

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5602

Chapter 510, Laws of 2005

(partial veto)

59th Legislature
2005 Regular Session

LIVESTOCK NUTRIENT MANAGEMENT

EFFECTIVE DATE: 7/24/05

Passed by the Senate April 24, 2005
YEAS 47 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 23, 2005
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 17, 2005, with the
exception of Section 2, which is vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5602** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 17, 2005 - 2:22 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5602

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

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

READ FIRST TIME 03/01/05.

1 AN ACT Relating to managing livestock nutrients; amending RCW
2 90.64.813 and 70.95.315; adding new sections to chapter 90.64 RCW;
3 adding a new section to chapter 42.17 RCW; adding a new section to
4 chapter 70.95 RCW; creating a new section; and providing a contingent
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.64 RCW
8 to read as follows:

9 (1) The legislature finds that a livestock nutrient management
10 program is essential to protecting the quality of the waters of the
11 state and ensuring a healthy and productive livestock industry.

12 (2) The departments of agriculture and ecology shall examine their
13 current statutory authorities and provide the legislature with
14 recommendations for statutory changes to fully implement a livestock
15 nutrient management program within the department of agriculture for
16 concentrated animal feeding operations, animal feeding operations, and
17 dairies, as authorized in RCW 90.48.260, 90.64.813, and 90.64.901. In
18 developing recommended statutory changes, the departments shall consult
19 with the livestock nutrient management program development and

1 oversight committee created in RCW 90.64.813. The recommendations must
2 be submitted to the legislature by the departments of agriculture and
3 ecology prior to applying to the environmental protection agency for
4 delegated authority to administer the CAFO portion of the national
5 pollutant discharge elimination system permit program under the federal
6 clean water act.

7 (3) For purposes of this act, animal feeding operations (AFOs) and
8 concentrated animal feeding operations (CAFOs) have the same meaning as
9 defined in 40 C.F.R. 122.23.

10 (4) This section applies to all operations that meet the definition
11 of an AFO. This section does not apply to true pasture and rangeland
12 operations that do not meet the definition of AFO, however, such
13 operations may have confinement areas that may qualify as an AFO.

14 **Sec. 2. RCW 90.64.813 and 2003 c 325 s 2 are each amended to read*
15 *as follows:*

16 (1) *A livestock nutrient management program development and*
17 *oversight committee is created comprised of the following members (~~(,~~*
18 *~~appointed as follows~~)):*

19 (a) *The director of the department of agriculture, or the*
20 *director's designee, who shall serve as committee chair;*

21 (b) *The director of the department of ecology, or the director's*
22 *designee;*

23 (c) *A representative of the United States environmental protection*
24 *agency, appointed by the regional director of the agency unless the*
25 *agency chooses not to be represented on the committee;*

26 (d) *One member from each of the two major caucuses of the house of*
27 *representatives, appointed by the speaker of the house of*
28 *representatives, and one member from each of the two major caucuses of*
29 *the senate, appointed by the president of the senate;*

30 (e) *A representative of commercial shellfish growers, nominated by*
31 *an organization representing these growers, appointed by the*
32 *~~(governor)~~ director;*

33 ~~((f))~~ (f) *A representative of an environmental interest*
34 *organization with familiarity and expertise in water quality issues as*
35 *nominated by a statewide environmental organization, appointed by the*
36 *~~(governor)~~ director;*

1 ~~((f))~~ (g) A representative of tribal governments as nominated by
2 an organization representing tribal governments(~~(, appointed by the~~
3 ~~governor)~~);

4 ~~((g))~~ (h) A representative of Washington State University
5 appointed by the dean of the college of agriculture and home economics;

6 ~~((h))~~ (i) A representative of the Washington association of
7 conservation districts, appointed by the association's board of
8 officers;

9 ~~((i))~~ (j) Three representatives of dairy producers nominated by
10 a statewide organization representing dairy producers in the state,
11 appointed by the ~~((governor))~~ director;

12 ~~((j))~~ (k) Two representatives of beef cattle producers nominated
13 by a statewide organization representing beef cattle producers in the
14 state, appointed by the ~~((governor))~~ director;

