

SENATE AMENDMENTS TO SENATE BILL 85

By COMMITTEE ON RULES

May 30

1 In line 2 of the printed bill, after “operations” insert “; creating new provisions; amending ORS
2 468B.050, 468B.215 and 537.545; and declaring an emergency”.

3 Delete lines 4 through 8 and insert:
4

“WATER QUALITY PERMIT

5
6
7 “**SECTION 1.** ORS 468B.050 is amended to read:

8 “468B.050. (1) Except as provided in ORS 468B.053 or 468B.215, without holding a permit from
9 the Director of the Department of Environmental Quality or the State Department of Agriculture,
10 which permit shall specify applicable effluent limitations, a person may not:

11 “(a) Discharge any wastes into the waters of the state from any industrial or commercial es-
12 tablishment or activity or any disposal system.

13 “(b) Construct, install, modify or operate any disposal system or part thereof or any extension
14 or addition thereto.

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

17 “(d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding
18 operation or other establishment or activity or any extension or modification thereof or addition
19 thereto, the operation or conduct of which would cause an increase in the discharge of wastes into
20 the waters of the state or which would otherwise alter the physical, chemical or biological proper-
21 ties of any waters of the state in any manner not already lawfully authorized.

22 “(e) Construct or use any new outlet for the discharge of any wastes into the waters of the
23 state.

24 “(2) The Department of Environmental Quality or the State Department of Agriculture may issue
25 a permit under this section as an individual, general or watershed permit. A permit may be issued
26 to a class of persons using the procedures for issuance of an order or for the adoption of a rule.
27 Notwithstanding the definition of ‘order’ or ‘rule’ provided in ORS 183.310, in issuing a general or
28 watershed permit by order pursuant to this section, the State Department of Agriculture or De-
29 partment of Environmental Quality:

30 “(a) Is not required to direct the order to a named person or named persons; and

31 “(b) May include in the order agency directives, standards, regulations and statements of gen-
32 eral applicability that implement, interpret or prescribe law or policy.

33 “(3) **When deciding whether to issue a permit to a confined animal feeding operation**
34 **under this section, the Department of Environmental Quality or the State Department of**
35 **Agriculture shall consider any relevant determination by the Water Resources Department**

1 pursuant to section 7 (2) of this 2023 Act.

2 “(4) Notwithstanding subsection (2) of this section, the Department of Environmental
3 Quality or the State Department of Agriculture may not issue a general NPDES or WPCF
4 permit to a new large confined animal feeding operation that:

5 “(a) Is located in a ground water management area declared under ORS 468B.180; and

6 “(b) Applies manure, litter, wastewater or processed waste to land within the ground
7 water management area.

8 “(5) Subsection (4) of this section does not apply to the issuance of water quality permits
9 to regulate stormwater.

10 “[3] (6) The State Department of Agriculture or the Department of Environmental Quality may
11 define ‘confined animal feeding operation’ by rule for purposes of implementing this section.

12 “(7) As used in this section:

13 “(a) ‘New large confined animal feeding operation’ has the meaning given that term in
14 ORS 468B.215.

15 “(b) ‘NPDES’ and ‘WPCF’ have the meanings given those terms in ORS 561.255.

16 “SECTION 2. ORS 468B.215 is amended to read:

17 “468B.215. (1) As used in this section:

18 “(a) ‘Expanding confined animal feeding operation’ means a confined animal feeding op-
19 eration that is expanding operational size into a new tier, as described in ORS 561.255 (2).

20 “(b) ‘Expanding large confined animal feeding operation’ means a large confined animal
21 feeding operation in the largest tier described in ORS 561.255 (2) that is expanding the ca-
22 pacity of the large confined animal feeding operation to manage animal wastes, consistent
23 with the conditions of a permit issued under ORS 468B.050, to more than 20 percent of the
24 capacity of the large confined animal feeding operation.

25 “(c) ‘Large confined animal feeding operation’ has the meaning given that term in ORS
26 561.255.

