

Senate Bill 1541

Sponsored by Senators GIROD, ROBLAN, WINTERS, Representative WITT (Presession filed.)

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**.

Authorizes Environmental Quality Commission to adopt program and rules to reduce public health risks of emissions of toxic air contaminants from industrial and commercial air contamination sources.

Authorizes commission to establish fee applicable to certain air contamination sources to cover direct and indirect costs of developing and implementing program and rules.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to toxic air contaminants; creating new provisions; amending ORS 468.065, 468A.300 and
3 468A.315; and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2018 Act are added to and made a part of ORS**
6 **chapter 468A.**

7 **SECTION 2. (1) As used in this section:**

8 (a) **"Hazard Index" means a number equal to the sum of the hazard quotients attribut-**
9 **able to toxic air contaminants that have noncancerous effects on the same target organs or**
10 **organ systems.**

11 (b) **"Hazard Quotient" means the ratio of the concentration of a single toxic air con-**
12 **taminant to which a receptor is exposed and the concentration at which no serious adverse**
13 **human health effects are documented to occur.**

14 (c) **"Rural County" means an Oregon county with a population of 500,000 or less accord-**
15 **ing to the latest federal decennial census.**

16 (2) **The Environmental Quality Commission may adopt a program and rules to reduce**
17 **public health risks of emissions of toxic air contaminants from industrial and commercial**
18 **air contamination sources.**

19 (3)(a) **Except as required by federal law, a person in control of an air contamination**
20 **source may not be required to comply with the program and rules adopted under this section**
21 **unless:**

22 (A) **The air contamination source is one for which a person is otherwise required to ob-**
23 **tain a permit under ORS 468A.040 or 468A.155, or is subject to the federal operating permit**
24 **program pursuant to 468A.310; and**

25 (B) **The demonstrated public health risks from toxic air contaminant emissions from the**
26 **air contamination source are determined to exceed a risk action level of:**

27 (i) **100 in a million excess lifetime cancer risk; or**

28 (ii) **A hazard index of 10 for noncancer risk.**

29 (b) **In lieu of the risk action levels set forth in paragraph (a)(B) of this subsection, the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 commission may adopt by rule alternate risk action levels for requiring an air contamination
2 source to comply with the rules described in this section if the commission makes the fol-
3 lowing findings:

4 (A) For each and every air contamination source in the state that is required to obtain
5 a permit under ORS 468A.040 or 468A.155 or is subject to the federal operating permit pro-
6 gram pursuant to 468A.310, the Department of Environmental Quality has assessed and ad-
7 dressed the air contamination source's toxic air contaminant emissions based on the risk
8 action levels set forth in paragraph (a)(B) of this subsection;

9 (B) The department has assessed the public health risks from toxic air contaminant
10 emissions from mobile sources and air contamination sources that are not required to obtain
11 permits under ORS 468A.040 or 468A.155 or subject to the federal operating permit program
12 pursuant to ORS 468A.310, and has determined that the cumulative public health risks as-
13 sociated with toxic air contaminant emissions from the sources described in this subpara-
14 graph have decreased by 50 percent since January 1, 2017;

15 (C) Alternative thresholds are warranted based on verified science and data; and

16 (D) Adopting alternative thresholds will not adversely affect rural counties.

17 (4) Rules adopted under this section must base evaluation of public health risk on:

18 (a) Emissions of toxic air contaminants from an air contamination source based on the
19 air contamination source's actual production, or for a new air contamination source, the
20 reasonably anticipated actual production by the new air contamination source;

21 (b) The impacts by toxic air contaminants on locations where people actually live or
22 normally congregate, on average, for:

23 (A) More than 30 hours a week for evaluating chronic risk; or

24 (B) Ten hours a day for evaluating acute noncancer risk; and

25 (c) For evaluating chronic risk, the assumption that a person is not present in a given
26 residence for more than 350 days per year and does not live in a given residence for longer
27 than a total of 26 years.

28 (5) Air contamination sources subject to the program and rules adopted under this sec-
29 tion may evaluate public health risk using ambient monitoring as an alternative to computer
30 modeling. Air contamination sources that choose to perform ambient monitoring as an al-
31 ternative to computer modeling must, in coordination with the department, develop an am-
32 bient monitoring plan. An air contamination source shall publish a public notice of
33 commencement of ambient monitoring after approval of the ambient monitoring plan by the
34 department. Only if the public health risk is determined to exceed the risk action levels de-
35 scribed in subsection (3)(a)(B) of this section, the department shall hold a public meeting to
36 discuss ambient monitoring results.

