

2 **SSB 6161 - H AMD 1065 ADOPTED 3-05-98**

3 By Representative Koster

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 90.64.005 and 1993 c 221 s 1 are each amended to read  
8 as follows:

9 The legislature finds that there is a need to establish a clear and  
10 understandable process that provides for the proper and effective  
11 management of dairy ((waste)) nutrients that affect((s)) the quality of  
12 surface or ground waters in the state of Washington. The legislature  
13 finds that there is a need for a program that will provide a stable and  
14 predictable business climate upon which dairy farms may base future  
15 investment decisions.

16 The legislature finds that federal regulations require a permit  
17 program for dairies ((~~with~~)) with over seven hundred head of mature  
18 cows and, other specified dairy farms that directly discharge into  
19 waters or are otherwise significant contributors of pollution. The  
20 legislature finds that significant work has been ongoing over a period  
21 of time and that the intent of this chapter is to take the consensus  
22 that has been developed and place it into statutory form.

23 It is also the intent of this chapter to establish an inspection  
24 and technical assistance program for dairy farms to address the  
25 discharge of pollution to surface and ground waters of the state that  
26 will lead to water quality compliance by the industry. A further  
27 purpose is to create a balanced program involving technical assistance,  
28 regulation, and enforcement with coordination and oversight of the  
29 program by a committee composed of industry, agency, and other  
30 representatives. Furthermore, it is the objective of this chapter to  
31 maintain the administration of the water quality program as it relates  
32 to dairy operations at the state level.

33 It is also the intent of this chapter to recognize the existing  
34 working relationships between conservation districts, the conservation  
35 commission, and the department of ecology in protecting water quality  
36 of the state. A further purpose of this chapter is to provide

1 statutory recognition of the coordination of the functions of  
2 conservation districts, the conservation commission, and the department  
3 of ecology pertaining to development of dairy waste management plans  
4 for the protection of water quality.

5 **Sec. 2.** RCW 90.64.010 and 1993 c 221 s 2 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Advisory and oversight committee" means a balanced committee  
10 of agency, dairy farm, and interest group representatives convened to  
11 provide oversight and direction to the dairy nutrient management  
12 program.

13 (2) "Bypass" means the intentional diversion of waste streams from  
14 any portion of a treatment facility.

15 (3) "Catastrophic" means a tornado, hurricane, earthquake, flood,  
16 or other extreme condition that causes an overflow from a required  
17 waste retention structure.

18 (4) "Certification" means:

19 (a) The acknowledgment by a local conservation district that a  
20 dairy producer has constructed or otherwise put in place the elements  
21 necessary to implement his or her dairy nutrient management plan; and

22 (b) The acknowledgment by a dairy producer that he or she is  
23 managing dairy nutrients as specified in his or her approved dairy  
24 nutrient management plan.

25 (5) "Chronic" means a series of wet weather events that precludes  
26 the proper operation of a dairy nutrient management system that is  
27 designed for the current herd size.

28 (6) "Conservation commission" or "commission" means the  
29 conservation commission under chapter 89.08 RCW.

30 ~~((2))~~ (7) "Conservation districts" or "district" means a  
31 subdivision of state government organized under chapter 89.08 RCW.

32 ~~((3))~~ (8) "Concentrated dairy animal feeding operation" means a  
33 dairy animal feeding operation subject to regulation under this chapter  
34 which the director designates under RCW ~~((90.64.030))~~ 90.64.020 or  
35 meets the following criteria:

36 (a) Has more than seven hundred mature dairy cows, whether milked  
37 or dry cows, that are confined; or

1 (b) Has more than two hundred head of mature dairy cattle, whether  
2 milked or dry cows, that are confined and either:

3 (i) From which pollutants are discharged into navigable waters  
4 through a manmade ditch, flushing system, or other similar manmade  
5 device; or

6 (ii) From which pollutants are discharged directly into surface or  
7 ground waters of the state that originate outside of and pass over,  
8 across, or through the facility or otherwise come into direct contact  
9 with the animals confined in the operation.

10 ~~((+4))~~ (9) "Dairy animal feeding operation" means a lot or  
11 facility where the following conditions are met:

12 (a) Dairy animals that have been, are, or will be stabled or  
13 confined and fed for a total of forty-five days or more in any twelve-  
14 month period; and

15 (b) Crops, vegetation forage growth, or postharvest residues are  
16 not sustained in the normal growing season over any portion of the lot  
17 or facility. Two or more dairy animal feeding operations under common  
18 ownership are considered, for the purposes of this chapter, to be a  
19 single dairy animal feeding operation if they adjoin each other or if  
20 they use a common area for land application of wastes.

21 ~~((+5))~~ (10) "Dairy farm" means any farm that is licensed to  
22 produce milk under chapter 15.36 RCW.

23 (11) "Dairy nutrient" means any organic waste produced by dairy  
24 cows or a dairy farm operation.

25 (12) "Dairy nutrient management plan" means a plan meeting the  
26 requirements established under section 6 of this act.

27 (13) "Dairy nutrient management technical assistance team" means  
28 one or more professional engineers and local conservation district  
29 employees convened to serve one of four distinct geographic areas in  
30 the state.

31 (14) "Dairy producer" means a person who owns or operates a dairy  
32 farm.

33 (15) "Department" means the department of ecology under chapter  
34 43.21A RCW.

