

PROPOSED FINAL REPORT:
2020 TAX PREFERENCE PERFORMANCE
REVIEWS

Livestock Nutrient Management Equipment
LEGISLATIVE AUDITOR'S CONCLUSION:

The preference helps Washington's dairies comply with the Dairy Nutrient Management Act. It is unclear if the preference has helped to improve water quality in Washington.

December 2020

Sales and use tax exemption for certain equipment that is used to manage manure

Dairies and animal feeding operations do not pay sales or use tax when they purchase certain equipment that is used exclusively to manage livestock nutrients (i.e., manure). Services to maintain or repair qualifying equipment or facilities are also tax-exempt.

The preference is available only for certain qualifying equipment and facilities that are detailed in statute.

The preference took effect July 13, 2001, and does not have an expiration date.

<p>Estimated Biennial Beneficiary Savings \$266,000 to \$1 Million</p>
<p>Tax Type Sales and use tax RCWs 82.08.890; RCW 82.12.890 Applicable Statutes</p>

Preference helps dairies comply with the Dairy Nutrient Management Act. It is unclear if the preference has helped to improve water quality in Washington.

The 1998 Dairy Nutrient Management Act requires dairies to develop and implement nutrient management plans to manage their livestock manure. The goal of the plans is to protect surface and ground water. When the Legislature passed this preference, it stated that it was intended to help dairy farmers comply with the Act. The preference was later extended to animal feeding operations.

Objectives	Results
Help dairies comply with the Dairy Nutrient Management Act.	Met. The preference reduces costs for dairies to purchase or repair qualifying nutrient management equipment and facilities, which helps them comply with the Act. The compliance rate for establishing nutrient management plans has increased from 82% in 2006 to 97% in 2019.
Maintain and improve water quality in Washington.	Unclear. In areas with large concentrations of dairies, water quality has primarily remained within the moderate range since 2001. However, it is unclear to what extent the preference has influenced those levels.

Recommendations

Legislative Auditor's Recommendation: Continue

The Legislature should continue the preference because it is helping dairies and animal feeding operations implement their nutrient management plans. The preference is one of many efforts to help maintain and improve water quality in Washington.

If the Legislature wants more accurate information on the size of the beneficiary savings, it should require the Department of Revenue to collect data on qualifying sales.

You can find additional information in Recommendations.

Commissioners' Recommendation

The Commission endorses the Legislative Auditor's recommendation without comment.

REVIEW DETAILS

1. Tax exemption for equipment and facilities used to manage manure

Sales and use tax exemption to help dairies and animal feeding operations maintain nutrient management plans and protect Washington's water quality

Dairies and animal feeding operations do not pay sales or use tax when they purchase:

- Certain equipment used exclusively to manage livestock nutrients (i.e., manure).
- Services to maintain or repair qualifying nutrient management equipment and existing facilities.

The 1998 Dairy Nutrient Management Act requires dairies to have nutrient management plans in order to protect water quality

The Dairy Nutrient Management Act requires dairies to have plans that demonstrate how they will efficiently and effectively manage livestock manure in order to protect surface and ground water.

Non-dairy animal feeding operations (AFOs) may elect to develop nutrient management plans, but they are not required to do so.

Dairies and other animal feeding operations qualify for the preference

The following animal-based operations are eligible for the preference:

1. **Licensed cow dairies with certified dairy nutrient management plans.**
2. **Animal feeding operations (AFOs) with a state waste permit or with a nutrient management plan approved by a conservation district.** An AFO is a facility where animals have been, are, or will be confined and fed, or kept for 45 or more days in a 12-

month period. AFOs have no crops, vegetation, or post harvest residue during the normal growing season at the facility or where the animals are confined. These facilities can include cattle, poultry, or pig operations.

Preference available only for equipment and facilities listed in statute

The preference applies only to equipment and facilities that are used exclusively to handle and treat livestock manure. Qualifying equipment and facilities are listed in statute and include items such as pumps, scrapers, manure spreaders, and lagoon or pond liners. See Appendix A for a full list of eligible equipment and facilities.

Preference has no expiration date

The preference took effect July 13, 2001, and originally only applied to dairies. It was extended to apply to non-dairy, livestock AFOs in 2006. The Legislature suspended the preference from July 1, 2010, through June 30, 2013. The preference currently has no expiration date.

JLARC is also reviewing a sales and use tax exemption for anaerobic digesters in 2020

The Legislature enacted a sales and use tax exemption for dairies that purchase [anaerobic digesters](#) in the same 2001 legislation that established the livestock nutrient management preference. JLARC staff are reviewing the anaerobic digester preference in a separate 2020 report.

2. Laws and plans are intended to protect water quality

Livestock nutrient management plans are intended to help dairies and livestock operations properly manage their manure and protect ground and surface waters

The Dairy Nutrient Management Act requires dairies to manage their livestock manure in order to protect the quality of surface and ground water. Non-dairy animal feeding operations (AFOs) may elect to do so, but are not required to under the Act.

1998 Dairy Nutrient Management Act established to protect water quality

The Dairy Nutrient Management Act requires dairies to have nutrient management plans. The plans cover all aspects of the operation, including manure production, collection, storage, treatment, and use. The goal is to determine how and when to apply nutrients to achieve balance between the nutrient needs of the property and the protection of ground and surface waters.

Dairies and some AFOs develop individualized livestock nutrient management plans

Dairies and some AFOs develop nutrient management plans to handle and use the livestock manure and byproducts, such as fertilizer and bedding, generated at their facilities. By following these plans, they can prevent water pollution coming from their properties.

Plan activities include:

- Collecting, storing, moving, and transporting manure.
- Separating manure solids from liquids.
- Applying manure to agricultural lands at times that are most appropriate for protecting water quality. For example, manure should not be applied before a heavy rainstorm or in amounts that exceed the nutrient needs of existing crops.

The Act is administered by the Washington State Department of Agriculture (WSDA) and requires all licensed dairies to:

- Develop and implement individualized nutrient management plans.
- Register with the WSDA.
- Receive regular inspections from the WSDA to ensure they are following plan requirements.
- Comply with laws and rules protecting surface and ground water.

