

# House Bill 3248

Sponsored by Representative SPRENGER

## 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**.

Provides that county prohibition, restriction, limitation or regulation of certain open burning applies throughout county unless county court or board of county commissioners expressly states otherwise. Prohibits rural fire protection district or city that is subject to county prohibition, restriction, limitation or regulation on open burning from administering or enforcing less strict prohibition, restriction, limitation or regulation.

Requires person to secure permit before initiating or maintaining open burning. Makes failure to secure required permit from district or city violation punishable by maximum of \$250 fine. Reduces penalty for failure to secure required permit from county to be violation punishable by maximum of \$250 fine.

Makes violation of county prohibition, restriction, limitation or regulation of open burning punishable by maximum of \$250 fine.

Makes provisions regarding rural fire protection districts and cities operative January 1, 2021.

## A BILL FOR AN ACT

1  
2 Relating to local government control over open burning; creating new provisions; and amending ORS  
3 468A.570, 468A.575, 468A.610, 476.010, 476.380 and 476.990.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 478.**

6 **SECTION 2. Notwithstanding ORS 478.960, if a county adopts a prohibition, restriction,**  
7 **limitation or regulation of open burning described in ORS 476.380, a rural fire protection**  
8 **district may not administer or enforce a less strict prohibition, restriction, limitation or**  
9 **regulation of open burning on land that is subject to the county prohibition, restriction,**  
10 **limitation or regulation.**

11 **SECTION 3. Section 4 of this 2019 Act is added to and made a part of ORS chapter 476.**

12 **SECTION 4. (1) Notwithstanding ORS 221.410, if a county adopts a prohibition, re-**  
13 **striction, limitation or regulation of open burning described in ORS 476.380, a city may not**  
14 **administer or enforce a less strict prohibition, restriction, limitation or regulation of open**  
15 **burning on land that is subject to the county prohibition, restriction, limitation or regu-**  
16 **lation.**

17 **(2)(a) Notwithstanding ORS 476.380, if a city prohibits, restricts, limits or regulates open**  
18 **burning of a type described in ORS 476.380, a person must secure a permit from the city**  
19 **before allowing or causing the initiation or maintenance of open burning on property of the**  
20 **person within the city or causing the initiation or maintenance of open burning on other**  
21 **property within the city.**

22 **(b) A city shall refuse, revoke or postpone issuance of permits under this subsection:**

23 **(A) As necessary to comply with the conditions established by the county court, the**  
24 **board of county commissioners or a designated representative of the court or board under**  
25 **ORS 476.380;**

**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 (B) As required by the Environmental Quality Commission under ORS 468A.085, 468A.570  
 2 or 468A.595 for the issuance of burning permits; or

3 (C) As ordered by the State Fire Marshal.

4 (c) Failure to secure a permit required under this subsection is a Class D violation.

5 (3) This section does not:

6 (a) Require permission for starting a campfire within a city in an otherwise lawful man-  
 7 ner.

8 (b) Relieve a person allowing or causing the initiation or maintenance of open burning  
 9 from responsibility for providing adequate protection to prevent injury or damage to the  
 10 property of another. If open burning results in the escape of fire and injury or damage to the  
 11 property of another, the escape and injury or damage constitutes prima facie evidence that  
 12 the protection provided was not adequate.

13 (c) Relieve a person that has obtained permission to initiate or maintain open burning,  
 14 or the agent of the person, from legal liability for property damage resulting from the open  
 15 burning.

16 (4) A city shall maintain records of all permits that the city issues under this section and  
 17 any conditions placed on those permits. The city shall submit the records or summaries of  
 18 the records to the commission as required by the commission. The commission shall provide  
 19 forms for record or summary submissions required by the commission.

20 **SECTION 5.** ORS 476.010 is amended to read:

21 476.010. (1) As used in ORS 476.010 to 476.115, 476.150 to 476.170 and 476.210 to 476.270, “al-  
 22 terations,” “construction,” “family,” “hospital,” “occupancy” and “private residence” have the  
 23 meanings given those terms in ORS 479.168.

24 (2) As used in ORS 476.030 and other laws relating to the duties of the State Fire Marshal,  
 25 “governmental subdivision” means a city, county, municipal corporation, quasi-municipal corporation  
 26 and rural fire protection district, created under the laws of Oregon.

27 [(3) As used in ORS 476.380:]

28 [(a) “Commercial waste”:]

29 [(A) Means any waste produced in any business involving the lease or sale, including wholesale  
 30 and retail, of goods or services, including but not limited to housing.]

31 [(B) Means any waste produced by a governmental, educational or charitable institution.]

32 [(C) Does not include any waste produced in a dwelling containing four living units or less.]

