

Senate Bill 528

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 **as introduced**.

Prohibits certain field burning in specified Oregon counties. Allows Environmental Quality Commission to adopt rules listing additional counties to be covered by prohibitions relating to field burning. Allows specified number of acres of steep terrain to be burned until 2011. Allows commission by order to permit emergency field burning of specified number of acres under certain conditions. Modifies fees for field burning. Transfers administration of certain provisions regarding field burning from State Department of Agriculture to Department of Environmental Quality.

Establishes Department of Environmental Quality Service Fund and continuously appropriates moneys in fund to Department of Environmental Quality for administering provisions related to field burning.

Repeals provisions related to memorandum of understanding between Environmental Quality Commission and State Department of Agriculture.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to field burning; creating new provisions; amending ORS 468A.560, 468A.570, 468A.575,
3 468A.580, 468A.590, 468A.595, 468A.610, 468A.615, 468A.620, 468A.990 and 468A.992; repealing
4 ORS 468A.585; appropriating money; and declaring an emergency.

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

6 **SECTION 1.** ORS 468A.560 is amended to read:

7 468A.560. (1) Except [*for the fee imposed under ORS 468A.615 (1)(c), the provisions of*] **as pro-**
8 **vided in** ORS 468A.550 to 468A.620 [*and 468A.992 shall apply only to*], open field burning, propane
9 flaming and stack or pile burning of **perennial or annual** grass seed **crop residue** or cereal grain
10 crop [*residues*] **residue is not allowed** on acreage located in [*the counties specified in ORS 468A.595*
11 *(2)*] **Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane**
12 **Counties.**

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

14 **(2) As necessary to implement the federal Clean Air Act, P.L. 88-206, as in effect on the**
15 **effective date of this 2009 Act, or as necessary to protect public health, the Environmental**
16 **Quality Commission by rule may list counties, in addition to those listed in subsection (1)**
17 **of this section, to which the provisions of ORS 468A.550 to 468A.620 apply.**

18 **SECTION 2.** Sections 3 and 4 of this 2009 Act are added to and made a part of ORS
19 **468A.550 to 468A.620.**

20 **SECTION 3.** (1) Notwithstanding the prohibition set forth in ORS 468A.560 and except as
21 **provided in subsection (2) of this section, after consultation with the Director of Agriculture,**
22 **species in areas of steep terrain identified by the Environmental Quality Commission by rule**
23 **in the counties listed in ORS 468A.560 (1) or in the counties listed in any rule adopted by the**
24 **commission pursuant to ORS 468A.560 (2) may be open burned, propane flamed or stack or**

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 **pile burned as follows:**

2 (a) **For 2009, a total of no more than 12,500 acres.**

3 (b) **For 2010, a total of no more than 6,250 acres.**

4 (c) **For 2011 and thereafter, none.**

5 (2) **Steep terrain in Linn, Benton and Lane Counties may not be open burned under the**
 6 **provisions of this section.**

7 **SECTION 4. (1) Notwithstanding the prohibition of ORS 468A.560 and in addition to the**
 8 **acreage that may open burned pursuant to section 3 of this 2009 Act, the Environmental**
 9 **Quality Commission may by order permit emergency open burning, propane flaming or stack**
 10 **or pile burning of up to 6,250 acres if the commission finds:**

11 (a) **Extreme hardship due to disease outbreak, insect infestation or irreparable damage**
 12 **to steep terrain, as identified by the Environmental Quality Commission by rule, outweighs**
 13 **the dangers to public health and safety from emergency open burning, propane flaming or**
 14 **stack or pile burning;**

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

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

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

21 (2) **The commission by rule may assess fees for the acreage burned pursuant to sub-**
 22 **section (1) of this section.**

23 **SECTION 5.** ORS 468A.570 is amended to read:
 24 468A.570. (1) As used in this section:

