

# Senate Bill 441

Sponsored by Senator MORSE (Presession filed.)

## 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 **as introduced**.

Modifies provisions related to written agreements by Department of Environmental Quality that provide certain parties with release from potential liability for releases of hazardous substances.

## A BILL FOR AN ACT

1  
2 Relating to releases of hazardous substances; creating new provisions; and amending ORS 465.320  
3 and 465.327.

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

5 **SECTION 1.** ORS 465.327 is amended to read:

6 465.327. (1) In order to facilitate cleanup and reuse of contaminated property, the Department  
7 of Environmental Quality may, through a written agreement, provide a party with a release from  
8 potential liability to the state under ORS 465.255, if:

9 (a) The party is not currently liable under ORS 465.255 for an existing release of hazardous  
10 substance at the facility;

11 (b) Removal or remedial action is necessary at the facility to protect human health or the en-  
12 vironment;

13 (c) The proposed redevelopment or reuse of the facility will not contribute to or exacerbate ex-  
14 isting contamination, increase health risks or interfere with remedial measures necessary at the fa-  
15 cility; and

16 (d) A substantial public benefit will result from the agreement, including but not limited to:

17 (A) The generation of substantial funding or other resources facilitating remedial measures at  
18 the facility in accordance with this section;

19 (B) A commitment to perform substantial remedial measures at the facility in accordance with  
20 this section;

21 (C) Productive reuse of a vacant or abandoned industrial or commercial facility; or

22 (D) Development of a facility by a governmental entity or nonprofit organization to address an  
23 important public purpose.

24 (2) In determining whether to enter an agreement under this section, the department shall con-  
25 sult with affected land use planning jurisdictions and consider reasonably anticipated future land  
26 uses at the facility and surrounding properties.

27 (3) An agreement under this section [*may be set forth in an administrative consent order or*  
28 *other*] **must, after opportunity for public notice and comment pursuant to ORS 465.320, be set**  
29 **forth as an** administrative agreement or in a judicial consent judgment entered in accordance with  
30 ORS 465.325. Any such agreement may include provisions considered necessary by the department,  
31 and shall include:

**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 (a) A commitment to undertake the measures constituting a substantial public benefit;

2 (b) If remedial measures are to be performed under the agreement, a commitment to perform any  
3 such measures under the department's oversight;

4 (c) A waiver by the party of any claim or cause of action against the State of Oregon arising  
5 from contamination at the facility existing as of the date of acquisition of ownership or operation  
6 of the facility;

7 (d) A grant of an irrevocable right of entry to the department and its authorized representative  
8 for purposes of the agreement or for remedial measures authorized under this section;

9 (e) A reservation of rights as to an entity not a party to the agreement; and

10 (f) A legal description of the property.

11 (4) Subject to the satisfactory performance by the party of its obligations under the agreement,  
12 the party shall not be liable to [*the State of Oregon*] **any person** under ORS 465.200 to 465.545 and  
13 465.900 **or ORS chapter 466 or 468B** for any release of a hazardous substance at the facility ex-  
14 isting as of the date of acquisition of ownership or operation of the facility. The party shall bear the  
15 burden of proving that any hazardous substance release existed before the date of acquisition of  
16 ownership of the facility. This release from liability shall not affect a party's liability for claims  
17 arising from any:

18 (a) Release of a hazardous substance at the facility after the date of acquisition of ownership  
19 or operation;

20 (b) Contribution to or exacerbation of a release of a hazardous substance;

21 (c) Interference or failure to cooperate with the department or other persons conducting reme-  
22 dial measures under the department's oversight at the facility;

23 (d) Failure to exercise due care or take reasonable precautions with respect to any hazardous  
24 substance at the facility; and

25 (e) Violation of federal[, *state*] or local law.

26 (5) Any agreement entered under this section shall be recorded in the real property records from  
27 the county in which the facility is located. The benefits and burdens of the agreement, including the  
28 release from liability, shall run with the land, but the release from liability shall limit or otherwise  
29 affect the liability only of persons who are not potentially liable under ORS 465.255 for a release  
30 of a hazardous substance at the facility as of the date of acquisition of ownership or operation of  
31 the facility and who assume and are bound by terms of the agreement applicable to the facility as  
32 of the date of acquisition of ownership or operation.

33 **SECTION 2.** ORS 465.320 is amended to read:

34 465.320. Except as provided in ORS 465.260 (3), before approval of any remedial action to be  
35 undertaken by the Department of Environmental Quality or any other person, [*or*] adoption of a  
36 certification decision under ORS 465.325 **or providing a party with a release under ORS**  
37 **465.327**, the department shall:

38 (1) Publish a notice and brief description of the proposed action in a local paper of general  
39 circulation and in the Secretary of State's Bulletin, and make copies of the proposal available to the  
40 public.

41 (2) Provide at least 30 days for submission of written comments regarding the proposed action,  
42 and, upon written request by 10 or more persons or by a group having 10 or more members, conduct  
43 a public meeting at or near the facility for the purpose of receiving verbal comment regarding the  
44 proposed action.

45 (3) Consider any written or verbal comments before approving the removal or remedial action

1 **or providing a party with a release under ORS 465.327.**

2 (4) Upon final approval of the remedial action **or providing a party with a release under ORS**  
3 **465.327**, publish notice, as provided under subsection (1) of this section, and make copies of the  
4 [*approved*] action **or release** available to the public.

5 **SECTION 3. The amendments to ORS 465.320 and 465.327 by sections 1 and 2 of this 2011**  
6 **Act apply to written agreements provided by the Department of Environmental Quality to a**  
7 **party on or after the effective date of this 2011 Act for releases of hazardous substances**  
8 **from facilities occurring before, on or after the effective date of this 2011 Act.**

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