

# SENATE BILL REPORT

## SB 6431

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As of February 2, 2012

**Title:** An act relating to harmonizing federal exemptions for agricultural practices with state law.

**Brief Description:** Harmonizing federal exemptions for agriculture practices with state law.

**Sponsors:** Senators Honeyford, Hatfield, Delvin, Hobbs, Haugen, Schoesler and Shin.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 1/30/12.

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Staff:** Diane Smith (786-7410)

**Background:** The Department of Ecology (DOE) administers the Water Pollution Control Act. This act makes unlawful any polluting discharge into the waters of the state. As part of its duty to administer the act, DOE issues state waste discharge permits, water quality permits, assesses fees and penalties, and issues notices of violation.

DOE must consider whether issuing a notice of violation for agricultural activity on agricultural land of five acres or more in size would contribute to conversion of the land to a non-agricultural use. Enforcement activity must attempt to minimize the possibility of conversion. Agricultural activity means growing; raising; or producing horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products.

The federal Clean Water Act exempts discharges associated with certain specified activities, provided the discharges do not convert an area of waters of the United States (U.S.) to a new use, and do not impair the flow or circulation of, or reduce the reach of, waters of the U.S. Among these specified activities are those associated with normal farming, ranching, and forestry activities. These activities include plowing, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products or upland soil and water conservation practices.

**Summary of Bill:** Certain dredge and fill discharges are not prohibited by or otherwise subject to regulation under the Water Pollution Control Act. These discharges are those from normal farming, silviculture, or ranching activities; those for the purpose of construction of

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farm ponds, farm stock ponds or irrigation ditches and the maintenance of drainage ditches; and those for the purpose of constructing or maintaining farm roads, forest roads, or temporary roads for moving mining equipment where these roads are constructed and maintained using best management practices,

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: State law should be consistent with these federal agricultural exemptions. These are normal activities safeguarded by use of best management practices. If there should be a problem, there are many laws that address this, such as critical area ordinances and the Shorelines Act. It is not true that if the bill passed you could do whatever you wanted. The differences between federal and state laws are a Catch 22 for farmers. This does not exempt us from the Endangered Species Act or any other federal laws. It is a very limited exemption for three circumstances that match the federal exemption.

CON: This is a blanket exemption that breaks the state's policy to control and prevent known sources of pollution. There is no definition of dredge and fill which is far beyond federal regulations. Fish eggs may be smothered, and spawning beds may be covered in fill. There is a tribal issue with impact on their usual and customary fishing grounds. This is a larger exemption than federal law.

**Persons Testifying:** PRO: Senator Honeyford, prime sponsor; John Stuhlmiller, WA Farm Bureau; Jay Gordon, WA State Dairy Federation.

CON: Don Seeberger, DOE; Bruce Wishart, People for Puget Sound.