
SENATE BILL 5723

State of Washington

62nd Legislature

2011 Regular Session

By Senators Schoesler, Ericksen, Haugen, Hatfield, Delvin, and Shin

Read first time 02/09/11. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to establishing a process for addressing water
2 quality issues associated with livestock operations; amending RCW
3 90.48.260; adding a new chapter to Title 90 RCW; and providing a
4 contingent effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds there is a need to
7 establish a clear and understandable process in statute that provides
8 for the proper and effective management of livestock nutrients that
9 affect the quality of surface waters or groundwaters in the state of
10 Washington. The legislature finds that there is a need for a program
11 that will provide a stable and predictable business climate upon which
12 livestock operations may base future investment decisions.

13 It is the intent of this chapter to place the responsibility for
14 conducting initial investigations of livestock operations relating to
15 impacts on water quality with the department of agriculture. Further,
16 it is the legislature's intent that if impacts are found to exist, a
17 structure be established to provide an orderly process to address these
18 impacts through the use of technical assistance and programs available
19 from conservation districts and associated federal agencies.

1 It is also the intent to transfer the powers and duties for
2 conducting initial investigations of water quality issues arising from
3 livestock operations from the department of ecology to the department
4 of agriculture through a memorandum of understanding and that authority
5 currently held by the department of ecology be retained should a
6 regulatory backstop be needed.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Confined animal feeding operations" means those operations
10 that are subject to permit requirements of the national pollutant
11 discharge elimination system.

12 (2) "Conservation commission" or "commission" means the
13 conservation commission under chapter 89.08 RCW.

14 (3) "Conservation districts" or "district" means a subdivision of
15 state government organized under chapter 89.08 RCW.

16 (4) "Dairy operations" means those livestock operations subject to
17 requirements under chapter 90.64 RCW.

18 (5) "Department" means the department of agriculture.

19 (6) "Director" means the director of the department of agriculture.

20 (7) "Livestock" means horses, mules, donkeys, cattle, bison, sheep,
21 goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl,
22 game birds, and other species so designated by statute.

23 (8) "Nutrients" means manure or other runoff generated as a result
24 of a livestock operation that enters waters of the state.

25 NEW SECTION. **Sec. 3.** (1) The department must conduct initial
26 investigations regarding possible water quality violations by livestock
27 operations.

28 (2) Upon receiving a complaint, upon its own determination that a
29 livestock operation is a likely source of water quality degradation, or
30 in watersheds that have been determined to be a priority basin due to
31 impairment of water quality, the department may investigate a livestock
32 operation to determine whether the operation is discharging livestock
33 nutrients or recently has discharged livestock nutrients into surface
34 waters or groundwaters of the state.

35 (3)(a) The department shall investigate a written complaint filed

1 with the department within ten days and shall make a written report of
2 its findings including the results of any water quality measurements,
3 photographs, or other pertinent information.

4 (b) A copy of the findings shall be provided upon request to the
5 livestock operation.

6 (4) Those livestock operations that are determined to be a
7 significant contributor of pollution based on actual water quality
8 tests, photographs, or other pertinent information, if immediate
9 corrective actions are not possible, are subject to this chapter.

10 NEW SECTION. **Sec. 4.** Enforcement actions and administrative
11 orders issued by the department may be appealed to the pollution
12 control hearings board in accordance with chapter 43.21B RCW.

13 NEW SECTION. **Sec. 5.** (1) The department has the following duties:

14 (a) To identify existing or potential water quality problems
15 resulting from livestock operations;

16 (b) To receive, process, and verify complaints concerning discharge
17 of pollutants from all livestock operations regardless of size;

18 (c) To determine if a livestock-related water quality problem
19 requires immediate corrective action under water pollution control
20 laws, chapter 90.48 RCW, water quality standards adopted under chapter
21 90.48 RCW, or other authorities. The department shall maintain the
22 lead enforcement responsibility;

23 (d) To encourage communication between local department personnel
24 and the appropriate conservation district personnel;

25 (e) To encourage the use of federal natural resource conservation
26 service standards and specifications in designing best management
27 practices for livestock nutrient management plans to protect water
28 quality; and

29 (f) To provide to the commission an annual report on enforcement
30 actions relating to water pollution from livestock nutrients.

31 (2) The department may not delegate its responsibilities in
32 enforcement to the commission or to conservation districts.

33 NEW SECTION. **Sec. 6.** (1) If the department determines that the
34 operator of a livestock operation has the means to correct a water

1 quality problem in a manner that will prevent future contamination,
2 does so promptly, and such correction is maintained, the department
3 shall cease pursuing the complaint.

4 (2) If the department determines that an unresolved water quality
5 problem from a livestock operation requires immediate corrective
6 action, the department shall notify the operator and the district in
7 which the problem is located.

