Chapter 274

1971 REPLACEMENT PART

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GENERAL PROVISIONS

274.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Director" means the Director of the Division of State Lands.

(2) "Division" means the Division of State Lands.

(3) "Line of ordinary high water" means the line on the bank or shore to which the high water ordinarily rises annually in season.

(4) "Line of ordinary low water" means the line on the bank or shore to which the low water ordinarily recedes annually in season.

(5) "Land" includes water, water rights, easements of every nature and all appurtenances to land.

(6) "Material" includes gravel, rock, sand and silt, but does not include hard minerals subject to ORS 274.611 to 274.645, or oil, gas and sulphur subject to ORS 274.705 to 274.860.

(7) "Submerged lands," except as provided in ORS 274.705, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.

(8) "Submersible lands," except as provided in ORS 274.705 means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal.

[1967 c.421 §98 and 1967 c.616 §13; 1969 c.594 §31]

274.010 [Amended by 1961 c.619 §41; renumbered 274.885]

274.015 Determination of ordinary high and low water. For purposes of this chapter, when the lines of ordinary high or low water cannot be determined by survey or inspection, then such lines shall be determined by the use of the annual mean high or mean low water for the preceding year.

[1967 c.421 §99]

274.020 [Renumbered 274.890]

274.025 Jurisdiction over submersible and submerged lands generally. (1) The title to the submersible and submerged lands of all navigable streams and 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 admission, and which has not become vested in any person, is vested in the State of Oregon. The State of Oregon is the owner of the submersible and submerged lands of such streams and lakes, and may use and dispose of the same as provided by law.

(2) No person shall acquire any right, title or interest in or to the submersible and submerged lands 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.

[Formerly 274.420]

274.030 [Amended by 1961 c.619 §42; renumbered 274.895]

274.035 [Formerly 274.570; repealed by 1969 c.594 §63]

SUBMERSIBLE LANDS

274.040 Sale or lease of submersible lands; easements. (1) Except as provided in subsection (2) of this section, submersible lands owned by the State of Oregon may be sold or leased only to the highest bidder after being advertised not less than once each week for four successive weeks in two or more newspapers of general circulation in the state, one of which must be of general circulation in the county in which the lands are situated. However:

(a) No such lands shall be sold for less than $5 per acre.

(b) Any owner of lands abutting or fronting on such submersible lands shall have the preference right to lease or purchase at the highest price offered in good faith. This preference does not apply as to any lease offered or issued by the division under ORS 274.615 or 274.705 to 274.860.

(2) The division 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 submersible lands for flowage and storage of waters, and for the construction, maintenance and operation of any 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 submersible lands within the meaning of subsection (1) of this section.

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

(4) Nothing in this section affects the provisions of ORS 509.436, 509.455 to 509.510 or 511.606 to 511.806.

[Amended by 1961 c.37 §1; subsection (3) enacted as 1961 c.37 §2; 1967 c.421 §104; 1969 c.594 §32; subsection (4) enacted as 1969 c.675 §17]

274.045 [Subsection (1) of 1965 Replacement Part enacted as 1961 c.703 §9; subsection (2) of 1965 Replacement Part enacted as 1961 c.619 §35; repealed by 1967 c.421 §206]

274.050 [Renumbered 273.900]

274.060 Regulation of harbor improvements; oyster beds; public easement in submersible lands. (1) Nothing in ORS 274.040 prevents the Legislative Assembly from providing for regulation of the building of wharves or other improvements in any bay, harbor or inlet of this state, subject to ORS 780.060, or grants the exclusive right to any person to use the natural oyster beds of this state.

(2) The grantee of any submersible 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.

[Amended by 1967 c.421 §105; 1969 c.594 §§33, 33a]

274.065 [1965 c.368 §1; 1967 c.421 §114; renumbered 390.710]

274.070 [Amended by 1965 c.368 §2; 1967 c.421 §115; renumbered 390.720]

274.075 [1961 c.36 §§1, 2, 3, 4; 1967 c.421 §116; 1969 c.594 §34; repealed by 1969 c.601 §30]

274.080 [Amended by 1955 c.257 §1; 1965 c.368 §3; 1967 c.421 §117; repealed by 1969 c.601 §30]

274.090 [Amended by 1959 c.237 §1; 1965 c.368 §4; 1967 c.421 §118; renumbered 390.730]

274.100 [Amended by 1965 c.368 §5; 1967 c.421 §119; renumbered 390.740]

274.110 [Amended by 1967 c.421 §120; renumbered 390.750]

274.120 [Renumbered 273.902]

274.130 [Renumbered 273.903]

LAKES, MARSHES AND SWAMPS

274.205 Definitions for ORS 274.210 to 274.310. As used in ORS 274.210 to 274.310, "reclamation" includes, but is not limited to, irrigation.

