

SENATE BILL REPORT

SB 5723

As of March 28, 2011

Title: An act relating to establishing a process for addressing water quality issues associated with livestock operations.

Brief Description: Establishing a process for addressing water quality issues associated with livestock operations.

Sponsors: Senators Schoesler, Ericksen, Haugen, Hatfield, Delvin and Shin.

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 2/15/11.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Staff: Bob Lee (786-7404)

Background: In 1988 a memorandum of agreement (MOA) was entered into between the Department of Ecology (Ecology) and the State Conservation Commission (Commission) regarding the processing of complaints relating to agricultural discharges into waters. Under this process, if a water quality violation is confirmed and not corrected quickly, the problem would be referred to a local conservation commission. A plan was required to be prepared within six months and implemented within 18 additional months. The larger confined animal feeding operations, including some dairies and feedlots, were subject to permit requirements under Environmental Protection Agency's (EPA) National Pollution Discharge Elimination System (NPDES).

In 1993, 1998, and 2003 specific legislation was enacted to address water quality issues relating to dairy operations. In 1993 the Dairy Waste Management Program was created based on the 1988 memorandum of agreement. In 1998 this program became the Dairy Nutrient Management Program and was altered to require inspection of all dairy farms that produce grade A milk. Generally, standards established by the federal Natural Resources Conservation Service (NRCS) were used as the basis for plans to which dairies must comply. All dairies were required to develop plans and to implement those plans within a statutorily established time frame, based partly on work load considerations of the involved agencies. Conservation districts worked with the dairy operators in developing the plans and designing the facilities.

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.

In 2003 the responsibility for the inspection program established under the 1998 act was transferred from Ecology to the Department of Agriculture (WSDA) though an MOA. Larger feedlots continue to be regulated under the NPDES permit program.

There is little statutory guidance establishing procedures for administering a program to address water quality complaints against other types of livestock operations not covered by either the Dairy Nutrient Management Act or the NPDES permit program. This legislation addresses other livestock sectors by establishing a statutory process based on the 1988 MOA and the 1993 program that applied to dairies.

Summary of Bill: It is the intent to assign to WSDA the responsibility for conducting initial investigations of specified types of livestock operations relating to impacts on water quality. If impacts are found to exist, a process is established to provide technical assistance and programs available from conservation districts and associated federal agencies. It is also the intent to transfer the powers and duties for conducting initial inspections of water quality issues from Ecology to WSDA through a memorandum of agreement. The authority currently held by Ecology is retained should a regulatory backstop be needed.

Nutrient means manure or other runoff generated as a result of a livestock operation that enters waters of the state. Livestock means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. Department means WSDA.

This act does not affect operators of confined animal feeding operations that hold NPDES permits, nor operations regulated under the Dairy Nutrient Management Act.

Upon receiving a verbal or written complaint, upon the Department's own determination, or in watersheds that have been determined to be a priority basin due to impairment of water quality, the Department may investigate a livestock operation to determine whether the operation is discharging nutrients or recently has discharged nutrients into the surface or ground waters of the state.

If it is a written complaint, the Department must investigate it within ten days and must make a written report of its findings including the results of any water quality measurements, photographs, or other pertinent information. Those operations that are determined to be a significant contributor of pollution based on actual water quality tests, photos, or other pertinent information, and if immediate corrective action is not possible, are subject to this chapter. Enforcement actions and administrative orders issued by the Department are appealable to the Pollution Control Hearings Board.

If the Department determines that the operator of a livestock operation has the means to correct a water quality problem in a manner that will prevent future contamination and does so promptly, and such correction is maintained, the Department must cease pursuing the complaint. If the problem is unresolved, the Department must notify the operator and the conservation district in which the problem is located.

Specific duties are assigned to the Department, conservation districts, and the Commission. Among the duties of the Department is to encourage the use of federal NRCS standards and

specifications in designing best management practices for livestock nutrient management plans to protect water quality.

Conservation districts are to assist the owner or operator in the development of a livestock nutrient management plan within six months. Implementation of the plan is to be accomplished in 18 months. Additional time can be granted by agreement of an approved schedule or in the case of hardship, subject to concurrence of the Department.

The Department may enter, at all reasonable times, a livestock operation for the purpose of inspecting and investigating conditions relating to pollution of any waters of the state. If denied access, the Director of the Department may apply for a search warrant.

Authority is provided to Ecology to enter into a memorandum of understanding to delegate its authorities and duties to the Department to conduct initial investigations and enforcement of violations.

