

Chapter 1089 Oregon Laws 1999
Session Law

AN ACT

HB 2431

Relating to community right to know programs; creating new provisions; amending ORS 453.307 and 453.376; appropriating money; limiting expenditures; and declaring an emergency.

Whereas the Legislative Assembly finds that community right to know regulatory programs concerning hazardous substances and toxic substances are an important function of state government; and

Whereas it is imperative that the information gathered by such programs be readily accessible to the public; and

Whereas ensuring the effectiveness of such programs is vital to the continued health and welfare of the citizenry; and

Whereas the Legislative Assembly determines that community right to know regulatory programs are most properly and efficiently operated by and are the responsibility of state government, specifically the office of the State Fire Marshal, in consultation with the Department of Environmental Quality and the Health Division; and

Whereas efforts spent on local programs, unless carefully constructed and not redundant, can weaken support for the state community right to know program by ineffectively consuming governmental and private resources as well as resulting in an inefficient patchwork of regulation in the state; and

Whereas as a matter of public health and safety, industries handling hazardous substances and toxic substances in this state have a responsibility to so notify the office of the State Fire Marshal; now, therefore,

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

SECTION 1. Sections 2 to 4 of this 1999 Act are added to and made a part of ORS 453.307 to 453.414.

SECTION 2. (1) There is established a Community Right to Know Technical Committee consisting of representatives of the State Department of Agriculture, the Department of Environmental Quality, the Health Division, the Department of Transportation, the State Fire Marshal and the Governor. The committee, which shall be chaired by the representative of the State Fire Marshal, may consult and seek counsel of public or private entities, including educational and research institutions, as the committee considers appropriate and helpful.

(2) The committee shall:

(a) Develop a plan including options, cost estimates and allotment of responsibilities to enhance and improve public access to public records pertaining to hazardous substance and toxic substance data. The plan also shall include the means and mechanisms for:

(A) Establishment of a central point for accessing hazardous substance and toxic substance information on the Internet;

(B) Movement and transition of appropriate data from written form to computer databases;

(C) Development, to the extent reasonable and practicable, of interactive and mutually accessible agency databases containing hazardous substance and toxic substance data;

(D) Timely and rapid addition of hazardous substance and toxic substance data, after appropriate quality control measures, electronically submitted by regulated entities into the appropriate databases;

(E) Development of reports and other data outputs most usable for local government and the general public; and

(F) Standardization, where possible and practicable, of reports and other hazardous substance and toxic substance data submittals required by state agencies.

(b) Report to the Seventy-first Legislative Assembly with recommendations and cost estimates of the various means and mechanisms for accomplishing the plan of enhancements and improvements described in paragraph (a) of this subsection.

SECTION 3. (1) In order to maintain and ensure the effectiveness of state programs established under ORS 453.307 to 453.414, as well as to ensure the effectiveness of local efforts, a local government may establish, enforce or enact a local community right to know regulatory program provided that the local program complies with the requirements of this section.

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

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

(b) May not exceed \$2,000 for any single facility in any calendar year.

(3)(a) All local community right to know regulatory program enforcement, including but not limited to penalties, may be imposed only by a local fire official or a board established by the local government to implement the local community right to know regulatory program.

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

(4) After notice and public hearing, the local government must determine that:

(a) Existing reporting to local, state or federal agencies is inadequate to meet the needs and concerns of the local government;

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

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

(d) The Department of Environmental Quality, the State Fire Marshal and the Health Division of the Department of Human Resources have had an opportunity to comment on the proposed program and the local government has responded to those comments; and

(e) The local government has provided an opportunity for written and oral public comment on the proposed program.

(5) Any local government that operates a local community right to know regulatory program shall:

(a) Provide for an opportunity to report data electronically;

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

(c) Keep records of data usage and otherwise document interest in the collected data.

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

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

(b) May, where feasible, indicate specifically which hazardous substances and toxic substances are being released into the local air, water and land; and

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

(7) For any hazardous substance or toxic substance that a local government proposes to require an employer to report under a local community right to know regulatory program established pursuant to sections 2 to 4 of this 1999 Act, the local government shall seek written and oral public comment and provide written notice to interested parties prior to adoption as a reporting requirement. The local government must provide the public with an opportunity to comment on the appropriateness of reporting on the proposed hazardous substance or toxic substance, including but not limited to commenting on health and environmental considerations, economic concerns and feasibility of compliance. The local government shall consider the comments before adopting a list or making additions to a list of hazardous substances and toxic substances to be reported.

