

Oregon Department of Justice FAQ for HB 2377

Environmental Accountability

HB 2377 in plain language:

- This bill is aimed at accomplishing two main goals:
 - Holding the right parties accountable for their share of environmental cleanup costs; and
 - Accessing funding to remediate contaminated sites and redevelop brownfields throughout Oregon.
- There are entities who polluted in Oregon and who also paid for insurance that covered environmental contamination, but we may be unable to reach those insurance assets because of a technicality in Oregon law. HB 2377 closes this loophole, ending the potential of an unearned windfall to insurers.

Why are insurance assets for formally dissolved corporations unavailable to pay for environmental cleanup costs?

Under Oregon's corporate dissolution statute, there is a five-year limitation on claims against a formally (statutorily) dissolved entity. If an entity went out of business and did not follow the statutory dissolution procedures, they would be considered administratively dissolved (for nonpayment). Those entities can be sued under current law even if they ceased operations decades ago and all of their principals are dead. This bill removes the narrow bar that might apply to the formally/statutorily dissolved entities, only to allow recovery of proceeds available under the dissolved corporation's insurance assets.

Do other state laws allow claims like this?

Yes. Though we have not conducted a state-by-state survey, other states do allow claims against statutorily-dissolved entities to the extent of their insurance assets, including California.

Could this bill inadvertently affect the rights of current landowners? For example, would it prevent anyone from obtaining insurance coverage or change anything in terms of their property ownership?

This bill should have no impact on current landowners or existing insurance policies. It only opens up claims against dissolved entities who had insurance policies that would have covered damages resulting from the insured's release(s) of hazardous substances. These insurance policies pre-date 1986, as that was when insurance companies phased this type of coverage out of standard policies (and we anticipate they will continue to not provide this type of coverage in new policies, regardless of this bill).

Note that entities that have dissolved administratively—i.e., by failing to pay fees or submit annual filings instead of following the statutory procedure—are already subject to suit to the extent of their insurance coverage. This bill targets only the statutory bar for entities who have statutorily dissolved.

What if the insurance company is no longer around?

In many cases, an insurance company that is no longer in existence will have been acquired by another insurance company who will be responsible for the prior insurance company's claims. Assuming that an insurance company is truly insolvent (and has not been acquired by another insurance company), it is possible that claims could be submitted to the Oregon Insurance Guarantee Association.

How will we go about identifying these assets?

Professionals in insurance archaeology are typically engaged to help identify applicable policies.

How much this could save taxpayers?

Passage of this bill could bring in tens of millions of additional funds to the Portland Harbor cleanup process. That money will help to reduce the funding required from parties potentially responsible for the cleanup, including the State of Oregon, the City of Portland, the Port of Portland, the Federal government, and industry. We are unsure of the exact reduction of the State of Oregon's (and Oregon taxpayers') share, but we anticipate it will be a significant amount.

With the help of insurance archaeologists, we anticipate that this bill will also allow recovery of insurance assets for brownfields across Oregon, resulting in a reduction of the share of the cost of related cleanups to state and local governments (and their taxpayers).

Additional Questions?

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