

A-Engrossed
House Bill 2860

Ordered by the House April 16
Including House Amendments dated April 16

Sponsored by Representative LIVELY; Representatives EVANS, HOLVEY, SALINAS, SCHOUTEN, 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 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 Well Water Fund and continuously appropriates moneys in fund to authority for purpose of making grants and loans. Appropriates moneys from General Fund for deposit in Safe Well Water 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*] **E. coli** and nitrates. Becomes operative March 1, 2020.

A BILL FOR AN ACT

Relating to wells that supply ground water for domestic purposes; creating new provisions; and amending ORS 90.320, 448.271 and 468B.150.

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

**TESTING OF WELLS THAT SUPPLY
GROUND WATER FOR DOMESTIC PURPOSES**

SECTION 1. As used in ORS 448.268 and 448.271 and sections 3 and 4 of this 2019 Act:

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

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

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

SECTION 2. ORS 448.271 is amended to read:

448.271. (1) In any transaction for the sale or exchange of real estate that includes a well that supplies ground water for domestic purposes, the seller of the real estate shall, upon accepting an offer to purchase [*that*] **the** real estate, have the well tested for arsenic, nitrates and [*total coliform bacteria*] **E. coli**. The Oregon Health Authority [*also may,*] by rule[,] **may** require additional tests for specific contaminants in specific areas of public health concern. **Tests required under this subsection must be conducted for drinking water by a laboratory accredited under the program established under ORS 438.615 using tests allowed under 40 C.F.R. 141.** The seller shall submit the results of the tests required under this [*section*] **subsection** to the authority and to the [*buyer*] **purchaser** within 90 days of receiving the results of the tests.

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 certification of treatment units. The authority may provide information as required by this
2 section by posting information on a website maintained by the authority and providing notice
3 of the website to property owners that receive a grant or loan under this section.

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

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

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

10 **SECTION 4.** (1) The Oregon Health Authority may make grants from the Safe Well Wa-
11 ter Fund established under section 5 of this 2019 Act for the purpose of assisting local public
12 health authorities, nonprofit organizations, soil and water conservation districts and the
13 Oregon State University Extension Service with:

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

16 (b) Providing for the free or low-cost testing of wells for drinking water by a laboratory
17 accredited under the program established under ORS 438.615 using tests allowed under 40
18 C.F.R. 141.

19 (2) For purposes of making grants under this section, the authority shall identify appro-
20 priate recipients of grant moneys. In identifying appropriate recipients of grant moneys, the
21 authority shall consider whether the recipient is qualified and capable of providing ground
22 water contaminant education as described in subsection (1)(a) of this section or providing for
23 the free or low-cost testing of wells as described in subsection (1)(b) of this section.

24 (3) The authority shall provide recipients of grant moneys under this section with the
25 technical support necessary to provide ground water contaminant education as described in
26 subsection (1)(a) of this section or to provide for the free or low-cost testing of wells as de-
27 scribed in subsection (1)(b) of this section.

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

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

31 **SECTION 5.** (1) The Safe Well Water Fund is established in the State Treasury, separate
32 and distinct from the General Fund.

33 (2) The Safe Well Water Fund shall consist of all moneys placed in the fund as provided
34 by law.

35 (3) Moneys in the fund are continuously appropriated to the Oregon Health Authority for
36 purposes described in ORS 448.271 and sections 3 and 4 of this 2019 Act.

37 (4) The authority may accept from any source any grant, donation or gift of moneys for
38 deposit in the fund.

39
40 **LANDLORD TESTING OF DRINKING WATER**

41
42 **SECTION 6.** Section 7 of this 2019 Act is added to and made a part of ORS 90.100 to 90.465.

43 **SECTION 7.** (1) For each dwelling unit rented by a landlord for which a source of drinking
44 water is a well, the landlord shall collect samples of drinking water in accordance with this
45 section, for the purpose of having those samples tested and, if necessary, water treated, in

1 accordance with rules adopted by the Oregon Health Authority.

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

4 (A) The drinking water must be tested for arsenic no later than 30 days after installing
5 the well. If the test results show arsenic levels in the drinking water that exceed the maxi-
6 mum levels adopted by rule by the authority in accordance with national drinking water
7 standards, the landlord shall retest the well according to a schedule set by rule by the au-
8 thority.