(8) In administering a local community right to know regulatory program, a local government shall establish procedures to exempt, when reasonable, an entity from all or part of the local program for the purpose of protecting trade secrets or where the local government determines that the operations of the entity pose little or no risk to the public health or the environment.

(9) Except as prohibited by federal or state law, a local program shall not differentiate between public and private employers.

(10) Nothing in this section shall be construed to limit the authority of a local government to:

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

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

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

(B) A uniform fire code; or

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

(11) For any local community right to know regulatory program established before January 1, 1999, subsections (2), (4) to (7) and (9) of this section shall not apply until July 1, 2003.

SECTION 4. The Director of the Department of Environmental Quality shall establish a governmental policy group consisting of individuals with appropriate regulatory, scientific, health or industrial expertise to explore options for enhancing statewide hazardous substance and toxic substance reporting and data collection, including the results from the reporting of hazardous substances and toxic substances in local programs. The group may include representatives of other state agencies, including but not limited to representatives of the Health Division of the Department of Human Resources. The Department of Environmental Quality's toxic substances coordinator shall provide staff support and technical advice to the group. The Department of Environmental Quality shall submit a report summarizing the group's recommendations to the Governor and the Seventy-first Legislative Assembly.

SECTION 5. ORS 453.307 is amended to read:

453.307. As used in ORS 453.307 to 453.414:

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

[(1)] **(2)** "Emergency service personnel" includes those entities providing emergency services as defined in ORS 401.025 (8) and (10).

[(2)] **(3)** "Employer" means:

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

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

[(3)] **(4)** "Fire district" means any agency having responsibility for providing fire protection services.

[(4)] **(5)** "Hazardous substance" means:

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

(b) Any substance for which a material safety data sheet is required by the Director of the Department of Consumer and Business Services under ORS 654.035 and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienists; or

(c) Radioactive waste and material as defined in ORS 469.300 and radioactive substance as defined in ORS 453.005.

[(5)] **(6)** "Health professional" means a physician as defined in ORS 677.010, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical technician.

[(6)] **(7)** "Law enforcement agency" has the meaning given that term in ORS 181.010.

(8) "Local government" means a city, town, county, regional authority or other political subdivision of this state.

[(7)] **(9)** "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agency thereof, and the Federal Government and any agency thereof.

[(8)] **(10)** "Trade secret" has the meaning given that term in ORS 192.501 (2).

SECTION 6. ORS 453.376 is amended to read:

453.376. (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 453.307 to 453.414, or enforcing the provisions of ORS 453.307 to 453.414, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of the State Fire Marshal:

(a) Furnish information relating to the oil or hazardous material; and

(b) Permit the State Fire Marshal at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section, the State Fire Marshal may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) Any person possessing or holding a quantity of oil or hazardous material meeting or exceeding the reporting criteria established by the State Fire Marshal shall notify the State Fire Marshal of the presence, quantity and other information required under statute or rule, and shall conform to the requirements of ORS 453.307 to 453.414.

SECTION 7. The amendments to ORS 453.376 by section 6 of this 1999 Act become operative on December 31, 2000.

SECTION 8. Notwithstanding any other law limiting expenditures of the Department of State Police for the payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds for the Law Enforcement Data System message switch reengineering, but excluding lottery funds collected or received by the Department of State Police for the biennium beginning July 1, 1999, the limitation of expenditures established by section 2 (3), chapter 231, Oregon Laws 1999 (Enrolled House Bill 5043), is increased by \$108,019 for the purpose of carrying out the duties imposed on the Department of State Police by this 1999 Act.

SECTION 9. Notwithstanding any other law, the amount of \$139,455 is established for the biennium beginning July 1, 1999, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding lottery funds and federal funds, collected or received by the Department of Environmental Quality for the purpose of carrying out the duties imposed on the Department of Environmental Quality by this 1999 Act.

SECTION 10. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Environmental Quality, for the biennium beginning July 1, 1999, out of the General Fund, the amount of \$149,117 for the purpose of carrying out this 1999 Act.

SECTION 11. This 1999 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 1999 Act takes effect September 1, 1999.

Approved by the Governor September 1, 1999

Filed in the office of the Secretary of State September 2, 1999

Effective date September 1, 1999