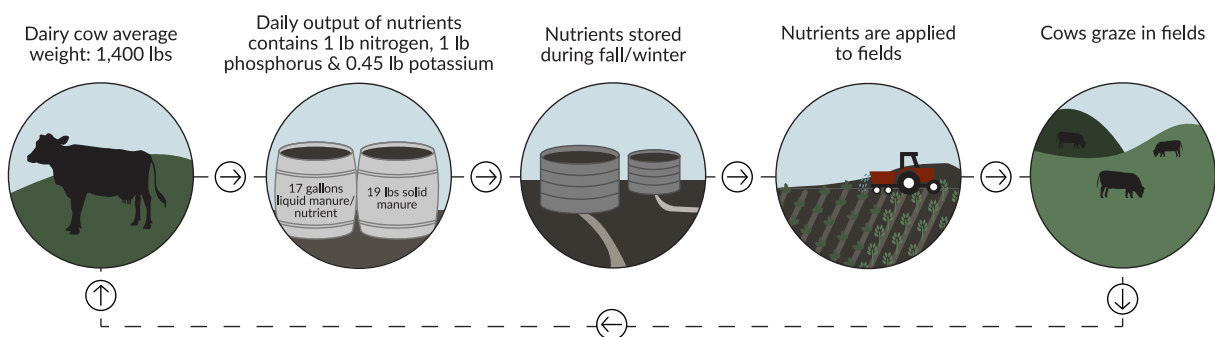
Conservation districts provide planning assistance to dairies and AFOs

Washington has 45 conservation districts throughout the state to help landowners manage their properties responsibly for ecological purposes. Staff from local conservation districts help dairies and AFOs design, fund, and implement their nutrient management plans. Each plan is individually developed to meet site specific conditions.

If any element of a dairy or AFO operation changes, conservation districts can help them modify and update their plans. For instance, if a dairy adds more cows or loses land that was available for manure application, the conservation district can help to revise the plan.

An average sized cow produces many gallons of manure daily. The manure contains nitrogen, phosphorus, and potassium which can be harmful to environmental and human health in certain concentrations. Collecting and containing the manure, and planning for proper nutrient application, helps to control the release of these elements and protects the environment.

Exhibit 2.1: Managing manure is an ongoing process for dairies

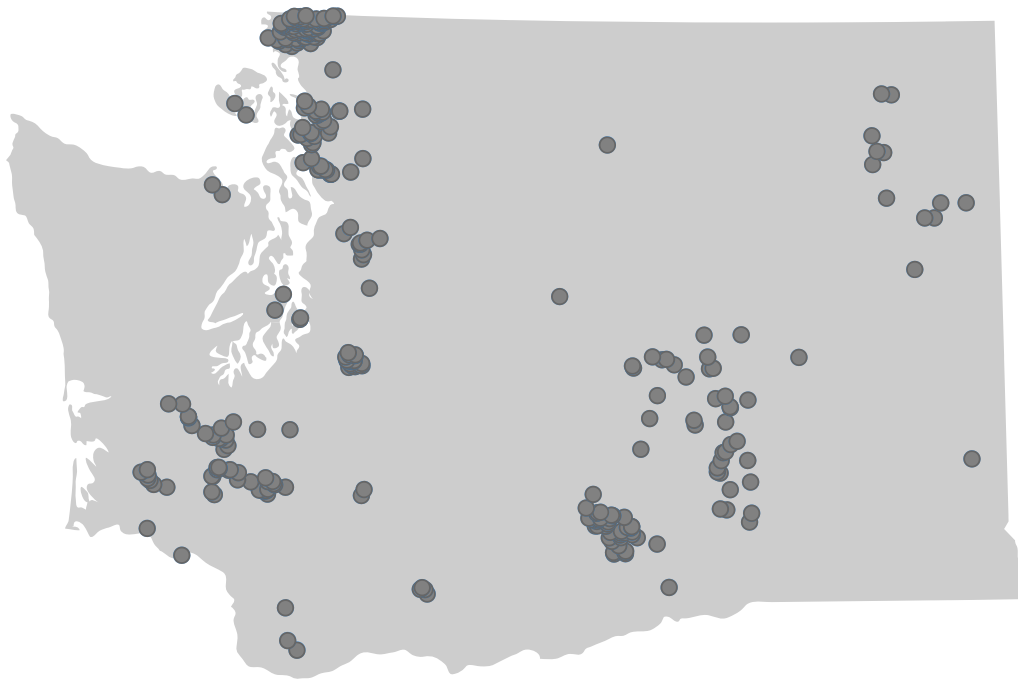


Source: JLARC staff analysis of data provided by Whatcom Conservation District staff.

323 licensed dairies in Washington as of January 2020

Milk products and cattle were ranked 2nd and 5th, respectively, among Washington's top agricultural commodities in 2019. As of January 2020, Washington had 323 licensed dairies. Because some dairies have multiple locations, the actual number of licensed dairy locations is 343.

Exhibit 2.2: Washington dairies are located throughout the state



Source: JLARC staff analysis of Washington Department of Agriculture dairy geo-coded data as of January 15, 2020.

38% of licensed Washington dairies are in Whatcom and Yakima Counties

While dairies are located throughout the state, Whatcom and Yakima counties have the largest concentration of facilities. These two counties have very different climates, landscapes, and soils which result in unique water and environmental concerns for each area.

84 licensed dairies in Whatcom County

As of January 2020, 84 licensed dairies were operating in Whatcom County. These dairies tend to be smaller in acreage and have fewer cows than dairies in Eastern Washington. One-quarter of the dairies had 700 or more mature cows.

This area receives significant levels of rain in the winter and spring, making nutrient management a challenge. Runoff from land surfaces generally flows into streams and rivers that empty into inlets of the Puget Sound. These inlets are home to recreational, commercial, and tribal (Lummi Nation) shellfish beds.

40 licensed dairies in Yakima County

Dairies in Eastern Washington tend to have more acreage and cows. As of January 2020, 83% of Yakima County's 40 dairies had 700 or more mature cows.

Although the climate is dry, conservation districts report that snowmelt during the spring can create sudden surges of water. Nutrient management is critical for these dairies because elevated nitrogen and phosphorus levels in the soil result in ongoing water quality issues.

Detail on the number of animal feeding operations in Washington is not available

Some large AFOs¹ are required to have state water discharge permits with the Department of Ecology. Any AFO may elect to develop a nutrient management plan, but these are developed with the assistance of local conservation districts and are not tracked on a state-wide basis.

3. Preference reduces costs for dairies to manage their nutrients

Washington dairies and animal feeding operations will save an estimated \$266,000 to \$1 million in 2021-23 biennium due to the preference

When the preference was enacted in 2001, the Dairy Nutrient Management Act required Washington's dairies to have nutrient management plans in place by December 31, 2003. Many dairies had to purchase equipment or services to implement their plans. The Legislature specifically stated that the preference was intended to help dairies meet the deadline and continue to comply with the Act in the future.

There is a wide range in costs for qualifying equipment and repairs

Industry representatives indicate that the preference is used for everyday purchases as well as major expenditures, such as new equipment or expensive repairs. Each beneficiary may spend anywhere from hundreds to tens of thousands of dollars or more on qualifying equipment and services in a given year. The exemption can save them about 8.3% - the average rural county sales tax rate - on their qualifying purchases.

The list below includes examples of equipment commonly used in livestock nutrient management and the estimated retail costs provided by vendors as of March 2020:

- **High volume pump** (used to clean facilities and move manure).
 - New flush pump: \$26,000.
 - Repair or spare parts kit: \$9,700.