[1969 c. 594 §36]

274.210 Authority of division to contract for drainage and reclamation of certain lands. The division in behalf of the State of Oregon may enter into contracts for:

(1) The drainage of submersible and submerged lands adjoining or underlying any lakes, marshes or swamps in this state, or for the drainage of that part which is in this state of submersible and submerged lands adjoining or underlying any lake, marsh or swamp lying partly in this state and partly in another state, and for the reclamation of any such lands; and

(2) The sale or disposal of such drained and reclaimed lands as provided for in ORS 274.210 to 274.260.

[Amended by 1967 c.421 §121; 1969 c.594 §37]

274.220 Applications for drainage and reclamation of lands. (1) Any person desiring to enter into a contract to drain submersible and submerged lands under ORS 274.210 to 274.260 and reclaim such lands shall file with the division an application.

(2) The applicant, at his own expense and without any cost or charge to the state, shall make the necessary surveys and prepare a map of the lands proposed to be reclaimed. The map shall exhibit a plan showing the area that is submersible or submerged and the mode of the contemplated drainage and reclamation, and shall be accompanied by a list of the lands proposed to be drained, with sufficient description to identify the lands in accordance with rules promulgated by the division.

(3) The application shall contain an estimate of the cost of the construction of the proposed system of drainage and reclamation.

[Amended by 1967 c.421 §122; 1969 c.594 §38]

274.230 Investigation and report by State Engineer; terms of contract; bond. (1) Upon receipt of the application, map and plan of drainage and reclamation under ORS 274.220, the division may require the State Engineer to make an investigation and report at the expense of the applicant. If the project appears feasible and desirable and such applicant responsible, the division may enter into a contract with the applicant for construction of the drainage and reclamation works.

(2) The applicant shall agree:

(a) To drain the submersible and submerged lands substantially in accordance with the plans set forth in the contract;

(b) To make such proofs of reclamation as are required by the division;

(c) To pay all costs incident to the contract and making of the proof and any other expense connected therewith;

(d) That work will be commenced upon the ditches or other works necessary for such drainage and reclamation at a time fixed by the division and agreed upon in the contract;

(e) 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

(f) That this work will be prosecuted with due diligence until complete and the required proof of reclamation is made.

(3) The division shall require a bond subject to its approval in any sum it finds necessary to insure the faithful performance of the contract.

[Amended by 1967 c.421 §123; 1969 c.594 §39]

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 division shall fix the amount to which the contractor is entitled for reclaiming the lands and shall also fix the amount to be paid to the state for such lands. The division may permit the contractor to sell or dispose of the lands at such price and upon such terms as the division may fix in tracts not to exceed 640 acres to any one person under such rules as the division may promulgate governing disposal.

(3) Upon proof satisfactory to the division that the amount fixed by the division as due for reclamation and the amount due the State of Oregon has been fully paid, the division shall issue a quitclaim deed for not more than 640 acres to the purchaser of such land.

[Amended by 1967 c.421 §124; 1969 c.594 §40]

274.250 Nonperformance; action by division; appeal from decision of division. (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 division shall give such parties written notice of such failure. If the parties have failed to proceed with the work or to conform to the specifications of the contract on or before the 60th day after the sending of such notice, the contract and all work constructed thereunder is forfeited to the state.

(2) Upon forfeiture, the division 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 of general circulation in this state, declaring the forfeiture of the contract, and that upon a day stated in the notice proposals will be received at the office of the division for the purchase of incomplete works and for the completion of the contract, the time for receiving such bids to be not earlier than the 60th day after issuance of the last notice of the forfeiture. The sales shall be for cash to the highest responsible bidder. 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 shall be paid into the State Treasury and become a part of the Common School Fund.

(3) The contractors may appeal from the decision of the division. The appeal shall be heard in chambers by the circuit court of the district wherein the head works of the drainage system are situated.

