

Enrolled
Senate Bill 528

Sponsored by Senators PROZANSKI, MORRISETTE, WALKER, BATES, Representative HOLVEY; Senator BONAMICI, Representatives BARNHART, BUCKLEY, GELSER, GREENLICK, KOTEK, NATHANSON, NOLAN, SHIELDS, TOMEI

CHAPTER

AN ACT

Relating to field burning; creating new provisions; amending ORS 468A.560, 468A.575, 468A.580, 468A.585, 468A.595, 468A.610, 468A.615 and 468A.620; and declaring an emergency.

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

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

468A.560. [(1)] Except for the fee imposed under ORS 468A.615 (1)(c), the provisions of ORS 468A.550 to 468A.620 and 468A.992 shall apply only to open field burning, propane flaming and stack or pile burning of grass seed **crop residues** or cereal grain crop residues on acreage located in [*the counties specified in ORS 468A.595 (2)*] **Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties.**

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

SECTION 2. ORS 468A.575 is amended to read:

468A.575. (1) Permits for open burning, propane flaming or stack or pile burning of the residue from perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the counties listed in ORS [*468A.595 (2) and*] **468A.560. Permits** shall be issued in accordance with rules adopted by the Environmental Quality Commission and subject to the fee prescribed in ORS 468A.615. The permit described in this section shall be issued in conjunction with permits required under ORS 476.380 or 478.960.

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

SECTION 3. ORS 468A.580 is amended to read:

468A.580. (1) Permits under ORS 468A.575 for open field burning of cereal grain crops shall be issued in the counties listed in ORS [*468A.595 (2)*] **468A.560** only if the person seeking the permit submits to the issuing authority a signed statement under oath or affirmation that the acreage to be burned will be planted to seed crops other than cereal grains which require flame sanitation for proper cultivation.

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

(3) Any person planting contrary to the restrictions of subsection (1) of this section shall be assessed by the department a civil penalty of \$25 for each acre planted contrary to the restrictions.

Any fines collected by the department under this subsection shall be deposited by the State Treasurer in the Department of Agriculture Service Fund to be used in carrying out the smoke management program in cooperation with the Oregon Seed Council and for administration of this section.

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

SECTION 4. ORS 468A.585 is amended to read:

468A.585. (1) The Environmental Quality Commission shall enter into a memorandum of understanding with the State Department of Agriculture that provides for the State Department of Agriculture to operate all of the field burning program.

(2) Subject to the terms of the memorandum of understanding required by subsection (1) of this section, the State Department of Agriculture:

(a) May perform any function of the Environmental Quality Commission or the Department of Environmental Quality relating to the operation and enforcement of the field burning smoke management program, **except for making findings pursuant to ORS 468A.610 (10) and (11).**

(b) May enter onto and inspect, at any reasonable time, the premises **and fields** of any person **registered under ORS 468A.615 for** *[conducting]* an open field burn, **propane flaming or stack or pile burning** to ascertain compliance with a statute, rule, standard or permit condition relating to the field burning smoke management program.

(c) May conduct a program for the research and development of alternatives to field burning.

SECTION 5. ORS 468A.595 is amended to read:

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

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

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

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

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

[(5)] **(4)** Any amendments to the State Implementation Plan prepared by the state pursuant to the federal Clean Air Act, *[as enacted by Congress, December 31, 1970, and as amended by Congress August 7, 1977, and November 15, 1990, and Acts amendatory thereto]* **42 U.S.C. 7401 et seq., as in effect on the effective date of this 2009 Act,** shall be *[only]* **at least** of such sufficiency as to gain approval of the amendment by the United States Environmental Protection Agency *[and shall not*

include rules promulgated by the commission pursuant to subsection (1) of this section not necessary for attainment of national ambient air quality standards].

SECTION 6. ORS 468A.610 is amended to read:

468A.610. (1) Except as provided under ORS 468A.620, no person shall open burn or cause to be open burned, propane flamed or stack or pile burned in the counties [specified] **listed** in ORS [468A.595 (2)] **468A.560**, perennial or annual grass seed crop **residue** or cereal grain crop residue, unless the acreage has been registered under ORS 468A.615 and the permits required by ORS 468A.575, 476.380 and 478.960 have been obtained.

(2) The maximum total registered acreage allowed to be open burned per year pursuant to subsection (1) of this section shall be:

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

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

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

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

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

(a) For 2009, 20,000 acres.

(b) For 2010 and thereafter, none.

(3) **The maximum total registered acreage allowed to be stack or pile burned per year under subsection (1) of this section shall be:**

(a) For 2009, 1,000 acres.

(b) For 2010, 1,000 acres.

(c) For 2011, 1,000 acres.

(d) For 2012, 1,000 acres.

(e) For 2013 and thereafter, none.

[3] (4) The maximum total **registered** acreage allowed to be propane flamed **per year** under subsection (1) of this section **in the counties listed in ORS 468A.560** shall be:

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

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

(a) For 2009, 500 acres.

(b) For 2010, 500 acres.

(c) For 2011, 500 acres.

(d) For 2012, 500 acres.

(e) For 2013 and thereafter, none.

[4(a)] (5) [After January 1, 1998,] Fields shall be prepared for propane flaming by removing all loose straw or vacuuming, or prepared using other techniques approved by rule by the [Environmental Quality] commission, **and** [.]