35 ~~((+6))~~ (16) "Director" means the director of the department of  
36 ecology, or his or her designee.

37 (17) "Upset" means an exceptional incident in which there is an  
38 unintentional and temporary noncompliance with technology-based permit  
39 effluent limitations because of factors beyond the reasonable control

1 of the dairy. An upset does not include noncompliance to the extent  
2 caused by operational error, improperly designed treatment facilities,  
3 inadequate treatment facilities, lack of preventive maintenance, or  
4 careless or improper operation.

5 (18) "Violation" means the following acts or omissions:

6 (a) A discharge of pollutants into the waters of the state, except  
7 those discharges that are due to a chronic or catastrophic event, or to  
8 an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as  
9 provided in 40 C.F.R. Sec. 122.41, and that occur when:

10 (i) A dairy producer has a current national pollutant discharge  
11 elimination system permit with a wastewater system designed, operated,  
12 and maintained for the current herd size and that contains all process-  
13 generated wastewater plus average annual precipitation minus  
14 evaporation plus contaminated storm water runoff from a twenty-five  
15 year, twenty-four hour rainfall event for that specific location, and  
16 the dairy producer has complied with all permit conditions, including  
17 dairy nutrient management plan conditions for appropriate land  
18 application practices; or

19 (ii) A dairy producer does not have a national pollutant discharge  
20 elimination system permit, but has complied with all of the elements  
21 of a dairy nutrient management plan that: Prevents the discharge of  
22 pollutants to waters of the state, is commensurate with the dairy  
23 producer's current herd size, and is approved and certified under  
24 section 6 of this act;

25 (b) Failure to register as required under section 3 of this act; or

26 (c) The lack of an approved dairy nutrient management plan by July  
27 1, 2002; or

28 (d) The lack of a certified dairy nutrient management plan for a  
29 dairy farm after December 31, 2003.

30 NEW SECTION. Sec. 3. (1) Every dairy producer licensed under  
31 chapter 15.36 RCW shall register with the department by September 1,  
32 1998, and shall reregister with the department by September 1st of  
33 every even-numbered year. Every dairy producer licensed after  
34 September 1, 1998, shall register with the department within sixty days  
35 of licensing. The purpose of registration is to provide and update  
36 baseline information for the dairy nutrient management program.

37 (2) To facilitate registration, the department shall obtain from  
38 the food safety and animal health division of the department of

1 agriculture a current list of all licensed dairy producers in the state  
2 and mail a registration form to each licensed dairy producer no later  
3 than July 15, 1998.

4 (3) At a minimum, the form shall require the following information  
5 as of the date the form is completed:

6 (a) The name and address of the operator of the dairy farm;

7 (b) The name and address of the dairy farm;

8 (c) The telephone number of the dairy farm;

9 (d) The number of cows in the dairy farm;

10 (e) The number of young stock in the dairy farm;

11 (f) The number of acres owned and rented in the dairy farm;

12 (g) Whether the dairy producer, to the best of his or her  
13 knowledge, has a plan for managing dairy nutrient discharges that is  
14 commensurate with the size of his or her herd, and whether the plan is  
15 being fully implemented; and

16 (h) If the fields where dairy nutrients are being applied belong to  
17 someone other than the dairy producer whose farm operation generated  
18 the nutrients, the name, address, and telephone number of the owners of  
19 the property accepting the dairy nutrients.

20 (4) In the mailing to dairy producers containing the registration  
21 form, the department shall also provide clear and comprehensive  
22 information regarding the requirements of this chapter.

23 (5) The department shall require the registrant to provide only  
24 information that is not already available from other sources accessible  
25 to the department, such as dairy licensing information.

26 NEW SECTION. **Sec. 4.** Before October 1, 1998, the department and  
27 conservation commission shall jointly sponsor and hold an educational  
28 workshop for conservation districts from around the state. The purpose  
29 of the workshop is to inform local conservation districts about the  
30 requirements of this chapter, and for local conservation districts, the  
31 conservation commission, and the department to clearly understand their  
32 respective roles and responsibilities in carrying out these  
33 requirements.

34 NEW SECTION. **Sec. 5.** (1) By October 1, 1998, the department shall  
35 initiate an inspection program of all dairy farms in the state. The  
36 purpose of the inspections is to:

37 (a) Survey for evidence of violations;

1 (b) Identify corrective actions for actual or imminent discharges  
2 that violate or could violate the state's water quality standards;

3 (c) Monitor the development and implementation of dairy nutrient  
4 management plans; and

5 (d) Identify dairy producers who would benefit from technical  
6 assistance programs.

7 (2) Local conservation district employees may, at their discretion,  
8 accompany department inspectors on any scheduled inspection of dairy  
9 farms except random, unannounced inspections.

10 (3) Follow-up inspections shall be conducted by the department to  
11 ensure that corrective and other actions as identified in the course of  
12 initial inspections are being carried out. The department shall also  
13 conduct such additional inspections as are necessary to ensure  
14 compliance with state and federal water quality requirements, provided  
15 that all licensed dairy farms shall be inspected once within two years  
16 of the start of this program. The department, in consultation with the  
17 advisory and oversight committee established in section 8 of this act,  
18 shall develop performance-based criteria to determine the frequency of  
19 inspections.

