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SENATE BILL 6568

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State of Washington

64th Legislature

2016 Regular Session

By Senator Warnick

Read first time 01/26/16. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to establishing a water discharge permit for  
2 concentrated animal feeding operations that is issued under the sole  
3 authority of state law; amending RCW 90.48.260, 90.64.030, and  
4 90.64.120; adding new sections to chapter 90.48 RCW; creating a new  
5 section; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48  
8 RCW to read as follows:

9 (1)(a) The department, in consultation with the department of  
10 agriculture, must establish a general permit issued under the sole  
11 authority of this chapter that is available to concentrated animal  
12 feeding operations that discharge exclusively to groundwater.

13 (b) A concentrated animal feeding operation that discharges to  
14 groundwater but that does not discharge to surface waters must be  
15 eligible to obtain coverage under either:

16 (i) The permit established under this section; or

17 (ii) Any combined permit issued under both the authority of this  
18 chapter and the authority of the federal clean water act, 33 U.S.C.  
19 Sec. 1251 et seq.

20 (2) A concentrated animal feeding operation that stores manure,  
21 stores manure effluent, or that applies manure nutrients to land must

1 be eligible to apply for coverage under the permit established  
2 pursuant to this section.

3 (3)(a) The department shall issue the permit required under this  
4 section in consultation with the department of agriculture. The  
5 department shall administer the permit jointly with the department of  
6 agriculture.

7 (b) The department and the department of agriculture must rely on  
8 the processes and procedures adopted pursuant to section 2 of this  
9 act in administering the permits established under this section.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48  
11 RCW to read as follows:

12 (1) The department and the department of agriculture shall  
13 operate the permit program identified in section 1 of this act via a  
14 memorandum of agreement regarding the administration of permits and  
15 enforcement of permit conditions issued under section 1 of this act.

16 (2) The permit administration procedures adopted pursuant to this  
17 section must:

18 (a) Establish protocols that identify manure lagoons and effluent  
19 storage systems that are a significant risk to groundwater resources;  
20 and

21 (b) Identify and facilitate the use of federal and state cost-  
22 share programs to support the improvements to manure lagoons and  
23 effluent storage systems identified in (a) of this subsection.

24 (3) The department of agriculture has primary responsibility for  
25 inspections of concentrated animal feeding operations covered by a  
26 permit issued pursuant to this section.

27 (4) For purposes of this section and section 1 of this act,  
28 "concentrated animal feeding operations" has the same meaning as the  
29 term is defined in 40 C.F.R. Sec. 122.23, as of the effective date of  
30 this section.

31 **Sec. 3.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each  
32 amended to read as follows:

33 (1) The department of ecology is hereby designated as the state  
34 water pollution control agency for all purposes of the federal clean  
35 water act as it exists on February 4, 1987, and is hereby authorized  
36 to participate fully in the programs of the act as well as to take  
37 all action necessary to secure to the state the benefits and to meet  
38 the requirements of that act. With regard to the national estuary

1 program established by section 320 of that act, the department shall  
2 exercise its responsibility jointly with the Puget Sound partnership,  
3 created in RCW 90.71.210. The department of ecology may delegate its  
4 authority under this chapter, including its national pollutant  
5 discharge elimination permit system authority and duties regarding  
6 animal feeding operations and concentrated animal feeding operations,  
7 to the department of agriculture through a memorandum of  
8 understanding. Until any such delegation receives federal approval,  
9 the department of agriculture's adoption or issuance of animal  
10 feeding operation and concentrated animal feeding operation rules,  
11 permits, programs, and directives pertaining to water quality shall  
12 be accomplished after reaching agreement with the director of the  
13 department of ecology or shall be consistent with the requirements of  
14 sections 1 and 2 of this act with respect to the administration of  
15 the state water discharge permit made available to concentrated  
16 animal feeding operations. Adoption or issuance and implementation  
17 shall be accomplished so that compliance with such animal feeding  
18 operation and concentrated animal feeding operation rules, permits,  
19 programs, and directives will achieve compliance with all federal and  
20 state water pollution control laws. The powers granted herein  
21 include, among others, and notwithstanding any other provisions of  
22 this chapter or otherwise, the following:

23 (a) Complete authority to establish and administer a  
24 comprehensive state point source waste discharge or pollution  
25 discharge elimination permit program which will enable the department  
26 to qualify for full participation in any national waste discharge or  
27 pollution discharge elimination permit system and will allow the  
28 department to be the sole agency issuing permits required by such  
29 national system operating in the state of Washington subject to the  
30 provisions of RCW 90.48.262(2). Program elements authorized herein  
31 may include, but are not limited to: (i) Effluent treatment and  
32 limitation requirements together with timing requirements related  
33 thereto; (ii) applicable receiving water quality standards  
34 requirements; (iii) requirements of standards of performance for new  
35 sources; (iv) pretreatment requirements; (v) termination and  
36 modification of permits for cause; (vi) requirements for public  
37 notices and opportunities for public hearings; (vii) appropriate  
38 relationships with the secretary of the army in the administration of  
39 his or her responsibilities which relate to anchorage and navigation,  
40 with the administrator of the environmental protection agency in the

1 performance of his or her duties, and with other governmental  
2 officials under the federal clean water act; (viii) requirements for  
3 inspection, monitoring, entry, and reporting; (ix) enforcement of the  
4 program through penalties, emergency powers, and criminal sanctions;  
5 (x) a continuing planning process; and (xi) user charges.

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

12 (c) The power to develop and implement appropriate programs  
13 pertaining to continuing planning processes, area-wide waste  
14 treatment management plans, and basin planning.

15 (2) The governor shall have authority to perform those actions  
16 required of him or her by the federal clean water act.

17 (3) By July 31, 2012, the department shall:

18 (a) Reissue without modification and for a term of one year any  
19 national pollutant discharge elimination system municipal storm water  
20 general permit applicable to western Washington municipalities first  
21 issued on January 17, 2007; and

22 (b) Issue an updated national pollutant discharge elimination  
23 system municipal storm water general permit applicable to western  
24 Washington municipalities for any permit first issued on January 17,  
25 2007. An updated permit issued under this subsection shall become  
26 effective beginning August 1, 2013.

27 (i) Provisions of the updated permit issued under (b) of this  
28 subsection relating to new requirements for low-impact development  
29 and review and revision of local development codes, rules, standards,  
30 or other enforceable documents to incorporate low-impact development  
31 principles must be implemented simultaneously. These requirements may  
32 go into effect no earlier than December 31, 2016, or the time of the  
33 scheduled update under RCW 36.70A.130(5), as existing on July 10,  
34 2012, whichever is later.

35 (ii) Provisions of the updated permit issued under (b) of this  
36 subsection related to increased catch basin inspection and illicit  
37 discharge detection frequencies and application of new storm water  
38 controls to projects smaller than one acre may go into effect no  
39 earlier than December 31, 2016, or the time of the scheduled update

1 under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is  
2 later.

3 (4) By July 31, 2012, the department shall:

4 (a) Reissue without modification and for a term of two years any  
5 national pollutant discharge elimination system municipal storm water  
6 general permit applicable to eastern Washington municipalities first  
7 issued on January 17, 2007; and

8 (b) Issue an updated national pollutant discharge elimination  
9 system municipal storm water general permit for any permit first  
10 issued on January 17, 2007, applicable to eastern Washington  
11 municipalities. An updated permit issued under this subsection  
12 becomes effective August 1, 2014.

13 **Sec. 4.** RCW 90.64.030 and 2011 c 103 s 3 are each amended to  
14 read as follows:

15 (1) Under the inspection program established in RCW 90.64.023,  
16 the department may investigate a dairy farm to determine whether the  
17 operation is discharging pollutants or has a record of discharging  
18 pollutants into surface or ground waters of the state. Upon  
19 concluding an investigation, the department shall make a written  
20 report of its findings, including the results of any water quality  
21 measurements, photographs, or other pertinent information, and  
22 provide a copy of the report to the dairy producer within twenty days  
23 of the investigation.

24 (2) The department shall investigate a written complaint filed  
25 with the department within three working days and shall make a  
26 written report of its findings including the results of any water  
27 quality measurements, photographs, or other pertinent information.  
28 Within twenty days of receiving a written complaint, a copy of the  
29 findings shall be provided to the dairy producer subject to the  
30 complaint, and to the complainant if the person gave his or her name  
31 and address to the department at the time the complaint was filed.

32 (3) The department may consider past complaints against the same  
33 dairy farm from the same person and the results of its previous  
34 inspections, and has the discretion to decide whether to conduct an  
35 inspection if:

36 (a) The same or a similar complaint or complaints have been filed  
37 against the same dairy farm within the immediately preceding six-  
38 month period; and

1 (b) The department made a determination that the activity that  
2 was the subject of the prior complaint was not a violation.

3 (4) If the decision of the department is not to conduct an  
4 inspection, it shall document the decision and the reasons for the  
5 decision within twenty days. The department shall provide the  
6 decision to the complainant if the name and address were provided to  
7 the department, and to the dairy producer subject to the complaint,  
8 and the department shall place the decision in the department's  
9 administrative records.

