

B-Engrossed Senate Bill 528

Ordered by the Senate June 23
Including Senate Amendments dated May 4 and June 23

Sponsored by Senators PROZANSKI, MORRISSETTE, WALKER, BATES, Representative HOLVEY; Senator BONAMICI, Representatives BARNHART, BUCKLEY, GELSER, GREENLICK, KOTEK, NATHANSON, NOLAN, SHIELDS, TOMEI

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.

[Allows Environmental Quality Commission to adopt rules listing counties to be covered by regulations relating to field burning in addition to those listed by statute.] Restricts number of acres to be burned. Requires field burning techniques to cease on specified dates. Allows specified number of acres of steep terrain to be burned *[until 2013]*. Allows commission by order to permit emergency field burning of specified number of acres under certain conditions. Modifies and creates fees for field burning. Specifies that fees for emergency field burning are to be deposited in State Treasury to credit of Department of Agriculture Service Fund for purpose of carrying out certain duties and responsibilities.

Directs State Department of Agriculture to transfer to commission, upon request, monies from fund sufficient for commission to carry out duties under Act.

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, 468A.615 and 468A.620; 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 **crop residues** or cereal grain crop residues on acreage located in *[the*
9 *counties specified in ORS 468A.595 (2)]* **Multnomah, Washington, Clackamas, Marion, Polk,**
10 **Yamhill, Linn, Benton and Lane Counties.**

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

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

13 468A.575. (1) Permits for open burning, propane flaming or stack or pile burning of the residue
14 from perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the
15 counties listed in ORS *[468A.595 (2) and]* **468A.560. Permits** shall be issued in accordance with rules
16 adopted by the Environmental Quality Commission and subject to the fee prescribed in ORS
17 468A.615. The permit described in this section shall be issued in conjunction with permits required
18 under ORS 476.380 or 478.960.

19 (2) By rule the Environmental Quality Commission may delegate to any county court, board of
20 county commissioners, fire chief of a rural fire protection district or other responsible person the
21 duty to deliver permits to burn acreage if the acreage has been registered under ORS 468A.615 and
22 fees have been paid as required in ORS 468A.615.

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

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

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

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

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

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

22 468A.585. (1) The Environmental Quality Commission shall enter into a memorandum of under-
23 standing with the State Department of Agriculture that provides for the State Department of Agri-
24 culture to operate all of the field burning program.

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

27 (a) May perform any function of the Environmental Quality Commission or the Department of
28 Environmental Quality relating to the operation and enforcement of the field burning smoke man-
29 agement program, **except for making findings pursuant to ORS 468A.610 (10) and (11).**

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

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

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

36 468A.595. In order to regulate open field burning pursuant to ORS [468A.610] **468A.550 to**
37 **468A.620:**

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

42 [(2) *In addition to but not in lieu of the provisions of ORS 468A.610 and of any other rule adopted*
43 *under subsection (1) of this section, the commission shall adopt rules for Multnomah, Washington,*
44 *Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, which provide for a more rapid*
45 *phased reduction by certain permit areas, depending on particular local air quality conditions and soil*

1 *characteristics, the extent, type or amount of open field burning of perennial grass seed crops, annual*
2 *grass seed crops and grain crops and the availability of alternative methods of field sanitation and*
3 *straw utilization and disposal.]*

4 [(3)] (2) Before promulgating rules pursuant to [subsections (1) and (2)] **subsection (1)** of this
5 section, the commission [shall] **may** consult with Oregon State University [and may consult with],
6 the United States Natural Resources Conservation Service, or its successor agency, the Agricultural
7 Stabilization Commission, the state Soil and Water Conservation Commission and other interested
8 agencies. The Department of Environmental Quality shall advise the commission in the promulgation
9 of such rules. The commission must review and show on the record the recommendations of the de-
10 partment in promulgating such rules.

11 [(4)] (3) No regional air quality control authority shall have authority to regulate burning of
12 perennial grass seed crops, annual grass seed crops and grain crops.