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

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

29 (2) For purposes of ORS 476.380 and 478.960, the Environmental Quality Commission shall clas-
 30 sify different types or combinations of atmospheric conditions as marginal conditions and shall
 31 specify the extent and types of burning that may be allowed under different combinations of atmo-
 32 spheric conditions. A schedule describing the types and extent of burning to be permitted on each
 33 type of marginal day shall be prepared and circulated to all public agencies responsible for providing
 34 information and issuing permits under ORS 476.380 and 478.960. The schedule shall give first priority
 35 to the burning of perennial grass seed crops used for grass seed production, second priority to an-
 36 nual grass seed crops used for grass seed production, third priority to grain crop burning, and fourth
 37 priority to all other burning and shall prescribe duration of periods of time during the day when
 38 burning is authorized.

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

42 *[(4)]* (3) In preparing the schedule required under subsection (2) of this section, the commission
 43 shall weigh the economic consequences of scheduled burnings and the feasibility of alternative
 44 actions, and shall consider weather conditions and other factors necessary to protect the public
 45 health and welfare.

1 [(5)] (4) None of the functions of the commission under this section or under ORS 476.380 or
 2 478.960, as it relates to agricultural burning, shall be performed by any regional air quality control
 3 authority established under ORS 468A.105.

4 **SECTION 6.** ORS 468A.575 is amended to read:

5 468A.575. (1) **If open burning, propane flaming or stack or pile burning is allowed pursuant**
 6 **to section 3 or 4 of this 2009 Act**, permits [*for open burning, propane flaming or stack or pile*
 7 *burning of the residue from perennial grass seed crops, annual grass seed crops and cereal grain*
 8 *crops*] are required [*in the counties listed in ORS 468A.595 (2)*] and shall be issued in accordance
 9 with rules adopted by the Environmental Quality Commission and subject to the fee prescribed in
 10 ORS 468A.615. The permit described in this section shall be issued in conjunction with permits re-
 11 quired under ORS 476.380 or 478.960.

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

16 **SECTION 7. The Department of Environmental Quality Service Fund is established in the**
 17 **State Treasury, separate and distinct from the General Fund. Interest earned by the De-**
 18 **partment of Environmental Quality Service Fund shall be credited to the fund. Moneys in**
 19 **the fund are continuously appropriated to the Department of Environmental Quality for the**
 20 **purpose of administering the provisions of ORS 468A.550 to 468A.620.**

21 **SECTION 8.** (1) **The unexpended balances of amounts in the Department of Agriculture**
 22 **Service Fund authorized to be expended by the State Department of Agriculture from any**
 23 **finances collected under ORS 468A.580 or fees collected under ORS 468A.615 for the purposes**
 24 **specified in those sections are transferred to the Department of Environmental Quality**
 25 **Service Fund established in section 7 of this 2009 Act and are available for expenditure by**
 26 **the Department of Environmental Quality beginning July 1, 2011, for the purpose of admin-**
 27 **istering the provisions of ORS 468A.550 to 468A.620.**

28 (2) **The amendments to ORS 468A.580 (3) and 468A.615 (2) by sections 10 and 15 of this**
 29 **2009 Act apply to fines and fees collected on or after July 1, 2011.**

30 **SECTION 9.** ORS 468A.580 is amended to read:

31 468A.580. (1) Permits under ORS 468A.575 for open field burning of cereal grain crops shall be
 32 issued in the counties listed in ORS [468A.595 (2)] **468A.560 (1) and in the counties listed in any**
 33 **rule adopted by the Environmental Quality Commission pursuant to ORS 468A.560 (2) only if**
 34 **allowed pursuant to section 3 or 4 of this 2009 Act and only if** the person seeking the permit
 35 submits to the issuing authority a signed statement under oath or affirmation that the acreage to
 36 be burned will be planted to seed crops other than cereal grains which require flame sanitation for
 37 proper cultivation.

