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**Agriculture & Natural Resources  
Committee**

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**E2SSB 5957**

**Brief Description:** Establishing a system of standards and procedures concerning water quality data.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Rasmussen, Morton, Swecker, Doumit, Sheahan, Oke and Brandland).

**Brief Summary of Engrossed Second Substitute Bill**

- Allows only credible data to be used when the Department of Ecology (DOE) takes certain actions required by the federal Clean Water Act.
- Identifies criteria for data to be deemed credible data.
- Requires the DOE to review prior actions to determine whether credible data was used.
- Requires the DOE to adopt rules regarding qualified data collectors.
- Requires the DOE to provide a status report to the appropriate committees of the Legislature.

**Hearing Date:** 2/25/04

**Staff:** Caroleen Dineen (786-7156).

**Background:**

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA sets effluent limitations for discharges of pollutants to navigable waters. "Pollutant" is defined to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods.

Washington law requires all pollution dischargers to use all known, available, and reasonable methods of waste water treatment before discharge to prevent pollution. The Washington Department of Ecology (DOE) is delegated federal CWA authority by the United States Environmental Protection Agency (EPA). The DOE also is the agency authorized by state law to implement state water quality programs.

The CWA requires states to adopt standards to protect fish and other aquatic life and to protect humans using water for recreation, drinking water, and fish. These water quality standards are rules that specify the desired water quality to be achieved or maintained and protect existing water quality from degradation. Washington's water quality standards consist of designated uses, criteria necessary to protect those uses, and the Antidegradation Policy, which establishes procedures for regulating an activity that might affect a particular water body.

The CWA requires states to periodically assess the water quality of their water bodies in both general and specific ways. First, Section 305(b) of the federal CWA requires states to prepare a state-wide assessment every two years of the health of the state's water bodies (the "305(b) report"). Second, Section 303(d) of the federal CWA requires states to prepare a list every two years of the specific water bodies (or segments) that do not meet the state water quality standards (the "303(d) list"). The DOE's policy for assessing whether water bodies are impaired for purposes of the 303(d) list includes criteria for data submitted by interested parties, quality assurance requirements, and other assessment considerations.

The DOE must develop water cleanup plans for all water bodies included on the 303(d) list. These plans (known as "total maximum daily loads" or "TMDLs") are developed to address the pollutants in the impaired water body that do not meet state water quality standards and to restore water quality to the impaired water body. A TMDL includes a technical assessment of the impaired water body, an analysis of the amount that pollution needs to be reduced to meet water quality standards, an implementation plan to control pollution from various sources, and a monitoring plan to assess effectiveness.

As a result of a legal challenge, the DOE entered into a settlement in 1998 regarding TMDL development. The settlement agreement requires the DOE to develop, by 2013, TMDLs for approximately 1,500 listings applicable to 650 impaired water bodies in the state. The schedule in the settlement agreement includes interim five-year targets for completing these TMDLs. The DOE reports it completed 249 TMDLs pursuant to the schedule as of June 30, 2003.

## **Summary of Bill:**

### Credible Data

The DOE must use only credible data when taking certain actions to comply with federal CWA requirements. Specifically, the DOE must use only credible data when developing and reviewing water quality standards, establishing a TMDL, or determining whether any: (1) water body is to be placed on or removed from the 303(d) list; (2) water body is supporting its designated use or other classification; or (3) degradation of any water body has occurred. The DOE may require use of credible data for other purposes.

"Credible data" is data collected by a qualified data collector for which the DOE has determined:

- appropriate quality assurance and quality control procedures were followed and documented for data analysis and collection;
- samples or analyses are representative of water quality conditions at the time the data was collected;
- the data consists of an adequate number of samples based on the nature of the water body and the parameters being analyzed;

- the sampling and analysis method is generally accepted and validated in the scientific community as appropriate for the assessment; and
- the data was collected in a manner consistent with these credible data provisions.

The DOE must adopt a process to evaluate whether credible data was used for any of these types of actions that were completed before the effective date of these provisions and, if not, to ensure compliance with these requirements. This evaluation must be done if requested by a person: (1) regulated under water pollution control statutes; or (2) who consumes water from, fishes from, swims in, or otherwise uses waters that are subjects of the data.

### Data Collection

The DOE also must adopt rules describing the training and experience required for a person to be a qualified data collector. The DOE's rules must require training to include knowledge of applicable sampling protocols and field methods so that data collection and interpretation are reproducible, scientifically defensible, and free from preconceived bias. The rules must allow individuals with the necessary academic credentials and experience to train other persons to be qualified data collectors.

In addition, the DOE's rules must require a person submitting data to document his or her status as a qualified data collector and to certify the data was collected according to the credible data provisions. The DOE must verify the person's status, review all data collected, and verify the data's accuracy. The DOE must approve the data as credible if the DOE determines these requirements are satisfied.

### Data Misrepresentation

Any DOE employee who knowingly misrepresents data is subject to statutes making a public officer's filing of a false report or a false certificate a gross misdemeanor.

### Water Quality Assessment

Other assessment requirements are specified. In assessing whether a water body is impaired, the DOE must consider the available data in light of the nature of the water body, including whether the water body is ephemeral. When evaluating waters for a 303(d) listing, the DOE may not categorize waters as "polluted waters that do not require a TMDL" (water quality assessment category 4) or "polluted waters that require a TMDL" (water quality assessment category 5) unless credible data supports the listing.

### Reports

The DOE must provide a status report regarding implementation of these provisions to the appropriate committees of the Legislature by January 31, 2005. The DOE also must provide a report by January 2006 on any rulemaking required to implement these provisions, including changes to listings from the use of credible data.

### Findings and Intent

Legislative findings recognize a need for proper collection and review of credible water quality data and the lack of standards for collecting such data. Legislative findings also recognize the significant financial and regulatory financial impacts of decisions based on analysis of water

quality data. In addition, legislative intent is specified to establish water quality protection measures based only on credible water quality data and to prohibit including on the 303(d) list any water body in which pollutant loadings from naturally occurring conditions alone are sufficient to cause a water quality standard violation. Further, definitions are included for purposes of these provisions.

**Appropriation:** None.

**Fiscal Note:** Available for second substitute. Requested for engrossed second substitute on February 20, 2004.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.