

Routine Program Change

Updating Oregon's Submersible and Submerged Lands Enforceable Policies

O.R.S. §§ 274.005-274.060, 274.400-274.440, 274.525-274.895

July 24, 2014

I. Introduction

The Oregon Coastal Management Program requests that the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) approve updates to the OCMP to reflect changes to Oregon's statutes regarding activities on submersible and submerged lands. Oregon requests concurrence that these updates constitute a Routine Program Change.

Section II.A describes the relevant programs in ORS Chapter 274 and identifies changes to the statutes since OCRM's previous approval. Section II.B identifies those sections that state "enforceable policies" that are used in Oregon's federal consistency review determinations. Section II.C shows that the submitted updates are a Routine Program Change under NOAA regulations and guidelines.

II. Analysis of Routine Program Change

A. Discussion of Programs in Chapter 274

The OCMP was initially approved by NOAA in 1977, and was subsequently revised and approved *in toto* by NOAA in 1987. The 1987 OCMP serves as the baseline program for subsequent updates and routine program changes.

In 1987, the effective OCMP included multiple sections of ORS Chapter 274. Chapter 274 governs the state's leasing and permitting programs for tidal and freshwater submersible and submerged lands, including for wave energy production and the exploration for and extraction of minerals, hard minerals, oil, gas, and sulfur as well as seaweed harvesting. It also includes policies regarding riparian property rights, harbor improvements, and the use of subaqueous material. These statutory provisions are administered by the Department of State Lands (renamed in 2003, from the former Division of State Lands).

The attached table includes the full listing of statutory provisions addressing authorities and activities relevant to submersible and submerged lands, including those provisions which remain unchanged since prior OCRM approval in 1987. This is in order to ensure that the full current program remains part of the OCMP and establishes the 2013 Edition of the Oregon Revised Statutes as the effective baseline for all of these statutory provisions, should they be further amended in the future. We are also attaching the full current versions of the statutes.

As shown in the attached table, the only changes to many of these sections since 1987 involved conforming cross-references and a name change. The Division of State Lands was renamed the

Department of State Lands in 2003. The correction of cross-references of Oregon law included replacing ORS 541.605 to 541.665 with ORS 196.600 to 196.905, the former provisions having been renumbered ORS 196.800 to 196.880 in 1989; replacing ORS 274.611 to 274.645 with ORS 274.610, the former provisions having been repealed in 1991 and ORS 274.610 having been enacted that year; replacing ORS 274.042 with ORS 274.043, the former having been repealed in 1991 and its content composing part of 274.043 when it was enacted that same year; and replacing ORS 274.005 to 274.060 and 274.205 to 274.990 with “this chapter.” Also, throughout the chapter, “sulphur” has been replaced with “sulfur,” “submerged and” has been added before “submersible lands,” and “State Highway Engineer” has been replaced with “Director of Transportation.”

Other updates and changes are as follows:

O.R.S. §§ 274.040-274.043. For most activities, use of submersible lands owned by the State of Oregon requires a lease. These statutory sections outline the normal procedures for leasing and selling state-owned submerged or submersible land, as well as exemptions to the lease requirement. Changes since 1987 allow licenses of less than three years’ duration to be granted to someone other than the highest bidder. The changes also allow persons holding water rights for irrigation or domestic use to occupy submerged and submersible lands, such as for water diversion structures, free of charge. Since 1987, these statutes specify more uses of submerged or submersible land that the department may authorize without charge and those they may authorize with charge. In addition, persons granted an easement or permission to use or occupy state-owned submerged and submersible lands must indemnify and hold harmless the state from all liability and claims arising from use or occupation. ORS 274.043(1) to (3) replaced ORS 274.042, both exempting privately owned floats and docks from leasing requirements.

O.R.S. §§ 274.400-274.440. The State of Oregon determines whether a waterbody is navigable, and generally the extent of its jurisdiction over submersible and submerged lands, including meandered lakes. In 1995, the State of Oregon gave the State Land Board exclusive jurisdiction to assert title to submerged or submersible lands in navigable waterways on behalf of the state; required the Board to adopt by rule a procedure for making final administrative determinations as to whether a waterway is navigable, and if so, the extent of the interest claimed by the state; required public notice of a claim; and authorized judicial review of a claim by an aggrieved person.

O.R.S. §§ 274.525-274.590. The renamed Department of State Lands governs the removal of material from submersible and submerged lands of navigable streams owned by the State of Oregon through leases and licenses. Changes since 1987 require the department to establish prebid qualifications, including but not limited to the minimum annual yardage of removal and evidence that all bidders have an established market. In addition, the changes allow the department to enter into a license for the removal of material from these lands based on a competitive market rate. These statute sections also identify exemptions from the royalty payment requirements associated with the removal of material from these lands. Changes since 1987 have added to these exemptions the removal of material used for the creation, maintenance, or enhancement of fish or wildlife habitat; used by a political subdivision for a public purpose or filling property up to an elevation of one foot above the line of ordinary high water; used for the maintenance of public beaches; or contaminated with hazardous material. No longer

exempted from royalty payments is use of such material for filling, diking, or reclaiming land located not more than one-half mile from the bank of the stream.

