

House Bill 2183

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Environmental Quality)

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**.

Allows Environmental Quality Commission to adopt rules listing additional counties to be covered by statutes relating to field burning. Modifies acreage that may be burned. Allows commission by order to permit emergency burning under certain conditions. Modifies fees for burning. Allows Department of Environmental Quality to evaluate burning programs.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to field burning; creating new provisions; amending ORS 468A.560, 468A.575, 468A.580,
3 468A.585, 468A.595, 468A.610 and 468A.615; and declaring an emergency.

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

5 **SECTION 1.** 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 spec-*
9 *ified in ORS 468A.595 (2)*] **Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn,**
10 **Benton and Lane Counties.**

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

12 **(2) As necessary to implement the federal Clean Air Act, P.L. 88-206, as in effect on the**
13 **effective date of this 2009 Act, the Environmental Quality Commission by rule may list**
14 **counties, in addition to those listed in subsection (1) of this section, to which the provisions**
15 **of ORS 468A.550 to 468A.620 and 468A.992 apply as specified in subsection (1) of this section.**
16 **The acreage restrictions in ORS 468A.610 (2), (3) and (5) do not apply to counties listed in any**
17 **rule adopted by the commission, except that the commission by rule may establish acreage**
18 **limitations as necessary to implement the federal Clean Air Act, P.L. 88-206, as in effect on**
19 **the effective date of this 2009 Act.**

20 **SECTION 2.** ORS 468A.575 is amended to read:

21 468A.575. (1) Permits for open burning, propane flaming or stack or pile burning of the residue
22 from perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the
23 counties listed in ORS [*468A.595 (2)*] **468A.560 (1) and in the counties listed in any rule adopted**
24 **by the Environmental Quality Commission pursuant to ORS 468A.560 (2).** [*and*] **Permits** shall
25 be issued in accordance with rules adopted by the Environmental Quality Commission and subject
26 to the fee prescribed in ORS 468A.615. The permit described in this section shall be issued in con-
27 junction with permits required under ORS 476.380 or 478.960.

28 (2) By rule the Environmental Quality Commission may delegate to any county court, board of
29 county commissioners, fire chief of a rural fire protection district or other responsible person the

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 duty to deliver permits to burn acreage if the acreage has been registered under ORS 468A.615 and
 2 fees have been paid as required in ORS 468A.615.

3 **SECTION 3.** ORS 468A.580 is amended to read:

4 468A.580. (1) Permits under ORS 468A.575 for open field burning of cereal grain crops shall be
 5 issued in the counties listed in ORS [468A.595 (2)] **468A.560 (1) and in the counties listed in any**
 6 **rule adopted by the Environmental Quality Commission pursuant to ORS 468A.560 (2)** only if
 7 the person seeking the permit submits to the issuing authority a signed statement under oath or
 8 affirmation that the acreage to be burned will be planted to seed crops other than cereal grains
 9 which require flame sanitation for proper cultivation.

10 (2) The Department of Environmental Quality shall inspect cereal grain crop acreage burned
 11 under subsection (1) of this section after planting in the following spring to determine compliance
 12 with subsection (1) of this section.

13 (3) Any person planting contrary to the restrictions of subsection (1) of this section shall be
 14 assessed by the department a civil penalty of \$25 for each acre planted contrary to the restrictions.
 15 Any fines collected by the department under this subsection shall be deposited by the State Treas-
 16 urer in the Department of Agriculture Service Fund to be used in carrying out the smoke manage-
 17 ment program in cooperation with the Oregon Seed Council and for administration of this section.

18 (4) Any person planting seed crops after burning cereal grain crops under subsection (1) of this
 19 section may apply to the department for permission to plant contrary to the restrictions of sub-
 20 section (1) of this section if the seed crop fails to grow. The department may allow planting contrary
 21 to the restrictions of subsection (1) of this section if the crop failure occurred by reasons other than
 22 the negligence or intentional act of the person planting the crop or one under the control of the
 23 person planting the crop.

