

SENATE BILL REPORT

SB 5051

As of February 9, 2011

Title: An act relating to public notice of proposed settlements of environmental and public health enforcement actions.

Brief Description: Concerning public notice of proposed settlements of environmental and public health enforcement actions.

Sponsors: Senators Kline, Rockefeller, Nelson, Keiser, Ranker and Chase.

Brief History:

Committee Activity: Environment, Water & Energy: 1/25/11.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Sam Thompson (786-7413)

Background: The state Model Toxics Control Act (MTCA), an initiative approved by voters in 1988, established procedures for requiring potentially liable persons to clean up hazardous waste sites. A provision in MTCA requires the Department of Ecology (Ecology) to provide the public with both notice of, and an opportunity to comment upon proposed settlements of enforcement actions against potentially liable persons. Ecology must hold a public hearing on a proposed settlement if at least ten persons request one or if Ecology determines that a hearing is necessary.

While MTCA's requirements regarding proposed settlements of enforcement actions are unusual in Washington law, other states have adopted similar requirements in varied environmental and public health laws, and federal agencies must provide public notice and opportunity to comment upon proposed settlements in actions to enforce the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Air Act; and other federal laws.

Summary of Bill: In any civil enforcement action involving an alleged or threatened violation of an environmental or public health law or related rules or permits, the state or local government enforcing agency or officer must provide public notice of a proposed settlement at least 30 days before it may approve the proposed settlement. In a judicial enforcement action, the enforcing agency or officer must file a proposed settlement with the court at least 30 days before it may be approved by the court.

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.

A settlement is an agreement issued by the enforcing agency or officer or a consent decree issued by a court of competent jurisdiction partially or entirely resolving liability of an alleged violator.

With respect to a proposed settlement, the enforcing agency or officer must:

- receive and consider any written comments and, in a judicial enforcement action, file with the court any written comments received;
- hold a public hearing if at least ten persons request a public hearing or the enforcing agency or officer determines that the proposed settlement significantly affects the environment or public health.

The enforcing agency or officer may:

- withdraw or withhold consent if public comment discloses facts or considerations indicating that the proposed settlement is inappropriate;
- permit an exception to public notice requirements in a specific case due to insignificant effect of the proposed settlement upon the environment or public health, or extraordinary circumstances.

Environmental or public health laws or related rules or permits are the following laws, rules adopted under them, and permits issued pursuant to them:

- RCW chapter 15.58, the Pesticide Control Act;
- RCW chapter 70.94, the Clean Air Act;
- RCW chapter 70.95, regarding solid waste management;
- RCW chapter 70.95J, regarding municipal sewage sludge;
- RCW chapter 70.105, the Hazardous Waste Management Act;
- RCW chapters 70.118 and 70.118B, regarding on-site sewage disposal;
- RCW chapters 70.119 and 70.119A, regarding public water systems;
- RCW chapter 76.09, the Forest Practices Act;
- RCW chapter 77.55, regarding hydraulic permits;
- RCW chapter 88.46, regarding vessel oil spill prevention and response;
- RCW chapters 90.03, 90.14, 90.22, and 90.44, regarding surface and ground water permits, change certificates, minimum water flows and levels, and water rights abandonment and relinquishment actions;
- RCW chapter 90.46, regarding reclaimed water use;
- RCW chapter 90.48, regarding water pollution control;
- RCW chapter 90.56, regarding oil and hazardous substance spill prevention and response; and
- RCW chapter 90.76, regarding underground storage tanks.

Appropriation: None.

Fiscal Note: Available.

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: The affected public should be provided with notice of proposed settlements, facilitating input, and robust discussion. Notice and hearing costs should be minimal.

CON: This bill's requirements could prevent quick responses to solve public health problems. Public notice and hearing requirements will delay settlements and could potentially have a chilling effect on settlements; affected businesses and property owners will face uncertainty and higher costs. Costs to state and local government will be significant.

Persons Testifying: PRO: Senator Kline, prime sponsor.

CON: Denise Clifford, Department of Health; John Sherman, Tacoma-Pierce County Health; Karen Terwilliger, Ecology; Bill Stauffacher, American Forest & Paper Assn., Building Industry Assn. of WA; Steve Gano, Cal Portland Cement, Goodrich Aviation, Longview Fibre; Grant Nelson, Assn. of WA Business; Debra Munguia, WA Forest Protection Assn.; John Stuhlmiller, Washington Farm Bureau.