37 (6) The department may not require an air contamination source that employs toxics best
38 available control technology in compliance with the program and rules adopted under this
39 section to undertake additional measures to limit or reduce toxic air contaminants emis-
40 sions.

41 (7)(a) Toxics best available control technology required under subsection (6) of this sec-
42 tion must be a toxic air contaminants emissions limitation based on the maximum degree
43 of reduction of toxic air contaminants that is feasible, determined for each air contamination
44 source on a case-by-case basis, taking into consideration:

45 (A) What has been achieved in practice for:

1 (i) Air contamination sources in the same class as the air contamination source to which
 2 the toxic air contaminants emissions limitation will apply, as classified under ORS 468A.050;
 3 or

4 (ii) For processes or emissions similar to the processes or emissions of the air contam-
 5 ination source;

6 (B) Energy and health or environmental impacts not related to air quality; and

7 (C) Economic impacts, including the costs of changing existing processes or equipment
 8 or adding equipment or controls to existing processes and equipment.

9 (b) Toxics best available control technology may be based on a design standard, equip-
 10 ment standard, work practice standard or other operational standard, or a combination
 11 thereof.

12 (c) In assessing the cost-effectiveness of any measure for purposes of determining toxics
 13 best available control technology for an air contamination source, the department must as-
 14 sess only the costs and benefits associated with controlling toxic air contaminants.

15 (8) In due recognition of the effect that the statewide land use planning system in Oregon
 16 has on the siting of air contamination sources, the program and rules adopted under this
 17 section may not impose requirements on one air contamination source based on the emis-
 18 sions from one or more other separate air contamination source.

19 (9) All public meetings related to rules described in this section must be organized, led
 20 and funded by the department.

21 (10) The program and rules adopted under this section and their applicability to any air
 22 contaminant source described in this section shall not give rise to any private right of action,
 23 shall not create a standard of care for imposing liability in any private action and may not
 24 be introduced as evidence in any civil litigation on the issue of negligence, nuisance, trespass,
 25 injuries or damages.

26 **SECTION 3.** (1) The Environmental Quality Commission may include in the fee schedules
 27 required under ORS 468.065 (2) for permits described in subsection (2) of this section a fee
 28 that is reasonably calculated to cover the direct and indirect costs of the commission and
 29 the Department of Environmental Quality in developing and implementing, under section 2
 30 of this 2018 Act, a program and rules to reduce the public health risks of emissions of toxic
 31 air contaminants from industrial and commercial air contamination sources.

32 (2) The fee authorized under this section shall:

33 (a) Apply for any class of air contamination sources classified pursuant to ORS 468A.050
 34 for which a person is required to obtain permits under ORS 468A.040 or 468A.155 or is subject
 35 to the federal operating permit program pursuant to ORS 468A.310; and

36 (b) Be in addition to, and not in lieu of, any other fee required under ORS 468.065 or
 37 468A.315.

38 (3) The fee authorized under this section for a source subject to the federal operating
 39 permit program established pursuant to ORS 468A.310 shall be a base amount of
 40 \$_____ plus an additional amount equal to \$_____ per ton of each regulated
 41 pollutant emitted during the prior calendar year as determined under ORS 468A.315 (2).

42 (4) The fee authorized under this section for a source subject to the following permitting
 43 requirements under ORS 468A.040 and rules adopted pursuant to ORS 468A.040 shall be as
 44 follows:

45 (a) For a source subject to a permit regulating basic air contaminant discharges,

1 \$_____.

2 (b) For a source subject to a permit regulating general, class I, air contaminant dis-
 3 charges, \$_____.

4 (c) For a source subject to a permit regulating general, class II, air contaminant dis-
 5 charges, \$_____.

6 (d) For a source subject to a permit regulating general, class III, air contaminant dis-
 7 charges, \$_____.

8 (e) For a source subject to a permit regulating general, class IV, air contaminant dis-
 9 charges, \$_____.

10 (f) For a source subject to a permit regulating general, class V, air contaminant dis-
 11 charges, \$_____.