[Amended by 1967 c.421 §125]

274.260 Title of riparian owners. (1) The title of owners of land riparian to lakes and ponds drained under ORS 274.210 to 274.260 extends to only so much of the submersible or submerged lands adjoining or underlying 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 is so limited when the waters of such lake or pond receding, because of such drainage, uncover the submersible or submerged lands adjoining or underlying such lake or pond.

(2) 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.
[Amended by 1967 c.421 §126; 1969 c.594 §41]

274.270 [Repealed by 1967 c.421 §206]

SWAMP AND SUBMERSIBLE LANDS

274.280 Surveys and plans for reclamation of lands. In addition to its powers under ORS 274.210 to 274.260, the division may cause reclamation surveys, plans and specifications to be made for the reclaiming of any unsold swamp lands and submersible lands under the control of the division.
[Amended by 1967 c.421 §127; 1969 c.594 §42]

274.290 Execution of plan. The division may direct the State Engineer to submit an estimate of the probable cost of any survey, plan or specification of any contemplated reclamation project under ORS 274.280. On consideration thereof, if the division finds it to be in the interest of the state, the division shall direct the State Engineer to cause such survey and plans and specifications to be made and prepared. Upon receipt thereof the division may proceed under the plan to the extent and in such manner as it considers advisable.
[Amended by 1967 c.421 §128]

274.300 [Amended by 1967 c.421 §22; renumbered 273.111]

274.310 Payment for survey and construction. All costs in connection with the surveys and construction of any reclamation project pursuant to ORS 274.280 to 274.310 shall be paid out of moneys appropriated under ORS 273.111, when approved by the division.
[Amended by 1967 c.421 §129; 1969 c.594 §14]

274.355 [1961 c.479 §1; 1967 c.421 §109; repealed by 1967 c.567 §14]

274.360 [1961 c.479 §§2, 3; 1967 c.421 §110; repealed by 1967 c.567 §14]

274.365 [1961 c.479 §§4, 6; 1967 c.421 §111; repealed by 1967 c.567 §14]

274.370 [1961 c.479 §5; 1967 c.421 §112; repealed by 1967 c.567 §14]

274.375 [1961 c.479 §7; 1967 c.421 §113; repealed by 1967 c.567 §14]

BEDS OF STREAMS, LAKES AND BAYS

(Ownership)

274.410 [Renumbered 274.525]

274.420 [Amended by 1967 c.421 §100; renumbered 274.025]

274.425 Definition for ORS 274.430 to 274.520. As used in ORS 274.430 to 274.520, "meandered lake" means a lake wholly or partly within this state that has been meandered by the United States surveys.
[1967 c.421 §131]

274.430 State ownership of meandered lakes; status as navigable and public waters. (1) All meandered lakes are declared to be navigable and public waters. The waters thereof are declared to be of public character. The title to the submersible and submerged lands of such meandered lakes, which are not included in the valid terms of a grant or conveyance from the State of Oregon, is vested in the State of Oregon.

(2) 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 impairs 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.
[Amended by 1967 c.421 §132]

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 meandered lake. No person shall acquire any right, title or interest in or to the submerged or submersible lands of any such lakes, 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 meandered lakes, the title of owners of land riparian to such lakes drained under any law shall extend to so much of the submersible and submerged lands 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 such owners shall be so limited when the receding lake waters, because of such drainage, uncover the submersible and submerged lands. 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) Submersible and submerged lands covered at ordinary high water at ordinarily recurring seasons by the waters of meandered lakes, or from which the waters of any such lakes have not at ordinarily high water permanently receded, are not considered 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, sold or managed in the manner provided by law.
[Amended by 1967 c.421 §133]

274.450 Acquisition of riparian rights by division. The division may acquire by purchase, gift, condemnation or otherwise, any 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 meandered lakes, and may institute such suits or actions as may be necessary in such condemnation proceedings.
[Amended by 1967 c.421 §134]

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 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 division. However, owners of the upland bordering upon such ordinary high water mark have a preference right to purchase, at the best price bid, state lands described in ORS 274.430 and riparian to their lands, and not exceeding 160 acres, in addition to the lands granted them by ORS 274.430 and 274.440.
[Amended by 1967 c.421 §135]

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 meandered lake 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, upon proof of such facts to the satisfaction of the division:

(a) Is entitled to a deed from the state, conveying and granting such lands not exceeding 160 acres without cost; and

(b) Has 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 lands described in subsection (1) of this section 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.
[Amended by 1967 c.421 §136]

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 lands within the meander lines 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 is 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 pur-

chase, in addition, 160 acres of such state lands, chiefly valuable for agricultural purposes.
[Amended by 1967 c.421 §137]

274.490 Settlement of conflicting preferential rights. Settlers within the meander line of any meandered lake have the first preferential right, and the division shall, so far as 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 division shall give the parties a reasonable time in which to agree, and if they cannot agree, the division shall decide the matter and make conveyances as it considers equitable, and its decision in the matter shall be final. The division shall fix the time within which such preferential rights shall be exercised.
[Amended by 1967 c.421 §138]

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 division.

