
SUBSTITUTE SENATE BILL 6781

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Agriculture & Rural Economic Development
(originally sponsored by Senators Rasmussen and Morton)

Read first time 02/03/2000.

1 AN ACT Relating to dairy nutrients; amending RCW 90.48.020,
2 90.48.390, 90.64.150, 90.64.026, 90.64.050, and 90.64.005; adding a new
3 section to chapter 90.64 RCW; creating new sections; providing an
4 expiration date; and declaring an emergency.

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

6 **Sec. 1.** RCW 90.48.020 and 1995 c 255 s 7 are each amended to read
7 as follows:

8 ~~((Whenever the word))~~ The definitions in this section apply
9 throughout this chapter unless the context clearly requires otherwise.

10 (1) "Person" ~~((is used in this chapter, it shall be construed to))~~
11 includes any political subdivision, government agency, municipality,
12 industry, public or private corporation, copartnership, association,
13 firm, individuals or any other entity whatsoever.

14 ~~((Wherever the words))~~ (2) "Waters of the state" ~~((shall be used in~~
15 ~~this chapter, they shall be construed to))~~ includes lakes, rivers,
16 ponds, streams, inland waters, underground waters, salt waters, and all
17 other surface waters and watercourses within the jurisdiction of the
18 state of Washington.

1 (~~Whenever the word~~) (3) "Pollution" (~~is used in this chapter, it~~
2 ~~shall be construed to~~) means such contamination, or other alteration
3 of the physical, chemical, or biological properties, of any waters of
4 the state, including change in temperature, taste, color, turbidity, or
5 odor of the waters, or such discharge of any liquid, gaseous, solid,
6 radioactive, or other substance into any waters of the state as will or
7 is likely to create a nuisance or render such waters harmful,
8 detrimental, or injurious to the public health, safety, or welfare, or
9 to domestic, commercial, industrial, agricultural, recreational, or
10 other legitimate beneficial uses, or to livestock, wild animals, birds,
11 fish or other aquatic life.

12 (~~Wherever the word~~) (4) "Department" (~~is used in this chapter it~~
13 ~~shall~~) means the department of ecology.

14 (~~Whenever the word~~) (5) "Director" (~~is used in this chapter it~~
15 ~~shall~~) means the director of ecology.

16 (~~Whenever the words~~) (6) "Aquatic noxious weed" (~~are used in~~
17 ~~this chapter, they have~~) has the same meaning as prescribed under RCW
18 17.26.020.

19 (7) "Dairy farm" means any farm licensed to produce milk under
20 chapter 15.36 RCW.

21 **Sec. 2.** RCW 90.48.390 and 1991 sp.s. c 13 s 84 are each amended to
22 read as follows:

23 The coastal protection fund is established to be used by the
24 department as a revolving fund for carrying out the purposes of
25 restoration of natural resources under this chapter and chapter 90.56
26 RCW. To this fund there shall be credited penalties, fees, damages,
27 charges received pursuant to the provisions of this chapter and chapter
28 90.56 RCW, compensation for damages received under this chapter and
29 chapter 90.56 RCW, and an amount equivalent to one cent per gallon from
30 each marine use refund claim under RCW 82.36.330. However,
31 notwithstanding any other provision of law, dairy farm-related
32 penalties received under the provisions of this chapter shall be
33 credited to the dairy nutrient management account as provided in RCW
34 90.64.150.

35 Moneys in the fund not needed currently to meet the obligations of
36 the department in the exercise of its powers, duties, and functions
37 under RCW 90.48.142, 90.48.366, 90.48.367, and 90.48.368 shall be
38 deposited with the state treasurer to the credit of the fund.

1 **Sec. 3.** RCW 90.64.150 and 1998 c 262 s 15 are each amended to read
2 as follows:

3 The dairy ((~~waste~~)) nutrient management account is created in the
4 custody of the state treasurer. All receipts from monetary penalties
5 levied pursuant to violations of this chapter and from dairy farm-
6 related violations of chapter 90.48 RCW must be deposited into the
7 account. Expenditures from the account may be used only for the
8 commission to provide grants to local conservation districts for the
9 sole purpose of assisting dairy producers to develop and fully
10 implement dairy nutrient management plans. Only the ((~~chairman~~)) chair
11 of the commission or the ((~~chairman's~~)) chair's designee may authorize
12 expenditures from the account. The account is subject to allotment
13 procedures under chapter 43.88 RCW, but an appropriation is not
14 required for expenditures.

