

# Senate Bill 338

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands air quality provisions from woodstove emissions to solid fuel burning devices. Modifies provisions relating to sale of solid fuel burning device. Provides description of solid fuel burning device. Prohibits burning of certain materials in solid fuel burning device, fireplace or trash burner. Renames Residential Wood Heating Air Quality Improvement Fund to Residential Solid Fuel Heating Air Quality Improvement Fund. Modifies certain aspects of fund. Modifies prohibition on installation of used solid fuel burning device. Modifies prohibition on sale of solid fuel burning device. Modifies prohibition on removal of solid fuel burning device. Modifies solid fuel heating curtailment program requirements.

## A BILL FOR AN ACT

1  
2 Relating to solid fuel burning devices; creating new provisions; amending ORS 468.135, 468A.005,  
3 468A.020, 468A.300, 468A.305, 468A.460, 468A.465, 468A.485, 468A.490, 468A.495, 468A.500,  
4 468A.505 and 468A.515; and repealing ORS 468A.470, 468A.475, 468A.480, 468A.510 and 468A.520.

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

6 **SECTION 1.** ORS 468A.460 is amended to read:

7 468A.460. In the interest of the public health and welfare it is declared to be the public policy  
8 of the state to control, reduce and prevent air pollution caused by [*woodstove emissions*] **solid fuel**  
9 **burning devices**. The Legislative Assembly declares it to be the public policy of the state to reduce  
10 [*woodstove*] **solid fuel burning device** emissions by encouraging the Department of Environmental  
11 Quality to continue efforts to educate the public about the **air quality** effects of [*woodstove*] **those**  
12 emissions and [*the desirability of achieving better woodstove*] **by ensuring that solid fuel burning**  
13 **devices used in Oregon meet appropriate** emission performance [*and heating efficiency*]  
14 **standards**.

15 **SECTION 2.** ORS 468A.465 is amended to read:

16 468A.465. [*On and after July 1, 1986,*] A person may not advertise to sell, offer to sell or sell a  
17 new [*woodstove*] **solid fuel burning device** in Oregon unless[.] **the solid fuel burning device meets**  
18 **emission performance standards established in rules adopted by the Environmental Quality**  
19 **Commission**.

20 [(1) *The woodstove has been tested to determine its emission performance and heating efficiency;*]

21 [(2) *The woodstove is certified by the Department of Environmental Quality under the program*  
22 *established under ORS 468A.480 (1); and]*

23 [(3) *An emission performance and heating efficiency label is attached to the woodstove.*]

24 **SECTION 3.** ORS 468A.485 is amended to read:

25 468A.485. [*As used in ORS 468A.490*] **For the purposes of ORS 468A.020 and 468A.460 to**  
26 **468A.515:**

27 [(1) *“Area that exceeds the PM10 standard” means an area of the state that exceeds, on or after*

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *January 1, 1990, the air quality standard for PM10 as established by the Environmental Quality*  
 2 *Commission under ORS 468A.025.]*

3 **(1) A solid fuel burning device is any device that burns wood, coal or other nongaseous**  
 4 **or nonliquid fuels for aesthetic, space heating or water heating purposes in a private or**  
 5 **commercial establishment and that has a heat output of less than one million British ther-**  
 6 **mal units per hour.**

7 *[(2) "Western interior valleys" means the area of the state encompassed by the borders of the States*  
 8 *of Washington and California and the crests of the Cascade Mountain Range on the east and the Coast*  
 9 *Range on the west.]*

10 **(2) Except for ORS 468A.460 and 468A.515 and section 5 of this 2007 Act, ORS 468A.460 to**  
 11 **468A.515 do not apply to:**

12 **(a) Masonry fireplaces built on a homesite, or factory-built metal fireplaces, that are**  
 13 **designed to be used with an open combustion chamber and without features to control air-**  
 14 **to-fuel ratios;**

15 **(b) Woodstoves built before 1940 that have an ornate construction and a current market**  
 16 **value substantially higher than a common woodstove manufactured during the same period;**  
 17 **and**

18 **(c) Other solid fuel burning devices identified in rules adopted by the Environmental**  
 19 **Quality Commission.**

20 **SECTION 4. Section 5 of this 2007 Act is added to and made a part of ORS 468A.460 to**  
 21 **468A.515.**

22 **SECTION 5. A person may not cause or allow any of the following materials to be burned**  
 23 **in a solid fuel burning device, fireplace or trash burner:**