8 (3) If immediate action is not necessary by the department, the
9 handling of complaints will differ depending on the amount of
10 information available and the compliance option selected by the
11 conservation district involved.

12 (a) When the name and address of the party against whom the
13 complaint was registered are known:

14 (i) Districts operating at levels 1 and 2 will receive a copy of
15 complaint information, and the compliance letter if one was sent out;

16 (ii) Districts operating at levels 3 and 4 will receive a copy of
17 complaint information and the letter sent by the department to the
18 operator informing the operator of the complaint and providing the
19 operator with the opportunity to work with the conservation district on
20 a voluntary basis.

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

24 NEW SECTION. **Sec. 7.** (1) A conservation district has the
25 following duties:

26 (a) To adopt and annually update the water quality section in the
27 conservation district livestock nutrient management plan;

28 (b) As part of the district annual report, to include a water
29 quality progress report on livestock nutrient management activities
30 conducted that are related to this chapter;

31 (c) To encourage communication between the conservation district
32 personnel and local department personnel; and

33 (d) To adopt and carry out a compliance option from level 1, level
34 2, level 3, or level 4.

35 (2) The district's capability to carry out its responsibilities in
36 the four levels of compliance is contingent upon the availability of

1 funding and resources to implement a livestock nutrient management
2 program.

3 NEW SECTION. **Sec. 8.** (1) The conservation commission has the
4 following duties:

5 (a) To forward to the department the livestock nutrient management
6 plan progress reports;

7 (b) To provide assistance as may be appropriate to the conservation
8 districts in the discharge of their responsibilities as management
9 agencies in livestock nutrient management program implementation;

10 (c) To provide coordination for conservation district programs at
11 the state level through special arrangements with appropriate federal
12 and state agencies;

13 (d) To inform conservation districts of activities and experiences
14 of other conservation districts relative to agricultural water quality
15 protection, and facilitate an interchange of advice, experience, and
16 cooperation between the districts;

17 (e) To encourage communication between the conservation district
18 personnel and local department personnel;

19 (f) To appoint conservation district representatives to serve on
20 the compliance review committee with advice of the Washington
21 association of conservation districts;

22 (g) To appoint a commission representative to participate on the
23 compliance review committee that will annually review and update policy
24 and disseminate information as needed; and

25 (h) To work with the department to provide communication outreach
26 to representatives of agricultural and environmental organizations to
27 receive feedback on implementation of this chapter.

28 (2) The commission's capability to carry out its responsibilities
29 under this chapter is contingent upon the availability of funding and
30 resources to implement a livestock nutrient management program.

31 NEW SECTION. **Sec. 9.** Conservation districts must adopt one of the
32 following compliance levels:

33 (1)(a) Level 1 compliance - Information/education/technical
34 assistance. The conservation district serves as a local source of
35 information on livestock nutrient management plan implementation
36 programs. The conservation district promotes plans and efforts to

1 improve water quality and explains the benefits of participating in
2 available implementation plans through news releases and other media
3 for the general public; presentations to groups and civic
4 organizations; workshops; training sessions; or other appropriate
5 means. The conservation district provides technical assistance upon
6 request.

7 (b) Response to complaint. The department responds to complaints
8 that involve water quality problems caused by livestock operations.
9 The department must work with the operator to bring the operation into
10 compliance with federal statutes and regulations and applicable state
11 laws. If immediate action is deemed necessary, the department must
12 pursue the appropriate actions that may include enforcement against the
13 responsible parties. The department must advise the operator of the
14 information and technical assistance available through the conservation
15 district and notify the conservation district of the operator's need
16 for information or technical assistance.

17 (2)(a) Level 2 compliance - Information, education, problem
18 assessment, and handling complaints. The conservation district carries
19 out programs described for compliance level 1. In addition, the
20 conservation district must inventory livestock nutrient-related water
21 quality problems defined in the water quality section of its annual
22 plan, prioritize problems, and work to apply voluntary solutions to the
23 highest priority problems within available resources using information,
24 education, technical assistance, and incentives.

25 (b)(i) Response to complaint. The conservation district must make
26 an appointment for an on-site contact with the alleged violator within
27 ten working days and determine if the operator desires to work with the
28 conservation district. If the operator desires conservation district
29 assistance, within six months the conservation district must develop a
30 plan with the individual operator that includes a schedule for
31 application of best management practices. The operator has eighteen
32 months, or by agreement an approved schedule with an alternative time
33 period, to implement the plan. If hardships occur, the operator may
34 request an extension of the implementation schedule subject to
35 concurrence of the department.