9 (B) The drinking water must be tested for E. coli, arsenic and nitrates at least once each
10 year. If the results of a test conducted under this subparagraph confirm that drinking water
11 collected under this section contains:

12 (i) Any amount of E. coli, the landlord must, as soon as practicable, treat the drinking
13 water or repair or replace the well and retest the drinking water to confirm that all E. coli
14 has been removed; or

15 (ii) An amount of arsenic or nitrates that exceeds the maximum contamination level in
16 drinking water as established by the United States Environmental Protection Agency, the
17 landlord must, as soon as practicable, treat the drinking water or repair or replace the well
18 and retest the drinking water to confirm that arsenic and nitrates are at an acceptable level.

19 (b) If the results of tests conducted under paragraph (a)(B) of this subsection for three
20 consecutive years confirm that drinking water collected under this section does not contain
21 any E. coli, arsenic or nitrates, the landlord is not required to collect and test drinking water
22 from that well for E. coli and nitrates for the next five years.

23 (c) If the results of the first test conducted under paragraph (a)(B) of this subsection
24 following a five-year period of a landlord not being required to conduct a test to confirm that
25 drinking water collected under this section does not contain any E. coli, arsenic or nitrates,
26 the landlord is not required to collect and test drinking water from that well for E. coli and
27 nitrates for the next five years.

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

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

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

35 (C) A landlord subject to this section must request a laboratory conducting a test pur-
36 suant to this section to electronically report the results of the test to the Department of
37 Environmental Quality.

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

41 (c) When submitting samples of drinking water collected under this section to a labora-
42 tory for testing, a landlord shall inform the laboratory that the testing is required pursuant
43 to this section.

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

45 (a) Be accredited under the environmental laboratory accreditation program established

1 under ORS 438.615; and

2 (b) At the request of the landlord:

3 (A) Electronically report the results of the test to the department in a form and manner
4 prescribed by the department, which may include reporting of the results through electronic
5 mail using a spreadsheet; and

6 (B) Send the full laboratory report to the landlord in a form showing the absence or
7 presence of E. coli, the concentration of nitrates in milligrams per liter or parts per million
8 and, if applicable, the concentration of arsenic in milligrams per liter or parts per million in
9 the drinking water.

10 (5) If a tenant is occupying the dwelling unit for which a test was conducted pursuant
11 to this section, the landlord must provide the results of the test to the tenant in one of the
12 following formats:

13 (a) A format showing the absence or presence of E. coli, the concentration of nitrates in
14 milligrams per liter or parts per million and, if applicable, the concentration of arsenic in
15 milligrams per liter or parts per million in the drinking water; or

16 (b) A format showing only whether the dwelling unit passed or failed the test described
17 in subsection (2)(a) of this section.

18 (6) In order to provide the results of a test to a tenant under subsection (5) of this sec-
19 tion, a landlord shall either:

20 (a) Direct the laboratory that conducted the test to send the full laboratory report to the
21 tenant directly; or

22 (b) Provide the results to the tenant using the form adopted by the Oregon Health Au-
23 thority under subsection (9)(a) of this section.

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

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

27 (b) Notice that the dwelling unit's drinking water has been tested for arsenic, E. coli and
28 nitrates;

29 (c) The results of the most recent test for arsenic, in a format described in subsection
30 (5) of this section;

31 (d) The results of the most recent test for E. coli and nitrates, in a format described in
32 subsection (5) of this section;

33 (e) The date on which the most recent test for E. coli, arsenic and nitrates was con-
34 ducted; and

35 (f) The date on which the next test for E. coli, arsenic and nitrates will be conducted.

36 (8) Each time a landlord has a sample tested under subsection (2)(a)(B), (b) or (c) of this
37 section, no later than 30 days after receiving the results of the test from the laboratory, the
38 landlord must provide the tenant of the dwelling unit for which the landlord conducted the
39 test with the following information:

40 (a) If the results of the test confirm that the drinking water does not contain any E. coli,
41 arsenic or nitrates, with:

42 (A) Notice of having conducted the test;

43 (B) The results of the test, in a format described in subsection (5) of this section;

44 (C) A statement that the tenant may request a copy of the full laboratory reports; and

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

1 (b) If the results of the test confirm that the drinking water contains E. coli, arsenic or
2 nitrates, with:

3 (A) Notice of having conducted the test;

4 (B) The results of the test, in a format described in subsection (5) of this section;

5 (C) A statement that the tenant may request a copy of the full laboratory reports;

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

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

9 (F) The handout adopted by the Oregon Health Authority under subsection (9)(b) of this
10 section.

11 (9) The Oregon Health Authority shall adopt by rule:

12 (a) A form that a landlord subject to this section must use to provide information de-
13 scribed in subsection (8)(a) and (b)(A) to (E) of this section. The form must include a section
14 that may be filled out by the landlord to indicate whether the dwelling unit passed or failed
15 the test, in accordance with the requirements of subsection (2)(a) of this section, and a sec-
16 tion that may be filled out by the landlord to indicate the absence or presence of E. coli, the
17 concentration of nitrates in milligrams per liter or parts per million and, if applicable, the
18 concentration of arsenic in milligrams per liter or parts per million in the drinking water.