24 **(1) Garbage;**

25 **(2) Treated wood;**

26 **(3) Plastic or plastic products;**

27 **(4) Rubber or rubber products;**

28 **(5) Animal carcasses;**

29 **(6) Products that contain asphalt;**

30 **(7) Waste petroleum products;**

31 **(8) Paint;**

32 **(9) Chemicals;**

33 **(10) Paper or paper products, except for paper used to kindle a fire; or**

34 **(11) Any other materials described in rules adopted by the Environmental Quality Com-**  
 35 **mission.**

36 **SECTION 6. ORS 468A.490 is amended to read:**

37 468A.490. (1) There is created within the State Treasury a fund known as the Residential  
 38 *[Wood]* **Solid Fuel** Heating Air Quality Improvement Fund, separate and distinct from the General  
 39 Fund.

40 (2) All moneys appropriated or received as gifts or grants for the purposes of this section **and**  
 41 **all moneys recovered by the Department of Environmental Quality under ORS 468.135 (3)**  
 42 **shall be credited to the Residential *[Wood]* Solid Fuel Heating Air Quality Improvement Fund.**

43 (3) The State Treasurer may invest and reinvest the moneys in the fund as provided in ORS  
 44 293.701 to 293.820. Interest from the moneys deposited in the fund and earnings from investment of  
 45 the moneys in the fund shall accrue to the fund.

1 (4) All moneys in the [*Residential Wood Heating Air Quality Improvement*] fund are continuously  
2 appropriated to the Department of Environmental Quality to:

3 (a) Pay all costs incurred by the department [*in maintaining residential wood heating emissions*  
4 *inventories, analyzing*] **for evaluating** projects and programs, **including projects and programs**  
5 proposed **by local communities or qualifying organizations**, for [*funding in accordance with this*  
6 *section,*] **project management and oversight of funds awarded for** [*administering*] projects and  
7 programs selected [*for funding*] in accordance with this section and [*implementing the requirements*  
8 *of ORS 468A.475 (2) and 468A.480 (1)(g)*] **for documenting the benefit to air quality from such**  
9 **projects.**

10 [(b) *Pay all reasonable costs as determined by the Environmental Quality Commission for local*  
11 *government and regional authority public education, emission inventory maintenance, curtailment and*  
12 *opacity programs to reduce residential wood heating emission in an area that exceeds the PM10*  
13 *standard or an area that is at risk of becoming an area that exceeds the PM10 standard.*]

14 [(c) (b) [*To the extent moneys remain in the fund after paying the costs under paragraphs (a) and*  
15 *(b) of this subsection, to*] Fund programs established under [*subsections (5) and (6)*] **subsection (5)**  
16 of this section in a manner designed to [*achieve cost-beneficial reductions in emission of air contam-*  
17 *inants from woodstoves, attain federal ambient air quality standards before deadlines specified in the*  
18 *Clean Air Act and maintain compliance with such standards after the deadlines established in the*  
19 *Clean Air Act*] **reduce the emission of air contaminants.**

20 [(d) *Not more than 15 percent of the total amount of moneys received under this section shall be*  
21 *expended for costs under paragraphs (a) and (b) of this subsection.*]

22 (5) [*A portion of*] The moneys available under subsection (4) of this section shall be used by the  
23 [*Environmental Quality Commission*] **department** to [*fund a low or no interest loan program for wood*  
24 *heated households located in the western interior valleys or in any other county containing an area that*  
25 *exceeds the PM10 standard to replace woodstoves*] **establish a program to provide grants, loans**  
26 **or other subsidies for the replacement or removal of solid fuel burning devices that do not**  
27 **meet the requirements of ORS 468A.465 or that** were not certified under ORS 468A.480, [*for sale*  
28 *as new on or after July 1, 1986*] **as in effect on January 1, 2007. In addition to any other re-**  
29 **quirements established by rules adopted by the Environmental Quality Commission**, the pro-  
30 gram shall [*include the following elements*] **provide that:**

31 (a) All forms of new high-efficiency, low air contaminant-emitting heating systems are allowed;

32 (b) Any [*removed woodstove*] **solid fuel burning device removed under the program** must be  
33 destroyed;

34 (c) Any replacement [*woodstoves*] **device** selected under the program must be installed in con-  
35 formance with building code requirements and the manufacturer's specifications including but not  
36 limited to chimney specifications; and

37 (d) To be eligible, program participants shall participate in any home energy audit program  
38 provided at no charge to the homeowner and shall obtain all information available regarding subsi-  
39 dies for cost-effective weatherization. The department shall make the information required in this  
40 subsection readily available to program participants.