27 “(d) ‘New confined animal feeding operation’ means a confined animal feeding operation
28 that is seeking a permit under ORS 468B.050 to operate on a parcel of land on which no
29 confined animal feeding operation has previously operated.

30 “(e) ‘New large confined animal feeding operation’ means a large confined animal feeding
31 operation that is seeking a permit under ORS 468B.050 to operate on a parcel of land on
32 which no confined animal feeding operation has previously operated.

33 “(f) ‘NPDES’ and ‘WPCF’ have the meanings given those terms in ORS 561.255.

34 “[1] (2) Any person operating a confined animal feeding operation or concentrated animal
35 feeding operation under an NPDES or WPCF permit shall annually pay a fee for a confined animal
36 feeding operation permit or concentrated animal feeding operation permit as provided by State De-
37 partment of Agriculture rules adopted under ORS 561.255. [As used in this subsection, ‘NPDES’ and
38 ‘WPCF’ have the meanings given those terms in ORS 561.255.]

39 “[2] (3) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, a
40 fee shall not be assessed to nor a permit required under ORS 468B.050 (1)(d) of confined animal
41 feeding operations of four months or less duration or that do not have waste water control facilities.
42 A confined animal feeding operation of four months or less duration or that does not have waste
43 water control facilities is subject to all requirements of ORS chapters 468, 468A and 468B if found
44 to be discharging wastes into the waters of the state.

45 “(4)(a) Before submitting an application for a permit under ORS 468B.050 for a new large

1 confined animal feeding operation or an expanding large confined animal feeding operation,
2 an applicant shall:

3 “(A) Request that the Department of Environmental Quality or the State Department
4 of Agriculture schedule a preliminary consultation.

5 “(B) Participate in the preliminary consultation.

6 “(b) Before scheduling the preliminary consultation, the Department of Environmental
7 Quality or the State Department of Agriculture shall:

8 “(A) Notify the governing bodies of all federally recognized Indian tribes in this state; and

9 “(B) Consult with the governing bodies, upon request by the governing bodies.

10 “(c) The preliminary consultation must:

11 “(A) Include the applicant, the Department of Environmental Quality, the State Depart-
12 ment of Agriculture, the Water Resources Department and other relevant state agencies,
13 as determined by the Department of Environmental Quality and the State Department of
14 Agriculture.

15 “(B) Occur not more than 45 days after the request is received.

16 “(5)(a) In addition to other permit conditions, a person that applies for a permit under
17 ORS 468B.050 for:

18 “(A) A confined animal feeding operation shall submit a water supply plan, as described
19 in section 7 of this 2023 Act, with the application.

20 “(B) A new large confined animal feeding operation shall send individual notice of the
21 public comment period for the permit, by mail, to all persons on record as owning property
22 within one-half mile of the parcel of land on which the new large confined animal feeding
23 operation is proposed to be located.

24 “(b) The Department of Environmental Quality and State Department of Agriculture may
25 not consider a person’s lack of receipt of the notice described in paragraph (a)(B) of this
26 subsection when deciding whether to approve or deny an application for a permit under ORS
27 468B.050.

28 “[3] (6) The Department of Environmental Quality or the State Department of Agriculture may
29 impose on the permit required for a confined animal feeding operation only those conditions neces-
30 sary to ensure that:

31 “(a) Wastes are [*disposed of*] used in a manner that does not cause pollution of the surface and
32 ground waters of the state.

33 “(b) The confined animal feeding operation is in compliance with water quality standards.

34 “(c) The quantity of water necessary to supply the level and duration of the water needs
35 of the confined animal feeding operation, including any ancillary operations of the confined
36 animal feeding operation described in the permit, is legally authorized.

37 “(7) After being issued a permit under ORS 468B.050, a person may not bring animals to
38 a new confined animal feeding operation, or to newly constructed or installed facilities for
39 an expanding confined animal feeding operation, until after the State Department of Agri-
40 culture:

41 “(a) Inspects the new confined animal feeding operation or expanding confined animal
42 feeding operation; and

43 “(b) Confirms that the construction or installation of the waste management system and
44 relevant operational functions of the new confined animal feeding operation or expanding
45 confined animal feeding operation comply with the conditions of the water quality permit.