15 NEW SECTION. **Sec. 4.** The legislature finds that:

16 (1) Complying with the laws regarding dairy nutrient management is
17 a burdensome yet laudable task that the dairy farmers of this state
18 have undertaken;

19 (2) The dairy nutrient management standards and specifications of
20 the natural resources conservation service were the most rigorous in
21 the nation when the dairy nutrient management act was enacted in 1998;

22 (3) Those standards, as they existed in 1998, continue to be
23 appropriate standards for proper management of dairy nutrients, despite
24 modification by the natural resources conservation service since 1998;

25 (4) Dairy farmers cannot comply with constantly changing
26 requirements. The uncertainty constant change creates is an
27 unnecessary drain on limited resources; and

28 (5) If management standards change substantively, there should be
29 a method for all parties concerned with proper dairy nutrient
30 management to consider and implement changes without causing
31 disruption, uncertainty, or an unnecessary drain on resources.

32 **Sec. 5.** RCW 90.64.026 and 1998 c 262 s 6 are each amended to read
33 as follows:

34 (1) Except for those producers who already have a certified dairy
35 nutrient management plan as required under the terms and conditions of
36 an individual or general national pollutant discharge elimination
37 system permit, all dairy producers licensed under chapter 15.36 RCW,

1 regardless of size, shall prepare a dairy nutrient management plan. If
2 at any time a dairy nutrient management plan fails to prevent the
3 discharge of pollutants to waters of the state, it shall be required to
4 be updated.

5 (2) By November 1, 1998, the conservation commission, in
6 conjunction with the advisory and oversight committee established under
7 section 8 of this act shall develop a document clearly describing the
8 elements that a dairy nutrient management plan must contain to gain
9 local conservation district approval.

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

16 (a) The natural resources conservation service, as those standards
17 and specifications existed on July 1, 1998, and as modified by the
18 geographically based standards developed under RCW 90.64.140; or

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

21 (4) In evaluating alternative technologies and methods, the
22 principal objectives of the committee's evaluation shall be
23 determining:

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

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

29 (c) Whether the technologies and methods approved or provided by
30 the natural resources conservation service for use by confined animal
31 feeding operations are necessarily required for other categories of
32 dairy operations.

33 In addition, the committee shall encourage the conservation
34 commission and the conservation districts to apply in dairy nutrient
35 management plans technologies and methods that are appropriate to the
36 needs of the specific type of operation and the specific farm site and
37 to avoid imposing requirements that are not necessary for the specific
38 dairy producer to achieve compliance with water quality requirements.

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

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

15 (7) Notwithstanding the timelines in this section, any dairy farm
16 licensed after September 1, 1998, shall have six months from the date
17 of licensing to develop a dairy nutrient management plan and another
18 eighteen months to fully implement that plan.

19 (8) If a plan contains the elements identified in subsection (2) of
20 this section, a conservation district shall approve the plan no later
21 than ninety days after receiving the plan. If the plan does not
22 contain the elements identified in subsection (2) of this section, the
23 local conservation district shall notify the dairy producer in writing
24 of modifications needed in the plan no later than ninety days after
25 receiving the plan. The dairy producer shall provide a revised plan
26 that includes the needed modifications within ninety days of the date
27 of the local conservation district notification. If the dairy producer
28 does not agree with, or otherwise takes exception to, the modifications
29 requested by the local conservation district, the dairy producer may
30 initiate the appeals process described in RCW 90.64.028 within thirty
31 days of receiving the letter of notification.

32 (9) An approved plan shall be certified by a conservation district
33 and a dairy producer when the elements necessary to implement the plan
34 have been constructed or otherwise put in place, and are being used as
35 designed and intended. A certification form shall be developed by the
36 conservation commission for use state-wide and shall provide for a
37 signature by both a conservation district representative and a dairy
38 producer. Certification forms shall be signed by December 31, 2003,

1 and a copy provided to the department for recording in the data base
2 established in RCW 90.64.130.

3 (10) The ability of dairy producers to comply with the planning
4 requirements of this chapter depends, in many cases, on the
5 availability of federal and state funding to support technical
6 assistance provided by local conservation districts. Dairy producers
7 shall not be held responsible for noncompliance with the planning
8 requirements of this chapter if conservation districts are unable to
9 perform their duties under this chapter because of insufficient
10 funding.

11 (11) The conservation commission may, after public hearing and due
12 consideration, including comment from the department of ecology, adopt
13 standards and specifications of the natural resources conservation
14 service that were not in existence on July 1, 1998. Producers affected
15 by new standards and specifications have five years from the date the
16 commission adopts the new standards and specifications to comply with
17 the new standards and specifications.

