

Requested by Senator DEMBROW

**PROPOSED AMENDMENTS TO
SENATE BILL 85**

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

4 Delete lines 4 through 8 and insert:
5

6 **“WATER QUALITY PERMIT**
7

8 **“SECTION 1.** ORS 468B.050 is amended to read:

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

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

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

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

19 “(d) Construct, install, operate or conduct any industrial, commercial,
20 confined animal feeding operation or other establishment or activity or any
21 extension or modification thereof or addition thereto, the operation or con-

1 duct of which would cause an increase in the discharge of wastes into the
2 waters of the state or which would otherwise alter the physical, chemical
3 or biological properties of any waters of the state in any manner not already
4 lawfully authorized.

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

7 “(2) The Department of Environmental Quality or the State Department
8 of Agriculture may issue a permit under this section as an individual, gen-
9 eral or watershed permit. A permit may be issued to a class of persons using
10 the procedures for issuance of an order or for the adoption of a rule. Not-
11 withstanding the definition of ‘order’ or ‘rule’ provided in ORS 183.310, in
12 issuing a general or watershed permit by order pursuant to this section, the
13 State Department of Agriculture or Department of Environmental Quality:

14 “(a) Is not required to direct the order to a named person or named per-
15 sons; and

16 “(b) May include in the order agency directives, standards, regulations
17 and statements of general applicability that implement, interpret or prescribe
18 law or policy.

19 **“(3) Notwithstanding subsection (2) of this section, the Department**
20 **of Environmental Quality or the State Department of Agriculture may**
21 **not issue a general or watershed permit to a new large confined animal**
22 **feeding operation, as defined in ORS 468B.215, that:**

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

25 **“(b) Applies manure, litter or processed wastewater to land within**
26 **the ground water management area.**

27 **“(4) Subsection (3) of this section does not prohibit the Department**
28 **of Environmental Quality or the State Department of Agriculture**
29 **from requiring under this section:**

30 **“(a) Individual permits, in addition to any individual permits issued**

1 under subsection (3) of this section.

2 “(b) General permits, except under circumstances described in sub-
3 section (3) of this section.

4 “(5) The Department of Environmental Quality or the State De-
5 partment of Agriculture may not issue a permit under this section to
6 a confined animal feeding operation that will operate any portion of
7 the confined animal feeding operation within one-half mile of a fish-
8 bearing stream.

9 “[3] (6) The State Department of Agriculture or the Department of En-
10 vironmental Quality may define ‘confined animal feeding operation’ by rule
11 for purposes of implementing this section.

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

13 “468B.215. (1) As used in this section:

14 “(a) ‘Expanding confined animal feeding operation’ means a con-
15 fined animal feeding operation that is expanding operational size into
16 a new tier, as described in ORS 561.255 (2).

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

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

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

30 “(e) ‘New large confined animal feeding operation’ means a large

1 **confined animal feeding operation that is seeking a permit under ORS**
2 **468B.050 to operate on a parcel of land on which no confined animal**
3 **feeding operation has previously operated.**

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

6 **“[(1)] (2) Any person operating a confined animal feeding operation or**
7 **concentrated animal feeding operation under an NPDES or WPCF permit**
8 **shall annually pay a fee for a confined animal feeding operation permit or**
9 **concentrated animal feeding operation permit as provided by State Depart-**
10 **ment of Agriculture rules adopted under ORS 561.255. [As used in this sub-**
11 **section, ‘NPDES’ and ‘WPCF’ have the meanings given those terms in ORS**
12 **561.255.]**

13 **“[(2)] (3) Except for an animal feeding operation subject to regulation**
14 **under 33 U.S.C. 1342, a fee shall not be assessed to nor a permit required**
15 **under ORS 468B.050 (1)(d) of confined animal feeding operations of four**
16 **months or less duration or that do not have waste water control facilities.**
17 **A confined animal feeding operation of four months or less duration or that**
18 **does not have waste water control facilities is subject to all requirements**
19 **of ORS chapters 468, 468A and 468B if found to be discharging wastes into**
20 **the waters of the state.**