1 in ORS 561.255.

2
3 “WATER SUPPLY PLAN
4

5 “SECTION 6. Section 7 of this 2023 Act is added to and made a part of ORS chapter 468B.

6 “SECTION 7. (1) A person that applies for a permit under ORS 468B.050 for a confined
7 animal feeding operation operating under an NPDES or WPCF permit, as described in ORS
8 468B.215 (2), shall submit with the application a water supply plan that identifies all sources
9 of the water that will be used to supply the level and duration of the water needs of the
10 confined animal feeding operation, including any ancillary operations of the confined animal
11 feeding operation, as described in the application.

12 “(2) After receiving a water supply plan described in subsection (1) of this section, the
13 Department of Environmental Quality or the State Department of Agriculture shall request
14 that the Water Resources Department review the water supply plan to determine whether
15 the water uses identified in the water supply plan are legally authorized and allowable.

16 “(3) Not more than 45 days after receiving a request described in subsection (2) of this
17 section, the Water Resources Department shall provide a determination described in sub-
18 section (2) of this section to the Department of Environmental Quality or the State Depart-
19 ment of Agriculture.

20 “(4) A water supply plan for a confined animal feeding operation that uses stockwater
21 as described in ORS 537.545 (1)(a) must use animal water consumption guidelines provided
22 by the State Department of Agriculture to estimate the gallons per day that the confined
23 animal feeding operation will use.

24 “(5) The Water Resources Department may recommend that the Department of Envi-
25 ronmental Quality or the State Department of Agriculture condition a permit under ORS
26 468B.050 on one or more of the following:

27 “(a) Requiring a confined animal feeding operation that uses stockwater, as described in
28 ORS 537.545 (1)(a), or a person renewing a permit under ORS 468B.050 for a confined animal
29 feeding operation, to:

30 “(A) Install water metering and submetering devices concerning a new or expanding
31 production area; and

32 “(B) Maintain quarterly water use data that the Water Resources Department may in-
33 spect annually, upon request by the department.

34 “(b) Prohibiting an expanding confined animal feeding operation, as defined in ORS
35 468B.215, within a critical ground water area designated by order or pursuant to ORS 537.730
36 from increasing the confined animal feeding operation’s use of water per day under the ex-
37 emption described in ORS 537.545 (1)(a) by more than the limit described in ORS 537.545
38 (1)(a).

39 “(6) When making a determination described in subsection (2) of this section, the Water
40 Resources Department may not consider a change of use, place of use or point of diversion
41 as legally authorized until the change is approved pursuant to an order described in ORS
42 540.530 that is final as a matter of law or is not subject to a pending appeal.

43 “(7) A determination under subsection (2) of this section may not be considered:

44 “(a) An authorization of water use or water rights.

45 “(b) A final order or ruling.

1 **“(8) A person that renews a permit under ORS 468B.050 for a confined animal feeding**
2 **operation operating under an NPDES or WPCF permit, as described in ORS 468B.215 (2), shall**
3 **attest upon renewal of the permit that the water supply plan for the confined animal feeding**
4 **operation that was previously approved under this section is compliant with this section.**

5 **“SECTION 8.** Section 7 of this 2023 Act is amended to read:

6 **“Sec. 7.** (1) A person that applies for a permit under ORS 468B.050 for a confined animal feeding
7 operation operating under an NPDES or WPCF permit, as described in ORS 468B.215 (2), shall submit
8 with the application a water supply plan that identifies all sources of the water that will be used
9 to supply the level and duration of the water needs of the confined animal feeding operation, including
10 any ancillary operations of the confined animal feeding operation, as described in the application.
11

12 “(2) After receiving a water supply plan described in subsection (1) of this section, the Department
13 of Environmental Quality or the State Department of Agriculture shall request that the Water
14 Resources Department review the water supply plan to determine whether the water uses identified
15 in the water supply plan are legally authorized and allowable.

