

A-Engrossed
Senate Bill 235

Ordered by the Senate April 25
Including Senate Amendments dated April 25

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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.

[Allows] **Directs** Environmental Quality Commission and State Department of Agriculture to [provide for] **enter into memorandum of understanding that addresses** department administration and enforcement of air quality laws applicable to agricultural operations or equipment. **Requires commission to adopt rules establishing specified ambient air quality standard and controlling air pollution from large concentrated animal feeding operations.** Expands duties and powers of State Department of Agriculture Natural Resources Division.

A BILL FOR AN ACT

1
2 Relating to air quality; creating new provisions; and amending ORS 468A.020, 468A.550 and 561.400.

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

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 468A.**

5 **SECTION 2. (1) The Environmental Quality Commission and the State Department of**
6 **Agriculture shall enter into a memorandum of understanding that addresses the adminis-**
7 **tration and enforcement of air quality laws contained in this chapter that apply to agricul-**
8 **tural operations and equipment. The terms of the memorandum of understanding must be**
9 **consistent with the obligations of this state under the federal Clean Air Act (P.L. 88-206 as**
10 **amended) and the purposes described in ORS 468A.305. Subject to the terms of the memo-**
11 **randum of understanding and to oversight by the Department of Environmental Quality, the**
12 **State Department of Agriculture may perform any function of the Department of Environ-**
13 **mental Quality under this chapter that relates to air quality, including but not limited to the**
14 **issuance of permits, establishment of fees, entry and inspection of premises and the assess-**
15 **ment of civil penalties.**

16 **(2) The Environmental Quality Commission and the State Department of Agriculture**
17 **shall consider the following when entering into a memorandum of understanding under sub-**
18 **section (1) of this section:**

19 **(a) Cooperation with private and public entities associated with agriculture in program**
20 **research, development and implementation.**

21 **(b) Program flexibility.**

22 **(c) The use of voluntary measures, including education, demonstration projects and in-**
23 **centives, if practicable and reasonably expected to be effective in helping to carry out regu-**
24 **latory requirements.**

25 **(d) The diverse nature of agricultural operations and the importance of, and public in-**

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 **terest in, the agricultural production of food, fiber and other products.**

2 **(e) The desirability of having the State Department of Agriculture serve as the lead**
3 **agency responsible for the administration of programs relating to agriculture.**

4 **(f) The importance of, and public interest in, the protection of human health and the**
5 **environment, including the protection of natural resources in special areas of the state des-**
6 **ignated for their outstanding scenery and historical and cultural importance.**

7 **(3) In adopting rules subject to the memorandum of understanding required by subsection**
8 **(1) of this section, the Environmental Quality Commission and the State Department of Ag-**
9 **riculture shall consult with each other.**

10 **SECTION 3. (1) No later than January 2, 2008, the Environmental Quality Commission**
11 **shall initiate rulemaking to adopt rules:**

12 **(a) To establish an ambient air quality standard for hydrogen sulfide to protect human**
13 **health and the environment with an adequate margin of safety.**

14 **(b) To control air pollution from large concentrated animal feeding operations, including**
15 **but not limited to pollution by ammonia and hydrogen sulfide.**

16 **(c) To define "large concentrated animal feeding operation" as used in the rules of the**
17 **commission.**

18 **(2) The commission shall complete the adoption of rules under this section in time for**
19 **the rules to become effective on or before June 1, 2008.**

20 **SECTION 4.** ORS 468A.020 is amended to read:

21 *468A.020. [(1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution*
22 *laws contained in ORS chapters 468, 468A and 468B do not apply to:]*

23 *[(a) Agricultural operations and the growing or harvesting of crops and the raising of fowls or*
24 *animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150,*
25 *468A.555 to 468A.620 and 468A.992 and this section;]*

26 *[(b) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or*
27 *animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150,*
28 *468A.555 to 468A.620 and 468A.992 and this section;]*

29 **(1) Except as provided in subsection (2) of this section, the air quality laws contained in**
30 **ORS chapters 468, 468A and 468B do not apply to:**

