

Chapter 274

1961 REPLACEMENT PART

Tide, Swamp and Submerged Lands; Stream and Lake Beds

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TIDE LANDS; SWAMP LANDS

274.010 [Amended by 1961 c 619 §41, renumbered 274 885]

274.020 [Renumbered 274 890]

274.030 [Amended by 1961 c 619 §42, renumbered 274 895]

274.040 Tide and overflow lands; lease and sale. (1) Except as provided in subsection (2) of this section, all tide and overflow lands shall be sold or leased only to the highest bidder after being duly advertised for a period of 30 days in two or more newspapers of general circulation in the state, one of which must be published in the county in which the lands lie; provided, that no such lands shall be sold for less than \$5 per acre. Any owner of lands abutting or fronting on such tide and overflow lands shall have the preference right to lease or purchase at the highest price offered in good faith. No accretions to islands heretofore sold by the state shall be leased.

(2) The State Land Board may grant to any person holding a permit from the State Engineer authorizing the impoundment for beneficial use of the waters of any lake or stream, easements or licenses over tide and overflow lands as defined by subsection (7) of ORS 273 010, including the shores of navigable lakes and streams, for flowage and storage of waters, and for the construction, maintenance and operation of any dams, plants, power lines, roads, pipe lines, conduits or other structures or facilities necessary for the use of the water under the terms of the permit upon payment of just compensation by the grantee. Such an easement or license shall not be construed to be a sale or lease of the tide or overflow lands within the purview of subsection (1) of this section.

(3) All easements or licenses granted pursuant to subsection (2) of this section shall be subject to terms and conditions that will assure the safety of the public and the preservation of economic, scenic, and recreational values and to lawful rules and regulations promulgated by state agencies affected by the activities of the grantee or licensee. [Amended by 1961 c 37 §1; subsection (3) enacted as 1961 c 37 §2]

274.045 Riparian owner's preference not applicable to leases under ORS 274.615 or 274.705 to 274.865. (1) The preference set forth in subsection (1) of ORS 274 040 does not apply as to any lease offered or issued by the State Land Board under ORS 274.615

(2) The preference set forth in subsection (1) of ORS 274.040 shall not apply as to any leases offered or issued by the board under ORS 274 705 to 274 865.

[Subsection (1) enacted as 1961 c 703 §9, subsection (2) enacted as 1961 c 619 §35]

274.050 Confirmation of title to tide lands and tide flats. The titles to all tide lands within this state, and all tide flats not adjacent to the shore in the waters of the state, which have been heretofore sold to purchasers by the State of Oregon, where the purchaser has, in good faith, actually paid to the state the purchase price, and the same has been received by the state, and the purchaser has not purchased from the state to exceed 320 acres of that character or class of land, are hereby confirmed to all such purchasers and grantees of the state, their heirs, successors or assigns, when such tide lands have not been fraudulently obtained, and without reference to the amount of any other character of lands purchased by such purchaser theretofore from the state.

Note: 1872 p 129, as amended by 1874 p 76 and 1876 p 69, (subsequently repealed by 1878 p 41 §34) provided: "The title of this state to tide or overflowed lands upon said Willamette, Coquille, Coos and Umpqua rivers is hereby granted and confirmed to the owners of the adjacent lands, or when any such tide or overflowed lands have been sold, then in that case, to the purchaser or purchasers of such tide or overflowed lands from such owner of such adjacent lands, or some previous owner thereof, as the case may be"

274.060 Regulation of wharves or harbor improvements; oyster beds; public easement in tide and overflow lands. (1) Nothing in ORS 274.040 shall be construed to prevent the legislature of this state, or the corporate authorities of any city or town thereof, from regulating the building of wharves or other improvements in any bay, harbor or inlet of this state, or construed as a grant of the exclusive right to any person to use the natural oyster beds of this state.

(2) The grantee of any tide and overflow 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 shell fish therefrom.

274.070 Ownership of Pacific shore; declaration as highway. Ownership of the shore of the Pacific Ocean between ordinary high tide and extreme low tide, and from the Columbia River on the north to the Oregon and California state line on the south, excepting such portion or portions as may

have been disposed of by the state prior to July 5, 1947, hereby is declared vested in the State of Oregon, and hereby is declared to be a public highway. No portion of such shore shall be alienated by any of the agencies of the state.

274.075 Easements across Pacific shore and adjacent submerged lands. (1) Notwithstanding the provisions of ORS 274.070, the State Land Board is authorized to grant easements and licenses for pipe lines, cable lines and other conduits across and under the shore of the Pacific Ocean and the adjacent submerged lands, upon payment of just compensation by the grantee. Such an easement or license shall not be construed to be a sale or lease of tide and overflow lands within the purview of ORS 274.040.

(2) All easements or licenses granted pursuant to this section shall be subject to terms and conditions that will assure the safety of the public and the preservation of economic, scenic and recreational values and to lawful rules and regulations promulgated by state agencies affected by the activities of the grantee or licensee.

(3) No easement or license shall be granted for a term exceeding 99 years

(4) Easements and licenses granted under this section shall not be valid unless filed for record by the grantee or licensee in the deed records of the county or counties wherein the property affected by the grant or privilege is located within 30 days from the date of execution thereof
[1961 c 36 §§1, 2, 3, 4]

274.080 Permit to take products from beach. No sand, rock, mineral, marine growth or other natural product of the Pacific Ocean or beach declared a public highway pursuant to ORS 274.070, other than fish or wild life, agates or souvenirs, shall be taken from such beach, except pursuant to rule, regulation or permit of or from the State Land Board, as provided in this section. Upon request of the county court of any county contiguous to any portion of said ocean shore the State Land Board may grant permits for the removal of sand or rock from said ocean shore at designated locations to supply reasonable needs for essential construction uses in such localities as it appears sand and rock for such construction are not otherwise obtainable at reasonable cost. The State Land Board may grant or issue a license or permit to any individual,

firm, copartnership, corporation or association permitting the taking and removal of sand, rock, mineral or marine growth from the ocean shore at designated locations. The terms, royalty and duration thereof shall be at the discretion of the State Land Board, and any such license or permit shall be revocable at any time at the discretion of the State Land Board without liability to the licensee or permittee, and any such license or permit shall so provide, and all royalties received therefrom shall, after deducting cost of administration of this section, be deposited with the State Treasurer for the benefit of the Common School Fund.
[Amended by 1955 c 257 §1]

274.090 Automobile and aircraft-free zones on ocean shore. Upon the recommendation of or approval by the county court of any county or the city council of any municipality contiguous to any portion of the ocean shore or beach declared a public highway pursuant to ORS 274.070, or upon its own motion as to such ocean shore or beach, the State Highway Commission may establish areas and zones on the ocean shore wherein there shall be no travel by motor vehicles, or landing of any aircraft except for an emergency. After the establishment of a zone or area and the erection of signs or markers thereon, no such use shall be made of such areas except in conformity with the rules and regulations of the commission.
[Amended by 1959 c 237 §1]

274.100 Deposit of logs, debris, etc., prohibited. No person shall deposit or wilfully permit the deposit of any logs, debris, rubbish or refuse upon the ocean shore or beach declared a public highway pursuant to ORS 274.070.