18 NEW SECTION. Sec. 6. (1) In consultation with the state
19 conservation commission and local conservation districts, the office of
20 financial management shall develop recommendations to provide adequate
21 funding for the dairy nutrient management program established pursuant
22 to chapter 90.64 RCW. The recommendations shall include an
23 identification of need, if any, for additional funding for each of the
24 following purposes: (a) To perform functions required by conservation
25 districts and the state conservation commission; (b) to provide
26 technical assistance for development of plans; and (c) for cost-share
27 moneys for implementation of the plans based on fifty percent of the
28 eligible costs to be derived from public sources. The recommendations
29 shall be for the amount of funding required each fiscal year for these
30 purposes assuming that the deadlines established in chapter 262, Laws
31 of 1998 will be met.

32 (2) The office of financial management shall submit its written
33 recommendations to the co-chief clerks of the house of representatives
34 and the secretary of the senate before December 20, 2000.

35 NEW SECTION. Sec. 7. The legislature finds that:

36 (1) Dairy nutrient management involves the knowledge of many areas
37 and the possession of many skills besides engineering;

1 (2) While engineering is important to a correctly designed system,
2 it is only part of the necessary skills, specialized knowledge, and
3 considerations required to create proper dairy nutrient management; and

4 (3) Trained technicians, with the help of established technical
5 manuals and guidelines, and working in consultation with a professional
6 engineer when appropriate, can design and implement proper dairy
7 nutrient management systems.

8 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.64 RCW
9 to read as follows:

10 (1) Work carried out by technical assistance teams in order to
11 comply with this chapter meets the requirements of chapter 18.43 RCW.
12 Professional engineers may work in conjunction with technicians and
13 need not have direct supervision over technicians in implementing this
14 chapter.

15 (2) The provisions of this section apply to all dairy nutrient
16 management plans developed under this chapter, whether developed prior
17 to or after the effective date of this section.

18 NEW SECTION. **Sec. 9.** The legislature finds that substantial
19 progress has been made in implementing the dairy nutrient management
20 act since its enactment in 1998. Though the involved agencies and
21 interest groups are cooperatively working to meet the deadlines
22 established in that legislation, insufficiency of funding or unexpected
23 obstacles, if not quickly remedied, will cause a delay in the
24 implementation of the legislation and noncompliance with established
25 deadlines.

26 The purpose of section 10 of this act is to combine, for a limited
27 duration, the advisory and oversight committee with the dairy nutrient
28 management task force that includes legislative participation to
29 provide continuity to monitoring and problem-solving efforts.

30 NEW SECTION. **Sec. 10.** (1) A dairy nutrient management task force
31 is reestablished. The task force shall be comprised of up to fourteen
32 members, appointed as follows:

33 (a) Two members of the house of representatives, one from each
34 major caucus, who were appointed by the co-speakers of the house of
35 representatives in accordance with chapter 262, Laws of 1999, and who
36 served on the original task force;

1 (b) Two members of the senate, one from each major caucus, who were
2 appointed by the president of the senate in accordance with chapter
3 262, Laws of 1999, and who served on the original task force;

4 (c) A representative of the department of ecology, appointed by the
5 director of ecology;

6 (d) A representative of the state conservation commission,
7 appointed by its executive secretary;

8 (e) A representative of local conservation districts, appointed by
9 the president of a state-wide association of conservation districts;

10 (f) Three active dairy farmers or representatives of dairy farmers,
11 appointed by a state-wide organization representing dairy farmers in
12 the state, who shall represent the different regions and different
13 sizes of dairy operations;

14 (g) A representative of an environmental organization with
15 familiarity and expertise in water quality issues who was appointed to
16 the dairy nutrient management task force by the co-speakers of the
17 house of representatives and the president of the senate in accordance
18 with chapter 262, Laws of 1999;

19 (h) A representative of shellfish growers, appointed by the
20 president of an association of coastal shellfish growers; and

21 (i) In addition to other members appointed under this subsection
22 (1) the following shall be invited to participate as nonvoting members:

23 (i) A representative of the federal natural resource conservation
24 service appointed by the state conservationist;

25 (ii) A representative of the federal environmental protection
26 agency appointed by the regional director of the environmental
27 protection agency;

28 (iii) A representative of local health districts appointed by the
29 president of a state-wide association of local health districts; and

30 (iv) A representative of the office of financial management.

31 (2) The entity that originally appointed members to the task force
32 may change the appointment or appoint a successor.

