

SENATE BILL REPORT

E2SSB 5957

As Passed Senate, February 17, 2004

Title: An act relating to the collection and use of water quality data.

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 History:

Committee Activity: Natural Resources, Energy & Water: 2/27/03, 3/5/03 [DPS, DNP].

Ways & Means: 2/9/04 [DP2S, DNP].

Passed Senate: 2/17/04, 32-17.

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5957 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Fraser and Regala.

Staff: Genevieve Pisarski (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5957 be substituted therefor, and the second substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Fairley, Fraser, Prentice, Regala and B. Sheldon.

Staff: Brian Sims (786-7431)

Background: The federal Clean Water Act requires states to report on the quality of water bodies and to list those that are impaired. For those listed as impaired, a Total Maximum Daily Load (TMDL) must be prepared, regulating the amounts of pollutants that may be discharged and allocating the amounts among their sources. To accomplish these requirements, states evaluate existing and readily available water quality data and information

and determine which data they will rely upon. The governing federal regulation requires quality assurance and control programs to assure scientifically valid data.

Summary of Bill: Standards and procedures are adopted to require use of credible water quality data for developing water quality standards, listing waters whose beneficial uses are impaired by pollutants, developing total maximum daily loads for impaired waters, determining whether beneficial uses are being supported, and determining whether waters have been degraded. The department must consider the nature of the water body, when assessing whether it is impaired.

For water quality data to be considered credible, the Department of Ecology must determine that quality control procedures were followed and documented, that data is representative of conditions at the time, the number of samples is adequate for the water and the parameters being analyzed, the method is accepted in the scientific community, and the data was collected consistent with these requirements. The department must adopt rules for qualifications and training requirements for data collectors. Knowing misrepresentation of data is subject to criminal penalties under applicable existing law.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Natural Resources, Energy & Water): There could also be independent third party review of data. Data has been used to support foregone conclusions, along with unrealistic models and experiments. TMDL decisions range from excellent to atrocious, depending on the personnel. There have been severe economic consequences. Regulation must be supported by good data to avoid costly consequences. Other states have adopted similar requirements.

Testimony Against (Natural Resources, Energy & Water): Both state and federal quality assurance and quality control policies are already in place and include several of the proposed requirements. The intent is good, but the language is unclear and, in some cases, overly specific; this will create difficulties for rule-making, which will be expensive. Policy, rather than rule, is preferable, because it makes changes and improvements easier. Many volunteers and permittees who are trained and qualified to collect data would be excluded, and their data from the past could not be used. It is unclear how much past work would have to be redone. There are inconsistencies with the Clean Water Act.

Testified (Natural Resources, Energy & Water): Pat Hamilton, Pacific County Commissioner (pro); Bryan Harrison, Pacific County (pro); Jane Rose, WCA Chair, Ecology/Land Planning, Farm Bureau, Rose Ranch (pro); Hertha Lund, Farm Bureau (pro); Bruce Wishart, People For Puget Sound (con); Megan White, Dept. of Ecology (concerns); Scott Hazlegrove, WA Assn. of Sewer and Water Districts (pro); Mike Schwisow, WA State Water Resources Assn. (pro).

Testified (Ways & Means): Jim Zimmerman, WA Fish Growers (pro); Ivy Sager-Rosenthal, WAPIRG (con); Dave Peeler, Dept. of Ecology (con); Bruce Wishart, People for Puget Sound (con).

House Amendment(s): The need to obtain data from various available sources, so long as it meets requirements for quality, is affirmed. The requirement that Ecology adopt a credible data evaluation and compliance process for past actions, to be implemented upon request, is replaced by a requirement that Ecology acknowledge questions within five days and provide a reasonable estimate of when it will answer. General acceptance in the scientific community is established as the standard for analytical methods. A requirement to adopt policy replaces the requirement to adopt rules regarding qualifications for collecting data, determination of credibility, and explanation of methodology. In addition to public employees, any person is made subject to criminal penalties for knowing misrepresentation of data. Reporting deadlines are extended by a year. The TMDL cooperative management agreement among the state, EPA, and the tribes is acknowledged and resulting data that meets the objectives of an approved quality assurance plan must be considered. Various technical and editorial changes are made.