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

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

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

7 **SECTION 10.** ORS 468A.580, as amended by section 9 of this 2009 Act, is amended to read:

8 468A.580. (1) Permits under ORS 468A.575 for open field burning of cereal grain crops shall be
 9 issued in the counties listed in ORS 468A.560 (1) and in the counties listed in any rule adopted by
 10 the Environmental Quality Commission pursuant to ORS 468A.560 (2) only if allowed pursuant to
 11 section 3 or 4 of this 2009 Act and only if the person seeking the permit submits to the issuing au-
 12 thority a signed statement under oath or affirmation that the acreage to be burned will be planted
 13 to seed crops other than cereal grains which require flame sanitation for proper cultivation.

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

17 (3) Any person planting contrary to the restrictions of subsection (1) of this section shall be
 18 assessed by the department a civil penalty of \$25 for each acre planted contrary to the restrictions.
 19 Any fines collected by the department under this subsection shall be deposited by the State Treas-
 20 urer in the [*Department of Agriculture Service Fund*] **Department of Environmental Quality Ser-**
 21 **vice Fund** to be used in carrying out the smoke management program in cooperation with the
 22 Oregon Seed Council and for administration of this section.

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

29 **SECTION 11.** ORS 468A.590 is amended to read:

30 468A.590. [*Pursuant to the memorandum of understanding established under ORS 468A.585, the*
 31 *State Department of Agriculture*] **The Department of Environmental Quality:**

32 (1) Shall:

33 (a) Conduct the smoke management program established by rule by the Environmental Quality
 34 Commission as it pertains to open field burning, propane flaming and stack or pile burning.

35 (b) Aid fire districts and permit agents in carrying out their responsibilities for administering
 36 field sanitization programs.

37 (c) Subject to available funding, conduct a program for the research and development of alter-
 38 natives to field burning.

39 (2) May:

40 (a) Enter into contracts with public and private agencies to carry out the purposes set forth in
 41 subsection (1) of this section;

42 (b) Obtain patents in the name of the State of Oregon and assign such rights therein as the
 43 [*State Department of Agriculture*] **Department of Environmental Quality** considers appropriate;

44 (c) Employ personnel to carry out the duties assigned to it; and

45 (d) [*Sell and dispose of all surplus property of the State Department of Agriculture related to*

1 *smoke management, including but not limited to straw-based products produced or manufactured by the*
 2 *State Department of Agriculture]* **Enter onto and inspect, at any reasonable time, the premises**
 3 **of any person engaged in open field burning, propane flaming or stack or pile burning to as-**
 4 **certain compliance with a statute, rule, standard or permit condition relating to the field**
 5 **burning smoke management program.**

6 **SECTION 12.** ORS 468A.595 is amended to read:

7 468A.595. In order to regulate open field burning pursuant to ORS [468A.610] **468A.550 to**
 8 **468A.620:**

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

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

20 [(3)] **(2)** Before promulgating rules pursuant to [subsections (1) and (2)] **subsection (1)** of this
 21 section, the commission [shall] **may** consult with Oregon State University and [may consult with] the
 22 United States Natural Resources Conservation Service, or its successor agency, the Agricultural
 23 Stabilization Commission, the state Soil and Water Conservation Commission and other interested
 24 agencies. The Department of Environmental Quality shall advise the commission in the promulgation
 25 of such rules. The commission must review and show on the record the recommendations of the de-
 26 partment in promulgating such rules.

27 [(4)] **(3)** No regional air quality control authority shall have authority to regulate burning of
 28 perennial grass seed crops, annual grass seed crops and grain crops.

29 [(5)] **(4)** Any amendments to the State Implementation Plan prepared by the state pursuant to
 30 the federal Clean Air Act, as enacted by Congress, December 31, 1970, and as amended by Congress
 31 August 7, 1977, and November 15, 1990, and Acts amendatory thereto shall be [only] **at least** of such
 32 sufficiency as to gain approval of the amendment by the United States Environmental Protection
 33 Agency and shall not include rules promulgated by the commission pursuant to subsection (1) of this
 34 section not necessary for attainment of national ambient air quality standards.

