

# Senate Bill 103

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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**.

Classifies dairies exceeding specified size as industrial facilities for purposes of right to farm laws, air pollution laws and land use laws. Provides that use of water for industrial dairy is industrial use. Allows local governments to adopt human health and safety ordinances restricting or prohibiting air and water emissions by dairies classified as industrial facilities.

Prohibits Department of Environmental Quality and State Department of Agriculture from issuing permits for construction of new industrial dairy or for addition to, or expansion of, existing industrial dairy.

Requires Environmental Quality Commission to adopt rules establishing program to regulate industrial dairy emissions into air. Requires commission to pattern program on recommendations in final report by Task Force on Dairy Air Quality. Requires implementation no later than January 1, 2021.

Prohibits Department of Environmental Quality and State Department of Agriculture from issuing permits for industrial dairies unless applicant has water right permit having specified characteristics. Limits stockwatering exemption from water right permit requirements if user is industrial dairy.

Requires applicant for permit to operate industrial dairy to post bond with State Department of Agriculture as security against environmental, health or animal welfare costs arising from operation of industrial dairy.

Requires State Department of Agriculture to conduct study on impacts of industrial dairies on small and medium sized dairies, identify state policies to lessen impacts and produce public report no later than one year after effective date of Act.

Creates Task Force on Dairy Animal Welfare. Requires task force to study animal welfare at industrial dairies. Allows task force to recommend minimum standards for animal welfare at industrial dairies. Requires task force to report to interim legislative committee related to agriculture no later than September 15, 2020. Sunsets task force December 31, 2020.

Requires Environmental Quality Commission to annually report to interim committee of Legislative Assembly regarding whether specified activities regarding regulation of industrial dairies have occurred. Requires first report no later than September 15, 2021. Terminates further reporting if commission reports all specified activities have occurred. Repeals reporting requirement January 2, 2024.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to industrial dairies; creating new provisions; amending ORS 537.141 and 537.545; and prescribing an effective date.

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

### LOCAL GOVERNMENT REGULATION OF INDUSTRIAL DAIRIES

**SECTION 1. (1) As used in this section, "industrial dairy" means a concentrated animal feeding operation or confined animal feeding operation that:**

**(a)(A) Has not less than 700 mature dairy cows;**

**(B) Does not guarantee to provide the cows with seasonal daily access to pasture land;**

**or**

**(b) Has more than 2,500 dairy cows.**

**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 (2) For purposes of ORS 30.930 to 30.947 and ORS chapters 195, 196, 197 and 215:  
2 (a) An industrial dairy:  
3 (A) Is an industrial facility; and  
4 (B) Is not a farm.  
5 (b) The operation of an industrial dairy:  
6 (A) Is an industrial activity; and  
7 (B) Is not a farming practice.  
8 (c) The use of land for an industrial dairy operation:  
9 (A) Is an industrial use of land; and  
10 (B) Is not an agricultural or farm use of land.  
11 (3) For purposes of ORS chapters 468, 468A and 468B, notwithstanding ORS 468A.020, an  
12 industrial dairy:  
13 (a) Is an industrial operation; and  
14 (b) Is not an agricultural operation.  
15 (4) For purposes of ORS chapters 536 to 543A, the provision of water to cows at an in-  
16 dustrial dairy:  
17 (a) Is an industrial use of water; and  
18 (b) Is not stock watering or other agricultural use of water.  
19 (5) A local government, as defined in ORS 174.116, may adopt ordinances to protect hu-  
20 man health and safety by restricting or prohibiting air and water emissions by industrial  
21 dairies. The local governments shall model any ordinances adopted under authority of this  
22 section on the recommendations contained in the final report of the Task Force on Dairy  
23 Air Quality created under section 3, chapter 799, Oregon Laws 2007. The ordinances may in-  
24 clude, but need not be limited to, restricting or prohibiting the emission of hydrogen sulfide,  
25 methane or haze into the air or emissions of nitrates into water.

26  
27 **PROHIBITION ON NEW OR EXPANDED INDUSTRIAL DAIRIES**

28  
29 **SECTION 2.** (1) As used in this section, “industrial dairy” has the meaning given that  
30 term in section 1 of this 2019 Act.

31 (2) The Department of Environmental Quality and the State Department of Agriculture  
32 may not issue any license or permit to allow the construction or operation of a new indus-  
33 trial dairy or issue or renew a license or permit to allow the construction or operation of  
34 an addition to, or expansion of, an existing industrial dairy.