¹Animal feeding operations are facilities where animals are confined and fed, or kept for 45 or more days in a 12-month period. They can include cattle, poultry, or pig operations.

- **High pressure pump** (used in ponds to spread and apply nutrients and other uses).
 - New floating pump: \$18,200.
 - Repair/spare parts kit: \$3,900.
- **Manure spreader or nutrient applicator** (used to apply nutrients to fields).
 - Prices range between \$56,000 to \$312,000, depending on size and features.

Beneficiaries may save an estimated \$266,000 to \$1 million in 2021-23 biennium

It is difficult to estimate beneficiary savings because there is no specific deduction classification for businesses to report use of this preference. JLARC staff estimated a range of savings based on available data.

JLARC staff estimate the direct beneficiaries savings for fiscal year 2019 was between \$57,000 and \$800,000. The estimated savings for the 2021-23 biennium is between \$266,000 to \$1 million.

The lower end of the estimated range is based on actual qualifying sales data that businesses reported as livestock nutrient-related purchases under an "other" deduction category. At a minimum, beneficiaries saved at least the lowest amount of the estimated range.

The higher end of the estimated range is based on the Department of Revenue's 2020 Tax Exemption Study. The actual beneficiary savings may be equal to or greater than these estimates.

Exhibit 3.1: The estimated 2021-23 biennial savings is between \$266,000 and \$1 million

Biennium	Fiscal Year	Estimated Beneficiary Savings
2017-19 7/1/17-6/30/19	2018	\$58,000 - \$800,000
	2019	\$57,000 - \$800,000
2019-2021 7/1/19 - 6/30/21	2020	\$283,000 - \$506,000
	2021	\$133,000 - \$506,000
2021-23 7/1/21-6/30/23	2022	\$133,000 - \$506,000
	2023	\$133,000 - \$506,000
	2021-23 Biennium	\$266,000 - \$1 million

Source: Lower range: JLARC staff analysis of Department of Revenue tax return deduction detail, July 2017 – December 2019. Higher range: JLARC staff analysis of Department of Revenue estimate for tax preference value for 2020 Tax Exemption Study.

4. Percentage of dairies with approved plans has increased

The percentage of dairies with individual nutrient management plans has increased from 82% in 2006 to 97% in 2019

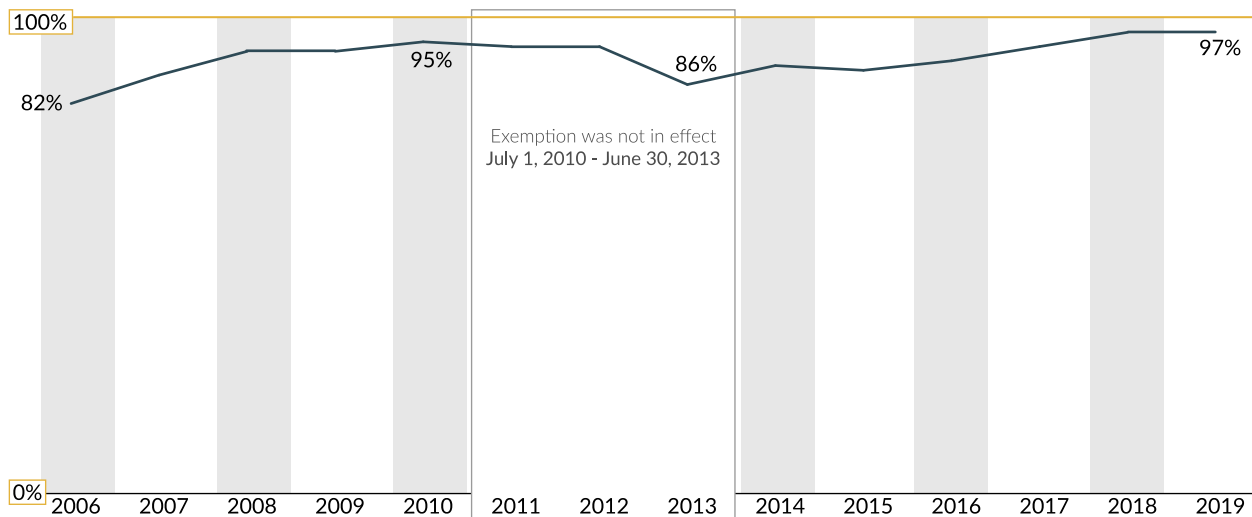
The 1998 Dairy Nutrient Management Act requires dairies to establish and certify their own nutrient management plans. Industry representatives indicate that the preference encourages dairies and animal feeding operations (AFOs) to replace or repair old or failing equipment used to manage manure.

Compliance rates have steadily improved outside of a three-year period when the exemption was not in effect

Washington's Department of Agriculture (WSDA) provided dairy inspection data from 2006 through 2019. The data shows that the percentage of dairies with approved nutrient management plans has increased over time, going from 82% to 97%. The one exception is a three-year period of time when the preference was not in effect (July 1, 2010, through June 30, 2013). During this time, compliance rates dropped from 95% to 86%.

The WSDA reports it is not authorized to enforce dairies' ongoing compliance with the plans.

Exhibit 4.1: WSDA reports that 97% of Washington dairies have approved nutrient management plans



Source: JLARC staff analysis of WSDA quarterly data, June 30, 2006, through September 30, 2019. Per WSDA, data prior to 2006 was not available.

5. Unclear if preference has helped to improve water quality

Water quality has primarily remained within the "moderate" range in areas with large concentrations of dairies. It is unclear to what extent the preference has influenced those levels.

Water quality refers to the chemical, physical, and biological characteristics of the water. It is often measured in terms of its suitability for a human purpose, such as drinking or swimming.

Managing livestock nutrients is one of many efforts the state uses to protect ground and surface waters.

Concerns with pollution levels in Portage Bay and the Nooksack River Watershed in Whatcom County preceded the enactment of the Dairy Nutrient Management Act

Many Whatcom County dairies are located in the Nooksack River watershed, which discharges into Bellingham Bay and Portage Bay. This area is home to the Lummi Nation's primary commercial shellfish growing area.

In 1996, the Lummi shellfish beds were closed due to fecal coliform bacterial pollution linked to dairy farms, as well as to septic issues and stormwater runoff. Fecal coliform is a group of bacteria that comes from human and animal feces. It is used as a primary indicator of water quality.

