

Enrolled House Bill 3068

Sponsored by Representative P SMITH; Representatives CLEM, ROBLAN (at the request of Oregon Vector Control Association)

CHAPTER

AN ACT

Relating to vector control; amending ORS 452.010, 452.080, 452.110, 452.130, 452.140, 452.210, 452.240, 452.245, 452.300 and 634.116; and declaring an emergency.

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

SECTION 1. ORS 452.010 is amended to read:

452.010. As used in **this section** and ORS 452.020 to 452.300, unless the context requires otherwise:

[(1) *“Board” means the board of trustees of a vector control district.*]

[(2)] (1) “County court” includes board of county commissioners.

[(3)] (2) “District” means a vector control district established for the **prevention, control or eradication** of public health vectors and predatory animals.

[(4)] (3) “Health officer” means the health officer appointed under ORS 431.418.

(4) **“Integrated pest management methods” means the processes described in ORS 634.650 (1).**

(5) **“Pesticide use plan” means an annual plan created by a vector control district or a county court that describes anticipated pesticide use.**

[(5)] (6) “Predatory animals” has the meaning given that term in ORS 610.002.

[(6)] (7) “Public health vectors” means arthropods and vertebrates of public health significance and those insects included within the family Chironomidae of the order Diptera. The term does not include any domesticated animal.

(8) **“Vector habitat” means any area where public health vectors are found.**

SECTION 2. ORS 452.080 is amended to read:

452.080. (1) After an order is entered forming a district, the county court of the county in which the district is situated shall forthwith appoint a governing board of five trustees each of whom shall be a resident and elector of the district.

(2) The trustees shall hold office for four years and until their successors are appointed and qualified, except that for each new board of five trustees one member shall be appointed for a term of one year, one for a term of two years, one for a term of three years and two for a term of four years.

(3) Each trustee shall take an oath to faithfully perform the duties of office. The oath shall be filed with the county clerk.

(4) The board of trustees shall elect a president, a secretary and a treasurer at the first meeting of each calendar year. Officers shall serve for one calendar year.

(5) All health officers with offices in the district shall be ex officio members of the board without vote[.] **and shall be offered the opportunity to assist in the creation of district plans.**

(6) **The board of trustees may compensate a trustee in an amount not exceeding \$100 per year for attendance at conferences that provide training and education to carry out trustee duties under ORS 452.110.**

(7) **The board of trustees may adopt a resolution to change the name of the district. The board shall file a copy of a resolution changing the name of the district with the Secretary of State and the county clerk within 10 days after adopting the resolution. Following a name change, the district name must contain the words:**

- (a) **Vector control district;**
- (b) **Mosquito and vector control district;**
- (c) **Mosquito control district; or**
- (d) **Vector and predatory animal control district.**

SECTION 3. ORS 452.110 is amended to read:

452.110. The board of trustees of a control district may:

(1) Take all necessary and proper steps and measures for the **prevention, control or eradication** of public health vectors **and vector habitats** within the district and for the control of predatory animals within the district, **using integrated pest management methods.** Prior to taking such measures the board shall consider technical information available to it for the purpose of determining the need for control measures and the need for specific actions.

[(2) Take all necessary and proper steps and measures for the eradication of rats within the district when the board determines that rats exist in such numbers as to be detrimental to human health and well-being. Prior to taking such measures the board shall consider technical information available to it for the purpose of determining the need for control measures and the need for specific actions.]

[(3)] (2) Enter upon any land, public or private, within the district at any reasonable time to inspect for or to **prevent**, control [*rats*] or **eradicate** public health vectors and [*their breeding places*] **vector habitats using integrated pest management methods.**

[(4)] (3) Purchase all needed equipment, supplies and materials.

[(5)] (4) Employ such labor and service as may be proper or necessary in the furtherance of the objects of ORS 452.020 to 452.170.

[(6)] (5) Employ labor and services and fix the compensation and prescribe the duties of all employees, agents and servants.

