

**B-Engrossed**  
**House Bill 2265**

Ordered by the House June 28  
Including House Amendments dated June 2 and June 28

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Office of the Legislative Counsel)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Allows person to submit preliminary wetland jurisdictional determination report to Department of State Lands for review and approval. Defines terms.]*

*[Requires person removing material from beds and banks or filling waters of this state under emergency authorization to submit fee to department.]*

*[Revises base fee and volume fee for permits to remove or fill material. Provides for annual increase of permit fees.]*

*[Allows department to assess fee for persons conducting certain actions under general authorization.]*

*[Declares emergency, effective July 1, 2005.]*

**Extends certain provisions relating to easements over submersible lands to submerged lands.**

**A BILL FOR AN ACT**

Relating to the Department of State Lands; amending ORS 274.040.

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the department under ORS 274.705 to 274.860.

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

6 (a) No such lands shall be sold for less than for a fair appraised value as determined by an ap-  
7 praiser appointed by the department.

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

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

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

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

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

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

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

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

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

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

42 (5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806,  
43 622.270 or 622.320 to 622.350.

44 (6) The Department of State Lands shall designate the minimum acceptable amount for the lease  
45 of any submersible lands otherwise authorized by law, other than any lease offered or issued by the

1 department under ORS 274.705 to 274.860.

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

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

7

---