

House Bill 2669

Sponsored by Representative NOSSE, Senator TAYLOR, Representative KENY-GUYER; Representatives HELM, POWER, SANCHEZ (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 **as introduced**.

Modifies requirements for local community right to know regulatory programs for toxic substances and harmful substances.

A BILL FOR AN ACT

1
2 Relating to community right to know regulatory programs; amending ORS 453.307 and 453.370.

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

4 **SECTION 1.** ORS 453.307 is amended to read:

5 453.307. As used in ORS 453.307 to 453.414:

6 (1) **“Biopersistent substance” means a hazardous substance that:**

7 (a) **Is part of a class of compounds created through industrial manufacturing or as an**
8 **unintentional byproduct of manufacturing;**

9 (b) **Has resistance to degradation from abiotic and biotic factors; and**

10 (c) **Is highly mobile, bioaccumulative and harmful to the environment.**

11 (2) “Community right to know regulatory program” or “local program” means any law, rule,
12 ordinance, regulation or charter amendment established, enforced or enacted by a local government
13 that requires an employer to collect or report information relating to the use, storage, release,
14 possession or composition of hazardous substances and toxic substances if a primary intent of the
15 law, rule, ordinance, regulation or charter amendment is the public distribution of the information.

16 [(2)] (3) “Emergency service personnel” includes those entities providing emergency services as
17 defined in ORS 401.025.

18 [(3)] (4) “Employer” means:

19 (a) Any person operating a facility that is included in one or more of the 21 standard industrial
20 classification categories in Appendix B of the Natural Resources Defense Council v. Train Consent
21 Decree of June 8, 1976 (8 E.R.C. 2120); or

22 (b) Any person operating a facility designated by the State Fire Marshal.

23 (5) **“Extremely hazardous substance” means a hazardous substance that appears on the**
24 **list of extremely hazardous substances prepared by the Administrator of the Environmental**
25 **Protection Agency pursuant to 42 U.S.C. 11002.**

26 [(4)] (6) “Fire district” means any agency having responsibility for providing fire protection
27 services.

28 [(5)] (7) “Hazardous substance” means:

29 (a) Any substance designated as hazardous by the Director of the Department of Consumer and
30 Business Services or by the State Fire Marshal;

31 (b) Any substance for which a material safety data sheet **as defined in ORS 453.396** is required

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 by the *[Director of the]* Department of Consumer and Business Services *[under ORS 654.035]* and
 2 which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents
 3 in the Work Environment by the American Conference of Governmental Industrial Hygienists; or

4 (c) Radioactive waste and material as defined in ORS 469.300 and radioactive substance as de-
 5 fined in ORS 453.005.

6 ~~[(6)]~~ **(8) “Health professional” means a physician licensed under ORS chapter 677, physician as-**
 7 **stant licensed under ORS 677.505 to 677.525, registered nurse, industrial hygienist, toxicologist,**
 8 **epidemiologist or emergency medical services provider.**

9 **(9) “Input” means, for a single facility, the quantity of each hazardous substance:**

10 **(a) Stored as inventory at the facility at the beginning of an accounting period;**

11 **(b) Stored as waste at the facility at the beginning of an accounting period;**

12 **(c) Produced at the facility during an accounting period; and**

13 **(d) Brought to the facility during an accounting period.**

14 ~~[(7)]~~ **(10) “Law enforcement agency” has the meaning given that term in ORS 181A.010.**

15 ~~[(8)]~~ **(11) “Local government” means a city, town, county, regional authority or other political**
 16 **subdivision of this state.**

17 **(12) “Materials balance report” means an accounting of the input and output for each**
 18 **hazardous substance in a facility.**

19 **(13) “Output” means, for a single facility, the quantity of each hazardous substance:**

20 **(a) Stored as inventory at the facility at the end of an accounting period;**

21 **(b) Stored as waste at the facility at the end of an accounting period; and**

22 **(c) Removed from the facility during an accounting period, including hazardous sub-**
 23 **stances:**