20 (4) Dairy farms shall be prioritized for inspection based on the  
21 development of criteria that include, but are not limited to, the  
22 following factors:

23 (a) Existence or implementation of a dairy nutrient management  
24 plan;

25 (b) Proximity to impaired waters of the state; and

26 (c) Proximity to all other waters of the state. The criteria  
27 developed to implement this subsection (4) shall be reviewed by the  
28 advisory and oversight committee.

29 NEW SECTION. **Sec. 6.** (1) Except for those producers who already  
30 have a certified dairy nutrient management plan as required under the  
31 terms and conditions of an individual or general national pollutant  
32 discharge elimination system permit, all dairy producers licensed under  
33 chapter 15.36 RCW, regardless of size, shall prepare a dairy nutrient  
34 management plan. If at any time a dairy nutrient management plan fails  
35 to prevent the discharge of pollutants to waters of the state, it shall  
36 be required to be updated.

37 (2) By November 1, 1998, the conservation commission, in  
38 conjunction with the advisory and oversight committee established under

1 section 8 of this act shall develop a document clearly describing the  
2 elements that a dairy nutrient management plan must contain to gain  
3 local conservation district approval.

4 (3) In developing the elements that an approved dairy nutrient  
5 management plan must contain, the commission may authorize the use of  
6 other methods and technologies than those developed by the natural  
7 resources conservation service when such alternatives have been  
8 evaluated by the advisory and oversight committee. Alternative methods  
9 and technologies shall meet the standards and specifications of:

10 (a) The natural resources conservation service as modified by the  
11 geographically based standards developed under section 10 of this act;  
12 or

13 (b) A professional engineer with expertise in the area of dairy  
14 nutrient management.

15 (4) In evaluating alternative technologies and methods, the  
16 principal objectives of the committee's evaluation shall be  
17 determining:

18 (a) Whether there is a substantial likelihood that, once  
19 implemented, the alternative technologies and methods would not violate  
20 water quality requirements;

21 (b) Whether more cost-effective methods can be successfully  
22 implemented in some or all categories of dairy operations; and

23 (c) Whether the technologies and methods approved or provided by  
24 the natural resources conservation service for use by confined animal  
25 feeding operations are necessarily required for other categories of  
26 dairy operations.

27 In addition, the committee shall encourage the conservation  
28 commission and the conservation districts to apply in dairy nutrient  
29 management plans technologies and methods that are appropriate to the  
30 needs of the specific type of operation and the specific farm site and  
31 to avoid imposing requirements that are not necessary for the specific  
32 dairy producer to achieve compliance with water quality requirements.

33 (5) Such plans shall be submitted for approval to the local  
34 conservation district where the dairy farm is located, and shall be  
35 approved by conservation districts no later than by July 1, 2002. The  
36 conservation commission, in conjunction with conservation districts,  
37 shall develop a state-wide schedule of plan development and approval to  
38 ensure adequate resources are available to have all plans approved by  
39 July 1, 2002.

1 (6) If a dairy producer leases land for dairy production from an  
2 owner who has prohibited the development of capital improvements, such  
3 as storage lagoons, on the leased property, the dairy producer shall  
4 indicate in his or her dairy nutrient management plan that such  
5 improvements are prohibited by the landowner and shall describe other  
6 methods, such as land application, that will be employed by the dairy  
7 producer to manage dairy nutrients.

8 (7) If a plan contains the elements identified in subsection (2) of  
9 this section, a conservation district shall approve the plan no later  
10 than ninety days after receiving the plan. If the plan does not  
11 contain the elements identified in subsection (2) of this section, the  
12 local conservation district shall notify the dairy producer in writing  
13 of modifications needed in the plan no later than ninety days after  
14 receiving the plan. The dairy producer shall provide a revised plan  
15 that includes the needed modifications within ninety days of the date  
16 of the local conservation district notification. If the dairy producer  
17 does not agree with, or otherwise takes exception to, the modifications  
18 requested by the local conservation district, the dairy producer may  
19 initiate the appeals process described in section 7 of this act within  
20 thirty days of receiving the letter of notification.

21 (8) An approved plan shall be certified by a conservation district  
22 and a dairy producer when the elements necessary to implement the plan  
23 have been constructed or otherwise put in place, and are being used as  
24 designed and intended. A certification form shall be developed by the  
25 conservation commission for use state-wide and shall provide for a  
26 signature by both a conservation district representative and a dairy  
27 producer. Certification forms shall be signed by December 31, 2003,  
28 and a copy provided to the department for recording in the data base  
29 established in section 9 of this act.

30 (9) The ability of dairy producers to comply with the planning  
31 requirements of this chapter depends, in many cases, on the  
32 availability of federal and state funding to support technical  
33 assistance provided by local conservation districts. Dairy producers  
34 shall not be held responsible for noncompliance with the planning  
35 requirements of this chapter if conservation districts are unable to  
36 perform their duties under this chapter because of insufficient  
37 funding.



1        NEW SECTION.

2        **Sec. 7.**

3        (1) Conservation district decisions  
4        pertaining to denial of approval or denial of certification of a dairy  
5        nutrient management plan; modification or amendment of a plan;  
6        conditions contained in a plan; application of any dairy nutrient  
7        management practices, standards, methods, and technologies to a  
8        particular dairy farm; and the failure to adhere to plan review and  
9        approval timelines identified in section 6 of this act are appealable  
10       under this chapter. Department actions pertaining to water quality  
11       violations are appealable under chapter 90.48 RCW.