35  
36 **EMISSIONS REDUCTION PROGRAM**

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38 **SECTION 3.** Section 4 of this 2019 Act is added to and made a part of ORS chapter 468A.

39 **SECTION 4.** (1) As used in this section, “industrial dairy” has the meaning given that  
40 term in section 1 of this 2019 Act.

41 (2) Notwithstanding ORS 468A.020, the Environmental Quality Commission shall establish  
42 by rule an Industrial Dairy Air Emission Program to regulate the release of industrial dairy  
43 emissions into the air. The commission shall model the program on the recommendations in  
44 the final report of the Task Force on Dairy Air Quality created under section 3, chapter 799,  
45 Oregon Laws 2007, regarding the regulation of dairy air contaminant emissions. The com-

1 mission shall make the program requirements operative immediately upon adoption.

2 (3) The program required by this section shall include, but need not be limited to, pro-  
 3 visions for the reduction of hydrogen sulfide, methane, haze and carbon dioxide equivalent  
 4 emissions.

5 (4) The Department of Environmental Quality may enter onto and inspect the facilities  
 6 of an industrial dairy at any reasonable time for the purpose of investigating air emission  
 7 sources or to ensure compliance with the program established by the commission under this  
 8 section. The commission may require an industrial dairy to maintain records regarding the  
 9 maintenance and operation of industrial dairy facilities and to allow inspection of the records  
 10 by the department.

11 **SECTION 5.** The Environment Quality Commission shall complete the adoption of initial  
 12 rules establishing the program described in section 4 of this 2019 Act no later than January  
 13 1, 2021.

14  
 15 **INDUSTRIAL DAIRY WATER USE**

16  
 17 **SECTION 6.** (1) As used in this section, “industrial dairy” has the meaning given that  
 18 term in section 1 of this 2019 Act.

19 (2) The Environmental Quality Commission, in consultation with the State Department  
 20 of Agriculture and the Water Resources Department, shall adopt rules to ensure that the  
 21 Department of Environmental Quality does not issue any license or permit for an industrial  
 22 dairy, or allow an industrial dairy to begin operation, unless the industrial dairy has obtained  
 23 a water use permit that:

- 24 (a) Is not subject to appeal;
- 25 (b) Identifies a water source with sufficient capacity to supply the full amount of water  
 26 allowed to be appropriated under the permit; and
- 27 (c) Allows all types of use required for operation of the industrial dairy.

28 **SECTION 7.** The adoption of commission rules under section 6 of this 2019 Act does not  
 29 authorize the Department of Environmental Quality to issue an industrial dairy permit in  
 30 violation of section 2 of this 2019 Act. The Environmental Quality Commission shall suspend  
 31 operation of a rule adopted under section 6 of this 2019 Act during any period that the rule  
 32 is in conflict with section 2 of this 2019 Act.

33 **SECTION 8.** (1) As used in this section, “industrial dairy” has the meaning given that  
 34 term in section 1 of this 2019 Act.

35 (2) The State Department of Agriculture, in consultation with the Environmental Quality  
 36 Commission and the Water Resources Department, shall adopt rules to ensure that the State  
 37 Department of Agriculture does not issue any license or permit for an industrial dairy, or  
 38 allow an industrial dairy to begin operation, unless the industrial dairy has obtained a water  
 39 use permit that:

- 40 (a) Is not subject to appeal;
- 41 (b) Identifies a water source with sufficient capacity to supply the full amount of water  
 42 allowed to be appropriated under the permit; and
- 43 (c) Allows all types of use required for operation of the industrial dairy.

44 **SECTION 9.** The adoption of rules under section 8 of this 2019 Act does not authorize the  
 45 State Department of Agriculture to issue an industrial dairy permit in violation of section 2

1 **of this 2019 Act. The department shall suspend operation of a rule adopted under section 8**  
2 **of this 2019 Act during any period that the rule is in conflict with section 2 of this 2019 Act.**

3 **SECTION 10.** ORS 537.141 is amended to read:

4 537.141. (1) The following water uses do not require an application under ORS 537.130 or  
5 537.615, a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

6 (a) Emergency fire-fighting uses;

7 (b) Nonemergency fire-fighting training, provided:

8 (A) The source of the water is existing storage and the use occurs with permission of the owner  
9 of the stored water; or

