

# HOUSE BILL REPORT

## HB 2486

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**As Reported by House Committee On:**  
Environment

**Title:** An act relating to updating specified environmental statutes of the department of ecology to improve efficiency and provide for increased flexibility for local governments.

**Brief Description:** Updating specified environmental statutes of the department of ecology to improve efficiency and provide for increased flexibility for local governments.

**Sponsors:** Representatives Fitzgibbon, Tharinger, Ryu, Van De Wege and McBride; by request of Department of Ecology.

**Brief History:**

**Committee Activity:**

Environment: 1/21/16, 2/1/16 [DPS].

**Brief Summary of Substitute Bill**

- Eliminates conflicting provisions in statutes that authorize programs administered by the Department of Ecology (ECY).
- Changes the ECY's beneficial use determination processes for solid wastes, the ECY's scope of authority to regulate noise, and the ECY's statewide oil spill planning duties.
- Expands and clarifies the scope of decisions, orders, and penalties issued by the ECY that are appealable to the Pollution Control Hearings Board.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Farrell, Fey, Goodman and McBride.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Shea, Ranking Minority Member; Short, Assistant Ranking Minority Member; Dye, Pike and Taylor.

**Staff:** Jacob Lipson (786-7196).

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*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.*

## **Background:**

The Department of Ecology (ECY) is responsible for managing many of the state's environmental programs and policies. The ECY's authority derives from multiple statutes that direct it to manage the state's water resources, air quality, pollution, solid and hazardous wastes, toxic hazards, and the state shorelines. Some of the programs administered by the ECY include the authority to:

- adopt rules and standards for noise abatement and control;
- adopt rules that establish statewide exemptions from local solid waste permitting requirements for certain solid wastes with beneficial uses;
- prepare and update a statewide master oil and hazardous substance spill prevention and contingency plan;
- administer and enforce the operations of stewardship organizations formed to collect and recycle mercury-containing lights;
- enforce the requirements of the Children's Safe Products Act, which establishes restrictions on the amount of certain chemicals in children's products and requires manufacturers to provide information to the ECY about their use of other chemicals of concern; and
- review and approve shoreline master programs submitted by local governments.

Aggrieved parties may appeal many types of ECY administrative decisions, orders, and penalties to the Pollution Control Hearings Board (PCHB), which is a quasi-judicial state agency.

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## **Summary of Substitute Bill:**

Programs administered by the ECY are amended to consolidate program implementation, eliminate inconsistencies among statutes, clarify statutory language, make technical changes, and repeal provisions that do not reflect current agency program administrative practices. The jurisdiction of the PCHB is expanded, and the PCHB statute is also updated to mirror existing references to PCHB review in other environmental statutes. Changes are made to the following statutes:

- Pollution Control Hearings Board enabling statute (chapter 43.21B RCW);
- Solid Waste Management (chapter 70.95 RCW);
- Noise Control (chapter 70.107 RCW);
- Oil and Hazardous Substance Spill Prevention and Response (chapter 90.56 RCW);
- Shoreline Management Act (chapter 90.58 RCW);
- Department of Ecology enabling statute (chapter RCW 43.21A); and
- Mercury Lights Stewardship Program (Chapter RCW 70.275).

Specific details of the substantive changes to ECY programs and PCHB appeals include:

### Pollution Control Hearings Board.

The following actions by the ECY are made appealable to the PCHB:

- penalties issued for violations of laws restricting the use of mercury in certain consumer products, such as thermometers and automotive mercury switches;

- penalties issued for violations of the Children's Safe Products Act; and
- penalties for failure to take appropriate action in response to a corrective action order for dangerous waste management violations.

#### Solid Waste.

The following changes to solid waste management laws are made:

- The authority for the ECY to issue exemptions from solid waste permitting requirements specifically for waste-derived soil amendments is eliminated.
- The requirement that the ECY adopt a rule for each beneficial use determination to exempt a solid waste from permitting requirements is eliminated. Instead, the ECY may adopt a rule establishing a process for the ECY to propose or approve beneficial use applications.
- Any aggrieved party is allowed to appeal beneficial use determinations to the PCHB, rather than limiting beneficial use appeals to local health departments or permit applicants.
- Biosolids and sewage sludge are clarified to not be subject to the ECY's general beneficial use determination process to exempt a waste from solid waste permitting requirements, and are instead subject to beneficial use determination procedures and use restrictions that are specific to biosolids and sewage sludge.

#### Noise Control.

The following changes to noise control laws are made:

- The requirement that local governments submit local noise ordinances to the ECY for approval is eliminated.
- The direction to the ECY to adopt maximum noise levels for the state and associated rules to ensure achievement of those levels is eliminated, and instead the ECY is directed to adopt model standards for use in noise regulation by local governments.

#### Oil Spill Planning.

The following changes to oil spill laws are made:

- The requirement that the ECY submit an annual state Master Oil and Hazardous Substance Spill Prevention and Contingency Plan to the Legislature is eliminated.
- The Vessel Response Account (VRA) used for rescue tug deployment is eliminated, and any money remaining in the VRA is transferred to the State Toxics Control Account (STCA), which funds various state pollution prevention programs.
- The state oil spill contingency plan prepared by the ECY may be prepared as a component of a regional plan required under federal law.

#### Shoreline Management Act.

The following changes to the Shoreline Management Act are made:

- Shoreline master program amendments addressing critical areas must be approved by the ECY if the amendment ensures no net loss of ecological function, instead of requiring the shoreline master program amendment to provide a level of protection for critical areas that is at least as high as the protections afforded by the critical area ordinance.
- The effective date of a local government's amendment to a shoreline master program occurs 14 days after amendment approval by the ECY, rather than the shoreline master program amendments taking effect upon either approval by the ECY or upon

decision by the Growth Management Hearings Board or Shoreline Hearings Board to approve the amendment.

Other Programs.

- The authority for the ECY to site, construct, and sell power from a steam electric generating plant is eliminated.
- Beginning in 2017, the ECY's administrative fee charged to stewardship organizations to cover the ECY's administrative and enforcement costs is changed from a flat \$5,000 per-producer fee to a fee of up to \$5,000 per producer, as determined by the ECY in conjunction with stewardship organizations.

**Substitute Bill Compared to Original Bill:**

Money remaining in the eliminated VRA is transferred to the STCA, rather than to the Coastal Protection Fund. The state oil spill contingency plan prepared by the ECY may be prepared as a component of a regional plan required under federal law.

The ECY's administrative fee charged to stewardship organizations implementing mercury light stewardship programs is reduced from a flat annual rate of \$5,000 per participating light producer to an annual rate of up \$5,000 per producer, determined annually by the ECY in conjunction with the stewardship organization.

Appeals of corrective action orders issued by local air authorities must be heard in front of the full three person PCHB panel, rather than before a single PCHB member or administrative appeals judge. Penalties of less than \$15,000 must be heard by at least one PCHB member, rather than by an administrative appeals judge.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4, relating to the authority of the Pollution Control Hearings Board, which takes effect June 30, 2019.

**Staff Summary of Public Testimony:**

(In support) It is in the interest of regulated parties and other stakeholders to have clarity in environmental statutes, and to eliminate conflicting provisions. The goal of this bill is to improve clarity, not to change regulatory requirements. Parties subject to a penalty or order should be able to look at state laws and clearly understand if something can be appealed to the PCHB. The ECY no longer actively administers a noise control program, yet the statute gives a false and confusing impression that the agency is actively overseeing local programs.

(Opposed) None.

**Persons Testifying:** Representative Fitzgibbon, prime sponsor; and Tom Clingman, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** None.