

Senate Bill 966

Sponsored by Senator PROZANSKI, Representative HOLVEY

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**.

Prohibits open field burning, stack burning, pile burning and propane flaming. Requires registration for open burning of agricultural waste.

Establishes Open Burning Management Account. Continuously appropriates moneys in account to Department of Environmental Quality for smoke management program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to air quality; creating new provisions; amending ORS 307.391, 468.140, 468A.020, 468A.135,
3 468A.550, 468A.555, 468A.560, 468A.570, 468A.595, 468A.597, 468A.600, 468A.605, 468A.610,
4 468A.615, 468A.992, 476.010, 476.380, 478.001, 478.960 and 496.340; repealing ORS 468A.575,
5 468A.580, 468A.585, 468A.590 and 468A.620; appropriating money; and declaring an emergency.

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

7 **SECTION 1.** ORS 468.140 is amended to read:

8 468.140. (1) In addition to any other penalty provided by law, any person who violates any of the
9 following shall incur a civil penalty for each day of violation in the amount prescribed by the
10 schedule adopted under ORS 468.130:

11 (a) The terms or conditions of any permit required or authorized by law and issued by the De-
12 partment of Environmental Quality or a regional air quality control authority.

13 (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
14 454.535, 454.605 to 454.755, ORS chapter 467 and ORS chapters 468, 468A and 468B.

15 (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued
16 pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755,
17 ORS chapter 467 and ORS chapters 468, 468A and 468B.

18 (d) Any term or condition of a variance granted by the commission or department pursuant to
19 ORS 467.060.

20 (e) Any rule or standard or order of a regional authority adopted or issued under authority of
21 ORS 468A.135.

22 (f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related
23 to the financial assurance requirement under ORS 468B.390.

24 (2) Each day of violation under subsection (1) of this section constitutes a separate offense.

25 (3)(a) In addition to any other penalty provided by law, any person who intentionally or
26 negligently causes or permits the discharge of oil into the waters of the state shall incur a civil
27 penalty not to exceed the amount of \$20,000 for each violation.

28 (b) In addition to any other penalty provided by law, the following persons shall incur a civil
29 penalty not to exceed the amount of \$10,000 for each day of violation:

30 (A) Any person who violates the terms or conditions of a permit authorizing waste discharge

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 into the air or waters of the state.

2 (B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040,
3 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B re-
4 lating to air or water pollution.

5 (C) Any person who violates the provisions of a rule adopted or an order issued under ORS
6 459A.590.

7 (4) In addition to any other penalty provided by law, any person who violates the provisions of
8 ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$500 for each day of violation.

9 (5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission
10 standards which are not violations of standards for control of noise emissions.

11 (6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided
12 by law, any person who intentionally or negligently causes or permits open [*field*] burning of **agri-**
13 **cultural waste as defined in ORS 468A.550** contrary to the provisions of ORS 468A.555 to 468A.620
14 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20
15 but not more than \$40 for each [*acre so burned*] **instance of a failure to register an open burning**
16 **of agricultural waste**. Any fines collected by the department pursuant to this subsection shall be
17 deposited with the State Treasurer to the credit of the General Fund and shall be available for
18 general governmental expense. [*As used in this subsection, "open field burning" does not include*
19 *propane flaming of mint stubble.*]

20 **SECTION 2.** ORS 468A.020 is amended to read:

21 468A.020. [(1)] Except as provided in this section and in ORS 476.380 and 478.960, the air pol-
22 lution laws contained in ORS chapters 468, 468A and 468B do not apply to:

23 [(a)] (1) Agricultural operations and the growing or harvesting of crops and the raising of fowls
24 or animals, except [*field*] **that open burning [which] of agricultural waste as defined in ORS**
25 **468A.550** shall be subject to regulation pursuant to ORS 468.140, 468.150, 468A.555 to 468A.620 and
26 468A.992 and this section;

27 [(b)] (2) Use of equipment in agricultural operations in the growth of crops or the raising of
28 fowls or animals, except [*field*] **that open burning [which] of agricultural waste** shall be subject
29 to regulation pursuant to ORS 468.140, 468.150, 468A.555 to 468A.620 and 468A.992 and this section;

30 [(c)] (3) Barbecue equipment used in connection with any residence;

31 [(d)] (4) Agricultural land clearing operations or land grading;

32 [(e)] (5) Heating equipment in or used in connection with residences used exclusively as
33 dwellings for not more than four families, except woodstoves which shall be subject to regulation
34 under this section, ORS 468A.460 to 468A.480, 468A.490 and 468A.515;

35 [(f)] (6) Fires set or permitted by any public agency when such fire is set or permitted in the
36 performance of its official duty for the purpose of weed abatement, prevention or elimination of a
37 fire hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the
38 agency is necessary;

39 [(g)] (7) Fires set pursuant to permit for the purpose of instruction of employees of private in-
40 dustrial concerns in methods of fire fighting, or for civil defense instruction; **or**

41 [(h)] (8) The propagation and raising of nursery stock, except boilers used in connection with
42 the propagation and raising of nursery stock[;].