274.110 Effect on other statutes. Nothing in ORS 274.070 or 274.080 to 274.100 shall be construed to repeal ORS 492.780 to 492.810

274.120 Confirmation of title to swamp and overflow lands; deed to claimant. (1) All the rights and title of the State of Oregon to the swamp and overflowed lands of this state, and claimed by persons who have completed settlement thereon, or who may hereafter complete settlement under the provisions of the pre-emption or homestead laws of the United States, and have obtained a patent or certificate of final proof therefor, hereby are granted and confirmed

unto such claimant, his heirs or assigns, respectively.

(2) Upon application of any such claimant to the State Land Board, with proof of claim evidenced by United States patent or final certificate of proof of settlement and payment, issued from the United States Land Office, the board shall execute and deliver to such claimant, without charge, a quitclaim deed of the state's right and title to the lands so claimed.

274.130 Title of certain swamp lands not to be questioned by State Land Board; prohibition against sale of certain swamp lands. The State Land Board shall not call in question the title of any person to any swamp lands which he may not have acquired by full and complete compliance with the preemption or homestead laws of the United States, nor shall the board sell to anyone any unsurveyed swamp lands, or swamp lands on which any settler shall have made and perfected bona fide legal entry under the laws of the United States. Swamp lands as used in this section means lands classified as swamp lands pursuant to ORS 273.010.

274.140 to 274.200 [Reserved for expansion]

DRAINAGE AND RECLAMATION OF LANDS

274.210 Authority of State Land Board to contract for drainage and reclamation of certain lands. The State Land Board for and in behalf of the State of Oregon may enter into contracts with persons or incorporations for the drainage and irrigation of any lakes, marshes or swamps lying in this state, or for the drainage and irrigation of that part which is in this state, of any lake, marsh or swamp lying partly in this state and partly in another state, and for the reclamation of the lands forming the beds of or submerged by any such lakes, marshes or swamps, and for the sale or disposal of such drained and reclaimed lands as provided for in ORS 274.220 to 274.270.

274.220 Applications for drainage and reclamation of lands. Any person, association or corporation desiring to enter into a contract to drain any lake, marsh or swamp lying wholly or partly within this state and reclaim the land forming the bed thereof or submerged thereby, shall file with the State Land Board an application for a contract to drain such lake, marsh or swamp and reclaim such land. The applicant shall,

at his own expense and without any cost or charge to the state, make the necessary surveys and prepare a map of the land proposed to be reclaimed. The map shall exhibit a plan showing the submerged area and the mode of the contemplated drainage and reclamation, and shall be accompanied by a list in duplicate of the lands proposed to be drained, with sufficient description to identify the land, either by legal subdivisions or monuments, all in accordance with rules and regulations promulgated by the State Land Board. The application for a contract shall contain an estimate of the cost of the construction of the proposed system of drainage.

274.230 Investigation and report by State Engineer; terms of contract; bond. Upon receipt of the application, map, plan of drainage and reclamation, provided under ORS 274.220, the State Land Board may require the State Engineer to make an investigation and report at the expense of the applicant, and, if the project appears feasible and desirable and such applicant responsible, enter into a contract with the applicant for construction of the drainage and reclamation works. The applicant, entering into the contract shall undertake and agree to drain the lake, marsh or swamp substantially in accordance with the plans set forth in the contract to reclaim the land, to make such proofs of reclamation as are required by the State Land Board, and to pay all costs incident to the contract and making of the proof and any other expense connected therewith. The applicant shall further agree and undertake that work will be commenced upon the ditches or other works necessary for such drainage and reclamation at a time fixed by the State Land Board and agreed upon in the contract; that by the end of the first year after the time fixed in the contract for beginning such work, 10 percent of the necessary expenditure will be made; and that this work will be prosecuted with due diligence until complete and the required proof of reclamation is made. The State Land Board shall require a bond subject to its approval in any sum it may deem necessary to insure the faithful performance of the contract.

274.240 Performance by contractor; disposal of lands. (1) Immediately upon execution of the contract, the contractor undertaking the drainage and reclamation may

enter upon the lands for the purpose of reclaiming the same.

(2) The State Land Board shall fix the amount to which the contractor is entitled for reclaiming the lands by drainage or drainage and irrigation and shall also fix the amount to be paid to the state for such lands. The board may permit the contractor to sell or dispose of the land at such price and upon such terms as it may fix in tracts not to exceed 320 acres to any one person under such rules and regulations as the board may promulgate governing the disposal of the same.

(3) Upon proof satisfactory to the board that at least 50 percent of any such tract is producing agricultural crops, and upon proof that the amount fixed by the board as due for reclamation and the amount due the State of Oregon has been fully paid, the board shall issue quitclaim deed for not more than 320 acres to the purchaser of such land.

274.250 Nonperformance; action by land board; appeal from decision of board.

(1) Upon failure of any parties having contracts with the state for construction of drainage and reclamation works to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract, the State Land Board shall give such parties written notice of such failure, and if after a period of 60 days from the sending of such notice they have failed to proceed with the work or to conform to the specifications of the contract, the contract and all work constructed thereunder, shall be at once and thereby forfeited to the state.

(2) Upon forfeiture, the State Land Board shall immediately give notice once every week for a period of four weeks in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner for a like period, declaring the forfeiture of the contract, and that upon a day fixed proposals will be received at the office of the State Land Board at Salem for the purchase of incomplete works and for the completion of the contract, the time for receiving such bids to be at least 60 days subsequent to the issuing of the last notice of the forfeiture. The sales shall be for cash to the highest responsible bidder, and the money received from the sale of the partially

completed works under this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, and any surplus, paid into the Common School Fund.

