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*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 152**

125th General Assembly

(As Reported by H. Agriculture and Natural Resources)

**Reps. Reinhard, Aslanides, Setzer, Niehaus, Gibbs, Distel, C. Evans,  
Schlichter, Faber, Carmichael, Widener, Walcher**

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### **BILL SUMMARY**

- Revises requirements that determine which animal feeding facilities must obtain a national pollutant discharge elimination system (NPDES) permit.
- For purposes of permit requirements and other provisions, makes numerous changes to definitions, including the revision of the definition of "concentrated animal feeding operation," the elimination of the definition of "animal unit" and the use of that term in the Concentrated Animal Feeding Facilities Law, and the creation and definition of the terms "large concentrated animal feeding operation," "medium concentrated animal feeding operation," and "small concentrated animal feeding operation."
- Prohibits a person from land applying annually the volume of manure specified in rules unless the person holds a livestock manager certification issued under current law, and requires the Director of Agriculture to adopt rules that establish that volume of manure.
- Prohibits a person who has a financial interest in an animal feeding facility from issuing or, pursuant to an appeal, requiring the vacating or modification of a NPDES permit.
- Establishes public notice and comment requirements with respect to the Director's denial, suspension, or revocation of a permit to install, permit to operate, or NPDES permit.

- Expands the categories of violations for which the Director may assess a civil penalty against the owner or operator of a concentrated animal feeding facility.
- Revises provisions governing which neighbors of an existing concentrated animal feeding facility must be notified when the Director proposes to issue a review compliance certificate for the facility.
- Makes relevant provisions in the Water Pollution Control Law consistent with the bill's provisions, and updates that Law to reflect the current status of the Department of Agriculture's implementation of a permit to install program and a NPDES program for animal feeding facilities.

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## CONTENT AND OPERATION

### NPDES permits

#### Background

The Federal Water Pollution Control Act and regulations adopted under it establish the national pollutant discharge elimination system (NPDES) program. The program generally requires a permit, called a NPDES permit, to be obtained for the discharge of sewage, industrial waste, or other wastes into the waters of the state. A NPDES permit is issued for each point source of discharge.

The Director of Agriculture is authorized under current law to issue NPDES permits for the discharge of certain agricultural wastes involving livestock and related storm water runoff (sec. 903.08(B) and (C)). With respect to the discharge of nonagricultural wastes into the waters of the state, current law authorizes the Director of Environmental Protection to issue NPDES permits (sec. 6111.03(J)).

A NPDES permit may be an individual permit or a general permit. Current law requires the Director of Agriculture, to the extent consistent with the Federal Water Pollution Control Act, to issue general NPDES permits that will apply in lieu of individual NPDES permits under certain circumstances involving discharges that will have only minimal cumulative adverse effects on the environment. (Sec. 903.08(F).)

#### NPDES permit requirements

Current law prohibits anyone from discharging manure from a point source into waters of the state without first obtaining a NPDES permit issued by the Director of Agriculture.<sup>1</sup> The bill retains this prohibition and further specifies that

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<sup>1</sup> Current law defines: (1) "discharge" as adding from a point source to waters of the state (sec. 903.01(G)), (2) "manure" as any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta (sec. 903.01(O)), (3) "point source" as having the same meaning as in the Federal Water Pollution Control Act (sec. 903.01(X)), and (4) "waters of the state" as all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border on, this state, or are within its jurisdiction,

the owner or operator of a concentrated animal feeding operation (CAFO) must apply for an individual NPDES permit or for coverage under a general NPDES permit issued by the Director. Additionally, the bill specifies that a CAFO is deemed to be a point source that discharges manure into the waters of the state unless the Director has determined that the CAFO has no potential to discharge manure into the waters of the state. If an owner or operator of a CAFO receives notice from the Director that the Director has determined that the CAFO has no potential to discharge manure, the owner or operator is not required to apply for an individual NPDES permit or for coverage under a general NPDES permit for that operation. The Director's determination must be made in accordance with rules. (Sec. 903.08(B)(1).)

### **Definition of CAFO and related definitions**

#### **Overview**

The bill makes numerous changes with respect to the definitions of terms that are used in the law governing CAFOs and other animal feeding facilities. The definitions are significant because their applications determine the facilities and operations that must comply with permit requirements and other regulatory provisions. As indicated above, for example, the definition of "CAFO" is significant because its application determines who must obtain a NPDES permit.

