

A-Engrossed
House Bill 2404

Ordered by the House April 14
Including House Amendments dated April 14

Sponsored by Representative LIVELY, Senator ROBLAN; Representatives EVANS, POWER, Senator GELSER
(Pre-session 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.

Requires Oregon Health Authority to analyze ground water contaminant data and provide education in areas with ground water contaminant problems.

Authorizes authority to make grants and loans for purpose of assisting rental property owners and low-income property owners with installation of treatment systems. Authorizes authority to make grants to local public health authorities and other specified entities for purposes related to ensuring safe ground water. Establishes Safe Ground Water Fund and continuously appropriates moneys in fund to authority for purpose of making grants and loans. Appropriates moneys for deposit in fund.

Requires, for each dwelling unit rented by landlord for which source of drinking water is well, landlord to collect and test samples of drinking water from dwelling unit for arsenic, total coliform bacteria and nitrates. Becomes operative March 1, 2018.

A BILL FOR AN ACT

1
2 Relating to ground water that is used for domestic purposes; creating new provisions; and amending
3 ORS 90.320, 448.271 and 468B.150.

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

5
6 **TESTING OF WELLS THAT SUPPLY**
7 **GROUND WATER FOR DOMESTIC PURPOSES**
8

9 **SECTION 1. As used in ORS 448.268 and 448.271 and sections 3 and 4 of this 2017 Act:**

10 (1) **"Area of ground water concern" has the meaning given that term in ORS 468B.150.**

11 (2) **"Contaminant" has the meaning given that term in ORS 468B.150.**

12 (3) **"Local public health authority" has the meaning given that term in ORS 431.003.**

13 **SECTION 2. ORS 448.271 is amended to read:**

14 448.271. (1) In any transaction for the sale or exchange of real estate that includes a well that
15 supplies ground water for domestic purposes, the seller of the real estate shall, upon accepting an
16 offer to purchase *[that]* **the** real estate, have the well tested for arsenic, nitrates and total coliform
17 bacteria. The Oregon Health Authority *[also may,]* by rule,] **may** require additional tests for specific
18 contaminants in specific areas of public health concern. The seller shall submit the results of the
19 tests required under this *[section]* **subsection** to the authority and to the *[buyer]* **purchaser** within
20 90 days of receiving the results of the tests.

21 [(2)] The failure of a seller to comply with *[the provisions of this section]* **this subsection** does
22 not invalidate an instrument of conveyance executed in the transaction.

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 (2) The authority shall:

2 (a) For purposes related to education, analyze the results of tests received by the au-
3 thority under subsection (1) of this section;

4 (b) Identify areas with likely ground water contaminant problems; and

5 (c) Provide ground water contaminant education in areas identified as having ground
6 water contaminant problems.

7 (3) The authority shall provide the results of tests received by the authority under sub-
8 section (1) of this section and any information derived from the authority's activities under
9 subsection (2)(a) and (b) of this section to the Department of Environmental Quality. The
10 department may use that information in the administration of ORS 468B.150 to 468B.190.
11 Upon request, the department shall assist the authority in fulfilling the authority's duties
12 under subsection (2)(a) and (b) of this section.

13 (4) To fulfill its duties under subsection (2)(c) of this section, the authority may:

14 (a) Collaborate with the department or any other state agency to provide ground water
15 contaminant education; or

16 (b) Notify a local public health authority that ground water contaminant education is
17 needed in an area subject to the jurisdiction of the local public health authority.

18 (5) The authority may adopt rules to implement this section.

19
20 **GRANTS AND LOANS**

21
22 **SECTION 3.** (1) The Oregon Health Authority may make grants and loans from the Safe
23 Ground Water Fund established under section 5 of this 2017 Act for the purpose of assisting
24 low-income and rental property owners with installation of treatment systems for ground
25 water that has contaminant problems or with repair or replacement of wells because of
26 ground water that has contaminant problems.

27 (2) The authority shall identify appropriate property owners for receipt of a grant or loan
28 under this section. At a minimum, a property owner that receives a grant or loan under this
29 section must:

30 (a) Be a low-income property owner, as determined by the authority, or a rental property
31 owner;

32 (b) Have tested the ground water supply of the property; and

33 (c) Have received test results indicating that the ground water supply of the property
34 poses a health risk.