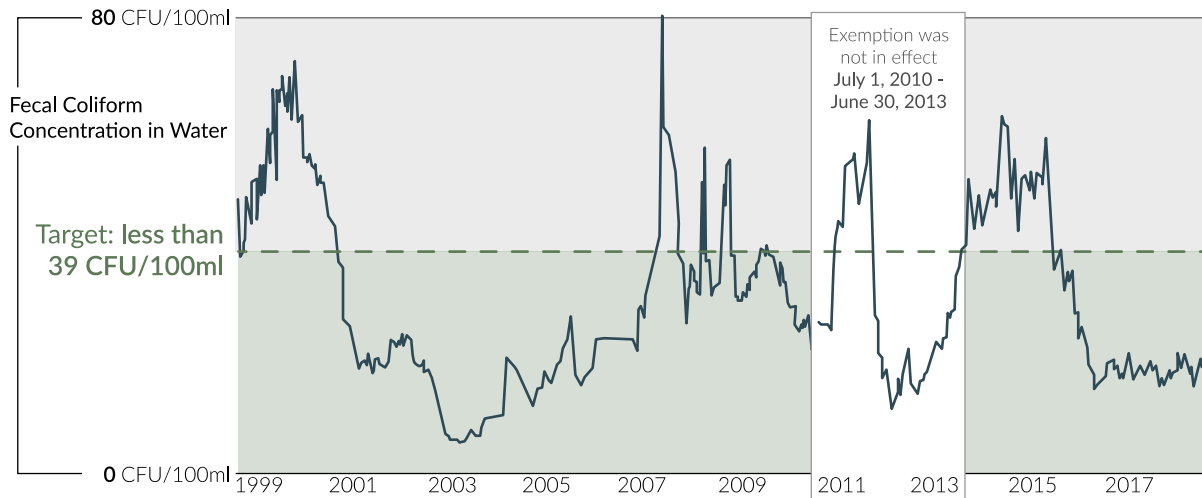
The closure of the Lummi shellfish beds encouraged the Legislature to enact the Dairy Nutrient Management Act in 1998 to improve water quality in Whatcom County and throughout the state. Since the late 1990s, state, federal, tribal, agricultural, and community representatives have collaborated to improve water quality for this area.

- The Lummi shellfish beds were fully reopened in 2006.
- Increasing fecal coliform bacterial levels resulted in closure of the Lummi shellfish beds in 2014.
- In April 2019, the seasonal shellfish harvest ban was lifted for all but the fall season (October through December) for 800 acres in Portage Bay.

Long-term data indicates that average fecal coliform bacteria levels² in the Nooksack River have fluctuated both above and within the established target zone since 1999. From 2015 on, the fecal coliform concentration has remained within the target zone.

²A group of bacteria that comes from human and animal feces.

Exhibit 5.1: Nooksack River fecal coliform levels have fluctuated but are currently within the target zone



Source: JLARC staff analysis of mean fecal coliform bacterial levels in Nooksack River mainstem at Marine Drive, as provided by Whatcom County Conservation District, December 2019.

Conservation District staff report that the tax preference is one tool among many used to maintain and improve water quality

Whatcom Conservation District staff note that improving water quality involves a combination of efforts and tools. They report that the tax preference is one piece among many. Examples of other efforts specific to working with Whatcom County dairies and other nutrient producers include:

- A text alert system that provides detail from the National Oceanic and Atmospheric Administration on timing nutrient application based on weather event forecasting.
- Manure spreading advisories that give 24- to 72-hour detail on risks associated with applying nutrients.
- Instances of local legally binding water quality improvement plans, such as the one included in a November 2017 agreement between the Lummi Nation and seven individual dairies.

Water quality has primarily remained in "moderate" range in areas with high concentrations of dairies

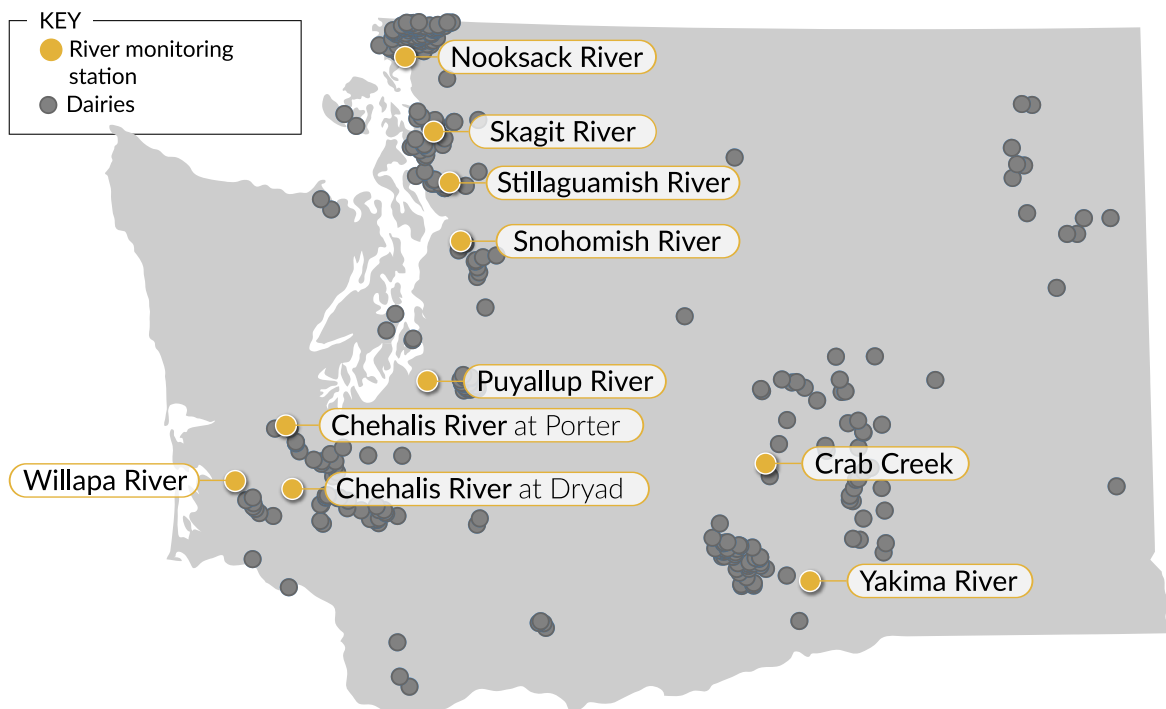
The Department of Ecology (DOE) maintains long-term river and stream water quality monitoring at locations throughout the state. It monitors and rates water quality based on eight elements, including temperature, dissolved oxygen, fecal coliform bacteria, nitrogen, and turbidity.

DOE conducts ongoing river and stream monitoring at limited locations in the state

DOE staff identified monitoring stations with data starting in 1997 for three areas of the state with high concentrations of dairies:

- **Northwest Washington** on the Nooksack, Skagit, Stillaguamish, and Snohomish Rivers.
- **Puget Sound/Southwest Washington** on the Puyallup, Chehalis, and Willapa Rivers.
- **Eastern Washington** on the Yakima River and Crab Creek.

