

HOUSE BILL REPORT

SSB 6161

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to dairy nutrient management.

Brief Description: Creating a dairy nutrient management program.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Swecker, Newhouse, Rasmussen and Anderson).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/26/98 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Chandler, Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin; Regala and Sump.

Staff: Carole Richmond (786-7114).

Background: The federal Clean Water Act establishes requirements and a regulatory framework for discharges to surface waters from dairy farms. The Department of Ecology is authorized to administer the federal Clean Water Act in Washington. State water quality laws regulate discharges to ground water, as well as to surface waters.

The Department of Ecology administers a dairy waste management program established in 1993. The program requires operators of concentrated dairy animal feeding operations to apply for a national pollution discharge elimination system (NPDES) permit. In addition, the program requires inspection of dairy farms if there is a third party complaint or if the Department of Ecology believes that a dairy farm is a likely source of water quality degradation. Under the program, dairy farms found to be discharging dairy nutrients into waters of the state are referred to the Conservation Commission and local conservation districts for technical assistance. A dairy producer is required to develop a dairy waste management plan within six months and to implement the plan in the ensuing 18-month period.

In early 1997, the federal Environmental Protection Agency conducted inspections of dairy farms in Washington due to water quality concerns. Because dairy farms are not periodically inspected, the rate of compliance with state and federal water quality laws is not known.

Summary of Amended Bill: The dairy waste management program is modified by requiring that every dairy producer register with the Department of Ecology, that every dairy farm be inspected at least once within two years, and that every dairy producer develop a dairy nutrient management plan. Other provisions of the new program include: an appeals process, an advisory and oversight committee and technical assistance teams, better response times to complaints, creation of an account, and a reduced fee for dairy producers who hold a NPDES permit.

Definitions. The term "violation" is defined to mean that discharges of pollutants to waters of the state are not a violation of state law if a dairy producer is in compliance with a dairy nutrient management plan approved under chapter 90.64 RCW that is commensurate with the current size of the herd.

Registration. Every dairy producer licensed as a dairy in the State of Washington must register with the Department of Ecology by September 1, 1998. The purpose of registration is to compile baseline information about numbers of cows per acres and the status of dairy nutrient management.

Dairy farm inspections. The Department of Ecology must inspect every dairy farm in the state within two years. The department may conduct such additional inspections as necessary to ensure compliance with state and federal water quality requirements. At its option, the local conservation district may accompany a Department of Ecology inspector on any scheduled dairy farm inspection, except random unannounced inspections.

Dairy nutrient management plans. Dairy producers must have an approved dairy nutrient management plan by July 1, 2002, and a certified plan by December 31, 2003. The Conservation Commission, in conjunction with the advisory and oversight committee, defines planning elements that dairy nutrient management plans must contain. If a person already has a certified plan, that person does not need to plan again, however, if any plan fails to prevent the discharge of pollutants to waters of the state, the plan must be updated. Alternative dairy nutrient management standards are encouraged, provided they also prevent the discharge of pollutants and are applied appropriately to individual dairy operations.

Appeals process. Certain conservation district decisions pertaining to the review or lack of approval or certification of dairy nutrient management plans are appealable to the pollution control hearings board. Informal hearings before the Conservation Commission are also available.

Information management. To manage and track information from the inspections, as well as information related to planning and enforcement actions, the Department of Ecology, in consultation with the Conservation Commission, must create and maintain a database.

Advisory and oversight committee and technical assistance teams. An advisory and oversight committee comprised of a balance of interests is created to monitor and advise the overall dairy nutrient management program. Technical assistance teams of persons with expertise in dairy nutrient management are created to serve up to four geographic areas of the state. These teams are created to assist dairy producers in developing dairy nutrient management plans. The teams also develop standards and specifications that are appropriate to the prevailing soils and weather conditions in various areas.

Investigations. The department is required to investigate any written complaint that is made within three days of receiving the complaint. For first offenses of water quality laws, the department may waive a penalty to allow a dairy producer to come into compliance with those laws.

Penalties. Fines for violations of planning requirements may be levied by the Department of Ecology upon request of the Conservation Commission. Fines may not exceed \$5,000 for non-compliance with planning deadlines, and \$100 for failure to register.

Account created. An account is created to receive any penalties that may be paid by dairy producers for violations of planning requirements. The balance in this account may only be used to provide grants to local conservation districts for assisting dairy producers in developing and fully implementing dairy nutrient management plans.

Fees. The fee for a NPDES permit issued for discharges related to dairy nutrients is 50 cents per animal unit covered by the permit, up to a specified cap beyond which the fee would be less than 50 cents per animal unit under the current fee structure.

One section of current law is repealed, referring to compliance levels and the respective roles of conservation districts and the department.

Amended Bill Compared to Substitute Bill: The following terms are defined: "advisory and oversight committee," "bypass," "certification," "dairy farm," "dairy nutrient," "dairy nutrient management plan," "dairy nutrient management technical assistance team," "dairy producer," "upset," and "violation."

Dairy nutrient management planning is required and alternatives to planning, such as water quality monitoring, are not permitted for the purposes of chapter 90.64 RCW. Plans must be approved by a local conservation district by July 1, 2002, and certified by both a district and a dairy producer by December 31, 2003.

An appeals process is provided to allow certain conservation district decisions pertaining to plan review or denial of plan approval or certification to be appealed before the pollution control hearings board, and an option is provided for informal hearings before the conservation commission.

Inspection of every farm is required once in the first two years after passage of this bill, instead of once every two years. Subsequent inspections will be based on criteria that will be developed by the advisory and oversight committee.

The membership of an advisory and oversight committee is defined. A nominations process for appointments to this committee is provided. Four geographically based technical assistance teams are established to assist dairy producers in developing their plans. Alternative dairy nutrient management standards may also be developed by these teams.

Penalties for planning violations under the dairy nutrient management chapter are established. The requirement to publish all enforcement actions through news releases is deleted. An account is created in the treasury to collect any penalties that may be levied for planning violations. These funds may only be used for technical assistance to implement the requirements of chapter 90.64 RCW.

The fee for a NPDES permit for dairy farms is reduced to 50 cents per animal unit up to a specified cap, beyond which the fee is less than 50 cents per animal unit under the current fee structure.

An annual report is required until 2002 to the Legislature on progress made to implement the provisions of chapter 90.64 RCW.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

Testimony For: The bill was developed collaboratively. Options are preferred, including alternatives to mandatory planning. The bill does not provide penalties for failure to plan. The bill includes options other than going to a local conservation district if farmers choose. Both bills require additional effort from conservation districts; therefore, more resources are required. The majority of farms need to complete dairy nutrient management plans.

Testimony Against: None.

Testified: Senator Dan Swecker (Con); Don Stuart, Washington Association of Conservation Districts (Pro); Dick Wallace, Washington Department of Ecology (Pro); Larry Kytola, Washington State Dairy Federation (Pro); Bruce Wishart, People for Puget Sound (Pro).