12       In addition, a dairy producer who is constrained from complying  
13       with the planning requirements of this chapter because of financial  
14       hardship or local permitting delays may request a hearing before the  
15       conservation commission and may request an extension of up to one year  
16       beyond the approval and certification dates prescribed in this chapter  
17       for plan approval and certification.

18       (2) Within thirty days of receiving a local conservation district  
19       notification regarding any of the decisions identified in subsection  
20       (1) of this section, a dairy producer who disagrees with any of these  
21       decisions may request an informal hearing before the conservation  
22       commission or may appeal directly to the pollution control hearings  
23       board. The commission shall issue a written decision no later than  
24       thirty days after the informal hearing.

25       (3) If the conservation commission upholds the decision of the  
26       local conservation district at the informal hearing, the decision of  
27       the local conservation district may be appealed to the pollution  
28       control hearings board according to the procedure in chapter 43.21B RCW  
29       within thirty days of receipt of the commission's decision.

30       (4) If the conservation commission reverses the decision of the  
31       conservation district, the conservation district may appeal this  
32       reversal to the pollution control hearings board according to the  
33       procedure in chapter 43.21B RCW within thirty days of receipt of the  
34       commission's decision.

35       (5) When an appeals process is initiated under this section, the  
36       length of time extending from the start of the appeals process to its  
37       conclusion shall be added onto the timelines provided in this chapter  
38       for plan development, approval, and certification only if an appeal is  
39       heard by the pollution control hearings board.

1        NEW SECTION.

2        **Sec. 8.**

3        (1) A dairy nutrient management program  
4        advisory and oversight committee is established. The committee shall  
5        be cochaired by the executive director of the conservation commission  
6        and a dairy industry representative. The purpose of the committee is  
7        to provide direction to and oversight of the dairy nutrient management  
8        inspection program, as well as to encourage the use of appropriate  
9        alternative technologies and methods for managing dairy nutrients.

10        (2) The committee shall include no less than eleven, and no more  
11        than thirteen members, including one representative from the  
12        department, one representative of the dairy industry from each of four  
13        geographic areas as referenced in section 10 of this act, one  
14        representative from the conservation commission, two representatives  
15        from local conservation districts, one representative from a local  
16        health department, one representative of an environmental organization,  
17        and one representative from the shellfish industry. In addition, the  
18        natural resources conservation service and the federal environmental  
19        protection agency shall each be invited to appoint a representative to  
20        the committee.

21        (3) The conservation commission shall contact agencies and  
22        organizations representing the interests identified in subsection (2)  
23        of this section and request that they notify their employees and  
24        membership of the opportunity to serve on the advisory and oversight  
25        committee. The commission shall also extend the invitations to the  
26        natural resources conservation service and the federal environmental  
27        protection agency. An association representing the dairy industry  
28        shall solicit interest broadly from both within and outside of the  
29        association. Persons interested in serving on the advisory and  
30        oversight committee shall submit their names to the conservation  
31        commission no later than May 1, 1998. By June 1, 1998, the commission  
32        shall appoint the required number of members from the nominations  
33        received.

34        (4) Advisory and oversight committee members shall be compensated  
35        under RCW 43.03.230 and shall be reimbursed for expenses as provided  
36        under RCW 43.03.050 and 43.03.060.

37        (5) The committee shall perform the following functions:

38        (a) Meet at least four times per calendar year;

39        (b) Maintain meeting minutes and account for the resolution of  
40        issues jointly identified by the committee chairs as needing to be  
41        addressed;

1 (c) Review the development of the data base, the quarterly data  
2 base summary, and the annual report provided by the department under  
3 section 9 of this act and RCW 90.64.050;

4 (d) Act as a forum to hear suggestions from any interested parties,  
5 including dairy farmers, regarding implementation of the dairy nutrient  
6 management program;

7 (e) Review and recommend standardized dairy farm inspection  
8 procedures, prioritization criteria, and frequencies and a reporting  
9 format to be used by the department;

10 (f) Assist the department and the conservation commission in  
11 developing reports to the legislature as required in section 18 of this  
12 act; and

13 (g) Review and recommend dairy nutrient management technologies and  
14 methods other than those approved or provided by the natural resources  
15 conservation service for use as components of nutrient management plans  
16 under this chapter.

17 NEW SECTION. **Sec. 9.** (1) By October 1, 1998, the department, in  
18 consultation with the advisory and oversight committee, shall develop  
19 and maintain a data base to account for the implementation of this  
20 chapter.

21 (2) The data base shall track registrations; inspection dates and  
22 results, including findings of violations; regulatory and enforcement  
23 actions; and the status of dairy nutrient management plans. In  
24 addition, the number of dairy farm inspections by inspector shall be  
25 tallied by month. A summary of data base information shall be provided  
26 quarterly to the advisory and oversight committee.

27 (3) Any information entered into the data base by the department  
28 about any aspect of a particular dairy operation may be reviewed by the  
29 affected dairy producer upon request. The department shall correct any  
30 information in the data base upon a showing that the information is  
31 faulty or inaccurate. Complaints that have been filed with the  
32 department and determined to be unfounded, invalid, or without merit  
33 shall not be recorded in the data base. Appeals of decisions related  
34 to dairy nutrient management plans to the pollution control hearings  
35 board or to any court shall be recorded, as well as the decisions of  
36 those bodies.