[(7)] (6) Acquire by gift or purchase, hold, manage and dispose of real and personal property in the name of the district in the furtherance of the purposes for which the district is established.

[(8)] (7) Work cooperatively with irrigation and drainage districts, municipal corporations or other public agencies, and use [*funds*] **the technical expertise** of the district to assist those agencies in the construction, improvement, repair and maintenance of ditches when such work is necessary for, or incident to, the prevention, [*and*] control **and eradication** of [*rats,*] predatory animals or public health vectors.

[(9)] (8) Enter into a contract with a city, county, district described in ORS 198.010 or person to perform, or to act jointly or in cooperation with the city, county, district or person in performing, any abatement practice or other activity that the vector control district is authorized to perform for the eradication, control and prevention of public health vectors **and vector habitats** or predatory animals.

[(10)] (9) Generally do all things necessary or incident to the powers granted and to carry out the [*objects*] **objectives** specified in this section.

SECTION 4. ORS 452.130 is amended to read:

452.130. All work performed under ORS 452.110 shall be paid for by the control district, except when a contract authorized under ORS 452.110 [*(9)*] (8) provides otherwise.

SECTION 5. ORS 452.140 is amended to read:

452.140. The board of trustees of a district:

(1) [Shall] **May** not apply [*insecticides or oil or other chemicals*] **pesticides** to waters in the district [*which*] **that** are frequented by waterfowl or [*which*] **that** contain any game fish without [*first*] obtaining [*the*] **annual** approval of the State Fish and Wildlife Commission.

(2) [Shall] **May** not [*spread poisons for rats or*] **apply pesticides** for public health vectors without first obtaining approval of the State Fish and Wildlife Commission.

SECTION 6. ORS 452.210 is amended to read:

452.210. Any county court may contract with any incorporated city, any vector control district, or with the county court of any other county on any matter incident to the eradication, prevention and control of public health vectors **and vector habitats using integrated pest management methods** and for the supervision of such work by county employees.

SECTION 7. ORS 452.240 is amended to read:

452.240. Any county court may:

(1) Take all necessary or proper steps and measures for the **prevention**, control or [*extermination*] **eradication** of public health vectors **using integrated pest management methods**.

(2) Abate as nuisances all [*places where public health vectors within the county may breed*] **vector habitats**.

(3) Purchase such supplies and materials and employ or contract for such labor as may be necessary or proper in furtherance of **prevention**, control or [*extermination*] **eradication**.

(4) Fix the compensation and prescribe the duties of all employees, agents and servants.

(5) Enter upon all places within the county and adjacent thereto for the purpose of carrying out this section.

(6) Cut or remove such shrubbery or undergrowth as is necessary or proper in order to carry out this section.

(7) Treat [*with proper chemicals*], **using integrated pest management methods** places where public health vectors are found or are likely to exist.

(8) Generally do any and all things necessary or incident to the powers granted in ORS 452.230 to 452.250 and to carry out the [*objects*] **objectives** specified in this section.

SECTION 8. ORS 452.300 is amended to read:

452.300. (1) The Department of Human Services shall maintain a program of public health vector control, which program shall include, but not be limited to:

[1] (a) Monitoring and investigating public health vectors, **vector habitats** and vector-borne diseases.

[2] (b) Providing technical assistance and information to vector control districts, local vector control programs and the public.

[3] (c) Maintaining training programs for vector control district personnel and other public health personnel.

[4] (d) Coordinating and assisting vector control district programs and other local programs in research projects.

[5] (e) Reviewing vector control program pesticide use plans submitted by agencies [*which*] **that** intend to use [*chemicals*] **pesticides** for vector control. Agencies must obtain [*the approval of the Department of Human Services*] **department approval of their annual pesticide use plan** prior to pesticide applications.

(2) **The department may provide an amount not to exceed \$5,000 per year in matching funds to a district for a program to allow the district to carry out disease surveillance in cooperation with public health personnel.**

SECTION 9. ORS 634.116 is amended to read:

634.116. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a pesticide operator license to the United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in ORS 634.306 (2).

