HOUSE BILL REPORT
SSB 5602

As Passed House - Amended:
April 23, 2005

Title: An act relating to managing livestock nutrients.

Brief Description: Managing livestock nutrients.

Sponsors: By Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Rasmussen and Schoesler; by request of Department of Agriculture).

Brief History:
Committee Activity:
Economic Development, Agriculture & Trade: 3/30/05, 4/1/05 [DPA].
Floor Activity:
Passed House - Amended: 4/23/05, 96-0.

Brief Summary of Substitute Bill
(As Amended by House)

- Requires the departments of Agriculture (WSDA) and Ecology (DOE) to recommend statutory changes to enable full implementation of a livestock nutrient management program within WSDA.
- Clarifies that true pasture and rangeland operations that do not meet the federal definition of animal feeding operation are not covered by the program, except for confinement areas within the operations that may qualify.
- Adds six new members, including four legislators, to the program development and oversight committee, specifies two new tasks, and changes the committee's expiration date.
- Requires DOE to develop, maintain, and report back to the Legislature on a standard protocol for water quality monitoring.
- Makes certain information obtained from specified livestock operations disclosable only in ranges.
- Exempts bovine and equine composters from metals testing and permit requirements for compost distributed off-site if certain conditions are met, with penalties for non-compliance.

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE & TRADE

Majority Report: Do pass as amended. Signed by 20 members: Representatives Linville, Chair; Pettigrew, Vice Chair; Kristiansen, Ranking Minority Member; Blake, Buri, Chase, Clibborn, Dunn, Grant, Haler, Holmquist, Kenney, Kilmer, Kretz, McCoy, Morrell, Newhouse, Quall, Strow and Wallace.

Staff: Meg Van Schoorl (786-7105).

Background:

In 1998, the Legislature enacted the Dairy Nutrient Management Act requiring dairies to develop by July 1, 2002, farm plans to protect water quality. The Department of Ecology (DOE) was given responsibility to regularly inspect dairies, and to develop and issue a Dairy General National Pollutant Discharge Elimination System (NPDES) permit. The Conservation Commission through conservation districts was charged with providing technical assistance and cost share to dairy farms to develop and implement their nutrient management plans by December 31, 2003.

In February 2003, the United States Environmental Protection Agency (EPA) adopted a final rule regulating animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) for the purpose of controlling water pollution. The rules expanded the type and number of CAFOs required to obtain NPDES permits by December 2006.

In 2003, the Legislature transferred to the Washington Department of Agriculture (WSDA) the Dairy Nutrient Management Program that had been administered since 1998 by the DOE. The Legislature intended that there be a fully functioning state program for concentrated animal feeding operations by 2006 and a single program that would apply to all livestock sectors. Broadened beyond dairies, the Livestock Nutrient Management Program (LNMP) was to provide regulatory oversight and guidance to all livestock farms regarding their state and federal responsibilities to protect water quality while maintaining a healthy business climate for the farms. The program was expected to develop resources for financial and technical assistance, conduct periodic inspections and take enforcement action to ensure compliance with state and federal water quality laws.

The LNMP Development and Oversight Committee (DOC) was created to help the WSDA evaluate the new federal rules and develop a program that would meet EPA's requirements and time frames. Chaired by the WSDA, the DOC included representatives from the DOE, the EPA, a tribal government, an environmental interest organization, a commercial shellfish grower, an egg laying facility, a conservation district association, three dairy producers, two beef cattle producers, a poultry producer, a commercial cattle feed lot, and Washington State University (WSU).

Since 2003, the WSDA, the DOE, and the DOC have worked to develop the comprehensive LNMP and the draft legislation to implement it. The WSDA and DOE developed a Memorandum of Understanding (MOU) to clarify their respective and shared responsibilities

during this transition period for site inspections, nutrient management plans, dairy and CAFO permit enforcement, and permit administration. Because the DOE has the delegated authority from the EPA to carry out the Clean Water Act in Washington, including the NPDES program for CAFOs, the DOE has retained responsibility for issuing water quality permits and coordinates with the WSDA in taking action on water quality issues for AFOs and CAFOs. Until the delegated authority is granted to the WSDA, the DOE will continue in that role. Other organizations such as the Natural Resources Conservation Service (NRCS), the state Conservation Commission and conservation districts, and WSU Extension, are recognized as providing producer education and technical assistance.

The 2003 legislation required the DOC to develop draft legislation including:

- the statutory changes, including a time line, to phase in a program to comply with the minimum requirements of federal and state water quality laws;
- the statutory changes necessitated by the transfer of the Dairy Nutrient Management Act from the DOE to the WSDA;
- continued inspections of dairy operations at least once every two years;
- an outreach and education program; and
- annual reporting to the Legislature on the progress for implementing the program.

In 2004, the United States Court of Appeals for the Second Circuit (New York, Vermont, and Connecticut) heard a consolidated case involving petitions against the EPA brought by both environmental and agricultural organizations. The petitioners challenged a number of the permitting requirements and effluent limitation guidelines contained in the February 2003 Final Rule for concentrated animal feeding operations.

