HOUSE BILL REPORT
E2SHB 1866

As Passed House
March 19, 1997

Title: An act relating to the establishment of voluntary programs creating environmental excellence program agreements.

Brief Description: Allowing for the creation of environmental excellence program agreements.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Chandler, Linville, Lisk, Delvin and Schoesler).

Brief History:
Committee Activity:
Agriculture & Ecology: 2/20/97, 2/25/97, 3/5/97 [DPS];
Appropriations: 3/7/97, 3/8/97 [DP2S(w/o sub AGEC)].
Floor Activity:
Passed House: 3/19/97, 69-29.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Delvin; Koster; Mastin and Sump.

Minority Report: Without recommendation. Signed by 3 members: Representatives Anderson, Assistant Ranking Minority Member; Cooper and Regala.

Staff: Bill Lynch (786-7092).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Ecology. Signed by 28 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers,

Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cooke; Crouse; Grant; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; Poulsen; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

Minority Report: Without recommendation. Signed by 2 members: Representatives Cody and Regala.

Staff: Nancy Stevenson (786-7137).

Background: Project XL is a federal initiative designed to provide regulated entities with flexibility in meeting environmental requirements while reducing pollution at the same time. The projects submitted for approval must be technically and administratively feasible, the proponents must have the financial capability to carry it out, and it must have stakeholder support.

Project XL agreements have been put into place in Georgia, Florida, and Arizona. No such agreements have been adopted in Washington. Project proponents contend that it is easier to adopt one of these agreements if a statutory framework is in place.

Summary of Bill: Environmental excellence program agreements are authorized if they achieve more effective or efficient environmental results. An environmental excellence program agreement (environmental agreement) may not authorize a decrease in the overall environmental results achieved by the participating facility over a representative period of time prior to the date on which the environmental agreement is proposed by the sponsor. More effective environmental results are defined as results that are better overall than those that would be achieved when compared to the legal requirements superseded or replaced by the environmental agreement. More efficient environmental results are defined as results that are achieved at reduced cost but do not decrease the overall environmental results achieved by the participating facility.

The director of a state, regional, or local agency may enter into an environmental agreement with any person regulated under the environmental laws of the state. The director may enter into an environmental agreement only to the extent the agency has jurisdiction to administer the environmental laws either directly or indirectly through the adoption of rules. No environmental agreement may apply to remedial actions taken under the state Model Toxics Control Act or the federal Comprehensive Environmental Response, Compensation and Liability Act. Environmental laws– mean the chapters of law regulating clean air, solid waste management, hazardous waste management, hydraulic permits, water pollution control, air and water pollution disclosure, drinking water, wastewater treatment, the Shorelines Management Act, dairy waste management, the Puget Sound water quality protection, and other responsibilities assigned to the Department of Ecology (DOE).

When a sponsor proposes an environmental agreement that would affect the jurisdiction of more than one agency, the coordinating agency must take the lead in developing the environmental agreement with the sponsor and other agencies with jurisdiction. The environmental agreement must be signed by all the agencies administering legal requirements affected by the environmental agreement. The coordinating agency is the agency with the primary regulatory responsibility for the environmental agreement. If multiple agencies have jurisdiction to administer state environmental laws, the DOE either acts as or designates the coordinating agency.

An environmental agreement may be proposed by anyone owning or operating a facility subject to regulation under environmental laws. A trade association or other authorized representatives of owners or operators of such facilities may propose a programmatic environmental agreement for multiple facilities. A proposal for an environmental agreement must include information on (1) how the proposal is consistent with the purposes of the environmental excellence program and project approval criteria; (2) an environmental checklist to inform the public of the probable impacts and benefits expected; (3) a draft environmental agreement; (4) a description of the stakeholder process; and (5) preliminary identification of permit amendments or modifications that are needed to implement the environmental agreement. If the proposal is site-specific, the proposal must contain a comprehensive description of the proposed environmental project that includes the nature of the facility and operation that will be affected, how the facility or operations will achieve the desired results, and the nature of the results anticipated. If it is a programmatic proposal, the sponsor must provide a comprehensive description of the facilities and operations that are expected to participate, how the participating facilities and operations will achieve the desired results more effectively or efficiently, the nature of the results anticipated, and the method to identify and document individual participants.

