

ESSB 5889 - H AMD 517

By Representative Linville

ADOPTED 04/26/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A livestock nutrient management program is
4 essential to ensuring a healthy and productive livestock industry in
5 Washington state. The goal of the program must be to provide clear
6 guidance to livestock farms as to their responsibilities under state
7 and federal law to protect water quality while maintaining a healthy
8 business climate for these farms. The program should develop
9 reasonable financial assistance resources, educational and technical
10 assistance to meet these responsibilities, and provide for periodic
11 inspection and enforcement actions to ensure compliance with state and
12 federal water quality laws. The legislature intends that by 2006,
13 there will be a fully functioning state program for concentrated animal
14 feeding operations in the state, and that this program will be a single
15 program for all livestock sectors.

16 The legislature finds that a livestock nutrient management program
17 is necessary to address the federal rule changes with which livestock
18 operations must comply. Furthermore, budgetary conditions demand
19 efficient and effective governance. In addition, many of the existing
20 requirements and goals for dairy farms will be completed by December
21 2003, and revisions will be needed.

22 NEW SECTION. **Sec. 2.** (1) A livestock nutrient management program
23 development and oversight committee is created comprised of the
24 following members, appointed as follows:

25 (a) The director of the department of agriculture, or the
26 director's designee, who shall serve as committee chair;

27 (b) The director of the department of ecology, or the director's
28 designee;

1 (c) A representative of the United States environmental protection
2 agency, appointed by the regional director of the agency unless the
3 agency chooses not to be represented on the committee;

4 (d) A representative of commercial shellfish growers, nominated by
5 an organization representing these growers, appointed by the governor;

6 (e) A representative of an environmental interest organization with
7 familiarity and expertise in water quality issues, appointed by the
8 governor;

9 (f) A representative of tribal governments as nominated by an
10 organization representing tribal governments, appointed by the
11 governor;

12 (g) A representative of Washington State University appointed by
13 the dean of the college of agriculture and home economics;

14 (h) A representative of the Washington association of conservation
15 districts, appointed by the association's board of officers;

16 (i) Three representatives of dairy producers nominated by a
17 statewide organization representing dairy producers in the state,
18 appointed by the governor;

19 (j) Two representatives of beef cattle producers nominated by a
20 statewide organization representing beef cattle producers in the state,
21 appointed by the governor;

22 (k) One representative of poultry producers nominated by a
23 statewide organization representing poultry producers in the state,
24 appointed by the governor;

25 (l) One representative of the commercial cattle feedlots nominated
26 by a statewide organization representing commercial cattle feedlots in
27 the state, appointed by the governor; and

28 (m) A representative of any other segment of the livestock industry
29 determined by the director of agriculture to be subject to federal
30 rules regulating animal feeding or concentrated animal feeding
31 operations.

32 (2) The state department of agriculture shall provide staff for the
33 committee. The department of agriculture may request staff assistance
34 be assigned by the United States environmental protection agency to
35 assist the director in staffing the committee.

36 (3) The committee shall establish a work plan that includes a list
37 of tasks and a projected completion date for each task.

1 (4) The committee may establish a subcommittee for each of the
2 major industry segments that is covered by the recently adopted federal
3 regulations that pertain to animal feeding operations and concentrated
4 animal feeding operations. The subcommittee shall be composed of
5 selected members of the full committee and additional representatives
6 from that major segment of the livestock industry as determined by the
7 director. The committee shall assign tasks to the subcommittees and
8 shall establish dates for each subcommittee to report back to the full
9 committee.

10 (5) The committee shall examine the recently adopted federal
11 regulations that provide for the regulation of animal feeding
12 operations and concentrated animal feeding operations and develop a
13 program to be administered by the department of agriculture that meets
14 the requirements and time frames contained in the federal rules.
15 Elements that the committee shall evaluate include:

16 (a) A process for adopting standards and for developing plans for
17 each operation that meet these standards;

18 (b) A process for revising current national pollution discharge
19 elimination system permits currently held by livestock operations and
20 to transition these permits into the new system; and

21 (c) In consultation with the director, a determination of what
22 other work is needed and what other institutional relationships are
23 needed or desirable. The committee shall consult with representatives
24 of the statewide association of conservation districts regarding any
25 functions or activities that are proposed to be provided through local
26 conservation districts.