(3) The contractors shall have the right of appeal from the decision of the State Land Board, which appeal shall be heard in chambers by the circuit court of the district wherein the head works of the drainage system is situated.

274.260 Title of riparian owners. The title of owners of land riparian to lakes and ponds drained under ORS 274.210 to 274.250 hereby is declared to extend to only so much of the bottom or bed of such lake or pond which may be reclaimed by such drainage as is required to fill up the fractional subdivision or subdivisions of a section which he owns and which are rendered fractional by such lake or pond, and the title of such owner shall be so limited when the waters of such lake or pond receding, because of such drainage, uncover the bed thereof. This section shall not affect the right of riparian owners to land acquired by natural accretion or reliction because of the gradual and natural recession of the waters of the lake or pond to which the lands of such owners are riparian.

274.270 Disposal of moneys received by land board. All money received by the State Land Board under ORS 274.210 to 274.250 shall be paid immediately to the State Treasurer and placed by him in the Common School Fund.

274.280 Surveys and plans for reclamation of lands by State Land Board for grazing and agricultural purposes. The State Land Board may cause reclamation surveys, plans and specifications to be made for the reclaiming of any swamp and overflow lands under the control of the board, for grazing and agricultural purposes.

274.290 Execution of plan. The State Land Board may direct the State Engineer to submit an estimate of the probable cost of any survey, plan or specification of any contemplated reclamation project, and on consideration thereof, if it deems it advisable and in the interest of the state, shall direct the State Engineer to cause such survey and plans and specifications to be made and prepared. Upon receipt thereof the board may proceed under the plan to the

extent and in such manner as it deems advisable.

274.300 Swamp and Overflow Land Reclamation Fund. There hereby are appropriated such sums of money not otherwise appropriated, for use from time to time, as are necessary to carry out the purposes of ORS 274.280 and 274.290, out of the net receipts from the sale of gravel, rock and sand from the beds of navigable streams in this state. Such sums of money shall be deposited in the State Treasury in a special account to be known as the Swamp and Overflow Land Reclamation Fund. When sufficient funds become available from the proceeds of the sale or lease of such reclaimed lands, all the sums of money expended pursuant to ORS 274.280 to 274.310 shall be repaid to the Common School Fund.

274.310 Payment for survey and construction. All claims, costs and outlays in connection with the surveys and costs of construction of any reclamation project pursuant to ORS 274.280 and 274.290 shall be paid by voucher drawn against the Swamp and Overflow Land Reclamation Fund, when approved by the State Land Board.

274.320 to 274.350 [Reserved for expansion]

FISH HABITATS AND SPAWNING AREAS

274.355 Legislative policy regarding protection of fish spawning areas. The protection and conservation of the habitat and spawning areas of game and food fish are declared to be of utmost public interest. The food and game fish resources of the state are the property of the people, and provide a major contribution to the economy and well-being of the state as well as providing a significant part of the people's food supply and therefore their conservation is a proper responsibility of the state. It is in the public interest to preserve, develop or prevent unnecessary damage to food or game fish habitat and spawning areas in streams, lakes or other bodies of water within this state.

[1961 c 479 §1]

274.360 Fish and game commissions to be notified before permits to remove materials from body of water are issued; exceptions. (1) Except as provided in ORS 274.530 to 274.590, no officer or agency of the state, or officer or agency of any political subdivi-

vision within the state shall issue a permit or license for any program which contemplates the removal of any sand, gravel, rock, silt or other material from the beds or banks of any stream, lake or other body of water which may be utilized or made available to food or game fish to any person, firm, corporation or government body without first notifying, in writing, the State Game Commission and the Fish Commission of Oregon

(2) Subsection (1) of this section does not apply to:

(a) Removal of gravel, sand, rock, silt or other material from the beds or banks of any stream, lake or other body of water under a contract or lease with any agency of this state or any political subdivision entered into prior to May 22, 1961.

(b) Removal of gravel, sand, rock, silt or other material from the beds or banks of any stream, lake or other body of water by the state or any political subdivision, in an emergency for the purpose of making repairs to dams or waterways or for the purpose of preventing damage to persons or property.

(3) Notification required by subsection (1) of this section shall include a complete description of the contemplated operation, the time and manner of contemplated removal, and such other pertinent information as may be required by the State Game Commission or Fish Commission of Oregon. The notice shall be by registered mail [1961 c 479 §2, 3]

274.365 Developing program to protect fish resources; surveys required. (1) The State Game Commission or Fish Commission of Oregon shall advise the officer or agency making notification of any damage which might result to food or game fish habitat or spawning areas, and the State Game Commission or Fish Commission of Oregon shall cooperate with such officer or agency in developing a program which will achieve an adequate supply of sand, gravel, rock, silt or other materials and minimize damage to the food and sport fish resources of Oregon in accordance with policy prescribed in ORS 274.355

(2) Neither the State Game Commission nor the Fish Commission of Oregon shall give advice as provided under subsection (1) of this section unless it has investigated or made previous surveys of the location of the contemplated removal and has determined that such contemplated removal will sub-

stantially affect the spawning areas or habitat of food or game fish
[1961 c 479 §§4, 6]

274.370 When consent may be given for removal of materials. (1) The agency or officer mailing a notice as provided under ORS 274.360 shall not issue a permit or license for 15 days following the date of mailing such notice, unless within that period such agency or officer is notified by the State Game Commission or Fish Commission of Oregon that the commissions have no interest in the matter or that the commissions believe the materials should be removed subject to certain specified conditions

(2) Following the fifteenth day from mailing of a notice as provided under ORS 274.360, the agency or officer may proceed with issuance of a permit or license, and such permit or license may contain provisions which will carry out the intent of ORS 274.355.

[1961 c 479 §5]

274.375 Exempting programs resulting in no significant damage to fish resources. Notwithstanding the provisions of ORS 274.360 to 274.370, the State Game Commission or the Fish Commission of Oregon may, by regulation, make exceptions from the application of ORS 274.355 to 274.375 where, by reason of the limited nature of the program or by reason of the proved harmlessness of the program, little or no damage to the habitat or spawning area of food or game fish could result.

[1961 c 479 §7]

274.380 to 274.400 [Reserved for expansion]

BEDS OF STREAMS, LAKES AND BAYS (Ownership)

274.410 [Renumbered 274.525]

274.420 State ownership of beds of navigable lakes; acquisition of title by others.

(1) The title to the beds of all navigable 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 said admission date, and which has not become vested in any person, firm or corporation, is vested in and claimed by the State of Oregon. The State of Oregon hereby is declared to be the owner of the beds of such lakes, and may use and dispose of the same as provided by law.

