

A-Engrossed
House Bill 3182

Ordered by the House April 11
Including House Amendments dated April 11

Sponsored by Representatives KENY-GUYER, POWER, Senator DEMBROW; Representative HELM, Senator ROBLAN

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.

Requires permit for construction, installation or operation of [*system for on-site treatment and reuse of nonpotable water*] **onsite nonpotable water system**. Requires Environmental Quality Commission to adopt by rule risk-based water quality standards for [*on-site treatment and reuse of nonpotable water*] **onsite nonpotable water system**.

Becomes operative January 1, 2020. Authorizes commission to take certain actions before operative date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to onsite nonpotable water systems; creating new provisions; amending ORS 468.005,
3 468.015, 468.035, 468.065, 468.070, 468.095, 468.100, 468.120, 468.140, 468.956, 468.997 and 537.132;
4 and declaring an emergency.

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

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

7 (a) **"Alternate water source" includes roof runoff, stormwater from precipitation that**
8 **accumulates on an artificial impervious surface, municipal sewage, gray water and any other**
9 **source of nonpotable water from a building as identified by the Environmental Quality**
10 **Commission by rule.**

11 (b) **"Nonpotable end use" means the use of nonpotable water for toilet or urinal supply**
12 **water, clothes washing, irrigation, mechanical cooling, p-trap priming, dust suppression or**
13 **any other use authorized by the commission by rule.**

14 (c) **"Onsite nonpotable water" means water that has been collected from an alternate**
15 **water source and treated such that the water is suitable for direct beneficial use.**

16 (d) **"Onsite nonpotable water system" means a treatment works as that term is defined**
17 **in ORS 454.010 that is a system for the collection of water from alternate water sources**
18 **within or surrounding a building, the treatment of the water into onsite nonpotable water**
19 **and the use of the resulting onsite nonpotable water for nonpotable end uses onsite or in a**
20 **local area.**

21 (2)(a) **Except as provided in subsection (3) of this section, a person may not construct,**
22 **install or operate an onsite nonpotable water system without first obtaining a permit from**
23 **the Department of Environmental Quality.**

24 (b) **An onsite nonpotable water system for which a permit has been issued under this**
25 **section is exempt from the requirements of ORS 454.610 and 454.655.**

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 **(3) A person who constructs, installs or operates a gray water reuse and disposal system**
2 **that meets the requirements adopted by rule under subsection (4) of this section for an**
3 **onsite nonpotable water system may choose to obtain a permit under either this section or**
4 **ORS 454.610.**

5 **(4) The Environmental Quality Commission, in consultation with the Building Codes Di-**
6 **vision of the Department of Consumer and Business Services, shall adopt rules to implement**
7 **the provisions of this section. Rules adopted by the commission must include risk-based wa-**
8 **ter quality standards for onsite nonpotable water systems. In adopting rules under this**
9 **subsection, the commission shall address, at a minimum:**

10 **(a) Risk-based log reduction targets for the removal of pathogens such as enteric viruses,**
11 **parasitic protozoa and enteric bacteria from water collected from alternate water sources,**
12 **such that the resulting onsite nonpotable water may be safely reused for nonpotable end**
13 **uses;**

14 **(b) Water quality monitoring requirements;**

15 **(c) Reporting requirements related to water quality monitoring results;**

16 **(d) Notification and public information requirements;**

17 **(e) Cross-connection controls; and**

18 **(f) Permit requirements.**

19 **SECTION 2.** ORS 537.132 is amended to read:

20 537.132. (1) The provisions of ORS 537.130 requiring application for a permit to appropriate
21 water shall not apply to the use of reclaimed water, if:

22 (a) The use of reclaimed water is authorized by the national pollutant discharge elimination
23 system or water pollution control facilities permit issued pursuant to ORS 468B.050 or 468B.053 **or**
24 **an onsite nonpotable water system permit issued under section 1 of this 2019 Act;**

25 (b) The Department of Environmental Quality, in reviewing an application for a permit pursuant
26 to ORS 468B.050 or 468B.053 **or section 1 of this 2019 Act**, has consulted with the State Depart-
27 ment of Fish and Wildlife on the impact to fish and wildlife to determine that the application of
28 reclaimed water under ORS 537.130, 537.131, 537.132, 540.510 and 540.610 shall not have a significant
29 negative impact on fish and wildlife; and

30 (c) The Department of Environmental Quality has determined the use of reclaimed water is in-
31 tended to improve the water quality of the receiving stream.