The Department, Ecology, and the Commission are directed to approach the federal EPA to secure new funding or seek the redirection of existing funds for the administration of this chapter.

This act takes effect on the latter of October 1, 2011, or upon written declaration by the Director of Agriculture and the Executive Director of the Commission that sufficient funding for the program has been secured. If funding subsequently becomes insufficient, the Department and the State Conservation Commission must notify the Office of Financial Management in writing at which time the administration of the program must revert to Ecology.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: None.

Effective Date: The latter of October 1, 2011, or when adequate funding is secured.

Staff Summary of Public Testimony: PRO: One-fourth of the livestock in Puget Sound are in Whatcom County with 1300 locations having livestock. Nooksack Basin was a success story in the nation for achieving reduction in fecal coliform. This success was built upon the relationship provided by the MOA between Ecology and the conservation districts (CDs) for getting technical assistance and funding from the NRCS to implement practices consistent with NRCS standards. This resulted in several tributaries being taken off the 303-D list for water quality impaired waters. Then in 2003, Ecology abandoned the MOA. Since, there has been no credible presence by Ecology. EPA recognizes NRCS standards but Ecology doesn't. Ecology then decided to develop their own manual with different standards than the NRCS manual. NRCS standards are science-based, peer reviews and works and voluntary compliance is possible because federal matching funds are available to install practices. Ecology's manual doesn't work and prevents use of NRCS programs. Support intent of bill which is a statement bill to express frustration that CD's and others are having with Ecology.

Bill codifies the historic relationship that CD's had before Ecology took a different direction but also transfers responsibility for initial inspections from Ecology to WSDA. The Okanogan CD has been developing grazing management plans for over 20 years. In 1990 Ecology began targeting grazing operations. In the last 10 years, Ecology is totally different and farmers are no longer willing or able to move forward. A livestock producer had voluntarily fenced off stream, installed off-stream watering, instituted rotational grazing, and began a voluntary water quality testing program at his own expense. Then, he was visited by an Ecology inspector and was cited for having a potential to pollute and fined \$6,000. He was singled-out, and the fine was widely publicized to have other people fall in line. Ecology has lost touch with the human element of people who work the soil. The technology exists, but Ecology refuses to conduct DNA testing for the source of fecal coliform to determine whether it is from waterfowl, human, wildlife, pets, or livestock, and instead blames livestock. Examples were given where birds were shown as the largest contributor. Over the last 30 years, many ranchers decided to move ahead of the curb and implement NRCS practices but Ecology's manual disrupts all this by creating a moving target. By moving the program from Ecology to WSDA, we will spend time getting something done instead of spending time arguing. Ecology staff are not trained and end up alienating needed working relationships. No industry representatives were involved in the interagency discussions last year.

CON: The environmental community wants to improve working relationship with landowners. The bill undermines the foundation of the Ruckelshaus Center process that agriculture and environmentalist have formulated. Water quality is a complex issue and developing solutions will require the expertise that Ecology has. Ecology has been relegated to the "black hat" regulatory only role and wants to be able to offer technical assistance to improve its relationships in the community. Interagency discussions began last summer to address the concerns relating to the proposed manual and how the water quality program relating to livestock operations will be addressed. Reviewing the roles and relationships between inspection, enforcement, technical assistance, and availability of NRCS funds for voluntary compliance has started and hopefully will be allowed to continue. The shellfish industry is in opposition to the bill but is in favor of the state getting their act together. With the recent increase in health standards for consumption of raw shellfish products, and increased monitoring of the bays, the number of days that shellfish beds are open has been significantly reduced. Additionally, shellfish growers are further boxed in by the cycle of the tides. Reducing the overall fecal counts is important to the survival of the shellfish industry.

Persons Testifying: PRO: George Boggs, Whatcom County Conservation District; Craig Nelson, Okanogan County Conservation District; Carolyn Kelly, Skagit County Conservation District; John Larson, Washington State Association of Conservation Districts; Vic Stokes, Dick Coon, Jack Field, Washington Cattlemen's Association; Randy Good, Mike Hull, Skagit County Cattlemen's Assn.; David Haggith, N's Consulting; Rod Tjoelke, Darryl Vander Hawk, Ed Black, Jason Vander Veen, Washington Dairy Federation; Heather Hansen, Cattle Producers of Washington.

CON: Mo McBroom, WA Environmental Council; Josh Baldi, Ecology; Jerrod Davis, Department of Health; Tom Davis, WSDA; Ron Shultz, Washington State Conservation Commission; Bill Dewey, Taylor Shellfish Company.