43 [(i) *The propane flaming of mint stubble; or*

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

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

3 **SECTION 3.** ORS 468A.550 is amended to read:

4 468A.550. [(1)] As used in ORS 468A.555 to 468A.620 and 468A.992:

5 (1) **“Agricultural waste” means any organic waste material generated or used by an ag-**
6 **ricultural operation, excluding:**

7 **(a) Perennial and annual grass seed;**

8 **(b) Cereal grain crops;**

9 **(c) Straw;**

10 **(d) Mint stubble;**

11 **(e) Christmas trees as defined in ORS 571.505; and**

12 **(f) Associated residue generated or used by an agricultural operation.**

13 (2) **“Open burning” means any burning conducted in such a manner that combustion air**
14 **is not effectively controlled and that combustion products are not vented through a stack**
15 **or chimney, including but not limited to burning conducted in open outdoor fires, common**
16 **burn barrels and backyard incinerators.**

17 (3) **“Open burning of agricultural waste” means the burning of agricultural waste mate-**
18 **rial by open burning on any land.**

19 [(a)] (4) “Research and development of alternatives to field burning” includes, but is not limited
20 to, projects concerned with cultural practices for producing grass seed without field burning, envi-
21 ronmental impacts of alternative seed production methods, straw marketing and utilization and al-
22 ternative crops.

23 [(b)] (5) “Smoke management” means the daily control of the conducting of open [*field*] burning
24 **of agricultural waste** to such times and places and in such amounts so as to provide for the escape
25 of smoke and particulate matter therefrom into the atmosphere with minimal intrusion into cities
26 and minimal impact on public health and in such a manner that under existing meteorological con-
27 ditions a maximum [*number of acres*] **amount of registered agricultural waste** can be **open** burned
28 in a minimum number of days without substantial impairment of air quality.

29 [(c)] (6) “Smoke management program” means a plan or system for smoke management. A smoke
30 management program shall include, but not be limited to, provisions for:

31 [(A)] *Annual inventorying and registering, prior to the burning season, of agricultural fields for*
32 *open field burning;*]

33 [(B)] (a) Preparation and issuance of [*open field burning*] permits **for open burning of agri-**
34 **cultural waste** by affected governmental agencies;

35 [(C)] (b) Gathering and disseminating regional and sectional meteorological conditions on a daily
36 or hourly basis;

37 [(D)] (c) Scheduling times, places and amounts of agricultural [*fields*] **waste** that may be open
38 burned daily or hourly, based on meteorological conditions during the burning season;

39 [(E)] (d) Conducting surveillance and gathering and disseminating information on a daily or
40 more frequent basis;

41 [(F)] (e) Effective communications between affected personnel during the burning season; and

42 [(G)] (f) Employment of personnel to conduct the program.

43 [(2) As used in this section, “open field burning” does not include propane flaming of mint stubble
44 or stack or pile burning of residue from Christmas trees, as defined in ORS 571.505.]

45 **SECTION 4.** ORS 468A.555 is amended to read:

1 468A.555. The Legislative Assembly declares it to be the public policy of this state to [*reduce*]
 2 **prohibit** the practice of open field burning **and to reduce the practice of open burning of agri-**
 3 **cultural waste to the maximum extent possible** while developing and providing alternative
 4 methods of field sanitization and alternative methods of utilizing and marketing crop residues.

5 **SECTION 5.** ORS 468A.560 is amended to read:

6 468A.560. [(1) *Except for the fee imposed under ORS 468A.615 (1)(c), the provisions of ORS*
 7 *468A.550 to 468A.620 and 468A.992 shall apply only to open field burning, propane flaming and stack*
 8 *or pile burning of grass seed or cereal grain crop residues on acreage located in the counties specified*
 9 *in ORS 468A.595 (2).*] **The following types of open field burning are prohibited:**

10 (1) **The burning of perennial grass seed crops used for grass seed production;**

11 (2) **The burning of annual grass seed crops used for grass seed production;**

12 (3) **The burning of grain crops;**

13 (4) **The propane flaming of mint stubble; and**

14 (5) **The stack or pile burning of Christmas trees, as defined in ORS 571.505.**

15 [(2) *Nothing in this section shall apply to the propane flaming of mint stubble.*]

16 **SECTION 6.** ORS 468A.570 is amended to read:

17 468A.570. (1) As used in this section:

18 (a) "Marginal conditions" means atmospheric conditions such that smoke and particulate matter
 19 escape into the upper atmosphere with some difficulty but not such that limited additional smoke
 20 and particulate matter would constitute a danger to the public health and safety.

21 (b) "Marginal day" means a day on which marginal conditions exist.

22 (2) For purposes of ORS 476.380 and 478.960, the Environmental Quality Commission shall clas-
 23 sify different types or combinations of atmospheric conditions as marginal conditions and shall
 24 specify the extent [*and types*] of **open burning of agricultural waste** that may be allowed under
 25 different combinations of atmospheric conditions. A schedule describing the [*types and*] extent of
 26 **open burning of agricultural waste** to be permitted on each type of marginal day shall be prepared
 27 and circulated to all public agencies responsible for providing information and issuing permits under
 28 ORS 476.380 and 478.960. The schedule shall [*give first priority to the burning of perennial grass seed*
 29 *crops used for grass seed production, second priority to annual grass seed crops used for grass seed*
 30 *production, third priority to grain crop burning, and fourth priority to all other burning and shall*]
 31 prescribe duration of periods of time during the day when **open burning of agricultural waste** is
 32 authorized.

33 [(3) *In preparing the schedule under subsection (2) of this section, the commission shall provide for*
 34 *the assignment of fourth priority burning by the State Department of Agriculture in accordance with*
 35 *the memorandum of understanding established pursuant to ORS 468A.585.*]

36 [(4)] (3) In preparing the schedule required under subsection (2) of this section, the commission
 37 shall weigh the economic consequences of scheduled **open** burnings and the feasibility of alternative
 38 actions, and shall consider weather conditions and other factors necessary to protect the public
 39 health and welfare.