10 (B) If the source of water is other than existing storage, the use occurs with the prior written  
11 approval of the watermaster in the district where the training will take place and subject to any  
12 conditions the watermaster determines are necessary to prevent injury to existing water rights and  
13 to protect in-stream resources;

14 (c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed  
15 under an existing water right permit or certificate for the reservoir;

16 (d) Fish screens, fishways and fish by-pass structures, as exempted by rule of the Water Re-  
17 sources Commission;

18 (e) Land management practices intended to save soil and improve water quality by temporarily  
19 impeding or changing the natural flow of diffuse surface water across agricultural lands when stor-  
20 age of public waters is not an intended purpose. Such practices include but are not limited to:

21 (A) Terraces;

22 (B) Dikes;

23 (C) Retention dams and other temporary impoundments; and

24 (D) Agronomic practices designed to improve water quality and control surface runoff to prevent  
25 erosion, such as ripping, pitting, rough tillage and cross slope farming;

26 (f) Livestock watering operations that comply with the requirements under subsections (2) and  
27 (3) of this section;

28 (g) Forest management activities that require the use of water in conjunction with mixing pes-  
29 ticides as defined in ORS 634.006, or in slash burning;

30 (h) The collection of precipitation water from an artificial impervious surface and the use of  
31 such water;

32 (i) Land application of ground water so long as the ground water:

33 (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625  
34 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water  
35 for confined animal feeding purposes;

36 (B) Is reused for irrigation purposes and the period of irrigation is a period during which the  
37 reused water has never been discharged to the waters of the state; and

38 (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the  
39 State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal  
40 system or ORS 468B.215 to operate a confined animal feeding operation; and

41 (j) Surface mining practices that result in the removal of water from a surface mine subject to  
42 an operating permit or reclamation plan approved by the State Department of Geology and Mineral  
43 Industries, unless the water is used for a subsequent beneficial use.

44 (2) The use of surface water for livestock watering may be exempted under subsection (1) of this  
45 section if:

1 (a) The water is diverted from a stream or other surface water source to a trough or tank  
2 through an enclosed water delivery system;

3 (b) The delivery system either is equipped with an automatic shutoff or flow control mechanism  
4 or includes a means for returning water to the surface water source through an enclosed delivery  
5 system; *[and]*

6 (c) The operation is located on land from which the livestock would otherwise have legal access  
7 to both the use and source of the surface water source; **and**

8 **(d) For an operation that is an industrial dairy, as defined in section 1 of this 2019 Act,**  
9 **the water use does not exceed 5,000 gallons per day.**

10 (3) If the diversion system described in subsection (2) of this section is located within or above  
11 a scenic waterway, the amount of water that may be used without a water right is limited to one-  
12 tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall prevent  
13 the Water Resources Commission from approving an application for a water right permit for a de-  
14 livery system not qualifying under subsection (2) of this section.

15 (4) The Water Resources Department, in conjunction with local soil and water conservation  
16 districts, the Oregon State University Extension Service, the State Department of Agriculture and  
17 the State Department of Fish and Wildlife and any other organization interested in participating,  
18 shall develop and implement a voluntary educational program on livestock management techniques  
19 designed to keep livestock away from streams and riparian areas.

20 (5) To qualify for an exempt use under subsection (1)(g) of this section, the user shall:

21 (a) Submit notice of the proposed use, including the identification of the proposed water source,  
22 to the Water Resources Department and to the State Department of Fish and Wildlife at the time  
23 notice is provided to other affected agencies pursuant to ORS 527.670; and

24 (b) Comply with any restrictions imposed by the department pertaining to sources of water that  
25 may not be used in conjunction with the proposed activity.

26 (6) Except for the use of water under subsection (1)(i) of this section, the Water Resources  
27 Commission by rule may require any person or public agency diverting water as described in sub-  
28 section (1) of this section to furnish information with regard to such water and the use thereof. For  
29 a use of water described in subsection (1)(i) of this section, the Department of Environmental Qual-  
30 ity or the State Department of Agriculture shall provide to the Water Resources Department a copy  
31 of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground  
32 water for reuse. The permit shall provide the information regarding the place of use of such water  
33 and the nature of the beneficial reuse.

