

**Enrolled**  
**House Bill 2478**

Sponsored by Representative SCHAUFLEER

CHAPTER .....

AN ACT

Relating to building inspection programs; creating new provisions; amending ORS 455.148 and 455.895; and declaring an emergency.

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

**SECTION 1. Sections 2 and 3 of this 2007 Act are added to and made a part of ORS chapter 455.**

**SECTION 2. The Director of the Department of Consumer and Business Services may adopt rules establishing uniform permit, inspection and certificate of occupancy requirements under the state building code. The rules may include, but need not be limited to, rules establishing standards for building inspections and inspection procedures and rules establishing uniform forms for certificates of occupancy. In adopting rules under this section, the director may establish a process for a municipality to address conditions that are unique to the municipality's enforcement of the state building code or that are not addressed by the rules establishing uniform permit, inspection and certificate of occupancy requirements.**

**SECTION 3. (1) As used in this section:**

**(a) "Public body" has the meaning given that term in ORS 174.109.**

**(b) "Work on a structure" means the construction, reconstruction, alteration or repair of a structure.**

**(2) A public body that administers and enforces a building inspection program shall ensure that a person required to be licensed under a provision of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 446.566 to 446.646, 446.666 to 446.746, 479.510 to 479.945, 479.950 and 480.510 to 480.670, this chapter or ORS chapter 447, 460 or 693 in order to obtain a permit for work on a structure has a current, valid license of the type required for the permit.**

**SECTION 4. ORS 455.148 is amended to read:**

455.148. (1)(a) A municipality that assumes the administration and enforcement of a building inspection program [on or after January 1, 2002,] shall administer and enforce the program for all of the following:

(A) The state building code, as defined in ORS 455.010, except as set forth in paragraph (b) of this subsection;

(B) Manufactured structure installation requirements under ORS 446.155, 446.185 (1) and 446.230;

(C) Manufactured dwelling parks and mobile home parks under ORS chapter 446;

(D) Park and camp programs regulated under ORS 455.680;

(E) Tourist facilities regulated under ORS 446.310 to 446.350;

(F) Manufactured dwelling alterations regulated under ORS 446.155; and

(G) Manufactured structure accessory buildings and structures under ORS 446.253.

- (b) A building inspection program of a municipality may not include:
- (A) Boiler and pressure vessel programs under ORS 480.510 to 480.670;
  - (B) Elevator programs under ORS 460.005 to 460.175;
  - (C) Amusement ride regulation under ORS 460.310 to 460.370;
  - (D) Prefabricated structure regulation under ORS chapter 455;
  - (E) Manufacture of manufactured structures programs under ORS 446.155 to 446.285, including the administration and enforcement of federal manufactured dwelling construction and safety standards adopted under ORS 446.155 or the National Manufactured Housing Construction and Safety Standards Act of 1974;
  - (F) Licensing and certification, or the adoption of statewide codes and standards, under ORS chapter 446, 447, 455, 479 or 693; or
  - (G) Review of plans and specifications as provided in ORS 455.685.

(2) A municipality that administers a building inspection program as allowed under this section shall do so for periods of four years. The Department of Consumer and Business Services shall adopt rules to adjust time periods for administration of a building inspection program to allow for variations in the needs of the department and participants.

(3) When a municipality administers a building inspection program, the governing body of the municipality shall, unless other means are already provided, appoint a person to administer and enforce the building inspection program, who shall be known as the building official. A building official shall, in the municipality for which appointed, attend to all aspects of code enforcement, including the issuance of all building permits. Two or more municipalities may combine in the appointment of a single building official for the purpose of administering a building inspection program within their communities.

(4)(a) By January 1 of the year preceding the expiration of the four-year period described in subsection (2) of this section, the governing body of the municipality shall notify the Director of the Department of Consumer and Business Services and, if the municipality is not a county, notify the county whether the municipality will continue to administer and enforce the building inspection program after expiration of the four-year period.

(b) Notwithstanding the January 1 date set forth in paragraph (a) of this subsection, the director and the municipality and, if the municipality is not a county, the county may by agreement extend that date to no later than March 1.

(5) If a city does not notify the director, or notifies the director that it will not administer the building inspection program, the county or counties in which the city is located shall administer and enforce the county program within the city in the same manner as the program is administered and enforced outside the city, except as provided by subsection (6) of this section.

(6) If a county does not notify the director, or notifies the director that it will not administer and enforce a building inspection program, the director shall contract with a municipality or other person or use such state employees or state agencies as are necessary to administer and enforce a building inspection program, and permit or other fees arising therefrom shall be paid into the Consumer and Business Services Fund created by ORS 705.145 and credited to the account responsible for paying the expenses thereof. A state employee may not be displaced as a result of using contract personnel.

