by 1977 c.757 §3]

274.975 [1973 c.329 §8; 1983 c.740 §71; repealed by 2015 c.804 §6]

274.977 [1973 c.329 §9; repealed by 2015 c.804 §6]

274.980 [1973 c.329 §11; 1999 c.803 §6; repealed by 2015 c.804 §6]

274.983 [1973 c.329 §§10,13; repealed by 2015 c.804 §6]

274.985 [1973 c.329 §12; repealed by 2015 c.804 §6]

PENALTIES

274.990 Criminal penalties. Violation of ORS 274.745 or 274.895, or any rule promulgated under such sections, is a misdemeanor. [Amended by 1967 c.421 §179; part renumbered 390.990; 1969 c.594 §48]

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

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

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

(4) Any civil penalty recovered under this section for violation of ORS 274.040, 274.873 or 274.879 or any rule, order or lease adopted or issued under ORS 274.040, 274.873, 274.876 or 274.879 shall be deposited in the Common School Fund for use by the Department of State Lands in administration of ORS 274.040, 274.873 or 274.879 and as otherwise required by law. [1991 c.521 §4; 1991 c.734 §113; 2013 c.345 §2; 2015 c.386 §8]

274.994 Amount of civil penalties; rules; considerations in imposing penalty.

(1) The Director of the Department of State Lands shall adopt by rule the amount of civil penalty that may be imposed for a particular violation of ORS 274.040, 274.873 or 274.879.

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

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

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

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

(d) Any other factors determined by the director to be relevant and consistent with the policy of ORS 274.040, 274.873 or 274.879.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the director deter-

mines to be proper and consistent with the policy of ORS 274.040, 274.873 or 274.879. Upon the request of the person incurring the penalty, the director shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated. [1991 c.521 §5; 2013 c.345 §3; 2015 c.386 §9]