O.R.S. § 274.610. The renamed Department of State Lands governs the exploration for and development of hard minerals on state-owned submersible and submerged lands. In 1991, the enactment of this statutory section banned the department from entering into contracts for hard mineral development or exploration within the territorial sea and navigable bays that are subject to the jurisdiction of the department. Scientific research conducted by or on behalf of an academic institution or a government agency is exempted from this prohibition. Also in 1991, the Oregon Legislature repealed ORS 274.611 to 645, which authorized the department to execute leases for the extraction of hard minerals from submerged and submersible lands of navigable bays and rivers in certain areas and set parameters for leases and the leasing process.

O.R.S. §§ 274.705-274.895. The renamed Department of State Lands has exclusive jurisdiction over all ungranted tidal submerged lands owned by the state, including the issuance of oil, gas, and sulfur leases as well as leases for harvesting wave energy and kelp and other seaweed on those lands. Since 1987, hearings prior to granting leases and easements for oil, gas, and sulfur exploration, development, and production are conducted by Administrative law judges and State Land Board-designated hearing officers, as opposed to department officers and employees and other state agency, board, and commission employees. In 2010, the Oregon Legislature enacted a law prohibiting leasing for exploration, development, or production of oil, gas, or sulfur in the territorial sea through the beginning of January 2020, with exceptions. The law also requires any exploration for oil, gas, or sulfur in the territorial sea allowed under ORS 274.705 to 274.860 to conform to the standards under ORS 196.405 to 196.515. Since 1987, the requirements for leasing submerged lands for the purpose of harvesting kelp and other seaweed have become more flexible: leases are not restricted to 50 years or less, 40 miles or fewer of coast line per person, or subject to forfeiture if the annual harvest is less than 1,000 tons of kelp or other seaweed. But the exemption from lease requirements for kelp harvesting has been made more stringent: the kelp must be for the person's personal use. In 2007, the Director of the Department of State Lands was authorized to adopt rules regarding wave energy facility authorization. The statutory provision also lists costs for which owner of such a facility must demonstrate financial assurance and outlines the process of demonstrating such financial assurance.

B. Enforceable Policies

OCRM initially approved Oregon's Coastal Management Program, including entire state statutes as part of the approved program. Subsequently OCRM has requested that states identify enforceable policies within their statutes as updates are submitted. While Oregon seeks to incorporate the entire updated statutes implementing the programs of ORS §§ 274.005-274.060, 274.400-274.440, 274.525-274.895, and 274.905-274.940 into the OCMP, we have identified specific sections that define enforceable policies for federal consistency purposes.

Each of the sections identified specifies a substantive enforceable policy; identifies when a lease, license, permit, or other authorization is required or defines its conditions; or provides enforceable

mechanisms for implementation of the substantive provisions. Statutory sections not defined as enforceable are those that are purely procedural, that contain only statements of findings, or that merely grant state officials authority to undertake administrative acts not affecting the potential activities of federal actors or licensees.

Thus, statements of policy, requirements for authorizations, lists of conditions for authorizations, provisions for rules that define regulatory requirements, and definitions that specify the content of obligations and requirements are enforceable policies. The sections in this Routine Program Change stating enforceable policies are: 274.005, 274.025, 274.036, 274.040, 274.043, 274.060, 274.400, 274.402, 274.404, 274.406, 274.412, 274.425, 274.430, 274.440, 274.525, 274.530, 274.550, 274.560, 274.610, 274.705, 274.710, 274.715, 274.725, 274.735, 274.740, 274.745, 274.760, 274.770, 274.780, 274.790, 274.795, 274.800, 274.805, 274.810, 274.820, 274.825, 274.830, 274.835, 274.840, 274.850, 274.855, 274.860, 274.867, 274.885, 274.890, 274.895, 274.905, 274.915, 274.920, 274.940 and Sections 1 and 2 of chapter 11 of Oregon Laws 2010. The attached table identifies these with an X and describes the content of each section.

These policies are rendered enforceable by the leases or licenses required in 274.040, 274.530, and 274.885; by the permits in 274.735 and 274.825 and by general authorizations in 274.043, 274.525, and 274.895 where leases are not required; and by prohibited actions in 274.610, 274.710, 274.820, and Sections 1 and 2 of chapter 11 of Oregon Laws 2010. Enforcement implementation includes the opportunity for judicial review under 274.412, cancellations under 274.850, and indemnity requirements under 274.560 and 274.800.

C. Action as Routine Program Change

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this section explains why this update to Oregon’s program is a Routine Program Change and does not constitute an amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization; and
- (5) coordination, public involvement and the national interest.

OCRM’s 1996 Program Change guidance states that a “substantial change” is a high threshold requiring case-by-case determination. Statutory changes are identified in the attached table. The table relates each change to Oregon’s authority as previously approved as part of the OCMP in 1987. Each change is described in detail in the right-hand column of the table.

1. Uses subject to management.

This submittal does not identify new uses subject to management. One of the changes includes the development of wave energy, which, like oil and gas development as covered in Chapter 273, is a use of tidal submerged lands for energy purposes.

2. Special management areas.

This submittal does not designate or change special management areas. It does not establish new criteria for special management areas.

3. Boundaries.

This submittal does not change the boundaries of Oregon's coastal zone.

4. Authorities and organization.

This submittal does not change Oregon's administration of the OCMP. The same authorities continue to apply these programs; references to Division have become Department in order to reflect the current status of the Department of State Lands.

