

Senate Bill 876

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

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**.

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

1
2 Relating to livestock operations; creating new provisions; and amending ORS 468B.050.

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

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

6 **SECTION 2. (1) As used in this section, "large confined animal feeding operation" has the**
7 **meaning given that term in ORS 561.255.**

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

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

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

19 **(b) A person may not operate or conduct the feeding operation, including but not limited**
20 **to populating the feeding operation, unless the permit holder obtains final approval for the**

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 construction or installation from the Department of Environmental Quality or the State
2 Department of Agriculture.

3 (4) Prior to the Department of Environmental Quality or the State Department of Agri-
4 culture granting final approval under subsection (3)(b) of this section, the State Department
5 of Agriculture shall:

6 (a) Consult with the Water Resources Department to ensure that there are adequate
7 water resources available to supply the water needs of the feeding operation at the levels
8 described in the permit on a sustained basis; and

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

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

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

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

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

27 (c) Provide that, if the feeding operation ceases or no longer holds a valid permit under
28 ORS 468B.050 to operate or conduct the feeding operation, payment be available to the de-
29 partment to cover incurred or authorized expenses associated with remediation of the feed-
30 ing operation site.

31 (2) Notwithstanding subsection (1) of this section, a rule that a department adopts under
32 this section must allow the permit holder the option to deposit cash or a security bond with
33 the department or to provide other evidence of financial responsibility acceptable to the de-
34 partment instead of obtaining an insurance policy.

35 **SECTION 4.** If a feeding operation ceases or no longer holds a valid permit under ORS
36 468B.050 to operate or conduct the feeding operation, and the operator of the feeding opera-
37 tion does not clean the feeding operation site or properly decommission the waste treatment
38 works of the feeding operation prior to vacating the site, the Department of Environmental
39 Quality or the State Department of Agriculture may, in addition to any other authority of
40 those departments:

41 (1) Independently or jointly clean or repurpose the feeding operation site or decommis-
42 sion the waste treatment system through processes that may include, but need not be lim-
43 ited to, the use of analysis, assessment, construction, contracting, designing, engineering,
44 inspection, investigation, maintenance, monitoring, operation, planning, sampling, studying,
45 surveying, testing and training; and

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

3 **SECTION 5. In addition to any other available remedy, the Department of Justice may**
 4 **bring an action to recover the amount of any costs that the Department of Environmental**
 5 **Quality or the State Department of Agriculture incurs due to reckless, malicious, bad faith**
 6 **or illegal conduct encountered during an investigation or proceeding concerning a large**
 7 **confined animal feeding operation or large concentrated feeding operation violation of ORS**
 8 **chapter 468 or 468B, a rule adopted under ORS chapter 468 or 468B or a term or condition**
 9 **of a permit issued under ORS chapter 468 or 468B.**

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

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

14 (a) Discharge any wastes into the waters of the state from any industrial or commercial estab-
 15 lishment or activity or any disposal system.

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

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

20 (d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding
 21 operation, **concentrated animal feeding operation** or other establishment or activity or any ex-
 22 tension or modification thereof or addition thereto, the operation or conduct of which would cause
 23 an increase in the discharge of wastes into the waters of the state or which would otherwise alter
 24 the physical, chemical or biological properties of any waters of the state in any manner not already
 25 lawfully authorized.

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

27 **(2) Except as provided in section 2 of this 2019 Act,** the Department of Environmental Quality
 28 or the State Department of Agriculture may issue a permit under this section as an individual,
 29 general or watershed permit. A permit may be issued to a class of persons using the procedures for
 30 issuance of an order or for the adoption of a rule. Notwithstanding the definition of “order” or
 31 “rule” provided in ORS 183.310, in issuing a general or watershed permit by order pursuant to this
 32 section, the State Department of Agriculture or Department of Environmental Quality:

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

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

36 (3) The [*State Department of Agriculture or the*] Department of Environmental Quality **and the**
 37 **State Department of Agriculture** may define “confined animal feeding operation” by rule for
 38 purposes of implementing this section.

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

41 **(a) Permits for which initial issuance occurs on or after the effective date of this 2019**
 42 **Act; and**

43 **(b) Permits initially issued before the effective date of this 2019 Act pursuant to an ap-**
 44 **plication originally filed on or after January 1, 2019. The Legislative Assembly expressly in-**
 45 **tends that this paragraph operates retroactively and that any permit described in this**

1 **paragraph that does not conform to sections 2 (2) and 3 of this 2019 Act be brought into**
2 **conformance with those sections or cancelled.**

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

5 **(3) Section 4 of this 2019 Act applies to large confined animal feeding operation and large**
6 **concentrated animal feeding operation sites that an operator vacates before, on or after the**
7 **effective date of this 2019 Act.**

8 **(4) Section 5 of this 2019 Act applies to costs incurred due to reckless, malicious, bad**
9 **faith or illegal conduct that occurs on or after the effective date of this 2019 Act.**

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