12 (g) For a source subject to a permit regulating general, class VI, air contaminant dis-
 13 charges, a supplemental fee of \$46.

14 (h) For a source that is subject to a permit regulating simple air contaminant discharges
 15 and that qualifies to pay a low fee under rules adopted by the commission under ORS 468.065,
 16 \$_____.

17 (i) For a source that is subject to a permit regulating simple air contaminant discharges
 18 and that qualifies to pay a high fee under rules adopted by the commission under ORS
 19 468.065, \$_____.

20 (j) For a source subject to a permit regulating standard air contaminant discharges,
 21 \$_____.

22 (5) The commission may annually increase the fees set forth in subsections (3) and (4)
 23 of this section in a proportional amount not to exceed the percentage increase, if any, in the
 24 Consumer Price Index, as defined in ORS 468A.315 (4), for the 12-month period ending August
 25 31 of the year immediately prior to the year in which the invoice for the fee is issued, if the
 26 commission determines by rule that the increased fees are necessary to cover the anticipated
 27 cost of developing and implementing the program adopted under section 2 of this 2018 Act.

28 (6) Before establishing fees pursuant to this section, the commission shall consider the
 29 total fees for each class of air contamination sources subject to the fee required by sub-
 30 section (1) of this section.

31 (7) Any fees collected under this section for an air contamination source issued a permit
 32 under ORS 468A.040 or 468A.155 or a source subject to the federal operating permit program
 33 pursuant to ORS 468A.310 must be collected as part of the fee for that specific permit.

34 (8)(a) Any rule adopted under ORS 468.065 (2) regarding late payment of emission fees
 35 by an air contamination source issued a permit under ORS 468A.040 or 468A.155 shall apply
 36 in the same manner to an air contamination source issued a permit under ORS 468A.040 or
 37 468A.155 for late payment of fees under this section.

38 (b) Any rule adopted under ORS 468A.315 regarding late payment of emission fees by
 39 sources subject to the federal operating permit program shall apply in the same manner to
 40 sources subject to the federal operating permit program for late payment of fees under this
 41 section.

42 (9) The department may, in the manner provided in ORS 468.070, refuse to issue, suspend,
 43 revoke or refuse to renew a permit issued under ORS 468A.040 or 468A.155 or under the
 44 federal operating permit program pursuant to ORS 468A.310 for failure to comply with the
 45 provisions of this section.

1 **SECTION 4.** ORS 468.065 is amended to read:

2 468.065. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205
3 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B:

4 (1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040,
5 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall
6 be made in a form prescribed by the Department of Environmental Quality. Any permit issued by
7 the department shall specify its duration, and the conditions for compliance with the rules and
8 standards, if any, adopted by the Environmental Quality Commission pursuant to ORS 448.305,
9 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
10 468A and 468B.

11 (2) By rule and after hearing, the commission may establish a schedule of fees for permits issued
12 pursuant to ORS 468A.040, 468A.045, 468A.155 and 468B.050. Except as provided in ORS 468A.315
13 and 468B.051 **and section 3 of this 2018 Act**, the fees contained in the schedule shall be based upon
14 the anticipated cost of filing and investigating the application, of carrying out applicable require-
15 ments of Title V, of issuing or denying the requested permit, and of an inspection program to de-
16 termine compliance or noncompliance with the permit. The fee shall accompany the application for
17 the permit. The fees for a permit issued under ORS 468A.040 or 468B.050 may be imposed on an
18 annual basis.

19 (3) An applicant for certification of a project under ORS 468B.040 or 468B.045, and any person
20 submitting a notice of intent to seek reauthorization, a preliminary application or an application for
21 reauthorization of a water right for a hydroelectric project under ORS 543A.030, 543A.035, 543A.075,
22 543A.080 or 543A.095 shall pay as a fee all expenses incurred by the commission and department
23 related to the review and decision of the Director of the Department of Environmental Quality and
24 commission. These expenses may include legal expenses, expenses incurred in evaluating the project,
25 issuing or denying certification and expenses of commissioning an independent study by a contractor
26 of any aspect of the proposed project. These expenses shall not include the costs incurred in de-
27 fending a decision of either the director or the commission against appeals or legal challenges. The
28 department shall bill applicants for costs incurred on a monthly basis, and shall provide a biennial
29 report describing how the moneys were spent. An applicant may arrange with the department to pay
30 the fee on a quarterly basis. The department shall not charge a fee under the fee authority in this
31 subsection if the holder is being charged a fee under ORS 543.088 and 543.090 or 543A.405. In no
32 event shall the department assess fees under this section and under ORS 543A.405 for performance
33 of the same work.