(2) All sales of such state lands shall be at prices fixed by the division, and no more than 320 acres shall be sold or conveyed to any one person.
[Amended by 1967 c.421 §139]

274.510 Lake bed lands claimed by the United States. (1) If the Federal Government claims title or interest in any 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 division 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 within the meander lines of any such lakes as the division and the Federal Government agree.

(2) Nothing in this section is a recognition of any title or interest in the United States 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 division or any other state agency to enter into any agreement which will divest any person of any water rights acquired under the laws of this state or otherwise.
[Amended by 1967 c.421 §140]

274.520 Acceptance of deed to lake bed lands as precluding any other claim. Any person who elects to take any deed from the State of Oregon under ORS 274.430 to 274.520 to any lands within the meander lines of a lake takes the same in lieu of any claim to any other lands within the meander line of such lake in which such deeded lands lie, and shall not thereafter 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 274.520 or which such person acquires in good faith from a grantee or purchaser from the State of Oregon under such statutes.
[Amended by 1967 c.421 §141]

(Removing Materials)

274.523 [1967 c.421 §143; repealed by 1969 c.594 §63]

274.525 City use of stream bed material. (1) Any city of the State of Oregon bordering on a navigable stream may dredge out and use material from submersible and submerged lands of the stream, owned by the State of Oregon and in front of such city, for the purpose of filling in or reclaiming the submersible lands within such city, under the rules of the division. The consent of the appropriate agency of the United States Government 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 submersible lands may dredge and use such material in the same manner as may be done by such city.
[Formerly 274.410; 1967 c.421 §145; 1969 c.594 §43]

274.530 Lease of stream beds for removal of material; measurement of volume removed. (1) The division may, after notice of competitive bidding, and following such competitive bidding, lease submersible and submerged lands of navigable streams, owned

by the State of Oregon, for the purpose of removing material therefrom. Competitive bid requirements may be waived for leases of less than one year's duration. No lease shall be made for a lump sum but only on a basis of the price per cubic yard or ton for the material removed.

(2) The division may prescribe by rule the manner in which the volume in cubic yards or the weight in tons for the material removed shall be determined.

[Amended by 1961 c.509 §2; 1961 c.676 §3; 1967 c.421 §144; 1967 c.567 §§15, 15a; 1971 c.509 §1]

274.540 [Amended by 1953 c.181 §2; 1961 c.509 §3; 1961 c.676 §4; 1967 c.421 §45; renumbered 273.225]

274.550 Removal of material without lease authorized for certain purposes. (1) The removal of material from submersible and submerged lands of any navigable stream, owned by the State of Oregon, is authorized when the material (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 removal, such person, organization or agency contemplating removal shall first notify the division.

(2) No payment of royalty shall be required for such material unless it is removed from the place deposited and sold or used as an article of commerce. Before any material may be removed from the place deposited and sold or used as an article of commerce, the division 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 division 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 material for his own exclusive use to the extent of not more than 50 cubic yards or the equivalent weight in tons in any one year. However, prior to such taking, the person shall first notify the division.

[Amended by 1961 c.149 §1; 1961 c.676 §5; 1967 c.421 §146; 1969 c.594 §44; 1971 c.509 §3]

274.560 Lease terms; bond; option to lease or purchase forbidden; monthly reports and payments. The division may enter into contract of lease for purposes of ORS 274.525 to 274.590 with such stipulations protecting the interest of the state as the division 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 option of leasing or purchasing the property of the State of Oregon. The lessee in all such contracts shall report monthly to the division the amount of material taken under the contract and pay to the division the amount of royalty thereon provided in the contract.