1        NEW SECTION.    **Sec. 10.**    (1) The conservation commission shall  
2 establish four dairy nutrient management technical assistance teams by  
3 June 1, 1998. The teams shall be geographically located throughout the  
4 state. Each team shall consist of one or more professional engineers,  
5 local conservation district employees, and dairy nutrient management  
6 experts from Washington State University. The purpose of the teams is  
7 to:

8        (a) Actively develop and promote new cost-effective approaches for  
9 managing dairy nutrients; and

10       (b) Assist dairy farms in developing dairy nutrient management  
11 plans.

12       (2) By January 1, 1999, each team shall develop one or more initial  
13 sets of standards and specifications to assist dairy producers in  
14 developing and implementing dairy nutrient management plans. Standards  
15 and specifications developed by a technical assistance team shall be  
16 appropriate to the soils and other conditions within that geographic  
17 area and shall be reviewed by the advisory and oversight committee.

18       **Sec. 11.** RCW 90.64.030 and 1993 c 221 s 4 are each amended to read  
19 as follows:

20       (~~Upon receiving a complaint or upon its own determination that a~~  
21 ~~dairy animal feeding operation is a likely source of water quality~~  
22 ~~degradation,~~) (1) Under the inspection program established in section  
23 5 of this act, the department may investigate a dairy (~~animal feeding~~  
24 ~~operation~~) farm to determine whether the operation is discharging  
25 (~~directly~~) pollutants or (~~recently~~) has (~~discharged directly~~) a  
26 record of discharging pollutants into surface or ground waters of the  
27 state. Upon concluding an investigation, the department shall make a  
28 written report of its findings, including the results of any water  
29 quality measurements, photographs, or other pertinent information, and  
30 provide a copy of the report to the dairy producer within twenty days  
31 of the investigation.

32       (2) The department shall investigate a written complaint filed  
33 with the department within (~~ten~~) three working days and shall make a  
34 written report of its findings including the results of any water  
35 quality measurements, photographs, or other pertinent information. A  
36 copy of the findings shall be provided (~~upon request~~) to the dairy  
37 (~~animal feeding operation~~) producer subject to the complaint within

1 twenty days. Only findings of violations shall be entered into the  
2 data base identified in section 9 of this act.

3 ~~((Those dairy animal feeding operations that are))~~ (3) A dairy farm  
4 that is determined to be a significant contributor of pollution based  
5 on actual water quality tests, photographs, or other pertinent  
6 information ((if immediate corrective actions are not possible, shall  
7 be designated as a concentrated dairy animal feeding operation and  
8 shall be)) is subject to the provisions of this chapter and to the  
9 enforcement provisions of chapters 43.05 and 90.48 RCW, including civil  
10 penalties levied under RCW 90.48.144.

11 (4) For a violation of water quality laws that is a first offense  
12 for a dairy producer, the penalty may be waived to allow the producer  
13 to come into compliance with water quality laws. The department shall  
14 record all legitimate violations and subsequent enforcement actions.

15 (5) A discharge, including a storm water discharge, to surface  
16 waters of the state shall not be considered a violation of this  
17 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall  
18 therefore not be enforceable by the department of ecology or a third  
19 party, if at the time of the discharge, a violation is not occurring  
20 under RCW 90.64.010(18). In addition, a dairy producer shall not be  
21 held liable for violations of this chapter, chapter 90.48 RCW, chapter  
22 173-201A WAC, or the federal clean water act due to the discharge of  
23 dairy nutrients to waters of the state resulting from spreading these  
24 materials on lands other than where the nutrients were generated, when  
25 the nutrients are spread by persons other than the dairy producer or  
26 the dairy producer's agent.

27 (6) As provided under RCW 7.48.305, agricultural activities  
28 associated with the management of dairy nutrients are presumed to be  
29 reasonable and shall not be found to constitute a nuisance unless the  
30 activity has a substantial adverse effect on public health and safety.

31 (7) This section specifically acknowledges that if a holder of a  
32 general or individual national pollutant discharge elimination system  
33 permit complies with the permit and the dairy nutrient management plan  
34 conditions for appropriate land application practices, the permit  
35 provides compliance with the federal clean water act and acts as a  
36 shield against citizen or agency enforcement for any additions of  
37 pollutants to waters of the state or of the United States as authorized  
38 by the permit.

1       (8) A dairy producer who fails to have an approved dairy nutrient  
2 management plan by July 1, 2002, or a certified dairy nutrient  
3 management plan by December 31, 2003, and for which no appeals have  
4 been filed with the pollution control hearings board, is in violation  
5 of this chapter. Each month beyond these deadlines that a dairy  
6 producer is out of compliance with the requirement for either plan  
7 approval or plan certification shall be considered separate violations  
8 of chapter 90.64 RCW that may be subject to penalties. Such penalties  
9 may not exceed one hundred dollars per month for each violation up to  
10 a combined total of five thousand dollars. Failure to register as  
11 required in section 3 of this act shall subject a dairy producer to a  
12 maximum penalty of one hundred dollars. Penalties shall be levied by  
13 the department.

