

# D R A F T

## SUMMARY

Requires Department of Environmental Quality or State Department of Agriculture approval as prerequisite to construction, installation, operation or maintenance of large confined animal feeding operation or large concentrated animal feeding operation. Requires State Department of Agriculture confirmation of adequate water supply availability and issuance of necessary federal, state and local licenses and permits prior to issuance of final approval of feeding operation by department or Department of Environmental Quality. Limits fees for approvals.

Requires that permit for large confined animal feeding operation or large concentrated feeding operation located in ground water management area and applying animal waste to land be issued as individual permit.

Authorizes Department of Environmental Quality and State Department of Agriculture to adopt rules making insurance policy or alternative security prerequisite to permit for operating or conducting large confined animal feeding operation or large concentrated animal feeding operation.

Authorizes Department of Environmental Quality and State Department of Agriculture to undertake cleanup and repurposing of vacated large confined animal feeding operation or large concentrated animal feeding operation.

Allows action to recover costs that Department of Environmental Quality or State Department of Agriculture incurs due to reckless, malicious, bad faith or illegal conduct encountered during investigation or proceeding concerning large confined animal feeding operation or concentrated animal feeding operation violation of certain laws, rules or permit terms and conditions.

Specifies that permit requirement for activities increasing effluent in manner not already lawfully authorized applies for large concentrated animal feeding operations.

## A BILL FOR AN ACT

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2 Relating to livestock operations; creating new provisions; and amending ORS

3 468B.050.

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

2 **SECTION 1. Sections 2 to 5 of this 2019 Act are added to and made**  
3 **a part of ORS 468B.048 to 468B.085.**

4 **SECTION 2. (1) As used in this section, “large confined animal**  
5 **feeding operation” has the meaning given that term in ORS 561.255.**

6 **(2) If a large confined animal feeding operation or large concen-**  
7 **trated animal feeding operation is located in a groundwater manage-**  
8 **ment area, and animal waste from the feeding operation is applied to**  
9 **land in the area, a permit that the Department of Environmental**  
10 **Quality and the State Department of Agriculture issues under ORS**  
11 **468B.050 for the feeding operation must be issued as an individual**  
12 **permit.**

13 **(3) The Department of Environmental Quality or the State Depart-**  
14 **ment of Agriculture shall include the following terms and conditions**  
15 **for a permit issued under ORS 468B.050 for a large confined animal**  
16 **feeding operation or large concentrated animal feeding operation:**

17 **(a) A person may not construct or install the feeding operation**  
18 **unless the permit holder obtains preliminary approval for the con-**  
19 **struction or installation from the Department of Environmental**  
20 **Quality or the State Department of Agriculture; and**

21 **(b) A person may not operate or conduct the feeding operation, in-**  
22 **cluding but not limited to populating the feeding operation, unless the**  
23 **permit holder obtains final approval for the construction or installa-**  
24 **tion from the Department of Environmental Quality or the State De-**  
25 **partment of Agriculture.**

26 **(4) Prior to the Department of Environmental Quality or the State**  
27 **Department of Agriculture granting final approval under subsection**  
28 **(3)(b) of this section, the State Department of Agriculture shall:**

29 **(a) Consult with the Water Resources Department to ensure that**  
30 **there are adequate water resources available to supply the water needs**  
31 **of the feeding operation at the levels described in the permit on a**

1 sustained basis; and

2 (b) Consult with federal, state and local government agencies to  
3 confirm that the permit holder has obtained all permits and licenses  
4 required for operating or conducting the feeding operation.

5 (5) Except as provided in ORS 468B.215, the Department of Envi-  
6 ronmental Quality or the State Department of Agriculture may charge  
7 a fee for granting preliminary or final approval under this section. The  
8 Department of Environmental Quality or the State Department of  
9 Agriculture may not charge a large confined animal feeding operation  
10 or large concentrated animal feeding operation amounts for approvals  
11 described in subsection (3) of this section totaling more than the  
12 maximum annual permit fee allowed under ORS 561.255 for a large  
13 confined animal feeding operation.

14 SECTION 3. (1) The Department of Environmental Quality and the  
15 State Department of Agriculture may, by rule, require as a term or  
16 condition of a new permit under ORS 468B.050 to operate or conduct  
17 a large confined animal feeding operation or large concentrated animal  
18 feeding operation that the permit holder secure an insurance policy  
19 and maintain the policy in effect. A rule that a department adopts  
20 under this section must require that the insurance policy:

21 (a) Be issued by an insurance company authorized to do business  
22 in this state;

23 (b) Be in an amount specified by rule; and

24 (c) Provide that, if the feeding operation ceases or no longer holds  
25 a valid permit under ORS 468B.050 to operate or conduct the feeding  
26 operation, payment be available to the department to cover incurred  
27 or authorized expenses associated with remediation of the feeding op-  
28 eration site.

29 (2) Notwithstanding subsection (1) of this section, a rule that a de-  
30 partment adopts under this section must allow the permit holder the  
31 option to deposit cash or a security bond with the department or to

1 provide other evidence of financial responsibility acceptable to the  
2 department instead of obtaining an insurance policy.