Under current law, the number of animal units that are present at an animal feeding facility often is determinative regarding whether a permit must be obtained for the facility. An animal unit is a unit of measurement consisting of formulas that are designed to determine the number of various livestock animals that are necessary to produce an amount of waste that is equal to the amount of waste produced by one slaughter or feeder cow. Generally, a facility involving more than 1,000 animal units is considered to be a CAFO and may be required to obtain a NPDES permit.

The bill eliminates the use of the term "animal unit" and instead uses the terms "large concentrated animal feeding operation" (large CAFO), "medium concentrated animal feeding operation" (medium CAFO), and "small concentrated animal feeding operation" (small CAFO). These definitions specify the numbers of animals that are stabled or confined at each size of CAFO. Under the bill, a NPDES permit generally must be obtained for a large CAFO and may be required for a medium or small CAFO under certain circumstances.

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*except those private waters that do not combine or effect a junction with natural surface or underground waters (sec. 903.01(FF)).*



### **Definition of CAFO**

Current law defines "concentrated animal feeding operation" as having the same meaning as in regulations adopted by the United States Environmental Protection Agency under the Federal Water Pollution Control Act. The bill instead states that "concentrated animal feeding operation" means an animal feeding facility that complies with one of the following: (1) has a total design capacity equal to or more than the number of animals specified under the definition of "large concentrated animal feeding operation" (see "**Definition of large CAFO**," below), (2) satisfies the criteria enumerated in the definitions of "large CAFO," "medium CAFO," or "small CAFO" (see also "**Definition of medium CAFO**," and "**Definition of small CAFO**," below), or (3) is designated by the Director as a medium or small CAFO pursuant to rules. (Sec. 903.01(F).)

### **Definitions of "animal feeding facility" and "agricultural animal"**

Current law defines "animal feeding facility" as a lot, building, or structure where both of the following conditions are met: (1) animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained there for a total of 45 days or more in any 12-month period, or (2) crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure. The bill replaces the reference to "animals, other than aquatic animals" with a reference to "agricultural animals." (Sec. 903.01(B).)

Current law defines "agricultural animal" as any animal generally used for food or in the production of food, including cattle, sheep, goats, rabbits, poultry, and swine; horses; and any other animal included by the Director by rule. The bill clarifies that "agricultural animal" does not include fish or other aquatic animals regardless of whether they are raised at fish hatcheries, fish farms, or other facilities that raise aquatic animals. (Sec. 903.01(A).) To avoid a redundancy that would be created because of the related changes in the definitions of "agricultural animal" and "animal feeding facility," the bill eliminates a provision stating that "animal feeding facility" does not include a hatchery, fish farm, or other facility that raises aquatic animals (sec. 903.01(B)).

Current law specifies that two or more animal feeding facilities under common ownership must be considered to be a single animal feeding facility if they adjoin each other or if they use a common area or system for the disposal of wastes. The bill eliminates the reference to a "system for the disposal of wastes" and replaces it with a reference to a "system for the disposal of manure." (Sec. 903.01(B).)

In addition to the above description, current law specifies that "animal feeding facility" includes land that is owned or leased by the owner or operator of the lot, building, or structure and on which manure originating from the lot, building, or structure is applied. The bill instead states that "animal feeding facility" includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied. (Sec. 903.01(B).)

#### **Definition of "production area"**

The bill defines "production area" as any of the following components of an animal feeding facility: (1) animal confinement areas, including, but not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, animal walkways, and stables, (2) manure storage areas, including, but not limited to, manure storage or treatment facilities, (3) raw material storage areas, including, but not limited to, feed silos, silage bunkers, commodity buildings, and bedding materials, or (4) waste containment areas, including, but not limited to, any of the following: an egg washing or egg processing facility; an area used in the storage, handling, treatment, or disposal of mortalities; or settling basins, runoff ponds, liquid impoundments, and areas within berms and diversions that are designed and maintained to separate uncontaminated storm water runoff from contaminated water and to contain and treat contaminated storm water runoff (sec. 903.01(AA)).

#### **Definition of "large CAFO"**

The bill defines "large concentrated animal feeding operation" as an animal feeding facility that stables or confines at least the number of animals specified in any of the following categories: (1) 700 mature dairy cattle whether milked or dry, (2) 1,000 veal calves, (3) 1,000 cattle other than mature dairy cattle or veal calves, (4) 2,500 swine that each weigh 55 pounds or more, (5) 10,000 swine that each weigh less than 55 pounds, (6) 500 horses, (7) 10,000 sheep or lambs, (8) 55,000 turkeys, (9) 30,000 laying hens or broilers if the animal feeding facility uses a liquid manure handling system, (10) 125,000 chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system, (11) 82,000 laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system, (12) 30,000 ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system, or (13) 5,000 ducks if the animal feeding facility uses a liquid manure handling system (sec. 903.01(M)). The bill specifies that "cattle" includes, but is not limited to, heifers, steers, bulls, and cow and calf pairs (sec. 903.01(D)).