21 **“(4)(a) Before submitting an application for a permit under ORS**
22 **468B.050 for a new large confined animal feeding operation or an ex-**
23 **panding large confined animal feeding operation, a person shall:**

24 **“(A) Request that the Department of Environmental Quality or the**
25 **State Department of Agriculture schedule a preliminary consultation.**

26 **“(B) Participate in the preliminary consultation.**

27 **“(b) The preliminary consultation must include the person, the**
28 **Department of Environmental Quality, the State Department of Agri-**
29 **culture, the Water Resources Department and other relevant state**
30 **agencies, as determined by the Department of Environmental Quality**

1 **and the State Department of Agriculture.**

2 **“(5) In addition to other permit conditions, a person that applies for**
3 **a permit under ORS 468B.050 for a confined animal feeding operation**
4 **must submit a water supply plan, as described in section 7 of this 2023**
5 **Act, with the application.**

6 *“(3) The Department of Environmental Quality or the State Department*
7 *of Agriculture may impose on the permit required for a confined animal feed-*
8 *ing operation only those conditions necessary to ensure that wastes are dis-*
9 *posed of in a manner that does not cause pollution of the surface and ground*
10 *waters of the state.]*

11 **“(6) After being issued a permit under ORS 468B.050, a person may**
12 **not bring animals to a new confined animal feeding operation, or to**
13 **newly constructed or installed facilities for an expanding confined an-**
14 **imal feeding operation, until after the State Department of Agricul-**
15 **ture:**

16 **“(a) Inspects the new confined animal feeding operation or ex-**
17 **panding confined animal feeding operation; and**

18 **“(b) Confirms that the construction or installation of the waste**
19 **management system and relevant operational functions of the new**
20 **confined animal feeding operation or expanding confined animal feed-**
21 **ing operation comply with the conditions of the water quality permit.**

22 **“(7) Except as authorized under an NPDES or WPCF permit, a**
23 **person may send manure, litter or processed wastewater from a con-**
24 **fined animal feeding operation to another person only if the other**
25 **person holds a nutrient application permit described in section 5 of**
26 **this 2023 Act.**

27 *“[(4)] (8) A permit for a confined animal feeding operation may be revoked*
28 *or modified by the Department of Environmental Quality or the State De-*
29 *partment of Agriculture or may be terminated upon request by the permit*
30 *holder. An animal feeding operation may be inspected for compliance with*

1 water quality laws and regulations by the Department of Environmental
2 Quality or the State Department of Agriculture.

3 **“SECTION 3. (1) The provisions of ORS 468B.215 (5) and (7) apply to:**

4 **“(a) New confined animal feeding operations and expanding con-**
5 **finned animal feeding operations, as defined in ORS 468B.215, that apply**
6 **for a permit under ORS 468B.050 on or after the effective date of this**
7 **2023 Act.**

8 **“(b) Large confined animal feeding operations, as described in ORS**
9 **561.255 (1), that renew permits under ORS 468B.050 on or after July 1,**
10 **2024.**

11 **“(c) Small confined animal feeding operations and medium confined**
12 **animal feeding operations, as described in ORS 561.255 (1), that renew**
13 **permits under ORS 468B.050 on or after July 1, 2025.**

14 **“(2) The Department of Environmental Quality or the State De-**
15 **partment of Agriculture may not enforce the prohibition in ORS**
16 **468B.215 (7) until after the State Department of Agriculture has**
17 **adopted rules to implement section 5 of this 2023 Act.**

18

19 **“NUTRIENT APPLICATION PERMIT**

20

21 **“SECTION 4. Section 5 of this 2023 Act is added to and made a part**
22 **of ORS 468B.200 to 468B.230.**

23 **“SECTION 5. (1) The State Department of Agriculture may issue a**
24 **nutrient application permit.**

25 **“(2) As applicable, the permit must concern, but need not only**
26 **concern:**

27 **“(a) The rate of nutrient application.**

28 **“(b) The source of the nutrients.**

29 **“(c) The placement of the nutrients.**

30 **“(d) The timing of nutrient application.**

1 uses identified in the water supply plan are legally authorized and al-
2 lowable.