24 **(A) Chemically altered in the facility’s processes;**

25 **(B) Shipped from the facility in product;**

26 **(C) Transferred away from the facility as waste;**

27 **(D) Emitted into the air;**

28 **(E) Discharged into publicly treated sewage;**

29 **(F) Released to surface waters;**

30 **(G) Eliminated through treatment at the facility;**

31 **(H) Eliminated through energy recovery at the facility; and**

32 **(I) Disposed of on-site.**

33 ~~[(9)]~~ **(14) “Person” includes individuals, corporations, associations, firms, partnerships, joint**
 34 **stock companies, public and municipal corporations, political subdivisions, the state and any agency**
 35 **thereof, and the federal government and any agency thereof.**

36 **(15) “Smallest accounting unit” means:**

37 **(a) For a hazardous substance, except as provided in paragraphs (b) and (c) of this sub-**
 38 **section, one pound;**

39 **(b) For a hazardous substance that is an extremely hazardous substance or biopersistent**
 40 **substance, 0.02 pounds; and**

41 **(c) For a hazardous substance that is a radioactive waste and material as defined in ORS**
 42 **469.300 and radioactive substance as defined in ORS 453.005, 0.02 pounds.**

43 ~~[(10)]~~ **(16) “Trade secret” has the meaning given that term in ORS 192.501 (2).**

44 **SECTION 2.** ORS 453.370 is amended to read:

45 453.370. (1) In order to maintain and ensure the effectiveness of state programs established un-

1 der ORS 453.307 to 453.414, as well as to ensure the effectiveness of local efforts, a local government
 2 may establish, enforce or enact a local community right to know regulatory program [*provided that*
 3 *the local program complies with the requirements of this section*].

4 (2) To the extent that a local **community right to know regulatory** program is supported in
 5 whole or in part by fees, those fees may be set, imposed or assessed only by the local government
 6 that is implementing the local program. Such fees are allowed only to the extent not otherwise
 7 prohibited or limited by law. Such fees:

8 (a) Shall be adopted by ordinance as a fee schedule, after notice and public hearing; [*and*]

9 (b) May not exceed [*\$2,000*] **\$10,000** for any single facility in any calendar year[.]; **and**

10 (c) **Shall be assessed based on a calculation method that accounts for:**

11 **(A) The output of each single facility; and**

12 **(B) The number of full-time equivalent persons employed by the employer.**

13 (3)(a) All local community right to know regulatory program enforcement, including but not
 14 limited to penalties, may be imposed only by a local fire official, **the local governing body** or a
 15 board established by the local government to implement the local community right to know regula-
 16 tory program.

17 (b) Penalties for violations of a **local** community right to know regulatory program may not ex-
 18 ceed \$1,000 per day and shall be assessed according to a schedule adopted by the local government
 19 after notice and public hearing. Except when a local government has reasonable grounds to find that
 20 an employer willfully and knowingly avoided compliance with the local program, and as long as the
 21 employer submits the required information within 30 days following a written notification of non-
 22 compliance, penalties shall be suspended if the employer has no history of violating the local pro-
 23 gram.

24 (4) **In order to establish, enforce or enact a local community right to know regulatory**
 25 **program**, after notice and public hearing, the local government must determine that:

26 (a) Existing reporting to local, state or federal agencies is inadequate to meet the needs and
 27 concerns of the local government **or the public, or the public's interest in enhancing public and**
 28 **environmental health;**

29 [*(b) The state or federal government does not collect data that will provide substantially the same*
 30 *information desired by the local government;*]

31 [*(c) The local government has asked the appropriate state agency to operate the program desired*
 32 *by the local government and the state agency has not committed to do so within 180 days;*]

33 [*(d) The Department of Environmental Quality, the State Fire Marshal and the Oregon Health*
 34 *Authority have had an opportunity to comment on the proposed program and the local government has*
 35 *responded to those comments;*] and

36 [*(e)*] (b) The local government has provided an opportunity for written and oral public comment
 37 on the proposed program.

