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**SUBSTITUTE SENATE BILL 5849**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Agriculture (originally sponsored by Senators M. Rasmussen, Erwin, McAuliffe, Roach, Anderson, Bauer, Barr, Amondson and Loveland)

Read first time 03/03/93.

1       AN ACT Relating to the regulation of dairy animal feeding  
2 operations; and adding a new chapter to Title 90 RCW.

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

4       NEW SECTION.   **Sec. 1.** The legislature finds that there is a need  
5 to establish a clear and understandable process that provides for the  
6 proper and effective management of dairy waste that affects the quality  
7 of surface or ground waters in the state of Washington. The  
8 legislature finds that there is a need for a program that will provide  
9 a stable and predictable business climate upon which dairy farms may  
10 base future investment decisions.

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

18       It is also the intent of this chapter to recognize the existing  
19 working relationships between conservation districts, the conservation

1 commission, and the department of ecology in protecting water quality  
2 of the state. A further purpose of this chapter is to provide  
3 statutory recognition of the coordination of the functions of  
4 conservation districts, the conservation commission, and the department  
5 of ecology pertaining to development of dairy waste management plans  
6 for the protection of water quality.

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

10 (1) "Conservation commission" or "commission" means the  
11 conservation commission under chapter 89.08 RCW.

12 (2) "Conservation districts" or "district" means a subdivision of  
13 state government organized under chapter 89.08 RCW.

14 (3) "Concentrated dairy animal feeding operation" means a dairy  
15 animal feeding operation subject to regulation under this chapter which  
16 the director designates under section 4 of this act or meets the  
17 following criteria:

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

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

22 (i) From which pollutants are discharged into navigable waters  
23 through a manmade ditch, flushing system, or other similar manmade  
24 device; or

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

29 (4) "Dairy animal feeding operation" means a lot or facility where  
30 the following conditions are met;

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

34 (b) Crops, vegetation forage growth, or postharvest residues are  
35 not sustained in the normal growing season over any portion of the lot  
36 or facility. Two or more dairy animal feeding operations under common  
37 ownership are considered, for the purposes of this chapter, to be a

1 single dairy animal feeding operation if they adjoin each other or if  
2 they use a common area for land application of wastes.

3 (5) "Department" means the department of ecology under chapter  
4 43.21A RCW.

5 (6) "Director" means the director of the department of ecology, or  
6 his or her designee.

7 NEW SECTION. **Sec. 3.** (1) The director of the department of  
8 ecology may designate any dairy animal feeding operation as a  
9 concentrated dairy animal feeding operation upon determining that it is  
10 a significant contributor of pollution to the surface or ground waters  
11 of the state. In making this designation the director shall consider  
12 the following factors:

13 (a) The size of the animal feeding operation and the amount of  
14 wastes reaching waters of the state;

15 (b) The location of the animal feeding operation relative to waters  
16 of the state;

17 (c) The means of conveyance of animal wastes and process waters  
18 into the waters of the state;

19 (d) The slope, vegetation, rainfall, and other factors affecting  
20 the likelihood or frequency of discharge of animal wastes and process  
21 waste waters into the waters of the state; and

22 (e) Other relevant factors as established by the department by  
23 rule.

24 (2) A notice of intent to apply for a permit shall not be required  
25 from a concentrated dairy animal feeding operation designated under  
26 this section until the director has conducted an on-site inspection of  
27 the operation and determined that the operation should and could be  
28 regulated under the permit program.

29 NEW SECTION. **Sec. 4.** Upon receiving a complaint or upon its own  
30 determination that a dairy animal feeding operation is a likely source  
31 of water quality degradation, the department may investigate a dairy  
32 animal feeding operation to determine whether the operation is  
33 discharging directly pollutants or recently has discharged directly  
34 pollutants into surface or ground waters of the state. The department  
35 shall investigate a written complaint filed with the department within  
36 ten days and shall make a written report of its findings including the  
37 results of any water quality measurements, photographs, or other

1 pertinent information. A copy of the findings shall be provided upon  
2 request to the dairy animal feeding operation.

3 Those dairy animal feeding operations that are determined to be a  
4 significant contributor of pollution based on actual water quality  
5 tests, photographs, or other pertinent information if immediate  
6 corrective actions are not possible, shall be designated as a  
7 concentrated dairy animal feeding operation and shall be subject to the  
8 provisions of this chapter.

9 NEW SECTION. **Sec. 5.** Enforcement actions and administrative  
10 orders issued by the department of ecology may be appealed to the  
11 pollution control hearings board in accordance with the provisions of  
12 chapter 43.21B RCW.