3 “(3) Not more than 45 days after receiving a request described in
4 subsection (2) of this section, the Water Resources Department shall
5 provide an approval or denial of the water supply plan to the Depart-
6 ment of Environmental Quality or the State Department of Agricul-
7 ture.

8 “(4) A water supply plan for a confined animal feeding operation
9 that uses stockwater as described in ORS 537.545 (1)(a) must use ani-
10 mal water consumption guidelines provided by the State Department
11 of Agriculture to estimate the gallons per day that the confined animal
12 feeding operation will use.

13 “(5) The Water Resources Department may require conditions for
14 approval of a water supply plan, including but not limited to:

15 “(a) Requiring a confined animal feeding operation that uses
16 stockwater, as described in ORS 537.545 (1)(a), to install water meter-
17 ing and submetering devices and maintain quarterly water use data
18 that the department may inspect annually, upon request by the de-
19 partment.

20 “(b) Prohibiting an expanding confined animal feeding operation,
21 as defined in ORS 468B.215, from using more than 12,000 gallons of
22 water per day under the exemption described in ORS 537.545 (1)(a) if
23 the expanding confined animal feeding operation is in:

24 “(A) A critical ground water area designated under ORS 537.730.

25 “(B) An area in which restrictions are imposed pursuant to ORS
26 536.340.

27 “(C) An area subject to an order of withdrawal pursuant to ORS
28 536.410.

29 “(D) An area designated as critical pursuant to a rule or order of
30 the Water Resources Commission or the Water Resources Department.

1 **“(B) A confined animal feeding operation, as defined in ORS 561.255,**
2 **for which ownership has transferred during the five years preceding**
3 **the use;**

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

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

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

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

12 “(f) Any single industrial or commercial purpose in an amount not ex-
13 ceeding 5,000 gallons a day; or

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

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

19 “(B) Is reused for irrigation purposes and the period of irrigation is a
20 period during which the reused water has never been discharged to the wa-
21 ters of the state; and

22 “(C) Is applied pursuant to a permit issued by the Department of Envi-
23 ronmental Quality or the State Department of Agriculture under either ORS
24 468B.050 to construct and operate a disposal system or ORS 468B.215 to op-
25 erate a confined animal feeding operation.

26 “(2) A ground water use for a purpose that is exempt under subsection (1)
27 of this section, to the extent that the use is beneficial, constitutes a right
28 to appropriate ground water equal to that established by a ground water
29 right certificate issued under ORS 537.700.

30 “(3) Except for the use of water under subsection (1)(g) of this section,

1 the Water Resources Commission by rule may require any person or public
2 agency using ground water for any such purpose to furnish information with
3 regard to such ground water and the use thereof. For a use of water de-
4 scribed in subsection (1)(g) of this section, the Department of Environmental
5 Quality or the State Department of Agriculture shall provide to the Water
6 Resources Department a copy of the permit issued under ORS 468B.050 or
7 468B.215 authorizing the land application of ground water for reuse. The
8 permit shall provide the information regarding the place of use of such water
9 and the nature of the beneficial reuse.

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

16 “(5) The person licensed under ORS 537.747 or permitted under ORS
17 537.753 (4) that constructs a well to allow ground water use for a purpose
18 that is exempt under subsection (1) of this section shall provide the Water
19 Resources Department with a map showing the exact location of the well on
20 the tax lot. The person licensed under ORS 537.747 or permitted under ORS
21 537.753 (4) that constructs a well shall provide a map required by this sub-
22 section to the department, along with the well log required by ORS 537.765,
23 no later than 30 days after the well is completed. The map must be prepared
24 in accordance with standards established by the department. The map and
25 well log must be accompanied by the fee described in subsection (6) of this
26 section to record the exempt ground water use.

27 “(6) The Water Resources Department shall collect a fee of \$300 for re-
28 cording an exempt ground water use under subsection (5) of this section.
29 Moneys from fees collected under this subsection shall be deposited to the
30 credit of the Water Resources Department Water Right Operating Fund.

