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SENATE BILL 5688

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State of Washington

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By Senators Pridemore, Poulsen, Rockefeller, Brown, Regala, Kline, Weinstein and Kohl-Welles

Read first time 02/02/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to compliance history disclosure upon application  
2 for environmental quality permits; and adding a new chapter to Title 43  
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) The illegal discharge of pollutants to Washington's air and  
7 water, and the improper management and disposal of solid and hazardous  
8 wastes in Washington's environment can create significant risks to  
9 public health and environmental quality;

10 (b) Washington's businesses bear much of the costs incurred when  
11 polluters fail to clean up environmental contamination;

12 (c) A polluting business may gain an economic advantage that is  
13 unfair to businesses that are in compliance with emission limitations,  
14 waste management standards, and other environmental quality  
15 requirements;

16 (d) The protection of Washington's environment from unnecessary  
17 degradation is a matter of public trust;

18 (e) The public has a right to clean air and water and to a healthy  
19 environment; and

1 (f) Because of the importance of these resources to the health and  
2 welfare of Washington citizens, there must be disclosure of pertinent  
3 environmental compliance information by those persons submitting  
4 applications and persons with operational responsibility or ownership  
5 of the activity to be covered by the permit.

6 (2) It is the purpose of this chapter to ensure that the state has  
7 adequate information about the environmental quality compliance history  
8 of applicants for the purpose of reviewing the application and making  
9 decisions on the application.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply  
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Environmental quality permit" means the following permits or  
13 approvals, or the renewal of a permit or approval, required from the  
14 department of ecology, department of fish and wildlife, department of  
15 natural resources, or a regional air pollution control agency:

16 (a) Air operating permits, registration of air contaminant sources,  
17 and new source reviews required by chapter 70.94 RCW;

18 (b) Water quality discharge permits required by chapter 90.48 RCW;

19 (c) Water quality certifications by the department of ecology under  
20 section 401 of the federal water pollution control amendments, 33  
21 U.S.C. Sec. 1341;

22 (d) Surface water and ground water withdrawal permits required by  
23 chapters 90.03 and 90.44 RCW;

24 (e) Hazardous waste management, treatment, storage, or disposal  
25 permits required by chapter 70.105 RCW;

26 (f) Approvals required from the department of ecology for metals  
27 mining and milling operations under chapter 78.56 RCW;

28 (g) Hydraulic project approvals required by the department of fish  
29 and wildlife under chapter 77.55 RCW; and

30 (h) Surface mining reclamation permits by the department of natural  
31 resources under chapter 78.44 RCW.

32 (2) "Responsible official" means the official charged by law with  
33 making a decision upon an environmental quality permit application.

34 NEW SECTION. **Sec. 3.** (1) An applicant for an environmental  
35 quality permit shall include in the application the names and business  
36 addresses of:

1 (a) All corporate officers of the applicant and all personnel  
2 responsible for overall operation of the activities that are the  
3 subject of the application;

4 (b) Businesses with whom the applicant has agreed to assume  
5 operational responsibilities for activities that are the subject of the  
6 application, and the names by which the businesses operated under  
7 within the past ten years;

8 (c) Each general or limited partner where the applicant is a  
9 partnership;

10 (d) Each person owning or controlling ten percent or more of the  
11 assets of the applicant's assets; and

12 (e) All subsidiary and parent companies of the applicant.

13 (2) The application shall also include the following information as  
14 to those persons or businesses described in subsection (1) of this  
15 section, for the ten years preceding the date of the application:

16 (a) All permit revocations, criminal citations, arrests,  
17 convictions, or civil or administrative penalties assessed, that relate  
18 directly to the violation of an environmental quality statute, rule,  
19 regulation, permit, license, approval, or order, whether in the state  
20 of Washington, another state, or another country, and a brief  
21 description of the disposition of the matter. The description must  
22 also address public funds that were expended to restore or remediate  
23 damage or the threat of damage caused by the violation, except where  
24 such funds were voluntarily recovered without litigation;

25 (b) Any felony conviction, and any other criminal conviction  
26 involving harm to environmental quality or a violation of environmental  
27 quality standards that resulted in a penalty or fine of more than five  
28 thousand dollars or a sentence longer than seven days, without regard  
29 to whether such penalty, fine, or sentence was suspended;

30 (c) A description of any civil judgment awarding damages for harm  
31 to environmental quality or public health, and all settlements of  
32 damage claims for environmental harm; and

33 (d) A description of all pending criminal complaints or charges  
34 alleging the violation of any state or federal environmental quality  
35 law.

36 (3) This section does not apply where the applicant is a unit of  
37 local or state government.

1        NEW SECTION.    **Sec. 4.**    (1) Applicants for an environmental quality  
2 permit have a continuing duty to respond to requests for additional  
3 information from the agency processing the permit application where the  
4 request relates to information required by section 3 of this act. The  
5 agency is authorized to investigate and to verify the accuracy of the  
6 information submitted in the application.

7        (2) The applicant shall promptly supplement the information  
8 provided if the applicant becomes aware of additional required  
9 information or if changed circumstances render the submitted  
10 information inaccurate or incomplete.

11        NEW SECTION.    **Sec. 5.**    Except as provided in this section, all  
12 information provided under section 3 of this act shall be maintained by  
13 the agency reviewing the application as public information and subject  
14 to disclosure as public records under chapter 42.17 RCW. Information  
15 exempt from public inspection and copying under RCW 42.17.310 shall not  
16 be otherwise disclosable under this section.

17        NEW SECTION.    **Sec. 6.**    (1) The responsible official must deny an  
18 environmental quality permit application if:

19        (a) The applicant or a person acting at the direction of the  
20 applicant intentionally withholds or misrepresents material information  
21 required to be submitted under section 3 of this act;

22        (b) The applicant or a person acting at the direction of the  
23 applicant has offered or conferred any benefit personally to an  
24 employee of the state or a local air pollution control agency in the  
25 expectation that such offer will result in or contribute to an approval  
26 of the application;

27        (c) The applicant or any person listed in the information provided  
28 in section 3(1) of this act has been convicted of a felony in  
29 Washington state or a criminal conviction in another state or country  
30 where the violation is punishable in Washington state as a felony, and  
31 the conviction is based upon the violation of an environmental quality  
32 statute, rule, regulation, permit, license, approval, or order.

33        (2) The responsible official may deny an application for an  
34 environmental quality permit, or may approve the application with the  
35 imposition of conditions to ensure compliance with the permit and  
36 applicable laws, if:

1 (a) The applicant has failed to pay a penalty or judgment within  
2 the past ten years obtained by a state or federal agency for the  
3 violation by the applicant of an environmental quality statute, rule,  
4 regulation, permit, license, approval, or order;

5 (b) An environmental quality permit issued in this state or a  
6 comparable permit issued by another state or a federal agency to the  
7 applicant has been revoked within the past ten years; or

8 (c) The applicant has defaulted on a corporate guarantee,  
9 inadequately funded a reserve or trust account established for  
10 environmental remediation purposes, or forfeited a bond obtained in  
11 connection with an environmental quality permit issued in this state or  
12 a comparable permit issued by another state or an agency of the federal  
13 government.

14 (3) This section is in addition to any other applicable statute  
15 establishing criteria guiding the responsible official's decision on an  
16 environmental quality permit application.

17 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute  
18 a new chapter in Title 43 RCW.

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