

HOUSE BILL REPORT

HB 2171

As Reported By House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to water pollution control.

Brief Description: Modifying water pollution control.

Sponsors: Representatives Linville, G. Chandler, B. Chandler and Parlette.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/25/99, 3/2/99 [DP];

Appropriations: 3/5/99, 3/6/99 [DPS].

Brief Summary of Substitute Bill

- Establishes processes for monitoring and improving water quality.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass. Signed by 10 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Anderson; B. Chandler; Fortunato; Grant; Reardon; Sump and Wood.

Minority Report: Without recommendation. Signed by 4 members: Representatives Koster, Republican Vice Chair; Delvin; Schoesler and Stensen.

Staff: Carole Richmond (786-7114).

Background:

Section 303(d) of the federal Clean Water Act requires states to identify those waters that do not meet water quality standards after taking into account technology-based reductions of pollutant discharge. The list of such waters is known as the "303(d)" list. For waters identified on the 303(d) list, the state must establish total maximum daily loads (TMDLs) that will ensure attainment of water quality standards. A TMDL is a quantitative analysis

that defines the maximum amount of a pollutant that can be discharged into a water body from all combined sources.

A number of citizen suits were brought against the Environmental Protection Agency (EPA) beginning in the mid-1980s alleging that the EPA was not requiring the development of 303(d) lists, or that such lists were inadequate. In Washington, lists have been developed every two years, as required, since at least 1988. A citizen suit was brought against the EPA in Washington in 1991, as well as in other northwest states, alleging the state's 303(d) lists were inadequate. In January of 1998, the Washington case was settled through negotiations between the EPA, the Department of Ecology (DOE), and the plaintiff. The settlement that was agreed to calls for the DOE to develop over 1,500 TMDLs on 666 water segments identified on the 1996 list in a 15-year period. A TMDL is required for each exceedence of a water quality standard, and there may be multiple exceedences in the same location.

The DOE currently lists water segments based on a variety of data, and then removes segments from the list if further testing shows the segments actually meet standards. Different public and private entities conduct water quality monitoring. Not every entity uses approved quality assurance and quality control plans in conducting such monitoring.

The EPA convened a federal advisory committee in 1996 to help it improve the TMDL program. The committee's report and recommendations were released in July 1998. The EPA is currently revising its rules regarding development of the 303(d) list and TMDLs, but the basic framework is established by law.

Summary of Bill:

The state's policy on water quality improvement is described. A number of terms are defined, including "other pollution control measures." The department's water quality monitoring program is provided with additional direction. An advisory committee is established to develop data quality objectives and guidelines. This committee includes legislators and is also directed to review the use-based water quality standards that are currently being developed by the department and to compare them to the current classification system.

Processes are established for developing lists of water quality limited segments and for developing TMDLs. The list is developed every four years or as determined by the EPA, and is adopted by the department as a rule. The list may be appealed in superior court, just like any other rule. The effect of listing is that no new sources or discharges may be allowed in a listed water body. In addition, actions must be taken to improve the water quality in each of the listed segments until that segment is removed from the list.

Alternatives to TMDLs, known as other pollution control measures (OPCMs), are authorized for nonpoint sources. If the alternatives do not show measurable improvements five years after listing, or five years after the effective date of the act, TMDLs are developed by the department. Where both point and nonpoint sources are the likely causes of exceedences, the department shall develop TMDLs, but nonpoint sources are to receive aggregate loads. Where point sources are the likely cause of exceedence, the department shall develop TMDLs.

TMDLs are comprised of seven elements, including implementation and adaptive management, as recommended by the federal advisory committee. The first five elements require quantification; the last two are more qualitative. TMDLs are developed as near to the site of impairment as possible, and an opportunity for public comment is provided. TMDLs are adopted by the department as orders and may be appealed to the pollution control hearings board only for the purpose of revising one or more elements of an approved TMDL.

The department is directed not to enforce exceedences of water quality standards that are limiting for aquatic or water-dependent species against persons who are subject to binding agreements that address such limitations, such as field office technical guides. The immunity is provided for up to 15 years as long as measurable progress toward attainment of standards can be shown at five-year intervals.

TMDLs are required for marine waters on the lists if no source control plan has been adopted.

Advisory committees are established to develop recommendations for storm water management and for revisions to the Shoreline Management Act (SMA).

Appropriation: None.

Fiscal Note: Requested.

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

Testimony For: We support a state program.