27 (6) The committee shall review and comment on proposals for grants
28 from the livestock nutrient management account created in RCW
29 90.64.150.

30 (7) The committee shall develop draft proposed legislation that
31 includes:

32 (a) Statutory changes, including a time line to achieve the phased-
33 in levels of regulation under federal law, to comply with the minimum
34 requirements under federal law and the minimum requirements under
35 chapter 90.48 RCW. These changes must meet the requirements necessary
36 to enable the department of agriculture and the department of ecology
37 to pursue the United States environmental protection agency's approval

1 of the transfer of the permitting program as it relates to the
2 concentrated animal feeding operations from the department of ecology
3 to the department of agriculture;

4 (b) Statutory changes necessitated by the transfer of functions
5 under chapter 90.64 RCW from the department of ecology to the
6 department of agriculture;

7 (c) Continued inspection of dairy operations at least once every
8 two years;

9 (d) An outreach and education program to inform the various animal
10 feeding operations and concentrated animal feeding operations of the
11 program's elements; and

12 (e) Annual reporting to the legislature on the progress of the
13 state strategy for implementing the animal feeding operation and
14 concentrated animal feeding operation.

15 (8) The committee shall provide a report by December 1, 2003, to
16 appropriate committees of the legislature that includes the results of
17 the committee's evaluation under subsection (5) of this section and
18 draft legislation to initiate the program.

19 (9) This section expires June 30, 2006.

20 **Sec. 3.** RCW 90.64.030 and 2002 c 327 s 1 are each amended to read
21 as follows:

22 (1) Under the inspection program established in RCW 90.64.023, the
23 department may investigate a dairy farm to determine whether the
24 operation is discharging pollutants or has a record of discharging
25 pollutants into surface or ground waters of the state. Upon concluding
26 an investigation, the department shall make a written report of its
27 findings, including the results of any water quality measurements,
28 photographs, or other pertinent information, and provide a copy of the
29 report to the dairy producer within twenty days of the investigation.

30 (2) The department shall investigate a written complaint filed with
31 the department within three working days and shall make a written
32 report of its findings including the results of any water quality
33 measurements, photographs, or other pertinent information. Within
34 twenty days of receiving a written complaint, a copy of the findings
35 shall be provided to the dairy producer subject to the complaint, and

1 to the complainant if the person gave his or her name and address to
2 the department at the time the complaint was filed.

3 (3) The department may consider past complaints against the same
4 dairy farm from the same person and the results of its previous
5 inspections, and has the discretion to decide whether to conduct an
6 inspection if:

7 (a) The same or a similar complaint or complaints have been filed
8 against the same dairy farm within the immediately preceding six-month
9 period; and

10 (b) The department made a determination that the activity that was
11 the subject of the prior complaint was not a violation.

12 (4) If the decision of the department is not to conduct an
13 inspection, it shall document the decision and the reasons for the
14 decision within twenty days. The department shall provide the decision
15 to the complainant if the name and address were provided to the
16 department, and to the dairy producer subject to the complaint, and the
17 department shall place the decision in the department's administrative
18 records.

19 (5) The report of findings of any inspection conducted as the
20 result of either an oral or a written complaint shall be placed in the
21 department's administrative records. Only findings of violations shall
22 be entered into the data base identified in RCW 90.64.130.

23 (6) A dairy farm that is determined to be a significant contributor
24 of pollution based on actual water quality tests, photographs, or other
25 pertinent information is subject to the provisions of this chapter and
26 to the enforcement provisions of chapters 43.05 and 90.48 RCW,
27 including civil penalties levied under RCW 90.48.144.