1 Notwithstanding ORS 536.009, moneys deposited to the fund under this sub-
2 section shall be used for the purposes of evaluating ground water supplies,
3 conducting ground water studies, carrying out ground water monitoring,
4 processing ground water data and the administration and enforcement of this
5 subsection and subsections (3), (5) and (7) of this section.

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

8

9

“ANIMAL WELFARE

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11 **“SECTION 10. (1) The State Department of Agriculture shall con-**
12 **vene a work group to:**

13 **“(a) Review the best management practices of confined animal**
14 **feeding operations, as defined in ORS 561.255, that relate to animal**
15 **welfare; and**

16 **“(b) Assess the appropriateness of allowing confined animal feeding**
17 **operations to use the exemption described in ORS 167.335.**

18 **“(2) On or before September 15, 2024, the department shall report,**
19 **in the manner provided by ORS 192.245, on the results of the review**
20 **and assessment described in subsection (1) of this section to commit-**
21 **tees or interim committees of the Legislative Assembly related to na-**
22 **tural resources, and shall include recommendations.**

23

24

“AIR QUALITY

25

26 **“SECTION 11. (1) On or before December 31, 2023, the Department**
27 **of Environmental Quality shall report, in the manner provided by ORS**
28 **192.245, to the interim committees of the Legislative Assembly related**
29 **to agriculture, on findings from the United States Environmental**
30 **Protection Agency’s National Air Emissions Monitoring Study that**

1 relate to animal feeding operations.

2 “(2) The report:

3 “(a) Must summarize how the findings inform a better understand-
4 ing of emissions of air contaminants by animal feeding operations in
5 Oregon.

6 “(b) Must include a summary of statutory authority that the Envi-
7 ronmental Quality Commission has over emissions of air contaminants
8 from dairy, poultry and swine animal feeding operations.

9 “(c) May identify a process for developing recommendations to re-
10 duce emissions of air contaminants by animal feeding operations,
11 based on the results of the study described in subsection (1) of this
12 section.

13

14 “LAND USE COMPATIBILITY STATEMENT

15

16 “SECTION 12. (1) Prior to applying for a permit under ORS 468B.050,
17 an applicant for a proposed confined animal feeding operation shall
18 request, from the city or county in which the confined animal feeding
19 operation is proposed to be located, a land use compatibility statement
20 that authorizes the land use.

21 “(2) The land use compatibility statement must demonstrate that
22 the requested permit pertains to a land use that is allowable as a
23 permitted or conditional use within the given zoning designation
24 where the land is located.

25 “(3) The Department of Environmental Quality or the State De-
26 partment of Agriculture may not issue the permit under ORS 468B.050
27 if the land use compatibility statement demonstrates that the proposed
28 land use is prohibited in the applicable zone.

29 “(4) Notwithstanding ORS 30.935, 215.253 (1) and 633.738, the gov-
30 erning body of the city or county may determine that the land use is

1 not allowable if the confined animal feeding operation would be sited
2 within:

3 “(a) One hundred yards of an adjacent parcel on which a residential
4 structure is sited; or

5 “(b) One-half mile of a school.

6 “(5) The governing body of the city or county may require, as a
7 condition of issuing the land use compatibility statement, that the
8 applicant for the proposed confined animal feeding operation send in-
9 dividual notice of the request for a land use compatibility statement
10 by mail to all persons on record as owning property within one-half
11 mile of the parcel of land on which the confined animal feeding oper-
12 ation would be located.

13

14

“CAPTIONS

15

16 “SECTION 13. The unit captions used in this 2023 Act are provided
17 for the convenience of the reader and do not become part of the stat-
18 utory law of this state or express any legislative intent in the
19 enactment of this 2023 Act.

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21

“EFFECTIVE DATE

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23 “SECTION 14. This 2023 Act being necessary for the immediate
24 preservation of the public peace, health and safety, an emergency is
25 declared to exist, and this 2023 Act takes effect on its passage.”.

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