5. Coordination, public involvement, and the national interest.

This submittal does not change any coordination, public involvement, or national interest provisions of the OCMP. The program changes include notice and judicial review requirements regarding declaration of the state's interest in waterways and land, but these requirements are similar to other notice and judicial review requirements in Oregon's Coastal Management Program.

Accordingly, this submittal is a Routine Program Change, and Oregon requests OCRM concurrence.

Submersible and Submerged Lands

Statutes Enacted since Last OCRM Approval

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
SALE, LEASE OR USE WITHOUT CHARGE						
274.043	Exemptions from leasing requirements; rules; registration; use without charge; use with charge; indemnification	Lists situations where state-registered, privately-owned docks or floats are exempt from leasing requirements stated in ORS 274.040; identifies specific uses of submerged or submersible land that the department may authorize without charge and those they may authorize with charge. Declares the state harmless from all liability regarding such use.	X		1991 2011	<ul style="list-style-type: none"> • Enacted in 1991 (274.043 (1) to (3) are in lieu of 274.042)
BEDS OF STREAMS, LAKES AND BAYS						
274.400	Definition for ORS 274.400 to 274.412	Defines the term “board” as used in ORS 274.400 to 274.412	X		1995	<ul style="list-style-type: none"> • Enacted in 1995
274.402	Exclusive jurisdiction to assert title to submerged or submersible lands in	Establishes the board’s exclusive jurisdiction to assert title to submerged or submersible lands; lists requirements for asserting	X		1995	<ul style="list-style-type: none"> • Enacted in 1995

¹ Oregon is seeking to establish the 2013 Edition of the Oregon Revised Statutes and the 2014 Oregon Laws supplement as the effective baseline for the statutory provisions incorporated into the Oregon Coastal Management Program (OCMP). The year in the “updates adopted and effective” column refers to the year(s) during which the Oregon legislature adopted changes to the statutory provisions incorporated into the OCMP.

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective¹	Changes Since Last Approval
	navigable waterway	title				
274.404	Administrative determination of navigable waterway; rules; procedure	Establishes that the department and board make final administrative determinations over whether a waterway is navigable; outlines procedure that board and department must follow for the determination, including public notice requirements	X		1995	<ul style="list-style-type: none"> Enacted in 1995
274.406	Declaration of state's claim; effect	Upon the adoption of a report (under ORS 274.404), the board may make a binding declaration of the state's interest in waterways/land mentioned in the report	X		1995	<ul style="list-style-type: none"> Enacted in 1995
274.408	Public notice of claim; content	Describes public notice to interested parties required of the board immediately following state's declaration of interest			1995	<ul style="list-style-type: none"> Enacted in 1995
274.412	Judicial review of declaration of state's claim	Allows persons to seek judicial review following the board's declaration, via the procedures outlined in ORS chapter 183	X		1995	<ul style="list-style-type: none"> Enacted in 1995
EXPLORATION FOR MINERALS						
274.610	Prohibited contracts for exploration for hard minerals;	Prohibits the department from entering into contracts for development or exploration of	X		1991	<ul style="list-style-type: none"> Enacted in 1991

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
	scientific research	hard minerals on submerged or submersible lands within the territorial sea and navigable bays that are subject to the jurisdiction of the department; defines the terms “hard minerals,” “exploration,” and “scientific research” as used in this section				
TIDAL SUBMERGED AND SUBMERSIBLE LANDS						
Sections 1 and 2, ch. 11, Oregon Laws 2010		Prohibits leasing for exploration, development, or production of oil, gas, or sulfur in the territorial sea, with exceptions; any exploration for oil, gas, or sulfur in the territorial sea allowed under ORS 274.705 to 274.860 must conform to standards under ORS 196.405 to 196.515	X		2010	<ul style="list-style-type: none"> • Enacted in 2010, sunsets on January 2, 2020
274.867	Wave energy; financial assurance; rules	Authorizes director to adopt rules regarding wave energy facility authorization; lists costs for which owner of such a facility must demonstrate financial assurance; outlines the process of demonstrating such financial assurance	X		2007 2013	<ul style="list-style-type: none"> • Enacted in 2007

Changes to Statutes in the Program since Last OCRM Approval

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
GENERAL PROVISIONS						
274.005	Definitions	Provides definitions for this chapter	X	1987	1991 2003	<ul style="list-style-type: none"> • “ORS 274.005 to 274.060 and 274.205 to 274.990” replaced with “this chapter” • Addition of subsection (1): “‘Department’ means the Department of State Lands.” • Former subsection (1) renumbered to subsection (2) • “Division” replaced with “Department” in subsection (2) • Removal of former subsection (2) defining “Division” • “ORS 274.611 to 274.645” replaced

² Oregon is seeking to establish the 2013 Edition of the Oregon Revised Statutes and the 2014 Oregon Laws supplement as the effective baseline for the statutory provisions incorporated into the Oregon Coastal Management Program (OCMP). The year in the “updates adopted and effective” column refers to the year(s) during which the Oregon legislature adopted changes to the statutory provisions incorporated into the OCMP.