16 “(3) Not more than 45 days after receiving a request described in subsection (2) of this section,
17 the Water Resources Department shall provide a determination described in subsection (2) of this
18 section to the Department of Environmental Quality or the State Department of Agriculture.

19 “(4) A water supply plan for a confined animal feeding operation that uses stockwater as described
20 in ORS 537.545 (1)(a) must use animal water consumption guidelines provided by the State
21 Department of Agriculture to estimate the gallons per day that the confined animal feeding operation
22 will use.

23 “(5) The Water Resources Department may recommend that the Department of Environmental
24 Quality or the State Department of Agriculture condition a permit under ORS 468B.050 on *[one or*
25 *more of the following:]*

26 “*[(a)]* requiring a confined animal feeding operation that uses stockwater, as described in ORS
27 537.545 (1)(a), or a person renewing a permit under ORS 468B.050 for a confined animal feeding operation,
28 to:

29 “*[(A)] (a)* Install water metering and submetering devices concerning a new or expanding production
30 area; and

31 “*[(B)] (b)* Maintain quarterly water use data that the Water Resources Department may inspect
32 annually, upon request by the department.

33 “*[(b) Prohibiting an expanding confined animal feeding operation, as defined in ORS 468B.215,*
34 *within a critical ground water area designated by order or pursuant to ORS 537.730 from increasing*
35 *the confined animal feeding operation’s use of water per day under the exemption described in ORS*
36 *537.545 (1)(a) by more than the limit described in ORS 537.545 (1)(a).]*

37 “(6) When making a determination described in subsection (2) of this section, the Water Resources
38 Department may not consider a change of use, place of use or point of diversion as legally
39 authorized until the change is approved pursuant to an order described in ORS 540.530 that is final
40 as a matter of law or is not subject to a pending appeal.

41 “(7) A determination under subsection (2) of this section may not be considered:

42 “(a) An authorization of water use or water rights.

43 “(b) A final order or ruling.

44 “(8) A person that renews a permit under ORS 468B.050 for a confined animal feeding operation
45 operating under an NPDES or WPCF permit, as described in ORS 468B.215 (2), shall attest upon

1 renewal of the permit that the water supply plan for the confined animal feeding operation that was
2 previously approved under this section is compliant with this section.

3 **“SECTION 9. The amendments to section 7 of this 2023 Act by section 8 of this 2023 Act**
4 **become operative on September 15, 2027.**

5
6 **“STOCKWATER EXEMPTION**

7
8 **“SECTION 10.** ORS 537.545 is amended to read:

9 “537.545. (1) [No] A registration, certificate of registration, application for a permit, permit,
10 certificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992
11 is **not** required for the use of ground water for:

12 “(a) Stockwatering purposes, **unless the use exceeds 12,000 gallons per day and occurs at a**
13 **new confined animal feeding operation, as defined in ORS 468B.215;**

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

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

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

18 “(e) Down-hole heat exchange purposes;

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

20 or

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

22 “(A) Has first been appropriated and used under a permit or certificate issued under ORS
23 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use
24 of water for confined animal feeding purposes;

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

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

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

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

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

1 “(5) The person licensed under ORS 537.747 or permitted under ORS 537.753 (4) that constructs
2 a well to allow ground water use for a purpose that is exempt under subsection (1) of this section
3 shall provide the Water Resources Department with a map showing the exact location of the well
4 on the tax lot. The person licensed under ORS 537.747 or permitted under ORS 537.753 (4) that
5 constructs a well shall provide a map required by this subsection to the department, along with the
6 well log required by ORS 537.765, no later than 30 days after the well is completed. The map must
7 be prepared in accordance with standards established by the department. The map and well log must
8 be accompanied by the fee described in subsection (6) of this section to record the exempt ground
9 water use.