(2) No person, firm or corporation shall acquire any right, title or interest in or to

the beds 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.

274.430 State ownership of lakes meandered by surveys; status as navigable and public waters. (1) Any and all lakes wholly or partly within the State of Oregon which have been meandered by the United States surveys, hereby are declared to be navigable and public waters, and the waters thereof hereby are declared to be of public character, and the title to the bed and land thereunder, including the shore or space between ordinary high and low water marks and between ordinary high and low water lines, which are not included in the valid terms of a grant or conveyance from the State of Oregon, hereby is declared to be in the State of Oregon, and the State of Oregon hereby asserts and declares its sovereignty over the same and its ownership thereof.

(2) The provisions of 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 shall be construed as impairing 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 or owners.

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 lake or public waters referred to in ORS 274.430. No person, firm or corporation shall acquire any right, title or interest in or to the beds of any such public waters 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 such lakes, the title of owners of land riparian to such lakes drained under any law shall extend to so much of the lake bottom or bed 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 said owners shall be so limited when the receding lake waters, because of such drainage, uncover the lake bed. 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) Lands covered at ordinary high water at ordinarily recurring seasons by the waters of any lakes or public waters defined in ORS 274.430, or from which the waters of any such lakes or public waters have not at ordinary high water permanently receded, shall not be deemed or held 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, demised, sold or disposed of in the manner provided by law.

274.450 Acquisition of riparian rights by State Land Board. The State Land Board may acquire and secure by purchase, gift, condemnation or otherwise, any and all riparian rights which may, by any court of competent jurisdiction, be held to be owned by or vested in any upland or riparian owner on any lakes or public waters referred to in ORS 274.430, and may institute such suits or actions as may be necessary in such condemnation proceedings.

274.460 Settler's and riparian owner's preferential right to purchase land within meander lines. All persons qualified to become entrymen and to secure land patents under the homestead laws of the United States and who prior to January 1, 1921, in good faith settled upon lands within the meander lines of lakes returned as navigable by the United States surveys and who, on January 1, 1921, by reason of settlement, cultivation and improvements on any such lands would be entitled to patent from the United States if such lands were open or subject to homestead entry are hereby given a preference right to purchase from the State of Oregon such lands so settled upon by them, not exceeding 160 acres for any one person, upon such terms and at such

prices and within such times as shall be fixed by the State Land Board; provided, that owners of the upland bordering upon such ordinary high water mark shall have a preference right to purchase, at the best price bid, state lands as defined in ORS 274.430 and riparian to their lands, and not exceeding 160 acres, in addition to the lands granted them by the provisions of ORS 274.430 and 274.440.

274.470 Settler's right to deed to land within meander lines; preferential right to additional land; tacking by successive settlers. (1) Any person who in good faith settled upon lands within the meander lines of any lake as described in ORS 274.430 and who, on January 1, 1921, actually resided thereon, who maintained his residence thereon for at least five years immediately prior to such date, and who complied with the requirements of settlement, residence, cultivation and improvement, specified for homestead entrymen under the homestead laws of the United States, and which would be sufficient to acquire title by patent if such lands were subject to homestead entry by qualified entrymen, shall be entitled upon proof of such facts to the satisfaction of the State Land Board, to a deed from the state, conveying and granting such lands not exceeding 160 acres without cost; and in addition thereto, such person shall have a preferential right to purchase from the State of Oregon 160 acres of additional lands, chiefly valuable for agricultural purposes.

(2) Any person who did not reside on any such lake bed lands for five years immediately prior to January 1, 1921, but who purchased the improvement or possessory rights or claims of a prior occupant, and whose residence and possession when tacked to that of such prior occupant extended for a period of not less than five years immediately prior to such date, shall have a preferential right to purchase such lands, not exceeding 160 acres, the price of which shall be fixed without reference to the value of the improvements thereon.

274.480 Rights of riparian owners on Malheur and Mud Lakes. The owners of lands riparian to Malheur and Mud Lakes, in Harney County, Oregon, shall be granted title to so much of the bottom or bed of such lakes as is required to fill out the least fractional subdivision or subdivisions of any section owned by such upland owners, and

which if rendered fractional by the meander line of such lakes, in addition to the rights recognized by ORS 274.430 to 274.460 to any natural accretion or reliction added to the lands of such upland owners prior to May 24, 1923. Owners of any upland bordering upon such meander lines shall have a preferential right to purchase, in addition, 160 acres of such state lands, chiefly valuable for agricultural purposes.

274.490 Settlement of conflicting preferential rights. Settlers within the meander line of any lake specified by ORS 274.430, shall have the first preferential right, and the State Land Board shall, so far as may be practicable, work out the various preferential rights by securing to each, all the lands which would be most advantageously used by such several persons. In case of conflict, the State Land Board shall give the parties a reasonable time in which to agree, and if they cannot agree, the board shall decide the matter and make conveyances as it shall deem just and equitable, and its decision in the matter shall be final. The State Land Board shall fix the time within which such preferential rights shall be exercised.

274.500 Conveyance of compact area; prices; maximum acreage. (1) All of the lands referred to in ORS 274.470 and 274.480 granted or conveyed by the state, shall be granted and conveyed in a reasonably compact area, to be determined by the State Land Board.

(2) All sales of such state lands shall be at prices fixed by the State Land Board, and no more than 320 acres shall be sold or conveyed to any one person.

274.510 Lake bed lands claimed by the United States. (1) If the Federal Government claims title or interest in any lake bed lands referred to in ORS 274.470 or 274.480 the same shall not be conveyed or otherwise disposed of, or preferential right therein accrue until such claim is settled. The State Land Board may enter into such agreements with the Federal Government affecting such lands as it deems best in the interest of the public, and make such deeds and conveyances to the United States in consideration of the issuance of such patents by the United States to the State of Oregon of such lands or lake beds within the meander lines of any such lakes as the State Land Board and the

Federal Government may mutually agree upon.

(2) Nothing contained in this section shall be construed as a recognition of any title or interest in the United States below or within the meander lines of any meandered lake to any lands or waters of any such lake prior to the execution and delivery of a deed or conveyance from the State of Oregon as provided for in this section.

