

SENATE BILL REPORT

ESHB 1689

As Reported By Senate Committee On:
Natural Resources, Energy & Water, April 4, 2003

Title: An act relating to implementing the federal permit requirements for municipal separate storm sewer system permits.

Brief Description: Implementing the federal permit requirements for municipal separate storm sewer system permits.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Schoesler, Cooper, Chandler, Holmquist and Hatfield).

Brief History:

Committee Activity: Natural Resources, Energy & Water: 3/27/03, 4/4/03 [DPA].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: Do pass as amended.

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

Staff: Evan Sheffels (786-7486)

Background: The federal Clean Water Act (CWA) and implementing Environmental Protection Agency (EPA) storm water regulations established two phases for National Pollutant Discharge Elimination System (NPDES) permits to control storm water discharges. Phase I permits were issued to cover storm water discharges from certain industries, construction sites involving five or more acres, and municipalities operating municipal separate storm sewer systems (MS4s) with a population greater than 100,000. Public entities covered under Phase I include King County, Pierce County, Snohomish County, Clark County, City of Seattle, City of Tacoma, and the Washington Department of Transportation facilities in the named jurisdictions. Phase II NPDES permits will be required for construction sites disturbing between one and five acres. Phase II permits also are required for municipalities operating MS4s that do not meet the Phase I criteria, are located in "census defined urbanized areas," and meet certain criteria.

Under the federal regulations, Phase II communities are required to apply for a storm water permit by March 2003. The Department of Ecology (DOE) has informed potential Phase II jurisdictions it will not have a NPDES permit for MS4s (MS4 permit) available by the March 2003 deadline. However, DOE has developed a MS4 permit application for Phase II jurisdictions.

Summary of Amended Bill: Three advisory groups, one for western Washington areas draining to Puget Sound, one for central/southwestern Washington, and one for eastern Washington, are established to advise and assist DOE in the drafting of phase II MS4 storm

water permits. DOE must use the existing eastern Washington storm water advisory group for these purposes. The western Washington advisory group may have up to 18 members, at least half of which must be local government representatives.

The advisory groups must address a list of issues and make recommendations to DOE. Issues considered include the following: types of discharges being regulated; areas being regulated; issuance of permits on a watershed basis; coordination of Phase I and Phase II permit requirements; application of permits to ground water discharges; level of effort required to satisfy federal minimum storm water control measures; protection of shellfish areas; costs and benefits associated with permit elements not required under federal law; use of land use planning and related regulations as best management practices; and potential funding sources.

DOE must submit a progress report to the appropriate committees of the Legislature regarding the work of the permit development advisory groups by December 1, 2003. DOE also must submit a legislative report regarding the advisory groups' recommendations and a final report after permits are developed, but no later than December 1, 2004. These advisory group provisions expire June 30, 2005.

Amended Bill Compared to Substitute Bill: A coastal/southwest Washington phase two storm water permit drafting advisory group is added. The western Washington advisory group is redefined to include areas that drain into Puget Sound, and the membership of that group is limited to 18, at least half of which must be local government representatives. Costs and benefits of permit elements not required under federal law is added to the list of issues advisory groups shall consider. Provisions providing definitions of standards, directions regarding fees, references to other reports, and specific determinations of group membership and facilitation are removed.

Appropriation: None.

Fiscal Note: Requested on March 25, 2003.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: (To bill as heard) Phase II of the NPDES permit program covers 13 counties and more than 90 cities. Local governments do not have discretionary resources to implement storm water programs and many can not afford to go beyond federal standards. We need to give cities and counties a break from unfunded mandates. Numeric standards should really be addressed at the federal level, and permit programs should be focused on preventing harm. Incentives are the best approach for long-term success. (Pro with concerns) The definitions of "maximum extent practicable" and "best management practices," and the addition of the "AKART" standard, create new ambiguities regarding financial responsibility. The bill should allow permits to be customized to address geographical differences. The bill's treatment of Phase I and Phase II as the same may conflict with federal law.

Testimony Against: (To bill as heard) Storm water is the most significant water quality problem in western Washington. A recent Ninth Circuit decision emphasizes that states need to ensure compliance with federal standards. The Federal Clean Water Act allows states to go beyond these minimums and fill in the details left by the vague federal framework. The

shellfish industry needs water quality output-based regulations, not best management practices, to protect shellfish growing areas and property rights in them. How do you know you're meeting water quality if you don't measure it? The bill will shift costs onto phase one entities, businesses and farmers to meet TMDL requirements in 303(d)listed streams.

Testified: Sue Joerger, Puget Soundkeeper Alliance (con); Jim Jesernig, Pacific Coast Shellfish Growers (concerns); Bruce Wulkan, Puget Sound Action Team (concerns); Bruce Wishart, People For Puget Sound (concerns); Dave Williams, AWC (pro w/concerns); Mel Oleson, Boeing (concerns); Grant Nelsons, AWB (pro w/concerns); Willy O'Neil, AGC (pro w/concerns); Ross Dunfee, Benton County, Eastern WA Stormwater Committee (comments); Paul Parker, WA State Assn. of Counties (comments); Curt Crawford, King County WCRD (comments); Peter Birch, WA Dept. of Fish and Wildlife (pro); Bill Moore, WA Dept. of Ecology (pro); Mark Blosser, City of Olympia (pro w/concerns); Brent Kirk, City of Longview (con); George Walk, Pierce County (concerns).