10 “(6) The Water Resources Department shall collect a fee of \$300 for recording an exempt ground
11 water use under subsection (5) of this section. Moneys from fees collected under this subsection
12 shall be deposited to the credit of the Water Resources Department Water Right Operating Fund.
13 Notwithstanding ORS 536.009, moneys deposited to the fund under this subsection shall be used for
14 the purposes of evaluating ground water supplies, conducting ground water studies, carrying out
15 ground water monitoring, processing ground water data and the administration and enforcement of
16 this subsection and subsections (3), (5) and (7) of this section.

17 “(7) The Water Resources Commission shall adopt rules to implement, administer and enforce
18 subsections (5) and (6) of this section.

19 “**SECTION 11.** ORS 537.545, as amended by section 10 of this 2023 Act, is amended to read:

20 “537.545. (1) A registration, certificate of registration, application for a permit, permit, certif-
21 icate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is
22 not required for the use of ground water for:

23 “(a) Stockwatering purposes[, *unless the use exceeds 12,000 gallons per day and occurs at a new*
24 *confined animal feeding operation, as defined in ORS 468B.215*];

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

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

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

29 “(e) Down-hole heat exchange purposes;

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

31 or

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

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

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

44 “(3) Except for the use of water under subsection (1)(g) of this section, the Water Resources
45 Commission by rule may require any person or public agency using ground water for any such

1 purpose to furnish information with regard to such ground water and the use thereof. For a use of
2 water described in subsection (1)(g) of this section, the Department of Environmental Quality or the
3 State Department of Agriculture shall provide to the Water Resources Department a copy of the
4 permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for
5 reuse. The permit shall provide the information regarding the place of use of such water and the
6 nature of the beneficial reuse.

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

12 “(5) The person licensed under ORS 537.747 or permitted under ORS 537.753 (4) that constructs
13 a well to allow ground water use for a purpose that is exempt under subsection (1) of this section
14 shall provide the Water Resources Department with a map showing the exact location of the well
15 on the tax lot. The person licensed under ORS 537.747 or permitted under ORS 537.753 (4) that
16 constructs a well shall provide a map required by this subsection to the department, along with the
17 well log required by ORS 537.765, no later than 30 days after the well is completed. The map must
18 be prepared in accordance with standards established by the department. The map and well log must
19 be accompanied by the fee described in subsection (6) of this section to record the exempt ground
20 water use.

21 “(6) The Water Resources Department shall collect a fee of \$300 for recording an exempt ground
22 water use under subsection (5) of this section. Moneys from fees collected under this subsection
23 shall be deposited to the credit of the Water Resources Department Water Right Operating Fund.
24 Notwithstanding ORS 536.009, moneys deposited to the fund under this subsection shall be used for
25 the purposes of evaluating ground water supplies, conducting ground water studies, carrying out
26 ground water monitoring, processing ground water data and the administration and enforcement of
27 this subsection and subsections (3), (5) and (7) of this section.

28 “(7) The Water Resources Commission shall adopt rules to implement, administer and enforce
29 subsections (5) and (6) of this section.

30 **“SECTION 12. The amendments to ORS 537.545 by section 11 of this 2023 Act become**
31 **operative on September 15, 2027.**

32 33 “AIR QUALITY 34

35 **“SECTION 13. (1) Not more than 180 days after the United States Environmental Pro-**
36 **tection Agency finalizes the National Air Emissions Monitoring Study, the Department of**
37 **Environmental Quality shall report, in the manner provided by ORS 192.245, to the interim**
38 **committees of the Legislative Assembly related to agriculture on the findings from the study**
39 **that relate to animal feeding operations.**

40 **“(2) The report:**

41 **“(a) Must summarize how the findings related to air emissions by confined animal feeding**
42 **operations may inform an understanding of emissions of air contaminants by animal feeding**
43 **operations in Oregon.**

44 **“(b) Must identify existing Oregon laws and rules, as well as NPDES and WPCF permit**
45 **requirements, that pertain to the findings described in paragraph (a) of this subsection.**