Exhibit 5.2: Department of Ecology monitors water quality in areas with concentrations of dairies

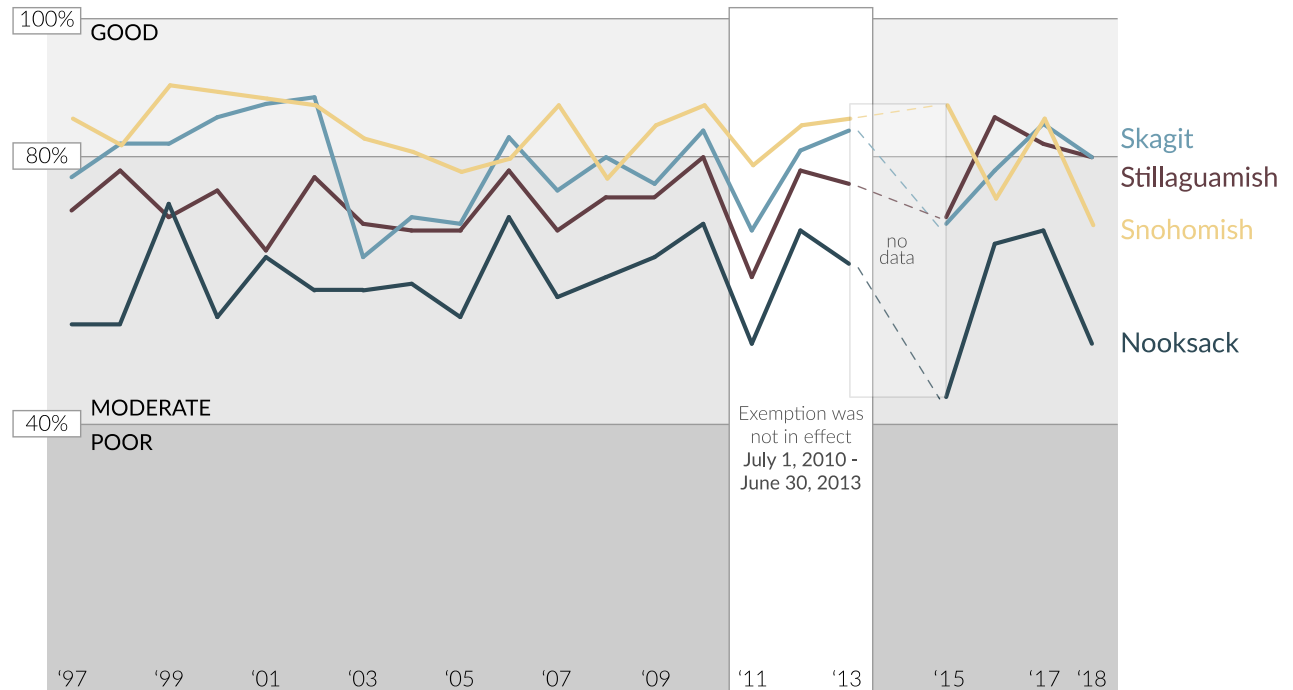


Source: JLARC staff analysis of Washington Department of Agriculture dairy locations as of January 15, 2020, and Department of Ecology long-term water quality monitoring sites.

Long-term water quality data varies but primarily remains in "moderate" range for areas with dairy concentrations

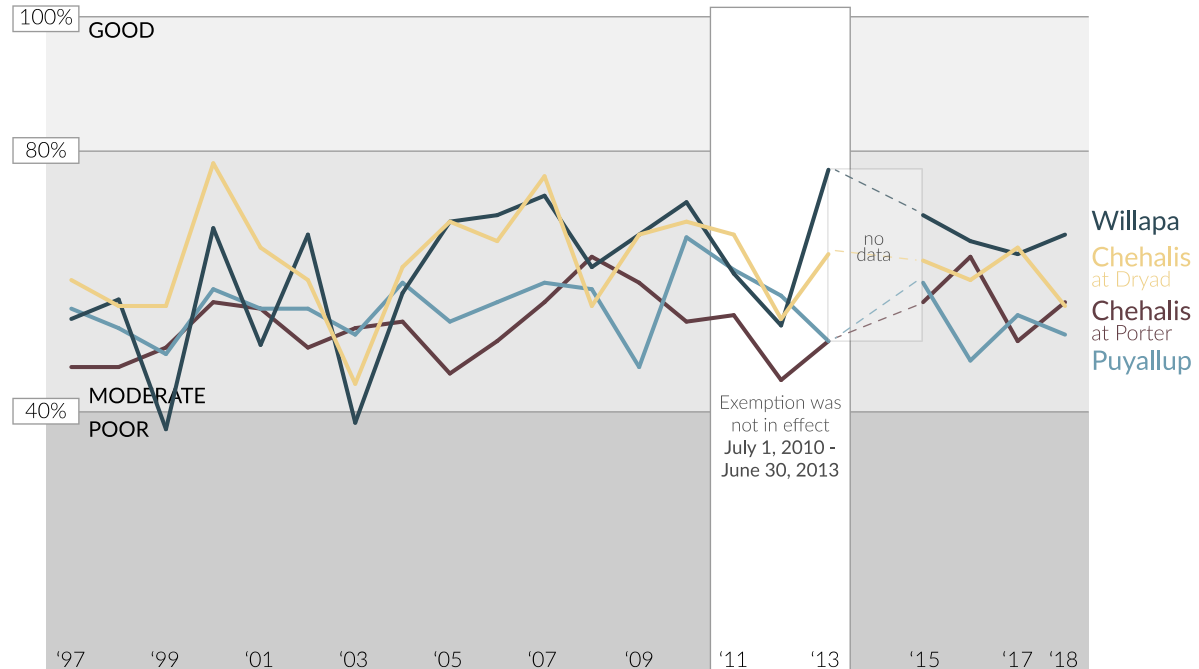
The graphics below reflect long term water quality levels in the three areas with concentrations of dairies. The Department of Ecology categorizes the water quality into three general classifications: Good, moderate, and poor. Since 1997, the water quality in all of the rivers and streams has been in the moderate or good range.