On February 28, 2005, the Second Circuit vacated provisions of the CAFO Rule that: (1) allow permitting authorities to issue permits without reviewing the terms of the nutrient management plans; (2) allow permitting authorities to issue permits that do not include the terms of the nutrient management plans; and (3) required CAFOs to apply for NPDES permits or otherwise demonstrate that they have no potential to discharge. The Second Circuit also determined the CAFO Rule violated the Clean Water Act's public participation requirements by failing to provide public access to nutrient management plans. The Second Circuit remanded other aspects of the CAFO Rule to the EPA for further clarification and analysis.

Summary of Amended Bill:

The amended bill requires WSDA and DOE to examine current statutory authorities and, in consultation with the Development and Oversight Committee (DOC), to submit to the Legislature recommended statutory changes for full program implementation. These recommendations must be submitted prior to applying for EPA delegation of authority. The amended bill clarifies that the program does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO. Members are added to the DOC, appointments are made by the director of agriculture rather than the Governor, and expiration of the committee is tied to

EPA's delegation of authority. The committee is given tasks on routine animal carcass disposal and simplified nutrient management tools and practices. The DOE must develop, maintain, and report to the Legislature on a standard protocol for water quality monitoring. Certain information in plans, records, and reports obtained from CAFOs, dairies, and AFOs, not required to apply for a permit are disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. Composters of bovine and equine carcasses are exempted from metals testing and permit requirements for compost distributed off-site if certain conditions are met. Penalties are provided in the event of noncompliance with exemption conditions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The bill completes the work of the 2003 Legislature by transferring program authority from the DOE to the WSDA. The Development Oversight Committee spent the last year drafting the legislation. Most sections of the bill are not changes in current law. The bill is structured to meet the minimum federal requirements and is the first step in applying for delegated authority from the EPA. Our attorneys believe that the court ruling does apply nationally. We have crafted some amendments to address the anticipated rule changes. Transfer of the program to the WSDA from the DOE is important because it is a quagmire having to deal with two agencies.

There are several areas in the bill that need work. Farm plans should stay on the farm, and the information in them should be confidential. Funding to support successful implementation of the legislation is needed for the conservation districts and the WSDA in the supplemental, capital, and operating budgets. The livestock industry would like to add a carcass composting component to the bill and believe we have agreed-to language with the DOE. There are concerns with the small staff at the WSDA, and we might offer an amendment to give conservation district staff a role in verifying to the WSDA that the farm plan implementation meets technical standards. The regulator should be the one approving and certifying the plans. We would like to see a water quality monitoring system by the departments that is outcome based. We may have a confidentiality agreement involving the listing of "ranges" of animals or nutrients instead of exact figures. We received the striking amendment this morning from People for Puget Sound and want to have conversations as to the intent of the changes. We may not be far apart. However, some changes appear to be beyond the scope of the bill.

Testimony Against: We were not at the table when this legislation was developed and are opposed to the underlying bill. Livestock operations have been a significant source of water pollution in Puget Sound and several shellfish beds have been shut down. Producers need to be treated like others in regulated industries. Environmental concerns with this bill include:

(1) no guarantee of public access to the farm plans; (2) lack of public appeal of the farm plan; (3) agency accountability; and (4) enforceability of the permit. Public access and review of the farm plan is important because most requirements for the CAFO permit are contained in the farm plan; however, farm plans are kept at each individual farm and current public disclosure laws only allow access and review of documents that are state records. Under the Clean Water Act, if a producer is in compliance with the permit, he is shielded from all third-party lawsuits, even if the operation is discharging above water quality standards. It is a problem that there is no water quality monitoring required under this bill. We wouldn't need the farm plans if we had information on water quality. We need to be able to tell if the program is working.

Resources at the WSDA for plan review and approval are minimal to nonexistent. There was no budget requested for review of farm plans, and only three inspectors are on staff. The bill calls for the WSDA to approve plans that meet just the minimum federal standards. Caps on the permit fees are a problem. The Second Circuit Court of Appeals vacated three parts of the CAFO Rule. The bill needs to be adjusted to comply with the Second Circuit Court case.

Persons Testifying: (In support) Senator Rasmussen, prime sponsor; Chris Cheney, Washington Fryer Commission; Jack Field, Washington Cattlemen's Association; Mary Beth Lang, Washington Department of Agriculture; Melodie Selby, Washington Department of Ecology; Larry Stap; Jason Vander Veen; Jim Jesernig, El Oro Feeders, Washington Association of Conservation Districts, and Pacific Coast Shellfish Growers; and John Stuhlmiller, Washington State Farm Bureau.

(Opposed) Bruce Wishart, People for Puget Sound; Sue Joerger, Puget Soundkeeper Alliance; and Craig Engelking, Sierra Club.

Persons Signed In To Testify But Not Testifying: None.