15 ~~((k))~~ (l) One representative of poultry producers nominated by a
16 statewide organization representing poultry producers in the state,
17 appointed by the ~~((governor))~~ director;

18 ~~((l))~~ (m) One representative of the commercial cattle feedlots
19 nominated by a statewide organization representing commercial cattle
20 feedlots in the state, appointed by the ~~((governor))~~ director; ~~((and))~~

21 ~~((m))~~ (n) A representative of any other segment of the livestock
22 industry determined by the director of agriculture to be subject to
23 federal rules regulating animal feeding or concentrated animal feeding
24 operations;

25 (o) One representative of horse owners nominated by a statewide
26 organization representing horse owners in the state, appointed by the
27 director; and

28 (p) One representative of sheep producers nominated by a statewide
29 organization representing sheep producers in the state, appointed by
30 the director.

31 (2) The state department of agriculture shall provide staff for the
32 committee. The department of agriculture may request staff assistance
33 be assigned by the United States environmental protection agency to
34 assist the director in staffing the committee.

35 (3) The committee shall establish a work plan that includes a list
36 of tasks and a projected completion date for each task.

37 (4) The committee may establish a subcommittee for each of the
38 major industry segments that is covered by the recently adopted federal

1 regulations that pertain to animal feeding operations and concentrated
2 animal feeding operations. The subcommittee shall be composed of
3 selected members of the full committee and additional representatives
4 from that major segment of the livestock industry as determined by the
5 director. The committee shall assign tasks to the subcommittees and
6 shall establish dates for each subcommittee to report back to the full
7 committee.

8 (5) The committee shall examine the recently adopted federal
9 regulations that provide for the regulation of animal feeding
10 operations and concentrated animal feeding operations and develop a
11 program to be administered by the department of agriculture that meets
12 the requirements and time frames contained in the federal rules.
13 Elements that the committee shall evaluate include:

14 (a) A process for adopting standards and for developing plans for
15 each operation that meet these standards;

16 (b) A process for revising current national pollution discharge
17 elimination system permits currently held by livestock operations and
18 to transition these permits into the new system; and

19 (c) In consultation with the director, a determination of what
20 other work is needed and what other institutional relationships are
21 needed or desirable. The committee shall consult with representatives
22 of the statewide association of conservation districts regarding any
23 functions or activities that are proposed to be provided through local
24 conservation districts.

25 (6) The committee shall review and comment on proposals for grants
26 from the livestock nutrient management account created in RCW
27 90.64.150.

28 (7) The committee shall develop draft proposed legislation that
29 includes:

30 (a) Statutory changes, including a timeline to achieve the phased-
31 in levels of regulation under federal law, to comply with the minimum
32 requirements under federal law and the minimum requirements under
33 chapter 90.48 RCW. These changes must meet the requirements necessary
34 to enable the department of agriculture and the department of ecology
35 to pursue the United States environmental protection agency's approval
36 of the transfer of the permitting program as it relates to the
37 concentrated animal feeding operations from the department of ecology
38 to the department of agriculture;

1 (b) Statutory changes necessitated by the transfer of functions
2 under chapter 90.64 RCW from the department of ecology to the
3 department of agriculture;

4 (c) Continued inspection of dairy operations at least once every
5 two years;

6 (d) An outreach and education program to inform the various animal
7 feeding operations and concentrated animal feeding operations of the
8 program's elements; and

9 (e) Annual reporting to the legislature on the progress of the
10 state strategy for implementing the animal feeding operation and
11 concentrated animal feeding operation.

12 (8) The committee shall provide a report by December 1, 2003, to
13 appropriate committees of the legislature that includes the results of
14 the committee's evaluation under subsection (5) of this section and
15 draft legislation to initiate the program.