Exhibit 5.3: Northwest Washington rivers



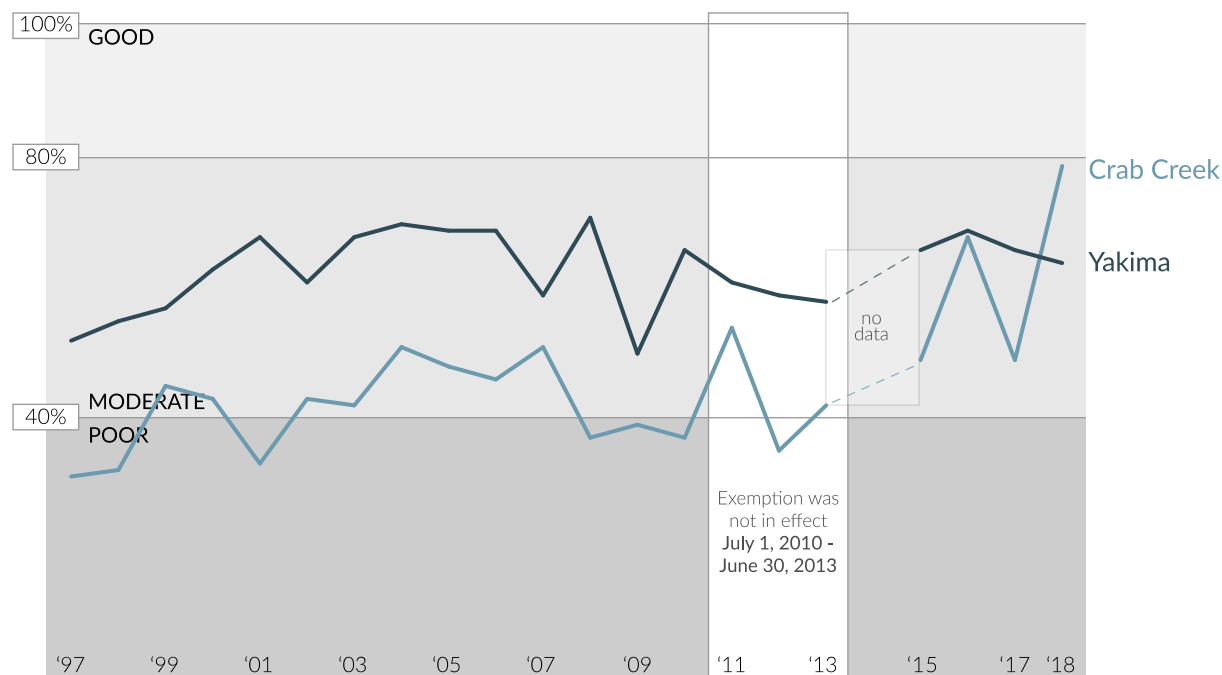
Source: JLARC staff analysis of Department of Ecology long-term river monitoring data.

Exhibit 5.4: Puget Sound and Southwest Washington rivers



Source: JLARC staff analysis of Department of Ecology long-term river monitoring data.

Exhibit 5.5: Eastern Washington rivers and streams



Source: JLARC staff analysis of Department of Ecology long-term river monitoring data.

Unclear to what extent the preference has influenced water quality

Because many factors impact water quality, it is not clear to what extent the preference has influenced the changes in water quality over time. The preference is one piece of a broad effort to reduce pollution in Washington's ground and surface waters.

6. Applicable statutes

RCW 82.08.890, RCW 82.12.890, RCW 90.64.005, and RCW 90.64.026

Exemptions-Qualifying livestock nutrient management equipment and facilities.

RCW 82.08.890

(1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of:

- (a) Qualifying livestock nutrient management equipment;
- (b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and
- (c)(i) Labor and services rendered in respect to repairing, cleaning, altering, or improving of qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the sale of or charge made for: (A) Labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities; or (B) tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2) The exemption provided in subsection (1) of this section applies to sales made after the livestock nutrient management plan is: (a) Certified under chapter 90.64 RCW; (b) approved as part of the permit issued under chapter 90.48 RCW; or (c) approved as required under subsection (4)(c)(iii) of this section.

(3)(a) The department of agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue upon request. Conservation districts must maintain lists of eligible persons as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility.

(b) A purchaser claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. Sellers making tax-exempt sales under this section must obtain an exemption certificate from the purchaser in a form and manner prescribed by the department. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy of the certificate or the data elements for the seller's files.

(4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(c) "Eligible person" means a person: (i) Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.

(d) "Handling and treatment of livestock manure" means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or

applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both.

(f) "Qualifying livestock nutrient management equipment" means the following tangible personal property for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers; (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler irrigation systems; (vii) lagoon and pond liners and floating covers; (viii) loaders; (ix) manure composting devices; (x) manure spreaders; (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry house washers; (xvi) poultry litter saver machines; (xvii) pipes; (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

(g) "Qualifying livestock nutrient management facilities" means the following structures and facilities for exclusive use in the handling and treatment of livestock manure: (i) Flush systems; (ii) lagoons; (iii) liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks; and (iv) structures used solely for the dry storage of manure, including roofed stacking facilities.

(5) The exemption under this section does not apply to sales made from July 1, 2010, through June 30, 2013.

[2014 c 97 § 602; 2010 1st sp.s. c 23 § 601; 2009 c 469 § 601; 2006 c 151 § 2; 2001 2nd sp.s. c 18 § 2.]

Notes:

Effective date—2010 1st sp.s. c 23 §§ 107, 601, 602, 702, 902, 1202, and 1401-1405: See note following RCW 82.04.2907.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2009 c 469: See note following RCW 82.08.962.

Effective date—2006 c 151: "This act takes effect July 1, 2006." [2006 c 151 § 7.]

Intent—2001 2nd sp.s. c 18: "It is the intent of the legislature to provide tax exemptions to assist dairy farmers to comply with the dairy nutrient management act, chapter 90.64 RCW, to encourage owners of nondairy animal feeding operations to develop and implement approved nutrient management plans, and to assist public or private entities to establish and operate anaerobic digesters to treat livestock nutrients on a regional or on-farm basis." [2006 c 151 § 1; 2001 2nd sp.s. c 18 § 1.]

Exemptions - Livestock nutrient management equipment and facilities

RCW 82.12.890

(1) The provisions of this chapter do not apply with respect to the use by an eligible person of:

- (a) Qualifying livestock nutrient management equipment;
 - (b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and
 - (c)(i) Tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.
 - (ii) The exemption provided in this subsection (1)(c) does not apply to the use of tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.
- (2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.
- (b) The exemption applies to the use of tangible personal property and labor and services made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).
- (3) The definitions and recordkeeping requirements in RCW 82.08.890 apply to this section.
- (4) The exemption under this section does not apply to the use of tangible personal property and services if first use of the property or services in this state occurs from July 1, 2010, through June 30, 2013.

[2014 c 97 § 604;2010 1st sp.s. c 23 § 602;2009 c 469 § 602;2006 c 151 § 3;2003 c 5 § 15;2001 2nd sp.s. c 18 § 3.]

Findings.

RCW 90.64.005

The legislature finds that there is a need to establish a clear and understandable process that provides for the proper and effective management of dairy nutrients that affect the quality of surface or ground waters in the state of Washington. The legislature finds that there is a need for a program that will provide a stable and predictable business climate upon which dairy farms may base future investment decisions.

The legislature finds that federal regulations require a permit program for dairies with over seven hundred head of mature cows and, other specified dairy farms that directly discharge into waters or are otherwise significant contributors of pollution. The legislature finds that significant work has been ongoing over a period of time and that the intent of this chapter is to take the consensus that has been developed and place it into statutory form.

It is also the intent of this chapter to establish an inspection and technical assistance program for dairy farms to address the discharge of pollution to surface and ground waters of the state that will lead to water quality compliance by the industry. A further purpose is to create a balanced program involving technical assistance, regulation, and enforcement with coordination and

oversight of the program by a *committee composed of industry, agency, and other representatives. Furthermore, it is the objective of this chapter to maintain the administration of the water quality program as it relates to dairy operations at the state level.

