

HOUSE BILL REPORT

SSB 6634

As Passed House:
February 28, 2010

Title: An act relating to establishing civil penalties for failure to comply with dairy nutrient management recordkeeping requirements.

Brief Description: Establishing civil penalties for failure to comply with dairy nutrient management recordkeeping requirements.

Sponsors: Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Ranker, Hatfield, Morton, Haugen, Becker, Shin and Jacobsen).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/18/10, 2/19/10 [DP].

Floor Activity:

Passed House: 2/28/10, 86-10.

Brief Summary of Substitute Bill

- Authorizes the Washington State Department of Agriculture to impose a civil penalty on a dairy producer of up to \$5,000 for failure to comply with nutrient management recordkeeping requirements.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 12 members: Representatives Blake, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Jacks, Kretz, Lias, McCoy, Nelson, Rolfes, Van De Wege and Warnick.

Minority Report: Do not pass. Signed by 1 member: Representative Pearson.

Staff: Jaclyn Ford (786-7339).

Background:

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.

The Washington State Department of Agriculture (WSDA) has the responsibility to regularly inspect dairies for compliance with the Dairy Nutrient Management Act which requires farmers to have plans to address water quality concerns associated with dairy farm nutrients.

Violations under the Dairy Nutrient Management Act include:

- discharges of pollutants to waters of the state;
- failure to register the dairy operation;
- lack of an approved Dairy Nutrient Management Plan; and
- lack of certification that the Dairy Nutrient Management Plan was fully implemented.

The failure to prepare or implement a plan is subject to \$100 per month fine not to exceed a combined total of \$5,000. Discharge of pollutants is subject to a maximum fine of \$10,000 per day. A civil penalty schedule serves as a guide to determine the amount of the fine when a discharge occurs.

In 2009 the Legislature added a separate violation under the Dairy Nutrient Management Act; one could be held in violation of the Dairy Nutrient Management Act for failure to keep necessary records that show application of nutrients was within acceptable agronomic rates. However, after the legislation was enacted, it was determined that if no actual discharge to waters of the state could be shown, the civil penalty authority for discharges did not apply. Thus, there was no penalty for failure to keep the required nutrient application records.

Summary of Bill:

The WSDA may impose a civil penalty on a dairy producer of up to \$5,000 for failure to comply with nutrient management recordkeeping requirements. The aggregate penalty is not to exceed \$5,000 in a calendar year.

In determining the amount of the civil penalty, the WSDA is to take into consideration the following:

- the gravity and magnitude of the violation;
- whether the violation is repeated or is continuous;
- whether the violation was an unavoidable accident, negligence, or intentional;
- the violator's efforts to correct the violation; and
- the immediacy and extent to which the violation threatens the public health or safety, or harms the environment.

Authority is also provided to the WSDA to establish by rule a graduated civil penalty schedule.

Persons may appeal a civil penalty to the Pollution Control Hearings Board.

Appropriation: None.

Fiscal Note: Available. Requested on substitute on February 16, 2010.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed except section 3 which reinstates prior law related to the Pollution Control Hearings Board after a scheduled expiration and takes effect June 30, 2019.

Staff Summary of Public Testimony:

(In support) The bill that passed last session did not have penalties. The dairy farmers wanted to make sure there were penalties for noncompliance. This bill would be an extension from last year. The dairy industry requested this bill.

(Opposed) None.

Persons Testifying: Senator Ranker, prime sponsor; Jeff Canaan, Washington State Department of Agriculture; and Chris Cheney, Washington Dairy Federation.

Persons Signed In To Testify But Not Testifying: None.