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

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

(6)(a) Notwithstanding the limitations set forth in subsection (2) of this section, steep terrain and species identified by the Director of Agriculture by rule shall not be included in the maximum total of permitted acreage set forth in subsection (2) of this section. The additional acreage allowed to be open burned shall be 15,000 acres per year.

(b) Steep terrain and species identified by the Director of Agriculture by rule may not be open burned under the provisions of this subsection in Benton and Lane Counties and in Linn County, except for portions of northeast Linn County that are east of Stayton-Scio Road and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.

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

[(7)] **(8)** In the event of the registration of more than the maximum allowable acres for open burning, **propane flaming or stack or pile burning** in the counties [specified] listed in ORS [468A.595 (2), after 1996] **468A.560**, the commission, after consultation with the State Department of Agriculture, by rule or order may assign priority of permits based on soil characteristics, the crop type, terrain or drainage. **In no event may permits be issued for more than the maximum acreage listed in subsections (2), (3), (4) and (6) of this section.**

[(8)] **(9)** Permits shall be issued under ORS 468A.575 and open burning, **propane flaming and stack or pile burning** shall be allowed for the maximum acreage specified in [subsection (2) of this section] **subsections (2), (3), (4) and (6) of this section** unless[.:]

[(a)] the daily determination of suitability of meteorological conditions, regional or local air quality conditions or other burning conditions requires that a maximum number of acres not be burned on a given day.[; or]

[(b)] *The commission finds after hearing that other reasonable and economically feasible, environmentally acceptable alternatives to the practice of annual open field burning have been developed.*

[(9)] **(10)** Upon a finding of [extreme] danger to public health or safety, the commission may order temporary emergency cessation of all open field burning, propane flaming [or] **and** stack or pile burning in any area of the counties listed in [ORS 468A.595 (2)] **468A.560**.

(11)(a) Notwithstanding subsection (8) of this section, the commission may by order permit emergency open burning, propane flaming or stack or pile burning of up to 2,000 acres each calendar year in addition to the acreage allowed under subsections (2), (3), (4) and (6) of this section, if the commission finds:

(A) Extreme hardship due to disease outbreak or insect infestation, as identified by the commission by rule, outweighs the dangers to public health and safety from emergency open burning, propane flaming or stack or pile burning;

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

(C) Authorization of additional acreage is limited to the calendar year in which the commission makes the required findings; and

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

(b) The commission by rule may assess fees for the acreage burned pursuant to this subsection. All fees collected under this subsection shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund for the purpose specified in ORS 468A.615 (2).

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

SECTION 7. Section 8 of this 2009 Act is added to and made a part of ORS 468A.550 to 468A.620.

SECTION 8. (1) Notwithstanding any other provision of ORS 468A.550 to 468A.620, the Environmental Quality Commission by rule may prohibit field burning of grass seed crop residues or cereal grain crop residues in areas determined by the commission to be critical nonburn areas. The prohibition may be permanent or for a limited period of time.

(2) To ensure that the provision of electricity services is not interrupted, the critical nonburn areas described in subsection (1) of this section may include, but are not limited to, areas under power transmission lines.

SECTION 9. ORS 468A.615 is amended to read:

468A.615. (1)(a) On or before April 1 of each year, the grower of a grass seed crop shall register with the county court or board of county commissioners, the fire chief of a rural fire protection district, the designated representative of the fire chief or other responsible persons the number of acres to be open burned or propane flamed in the remainder of the year. At the time of registration,

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

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

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

(A) [\$8] **\$16** per acre of crop sanitized by open burning in the counties [specified] **listed** in ORS [468A.595 (2)] **468A.560;**

(B) [\$4] **\$8** per acre of perennial or annual grass seed crop sanitized by open burning in any county not [specified] **listed** in ORS [468A.595 (2)] **468A.560;**

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

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

[i] *\$2 per acre from January 1, 1992, to December 31, 1997;*

[ii] *\$4 per acre in 1998;*

[iii] *\$6 per acre in 1999;*

[iv] *\$8 per acre in 2000; and*

[v] *\$10 per acre in 2001 and thereafter; and*

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

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

(2)(a) All fees collected under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the State Department of Agriculture for the purpose of carrying out the duties and responsibilities carried out by the State Department of Agriculture pursuant to the memorandum of understanding established under ORS 468A.585. **Upon a request from the Environmental Quality Commission, the State Department of Agriculture shall transfer from the fund to the commission moneys sufficient for the commission to carry out its duties specified in ORS 468A.610 (10) and (11).**

(b) **The State Department of Agriculture by rule may increase the fees required under this section as needed to carry out its duties and responsibilities pursuant to the memorandum of understanding established under ORS 468A.585, provided that the fees do not exceed the costs of the State Department of Agriculture in operating all of the field burning program.**

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

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

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

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

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

SECTION 10. ORS 468A.620 is amended to read:

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

(a) Development, demonstration or training personnel in the use of special or unusual field ignition techniques or methodologies.

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

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

(d) Improved methods of stack or pile burning.

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

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

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

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

SECTION 11. Section 8 of this 2009 Act and the amendments to ORS 468A.560, 468A.575, 468A.580, 468A.585, 468A.595, 468A.610, 468A.615 and 468A.620 by sections 1 to 6, 9 and 10 of

this 2009 Act apply to all open field burning, propane flaming and stack or pile burning occurring on or after the effective date of this 2009 Act.

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

Passed by Senate June 25, 2009

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Secretary of Senate

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President of Senate

Passed by House June 29, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State