

SENATE BILL REPORT

SB 6568

As Reported by Senate Committee On:
Agriculture, Water & Rural Economic Development, February 4, 2016
Ways & Means, February 9, 2016

Title: An act relating to establishing a water discharge permit for concentrated animal feeding operations that is issued under the sole authority of state law.

Brief Description: Establishing a water discharge permit for concentrated animal feeding operations that is issued under the sole authority of state law.

Sponsors: Senator Warnick.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 2/02/16, 2/04/16 [DP-WM, DNP].

Ways & Means: 2/08/16, 2/09/16 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Warnick, Chair; Takko, Ranking Member; Hobbs and Honeyford.

Minority Report: Do not pass.
Signed by Senator Dansel, Vice Chair.

Staff: Diane Smith (786-7410)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6568 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Bailey, Becker, Brown, Hewitt, O'Ban, Padden, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Ranker, Ranking Minority Member, Operating; Billig, Conway, Darneille, Hasegawa, Nelson, Pedersen and Rolfes.

Minority Report: That it be referred without recommendation.

Signed by Senator Keiser, Assistant Ranking Member on the Capital Budget.

Staff: Sherry McNamara (786-7402)

Background: A concentrated animal feeding operation (CAFO) is an agricultural operation with its definition primarily found in federal law. With some exception and clarification in federal rules, a CAFO is generally a facility that confines animals for 45 days or more during any 12 month period in an area that does not contain forage or crops.

Any CAFO that is discharging into waters of the state is required to obtain coverage under a general permit or obtain an individual permit. Waters of the state include both surface and ground waters. A general discharge permit is written to cover similar types of discharges from similar activities.

The Federal Clean Water Act (CWA) provides that the discharge of pollutants from point sources, including CAFOs, to surface waters is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. The State Water Pollution Control Act, the chapter of law amended by this bill, requires that any person who conducts a commercial or industrial operation that results in the disposal of liquid or solid waste material into waters of the state must obtain a permit.

The Department of Ecology (DOE), as the state agency delegated the responsibility for implementing the federal Clean Water Act in Washington, is responsible for permitting CAFOs in regards to water quality regulations. An existing general permit relating to CAFOs expired in the year 2011. That permit was issued as a combined NPDES permit, under federal authority and a State Waste Discharge permit, under state authority. DOE is in the early stages of a process to update that permit.

CAFOs that are also dairies must register with the Washington State Department of Agriculture (WSDA) and operate under a dairy nutrient management plan that has been approved by their local conservation district. The administration and enforcement of programs, including inspections, relating to CAFOs are outlined in a memorandum of understanding (MOU) entered into between DOE and WSDA. The lead agency for various administrative actions depends on a number of factors, such as whether the CAFO is permitted under an NPDES permit or not. Generally, inspection and compliance actions at dairies are the primary responsibility of WSDA.

Summary of Bill (Recommended Substitute): DOE, in consultation with WSDA, must establish a general permit known as the state dairy groundwater discharge permit issued under the sole authority of the state. A CAFO that discharges exclusively to groundwater electing to obtain coverage under the state dairy groundwater discharge permit is not required to obtain coverage under any combined permit issued under both the state and the authority of the federal Clean Water Act.

The state dairy groundwater discharge permit must be administered jointly by DOE and WSDA. That joint administration must be specified in an MOU between the two agencies. The MOU must cover both the administration and enforcement of the state dairy groundwater discharge permit, including how manure lagoons and effluent storage systems that pose a risk to groundwater will be identified and how federal and state cost-share programs can be facilitated. The MOU must provide for WSDA to have the primary inspection responsibility.

Various enforcement and administrative provisions are updated to reflect the state dairy groundwater discharge permit and to clarify the ability of WSDA to take enforcement actions for permit violations at CAFOs.

A joint report from DOE and WSDA is due to the Legislature in 2018 regarding progress made toward implementing the state dairy groundwater discharge permit. The report must specifically include recommendations for establishing or improving a permit that allows for shared costs of improving manure lagoons or effluent storage systems.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute):

- Establishes a general permit, known as the "state dairy groundwater discharge permit";
- Clarifies that "concentrated animal feeding operations" (CAFOs) that are eligible for the permit are not required to obtain coverage under any combined state/federal National Pollutant Discharge Elimination System (NPDES) permit;
- Revises the definition of a CAFO to the number of dairy cows;
- Acknowledges that coverage with the state dairy groundwater discharge permit complies with chapter 90.48 RCW (Water Pollution Control); and
- Adds requirement that certain sections are subject to the availability of amounts appropriated for the specific purposes described.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Agriculture, Water & Rural Economic Development): PRO: Our state needs certainty for our dairies primarily because of lawsuits against them. Because ground water is not navigable, it is not a water of the United States under federal law. There is no state law allowing citizen-suits for groundwater issues. No one loses their right to sue under federal law. Other states such as California, Utah, and New Mexico have both permits. DOE could and would provide this state-option permit along with the new draft combined CAFO permit expected in March.

CON: The bill derails the NPDES program. Of all dairies, 99 percent fall under this federal program. The environmentalist interest is only for dairies over 200 head, not small dairies. There are water quality problems in Yakima and Whatcom counties from over-application of manure. Wells have been closed because of this. A third-party lawsuit cannot be used to force a dairy to exceed permit requirements; it is only used for enforcement when agencies fail to enforce. It gives WSDA the prime inspection duty for DOE permits. The bill does not allow the transparency to inspect farm plans.

OTHER: The bill potentially introduces ambiguity. We should have two permits but an operation must have one or the other. There should be no interference with DOE's authority to enforce. The definition of "CAFO" applies to both ground and surface water, so it needs clarification. Everything the bill directs can already be done under DOE's existing authority. Both WSDA and DOE have regulatory authority but over different aspects of dairy farming. Most comments have been positive for a new CAFO program. A future MOU could accomplish that. The definitions in Section 2(4) are from a federal rule and need to be refined for state application.

Persons Testifying on Original Bill (Agriculture, Water & Rural Economic Development): PRO: Senator Warnick, prime sponsor; Jay Gordon, Washington State Dairy Federation.

CON: Bruce Wishart, Puget Soundkeeper/Sierra Club; Neil Beaver, The Lands Council/Lobbyist.

OTHER: Kelly Susewind, Dept of Ecology; Kirk Robinson, WSDA; Jack Field, Washington Cattlemen's Assoc.; Evan Sheffels, WA Farm Bureau.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: The underlying policy in this bill is good. It provides administrative guidance. The assumptions in the fiscal note seem a little high.

CON: This bill derails the current Ecology process to develop the permit. Without the federal permit, protection of groundwater and surface water is eliminated. Without this protection, shellfish beds and drinking water supplies are in danger of being polluted.

Persons Testifying on First Substitute (Ways & Means): PRO: Jay Gordon, Washington Dairy Federation.

CON: Bruce Wishart, Sierra Club/CELP.

Persons Signed In To Testify But Not Testifying: No one.