(3) In carrying out such agreements the board may utilize the proceeds from the sale of such lands in which title or interest is claimed by the Federal Government. This section does not authorize the State Land Board or any other state agency to enter into any agreement which will divest any person or corporation of any water rights acquired under the laws of this state or otherwise.

274.520 Acceptance of deed to lake bed lands as precluding any other claim. Any person who elects to take or accept any deed from the State of Oregon under ORS 274.430 to 274.510 to any lake bed lands, shall be deemed to take the same in lieu of any claim to any other lands within the meander line of any such lake in which such deeded lands lie, and shall not thereafter be permitted to maintain in any court any claim to any lands inside the meander line of such lake other than to the lands conveyed to such person by deed from the state under ORS 274.430 to 274.510 or which such person acquires in good faith from a grantee or purchaser from the State of Oregon under such statutes.

(Removing Materials)

274.525 City use of riverbed material.

(1) Any city of the State of Oregon bordering on a navigable river hereby is granted the right to dredge out and use material from the channel of such river, or from the submerged sand bars or tide flats, or the bed of the river in front of such city, for the purpose of filling in or reclaiming the tide lands or mud flats within such city, under applicable restrictions and regulations of the State Land Board. The consent of the United States Government, through the Department of the Army, 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 tide flats or overflowed lands may dredge and use such material in

the same manner as may be done by such city.

[Formerly 274 410]

274.530 Lease of stream beds for removal of material. (1) The State Land Board may, after notice of competitive bidding, and following such competitive bidding, lease the beds of navigable portions of navigable streams for the purpose of removing gravel, rock, sand and silt therefrom. No lease shall be made for a lump sum but only on a basis of the price per cubic yard for the material removed.

(2) Prior to advertising for bids, the State Land Board shall request information from the appropriate natural resource agencies as to the probable effect of such contemplated gravel, rock, sand or silt removal; and the board shall consult with such agencies relative to provisions which may be included in any lease awarded as a result of competitive bidding

(3) The provisions of subsection (2) of this section shall not apply to existing leases, but shall apply to any new lease negotiated after August 9, 1961.

[Amended by 1961 c 509 §2, 1961 c 676 §3]

274.540 Application for lease. Before any person shall take any gravel, rock, sand or silt from state properties, except in the manner and for the purposes mentioned in ORS 274 550, he shall apply to the State Land Board for a lease, and such application shall include a complete description of the location of the contemplated operation, the time and manner of contemplated removal, and such other pertinent information as the board may require. Upon receipt of such application the State Land Board may award a lease to the applicant as provided in ORS 274.530 and fix a royalty.

[Amended by 1953 c 181 §2; 1961 c 509 §3, 1961 c 676 §4]

274.550 Removal of material without lease authorized for certain purposes. (1) The removal of gravel, rock, sand, silt or other material from the bed or bars of any navigable stream within the state is authorized when the same (a) is removed for channel or harbor improvement or flood control, or (b) is used for filling, diking or reclaiming land located not more than one-half mile from the bank of the stream, or (c) is used for filling, diking or reclaiming land owned by the state or any political subdivision as defined in subsection (1) of ORS 271.300 and

located not more than two miles from the bank of the stream; however, prior to such removal, such person, organization or agency contemplating such removal shall first notify the State Land Board, and the board shall in turn notify the state agencies mentioned in ORS 274.530.

(2) No payment of royalty shall be required for such gravel, rock, sand, silt or other material unless the same is removed from the place deposited and sold or used as an article of commerce. Before any such material may be removed from the place deposited and sold or used as an article of commerce, the State Land Board shall be duly notified in writing of such intended removal and sale or use as an article of commerce and payment shall be made to the board of such royalty as it may fix therefor.

(3) In addition to the purposes enumerated in subsection (1) of this section, any person may take such gravel, rock, sand, silt or other material for his own exclusive use to the extent of not more than 50 cubic yards in any one year; however, prior to such taking, the person contemplating such taking shall first notify the State Land Board, and the board shall in turn notify the state agencies mentioned in ORS 274.530.

[Amended by 1961 c 149 §1, 1961 c 676 §5]

274.560 Lease terms; bond; exclusive privilege forbidden; monthly reports and payments. The State Land Board may enter into contract of lease with such stipulations protecting the interest of the state as the board may require, and shall require a bond with a surety company authorized to transact a surety business in this state, as surety, 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 exclusive privilege of leasing or purchasing the property of the State of Oregon. The lessee in all such contracts shall report monthly to the State Land Board the amount of gravel, rock and sand taken under the contract and pay to the board the amount of royalty thereon provided in the contract.

274.570 Unauthorized removal as trespass. The establishment or placing of a dredging or digging outfit on any waters or stream, the bed of which belongs to the State of Oregon, and the removal of material from the bed thereof for commercial

uses, without having applied for and received a lease, hereby is declared to constitute a continuing trespass.

274.580 Removal without compliance with statute prohibited. No person shall remove gravel, rock, sand or silt from the bed of any navigable stream of water, or from the bars of any navigable stream, or from any property of the State of Oregon, for commercial uses without complying with the provisions of ORS 274.540 to 274.560.

[Amended by 1961 c 509 §4]

274.590 State Land Board cooperation with Washington authorities respecting removal of material from the bed of the Columbia River. The State Land Board 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 sand, gravel or other material from the bed 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. The board may do such other things and take such other action as may be advisable or necessary as to such taking

274.600 Land board powers to enforce statute; proceeds to go to Common School Fund. (1) The State Land Board shall employ such assistance as required to carry out ORS 274.530 to 274.600 and shall receive the services of the Attorney General and the State Engineer when required.

(2) The State Land Board may inspect and audit books, records and accounts of each person removing rock, sand or gravel from the bed of any navigable stream or waters or other state land, and make other investigation and secure or receive other evidence necessary to determine whether or not the State Land Board is being paid the full amount payable to it for the removal of such sand, rock or gravel. The State Land Board may proceed by action or suit to enforce payment for all materials heretofore or hereafter taken from any waters or stream, the bed of which belongs to the State of Oregon, for commercial uses, whether under lease, or otherwise, for which payment has not been made.

(3) The proceeds derived from the operations under ORS 274.530 to 274.600 after payment of all expenses incident hereto, shall be turned over to and become a part of the Common School Fund.