It is also the intent of this chapter to recognize the existing working relationships between conservation districts, the conservation commission, and the department of ecology in protecting water quality of the state. A further purpose of this chapter is to provide statutory recognition of the coordination of the functions of conservation districts, the conservation commission, and the department of ecology pertaining to development of dairy waste management plans for the protection of water quality.

[1998 c 262 § 1;1993 c 221 § 1.]

Dairy nutrient management plans - Elements - Approval - Timelines - Certification

RCW 90.64.026

(1) Except for those producers who already have a certified dairy nutrient management plan as required under the terms and conditions of an individual or general national pollutant discharge elimination system permit, all dairy producers licensed under chapter 15.36 RCW, regardless of size, shall prepare a dairy nutrient management plan. If at any time a dairy nutrient management plan fails to prevent the discharge of pollutants to waters of the state, it shall be required to be updated.

(2) By November 1, 1998, the conservation commission, in conjunction with the *advisory and oversight committee established under section 8 of this act shall develop a document clearly describing the elements that a dairy nutrient management plan must contain to gain local conservation district approval.

(3) In developing the elements that an approved dairy nutrient management plan must contain, the commission may authorize the use of other methods and technologies than those developed by the natural resources conservation service when such alternatives have been evaluated by the *advisory and oversight committee. Alternative methods and technologies shall meet the standards and specifications of:

(a) The natural resources conservation service as modified by the geographically based standards developed under RCW 90.64.140; or

(b) A professional engineer with expertise in the area of dairy nutrient management.

(4) In evaluating alternative technologies and methods, the principal objectives of the *committee's evaluation shall be determining:

(a) Whether there is a substantial likelihood that, once implemented, the alternative technologies and methods would not violate water quality requirements;

(b) Whether more cost-effective methods can be successfully implemented in some or all categories of dairy operations; and

(c) Whether the technologies and methods approved or provided by the natural resources conservation service for use by confined animal feeding operations are necessarily required for other categories of dairy operations.

In addition, the *committee shall encourage the conservation commission and the conservation districts to apply in dairy nutrient management plans technologies and methods that are appropriate to the needs of the specific type of operation and the specific farm site and to avoid imposing requirements that are not necessary for the specific dairy producer to achieve compliance with water quality requirements.

(5) Such plans shall be submitted for approval to the local conservation district where the dairy farm is located, and shall be approved by conservation districts no later than by July 1, 2002. The conservation commission, in conjunction with conservation districts, shall develop a statewide schedule of plan development and approval to ensure adequate resources are available to have all plans approved by July 1, 2002.

(6) If a dairy producer leases land for dairy production from an owner who has prohibited the development of capital improvements, such as storage lagoons, on the leased property, the dairy producer shall indicate in his or her dairy nutrient management plan that such improvements are prohibited by the landowner and shall describe other methods, such as land application, that will be employed by the dairy producer to manage dairy nutrients.

(7) Notwithstanding the timelines in this section, any dairy farm licensed after September 1, 1998, shall have six months from the date of licensing to develop a dairy nutrient management plan and another eighteen months to fully implement that plan.

(8) If a plan contains the elements identified in subsection (2) of this section, a conservation district shall approve the plan no later than ninety days after receiving the plan. If the plan does not contain the elements identified in subsection (2) of this section, the local conservation district shall notify the dairy producer in writing of modifications needed in the plan no later than ninety days after receiving the plan. The dairy producer shall provide a revised plan that includes the needed modifications within ninety days of the date of the local conservation district notification. If the dairy producer does not agree with, or otherwise takes exception to, the modifications requested by the local conservation district, the dairy producer may initiate the appeals process described in RCW 90.64.028 within thirty days of receiving the letter of notification.

(9) An approved plan shall be certified by a conservation district and a dairy producer when the elements necessary to implement the plan have been constructed or otherwise put in place, and are being used as designed and intended. A certification form shall be developed by the conservation commission for use statewide and shall provide for a signature by both a conservation district representative and a dairy producer. Certification forms shall be signed by December 31, 2003, and a copy provided to the department for recording in the database established in RCW 90.64.130.

(10) The ability of dairy producers to comply with the planning requirements of this chapter depends, in many cases, on the availability of federal and state funding to support technical

assistance provided by local conservation districts. Dairy producers shall not be held responsible for noncompliance with the planning requirements of this chapter if conservation districts are unable to perform their duties under this chapter because of insufficient funding.

[1998 c 262 § 6.]

Appendix A: Qualifying equipment and facilities

Preference applies only to equipment and facilities listed in statute that are exclusively used to handle and treat manure

The Legislature identified in statute which equipment qualifies for the sales and use tax exemption. The preference applies only to services and items used exclusively for repairing, cleaning, altering, or maintaining existing facilities or structures. It does not apply to new construction.

Qualifying equipment

Sales and use tax does not apply to purchases or repairs of the following equipment when used exclusively to handle and treat livestock manure. Repair services and replacement parts for the equipment are also exempt.

- Aerators
- Agitators
- Augers
- Conveyers
- Gutter cleaners.
- Hard-hose reel traveler irrigation systems.
- Lagoon and pond liners and floating covers.
- Loaders
- Manure composting devices.
- Manure spreaders.
- Manure tank wagons.
- Manure vacuum tanks.
- Poultry house cleaners.
- Poultry house fame sterilizers.
- Poultry house washers.
- Poultry litter saver machines.
- Pipes

- Pumps
- Scrapers
- Separators
- Slurry injectors and hoses.
- Wheelbarrows, shovels, and pitchforks.

Qualifying structures or facilities

Sales and use tax does not apply to services used to repair, clean, alter, or improve the following structures or facilities. Items installed as part of such services are also exempt:

- Flush systems.
- Lagoons
- Liquid livestock manure storage facilities, such as concrete tanks or glass-lined steel tanks.
- Structures used solely to store dried manure.

RECOMMENDATIONS & RESPONSES

Legislative Auditor's Recommendation

Legislative Auditor recommends continuing the preference

The Legislature should continue the preference because it is helping dairies and animal feeding operations implement their nutrient management plans. The preference is one of many efforts to help maintain and improve water quality in Washington.

If the Legislature wants more accurate information on the size of the beneficiary savings, it should require the Department of Revenue to collect data on qualifying sales.