13 NEW SECTION. **Sec. 6.** (1) The department has the following duties:

14 (a) Identify existing or potential water quality problems resulting  
15 from dairy farms;

16 (b) Receive, process, and verify complaints concerning discharge of  
17 pollutants from all dairy farms regardless of size;

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

23 (d) Administer and enforce national pollutants discharge  
24 elimination system permits for operators of concentrated dairy animal  
25 feeding operations, where required by federal regulations, and  
26 administer state laws;

27 (e) Appoint representatives, including dairy industry  
28 representatives, to participate in the compliance review committee that  
29 will annually review and update policy and disseminate information as  
30 needed;

31 (f) Encourage communication between local department personnel and  
32 the appropriate conservation district personnel;

33 (g) Encourage the use of federal soil conservation service  
34 standards and specifications in designing best management practices for  
35 dairy waste management plans to protect water quality;

36 (h) Provide to the commission an annual report of dairy waste  
37 pollution enforcement activities.

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

3 NEW SECTION. **Sec. 7.** (1) If the department determines that the  
4 operator of a dairy animal feeding operation has the means to correct  
5 a water quality problem in a manner that will prevent future  
6 contamination and does so promptly and such correction is maintained,  
7 the department shall cease pursuit of the complaint.

8 (2) If the department determines that an unresolved water quality  
9 problem from a dairy animal feeding operation requires immediate  
10 corrective action, the department shall notify the operator and the  
11 district in which the problem is located.

12 (3) If immediate action is not necessary by the department, the  
13 handling of complaints will differ depending on the amount of  
14 information available and the compliance option selected by the  
15 conservation district involved.

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

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

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

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

28 NEW SECTION. **Sec. 8.** (1) The conservation district has the  
29 following duties:

30 (a) Adopt and annually update the water quality section in the  
31 conservation district dairy waste management plan;

32 (b) As part of the district annual report, include a water quality  
33 progress report on dairy waste management activities conducted that are  
34 related to this chapter;

35 (c) Encourage communication between the conservation district  
36 personnel and local department personnel;

1 (d) Adopt and carry out a compliance option from level 1, level 2,  
2 level 3, or level 4.

3 (2) The district's capability to carry out its responsibilities in  
4 the four levels of compliance is contingent upon the availability of  
5 funding and resources to implement a dairy waste management program.

6 NEW SECTION. **Sec. 9.** (1) The conservation commission has the  
7 following duties:

8 (a) Forward to the department the dairy waste management plan  
9 progress reports;

10 (b) Provide assistance as may be appropriate to the conservation  
11 districts in the discharge of their responsibilities as management  
12 agencies in dairy waste management program implementation;

13 (c) Provide coordination for conservation district programs at the  
14 state level through special arrangements with appropriate federal and  
15 state agencies;

16 (d) Inform conservation districts of activities and experiences of  
17 other conservation districts relative to agricultural water quality  
18 protection, and facilitate an interchange of advice, experience, and  
19 cooperation between the districts;

20 (e) Encourage communication between the conservation district  
21 personnel and local department personnel;

22 (f) Appoint conservation district representatives to serve on the  
23 compliance review committee with advice of the Washington association  
24 of conservation districts;

25 (g) Appoint a commission representative to participate on the  
26 compliance review committee that will annually review and update policy  
27 and disseminate information as needed;

28 (h) Work with the department to provide communication outreach to  
29 representatives of agricultural and environmental organizations to  
30 receive feed back on implementation of this chapter.

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

34 NEW SECTION. **Sec. 10.** Conservation districts shall adopt one of  
35 the following compliance levels:

36 (1) Level 1 - Information/education/technical assistance.

1 The conservation district will serve as a local source of  
2 information on dairy waste management plan implementation programs.  
3 The conservation district will promote plans and efforts to improve  
4 water quality and explain the benefits of participating in available  
5 implementation plans through news releases and other media for the  
6 general public; programs for schools; presentations to groups and civic  
7 organizations; workshops; training sessions; or other appropriate  
8 means. The conservation district will provide technical assistance  
9 upon request.

10 The department will respond to complaints that involve water  
11 quality problems caused by dairy animal feeding operations. The  
12 department will work with the operator to bring the operation into  
13 compliance with federal statutes, federal regulations, and applicable  
14 state laws. If immediate action is deemed necessary, the department  
15 will pursue the appropriate actions that may include enforcement  
16 against the responsible parties. The department will advise the  
17 operator of the information and technical assistance available through  
18 the conservation district. The department will notify the conservation  
19 district of the operator's need for information or technical  
20 assistance.

21 (2) Level 2 - Information/education, problem assessment, and  
22 handling complaints.

23 The conservation district will carry out programs described in  
24 level 1. In addition, the conservation district will inventory dairy  
25 waste related water quality problems defined in the water quality  
26 section of its annual plan. The conservation district will prioritize  
27 problems and work to apply voluntary solutions to the highest priority  
28 problems within available resources utilizing information/education,  
29 technical assistance, and incentives. Response to complaint - The  
30 conservation district will make an appointment for an on-site contact  
31 with the alleged violator within ten working days and determine if the  
32 operator desires to work with the conservation district. If the  
33 operator wishes conservation district assistance, within six months the  
34 conservation district will develop a plan with the individual operator  
35 which includes a schedule for application of best management practices.  
36 The operator will have eighteen months, or by agreement, an approved  
37 schedule with an alternative time period to implement the plan. If  
38 hardships occur, the operator may request an extension of the  
39 implementation schedule subject to concurrence of the department.