274.605 Action to recover damages for unlawful removal of materials. (1) Removal of gravel, rock, sand or silt from the bed of navigable waters within the State of Oregon or from any property of the State of Oregon under the control of the State Land Board by any person without lawful authority is a trespass for which the state, in addition to any action commenced under ORS 274.990, may also commence an action for damages. If damages are assessed against the defendant in any such action, the state shall be awarded double the amount of damages assessed if the trespass is wilful. Proof by the state of its ownership of the premises is prima facie evidence that the trespass, if committed, was wilful.

(2) Any action under the provisions of subsection (1) of this section shall be commenced within six years from the date of the trespass or the date on which the trespass is discovered by the state, whichever last occurs.

[1961 c 509 §1]

274.610 [Reserved for expansion]

(Extracting Minerals)

274.615 Lease of navigable bay and river beds for extraction of minerals; administrative procedures. (1) In addition to powers granted under ORS 273.355 and 274.530, the State Land Board may execute leases for the extraction of hard minerals (including but not limited to gold, silver, copper, lead, cinnabar, iron, manganese and silica) from the beds of navigable bays and rivers that are subject to the jurisdiction and control of the board and that are situated north of the 46th north parallel of latitude. Such leases shall be upon terms and conditions agreed upon by the board and the lessee pursuant to ORS 274.630, subsections (1) and (3) of ORS 274.635 and subsection (1) of ORS 274.640

(2) The provisions of ORS chapter 183 are made expressly applicable to ORS 274.615 to 274.650.

[1961 c 703 §§1, 13]

274.620 Hearing prior to granting of lease. (1) Whenever it appears advisable to the State Land Board to offer the beds of navigable bays and rivers for leasing under ORS 274.615, or whenever any person files a written application with the board requesting that such lands be offered for leasing under ORS 274.615, accompanying the same

with the fee required by the board, the board, upon concurrence of a majority of the members thereof, shall first hold a public hearing as provided in this section.

(2) Before inviting bids on the beds of any navigable bays and rivers the board shall cause written notice describing the area under consideration for bidding, and other pertinent information to be transmitted to:

(a) Director, Oregon State Department of Geology and Mineral Industries;

(b) State Highway Engineer;

(c) Secretary, State Sanitary Authority;

(d) Director, Oregon State Game Commission;

(e) Director, Fish Commission of the State of Oregon;

(f) The applicant, if any, requesting the hearing;

(g) Prospective bidders, by publication thereof in two or more publications of general circulation in the mining and mineral industries; and

(h) 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 less than 20 days following the date of the last newspaper publication.

(4) The board may appoint one of its officers or employes to conduct hearings authorized under this section. An officer or employe of each interested state agency, board or commission named in subsection (2) of this section may question any witnesses appearing before the board, and any interested person may offer evidence and otherwise be heard

[1961 c 703 §2]

274.625 Determining advisability of granting lease. After the hearing under ORS 274.620 the State Land Board shall determine whether an invitation for bidding to lease the area under consideration would be in the public interest. In such determination the board shall consider whether 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 esthetic and scenic values of the affected area;

(4) Create any air, water or other pollution;

(5) Substantially endanger marine life or wildlife; and

(6) Substantially interfere with commerce or navigation

[1961 c 703 §3]

274.630 Publishing offer to lease mineral rights; bids; cash bonus; award of lease; fee. (1) The State Land Board may offer the beds of navigable bays and rivers for leasing under ORS 274.615 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 a general circulation in the county in which the lands lie or the county or counties contiguous to the area under consideration for bidding. The notice shall describe the lands so offered, and shall specify the rate of royalty and the rental, the manner in which bids may be filed with the board, the amount of the deposit that must accompany each bid, and the time and place for filing bids, which time shall not be less than 30 days 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 board upon request.

(2) Each bid shall be enclosed in a sealed envelope, shall be on the form provided by the board 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 board, 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 within 15 days after the award

of the lease, or fails to post any bond required by the lease or the regulations 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 board 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 board may, however, reject any and 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, the fee specified in this section and the posting of any required bonds, the board 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 board shall prescribe a reasonable fee to cover the procedures under this section, which shall be paid by the successful bidder.

[1961 c 703 §4]

274.635 Conditions in leases; fees; execution; delivery of bonds or contracts to Land Board. (1) The form of lease shall contain such provisions as the State Land Board considers necessary and desirable to protect the interests of the state and to prevent any of the eventualities described in subsections (1) to (6) of ORS 274.625. In determining these provisions, the board shall consult with the Department of Geology and Mineral Industries, the Oregon State Game Commission, the Fish Commission of the State of Oregon and other interested agencies, boards and commissions.

(2) The State Land Board may charge a reasonable fee, to be paid by the applicant, for making necessary investigations before the execution of any lease under this section.

(3) All leases and other instruments required in carrying out ORS 274.615 to 274.650 shall be executed by the board. All bonds, contracts and other instruments required by ORS 274.615 to 274.650 for the protection of the interests of this state and political subdivisions, persons and property therein shall be executed and delivered to the board.

[1961 c 703 §§ 5, 8 and 12]

274.640 Maximum area; persons ineligible. (1) The maximum area which shall be included in any single lease to any person shall be 640 acres.

(2) No permit or lease shall be granted to any person then in violation of any laws or regulations applicable to ORS 274.615 to 274.650

[1961 c 703 §§7, 10]

274.645 Cancellation of lease. Leases executed under ORS 274.615 may be without limitation as to time, but the board may cancel any lease upon failure by the lessee to exercise due diligence as required by the terms of the lease in the development and continued performance of the necessary extraction operations. Appropriate provisions for such cancellation shall be included in each lease.

[1961 c 703 §11]

274.650 Disposition of proceeds from leases. The proceeds from all leases under ORS 274.615 to 274.650, including rents and royalties, after payment of the necessary expenses incurred by the board in carrying out ORS 274.615 to 274.650, shall be turned over to the State Treasurer and deposited by him in the common school fund

[1961 c 703 §6]

274.655 to 274.700 [Reserved for expansion]

SUBMERGED AND TIDE LANDS (General Provisions)

274.705 Definitions for ORS 274.705 to 274.895. As used in ORS 274.705 to 274.895, unless the context requires otherwise:

(1) "Board" means the State Land Board

(2) "Filled lands" includes tide and submerged 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.

(3) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subsection (5) of this section, including condensate originally in the gaseous phase in the reservoir.

(4) "Lease" means an oil, gas and sulphur lease issued pursuant to the provisions of ORS 274.705 to 274.865.

(5) "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

(6) "Person," in addition to the meanings defined by ORS 174.100, includes quasi-public corporations, political subdivisions and governmental agencies and instrumentalities

(7) "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.