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
						with “ORS 274.610” in subsection (6)
274.015	Determination of ordinary high and low water	Requires that ordinary high and low water lines be determined by mean high/low levels from the previous year if they cannot be determined by inspection	X	1987		<ul style="list-style-type: none"> “ORS 274.005 to 274.060 and 274.205 to 274.990” replaced with “this chapter”
274.025	Jurisdiction over submersible and submerged lands generally	Announces state jurisdiction over submersible and submerged lands of navigable streams and lakes, and prohibits acquiring these lands except as by statute	X	1987		<ul style="list-style-type: none"> None
NAVIGABILITY OF STREAMS						
274.036	Status of channel of Willamette River; approval of dam; state maintenance of river location	Announces that the Willamette River has been returned to its pre-1971 channel, and notes findings of the Legislature regarding the dike and the present location of the river		1987		<ul style="list-style-type: none"> “state not obligated to maintain river location” replaced with “state maintenance of river location” in title “ORS 541.605 to 541.665” replaced

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						with "ORS 196.600 to 196.905"
SALE, LEASE OR USE WITHOUT CHARGE						
274.040	Sale or lease of submersible lands; easements; occupation of submerged and submersible lands for water works	Outlines procedure for leasing and selling state-owned submerged or submersible land. Authorizes department to grant persons with a permit for water impoundment use of such land upon payment. Authorizes persons with a water right for irrigation/domestic use to occupy such lands for construction, maintenance, and operation of a structure/facility necessary for that use so long as their right/permit exists; declares the state harmless from all liability regarding such use. Requires all	X	1987	1991 1995 2003 2011	<ul style="list-style-type: none"> • "division" or "Division of State Lands" replaced with "Department of State Lands" or "department" • Addition of "; occupation of submerged and submersible lands for water works" at end of title • "ORS 274.042" replaced with "ORS 274.043" in subsection (1) • Addition of ", in ORS 274.530(3) for licenses of less than three years' duration" after "one year's duration" in subsection (1) • "shall" replaced with "does" in the fourth sentence of

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
		<p>easements and permissions to ensure the safety of the public and the preservation of economic, scenic and recreational values.</p>				<p>subsection (1)</p> <ul style="list-style-type: none"> • “preference” replaced with “preferences” in the sixth and seventh sentences of subsection (1), with associated changes in verbs to keep subject/verb agreement • Removal of “ORS 274.615 or” from the seventh sentence of subsection (1) and from subsection (6) • Addition of a sentence at the end of subsection (1): “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

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						<p>conditions of the lease.”</p> <ul style="list-style-type: none"> • The first sentence of former subsection (3) is now subsection (3)(a) • Removal of “or licenses” after “easements” in subsection (3)(a) • Addition of “submerged and” before “submersible lands” in subsections (3)(a), (3)(c), (6), and twice in (8) • Addition of subsection (3)(b) permitting persons holding water rights to occupy submerged and submersible lands for irrigation or domestic use, prohibiting the department from

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						<p>charging for such occupation, and setting limits on such occupation</p> <ul style="list-style-type: none"> • The second sentence of former subsection (3) is now subsection (3)(c) • “Such an” replaced with “An” at the beginning of subsection (3)(c) • “licenses shall” replaced with “the permission granted under this subsection may” in subsection (3)(c) • Addition of subsection (3)(d) requiring a person granted an easement or permission to use or occupy to indemnify the state • “licenses” replaced with “the permission” in

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						subsection (4) <ul style="list-style-type: none"> • “assure” replaced with “ensure” in subsection (4) • Removal of “or licensee” from the end of subsection (4)
HARBOR IMPROVEMENTS						
274.060	Regulation of harbor improvements; oyster beds; public easement in submerged and submersible lands	Describes the Legislative Assembly’s right to regulate harbor improvements and the use of state-owned oyster beds; subjects submerged or submersible lands grantees to the easement of the public to enter and remove oysters/shellfish	X	1987	2011	<ul style="list-style-type: none"> • “submerged and” added before “submersible lands” in title and in subsection (2)
BEDS OF STREAMS, LAKES AND BAYS						
274.425	Definition for ORS 274.430 to 274.520	Defines the term “meandered lake” as used in ORS 274.430 to 274.520	X	1987		<ul style="list-style-type: none"> • None

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
274.430	State ownership of meandered lakes; status as navigable and public waters	Declares meandered lakes navigable and state-owned; notes exceptions	X	1987		<ul style="list-style-type: none"> • None
274.440	Acquisition of future rights to meandered lakes denied; extension of riparian ownership; lands overflowed by high water	Prohibits acquisition of any right, title or interest in or to the submerged or submersible lands of meandered lakes, or any part thereof, by reliction, accretion, lowering or drainage of the waters, etc., except as provided by statute; outlines title rights following the drainage of meandering lakes	X	1987		<ul style="list-style-type: none"> • None
274.525	City use of stream bed material	Outlines rights of cities (and their contractors) bordering a state-owned, navigable stream to use material from the stream's submerged or submersible lands for filling or reclaiming submersible lands	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
		within the city				
274.530	Lease or license of stream beds for removal of material; rules for measurement of volume removed	Outlines procedure for leasing submerged or submersible lands of navigable streams owned by the State of Oregon for removal of stream material	X	1987	1995	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or “department” • Addition of “or license” after “lease” in title and in the first sentence of subsection (1) • Removal of commas surrounding the phrase “owned by the State of Oregon” in subsection (1) • Addition of subsection (3) authorizing the department to base a license on a competitive market rate reflecting fair market value • Addition of subsection (4) requiring the department to