40 [(5)] (4) [*None of*] The functions of the commission under this section or under ORS 476.380 or
 41 478.960, as it relates to [*agricultural*] **open burning of agricultural waste**, [*shall*] **may** be performed
 42 by any regional air quality control authority established under ORS 468A.105.

43 **SECTION 7.** ORS 468A.595 is amended to read:

44 468A.595. In order to regulate open [*field*] burning of **agricultural waste** pursuant to ORS
 45 468A.610:

1 (1) In such areas of the state and for such periods of time as it considers necessary to carry out
 2 the policy of ORS 468A.010, the Environmental Quality Commission by rule may prohibit, restrict
 3 or limit [*classes, types and*] **the extent and amount of open burning of agricultural waste** [*burning*
 4 *for perennial grass seed crops, annual grass seed crops and grain crops*].

5 (2) In addition to but not in lieu of the provisions of ORS 468A.610 and of any other rule adopted
 6 under subsection (1) of this section, the commission shall adopt rules for Multnomah, Washington,
 7 Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, which provide for a more rapid
 8 phased reduction by certain permit areas, depending on particular local air quality conditions and
 9 soil characteristics, the extent[, *type*] or amount of open [*field*] burning of [*perennial grass seed crops,*
 10 *annual grass seed crops and grain crops*] **agricultural waste** and the availability of alternative
 11 methods of field sanitation [*and straw utilization and disposal*].

12 (3) Before promulgating rules pursuant to subsections (1) and (2) of this section, the commission
 13 shall consult with Oregon State University and may consult with the United States Natural Re-
 14 sources Conservation Service, or its successor agency, the Agricultural Stabilization Commission,
 15 the state Soil and Water Conservation Commission and other interested agencies. The Department
 16 of Environmental Quality shall advise the commission in the promulgation of such rules. The com-
 17 mission must review and show on the record the recommendations of the department in
 18 promulgating such rules.

19 [(4) *No regional air quality control authority shall have authority to regulate burning of perennial*
 20 *grass seed crops, annual grass seed crops and grain crops.*]

21 [(5)] (4) Any amendments to the State Implementation Plan prepared by the state pursuant to
 22 the federal Clean Air Act, as enacted by Congress, December 31, 1970, and as amended by Congress
 23 August 7, 1977, and November 15, 1990, and Acts amendatory thereto shall be only of such suffi-
 24 ciency as to gain approval of the amendment by the United States Environmental Protection Agency
 25 and shall not include rules promulgated by the commission pursuant to subsection (1) of this section
 26 not necessary for attainment of national ambient air quality standards.

27 **SECTION 8.** ORS 468A.597 is amended to read:

28 468A.597. Unless otherwise specifically agreed by the parties, after straw is removed from the
 29 fields of the grower, the responsibility for the further disposition of the straw[, *including burning*
 30 *or disposal,*] **in a manner provided by the Environmental Quality Commission** shall be upon the
 31 person who bales or removes the straw.

32 **SECTION 9.** ORS 468A.600 is amended to read:

33 468A.600. The Environmental Quality Commission shall establish standards of practice and per-
 34 formance for open [*field*] burning[, *propane flaming, stack or pile burning*] **of agricultural waste** and
 35 certified alternative methods to open [*field*] burning **of agricultural waste**.

36 **SECTION 10.** ORS 468A.610 is amended to read:

37 468A.610. (1) [*Except as provided under ORS 468A.620,*] No person shall open burn, or cause to
 38 be open burned, [*propane flamed or stack or pile burned in the counties specified in ORS 468A.595 (2),*
 39 *perennial or annual grass seed crop or cereal grain crop residue, unless the acreage has been regis-*
 40 *tered under ORS 468A.615 and*] **any agricultural waste unless** the permits required by ORS
 41 [468A.575,] 476.380 and 478.960 have been obtained.

42 [(2) *The maximum total registered acreage allowed to be open burned per year pursuant to sub-*
 43 *section (1) of this section shall be:*]

44 [(a) *For 1991, 180,000 acres.*]

45 [(b) *For 1992 and 1993, 140,000 acres.*]

1 [(c) For 1994 and 1995, 120,000 acres.]

2 [(d) For 1996 and 1997, 100,000 acres.]

3 [(e) For 1998 and thereafter, 40,000 acres.]

4 [(3) The maximum total acreage allowed to be propane flamed under subsection (1) of this section
5 shall be:]

6 [(a) In 1991 through 1997, 75,000 acres per year; and]

7 [(b) In 1998 and thereafter, 37,500 acres per year may be propane flamed.]

8 [(4)(a) After January 1, 1998, fields shall be prepared for propane flaming by removing all loose
9 straw or vacuuming or prepared using other techniques approved by rule by the Environmental Quality
10 Commission.]

11 [(b) After January 1, 1998, propane equipment shall satisfy best available technology.]

12 [(5) Notwithstanding the limitations set forth in subsection (2) of this section, in 1991 and there-
13 after, a maximum of 25,000 acres of steep terrain and species identified by the Director of Agriculture
14 by rule may be open burned and shall not be included in the maximum total permitted acreage.]

15 [(6) Acreage registered to be open burned under this section may be propane flamed at the regis-
16 trant's discretion without reregistering the acreage.]

17 [(7) In the event of the registration of more than the maximum allowable acres for open burning
18 in the counties specified in ORS 468A.595 (2), after 1996, the commission, after consultation with the
19 State Department of Agriculture, by rule or order may assign priority of permits based on soil char-
20 acteristics, the crop type, terrain or drainage.]