Legislation Required: No

Fiscal Impact: None

Letter from Commission Chair

State of Washington
Citizen Commission for Performance Measurement of Tax Preferences

COMMISSION MEMBERS

Dr. Grant Forsyth Chair
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November 2, 2020

The Honorable Representative Timm Ormsby The Honorable Representative Ed Orcutt
The Honorable Representative Drew Stokesbary The Honorable Senator Patty Kuderer
The Honorable Representative Cindy Ryu The Honorable Senator Hans Zeiger
The Honorable Representative Bill Jenkin The Honorable Senator Emily Randall
The Honorable Representative Drew Hansen The Honorable Senator Jeff Holy
The Honorable Representative Luanne Van Werven The Honorable Senator Christine Rolfes
The Honorable Representative Gael Tarleton The Honorable Senator John Braun

Re: 2020 Tax Preference Reviews

Dear Senators and Representatives,

I am pleased to forward to you the comments that the Citizen Commission for Performance Measurement of Tax Preferences unanimously adopted for this year's review of tax preferences. The Citizen Commission consists of five voting members, with a member appointed by each of the four caucuses and the Governor's office. Notably, reviews this year included four preferences that the Legislative Auditor identified for further legislative review:

Two are not meeting their stated objectives:

- The Legislative Auditor found that a tax credit for customized employee training is not attracting new businesses and is unlikely to contribute to business retention. The Commission recommends changing the purpose to focus on assisting small existing businesses.
- The Legislative Auditor found that tax credits for hiring unemployed veterans have not met the Legislature's goal of reducing the number of unemployed veterans by 30%, and recommends modifying them to more effectively serve veterans.

Two are for industries that have changed since the preferences were enacted:

- The Legislative Auditor found that a sales tax exemption for farmworker housing may have incentivized the construction of some types of housing. However, the exemption requirements may not align with other current housing practices. The Legislative Auditor recommends clarifying the preference with a performance statement and determining if the preference should align with other housing practices.
- The Legislative Auditor found that a beer tax exemption for microbreweries has created an estimated 2 to 6 jobs in the beverage manufacturing industry and distributors receive 84% of the direct preference savings. The Washington beer industry has changed, and now has more breweries with smaller production. The Legislative Auditor recommends clarifying the

preference to include a performance statement and ensure the preference supports the intended beneficiaries.

We adopted positions similar to the Legislative Auditor for seven of the eight recommendations issued this year. Based on testimony, we adopted a different recommendation than the Legislative Auditor on the customized employee training preference. Summaries of the JLARC staff's analysis and recommendations and brief video summaries of each preference are available on the 2020 Tax Preference Reviews overview page linked [here](#). The full text of our Commissioner recommendations are included below and will be added to our proposed final report in December.

Tax preference reviews provide valuable information as the Legislature considers whether specific preferences are meeting the Legislature's policy objectives. With this year's report, there are now 14 years of tax preference evaluations available to the Legislature, comprising over 300 individual reviews.

I urge you to consider this year's and previous years' recommendations and comments on tax preference statutes in the upcoming legislative session. An interactive summary of legislative action on prior reviews is available [here](#).

As Chair of the Citizen Commission, I would be pleased to discuss the Commission's position and comments with you and any interested legislators. Please feel free to contact me (grant.forsyth@leg.wa.gov) or the Legislative Auditor, Keenan Konopaski (keenan.konopaski@leg.wa.gov or 360-786-5187).

Sincerely,



Grant D. Forsyth, Chair
Citizen Commission for Performance Measurement of Tax Preferences

Commissioners' Recommendation

The Commission endorses the Legislative Auditor's recommendation without comment.

Agency Response



STATE OF WASHINGTON

September 16, 2020

TO: Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: David Schumacher, Director
Office of Financial Management

Handwritten signature of David Schumacher in black ink.

Vikki Smith, Director
Department of Revenue

Handwritten signature of Vikki Smith in black ink.

**SUBJECT: JLARC PRELIMINARY REPORT ON 2020 TAX PREFERENCE
PERFORMANCE REVIEWS**

The Office of Financial Management and Department of Revenue have reviewed the Joint Legislative Audit and Review Committee's (JLARC) preliminary report on the 2020 tax preference performance reviews.

We appreciate the thorough analysis of JLARC and the detailed review provided by the Citizen Commission for Performance Measurement of Tax Preferences. A system that provides for a continuous review of the state tax preferences is critical to ensure the state of Washington maintains a fair and equitable tax system.

While we have no specific comments on the 2020 preliminary report, we continue to support the recommendations of JLARC for the inclusion of performance statements and specific public policy objectives for all tax preferences where they don't exist in statute today.

Thank you for the opportunity to review and provide comments on this JLARC report.

MORE ABOUT THIS REVIEW

Study Questions



PROPOSED STUDY QUESTIONS

Livestock Nutrient Management Equipment

State of Washington Joint Legislative Audit and Review Committee

December 2019

JLARC to review a sales and use tax exemption for certain equipment, facilities, and services related to livestock nutrient management



Scrapper used to clean facility floors



Liner installation for lagoon

Livestock nutrient management is the process of handling, treating, and reusing manure byproducts. Dairy and animal feeding operation owners have nutrient management plans to help them manage their manure in an economical and ecological manner.

The 2006 Legislature directed JLARC staff to conduct performance audits of tax preferences. This preference is included in the 10-year review schedule set by the Citizen Commission for Performance Measurement of Tax Preferences.

Owners of dairies and animal feeding operations do not pay sales or use tax when they purchase certain equipment related to livestock nutrient management, or services to maintain and repair equipment and facilities used in nutrient management. New facility construction is not exempt.

State requires dairies to develop nutrient management plans

Washington's 1998 Dairy Nutrient Management Act required dairies to fully implement nutrient management plans by December 31, 2003. The Act was established to protect water quality from animal nutrient discharges and to help maintain a healthy agricultural business climate. The Legislature established this preference for dairies in 2001, and extended it to include animal feeding operations in 2006. Qualifying equipment and facilities are identified in law. They include scrapers, aerators, separators, lagoon liners and floating covers.

Review will assess if the preference has helped dairies and animal feeding operations implement and maintain their nutrient management systems

The Legislature did not state an objective when it enacted this preference. JLARC staff infer that the preference's objective was to provide tax relief to the owners of dairies and livestock operations to help them implement and maintain nutrient management systems. The exemption has no expiration date.

1. To what extent has the preference provided tax relief to help the owners of dairies and animal feeding operations install and maintain nutrient management systems?
2. To what extent has the preference helped to protect water quality from animal nutrient discharges?

JLARC staff are also reviewing a sales and use tax exemption for anaerobic digester facilities and equipment in 2020.

Study Timeframe

Preliminary Report: July 2020

Proposed Final Report: December 2020

JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE

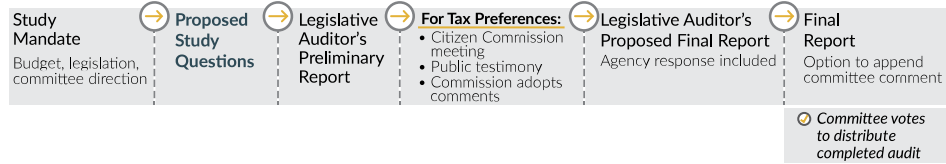
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JLARC Study Process



Washington Joint Legislative Audit and Review Committee

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