36 (ii) In responding to complaints, the conservation district must
37 report progress, or the need for further department technical
38 expertise, to the individual involved and the department. A copy of

1 the plan must be made available to the department. If the district
2 offers assistance and the individual involved refuses to cooperate or
3 ceases to work with the conservation district, the district must notify
4 the department.

5 (iii) The conservation district must refer all alleged water
6 quality violations or individuals who wish to make a complaint to the
7 department.

8 (iv) The department must investigate and seek resolution of all
9 complaints that appear to need immediate action and refer all other
10 complaints concerning livestock operations to the appropriate
11 conservation district. The department must keep a record of those
12 complaints. When a referral is made by a conservation district due to
13 a continuing unresolved water quality problem, the department must take
14 appropriate action and advise the conservation district of the action
15 taken.

16 (3)(a) Level 3 compliance - Information, education, problem
17 assessment, handling complaints, and assisting in compliance. The
18 conservation district carries out programs described for compliance
19 levels 1 and 2. In addition, the conservation district must actively
20 follow up those problems and complaints deemed highest priority by the
21 conservation district within sixty days after the initial contact.

22 (b) Response to complaint. The complaint referral follow-up
23 includes:

24 (i) Meeting with the owner/operator;

25 (ii) Making an on-site assessment of the nature and extent of the
26 problem, if so desired by the owner or operator;

27 (iii) Notifying the department within twenty-five working days that
28 the owner or operator has or has not requested assistance from the
29 conservation district;

30 (iv) Assisting the owner or operator in the development of a
31 livestock nutrient management plan within six months. Implementation
32 must be completed within eighteen months, or by agreement and approved
33 schedule, with an alternative time period to implement the plan. If
34 hardships occur, the owner or operator may request an extension of the
35 planning or implementation schedule with concurrence of the department;

36 (v) Providing such technical assistance as is necessary and
37 available during plan implementation;

38 (vi) Monitoring plan implementation;

1 (vii) Notifying the department within twenty-five working days in
2 the event that the owner or operator either refuses to cooperate in the
3 development of a livestock nutrient management plan that corrects the
4 problems identified during the on-site assessment, or fails to
5 implement the plan within the designated time period; and

6 (viii) By June 30th of each year, submitting a formal summary of
7 progress on alleged water quality violations referred to the
8 conservation district by the department.

9 (c) The department must investigate and seek resolution of all
10 complaints that appear to need immediate action and pursue all
11 activities addressed with regard to level 2 districts. However, on
12 those sites where the conservation district is making progress on water
13 quality problems caused from livestock operations and is reporting the
14 progress to the department, the department must hold any related
15 enforcement actions in abeyance until the problem is solved or until
16 the operator refuses to cooperate further. The department must
17 continue to pursue any immediate action where required.

18 (4)(a) Level 4 compliance - Compliance. The conservation district
19 carries out programs described for compliance levels 1 through 3. In
20 addition, the conservation district must provide information and direct
21 support for resolving water quality actions that may be filed by the
22 department pursuant to its statutory authority. Information and
23 support required at this level includes the following:

24 (i) A field site tour to provide information and attempt to resolve
25 the issues;

26 (ii) Provision for access to public information in a conservation
27 district's files and, if appropriate, in-house documents such as field
28 notes, photographs, and in-house memoranda, subject to applicable
29 access laws and rules;

30 (iii) Department interviews with appropriate conservation district
31 personnel regarding a site under enforcement;

32 (iv) Assistance and attendance, if appropriate, at negotiation
33 sessions with responsible parties;

34 (v) Affidavits or testimony necessary to document the case.

35 (b) The department must pursue all activities as required for
36 compliance level 3, except where the conservation district has been
37 involved the department must use the information and support offered by
38 the conservation district to resolve the matter.

1 NEW SECTION. **Sec. 10.** The director may enter at all reasonable
2 times in or upon livestock operations for the purpose of inspecting and
3 investigating conditions relating to pollution of any waters of the
4 state.

5 If the director or the director's duly appointed agent is denied
6 access to a livestock operation, he or she may apply to a court of
7 competent jurisdiction for a search warrant authorizing access to the
8 property and facilities at a reasonable time for purposes of conducting
9 tests and inspections and taking samples. To show that access is
10 denied, the director must file with the court an affidavit or
11 declaration containing a description of his or her attempts to notify
12 and locate the owner or the owner's agent and to secure consent. Upon
13 application, the court may issue a search warrant for the purposes
14 requested.

15 NEW SECTION. **Sec. 11.** A party acting under this chapter is not
16 liable for another party's actions under this chapter.