21 [(8)] **(2) In addition to the requirements of ORS 476.380 and 478.960, permits [shall be issued
22 and burning shall be allowed for the maximum acreage specified in subsection (2) of this section
23 unless] described in subsection (1) of this section shall be issued pursuant to rules established
24 by the Environmental Quality Commission. Open burning of agricultural waste shall be al-
25 lowed for the maximum amount of agricultural waste specified in a permit unless:**

26 (a) The daily determination of suitability of meteorological conditions, regional or local air
27 quality conditions or other burning conditions requires that a maximum [number of acres] **amount
28 of agricultural waste** not be **open** burned on a given day; or

29 (b) The commission finds after hearing that other reasonable and economically feasible, envi-
30 ronmentally acceptable alternatives to the practice of annual open [field] burning **of agricultural
31 waste** have been developed.

32 [(9)] **(3) Upon a finding of extreme danger to public health or safety, the commission may order
33 temporary emergency cessation of all open [field] burning[, propane flaming or stack or pile burning
34 in any area of the counties listed in ORS 468A.595 (2)] of agricultural waste, or any other form
35 of agricultural burning permitted by statute or rule.**

36 [(10)] **(4) The commission shall act on any application for a permit under [ORS 468A.575] this
37 section within 60 days of registration and receipt of the fee required under ORS 468A.615. The
38 commission may order emergency cessation of open [field] burning of agricultural waste at any
39 time. Any other decision required under this section must be made by the commission on or before
40 June 1 of each year.**

41 **SECTION 11.** ORS 468A.615 is amended to read:

42 468A.615. (1)[(a)] On or before April 1 of each year, [the grower of a grass seed crop] **a person
43 intending to engage in the open burning of agricultural waste** shall register with the county
44 court or board of county commissioners, the fire chief of a rural fire protection district, the desig-
45 nated representative of the fire chief or other responsible persons the [number of acres] **amount of**

1 **agricultural waste** to be open burned [*or propane flamed*] in the remainder of the year. [*At the time*
 2 *of registration,*] The Department of Environmental Quality shall [*collect a nonrefundable fee of \$2 per*
 3 *acre registered to be sanitized by open burning or \$1 per acre to be sanitized by propane flaming.*]
 4 **establish a schedule of fees to be paid by registrants based on the amount of agricultural**
 5 **waste to be open burned.** The department may contract with counties and rural fire protection
 6 districts or other responsible persons for the collection of [*the*] **registration** fees which shall be
 7 forwarded to the department. [*Any*] **The department may require an additional fee from a** person
 8 registering after April 1 of each year [*shall pay an additional fee of \$1 per acre registered*] if the late
 9 registration is due to the fault of the late registrant or one under the control of the late registrant.
 10 Late registrations must be approved by the department. Copies of the registration form shall be
 11 forwarded to the department. The required registration must be made and the fee paid before a
 12 permit shall be issued under ORS [468A.575] **468A.610.**

13 [*(b) Except as provided in paragraph (d) of this subsection, the department shall collect a fee in*
 14 *accordance with paragraph (c) of this subsection for issuing a permit for open burning, propane flam-*
 15 *ing or stack or pile burning of perennial or annual grass seed crop or cereal grain crop residue under*
 16 *ORS 468A.555 to 468A.620 and 468A.992. The department may contract with counties and rural fire*
 17 *protection districts or other responsible persons for the collection of the fees which shall be forwarded*
 18 *to the department.*]

19 [*(c) The fee required under paragraph (b) of this subsection shall be paid within 10 days after a*
 20 *permit is issued and shall be:*]

21 [(A) \$8 per acre of crop sanitized by open burning in the counties specified in ORS 468A.595
 22 (2);]

23 [(B) \$4 per acre of perennial or annual grass seed crop sanitized by open burning in any county
 24 not specified in ORS 468A.595 (2);]

25 [(C) \$2 per acre of crop sanitized by propane flaming;]

26 [(D) For acreage from which 100 percent of the straw is removed and burned in stacks or piles:]

27 [(i) \$2 per acre from January 1, 1992, to December 31, 1997;]

28 [(ii) \$4 per acre in 1998;]

29 [(iii) \$6 per acre in 1999;]

30 [(iv) \$8 per acre in 2000; and]

31 [(v) \$10 per acre in 2001 and thereafter; and]

32 [(E) For acreage from which less than 100 percent of the straw is removed and burned in stacks
 33 or piles, the same per acre as the fee imposed under subparagraph (D) of this paragraph, but with a
 34 reduction in the amount of acreage for which the fee is charged by the same percentage as the reduction
 35 in the amount of straw to be burned.]

36 [(d) The fee required by paragraph (b) of this subsection shall not be charged for any acreage
 37 where efficient burning of stubble is accomplished with equipment certified by the department for field
 38 sanitizing purposes or with any other certified alternative method to open field burning, propane
 39 flaming or stack or pile burning. The fee required by paragraph (b) of this subsection shall not be
 40 charged for any acreage not harvested prior to burning or for any acreage not burned.]

