

SENATE BILL REPORT

SB 5688

As of February 21, 2005

Title: An act relating to compliance history disclosure upon application for environmental quality permits.

Brief Description: Requiring compliance history disclosure in order to obtain an environmental quality permit.

Sponsors: Senators Pridemore, Poulsen, Rockefeller, Brown, Regala, Kline, Weinstein and Kohl-Welles.

Brief History:

Committee Activity: Water, Energy & Environment: 2/16/05.

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Staff: Sam Thompson (786-7413)

Background: State and federal law requires developers to obtain a variety of environmental permits before commencing work on a project. Several states require permit applicants to submit background information concerning any prior violations of environmental laws, and authorize agencies to deny permits to applicants who have violated environmental laws.

Summary of Bill: Applicants for environmental quality permits must submit information concerning responsible personnel and prior violations of environmental laws. Officials may deny permits to applicants who have been penalized for violating environmental laws. State and local government units are exempted.

Environmental Quality Permits. The following permits required from Department of Ecology (DOE), the Department of Fish and Wildlife (DFW), the Department of Natural Resources (DNR), or a regional air pollution control agency are "environmental quality permits" subject to additional disclosure requirements:

- air operating permits, registration of air contaminant sources, and new source reviews required by the state Clean Air Act;
- water quality discharge permits required by the state Water Pollution Control Act;
- water quality certifications by DOE under the federal Clean Water Act;
- surface water and ground water withdrawal permits required by the state water and groundwater codes;
- hazardous waste management, treatment, storage, or disposal permits required by the state Hazardous Waste Management Act;
- approvals required from DOE for metals mining and milling operations;
- hydraulic project approvals required by DFW; and
- surface mining reclamation permits required by DNR.

Disclosure. An applicant for an environmental quality permit must specify: names and business addresses of responsible corporate officers, partners and personnel; businesses that will assume operational responsibilities, with previous business names, if any; persons owning or controlling 10 percent or more of the applicant's assets; and subsidiary and parent companies.

Applicants must also provide or describe, for the 10 years preceding the application: permit revocations, criminal and civil penalties, arrests and convictions directly relating to violation of environmental quality laws; unrecovered public funds expended to remediate environmental damage; criminal convictions involving harm to environmental quality standards penalized by a fine of over \$5,000 or a sentence of over seven days; any civil judgment or settlement for harm to environmental quality or public health; and pending criminal charges alleging violation of state or federal environmental quality law.

Applicants have a continuing duty to respond to requests for additional related information and must update previously submitted information.

Agencies are authorized to investigate and verify the accuracy of submitted information.

The submitted information is publicly-accessible, subject to exemptions under the Public Disclosure Act.

Grounds for Permit Denial. The official responsible for making a decision on an application must deny it if:

- the applicant or their agent intentionally withholds or misrepresents required information or offers or confers any benefit to an official expecting that it will result in obtaining approval of the application; and
- the applicant or their responsible personnel have been convicted of a felony in Washington or another state or country for violating an environmental quality law.

The official may deny the application or impose conditions if:

- the applicant failed to pay a penalty or judgment within the past 10 years for violating an environmental quality law;
- a state or a federal environmental permit issued to the applicant has been revoked within the past 10 years; and
- the applicant has defaulted on a corporate guarantee, inadequately funded an environmental remediation reserve or trust account, or forfeited a bond connected with a environmental quality permit.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: This legislation is necessary to deter a small number of "fly by night" serial polluters, and would allow environmental quality permits to be denied only in the most

egregious cases involving intentional violations. Not much additional paperwork would be required, and 41 other states already have similar requirements. Under existing law, some permits cannot be denied to applicants with prior violations; in other cases, reviewing agencies are unaware of applicants' criminal history.

Testimony Against: This legislation is extremely broad, contains redundancies, and is too burdensome. Businesses are already complying with rigorous Washington environmental standards, among the most stringent in the nation. There are many similar disclosure mandates under existing law, and current paperwork requirements are already onerous. This legislation could unjustly penalize an applicant that had previously voluntarily reported a violation. Requirements concerning water permits could cause uncertainty regarding water rights.

Who Testified: PRO: Senator Pridemore, prime sponsor; Mo McBroom, WashPIRG; Jessica Branom-Zwick; Marnie Jones; Alan Philips; Heath Packard, Audubon Society; Greg Sorlie, Department of Ecology.

CON: Llewellyn Matthews, Northwest Pulp & Paper Association; Kristen Sawin, Association of Washington Business; Steve Gano, Glacier Northwest; John Stuhlmiller, Washington Farm Bureau.