35 (3) The authority shall provide property owners that receive a grant or loan under this
36 section with information necessary to install a treatment system or to repair or replace a
37 well, including information on the efficacy of different treatment systems or well designs and
38 information on businesses that sell treatment systems or that repair or replace wells. In
39 providing information under this section, the authority may post information on a website
40 maintained by the authority and provide notice of the website to property owners that re-
41 ceive a grant or loan under this section.

42 (4) The authority shall require a property owner that receives a loan under this section
43 to repay the loan within five years after receiving the loan.

44 (5) The authority may pay the expenses incurred by the authority in administering this
45 section out of moneys that are available for the purpose of making grants or loans under this

1 section.

2 (6) The authority may adopt rules necessary to administer this section.

3 **SECTION 4.** (1) The Oregon Health Authority may make grants from the Safe Ground
4 Water Fund established under section 5 of this 2017 Act for the purpose of assisting local
5 public health authorities, nonprofit organizations, soil and water conservation districts and
6 the Oregon State University Extension Service with:

7 (a) Providing ground water contaminant education in an area that has been identified by
8 the authority as having a ground water contaminant problem; and

9 (b) Conducting free or low-cost tests of wells.

10 (2) For purposes of making grants under this section, the authority shall identify appro-
11 priate recipients of grant moneys. In identifying appropriate recipients of grant moneys, the
12 authority shall consider whether the recipient is qualified and capable of providing ground
13 water contaminant education as described in subsection (1)(a) of this section or conducting
14 free or low-cost tests of wells as described in subsection (1)(b) of this section.

15 (3) The authority shall provide recipients of grant moneys under this section with the
16 technical support necessary to provide ground water contaminant education as described in
17 subsection (1)(a) of this section or to conduct free or low-cost tests of wells as described in
18 subsection (1)(b) of this section.

19 (4) The authority may pay the expenses incurred by the authority in administering this
20 section out of moneys that are available for the purpose of making grants under this section.

21 (5) The authority may adopt rules necessary to administer this section.

22 **SECTION 5.** (1) There is established the Safe Ground Water Fund, separate and distinct
23 from the General Fund. Interest earned by the Safe Ground Water Fund shall be credited
24 to the fund.

25 (2) Moneys in the fund are continuously appropriated to the Oregon Health Authority for
26 purposes described in sections 3 and 4 of this 2017 Act.

27 (3) The authority may accept from any source any grant, donation or gift of moneys for
28 deposit in the fund.

29 **SECTION 6.** In addition to and not in lieu of any other appropriation, there is appropri-
30 ated to the Oregon Health Authority, for the biennium beginning July 1, 2017, out of the
31 General Fund, the amount of \$15,000, for deposit in the Safe Ground Water Fund established
32 in section 5 of this 2017 Act.

33
34 **LANDLORD TESTING OF DRINKING WATER**

35
36 **SECTION 7.** Section 8 of this 2017 Act is added to and made a part of ORS 90.100 to 90.465.

37 **SECTION 8.** (1) For each dwelling unit rented by a landlord for which a source of drinking
38 water is a well, the landlord shall collect and test samples of drinking water in accordance
39 with this section, for the purpose of having those samples tested in accordance with rules
40 adopted by the Oregon Health Authority.

41 (2)(a) A landlord subject to this section must ensure that each well for which drinking
42 water is collected under this section is tested as follows:

43 (A) The drinking water must be tested for arsenic at least once during the life of the
44 well, no later than 30 days after installing the well.

45 (B) Except as provided in paragraphs (b) and (c) of this subsection, the drinking water

1 must be tested for total coliform bacteria and nitrates at least once each year. If the results
2 of a test conducted under this subparagraph confirm that drinking water collected under this
3 section contains:

4 (i) Any amount of total coliform bacteria, the landlord must, as soon as practicable, treat
5 the drinking water or repair or replace the well and retest the drinking water to confirm
6 that all coliform bacteria has been removed; or

7 (ii) An amount of nitrates that exceeds the amount of nitrates that drinking water may
8 safely contain as established by the United States Environmental Protection Agency, the
9 landlord must, as soon as practicable, treat the drinking water or repair or replace the well
10 and retest the drinking water to confirm that nitrates are at an acceptable level.