13 [(5)] (4) Any amendments to the State Implementation Plan prepared by the state pursuant to
14 the federal Clean Air Act, [as enacted by Congress, December 31, 1970, and as amended by Congress
15 August 7, 1977, and November 15, 1990, and Acts amendatory thereto] **42 U.S.C. 7401 et seq., as in**
16 **effect on the effective date of this 2009 Act**, shall be [only] **at least** of such sufficiency as to gain
17 approval of the amendment by the United States Environmental Protection Agency [and shall not
18 include rules promulgated by the commission pursuant to subsection (1) of this section not necessary
19 for attainment of national ambient air quality standards].

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

21 468A.610. (1) Except as provided under ORS 468A.620, no person shall open burn or cause to be
22 open burned, propane flamed or stack or pile burned in the counties [specified] **listed** in ORS
23 [468A.595 (2)] **468A.560**, perennial or annual grass seed crop **residue** or cereal grain crop residue,
24 unless the acreage has been registered under ORS 468A.615 and the permits required by ORS
25 468A.575, 476.380 and 478.960 have been obtained.

26 (2) The maximum total registered acreage allowed to be open burned per year pursuant to sub-
27 section (1) of this section shall be:

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

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

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

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

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

33 **(a) For 2009, 20,000 acres.**

34 **(b) For 2010 and thereafter, none.**

35 **(3) The maximum total registered acreage allowed to be stack or pile burned per year**
36 **under subsection (1) of this section shall be:**

37 **(a) For 2009, 1,000 acres.**

38 **(b) For 2010, 1,000 acres.**

39 **(c) For 2011, 1,000 acres.**

40 **(d) For 2012, 1,000 acres.**

41 **(e) For 2013 and thereafter, none.**

42 [(3)] (4) The maximum total **registered** acreage allowed to be propane flamed **per year** under
43 subsection (1) of this section **in the counties listed in ORS 468A.560** shall be:

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

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

1 (a) For 2009, 500 acres.

2 (b) For 2010, 500 acres.

3 (c) For 2011, 500 acres.

4 (d) For 2012, 500 acres.

5 (e) For 2013 and thereafter, none.

6 [(4)(a)] (5) [After January 1, 1998,] Fields shall be prepared for propane flaming by removing all
7 loose straw or vacuuming, or prepared using other techniques approved by rule by the [Environ-
8 mental Quality] commission, and [.]

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

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

13 (6)(a) Notwithstanding the limitations set forth in subsection (2) of this section, steep
14 terrain and species identified by the Director of Agriculture by rule shall not be included in
15 the maximum total of permitted acreage set forth in subsection (2) of this section. The ad-
16 ditional acreage allowed to be open burned shall be 15,000 acres per year.

17 (b) Steep terrain and species identified by the Director of Agriculture by rule may not
18 be open burned under the provisions of this subsection in Benton and Lane Counties and in
19 Linn County, except for portions of northeast Linn County that are east of Stayton-Scio
20 Road and north of Highway 226, and portions of northeast Linn County that are east of
21 Richardson Gap Road and north of Fish Hatchery Drive.

22 [(6)] (7) Acreage registered to be open burned under this section may be propane flamed at the
23 registrant's discretion without reregistering the acreage.

24 [(7)] (8) In the event of the registration of more than the maximum allowable acres for open
25 burning, **propane flaming or stack or pile burning** in the counties [specified] listed in ORS
26 [468A.595 (2), after 1996] 468A.560, the commission, after consultation with the State Department of
27 Agriculture, by rule or order may assign priority of permits based on soil characteristics, the crop
28 type, terrain or drainage. **In no event may permits be issued for more than the maximum
29 acreage listed in subsections (2), (3), (4) and (6) of this section.**

30 [(8)] (9) Permits shall be issued **under ORS 468A.575 and open burning, propane flaming and
31 stack or pile burning** shall be allowed for the maximum acreage specified in [subsection (2) of this
32 section] **subsections (2), (3), (4) and (6) of this section** unless[:]

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

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

38 [(9)] (10) Upon a finding of [extreme] danger to public health or safety, the commission may order
39 temporary emergency cessation of all open field burning, propane flaming [or] **and** stack or pile
40 burning in any area of the counties listed in [ORS 468A.595 (2)] 468A.560.