41 (2) All fees collected under this section shall be deposited in the State Treasury to the credit
 42 [*of the Department of Agriculture Service Fund*] **of the Open Burning Management Account es-**
 43 **established under section 21 of this 2007 Act.** Such moneys are continuously appropriated to the
 44 [*State Department of Agriculture*] **Department of Environmental Quality** for the purpose of car-
 45 rying out the duties and responsibilities [*carried out by the State Department of Agriculture*] **of the**

1 **department** pursuant to *[the memorandum of understanding established under ORS 468A.585]* **the**
 2 **provisions of ORS 468A.555 to 468A.620 and 468A.992.**

3 (3) It is the intention of the Legislative Assembly that the programs for smoke management, air
 4 quality monitoring and the enforcement of rules under ORS 468A.550 to 468A.620 and 468A.992 be
 5 operated **by the department** in a manner that maximizes the resources available for the research
 6 and development program. Therefore, with regard to the disbursement of funds collected under
 7 subsection (1) of this section, the *[State Department of Agriculture]* **department** shall act in ac-
 8 cordance with the intent of the Legislative Assembly and shall:

9 (a) Pay an amount **based on the number of permits issued and amount of agricultural**
 10 **waste open burned in each rural fire protection district** to the county or board of county com-
 11 missioners or the fire chief of the rural fire protection district or other responsible person, *for each*
 12 *fire protection district, \$1 per acre registered for each of the first 5,000 acres registered for open field*
 13 *burning and propane flaming in the district, 75 cents per acre registered for each of the second 5,000*
 14 *acres registered in the district and 35 cents per acre registered for all acreage registered in the district*
 15 *in excess of 10,000 acres,* to cover the cost of and to be used solely for the purpose of administering
 16 the program of registration of *[acreage]* **agricultural waste** to be **open** burned, issuance of permits,
 17 keeping of records and other matters directly related to *[agricultural field]* **open burning of agri-**
 18 **cultural waste.** *[For each acre from which straw is removed and burned in stacks or piles, the State*
 19 *Department of Agriculture shall pay to the county or board of county commissioners, or the fire chief*
 20 *of the rural fire protection district or other responsible person, 25 cents per acre.]*

21 (b) Designate an amount to be used for the smoke management program. The *[State Department*
 22 *of Agriculture]* **department** by contract with the Oregon Seed Council or otherwise shall organize
 23 rural fire protection districts and growers, coordinate and provide communications, hire ground
 24 support personnel, provide aircraft surveillance and provide such added support services as are
 25 necessary.

26 (c) Retain funds *[for the operation and maintenance of the Willamette Valley field burning air*
 27 *quality impact monitoring network and]* to insure adequate enforcement of rules established by the
 28 Environmental Quality Commission governing standards of practice for open *[field]* burning, *propane*
 29 *flaming and stack or pile burning]* **of agricultural waste.**

30 *[(d) Of the remaining funds, designate an amount to be used for additional funding for research*
 31 *and development proposals described in the plan developed pursuant to section 15, chapter 920, Oregon*
 32 *Laws 1991.]*

33 **SECTION 12.** ORS 476.010 is amended to read:

34 476.010. (1) As used in ORS 476.010 to 476.115, 476.150 to 476.170 and 476.210 to 476.270, “al-
 35 terations,” “construction,” “family,” “hospital,” “occupancy” and “private residence” have the
 36 meanings given those terms in ORS 479.168.

37 (2) As used in ORS 476.030 and other laws relating to the duties of the State Fire Marshal,
 38 “governmental subdivision” means a city, county, municipal corporation, quasi-municipal corporation
 39 and rural fire protection district, created under the laws of Oregon.

40 (3) As used in ORS 476.380:

41 (a) **“Agricultural waste” means any organic waste material generated or used by an ag-**
 42 **ricultural operation, excluding:**

43 (A) **Perennial and annual grass seed;**

44 (B) **Cereal grain crops;**

45 (C) **Straw;**

1 **(D) Mint stubble;**

2 **(E) Christmas trees as defined in ORS 571.575; and**

3 **(F) Associated residue generated or used by an agricultural operation.**

4 [(a)] **(b)** “Commercial waste”:

5 (A) Means any waste produced in any business involving the lease or sale, including wholesale
6 and retail, of goods or services, including but not limited to housing.

7 (B) Means any waste produced by a governmental, educational or charitable institution.

8 (C) Does not include any waste produced in a dwelling containing four living units or less.

9 [(b)] **(c)** “Demolition material” means any waste resulting from the complete or partial de-
10 struction of any man-made structure, such as a house, apartment, commercial building or industrial
11 building.

12 [(c)] **(d)** “Domestic waste” means any nonputrescible waste, consisting of combustible materials,
13 such as paper, cardboard, yard clippings, wood or similar materials, generated in a dwelling, in-
14 cluding the real property upon which it is situated, containing four living units or less.

15 [(d)] “*Field burning*” means the burning of any grass field, grain field, pasture, rangeland or other
16 field by open burning or by use of mobile equipment or flaming equipment on any land or
17 vegetation.]

18 (e) “Industrial waste” means any waste resulting from any process or activity of manufacturing
19 or construction.

20 (f) “Land clearing debris” means any waste generated by the removal of debris, logs, trees, brush
21 or demolition material from any site in preparation for land improvement or construction projects.

22 (g) “Open burning” means any burning conducted in such a manner that combustion air is not
23 effectively controlled and that combustion products are not vented through a stack or chimney, in-
24 cluding but not limited to burning conducted in open outdoor fires, common burn barrels and back-
25 yard incinerators.

26 **(h) “Open burning of agricultural waste” means the burning of agricultural waste mate-
27 rial by open burning on any land.**

28 **SECTION 13.** ORS 476.380 is amended to read:

29 476.380. (1) No person, outside the boundaries of a rural fire protection district or a forest pro-
30 tection district, shall cause or permit to be initiated or maintained on the property of the person,
31 or cause to be initiated or maintained on the property of another any open burning of **agricultural**
32 **waste**, commercial waste, demolition material, domestic waste, industrial waste[,] **or** land clearing
33 debris [*or field burning*] without first securing a permit from the county court or board of county
34 commissioners.

