

# House Bill 2007

Sponsored by COMMITTEE ON BUSINESS AND LABOR

## 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**.

Makes legislative findings regarding water quality.

Requires Environmental Quality Commission and Department of Environmental Quality to undertake certain efforts in relation to water quality standards.

Requires Department of Environmental Quality to identify certain permittees to apply for pilot water quality variance from water quality standards. Requires report to Legislative Assembly.

Requires Department of Environmental Quality to identify certain surface waters that do not meet certain criteria for polychlorinated biphenyls. Requires department to prepare multiple discharger variances and to submit variances to Environmental Quality Commission and to United States Environmental Protection Agency. Requires report to Legislative Assembly.

Requires Department of Environmental Quality to identify substances that exceed certain water quality standards. Requires department to submit certain revised water quality standards to Environmental Quality Commission and to United States Environmental Protection Agency. Requires report to Legislative Assembly.

Specifies certain requirements related to water quality standards adopted by Environmental Quality Commission.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to water; and declaring an emergency.

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

4 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS**  
5 **chapter 468B.**

6 **SECTION 2. The Legislative Assembly finds and declares that:**

7 (1) **ORS 468B.035 and 468B.048 and the Federal Water Pollution Control Act, P.L. 92-500,**  
8 **as amended, require the Environmental Quality Commission to establish water quality stan-**  
9 **dards for the protection of human health in surface waters of this state. These standards**  
10 **are implemented through wastewater discharge permits for municipal and industrial facilities**  
11 **and through other legal mechanisms.**

12 (2) **A source of pollutants in waters of this state is not always within the legal or prac-**  
13 **ticable control of this state. This is often especially true of naturally occurring earth metals**  
14 **that may be designated pollutants, pollutants from past human activities pollutants contrib-**  
15 **uted in small amounts from many different human activities and pollutants generated out-**  
16 **side this state that ultimately reach waters of this state through combustion sources, global**  
17 **air deposition and other means. As water quality standards for the protection of human**  
18 **health become more stringent, achieving the standards becomes increasingly difficult be-**  
19 **cause the sources of pollutants that are outside this state's legal or practicable control be-**  
20 **come a larger proportion of the pollutant sources and may alone cause the standards to be**  
21 **exceeded.**

22 (3) **As water quality standards for the protection of human health become increasingly**  
23 **stringent, the marginal benefits to human health are likely to decrease, and both the abso-**

**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 lute and marginal economic, social and environmental costs of achieving the standards are  
2 likely to increase.

3 (4) Because of the factors described in this section, very stringent water quality stan-  
4 dards for the protection of human health may often result in wastewater permit discharge  
5 limits or other requirements that are unreasonable because they are infeasible or impossible  
6 to achieve, providing negligible or no human health benefits.

7 **SECTION 3.** The Environmental Quality Commission and the Department of Environ-  
8 mental Quality shall undertake, to the extent allowed by federal law, all reasonable efforts  
9 to ensure that the economic, social and environmental costs of achieving waste discharge  
10 limits and other controls needed to meet water quality standards for the protection of human  
11 health are reasonable in relation to the human health benefits likely to be achieved.

12 **SECTION 4.** (1) By October 1, 2011, the Department of Environmental Quality shall  
13 identify one major municipal and one major industrial National Pollutant Discharge Elim-  
14 ination System permittee in this state that are willing to apply for a pilot water quality var-  
15 iance from a water quality standard for the protection of human health not later than  
16 December 31, 2011. Not later than June 30, 2012, the department shall either approve the  
17 variances and submit the variances to the United States Environmental Protection Agency  
18 for its approval or deny the variances.

19 (2) If by December 31, 2011, the department does not receive applications for the pilot  
20 water quality variances described in subsection (1) of this section, the department shall re-  
21 port to the Seventy-sixth Legislative Assembly by February 1, 2012. The report shall discuss  
22 why the department considers that it did not receive the applications, including whether the  
23 applications were not received because no variance was needed by a major municipal or in-  
24 dustrial permittee or because no permittee was willing to apply for the variance because of  
25 the cost, likelihood of disapproval or other reasons.

26 (3) By November 1, 2012, the department shall report to the Seventy-sixth Legislative  
27 Assembly on the pilot water quality variances described in subsection (1) of this section. The  
28 report shall include, but need not be limited to:

29 (a) A description of the variances;

30 (b) The department's reasons for approving or denying the variances;

31 (c) The United States Environmental Protection Agency's action if the variances were  
32 submitted to it for approval;

33 (d) The department personnel and other resources required to process the variance ap-  
34 plications, as well as the permittees' costs to apply for the variances, to the extent that in-  
35 formation is available to the department or that it can be estimated; and

36 (e) The department's process for seeking comments on the variance applications from  
37 the public, the United States Environmental Protection Agency and other appropriate state  
38 and federal agencies and tribal governments.

39 **SECTION 5.** (1) By October 1, 2011, the Department of Environmental Quality shall  
40 identify the surface waters of the state that do not meet the applicable human health water  
41 quality criteria for polychlorinated biphenyls, including any more stringent applicable human  
42 health water quality criteria for polychlorinated biphenyls that have been adopted by the  
43 Environmental Quality Commission but are not yet effective on the effective date of this 2011  
44 Act. The identification must be based on reasonably available information, including infor-  
45 mation based on the use of United States Environmental Protection Agency Analytical

1 Method 1668 and revisions thereof. The waters identified must include at least all waters that  
 2 are listed pursuant to subsection 303(d) of the Federal Water Pollution Control Act, P.L.  
 3 92-500, as amended, as having water quality compromised due to presence of polychlorinated  
 4 biphenyls.