24 **SECTION 4.** ORS 468A.585 is amended to read:

25 468A.585. (1) The Environmental Quality Commission shall enter into a memorandum of under-
 26 standing with the State Department of Agriculture that provides for the State Department of Agri-
 27 culture to operate all of the field burning program.

28 (2) Subject to the terms of the memorandum of understanding required by subsection (1) of this
 29 section, the State Department of Agriculture:

30 (a) May perform any function of the Environmental Quality Commission or the Department of
 31 Environmental Quality relating to the operation and enforcement of the field burning smoke man-
 32 agement program, **except for making findings pursuant to ORS 468A.610 (9) and (10).**

33 (b) May enter onto and inspect, at any reasonable time, the premises **and fields** of any person
 34 **registered under ORS 468A.615 for [conducting] an open field burn, propane flaming or stack**
 35 **or pile burning** to ascertain compliance with a statute, rule, standard or permit condition relating
 36 to the field burning smoke management program.

37 (c) May conduct a program for the research and development of alternatives to field burning.

38 **SECTION 5.** ORS 468A.595 is amended to read:

39 468A.595. In order to regulate open field burning pursuant to ORS 468A.610:

40 (1) In such areas of the state and for such periods of time as it considers necessary to carry out
 41 the policy of ORS 468A.010, the Environmental Quality Commission by rule may prohibit, restrict
 42 or limit classes, types and extent and amount of burning for perennial grass seed crops, annual grass
 43 seed crops and grain crops.

44 *[(2) In addition to but not in lieu of the provisions of ORS 468A.610 and of any other rule adopted*
 45 *under subsection (1) of this section, the commission shall adopt rules for Multnomah, Washington,*

1 *Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, which provide for a more rapid*
 2 *phased reduction by certain permit areas, depending on particular local air quality conditions and soil*
 3 *characteristics, the extent, type or amount of open field burning of perennial grass seed crops, annual*
 4 *grass seed crops and grain crops and the availability of alternative methods of field sanitation and*
 5 *straw utilization and disposal.]*

6 [(3)] (2) Before promulgating rules pursuant to [subsections (1) and (2)] **subsection (1)** of this
 7 section, the commission shall consult with Oregon State University and may consult with the United
 8 States Natural Resources Conservation Service, or its successor agency, the Agricultural Stabiliza-
 9 tion Commission, the state Soil and Water Conservation Commission and other interested agencies.
 10 The Department of Environmental Quality shall advise the commission in the promulgation of such
 11 rules. The commission must review and show on the record the recommendations of the department
 12 in promulgating such rules.

13 [(4)] (3) No regional air quality control authority shall have authority to regulate burning of
 14 perennial grass seed crops, annual grass seed crops and grain crops.

15 [(5)] (4) Any amendments to the State Implementation Plan prepared by the state pursuant to
 16 the federal Clean Air Act, [as enacted by Congress, December 31, 1970, and as amended by Congress
 17 August 7, 1977, and November 15, 1990, and Acts amendatory thereto] **P.L. 88-206, as in effect on**
 18 **the effective date of this 2009 Act**, shall be only of such sufficiency as to gain approval of the
 19 amendment by the United States Environmental Protection Agency [and shall not include rules
 20 promulgated by the commission pursuant to subsection (1) of this section not necessary for attainment
 21 of national ambient air quality standards].

22 **SECTION 6.** ORS 468A.610 is amended to read:

23 468A.610. (1) Except as provided under ORS 468A.620, no person shall open burn or cause to be
 24 open burned, propane flamed or stack or pile burned in the counties [specified] **listed** in ORS
 25 [468A.595 (2)] **468A.560 (1) and in the counties listed in any rule adopted by the Environmental**
 26 **Quality Commission pursuant to ORS 468A.560 (2)**, perennial or annual grass seed crop or cereal
 27 grain crop residue, unless the acreage has been registered under ORS 468A.615 and the permits re-
 28 quired by ORS 468A.575, 476.380 and 478.960 have been obtained.

