

Senate Bill 915

Sponsored by Senator MORSE

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 municipality that enforces state building code provision or building requirement by means of municipal ordinance from assessing criminal penalty for ordinance violation if violation of corresponding state building code provision or building requirement is subject to civil penalty. Prohibits municipality from imposing civil penalty for ordinance violation that exceeds maximum civil penalty for violation of corresponding state building code provision or building requirement. Requires that fees municipality charges for investigation or other activities regarding alleged violation of ordinance be approved by Director of Department of Consumer and Business Services.

Revises grounds on which director may allow municipality to adopt municipal ordinance, rule or regulation conflicting with state building code.

Requires that rules for uniform enforcement of state building code provide for building official or inspector to give violator notice of penalties and procedural rights when issuing citation. Requires that rules provide appeal process for denial of certificate of occupancy if denial is based on violation of state building code specialty code.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the regulation of structures; creating new provisions; amending ORS 455.040, 455.055,
3 455.080, 455.153 and 455.156; and declaring an emergency.

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

5 **SECTION 1.** ORS 455.040 is amended to read:

6 455.040. *[(1)]* The state building code shall be applicable and uniform throughout this state and
7 in all municipalities, and no municipality shall enact or enforce any ordinance, rule or regulation
8 relating to the same matters encompassed by the state building code but *[which]* **that** provides dif-
9 ferent requirements unless authorized by the Director of the Department of Consumer and Business
10 Services. The director's authorization *[shall not be considered]* **under this section does not con-**
11 **stitute** an amendment to the state building code under ORS 455.030. The director *[shall encourage*
12 *experimentation, innovation and cost effectiveness by municipalities in the adoption of ordinances, rules*
13 *or regulations which conflict with the state building code.]* **may authorize a municipality to adopt**
14 **an ordinance, rule or regulation that conflicts with the state building code only if the direc-**
15 **tor makes written findings that:**

16 **(1) A unique local geological or other condition makes application of the state building**
17 **code impracticable or is not addressed by the code; and**

18 **(2) Adoption of the ordinance, rule or regulation will result in better service to the public.**

19 *[(2) Subsection (1) of this section is operative:]*

20 *[(a) With regard to the state structural code, July 1, 1974.]*

21 *[(b) With regard to the state mechanical, heating and ventilating code, on the effective date of such*
22 *code as determined under ORS 183.355.]*

23 *[(c) With regard to each specialty code not named by paragraphs (a) and (b) of this subsection, on*
24 *the effective date, as determined under ORS 183.355, of the first amendments to such code adopted*

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 *pursuant to this chapter.]*

2 **SECTION 2.** ORS 455.055 is amended to read:

3 455.055. (1) The Director of the Department of Consumer and Business Services may adopt rules
4 establishing uniform permit, inspection and certificate of occupancy requirements under the state
5 building code.

6 (2) The rules may include, but need not be limited to, rules establishing standards for building
7 inspections and inspection procedures and rules establishing uniform forms for certificates of occu-
8 pancy.

9 (3) **The rules shall include the following:**

10 (a) **A requirement that a building official or inspector who issues a citation for a violation**
11 **of the state building code include with the citation a notice stating the proposed penalty**
12 **amount, the maximum penalty for the violation and the procedure for challenging the cita-**
13 **tion.**

14 (b) **A requirement that if a certificate of occupancy is denied based on violation of a**
15 **specialty code:**

16 (A) **If the denial is by a municipality, the denial may be appealed to the municipal appeals**
17 **board and then to the appropriate advisory board under ORS 455.690.**

18 (B) **If the denial is by a municipality and no municipal appeals board exists, the denial**
19 **may be appealed directly to the appropriate advisory board in the same manner as an appeal**
20 **under ORS 455.690.**

21 (C) **If the denial is by the department, the denial may be appealed to the appropriate state**
22 **advisory board under ORS 455.690.**

23 (4) In adopting rules under this section, the director may establish a process for a municipality
24 to address conditions that are unique to the municipality's enforcement of the state building code
25 or that are not addressed by the rules establishing uniform permit, inspection and certificate of oc-
26 cupancy requirements.

