SENATE BILL REPORT
SB 6087

As of January 29, 2014

Title: An act relating to protecting water quality while maintaining and enhancing the viability of agriculture.

Brief Description: Protecting water quality while maintaining and enhancing the viability of agriculture.

Sponsors: Senators Honeyford, Hatfield, Schoesler and Sheldon.

Brief History:
Committee Activity: Agriculture, Water & Rural Economic Development: 1/28/14.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Diane Smith (786-7410)

Background: Agriculture is a $49 billion component of the economy of the state. There is a concern that the state's non-point water quality regulations can impair the agricultural sector's economic viability by leading to the conversion of agricultural land to other uses.

Agricultural stormwater discharges and return flows from irrigated agriculture are exempt from the Federal Clean Water Act (Act) national pollution discharge and elimination system (NPDES) point source permitting requirements. Normal and customary farming and ranching activities; construction and maintenance of farm or stock ponds or irrigation districts; maintenance of drainage districts; construction and maintenance of farm roads when best management practices are used; maintenance and emergency reconstruction of dikes and similar constructions are exempt from the dredge and fill permit requirements of the Act.

The Federal Food Security Act (FFSA) of 1985 contains a definition of prior converted wetlands. The term converted wetland means any wetland that was drained, dredged, filled, leveled, or otherwise manipulated for the purpose of producing an agricultural commodity. Wetlands designated as prior converted crop land are a type of wetland that is exempt from regulation by the FFSA as long as it remains in agricultural use.

Summary of Bill: The Department of Ecology's (DOE) regulatory authority is held to the same exemptions and conditions as in the Act both for NPDES point source permitting

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requirements and for dredge and fill permitting requirements, and the FFSA for croplands converted to agricultural use before December 23, 1985.

In addition, DOE's regulation of non-point agricultural activities must be consistent with three existing statutory directives as follows: (1) to minimize conversion of agricultural land; (2) to base regulatory decisions on sound science; and (3) to ensure credible water quality data is used as the basis for regulation. DOE must also ensure regional equity of non-point regulation by making the burdens and costs of Washington's regulation not significantly greater than that of bordering states.

Appropriation: None.

Fiscal Note: Available.

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: Vigorous debate over controversial issues should be an expected and encouraged part of the legislative process. Farmers strive to make their land better for passing down to each successive generation. They have done this, from contour plowing to no-till seed drills, and they have done it voluntarily. The federal law recognizes this along with the fact that there will never be enough police to enforce non-point regulations. De-coupling federal funding from voluntary compliance is a mistake. Funding voluntary progress through the Voluntary Stewardship Program (VSP) is the only solution. Substantial potential to pollute is in the eye of the beholder without scientific proof. It is un-American to prove yourself innocent and to be convicted just on the government's say-so without scientific proof. Likewise, the new demand for large buffers in order to get funding will leave the money on the table. Farmers will not accept it and many could not if they wanted to because these buffers would put them out of business. It is all stick and no carrots now. The more objective approach is to use the existing Total Maximum Daily Load (TMDL) studies. When DOE regulates waters that do not have TMDLs, it reverts to the subjective approach.

CON: Agriculture is the largest source of non-point pollution in state and federal waters. Studies say at this rate, it will take more than 1000 years to restore all our waters and that is an unacceptable timeframe. Sustaining treaty rights, salmon, and shellfish is only possible with clean water. The Supreme Court in Lemire requires stopping pollution before it gets into Washington waters. The problem is bad stewardship, not DOE. This bill essentially eliminates DOE's authority. However, this authority is not new. It has been around for decades. DOE uses its authority only in the most egregious violations. In Lemire, the photos show overwhelming manure-water pollution potential. Allowing that kind of pollution leads to further job loss in rural communities dependent on salmon and shell fish, contaminates drinking water, and is a human health hazard from water-borne illnesses. To pay the cost of up and down-stream testing in rain events in addition to DNA testing would require a huge new budget. There are limits to what DNA testing can reveal. DOE does not have authority to fine for substantial potential to pollute, cannot issue orders or directives on that, and does not consider the fact that livestock raised on a farm with a creek have a substantial potential

to pollute. DOE does start with technical assistance and funds to help, if possible. It has had great success with the voluntary approach. The Act mandates that the Environmental Protection Agency (EPA) approve the cleanup. We need to understand that EPA uses Washington's statutes to determine whether it accepts our assurances of reducing pollution as meaningful. The total pollution is at issue: point source is regulated federally under the NPDES so that any contributions from non-point can put more pressure on point source. VSP needs a solid backstop in order to work as it has been working and this bill takes that away. We all need to have a dialog.

OTHER: Uncertainty is devastating for producers, their suppliers, and their bankers. In the last five years, DOE has issued nine fines and 27 orders. The VSP program through conservation districts is a success. It is not perfect. Neither is DOE's recent issuance of form letters to 33 producers, but DOE acknowledges that. We need a workgroup to define substantial potential to pollute so that everyone knows that this practice will first get you a warning and then that practice will get you a fine. We need to fully fund VSP, perhaps moving it from two counties to seven, and giving it another year. There are people who understand farming and ranching who work for DOE and who work in the Conservation Districts. We have this bill because the court case was a perfect storm of unfortunate circumstances. We all need to know where DOE has the authority to draw the line. We need to consider the proposed substitute so that we focus on DOE's authority under the Act.

Persons Testifying: PRO: Evan Sheffels, John Stuhlmiller, Britt Dudek, Aaron Golladay, WA Farm Bureau; Jack Field, WA Cattlemen's Assn.

CON: Bruce Wishart, Puget Soundkeeper, Sierra Club, CELP; Larry Wasserman, Swinomish Indian Tribal Community; Kelly Susewind, DOE; Todd Bolster, NW Indian Fisheries Commission; Dawn Vyvyan, Yakama Nation.

OTHER: Jim Halstrom, WA State Horticultural Assn.; Jim Jesernig, WAWG, PCSGA, WSPC; Dave Mastin, Muckleshoot Tribe.