32 (2) Any person using or intending to use reclaimed water shall file with the Water Resources
33 Department a reclaimed water registration form setting forth the following:

34 (a) Name and mailing address of the registrant;

35 (b) The date the use of reclaimed water is initiated;

36 (c) Source of reclaimed water supply, including a description of the location of the reclaimed
37 water treatment facility and the name and mailing address of the owner and operator of the facility;

38 (d) Nature of the use of the reclaimed water;

39 (e) Amount of reclaimed water used or proposed to be used;

40 (f) Location and description of the ditch, canal, pipeline or any other conduction facility used
41 or to be used to transport the reclaimed water from the treatment facility to the place of use;

42 (g) A statement declaring the existence of a written contract or agreement to provide reclaimed
43 water including the name and address of the reclaimed water provider and the date and terms of
44 such contract or agreement;

45 (h) A description of the season of use and the place of use of the reclaimed water, and any re-

1 strictions applicable to the use of the reclaimed water; and

2 (i) If the reclaimed water is used in lieu of using water under an existing water right, the ap-
3 plication, permit and certificate number of such right, or if the right is granted pursuant to a decree
4 of circuit court, the volume and page number setting forth the right.

5 (3) If a municipality has discharged waste water into a natural watercourse for five or more
6 years, and the discharge represents more than 50 percent of the total average flow of the natural
7 watercourse and if such discharge would cease as a result of the use of reclaimed water in accord-
8 ance with the provisions of ORS 540.510 (3) and this section, the director of the department shall
9 notify any persons who, according to the department records, have a water right that may be af-
10 fected by the cessation of the discharge by the municipality.

11 (4) If a person holding an affected water right demonstrates to the department that the cessation
12 of discharge by the municipality substantially impairs the ability to satisfy a water right, the person
13 shall be entitled to a preference to the use of the reclaimed water. However, the delivery of the
14 reclaimed water to the person claiming such preference shall be accomplished through a conveyance
15 facility or channel other than a natural watercourse.

16 (5) If a municipality has a less expensive alternative for the disposal and distribution of the re-
17 claimed water, the municipality shall not be obligated to incur expenses or cost beyond the expenses
18 or costs of such alternative.

19 (6) The Water Resources Commission shall adopt rules to implement the notice and preference
20 provisions and impairment evaluation standards of this section.

21 **SECTION 3.** ORS 468.005 is amended to read:

22 468.005. As used in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535,
23 454.605 to 454.755, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B, unless the
24 context requires otherwise:

25 (1) "Commission" means the Environmental Quality Commission.

26 (2) "Department" means the Department of Environmental Quality.

27 (3) "Director" means the Director of the Department of Environmental Quality.

28 (4) "Order" has the same meaning as given in ORS 183.310.

29 (5) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock
30 companies, public and municipal corporations, political subdivisions, the state and any agencies
31 thereof, and the federal government and any agencies thereof.

32 (6) "Rule" has the same meaning as given in ORS 183.310.

33 (7) "Standard" or "standards" means such measure of quality or purity for air or for any waters
34 in relation to their reasonable or necessary use as may be established by the commission pursuant
35 to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS
36 chapters 468, 468A and 468B.

37 **SECTION 4.** ORS 468.015 is amended to read:

38 468.015. It is the function of the Environmental Quality Commission to establish the policies for
39 the operation of the Department of Environmental Quality in a manner consistent with the policies
40 and purposes of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
41 454.755, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B. In addition, the com-
42 mission shall perform any other duty vested in it by law.

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

44 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-
45 ment of Environmental Quality:

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

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

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

11 (d) May employ personnel, including specialists and consultants, purchase materials and sup-
12 plies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010
13 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **section 1 of this 2019 Act** and
14 ORS chapters 468, 468A and 468B.

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

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

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

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

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

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

28 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
29 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,
30 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
31 454.755, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B.

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

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

38 (n) May perform such other and further acts as may be necessary, proper or desirable to carry
39 out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,
40 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **section 1 of this 2019**
41 **Act** and ORS chapters 468, 468A and 468B.

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

45 (2) Nothing in this section shall affect the authority of the Oregon Health Authority to make

1 and enforce rules:

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

4 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.001 to
5 431.550 and 431.990.

