

SENATE BILL REPORT

SB 6551

As of February 2, 2016

Title: An act relating to a notice of violation for discharges from agricultural activity on agricultural land based on information provided to the department of ecology by a third party.

Brief Description: Concerning a notice of violation for discharges from agricultural activity on agricultural land based on information provided to the department of ecology by a third party.

Sponsors: Senators Warnick, Becker, Pearson, Angel, Brown and Schoesler.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 2/02/16.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Bonnie Kim (786-7316)

Background: The Department of Ecology (Ecology) 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, Ecology issues state waste discharge permits, water quality permits, assesses fees and penalties, and issues notices of violation.

Ecology 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, U.S. waters. 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.

Provisions governing water pollution controls specify civil penalties for persons who:

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- violate the terms or conditions of a waste discharge permit;
- conduct a commercial or industrial operation or other point-source discharge operation without a required permit; or
- improperly discharge polluting matters in waters.

Civil penalties for violating water pollution controls include fines of up to \$10,000 per day per violation. Imposed penalties may be appealed to the Pollution Control Hearings Board within 30 days after receipt of the penalty notice.

Summary of Bill: If Ecology, based on information provided by a third-party, issues a notice of violation related to discharges from agricultural activity on agricultural land, Ecology must, upon the request of the person receiving the violation, disclose the name of the third-party informant.

Ecology is deemed to have issued a notice of violation based on information provided by a third-party if Ecology investigates a suspected discharge after receiving a phone call, email, letter, report, complaint, or other information, from a third-party who claims that a discharge is or may be occurring, or will soon occur, from agricultural activity on agricultural land.

Ecology may not investigate a suspected discharge from agricultural activity on agricultural land based on information provided by an anonymous third-party.

No additional civil liability on the part of the state or any state agency, officer, employee, or agent is created.

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: I heard from individuals who were investigated without knowing who or where a complaint came from. In this country, we have the right to confront an accuser. I brought this bill forward for a discussion about how this process works. Many producers who have a complaint filed against them want to know who made the complaint against them. The guidance document was not intended to address the citizen suit or third-party complaint situation. Our members feel bullied and threatened when a complaint is filed against them. There are many folks going out of business and there is a lot of conversion because of this process.

CON: This bill would hinder our ability to protect water, particularly in non-point source situations. Being able to report anonymously is important for those who fear being retaliated against. We work with landowners through technical assistance first and there is a long road between a complaint and issuance of a violation. The agriculture and water quality work group is working on this issue. Both the agricultural and environmental stakeholders are

interested in moving away from a complaint-driven enforcement process. Anonymous tips are widely accepted.

OTHER: The dairy nutrient act includes a provision that after two meritless complaints in six months, the Department is able to send a letter to the anonymous informant letting them know the Department will not investigate tips from that person for six months. The letter is also placed in the producer's file.

Persons Testifying: PRO: Senator Warnick, prime sponsor; Jack Field, WA Cattlemen's Assn.; Evan Sheffels, WA Farm Bureau.

CON: Kelly Susewind, Dept. of Ecology; Bruce Wishart, Puget Soundkeeper and Sierra Club.

OTHER: Jay Gordon, WA State Dairy Federation.

Persons Signed In To Testify But Not Testifying: No one.