

SENATE BILL REPORT

SSB 6036

As Amended by House, April 8, 2009

Title: An act relating to water cleanup planning and implementation.

Brief Description: Concerning water cleanup planning and implementation.

Sponsors: Senate Committee on Environment, Water & Energy (originally sponsored by Senators Fraser, Ranker and Shin).

Brief History:

Committee Activity: Environment, Water & Energy: 2/20/09, 2/24/09 [DPS].

Passed Senate: 3/04/09, 48-0.

Passed House: 4/08/09, 98-0.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 6036 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Fraser, Hatfield, Holmquist, Marr, Morton, Ranker and Sheldon.

Staff: Karen Epps (786-7424)

Background: The modern framework for federal water pollution control regulation was enacted in 1972 as federal law amendments now referred to as the Clean Water Act (CWA). The CWA sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate discharge of pollutants into navigable waters.

The CWA also requires states to adopt standards to protect fish and other aquatic life as well as humans using water for recreation, drinking water, and fish. Water quality standards are rules specifying the desired water quality to be achieved or maintained and protecting existing water quality from degradation.

The Department of Ecology (Ecology) is the state agency delegated authority to implement provisions of the federal CWA. Under that authority, Ecology develops total maximum daily load assessments and allocations (TMDLs) for water bodies that violate water quality standards. The objective of a TMDL is to allocate allowable loads among different pollutant sources so that the appropriate control actions can be taken and water quality standards

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

achieved. The TMDLs are submitted to the U. S. Environmental Protection Agency (EPA) for approval.

Summary of Substitute Bill: Ecology must amend the state's water quality standards to authorize compliance schedules for discharge permits that implement a TMDL that must be met as soon as possible, but may exceed ten years if during the first ten years the entity has made significant investments to reduce pollutant loading. Compliance schedules must be met as soon as possible but those longer than ten years may only be authorized for an additional five years at a time and cannot exceed 20 years. If EPA does not approve the amendment to the state water quality standards necessary to implement this bill, Ecology must work with EPA to develop an approved amendment to the state water quality standards.

Appropriation: None.

Fiscal Note: Requested on February 18, 2009.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: There are many water bodies in Washington that are not meeting water quality standards. Ecology is in the process of preparing water cleanup plans. Through these water cleanup plans, Ecology requires the point source dischargers to significantly decrease the impact of their discharges. In some instances, there is not the technology and ability to meet these standards within ten years. This bill will help by providing more time in the case where there is not technology available and there is more reliance on nonpoint source discharges. This bill also clarifies that Ecology cannot keep extending the deadline without any effort on the part of the discharger.

CON: By extending the time to come into compliance with our state's water quality standards, this legislation appears to be inconsistent with federal CWA requirements that require compliance as soon as possible and that schedules of compliance only occur when appropriate. This legislation allows a discharger to obtain a compliance schedule based on whether or not the discharger has made significant past progress in reducing pollution loading. Ecology already has a tool under the CWA called a variance that it can use on a case by case basis to extend a schedule for compliance for five years. It is important to understand the impact of this legislation on all the TMDLs that are trying to meet state standards. This bill undermines the vigorous efforts of other point source dischargers who are attempting to comply with TMDLs in their rivers. This bill seems very inconsistent with the Puget Sound Partnership's Action Agenda.

OTHER: Compliance schedules are only allowed if authorized by the state's water quality standards. They only apply to point sources. The federal requirements require compliance as soon as possible. There are no specific timelines in the federal regulations. Once the permit is approved, EPA incorporates the compliance schedule into the permit. EPA is required to consult with NOAA, U.S. Fish and Wildlife, and federally-recognized Indian tribes when approving each permit on a case by case basis. Each permit must meet the as soon as possible test.

Persons Testifying: PRO: Senator Fraser, prime sponsor; Melodie Selby, Ecology.

CON: Rick Eichstaedt, Center for Justice; Sue Joerger, Puget Soundkeeper Alliance; Bruce Wishard, People for Puget Sound.

OTHER: Tom Eaton, EPA.

House Amendment(s): Removes the requirement that a permittee may have an extended compliance schedule if that permittee has made significant investments in advanced technology. Removes the requirement that Ecology consider the nature, magnitude, and cost of point and nonpoint pollution controls. Removes the requirement that compliance schedules longer than 10 years may only be authorized for an additional five years at a time, and the total length of any compliance schedule may not exceed 20 years.