

D R A F T

SUMMARY

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
3 and 468.035; and declaring 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
7 Commission, the Department of Environmental Quality:

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

12 (b) May conduct and prepare, independently or in cooperation with oth-
13 ers, studies, investigations, research and programs pertaining to the quality
14 and purity of the air or the waters of the state and to the treatment and
15 disposal of wastes.

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

1 (d) May employ personnel, including specialists and consultants, purchase
2 materials and supplies, and enter into contracts **with public and private**
3 **entities** necessary to carry out the purposes set forth in ORS 448.305, 454.010
4 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS
5 chapters 468, 468A and 468B.

6 (e) Shall conduct and supervise programs of air and water pollution con-
7 trol education, including the preparation and distribution of information re-
8 garding air and water pollution sources and control.

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

11 (g) Shall develop and conduct demonstration programs in cooperation
12 with units of local government.

13 (h) Shall serve as the agency of the state for receipt of moneys from the
14 federal government or other public or private agencies for the purposes of
15 air and water pollution control, studies or research and to expend moneys
16 after appropriation thereof for the purposes given.

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

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

21 (k) Shall institute or cause to be instituted in a court of competent ju-
22 risdiction, proceedings to compel compliance with any rule or standard
23 adopted or any order or permit, or condition thereof, issued pursuant to ORS
24 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
25 454.755 and ORS chapters 468, 468A and 468B.

26 (L) Shall encourage the formulation and execution of plans in conjunction
27 with air and water pollution control agencies or with associations of coun-
28 ties, cities, industries and other persons who severally or jointly are or may
29 be the source of air or water pollution, for the prevention and abatement of
30 pollution.

31 (m) May determine, by means of field studies and sampling, the degree

1 of air or water pollution in various regions of the state.

2 (n) May perform such other and further acts as may be necessary, proper
3 or desirable to carry out effectively the duties, powers and responsibilities
4 of the department as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to
5 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and
6 468B.

7 (o) Shall coordinate any activities of the department related to a
8 watershed enhancement project approved by the Oregon Watershed En-
9 hancement Board under ORS 541.932 with activities of other cooperating
10 state and federal agencies participating in the project.

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

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

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

18 (3) Nothing in this section shall prevent the State Department of Agri-
19 culture or the State Forestry Department from independently receiving
20 moneys from a public or private agency for the purposes of preventing or
21 controlling air or water pollution resulting from agricultural or silvicultural
22 activities or soil erosion, or for research related to such purposes.

23 (4)(a) In awarding a public contract under ORS 279.835 to 279.855 or ORS
24 chapter 279A, 279B or 279C for a removal or remedial action pursuant to
25 ORS 465.200 to 465.545, a corrective action or cleanup action pursuant to
26 ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a removal
27 pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085,
28 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and
29 the Oregon Department of Administrative Services, when administering the
30 establishment of such a contract on behalf of the Department of Environ-
31 mental Quality under ORS 279A.050 and 279A.140, shall subtract from the

1 amount of any bid or proposal the hazardous waste management fees and
2 solid waste fees that would be required by law to be paid to the department
3 for waste that would be disposed of at a solid waste disposal site or a haz-
4 arduous waste or PCB disposal facility, based on the bid or proposal. The
5 amount to be subtracted shall be established on the basis of reasonable pre-
6 procurement estimates of the amount of waste that would be disposed of
7 under the contract and that would be subject to those fees.

8 (b) The subtraction for fees under paragraph (a) of this subsection shall
9 apply only to a contract reasonably anticipated to involve the disposal of
10 no less than 50 tons of hazardous waste or no less than 500 tons of solid
11 waste. The Legislative Assembly finds that making accurate advance esti-
12 mates of amounts of waste that would be disposed of in projects of this
13 character is technically challenging and requires the application of profes-
14 sional discretion. Therefore, no award of a contract under this subsection
15 shall be subject to challenge, under ORS 279B.410, 279B.415 or 279C.460 or
16 otherwise, on the ground of the inaccuracy or claimed inaccuracy of any
17 such estimate.

18 (c) The subtraction for fees under paragraph (a) of this subsection shall
19 not apply to the establishment, by or on behalf of the department, of master
20 contracts by which the department engages the services of a contractor over
21 a period of time for the purpose of issuing work orders for the performance
22 of environmental activities on a project or projects for which the amounts
23 of waste to be disposed of were not reasonably identified at the inception of
24 the master contracts. However, the department shall require any contractor
25 under a master contract to apply the subtraction for fees under paragraph
26 (a) of this subsection in the selection of any subcontractor to perform the
27 removal of waste in amounts equaling or exceeding the amounts set forth in
28 paragraph (b) of this subsection. Nothing in this subsection shall be con-
29 strued to prohibit the department or the Oregon Department of Administra-
30 tive Services from establishing contracts pursuant to this section through
31 contracting procedures authorized by ORS 279.835 to 279.855 and ORS chap-

1 ters 279A, 279B and 279C that do not require the solicitation of bids or pro-
2 posals.

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

4 454.725. (1) The Department of Environmental Quality may enter into
5 agreements with local units of government for the local units to perform the
6 duties of the department under ORS 454.635, 454.655, 454.665 and 454.755. **A
7 local unit of government described in this subsection may contract
8 with private entities as necessary to assist the local unit of govern-
9 ment in carrying out the provisions described in this subsection.**

10 (2) The Department of Environmental Quality may enter into an agree-
11 ment with a local unit of government when the local unit of government
12 requests to perform the variance duties of the department under ORS 454.657
13 and 454.660 subject to variance criteria specified in the agreement by the
14 department. Each local unit of government performing variance duties under
15 an agreement may set and collect a variance application fee as provided in
16 ORS 454.662. A fee collected by a local unit of government under this sub-
17 section shall not exceed the cost to the local unit of government of per-
18 forming the variance duties of the department.

19 **SECTION 3.** **This 2013 Act being necessary for the immediate pres-
20 ervation of the public peace, health and safety, an emergency is de-
21 clared to exist, and this 2013 Act takes effect on its passage.**

22