31 **(a) Agricultural operations, including but not limited to:**

32 **(A) Growing or harvesting crops;**

33 **(B) Raising fowl or animals;**

34 **(C) Clearing or grading agricultural land;**

35 **(D) Propagating and raising nursery stock;**

36 **(E) Propane flaming of mint stubble; and**

37 **(F) Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505,**
38 **during the period beginning October 1 and ending May 31 of the following year.**

39 **(b) Equipment used in agricultural operations, except boilers used in connection with**
40 **propagating and raising nursery stock.**

41 **(c) Barbecue equipment used in connection with any residence.[:]**

42 **[(d) Agricultural land clearing operations or land grading;]**

43 **[(e)] (d) Heating equipment in or used in connection with residences used exclusively as**
44 **dwellings for not more than four families, except woodstoves which shall be subject to regulation**
45 **under this section, ORS 468A.460 to 468A.480, 468A.490 and 468A.515.[:]**

1 [(f)] (e) Fires set or permitted by any public agency when such fire is set or permitted in the
2 performance of its official duty for the purpose of weed abatement, prevention or elimination of a
3 fire hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the
4 agency is necessary.[:]

5 [(g)] (f) Fires set pursuant to permit for the purpose of instruction of employees of private in-
6 dustrial concerns in methods of fire fighting, or for civil defense instruction.[:]

7 [(h)] *The propagation and raising of nursery stock, except boilers used in connection with the*
8 *propagation and raising of nursery stock;]*

9 [(i)] *The propane flaming of mint stubble; or]*

10 [(j)] *Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505, during the*
11 *period beginning October 1 and ending May 31 of the following year.]*

12 [(2)] *As used in subsection (1) of this section, “field burning” does not include propane flaming of*
13 *mint stubble.]*

14 **(2) Subsection (1) of this section does not apply to the extent:**

15 **(a) Otherwise provided in ORS 468A.555 to 468A.620, 468A.992, 476.380 and 478.960 and**
16 **section 2 of this 2007 Act;**

17 **(b) Necessary to implement the federal Clean Air Act (P.L. 88-206 as amended) under**
18 **ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330; or**

19 **(c) Necessary to protect and enhance air quality in the Columbia River Gorge National**
20 **Scenic Area or in any area that has been designated or redesignated as a Class I area under**
21 **the federal Clean Air Act.**

22 **SECTION 5.** ORS 468A.550 is amended to read:

23 468A.550. [(1)] As used in **this section and** ORS 468A.555 to 468A.620 and 468A.992:

24 **(1) “Field burning” and “open field burning” do not include:**

25 **(a) Propane flaming of mint stubble; or**

26 **(b) Stack or pile burning of residue from Christmas trees as defined in ORS 571.505.**

27 [(a)] **(2)** “Research and development of alternatives to field burning” includes, but is not limited
28 to, projects concerned with cultural practices for producing grass seed without field burning, envi-
29 ronmental impacts of alternative seed production methods, straw marketing and utilization and al-
30 ternative crops.

31 [(b)] **(3)** “Smoke management” means the daily control of the conducting of open field burning
32 to such times and places and in such amounts so as to provide for the escape of smoke and
33 particulate matter therefrom into the atmosphere with minimal intrusion into cities and minimal
34 impact on public health and in such a manner that under existing meteorological conditions a max-
35 imum number of acres registered can be burned in a minimum number of days without substantial
36 impairment of air quality.

37 [(c)] **(4)** “Smoke management program” means a plan or system for smoke management. A smoke
38 management program shall include, but not be limited to, provisions for:

39 [(A)] **(a)** Annual inventorying and registering, prior to the burning season, of agricultural fields
40 for open field burning;

41 [(B)] **(b)** Preparation and issuance of open field burning permits by affected governmental
42 agencies;

43 [(C)] **(c)** Gathering and disseminating regional and sectional meteorological conditions on a daily
44 or hourly basis;

45 [(D)] **(d)** Scheduling times, places and amounts of agricultural fields that may be open burned

1 daily or hourly, based on meteorological conditions during the burning season;

2 [(E)] (e) Conducting surveillance and gathering and disseminating information on a daily or
3 more frequent basis;

4 [(F)] (f) Effective communications between affected personnel during the burning season; and

5 [(G)] (g) Employment of personnel to conduct the program.

