

# B-Engrossed Senate Bill 235

Ordered by the Senate June 22  
Including Senate Amendments dated April 25 and June 22

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for State Department of Agriculture)

## 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.

Directs Environmental Quality Commission and State Department of Agriculture to 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.

**Creates Task Force on Dairy Air Quality. Specifies membership and duties of task force. Declares emergency, effective on passage.**

## A BILL FOR AN ACT

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

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

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

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

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

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

22 **(b) Program flexibility.**

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

3 (d) The diverse nature of agricultural operations and the importance of, and public in-  
4 terest in, the agricultural production of food, fiber and other products.

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

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

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

13 **SECTION 3.** (1) There is created the Task Force on Dairy Air Quality, consisting of 15  
14 members appointed as follows:

15 (a) The President of the Senate shall appoint two members from among members of the  
16 Senate.

17 (b) The Speaker of the House of Representatives shall appoint two members from among  
18 members of the House of Representatives.

19 (c) The Director of the Department of Environmental Quality shall appoint one repre-  
20 sentative from the Department of Environmental Quality.

21 (d) The Director of Agriculture shall appoint one representative from the State Depart-  
22 ment of Agriculture.

23 (e) The Director of Human Services shall appoint one representative from the Depart-  
24 ment of Human Services having expertise in public health.

25 (f) The Governor shall appoint three representatives from the dairy industry.

26 (g) The Governor shall appoint three representatives from environmental and public in-  
27 terest organizations.

28 (h) The Governor shall appoint two representatives from institutions of higher education  
29 listed in ORS 352.002 having expertise in science and technology relevant to air emissions  
30 generated by dairy operations.

31 (2) The task force shall:

32 (a) Study the emission of air contaminants from dairy operations, including but not lim-  
33 ited to emissions regulated under the federal Clean Air Act;

34 (b) Study available data on the emission of air contaminants, including but not limited  
35 to the United States Environmental Protection Agency national air study of animal feeding  
36 operations; and

37 (c) Evaluate available alternatives for reducing emissions, taking into consideration:

38 (A) The diverse nature and economic viability of dairies and the economic contribution  
39 dairies make to the state economy;

40 (B) The impact that federal Clean Air Act regulations have, and that actions to address  
41 air emissions would have, on Oregon's dairies in Pacific Northwest markets;

42 (C) The protection of human health, the environment and scenic and cultural resources;

43 (D) The impact of available alternatives on other environmental media, energy and the  
44 cost of producing dairy products; and

45 (E) The feasibility of implementation.

1       (3) To assist the task force in its work, the task force may establish technical or advisory  
2 committees as the task force considers necessary. The task force may determine committee  
3 representation, duration and organization and may appoint the members. Committee mem-  
4 bers who are not members of the task force are not entitled to compensation or reimburse-  
5 ment of expenses.

6       (4) A majority of the members of the task force constitutes a quorum for the transaction  
7 of business.

8       (5) Official action by the task force requires the approval of a majority of the members  
9 of the task force.

10       (6) The task force shall elect one of its members to serve as chairperson.

11       (7) If there is a vacancy for any cause, the appointing authority shall make an appoint-  
12 ment to become immediately effective.

13       (8) The task force shall meet at times and places specified by the call of the chairperson  
14 or of a majority of the members of the task force.

15       (9) The task force may adopt rules necessary for the operation of the task force.

16       (10) The task force shall present its findings and recommendations to the Department  
17 of Environmental Quality and the State Department of Agriculture no later than July 1, 2008.  
18 The findings and recommendations may include, but need not be limited to, findings and  
19 recommendations for technical studies, voluntary actions, regulation and proposed legis-  
20 lation.

21       (11) The Department of Environmental Quality and the State Department of Agriculture  
22 shall jointly report on dairy air quality to an interim committee related to agriculture or  
23 natural resources no later than October 1, 2008. The report shall include any recommen-  
24 dations of the departments for proposed legislation to reduce the emission of air contam-  
25 inants by dairies.

