

SENATE BILL REPORT

E2SHB 2847

As Reported By Senate Committee On:
Environment, Energy & Water, March 1, 2002

Title: An act relating to evaluating the performance of the state storm water program.

Brief Description: Improving water quality through sound storm water management.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Cooper, Roach, Berkey, Cairnes, Linville, Esser, Kirby, Reardon, Casada, Doumit, Ogden, Chase and Pearson).

Brief History:

Committee Activity: Environment, Energy & Water: 2/26/02, 3/1/02 [DPA-WM].
Ways & Means: 3/4/02.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Hale, Honeyford, Jacobsen, Keiser, McDonald and Morton.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Richard Ramsey (786-7412)

Background: The Department of Ecology (DOE) administers a state program for discharge of pollutants to state waters. State permits are required for anyone who discharges waste materials from a commercial or industrial operation to ground or to publicly-owned treatment plants. State permits are also required for municipalities that discharge to ground.

DOE also provides storm water management manuals (manuals) to assist local governments and businesses to develop storm water programs. DOE recently completed its revision of the western Washington manual and is currently working to complete the eastern Washington manual.

The federal Clean Water Act establishes the National Pollution Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. Washington's DOE has been delegated authority by the United States Environmental Protection Agency (EPA) to administer NPDES permits.

In the state and NPDES permit programs, DOE issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers). These permits include limits on the quantity and concentrations of contaminants that may be discharged. These permits also may require wastewater treatment or impose operating or other conditions.

Phase I of the NPDES storm water permit program applies to six local governments (Seattle, Tacoma, and the unincorporated areas of Clark, Pierce, King, and Snohomish counties) and to the Washington State Department of Transportation facilities within those jurisdictions. The 1999 NPDES rules (Phase II of the permit program) apply to operators of small municipal separate storm sewer systems serving fewer than 100,000. The Phase II communities are required to apply for a storm water permit by March 2003.

In 1998 the Legislature created the Independent Science Panel, a five-member panel of scientists with specified expertise who are appointed by the Governor, to ensure that sound science is used in salmon recovery efforts. The panel is responsible for reviewing salmon recovery plans from the Salmon Recovery Office, recommending standardized monitoring indicators and data quality guidelines related to habitat projects and salmon recovery efforts, and recommending criteria for evaluation of monitoring data.

Summary of Amended Bill: DOE must convene a Western Washington Storm Water Advisory Committee to coordinate and assist with implementation of storm water management. The committee includes no more than 18 members. Specific committee representation requirements are included.

The committee must work with DOE and the eastern Washington storm water steering committee to:

- advise DOE regarding how to improve coordination on storm water management, including the appropriate use of the new manuals and a streamlined permit process;
- develop recommendations for alternative watershed-based practices for flow control and water quality treatment;
- study, evaluate, and make recommendations on: (a) the feasibility of alternative approaches in highly urbanized areas; (b) the appropriate use of off-site mitigation for storm water flow and water quality impacts, including issues related to stream flow impacts on fish species; and (c) the funding needs for local governments to meet the new federal storm water regulations;
- assist in developing the comparative cost analysis required of DOE; and
- to the maximum extent possible, coordinate efforts with the Transportation Projects Efficiency and Accountability Committee.

The committee must build upon the: (1) 2001 Storm Water Advisory Committee report to the Legislature, (2) the panel's review, and (3) DOE's cost-benefit analysis.

The committee must begin its work no later than July 1, 2002, and complete its work and issue a final report by December 31, 2003. A progress report is due by December 31, 2002.

The Independent Science Panel must review DOE's western Washington manual. The panel must:

- review the scientific information used to develop the manual, especially with respect to development of management practices and thresholds; and
- evaluate whether the manual's recommendations are supportable by the cited science and identify additional specific scientific studies that are needed.

The panel may contract with other experts to perform the required reviews. The panel must report its results for the western Washington manual by June 30, 2003.

DOE must evaluate the comparative costs of alternatives available in meeting the goals of the manual. DOE must report its results for the western Washington manual by December 31, 2002.

DOE, DFW, state agencies and local government are strongly encouraged to use flexibility in conditioning permits dealing with storm water management while an integrated storm water management process is being developed. Local governments are encouraged to use the new manual until such time as it is updated. State and local government must ensure that state and federal water quality laws are complied with. The flexibility provisions are prospective and do not apply to applications filed before the effective date of this act.

Amended Bill Compared to Second Substitute Bill: The science panel's duties are reduced. Additional members are added to the advisory committee and the committee is limited to western Washington. Legislative members may be appointed as liaisons to the committee. The cost-benefit analysis is replaced with a study of the comparative costs of alternatives. Specific agencies are identified as needing to use flexibility. Local governments are encouraged to use the new manual. The flexibility provisions are made prospective. A null and void clause is added.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately. The bill is null and void unless funded in the omnibus appropriations act by June 30, 2002.

Testimony For: Flexibility is needed for storm water management especially in highly urbanized areas. Flexibility is also required when balancing public expectations for road projects to relieve congestion against funds to address transportation projects' storm water impacts. Nothing in the storm water statutes speaks to cost/benefit analysis, flexibility, alternatives, or off-site mitigation. The manual has been applied in a very strict manner, instead of being used as a guidance document, by the Department of Fish and Wildlife and by local governments.

The storm water manual is not the product of any independent regulatory authority and should not be treated as though it is a regulatory document. A process is needed to get people involved in storm water issues, and the Legislature needs to be engaged in these issues.

The bill recognizes the significant social, environmental, and economic impacts of storm water management. The bill puts the emphasis on the science and on practicality of solutions developed in the process. The bill also includes accountability.

Testimony Against: (Concerns) Storm water is the leading cause of pollution in urban streams and bays. Storm water management is technically challenging and very expensive. The new storm water manual for western Washington is the product of a long process. The Department of Ecology did a good job with its previous storm water advisory committee and that is why the manual already includes flexibility. The focus should be on complying with the federal Clean Water Act and not whether it is cost effective to meet the standards.

Money will be needed to fund this bill so that it doesn't take away from DOE's duties in meeting the federal storm water deadlines and cause a delay in the issuance of National Pollution Discharge Elimination System (NPDES) permits or implementation of the storm water management manuals by local governments. A null and void clause should be added to the bill.

Testified: Doug Levy, Cities of Everett and Kent (pro); Dan Mathias, City of Everett (pro); Tim LaPorte, City of Kent (pro); John Dohrmann, Puget Sound Action Team (pro w/concerns); Dave Peeler, Dept. of Ecology; Willy O'Neil, AGC of Wash (pro); Shari Schafflein, WSDOT (pro); Mark Blosser, City of Olympia (concerns); Bruce Wishart, People for Puget Sound (pro).