35 **SECTION 13.** ORS 468A.610 is amended to read:

36 468A.610. (1) Except as provided under ORS 468A.620, no person shall open burn or cause to be
 37 open burned, propane flamed or stack or pile burned in the counties [specified] **listed** in ORS
 38 [468A.595 (2)] **468A.560 (1) and in the counties listed in any rule adopted by the Environmental**
 39 **Quality Commission pursuant to ORS 468A.560 (2),** perennial or annual grass seed crop **residue**
 40 or cereal grain crop residue, unless **allowed pursuant to section 3 or 4 of this 2009 Act and**
 41 **unless** the acreage has been registered under ORS 468A.615 and the permits required by ORS
 42 468A.575, 476.380 and 478.960 have been obtained.

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

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

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

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

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

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

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

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

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

9 [(4)(a)] (2) [After January 1, 1998,] Fields shall be prepared for propane flaming by removing all
10 loose straw or vacuuming, or prepared using other techniques approved by rule by the [Environ-
11 mental Quality] commission, **and** [.]

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

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

16 [(6)] (3) Acreage registered to be open burned under this section may be propane flamed at the
17 registrant's discretion without reregistering the acreage.

18 [(7)] (4) In the event of the registration of more than the maximum allowable acres for open
19 burning, **propane flaming or stack or pile burning** in the counties [specified] **listed** in ORS
20 [468A.595 (2), after 1996] **468A.560 (1) or in the counties listed in any rule adopted by the com-
21 mission pursuant to ORS 468A.560 (2)**, the commission, after consultation with the State Depart-
22 ment of Agriculture, by rule or order may assign priority of permits based on soil characteristics,
23 the crop type, terrain or drainage.

24 [(8)] (5) Permits shall be issued **under ORS 468A.575 and open burning, propane flaming and
25 stack or pile burning** shall be allowed for the maximum acreage [specified in subsection (2) of this
26 section] **allowed pursuant to section 3 of this 2009 Act** 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)] (6) 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] **and** stack or pile
34 burning in any area [of the counties listed in ORS 468A.595 (2)] **where burning or flaming is al-
35 lowed pursuant to section 3 or 4 of this 2009 Act.**

36 [(10)] (7) The commission shall act on any application for a permit under ORS 468A.575 within
37 60 days of registration and receipt of the fee required under ORS 468A.615. [The commission may
38 order emergency cessation of open field burning at any time. Any other decision required under this
39 section must be made by the commission on or before June 1 of each year.]

40 **SECTION 14.** ORS 468A.615 is amended to read:

41 468A.615. (1)(a) On or before April 1 of each year, the grower of a grass seed crop shall register
42 with the county court or board of county commissioners, the fire chief of a rural fire protection
43 district, the designated representative of the fire chief or other responsible persons the number of
44 acres to be open burned or propane flamed in the remainder of the year. At the time of registration,
45 the Department of Environmental Quality shall collect a nonrefundable fee of [\$2] **\$4** per acre reg-

1 istered to be sanitized by open burning or [~~\$1~~] **\$2** per acre to be sanitized by propane flaming. The
 2 department may contract with counties and rural fire protection districts or other responsible per-
 3 sons for the collection of the fees which shall be forwarded to the department. Any person regis-
 4 tering after April 1 [~~of~~] **in** each year shall pay an additional fee of [~~\$1~~] **\$2** per acre registered if the
 5 late registration is due to the fault of the late registrant or [~~one~~] **a person** under the control of the
 6 late registrant. Late registrations must be approved by the department. Copies of the registration
 7 form shall be forwarded to the department. The required registration must be made and the fee paid
 8 before a permit shall be issued under ORS 468A.575.