[Amended by 1965 c.375 §1; 1967 c.421 §147; 1969 c.594 §45]

274.570 [Amended by 1967 c.421 §106; renumbered 274.035]

274.580 [Amended by 1961 c.509 §4; 1967 c.421 §46; renumbered 273.231]

274.590 Cooperation with Washington authorities respecting removal of material from bed of Columbia River. The division 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 material from the submersible and submerged lands 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.

[Amended by 1967 c.421 §148]

274.600 [Amended by 1967 c.33 §1; 1967 c.421 §47; amended by 1967 c.567 §16; renumbered 273.235]

274.605 [Amended by 1967 c.421 §48; renumbered 273.241]

(Extracting Minerals)

274.611 Definition for ORS 274.615 to 274.645. As used in ORS 274.615 to 274.645, "hard minerals" includes but is not limited to gold, silver, copper, lead, cinnabar, iron, manganese and silica.

[1967 c.421 §150]

274.615 Lease of navigable bay and river beds for extraction of minerals. In addition to powers granted under ORS 273.551 and 274.530, the division may execute leases for the extraction of hard minerals from the submersible and submerged lands of navigable bays and rivers that are subject to the jurisdiction of the division and that are situ-

ated north of the 46th north parallel of latitude. Such leases shall be upon terms agreed upon by the division and the lessee pursuant to ORS 274.615 to 274.645.
[1961 c.703 §§1, 13; 1967 c.421 §151]

274.620 Hearing prior to granting of lease. (1) Whenever it appears advisable to the division to offer the submersible and submerged lands of navigable bays and rivers for leasing under ORS 274.615, or whenever any person files a written application with the division requesting that such lands be offered for leasing under ORS 274.615, accompanying the same with the fee required by the division, the division shall first hold a public hearing in the manner prescribed by ORS 274.755.

(2) Before inviting bids on the submersible and submerged lands of any navigable bays and rivers the division shall cause written notice describing the area under consideration for bidding, and other pertinent information to be transmitted in the manner prescribed by ORS 274.755 to the applicant, prospective bidders and the public, and to the officers designated in ORS 274.755.
[1961 c.703 §2; 1965 c.375 §2; 1967 c.421 §152; 1969 c.594 §46]

274.625 Determining advisability of granting lease. After the hearing under ORS 274.620 the division shall determine whether an invitation for bidding to lease the area under consideration would be in the public interest. In such determination the division shall consider whether a lease or leases of the area under consideration would have any of the effects set out in ORS 274.760.
[1961 c.703 §3; 1967 c.421 §153]

274.630 Publishing offer to lease mineral rights; bids; cash bonus; award of lease; fee. (1) The division may offer the submersible and submerged lands of navigable bays and rivers for leasing under ORS 274.615 by publication of a notice of its intention to do so, in the manner prescribed by ORS 274.765, so far as applicable for this purpose.

(2) Each bid shall be submitted in the manner and subject to the conditions prescribed by ORS 274.765.

(3) At the time and place specified in the notice the division 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 division 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 division 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 division shall prescribe a reasonable fee to cover the procedures under this section, which shall be paid by the successful bidder.
[1961 c.703 §4; 1967 c.421 §154]

274.635 Conditions in leases; fees; execution; delivery of bonds or contracts to division. (1) The form of lease shall contain such provisions as the division considers desirable to protect the interests of the state and to prevent any of the eventualities described in ORS 274.760. In determining these provisions, the division shall consult with the State Department of Geology and Mineral Industries, the State Game Commission, the Fish Commission of the State of Oregon and other interested agencies, boards and commissions.

(2) The division 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 274.645 shall be executed by the division. All bonds, contracts and other instruments required by ORS 274.615 to 274.645 for the protection of the interests of this state and political subdivisions, persons and property therein shall be executed and delivered to the division.
[1961 c.703 §§5, 8 and 12; 1967 c.421 §155]

274.640 Maximum area; persons ineligible. (1) The maximum area which shall be included in any single lease to any person under ORS 274.615 to 274.645 shall be 640 acres.

(2) No lease shall be granted to any person then in violation of any laws or rules applicable to ORS 274.615 to 274.645.
[1961 c.703 §§7, 10; 1967 c.421 §156]

274.645 Cancellation of lease. Leases executed under ORS 274.615 to 274.645 may be without limitation as to time; but the divi-

sion 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; 1967 c.421 §157]

274.650 [1961 c.703 §6; repealed by 1967 c.421 §206]

TIDAL SUBMERGED AND SUBMERSIBLE LANDS
(General Provisions)

274.705 Definitions for ORS 274.705 to 274.860. As used in ORS 274.705 to 274.860, unless the context requires otherwise:

(1) "Filled lands" includes submerged and submersible 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.