(7)(a) The governing body of a municipality may commence responsibility for the administration and enforcement of a building inspection program beginning July 1 of any year by notifying the director no later than January 1 of the same year and obtaining the director's approval of an assumption plan as described in subsection (11)(c) of this section.

**(b) Notwithstanding paragraph (a) of this subsection, a municipality may not assume responsibility for administering and enforcing a building inspection program within the municipality unless:**

- (A) Prior to the assumption, the municipality is subject to ORS 455.150; or**
- (B) Responsibility for the program is being assumed from the department.**

(8) The department shall adopt rules to require the governing body of each municipality assuming or continuing a building inspection program under this section to submit a written plan with the notice required under subsection (4) or (7) of this section. If the department is the governing body, the department shall have a plan on file. The plan must specify how cooperation with the State Fire Marshal or a designee of the State Fire Marshal will be achieved and how a uniform fire code will be considered in the review process of the design and construction phases of buildings or structures.

(9) A municipality that administers and enforces a building inspection program pursuant to this section shall recognize and accept the performances of state building code activities by businesses and persons authorized under ORS 455.457 to perform the activities as if the activities were performed by the municipality. A municipality is not required to accept an inspection, a plan or a plan review that does not meet the requirements of the state building code.

(10) The department or a municipality that accepts an inspection or plan review as required by this section by a person licensed under ORS 455.457 has no responsibility or liability for the activities of the licensee.

(11) In addition to the requirements of ORS 455.100 and 455.110, the director shall regulate building inspection programs that municipalities assume on or after January 1, 2002. Regulation under this subsection shall include but not be limited to:

(a) Creating building inspection program application and amendment requirements and procedures;

(b) Granting or denying applications for building inspection program authority and amendments;

(c) Requiring a municipality assuming a building inspection program to submit with the notice given under subsection (7) of this section an assumption plan that includes, at a minimum:

(A) A description of the intended availability of program services, including proposed service agreements for carrying out the program during at least the first two years;

(B) Demonstration of the ability and intent to provide building inspection program services for at least two years;

(C) An estimate of proposed permit revenue and program operating expenses;

(D) Proposed staffing levels; and

(E) Proposed service levels;

(d) Reviewing procedures and program operations of municipalities;

(e) Creating standards for efficient, effective, timely and acceptable building inspection programs;

(f) Creating standards for justifying increases in building inspection program fees adopted by a municipality;

(g) Creating standards for determining whether a county or department building inspection program is economically impaired in its ability to reasonably continue providing the program throughout a county, if another municipality is allowed to provide a building inspection program within the same county; and

(h) Enforcing the requirements of this section.

(12) The department may assume administration of a building inspection program:

(a) During the pendency of activities under ORS 455.770;

(b) If a municipality abandons or is no longer able to administer the building inspection program; and

(c) If a municipality fails to substantially comply with any provision of this section or of ORS 455.465, 455.467 and 455.469.

(13) A municipality that abandons or otherwise ceases to administer a building inspection program that the municipality assumed under this section may not resume the administration or enforcement of the program for at least two years. The municipality may resume the administration and enforcement of the abandoned program only on July 1 of an odd-numbered year. Prior to resuming the administration and enforcement of the program, the municipality must follow the notification procedure set forth in subsection (7) of this section.

**SECTION 5.** ORS 455.148, as amended by section 1 of this 2007 Act, is amended to read:

455.148. (1)(a) A municipality that assumes the administration and enforcement of a building inspection program shall administer and enforce the program for all of the following:

(A) The state building code, as defined in ORS 455.010, except as set forth in paragraph (b) of this subsection;

(B) Manufactured structure installation requirements under ORS 446.155, 446.185 (1) and 446.230;

(C) Manufactured dwelling parks and mobile home parks under ORS chapter 446;

(D) Park and camp programs regulated under ORS 455.680;

(E) Tourist facilities regulated under ORS 446.310 to 446.350;

(F) Manufactured dwelling alterations regulated under ORS 446.155; and

(G) Manufactured structure accessory buildings and structures under ORS 446.253.

(b) A building inspection program of a municipality may not include:

(A) Boiler and pressure vessel programs under ORS 480.510 to 480.670;

(B) Elevator programs under ORS 460.005 to 460.175;

(C) Amusement ride regulation under ORS 460.310 to 460.370;

(D) Prefabricated structure regulation under ORS chapter 455;

(E) Manufacture of manufactured structures programs under ORS 446.155 to 446.285, including the administration and enforcement of federal manufactured dwelling construction and safety standards adopted under ORS 446.155 or the National Manufactured Housing Construction and Safety Standards Act of 1974;

(F) Licensing and certification, or the adoption of statewide codes and standards, under ORS chapter 446, 447, 455, 479 or 693; or

(G) Review of plans and specifications as provided in ORS 455.685.

