
HOUSE JOINT MEMORIAL 4016

State of Washington **59th Legislature** **2005 Regular Session**

By Representatives Kretz, Ahern, Haler, Holmquist, Kristiansen, Serben, Newhouse and Orcutt

Read first time 02/10/2005. Referred to Committee on Economic Development, Agriculture & Trade.

1 TO THE HONORABLE GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES,
2 AND TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
3 REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE
4 UNITED STATES, IN CONGRESS ASSEMBLED, AND TO THE ADMINISTRATOR OF THE
5 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

6 We, your Memorialists, the Senate and House of Representatives of
7 the State of Washington, in legislative session assembled, respectfully
8 represent and petition as follows:

9 WHEREAS, The Clean Water Act, 33 U.S.C. Sec. 1251 et seq., is a
10 federal law establishing a national goal of restoring and maintaining
11 the chemical, physical, and biological integrity of the nation's
12 waters; and

13 WHEREAS, The federal Clean Water Act establishes numerous
14 provisions designed to focus national, state, and local efforts on
15 water pollution control, including: Effluent limitation requirements;
16 state adoption of water quality standards; state water quality
17 assessments and reporting requirements; enforcement requirements; and
18 grant programs for research, water pollution control programs, and
19 treatment facilities; and

1 WHEREAS, The federal Clean Water Act establishes a national
2 pollutant discharge elimination system of permitting for point source
3 discharges of pollutants to navigable waters of the United States and
4 includes provisions for nonpoint source management programs for the
5 nation's waters; and

6 WHEREAS, The programs and regulations established under the federal
7 Clean Water Act impose numerous requirements on state and local
8 governments, requiring the investment of human and other resources and
9 the expenditure of substantial funds; and

10 WHEREAS, Many small jurisdictions with limited financial resources
11 are struggling to comply with federal Clean Water Act mandates while
12 attempting to provide basic governmental services to their citizens;
13 and

14 WHEREAS, Actions to comply with federal Clean Water Act mandates,
15 including development of discharge management programs and construction
16 of treatment facilities, can take a significant amount of time and
17 require a substantial amount of local resources; and

18 WHEREAS, The citizen suit provision of the Clean Water Act, 33
19 U.S.C. Sec. 1365, allows any citizen to commence a civil action against
20 any other person for violations of effluent standards, permit
21 requirements, and certain other provisions of the federal Clean Water
22 Act; and

23 WHEREAS, Large advocacy organizations can file civil actions
24 against small jurisdictions under the federal Clean Water Act's citizen
25 suit provision, with standing to file an action based on their
26 representation of individual organization members; and

27 WHEREAS, According to standing doctrine developed in case law
28 related to environmental actions such as those filed under the federal
29 Clean Water Act's citizen suit provision, these organizations can
30 assert standing by showing that individual members use an area affected
31 by the defendant's challenged activity and the defendant's actions have
32 lessened recreational or aesthetic enjoyment of the affected area; and

33 WHEREAS, Organizations filing civil actions under the federal Clean
34 Water Act's citizen suit provision and other environmental laws may
35 have little or no real connection to the small jurisdictions against
36 whom these actions are filed; and

37 WHEREAS, The federal Clean Water Act's citizen suit provision
38 provides for sixty days' notice of such suits but neither affords small

1 jurisdictions an opportunity to remedy problems before suit nor
2 recognizes good faith efforts by small jurisdictions to achieve
3 compliance; and

4 WHEREAS, The legal costs of defense and the financial liability for
5 damages and awards of attorneys' fees to prevailing plaintiffs in these
6 actions have the potential to cripple already struggling small
7 jurisdictions in Washington State;

8 NOW, THEREFORE, Your Memorialists respectfully pray that the
9 Congress enact and the President sign amendments to the citizen suit
10 provision of the federal Clean Water Act, 33 U.S.C. Sec. 1365, to
11 protect small jurisdictions from significant legal and financial
12 liabilities by: (1) Requiring plaintiff organizations that assert
13 representational standing to demonstrate a real and substantial
14 connection to the area affected by the defendant's challenged activity;
15 (2) requiring plaintiff organizations to identify the members whose
16 interests are the basis for the standing the organization asserts; and
17 (3) recognizing good faith compliance efforts by small jurisdictions in
18 such actions and provide small jurisdictions a meaningful opportunity
19 to remedy compliance problems before being subjected to damages and
20 attorney fee awards.

21 BE IT RESOLVED, That copies of this Memorial be immediately
22 transmitted to the Honorable George W. Bush, President of the United
23 States, the Administrator of the United States Environmental Protection
24 Agency, the President of the United States Senate, the Speaker of the
25 House of Representatives, and each member of Congress from the State of
26 Washington.

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