

**SB 85 -4, -6, -7 STAFF MEASURE SUMMARY**

**Senate Committee On Rules**

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**Prepared By:** Laura Kentnesse

**Meeting Dates:** 4/27, 5/4, 5/23

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**WHAT THE MEASURE DOES:**

Directs the Oregon Department of Agriculture to study confined animal feeding operations, and to submit a report to agriculture-related interim legislative committees by September 15, 2024.

*FISCAL: Fiscal impact issued*

*REVENUE: No revenue impact*

**ISSUES DISCUSSED:**

**EFFECT OF AMENDMENT:**

-4 Replaces the measure. **Prohibits** the Department of Environmental Quality (DEQ) and Oregon Department of Agriculture (ODA) from **issuing a general or watershed permit to a new large confined animal feeding operation (CAFO)** that is located in a ground water management area or that applies manure, litter, or processed wastewater to land within a ground water management area. Prohibits DEQ or ODA from issuing a permit to a CAFO that will operate within one-half mile of a fish-bearing stream. **Defines terms**, including "new," "large," "new large," "expanding," and "expanding large" CAFOs. Before submitting a permit application for a new large CAFO or an expanding large CAFO, requires a person to request and participate in a **preliminary consultation** with specified state agencies. After issuance of a permit, prohibits a person from bringing animals to a new or expanding CAFO until after ODA inspects the operation and confirms the waste management system complies with permit conditions. Specifies that **water supply plan and nutrient management plan requirements apply to:** new and expanding CAFOs that apply for a permit on or after the effective date of this Act; large existing CAFOs that renew permits on or after July 1, 2024; and small and medium existing CAFOs that renew permits on or after July 1, 2025. Authorizes ODA to issue **nutrient application permits**, and requires that a permit, if issued, consider the rate, source, placement, and timing of nutrients and nutrient application, and the volume of wastewater applied. Authorizes a person to send manure, litter, or processed wastewater from a CAFO to another person only if the other person holds a nutrient application permit. Requires that a person applying manure, litter, or processed wastewater provides a copy of the permit to the CAFO that supplied the material. Authorizes ODA to adopt rules for implementation that establish recordkeeping requirements, inspection criteria, and permit fees, and requires ODA to wait until rules are adopted before taking enforcement actions. Requires that a CAFO permit application include a **water supply plan** that identifies all legally authorized water that will be used to meet the needs of the CAFO. Directs DEQ and ODA to request that the Oregon Water Resources Department (OWRD) review the water supply plan to ensure uses are legally authorized and allowable, and to provide approval or denial within 45 days. Requires that a water supply plan for a CAFO that uses stockwater must use animal water consumption guidelines provided by ODA to estimate the gallons per day that the CAFO will use. Authorizes OWRD to require conditions for plan approval, including but not limited to requiring that CAFOs using stockwater install water metering and submetering devices and maintain quarterly water use data for department inspection, and prohibiting expanding CAFOs from using more than 12,000 gallons of water per day under the stockwater exemption if the CAFO is located in specified areas. Specifies that an approved water supply plan shall be considered part of the permit, and that approval or denial of the plan may not be considered a final order or ruling by OWRD. Prohibits a person from **hauling water**, or arranging for the hauling of water, to a CAFO for the primary purpose of watering animals, but allows for temporary hauling of water to ensure the health, welfare, or

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well-being of animals. Specifies that no registration, permit, or ground water right certificate is required for the **use of ground water for stockwatering**, unless the use exceeds 12,000 gallons per day and occurs at a new CAFO or CAFO for which ownership has transferred during the five years preceding the use. Directs ODA to convene a work group to review CAFO best management practices for **animal welfare**, and to assess the appropriateness of allowing CAFOs to use the statutory exemption for offenses against animal welfare. Requires ODA report results and recommendations to a natural resources-related legislative committee by September 15, 2024. Directs DEQ to report to an agriculture-related legislative committee by December 31, 2023 on findings that relate to animal feeding operations from the United States Environmental Protection Agency's **National Air Emissions Monitoring Study**. Specifies report requirements. Requires that a permit applicant for a proposed CAFO request, from the city or county in which the CAFO is proposed to be located, a **land use compatibility statement (LUCS)** that authorizes the land use. Prohibits DEQ or ODA from issuing a permit if the LUCS demonstrates that the proposed land use is prohibited in the applicable zone. Authorizes the city or county to determine that the land use is not allowable if the CAFO would be sited within one hundred yards of an adjacent parcel on which a residential structure is sited, or one-half mile from a school. Authorizes the city or county to require, as a condition of issuing the LUCS, that the applicant send individual notice of the LUCS request by mail to all persons on record as owning property within one-half mile of the parcel where the CAFO would be located. **Declares emergency, effective on passage.**