38 (5) Any local government that [*operates*] **establishes or enacts** a local community right to know
 39 regulatory program shall:

40 (a) **Require all employers with a total output of 1,000 pounds of hazardous substances or**
 41 **more from a single facility during a calendar year to report under the local program by**
 42 **submitting materials balance reports for the facility that:**

43 **(A) Indicate the weight in pounds of each of the quantities specified in each paragraph**
 44 **of ORS 453.307 (9) and (13); and**

45 **(B) Are calculated such that the input and output are equal and are accurate to the**

1 **smallest accounting unit.**

2 (b) Provide for an opportunity to report data electronically;

3 *[(b) Place data reported under the program on the Internet with instructions for the general public*
 4 *that explain the organization of the data; and]*

5 (c) **Place data reported under the local program on a website:**

6 (A) **With instructions for the general public that explain the organization of the data; and**

7 (B) **In a manner that allows any member of the public who visits the website immediate**
 8 **and unrestricted access to the data; and**

9 *[(c)]* (d) **Keep records of data usage and otherwise document interest in the collected data for**
 10 **a period of at least 25 years.**

11 (6) Data and other information presented under a local community right to know regulatory
 12 program:

13 (a) Shall clearly distinguish, where appropriate, public health interpretations from the raw data;

14 (b) *[May]* **Shall**, where feasible, indicate specifically which hazardous substances and toxic sub-
 15 stances are being released into the local air, water and land; and

16 (c) Shall include locations where a person may obtain epidemiological statistics related to health
 17 effects of the hazardous substances and toxic substances, if available.

18 (7) For any hazardous substance or toxic substance that a local government proposes to require
 19 an employer to report under a local community right to know regulatory program established pur-
 20 suant to this section, the local government shall: *[seek written and oral public comment and provide*
 21 *written notice to interested parties prior to adoption as a reporting requirement. The local government*
 22 *must provide the public with an opportunity to comment on the appropriateness of reporting on the*
 23 *proposed hazardous substance or toxic substance, including but not limited to commenting on health*
 24 *and environmental considerations, economic concerns and feasibility of compliance. The local govern-*
 25 *ment shall consider the comments before adopting a list or making additions to a list of hazardous*
 26 *substances and toxic substances to be reported.]*

27 (a) **Provide written notice to interested parties prior to adoption as a reporting require-**
 28 **ment;**

29 (b) **Provide the public with an opportunity to comment on the reporting on the proposed**
 30 **hazardous substance or toxic substance, including but not limited to commenting on health**
 31 **and environmental considerations and feasibility of compliance; and**

32 (c) **Consider the comments before adopting a list or making additions to a list of haz-**
 33 **ardous substances or toxic substances to be reported.**

34 (8) In administering a local community right to know regulatory program, a local government
 35 shall establish procedures to exempt, when reasonable, an entity from all or part of the local pro-
 36 gram *[for the purpose of protecting trade secrets or where]* if the local government determines that
 37 the operations of the entity pose *[little]* **a de minimis** or no risk to the public health or the envi-
 38 ronment.

39 (9) Except as *[prohibited]* **required** by federal or state law, a local program may not differentiate
 40 between public and private employers.

41 (10) **In administering a local community right to know regulatory program, a local gov-**
 42 **ernment shall establish:**

43 (a) **Procedures to require, when reasonable, reporting of chemicals containing pesticide**
 44 **active ingredients that are used for the purpose of wood preservation and chemical manu-**
 45 **facturing; and**

1 **(b) A schedule for auditing the reports submitted by an employer.**

2 [(10)] (11) Nothing in this section [shall] **may** be construed to limit the authority of a local
3 government to:

4 (a) Distribute information collected under the state Community Right to Know and Protection
5 Act; or

6 (b) Adopt or enforce a local ordinance, rule or regulation strictly necessary to comply with:

7 (A) The Uniform Building Code as adopted and amended by the Director of the Department of
8 Consumer and Business Services;

9 (B) A uniform fire code; or

10 (C) Any requirement of a state or federal statute, rule or regulation, including but not limited
11 to those controlling hazardous substances, toxic substances or other environmental contaminants.

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