14       **Sec. 12.** RCW 90.64.050 and 1993 c 221 s 6 are each amended to read  
15 as follows:

16       (1) The department has the following duties:

17       (a) Identify existing or potential water quality problems resulting  
18 from dairy farms through implementation of the inspection program in  
19 section 5 of this act;

20       (b) Inspect a dairy farm upon the request of a dairy producer;

21       (c) Receive, process, and verify complaints concerning discharge of  
22 pollutants from all dairy farms ~~((regardless of size))~~;

23       ~~((e))~~ (d) Determine if a dairy-related water quality problem  
24 requires immediate corrective action under the Washington state water  
25 pollution control laws, chapter 90.48 RCW, or the Washington state  
26 water quality standards adopted under chapter 90.48 RCW~~((, or other~~  
27 ~~authorities))~~. The department shall maintain the lead enforcement  
28 responsibility;

29       ~~((d))~~ (e) Administer and enforce national pollutant~~((s))~~  
30 discharge elimination system permits for operators of concentrated  
31 dairy animal feeding operations, where required by federal  
32 regulations~~((,))~~ and ~~((administer))~~ state laws or upon request of a  
33 dairy producer;

34       ~~((e) Appoint representatives, including dairy industry~~  
35 ~~representatives, to participate in the compliance review committee that~~  
36 ~~will annually review and update policy and disseminate information as~~  
37 ~~needed;))~~

38       (f) Participate on the advisory and oversight committee;

1       (g) Encourage communication and cooperation between local  
2 department personnel and the appropriate conservation district  
3 personnel;

4       (~~(g) Encourage~~) (h) Require the use of (~~federal soil~~  
5 ~~conservation service standards and specifications in designing best~~  
6 ~~management practices for~~) dairy (~~waste~~) nutrient management plans  
7 (~~to protect water quality~~) as required under this chapter for  
8 entities required to plan under this chapter; and

9       (~~(h)~~) (i) Provide to the commission and the advisory and  
10 oversight committee an annual report of dairy (~~waste pollution~~) farm  
11 inspection and enforcement activities.

12       (2) The department may not delegate its responsibilities in  
13 enforcement.

14       **Sec. 13.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to read  
15 as follows:

16       (~~(1) If the department determines that the operator of a dairy~~  
17 ~~animal feeding operation has the means to correct a water quality~~  
18 ~~problem in a manner that will prevent future contamination and does so~~  
19 ~~promptly and such correction is maintained, the department shall cease~~  
20 ~~pursuit of the complaint.~~

21       (2)) If the department determines that an unresolved water quality  
22 problem from a dairy (~~animal feeding operation~~) farm requires  
23 immediate corrective action, the department shall notify the  
24 (~~operator~~) producer and the district in which the problem is located.  
25 When corrective actions are required to address such unresolved water  
26 quality problems, the department shall provide copies of all final  
27 dairy farm inspection reports and documentation of all formal  
28 regulatory and enforcement actions taken by the department against that  
29 particular dairy farm to the local conservation district and to the  
30 appropriate dairy farm within twenty days.

31       (~~(3) If immediate action is not necessary by the department, the~~  
32 ~~handling of complaints will differ depending on the amount of~~  
33 ~~information available and the compliance option selected by the~~  
34 ~~conservation district involved.~~

35       (a) ~~When the name and address of the party against whom the~~  
36 ~~complaint was registered are known:~~

37       (i) ~~Districts operating at levels 1 and 2 will receive a copy of~~  
38 ~~complaint information, and compliance letter if one was sent out.~~

1       ~~(ii) Districts operating at levels 3 and 4 will receive a copy of~~  
2 ~~complaint information and the letter sent by the department to the~~  
3 ~~operator informing the operator of the complaint and providing the~~  
4 ~~operator with the opportunity to work with the conservation district on~~  
5 ~~a voluntary basis.~~

6       ~~(b) The department and the conservation district will work together~~  
7 ~~at the local level to resolve complaints when the name and address of~~  
8 ~~the party against whom the complaint was registered are unknown.))~~

9       **Sec. 14.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read  
10 as follows:

11       (1) The conservation district has the following duties:

12       (a) ~~((Adopt and annually update the water quality section in the~~  
13 ~~conservation district dairy waste management plan))~~ Provide technical  
14 assistance to the department in identifying and correcting existing  
15 water quality problems resulting from dairy farms through  
16 implementation of the inspection program in section 5 of this act;

17       (b) ~~((As part of the district annual report, include a water~~  
18 ~~quality progress report on dairy waste management activities conducted~~  
19 ~~that are related to this chapter))~~ Immediately refer complaints  
20 received from the public regarding discharge of pollutants to the  
21 department;

22       (c) Encourage communication and cooperation between the  
23 conservation district personnel and local department personnel;

24       (d) ~~((Adopt and carry out a compliance option from level 1, level~~  
25 ~~2, level 3, or level 4))~~ Provide technical assistance to dairy  
26 producers in developing and implementing a dairy nutrient management  
27 plan; and

28       (e) Review, approve, and certify dairy nutrient management plans  
29 that meet the minimum standards developed under this chapter.

30       (2) The district's capability to carry out its responsibilities  
31 ~~((in the four levels of compliance))~~ under this chapter is contingent  
32 upon the availability of funding and resources to implement a dairy  
33 ~~((waste))~~ nutrient management program.