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

21 (10) This section does not apply to a dwelling unit that is part of a premises subject to
22 regulation under ORS 448.119 to 448.285, 454.235 and 454.255, as described in ORS 448.119.

23 (11) If a landlord fails to conduct a test or disclose test results as required by this sec-
24 tion, the tenant renting the dwelling unit from the landlord may recover the actual damages
25 of the tenant or \$300, whichever is greater.

26 **SECTION 8.** Notwithstanding section 7 (2) of this 2019 Act, if the results of the first test
27 of drinking water for E. coli, arsenic and nitrates following the operative date specified in
28 section 13 of this 2019 Act confirm that drinking water collected under section 7 of this 2019
29 Act does not contain any E. coli, arsenic or nitrates, the landlord of the dwelling unit for
30 which the test is conducted is not required to collect and test the drinking water for that
31 dwelling unit for the next five years.

32 **SECTION 9.** Notwithstanding section 7 (2)(a)(A) of this 2019 Act, for each dwelling unit
33 rented by a landlord before the operative date specified in section 13 of this 2019 Act for
34 which a source of drinking water is a well, the landlord shall:

35 (1) Collect and test samples of drinking water in accordance with section 7 of this 2019
36 Act no later than 60 days after the operative date specified in section 13 of this 2019 Act; and

37 (2) Provide the tenant of the dwelling unit for which the landlord conducted the test with
38 the information described in section 7 (6) of this 2019 Act no later than 90 days after the
39 operative date specified in section 13 of this 2019 Act.

40
41 **CONFORMING AMENDMENTS**

42
43 **SECTION 10.** ORS 468B.150 is amended to read:

44 468B.150. As used in ORS [448.268, 448.271 and] 468B.150 to 468B.190:

45 (1) "Area of ground water concern" means an area of the state subject to a declaration by the

1 Department of Environmental Quality under ORS 468B.175 or the Oregon Health Authority under
2 ORS 448.268.

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

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

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

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

11 **SECTION 11.** ORS 90.320 is amended to read:

12 90.320. (1) A landlord shall at all times during the tenancy maintain the dwelling unit in a
13 habitable condition. For purposes of this section, a dwelling unit shall be considered uninhabitable if
14 it substantially lacks:

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

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

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

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

22 (B) Furnished to appropriate fixtures;

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

24 (D) Maintained so as to provide safe drinking water, **including as demonstrated by a test or**
25 **a treatment as required by section 7 of this 2019 Act for a dwelling unit with a well as a**
26 **source of drinking water**, and to be in good working order to the extent that the system can be
27 controlled by the landlord;

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

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

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

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

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

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

45 (j) Safety from fire hazards, including a working smoke alarm or smoke detector, with working

1 batteries if solely battery-operated, provided only at the beginning of any new tenancy when the
2 tenant first takes possession of the premises, as provided in ORS 479.270, but not to include the
3 tenant's testing of the smoke alarm or smoke detector as provided in ORS 90.325 (1);

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

5 (A) Contains a carbon monoxide source; or

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

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

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

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

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

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

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

27
28 **APPROPRIATION**

29
30 **SECTION 12. In addition to and not in lieu of any other appropriation, there is appro-**
31 **riated to the Oregon Health Authority, for the biennium beginning July 1, 2019, out of the**
32 **General Fund, the amount of \$_____ , for deposit in the Safe Well Water Fund estab-**
33 **lished in section 5 of this 2019 Act.**

34
35 **OPERATIVE DATE**

36
37 **SECTION 13. (1) Sections 6 to 9 of this 2019 Act and the amendments to ORS 90.320 by**
38 **section 11 of this 2019 Act become operative on March 1, 2020.**

39 **(2) The Oregon Health Authority may take any action before the operative date specified**
40 **in subsection (1) of this section that is necessary to enable the authority to exercise, on and**
41 **after the operative date specified in subsection (1) of this section, all the duties, functions**
42 **and powers conferred on the authority by sections 6 to 9 of this 2019 Act and the amend-**
43 **ments to ORS 90.320 by section 11 of this 2019 Act.**

44
45 **UNIT CAPTIONS**

1 **SECTION 14.** The unit captions used in this 2019 Act are provided only for the conven-
2 ience of the reader and do not become part of the statutory law of this state or express any
3 legislative intent in the enactment of this 2019 Act.

4