The proposal for an environmental agreement must include a plan to identify and contact stakeholders, advise stakeholders of the facts and nature of the project, and to request stakeholder participation and review in the development, consideration, and implementation of the environmental agreement. The plan must include notice to the employees of the facility and public notice in the area covered by the facility. Notice must also be provided to the federal agency responsible for administering a program under which the legal requirements will be affected. The coordinating agency must identify any other provisions for the stakeholder process deemed appropriate by the director. The coordinating agency must invite a broad and representative sample of the public to participate, and select the participants in the stakeholder process.

The environmental agreement must contain (1) an identification of all legal requirements that are superceded or replaced by the agreement; (2) a description of any enforceable legal requirements and how they differ from existing legal requirements; (3) a statement of any voluntary goals for the project; (4) a statement describing how the environmental agreement will achieve the purposes of this

legislation; (5) an implementation schedule; (6) a statement that the environmental agreement will not increase overall worker safety risks or impose unjust or disproportionate environmental impacts; (7) a summary of the stakeholder process that was followed in the development of the agreement; (8) a description of the methods that will be used by the participating facility to measure and demonstrate compliance with the agreement; (9) a description of and plan for public participation in the implementation of the environmental agreement, and for public access to information needed to assess the benefits of the environmental agreement and the sponsor's compliance with the environmental agreement; (10) a schedule of periodic performance review by the director who signed the agreement; (11) provisions for voluntary and involuntary termination of the environmental agreement; (12) the duration of the environmental agreement and provisions for its renewal; (13) statements approving the agreement by the sponsor and by or on behalf of the directors of agencies affected by the agreement; (14) additional terms as requested by the directors which are consistent with this legislation; (15) draft permits or permit modification; and (16) if it is a programmatic agreement, the method to identify and document specific commitments made by individual facilities.

Before an environmental agreement is entered into or modified, the coordinating agency must provide at least 30 days for public comment. Before the start of the comment period, the coordinating agency must prepare a proposed agreement, public notice, and fact sheet. The fact sheet must briefly describe the principal facts and the significant factual, legal, methodological, and policy questions considered by the directors signing the agreement, the directors' proposed decisions, and the how the proposed action meets the requirements for environmental excellence. The coordinating agency may extend the 30-day comment period.

The coordinating agency must also publish notice of the proposed environmental agreement in a newspaper of general circulation in the vicinity of the facility covered by the proposed environmental agreement. Notice must also be published in the Washington State Register. The notice must describe the environmental agreement, the facilities to be covered, summarize the changes in legal requirements, summarize the reasons for approving the agreement, identify an agency person available for additional information, state that the proposed agreement and fact sheet are available upon request, and announce that the public has an opportunity to comment during the comment period. If the written comments during the comment period demonstrate considerable public interest in the project, the coordinating agency must order a public informational hearing or a public hearing to receive oral comments. The coordinating agency must prepare and make available a responsiveness summary indicating the agencies' actions taken in response to comments and the reasons for those actions.

A federal agency that is given responsibility for administering a program affected by the environmental agreement must be given a copy of the environmental agreement

and a copy of the notice by the coordinating agency at least 30 days before entering into or modifying an environmental agreement. The federal agency must be given an opportunity to object to terms or modifications to the agreement affecting legal requirements. No environmental agreement may be signed by a director of an agency if it contains terms affecting legal requirements pertaining to a federal regulatory program that are objected to by the federal agency.

Legal requirements under existing environmental laws may be superceded in accordance with the terms of an environmental agreement. Legal provisions in permits that are affected by the environmental agreement are to be revised to conform with the provisions of the environmental agreement. Other permit provisions remain in effect. Permit revisions must completed within 120 days in accordance with applicable procedural requirements. Legal requirements contained in a permit are in effect and enforceable until the permit revisions are completed. A programmatic environmental agreement becomes effective for an individual facility when the owner or operator provides a satisfactory commitment to the director or directors entering into the programmatic agreement to comply with the environmental agreement.

An environmental agreement may be terminated in whole or in part by written notice from the director with respect to a legal requirement administered by that agency if: (a) after notice and a reasonable opportunity to cure, the covered facility is in violation of a material requirement of the agreement; (b) the facility has repeatedly violated any requirements of the agreement; (c) the operation of the facility under the agreement has caused an imminent and substantial endangerment to the public health; or (d) the facility has failed to make substantial progress in achieving goals that are material to the agreement. The notice must specify the extent to which the environmental agreement is terminated, the legal and factual basis for the termination, and a description of the opportunity for judicial review for the decision to terminate the agreement. If the director terminates less than the entire environmental agreement, the covered facility may elect to terminate the entire agreement.

