Senate Bill 235

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 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

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

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

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

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

(2) The Legislative Assembly declares that it is the policy of this state that a memorandum authorized under this section and rules establishing programs to apply air quality laws to agricultural operations or equipment are to be guided by the following principles:

(a) The commission and the State Department of Agriculture should act cooperatively with the private and public entities associated with agriculture in program research, development and implementation.

(b) Programs should be flexible.

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

(d) Regulatory provisions and enforcement should be considered when voluntary measures are impracticable, have been ineffective or reasonably are expected to be ineffective.

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

(f) To the extent consistent with the federal Clean Air Act (P.L. 88-206 as amended), the
State Department of Agriculture should be the lead agency responsible for administration of the programs.

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

368A.020. [(1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution laws contained in ORS chapters 468, 468A and 468B do not apply to:]

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

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

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

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

(a) Growing or harvesting crops;
(b) Raising fowl or animals;
(c) Clearing or grading agricultural land;
(d) Propagating and raising nursery stock;
(e) Propane flaming of mint stubble; and
(f) Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505, during the period beginning October 1 and ending May 31 of the following year.

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

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

[(d) Agricultural land clearing operations or land grading.]

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

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

[(g) Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction.]

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

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

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

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

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

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

[2]
(1) “Field burning” and “open field burning” do not include:
   (a) Propane flaming of mint stubble; or
   (b) Stack or pile burning of residue from Christmas trees as defined in ORS 571.505.

   [(a)] (2) “Research and development of alternatives to field burning” includes, but is not limited to, projects concerned with cultural practices for producing grass seed without field burning, environmental impacts of alternative seed production methods, straw marketing and utilization and alternative crops.

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

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

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

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

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

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

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

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

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

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

   SECTION 5. ORS 561.400 is amended to read:

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

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

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

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

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

   (d) To solicit the cooperation and assistance of any department or agency of the United States or other department or agency of this state;
(e) To disseminate information concerning the activities and programs of soil and water conservation districts and encourage formation of such districts in areas where they would be desirable and feasible;

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

(g) To receive from any public or private source, donations, gifts and grants for the furtherance of soil and water conservation, the provisions of ORS 568.225 or the protection of natural resources affecting agriculture, which moneys are continuously appropriated to the department for the administration of the Natural Resources Division and functions related thereto and for furnishing support and financial assistance for the projects and activities of soil and water conservation districts or other projects and activities relating to natural resources affecting agriculture or consistent with ORS 568.225;

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

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

(j) To conduct research in and assist in the development of agricultural management procedures and practices relating to natural resources for the prevention of soil erosion, [and] water contamination and air pollution or for the enhancement of water quality and quantity and air quality.

(3) The administrator of the division shall coordinate any activities of the Natural Resources Division related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(4) In addition to or in lieu of the coverage provided pursuant to ORS 30.282 (4), the Oregon Department of Administrative Services may provide to soil and water conservation districts and their officers, employees and agents acting within the scope of their employment or duties, protection against liability as part of the insurance provided to the State Department of Agriculture pursuant to ORS 278.120 to 278.215. The Oregon Department of Administrative Services shall determine any additional contributions to be apportioned to the State Department of Agriculture under ORS 278.110 for extending insurance to soil and water conservation districts, and the State Department of Agriculture shall pay the assessments from such moneys as may be available therefor.