35 (2) The county court or board of county commissioners, or its designated representative, shall
36 prescribe conditions for issuance of any permit and shall refuse, revoke or postpone issuance of
37 permits when necessary to prevent danger to life or property or to protect the air resources of this
38 state. The Environmental Quality Commission shall notify the State Fire Marshal of the [*type of*
39 *and*] time for **open** burning [*to be*] **of agricultural waste** allowed on each day under schedules
40 adopted pursuant to ORS 468A.570 and 468A.595. The State Fire Marshal shall cause all county
41 courts and boards of county commissioners or their designated representatives in the affected areas
42 to be notified of the [*type of and*] time for **open** burning to be allowed on each day and of any re-
43 visions of such conditions during each day. The county court, board or representative shall issue
44 permits only in accordance with schedules of the Environmental Quality Commission adopted pur-
45 suant to this section and ORS 468A.555 to 468A.620 and 468A.992, 476.990, 478.960 and 478.990 but

1 may reduce the hours allowed for burning if necessary to prevent danger to life or property from
 2 fire. The State Fire Marshal may refuse or postpone permits when necessary in the judgment of the
 3 State Fire Marshal to prevent danger to life or property from fire, notwithstanding any determi-
 4 nation by the county court or board of county commissioners or its designated officer.
 5 *[Notwithstanding any other provision of this subsection, for a permit for the propane flaming of mint*
 6 *stubble, the county court or board of county commissioners, or its designated representative may only*
 7 *prescribe conditions necessary to prevent the spread of fire or to prevent endangering life or property*
 8 *and may refuse, revoke or postpone permission to conduct the propane flaming only when necessary to*
 9 *prevent danger to life or property from fire.]*

10 (3) Nothing in this section:

11 (a) Requires permission for starting a campfire in a manner otherwise lawful.

12 (b) Relieves a person starting a fire from responsibility for providing adequate protection to
 13 prevent injury or damage to the property of another. If such burning results in the escape of fire
 14 and injury or damage to the property of another, such escape and damage or injury constitutes
 15 prima facie evidence that the burning was not safe.

16 (c) Relieves a person who has obtained permission to start a fire, or the agent of the person,
 17 from legal liability for property damage resulting from the fire.

18 (d) Permits an act within a city or regional air quality control authority area that otherwise is
 19 unlawful pursuant to an ordinance of the city or rule, regulation or order of the regional authority.

20 (4) The county court or board of county commissioners shall maintain records of all permits and
 21 the conditions thereof, if any, that are issued under this section and shall submit at such times, as
 22 the Environmental Quality Commission shall require such records or summaries thereof to the
 23 commission. The Environmental Quality Commission shall provide forms for the reports required
 24 under this subsection.

25 **SECTION 14.** ORS 478.001 is amended to read:

26 478.001. (1) As used in this chapter, unless the context requires otherwise:

27 (a) "Board of directors" or "district board" means the governing body of a district.

28 (b) "County" means the county in which the district, or the greater portion of the taxable as-
 29 sessed value of the district, is located.

30 (c) "County board" means the county court or board of county commissioners of the county.

31 (d) "District" means a rural fire protection district proposed to be organized or organized under,
 32 or subject to, this chapter.

33 (e) "Owner" or "landowner" means a legal owner of real property or the vendee of a contract
 34 of purchase of real property, if any, to the exclusion of the vendor. The term includes a unit owner,
 35 as defined in ORS 100.005.

36 (2) As used in ORS 478.960:

37 (a) **"Agricultural waste" means any organic waste material generated or used by an ag-**
 38 **ricultural operation, excluding:**

39 **(A) Perennial and annual grass seed;**

40 **(B) Cereal grain crops;**

41 **(C) Straw;**

42 **(D) Mint stubble;**

43 **(E) Christmas trees as defined at ORS 571.505; and**

44 **(F) Associated residue generated or used by an agricultural operation.**

45 [(a)] (b) "Commercial waste" means any waste produced in any business involving the lease or

1 sale, including wholesale and retail, of goods or services, including but not limited to housing, and
 2 means any waste produced by a governmental, educational or charitable institution; however, it does
 3 not include any waste produced in a dwelling containing four living units or less.

4 [(b)] (c) “Demolition material” means any waste resulting from the complete or partial de-
 5 struction of any man-made structure such as a house, apartment, commercial building or industrial
 6 building.

7 [(c)] (d) “Domestic waste” means any nonputrescible waste, consisting of combustible materials,
 8 such as paper, cardboard, yard clippings, wood, or similar materials, generated in a dwelling, in-
 9 cluding the real property upon which it is situated, containing four living units or less.

10 [(d)] “*Field burning*” means the burning of any grass field, grain field, pasture, rangeland or other
 11 field by open burning or by use of mobile equipment or flaming equipment on any land or
 12 vegetation.]

13 (e) “Industrial waste” means any waste resulting from any process or activity of manufacturing
 14 or construction.

15 (f) “Land clearing debris” means any waste generated by the removal of debris, logs, trees, brush
 16 or demolition material from any site in preparation for land improvement or construction projects.

17 (g) “Open burning” means any burning conducted in such a manner that combustion air is not
 18 effectively controlled and that combustion products are not vented through a stack or chimney, in-
 19 cluding but not limited to burning conducted in open outdoor fires, common burn barrels and back-
 20 yard incinerators.