34       **Sec. 15.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to read  
35 as follows:

36       (1) The conservation commission has the following duties:



1 (a) ~~((Forward to the department the dairy waste management plan~~  
2 ~~progress reports;~~

3 (b)) Provide assistance as may be appropriate to the conservation  
4 districts in the discharge of their responsibilities as management  
5 agencies in dairy ~~((waste))~~ nutrient management program implementation;

6 ~~((e))~~ (b) Provide coordination for conservation district programs  
7 at the state level through special arrangements with appropriate  
8 federal and state agencies, including oversight of the review,  
9 approval, and certification of dairy nutrient management plans;

10 ~~((d))~~ (c) Inform conservation districts of activities and  
11 experiences of other conservation districts relative to agricultural  
12 water quality protection, and facilitate an interchange of advice,  
13 experience, and cooperation between the districts;

14 (d) Provide an informal hearing for disputes between dairy  
15 producers and local conservation districts pertaining to: (i) Denial  
16 of approval or denial of certification of dairy nutrient management  
17 plans; (ii) modification or amendment of plans; (iii) conditions  
18 contained in plans; (iv) application of any dairy nutrient management  
19 practices, standards, methods, and technologies to a particular dairy  
20 farm; and (v) the failure to adhere to the plan review and approval  
21 timelines identified in section 6 of this act. An informal hearing may  
22 also provide an opportunity for dairy producers who are constrained  
23 from timely compliance with the planning requirements of this chapter  
24 because of financial hardship or local permitting delays to petition  
25 for additional time to comply.

26 (e) Encourage communication between the conservation district  
27 personnel and local department personnel;

28 (f) Accept nominations and appoint ~~((conservation district~~  
29 ~~representatives))~~ members to serve on the ~~((compliance review))~~  
30 advisory and oversight committee with advice of the Washington  
31 association of conservation districts and the department;

32 (g) ~~((Appoint a commission representative to participate on the~~  
33 ~~compliance review committee that will annually review and update policy~~  
34 ~~and disseminate information as needed))~~ Provide a cochair to the  
35 advisory and oversight committee;

36 (h) Report to the legislature by December 1st of each year until  
37 2003 on the status of dairy nutrient management planning and on the  
38 technical assistance provided to dairy producers in carrying out the  
39 requirements of this chapter; and

1        (i) Work with the department to provide communication outreach to  
2 representatives of agricultural and environmental organizations to  
3 receive feedback on implementation of this chapter.

4        (2) The commission's capability to carry out its responsibilities  
5 under this chapter is contingent upon the availability of funding and  
6 resources to implement a dairy ((waste)) nutrient management program.

7        NEW SECTION.    **Sec. 16.**    The dairy waste management account is  
8 created in the custody of the state treasurer.    All receipts from  
9 monetary penalties levied pursuant to violations of this chapter must  
10 be deposited into the account.    Expenditures from the account may be  
11 used only for the commission to provide grants to local conservation  
12 districts for the sole purpose of assisting dairy producers to develop  
13 and fully implement dairy nutrient management plans.    Only the chairman  
14 of the commission or the chairman's designee may authorize expenditures  
15 from the account.    The account is subject to allotment procedures under  
16 chapter 43.88 RCW, but an appropriation is not required for  
17 expenditures.

18        **Sec. 17.**    RCW 90.48.465 and 1997 c 398 s 2 are each amended to read  
19 as follows:

20        (1) The department shall establish annual fees to collect expenses  
21 for issuing and administering each class of permits under RCW  
22 90.48.160, 90.48.162, and 90.48.260.    An initial fee schedule shall be  
23 established by rule within one year of March 1, 1989, and thereafter  
24 the fee schedule shall be adjusted no more often than once every two  
25 years.    This fee schedule shall apply to all permits, regardless of  
26 date of issuance, and fees shall be assessed prospectively.    All fees  
27 charged shall be based on factors relating to the complexity of permit  
28 issuance and compliance and may be based on pollutant loading and  
29 toxicity and be designed to encourage recycling and the reduction of  
30 the quantity of pollutants.    Fees shall be established in amounts to  
31 fully recover and not to exceed expenses incurred by the department in  
32 processing permit applications and modifications, monitoring and  
33 evaluating compliance with permits, conducting inspections, securing  
34 laboratory analysis of samples taken during inspections, reviewing  
35 plans and documents directly related to operations of permittees,  
36 overseeing performance of delegated pretreatment programs, and

1 supporting the overhead expenses that are directly related to these  
2 activities.

3 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.  
4 Sec. 1362, for all domestic wastewater facility permits issued under  
5 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of  
6 fifteen cents per month per residence or residential equivalent  
7 contributing to the municipality's wastewater system. The department  
8 shall adopt by rule a schedule of credits for any municipality engaging  
9 in a comprehensive monitoring program beyond the requirements imposed  
10 by the department, with the credits available for five years from March  
11 1, 1989, and with the total amount of all credits not to exceed fifty  
12 thousand dollars in the five-year period.

13 (3) The department shall ensure that indirect dischargers do not  
14 pay twice for the administrative expense of a permit. Accordingly,  
15 administrative expenses for permits issued by a municipality under RCW  
16 90.48.165 are not recoverable by the department.

17 (4) In establishing fees, the department shall consider the  
18 economic impact of fees on small dischargers and the economic impact of  
19 fees on public entities required to obtain permits for storm water  
20 runoff and shall provide appropriate adjustments.

21 (5) The fee for an individual permit issued for a dairy farm as  
22 defined under chapter 90.64 RCW shall be fifty cents per animal unit up  
23 to one thousand one hundred sixty-seven dollars for fiscal year 1998  
24 and one thousand two hundred fourteen dollars for fiscal year 1999.  
25 The fee for a general permit issued for a dairy farm as defined under  
26 chapter 90.64 RCW shall be fifty cents per animal unit up to eight  
27 hundred seventeen dollars for fiscal year 1998 and eight hundred fifty  
28 dollars for fiscal year 1999.

