
**Agriculture & Natural
Resources Committee**

ESSB 5889

Brief Description: Concerning a livestock nutrient management program.

Sponsors: Senate Committee on Agriculture (originally sponsored by Senators Swecker and Rasmussen).

Brief Summary of Engrossed Substitute Bill

- Transfers the dairy nutrient management program to the Department of Agriculture.
- Establishes a committee to evaluate the federal concentrated animal feeding operation (CAFO) rules and make recommendations regarding statutory changes and program development and implementation.
- Allows discretion in imposing penalties for failure to meet plan approval and certification deadlines if failure is due to a lack of state funding.
- Replaces the Dairy Waste Management Account with the Livestock Nutrient Management Account.

Hearing Date: 4/1/03

Staff: Caroleen Dineen (786-7156).

Background:

Dairy Nutrient Management Program

The federal Clean Water Act (CWA) and its implementing regulations specify requirements for managing surface water discharges from dairy farms. The Department of Ecology (DOE) has been delegated federal authority to implement CWA programs in Washington, including issuance of federal National Pollutant Discharge Elimination System (NPDES) permits. State water quality laws also regulate certain discharges to surface and to ground water.

A dairy waste management program was established in the DOE in 1993. The Legislature

substantially amended the state's dairy waste management law in 1998. *SSB 6161, enacted as Chapter 262, Laws of 1998.* As amended in 1998, the DOE's dairy management program is established to maintain water quality administration at the state level and to provide a balanced approach involving technical assistance, regulation, and enforcement.

All licensed dairy producers in Washington must register with the DOE. Statutory provisions govern the procedural requirements for the timing and information required to register. The 1998 legislation also required the DOE to inspect every dairy farm in the state within two years and to initiate an inspection program for all dairy farms to:

- survey for evidence of violations;
- identify corrective actions for actual or imminent discharges that violate or could violate state water quality standards;
- monitor the development and implementation of dairy nutrient management plans; and
- identify dairy producers who would benefit from technical assistance programs.

The DOE must conduct follow-up inspections to ensure corrective actions are implemented and may conduct inspections to ensure compliance with state and federal water quality requirements. Statutory provisions specify timing and other requirements for conducting inspections and authorize penalties for violations of plan requirements.

Further, the 1998 legislation required every licensed dairy producer (other than those who have a plan required under the terms and conditions of a federal discharge permit) to develop a dairy nutrient management plan. The Conservation Commission defines the elements that dairy nutrient management plans must contain. All producers are required to have a plan approved by the local conservation district by July 1, 2002, and certified by the conservation district and the producer by December 31, 2003. Penalties are established for failure to meet these deadlines.

In 2000 the Legislature created the Dairy Nutrient Management Task Force (Task Force) to make recommendations to the DOE and the Legislature regarding the dairy nutrient management program. *SSB 6781, enacted as Chapter 147, Laws of 2000.* The Task Force provisions expire June 30, 2004.

Federal Requirements

In December 2002 the United States Environmental Protection Agency revised its water quality rules defining and regulating concentrated animal feeding operations (CAFOs). The new rules define animal feeding operations (AFOs) as operations that confine animals for at least 45 days in a 12-month period and do not have grass or other vegetation in the confinement area during the normal growing season. An operation is a CAFO if it meets the AFO definition and any of the CAFO definitions (large, medium, or designated CAFO). Operations determined to be CAFOs under the federal rules are subject to federal NPDES permit requirements.

The new CAFO rules became effective March 15, 2003. States must adopt program revisions by March 2004 if no statutory changes are required or by March 2005 if statutory changes are required.

Summary of Bill:

Dairy Nutrient Management Program

The powers, duties, and functions of the Department of Ecology (DOE) with respect to the dairy nutrient management program are transferred to the Department of Agriculture (WSDA). Provisions are included to direct transfer of DOE records, equipment, funds, and assets related to this program to the WSDA. The DOE is authorized to delegate its NPDES permit authority and duties regarding AFOs and CAFOs to the WSDA through a memorandum of understanding. Transfer of this program does not affect the validity of any act performed before the effective date of the transfer.

Departmental discretion is authorized for imposing penalties for failure to meet deadlines for plan approval or plan certification if failure to comply is due to a lack of state funding for program implementation.

The Dairy Waste Management Account for the Conservation Commission is replaced with the Livestock Nutrient Management Account for the WSDA. Uses of this account include research or education proposals that assist livestock operations to achieve compliance with state and federal water quality laws. The WSDA Director must accept and prioritize research and education proposals.

Livestock Nutrient Management Program Committee

A Livestock Nutrient Management Program Development and Oversight Committee (Committee) is created to examine the federal CAFO rules and develop a state program to be administered by the WSDA. The Committee includes the directors of the WSDA and DOE, a representative of Washington State University, and representatives of commercial shellfish growers, environmental organizations, tribal governments, dairy producers, beef cattle producers, poultry producers, commercial cattle feedlots, and any other segment of the livestock industry determined by the WSDA to be subject to the federal CAFO rules. The Committee also includes a representative of the United States Environmental Protection Agency unless the agency chooses not to be represented. Provisions are included for nomination and appointment of the Committee members and for establishment of a work plan and subcommittees. The WSDA provides staff support to the Committee.

The Committee's evaluation of the federal CAFO rules must include a:

- process for adopting standards and developing plans for each operation meeting these standards;
- process for revising NPDES permits to transition to the new program requirements; and
- a determination, in consultation with the WSDA Director, of other work and institutional relationships that may be needed or desirable.

The Committee must consult with the statewide association of conservation districts regarding proposed functions or activities to be provided through conservation districts. The Committee also must review and comment on proposals for grants from the Livestock Nutrient Management Account.

In addition, the Committee must develop draft legislation regarding statutory changes, including a time line to achieve phased implementation of the regulatory requirements, to comply with minimum requirements under federal and state water pollution control law. The Committee's draft legislation also must include continued inspection of dairy operations at least once every two years, an outreach and education program for AFO and CAFO operators, and annual reports to the Legislature on progress of the state strategy. Statutory change recommendations must meet requirements needed to enable the WSDA and the DOE to pursue federal approval for transferring permit program authority with respect to CAFOs.

The Committee must report to the appropriate committees of the Legislature by December 1, 2003, regarding the results of the Committee's evaluation and draft legislation. The Committee provisions expire June 30, 2006.

Legislative findings are specified regarding the importance of a state livestock nutrient management program. Legislative intent is specified to have a fully functioning state program for CAFOs by 2006.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Provisions establishing the Committee and transferring the dairy nutrient management program take effect immediately. Other provisions of the bill take effect 90 days after adjournment of session in which bill is passed.