34 (4) The department may require the submission of plans, specifications and corrections and re-
35 visions thereto and such other reasonable information as it considers necessary to determine the
36 eligibility of the applicant for the permit.

37 (5) The department may require periodic reports from persons who hold permits under ORS
38 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755 and ORS chap-
39 ters 468, 468A and 468B. The report shall be in a form prescribed by the department and shall
40 contain such information as to the amount and nature or common description of the pollutant, con-
41 taminant or waste and such other information as the department may require.

42 (6) Any fee collected under a schedule of fees established pursuant to this section or ORS
43 468A.315 **or section 3 of this 2018 Act** shall be deposited in the State Treasury to the credit of an
44 account of the department. The fees are continuously appropriated to meet the expenses of the
45 program for which they are collected, except as follows:

1 (a) The federal operating permit program shall include a commensurate amount of the fee for
 2 any permit specified in this section for which the department incurs costs associated with the re-
 3 quirements of Title V and any fees collected under ORS 468A.315. Fees collected for the federal
 4 operating permit program in any biennium that exceed the legislatively approved budget, including
 5 amounts authorized by the Emergency Board for the federal operating permit program for such
 6 biennium, shall be credited toward the federal operating permit program budget for the following
 7 biennium.

8 (b) Fees collected for permits issued under ORS 468B.050 to authorize the discharge of wastes
 9 into the waters of the state may be used to pay the expenses of any of the programs associated with
 10 the issuance of permits under ORS 468B.050 to authorize the discharge of wastes into the waters
 11 of the state.

12 (c) The fees collected under a schedule of fees established pursuant to this section or ORS
 13 468A.315 **or section 3 of this 2018 Act** by a regional air pollution control authority pursuant to a
 14 permit program authorized by the commission shall be retained by and shall be income to the re-
 15 gional authority except as provided in ORS 468A.155 (2)(c). Such fees shall be accounted for and
 16 expended in the same manner as are other funds of the regional authority. However, if the depart-
 17 ment finds after hearing that the permit program administered by the regional authority does not
 18 conform to the requirements of the permit program approved by the commission pursuant to ORS
 19 468A.155, such fees shall be deposited and expended as are permit fees submitted to the department.

20 (7) As used in this section, "Title V" has the meaning given in ORS 468A.300.

21 **SECTION 5.** ORS 468A.300 is amended to read:

22 468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and
 23 468A.460 to 468A.515 **and sections 2 and 3 of this 2018 Act:**

24 (1) "Administrator" means the administrator of the United States Environmental Protection
 25 Agency.

26 (2) "Clean Air Act" means P.L. 88-206 as amended.

27 (3) "Federal operating permit program" means the program established by the Environmental
 28 Quality Commission and the Department of Environmental Quality pursuant to ORS 468A.310.

29 (4) "Major source" has the meaning given in section 501(2) of the Clean Air Act.

30 (5) "Title V" means Title V of the Clean Air Act.

31 **SECTION 6.** ORS 468A.315 is amended to read:

32 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal
 33 operating permit program shall be based on a schedule established by rule by the Environmental
 34 Quality Commission in accordance with this section. Except for the additional [*fee*] **fees** under sub-
 35 section (2)(e) of this section **and section 3 of this 2018 Act**, this fee schedule shall be in lieu of any
 36 other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall
 37 cover all reasonable direct and indirect costs of implementing the federal operating permit program
 38 and shall consist of:

39 (a) An emission fee per ton of each regulated pollutant emitted during the prior calendar year
 40 as determined under subsection (2) of this section, subject to annual fee increases as set forth in
 41 paragraph (d) of this subsection. The following emission fees apply:

42 (A) \$27 per ton emitted during the 2006 calendar year.

43 (B) \$29 per ton emitted during the 2007 calendar year.

44 (C) \$31 per ton emitted during the 2008 calendar year and each calendar year thereafter.