27 **SECTION 3.** ORS 455.080 is amended to read:

28 455.080. Notwithstanding ORS 455.630 (2), any inspector, including a specialty code inspector
29 licensed under ORS 455.457, authorized by ORS **455.148**, 455.150 or 455.153 to determine compliance
30 with the requirements of the state building code or any specialty code under this chapter may, in
31 accordance with a compliance program as described in ORS 455.153 [(2)] (3), require any person who
32 is engaged in any activity regulated by the state building code to demonstrate proof of compliance
33 with the applicable licensing, registration or certification requirements of ORS chapters 446, 447,
34 455, 460, 479, 480, 693 and 701.

35 **SECTION 4.** ORS 455.153 is amended to read:

36 455.153. (1) **Subject to subsection (2) of this section**, a municipality may administer any spe-
37 cialty code or building requirements as though the code or requirements were ordinances of the
38 municipality if the municipality is authorized to administer:

39 (a) The specialty code under ORS chapter 447 or 455 or ORS 479.510 to 479.945 and 479.995.

40 (b) Mobile or manufactured dwelling parks requirements adopted under ORS 446.062.

41 (c) Temporary parks requirements adopted under ORS 446.105.

42 (d) Manufactured dwelling installation, support and tiedown requirements adopted under ORS
43 446.230.

44 (e) Park or camp requirements adopted under ORS 455.680.

45 (2) **A municipality that treats the violation of a state building code provision or a building**

1 **requirement as a violation of a municipal ordinance may not:**

2 **(a) Impose a criminal penalty for the violation of a municipal ordinance if violation of the**
 3 **state building code provision or building requirement is subject to a civil penalty;**

4 **(b) Impose a civil penalty for the violation of a municipal ordinance that exceeds the**
 5 **maximum civil penalty for violation of the state building code provision or building require-**
 6 **ment; or**

7 **(c) Assess an investigative fee or other fee in connection with the violation of the mu-**
 8 **nicipal ordinance unless the fee is adopted in compliance with ORS 455.210.**

9 [(2)] (3) Administration of any specialty code or building requirement includes establishing a
 10 program intended to verify compliance with state licensing requirements and all other administra-
 11 tive and judicial aspects of enforcement of the code or requirement. Nothing in this section affects
 12 the concurrent jurisdiction of the Director of the Department of Consumer and Business Services,
 13 the Building Codes Structures Board, the State Plumbing Board, the Manufactured Structures and
 14 Parks Advisory Board, the Electrical and Elevator Board, the Residential Structures Board or the
 15 Mechanical Board to impose civil penalties for violations committed within municipalities.

16 **SECTION 5.** ORS 455.156 is amended to read:

17 455.156. (1) Notwithstanding any other provision of this chapter, ORS chapter 693 or ORS
 18 447.010 to 447.156, 447.992, 479.510 to 479.945, 479.990 or 479.995, the Department of Consumer and
 19 Business Services shall carry out the provisions of this section.

20 (2)(a) A municipality that establishes a building inspection program under ORS 455.148 or a
 21 plumbing inspection program under ORS 455.150 covering installations under the plumbing specialty
 22 code or Low-Rise Residential Dwelling Code may act on behalf of the State Plumbing Board to in-
 23 vestigate violations of and enforce ORS 447.040, 693.030 and 693.040 and to issue notices of proposed
 24 assessment of civil penalties for those violations.

25 (b) A municipality that establishes a building inspection program under ORS 455.148 or an
 26 electrical inspection program under ORS 455.150 covering installations under the electrical specialty
 27 code or Low-Rise Residential Dwelling Code may act on behalf of the Electrical and Elevator Board
 28 to investigate violations of and enforce ORS 479.550 (1) and 479.620 and to issue notices of proposed
 29 assessment of civil penalties for those violations.

30 (c) A municipality that establishes a building inspection program under ORS 455.148 or 455.150
 31 may investigate violations and enforce any provisions of the program administered by the munic-
 32 ipality.

33 (3) The department shall establish:

34 (a) Procedures, forms and standards to carry out the provisions of this section, including but
 35 not limited to creating preprinted notices of proposed assessment of penalties that can be completed
 36 and served by municipal inspectors;

37 (b) A program to provide that all of the moneys recovered by the department, less collection
 38 expenses, be paid to the municipality that initiated the charges when a person charged with a vio-
 39 lation as provided in subsection (2) of this section, other than a violation of a licensing requirement,
 40 agrees to the entry of an assessment of civil penalty or does not request a hearing, and an order
 41 assessing a penalty is entered against the person;