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						<p>establish prebid qualifications including but not limited to the minimum annual yardage of removal and evidence that all bidders have an established market</p>
274.550	Removal of material without payment of royalties; eligible material and uses	Lists cases in which persons may remove materials from state-owned submerged or submersible lands without payment of royalties; prohibits removal of material from the place it was first deposited or use of the material as an article of commerce written notification and payment of royalties; defines the terms “article of commerce” and “reclaiming land” as used in this section	X	1987	2003	<ul style="list-style-type: none"> • “lease authorized for certain purposes” replaced with “payment of royalties; eligible material and uses” in title • “The removal of” replaced with “A person may remove” in subsection (1) • Removal of “of any navigable stream” in subsection (1) • “, is authorized when” replaced with “without payment of royalties to the Department of

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						<p>State Lands if” in subsection (1)</p> <ul style="list-style-type: none"> • Addition of “is:” at end of subsection (1), before subsection (1)(a) • “is removed” replaced with “Removed” in subsection (1)(a) • “, or” replaced with “;” at end of subsection (1)(a) • Removal of subsection (1)(b): “is used for filling, diking or reclaiming land located not more than one half mile from the bank of the stream, or” • Former subsection (1)(c) renumbered as (1)(b) • “is used” replaced with “Used” in subsection (1)(b) • “ORS 271.005 (3)” replaced with

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						<p>“ORS 271.005” in subsection (1)(b)</p> <ul style="list-style-type: none"> • Removal of final sentence in subsection (1)(b): “However, before removal, the person, organization or agency contemplating removal shall first notify the division.” • Addition of subsection (1)(c): “Used for the creation, maintenance or enhancement of fish or wildlife habitat;” • Addition of subsection (1)(d): “Used for the maintenance of public beaches; or” • Addition of subsection (1)(e) allowing removal

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						<p>of material contaminated with hazardous material with 30 days' written notice to the department</p> <ul style="list-style-type: none"> • Addition of subsection (2) allowing use without royalty payments if the person provides 30 days' written notice to the department for (2)(a) a state agency or political subdivision filling any property up to one foot above the ordinary high tie line, or (2)(b) material used solely for a public purpose by a political subdivision • Former subsection (2) renumbered as (3) • Removal of "No

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						<p>payment of royalty shall be required for the material unless it is removed from the place deposited and sold or used as an article of commerce.” from beginning of current subsection (3)</p> <ul style="list-style-type: none"> • The remaining sentence of current subsection (3) is substantially restructured to use the active rather than passive voice, without altering the meaning • Former subsection (3) renumbered to (4) • “division” replaced with “department” in current subsection (4) • Addition of subsection (5) requiring payment

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						<p>of royalties established by department for removal from lands not exempt from royalty payments</p> <ul style="list-style-type: none"> • Addition of subsection (6) defining “Article of commerce” and “Reclaiming land”
274.560	Lease terms; bond or security; prohibited lease or purchase option; monthly reports and payments; rules	Authorizes stipulations on leases protecting the interest of the state as the department may require, including requiring a bond; requires monthly reporting on the amount of material taken and payment of royalties; prohibits contracts giving any person an option of leasing or purchasing the property of the State of Oregon. Requires the adoption of rules regarding when security is	X	1987	1991	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or “department” • Addition of “or security” after “bond” in title • “option to lease or purchase forbidden” replaced with “prohibited lease or purchase option” in title • Addition of “; rules” at end of title • “shall” replaced with “may” in first sentence of subsection (1)

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		required.				<ul style="list-style-type: none"> • Addition of “or other form of security,” after “surety,” in subsection (1)
274.590	Cooperation with Washington authorities respecting removal of material from bed of Columbia River	Requires the department to collaborate with the State of Washington regarding removal of material from the Columbia River		1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”
TIDAL SUBMERGED AND SUBMERSIBLE LANDS						
274.705	Definitions for ORS 274.705 to 274.860	Defines terms as used in ORS 274.705 to 274.860	X	1987		<ul style="list-style-type: none"> • “sulphur” replaced with “sulfur” in subsection (3)
274.710	Jurisdiction of department over tidal submerged lands; easements; leases for oil, gas and sulfur	Gives the department exclusive authority to manage and control all tidal submerged lands over which the state has jurisdiction/authority; prohibits the department from permitting non-	X	1987	2005	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or “department” • “sulphur” replaced with “sulfur” • Addition of a colon to the end of subsection (1) (before (1)(a))

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
		temporary interference with the surface of the ocean shore, with exceptions				<ul style="list-style-type: none"> • “by” replaced with “By” at the beginning of subsections (1)(a) and (1)(b) • Comma replaced with semicolon after “thereof” in subsection (1)(a) • The last sentence of former subsection (1) is renumbered as subsection (2) • Former subsections (2) and (3) are renumbered as (3) and (4), respectively • “subsection (1)” replaced with “subsections (1) and (2)” in first sentence of current subsection (3)
274.715	Sulfur leases	ORS 274.705 to 274.860 also apply to leasing lands for sulfur production	X	1987		<ul style="list-style-type: none"> • “sulphur” replaced with “sulfur”
274.720	Effect of ORS 274.705 to	Clarifies that ORS 274.705 to 274.860		1987		<ul style="list-style-type: none"> • “division” replaced with “Department