29 (6) All fees collected under this section shall be deposited in the  
30 water quality permit account hereby created in the state treasury.  
31 Moneys in the account may be appropriated only for purposes of  
32 administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

33 ((+6)) (7) Beginning with the biennium ending June 30, 1997, the  
34 department shall present a biennial progress report on the use of  
35 moneys from the account to the legislature. The report will be due  
36 December 31st of odd-numbered years. The report shall consist of  
37 information on fees collected, actual expenses incurred, and  
38 anticipated expenses for the current and following fiscal years.

1        NEW SECTION.    **Sec. 18.**    The department, in conjunction with the  
2 conservation commission and advisory and oversight committee, shall  
3 report to the legislature by December 1st of each year until 2003, on  
4 progress made in implementing chapter . . . , Laws of 1998 (this act).  
5 At a minimum, the reports shall include data on inspections, the status  
6 of dairy nutrient planning, compliance with water quality standards,  
7 and enforcement actions. The report shall also provide recommendations  
8 on how implementation of chapter . . . , Laws of 1998 (this act) could  
9 be facilitated for dairy producers and generally improved.

10        The conservation commission shall include in the report to the  
11 legislature filed December 1, 1999, an evaluation of whether the fiscal  
12 resources available to the commission, to conservation districts, and  
13 to Washington State University dairy nutrient management experts are  
14 adequate to fund the technical assistance teams established under  
15 section 10 of this act and to develop and certify plans as required by  
16 the schedule established in section 6 of this act. If the funding is  
17 insufficient, the report shall include an estimate of the amount of  
18 funding necessary to accomplish the schedule contained in section 6 of  
19 this act.

20        **Sec. 19.**    RCW 43.21B.110 and 1993 c 387 s 22 are each amended to  
21 read as follows:

22        (1) The hearings board shall only have jurisdiction to hear and  
23 decide appeals from the following decisions of the department, the  
24 director, local conservation districts, the administrator of the office  
25 of marine safety, and the air pollution control boards or authorities  
26 as established pursuant to chapter 70.94 RCW, or local health  
27 departments:

28        (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
29 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
30 90.56.330.

31        (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
32 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
33 90.14.130, ~~((and))~~ 90.48.120, and 90.56.330.

34        (c) The issuance, modification, or termination of any permit,  
35 certificate, or license by the department or any air authority in the  
36 exercise of its jurisdiction, including the issuance or termination of  
37 a waste disposal permit, the denial of an application for a waste

1 disposal permit, or the modification of the conditions or the terms of  
2 a waste disposal permit.

3 (d) Decisions of local health departments regarding the grant or  
4 denial of solid waste permits pursuant to chapter 70.95 RCW.

5 (e) Decisions of local health departments regarding the issuance  
6 and enforcement of permits to use or dispose of biosolids under RCW  
7 70.95J.080.

8 (f) Decisions of local conservation districts related to the denial  
9 of approval or denial of certification of a dairy nutrient management  
10 plan; conditions contained in a plan; application of any dairy nutrient  
11 management practices, standards, methods, and technologies to a  
12 particular dairy farm; and failure to adhere to the plan review and  
13 approval timelines in section 6 of this act.

14 (g) Any other decision by the department, the administrator of the  
15 office of marine safety, or an air authority which pursuant to law must  
16 be decided as an adjudicative proceeding under chapter 34.05 RCW.

17 (2) The following hearings shall not be conducted by the hearings  
18 board:

19 (a) Hearings required by law to be conducted by the shorelines  
20 hearings board pursuant to chapter 90.58 RCW.

21 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
22 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

23 (c) Proceedings by the department relating to general adjudications  
24 of water rights pursuant to chapter 90.03 or 90.44 RCW.

25 (d) Hearings conducted by the department to adopt, modify, or  
26 repeal rules.

27 (3) Review of rules and regulations adopted by the hearings board  
28 shall be subject to review in accordance with the provisions of the  
29 Administrative Procedure Act, chapter 34.05 RCW.

30 NEW SECTION. Sec. 20. RCW 90.64.090 and 1993 c 221 s 10 are each  
31 repealed.

32 NEW SECTION. Sec. 21. Sections 3, 5 through 10, 16, and 18 of  
33 this act are each added to chapter 90.64 RCW.

34 NEW SECTION. Sec. 22. This act is necessary for the immediate  
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 immediately.

3 NEW SECTION. **Sec. 23.** If specific funding for the purposes of  
4 this act, referencing this act by bill or chapter number, is not  
5 provided by June 30, 1998, in the omnibus appropriations act, this act  
6 is null and void."

7 **SSB 6161** - H AMD  
8 By Representative Koster

9

10 On page 1, line 1 of the title, after "management;" strike the  
11 remainder of the title and insert "amending RCW 90.64.005, 90.64.010,  
12 90.64.030, 90.64.050, 90.64.060, 90.64.070, 90.64.080, 90.48.465, and  
13 43.21B.110; adding new sections to chapter 90.64 RCW; creating new  
14 sections; repealing RCW 90.64.090; prescribing penalties; and declaring  
15 an emergency."

--- END ---