### **Definition of "medium CAFO"**

The bill defines "medium concentrated animal feeding operation" as an animal feeding facility that satisfies both of the following: (1) the facility stables or confines the number of animals specified in any of the following categories: 200 to 699 mature dairy cattle whether milked or dry; 300 to 999 veal calves; 300 to 999 cattle other than mature dairy cattle or veal calves; 750 to 2,499 swine that each weigh 55 pounds or more; 3,000 to 9,999 swine that each weigh less than 55 pounds; 150 to 499 horses; 3,000 to 9,999 sheep or lambs; 16,500 to 54,999 turkeys; 9,000 to 29,999 laying hens or broilers if the animal feeding facility uses a liquid manure handling system; 37,500 to 124,999 chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system; 25,000 to 81,999 laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system; 10,000 to 29,999 ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system; or 1,500 to 4,999 ducks if the animal feeding facility uses a liquid manure handling system, and (2) the facility does one of the following: discharges pollutants into waters of the United States through a ditch constructed by humans, a flushing system constructed by humans, or another similar device constructed by humans, or discharges pollutants directly into waters of the United States that originate outside of and that pass over, across, or through the facility or otherwise come into direct contact with the animals at the facility. "Medium concentrated animal feeding operation" includes an animal feeding facility that is designated by the Director as a medium CAFO pursuant to rules. (Sec. 903.01(Q).)

### **Definition of "small CAFO"**

The bill defines "small concentrated animal feeding operation" as an animal feeding facility that is not a large or medium CAFO and that is designated by the Director as a small CAFO pursuant to rules (sec. 903.01(EE)).

### **Elimination of definition of "animal unit"**

The bill eliminates the definition of "animal unit," which under current law means a unit of measurement calculated by adding the following numbers: (1) the number of slaughter and feeder cattle multiplied by one, (2) the number of mature dairy cattle whether milked or dry multiplied by 1.4, (3) the number of swine each weighing over 55 pounds multiplied by .4, (4) the number of horses multiplied by two, (5) the number of sheep or lambs multiplied by .1, (6) the number of turkeys multiplied by .02, (7) the number of laying hens or broilers multiplied by .01, and (8) the number of ducks multiplied by .2 (sec. 903.01(C)). Accordingly, the bill eliminates all references to "animal unit" that appear in the Concentrated Animal Feeding Facilities Law and related statutes and replaces them as follows: "the

number of animal units" is replaced with "the number of animals"; "the number of animal units of design capacity" is replaced with "the design capacity"; "1,000 animal units" is replaced with "the number of animals specified in any of the categories listed in the definition of "large CAFO""; and "10,000 animal units" is replaced with "ten times the number of animals specified in any of the categories listed in the definition of "large CAFO."" (Secs. 307.24; 505.266; 903.01(C), (E), and (N); 903.02; 903.04; 903.10(D)(6); and 903.20.)

**Definition of "concentrated animal feeding facility"**

Under current law, "concentrated animal feeding facility" (CAFF) means an animal feeding facility with a total design capacity of more than 1,000 animal units. The bill instead specifies that it means an animal feeding facility with a total design capacity of equal to or more than the number of animals specified in any of the categories listed in the definition of "large CAFO." (Sec. 903.01(E).)

**Determination that an animal feeding facility must be permitted as a medium or small CAFO**

The bill specifies that in certain instances, an animal feeding facility that does not satisfy the definition of "medium CAFO" or "small CAFO" nevertheless may be required to obtain a permit to operate as a medium CAFO or small CAFO when the Director so determines. (For an explanation of permits to operate, see "**Public notice and comment opportunity for denial, suspension, or revocation of permits**," below.) Those instances include situations in which all of the following apply: (1) the Director has received from the Chief of the Division of Soil and Water Conservation in the Department of Natural Resources a copy of an order issued under the Division of Soil and Water Conservation Law that specifies that the animal feeding facility has caused agricultural pollution by failure to comply with standards established under that Law and that the animal feeding facility therefore should be required to be permitted as a medium or small CAFO, (2) the Director or his authorized representative has inspected the animal feeding facility, and (3) the Director or his authorized representative finds that the facility is not being operated in a manner that protects the waters of the state. (Sec. 903.082(A).) If an animal feeding facility is required under the bill to be permitted in accordance with these provisions, the owner or operator of the facility must apply to the Director for a permit to operate as a CAFO (sec. 903.082(B)). In the case of an animal feeding facility for which a permit to operate is required in accordance with these provisions, a permit to operate cannot be required under the bill after the end of the five-year term of the permit if the problems that caused the facility to be required to obtain the permit have been corrected to the Director's satisfaction (sec. 903.082(C)).