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
	274.860 on power to make other leases and on jurisdiction of agencies other than department	does not affect leases for other materials and the authorities of other departments				<ul style="list-style-type: none"> • of State Lands” or “department” • “sulphur” replaced with “sulfur”
274.725	Scope of leases and permits; persons ineligible	Allows any state interests in lands, or lands in fee simple, to be made available to any lessee for the purposes in ORS 274.705 to 274.860 upon terms determined by the department; prohibits granting a permit or lease to any person then in violation of any laws or rules of ORS 274.705 to 274.860	X	1987		<ul style="list-style-type: none"> • “division” replaced by “Department of State Lands” or “department”
274.735	Application for survey permit; effect of permit; rules	Authorizes the department to grant non-exclusive permits for geological, geophysical, and seismic surveys, after consultation with specific agencies, with certain restrictions, and	X	1987	2003	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” • Addition of “; rules” at the end of the title • Addition of “, for purposes related to exploration for oil,

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
		so long as the application includes identified information				<p>gas and sulfur” after “other samples” in subsection (1)</p> <ul style="list-style-type: none"> • “sulphur or other mineral” replaced with “sulfur” in subsection (1)(a)
274.740	Issuance of survey permit; renewal; reports	Authorizes the department to prohibit geological, geophysical, and seismic surveys on any area; outlines permit requirements including environmental protection measures	X	1987	2003	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or “department” • “shall” replaced with “may” in subsection (2)
274.745	Drilling logs and records	Requires drilling logs to be filed with the State Department of Geology and Mineral Industries; department may condition a lease on submitting exploration results and logs/records of operations	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”
274.755	Hearing prior to granting lease or easement	Requires department to hold a public hearing prior to granting a		1987	1993 1999 2001	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
		lease or easement under ORS 274.705 to 274.860; identifies to whom the department must provide written notice of the area under consideration and other pertinent information prior to granting an easement or inviting bids on such lands; outlines requirements for public hearings			2003	<p>“department”</p> <ul style="list-style-type: none"> • “State Highway Engineer” replaced with “Director of Transportation” in subsection (2)(b) • “Director,” replaced with “Director of the” in subsection (2)(c) • “Director, State and Wildlife Commission” replaced with “State and Wildlife Director” in subsection (2)(d) • The first sentence of subsection (4), authorizing division officers or employees and other state agency, board, or commission employees to conduct hearings, replaced with a sentence authorizing

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
						administrative law judges and hearing officers designated by the State Land Board to conduct hearings <ul style="list-style-type: none"> • “before the division or its representative” replaced with “in the hearing” in subsection (4)
274.760	Considerations involved in granting lease or easement	Lists the points that the department must consider in determining whether granting an easement or inviting lease bids would be in the public interest	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or “department” • “esthetic” replaced with “aesthetic” in subsection (3)
274.765	Publishing offer to lease tidal submerged lands; bids; cash bonus; award of lease; fee	Outlines requirements for publishing notice of the department’s intention to lease such land, the bidding process, and the awarding process		1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or “department” • “sulphur” replaced with “sulfur” in subsection (1)
274.770	Prohibited drilling requirements	Prohibits department from discriminating between bidders	X	1987		<ul style="list-style-type: none"> • “Discriminatory requirements prohibited”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
		through certain drilling requirements				<p>replaced with “Prohibited drilling requirements” in title</p> <ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”
274.780	Conditions in leases and permits; execution; delivery of bonds or contracts to department	Identifies the basis of content for permits and leases; requires the department to execute all leases and other instruments required in carrying out ORS 274.705 to 274.860; directs applicable bonds, contracts and other required instruments to be executed and delivered to the department	X	1987	2003	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or “department”
274.785	Exclusive rights granted by lease; requirement of diligence; maximum area; assignment	A lease grants the exclusive right to drill for all oil, gas, and sulfur deposits in the leased land; identifies term limits and the maximum area of land per single lease; prohibits assigning a		1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” • “sulphur” replaced with “sulfur”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
		permit, easement, or lease (or part thereof) without prior consent of the department				
274.790	Royalties	Requires the department to specify the rate of royalty under a lease in the notice and lease; identifies minimum royalties and payment procedures	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” or “department” • “sulphur” replaced with “sulfur”
274.795	Rents	Requires the department to specify the annual rental rate and outlines the minimum rent price	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”
274.800	Bonds	Requires the Department of Geology and Mineral Industries to specify sufficient bonding requirements to secure lease compliance and the public as to all proper claims for damages	X	1987		<ul style="list-style-type: none"> • None
274.805	Drill sites	Outlines from where drilling into subsurface of the lands covered by	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
		the lease may occur				
274.810	Commencement of drilling; operational requirements	Outlines time period by which lessee must commence drilling; requires the lease to include necessary exploratory, drilling, and producing requirements	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” • “sulphur” replaced with “sulfur”
274.815	Extension of time when wells to be drilled from filled land or structure	Allows lessee time extensions on drilling commencement to secure necessary permission from federal and state agencies for filling lands or building structures, and to fill those lands and/or construct the structures		1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”
274.820	Water contamination or pollution	Prohibits avoidable pollution and contamination of the ocean and waters covering tidal submerged and submersible lands, the lands underneath, and beaches and prohibits	X	1987		<ul style="list-style-type: none"> • None