28 (7) If the department determines that an unresolved water quality
29 problem from a dairy farm requires immediate corrective action, the
30 department shall notify the producer and the district in which the
31 problem is located. When corrective actions are required to address
32 such unresolved water quality problems, the department shall provide
33 copies of all final dairy farm inspection reports and documentation of
34 all formal regulatory and enforcement actions taken by the department
35 against that particular dairy farm to the local conservation district
36 and to the appropriate dairy farm within twenty days.

1 (8) For a violation of water quality laws that is a first offense
2 for a dairy producer, the penalty may be waived to allow the producer
3 to come into compliance with water quality laws. The department shall
4 record all legitimate violations and subsequent enforcement actions.

5 (9) A discharge, including a storm water discharge, to surface
6 waters of the state shall not be considered a violation of this
7 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
8 therefore not be enforceable by the department of ecology or a third
9 party, if at the time of the discharge, a violation is not occurring
10 under RCW 90.64.010(18). In addition, a dairy producer shall not be
11 held liable for violations of this chapter, chapter 90.48 RCW, chapter
12 173-201A WAC, or the federal clean water act due to the discharge of
13 dairy nutrients to waters of the state resulting from spreading these
14 materials on lands other than where the nutrients were generated, when
15 the nutrients are spread by persons other than the dairy producer or
16 the dairy producer's agent.

17 (10) As provided under RCW 7.48.305, agricultural activities
18 associated with the management of dairy nutrients are presumed to be
19 reasonable and shall not be found to constitute a nuisance unless the
20 activity has a substantial adverse effect on public health and safety.

21 (11) This section specifically acknowledges that if a holder of a
22 general or individual national pollutant discharge elimination system
23 permit complies with the permit and the dairy nutrient management plan
24 conditions for appropriate land application practices, the permit
25 provides compliance with the federal clean water act and acts as a
26 shield against citizen or agency enforcement for any additions of
27 pollutants to waters of the state or of the United States as authorized
28 by the permit.

29 (12) A dairy producer who fails to have an approved dairy nutrient
30 management plan by July 1, 2002, or a certified dairy nutrient
31 management plan by December 31, 2003, and for which no appeals have
32 been filed with the pollution control hearings board, is in violation
33 of this chapter. Each month beyond these deadlines that a dairy
34 producer is out of compliance with the requirement for either plan
35 approval or plan certification shall be considered separate violations
36 of chapter 90.64 RCW that may be subject to penalties. Such penalties
37 may not exceed one hundred dollars per month for each violation up to

1 a combined total of five thousand dollars. The department has
2 discretion in imposing penalties for failure to meet deadlines for plan
3 approval or plan certification if the failure to comply is due to lack
4 of state funding for implementation of the program. Failure to
5 register as required in RCW 90.64.017 shall subject a dairy producer to
6 a maximum penalty of one hundred dollars. Penalties shall be levied by
7 the department.

8 **Sec. 4.** RCW 90.64.120 and 1993 c 221 s 13 are each amended to read
9 as follows:

10 (1) Nothing in this chapter shall affect the ((department's))
11 department of ecology's authority or responsibility to administer or
12 enforce the national pollutant discharge elimination system permits for
13 operators of concentrated dairy animal feeding operations, where
14 required by federal regulations or to administer the provisions of
15 chapter 90.48 RCW.

16 (2) Unless the department of ecology delegates its authority under
17 chapter 90.48 RCW to the department of agriculture pursuant to RCW
18 90.48.260, and until any such delegation of authority receives federal
19 approval, the transfer specified in section 6 of this act shall not
20 preclude the department of ecology from taking action related to animal
21 feeding operations or concentrated animal feeding operations to protect
22 water quality pursuant to its authority in chapter 90.48 RCW. Before
23 taking such actions, the department of ecology shall notify the
24 department of agriculture.