*FISCAL: May have fiscal impact, but no statement yet issued*

*REVENUE: May have revenue impact, but no statement yet issued*

-6 Replaces the measure. Requires that the Department of Environmental Quality (DEQ) and Oregon Department of Agriculture (ODA) consider any relevant determination by the Oregon Water Resources Department (OWRD) when deciding whether to issue a permit to a confined animal feeding operation (CAFO). **Prohibits** DEQ and ODA from issuing a **general National Pollutant Discharge Elimination System or water pollution control facility permit to a new CAFO** that is located in a ground water management area and that applies manure, litter, wastewater, or processed waste to land within the ground water management area. **Defines terms**, including "new," "large," "new large," "expanding," and "expanding large" CAFOs. Before submitting a permit application for a new large CAFO or an expanding large CAFO, requires a person to request and participate in a **preliminary consultation** with specified state agencies. Before scheduling the preliminary consultation, DEQ or ODA must notify and upon request consult with the governing bodies of all federally recognized Indian tribes in Oregon. Requires that a CAFO permit applicant submit a water supply plan along with the application. Requires that a new large CAFO permit applicant send **individual notice of the permit public comment period** by mail to property owners within one-half mile of the parcel where the CAFO would be located. Authorizes DEQ and ODA to **impose only those permit conditions necessary to ensure** that: wastes are used in a manner that does not cause pollution of surface and ground waters; the CAFO is in compliance with water quality standards; and the quantity of water necessary to supply the level and duration of the operation's and ancillary operation's water needs is legally authorized. After issuance of a permit, prohibits a person from bringing animals to a new or expanding CAFO until after ODA inspects the operation and confirms the waste management system complies with permit conditions. Specifies that **requirements related to water supply plans, notice to nearby property owners, and bringing additional animals to an operation, apply to:** new and expanding CAFOs that apply for a permit on or after the effective date of this Act; large existing CAFOs that renew permits on or after July 1, 2024; and small and medium existing CAFOs that renew permits on or after July 1, 2025. Authorizes ODA to issue **nutrient application permits**, and requires that a permit, if issued, consider the rate, source, placement, and timing of nutrients and nutrient application, and the volume of wastewater applied. Authorizes a person to send manure, litter, wastewater, or processed waste from a CAFO in a ground water management area to another person only if the other person holds a nutrient application permit. Requires that a person applying manure, litter, wastewater, or processed waste provides a copy of the permit to the CAFO that supplied the material. Authorizes ODA to adopt rules for implementation that

establish recordkeeping requirements, inspection criteria, and permit fees. Requires that a CAFO permit application include a **water supply plan** that identifies all sources of water that will be used to meet the needs of the CAFO. Directs DEQ and ODA to request that ORWD review the water supply plan to ensure uses are legally authorized and allowable, and to provide a determination within 45 days. Requires that a water supply plan for a **CAFO that uses stockwater** must use animal water consumption guidelines provided by ODA to estimate the gallons per day that the CAFO will use. Authorizes OWRD to recommend that DEQ and ODA condition a permit on one or more of the following: requiring that CAFOs using stockwater install water metering and submetering devices and maintain quarterly water use data for department inspection. Prohibits an expanding CAFO within a critical ground water area from increasing the CAFO's water use per day under the stockwater exemption by more than 12,000 gallons of water per day until the provision **sunsets on January 2, 2028**. . Prohibits OWRD from considering a change of use, place of use, or point of diversion as legally authorized until the change is approved with finality. Specifies that a determination may not be considered an authorization of water use or water rights, or a final order or ruling. Specifies that no registration, permit, or ground water right certificate is required for the use of ground water for stockwatering, **unless the use exceeds 12,000 gallons per day and occurs at a new CAFO** . Directs DEQ to report to an agriculture-related legislative committee not more than 180 days after the United States Environmental Protection Agency finalizes its **National Air Emissions Monitoring Study**, on study findings that relate to animal feeding operations. Specifies report requirements. Requires that a permit applicant for a proposed CAFO request, from the city or county in which the CAFO is proposed to be located, a **land use compatibility statement (LUCS)** that authorizes the land use. Prohibits DEQ or ODA from issuing a permit if the LUCS demonstrates that the proposed land use is prohibited in the applicable zone. Authorizes the city or county in which a new large CAFO is proposed to be located, to require the operation to include a setback or buffer if the operation would be adjacent to a parcel on which a residential structure is lawfully sited or nonconforming structure is sited. **Declares emergency, effective on passage.**