(2) A municipality that administers a building inspection program as allowed under this section shall do so for periods of four years. The Department of Consumer and Business Services shall adopt rules to adjust time periods for administration of a building inspection program to allow for variations in the needs of the department and participants.

(3) When a municipality administers a building inspection program, the governing body of the municipality shall, unless other means are already provided, appoint a person to administer and enforce the building inspection program, who shall be known as the building official. A building official shall, in the municipality for which appointed, attend to all aspects of code enforcement, including the issuance of all building permits. Two or more municipalities may combine in the appointment of a single building official for the purpose of administering a building inspection program within their communities.

(4)(a) By January 1 of the year preceding the expiration of the four-year period described in subsection (2) of this section, the governing body of the municipality shall notify the Director of the Department of Consumer and Business Services and, if the municipality is not a county, notify the county whether the municipality will continue to administer and enforce the building inspection program after expiration of the four-year period.

(b) Notwithstanding the January 1 date set forth in paragraph (a) of this subsection, the director and the municipality and, if the municipality is not a county, the county may by agreement extend that date to no later than March 1.

(5) If a city does not notify the director, or notifies the director that it will not administer the building inspection program, the county or counties in which the city is located shall administer and enforce the county program within the city in the same manner as the program is administered and enforced outside the city, except as provided by subsection (6) of this section.

(6) If a county does not notify the director, or notifies the director that it will not administer and enforce a building inspection program, the director shall contract with a municipality or other person or use such state employees or state agencies as are necessary to administer and enforce a building inspection program, and permit or other fees arising therefrom shall be paid into the Consumer and Business Services Fund created by ORS 705.145 and credited to the account responsible

for paying the expenses thereof. A state employee may not be displaced as a result of using contract personnel.

(7)[(a)] The governing body of a municipality may commence responsibility for the administration and enforcement of a building inspection program beginning July 1 of any year by notifying the director no later than January 1 of the same year and obtaining the director's approval of an assumption plan as described in subsection (11)(c) of this section.

*[(b) Notwithstanding paragraph (a) of this subsection, a municipality may not assume responsibility for administering and enforcing a building inspection program within the municipality unless:]*

*[(A) Prior to the assumption, the municipality is subject to ORS 455.150; or]*

*[(B) Responsibility for the program is being assumed from the department.]*

(8) The department shall adopt rules to require the governing body of each municipality assuming or continuing a building inspection program under this section to submit a written plan with the notice required under subsection (4) or (7) of this section. If the department is the governing body, the department shall have a plan on file. The plan must specify how cooperation with the State Fire Marshal or a designee of the State Fire Marshal will be achieved and how a uniform fire code will be considered in the review process of the design and construction phases of buildings or structures.

(9) A municipality that administers and enforces a building inspection program pursuant to this section shall recognize and accept the performances of state building code activities by businesses and persons authorized under ORS 455.457 to perform the activities as if the activities were performed by the municipality. A municipality is not required to accept an inspection, a plan or a plan review that does not meet the requirements of the state building code.

(10) The department or a municipality that accepts an inspection or plan review as required by this section by a person licensed under ORS 455.457 has no responsibility or liability for the activities of the licensee.

(11) In addition to the requirements of ORS 455.100 and 455.110, the director shall regulate building inspection programs that municipalities assume on or after January 1, 2002. Regulation under this subsection shall include but not be limited to:

(a) Creating building inspection program application and amendment requirements and procedures;

(b) Granting or denying applications for building inspection program authority and amendments;

(c) Requiring a municipality assuming a building inspection program to submit with the notice given under subsection (7) of this section an assumption plan that includes, at a minimum:

(A) A description of the intended availability of program services, including proposed service agreements for carrying out the program during at least the first two years;

(B) Demonstration of the ability and intent to provide building inspection program services for at least two years;

(C) An estimate of proposed permit revenue and program operating expenses;

(D) Proposed staffing levels; and

(E) Proposed service levels;

(d) Reviewing procedures and program operations of municipalities;

(e) Creating standards for efficient, effective, timely and acceptable building inspection programs;

(f) Creating standards for justifying increases in building inspection program fees adopted by a municipality;

(g) Creating standards for determining whether a county or department building inspection program is economically impaired in its ability to reasonably continue providing the program throughout a county, if another municipality is allowed to provide a building inspection program within the same county; and

(h) Enforcing the requirements of this section.

(12) The department may assume administration of a building inspection program:

(a) During the pendency of activities under ORS 455.770;

(b) If a municipality abandons or is no longer able to administer the building inspection program; and

(c) If a municipality fails to substantially comply with any provision of this section or of ORS 455.465, 455.467 and 455.469.