21 **(h) “Open burning of agricultural waste” means the burning of agricultural waste mate-**
 22 **rial by open burning on any land.**

23 **SECTION 15.** ORS 478.960 is amended to read:

24 478.960. (1) No one, within the boundaries of a district, shall cause or permit to be initiated or
 25 maintained on one’s own property, or cause to be initiated or maintained on the property of another,
 26 any open burning of **agricultural waste**, commercial waste, demolition material, domestic waste,
 27 industrial waste[,] **or** land clearing debris [*or field burning*] without first securing permission from
 28 the fire chief of the district and complying with the direction of the fire chief. A deputy of a fire
 29 chief has the power to perform any act or duty of the fire chief under this section.

30 (2) The fire chief shall prescribe conditions upon which permission is granted and which are
 31 necessary to be observed in setting the fire and preventing it from spreading and endangering life
 32 or property or endangering the air resources of this state. The Environmental Quality Commission
 33 shall notify the State Fire Marshal of the [*type of and*] time for **open** burning to be allowed on each
 34 day under schedules adopted pursuant to ORS 468A.570 and ORS 468A.595. The State Fire Marshal
 35 shall cause all fire chiefs and their deputies in the affected area to be notified of the [*type and*] time
 36 for **open** burning to be allowed on each day with updating messages each day as required. A fire
 37 chief or deputy shall grant permission only in accordance with the schedule of the Environmental
 38 Quality Commission but may reduce hours to be allowed for **open** burning if necessary to prevent
 39 danger to life or property from fire. The State Fire Marshal may refuse, revoke or postpone per-
 40 mission when necessary in the judgment of the State Fire Marshal to prevent danger to life or
 41 property from fire, notwithstanding any determination by the fire chief.

42 (3) Nothing in this section relieves a person starting a fire from responsibility for providing
 43 adequate protection to prevent injury or damage to the person or property of another. If such **open**
 44 burning results in the escape of fire and injury or damage to the person or property of another, such
 45 escape and damage or injury constitutes prima facie evidence that the **open** burning was not safe.

1 (4) Within a district, no person shall, during the fire season declared under ORS 477.505, operate
 2 any equipment in forest harvesting or agricultural operations powered by an internal combustion
 3 engine on or within one-eighth of one mile of forestland unless each piece of equipment is provided
 4 with a fire extinguisher of sufficient size and capacity and with such other tools and fire-fighting
 5 equipment as may be reasonably required by the fire chief of the district. The provisions of this
 6 subsection do not apply to machinery regulated by ORS chapter 477.

7 (5) No person shall dispose of any building or building wreckage within a district by fire without
 8 having first secured permission therefor from the fire chief. No person shall refuse to comply with
 9 any reasonable requirements of the fire chief as to the safeguarding of such fire from spreading.

10 (6) This section is not intended to limit the authority of a district to adopt a fire prevention code
 11 as provided in ORS 478.910 to 478.940 or to issue permits when the **open** burning is done by me-
 12 chanical burners fired by liquid petroleum gas.

13 (7) The fire chief shall maintain records of all permits and the conditions thereof, if any, that
 14 are issued for *[field]* **open burning of agricultural waste** under this section and shall submit at such
 15 times, as the Environmental Quality Commission shall require, such records or summaries thereof
 16 to the commission. The Environmental Quality Commission shall provide forms for the reports re-
 17 quired under this subsection.

18 (8) Notwithstanding any other provision of this section[.],

19 *[(a)]* a permit is required for *[field]* **open burning of agricultural waste** authorized pursuant to
 20 ORS 468A.550 to 468A.620 and 468A.992.

21 *[(b) For a permit for the propane flaming of mint stubble, the fire chief may only prescribe condi-
 22 tions necessary to prevent the spread of fire or to prevent endangering life or property and may refuse,
 23 revoke or postpone permission to conduct the propane flaming only when necessary to prevent danger
 24 to life or property from fire.]*

25 **SECTION 16.** ORS 496.340 is amended to read:

26 496.340. (1) Except as provided in subsection (3) of this section, whenever real property owned
 27 by the State Fish and Wildlife Commission is exempt from taxation on January 1 of any year by
 28 reason of its ownership by the state, the commission shall pay to the county in which the property
 29 is situated an amount equal to the ad valorem taxes that would have been charged against the
 30 property if it had been assessed to a taxable owner as of January 1 of such year as provided in
 31 subsection (2) of this section. The county assessor shall determine the value of such property and
 32 shall notify the commission of the determination of the county assessor. Upon request of the com-
 33 mission, the Department of Revenue shall review the determination of value and shall redetermine
 34 the value if it concludes the value initially determined was substantially incorrect.

35 (2)(a) Except as provided in paragraph (b) *[or (c)]* of this subsection, the value of the property
 36 shall be computed at its assessed value under ORS 308A.107 or for forestland use, whichever is ap-
 37 plicable.

38 *[(b) Paragraph (a) of this subsection shall not apply to any property upon which open field burning
 39 takes place. If open field burning takes place on any property described in this section, the property
 40 shall be valued at its highest and best use rather than the values authorized in paragraph (a) of this
 41 subsection on the January 1 following the date of the open field burning. If in the next year, the open
 42 field burning is discontinued, paragraph (a) of this subsection shall apply the next January 1 and each
 43 year thereafter as long as no open field burning occurs.]*

44 *[(c)]* (b) Paragraph (a) of this subsection shall not apply to any property acquired by the com-
 45 mission after September 9, 1971, if such property was valued under farm use or forestland use spe-

1 cial assessment provisions, at the time the property was acquired by the commission. However, no
 2 payments in lieu of taxes made to a county pursuant to this section prior to January 1, 1974, shall
 3 be refunded to the commission.