41 [(6) *A portion of the moneys available under subsection (4) of this section shall be used by the*  
42 *commission to fund local government or regional authority programs to provide subsidies for replace-*  
43 *ment of woodstoves that were not certified under ORS 468A.480 for sale as new on or after July 1,*  
44 *1986, to low income persons in wood heated households in an area that exceeds the PM10 standard.*  
45 *The local government or regional authority programs must include the following elements to be eligible*

1 for funding:]

2 [(a) All forms of new high-efficiency, low emitting heating systems are allowed.]

3 [(b) All woodstoves removed are destroyed.]

4 [(c) The local government or regional authority adopts and enforces an ordinance that limits  
5 emissions from woodstoves to no visible smoke, except for steam and heat waves, during periods of air  
6 stagnation and to an average of 20 percent opacity at all other times except during start up and refu-  
7 eling as determined by the commission. This requirement shall not be in lieu of any final stage of  
8 woodstove curtailment required during air stagnation if the final stage of curtailment is necessary to  
9 prevent exceeding air quality standards established under ORS 468A.025 by the latest date allowed  
10 under the Clean Air Act to reach attainment of such standards.]

11 [(d) In an airshed requiring more than a 50 percent reduction in woodheating emissions as speci-  
12 fied in the State Implementation Plan control strategy for PM10 emissions, program participants shall  
13 have a backup heat source if a certified woodstove is selected.]

14 [(e) Any replacement woodstove selected under the program must be installed in conformance with  
15 building code requirements and the manufacturer's specifications including but not limited to chimney  
16 specifications.]

17 [(f) To be eligible, program participants shall participate in any home energy audit program pro-  
18 vided at no charge to the homeowner and shall obtain all information available regarding subsidies for  
19 cost-effective weatherization. The local government or regional air quality authority shall make the in-  
20 formation required in this subsection readily available to program participants.]

21 **(6) The department may enter into an agreement with a local government or a regional  
22 authority in order to implement a program established under subsection (5) of this section.**

23 **SECTION 7.** ORS 468A.495 is amended to read:

24 468A.495. [On and after September 29, 1991,] The state building code under ORS 455.010 shall  
25 prohibit installations of used [woodstoves] **solid fuel burning devices** that:

26 **(1) Do not meet the requirements of ORS 468A.465; or**

27 **(2) Were not certified for sale as new [on or after July 1, 1986,] under ORS 468A.480 (1), as in  
28 effect on January 1, 2007.**

29 **SECTION 8.** ORS 468A.500 is amended to read:

30 468A.500. [On and after September 29, 1991, no] **A person [shall] may not** advertise for sale, offer  
31 to sell or sell, within this state, a used [woodstove] **solid fuel burning device** that:

32 **(1) Does not meet the requirements of ORS 468A.465; or**

33 **(2) Was not certified under ORS 468A.480 (1), [for sale as new on or after July 1, 1986] as in  
34 effect on January 1, 2007.**

35 **SECTION 9.** ORS 468A.505 is amended to read:

36 468A.505. [After December 31, 1994,] **Upon sale of a residential building,** all [woodstoves] **solid  
37 fuel burning devices,** other than cookstoves, **must be removed and destroyed if the solid fuel  
38 burning devices:**

39 **(1) Do not meet the requirements of ORS 468A.465; or**

40 **(2) Were not certified for sale as new [on or after July 1, 1986,] under ORS 468A.480 (1), as in  
41 effect on January 1, 2007. [shall be removed and destroyed upon sale of a home in any PM10 non-  
42 attainment area in the state that does not attain compliance with the PM10 standard established by the  
43 Environmental Quality Commission under ORS 468A.025 by December 31, 1994.]**

44 **SECTION 10.** ORS 468A.515 is amended to read:

45 468A.515. **(1) If a local government or regional authority has not adopted or is not ade-**

1 **quately implementing a curtailment program in any area of the state where such a program**  
 2 **is required under the Clean Air Act, the Environmental Quality Commission may adopt by**  
 3 **rule and the Department of Environmental Quality may operate and enforce a program to**  
 4 **curtail residential solid fuel heating during periods of air stagnation pursuant to subsection**  
 5 **(2) of this section. The department shall suspend operation and enforcement of a program**  
 6 **adopted under this subsection upon a determination by the department that the local gov-**  
 7 **ernment or regional air quality authority has adopted and is adequately implementing the**  
 8 **required curtailment program.**