The bill additionally specifies that in a situation in which best management practices cannot be implemented without modifying the existing animal feeding facility, the owner or operator of the facility also must apply for a permit to install for the facility (sec. 903.082(B)).

### **Livestock manager certification**

Current law requires persons who are responsible for manure management at a major concentrated animal feeding facility and persons who transport, buy, or sell a certain quantity of manure annually to obtain a livestock manager certification issued by the Director (sec. 903.07).<sup>2</sup> In addition, the bill prohibits a person from land applying annually the volume of manure specified in rules unless the person holds a livestock manager certification (sec. 903.07(A)(2)). The bill further requires the Director to adopt rules that establish that volume of manure (sec. 903.10(E)(5)).

### **Conflict of interest**

The bill prohibits a person from issuing a NPDES permit for an animal feeding facility if the person receives or has received during the two years prior to the receipt of an application for a NPDES permit a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. In addition, the bill prohibits a person who, pursuant to an appeal of an action regarding a NPDES permit, has the authority to require or to order the Director of Agriculture to vacate or modify a NPDES permit from requiring or ordering the Director to vacate or modify a NPDES permit if the person receives or has received during the two years prior to the filing of the appeal a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. (Sec. 903.081(A).)

For purposes of these provisions, the bill defines "significant portion of income" as 10% or more of gross personal income in a calendar year or 50% or more of gross personal income in a calendar year if the recipient of the income is more than 60 years of age and is receiving that portion of income under retirement benefits, including a pension or similar arrangement (sec. 903.081(B)(1)). Under the bill, "income" includes retirement benefits, consultant fees, and stock dividends. "Income" does not include mutual fund payments or other diversified investments for which the recipient does not know the identity of the primary sources of the income. (Sec. 903.081(B)(2).) The bill specifies that "permittee"

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<sup>2</sup> *"Major concentrated animal feeding facility" means a concentrated animal feeding facility with a total design capacity of more than ten times the number of animals specified in any of the categories listed in the definition of "large CAFO" (sec. 903.01(N)).*

and "applicant for a NPDES permit" does not include any department or agency of the state (sec. 903.081(B)(3).)

**Public notice and comment opportunity for denial, suspension, or revocation of permits**

Under current law, a permit to install must be obtained prior to the construction or modification of a CAFF (sec. 903.02). A permit to operate also must be obtained and kept current for the operation of a CAFF (sec. 903.03, not in the bill). Prior to issuing or modifying a permit to install, permit to operate, or NPDES permit, current law requires the Director to issue a draft permit (sec. 903.09(A)).

Current law establishes public notice and comment provisions with respect to the draft permits (sec. 903.09(A)). The bill additionally establishes public notice and comment provisions with respect to the denial, suspension, or revocation of a permit to install, permit to operate, or NPDES permit (sec. 903.09(F)).

Under current law, the denial, modification, suspension, or revocation of a permit to install, permit to operate, or NPDES permit without the consent of the applicant or permittee must be preceded by a proposed action stating the Director's intention to issue an order with respect to the permit and the reasons for it. The bill additionally requires the Director to mail to the applicant or the permittee notice of the Director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit. Under the bill, the Director also must publish the notice once in a newspaper of general circulation in the county in which the CAFF or CAFO is located or proposed to be located. The Director must mail a copy of the notice of the proposed action to the board of county commissioners of the county and to the board of township trustees of the county in which the CAFF or CAFO is located or proposed to be located. The Director also must provide notice of the Director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit to any other person that is entitled to notice under the Federal Water Pollution Control Act. The notice of the Director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit must include the address where written comments concerning the Director's proposed action may be submitted and the period of time during which comments will be accepted as established by rule.

If the Director receives written comments in an amount that demonstrates significant public interest, as "significant public interest" is defined by rules that are required to be adopted under the bill, the Director must schedule one public meeting to provide information to the public and to hear comments pertinent to the proposed action. The notice of the public meeting must be provided in the same

manner as the notice of the Director's proposed action. (Secs. 903.09(F) and 903.10(G).)