41 (11)(a) Notwithstanding subsection (8) of this section, the commission may by order per-
42 mit emergency open burning, propane flaming or stack or pile burning of up to 2,000 acres
43 each calendar year in addition to the acreage allowed under subsections (2), (3), (4) and (6)
44 of this section, if the commission finds:

45 (A) Extreme hardship due to disease outbreak or insect infestation, as identified by the

1 **commission by rule, outweighs the dangers to public health and safety from emergency open**
2 **burning, propane flaming or stack or pile burning;**

3 **(B) Authorization of additional acreage does not result in open burning, propane flaming**
4 **or stack or pile burning of more acreage than required to address the emergency;**

5 **(C) Authorization of additional acreage is limited to the calendar year in which the**
6 **commission makes the required findings; and**

7 **(D) All emergency open burning, propane flaming or stack or pile burning is otherwise**
8 **consistent with ORS 468A.550 to 468A.620 and rules adopted under ORS 468A.550 to 468A.620.**

9 **(b) The commission by rule may assess fees for the acreage burned pursuant to this**
10 **subsection. All fees collected under this subsection shall be deposited in the State Treasury**
11 **to the credit of the Department of Agriculture Service Fund for the purpose specified in ORS**
12 **468A.615 (2).**

13 *[(10)] (12) The commission shall act on any application for a permit under ORS 468A.575 within*
14 *60 days of registration and receipt of the fee required under ORS 468A.615. [The commission may*
15 *order emergency cessation of open field burning at any time. Any other decision required under this*
16 *section must be made by the commission on or before June 1 of each year.]*

17 **SECTION 7. Section 8 of this 2009 Act is added to and made a part of ORS 468A.550 to**
18 **468A.620.**

19 **SECTION 8. (1) Notwithstanding any other provision of ORS 468A.550 to 468A.620, the**
20 **Environmental Quality Commission by rule may prohibit field burning of grass seed crop**
21 **residues or cereal grain crop residues in areas determined by the commission to be critical**
22 **nonburn areas. The prohibition may be permanent or for a limited period of time.**

23 **(2) To ensure that the provision of electricity services is not interrupted, the critical**
24 **nonburn areas described in subsection (1) of this section may include, but are not limited to,**
25 **areas under power transmission lines.**

26 **SECTION 9. ORS 468A.615 is amended to read:**

27 468A.615. (1)(a) On or before April 1 of each year, the grower of a grass seed crop shall register
28 with the county court or board of county commissioners, the fire chief of a rural fire protection
29 district, the designated representative of the fire chief or other responsible persons the number of
30 acres to be open burned or propane flamed in the remainder of the year. At the time of registration,
31 the Department of Environmental Quality shall collect a nonrefundable fee of [~~\$2~~] **\$4** per acre reg-
32 istered to be sanitized by open burning or [~~\$1~~] **\$2** per acre to be sanitized by propane flaming. The
33 department may contract with counties and rural fire protection districts or other responsible per-
34 sons for the collection of the fees which shall be forwarded to the department. Any person regis-
35 tering after April 1 [~~of~~] **in** each year shall pay an additional fee of [~~\$1~~] **\$2** per acre registered if the
36 late registration is due to the fault of the late registrant or [~~one~~] **a person** under the control of the
37 late registrant. Late registrations must be approved by the department. Copies of the registration
38 form shall be forwarded to the department. The required registration must be made and the fee paid
39 before a permit shall be issued under ORS 468A.575.

40 (b) Except as provided in paragraph (d) of this subsection, the department shall collect a fee in
41 accordance with paragraph (c) of this subsection for issuing a permit for open burning, propane
42 flaming or stack or pile burning of perennial or annual grass seed crop **residue** or cereal grain crop
43 residue under ORS 468A.555 to 468A.620 and 468A.992. The department may contract with counties
44 and rural fire protection districts or other responsible persons for the collection of the fees which
45 shall be forwarded to the department.