10 (5) The report of findings of any inspection conducted as the  
11 result of either an oral or a written complaint shall be placed in  
12 the department's administrative records. Only findings of violations  
13 shall be entered into the database identified in RCW 90.64.130.

14 (6) A dairy farm that is determined to be in violation of the  
15 terms or conditions of a state water quality permit, or of an  
16 individual or general national pollution discharge elimination system  
17 permit, or a significant contributor of pollution based on actual  
18 water quality tests, photographs, or other pertinent information is  
19 subject to the provisions of this chapter and to the enforcement  
20 provisions of chapters 43.05 and 90.48 RCW, including civil penalties  
21 levied under RCW 90.48.144.

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

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

36 (9) A discharge, including a storm water discharge, to surface  
37 waters of the state shall not be considered a violation of this  
38 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall  
39 therefore not be enforceable by the department of ecology or a third  
40 party, if at the time of the discharge, a violation is not occurring

1 under RCW 90.64.010 (17). In addition, a dairy producer shall not be  
2 held liable for violations of this chapter, chapter 90.48 RCW,  
3 chapter 173-201A WAC, or the federal clean water act due to the  
4 discharge of dairy nutrients to waters of the state resulting from  
5 spreading these materials on lands other than where the nutrients  
6 were generated, when the nutrients are spread by persons other than  
7 the dairy producer or the dairy producer's agent.

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

13 (11) This section specifically acknowledges that if a holder of a  
14 general or individual national pollutant discharge elimination system  
15 permit complies with the permit and the dairy nutrient management  
16 plan conditions for appropriate land application practices, the  
17 permit provides compliance with the federal clean water act and acts  
18 as a shield against citizen or agency enforcement for any additions  
19 of pollutants to waters of the state or of the United States as  
20 authorized by the permit.

21 (12) A dairy producer who fails to have an approved dairy  
22 nutrient management plan by July 1, 2002, or a certified dairy  
23 nutrient management plan by December 31, 2003, and for which no  
24 appeals have been filed with the pollution control hearings board, is  
25 in violation of this chapter. Each month beyond these deadlines that  
26 a dairy producer is out of compliance with the requirement for either  
27 plan approval or plan certification shall be considered separate  
28 violations of this chapter ((90.64-RCW)) that may be subject to  
29 penalties. Such penalties may not exceed one hundred dollars per  
30 month for each violation up to a combined total of five thousand  
31 dollars. The department has discretion in imposing penalties for  
32 failure to meet deadlines for plan approval or plan certification if  
33 the failure to comply is due to lack of state funding for  
34 implementation of the program. Failure to register as required in RCW  
35 90.64.017 shall subject a dairy producer to a maximum penalty of one  
36 hundred dollars. Penalties shall be levied by the department.

37 **Sec. 5.** RCW 90.64.120 and 2003 c 325 s 4 are each amended to  
38 read as follows:

1 (1) Nothing in this chapter shall affect the department of  
2 ecology's authority or responsibility to administer or enforce the  
3 national pollutant discharge elimination system permits for operators  
4 of concentrated dairy animal feeding operations, where required by  
5 federal regulations or to administer the provisions of chapter 90.48  
6 RCW.

7 (2) The department of agriculture may take enforcement action as  
8 provided in this chapter against a dairy found to be in violation of  
9 the terms or conditions of a state water quality permit issued under  
10 chapter 90.48 RCW.

11 (3) Unless the department of ecology delegates its authority  
12 under chapter 90.48 RCW to the department of agriculture pursuant to  
13 RCW 90.48.260, and until any such delegation of authority receives  
14 federal approval, the transfer specified in RCW 90.64.901 shall not  
15 preclude the department of ecology from taking action related to  
16 animal feeding operations or concentrated animal feeding operations  
17 to protect water quality pursuant to its authority in chapter 90.48  
18 RCW. Before taking such actions, the department of ecology shall  
19 notify the department of agriculture.

20 NEW SECTION. Sec. 6. A new section is added to chapter 90.48  
21 RCW to read as follows:

22 (1) By November 1, 2018, the department and the department of  
23 agriculture shall submit a report to the appropriate policy and  
24 fiscal committees of the legislature on the progress of the  
25 implementation of the permit established pursuant to sections 1 and 2  
26 of this act. This report must include recommendations for the  
27 establishment or improvement of programs that allow for shared costs  
28 of manure lagoon or effluent storage system improvements that are  
29 required of concentrated animal feeding organizations under sections  
30 1 and 2 of this act.

31 (2) This section expires June 30, 2020.

32 NEW SECTION. Sec. 7. This act may be known and cited as the  
33 dairy farm and water resource sustainability act.

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