### **Civil penalties**

Under current law, the Director may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the Director or his authorized representative determines that the owner or operator is not in compliance with the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the CAFF (sec. 903.16(A)). (For an explanation of review compliance certificates, see "**Review compliance certificates**," below.) With certain exceptions, the civil penalty must be paid in an amount established in rules (sec. 903.16(B)). The bill adds that the Director may assess a civil penalty if he or his representative determines that the owner or operator is not in compliance with statutory law governing permits to install, permits to operate, or review compliance certificates or rules governing permits to install or permits to operate (sec. 903.16(A) and (B)).

### **Review compliance certificates**

#### **Background**

On March 15, 2001, Sub. S.B. 141 of the 123rd General Assembly took effect and required the Director of Agriculture to finalize a program under which he is given the authority to issue permits to install, permits to operate, and NPDES permits for concentrated animal feeding facilities.<sup>3</sup> Prior to finalization of the program, the Director of Environmental Protection was responsible for issuing permits to install and NPDES permits for those facilities.

Current law specifies that on and after the date that is two years after the date on which the Director finalizes the program for the issuance of permits to install for concentrated animal feeding facilities, and until the issuance of a permit to operate, no person lawfully can operate an existing concentrated animal feeding facility unless the person applies for a review compliance certificate issued by the Director of Agriculture (sec. 903.04(D)). "Existing concentrated animal feeding facility" means such a facility that was in existence prior to the date on which the Director finalized the program and that previously had obtained an installation permit from the Director of Environmental Protection (sec. 903.04(A)). Upon the Director's review of specified information concerning a facility and inspection of the facility, the Director must issue a review compliance certificate to the facility

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<sup>3</sup> According to a press release from the Department of Agriculture, the Director finalized the program in August, 2002.

if he determines that it satisfies certain criteria. A permit to operate must be obtained prior to expiration of the review compliance certificate, which is valid for five years. (Sec. 903.04.)

**Notice to neighbors upon issuance of review compliance certificate**

Current law specifies that the issuance of a review compliance certificate does not require public notice or a public meeting. However, notice must be provided to persons who own property that is contiguous to the concentrated animal feeding facility for which the review compliance certificate is to be issued, and those persons may submit written comments to the Director within a time period that he establishes. The bill clarifies that notice must be provided to persons who own property that is contiguous to the production area of the concentrated animal feeding facility for which the review compliance certificate is to be issued. (Sec. 903.04(F).)

**Director of Environmental Protection's authority**

The existing Water Pollution Control Law states that provisions granting authority to the Director of Environmental Protection to issue permits and perform certain other actions to protect the waters of the state from pollution do not apply to animal waste disposal systems and related management and conservation practices that are subject to rules adopted under the Division of Soil and Water Conservation Law and involving less than 1,000 animal units as defined in United States Environmental Protection Agency (USEPA) regulations. The bill eliminates the language regarding animal units. (Sec. 6111.03(S)(2).)

Current law specifies that until the USEPA approves the NPDES program submitted by the Director of Agriculture, the above exclusion does not apply to animal waste treatment works having a controlled direct discharge to the waters of the state. The bill adds that, until the NPDES program approval date, the exclusion also does not apply to any CAFO as defined in federal regulations. (Sec. 6111.03(S)(2).)

Existing law specifies that on and after the date on which the Director of Agriculture has finalized the program for the issuance of permits to install, statutes governing the Director of Environmental Protection's authority over the installation of sewerage systems and treatment works do not apply to sewerage systems, treatment works, or disposal systems for storm water from an animal feeding facility or manure. The bill eliminates the reference to "on and after the date on which the Director of Agriculture has finalized the program for the issuance of permits to install." (Sec. 6111.44(B)(2).)

Current law also specifies that those statutes do not apply to animal waste treatment or disposal works and related management and conservation practices that are subject to rules adopted under the Division of Soil and Water Conservation Law and that involve less than 1,000 animal units as defined in USEPA regulations. The bill eliminates the language regarding animal units. (Sec. 6111.44(B)(3).)

Finally, the bill removes from existing law language specifying that the above two exclusions do not apply to animal waste treatment or disposal works having a controlled direct discharge to the waters of the state until the date on which the Director of Agriculture finalizes the program for the issuance of permits to install (sec. 6111.44(B)).

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## HISTORY

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Introduced	04-01-03	p. 308
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