33 [(b) “Demolition material” means any waste resulting from the complete or partial destruction of  
 34 any man-made structure, such as a house, apartment, commercial building or industrial building.]

35 [(c) “Domestic waste” means any nonputrescible waste, consisting of combustible materials, such  
 36 as paper, cardboard, yard clippings, wood or similar materials, generated in a dwelling, including the  
 37 real property upon which it is situated, containing four living units or less.]

38 [(d) “Field burning” means the burning of any grass field, grain field, pasture, rangeland or other  
 39 field by open burning or by use of mobile equipment or flaming equipment on any land or  
 40 vegetation.]

41 [(e) “Industrial waste” means any waste resulting from any process or activity of manufacturing  
 42 or construction.]

43 [(f) “Land clearing debris” means any waste generated by the removal of debris, logs, trees, brush  
 44 or demolition material from any site in preparation for land improvement or construction projects.]

45 [(g) “Open burning” means any burning conducted in such a manner that combustion air is not

1 *effectively controlled and that combustion products are not vented through a stack or chimney, includ-*  
 2 *ing but not limited to burning conducted in open outdoor fires, common burn barrels and backyard*  
 3 *incinerators.]*

4 **SECTION 6.** ORS 476.380 is amended to read:

5 476.380. [(1) *No person, outside the boundaries of a rural fire protection district or a forest pro-*  
 6 *tection district, shall cause or permit to be initiated or maintained on the property of the person, or*  
 7 *cause to be initiated or maintained on the property of another any open burning of commercial waste,*  
 8 *demolition material, domestic waste, industrial waste, land clearing debris or field burning without*  
 9 *first securing a permit from the county court or board of county commissioners.]*

10 **(1) As used in this section:**

11 **(a) “Commercial waste”:**

12 **(A) Means any waste produced in any business involving the lease or sale, including**  
 13 **wholesale and retail, of goods or services, including but not limited to housing.**

14 **(B) Means any waste produced by a governmental, educational or charitable institution.**

15 **(C) Does not include any waste produced in a dwelling containing four living units or less.**

16 **(b) “Demolition material” means any waste resulting from the complete or partial de-**  
 17 **struction of any man-made structure, such as a house, apartment, commercial building or**  
 18 **industrial building.**

19 **(c) “Domestic waste” means any nonputrescible waste, consisting of combustible mate-**  
 20 **rials, such as paper, cardboard, yard clippings, wood or similar materials, generated in a**  
 21 **dwelling, including the real property upon which it is situated, containing four living units**  
 22 **or less.**

23 **(d) “Field burning” means the burning of any grass field, grain field, pasture, rangeland**  
 24 **or other field by open burning or by use of mobile equipment or flaming equipment on any**  
 25 **land or vegetation.**

26 **(e) “Industrial waste” means any waste resulting from any process or activity of manu-**  
 27 **facturing or construction.**

28 **(f) “Land clearing debris” means any waste generated by the removal of debris, logs,**  
 29 **trees, brush or demolition material from any site in preparation for land improvement or**  
 30 **construction projects.**

31 **(g) “Open burning” means any burning conducted in such a manner that combustion air**  
 32 **is not effectively controlled and that combustion products are not vented through a stack**  
 33 **or chimney, including but not limited to burning conducted in open outdoor fires, common**  
 34 **burn barrels and backyard incinerators.**

35 **(2)(a) Unless the county court or board of county commissioners expressly states other-**  
 36 **wise, a county prohibition, restriction, limitation or regulation of the open burning of com-**  
 37 **mercial waste, demolition material, domestic waste, industrial waste, land clearing debris or**  
 38 **field burning applies for all nonfederal lands within the county.**

39 **(b) Violating a county prohibition, restriction, limitation or regulation described in this**  
 40 **subsection is a Class D violation.**

41 **(3)(a) Except as provided in this subsection, if property is subject to a county prohibition,**  
 42 **restriction, limitation or regulation of open burning described in subsection (2) of this sec-**  
 43 **tion, a person must secure a permit from the county before allowing or causing the initiation**  
 44 **or maintenance of open burning on property of the person or causing the initiation or**  
 45 **maintenance of open burning on property of another.**

1       **(b) A county may not issue a permit under this subsection for open burning on property**  
 2       **within:**

3       **(A) A rural fire protection district that prohibits, restricts, limits or regulates open**  
 4       **burning as provided under section 2 of this 2019 Act and ORS 478.960; or**

5       **(B) A city that prohibits, restricts, limits or regulates open burning as provided under**  
 6       **section 4 of this 2019 Act.**

7       **(c) Failure to secure a permit required under this subsection is a Class D violation.**