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

10 (4)(a) In awarding a public contract under ORS 279.835 to 279.855 or ORS chapter 279A, 279B
11 or 279C for a removal or remedial action pursuant to ORS 465.200 to 465.545, a corrective action
12 or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a
13 removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093,
14 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department of Administrative
15 Services, when administering the establishment of such a contract on behalf of the Department of
16 Environmental Quality under ORS 279A.050 and 279A.140, shall subtract from the amount of any bid
17 or proposal the hazardous waste management fees and solid waste fees that would be required by
18 law to be paid to the department for waste that would be disposed of at a solid waste disposal site
19 or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be
20 subtracted shall be established on the basis of reasonable preprocurement estimates of the amount
21 of waste that would be disposed of under the contract and that would be subject to those fees.

22 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract
23 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less
24 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates
25 of amounts of waste that would be disposed of in projects of this character is technically challenging
26 and requires the application of professional discretion. Therefore, no award of a contract under this
27 subsection shall be subject to challenge, under ORS 279B.410, 279B.415 or 279C.460 or otherwise,
28 on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

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

41 **SECTION 6.** ORS 468.065, as amended by section 18, chapter 102, Oregon Laws 2018, is
42 amended to read:

43 468.065. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205
44 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **section 1 of this 2019 Act** and ORS chapters 468,
45 468A and 468B:

1 (1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040,
2 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **section 1 of this 2019 Act** and ORS
3 chapters 468, 468A and 468B shall be made in a form prescribed by the Department of Environ-
4 mental Quality. Any permit issued by the department shall specify its duration, and the conditions
5 for compliance with the rules and standards, if any, adopted by the Environmental Quality Com-
6 mission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605
7 to 454.755, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B.

8 (2) By rule and after hearing, the commission may establish a schedule of fees for permits issued
9 pursuant to ORS 468A.040, 468A.045, 468A.155 and 468B.050. Except as provided in ORS 468A.315
10 and 468B.051 and section 13, chapter 102, Oregon Laws 2018, the fees contained in the schedule shall
11 be based upon the anticipated cost of filing and investigating the application, of carrying out appli-
12 cable requirements of Title V, of issuing or denying the requested permit, and of an inspection pro-
13 gram to determine compliance or noncompliance with the permit. The fee shall accompany the
14 application for the permit. The fees for a permit issued under ORS 468A.040 or 468B.050 may be
15 imposed on an annual basis.

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

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

34 (5) The department may require periodic reports from persons who hold permits under ORS
35 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755, **section 1 of**
36 **this 2019 Act** and ORS chapters 468, 468A and 468B. The report shall be in a form prescribed by
37 the department and shall contain such information as to the amount and nature or common de-
38 scription of the pollutant, contaminant or waste and such other information as the department may
39 require.

40 (6) Any fee collected under a schedule of fees established pursuant to this section or ORS
41 468A.315 or section 13, chapter 102, Oregon Laws 2018, shall be deposited in the State Treasury to
42 the credit of an account of the department. The fees are continuously appropriated to meet the ex-
43 penses of the program for which they are collected, except as follows:

44 (a) The federal operating permit program shall include a commensurate amount of the fee for
45 any permit specified in this section for which the department incurs costs associated with the re-

1 requirements of Title V and any fees collected under ORS 468A.315. Fees collected for the federal
2 operating permit program in any biennium that exceed the legislatively approved budget, including
3 amounts authorized by the Emergency Board for the federal operating permit program for such
4 biennium, shall be credited toward the federal operating permit program budget for the following
5 biennium.

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

10 (c) The fees collected under a schedule of fees established pursuant to this section or ORS
11 468A.315 or section 13, chapter 102, Oregon Laws 2018, by a regional air pollution control authority
12 pursuant to a permit program authorized by the commission shall be retained by and shall be income
13 to the regional authority except as provided in ORS 468A.155 (2)(c). Such fees shall be accounted for
14 and expended in the same manner as are other funds of the regional authority. However, if the de-
15 partment finds after hearing that the permit program administered by the regional authority does
16 not conform to the requirements of the permit program approved by the commission pursuant to
17 ORS 468A.155, such fees shall be deposited and expended as are permit fees submitted to the de-
18 partment.