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

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

18 (A) [~~\$8~~] **\$16** per acre of crop sanitized by open burning in the counties [~~specified~~] **listed** in ORS
 19 [~~468A.595 (2)~~] **468A.560 (1) and in the counties listed in any rule adopted by the Environmental**
 20 **Quality Commission pursuant to ORS 468A.560 (2);**

21 (B) \$4 per acre of perennial or annual grass seed crop sanitized by open burning in any county
 22 not [~~specified~~] **listed** in ORS [~~468A.595 (2)~~] **468A.560 (1) or in any county not listed in any rule**
 23 **adopted by the commission pursuant to ORS 468A.560 (2);**

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

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

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
 34 a reduction in the amount of acreage for which the fee is charged by the same percentage as the
 35 reduction 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
 38 field sanitizing purposes or with any other certified alternative method to open field burning,
 39 propane flaming or stack or pile burning. The fee required by paragraph (b) of this subsection shall
 40 not be 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. Such moneys are continuously appropriated to the
 43 State Department of Agriculture for the purpose of carrying out the duties and responsibilities car-
 44 ried out by the State Department of Agriculture pursuant to the memorandum of understanding es-
 45 tablished under ORS 468A.585.

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

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

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

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

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

29 **SECTION 15.** ORS 468A.615, as amended by section 14 of this 2009 Act, is amended to read:

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

43 (b) Except as provided in paragraph (d) of this subsection, the department shall collect a fee in
44 accordance with paragraph (c) of this subsection for issuing a permit for open burning, propane
45 flaming or stack or pile burning of perennial or annual grass seed crop residue or cereal grain crop

1 residue under ORS 468A.555 to 468A.620 and 468A.992. The department may contract with counties
2 and rural fire protection districts or other responsible persons for the collection of the fees which
3 shall be forwarded to the department.

4 (c) The fee required under paragraph (b) of this subsection shall be paid within 10 days after the
5 date of the invoice issued by the issuing authority and shall be:

6 (A) \$16 per acre of crop sanitized by open burning in the counties listed in ORS 468A.560 (1)
7 and in the counties listed in any rule adopted by the Environmental Quality Commission pursuant
8 to ORS 468A.560 (2);

9 (B) \$4 per acre of perennial or annual grass seed crop sanitized by open burning in any county
10 not listed in ORS 468A.560 (1) or in any county not listed in any rule adopted by the commission
11 pursuant to ORS 468A.560 (2);

12 (C) \$4 per acre of crop sanitized by propane flaming;

13 (D) \$10 per acre for acreage from which 100 percent of the straw is removed and burned in
14 stacks or piles; and

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

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

24 (2) All fees collected under this section shall be deposited in the State Treasury to the credit
25 of the *[Department of Agriculture Service Fund]* **Department of Environmental Quality Service**
26 **Fund established under section 7 of this 2009 Act.** *[Such moneys are continuously appropriated to*
27 *the State Department of Agriculture for the purpose of carrying out the duties and responsibilities*
28 *carried out by the State Department of Agriculture pursuant to the memorandum of understanding es-*
29 *tablished under ORS 468A.585.]*

30 (3) It is the intention of the Legislative Assembly that the programs for smoke management, air
31 quality monitoring and the enforcement of rules under ORS 468A.550 to 468A.620 and 468A.992 be
32 operated in a manner that maximizes the resources available for the research and development
33 program. Therefore, with regard to the disbursement of funds collected under subsection (1) of this
34 section, the *[State Department of Agriculture]* **Department of Environmental Quality** shall act in
35 accordance with the intent of the Legislative Assembly and shall:

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

1 or other responsible person, 25 cents per acre.

2 (b) Designate an amount to be used for the smoke management program. The [*State Department*
 3 *of Agriculture*] **Department of Environmental Quality** by contract with the Oregon Seed Council
 4 or otherwise [*shall*] **may** organize rural fire protection districts and growers, coordinate and provide
 5 communications, hire ground support personnel, provide aircraft surveillance and provide such
 6 added support services as are necessary.