(3)(a) The department shall establish a pesticide operator license fee not to exceed \$90 for the first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and not to exceed \$15 for each additional class.

(b) After a person makes first application for a specific license period, if later during the same license period the person desires to engage in additional classes of pest control or pesticide application businesses, such person shall pay the fee for each additional class established by the department not to exceed \$20.

(4) At least one owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. If a pesticide operator is found to be in violation of this subsection, the pesticide operator's license, notwithstanding ORS chapter 183, is automatically suspended until the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to the individual under ORS 634.122.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of a policy, has furnished a deposit of cash, surety bond or other evidence of financial responsibility acceptable to the department that may be applied by the department to the payment of damages resulting from operator liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section must be not less than \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, if the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, the license is automatically suspended until the department again verifies the pesticide operator is in compliance with subsections (5) and (6) of this section. The liability insurance company shall notify the department in writing at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of use of pesticides, or financial responsibility for the same is limited to actual damages only.

(9) The department shall return the deposit required by subsection (5) of this section to the pesticide operator if the pesticide operator at any time establishes exemption from the financial responsibility requirements under this chapter. After the expiration of two years from the date of an injury, death, loss or damage, the department shall return any deposit remaining to the pesticide operator or to the personal representative of the pesticide operator except that the department shall not make a return if the department has received notice that an action for damages arising out of

the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that the action is pending or that any judgment resulting from the action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by rule allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by rule allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12)(a) The United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies are not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when:

(A) Applying pesticides to property under their ownership, possession, control or jurisdiction;

(B) Applying pesticides pursuant to an order issued by the department for purposes of controlling or eradicating noxious weeds or pests; or

(C) Applying pesticides to property under the ownership, possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if:

(i) The land is in a jurisdiction adjacent to property under their ownership, possession, control or jurisdiction;

(ii) The application is done in conjunction with, or as an extension of, an application of pesticides to property under their ownership, possession, control or jurisdiction; and

(iii) The pesticide application is done on a cost recovery, cooperative trade of services or no cost basis, and not as a source for profit.

(b) A public utility or telecommunications utility is not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when applying pesticides to property under the ownership, possession or control of the utility.

(c) In addition to any application allowed under paragraph (a) of this subsection, a vector control district is not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when applying pesticides for the prevention, control or eradication of a public health vector as defined in ORS 452.010 to property under the ownership, possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no cost basis, and not as a source of profit.

(13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities, subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies or utilities described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this chapter, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this chapter relating thereto.

(14) The public applicator license or public trainee certificate shall be:

(a) Issued by the department upon payment of the fee for the pesticide applicator license or pesticide trainee certificate.

(b) Valid and used by the licensee or certificate holder only when applying pesticides as described in subsection (12) of this section.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) The provisions of subsection (13) of this section apply only to:

- (a) The application of restricted-use pesticides; or
- (b) The application of any pesticide by using a machine-powered device.

(16) Prior to applying pesticides to land described in subsection (12)(a)(C) of this section, a public applicator shall inform the person requesting pesticide application of the possible availability of alternative sources of assistance, including sources in the private sector that are registered with the department or with industry trade or professional organizations.

(17) A federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body may not solicit or advertise for pesticide application business in areas outside its jurisdiction.

SECTION 10. ORS 452.245 is amended to read:

452.245. In exercising its powers under ORS 452.210 to 452.250, a county court:

(1) [Shall] **May** not order the application of [insecticides, oil or other chemicals] **pesticides** to waters in the county [which] **that** are frequented by waterfowl or [which] **that** contain any game fish without [first] obtaining [the] **annual** approval of the State Fish and Wildlife Commission.

(2) [Shall] **May** not order the [spreading of poisons] **application of pesticides** for public health vectors without first obtaining the approval of the State Fish and Wildlife Commission.

SECTION 11. 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 April 9, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 15, 2007

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President of Senate

Received by Governor:

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

Approved:

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

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Governor

Filed in Office of Secretary of State:

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

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Secretary of State