

House Bill 2121

Sponsored by Representative MANNIX (Pre-session filed.)

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**.

Directs Environmental Quality Commission and State Department of Agriculture to enter into memorandum of understanding to allow department to exercise exclusive jurisdiction over air quality laws, water quality laws and land quality laws that apply to agricultural lands, operations and equipment. Requires department to assume exclusive jurisdiction no later than January 1, 2026.

Directs Department of Environmental Quality and State Department of Agriculture to report progress to interim committees of Legislative Assembly related to agriculture no later than September 15, 2024.

A BILL FOR AN ACT

1
2 Relating to environmental quality; creating new provisions; amending ORS 468A.020; and repealing
3 ORS 468A.790.

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

5 **SECTION 1. (1) The Environmental Quality Commission and the State Department of**
6 **Agriculture shall enter into a memorandum of understanding that addresses the adminis-**
7 **tration and enforcement of air quality laws, water quality laws and land quality laws con-**
8 **tained in ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535 and 454.605 to 454.755**
9 **and ORS chapters 459, 459A, 465, 466, 468, 468A and 468B that apply to agricultural lands,**
10 **operations and equipment.**

11 **(2) Subject to the terms of the memorandum of understanding, the State Department of**
12 **Agriculture:**

13 **(a) Shall have exclusive jurisdiction over the administration and enforcement of air**
14 **quality laws, water quality laws and land quality laws that apply to agricultural lands, oper-**
15 **ations and equipment; and**

16 **(b) May perform any function of the Department of Environmental Quality under ORS**
17 **454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535 and 454.605 to 454.755 and ORS chapters**
18 **459, 459A, 465, 466, 468, 468A and 468B, including but not limited to the issuance of permits,**
19 **establishment of fees, entry and inspection of premises and assessment of civil penalties.**

20 **(3) The terms of the memorandum of understanding must be consistent with the obli-**
21 **gations of this state under federal environmental law, as defined in ORS 468.149, or any other**
22 **federal laws or regulations related to air quality, water quality or land quality, to ensure the**
23 **continued state implementation of federally required air quality, water quality and land**
24 **quality programs.**

25 **(4) The Environmental Quality Commission and the State Department of Agriculture**
26 **shall consider the following when entering into a memorandum of understanding under this**
27 **section:**

28 **(a) Cooperation with private and public entities associated with agriculture in program**

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 research, development and implementation.

2 (b) Program flexibility.

3 (c) The use of voluntary measures, including education, demonstration projects and in-
4 centives, if practicable and reasonably expected to be effective in helping to carry out regu-
5 latory requirements.

6 (d) The diverse nature of agricultural operations and the importance of, and public in-
7 terest in, the agricultural production of food, fiber and other products.

8 (e) The desirability of having the State Department of Agriculture serve as the lead
9 agency responsible for the administration of programs relating to agriculture.

10 (f) The importance of, and public interest in, the protection of human health and the
11 environment, including the protection of natural resources in special areas of this state
12 designated for their outstanding scenery and historical and cultural importance.

13 (5) The memorandum of understanding under this section is in addition to the memo-
14 randums of understanding between the Environmental Quality Commission and the State
15 Department of Agriculture under ORS 468A.585 and 468B.217.

16 (6) In adopting rules subject to the memorandum of understanding required by this sec-
17 tion, the Environmental Quality Commission and the State Department of Agriculture shall
18 consult with each other.

19 **SECTION 2.** (1) The State Department of Agriculture shall assume exclusive jurisdiction
20 over the administration and enforcement of air quality laws, water quality laws and land
21 quality laws that apply to agricultural lands, operations and equipment pursuant to the
22 memorandum of understanding under section 1 of this 2023 Act no later than January 1, 2026.

23 (2)(a) The Department of Environmental Quality and the State Department of Agricul-
24 ture shall jointly submit a report in the manner provided by ORS 192.245, and may include
25 recommendations for legislation, to the interim committees of the Legislative Assembly re-
26 lated to agriculture no later than September 15, 2024.

27 (b) The report required under this subsection shall describe the progress made by the
28 State Department of Agriculture and the Environmental Quality Commission on entering
29 into and implementing the memorandum of understanding required under section 1 of this
30 2023 Act and describe any additional resources or authorities needed by the State Depart-
31 ment of Agriculture to assume exclusive jurisdiction over the administration and enforce-
32 ment of air quality laws, water quality laws and land quality laws that apply to agricultural
33 lands, operations and equipment by January 1, 2026.

34 **SECTION 3.** ORS 468A.790 is repealed.

35 **SECTION 4.** ORS 468A.020 is amended to read:

36 468A.020. (1) Except as provided in subsection (2) of this section, the air pollution laws con-
37 tained in ORS chapters 468, 468A and 468B do not apply to:

38 (a) Agricultural operations, including but not limited to:

39 (A) Growing or harvesting crops;

40 (B) Raising fowl or animals;

41 (C) Clearing or grading agricultural land;

42 (D) Propagating and raising nursery stock;

43 (E) Propane flaming of mint stubble; and

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

1 (b) Equipment used in agricultural operations, except boilers used in connection with propagat-
2 ing and raising nursery stock.

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

4 (d) Heating equipment in or used in connection with residences used exclusively as dwellings for
5 not more than four families, except solid fuel burning devices, as defined in ORS 468A.485, that are
6 subject to regulation under this section and ORS 468A.140 and 468A.460 to 468A.515.

7 (e) Fires set or permitted by any public agency when such fire is set or permitted in the per-
8 formance of its official duty for the purpose of weed abatement, prevention or elimination of a fire
9 hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the
10 agency is necessary.

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

13 (2) Subsection (1) of this section does not apply to the extent:

14 (a) Otherwise provided in ORS 468A.555 to 468A.620, [468A.790,] 468A.992, 476.380 and 478.960
15 **and section 1 of this 2023 Act;**

16 (b) Necessary to implement the federal Clean Air Act (P.L. 88-206 as amended) under ORS
17 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330; or

18 (c) Necessary for the Environmental Quality Commission, in the commission's discretion, to im-
19 plement a recommendation of the Task Force on Dairy Air Quality created under section 3, chapter
20 799, Oregon Laws 2007, for the regulation of dairy air contaminant emissions.

21 (3)(a) Except to the extent necessary to implement the federal Clean Air Act (P.L. 88-206 as
22 amended), the air pollution laws contained in ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045
23 and 468A.300 to 468A.330 do not apply to carbon dioxide emissions from the combustion or decom-
24 position of biomass.

25 (b) As used in this subsection, "biomass" means:

26 (A) Nonfossilized and biodegradable organic materials that originate from plants, animals and
27 microorganisms and that are products, byproducts, residues or wastes from agriculture, forestry and
28 related industries;

29 (B) Nonfossilized and biodegradable organic fractions of industrial and municipal wastes; and

30 (C) Gases and liquids recovered from the decomposition of nonfossilized and biodegradable or-
31 ganic matter.

32 **SECTION 5. The repeal of ORS 468A.790 by section 3 of this 2023 Act and the amendments**
33 **to ORS 468A.020 by section 4 of this 2023 Act become operative on January 1, 2026.**