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
		substantial impairment of uses thereof; Requires lessee to exercise a high degree of care to prevent specific items from being deposited on or passing into these waters				
274.825	Nonconflicting use of leased lands	Describes circumstances under which the state may permit nonconflicting uses of leased land	X	1987	1999	<ul style="list-style-type: none"> • Punctuation change, setting off a clause in commas rather than parentheses, without altering meaning
274.830	Protecting lands from drainage	Requires lessees to exercise due diligence in protecting the leasehold from drainage by wells on lands not owned by the state	X	1987		<ul style="list-style-type: none"> • None
274.835	Conformance to laws and regulations; periodic negotiations	Requires lessees to conform to all applicable state laws in effect at the date of the invitation for bids	X	1987		<ul style="list-style-type: none"> • None
274.840	Continuation of lease after	Describes the circumstances under	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
	cessation of production	which a lease continues even if production on the leasehold ceases				of State Lands” <ul style="list-style-type: none"> • “sulphur” replaced with “sulfur”
274.845	Surrender of lease	Outlines process by which a lessee may surrender the lease or portion thereof; surrendering does not release lessee of accrued financial obligations		1987		<ul style="list-style-type: none"> • “board” replaced with “Department of State Lands”
274.850	Cancellation of lease; partial retention of leasehold; removal of equipment	Lists circumstances in which department has the right to cancel a lease and outlines the processes for doing so; describes effect of lease cancellation on lessee and their responsibilities	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” • “sulphur” replaced with “sulfur”
274.855	Restoration of leasehold to original condition	Authorizes department to require a permittee or lessee to restore the portion of the premises that is visible at extreme low tide to substantially its original condition	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
274.860	Protection and location of filled lands	Describes permitted locations and protective measures regarding filled lands	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands”
274.885	Lease of kelp fields	Authorizes the department to lease state-owned submerged lands for seaweed harvesting after consultation with the State Fish and Wildlife Commission	X	1987	1993 2011	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” • Former subsection (1) is now the entirety of the section • Removal of former subsection (2), specifying lease term, annual payment requirement, conditions for forfeiture of lease, and maximum amount of coastline to lease to one person
274.890	Time allowed lessee for survey and erection of plant; filing copy of survey with department	Describes timeline allowing lessee to survey land, erect plants, and commence production; lessee must file a copy of the survey with the	X	1987		<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” • “director” replaced with “Director of the Department of State Lands”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
		department				<ul style="list-style-type: none"> • “his lease” replaced with “the lease” • “his failure” replaced with “the failure of the lessee”
274.895	Removing kelp without lease	Prohibits harvesting/removing any seaweed from any state-owned submerged lands without a lease from the department, except for removing less than 2,000 pounds of wet kelp each year for personal consumption	X	1987	2011	<ul style="list-style-type: none"> • “division” replaced with “Department of State Lands” • Addition of “wet” before “kelp” in specifying the maximum weight that can be removed without a lease • Addition of “for the person’s personal use” after “human consumption” • “no person shall” replaced with “a person may not” • “he” replaced with “the person”
SUBMERSIBLE, SUBMERGED AND NEW LANDS						
274.905	Definitions for ORS 274.905 to 274.940	Defines terms as used in ORS 274.905 to 274.940	X	1987		“division” replaced with “Department of State Lands”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
274.910	Application and effect	Provides applicable bounds of the section		1987		“division” replaced with “Department of State Lands”
274.915	Lease or disposal of new lands; method	Authorizes the department to sell, lease, or trade submersible or submerged lands owned by the state	X	1987		“division” replaced with “Department of State Lands”
274.920	Creation of new lands upon submersible or submerged lands	Prohibits any party other than the United States from artificially creating 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.	X	1987		“division” replaced with “Department of State Lands”
274.925	Right of public riparian owner to purchase new lands; price determination	Specifies when and how a public body may purchase new lands		1987		“division” replaced with “Department of State Lands”
274.929	Right of nonpublic	Specifies when and how a nonpublic		1987		“division” replaced with “Department of State

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
	riparian owner to purchase certain new lands; price determination	riparian owner body may purchase new lands				Lands”
274.932	Right of public body to purchase new lands created by it; price determination	Specifies when and how a public body may purchase new lands		1987		“division” replaced with “Department of State Lands”
274.935	Ownership, by nonpublic owner of submersible or submerged lands, of new lands created thereon	Specifies that whenever new lands are created upon submersible or submerged lands owned by other than a public body, the new lands shall be owned by the owner of the submersible or submerged lands upon which the new lands are created.		1987		“division” replaced with “Department of State Lands”
274.937	Right of individual to purchase new lands created by individual; price determination	Specifies when and how an individual may purchase new lands		1987		“division” replaced with “Department of State Lands”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
274.940	Reservation of new lands	Allows the department to reserve new lands from sale, transfer or lease where upon notice and hearing it determines that the public interest requires such lands to be preserved for recreation, conservation of fish and wildlife or the development of navigation facilities.	X	1987		"division" replaced with "Department of State Lands"

Statutes that Were in the Program but Have Been Repealed since Last OCRM Approval