4 (3) This section does not apply to real property used for bird farms, fish hatcheries, office
 5 quarters, fishing access sites or impoundments, capital improvements or real property acquired
 6 pursuant to the Act of May 19, 1948 (62 Stat. 240), Public Law 80-537.

7 (4) The amount prescribed in subsection (1) of this section shall be determined annually by the
 8 assessor of the county in which the property is situated and certified by the assessor to the county
 9 court or the board of county commissioners. A notice of the determination, signed by the county
 10 judge or the chairperson of the board of county commissioners, shall be mailed to the principal office
 11 of the commission not later than October 15. The notice shall contain a statement of the value of
 12 the property and a complete explanation of the method used in computing the amount claimed pur-
 13 suant to subsection (1) of this section. Not later than November 15, the commission shall pay each
 14 amount, less a discount equivalent to that which is provided in ORS 311.505. Payment shall be made
 15 to the county treasurer, who shall distribute the payment to the taxing districts of the county in
 16 accordance with the schedule of percentages computed under ORS 311.390.

17 (5) Notwithstanding any other provision of the wildlife laws, the commission shall make the
 18 payments to counties required by this section annually from the moneys in the State Wildlife Fund
 19 established by ORS 496.300.

20 **SECTION 17.** ORS 468A.992 is amended to read:

21 468A.992. [(1)] In addition to any liability or penalty provided by law, the [State] Department of
 22 [Agriculture] **Environmental Quality** may impose a civil penalty on any person who fails to comply
 23 with a provision of ORS 468A.555 to 468A.620 or any rule adopted thereunder, or a permit issued
 24 under ORS 468A.555 to 468A.620, relating to open [field] burning **of agricultural waste**.

25 [(2) *The State Department of Agriculture shall impose any civil penalty under this section in the*
 26 *same manner as the Department of Environmental Quality imposes and collects a civil penalty under*
 27 *ORS 468.140.*]

28 **SECTION 18.** ORS 307.391 is amended to read:

29 307.391. Radio communications equipment, meteorological equipment or other tangible personal
 30 property used in connection with the operation of the [field] **open** burning smoke management pro-
 31 gram established under ORS 468A.555 to 468A.620 and 468A.992 is exempt from ad valorem property
 32 taxation.

33 **SECTION 19.** ORS 468A.135 is amended to read:

34 468A.135. (1) When authorized to do so by the Environmental Quality Commission, a regional
 35 authority formed under ORS 468A.105 shall exercise the functions relating to air pollution control
 36 vested in the commission and the Department of Environmental Quality by ORS 468.020, 468.035,
 37 468.065, 468.070, 468.090, 468.095, 468.120, 468.140, 468A.025, 468A.040, 468A.050, 468A.055, 468A.065,
 38 468A.070 and 468A.700 to 468A.755 insofar as such functions are applicable to the conditions and
 39 situations of the territory within the regional authority. The regional authority shall carry out these
 40 functions in the manner provided for the commission and the department to carry out the same
 41 functions. Such functions may be exercised over both incorporated and unincorporated areas within
 42 the territory of the regional authority, regardless of whether the governing body of a city within the
 43 territory of the region is participating in the regional authority.

44 (2) No regional authority is authorized to establish or alter areas or to adopt any rule or
 45 standard that is less strict than any rule or standard of the commission. The regional authority must

1 submit to the commission for its approval all air quality standards adopted by the regional authority
 2 prior to enforcing any such standards.

3 (3) Subject to ORS 468A.140, 468A.145 and 468A.165, when a regional authority is exercising
 4 functions under subsection (1) of this section, the commission and the department shall not exercise
 5 the same functions in the same territory. The regional authority’s jurisdiction shall be exclusive.
 6 The regional authority shall enforce rules and standards of the commission as required to do so by
 7 the commission.

8 (4) The commission and the regional authorities may regulate, limit, control or prohibit by rule
 9 all air contamination sources not otherwise exempt within their respective jurisdictions. However,
 10 *[field]* **open burning of agricultural waste** and forestland burning shall be regulated by the com-
 11 mission and fire permit agencies as provided in ORS 468A.555 to 468A.620 and 468A.992, 476.380,
 12 477.505 to 477.562 and 478.960.

13 **SECTION 20.** ORS 468A.605 is amended to read:

14 468A.605. The Department of Environmental Quality, in coordinating efforts under ORS 468.140,
 15 468.150, 468A.020, 468A.555 to 468A.620 and 468A.992, shall:

16 (1) Enforce all *[field]* **open** burning rules adopted by the Environmental Quality Commission and
 17 all related statutes; and

18 (2) Monitor and prevent unlawful *[field]* **open** burning.

19 **SECTION 21.** **The Open Burning Management Account is established separate and dis-**
 20 **tinguish from the General Fund. Moneys in the Open Burning Management Account are con-**
 21 **tinuously appropriated to the Department of Environmental Quality and may be used only**
 22 **to pay the administrative expenses of carrying out the provisions of ORS 468A.555 to 468A.620**
 23 **and 468A.992. Interest earned by the account shall be credited to the account.**

24 **SECTION 22.** ORS 468A.575, 468A.580, 468A.585, 468A.590 and 468A.620 are repealed.

25 **SECTION 23.** **This 2007 Act being necessary for the immediate preservation of the public**
 26 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
 27 **on its passage.**

28