11 (b) If the results of tests conducted under paragraph (a)(B) of this subsection for three
12 consecutive years confirm that drinking water collected under this section does not contain
13 any total coliform bacteria or nitrates, the landlord is not required to collect and test
14 drinking water from that well for the next five years.

15 (c) If the results of the first test conducted under paragraph (a)(B) of this subsection
16 following a five-year period of a landlord not being required to conduct a test to confirm that
17 drinking water collected under this section does not contain any total coliform bacteria or
18 nitrates, the landlord is not required to collect and test drinking water from that well for
19 the next five years.

20 (3)(a) In accordance with rules adopted by the Oregon Health Authority:

21 (A) Except as provided in paragraph (b) of this subsection, a landlord subject to this
22 section shall collect samples of drinking water from a dwelling unit's primary dispenser of
23 drinking water.

24 (B) A landlord subject to this section may collect supplementary samples of drinking
25 water from a dwelling unit's other dispensers of drinking water or from a dwelling unit's
26 well head.

27 (b) A landlord subject to this section may delegate the landlord's duty to collect samples
28 of drinking water to a tenant if the landlord and the tenant agree to the delegation in writing
29 and the agreement is made in good faith and for adequate consideration.

30 (4)(a) A laboratory conducting a test pursuant to this section must:

31 (A) Electronically report the results of the test to the Department of Environmental
32 Quality in a form and manner prescribed by the department; and

33 (B) Send the results of the test to the landlord in a form showing the exact levels of total
34 coliform bacteria, nitrates and, if applicable, arsenic present in the drinking water.

35 (b) If a tenant is occupying the dwelling unit for which a test was conducted pursuant
36 to this section, the landlord must provide the results of the test to the tenant in one of the
37 following formats:

38 (A) A format showing the exact levels of total coliform bacteria, nitrates and, if appli-
39 cable, arsenic present in the drinking water; or

40 (B) A format showing only whether the dwelling unit passed or failed the test, in ac-
41 cordance with the requirements of subsection (2)(a) of this section.

42 (c) In providing the results of a test to a tenant under paragraph (b) of this subsection,
43 a landlord may:

44 (A) Direct the laboratory that conducted the test to send the results to the tenant di-
45 rectly; or

1 (B) Provide the results to the tenant using the form adopted by the Oregon Health Au-
2 thority under subsection (7)(a) of this section.

3 (5) At the beginning of a tenancy for a dwelling unit for which a landlord must collect
4 and test drinking water under this section, the landlord must provide to the tenant:

5 (a) Notice that the dwelling unit has a well as a source of drinking water;

6 (b) Notice that the dwelling unit's drinking water has been tested for arsenic, total
7 coliform bacteria and nitrates;

8 (c) The results of the most recent test for arsenic, in a format described in subsection
9 (4)(b) of this section;

10 (d) The results of the most recent test for total coliform bacteria and nitrates, in a for-
11 mat described in subsection (4)(b) of this section;

12 (e) The date on which the most recent test for total coliform bacteria and nitrates was
13 conducted; and

14 (f) The date on which the next test for total coliform bacteria and nitrates will be con-
15 ducted.

16 (6) Each time a landlord conducts a test under subsection (2)(a)(B), (b) or (c) of this
17 section, no later than 30 days after conducting the test, the landlord must provide the tenant
18 of the dwelling unit for which the landlord conducted the test with the following information:

19 (a) If the results of the test confirm that the drinking water does not contain any total
20 coliform bacteria or nitrates, with:

21 (A) Notice of having conducted the test;

22 (B) The results of the test, in a format described in subsection (4)(b) of this section;

23 (C) A statement that the tenant may request a copy of the full and complete test results;
24 and

25 (D) The date on which the landlord will next test the drinking water.