16 (9) The committee shall evaluate simplified nutrient management
17 planning tools and systematic practices that can be offered to those
18 livestock operations not required to have permits or farm plans. The
19 planning tools and systematic practices may include coordinated
20 resource management and shall differentiate between types of
21 operations, between stock restricted and open range areas, and between
22 regional differences in average annual precipitation. The goal shall
23 be to introduce these practical models through technical assistance,
24 education, and outreach so that all livestock owners will have clear
25 guidance on how to meet basic responsibilities to protect water
26 quality. The committee shall report its recommendations on tools and
27 service delivery options to appropriate committees of the legislature
28 during the September 2005 assembly.

29 (10) With respect to the federal requirement that livestock
30 nutrient management plans contain a component ensuring proper
31 management of dead animals, the committee shall review issues
32 concerning routine animal carcass disposal in Washington, including
33 composting, rendering, burying, landfills, and incineration. The
34 committee may appoint a subcommittee including appropriate technical
35 staff from state agencies to undertake this task and make
36 recommendations back to the full committee. At the legislative
37 assembly in September 2005, the department of agriculture, the

1 department of ecology, the state board of health, and committee
2 representatives shall present reports as follows to the appropriate
3 legislative committees:

4 (a) The department of ecology shall report on the status of off-
5 site animal composting options that meet the livestock industry's need
6 for disposal alternatives while assuring consumer protection and equity
7 with other composters;

8 (b) The department of agriculture shall report on the status of a
9 comprehensive, clearly written guidance document for the livestock
10 industry on alternatives currently available for routine disposal of
11 animal carcasses. The guidance document shall include, at a minimum,
12 the disposal alternatives of rendering, burying, landfills, and
13 composting; and

14 (c) The state board of health shall report on the status of rule
15 making that clarifies burial depth, location of burial sites in
16 relation to drinking water wells, and incineration.

17 (11) This section expires ((June 30, 2006)) when the federal
18 environmental protection agency delegates authority for the NPDES CAFO
19 program to the department of agriculture. The department of
20 agriculture shall provide notice to the legislature of the date of any
21 such delegation of authority.

*Sec. 2 was vetoed. See message at end of chapter.

22 NEW SECTION. Sec. 3. (1) The department of ecology shall develop
23 and maintain a standard protocol for water quality monitoring of the
24 waters of the state within the vicinity of dairies and CAFOs. The
25 protocol shall include sampling methods and procedures and identify the
26 water quality constituents to be monitored.

27 (2) The department of ecology shall submit the initial protocol
28 developed according to this section to the appropriate committees of
29 the legislature by December 1, 2005.

30 NEW SECTION. Sec. 4. A new section is added to chapter 90.64 RCW
31 to read as follows:

32 This section applies to dairies, AFOs, and CAFOs, not required to
33 apply for a permit. Information in plans, records, and reports
34 obtained by state and local agencies from livestock producers under
35 this act regarding (1) number of animals; (2) volume of livestock
36 nutrients generated; (3) number of acres covered by the plan or used

1 for land application of livestock nutrients; (4) livestock nutrients
2 transferred to other persons; and (5) crop yields shall be disclosable
3 in response to request or public records under chapter 2.17 CW
4 only in ranges that provide meaningful information to the public while
5 ensuring confidentiality of business information. The department of
6 agriculture shall adopt rules to implement this section in consultation
7 with affected state and local agencies.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 42.17 RCW
9 to read as follows:

10 The following information in plans, records, and reports obtained
11 by state and local agencies from dairies, animal feeding operations,
12 and concentrated animal feeding operations, not required to apply for
13 a national pollutant discharge elimination system permit is disclosable
14 only in ranges that provide meaningful information to the public while
15 ensuring confidentiality of business information regarding: (1) Number
16 of animals; (2) volume of livestock nutrients generated; (3) number of
17 acres covered by the plan or used for land application of livestock
18 nutrients; (4) livestock nutrients transferred to other persons; and
19 (5) crop yields. The department of agriculture shall adopt rules to
20 implement this section in consultation with affected state and local
21 agencies.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.95 RCW,
23 to be codified after RCW 70.95.305, to read as follows:

24 (1) By July 1, 2005, the department of ecology and the department
25 of agriculture, in consultation with the department of health, shall
26 make available to livestock producers clearly written guidelines for
27 the composting of bovine and equine carcasses for routine animal
28 disposal.