25 **Sec. 5.** RCW 90.64.150 and 1998 c 262 s 15 are each amended to read
26 as follows:

27 The ((dairy waste)) livestock nutrient management account is
28 created in the custody of the state treasurer. All receipts from
29 monetary penalties levied pursuant to violations of this chapter must
30 be deposited into the account. Expenditures from the account may be
31 used only ((for the commission)) to provide grants ((to local
32 conservation districts for the sole purpose of assisting dairy
33 producers to develop and fully implement dairy nutrient management
34 plans)) for research or education proposals that assist livestock
35 operations to achieve compliance with state and federal water quality

1 laws. The director of agriculture shall accept and prioritize research
2 proposals and education proposals. Only the (~~chairman of the~~
3 ~~commission~~) director or the (~~chairman's~~) director's designee may
4 authorize expenditures from the account. The account is subject to
5 allotment procedures under chapter 43.88 RCW, but an appropriation is
6 not required for expenditures.

7 NEW SECTION. Sec. 6. A new section is added to chapter 90.64 RCW
8 to read as follows:

9 (1) All powers, duties, and functions of the department of ecology
10 pertaining to chapter 90.64 RCW are transferred to the department of
11 agriculture. All references to the director of ecology or the
12 department of ecology in the Revised Code of Washington shall be
13 construed to mean the director of agriculture or the department of
14 agriculture when referring to the functions transferred in this
15 section.

16 (2)(a) All reports, documents, surveys, books, records, files,
17 papers, or written material in the possession of the department of
18 ecology pertaining to the powers, functions, and duties transferred
19 shall be delivered to the custody of the department of agriculture.
20 All cabinets, furniture, office equipment, motor vehicles, and other
21 tangible property employed by the department of ecology in carrying out
22 the powers, functions, and duties transferred shall be made available
23 to the department of agriculture. All funds, credits, or other assets
24 held in connection with the powers, functions, and duties transferred
25 shall be assigned to the department of agriculture.

26 (b) Any appropriations made to the department of ecology for
27 carrying out the powers, functions, and duties transferred shall, on
28 the effective date of this section, be transferred and credited to the
29 department of agriculture.

30 (c) Whenever any question arises as to the transfer of any funds,
31 books, documents, records, papers, files, equipment, or other tangible
32 property used or held in the exercise of the powers and the performance
33 of the duties and functions transferred, the director of financial
34 management shall make a determination as to the proper allocation and
35 certify the same to the state agencies concerned.

1 (3) All rules and all pending business before the department of
2 ecology pertaining to the powers, functions, and duties transferred
3 shall be continued and acted upon by the department of agriculture.
4 All existing contracts and obligations shall remain in full force and
5 shall be performed by the department of agriculture.

6 (4) The transfer of the powers, duties, and functions of the
7 department of ecology shall not affect the validity of any act
8 performed before the effective date of this section.

9 (5) If apportionments of budgeted funds are required because of the
10 transfers directed by this section, the director of financial
11 management shall certify the apportionments to the agencies affected,
12 the state auditor, and the state treasurer. Each of these shall make
13 the appropriate transfer and adjustments in funds and appropriation
14 accounts and equipment records in accordance with the certification.

15 **Sec. 7.** RCW 90.48.260 and 1988 c 220 s 1 are each amended to read
16 as follows:

17 The department of ecology is hereby designated as the State Water
18 Pollution Control Agency for all purposes of the federal clean water
19 act as it exists on February 4, 1987, and is hereby authorized to
20 participate fully in the programs of the act as well as to take all
21 action necessary to secure to the state the benefits and to meet the
22 requirements of that act. With regard to the national estuary program
23 established by section 320 of that act, the department shall exercise
24 its responsibility jointly with the Puget Sound water quality
25 authority. The department of ecology may delegate its authority under
26 this chapter, including its national pollutant discharge elimination
27 permit system authority and duties regarding animal feeding operations
28 and concentrated animal feeding operations, to the department of
29 agriculture through a memorandum of understanding. Until any such
30 delegation receives federal approval, the department of agriculture's
31 adoption or issuance of animal feeding operation and concentrated
32 animal feeding operation rules, permits, programs, and directives
33 pertaining to water quality shall be accomplished after reaching
34 agreement with the director of the department of ecology. Adoption or
35 issuance and implementation shall be accomplished so that compliance
36 with such animal feeding operation and concentrated animal feeding

1 operation rules, permits, programs, and directives will achieve
2 compliance with all federal and state water pollution control laws.