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-7 Replaces the measure. Requires that the Department of Environmental Quality (DEQ) and Oregon Department of Agriculture (ODA) consider any relevant determination by the Oregon Water Resources Department (OWRD) when deciding whether to issue a permit to a confined animal feeding operation (CAFO). **Prohibits** DEQ and ODA from issuing a **general National Pollutant Discharge Elimination System or water pollution control facility permit to a new CAFO** that is located in a ground water management area and that applies manure, litter, wastewater, or processed waste to land within the ground water management area. **Defines terms**, including "new," "large," "new large," "expanding," and "expanding large" CAFOs. Before submitting a permit application for a new large CAFO or an expanding large CAFO, requires a person to request and participate in a **preliminary consultation** with specified state agencies. Before scheduling the preliminary consultation, DEQ or ODA must notify and upon request consult with the governing bodies of all federally recognized Indian tribes in Oregon. Requires that a CAFO permit applicant submit a water supply plan along with the application. Requires that a new large CAFO permit applicant send **individual notice of the permit public comment period** by mail to property owners within one-half mile of the parcel where the CAFO would be located. Authorizes DEQ and ODA to **impose only those permit conditions necessary to ensure** that: wastes are used in a manner that does not cause pollution of surface and ground waters; the CAFO is in compliance with water quality standards; and the quantity of water necessary to supply the level and duration of the operation's and ancillary operation's water needs is legally authorized. After issuance of a permit, prohibits a person from bringing animals to a new or expanding CAFO until after ODA inspects the operation and confirms the waste management system complies with permit conditions. Specifies that **requirements related to water supply plans, notice to nearby property owners, and bringing additional animals to an operation, apply to:** new and expanding CAFOs that apply for a permit on or after the effective date

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#### **BACKGROUND:**

The legislature first established a regulatory program for confined animal feeding operations (CAFO) in 1989. The legislation directed the Oregon Department of Environmental Quality (DEQ) to issue CAFO permits and the Oregon Department of Agriculture (ODA) to inspect CAFO facilities. In 1993, the CAFO statutes were amended to direct the Environmental Quality Commission (EQC) and ODA to enter a formal memorandum of understanding authorizing ODA to perform the CAFO-related functions of DEQ and the EQC.

CAFOs are defined in administrative rule as (1) the concentrated confined feeding or holding of animals in buildings or pens: where the surface has been prepared with concrete, rock, or fibrous material; that have wastewater treatment works; or that discharge wastes into waters of the state; or (2) concentrated animal feeding operations under federal regulations where: animals are confined and fed on a lot or facility for at least 45 days per year; no vegetation is grown in the confinement area; and a threshold number for each type of specified animal is confined.

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In 2022, there were 504 permitted CAFO facilities in Oregon. Most CAFO permits are for dairy operations, but facilities that meet CAFO requirements for horses, cattle, sheep, swine, chickens, turkeys, quail, egg production, and fur farms necessitate permits as well. In recent years, applications to register new CAFO facilities have ranged from four to 14 permit applications per year.

Senate Bill 85 would direct the Oregon Department of Agriculture to study confined animal feeding operations, and to submit a report to agriculture-related interim legislative committees by September 15, 2024.