8       [(2)] (4) The county court or board of county commissioners, or its designated representative,  
 9 shall prescribe conditions for issuance of any **burning** permit and shall refuse, revoke or postpone  
 10 issuance of permits when necessary to prevent danger to life or property or to protect the air re-  
 11 sources of this state. The Environmental Quality Commission shall notify the State Fire Marshal  
 12 of the type of and time for burning to be allowed on each day under schedules adopted pursuant to  
 13 ORS 468A.570 and 468A.595. The State Fire Marshal shall cause all county courts and boards of  
 14 county commissioners or their designated representatives in the affected areas to be notified of the  
 15 type of and time for burning to be allowed on each day and of any revisions of such conditions  
 16 during each day. The county court, board or representative shall issue **burning** permits only in ac-  
 17 cordance with schedules of the Environmental Quality Commission adopted pursuant to this section  
 18 and ORS 468A.555 to 468A.620 and 468A.992[, 476.990,] **and** 478.960 [*and 478.990*] but may reduce the  
 19 hours allowed for burning if necessary to prevent danger to life or property from fire. The State Fire  
 20 Marshal may refuse or postpone permits when necessary in the judgment of the State Fire Marshal  
 21 to prevent danger to life or property from fire, notwithstanding any determination by the county  
 22 court or board of county commissioners or its designated officer. Notwithstanding any other pro-  
 23 vision of this subsection, for a permit for the propane flaming of mint stubble, the county court or  
 24 board of county commissioners, or its designated representative, may only prescribe conditions  
 25 necessary to prevent the spread of fire or to prevent endangering life or property and may refuse,  
 26 revoke or postpone permission to conduct the propane flaming only when necessary to prevent  
 27 danger to life or property from fire.

28       [(3)] (5) Nothing in this section:

29       (a) Requires permission for starting a campfire in [*a manner*] **an** otherwise lawful **manner**.

30       (b) Relieves a person starting a fire from responsibility for providing adequate protection to  
 31 prevent injury or damage to the property of another. If such burning results in the escape of fire  
 32 and injury or damage to the property of another, such escape and [*damage or*] injury **or damage**  
 33 constitutes prima facie evidence that the burning was not safe.

34       (c) Relieves a person who has obtained permission to start a fire, or the agent of the person,  
 35 from legal liability for property damage resulting from the fire.

36       (d) Permits an act within a city or regional air quality control authority area that otherwise is  
 37 unlawful pursuant to an ordinance of the city or rule, regulation or order of the regional authority.

38       [(4)] *The county court or board of county commissioners shall maintain records of all permits and*  
 39 *the conditions thereof, if any, that are issued under this section and shall submit at such times, as the*  
 40 *Environmental Quality Commission shall require such records or summaries thereof to the commission.*  
 41 *The Environmental Quality Commission shall provide forms for the reports required under this sub-*  
 42 *section.]*

43       **(6) The county court or board of county commissioners shall maintain records of all**  
 44 **permits issued under this section and any conditions placed on those permits. The court or**  
 45 **board shall submit the records or summaries of the records to the Environmental Quality**

1 **Commission as required by the commission. The commission shall provide forms for record**  
2 **or summary submissions required by the commission.**

3 **SECTION 7.** ORS 476.990 is amended to read:

4 476.990. (1) Violation of ORS 476.150 (2) is a Class A misdemeanor.

5 *[(2) Violation of ORS 476.380 (1) is a Class A misdemeanor.]*

6 *[(3)]* (2) Violation of ORS 476.410 to 476.440 is a Class C misdemeanor.

7 *[(4)]* (3) Violation of any provision of ORS 476.510 to 476.610 is a Class A misdemeanor.

8 *[(5)]* (4) Subject to ORS 153.022, violation of ORS 476.710 or 476.715 or of any rule or regulation  
9 of the State Parks and Recreation Department promulgated thereunder is a Class B misdemeanor.

10 **SECTION 8.** ORS 468A.570 is amended to read:

11 468A.570. (1) As used in this section:

12 (a) "Marginal conditions" means atmospheric conditions such that smoke and particulate matter  
13 escape into the upper atmosphere with some difficulty but not such that limited additional smoke  
14 and particulate matter would constitute a danger to the public health and safety.

15 (b) "Marginal day" means a day on which marginal conditions exist.

16 (2) For purposes of ORS 476.380 and 478.960 **and section 4 of this 2019 Act**, the Environmental  
17 Quality Commission shall classify different types or combinations of atmospheric conditions as  
18 marginal conditions and shall specify the extent and types of burning that may be allowed under  
19 different combinations of atmospheric conditions. A schedule describing the types and extent of  
20 burning to be permitted on each type of marginal day shall be prepared and circulated to all public  
21 agencies responsible for providing information and issuing permits under ORS 476.380 and 478.960  
22 **and section 4 of this 2019 Act**. The schedule shall give first priority to the burning of perennial  
23 grass seed crops used for grass seed production, second priority to annual grass seed crops used for  
24 grass seed production, third priority to grain crop burning, and fourth priority to all other burning  
25 and shall prescribe duration of periods of time during the day when burning is authorized.