33 (3) The task force shall meet two times per year, or more if
34 necessary, to monitor the progress and provide oversight of the dairy
35 nutrient management program administered by the department of ecology,
36 the conservation commission, and local conservation districts. The
37 task force shall include but not be limited to examination of the
38 following topics:

1 (a) Determining whether the necessary progress is being attained so
2 that deadlines established in chapter 262, Laws of 1998, for the
3 development, approval, implementation, and final certification of dairy
4 nutrient management plans will be achieved;

5 (b) Better assurance of consistency in interpretations between
6 staff that conduct inspections, and between inspectors and staff that
7 design and approve dairy nutrient management plans;

8 (c) What constitutes waters of the state for purposes of the dairy
9 nutrient management program;

10 (d) Clarification of what constitutes a violation, including a
11 review of the federal environmental protection agency guidance manual,
12 and whether there must be an actual discharge and/or exceedance of
13 state water quality standards;

14 (e) Clarification as to the circumstances under which dairy
15 operations are responsible to control flood waters arising from outside
16 of the dairy operation to prevent mixing with dairy nutrients including
17 flood waters that arise during major flood events;

18 (f) A review of materials provided by state agencies to dairy
19 farmers regarding dairy nutrient management inspections;

20 (g) Reviewing changes in any standards used in the development and
21 approval of dairy nutrient management plans;

22 (h) Monitoring the development of and reviewing recommendations for
23 adequate funding for the various components of the program; and

24 (i) Resolution of the conflict between the state public records
25 laws and federal privacy laws in regards to processing of requests for
26 dairy nutrient management plans when requests are submitted to staff
27 that operate under different directives but share common office space.

28 (4) By December 10th of each year, the task force shall:

29 (a) Provide recommendations to the department of ecology, to the
30 conservation commission, and to local conservation districts for
31 improvements in the implementation of the dairy nutrient management
32 program; and

33 (b) Provide recommendations and proposed legislation to the
34 legislature containing statutory changes to clarify and improve the
35 operations of various facets of the program.

36 (5) The task force shall convene as soon as possible upon
37 appointment of its members. The task force shall elect a chair or co-
38 chairs from among the legislative members and adopt rules for

1 conducting the business of the task force. Staff support for the task
2 force shall be provided by the department of ecology.

3 (6) This section expires June 30, 2004.

4 **Sec. 11.** RCW 90.64.050 and 1998 c 262 s 12 are each amended to
5 read as follows:

6 (1) The department has the following duties:

7 (a) Identify existing or substantial potential water quality
8 problems resulting from dairy farms through implementation of the
9 inspection program in RCW 90.64.023;

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

11 (c) Receive, process, and verify complaints concerning discharge of
12 pollutants from all dairy farms;

13 (d) Determine if a dairy-related water quality problem requires
14 immediate corrective action under the Washington state water pollution
15 control laws, chapter 90.48 RCW, or the Washington state water quality
16 standards adopted under chapter 90.48 RCW. The department shall
17 maintain the lead enforcement responsibility;

18 (e) Administer and enforce national pollutant discharge elimination
19 system permits for operators of concentrated dairy animal feeding
20 operations, where required by federal regulations and state laws or
21 upon request of a dairy producer;

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

23 (g) Encourage communication and cooperation between local
24 department personnel and the appropriate conservation district
25 personnel;

26 (h) Require the use of dairy nutrient management plans as required
27 under this chapter for entities required to plan under this chapter;
28 and

29 (i) Provide to the commission and the advisory and oversight
30 committee an annual report of dairy farm inspection and enforcement
31 activities.

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

34 **Sec. 12.** RCW 90.64.005 and 1998 c 262 s 1 are each amended to read
35 as follows:

36 The legislature finds that there is a need to establish a clear and
37 understandable process that provides for the proper and effective

1 management of dairy nutrients that affect the quality of surface or
2 ground waters in the state of Washington. The legislature finds that
3 there is a need for a program that will provide a stable and
4 predictable business climate upon which dairy farms may base future
5 investment decisions.

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

13 It is also the intent of this chapter to establish an inspection
14 and technical assistance program for dairy farms to address the
15 discharge of pollution to surface and ground waters of the state that
16 will lead to water quality compliance by the industry. A further
17 purpose is to create a balanced program involving technical assistance,
18 regulation, and enforcement with coordination and oversight of the
19 program by a committee composed of industry, agency, and other
20 representatives. Furthermore, it is the objective of this chapter to
21 maintain the administration of the water quality program as it relates
22 to dairy operations at the state level.

23 It is also the intent of this chapter to recognize the existing
24 working relationships between conservation districts, the conservation
25 commission, and the department of ecology in protecting water quality
26 of the state. A further purpose of this chapter is to provide
27 statutory recognition of the coordination of the functions of
28 conservation districts, the conservation commission, and the department
29 of ecology pertaining to development of dairy ((waste)) nutrient
30 management plans for the protection of water quality.

31 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the
33 state government and its existing public institutions, and takes effect
34 immediately.

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