(2) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subsection (4) of this section, including condensate originally in the gaseous phase in the reservoir.

(3) "Lease" means an oil, gas and sulphur lease issued pursuant to ORS 274.705 to 274.860.

(4) "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.

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

(6) "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.

(7) "Tidal 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.
[1961 c.619 §1; 1967 c.421 §158]

274.710 Jurisdiction of division over tidal submerged lands; easements; leases for oil, gas and sulphur. (1) The division has exclusive jurisdiction over all ungranted tidal 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 tidal submerged lands as to which grants have been or may be made is vested in the division.

(2) Notwithstanding ORS 273.551, the division shall administer and control all tidal submerged lands described in subsection (1) of this section under its jurisdiction, and may lease such lands and submersible lands and dispose of oil, gas and sulphur under such lands and submersible lands in the manner prescribed by ORS 274.705 to 274.860. However, submerged and submersible lands lying more than 10 miles easterly of the 124th West Meridian shall be subject to leasing for oil, gas and sulphur under ORS 273.551, rather than under ORS 274.705 to 274.860.

(3) Notwithstanding any other provision of ORS 274.705 to 274.860, the division may not permit any interference other than temporary interference with the surface of the ocean shore, as defined in ORS 390.615. The division may, however:

(a) Grant easements underlying that part of the surface of the ocean shore owned by the state at such times and at such places as the division finds necessary to permit the extraction and transportation of oil, gas or sulphur from state, federal or private lands; and

(b) Issue oil and gas leases underlying the ocean shore under the same terms and conditions as provided in ORS 274.705 to 274.860.
[1961 c.619 §2; 1961 c.421 §159]

274.715 Sulphur leases. ORS 274.705 to 274.860 shall apply equally to the exploration and leasing of lands subject thereto for the production of sulphur.
[1961 c.619 §34; 1967 c.421 §160]

274.720 Effect of ORS 274.705 to 274.860 on power to make other leases and on jurisdiction of agencies other than division. ORS 274.705 to 274.860 shall not:

(1) Affect the power of the division to lease mineral rights, including oil, gas and

sulphur underlying state lands other than lands subject to ORS 274.705 to 274.860.

(2) Affect the power of the division to lease mineral rights, other than oil, gas and sulphur underlying lands subject to ORS 274.705 to 274.860.

(3) Affect any oil, gas and mineral lease issued before August 9, 1961, by any agency, board or commission of the State of Oregon.

(4) Deprive 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; 1967 c.421 §161]

274.725 Scope of leases and permits; persons ineligible. (1) Any interests in lands, or lands in fee simple, acquired by the division 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 274.860 and upon such terms as may be determined by the division.

(2) No permit or lease shall be granted to any person then in violation of any laws or rules applicable to ORS 274.705 to 274.860.

[1961 c.619 §§32, 38 and 43; 1967 c.421 §162]

(Geological and Geophysical Surveys)

274.735 Application for survey permit; effect of permit. (1) The division upon application by any person may permit geological, geophysical and seismic surveys, including the taking of cores and other samples, on lands subject to ORS 274.705 to 274.860. 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 division in consultation with the State 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 division 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 division requires.

[1961 c.619 §3; 1967 c.421 §163]

274.740 Issuance of survey permit; renewal; reports. (1) Upon compliance of an applicant with ORS 274.735, the division 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 lands subject to ORS 274.705 to 274.860 that are described on the permit. The division may prohibit such surveys on any area if, in consultation with the State Department of Geology and Mineral Industries, it determines that a lease, if applied for, should not be granted as to such areas. The division 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 division and upon showing due compliance with applicable laws and regulations.

(3) The division 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; 1967 c.421 §164]

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 State 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 division may require, as a condition to the issuance of any lease under ORS 274.705 to 274.860, that the lessee make available to the division, or the State 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 division and the department shall not be open to inspection by any other

person or agency without the written consent of the lessee.

(3) No member of the Department of Geology and Mineral Industries, officer or employe thereof, or any person performing any function or work assigned to him by the department, shall 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 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; 1967 c.421 §165]

(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 274.860, and before offering lands for leasing under ORS 274.705 to 274.860, or whenever any person files a written application with the division requesting that an easement be granted for such lands or that such lands be offered for leasing under ORS 274.705 to 274.860, accompanying the same with the required fee, the division shall hold a public hearing as provided in this section.

