

HOUSE BILL REPORT

ESHB 2844

As Passed House:

February 12, 2002

Title: An act relating to environmental excellence program agreements.

Brief Description: Concerning environmental excellence program agreements.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Linville, Schoesler, Romero, Chandler, Jarrett, Reardon, Gombosky, Morris, Sehlin, Lantz, Conway, Kenney, Santos, Ogden, Bush, Schual-Berke, Kessler, Chase, Rockefeller, Simpson, McDermott and Kagi).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/5/02, 2/7/02 [DPS].

Floor Activity:

Passed House: 2/12/02, 97-0.

Brief Summary of Engrossed Substitute Bill

- Extends the period of time that new environmental excellence agreements can be entered into from June 30, 2002 to June 30, 2012.
- Establishes an alternate route for an agency director to terminate an environmental excellence program agreement.
- Expresses a list of rights that extend to a permit applicant.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Linville, Chair; Hunt, Vice Chair; Schoesler, Ranking Minority Member; Chandler, Cooper, Delvin, Grant, Holmquist, Kirby, Quall and Roach.

Staff: Jason Callahan (786-7117).

Background:

A federal initiative called Project XL is designed to provide regulated entities with flexibility in meeting environmental requirements while reducing pollution at the same time. Washington created a program under Project XL in 1997 that authorizes the director of a state, regional, or local agency to enter into environmental excellence agreements. Since that time, numerous other states have developed similar programs.

Regulated entities may propose alternative methods for complying with environmental laws to the directors of any state, regional, or local agency. These proposals can be accepted, and become environmental excellence agreements, if doing so will result in more effective and efficient environmental results. A proposal for an environmental excellence agreement must include a plan to involve stakeholders in the development, consideration, and implementation of the proposed environmental excellence agreement. Final decisions to accept, modify, or terminate environmental excellence agreements is subject to judicial review in superior court.

Environmental excellence agreements can be entered into for most environmental laws. "Environmental laws" is defined to include laws effecting 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, and other responsibilities of the Department of Ecology. However, certain environmental laws are not subject to environmental excellence agreements. Agreements are not allowed for the release of a water or air pollutant that will exceed the allowed ambient environmental standard, for a proposal that would decrease the overall environmental results achieved by the facility over a past period of time, and for any remedial actions under the Model Toxics Control Act.

The authority for agency directors to enter into environmental excellence agreements expires on June 30, 2002. Any agreements entered into before this date will remain in effect. The Department of Ecology reports that only one environmental excellence agreement has been entered into as of January 1, 2002.

Summary of Engrossed Substitute Bill:

Citizens applying to the state for a permit or license have the right to know how long the decision on approval will take, how much information will be required, and how expensive the application process will be.

The director of an agency is authorized to terminate all or part of an environmental excellence agreement if he or she finds that the facility is in violation of a material requirement of the agreement, the facility has repeatedly violated any requirement, that the agreement has caused endangerment to the public health or the environment, or that the facility has failed to make substantial progress towards the overall objectives of the agreement. Any termination must be accompanied with proper notice and an opportunity

for judicial review. As part of the notice, the director may indicate remedial measures that may be taken to avoid termination of the agreement. If only part of an agreement is terminated, the owner or operator of the facility may terminate the remaining portions.

The period of time that new environmental excellence agreements can be entered into is extended from June 30, 2002 to June 30, 2012.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: Although suffering from low participation, the environmental excellence program does answer a need for performance-based approaches to environmental law. The need for regulatory flexibility still exists, and investigations into why the environmental excellence program has not been used should be conducted. Alternate mechanisms for environmental compliance should be pursued.

Testimony Against: The environmental excellence program takes years of law and rule development and sets them aside without instilling complete confidence in their replacement. The Legislature should only extend the deadline for entering into agreements in short time intervals to allow for an easy monitoring of the program as agreements are executed and implemented.

Testified: (In support) Scott Boettcher, Department of Ecology; and Kristin Sawin, Association of Washington Businesses.

n(Concerns) Bruce Wishart, People for Puget Sound.