6 [(2) As used in this section, "open field burning" does not include propane flaming of mint stubble
7 or stack or pile burning of residue from Christmas trees, as defined in ORS 571.505.]

8 **SECTION 6.** ORS 561.400 is amended to read:

9 561.400. (1) There is established within the State Department of Agriculture a Natural Resources
10 Division which shall have the duties and powers conferred by subsection (2) of this section, by ORS
11 568.210 to 568.808 and 568.900 to 568.933 and by the Director of Agriculture. The administrator of
12 the division shall be appointed by the director under ORS 561.050 after consultation with the Soil
13 and Water Conservation Commission.

14 (2) In addition to other duties and powers, the division is authorized:

15 (a) To review and approve or disapprove all projects, practices, budgets, contracts or regulations
16 of soil and water conservation districts organized under ORS 568.300 to 568.790;

17 (b) To keep the directors of the soil and water conservation districts informed of the activities
18 and experiences of other districts, to assist in the interchange of advice and information among the
19 districts, and to promote cooperation among the districts;

20 (c) To coordinate, as much as possible, the various programs of the soil and water conservation
21 districts;

22 (d) To solicit the cooperation and assistance of any department or agency of the United States
23 or other department or agency of this state;

24 (e) To disseminate information concerning the activities and programs of soil and water con-
25 servation districts and encourage formation of such districts in areas where they would be desirable
26 and feasible;

27 (f) To receive, from any source, materials, machinery and equipment and to transfer such to any
28 soil and water conservation district under terms and conditions deemed appropriate, including pay-
29 ment by the district for costs of delivery or use;

30 (g) To receive from any public or private source, donations, gifts and grants for the furtherance
31 of soil and water conservation, the provisions of ORS 568.225 or the protection of natural resources
32 affecting agriculture, which moneys are continuously appropriated to the department for the ad-
33 ministration of the Natural Resources Division and functions related thereto and for furnishing
34 support and financial assistance for the projects and activities of soil and water conservation dis-
35 tricts or other projects and activities relating to natural resources affecting agriculture or consist-
36 ent with ORS 568.225;

37 (h) To establish the procedures for developing and implementing extended stream bank erosion
38 plans under ORS 561.403;

39 (i) To review and evaluate documents and proposals of the federal government, agencies of the
40 State of Oregon, counties, cities, other governmental bodies or subdivisions thereof relating to na-
41 tural resources affecting agriculture or consistent with ORS 568.225; and

42 (j) To **conduct research in and** assist in the development of agricultural management proce-
43 dures and practices relating to natural resources for the prevention of soil erosion, [and] water
44 contamination **and air pollution** or **for the** enhancement of water quality and quantity **and air**
45 **quality**.

1 (3) The administrator of the division shall coordinate any activities of the Natural Resources
2 Division related to a watershed enhancement project approved by the Oregon Watershed Enhance-
3 ment Board under ORS 541.375 with activities of other cooperating state and federal agencies par-
4 ticipating in the project.

5 (4) In addition to or in lieu of the coverage provided pursuant to ORS 30.282 (4), the Oregon
6 Department of Administrative Services may provide to soil and water conservation districts and
7 their officers, employees and agents acting within the scope of their employment or duties, pro-
8 tection against liability as part of the insurance provided to the State Department of Agriculture
9 pursuant to ORS 278.120 to 278.215. The Oregon Department of Administrative Services shall de-
10 termine any additional contributions to be apportioned to the State Department of Agriculture under
11 ORS 278.110 for extending insurance to soil and water conservation districts, and the State De-
12 partment of Agriculture shall pay the assessments from such moneys as may be available therefor.

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