26       (12) The Department of Environmental Quality and the State Department of Agriculture  
27 shall provide staff support to the task force.

28       (13) Members of the task force who are not members of the Legislative Assembly are not  
29 entitled to compensation, but may be reimbursed for actual and necessary travel and other  
30 expenses incurred by them in the performance of their official duties in the manner and  
31 amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions  
32 of the task force shall be paid out of funds appropriated to the Department of Environmental  
33 Quality and the State Department of Agriculture for that purpose.

34       (14) All agencies of state government, as defined in ORS 174.111, are directed to assist  
35 the task force in the performance of its duties and, to the extent permitted by laws relating  
36 to confidentiality, to furnish such information and advice as the members of the task force  
37 consider necessary to perform their duties.

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

39       468A.020. [(1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution  
40 laws contained in ORS chapters 468, 468A and 468B do not apply to:]

41       [(a) Agricultural operations and the growing or harvesting of crops and the raising of fowls or  
42 animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150,  
43 468A.555 to 468A.620 and 468A.992 and this section;]

44       [(b) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or  
45 animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150,

1 468A.555 to 468A.620 and 468A.992 and this section;]

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

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

5 (A) Growing or harvesting crops;

6 (B) Raising fowl or animals;

7 (C) Clearing or grading agricultural land;

8 (D) Propagating and raising nursery stock;

9 (E) Propane flaming of mint stubble; and

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

12 (b) Equipment used in agricultural operations, except boilers used in connection with  
13 propagating and raising nursery stock.

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

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

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

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

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

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

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

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

30 [(2) As used in subsection (1) of this section, "field burning" does not include propane flaming of  
31 mint stubble.]

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

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

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

37 (c) Necessary for the Environmental Quality Commission, in the commission's discretion,  
38 to implement a recommendation of the Task Force on Dairy Air Quality created under sec-  
39 tion 3 of this 2007 Act for the regulation of dairy air contaminant emissions.

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

41 468A.550. [(1)] As used in **this section** and ORS 468A.555 to 468A.620 and 468A.992:

42 (1) "Field burning" and "open field burning" do not include:

43 (a) Propane flaming of mint stubble; or

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

45 [(a)] (2) "Research and development of alternatives to field burning" includes, but is not limited

1 to, projects concerned with cultural practices for producing grass seed without field burning, envi-  
2 ronmental impacts of alternative seed production methods, straw marketing and utilization and al-  
3 ternative crops.

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

10 [(c)] (4) "Smoke management program" means a plan or system for smoke management. A smoke  
11 management program shall include, but not be limited to, provisions for:

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

14 [(B)] (b) Preparation and issuance of open field burning permits by affected governmental  
15 agencies;

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

18 [(D)] (d) Scheduling times, places and amounts of agricultural fields that may be open burned  
19 daily or hourly, based on meteorological conditions during the burning season;

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

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

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

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

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

27 561.400. (1) There is established within the State Department of Agriculture a Natural Resources  
28 Division which shall have the duties and powers conferred by subsection (2) of this section, by ORS  
29 568.210 to 568.808 and 568.900 to 568.933 and by the Director of Agriculture. The administrator of  
30 the division shall be appointed by the director under ORS 561.050 after consultation with the Soil  
31 and Water Conservation Commission.

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

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

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

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

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

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

45 (f) To receive, from any source, materials, machinery and equipment and to transfer such to any

1 soil and water conservation district under terms and conditions deemed appropriate, including pay-  
2 ment by the district for costs of delivery or use;

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

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

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

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

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

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

31 **SECTION 7. Section 3 of this 2007 Act is repealed on the date of the convening of the next**  
32 **regular biennial legislative session.**

33 **SECTION 8. This 2007 Act being necessary for the immediate preservation of the public**  
34 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
35 **on its passage.**

36