

Enrolled

# House Bill 1601

Sponsored by Representatives BAZETT, OUDERKIRK, Senator YTURRI

CHAPTER ..... 601 .....

AN ACT

Relating to the rights of the State of Oregon and the public in the Oregon seashores as established by prescription or otherwise; declaring and confirming such rights; providing for the acquisition of additional seashore lands; and declaring an emergency.

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

**Section 1.** The Legislative Assembly hereby declares it is the public policy of the State of Oregon to forever preserve and maintain the sovereignty of the state heretofore existing over the seashore and ocean beaches of the state from the Columbia River on the North to the Oregon-California line on the South so that the public may have the free and uninterrupted use thereof.

**Section 2.** (1) The Legislative Assembly recognizes that over the years the public has made frequent and uninterrupted use of lands abutting, adjacent and contiguous to the public highways and state recreation areas and recognizes, further, that where such use has been sufficient to create easements in the public through dedication, prescription, grant or otherwise, that it is in the public interest to protect and preserve such public easements as a permanent part of Oregon's recreational resources.

(2) Accordingly, the Legislative Assembly hereby declares that all public rights and easements in those lands described in subsection (1) of this section are confirmed and declared vested exclusively in the State of Oregon and shall be held and administered in the same manner as those lands described in ORS 274.070.

(3) The Legislative Assembly further declares that it is in the public interest to acquire additional rights and to do whatever is necessary to preserve and protect scenic and recreational use of Oregon's seashore and ocean beaches.

(4) No portion of those lands described in this section or any interest either therein now or hereafter acquired by the State of Oregon or any political subdivision thereof may be alienated except as expressly provided by state law.

**Section 3.** The State Highway Commission, when necessary, shall undertake appropriate court proceedings to protect, settle and confirm all such public rights and easements in the State of Oregon.

**Section 4.** The State Highway Commission, in accordance with ORS 366.345, may acquire ownership or interests in such lands abutting, adjacent or contiguous to the Oregon seashore and beaches as may be appropriate for recreational purposes where such lands are held in private ownership.

**Section 5.** (1) In order to promote the public health, safety and welfare,

to protect the state recreation areas recognized and declared by section 2 of this Act and by ORS 274.070, to protect the safety of the public using such areas, and to preserve values adjacent to and adjoining such areas, the natural beauty of the seashore and the public recreational benefit derived therefrom, no person shall, except as provided by section 6 of this Act, erect, make or place any appurtenance, structure or improvement on any property that is within the area along the Pacific Ocean located between the extreme low tide and the elevation of 16 feet following natural topographic contour lines. The position of the landward boundary line shall be interpolated to follow natural topographic contour lines whenever interrupted by man-made structures. However, in low-elevation areas, including but not limited to sand spits and marshes and the mouth of streams, estuaries, rivers and creeks where the 16.00 foot contour nearest the ocean, in plan view, does not substantially parallel the shore line, the boundary line is 300 feet (but not in excess of the 16.00 foot elevation) inland from the contour line nearest the ocean which describes the 5.7 foot elevation. However, at the mouths of streams, estuaries, rivers and creeks in such low-elevation areas where the 5.7 foot contour nearest the ocean does not substantially parallel the trend of the shoreline, the 5.7 foot contour line is replaced, for measurement purposes, by a straight line extending across the mouth from a point nearest the ocean on the 5.7 foot contour and proceeding in a straight line to a similar point on the opposite side. All elevations and vertical measurements are referred to the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947.

(2) This section does not apply to structures, including a 25-foot yard on all four sides of a single-family residence, existing on May 1, 1967, or to publicly owned appurtenances, structures or improvements made with the approval of the State Highway Engineer for the safety or convenience of the public.

(3) This section and section 6 of this Act do not apply to appurtenances, structures or improvements subject to easement or license granted by the State Land Board under ORS 274.075 or to rule, regulation or permit of or from the State Land Board under ORS 274.080.

**Section 6.** (1) Any person who desires a permit to erect, make or place an appurtenance, structure or improvement on any property subject to section 5 of this Act shall apply in writing to the State Highway Engineer, on a form and in a manner prescribed by the engineer, stating the kind of and reason for the appurtenance, structure or improvement. Upon receipt of an application satisfactory to the engineer, the engineer shall cause notice of the application to be posted at or near the location of the proposed appurtenance, structure or improvement. At the next regular meeting of the State Highway Commission held more than 10 days after receipt of the application, the engineer shall announce the receipt of the application. The notice and announcement shall include the name of the applicant, a description of the appurtenance, structure or improvement and its proposed location and a statement of the time within which any interested person may file a request with the engineer for a hearing on the application. The State Highway Engineer shall give notice of any application, hearing or decision to any person who files a written request with him for such notice.

