

SENATE AMENDMENTS TO SENATE BILL 74

By COMMITTEE ON NATURAL RESOURCES AND WILDFIRE

April 16

1 In line 2 of the printed bill, after “waterways” insert “; amending ORS 274.404, 274.406 and
2 274.408”.

3 Delete lines 4 through 8 and insert:

4 “**SECTION 1.** ORS 274.404 is amended to read:

5 “274.404. (1) On or before July 1, 1996, the State Land Board shall adopt by rule a procedure
6 that is consistent with ORS 274.400 to 274.412 by which the board and the Department of State
7 Lands shall make a final administrative determination as to whether a waterway or part of a
8 waterway is navigable, and if so, the extent of the interest claimed by the State of Oregon in the
9 navigable portion of the waterway.

10 “(2) The rules adopted under subsection (1) of this section shall incorporate the following pro-
11 cedures that the board and the department shall follow:

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

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

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

21 “(d) The department shall provide appropriate prior public notice to affected property owners
22 and other interested parties concerning the draft report. The notice shall provide an opportunity for
23 a public hearing in the area of the affected waterway and an opportunity for the public to submit
24 written comments on the draft report and to submit testimony or other evidence concerning the
25 navigability of the affected waterway or part of the waterway or the State of Oregon’s interest in
26 the waterway or part of the waterway.

27 “(e) Following the public hearing, the board may adopt the draft report submitted by the de-
28 partment if substantial evidence in the record supports the report’s findings and conclusions, or the
29 board may refer the report to the department for further action as determined by the board.

30 “(3)(a) **Notwithstanding common law principles of accretion and avulsion, the department**
31 **may find in a draft report under this section that the state’s interest in a waterway should**
32 **extend to the current submerged and submersible lands within the waterway.**

33 “(b) **At any point after the beginning of the study and before the board adopts a draft**
34 **report under subsection (2) of this section, the department may negotiate an exchange of**
35 **deeds with any property owner that would be affected by a finding that the state’s interest**

1 in the waterway should extend to the current submerged and submersible lands within the
2 waterway. In any negotiation with an affected property owner, the department shall prior-
3 itize the goal of state ownership of the current waterway and need not seek an equal ex-
4 change of property values.

5 “(c) Notwithstanding ORS 273.780, the department may convey the mineral and
6 geothermal resource rights of property exchanged by the department pursuant to this sub-
7 section.

8 “(d) If the department is unable to reach an agreement with any affected property owner
9 described in this subsection, the department shall determine the extent of the state’s inter-
10 est in the applicable portion of the waterway in accordance with common law principles of
11 accretion and avulsion.

12 “(e) If a report adopted by the board includes a finding that the state’s interest in the
13 waterway extends to the current submerged and submersible lands within the waterway, the
14 board may find in a declaration under ORS 274.406 that the boundary of the waterway should
15 remain ambulatory and change with future accretion.

16 “(f) This subsection does not apply to a meandered lake.

17 “(g) As used in this subsection:

18 “(A) ‘Geothermal resource’ has the meaning given that term in ORS 522.005.

19 “(B) ‘Meandered lake’ has the meaning given that term in ORS 274.425.

20 “(C) ‘Mineral’ has the meaning given that term in ORS 273.775.

21 “SECTION 2. ORS 274.406 is amended to read:

22 “274.406. (1) Upon the adoption of a report by the State Land Board under ORS 274.404 (2)(e),
23 the board shall declare the nature and extent of the state’s claim to any interest that remains or is
24 vested in the State of Oregon with respect to any land or waterway described in the report.

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

29 “(3) If a declaration made by the board under subsection (1) of this section is filed with
30 the county clerk for recording, the county clerk shall record the declaration in the deed re-
31 cords of the county where the waterway is located.

32 “[3] (4) Nothing contained in this section is intended to affect the ability of a court of compe-
33 tent jurisdiction to make a determination with respect to a private claim to or interest in real
34 property.

35 “SECTION 3. ORS 274.408 is amended to read:

36 “274.408. Immediately following a declaration made by the State Land Board pursuant to ORS
37 274.406, the board shall:

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

40 “(a) Describe the land or waterway affected and the nature and extent of the state’s claim. Such
41 notice need not describe the land or waterway in legal terms, but by the use of common descriptions
42 or maps shall be designed to identify the land or waterway in a manner intelligible to the layperson
43 and useful in establishing the [exact] location of the state claim [in relation to existing legal de-
44 scriptions].

45 “(b) Advise that any person aggrieved by the declaration may seek judicial review of the dec-

1 laration pursuant to ORS 274.412.

2 “(2) Send to each owner of record of land described in the declaration a copy of the declaration
3 made with respect to the land and a statement advising such owner that any aggrieved party may
4 seek judicial review of the declaration pursuant to ORS 274.412.”.

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