42 (c) A uniform citation process to be used in all jurisdictions of the state for violation of a li-
 43 censing requirement. The process may include but need not be limited to all program areas admin-
 44 istered by a municipality under ORS 455.148 or 455.150 and may provide a uniform method for
 45 checking license status and issuing citations for violation of a licensing requirement, and a con-

1 sistest basis for enforcement of licensing requirements and treatment of violations, including
 2 **schedules for imposing statutorily authorized fine or civil penalty** amounts;

3 (d) A program to provide a division of the moneys recovered by the department with the
 4 municipality that initiated the charges, when a person charged with a violation as provided in sub-
 5 section (2) of this section, other than a violation of a licensing requirement, requests a hearing and
 6 is assessed a penalty. One-half of the amounts recovered shall be paid to the municipality. The de-
 7 partment shall keep an amount equal to its costs of processing the proceeding and collection ex-
 8 penses out of the remaining one-half and remit the balance, if any, to the municipality; and

9 (e) A program to require municipalities to investigate violations of the department's permit re-
 10 quirements for plumbing installations and services under the plumbing specialty code and for
 11 plumbing and electrical installations and services under the Low-Rise Residential Dwelling Code,
 12 and to:

13 (A) Initiate notices of proposed assessment of civil penalties as agents of the boards designated
 14 in subsection (2) of this section; and

15 (B) Pay the agents of the boards out of net civil penalty recoveries as if the recoveries were
 16 under paragraphs (b) and (d) of this subsection.

17 (4) The assessment of a civil penalty under this section by a municipality is subject to the
 18 amount limitations set forth in ORS 455.895.

19 (5)(a) It shall be a defense for any person charged with a penalty for violation of a building in-
 20 spection program permit requirement covering plumbing installations under the plumbing specialty
 21 code, electrical permit requirements under ORS 479.550 or plumbing or electrical requirements un-
 22 der the Low-Rise Residential Dwelling Code that the person was previously penalized for the same
 23 occurrence.

24 (b) A building inspection program permit requirement is a requirement contained in a specialty
 25 code or municipal ordinance or rule requiring a permit before the particular installations covered
 26 by the codes are commenced.

27 (c) A penalty for the same occurrence includes a combination of two or more of the following
 28 that are based on the same plumbing or electrical installation:

29 (A)(i) An investigative or other fee added to an electrical permit fee when a permit was obtained
 30 after the electrical installation was started;

31 (ii) A civil penalty pursuant to ORS 479.995 for violation of ORS 479.550 for failure to obtain
 32 an electrical permit;

33 (iii) A civil penalty pursuant to ORS 455.895 for failure to obtain an electrical permit under the
 34 Low-Rise Residential Dwelling Code; or

35 (iv) A municipal penalty, other than an investigative fee, for making an electrical installation
 36 under the electrical specialty code or the Low-Rise Residential Dwelling Code without a permit; or

37 (B)(i) An investigative or other fee added to a plumbing permit fee when a permit was obtained
 38 after the plumbing installation was started;

39 (ii) A civil penalty pursuant to ORS 447.992 for failure to obtain a plumbing permit as required
 40 under the plumbing specialty code;

41 (iii) A civil penalty pursuant to ORS 455.895 for failure to obtain a plumbing permit under the
 42 Low-Rise Residential Dwelling Code; or

43 (iv) A municipal penalty, other than an investigative fee, for making a plumbing installation
 44 under the plumbing specialty code or the Low-Rise Residential Dwelling Code without a permit.

45 **SECTION 6. (1) The amendments to ORS 455.156 by section 5 of this 2009 Act apply to**

1 proceedings for an alleged violation of a municipal ordinance, rule or regulation that become
2 final by operation of law or on appeal on or after the effective date of this 2009 Act.

3 (2) The Director of the Department of Consumer and Business Services shall adopt the
4 rules described in the amendments to ORS 455.055 by section 2 of this 2009 Act in time for
5 the rules to become effective no later than January 1, 2010.

6 (3) Notwithstanding ORS 455.690, a person that is denied a certificate of occupancy for a
7 structure prior to the effective date of the rules described in ORS 455.055 (3)(b) may, if the
8 person has not previously received review of the denial by the appropriate advisory board,
9 file an appeal of the denial with the appropriate advisory board on or before March 1, 2010.
10 An advisory board shall review and issue a determination for a denial described in this sub-
11 section no later than 60 days after the appeal is filed.

12 SECTION 7. This 2009 Act being necessary for the immediate preservation of the public
13 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
14 on its passage.
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