45 (b) Fees for the following specific elements of the federal operating permit program:

- 1 (A) Reviewing and acting upon applications for modifications to federal operating permits.
- 2 (B) Any activity related to permits required under ORS 468A.040 other than the federal operat-
- 3 ing permit program.
- 4 (C) Department of Environmental Quality activities for sources not subject to the federal oper-
- 5 ating permit program.
- 6 (D) Department review of ambient monitoring networks installed by a source.
- 7 (E) Other distinct department activities created by a source or a group of sources if the com-
- 8 mission finds that the activities are unique and specific and that additional rulemaking is necessary
- 9 and will impose costs upon the department that are not otherwise covered by federal operating
- 10 permit program fees.
- 11 (c) A base fee for a source subject to the federal operating permit program. This base fee shall
- 12 be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases
- 13 as set forth in paragraph (d) of this subsection:
- 14 (A) \$2,700 for the period of November 15, 2007, through November 14, 2008.
- 15 (B) \$2,900 for the period of November 15, 2008, through November 14, 2009.
- 16 (C) \$3,100 for the period of November 15, 2009, through November 14, 2010.
- 17 (D) \$4,100 for the period of November 15, 2010, through November 14, 2011, and for each annual
- 18 period thereafter.
- 19 (d) An annual increase in the fees set forth in paragraphs (a) to (c) of this subsection by the
- 20 percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index as of the
- 21 close of the 12-month period ending on August 31, 1989, if the commission determines by rule that
- 22 the increased fees are necessary to cover all reasonable direct and indirect costs of implementing
- 23 the federal operating permit program.
- 24 (2)(a) The fee on emissions of regulated pollutants required under this section shall be based on
- 25 the amount of each regulated pollutant emitted during the prior calendar year as documented by
- 26 information provided by the source in accordance with criteria adopted by the commission or, if the
- 27 source elects to pay the fee based on permitted emissions, the fee shall be based on the emission
- 28 limit for the plant site of the major source.
- 29 (b) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess
- 30 of 4,000 tons per year of any regulated pollutant through calendar year 2010 and in excess of 7,000
- 31 tons per year of all regulated pollutants for each calendar year thereafter. The department may not
- 32 revise a major source's plant site emission limit due solely to payment of the fee on the basis of
- 33 documented emissions.
- 34 (c) The commission shall establish by rule criteria for the acceptability and verifiability of in-
- 35 formation related to emissions as documented, including but not limited to the use of:
- 36 (A) Emission monitoring;
- 37 (B) Material balances;
- 38 (C) Emission factors;
- 39 (D) Fuel use;
- 40 (E) Production data; or
- 41 (F) Other calculations.
- 42 (d) The department shall accept reasonably accurate information that complies with the criteria
- 43 established by the commission as documentation of emissions.
- 44 (e) The rules adopted under this section shall require an additional fee for failure to pay, sub-
- 45 stantial underpayment of or late payment of emission fees.

1 (3) The commission shall establish by rule the size fraction of total particulates subject to
2 emission fees as particulates under this section.

3 (4) As used in this section:

4 (a) "Regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen,
5 and sulfur dioxide; and

6 (b) "Consumer Price Index" has the meaning given in 42 U.S.C. 7661a(b), as in effect on June
7 20, 2007.

8 **SECTION 7. (1) Notwithstanding section 3 (7) of this 2018 Act, a source that has been**
9 **issued, on or before the effective date of this 2018 Act, a permit under ORS 468A.040 or**
10 **468A.155 or under the federal operating permit program pursuant to ORS 468A.310 to emit**
11 **air contaminants during the period beginning July 1, 2018, and ending June 30, 2019, shall pay**
12 **to the Department of Environmental Quality the fee required under section 3 of this 2018**
13 **Act no later than 30 days after the date of the invoice issued by the department for the fee.**

14 (2) If, on or after the effective date of this 2018 Act, a source submits an application for
15 a permit under ORS 468A.040 or 468A.155 or under the federal operating permit program
16 pursuant to ORS 468A.310 that, if issued by the department, would authorize the air con-
17 tamination source to emit air contaminants during the period beginning July 1, 2018, and
18 ending June 30, 2019, the applicable supplemental fee required by section 3 of this 2018 Act
19 shall accompany the application for the permit.

20 **SECTION 8. This 2018 Act being necessary for the immediate preservation of the public**
21 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
22 **on its passage.**