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

20 **SECTION 7.** ORS 468.070 is amended to read:

21 468.070. (1) At any time, the Department of Environmental Quality may refuse to issue, modify,
22 suspend, revoke or refuse to renew any permit issued pursuant to ORS 468.065 if it finds:

23 (a) A material misrepresentation or false statement in the application for the permit.

24 (b) Failure to comply with the conditions of the permit.

25 (c) Violation of any applicable provisions of ORS 466.605 to 466.680, 466.990 (3) and (4) and
26 466.995 (2) or ORS chapters 468, 468A and 468B.

27 (d) Violation of any applicable rule, standard or order of the Environmental Quality Commission.

28 (2) The department may modify any permit issued pursuant to ORS 468.065 if it finds that mod-
29 ification is necessary for the proper administration, implementation or enforcement of the provisions
30 of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, 466.605
31 to 466.680, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B.

32 (3) The procedure for modification, suspension, revocation or refusal to issue or renew shall be
33 the procedure for a contested case as provided in ORS chapter 183.

34 **SECTION 8.** ORS 468.095 is amended to read:

35 468.095. (1) The Department of Environmental Quality shall have the power to enter upon and
36 inspect, at any reasonable time, any public or private property, premises or place for the purpose
37 of investigating either an actual or suspected source of water pollution or air pollution or air con-
38 tamination or to ascertain compliance or noncompliance with any rule or standard adopted or order
39 or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535,
40 454.605 to 454.755, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B. The Envi-
41 ronmental Quality Commission shall also have access to any pertinent records relating to such
42 property, including but not limited to blueprints, operation and maintenance records and logs, op-
43 erating rules and procedures.

44 (2) Unless classified by the Director of the Department of Environmental Quality as confidential,
45 any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to

1 454.255, 454.505 to 454.535, 454.605 to 454.755, **section 1 of this 2019 Act** and ORS chapters 468,
2 468A and 468B shall be available to the public. Upon a showing satisfactory to the director by any
3 person that records, reports or information, or particular parts thereof, other than emission data, if
4 made public, would divulge a secret process, device or method of manufacturing or production en-
5 titled to protection as trade secrets of such person, the director shall classify such record, report
6 or information, or particular part thereof, other than emission data, confidential and such confiden-
7 tial record, report or information, or particular part thereof, other than emission data, shall not be
8 made a part of any public record or used in any public hearing unless it is determined by a circuit
9 court that evidence thereof is necessary to the determination of an issue or issues being decided at
10 a public hearing.

11 **SECTION 9.** ORS 468.100 is amended to read:

12 468.100. (1) Whenever the Environmental Quality Commission has good cause to believe that any
13 person is engaged or is about to engage in any acts or practices which constitute a violation of ORS
14 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **section 1 of**
15 **this 2019 Act** and ORS chapters 468, 468A and 468B, or any rule, standard or order adopted or
16 entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040,
17 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **section 1 of this 2019 Act** and ORS
18 chapters 468, 468A and 468B, the commission may institute actions or proceedings for legal or eq-
19 uitable remedies to enforce compliance thereto or to restrain further violations.

20 (2) The proceedings authorized by subsection (1) of this section may be instituted without the
21 necessity of prior agency notice, hearing and order, or during said agency hearing if it has been
22 initially commenced by the commission.

23 (3) A regional authority formed under ORS 468A.105 may exercise the same functions as are
24 vested in the commission by this section insofar as such functions relate to air pollution control and
25 are applicable to the conditions and situations of the territory within the regional authority. The
26 regional authority shall carry out these functions in the manner provided for the commission to
27 carry out the same functions.

28 (4) The provisions of this section are in addition to and not in substitution of any other civil
29 or criminal enforcement provisions available to the commission or a regional authority. The pro-
30 visions of this section shall not prevent the maintenance of actions for legal or equitable remedies
31 relating to private or public nuisances brought by any other person, or by the state on relation of
32 any person without prior order of the commission.

33 **SECTION 10.** ORS 468.120 is amended to read:

34 468.120. (1) The Environmental Quality Commission, its members or a person designated by and
35 acting for the commission may:

36 (a) Conduct public hearings.

37 (b) Issue subpoenas for the attendance of witnesses and the production of books, records and
38 documents relating to matters before the commission.

39 (c) Administer oaths.