(13) A municipality that abandons or otherwise ceases to administer a building inspection program that the municipality assumed under this section may not resume the administration or enforcement of the program for at least two years. The municipality may resume the administration and enforcement of the abandoned program only on July 1 of an odd-numbered year. Prior to resuming the administration and enforcement of the program, the municipality must follow the notification procedure set forth in subsection (7) of this section.

**SECTION 6.** ORS 455.895 is amended to read:

455.895. (1)(a) The State Plumbing Board may impose a civil penalty against a person as provided under ORS 447.992 and 693.992. Amounts recovered under this paragraph are subject to ORS 693.165.

(b) The Electrical and Elevator Board may impose a civil penalty against a person as provided under ORS 479.995. Amounts recovered under this paragraph are subject to ORS 479.850.

(c) The Board of Boiler Rules may impose a civil penalty against a person as provided under ORS 480.670. Amounts recovered under this paragraph shall be deposited to the General Fund.

(2) The Director of the Department of Consumer and Business Services, in consultation with the appropriate board, if any, may impose a civil penalty against any person who violates any provision of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 446.566 to 446.646, 446.666 to 446.746, 479.510 to 479.945, 479.950 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and 693, or any rule adopted or order issued for the administration and enforcement of those provisions. Except as provided in subsections (3), (4) and [(8)] (9) of this section or ORS 446.995, a civil penalty imposed under this section must be in an amount determined by the appropriate board or the director of not more than \$5,000 for each offense or, in the case of a continuing offense, not more than \$1,000 for each day of the offense.

(3) Each violation of ORS 446.003 to 446.200 or 446.225 to 446.285, or any rule or order issued thereunder, constitutes a separate violation with respect to each manufactured structure or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed \$1 million for any related series of violations occurring within one year from the date of the first violation.

**(4) The director may impose a civil penalty of not more than \$25,000 against a public body responsible for administering and enforcing a building inspection program. As used in this subsection, "public body" has the meaning given that term in ORS 174.109.**

[(4)] (5) The maximum penalty established by this section for a violation may be imposed only upon a finding that the person has engaged in a pattern of violations. The Department of Consumer and Business Services, by rule, shall define what constitutes a pattern of violations. Except as provided in subsections (1) and [(9)] (10) of this section, moneys received from any civil penalty under this section are appropriated continuously for and shall be used by the director for enforcement and administration of provisions and rules described in subsection (2) of this section.

[(5)] (6) Civil penalties under this section shall be imposed as provided in ORS 183.745.

[(6)] (7) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the director or the appropriate board considers proper and consistent with the public health and safety. In any judicial review of a civil penalty imposed under this section, the court may, in its discretion, reduce the penalty.

[(7)] (8) Any officer, director, shareholder or agent of a corporation, or member or agent of a partnership or association, who personally participates in or is an accessory to any violation by the partnership, association or corporation of a provision or rule described in subsection (2) of this section is subject to the penalties prescribed in this section.

[(8)] (9) In addition to the civil penalty set forth in subsection (1) or (2) of this section, any person who violates a provision or rule described in subsection (2) of this section may be required

by the director or the appropriate board to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director or board that shall not exceed five times the amount by which such person profited in any transaction that violates a provision or rule described in subsection (2) of this section.

[9] (10) If a civil penalty is imposed for a violation of a provision of ORS 446.566 to 446.646 and the violation relates to a filing or failure to file with a county assessor functioning as agent of the department, the department, after deducting an amount equal to the department's procedural, collection and other related costs and expenses, shall forward one-half of the remaining civil penalty amount to the county in which the manufactured structure is located at the time of the violation.

**SECTION 7. (1) The amendments to ORS 455.148 by section 4 of this 2007 Act apply to the assumption of building inspection programs on or after July 1, 2007. If this 2007 Act takes effect after July 1, 2007, a municipality that does not qualify under ORS 455.148 (7)(b) as set forth in section 4 of this 2007 Act and that assumed a building inspection program on July 1, 2007, shall return responsibility for the program to the transferring municipality on the effective date of this 2007 Act.**

**(2) The amendments to ORS 455.148 by section 5 of this 2007 Act apply to the assumption of building inspection programs on or after July 1, 2010.**

**SECTION 8. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.**

Passed by House May 11, 2007

Received by Governor:

Repassed by House June 5, 2007

.....M.,....., 2007

Approved:

.....  
Chief Clerk of House

.....M.,....., 2007

.....  
Speaker of House

.....  
Governor

Passed by Senate June 1, 2007

Filed in Office of Secretary of State:

.....  
President of Senate

.....M.,....., 2007

.....  
Secretary of State