(8) "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.

(9) "Tide lands" means lands lying between the line of ordinary high tide and the line of mean low tide
[1961 c 619 §1]

274.710 Jurisdiction of State Land Board over tide and submerged lands; easements; leases for oil, gas and sulphur. (1) The State Land Board has exclusive jurisdiction over all ungranted 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. All jurisdiction and authority remaining in the state over submerged lands as to which grants have been or may be made is vested in the board

(2) Notwithstanding ORS 273.355, the board shall administer and control all lands described in subsection (1) of this section, and may lease such lands and tide lands and dispose of oil, gas and sulphur under such lands and tide lands in the manner prescribed by ORS 274.705 to 274.865; provided, however, that any tide and submerged lands lying more than 10 miles easterly of the 124th West Meridian shall be subject to leasing for oil, gas and sulphur under the provisions of ORS 273.355, rather than under ORS 274.705 to 274.865

(3) Notwithstanding any other provision of ORS 274.705 to 274.865, the State Land Board may not permit any interference other than temporary interference with the surface of the Pacific shore, as defined in ORS

274.070 It may, however, grant easements underlying that part of the surface of the Pacific shore owned by the state at such times and at such places as the board finds necessary to permit the extraction and transportation of oil, gas or sulphur from state, federal or private lands; and in addition the State Land Board may issue oil and gas leases underlying the Pacific shore under the same terms and conditions as provided in ORS 274.705 to 274.865.

[1961 c 619 §2]

274.715 Sulphur leases; royalties. The provisions of ORS 274.705 to 274.865 shall apply equally to the exploration and leasing of tide and submerged lands for the production of sulphur, save and except that the royalty for sulphur produced under ORS 274.705 to 274.865 shall be not less than \$1 per long ton.

[1961 c 619 §34]

274.720 Effect of ORS 274.705 to 274.865 on power to make other leases and on jurisdiction of agencies other than land board. (1) ORS 274.705 to 274.865 shall not affect the power and authority of the board to lease mineral rights, including oil, gas and sulphur underlying state lands other than tide and submerged lands subject to ORS 274.705 to 274.865; nor shall the provisions of ORS 274.705 to 274.865 affect the power and authority of the board to lease mineral rights, other than oil, gas and sulphur underlying tide and submerged lands. Nothing contained in ORS 274.705 to 274.865 shall in any way impair or affect any existing oil, gas and mineral lease issued before August 9, 1961, by any agency, board or commission of the State of Oregon, and all such leases are hereby ratified and confirmed

(2) Nothing in ORS 274.705 to 274.865 deprives 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]

274.725 Scope of leases and permits; persons ineligible; administrative procedures. (1) Any interests in lands, or lands in fee simple, acquired by the board 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 274.865 and upon such terms and conditions as may be determined by the board

(2) No permit or lease shall be granted to any person then in violation of any laws or regulations applicable to ORS 274.705 to 274.865

(3) The provisions of ORS chapter 183 are made expressly applicable to ORS 274.705 to 274.865.

[1961 c 619 §§32, 38 and 43]

274.730 [Reserved for expansion]

(Geological and Geophysical Surveys)

274.735 Application for survey permit; effect of permit. (1) The board upon application by any person may permit geological, geophysical and seismic surveys, including the taking of cores and other samples, on the tide and submerged lands of this state. However.

(a) Such permits shall be nonexclusive and shall not give any preferential rights to any oil, gas and sulphur or other mineral lease.

(b) The board in consultation with the Department of Geology and Mineral Industries may grant permission for the taking of cores and other samples

(c) After consultation with the Fish Commission and the Game Commission, the board 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 board requires

[1961 c 619 §3]

274.740 Issuance of survey permit; renewal; reports. (1) Upon compliance of an applicant with ORS 274.735, the board 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 tide and submerged lands of this state described on the permit. The board may prohibit such surveys on any area if, in consultation with the Department of Geology and Mineral Industries, it determines that a lease, if applied for, should

not be granted as to such areas. The board shall include in a permit conditions and payments proper to safeguard the interests of the state

(2) Permits issued under this section shall not exceed two years, and may be renewed for like periods upon application to the board and upon showing due compliance with applicable laws and regulations.

(3) The board shall require the permittee to provide the Fish Commission and the Game 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]

274.745 Drilling logs and records; use of information restricted. (1) Records of drilling conducted by a permittee under ORS 274.740 shall be filed by the permittee with the Department of Geology and Mineral Industries as prescribed by ORS 520.095. Such records shall be treated as confidential for a period of five years from the date of filing unless the permittee authorizes their earlier release.

(2) The board may require, as a condition to the issuance of any lease under ORS 274.705 to 274.865, that the lessee make available to the board, or the Department of Geology and Mineral Industries, upon request, all factual and physical exploration results, logs and records resulting from the operations under the lease. Any such factual or physical exploration results, logs or records which the lessee is required to make available to the board and the department shall not be open to inspection by any other person or agency without the written consent of the lessee

(3) It is a misdemeanor for any member of the Department of Geology and Mineral Industries, any officer or employe thereof, or any person performing any function or work assigned to him by the department, to disclose to any person who is not a member, officer, employe of the department or to any person who is not performing any function or work assigned to him by the department, any information obtained from the inspection of such factual or physical exploration results, logs or records, or to use

such information for purposes other than the administration of the functions, responsibilities, and duties vested in the department by law, except upon the written consent of the permittee or lessee making such information available to the department.
[1961 c 619 §5]

274.750 [Reserved for expansion]

(Bid Procedure)

274.755 Hearing prior to granting lease or easement. (1) Before granting any easement under ORS 274.075 or under ORS 274.705 to 274.865, and before offering tide and submerged lands for leasing under ORS 274.705 to 274.865, or whenever any person files a written application with the board requesting that an easement be granted for such lands or that such lands be offered for leasing under ORS 274.705 to 274.865, accompanying the same with the required fee, the board shall hold a public hearing as provided in this section

(2) Before granting an easement or inviting bids on any tide and submerged lands, the board shall cause written notice describing the area under consideration and other pertinent information to be transmitted to:

- (a) Director, Oregon State Department of Geology and Mineral Industries;
- (b) State Highway Engineer;
- (c) Secretary, State Sanitary Authority;
- (d) Director, Oregon State Game Commission;
- (e) Director, Fish Commission of Oregon;
- (f) The applicant, if any, requesting the hearing;

(g) Prospective applicants or bidders, by publication thereof in two or more publications of general circulation in the oil and gas industry, and

(h) 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 less than 20 days following date of the last newspaper publication

(4) The board may appoint one of its officers or employes to conduct hearings authorized under this section. An officer or employe of each interested state agency, board

or commission named in subsection (2) of this section may question any witnesses appearing before the board or its representative, and any interested person may offer evidence and otherwise be heard.
[1961 c 619 §6]

274.760 Considerations involved in granting lease or easement. After the public hearing the board 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 board 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 esthetic 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 tide and submerged lands; bids; cash bonus; award of lease; fee. (1) The board may offer to lease tide and submerged lands 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 and the rental, the manner in which bids may be filed with the board, the amount of the deposit that must accompany each bid, and the time and place for filing bids, which time shall not be less than 30 days 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 board upon request.