5 (2) For the waters identified under subsection (1) of this section, the department shall  
 6 prepare a multiple discharger variance or multiple discharger variances from the applicable  
 7 human health criteria for polychlorinated biphenyls for all those National Pollutant Dis-  
 8 charge Elimination System permittees to which the criteria would apply and that may have  
 9 a reasonable potential to cause or contribute to a violation of the criteria. Separate multiple  
 10 discharger variances may be prepared for different waters or categories of permittees. The  
 11 multiple discharger variances may be prepared with conditions or criteria that would exclude  
 12 permittees that would not be eligible for a water quality variance.

13 (3) By June 30, 2012, the department shall submit the multiple discharger variances de-  
 14 scribed in this section to the Environmental Quality Commission for adoption, and if so  
 15 adopted, to the United States Environmental Protection Agency for approval.

16 (4) By November 1, 2012, the department shall report to the Seventy-sixth Legislative  
 17 Assembly on whether the multiple discharger variances required by this section were  
 18 adopted by the Environmental Quality Commission and, if so, whether the variances were  
 19 submitted to and approved by the United States Environmental Protection Agency. If any  
 20 circumstances precluded the department from preparing a multiple discharger variance or  
 21 multiple discharger variances for all the permittees required by this section, the department  
 22 shall identify which permittees or categories of permittees were excluded and the reasons for  
 23 the exclusion, as well as what actions the department plans to take to address these  
 24 permittees' compliance with the applicable human health criteria for polychlorinated  
 25 biphenyls.

26 SECTION 6. (1) By November 1, 2011, the Department of Environmental Quality shall  
 27 identify in a report to the Seventy-sixth Legislative Assembly any substances for which  
 28 concentrations allowed for that substance in a water quality standard for the protection of  
 29 human health, including any such standard that has been adopted by the Environmental  
 30 Quality Commission but that is not yet effective for any waters of the state, have been na-  
 31 turally exceeded or are likely to be naturally exceeded.

32 (2)(a) For any substances and waters identified pursuant to subsection (1) of this section  
 33 for which there are discharges permitted by the Department of Environmental Quality under  
 34 the National Pollutant Discharge Elimination System permit program, the department shall  
 35 evaluate whether and to what extent drinking water, fishing and other beneficial uses pro-  
 36 tected by the human health water quality standard are attainable at the natural pollutant  
 37 levels plus the pollutant allowances for human activities that do not significantly impair  
 38 these beneficial uses.

39 (b) If the Department of Environmental Quality determines pursuant to paragraph (a)  
 40 of this subsection that the beneficial uses are attainable, the department shall prepare and  
 41 submit to the Environmental Quality Commission by November 1, 2012, revised human health  
 42 water quality standards that are no more stringent than standards that reflect the natural  
 43 pollutant levels plus the pollutant allowances for human activities that do not significantly  
 44 impair the beneficial uses. If the commission agrees that the beneficial uses are attainable  
 45 at the proposed water quality standards or at less stringent standards, the commission shall

1 adopt the proposed or less stringent standards and submit them to the United States Envi-  
2 ronmental Protection Agency for approval.

3 (c) If the Department of Environmental Quality determines pursuant to paragraph (a)  
4 of this subsection that the beneficial uses are not attainable, if pursuant to paragraph (b)  
5 of this subsection the Environmental Quality Commission does not agree that the beneficial  
6 uses are attainable at the natural pollutant levels plus the pollutant allowances for human  
7 activities that do not significantly impair the human health uses or if the United States  
8 Environmental Protection Agency does not approve the standards submitted to the agency  
9 pursuant to paragraph (b) of this subsection, the department shall prepare and submit to the  
10 commission for approval:

11 (A) Revised water quality standards that do not include the human health uses or that  
12 include designations of impaired human health uses; and

13 (B) Revised water quality standards that are no more stringent than standards that re-  
14 flect the natural pollutant levels plus pollutant allowances for human activities that do not  
15 significantly impair the human health uses.

16 (d) The commission shall submit revised water quality standards adopted pursuant to  
17 paragraph (c) of this subsection to the United States Environmental Protection Agency for  
18 approval.

19 (3) The Department of Environmental Quality shall report to the Seventy-sixth Legisla-  
20 tive Assembly not later than December 31, 2012, on its actions and those of the Environ-  
21 mental Quality Commission pursuant to the provisions of this section.

22 SECTION 7. For purposes of National Pollutant Discharge Elimination System permits  
23 issued by the Department of Environmental Quality pursuant to ORS 468B.050 as part of this  
24 state's administration of section 402 of the Federal Water Pollution Control Act, P.L. 92-500,  
25 as amended, any numeric water quality standard for the protection of human health that is  
26 adopted by the Environmental Quality Commission on or after the effective date of this 2011  
27 Act that is more stringent than any standard adopted by the Environmental Quality Com-  
28 mission before the effective date of this 2011 Act may not become effective until March 1,  
29 2013, or one year after it is approved by the United States Environmental Protection Agency,  
30 whichever is later. This section does not apply to any water quality standard that the United  
31 States Environmental Protection Agency has not been approved because it has determined  
32 that an earlier effective date is necessary to comply with the Federal Water Pollution Con-  
33 trol Act.

34 SECTION 8. This 2011 Act being necessary for the immediate preservation of the public  
35 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
36 on its passage.

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