26 (b) If the results of the test confirm that the drinking water contains total coliform
27 bacteria or nitrates, with:

28 (A) Notice of having conducted the test;

29 (B) The results of the test, in a format described in subsection (4)(b) of this section;

30 (C) A statement that the tenant may request a copy of the full and complete test results;

31 (D) The date on which the landlord treated or will treat the drinking water or on which
32 the landlord repaired or replaced or will repair or replace the well;

33 (E) The date on which the landlord will next test the drinking water; and

34 (F) The handout adopted by the Oregon Health Authority under subsection (7)(b) of this
35 section.

36 (7) The Oregon Health Authority shall adopt by rule:

37 (a) A form that a landlord subject to this section must use to provide information de-
38 scribed in subsection (6)(a) and (b)(A) to (E) of this section. The form must include a section
39 that may be filled out by the landlord to indicate whether the dwelling unit passed or failed
40 the test, in accordance with the requirements of subsection (2)(a) of this section, and a sec-
41 tion that may be filled out by the landlord to indicate the exact levels of total coliform bac-
42 teria, nitrates and, if applicable, arsenic present in the drinking water.

43 (b) A handout providing information on testing drinking water for contaminants and the
44 impact that drinking water that contains contaminants can have on a person's health.

45 (8) This section does not apply to a dwelling unit that is:

1 (a) Subject to ORS 90.505 to 90.850;

2 (b) Part of a premises subject to regulation under ORS 448.119 to 448.285, 454.235 and
3 454.255, as described in ORS 448.119; or

4 (c) Farmworker housing, as defined in ORS 215.278.

5 (9) If a landlord fails to conduct a test or disclose test results as required by this section,
6 the tenant renting the dwelling unit from the landlord may recover the actual damages of
7 the tenant or \$300, whichever is greater.

8 **SECTION 9.** Notwithstanding section 8 (2) of this 2017 Act, if the results of the first test
9 of drinking water for total coliform bacteria and nitrates following the operative date speci-
10 fied in section 13 of this 2017 Act confirm that drinking water collected under section 8 of
11 this 2017 Act does not contain any total coliform bacteria or nitrates, the landlord of the
12 dwelling unit for which the test is conducted is not required to collect and test the drinking
13 water for that dwelling unit for the next five years.

14 **SECTION 10.** (1) Notwithstanding section 8 (2)(a)(A) of this section, for each dwelling unit
15 rented by a landlord before the operative date specified in section 13 of this 2017 Act for
16 which a source of drinking water is a well, the landlord shall collect and test samples of
17 drinking water in accordance with section 8 of this 2017 Act no later than 60 days after the
18 operative date specified in section 13 of this 2017 Act.

19 (2) For each dwelling unit rented by a landlord before the operative date specified in
20 section 13 of this 2017 Act for which a source of drinking water is a well, the landlord shall
21 provide the tenant of the dwelling unit for which the landlord conducted the test with the
22 information described in section 8 (6) of this 2017 Act no later than 90 days after the opera-
23 tive date specified in section 13 of this 2017 Act.

24
25 **CONFORMING AMENDMENTS**

26
27 **SECTION 11.** ORS 468B.150 is amended to read:

28 468B.150. As used in ORS [448.268, 448.271 and] 468B.150 to 468B.190:

29 (1) "Area of ground water concern" means an area of the state subject to a declaration by the
30 Department of Environmental Quality under ORS 468B.175 or the Oregon Health Authority under
31 ORS 448.268.

32 (2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound,
33 microorganism, waste or other substance that does not occur naturally in ground water or that oc-
34 curs naturally but at a lower concentration.

35 (3) "Ground water management area" means an area in which contaminants in the ground water
36 have exceeded the levels established under ORS 468B.165, and the affected area is subject to a
37 declaration under ORS 468B.180.

38 (4) "Fertilizer" has the meaning given that term in ORS 633.311.

39 (5) "Pesticide" has the meaning given that term in ORS 634.006.