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

11 **SECTION 16.** ORS 468A.620 is amended to read:

12 468A.620. (1) [*Notwithstanding the provisions of ORS 468A.610,*] For the purpose of improving
 13 by demonstration or investigation the environmental or agronomic effects of alternative methods of
 14 field sanitization, the Environmental Quality Commission shall by rule allow experimental field
 15 sanitization under the direction of the Department of Environmental Quality for up to 1,000 acres
 16 of perennial grass seed crops, annual grass seed crops and grain crops in such areas and for such
 17 periods of time as it considers necessary. Experimental field sanitization includes but is not limited
 18 to:

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

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

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

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

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

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

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

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

33 **SECTION 17.** ORS 468A.990 is amended to read:

34 468A.990. (1) Violation of any rule or standard adopted or any order issued by a regional au-
 35 thority relating to air pollution is a Class A misdemeanor.

36 (2) Unless otherwise provided, each day of violation of any rule, standard or order relating to
 37 air pollution constitutes a separate offense.

38 (3) Violation of ORS **468A.560** or 468A.610 or of any rule adopted pursuant to ORS **468A.560**
 39 **or** 468A.595 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

40 (4) Violation of the provisions of ORS 468A.655 is a Class A misdemeanor.

41 **SECTION 18.** ORS 468A.992 is amended to read:

42 468A.992. (1) In addition to any liability or penalty provided by law, the [*State Department of*
 43 *Agriculture*] **Department of Environmental Quality** may impose a civil penalty on any person who
 44 fails to comply with a provision of ORS 468A.555 to 468A.620 or any rule adopted thereunder, or a
 45 permit issued under ORS 468A.555 to 468A.620, relating to open field burning.

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

4 **SECTION 19. ORS 468A.585 is repealed.**

5 **SECTION 20. Except as provided in section 21 of this 2009 Act, sections 7 and 8 of this**
6 **2009 Act, the repeal of ORS 468A.585 by section 19 of this 2009 Act and the amendments to**
7 **ORS 468A.570, 468A.580, 468A.590, 468A.615 and 468A.992 by sections 5, 10, 11, 15 and 18 of this**
8 **2009 Act become operative July 1, 2011.**

9 **SECTION 21. The Environmental Quality Commission may adopt rules before the opera-**
10 **tive date specified in section 20 of this 2009 Act or take any action before that date that is**
11 **necessary to carry out sections 7 and 8 of this 2009 Act, the repeal of ORS 468A.585 by sec-**
12 **tion 19 of this 2009 Act and the amendments to ORS 468A.570, 468A.580, 468A.590, 468A.615**
13 **and 468A.992 by sections 5, 10, 11, 15 and 18 of this 2009 Act.**

14 **SECTION 22. (1) Sections 2 to 4 of this 2009 Act and the amendments to ORS 468A.560,**
15 **468A.575, 468A.580, 468A.595, 468A.610, 468A.615, 468A.620 and 468A.990 by sections 1, 6, 9, 12**
16 **to 14, 16 and 17 of this 2009 Act apply to all open field burning, propane flaming and stack**
17 **or pile burning occurring on or after the effective date of this 2009 Act.**

18 (2) Sections 7 and 8 of this 2009 Act, the repeal of ORS 468A.585 by section 19 of this 2009
19 Act and the amendments to ORS 468A.570, 468A.580, 468A.590, 468A.615 and 468A.992 by
20 sections 5, 10, 11, 15 and 18 of this 2009 Act apply to all open field burning, propane flaming
21 and stack or pile burning occurring on or after the operative date specified in section 20 of
22 this 2009 Act.

23 **SECTION 23. This 2009 Act being necessary for the immediate preservation of the public**
24 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
25 **on its passage.**

26