34 **SECTION 11.** ORS 537.545 is amended to read:

35 537.545. (1) No registration, certificate of registration, application for a permit, permit, certif-  
36 icate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is  
37 required for the use of ground water for:

38 (a) Stockwatering purposes, **not to exceed 5,000 gallons per day if used in the operation of**  
39 **an industrial dairy as defined in section 1 of this 2019 Act;**

40 (b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

41 (c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located  
42 within a critical ground water area established pursuant to ORS 537.730 to 537.740;

43 (d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

44 (e) Down-hole heat exchange purposes;

45 (f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day;

1 or

2 (g) Land application, so long as the ground water:

3 (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625  
4 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water  
5 for confined animal feeding purposes;

6 (B) Is reused for irrigation purposes and the period of irrigation is a period during which the  
7 reused water has never been discharged to the waters of the state; and

8 (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the  
9 State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal  
10 system or ORS 468B.215 to operate a confined animal feeding operation.

11 (2) A ground water use for a purpose that is exempt under subsection (1) of this section, to the  
12 extent that the use is beneficial, constitutes a right to appropriate ground water equal to that es-  
13 tablished by a ground water right certificate issued under ORS 537.700.

14 (3) Except for the use of water under subsection (1)(g) of this section, the Water Resources  
15 Commission by rule may require any person or public agency using ground water for any such  
16 purpose to furnish information with regard to such ground water and the use thereof. For a use of  
17 water described in subsection (1)(g) of this section, the Department of Environmental Quality or the  
18 State Department of Agriculture shall provide to the Water Resources Department a copy of the  
19 permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for  
20 reuse. The permit shall provide the information regarding the place of use of such water and the  
21 nature of the beneficial reuse.

22 (4) If it is necessary for the Water Resources Department to regulate the use or distribution of  
23 ground water, including uses for purposes that are exempt under subsection (1) of this section, the  
24 department shall use as a priority date for the exempt uses the date indicated in the log for the well  
25 filed with the department under ORS 537.765 or other documentation provided by the well owner  
26 showing when water use began.

27 (5) The owner of land on which a well is drilled to allow ground water use for a purpose that  
28 is exempt under subsection (1) of this section shall provide the Water Resources Department with  
29 a map showing the exact location of the well on the tax lot. The landowner shall provide a map  
30 required by this subsection to the department no later than 30 days after the well is completed. The  
31 map must be prepared in accordance with standards established by the department.

32 (6) The owner of land on which a well described in subsection (5) of this section is located shall  
33 file the exempt ground water use with the Water Resources Department for recording. The filing  
34 must be accompanied by the fee described in subsection (7) of this section. The filing must be re-  
35 ceived by the department no later than 30 days after the well is completed.

36 (7) The Water Resources Department shall collect a fee of \$300 for recording an exempt ground  
37 water use under subsection (6) of this section. Moneys from fees collected under this subsection  
38 shall be deposited to the credit of the Water Resources Department Water Right Operating Fund.  
39 Notwithstanding ORS 536.009, moneys deposited to the fund under this subsection shall be used for  
40 the purposes of evaluating ground water supplies, conducting ground water studies, carrying out  
41 ground water monitoring, processing ground water data and the administration and enforcement of  
42 this subsection and subsections (3), (5), (6) and (8) of this section.

43 (8) The Water Resources Commission shall adopt rules to implement, administer and enforce  
44 subsections (5) to (7) of this section.

45

**BOND REQUIREMENT**

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3     **SECTION 12.** (1) As used in this section, “industrial dairy” has the meaning given that  
4 term in section 1 of this 2019 Act.

5         (2) An applicant for issuance or renewal of a permit to operate an industrial dairy shall  
6 file with the State Department of Agriculture a surety bond with one or more corporate  
7 sureties authorized to do business in this state. The department shall adopt rules establish-  
8 ing reasonable bond requirements.

9         (3) The surety bond must provide that the applicant will pay amounts to reimburse the  
10 department or other entities for any environmental, health or animal welfare costs arising  
11 from operations of the industrial dairy, including but not limited to costs due to manure  
12 spills, improper disposal of animals, excessive applications of manure that threaten water  
13 quality or public health, the cleaning of abandoned facilities and the relocation of animals  
14 due to facility closure or permit suspension or revocation. Bonds filed under this section  
15 shall remain in effect for the permit period or until depleted by payments under this section,  
16 unless the surety sooner cancels the bond. If the surety cancels the bond, the surety shall  
17 send written notice of the cancellation to the department no later than the third business  
18 day following the cancellation.