(2) Each bid shall be enclosed in a sealed envelope, shall be on the form provided by the board 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 board, 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 within 15 days after the award of the lease, or fails to post any bond required by the lease or the regulations 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 board 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 board 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 board 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 board shall prescribe a reasonable fee to cover the procedures under this section, which shall be paid by the successful bidder.

[1961 c 619 §27]

274.770 Discriminatory requirements prohibited. In leasing tide and submerged lands, the board 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 tide and submerged lands with respect to which this

state or any other owner thereof has consented to use.

[1961 c 619 §30]

274.775 [Reserved for expansion]

(Leases)

274.780 Conditions in leases and permits; execution; delivery of bonds or contracts to Land Board. (1) The form of lease shall contain, in addition to other provisions deemed necessary and desirable by the board, after consultation with the Department of Geology and Mineral Industries, the Fish Commission, the Game Commission and other interested agencies, boards and commissions, the provisions of ORS 274 780 to 274 855

(2) The form of a permit shall contain, in addition to other provisions deemed necessary and desirable by the board, after consultation with the Department of Geology and Mineral Industries, the Fish Commission, the Game Commission and other interested agencies, boards and commissions, the provisions of subsection (3) of ORS 274.785.

(3) All leases and other instruments required in carrying out ORS 274.705 to 274.865 shall be executed by the board. All bonds, contracts and other instruments required by ORS 274.705 to 274.865 for the protection of the interests of this state and political subdivisions, persons and property therein shall be executed and delivered to the board.

[1961 c 619 §§9, 28]

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 sulphur deposits in the leased land and be for a primary term of 10 years and for so long thereafter as oil, gas or sulphur 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 three geographical miles seaward by six statute miles along or parallel to the shore.

(3) No permit, easement or lease, or any

portions thereof shall be assignable without the prior written consent of the board.

[1961 c 619 §§8, 10, 22]

274.790 Royalties. (1) The board 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 12½ 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 board'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 State of Oregon shall have a lien upon all production for unpaid royalties.

[1961 c 619 §§11, 12]

274.795 Rents. The board 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 board, each well drilled pursuant to the terms of the lease may be drilled or slant drilled to and into the subsurface of the submerged 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 submerged lands covered by the lease or otherwise available to the lessee.

[1961 c 619 §16]

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 sulphur in paying quantities, unless the board 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 board 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 his bid, 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 board 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 submerged lands, avoidable pollution or avoidable contamination of the beaches or land underlying the ocean or waters covering submerged lands, 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 submerged lands; provided, however, that 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, employes or agents, or

(b) Events that could have been prevented by the lessee or its officers, employes or agents through the exercise of a high degree of care
[1961 c 619 §18]

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) so 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]

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 cur-

rent 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 board 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 sulphur from the leased lands
[1961 c 619 §15]

274.845 Surrender of lease. The lessee may at any time file with the board 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 board shall reserve and may exercise the authority to cancel any lease upon which oil, gas or sulphur 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 sulphur 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 board 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 board pursuant to ORS 274 705 to 274.865, 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 board, in consultation with the Department of Geology and Mineral Industries, the Fish Commission, Game Commission and other interested agencies, boards and commissions

[1961 c 619 §31]

274.865 Disposition of proceeds from leases. The proceeds from all leases under ORS 274 705 to 274.865, including rents and royalties, after payment of the necessary expenses incurred by the board in carrying out ORS 274 705 to 274 865, shall be turned over to the State Treasurer and deposited by him in the Common School Fund.

[1961 c 619 §29]

274.870 to 274.880 [Reserved for expansion]

(Kelp Fields)

274.885 Lease of kelp fields. (1) The State Land Board may lease submerged lands for the purpose of harvesting kelp and other seaweed after consultation with the Fish Commission and the Game Commission.

(2) The lease may be for a term of not to exceed 50 years and shall provide for the payment to the State of Oregon of a sum to be fixed by the board for all kelp or other seaweed harvested under the lease, to be paid at the end of each year. The lease shall also be conditioned that for the failure to harvest at least 1,000 tons of kelp or other seaweed, within any one year, from the territory described in the lease, the lease shall be forfeited, at the board's option. Not more than 40 miles of coast line shall be leased to one person.

[Formerly 274 010]

274.890 Time allowed lessee for survey and erection of plant; filing copy of survey with board. For the purpose of aiding and establishing the kelp and seaweed industry, the first leases may be issued allowing the applicant six months' time in which to make a practical survey of the field which he has leased, and another 12 months' time 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 his lease, and shall file a copy of the survey with the secretary of the State Land Board, within six months. Upon his failure so to do, the lease shall be canceled by the board.

[Formerly 274 020]

274.895 Removing kelp without lease. Except in the case of a person harvesting or removing less than 2,000 pounds of kelp each year for the purposes of human consumption, no person shall harvest or remove any kelp or other seaweed from any submerged lands unless he has first obtained a lease from the board.

[Formerly 274 030]

274.900 to 274.985 [Reserved for expansion]

PENALTIES

274.990 Penalties. (1) Violation of ORS 274.895 is punishable, upon conviction, by a fine not exceeding \$100 for each offense.

(2) Violation of any provision of ORS

274 070, 274 080 to 274 100, or any rule or regulation of the State Highway Commission promulgated under such statutes, is punishable, upon conviction, by a fine not exceeding \$500 or imprisonment in the county jail for not more than six months, or both.

(3) Violation of ORS 274 580 is punishable, upon conviction, by a fine of not less than \$100 nor more than \$1,000, or by imprisonment of not less than 10 days nor more than 250 days

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Sam R Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 1, 1961

Sam R. Haley
Legislative Counsel