1 The conservation district in responding to complaints will report  
2 progress, or the need for further department technical expertise, to  
3 the individual involved and the department. A copy of the plan will be  
4 made available to the department. If the district offers assistance  
5 and the individual involved refuses to cooperate or ceases to work with  
6 the conservation district, the district will notify the department.

7 The conservation district will refer all alleged water quality  
8 violations, or individuals who wish to make a complaint to the  
9 department.

10 The department will investigate and seek resolution of all  
11 complaints that appear to need immediate action and refer all other  
12 complaints concerning dairy animal feeding operations to the  
13 appropriate conservation district. The department will keep a record  
14 of those complaints. When a referral is made by a conservation  
15 district, due to a continuing unresolved water quality problem, the  
16 department will take appropriate action and advise the conservation  
17 district of the action taken.

18 (3) Level 3 - Information/education, problem assessment, handling  
19 complaints, and assisting in compliance.

20 The conservation district will carry out programs described in  
21 levels 1 and 2. In addition, the conservation district will actively  
22 follow up those problems and complaints deemed highest priority by the  
23 conservation district within sixty days after the initial contact. The  
24 complaint referral follow-up will include:

25 (a) Meet with the owner/operator;

26 (b) Make an on-site assessment of the nature and extent of the  
27 problem, if so desired by the owner/operator;

28 (c) Notify within twenty-five working days the department that the  
29 owner/operator has or has not requested assistance from the  
30 conservation district;

31 (d) Assist the owner/operator in the development of a dairy waste  
32 management plan within six months. Implementation is to be completed  
33 within eighteen months, or by agreement and approved schedule, with an  
34 alternative time period to implement the plan. If hardships occur, the  
35 operator may request an extension of the planning or implementation  
36 schedule with concurrence of the department;

37 (e) Provide such technical assistance as is necessary and available  
38 during plan implementation;

39 (f) Monitor plan implementation;



1 (g) Notify the department within twenty-five working days in the  
2 event that the owner/operator either refuses to cooperate in the  
3 development of a dairy waste management plan that will correct the  
4 problems identified during the on-site assessment, or fails to  
5 implement the plan within the designated time period;

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

9 The department will investigate and seek resolution of all  
10 complaints that appear to need immediate action.

11 The department will pursue all activities addressed under level 2.  
12 Except that on those sites where the conservation district is making  
13 progress on water quality problems caused from dairy animal feeding  
14 operations and is reporting the same to the department, the department  
15 will hold any related enforcement actions in abeyance until the problem  
16 is solved, or the operator refuses to cooperate further. The  
17 department shall continue to pursue any immediate action where  
18 required.

19 (4) Level 4 - Compliance.

20 The conservation district will carry out programs described in  
21 levels 1 through 3. In addition, the conservation district will  
22 provide information and direct support for resolving water quality  
23 actions which may be filed by the department pursuant to its statutory  
24 authority.

25 Information and support include the following:

26 (a) A field site tour to provide information and attempt to resolve  
27 the issues;

28 (b) Provision for access to public information in a conservation  
29 district's files, and if appropriate, in-house documents such as field  
30 notes, photographs, and in-house memoranda. Access is subject to  
31 applicable laws and regulations;

32 (c) Department interviews with appropriate conservation district  
33 personnel regarding a site under enforcement;

34 (d) Assistance and attendance, if appropriate, at negotiation  
35 sessions with responsible parties;

36 (e) Affidavits or testimony necessary to document the case.

37 The department will pursue all activities as addressed in level 3,  
38 except where the conservation district has been involved, the

1 department will utilize the information and support offered by the  
2 conservation district to resolve the matter.

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

5 NEW SECTION. **Sec. 12.** The state conservation commission is  
6 authorized to receive moneys from the department of ecology from funds  
7 appropriated under chapter 43.99F RCW for disbursement to local  
8 conservation districts for the development and design of dairy waste  
9 management facility plans.

10 NEW SECTION. **Sec. 13.** The department may adopt rules as necessary  
11 to implement this chapter.

12 NEW SECTION. **Sec. 14.** Nothing in this chapter shall affect the  
13 department's authority or responsibility to administer or enforce the  
14 national pollutant discharge elimination system permits for operators  
15 of concentrated dairy animal feeding operations, where required by  
16 federal regulations or to administer the provisions of chapter 90.48  
17 RCW.

18 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act shall  
19 constitute a new chapter in Title 90 RCW.

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