19         (4) The department may require a permit holder to obtain a new surety bond if the surety  
20 pays an amount out of the bond of the permit holder. The new surety bond must be in the  
21 amount that was paid by the surety, unless the department requires a higher amount by  
22 rule.

23         (5) If the amount the permit holder must pay in cost reimbursements under subsection  
24 (3) of this section exceeds the amount of the bond, the department shall suspend the indus-  
25 trial dairy permit until the amount owed is paid. The department may, as a condition of  
26 ending the suspension, require the permit holder to obtain a bond in a higher amount.

27         (6) The bond required under this section is for the exclusive purpose of costs under sub-  
28 section (3) of this section that are approved by the department for payment from the bond.

**ECONOMIC EFFECT STUDY**

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31  
32     **SECTION 13.** (1) As used in this section, “industrial dairy” has the meaning given that  
33 term in section 1 of this 2019 Act.

34         (2) The State Department of Agriculture, in consultation with the Oregon Business De-  
35 velopment Department, the Department of Revenue and any other entities the State De-  
36 partment of Agriculture deems appropriate, shall conduct a study to determine the effect  
37 of industrial dairies on the economic viability of small and medium sized dairies, including  
38 but not limited to the effect industrial dairies have on milk prices. The department shall  
39 identify additions to, or changes in, state policies having the potential to allow small and  
40 medium sized dairies to counteract any negative economic impacts caused by the presence  
41 of industrial dairies in the marketplace.

42         (3) The department shall issue the results of the study in a public report no later than  
43 one year after the effective date of this 2019 Act.

**DAIRY ANIMAL WELFARE TASK FORCE**





1 by the Department of Environmental Quality are in effect. For purposes of this paragraph,  
 2 a rule under section 6 of this 2019 Act for which operation is suspended under section 7 of  
 3 this 2019 Act is in effect.

4 (c) Rules under section 8 of this 2019 Act to prevent the improper issuance of permits  
 5 by the State Department of Agriculture are in effect. For purposes of this paragraph, a rule  
 6 under section 8 of this 2019 Act for which operation is suspended under section 9 of this 2019  
 7 Act is in effect.

8 (d) The State Department of Agriculture has adopted rules establishing bonding amount  
 9 requirements under section 12 of this 2019 Act.

10 (e) The State Department of Agriculture has released a public report under section 13  
 11 of this 2019 Act.

12 (f) The Task Force on Dairy Animal Welfare has submitted a report to an interim legis-  
 13 lative committee under section 14 of this 2019 Act.

14 (2) Except as provided in subsection (3) of this section, the commission shall report its  
 15 annual determination under subsection (1) of this section in the manner provided in ORS  
 16 192.245 to an interim committee of the Legislative Assembly related to the environment no  
 17 later than September 15 of each year.

18 (3) If the commission determines and reports that all activities under subsection (1) of  
 19 this section have occurred, the commission shall cease making determinations and submit-  
 20 ting reports under this section.

21 SECTION 17. Section 16 of this 2019 Act is repealed on January 2, 2024.

22  
 23 **APPLICABILITY**

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 25 SECTION 18. For purposes of ORS 30.930 to 30.947, section 1 (2) of this 2019 Act applies  
 26 to industrial dairy activities taking place on or after the effective date of this 2019 Act.

27 SECTION 19. For purposes of ORS chapters 195, 196, 197 and 215, section 1 (2) of this 2019  
 28 Act applies to land use decisions that become final by operation of law or on appeal on or  
 29 after the effective date of this 2019 Act.

30 SECTION 20. For purposes of ORS chapters 536 to 543A, section 1 (4) of this 2019 Act  
 31 applies to water right permits and water right certificates issued on or after the effective  
 32 date of this 2019 Act and to stock watering on or after the effective date of this 2019 Act  
 33 under ORS 537.141 or 537.545.

34 SECTION 21. Section 12 of this 2019 Act applies to permit applications received by the  
 35 State Department of Agriculture on or after January 1, 2021.

36  
 37 **CAPTIONS**

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 39 SECTION 22. The unit captions used in this 2019 Act are provided only for the conven-  
 40 ience of the reader and do not become part of the statutory law of this state or express any  
 41 legislative intent in the enactment of this 2019 Act.

42  
 43 **EFFECTIVE DATE**

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 45 SECTION 23. This 2019 Act takes effect on the 91st day after the date on which the 2019

1 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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