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

4 (A) [~~\$8~~] **\$16** per acre of crop sanitized by open burning in the counties [*specified*] **listed** in ORS
5 [~~468A.595 (2)~~] **468A.560**;

6 (B) [~~\$4~~] **\$8** per acre of perennial or annual grass seed crop sanitized by open burning in any
7 county not [*specified*] **listed** in ORS [~~468A.595 (2)~~] **468A.560**;

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

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

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

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

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

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

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

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

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

25 (2)(a) All fees collected under this section shall be deposited in the State Treasury to the credit
26 of the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the
27 State Department of Agriculture for the purpose of carrying out the duties and responsibilities car-
28 ried out by the State Department of Agriculture pursuant to the memorandum of understanding es-
29 tablished under ORS 468A.585. **Upon a request from the Environmental Quality Commission,**
30 **the State Department of Agriculture shall transfer from the fund to the commission moneys**
31 **sufficient for the commission to carry out its duties specified in ORS 468A.610 (10) and (11).**

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

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

43 (a) Pay an amount to the county or board of county commissioners or the fire chief of the rural
44 fire protection district or other responsible person, for each fire protection district, \$1 per acre
45 registered for each of the first 5,000 acres registered for open field burning and propane flaming in

1 the district, 75 cents per acre registered for each of the second 5,000 acres registered in the district
2 and 35 cents per acre registered for all acreage registered in the district in excess of 10,000 acres,
3 to cover the cost of and to be used solely for the purpose of administering the program of registra-
4 tion of acreage to be burned, issuance of permits, keeping of records and other matters directly rel-
5 ated to agricultural field burning. For each acre from which straw is removed and burned in stacks
6 or piles, the State Department of Agriculture shall pay to the county or board of county commis-
7 sioners, or the fire chief of the rural fire protection district or other responsible person, 25 cents
8 per acre.

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

13 (c) Retain funds for the operation and maintenance of the Willamette Valley field burning air
14 quality impact monitoring network and to insure adequate enforcement of rules established by the
15 Environmental Quality Commission governing standards of practice for open field burning, propane
16 flaming and stack or pile burning.

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

20 **SECTION 10.** ORS 468A.620 is amended to read:

21 468A.620. (1) *[Notwithstanding the provisions of ORS 468A.610,]* For the purpose of improving
22 by demonstration or investigation the environmental or agronomic effects of alternative methods of
23 field sanitization, the Environmental Quality Commission shall by rule allow experimental field
24 sanitization under the direction of the Department of Environmental Quality for up to 1,000 acres
25 of perennial grass seed crops, annual grass seed crops and grain crops in such areas and for such
26 periods of time as *[it]* **the commission** considers necessary. Experimental field sanitization includes
27 but is not limited to:

28 (a) Development, demonstration or training personnel in the use of special or unusual field ig-
29 nition techniques or methodologies.

30 (b) Setting aside times, days or areas for special studies.

31 (c) Operation of experimental mobile field sanitizers and improved propane flaming devices.

32 (d) Improved methods of stack or pile burning.

33 (2) The commission may allow open burning under this section of acreage for which permits
34 have not been issued under ORS *[468A.610]* **468A.575** if the commission finds that the experimental
35 burning:

36 (a) Can, in theory, reduce the adverse effects on air quality or public health from open field
37 burning; and

38 (b) Is necessary in order to obtain information on air quality, public health or the agronomic
39 effects of an experimental form of field sanitization.

40 (3) The commission may, by rule, establish fees, registration requirements and other require-
41 ments or limitations necessary to carry out the provisions of this section.

42 **SECTION 11.** Section 8 of this 2009 Act and the amendments to ORS 468A.560, 468A.575,
43 468A.580, 468A.585, 468A.595, 468A.610, 468A.615 and 468A.620 by sections 1 to 6, 9 and 10 of
44 this 2009 Act apply to all open field burning, propane flaming and stack or pile burning oc-
45 ccurring on or after the effective date of this 2009 Act.

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

4
