

SB 85 A STAFF MEASURE SUMMARY**Senate Committee On Rules****Action Date:** 05/23/23**Action:** Do pass with amendments and requesting referral to Ways and Means. (Printed A-Engrossed.)**Vote:** 5-0-0-0**Yeas:** 5 - Hansell, Knopp, Lieber, Manning Jr, Steiner**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** Laura Kentnesse**Meeting Dates:** 4/27, 5/4, 5/23**WHAT THE MEASURE DOES:**

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 (NPDES) or water pollution control facility (WPCF) permit to a new large 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, requires DEQ or ODA to 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 notices by mail regarding the public comment period** to property owners within a 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 to meet the 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. Requires that NPDES and WPCF permit holders that send manure, litter, or processed wastewater to a nutrient application permit holder, maintain records of the nutrient application permit. 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 apply manure, litter, wastewater, or processed waste from a CAFO in a ground water management area only if the person holds a nutrient application permit. Requires that the 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 OWRD 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

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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 or a person renewing a CAFO permit install water metering and submetering devices in new or expanding areas, and maintain quarterly water use data for OWRD 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 **sunset on September 15, 2027**. 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**, until the provision **sunset on September 15, 2027**. Directs DEQ to report to an agriculture-related interim 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 a **land use compatibility statement (LUCS)** that authorizes the land use from the city or county in which the CAFO is proposed to be located. 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.**

ISSUES DISCUSSED:

- Importance of the legislature giving these policies several years to "play out," rather than making new, significant modifications in the near-term
- Severity of drought conditions and water supply challenges
- Regulatory fatigue among Oregon's agricultural community
- Local government discretion on setback distances for new large CAFOs
- Sunset on stockwater exemption limitation for new and expanding CAFOs
- Extensive negotiations with stakeholders
- Impact of public hearing testimony

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

The Legislative Assembly 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.

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.

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Senate Bill 85 A would modify existing statutes for CAFO permits through provisions related to water quality permits, nutrient application permits, water supply plans, the stockwater exemption, air quality, and land use compatibility statements.