(2) Before granting an easement or inviting bids on any lands subject to ORS 274.705 to 274.860, the division shall cause written notice describing the area under consideration and other pertinent information to be transmitted to:

(a) State Geologist;

(b) State Highway Engineer;

(c) Director, Department of Environmental Quality;

(d) Director, State Game Commission;

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

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

(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 earlier than the 20th day after date of the last newspaper publication.

(4) The division may appoint one of its officers or employes or, by mutual agreement with another state agency, board or commission, one of its 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 division or its representative, and any interested person may offer evidence and otherwise be heard.

[1961 c.619 §6; 1965 c.375 §3; 1967 c.421 §166; 1969 c.593 §34]

274.760 Considerations involved in granting lease or easement. After the public hearing the division 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 division 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 tidal submerged lands; bids; cash bonus; award of lease; fee. (1) The division may offer to lease lands subject to ORS 274.705 to

274.860 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, including the royalty for sulphur, and the rental, the manner in which bids may be filed with the division, the amount of the deposit that must accompany each bid, and the time and place for filing bids, which time shall not be earlier than the 30th day 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 division upon request.

(2) Each bid shall be enclosed in a sealed envelope, shall be on the form provided by the division 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 division, 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 not later than the 15th day after the award of the lease, or fails to post any bond required by the lease or the rules 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 division 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 division 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 division 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 division shall prescribe a reasonable fee to cover the procedures under this section, which shall be paid by the successful bidder.

[1961 c.619 §27; 1967 c.421 §167]

274.770 Discriminatory requirements prohibited. In leasing lands subject to ORS 274.705 to 274.860, the division 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 lands subject to ORS 274.705 to 274.860, with respect to which this state or any other owner thereof has consented to use.

[1961 c.619 §30; 1967 c.421 §168]

(Leases)

274.780 Conditions in leases and permits; execution; delivery of bonds or contracts to division. (1) The form of lease shall contain, in addition to other provisions deemed necessary and desirable by the division, 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 274.860.

(2) The form of a permit shall contain, in addition to other provisions deemed necessary and desirable by the division, 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 division. All bonds, contracts and other instruments required by ORS 274.705 to 274.860 for the protection of the interests of this state and political subdivisions, persons and property therein shall be executed and delivered to the division.

[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 13,200 acres.

(3) No permit, easement or lease, or any portions thereof shall be assignable without the prior written consent of the division.
[1961 c.619 §§8, 10, 22; 1963 c.359 §1]

274.790 Royalties. (1) The division 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 division'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 royalty for sulphur produced under ORS 274.705 to 274.860 shall not be less than $1 per long ton.

(3) The State of Oregon shall have a lien upon all production for unpaid royalties.
[1961 c.619 §§11, 12; 1967 c.421 §169]

274.795 Rents. The division 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 division, each well drilled pursuant to the terms of the lease may be drilled or slant drilled to and into the subsurface of the 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 lands covered by the lease or otherwise available to the lessee.
[1961 c.619 §16; 1967 c.421 §170]

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 division 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 division 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 division 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 lands subject to ORS 274.705 to 274.860, avoidable pollution or avoidable contamination of the beaches or land underlying the ocean or waters covering lands subject to ORS 274.705 to 274.860, 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 lands subject to ORS 274.705 to 274.860. However, 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; 1967 c.421 §171]

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 current 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 division 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 division 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 division 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 division pursuant to ORS 274.705 to 274.860, 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 division, 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 [1961 c.619 §29; repealed by 1967 c.421 §206]

(Kelp Fields)

274.885 Lease of kelp fields. (1) The division may lease submerged lands owned by the State of Oregon 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 division 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 division's option. Not more than 40 miles of coast line shall be leased to one person.
[Formerly 274.010; 1967 c.421 §172]

274.890 Time allowed lessee for survey and erection of plant; filing copy of survey with division. The first lease issued to an applicant under ORS 274.885 to 274.895 with respect to any submerged lands may allow the applicant six months in which to make a practical survey of the field which he has leased, and another 12 months 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 director within six months. Upon his failure so to do, the lease shall be canceled by the division.
[Formerly 274.020; 1967 c.421 §173]

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 owned by the State of Oregon unless he has first obtained a lease from the division.
[Formerly 274.030; 1967 c.421 §174]

SUBMERSIBLE, SUBMERGED AND NEW LANDS

274.905 Definitions for ORS 274.905 to 274.940. As used in ORS 274.905 to 274.940, unless the context requires otherwise:

(1) "New lands" means those lands, as distinguished from bridges, wharves, quays and similar structures, protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the thread of the stream, which have been created upon submersible or submerged lands by artificial fill or deposit.