17 NEW SECTION. **Sec. 12.** The department may adopt rules as necessary
18 to implement this chapter.

19 NEW SECTION. **Sec. 13.** Nothing in this chapter affects the
20 department of ecology's authority or responsibility to enforce the
21 national pollutant discharge elimination system permits for operators
22 of confined animal feeding operations required by federal regulations
23 or its authority to administer the provisions of chapter 90.48 RCW.

24 Nothing in this chapter affects livestock operations regulated
25 under the dairy nutrient management act, chapter 90.64 RCW.

26 **Sec. 14.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to
27 read as follows:

28 The department of ecology is hereby designated as the state water
29 pollution control agency for all purposes of the federal clean water
30 act as it exists on February 4, 1987, and is hereby authorized to
31 participate fully in the programs of the act as well as to take all
32 action necessary to secure to the state the benefits and to meet the
33 requirements of that act. With regard to the national estuary program
34 established by section 320 of that act, the department shall exercise

1 its responsibility jointly with the Puget Sound partnership, created in
2 RCW 90.71.210. The department of ecology may delegate its authority
3 under this chapter, including its national pollutant discharge
4 elimination permit system authority and duties regarding animal feeding
5 operations and concentrated animal feeding operations, to the
6 department of agriculture through a memorandum of understanding. Until
7 any such delegation receives federal approval, the department of
8 agriculture's adoption or issuance of animal feeding operation and
9 concentrated animal feeding operation rules, permits, programs, and
10 directives pertaining to water quality shall be accomplished after
11 reaching agreement with the director of the department of ecology.
12 Adoption or issuance and implementation shall be accomplished so that
13 compliance with such animal feeding operation and concentrated animal
14 feeding operation rules, permits, programs, and directives will achieve
15 compliance with all federal and state water pollution control laws.
16 The department may delegate its authority and duties under this chapter
17 regarding livestock operations as defined in section 2 of this act to
18 the department of agriculture including the responsibility to conduct
19 initial investigations and enforcement of violations through a
20 memorandum of understanding entered into for the purposes of chapter
21 90.--- RCW (the new chapter created in section 16 of this act). The
22 powers granted herein include, among others, and notwithstanding any
23 other provisions of this chapter (~~(90.48—RCW)~~) or otherwise, the
24 following:

25 (1) Complete authority to establish and administer a comprehensive
26 state point source waste discharge or pollution discharge elimination
27 permit program which will enable the department to qualify for full
28 participation in any national waste discharge or pollution discharge
29 elimination permit system and will allow the department to be the sole
30 agency issuing permits required by such national system operating in
31 the state of Washington subject to the provisions of RCW 90.48.262(2).
32 Program elements authorized herein may include, but are not limited to:
33 (a) Effluent treatment and limitation requirements together with timing
34 requirements related thereto; (b) applicable receiving water quality
35 standards requirements; (c) requirements of standards of performance
36 for new sources; (d) pretreatment requirements; (e) termination and
37 modification of permits for cause; (f) requirements for public notices
38 and opportunities for public hearings; (g) appropriate relationships

1 with the secretary of the army in the administration of his
2 responsibilities which relate to anchorage and navigation, with the
3 administrator of the environmental protection agency in the performance
4 of his duties, and with other governmental officials under the federal
5 clean water act; (h) requirements for inspection, monitoring, entry,
6 and reporting; (i) enforcement of the program through penalties,
7 emergency powers, and criminal sanctions; (j) a continuing planning
8 process; and (k) user charges.

9 (2) The power to establish and administer state programs in a
10 manner which will insure the procurement of moneys, whether in the form
11 of grants, loans, or otherwise; to assist in the construction,
12 operation, and maintenance of various water pollution control
13 facilities and works; and the administering of various state water
14 pollution control management, regulatory, and enforcement programs.

15 (3) The power to develop and implement appropriate programs
16 pertaining to continuing planning processes, area-wide waste treatment
17 management plans, and basin planning.

18 The governor shall have authority to perform those actions required
19 of him or her by the federal clean water act.

20 NEW SECTION. **Sec. 15.** The department of agriculture, the
21 department of ecology, and the state conservation commission shall
22 approach the federal environmental protection agency to secure new
23 funding or seek redirection of existing funds for the administration of
24 this chapter.

25 NEW SECTION. **Sec. 16.** Sections 1 through 13 and 15 of this act
26 constitute a new chapter in Title 90 RCW.

27 NEW SECTION. **Sec. 17.** This act takes effect on the later of
28 October 1, 2011, or upon written declaration by the director of
29 agriculture and the executive director of the conservation commission
30 to the office of financial management that sufficient funding for the
31 program has been secured. Once funding has been secured and the
32 department of agriculture or the state conservation commission
33 subsequently find that funding is insufficient to continue their
34 respective roles in implementing this act, they shall notify the office

1 of financial management in writing at which time the administration of
2 the program shall revert to the department of ecology.

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