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
[274.042]	Leases not required or authorized for certain boating facilities; lease not to be used as condition of state approval to obtain federal permit	Defines terms as used in this section; lists boating facilities that may extend onto state-owned submerged or submersible lands without a lease; applicants for permit from federal government may not be required to enter into a lease with state to gain state approval	1987	<ul style="list-style-type: none"> repealed in 1991
[274.611]	Definition for ORS 274.615 to 274.645	Defines “hard minerals” as used in ORS 274.615 to 274.645	1987	<ul style="list-style-type: none"> repealed in 1991
[274.615]	Lease of navigable bay and river beds for extraction of minerals	Authorizes the division (department) to execute leases for the extraction of hard minerals from submerged and submersible lands of navigable bays and rivers in certain areas	1987	<ul style="list-style-type: none"> repealed in 1991
[274.620]	Hearing prior to granting of lease	Requires public hearing and written notice before the leasing of submerged and submersible lands for extraction of hard minerals; requires written notice describing the area and other information prior to inviting bids	1987	<ul style="list-style-type: none"> repealed in 1991

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
[274.625]	Determining advisability of granting lease	Requires the division (department) to determine whether an invitation for bidding to lease the area would be in the public interest, including whether leasing would have any of effects listed in ORS 274.760	1987	<ul style="list-style-type: none"> repealed in 1991
[274.630]	Publishing offer to lease mineral rights; bids; cash bonus; award of lease; fee	Outlines requirements for publishing notice of the division's (department's) intention to lease such land, for the bidding process, and for the awarding process	1987	<ul style="list-style-type: none"> repealed in 1991
[274.635]	Conditions in leases; fees; execution; delivery of bonds or contracts to division	Requires leases to include conditions determined by the division (department) and interested agencies to protect interests of the state; outlines procedure for executing evaluations and the lease	1987	<ul style="list-style-type: none"> repealed in 1991
[274.640]	Maximum area; persons ineligible	Limits the maximum area for a hard minerals extraction lease to 640 acres; persons in violation of applicable laws may not be granted a lease	1987	<ul style="list-style-type: none"> repealed in 1991
[274.645]	Cancellation of lease	Leases under ORS 274.615 to 274.645 are not subject to time limits but division (department) may cancel any lease upon lessee's failure to	1987	<ul style="list-style-type: none"> repealed in 1987

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
		follow the terms of the lease		

Text of ORS Chapter 274 Statutes Included in July 24, 2014 RPC
2013 Edition Oregon Revised Statutes

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]

274.015 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]

274.025 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]

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 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]

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

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

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

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

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

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

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

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

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

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

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

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]

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]

274.412 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]

274.425 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 relicted 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]

(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]

274.550 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 nonpayment 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]

274.590 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]

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]

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 jurisdiction 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 conducted 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, redrilling 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 allowance 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 interested agencies, boards and commissions. [1961 c.619 §31]

(Wave Energy Facilities or Devices)

274.867 Wave energy; financial assurance; plan for decommissioning; rules. (1) In accordance with applicable provisions of ORS chapter 183, the Director of the Department of State Lands may adopt rules for the authorization of wave energy facilities or devices.

(2) An owner or operator of a facility or device sited within Oregon's territorial sea, as defined in ORS 196.405, that converts the kinetic energy of waves into electricity 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 or device, 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 (9) of this section; and

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

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

(4) The financial assurance requirements established by subsection (2) 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.

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

(6)(a) Prior to the time that operation of a facility or device described in subsection (2) of this section is authorized, the owner or operator of the facility or device must provide the director with a plan for decommissioning the facility or device after the permanent cessation of use of that facility or device for the conversion of the kinetic energy of waves into electricity. The plan for decommissioning the facility or device must include, but need not be limited to:

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

(B) The cost estimates required by subsection (2) of this section;

(C) The evidence of financial assurance required by subsections (2) and (4) of this section;

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

(E) A description of the anticipated methods that will be used to close the facility or device, engage in post-closure maintenance and take any corrective action required at the site of the facility or device; 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 or device must update the information required under this subsection with the Department of State Lands.

(7) An owner or operator shall provide evidence of financial assurance before beginning corrective action at the site of a facility or device described in subsection (2) of this section.

(8) 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.

(9)(a) An owner or operator of a facility or device described in subsection (2) of this section must initiate removal of all equipment related to that facility or device, 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 or device for the conversion of the kinetic energy of waves into electricity.

(b) Notwithstanding paragraph (a) of this subsection, an owner or operator of a facility or device described in subsection (2) of this section 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 or device for the conversion of the kinetic energy of waves into electricity.

(d) The director may extend the deadlines under this subsection if the owner or operator of the facility or device can show good cause and has undertaken a good faith effort to remove the equipment as required by this subsection. [2007 c.591 §3; 2013 c.345 §1]

(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) "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, which have been created upon submersible or submerged lands by artificial fill or deposit. "New lands" does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(2) "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]

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

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

(3) 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]

274.915 Lease or disposal of new lands; method. (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. [1963 c.376 §3; 1967 c.421 §177; 1969 c.594 §47; 1973 c.203 §3; 1989 c.64 §1]

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 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 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 274.910 (2), this section applies only to new lands created on or after October 5, 1973. [1973 c.203 §2]

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 determination 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 new lands. Notwithstanding ORS 274.905, 274.915 to 274.925, 274.929, 274.932 and 274.937, the Department of State Lands may reserve new lands from sale, transfer or lease where upon notice and hearing it determines that the public interest requires such lands to be preserved for recreation, conservation of fish and wildlife or the development of navigation facilities, but in case of such reservation the adjoining or opposite upland or riparian owner shall be allowed reasonable access across such reserved new lands to navigable water. [1963 c.376 §7; 1967 c.421 §178; 1973 c.203 §8]