3 The powers granted herein include, among others, and notwithstanding
4 any other provisions of chapter 90.48 RCW or otherwise, the following:

5 (1) Complete authority to establish and administer a comprehensive
6 state point source waste discharge or pollution discharge elimination
7 permit program which will enable the department to qualify for full
8 participation in any national waste discharge or pollution discharge
9 elimination permit system and will allow the department to be the sole
10 agency issuing permits required by such national system operating in
11 the state of Washington subject to the provisions of RCW 90.48.262(2).

12 Program elements authorized herein may include, but are not limited
13 to: (a) Effluent treatment and limitation requirements together with
14 timing requirements related thereto; (b) applicable receiving water
15 quality standards requirements; (c) requirements of standards of
16 performance for new sources; (d) pretreatment requirements; (e)
17 termination and modification of permits for cause; (f) requirements for
18 public notices and opportunities for public hearings; (g) appropriate
19 relationships with the secretary of the army in the administration of
20 his responsibilities which relate to anchorage and navigation, with the
21 administrator of the environmental protection agency in the performance
22 of his duties, and with other governmental officials under the federal
23 clean water act; (h) requirements for inspection, monitoring, entry,
24 and reporting; (i) enforcement of the program through penalties,
25 emergency powers, and criminal sanctions; (j) a continuing planning
26 process; and (k) user charges.

27 (2) The power to establish and administer state programs in a
28 manner which will insure the procurement of moneys, whether in the form
29 of grants, loans, or otherwise; to assist in the construction,
30 operation, and maintenance of various water pollution control
31 facilities and works; and the administering of various state water
32 pollution control management, regulatory, and enforcement programs.

33 (3) The power to develop and implement appropriate programs
34 pertaining to continuing planning processes, area-wide waste treatment
35 management plans, and basin planning.

36 The governor shall have authority to perform those actions required
37 of him or her by the federal clean water act.

1 NEW SECTION. **Sec. 8.** Such actions as are necessary to make the
2 appointments to the committee created in section 2 of this act shall be
3 taken before July 1, 2003, to make the appointments on that date.

4 NEW SECTION. **Sec. 9.** Sections 2 and 6 of this act are necessary
5 for the immediate preservation of the public peace, health, or safety,
6 or support of the state government and its existing public
7 institutions, and take effect July 1, 2003."

8 Correct the title.

EFFECT: (1) Makes technical corrections to remove references to
personnel transfers.

(2) Requires actions to be taken before the effective date on which
the development and oversight committee is created to make the
appointments to the committee on that date.

(3) Adds a representative of the Washington Association of
Conservation Districts to the Livestock Nutrient Management Program
Development and Oversight Committee.

(4) Preserves the authority of the Department of Ecology (DOE) to
issue water quality permits and take action regarding water quality
issues for animal feeding operations (AFOs) and concentrated animal
feeding operations (CAFOs) after transfer of the dairy nutrient
management program to the Department of Agriculture WSDA: (a) Unless
the DOE delegates its federal Clean Water Act authority to the WSDA;
and (b) until the delegation receives federal approval.

(5) Authorizes the DOE to delegate its water quality authority
(include permits) regarding AFOs and CAFOs to the WSDA.

(6) Requires the WSDA to reach agreement with the DOE Director on
AFO/CAFO program rules, permits, programs, and directives until
delegated authority receives federal approval.

(7) Specifies that adoption or issuance of program rules, permits,
programs, and directives must be accomplished so that compliance with
these program requirements will achieve compliance with federal and
state water quality laws.

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