26 (3) In preparing the schedule under subsection (2) of this section, the commission shall provide  
27 for the assignment of fourth priority burning by the State Department of Agriculture in accordance  
28 with the memorandum of understanding established pursuant to ORS 468A.585.

29 (4) In preparing the schedule required under subsection (2) of this section, the commission shall  
30 weigh the economic consequences of scheduled burnings and the feasibility of alternative actions,  
31 and shall consider weather conditions and other factors necessary to protect the public health and  
32 welfare.

33 (5) None of the functions of the commission under this section or under ORS 476.380 or 478.960  
34 **or section 4 of this 2019 Act**, as it relates to agricultural burning, shall be performed by any re-  
35 gional air quality control authority established under ORS 468A.105.

36 **SECTION 9.** ORS 468A.575 is amended to read:

37 468A.575. (1) Permits for open burning, propane flaming or stack or pile burning of the residue  
38 from perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the  
39 counties listed in ORS 468A.560. Permits shall be issued in accordance with rules adopted by the  
40 Environmental Quality Commission and subject to the fee prescribed in ORS 468A.615. The permit  
41 described in this section shall be issued in conjunction with permits required under ORS 476.380 or  
42 478.960 **or section 4 of this 2019 Act**.

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

1 fees have been paid as required in ORS 468A.615.

2 **SECTION 10.** ORS 468A.610 is amended to read:

3 468A.610. (1) Except as provided under ORS 468A.620, [no] a person [shall] **may not** open burn  
 4 or cause to be open burned, propane flamed or stack or pile burned in the counties listed in ORS  
 5 468A.560[,] perennial or annual grass seed crop residue or cereal grain crop residue, unless the  
 6 acreage has been registered under ORS 468A.615 and the permits required by ORS 468A.575, 476.380  
 7 and 478.960 **and section 4 of this 2019 Act** have been obtained.

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

- 10 (a) For 2009, 20,000 acres.
- 11 (b) For 2010 and thereafter, none.

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

- 14 (a) For 2009, 1,000 acres.
- 15 (b) For 2010, 1,000 acres.
- 16 (c) For 2011, 1,000 acres.
- 17 (d) For 2012, 1,000 acres.
- 18 (e) For 2013 and thereafter, none.

19 (4) The maximum total registered acreage allowed to be propane flamed per year under sub-  
 20 section (1) of this section in the counties listed in ORS 468A.560 shall be:

- 21 (a) For 2009, 500 acres.
- 22 (b) For 2010, 500 acres.
- 23 (c) For 2011, 500 acres.
- 24 (d) For 2012, 500 acres.
- 25 (e) For 2013 and thereafter, none.

26 (5) Fields shall be prepared for propane flaming by removing all loose straw or vacuuming, or  
 27 prepared using other techniques approved by rule by the Environmental Quality Commission, and  
 28 propane equipment shall satisfy best available technology.

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

33 (b) Steep terrain and species identified by the Director of Agriculture by rule may not be open  
 34 burned under the provisions of this subsection in Benton and Lane Counties and in Linn County,  
 35 except for portions of northeast Linn County that are east of the North Santiam River and north  
 36 of Jefferson-Scio Drive and Robinson Drive to the west boundary of the City of Scio and north of  
 37 Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and  
 38 north of Fish Hatchery Drive.

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

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

1 (9) Permits shall be issued under ORS 468A.575 and open burning, propane flaming and stack  
2 or pile burning shall be allowed for the maximum acreage specified in subsections (2), (3), (4) and  
3 (6) of this section unless the daily determination of suitability of meteorological conditions, regional  
4 or local air quality conditions or other burning conditions requires that a maximum number of acres  
5 not be burned on a given day.

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

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

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

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

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

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

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

25 (12) The commission shall act on any application for a permit under ORS 468A.575 within 60  
26 days of registration and receipt of the fee required under ORS 468A.615.

27 **SECTION 11. Sections 2 and 4 of this 2019 Act and the amendments to ORS 468A.570,**  
28 **468A.575 and 468A.610 by sections 8 to 10 of this 2019 Act become operative January 1, 2021.**

29 **SECTION 12. The amendments to ORS 476.380 by section 6 of this 2019 Act apply to**  
30 **county prohibitions, restrictions, limitations or regulations of open burning adopted before,**  
31 **on or after the effective date of this 2019 Act.**

32 **SECTION 13. The amendments to ORS 476.990 by section 7 of this 2019 Act apply to open**  
33 **burning initiated on or after the effective date of this 2019 Act.**

34