29 (2) The maximum total registered acreage allowed to be open burned **or stack or pile burned**
 30 per year pursuant to subsection (1) of this section **in the counties listed in ORS 468A.560 (1)** shall
 31 be:

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

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

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

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

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

37 **(a) For 2010, 20,000 acres.**

38 **(b) For 2011 and thereafter, none.**

39 (3) The maximum total acreage allowed to be propane flamed **per year** under subsection (1) of
 40 this section **in the counties listed in ORS 468A.560 (1)** shall be:

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

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

43 **(a) For 2010, 18,750 acres.**

44 **(b) For 2011 and thereafter, none.**

45 [(4)(a)] (4) [After January 1, 1998,] Fields shall be prepared for propane flaming by removing all

1 loose straw or vacuuming or prepared using other techniques approved by rule by the Environ-
2 mental Quality Commission, and [.]

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

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

7 **(5) Notwithstanding the limitations set forth in subsection (2) of this section, steep ter-
8 rain and species identified by the Director of Agriculture by rule shall not be included in the
9 maximum total of permitted acreage set forth in subsection (2) of this section. The additional
10 acreage allowed to be open burned shall be:**

11 **(a) For 2010, 12,500 acres.**

12 **(b) For 2011 and thereafter, none.**

13 (6) Acreage registered to be open burned under this section may be propane flamed at the reg-
14 istrant's discretion without reregistering the acreage.

15 (7) In the event of the registration of more than the maximum allowable acres for open burning
16 **or stack or pile burning** in the counties *[specified]* **listed** in ORS *[468A.595 (2), after 1996]* **468A.560**
17 **(1) or in the counties listed in any rule adopted by the Environmental Quality Commission**
18 **pursuant to ORS 468A.560 (2)**, the commission, after consultation with the State Department of
19 Agriculture, by rule or order may assign priority of permits based on soil characteristics, the crop
20 type, terrain or drainage. **In no event may permits be issued for more than the maximum**
21 **acreage listed in subsections (2), (3) and (5) of this section or in any rule adopted by the**
22 **Environmental Quality Commission pursuant to ORS 468A.560 (2).**

23 (8) Permits shall be issued and **open burning, propane flaming and stack or pile burning** shall
24 be allowed for the maximum acreage specified in *[subsection (2)]* **subsections (2), (3) and (5) of this**
25 **section and in any rule adopted by the Environmental Quality Commission pursuant to ORS**
26 **468A.560 (2)** of this section unless[:]

27 *[(a)] the daily determination of suitability of meteorological conditions, regional or local air
28 quality conditions or other burning conditions requires that a maximum number of acres not be
29 burned on a given day.[: or]*

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

32 (9) Upon a finding of extreme danger to public health or safety, the **Environmental Quality**
33 **Commission** *[commission]* may order temporary emergency cessation of all open field burning,
34 propane flaming or stack or pile burning in any area of the counties listed in ORS *[468A.595 (2)]*
35 **468A.560 (1) or in the counties listed in any rule adopted by the Environmental Quality**
36 **Commission pursuant to ORS 468A.560 (2).**

37 **(10) Notwithstanding subsection (7) of this section, the Environmental Quality Commis-
38 sion may by order permit emergency open burning, propane flaming or stack or pile burning**
39 **of more acreage than allowed by subsections (2), (3) and (5) of this section or in any rule**
40 **adopted by the Environmental Quality Commission pursuant to ORS 468A.560 (2) if the**
41 **commission finds:**

42 **(a) Extreme hardship due to disease outbreak, insect infestation or irreparable damage**
43 **to land outweighs the dangers to public health and safety from emergency open burning,**
44 **propane flaming or stack or pile burning;**

45 **(b) Authorization of additional acreage does not result in open burning, propane flaming**

1 or stack or pile burning of more acreage than required to address the emergency;

2 (c) Authorization of additional acreage is limited to the calendar year in which the com-
3 mission makes the required findings; and

4 (d) All emergency open burning, propane flaming or stack or pile burning is otherwise
5 consistent with ORS 468A.550 to 468A.620.

6 (11) The commission by rule may assess fees for the acreage burned pursuant to sub-
7 section (10) of this section.

