SENATE BILL REPORT
SSB 5602

As Passed Senate, March 16, 2005

Title: An act relating to managing livestock nutrients.

Brief Description: Managing livestock nutrients.

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

Brief History:
Committee Activity: Agriculture & Rural Economic Development: 2/1/05, 2/28/05 [DPS].
Passed Senate: 3/16/05, 42-6.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5602 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Schoesler, Ranking Minority Member; Delvin, Jacobsen, Morton and Sheldon.

Staff: Bob Lee (786-7404)

Background: The Federal Clean Water Act created two categories of programs. The point source program, which includes specified concentrated livestock feeding operations, requires discharges from point sources to obtain a National Pollution Discharge Elimination System (NPDES) permit. These permits are generally renewed at five year intervals. The non-point program includes an array of activities that do not have a discrete discharge and includes livestock grazing operations. The Department of Ecology has been the state agency that received delegation from the Federal Environmental Protection Agency to administer most of the federal program. State law provides the Department of Ecology authority to receive this delegation.

In 1998, amendments to the Dairy Nutrient Management Act were enacted that required each dairy in the state to develop and implement a nutrient management plan to assure the dairy does not discharge to state waters. This act contained inspection requirements and set deadlines for the development and implementation of plans for all commercial dairies.

In February 2003, amendments to federal CAFO regulations included additional livestock operations under the point source regulatory system. Any animal feeding operation (AFO) either defined or designated as a concentrated animal feeding operation (CAFO) is required to develop and implement nutrient management plans. These rules apply to additional categories of livestock facilities including defined and designated cattle feedlots, and swine and poultry operations. The federal rule establishes standards, inspection requirements and deadlines for compliance.

In 2003, SSB 5889 transferred administration of the existing state Dairy Nutrient Management Act to the Department of Agriculture. This legislation also created a multi-interest and multi-agency committee to assist the Department of Agriculture in the development of a livestock nutrient management program that maintains the Dairy Nutrient Management Act plus transfers the remaining livestock operations (certain beef, feedlot, poultry, swine, etc.) with NPDES obligations into a single program to be administered by the Department of Agriculture.

Once the program is in place, including the statutory authority provided by this bill, it is anticipated that the Environmental Protection Agency (EPA) will approve delegation of the CAFO NPDES program directly to the Department of Agriculture.

Summary of Bill: The definitions from the updated federal rule and associated state statutes are included in the act. The Dairy Nutrient Management Act is broadened to include other livestock sectors that are required to be covered under the federal rule. The definitions for AFO and the various categories of CAFOs from the federal rule are incorporated as are the criteria for designating CAFOs by size category. Definitions from applicable state laws are also included.

The minimum inspection frequency of at least once every two years that applied to dairies is extended to all CAFOs. Dairies not covered by a permit and other AFOs are required to make records available during inspections to assess compliance with state and federal water quality laws, and to verify qualification for technical assistance programs and any tax exemptions available under state law. Authority to obtain warrants from a court is provided if access is denied.

The requirement in state law to develop and implement a livestock nutrient management plan is extended from all dairies to also include all operations that are defined or designated as CAFOs. The Department of Agriculture is required to approve the plans and to certify that they are fully implemented. Plans are to be developed using practice standards established by the Federal Natural Resource Conservation Service (NRSC). The process for developing approved alternative practices that meet or exceed NRCS standards is to be developed by rule.

Specific components of plans are to include adequate storage, proper management of mortalities, assure clean water is diverted away from the production area, prevention of direct contact of confined animals with waters of the state, ensure chemicals and other contaminates are not disposed in livestock nutrients or storm water storage unless the system is designed to treat such chemicals and other contaminants, site-specific conservation practices including appropriate buffers to control runoff of pollutants into state waters, identify the protocols for testing livestock nutrients in soil and applications to ensure appropriate agricultural utilization of the nutrients, and identification of records that will be maintained to document the implementation of the plan.

Several sections contained in the state water quality laws pertaining to civil and criminal penalties, administrative enforcement process, appeals to the Pollution Control Hearings Board, and processing of complaints are included. Changes are made for transfer of fees and fund balances to the Department of Agriculture. Authority is granted for the adoption of rules to accommodate changes to federal regulations. Record keeping and reporting requirements

and agency authority to access records are established. Public disclosure requirements of information held by the agencies is the same as required of states by federal rule.

Direction for coordination of educational programs, and authority to establish an advisory committee are provided. Authority for conservation districts to provide technical and financial assistance for plan development and implementation is provided, as is authority to verify that elements of plans meet required standards.

Authority for the Department of Agriculture to receive direct delegation from EPA to administer the CAFO NPDES program is provided. Until delegation, authority to utilize the memorandum of agreement between the agencies is provided.

Annual fees for administering permits by the Department of Agriculture must be the same as the fee schedule established by the Department of Ecology and the fees may rise in accordance with the fiscal growth factor. Until the initial permit fee schedule is adopted, by the Department of Agriculture, the fees established by the Department of Ecology must be in effect.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: The department is to establish an advisory committee on July 2006. Legislative participation is not required.

Effective Date: Effective Date: Ninety days after adjournment of session in which bill is passed. However, the section that establishes an advisory committee takes effect on July 2006 when the existing advisory committee expires.

Testimony For: The bill provides for compliance with existing federal requirements and state water quality law requirements. Extensive work has been done to gain input from stakeholder groups over the last 18 months. Passage of this bill is needed to obtain delegation of the program from EPA to the Department of Agriculture.

Testimony Against: General concerns were expressed by environmental representative about whether the program will be sufficiently rigorous to assure protection of water quality.

Other: There are objections to the requirements in section 15 to disclose personal operating information. The standard in the bill that prevents disclosure is very high which likely means that all information will be considered as public. At a time that there are concerns about acts of terrorism, it is not prudent to make information available to anyone who asks of maps of facilities that show such things as locations of watering systems used for livestock feeding operations. The program should not be funded solely by fees on permitted livestock operations. The fee structure in section 35 is vague. Additional funding is needed to insure inspection of small and medium facilities to assure compliance. The penalties, including criminal and civil penalties, are very high.

Who Testified: PRO: Mary Beth Land and Nora Mena, Department of Agriculture; Melodie Selby, Department of Ecology. OTHER: Chris Cheney, Washington Fryer Commission; Jack Field, Washington Cattlemens Association; Jay Gordon, Washington State Dairy Federation; John Stuhlmiller, Washington State Farm Bureau; Heather Hansen, Washington Cattle

Feeders Association; Jim Jesernig, Washington Association of Conservation Districts and Pacific Coast Shellfish Growers Association; Mark Clark, Washington State Conservation Commission.

CON: Bruce Wishart, People for Puget Sound.

House Amendment(s): The House amendment strikes the underlying bill and replaces it with the following: The Departments of Agriculture and Ecology are to examine current statutory authorities, in consultation with the Development and Oversight Committee, and recommend to the legislature statutory changes for full program implementation. These recommendations to be submitted to the legislature prior to applying for EPA delegation.

It is re-affirmed that the livestock nutrient management program is to be implemented within the Department of Agriculture. It is clarified that the section applies to animal feeding operations and not to pasture and rangeland operations. Legislators and representative of horses and sheep producers are added to the committee and two additional tasks are assigned.

The Department of Ecology is required to develop protocols for monitoring water quality of state waters in the vicinity of concentrated animal feeding operations and dairies. Ranges are to be developed by rule for reporting of information. Composting guidelines for livestock operations are to be developed by involved state agencies and penalties are applied for non-compliance.

Passed House: 96-0