(2) "Public body" means the State of Oregon or any port organized under the laws of this state or any dock commission of any city of this state.

[1963 c.376 §1; 1967 c.421 §175]

274.910 Application and effect. (1) ORS 274.905 to 274.940 shall not apply to submersible, submerged or new lands fronting upon the Pacific Ocean.

(2) The provisions of ORS 274.905 to 274.940 apply to new lands created before, on or after May 28, 1963.

(3) Nothing contained in ORS 274.905 to 274.940 shall divest the State of Oregon of its rights to minerals, oil, gas and sulphur.

[1963 c.376 §§2, 9; 1967 c.421 §176]

274.915 Division to lease or dispose of new lands. Except as provided in ORS 274.930, the division may sell, lease or trade submersible or submerged lands owned by the state and new lands created upon submersible or submerged lands owned by the state in the same manner as provided for submersible lands in ORS chapter 273 and this chapter.

[1963 c.376 §3; 1967 c.421 §177; 1969 c.594 §47]

274.920 Creation of new lands upon submersible or submerged lands. No one other than the United States or a public body engaged in the promotion of navigation, industry or commerce shall artificially create new lands by fill or deposit upon submersible or submerged lands without the approval of the owner of such lands. A public body so creating such new lands shall notify the division of such action.

[1963 c.376 §4]

274.925 Ownership of new lands by public body as riparian owner. Whenever new lands have been created upon submersible or submerged lands owned by the state and the adjoining or opposite upland or riparian land on the same side of the thread of the stream is owned by a public body, such public body shall be the owner of the new lands so created and that public body shall pay to the division for such new lands an amount prescribed by the division to pay its costs incurred in carrying out its duties under ORS 274.905 to 274.940. Such payment shall be made when that public body sells, leases, trades or uses said new lands for revenue.

[1963 c.376 §5; 1965 c.375 §4; 1967 c.82 §1]

274.930 Right of nonpublic riparian owner to lease or purchase new lands. (1) Whenever new lands have been created upon submersible or submerged lands owned by the state and the adjoining or opposite upland or riparian land on the same side of the thread of the stream is owned by other than a public body, such other owner shall have the right to purchase such new land or any portion thereof from the division for the reasonable value thereof upon giving written notice to the division. Such written notice of intent to purchase must be given within a period of six months from such owner's receipt of actual official notice by the division of such creation of new land.

(2) In the event such nonpublic owner and the division cannot agree on the reasonable value of such new land, the value shall be determined by three appraisers, one appointed by the upland or riparian owner, one by the division, and the third by the first two, and their determination shall be final. The cost of the third appraiser shall be borne equally by the division and the nonpublic owner. A nonpublic owner shall have a right of preference to purchase or lease as to any bona fide offer received by the division from any other person after said six-month period has expired.

[1963 c.376 §6; 1965 c.375 §5]

274.935 Ownership, by nonpublic owner of submersible or submerged lands, of new lands created thereon. Whenever new lands are created upon submersible or submerged lands owned by other than a public body, such new lands shall be owned by the owner of the submersible or submerged lands upon which the new lands are created.

[1963 c.376 §8]

274.940 Reservation of new lands. Notwithstanding ORS 274.905 and 274.915 to

274.930, the division may reserve new lands from sale, transfer or lease to anyone other than a public body where upon notice and hearing it determines that the public interest requires such lands to be preserved for recreation, conservation of fish and wildlife or the development of port, industrial or navigation facilities, but in case of such reservation the adjoining or opposite upland or riparian owner shall be allowed reasonable access across such reserved new lands to navigable water.

[1963 c.376 §7; 1967 c.421 §178]

PENALTIES

274.990 Penalties. Violation of ORS 274.080, 274.745 or 274.895, or any rule promulgated under such sections, is a misdemeanor.

[Amended by 1967 c.421 §179; part renumbered 390.990; 1969 c.594 §48]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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, 1971.

Robert W. Lundy
Legislative Counsel