

HOUSE BILL REPORT

ESSB 5889

As Passed House - Amended:

April 26, 2003

Title: An act relating to animal feeding operations.

Brief Description: Concerning a livestock nutrient management program.

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

Brief History:

Committee Activity:

Agriculture & Natural Resources: 4/1/03, 4/4/03 [DPA];

Appropriations: 4/7/03 [DPA(AGNR)].

Floor Activity:

Passed House - Amended: 4/26/03, 97-0.

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Transfers the dairy nutrient management program from the Department of Ecology to the Department of Agriculture.
- Includes provisions authorizing transfer of delegated federal Clean Water Act authority.
- 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 agency 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.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 9 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Kristiansen, Assistant Ranking Minority

Member; Eickmeyer, Grant, McDermott, Orcutt, Quall and Sump.

Minority Report: Do not pass. Signed by 4 members: Representatives Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Chandler and Hunt.

Staff: Caroleen Dineen (786-7156).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Agriculture & Natural Resources. Signed by 16 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Clements, Cody, DeBolt, Grant, Hunter, Kessler, Linville, McDonald, Pflug, Ruderman and Sump.

Minority Report: Do not pass. Signed by 11 members: Representatives Sehlin, Ranking Minority Member; Buck, Conway, Cox, Dunshee, Kagi, Kenney, McIntire, Miloscia, Schual-Berke and Talcott.

Staff: Patricia Linehan (786-7178).

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 DOE is required to inspect every dairy farm in the state within two years and to initiate an inspection program for all dairy farms to survey for violations and monitor plan development. 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.

Every licensed dairy producer (other than those who have a plan required under the terms and conditions of a federal discharge permit) must develop a dairy nutrient management plan. 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.

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 March 2005 if statutory changes are required.

Summary of Amended 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 the Washington Association of Conservation Districts, 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;
- 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: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except for sections 2 and 5, relating to the dairy nutrient management program, which take effect July 1, 2003.

Testimony For: (Agriculture & Natural Resources) This bill is the result of extensive industry work and negotiations, and the issue addressed in this bill is a high stakes one for the livestock industry. The Department of Ecology (DOE) proposed eliminating this important program last summer. This bill attempts to create the most efficient, effective livestock nutrient management program to meet federal requirements. The dairy industry has worked hard on compliance, and this bill is needed to help them succeed.

A program covering all livestock should be managed by the Department of Agriculture (WSDA). Twenty-two states have livestock nutrient management programs managed by their agriculture departments. Problems are not apparent in other states with federal delegation or agency operation through agreements. The federal Environmental Protection Agency has not indicated concern about transferring this program.

Three WSDA inspectors can perform required inspections. Conservation districts are partners in implementing the program and must be consulted by the new review committee.

(In support with concerns) Conservation districts should be members of the committee created in this bill. Three inspectors are not adequate for program inspections. The state needs to act on this program by 2004, not 2006.

(Neutral) The DOE now has primary authority for this program. The DOE proposed elimination of the program last summer because of budget concerns. The DOE supports continuing the program regardless of which agency manages it and suggests transfer of the entire program if it is taken out of the DOE. The WSDA is fully prepared to develop and implement the program.

Testimony For: (Appropriations) The dairy nutrient management program has existed since 1998. Of the approximately 600 dairies required to have plans by the end of 2003, 200 will not meet the deadline. Under the new federal water quality rules, the state will have to have a complete livestock nutrient management program by 2005.

The Department of Ecology (DOE) proposed eliminating this program. The new program is not the same as the DOE's dairy program; different employee skills may be required. The Department of Agriculture (WSDA) can manage the livestock program for the entire industry for half of what was appropriated for just the dairy industry.

Testimony Against: (Agriculture & Natural Resources) The dairy nutrient management program is a water quality program and should be managed by the Department of Ecology (DOE). The bill strips the dairy nutrient management program from the DOE, where it has been a great success. The WSDA is not well equipped to take over all aspects of this program. Transfer of federally delegated authority under the Clean Water Act may be problematic and will trigger an Endangered Species Act review.

Testimony Against: (Appropriations) The dairy nutrient management program is primarily a water quality program and belongs at the DOE. There is no good justification for this transfer. The WSDA lacks the experience and infrastructure to do an adequate job. In addition, there are serious concerns about transfer of federally delegated authority to the DOE.

The DOE employees have been told that they will have to apply for jobs at the WSDA that are several salary scales below their current jobs. Employees with years of experience may be lost.

Testified: (Agriculture & Natural Resources) (In support) Senator Rasmussen, sponsor; Jim Jesernig, Washington Association of Conservation Districts and Pacific Coast Shellfish Growers Association; Jay Gordon, Victor Jensen, and Larry Stap, Washington State Dairy Federation; Tip Hudson, Washington Cattlemen's Association; and Chris Cheney, Washington Fryer Commission.

(Neutral) Dave Peeler, Department of Ecology; and Lee Faulconer, Department of Agriculture.

(Opposed) Bruce Wishart, People for Puget Sound.

Testified: (Appropriations) (In support) Chris Cheney, Washington Dairy Federation, Washington Cattlemen's Association, and Washington Fryer Commission.

(Concerns) Lynn Maier, Washington Public Employees Association.

(Opposed) Bruce Wishart, People for Puget Sound.