3 **SECTION 4.** If a feeding operation ceases or no longer holds a valid  
4 permit under ORS 468B.050 to operate or conduct the feeding opera-  
5 tion, and the operator of the feeding operation does not clean the  
6 feeding operation site or properly decommission the waste treatment  
7 works of the feeding operation prior to vacating the site, the Depart-  
8 ment of Environmental Quality or the State Department of Agricul-  
9 ture may, in addition to any other authority of those departments:

10 (1) Independently or jointly clean or repurpose the feeding operation  
11 site or decommission the waste treatment system through processes  
12 that may include, but need not be limited to, the use of analysis, as-  
13 sessment, construction, contracting, designing, engineering, in-  
14 spection, investigation, maintenance, monitoring, operation, planning,  
15 sampling, studying, surveying, testing and training; and

16 (2) Recover any expenses incurred or authorized to carry out the  
17 activities and processes described in subsection (1) of this section.

18 **SECTION 5.** In addition to any other available remedy, the Depart-  
19 ment of Justice may bring an action to recover the amount of any  
20 costs that the Department of Environmental Quality or the State De-  
21 partment of Agriculture incurs due to reckless, malicious, bad faith  
22 or illegal conduct encountered during an investigation or proceeding  
23 concerning a large confined animal feeding operation or large con-  
24 centrated feeding operation violation of ORS chapter 468 or 468B, a  
25 rule adopted under ORS chapter 468 or 468B or a term or condition of  
26 a permit issued under ORS chapter 468 or 468B.

27 **SECTION 6.** ORS 468B.050 is amended to read:

28 468B.050. (1) Except as provided in ORS 468B.053 or 468B.215, without  
29 holding a permit from [*the Director of*] the Department of Environmental  
30 Quality or the State Department of Agriculture, which permit shall specify  
31 applicable effluent limitations, a person may not:

1 (a) Discharge any wastes into the waters of the state from any industrial  
2 or commercial establishment or activity or any disposal system.

3 (b) Construct, install, modify or operate any disposal system or part  
4 thereof or any extension or addition thereto.

5 (c) Increase in volume or strength any wastes in excess of the permissive  
6 discharges specified under an existing permit.

7 (d) Construct, install, operate or conduct any industrial, commercial,  
8 confined animal feeding operation, **concentrated animal feeding operation**  
9 or other establishment or activity or any extension or modification thereof  
10 or addition thereto, the operation or conduct of which would cause an in-  
11 crease in the discharge of wastes into the waters of the state or which would  
12 otherwise alter the physical, chemical or biological properties of any waters  
13 of the state in any manner not already lawfully authorized.

14 (e) Construct or use any new outlet for the discharge of any wastes into  
15 the waters of the state.

16 (2) **Except as provided in section 2 of this 2019 Act**, the Department  
17 of Environmental Quality or the State Department of Agriculture may issue  
18 a permit under this section as an individual, general or watershed permit.  
19 A permit may be issued to a class of persons using the procedures for issu-  
20 ance of an order or for the adoption of a rule. Notwithstanding the definition  
21 of “order” or “rule” provided in ORS 183.310, in issuing a general or  
22 watershed permit by order pursuant to this section, the State Department  
23 of Agriculture or Department of Environmental Quality:

24 (a) Is not required to direct the order to a named person or named per-  
25 sons; and

26 (b) May include in the order agency directives, standards, regulations and  
27 statements of general applicability that implement, interpret or prescribe law  
28 or policy.

29 (3) The [*State Department of Agriculture or the*] Department of Environ-  
30 mental Quality **and the State Department of Agriculture** may define  
31 “confined animal feeding operation” by rule for purposes of implementing

1 this section.

2 **SECTION 7. (1) Sections 2 (2) and 3 of this 2019 Act and the**  
3 **amendments to ORS 468B.050 by section 6 of this 2019 Act apply to:**

4 **(a) Permits for which initial issuance occurs on or after the effec-**  
5 **tive date of this 2019 Act; and**

6 **(b) Permits initially issued before the effective date of this 2019 Act**  
7 **pursuant to an application originally filed on or after January 1, 2019.**  
8 **The Legislative Assembly expressly intends that this paragraph oper-**  
9 **ates retroactively and that any permit described in this paragraph that**  
10 **does not conform to sections 2 (2) and 3 of this 2019 Act be brought**  
11 **into conformance with those sections or cancelled.**

12 **(2) Except as provided in subsection (1) of this section, section 2 of**  
13 **this 2019 Act applies to permits issued on or after the effective date**  
14 **of this 2019 Act.**

15 **(3) Section 4 of this 2019 Act applies to large confined animal feed-**  
16 **ing operation and large concentrated animal feeding operation sites**  
17 **that an operator vacates before, on or after the effective date of this**  
18 **2019 Act.**

19 **(4) Section 5 of this 2019 Act applies to costs incurred due to reck-**  
20 **less, malicious, bad faith or illegal conduct that occurs on or after the**  
21 **effective date of this 2019 Act.**

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