8 [(10)] (12) The commission shall act on any application for a permit under ORS 468A.575 within
9 60 days of registration and receipt of the fee required under ORS 468A.615. [The commission may
10 order emergency cessation of open field burning at any time. Any other decision required under this
11 section must be made by the commission on or before June 1 of each year.]

12 **SECTION 7.** ORS 468A.615 is amended to read:

13 468A.615. (1)(a) On or before April 1 of each year, the grower of a grass seed crop shall register
14 with the county court or board of county commissioners, the fire chief of a rural fire protection
15 district, the designated representative of the fire chief or other responsible persons the number of
16 acres to be open burned or propane flamed in the remainder of the year. At the time of registration,
17 the Department of Environmental Quality shall collect a nonrefundable fee of [\$2] **\$4** per acre reg-
18 istered to be sanitized by open burning or [\$1] **\$2** per acre to be sanitized by propane flaming. The
19 department may contract with counties and rural fire protection districts or other responsible per-
20 sons for the collection of the fees which shall be forwarded to the department. Any person regis-
21 tering after April 1 [of] **in** each year shall pay an additional fee of [\$1] **\$2** per acre registered if the
22 late registration is due to the fault of the late registrant or [one] **a person** under the control of the
23 late registrant. Late registrations must be approved by the department. Copies of the registration
24 form shall be forwarded to the department. The required registration must be made and the fee paid
25 before a permit shall be issued under ORS 468A.575.

26 (b) Except as provided in paragraph (d) of this subsection, the department shall collect a fee in
27 accordance with paragraph (c) of this subsection for issuing a permit for open burning, propane
28 flaming or stack or pile burning of perennial or annual grass seed crop or cereal grain crop residue
29 under ORS 468A.555 to 468A.620 and 468A.992. The department may contract with counties and ru-
30 ral fire protection districts or other responsible persons for the collection of the fees which shall
31 be forwarded to the department.

32 (c) The fee required under paragraph (b) of this subsection shall be paid within 10 days after
33 [a permit is issued and shall be] **the date of the invoice issued by the issuing agency and shall**
34 **be:**

35 (A) [\$8] **\$16** per acre of crop sanitized by open burning in the counties [specified] **listed** in ORS
36 [468A.595 (2)] **468A.560 (1) and in the counties listed in any rule adopted by the Environmental**
37 **Quality Commission pursuant to ORS 468A.560 (2);**

38 (B) \$4 per acre of perennial or annual grass seed crop sanitized by open burning in any county
39 not [specified] **listed** in ORS [468A.595 (2)] **468A.560 (1) or in any county not listed in any rule**
40 **adopted by the Environmental Quality Commission pursuant to ORS 468A.560 (2);**

41 (C) [\$2] **\$4** per acre of crop sanitized by propane flaming;

42 (D) **\$10 per acre** for acreage from which 100 percent of the straw is removed and burned in
43 stacks or piles; **and** [.]

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

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

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

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

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

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

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

13 (2)(a) All fees collected under this section shall be deposited in the State Treasury to the credit
14 of the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the
15 State Department of Agriculture for the purpose of carrying out the duties and responsibilities car-
16 ried out by the State Department of Agriculture pursuant to the memorandum of understanding es-
17 tablished under ORS 468A.585.

18 **(b) The State Department of Agriculture by rule may increase the fees required under**
19 **this section as needed to carry out its duties and responsibilities pursuant to the memoran-**
20 **dum of understanding established under ORS 468A.585, provided that the fees do not exceed**
21 **the costs of the State Department of Agriculture in operating all of the field burning pro-**
22 **gram.**

23 (3) It is the intention of the Legislative Assembly that the programs for smoke management, air
24 quality monitoring and the enforcement of rules under ORS 468A.550 to 468A.620 and 468A.992 be
25 operated in a manner that maximizes the resources available for the research and development
26 program. Therefore, with regard to the disbursement of funds collected under subsection (1) of this
27 section, the State Department of Agriculture shall act in accordance with the intent of the Legis-
28 lative Assembly and shall:

29 (a) Pay an amount to the county or board of county commissioners or the fire chief of the rural
30 fire protection district or other responsible person, for each fire protection district, \$1 per acre
31 registered for each of the first 5,000 acres registered for open field burning and propane flaming in
32 the district, 75 cents per acre registered for each of the second 5,000 acres registered in the district
33 and 35 cents per acre registered for all acreage registered in the district in excess of 10,000 acres,
34 to cover the cost of and to be used solely for the purpose of administering the program of registra-
35 tion of acreage to be burned, issuance of permits, keeping of records and other matters directly re-
36 lated to agricultural field burning. For each acre from which straw is removed and burned in stacks
37 or piles, the State Department of Agriculture shall pay to the county or board of county commis-
38 sioners, or the fire chief of the rural fire protection district or other responsible person, 25 cents
39 per acre.

40 (b) Designate an amount to be used for the smoke management program. The State Department
41 of Agriculture by contract with the Oregon Seed Council or otherwise shall organize rural fire
42 protection districts and growers, coordinate and provide communications, hire ground support per-
43 sonnel, provide aircraft surveillance and provide such added support services as are necessary.

44 (c) Retain funds for the operation and maintenance of the Willamette Valley field burning air
45 quality impact monitoring network and to insure adequate enforcement of rules established by the

1 Environmental Quality Commission governing standards of practice for open field burning, propane
 2 flaming and stack or pile burning.

3 (d) Of the remaining funds, designate an amount to be used for additional funding for research
 4 and development proposals described in the plan developed pursuant to section 15, chapter 920,
 5 Oregon Laws 1991.

6 **SECTION 8.** Section 9 of this 2009 Act is added to and made a part of ORS chapter 468A.

7 **SECTION 9.** (1)(a) The Department of Environmental Quality may evaluate the effec-
 8 tiveness of open burning programs specified in subsection (3) of this section that are oper-
 9 ated by state agencies, regional authorities and political subdivisions of this state, as well
 10 as open burning programs operated by the federal government, tribal governments and other
 11 state governments and political subdivisions, in reducing the frequency and magnitude of air
 12 quality impacts from open burning.

13 (b) In conducting an evaluation under this section, the department shall consider at least
 14 the following factors:

- 15 (A) The extent to which the open burning programs are coordinated;
- 16 (B) Whether multiple programs address the same type of open burning;
- 17 (C) Whether any types of open burning are not addressed by any programs;
- 18 (D) The extent to which the open burning programs minimize air quality impacts;
- 19 (E) The effectiveness of the open burning programs in increasing the use of alternatives
 20 to open burning; and
- 21 (F) The effectiveness of the open burning programs in notifying the public about air
 22 quality impacts and responding to public concerns about open burning.

23 (2) Based on an evaluation conducted under subsection (1) of this section, the department
 24 may:

- 25 (a) Recommend changes to the open burning programs to decrease the air quality im-
 26 pacts of open burning;
- 27 (b) Facilitate actions to improve coordination of the open burning programs; and
- 28 (c) Otherwise assist in the implementation of the open burning programs.

29 (3) An evaluation performed by the department under this section shall be of open
 30 burning regulated under ORS 468A.550 to 468A.620, residential open burning of vegetative
 31 debris regulated under ORS 468A.085, burning regulated under ORS 477.013, burning of
 32 forestland, burning of rangeland and other burning as determined by the department.

33 **SECTION 10.** Except as provided in section 11 of this 2009 Act, sections 8 and 9 of this
 34 2009 Act and the amendments to ORS 468A.560, 468A.575, 468A.580, 468A.585, 468A.595,
 35 468A.610 and 468A.615 by sections 1 to 7 of this 2009 Act become operative on January 1, 2010.

36 **SECTION 11.** The Environmental Quality Commission may adopt rules before the opera-
 37 tive date specified in section 10 of this 2009 Act or take any action before that date that is
 38 necessary to carry out sections 8 and 9 of this 2009 Act and the amendments to ORS
 39 468A.560, 468A.575, 468A.580, 468A.585, 468A.595, 468A.610 and 468A.615 by sections 1 to 7 of
 40 this 2009 Act.

41 **SECTION 12.** This 2009 Act being necessary for the immediate preservation of the public
 42 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
 43 on its passage.