

SENATE BILL REPORT

E2SHB 1336

As Reported By Senate Committee On:
Natural Resources, Energy & Water, April 2, 2003

Title: An act relating to watershed planning.

Brief Description: Concerning watershed planning.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Linville, Kirby, Grant, Rockefeller, Quall, Hunt, Shabro, Jarrett, Delvin, Morris and Conway; by request of Governor Locke).

Brief History:

Committee Activity: Natural Resources, Energy & Water: 3/26/03, 4/2/03 [DPA-WM].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Hale, Hargrove, Honeyford and Oke.

Staff: Evan Sheffels (786-7486)

Background: Chapter 90.82 RCW establishes procedures and policies for initiating voluntary watershed planning at the local level. The efforts of the earliest watershed planning units are expected to come to fruition in 2003. Watershed planning units funded beyond the initiating stage of watershed management are given four years from the initial receipt of funding to submit a proposed plan to affected counties for approval. By majority vote, counties can approve or reject, but not amend, the planning unit's proposed watershed plan. Currently, a proposed watershed plan and process will terminate if the plan is not adopted by a majority of each county legislative authority with territory in the watershed management area.

The watershed planning statutes do not provide specific direction or funding for watershed plan implementation, or subsequent modification, of an adopted plan.

A government entity can only become obligated if that government agency's designated representative on the planning unit is recorded as having voted in favor of such an obligation. Such obligations become binding through the adoption of agency rules or county ordinances setting forth the obligations, and "implementing rules," defined in RCW 90.82.020 as "the rules needed to give force and effect to the parts of a plan that create rights or obligations for any party including a state agency or that establish water management policy."

Summary of Amended Bill: State agencies must work cooperatively with local citizens and governments in creating locally developed watershed plans. Watershed planning units are given authority for phase four implementation.

Planning units may apply for grants of up to \$100,000 per WRIA for each of the first three years of phase four implementation (and up to an additional \$25,000 per year per additional WRIA); up to \$50,000 per WRIA for years four and five (and up to an additional \$12,500 per year per additional WRIA). A local match of 10 percent is required. Ongoing funding is conditioned upon the Department of Ecology's (DOE) receipt of a sufficiently detailed implementation plan by the end of the first year.

Once each county in a watershed management area has adopted a proposed watershed plan, the department must adopt state and county obligations and means to implement obligations by rule, or with planning unit consent, by policy, procedure, or agreement. With notice, and without affecting the ability of other counties to adopt a watershed plan, a county with less than five percent of the territory in a watershed management area may opt out of watershed planning and plan adoption hearings. A county with 5 percent or more of the territory in a watershed management area may opt out with the consent of all other initiating governments. A county that opts out is not bound by watershed plan obligations.

If DOE participated in the planning process, the watershed plan is deemed to satisfy the department's watershed planning authority for components addressed. The department must rely upon the plan, which is deemed a primary consideration in determining the public interest related to watershed planning.

Departmental modification of an adopted watershed plan is subject to a negotiated rulemaking process conducted among local residents and the planning unit members, to the extent practicable. Periodic review of budget and staffing needs is advised. The planning unit must consider coordination with salmon recovery efforts.

The bill is null and void unless funded in the budget.

Amended Bill Compared to Second Substitute Bill: The striking amendment requires negotiated rulemaking prior to DOE modification of a plan, instead of modification guided by adaptive management in the underlying bill. The amendment extends the opt out provision for counties with less than 5 percent of the territory in a management area to allow counties with more territory to opt out with the consent of all initiating governments. Language requiring DOE to rely on approved watershed plans as a framework for future water decisions is amended to state that such plans are deemed to satisfy DOE authority with regard to components planned. The provision granting the discretion to adopt obligations and related provisions by policy, procedure or agreement instead of by rule is amended to require planning unit consent first. Sections dealing with enhanced planning timelines, milestones, limiting factors analysis, and TMDL (total maximum daily load) and instream flow setting are deleted. A provision requiring planning units to consider coordination of watershed efforts with salmon recovery efforts replaces a provision requiring coordination with salmon recovery efforts. A null and void clause is added.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (To Original Bill) This bill will help put watershed planning into action in local watersheds and communities, instead of just putting more studies on the shelf. The instream flows and TMDL setting objectives are important additions.

Testimony Against: (To Original Bill) This bill is too ambitious, with too many unfunded and after the fact duties. (Concerns to Original Bill): The bill gives too much preference to out of stream uses over instream needs. The requirement of watershed and salmon planning coordination may burden salmon efforts already in process; DOE should not be able to unilaterally amend a plan. Planning unit approval should be required before DOE is allowed to adopt provisions by policy, procedure, or agreement instead of by rule.

Testified: Paul Parker, Washington State Association of Counties (pro); Bill Hahn, PUD Association Viatea Comm, Kitsap PUD (concerns); Kathleen Collins, Washington Water Policy Alliance (concerns); Kristen Sawin, AWB (concerns); Josh Baldi, WEC (gen. supportive); Dawn Vyvyan, Yakama Nation (concerns); Mike Schwisow, Washington State Water Resources Associaton (concerns); Jim Waldo, Governor's Office; Hertha Lund, Washington Farm Bureau (con).