9 [(1)] (2) Any programs adopted by the Environmental Quality Commission **pursuant to sub-**  
 10 **section (1) of this section** to curtail residential [wood] **solid fuel** heating during periods of air  
 11 stagnation shall provide for two stages of curtailment based on the severity of projected air quality  
 12 conditions. Except as provided in subsection [(2)] (3) of this section, the programs shall apply to all  
 13 [woodburning fireplaces, woodstoves and appliances] **heating by means of solid fuel, including but**  
 14 **not limited to solid fuel burning devices, fireplaces and appliances.** The programs shall provide  
 15 that [woodstoves that were] **use of a solid fuel burning device, fireplace or appliance be curtailed**  
 16 **only at the stage established for more severe air quality conditions if the solid fuel burning**  
 17 **device, fireplace or appliance:**

18 (a) **Meets the requirements of ORS 468A.465; or**

19 (b) **Was certified for sale as new [on or after July 1, 1986,] under ORS 468A.480 (1), as in effect**  
 20 **on January 1, 2007.** [shall be curtailed only at the second stage to insure attainment of air quality  
 21 standards.]

22 [(2)] (3) Programs adopted by the **Environmental Quality** Commission to curtail residential  
 23 [wood] **solid fuel** heating **during periods of air stagnation** [shall] **do not** apply to:

24 (a) A person who is classified at less than or equal to 125 percent of poverty level pursuant to  
 25 **guidelines established by the commission taking into account** federal poverty income guidelines  
 26 [adopted under the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35)];

27 (b) A person whose residence is equipped [only with wood heating until such time as funding  
 28 becomes available for replacement or woodstoves that were not certified under ORS 468A.480 for sale  
 29 as new on or after July 1, 1986, and for the period of time between application for such funds and  
 30 completion of the replacement] **solely with a solid fuel burning device that meets any additional**  
 31 **requirements as described in rules adopted by the commission; and**

32 (c) Wood burning pellet stoves, **unless the stove is located in an area designated as a non-**  
 33 **attainment area for particulates by rule of the commission adopted under ORS 468A.025.**

34 [(3)] *If a local government or regional authority has not adopted or is not adequately implementing*  
 35 *the required curtailment program, the Environmental Quality Commission may adopt by rule and the*  
 36 *Department of Environmental Quality may operate and enforce a program to curtail residential wood*  
 37 *heating during periods of air stagnation as specified in subsection (1) of this section in any area of the*  
 38 *state where such a program is required under the Clean Air Act. The department shall suspend oper-*  
 39 *ation and enforcement of a program adopted under this subsection upon a determination by the de-*  
 40 *partment that the local government or regional air quality authority has adopted and is adequately*  
 41 *implementing the required curtailment program.]*

42 [(4)] *Except as provided in this section, after September 29, 1991, the commission shall not adopt*  
 43 *or make more stringent any additional regulatory programs affecting residential wood heating unless*  
 44 *the air quality standard for PM10 established by the commission under ORS 468A.025 has not been*  
 45 *attained in the state by the latest date, considering extensions, allowed under the Clean Air Act.*

1 *Nothing in this section shall be construed to affect regulatory programs in effect on September 29,*  
 2 *1991.]*

3 **SECTION 11.** ORS 468A.005 is amended to read:

4 468A.005. As used in ORS chapters 468, 468A and 468B, unless the context requires otherwise:

5 (1) "Air-cleaning device" means any method, process or equipment which removes, reduces or  
 6 renders less noxious air contaminants prior to their discharge in the atmosphere.

7 (2) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon,  
 8 acid or particulate matter or any combination thereof.

9 (3) "Air contamination" means the presence in the outdoor atmosphere of one or more air con-  
 10 taminants which contribute to a condition of air pollution.

11 (4) "Air contamination source" means any source at, from, or by reason of which there is emit-  
 12 ted into the atmosphere any air contaminant, regardless of who the person may be who owns or  
 13 operates the building, premises or other property in, at or on which such source is located, or the  
 14 facility, equipment or other property by which the emission is caused or from which the emission  
 15 comes.

16 (5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contam-  
 17 inants, or any combination thereof, in sufficient quantities and of such characteristics and of a du-  
 18 ration as are or are likely to be injurious to public welfare, to the health of human, plant or animal  
 19 life or to property or to interfere unreasonably with enjoyment of life and property throughout such  
 20 area of the state as shall be affected thereby.

21 (6) "Area of the state" means any city or county or portion thereof or other geographical area  
 22 of the state as may be designated by the Environmental Quality Commission.