40 (d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may
41 be considered necessary or proper to carry out duties of the commission and Department of Envi-
42 ronmental Quality pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535,
43 454.605 to 454.755, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B.

44 (2) Subpoenas authorized by this section may be served by any person authorized by the person
45 issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in

1 ORS 44.415 (2).

2 **SECTION 11.** ORS 468.140 is amended to read:

3 468.140. (1) In addition to any other penalty provided by law, any person who violates any of the
4 following shall incur a civil penalty for each day of violation in the amount prescribed by the
5 schedule adopted under ORS 468.130:

6 (a) The terms or conditions of any permit required or authorized by law and issued by the De-
7 partment of Environmental Quality or a regional air quality control authority.

8 (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
9 454.535, 454.605 to 454.755 and 783.625 to 783.640, **section 1 of this 2019 Act** and ORS chapter 467
10 and ORS chapters 468, 468A and 468B.

11 (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued
12 pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755
13 and 783.625 to 783.640, **section 1 of this 2019 Act** and ORS chapter 467 and ORS chapters 468, 468A
14 and 468B.

15 (d) Any term or condition of a variance granted by the commission or department pursuant to
16 ORS 467.060.

17 (e) Any rule or standard or order of a regional authority adopted or issued under authority of
18 ORS 468A.135.

19 (f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related
20 to the financial assurance requirement under ORS 468B.390.

21 (2) Each day of violation under subsection (1) of this section constitutes a separate offense.

22 (3)(a) In addition to any other penalty provided by law, any person who intentionally or
23 negligently causes or permits the discharge of oil or hazardous material into the waters of the state
24 or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into
25 the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the
26 amount of \$100,000 for each violation.

27 (b) In addition to any other penalty provided by law, the following persons shall incur a civil
28 penalty not to exceed the amount of \$25,000 for each day of violation:

29 (A) Any person who violates the terms or conditions of a permit authorizing waste discharge
30 into the air or waters of the state.

31 (B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040,
32 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640, **section 1 of this**
33 **2019 Act** and ORS chapters 468, 468A and 468B relating to air or water pollution.

34 (C) Any person who violates the provisions of a rule adopted or an order issued under ORS
35 459A.590.

36 (4) In addition to any other penalty provided by law, any person who violates the provisions of
37 ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$1,000 for each day of vio-
38 lation.

39 (5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission
40 standards which are not violations of standards for control of noise emissions.

41 (6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided
42 by law, any person who intentionally or negligently causes or permits open field burning contrary
43 to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed
44 by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned.
45 Any amounts collected by the department pursuant to this subsection shall be deposited with the

1 State Treasurer to the credit of the General Fund and shall be available for general governmental
2 expense. As used in this subsection, “open field burning” does not include propane flaming of mint
3 stubble.

4 **SECTION 12.** ORS 468.956 is amended to read:

5 468.956. Refusal, without good cause, to produce books, papers or information subpoenaed by the
6 Environmental Quality Commission, the Department of Environmental Quality or the regional air
7 quality control authority or any report required by law or by the commission, the department or a
8 regional authority pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535,
9 454.605 to 454.755, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B is a Class A
10 misdemeanor.

11 **SECTION 13.** ORS 468.997 is amended to read:

12 468.997. Where any provision of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
13 454.535, 454.605 to 454.755, **section 1 of this 2019 Act** and ORS chapters 468, 468A and 468B pro-
14 vides that each day of violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
15 454.535, 454.605 to 454.755 or a section of ORS chapters 468, 468A and 468B constitutes a separate
16 offense, violations of that section that occur within the same court jurisdiction may be joined in one
17 indictment, or complaint, or information, in several counts.

18 **SECTION 14. (1) Section 1 of this 2019 Act and the amendments to statutes by sections**
19 **2 to 13 of this 2019 Act become operative on January 1, 2020.**

20 **(2) The Environmental Quality Commission may adopt rules or take any actions before**
21 **the operative date specified in subsection (1) of this section that are necessary to enable the**
22 **commission and the Department of Environmental Quality, on and after the operative date**
23 **specified in subsection (1) of this section, to carry out the provisions of section 1 of this 2019**
24 **Act and the amendments to statutes by sections 2 to 13 of this 2019 Act. Rules adopted**
25 **pursuant to this section may not become operative before January 1, 2020.**

26 **SECTION 15. This 2019 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
28 **on its passage.**

29