

# Senate Bill 235

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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 **as introduced**.

Allows Environmental Quality Commission and State Department of Agriculture to provide for department administration and enforcement of air quality laws applicable to agricultural operations or equipment. Expands duties and powers of State Department of Agriculture Natural Resources Division.

## A BILL FOR AN ACT

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

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

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

4 **SECTION 2. (1) The Environmental Quality Commission and the State Department of**  
5 **Agriculture may enter into a memorandum of understanding that provides for the State**  
6 **Department of Agriculture to administer and enforce any air quality laws contained in this**  
7 **chapter that apply to agricultural operations or equipment under an exception described in**  
8 **ORS 468A.020. Subject to the terms of the memorandum, the State Department of Agricul-**  
9 **ture may perform any function of the commission or the Department of Environmental**  
10 **Quality including, but not limited to, the adoption of rules, issuance of permits, establish-**  
11 **ment of fees, entry and inspection of premises and assessment of civil penalties. The terms**  
12 **of the memorandum must be consistent with the obligations of this state under the federal**  
13 **Clean Air Act (P.L. 88-206 as amended) and ORS 468A.305.**

14 (2) The Legislative Assembly declares that it is the policy of this state that a memoran-  
15 dum of understanding authorized under this section and rules establishing programs to apply  
16 air quality laws to agricultural operations or equipment are to be guided by the following  
17 principles:  
18

19 (a) The commission and the State Department of Agriculture should act cooperatively  
20 with the private and public entities associated with agriculture in program research, devel-  
21 opment and implementation.

22 (b) Programs should be flexible.

23 (c) When possible, voluntary measures, including education, demonstration projects and  
24 incentives, should be used.

25 (d) Regulatory provisions and enforcement should be considered when voluntary meas-  
26 ures are impracticable, have been ineffective or reasonably are expected to be ineffective.

27 (e) The commission and the State Department of Agriculture should consult with each  
28 other before adopting rules regarding a program.

29 (f) To the extent consistent with the federal Clean Air Act (P.L. 88-206 as amended), the

**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 **State Department of Agriculture should be the lead agency responsible for administration**  
 2 **of the programs.**

3 **SECTION 3.** ORS 468A.020 is amended to read:

4 468A.020. *[(1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution*  
 5 *laws contained in ORS chapters 468, 468A and 468B do not apply to:]*

6 *[(a) Agricultural operations and the growing or harvesting of crops and the raising of fowls or*  
 7 *animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150,*  
 8 *468A.555 to 468A.620 and 468A.992 and this section;]*

9 *[(b) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or*  
 10 *animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150,*  
 11 *468A.555 to 468A.620 and 468A.992 and this section;]*

12 **Except as provided in ORS 468A.555 to 468A.620, 468A.992, 476.380 and 478.960 and section**  
 13 **2 of this 2007 Act, or as necessary to implement the federal Clean Air Act (P.L. 88-206 as**  
 14 **amended) under ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to**  
 15 **468A.330, the air quality laws contained in ORS chapters 468, 468A and 468B do not apply to:**

16 **(1) Agricultural operations, including but not limited to:**

17 **(a) Growing or harvesting crops;**

18 **(b) Raising fowl or animals;**

19 **(c) Clearing or grading agricultural land;**

20 **(d) Propagating and raising nursery stock;**

21 **(e) Propane flaming of mint stubble; and**

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

24 **(2) Equipment used in agricultural operations, except boilers used in connection with**  
 25 **propagating and raising nursery stock.**

26 *[(c)] (3) Barbecue equipment used in connection with any residence.[;]*

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

28 *[(e)] (4) Heating equipment in or used in connection with residences used exclusively as*  
 29 *dwellings for not more than four families, except woodstoves which shall be subject to regulation*  
 30 *under this section, ORS 468A.460 to 468A.480, 468A.490 and 468A.515.[;]*

31 *[(f)] (5) Fires set or permitted by any public agency when such fire is set or permitted in the*  
 32 *performance of its official duty for the purpose of weed abatement, prevention or elimination of a*  
 33 *fire hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the*  
 34 *agency is necessary.[;]*

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

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

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

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

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

44 **SECTION 4.** ORS 468A.550 is amended to read:

45 468A.550. *[(1)] As used in **this section and** ORS 468A.555 to 468A.620 and 468A.992:*

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

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

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

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

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

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

16       [(A)] **(a)** Annual inventoring and registering, prior to the burning season, of agricultural fields  
17 for open field burning;

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

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

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

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

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

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

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

30       **SECTION 5.** ORS 561.400 is amended to read:

31       561.400. (1) There is established within the State Department of Agriculture a Natural Resources  
32 Division which shall have the duties and powers conferred by subsection (2) of this section, by ORS  
33 568.210 to 568.808 and 568.900 to 568.933 and by the Director of Agriculture. The administrator of  
34 the division shall be appointed by the director under ORS 561.050 after consultation with the Soil  
35 and Water Conservation Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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