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**HOUSE BILL 1166**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representatives Dye and Walsh

Prefiled 01/06/23. Read first time 01/09/23. Referred to Committee on Environment & Energy.

1 AN ACT Relating to improving climate resiliency through the  
2 development of a water quality trading program for recipients of  
3 national pollutant discharge elimination system general permits; and  
4 amending RCW 90.48.260.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each  
7 amended to read as follows:

8 (1) The department of ecology is hereby designated as the state  
9 water pollution control agency for all purposes of the federal clean  
10 water act as it exists on February 4, 1987, and is hereby authorized  
11 to participate fully in the programs of the act as well as to take  
12 all action necessary to secure to the state the benefits and to meet  
13 the requirements of that act. With regard to the national estuary  
14 program established by section 320 of that act, the department shall  
15 exercise its responsibility jointly with the Puget Sound partnership,  
16 created in RCW 90.71.210. The department of ecology may delegate its  
17 authority under this chapter, including its national pollutant  
18 discharge elimination permit system authority and duties regarding  
19 animal feeding operations and concentrated animal feeding operations,  
20 to the department of agriculture through a memorandum of  
21 understanding. Until any such delegation receives federal approval,

1 the department of agriculture's adoption or issuance of animal  
2 feeding operation and concentrated animal feeding operation rules,  
3 permits, programs, and directives pertaining to water quality shall  
4 be accomplished after reaching agreement with the director of the  
5 department of ecology. Adoption or issuance and implementation shall  
6 be accomplished so that compliance with such animal feeding operation  
7 and concentrated animal feeding operation rules, permits, programs,  
8 and directives will achieve compliance with all federal and state  
9 water pollution control laws. The powers granted herein include,  
10 among others, and notwithstanding any other provisions of this  
11 chapter or otherwise, the following:

12 (a) Complete authority to establish and administer a  
13 comprehensive state point source waste discharge or pollution  
14 discharge elimination permit program which will enable the department  
15 to qualify for full participation in any national waste discharge or  
16 pollution discharge elimination permit system and will allow the  
17 department to be the sole agency issuing permits required by such  
18 national system operating in the state of Washington subject to the  
19 provisions of RCW 90.48.262(2). Program elements authorized herein  
20 may include, but are not limited to: (i) Effluent treatment and  
21 limitation requirements together with timing requirements related  
22 thereto; (ii) applicable receiving water quality standards  
23 requirements; (iii) requirements of standards of performance for new  
24 sources; (iv) pretreatment requirements; (v) termination and  
25 modification of permits for cause; (vi) requirements for public  
26 notices and opportunities for public hearings; (vii) appropriate  
27 relationships with the secretary of the army in the administration of  
28 his or her responsibilities which relate to anchorage and navigation,  
29 with the administrator of the environmental protection agency in the  
30 performance of his or her duties, and with other governmental  
31 officials under the federal clean water act; (viii) requirements for  
32 inspection, monitoring, entry, and reporting; (ix) enforcement of the  
33 program through penalties, emergency powers, and criminal sanctions;  
34 (x) a continuing planning process; and (xi) user charges.

35 (b) The power to establish and administer state programs in a  
36 manner which will ensure the procurement of moneys, whether in the  
37 form of grants, loans, or otherwise; to assist in the construction,  
38 operation, and maintenance of various water pollution control  
39 facilities and works; and the administering of various state water  
40 pollution control management, regulatory, and enforcement programs.

1 (c) The power to develop and implement appropriate programs  
2 pertaining to continuing planning processes, area-wide waste  
3 treatment management plans, and basin planning.

4 (2) The governor shall have authority to perform those actions  
5 required of him or her by the federal clean water act.

6 (3) By July 31, 2012, the department shall:

7 (a) Reissue without modification and for a term of one year any  
8 national pollutant discharge elimination system municipal stormwater  
9 general permit applicable to western Washington municipalities first  
10 issued on January 17, 2007; and

11 (b) Issue an updated national pollutant discharge elimination  
12 system municipal stormwater general permit applicable to western  
13 Washington municipalities for any permit first issued on January 17,  
14 2007. An updated permit issued under this subsection shall become  
15 effective beginning August 1, 2013.

16 (i) Provisions of the updated permit issued under (b) of this  
17 subsection relating to new requirements for low-impact development  
18 and review and revision of local development codes, rules, standards,  
19 or other enforceable documents to incorporate low-impact development  
20 principles must be implemented simultaneously. These requirements may  
21 go into effect no earlier than December 31, 2016, or the time of the  
22 scheduled update under RCW 36.70A.130(~~((+5))~~) (4), as existing on July  
23 10, 2012, whichever is later.

24 (ii) Provisions of the updated permit issued under (b) of this  
25 subsection related to increased catch basin inspection and illicit  
26 discharge detection frequencies and application of new stormwater  
27 controls to projects smaller than one acre may go into effect no  
28 earlier than December 31, 2016, or the time of the scheduled update  
29 under RCW 36.70A.130(~~((+5))~~) (4), as existing on July 10, 2012,  
30 whichever is later.

31 (4) By July 31, 2012, the department shall:

32 (a) Reissue without modification and for a term of two years any  
33 national pollutant discharge elimination system municipal stormwater  
34 general permit applicable to eastern Washington municipalities first  
35 issued on January 17, 2007; and

36 (b) Issue an updated national pollutant discharge elimination  
37 system municipal stormwater general permit for any permit first  
38 issued on January 17, 2007, applicable to eastern Washington  
39 municipalities. An updated permit issued under this subsection  
40 becomes effective August 1, 2014.

1       (5) If a national pollutant discharge elimination system general  
2 permittee discharges to a waterbody for which a total maximum daily  
3 load for temperature has been issued and the permittee is not in  
4 compliance with the terms of the permittee's permit, the department  
5 must offer the permittee a watershed-based water quality trading  
6 program to assist the permittee to come into compliance with the  
7 terms of the permit through a community-based or market-based water  
8 quality trading program. In any such water quality trading program,  
9 the department must offer incentives whenever feasible to do so for  
10 any improvements made by or on behalf of the permittee that take  
11 place in the built environment or that otherwise address the urban  
12 heat island effect on waters of the state.

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