

SENATE BILL REPORT

SB 5723

As Reported by Senate Committee On:
Agriculture & Rural Economic Development, February 21, 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, 2/21/11 [DPS, w/oRec].

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5723 be substituted therefor, and the substitute bill do pass.

Signed by Senators Shin, Vice Chair; Delvin, Ranking Minority Member; Becker, Honeyford and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Hatfield, Chair; Haugen.

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).

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 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.

In 2003 the responsibility for the inspection program established under the 1998 act was transferred from Ecology to the Department of Agriculture (WSDA) through 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 (Recommended Substitute): The Commission is directed to coordinate a process to examine the livestock/water quality issue. The Directors of Ecology, WSDA, and the Commission are to assign personnel to this activity and the directors may provide oversight to the process. The Commission is to involve agencies, stakeholders and tribes in the process.

The list of topics to be considered are:

- training of inspectors and technical assistance personnel;
- roles and relationships between technical assistance, inspection and enforcement and the concept of customer service;
- use, availability, and limitations of DNA testing as a water quality diagnosis tool;
- availability and constraints of state and federal programs for planning, installation, and maintenance of conservation and pollution control practices and of alternative practices;
- extent of known water quality problems relating to livestock operations;
- best methods to achieve water quality objectives in the context of a system that includes both regulatory and incentive-based approaches; and
- availability of state and federal funds and whether it is appropriately allocated.

The Commission is to report to the Legislature and the Governor by December 1, 2011, with recommendations.

The above activities are to be completed to the extent feasible from within existing fiscal resources available to the involved state agencies.

Prior to imposing a civil penalty for a water quality violation to a livestock operation as a non-point source, Ecology must have received testing results for (1) stream samples from

above and below the livestock operation for total fecal count, and (2) from the stream at the livestock operation for DNA using the best available technology. Authority of Ecology to impose fines after the test results are received are not constrained.

EFFECT OF CHANGES MADE BY AGRICULTURE & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute): The provisions of the original bill were removed and replaced with requirement that the agencies continue to work to resolve the enumerated issues and the DNA testing requirement described in the summary.

The original bill would have established a statutory process for conducting investigation of complaints against livestock operations for water quality problems based on the 1988 MOA between Ecology and conservation districts. It would have also transferred from Ecology to WSDA the responsibility to conduct initial water quality inspections of livestock operations. The original would have retained all of the current authorities of Ecology relating to water quality including enforcement as a regulatory backstop.

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 on Original Bill: 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 a 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 curve 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.