23 *[(7) "Woodstove" means a wood fired appliance with a closed fire chamber which maintains an*  
 24 *air-to-fuel ratio of less than 30 during the burning of 90 percent or more of the fuel mass consumed in*  
 25 *the low firing cycle. The low firing cycle means less than or equal to 25 percent of the maximum burn*  
 26 *rate achieved with doors closed or the minimum burn achievable.]*

27 **SECTION 12.** ORS 468A.020 is amended to read:

28 468A.020. (1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution  
 29 laws contained in ORS chapters 468, 468A and 468B do not apply to:

30 (a) Agricultural operations and the growing or harvesting of crops and the raising of fowls or  
 31 animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150,  
 32 468A.555 to 468A.620 and 468A.992 and this section;

33 (b) Use of equipment in agricultural operations in the growth of crops or the raising of fowls  
 34 or animals, except field burning which shall be subject to regulation pursuant to ORS 468.140,  
 35 468.150, 468A.555 to 468A.620 and 468A.992 and this section;

36 (c) Barbecue equipment used in connection with any residence;

37 (d) Agricultural land clearing operations or land grading;

38 (e) Heating equipment in or used in connection with residences used exclusively as dwellings for  
 39 not more than four families, except [*woodstoves*] **solid fuel burning devices**, which shall be subject  
 40 to regulation under this section[,] **and** ORS 468A.460 to [*468A.480, 468A.490 and*] 468A.515;

41 (f) Fires set or permitted by any public agency when such fire is set or permitted in the per-  
 42 formance of its official duty for the purpose of weed abatement, prevention or elimination of a fire  
 43 hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the  
 44 agency is necessary;

45 (g) Fires set pursuant to permit for the purpose of instruction of employees of private industrial

1 concerns in methods of fire fighting, or for civil defense instruction;

2 (h) The propagation and raising of nursery stock, except boilers used in connection with the  
3 propagation and raising of nursery stock;

4 (i) The propane flaming of mint stubble; or

5 (j) Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505, during the  
6 period beginning October 1 and ending May 31 of the following year.

7 (2) As used in subsection (1) of this section, “field burning” does not include propane flaming  
8 of mint stubble.

9 **SECTION 13.** ORS 468.135 is amended to read:

10 468.135. (1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in  
11 ORS 183.745.

12 (2) **Except as provided in subsection (3) of this section,** all penalties recovered under ORS  
13 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the  
14 penalty is recovered by a regional air quality control authority, it shall be paid into the county  
15 treasury of the county in which the violation occurred.

16 (3) **All penalties recovered by the Department of Environmental Quality for violations of**  
17 **ORS 468A.085 or 468A.700 to 468A.760 or any rule or standard adopted by the Environmental**  
18 **Quality Commission pursuant to those statutes shall be paid into the Residential Solid Fuel**  
19 **Heating Air Quality Improvement Fund established under ORS 468A.490.**

20 **SECTION 14.** ORS 468A.300 is amended to read:

21 468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and  
22 [468A.485] **468A.460** to 468A.515:

23 (1) “Administrator” means the administrator of the United States Environmental Protection  
24 Agency.

25 (2) “Clean Air Act” means P.L. 88-206 as amended.

26 (3) “Federal operating permit program” means the program established by the Environmental  
27 Quality Commission and the Department of Environmental Quality pursuant to ORS 468A.310.

28 (4) “Major source” has the meaning given in section 501(2) of the Clean Air Act.

29 (5) “Title V” means Title V of the Clean Air Act.

30 **SECTION 15.** ORS 468A.305 is amended to read:

31 468A.305. The Legislative Assembly declares the purpose of ORS 184.730, 184.733, 468.065,  
32 468A.020, 468A.040, 468A.045, 468A.155, 468A.300 to 468A.330, 468A.415[,] **and** 468A.420 [*and*  
33 *468A.475 to 468A.520*] is to:

34 (1) [*Insure*] **Ensure** that the state meets its minimum obligations under the Clean Air Act  
35 Amendments of 1990.

36 (2) Avoid direct regulation of industrial sources of air pollution through a federal government  
37 administered permit program.

38 (3) Prevent imposition of Clean Air Act sanctions [*which*] **that** would impound federal highway  
39 funds appropriated for the state and increase emission offset requirements for new and expanding  
40 major industrial sources of air pollution.

41 (4) Provide adequate resources to fully cover the costs of the Department of Environmental  
42 Quality to develop and administer an approvable federal operating permit program in accordance  
43 with the Clean Air Act, including costs of permitting, compliance, rule development, emission in-  
44 ventorying, monitoring and modeling and related activities.

45 **SECTION 16.** ORS 468A.470, 468A.475, 468A.480, 468A.510 and 468A.520 are repealed.