(2) Within 30 days after the date of the regular meeting at which the engineer announces the receipt of a satisfactory application, the applicant or any other interested person may file a written request with the engineer for a hearing on the application. If such a request is filed, the engineer shall set a time for a hearing to be held by the engineer or his authorized representative. The engineer shall cause notice of the hearing to be posted

and announced in the manner provided in subsection (1) of this section. The notice shall include the time and place of the hearing.

(3) After the hearing on an application or, if a hearing is not requested, after the time for requesting a hearing has expired, the engineer shall grant the permit if approval would not be adverse to the public interest in preserving the recreational and scenic resources. In acting on an application, the engineer shall take into consideration the existing uses and structures and the future recreational and scenic needs in the vicinity of the proposed appurtenance, structure or improvement. If the engineer does not act on a satisfactory application within 90 days after the date of receipt thereof or, if a hearing is held thereon, within 60 days after the date of the hearing, the application shall be considered denied.

(4) Any person is entitled to appeal to the circuit court of the county where the property is located for a judicial review in equity of the action or failure to act by the engineer under this section. Any appeal taken under this subsection shall be made within 60 days after the date of the action or after the expiration of the period prescribed for action by the engineer under subsection (3) of this section.

**Section 7.** The State Highway Commission is hereby authorized to police, protect and maintain property that is subject to section 5 of this Act and property abutting, adjacent and contiguous to those lands described by ORS 274.070 that is available for public use, whether such right to use is obtained by prescription, easement, state-ownership or by permission of a private owner.

**Section 8.** The owner or person in control of any property subject to a public easement declared a state recreation area by section 2 of this Act or any property subject to section 5 of this Act shall not be liable for any injury to another person or damage to property of another resulting from a condition of the property within the easement or within the area subject to section 5 of this Act, unless the injury or damage results from a condition that he created or that he knew or, in the exercise of reasonable care, should have known was likely to cause injury to persons or damage to property.

**Section 9.** (1) In any court proceedings involving prescriptive rights of the public over property abutting, adjacent and contiguous to those lands described in ORS 274.070, an instrument executed and filed as provided by subsection (2) of this section shall be an act and declaration admissible as evidence of the intent of the owner or person in control of property to exercise dominion and control over his property.

(2) The declaration shall describe the property and shall be signed and acknowledged as provided by ORS 93.410. It shall state that the public is granted permission to use the property, or a specifically described portion of the property, and that the public use may be for certain purposes which shall also be described. The declaration shall be filed in the office of the county officer charged with the duty of filing and recording instruments or documents affecting title to real property.

(3) The permission granted may be revoked at any time by the grantor by a declaration revoking the permission signed, acknowledged and filed as provided by subsection (2) of this section. In any event, the permission granted shall terminate upon the assignment, grant, devise or other transfer or conveyance of the property or any interest therein by the owner or person in control of the property.

(4) Failure of the owner or person in control of property to execute and file the declaration as provided in subsection (2) of this section shall not imply an intent to relinquish dominion and control over his property.

**Section 10.** Nothing in this Act shall be construed to relinquish, impair or limit the sovereign title or rights of the State of Oregon in the shores of

the Pacific Ocean as the same may exist before or after the effective date of this Act.

**Section 11.** The State Highway Commission is directed to survey the land on the shore of the Pacific Ocean from the Columbia River on the north to the Oregon and California state line on the south for the purpose of locating the boundaries of the area zoned by section 5 of this Act and also for the purpose of obtaining information and material suitable for a re-evaluation and redefinition, if necessary, of such boundaries so that the public rights and interests in the lands along the shore of the Pacific Ocean shall be preserved. The commission shall complete the survey and present its report to the Fifty-fifth Legislative Assembly.

**Section 12.** For purposes of assessment and ad valorem taxation, whenever real property is held subject to a public easement declared a state recreation area by section 2 of this Act, the true cash value of the property shall be taken into consideration for the restricted use imposed on the servient property by the easement.

**Section 13.** Section 12 of this Act is first operative on January 1, 1968.

**Section 14.** If one of the sections of this Act is declared unconstitutional, it is the intent of the Legislative Assembly that the remaining provisions of this Act remain in effect.

**Section 15.** Sections 1 to 11 of this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and sections 1 to 11 of this Act shall take effect upon passage.



ENROLLED

House Bill 1601

Passed by House May 22, 1967

Repassed by House June 7, 1967

*[Signature]*  
Chief Clerk of House

*[Signature]*  
Speaker of House

Passed by Senate June 6, 1967

Repassed by Senate

*[Signature]*  
President of Senate

Received by Executive Department:

10:30 A.M., June 17, 1967

Approved: July 6, 1967

*[Signature]*  
Governor

Filed in Office of Secretary of State:

4:25 P. M., July 6, 1967

*[Signature]*  
Secretary of State