

SENATE BILL REPORT

SB 5027

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 27, 2003
Ways & Means, March 10, 2003

Title: An act relating to watershed planning.

Brief Description: Giving local citizens and governments authority to determine the allocation and management of water in a water resource inventory area.

Sponsors: Senators Morton, Rasmussen and Hale.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/22/03, 2/27/03 [DPS-WM, DNP].

Ways & Means: 3/10/03 [DP2S, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5027 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: Do not pass.

Signed by Senator Fraser.

Staff: Evan Sheffels (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5027 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Doumit, Hale, Honeyford, Johnson, Parlette, Roach, Sheahan and Winsley.

Minority Report: Do not pass.

Signed by Senators Brown, Fraser, Poulsen and Regala.

Staff: Richard Ramsey (786-7412)

Background: Chapter 90.82 RCW establishes procedures and policies for initiating voluntary watershed planning at the local level. Planning is conducted according to the Water Resource Inventory Area (WRIA), with each WRIA corresponding to a watershed or river basin.

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 watershed plan, or any portion of a watershed plan approved by the planning unit, to affected counties for approval. Planning units may approve a proposed watershed plan by consensus, or alternatively, by a consensus among the governmental unit members and a majority vote of non-governmental members. 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.

Once plans are adopted, implementation becomes the next order of business. The watershed planning statutes do not provide specific direction or funding for watershed plan implementation, or subsequent modification, of an adopted plan. "Implementing rules," as defined in RCW 90.82.020, "are 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."

Under RCW 90.82.130, any watershed planning result that imposes a fiscal impact, a redeployment of resources, or a policy change upon a tribal, county, or state government is said to create an obligation. 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. Where both state agencies and counties are obligated under a watershed plan, obligated state agencies are required to adopt rules setting forth and binding those new obligations upon both state and county governments. State agencies are also required to adopt rules to implement the agency's watershed management obligations. Watershed obligations are also binding on county governments, and counties must adopt implementing ordinances, as necessary, to set out how the county intends to fulfill its obligations.

Summary of Second Substitute 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 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 may opt out of watershed planning and plan adoption hearings. 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 rule-making 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.

Second Substitute Bill Compared to Substitute Bill: A null and void clause is added.

Substitute Bill Compared to Original Bill: The substitute bill contains funding and matching provisions not contained in the original bill.

The substitute bill does not contain the original bill's requirement that the adoption of watershed plan obligations and implementing rules take place within a negotiated rule-making context.

With regard to the modification of adopted plans, the negotiated rule-making concept in the original bill is retained, in a more concise form, in the substitute bill.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Natural Resources, Energy & Water): The rules for obligated government participants need to reflect local needs and designs. Affected local initiating governments need to be given great deference. The Department of Ecology needs to be restrained from imposing top-down solutions. Negotiated rulemaking will help accomplish that.

Testimony Against (Natural Resources, Energy & Water): State interest should supersede local interests. We need to see what planning unit products are first before we tweak the process. There is concern that deferring to the majority vote of the planning unit, when initiating governments only have one vote each, will lead to unintended results. Wait until next session, after the first WRIA plans are adopted and into the implementation stage. Implementing or initiating governments should be given deference, not planning units.

Testified (Natural Resources, Energy & Water): PRO: Darryll Olsen, Columbia-Snake River Irrigation; Dave Monthie, King County; Mike Schwisow, WA State Water Resources Assn.; Chris Cheney, Hop Growers of WA; Scott Hazlegrove, Water and Sewer Districts; CON: Mike Moran, CELP; COMMENTS: Dick Wallace, WA DOE; Bob Mack, City of Spokane; Kathleen Collins, WA Water Policy Alliance; Jim Waldo, Governor's Office.

Testimony For (Ways & Means): Five years ago the state began watershed planning. Counties strongly support moving forward with funding for implementation. The department supports the move to implementation with the carry forward funding of \$11.2 million from the water quality account.

Testimony Against (Ways & Means): The "deemed to satisfy" provision may also include TMDLs. Allowing counties to opt out is a concern. A higher local share for implementation grants would be appropriate. By relying upon the plan to express "public interest" does not acknowledge there may be broader public interests.

Testified (Ways & Means): PRO: Paul Parker, Washington State Association of Counties; Support Budget: Dick Wallace, Department of Ecology; CON: Josh Baldi, Washington Environmental Council.