29 (2) Composters of bovine and equine carcasses are exempt from the
30 metals testing and permit requirements under the solid waste handling
31 rules for compost that is distributed off-site if the following
32 conditions are met:

33 (a) The carcasses to be composted are not known or suspected to be
34 affected with a prion-protein disease such as bovine spongiform
35 encephalopathy, a spore-forming disease such as anthrax or other
36 diseases designated by the state veterinarian;

1 (b) The composter follows the written guidelines provided for in
2 subsection (1) of this section;

3 (c) The composter does not accept for composting animal mortalities
4 from other sources not directly affiliated with the composter's
5 operation;

6 (d) The composter provides information to the end-user that
7 includes the source of the material; the quality of the compost as to
8 its nutrient content, pathogens, and stability; and the restrictions on
9 use of the compost as stated in (f) of this subsection;

10 (e) The composter reports annually to the department the number of
11 bovines and equines and the amounts of other material composted,
12 including the composter's best estimate of the tonnage or yardage
13 involved; and

14 (f) The end-user applies the compost only to agricultural lands
15 that are not used for the production of root crops except as prescribed
16 in the guidelines and ensures no compost comes into contact with the
17 crops harvested from the lands where the compost is applied.

18 (3) If a compost production facility does not operate in compliance
19 with the terms and conditions established for an exemption in this
20 section, the facility shall be subject to the permitting requirements
21 for solid waste handling under this chapter.

22 **Sec. 7.** RCW 70.95.315 and 1998 c 156 s 7 are each amended to read
23 as follows:

24 The department may assess a civil penalty in an amount not to
25 exceed one thousand dollars per day per violation to any person exempt
26 from solid waste permitting in accordance with RCW 70.95.300 (~~(e)~~),
27 70.95.305, or section 6 of this act who fails to comply with the terms
28 and conditions of the exemption. Each such violation shall be a
29 separate and distinct offense, and in the case of a continuing
30 violation, each day's continuance shall be a separate and distinct
31 violation.

Passed by the Senate April 24, 2005.

Passed by the House April 23, 2005.

Approved by the Governor May 17, 2005, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 17, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 2, Substitute
Senate Bill No. 5602 entitled:

"AN ACT Relating to managing livestock nutrients."

This bill directs the Departments of Agriculture and Ecology, together with legislators and affected and interested parties, to jointly develop recommendations for changes to the law to establish a single state livestock nutrient program within the Department of Agriculture.

The bill also calls for rules that will allow disclosure of farm plan information to provide meaningful information to the public while protecting confidential business information. It will also establish composting guidelines to ensure safe farm practices for disposal of dead animals in a way that protects animal health, water supplies and food supplies.

Section 2 of the bill amends the membership of the Development and Oversight Committee that works with the Department of Agriculture on this program. It also assigns them a couple new tasks, one of which would direct the agency and committee to develop nutrient management tools for smaller livestock producers that are not part of the new federal and state regulatory programs. While these tools could help smaller producers protect water quality, it would divert the limited state agency and committee resources away from the work needed to help larger producers comply with the new federal requirements.

To fulfill the Legislature's intent regarding the membership of the committee and the reporting requirements for composting of dead animals:

1. I will ask legislative leadership to appoint representatives to serve as members of the Development and Oversight Committee. I will also review the membership of the Development and Oversight Committee to ensure effective representation of affected and interested parties, and, as needed, seek nominations from statewide organizations to identify the best candidates for the committee.

2. I hereby direct the Departments of Agriculture and Ecology, and the Department of Health, working with the State Board of Health, to provide reports on their programs related to safe disposal of animal carcasses, including disposal through composting, rendering, burying, and land filling methods. I further direct that the agencies provide their reports to the assigned committees of the Legislature at their legislative assembly in September 2005.

For these reasons, I have vetoed Section 2 of Substitute Senate Bill No. 5602.

With the exception of Section 2, Substitute Senate Bill No. 5602 is approved."