Testimony For: (with concerns) We do not want TMDLs to hold up sediment cleanups. OPCMs should be expanded with additional programs and plans. The prohibition on new sources in listed water bodies is overly restrictive. New permits can be issued if existing contributions are reduced. The entire Columbia River exceeds natural standards; natural causes are indicated. Fifty percent of water bodies are inaccurately listed. The technical committee under section 3 should review how natural conditions affect standards. Section 11 should require the DOE to conduct an evaluation of current storm water

management technology. Staff and funding should be provided to make this happen. The storm water advisory committee is government-heavy. The language is either too vague or is inconsistent with federal law. The language should be made consistent. We want to work with you to perfect the bill. Not all growers qualify for the Conservation Reserve Enhancement Program. The bill should consider other plans approved by the Washington Conservation Commission. For data quality standards and objectives, adopt the recommendations of the technical committee. We have a concern that the data standards are too stringent. We support the current data approach. Split samples are good. We don't support rule adoption for the list; it will be too difficult to remove water bodies from the list when they meet standards. We don't support immunity provisions. The marine waters section should include water column TMDLs, as well as sediment TMDLs. We have some cost concerns. Monitoring expectations are not in our budget. The rule adoption process is unnecessary. We're concerned with prohibiting work on TMDLs for five years. The agency's water quality standards review process is on a faster track than what the bill envisions. We support the Forestry Module approach to the Endangered Species Act compliance. Ecology needs to be in the loop and agree that OPCMs and plans will lead to attainment of water quality standards. Field office technical guides are not binding as stated. OPCMs could and should be applied to point sources. We're skeptical about giving the DOE more power. The DOE should tell property owners about the availability of split samples. Agriculture would like a seat on the SMA advisory group.

Testimony Against: (Original Bill) In regard to shoreline management, we think the proposed rules from the DOE are good. Local government needs guidance from the DOE. We're opposed to section 12 setting up a new committee. The bill is not consistent with the federal Clean Water Act or the letter or spirit of the settlement. It is also inconsistent with the delegation of authority to the DOE. If this bill is adopted, we'll sue to have DOE's delegation removed. You need to ask if these approaches are consistent with the Clean Water Act and with the settlement agreement. There is a heavy reliance on OPCMs. These must meet water quality standards. The monitoring standards are higher than the DOE's. They should be made consistent. The bill calls for business as usual. Don't reopen the SMA. We don't think the bill will get us there. The true test of commitment to clean water is funding.

Testified: (In support with concerns) Eric Johnson, Washington Public Ports Association; Scott Hazlegrove, Association of Washington Business; Llewellyn Matthews, Northwest Pulp and Paper; Corky Lambert, citizen; Enid Layes, Washington Horticultural Association; Ray Shindler, Washington Wheatgrowers Association; John Dorhmann, Puget Sound Action Team; Doug Levy, City of Everett; and Lincoln Loehr, Heller, Erhman, White & McAuliffe.

(Neutral with questions) Linda Johnson, Washington Farm Bureau; Don Stuart, Washington Association of Conservation Districts; Randy Smith, Environmental Protection Agency, Region 10; and Megan White, Department of Ecology.

(Opposed) John Stier, Washington Public Interest Research Group; Bruce Wishart, People for Puget Sound; Karla Fullerton, Washington Cattlemen's Association; Josh Baldi, Washington Environmental Council; Tim Trohimouich, City of Redmond; and Eugene Rosolie, Northwest Environmental Advocates.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Alexander, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Barlean; Benson; Boldt; Carlson; Clements; Cody; Crouse; Gombosky; Grant; Keiser; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Sullivan and Wensman.

Minority Report: Do not pass. Signed by 5 members: Representatives Kagi; Kenney; Rockefeller; Ruderman and Tokuda.

Staff: Jeff Olsen (786-7157).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Agriculture & Ecology: The substitute bill makes a number of language changes to clarify the intent of the legislation. All operative sections of this bill are null and void if the total maximum daily load program is managed by the federal government, instead of the state. The water quality monitoring network called for in Section 3 must rely on existing water quality data and is not intended to enhance the current level of effort provided by the Department of Ecology. Limitations on discharges in water segments listed as water quality impaired do not apply solely because a total maximum daily load has not been completed, and do not apply to nonpoint sources, provided those discharges are in compliance with all applicable laws and regulations pertaining to water quality. If funding for the bill is not provided by June 30, 1999, in the omnibus appropriations act, the bill is null and void.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed. However, if the bill is null and void unless funded in the budget.

Testimony For: The Department of Ecology supports many parts of the bill, and is still working with the sponsors regarding issues they have with the bill. There are three options; allow the federal government to implement this program, which reduces state

costs while providing little flexibility; allow the state to do the program without the framework provided by this bill; or use the bill as the framework for implementing a TMDL program. The best option is to use this bill and develop a state program. The AWB has some concerns about specific policies that are cost drivers, but they are working with the sponsors to address these concerns.

Testimony Against: A number of provisions of the bill are in sharp contrast to the provisions of the federal Clean Water Act (CWA). The bill creates immunities for individuals who violate the CWA, and places obstacles to furthering the TMDL process. The provisions in the bill could be in conflict with new regulations being adopted by the Environmental Protection Agency. Washington could lose its delegation of the federal CWA program.

Testified: (In support with concerns) Megan White, Department of Ecology; Scott Hazlegrove, Association of Washington Business; and Bruce Wishart, People for Puget Sound.