After a decision to terminate an environmental agreement is no longer subject to judicial review, the sponsor of the project has 60 days to apply for any permit or approval affected by the termination. The director may establish interim requirements in the notice of termination that are no less stringent than the legal requirements that would apply to the facility in the absence of the agreement, as well as a schedule for meeting the interim requirements if the facility was unable to meet the legal requirements of the agreement or caused an imminent danger to public health.

The terms of the environmental agreement remain in effect until a final permit or approval is issued. If the sponsor fails to submit a timely completed application, any affected permit or approval may be modified at any time that is consistent with the law. A decision by a director to approve, terminate, or modify an environmental

agreement is subject to judicial review in accordance with the provisions of the Administrative Procedures Act.

The authority of the attorney general or prosecuting attorneys to initiate suits for violations of applicable legal requirements is unaffected, except no action may be initiated for any legal requirement superceded by the environmental agreement. No action may be initiated for failure to meet voluntary goals that were set forth in the environmental agreement. The ability to bring a citizen suit is unaffected, but no new authority to bring a citizen suit is created.

Environmental agreements may contain reduced fee schedules with respect to a program applicable to the covered facilities. A decision to approve an environmental agreement is not subject to the State Environmental Protection Act. The consideration of a proposed environmental agreement will integrate an assessment of environmental impacts. State, regional, and local agencies administering environmental laws may adopt rules or ordinances to implement the environmental excellence program agreement program.

The director of the DOE must appoint an advisory committee to review the effectiveness of the environmental excellence program agreement program and make recommendations concerning the program to the Legislature. The advisory committee consists of two state agency representatives, two representatives of the regulated community, and two representatives of environmental organizations or other public interest groups. The advisory committee must submit a report to the Legislature by October 31, 2001. Staff support for the advisory committee is provided by the DOE.

A director does not have authority to enter into new environmental agreements after June 30, 2002. Environmental agreements entered into before June 30, 2002, remain in force and are subject to statutory provisions..

State, local, and regional agencies may assess a fee to cover the costs of processing environmental agreement proposals. The fee may be graduated to account for different size businesses. Sponsors may voluntarily contribute funds to administer the program.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Agriculture & Ecology) This legislation represents a movement to a new generation of environmental laws which focus on the end results. By focusing on

performance, needed flexibility is given to the regulated community. These agreements are permissive. The agreements are quite detailed, and require stakeholder participation in their development and implementation.

(Appropriations) The bill provides a more effective way to comply with environmental regulations and provides the means to do so on a fee for service basis. The appropriations sections are no longer in the bill. The concept is to have existing staff drawn in to work as a team when an application is received. At that point it becomes a fee for service situation.

Testimony Against: (Agriculture & Ecology) Experimental technology should achieve better environmental results. This legislation provides too much flexibility, these environmental laws have taken 25 years of careful work by all parties. This runs contrary to regulatory reform's concept of limiting the amount of authority that may be delegated to an agency. The stakeholder process is insufficient. The projects in other states where this has been approved have run into problems.

(Appropriations) There is support for a new way of thinking, but there are not adequate safeguards at this point. There is concern that start-up costs not be taken out of agencies that are already strapped. The program needs to be fee for service. State and local agencies lack funding to do the analysis required under this bill. The worry is that without dollars, poor decisions will be made. This is a dramatic shift. Perhaps a pilot approach should be taken.

Testified: (Agriculture & Ecology) Scott Hazlegrove, Association of Washington Businesses (pro); Dun Myers, Association of Washington Businesses and Law Offices of Stoel Rives (pro); Charlie Douthwaite, Association of Washington Businesses and Weyerhaeuser (pro); Kris Holm, Northwest Pulp and Paper Association (pro); Scott Merriman, Washington Environmental Council (comment); David Mann, Washington Environmental Council (con); Laura Hitchcock, Sierra Club (con); Bruce Wishart, People for Puget Sound (con); Ron Shultz, Audubon Society (con); Paul Parker, Washington State Association of Counties (pro); Peggy Bruton, Washington State League of Women Voters (concerns); Ed Owens, Coalition of Coastal Fisheries (pro w/concerns); Tom Eaton, Department of Ecology (pro); and John Palmer, Environmental Protection Agency (pro w/concerns).

(Appropriations) Scott Hazlegrove, Association of Washington Businesses (pro); Scott Merriman, Washington Environmental Council (con); and Bruce Wishart, People for Puget Sound (con).