

House Bill 3167

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

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**.

Provides that certain local units of government may contract with private entities to assist local units of government in carrying out certain duties related to sewage.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to contracts concerning the environment; amending ORS 454.725 and 468.035; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 468.035 is amended to read:

6 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-
7 ment of Environmental Quality:

8 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,
9 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the
10 waters of the state in accordance with rules and standards established by the commission.

11 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-
12 gations, research and programs pertaining to the quality and purity of the air or the waters of the
13 state and to the treatment and disposal of wastes.

14 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,
15 other states or the federal government, in respect to any proceedings and all matters pertaining to
16 control of air or water pollution or for the formation and submission to the legislature of interstate
17 pollution control compacts or agreements.

18 (d) May employ personnel, including specialists and consultants, purchase materials and sup-
19 plies, and enter into contracts **with public and private entities** necessary to carry out the purposes
20 set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755
21 and ORS chapters 468, 468A and 468B.

22 (e) Shall conduct and supervise programs of air and water pollution control education, including
23 the preparation and distribution of information regarding air and water pollution sources and con-
24 trol.

25 (f) Shall provide advisory technical consultation and services to units of local government and
26 to state agencies.

27 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-
28 ernment.

29 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or
30 other public or private agencies for the purposes of air and water pollution control, studies or re-
31 search and to expend moneys after appropriation thereof for the purposes given.

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 (i) Shall make such determination of priority of air or water pollution control projects as may
 2 be necessary under terms of statutes enacted by the Congress of the United States.

3 (j) Shall seek enforcement of the air and water pollution laws of the state.

4 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
 5 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,
 6 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
 7 454.755 and ORS chapters 468, 468A and 468B.

8 (L) Shall encourage the formulation and execution of plans in conjunction with air and water
 9 pollution control agencies or with associations of counties, cities, industries and other persons who
 10 severally or jointly are or may be the source of air or water pollution, for the prevention and
 11 abatement of pollution.

12 (m) May determine, by means of field studies and sampling, the degree of air or water pollution
 13 in various regions of the state.

14 (n) May perform such other and further acts as may be necessary, proper or desirable to carry
 15 out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,
 16 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
 17 468A and 468B.

18 (o) Shall coordinate any activities of the department related to a watershed enhancement project
 19 approved by the Oregon Watershed Enhancement Board under ORS 541.932 with activities of other
 20 cooperating state and federal agencies participating in the project.

21 (2) Nothing in this section shall affect the authority of the Oregon Health Authority to make
 22 and enforce rules:

23 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115
 24 to 448.325, 624.010 to 624.121 and 624.310 to 624.430; and

25 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

26 (3) Nothing in this section shall prevent the State Department of Agriculture or the State
 27 Forestry Department from independently receiving moneys from a public or private agency for the
 28 purposes of preventing or controlling air or water pollution resulting from agricultural or
 29 silvicultural activities or soil erosion, or for research related to such purposes.

30 (4)(a) In awarding a public contract under ORS 279.835 to 279.855 or ORS chapter 279A, 279B
 31 or 279C for a removal or remedial action pursuant to ORS 465.200 to 465.545, a corrective action
 32 or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a
 33 removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093,
 34 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department of Administrative
 35 Services, when administering the establishment of such a contract on behalf of the Department of
 36 Environmental Quality under ORS 279A.050 and 279A.140, shall subtract from the amount of any bid
 37 or proposal the hazardous waste management fees and solid waste fees that would be required by
 38 law to be paid to the department for waste that would be disposed of at a solid waste disposal site
 39 or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be
 40 subtracted shall be established on the basis of reasonable preprocurement estimates of the amount
 41 of waste that would be disposed of under the contract and that would be subject to those fees.

42 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract
 43 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less
 44 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates
 45 of amounts of waste that would be disposed of in projects of this character is technically challenging

1 and requires the application of professional discretion. Therefore, no award of a contract under this
 2 subsection shall be subject to challenge, under ORS 279B.410, 279B.415 or 279C.460 or otherwise,
 3 on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

4 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-
 5 lishment, by or on behalf of the department, of master contracts by which the department engages
 6 the services of a contractor over a period of time for the purpose of issuing work orders for the
 7 performance of environmental activities on a project or projects for which the amounts of waste to
 8 be disposed of were not reasonably identified at the inception of the master contracts. However, the
 9 department shall require any contractor under a master contract to apply the subtraction for fees
 10 under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal
 11 of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.
 12 Nothing in this subsection shall be construed to prohibit the department or the Oregon Department
 13 of Administrative Services from establishing contracts pursuant to this section through contracting
 14 procedures authorized by ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C that do
 15 not require the solicitation of bids or proposals.

16 **SECTION 2.** ORS 454.725 is amended to read:

17 454.725. (1) The Department of Environmental Quality may enter into agreements with local
 18 units of government for the local units to perform the duties of the department under ORS 454.635,
 19 454.655, 454.665 and 454.755. **A local unit of government described in this subsection may con-**
 20 **tract with private entities as necessary to assist the local unit of government in carrying**
 21 **out the provisions described in this subsection.**

22 (2) The Department of Environmental Quality may enter into an agreement with a local unit of
 23 government when the local unit of government requests to perform the variance duties of the de-
 24 partment under ORS 454.657 and 454.660 subject to variance criteria specified in the agreement by
 25 the department. Each local unit of government performing variance duties under an agreement may
 26 set and collect a variance application fee as provided in ORS 454.662. A fee collected by a local unit
 27 of government under this subsection shall not exceed the cost to the local unit of government of
 28 performing the variance duties of the department.

29 **SECTION 3. This 2013 Act being necessary for the immediate preservation of the public**
 30 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 31 **on its passage.**

32