40 **SECTION 12.** ORS 90.320 is amended to read:

41 90.320. (1) A landlord shall at all times during the tenancy maintain the dwelling unit in a
42 habitable condition. For purposes of this section, a dwelling unit shall be considered uninhabitable if
43 it substantially lacks:

44 (a) Effective waterproofing and weather protection of roof and exterior walls, including windows
45 and doors;

1 (b) Plumbing facilities that conform to applicable law in effect at the time of installation, and
2 maintained in good working order;

3 (c) A water supply approved under applicable law that is:

4 (A) Under the control of the tenant or landlord and is capable of producing hot and cold running
5 water;

6 (B) Furnished to appropriate fixtures;

7 (C) Connected to a sewage disposal system approved under applicable law; and

8 (D) Maintained so as to provide safe drinking water, **including as demonstrated by a test or**
9 **a treatment as required by section 8 of this 2017 Act for a dwelling unit with a well as a**
10 **source of drinking water**, and to be in good working order to the extent that the system can be
11 controlled by the landlord;

12 (d) Adequate heating facilities that conform to applicable law at the time of installation and
13 maintained in good working order;

14 (e) Electrical lighting with wiring and electrical equipment that conform to applicable law at the
15 time of installation and maintained in good working order;

16 (f) Buildings, grounds and appurtenances at the time of the commencement of the rental agree-
17 ment in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from
18 all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control
19 of the landlord kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary
20 and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

21 (g) Except as otherwise provided by local ordinance or by written agreement between the land-
22 lord and the tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean
23 condition and good repair at the time of the commencement of the rental agreement, and the land-
24 lord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their
25 removal;

26 (h) Floors, walls, ceilings, stairways and railings maintained in good repair;

27 (i) Ventilating, air conditioning and other facilities and appliances, including elevators, main-
28 tained in good repair if supplied or required to be supplied by the landlord;

29 (j) Safety from fire hazards, including a working smoke alarm or smoke detector, with working
30 batteries if solely battery-operated, provided only at the beginning of any new tenancy when the
31 tenant first takes possession of the premises, as provided in ORS 479.270, but not to include the
32 tenant's testing of the smoke alarm or smoke detector as provided in ORS 90.325 (1);

33 (k) A carbon monoxide alarm, and the dwelling unit:

34 (A) Contains a carbon monoxide source; or

35 (B) Is located within a structure that contains a carbon monoxide source and the dwelling unit
36 is connected to the room in which the carbon monoxide source is located by a door, ductwork or a
37 ventilation shaft; or

38 (L) Working locks for all dwelling entrance doors, and, unless contrary to applicable law,
39 latches for all windows, by which access may be had to that portion of the premises that the tenant
40 is entitled under the rental agreement to occupy to the exclusion of others and keys for those locks
41 that require keys.

42 (2) The landlord and tenant may agree in writing that the tenant is to perform specified repairs,
43 maintenance tasks and minor remodeling only if:

44 (a) The agreement of the parties is entered into in good faith and not for the purpose of evading
45 the obligations of the landlord;

1 (b) The agreement does not diminish the obligations of the landlord to other tenants in the
2 premises; and

3 (c) The terms and conditions of the agreement are clearly and fairly disclosed and adequate
4 consideration for the agreement is specifically stated.

5 (3) Any provisions of this section that reasonably apply only to a structure that is used as a
6 home, residence or sleeping place shall not apply to a manufactured dwelling, recreational vehicle
7 or floating home where the tenant owns the manufactured dwelling, recreational vehicle or floating
8 home, rents the space and, in the case of a dwelling or home, the space is not in a facility. Manu-
9 factured dwelling or floating home tenancies in which the tenant owns the dwelling or home and
10 rents space in a facility shall be governed by ORS 90.730, not by this section.

11
12 **OPERATIVE DATE**

13
14 **SECTION 13. (1) Sections 7 to 10 of this 2017 Act and the amendments to ORS 90.320 by**
15 **section 12 of this 2017 Act become operative on March 1, 2018.**

16 **(2) The Oregon Health Authority may take any action before the operative date specified**
17 **in subsection (1) of this section that is necessary to enable the authority to exercise, on and**
18 **after the operative date specified in subsection (1) of this section, all the duties, powers and**
19 **functions conferred on the authority by sections 7 to 10 of this 2017 Act and the amendments**
20 **to ORS 90.320 by section 12 of this 2017 Act.**

21
22 **UNIT CAPTIONS**

23
24 **SECTION 14. The unit captions used in this 2017 Act are provided only for the conven-**
25 **ience of the reader and do not become part of the statutory law of this state or express any**
26 **legislative intent in the enactment of this 2017 Act.**