
HOUSE BILL 2721

State of Washington

64th Legislature

2016 Regular Session

By Representatives Scott, Taylor, Schmick, Dent, Van Werven, Buys, Griffey, McCaslin, Holy, Manweller, Wilson, and Shea

Read first time 01/19/16. Referred to Committee on Environment.

1 AN ACT Relating to ensuring that a new federal government
2 definition of the term "waters of the United States" has no
3 applicability to the regulation of water quality in the state of
4 Washington; amending RCW 90.48.010, 90.48.020, 90.48.030, 90.48.035,
5 90.48.153, and 90.48.260; adding a new section to chapter 90.48 RCW;
6 and creating a new section.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that the ninth
9 and tenth amendments to the United States Constitution guarantee to
10 the states and their people all powers and rights not granted to the
11 federal government elsewhere in the Constitution and reserve to the
12 state and people of Washington certain powers and rights as they were
13 understood at the time that Washington was admitted to statehood in
14 1889. The regulation of intrastate commerce, including the natural
15 environment as affected by intrastate business, is vested in the
16 states under the tenth amendment to the United States Constitution
17 and is specifically retained by the people and property owners of the
18 state of Washington.

19 (2) The legislature further finds that the United States
20 environmental protection agency and the United States army corps of
21 engineers, acting under the color of the authority of congress to

1 regulate interstate commerce, recently proposed a new administrative
2 rule that defines the use of the term "waters of the United States"
3 as it appears in the federal clean water act. This proposed rule
4 purports to be reflective of statutory language, science, public
5 comment, agency expertise, and specific holdings of the United States
6 supreme court.

7 (3) The legislature further finds that contents of the proposed
8 rule fails to fulfill its own identified justifications and exceeds
9 the authority given to the agencies by the United States congress in
10 the federal clean water act and to congress itself by the United
11 States Constitution. However, regardless of justification or scope of
12 delegation or authority, neither the United States environmental
13 protection agency nor the United States army corps of engineers
14 possess the authority to apply, administer, or enforce the proposed
15 rule within the state of Washington.

16 (4) The legislature further finds that section 101(g) of the
17 clean water act expressly states that "the authority of each state to
18 allocate quantities of water within its jurisdiction shall not be
19 superseded, abrogated, or otherwise impaired by this act." Therefore,
20 it is the duty of the legislature to adopt any and all measures as
21 may be necessary to prevent the proposed rule described in this
22 section, and its effect on the allocation of waters and the resulting
23 impact on the property rights of the citizens of the state of
24 Washington, from taking effect in Washington.

25 (5) The legislature further finds that although the existing
26 provisions of chapter 90.48 RCW may minimize any effect that changes
27 to the definition of "waters of the United States" have within the
28 state of Washington, it is still incumbent upon the legislature to
29 ensure that changes to the definition on the federal level do not
30 create any threats to private property rights in Washington or an
31 expectation that water quality will be managed and regulated in any
32 manner that impacts private property rights even more than the
33 current implementation of chapter 90.48 RCW.

34 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48
35 RCW to read as follows:

36 Since neither the United States environmental protection agency
37 or the United States army corps of engineers possess the authority to
38 apply, administer, or enforce within the state of Washington the
39 proposed amendments to the rules developed under the federal clean

1 water act, 33 U.S.C. Sec. 1251 et seq., described in the notice of
2 proposed rule published in the Federal Register entitled "Definition
3 of 'Waters of the United States' under the Clean Water Act" (79 Fed.
4 Reg. 22188 (April 21, 2014)), the rule shall have no effect in the
5 state of Washington and neither the department nor any state officer
6 or employee may attempt to enforce an order, law, statute, rule, or
7 regulation of the United States government that is based on it.

8 **Sec. 3.** RCW 90.48.010 and 1973 c 155 s 1 are each amended to
9 read as follows:

10 (1) It is declared to be the public policy of the state of
11 Washington to maintain the highest possible standards to (~~insure~~)
12 ensure the purity of all waters of the state consistent with public
13 health and public enjoyment thereof, the propagation and protection
14 of wild life, birds, game, fish and other aquatic life, and the
15 industrial development of the state, and to that end require the use
16 of all known available and reasonable methods by industries and
17 others to prevent and control the pollution of the waters of the
18 state of Washington. Consistent with this policy, the state of
19 Washington will exercise its powers, as fully and as effectively as
20 possible, to retain and secure high quality for all waters of the
21 state.

22 (2) The state of Washington in recognition of the federal
23 government's interest in the quality of the navigable waters of the
24 United States, of which certain portions thereof are within the
25 jurisdictional limits of this state, proclaims a public policy of
26 working cooperatively with the federal government, consistent with
27 section 2 of this act, in a joint effort to extinguish the sources of
28 water quality degradation, while at the same time preserving and
29 vigorously exercising state powers to (~~insure~~) ensure that present
30 and future standards of water quality within the state shall be
31 determined by the citizenry, through and by the efforts of state
32 government, of the state of Washington.

33 **Sec. 4.** RCW 90.48.020 and 2002 c 161 s 4 are each amended to
34 read as follows:

35 (1) Whenever the word "person" is used in this chapter, it shall
36 be construed to include any political subdivision, government agency,
37 municipality, industry, public or private corporation, copartnership,
38 association, firm, individual or any other entity whatsoever.

1 (2) Wherever the words "waters of the state" shall be used in
2 this chapter, they shall be construed to include lakes, rivers,
3 ponds, streams, inland waters, underground waters, salt waters and
4 all other surface waters and watercourses within the jurisdiction of
5 the state of Washington. However, the words "waters of the state" may
6 not be interpreted in any manner that is inconsistent with section 2
7 of this act.

8 (3) Whenever the word "pollution" is used in this chapter, it
9 shall be construed to mean such contamination, or other alteration of
10 the physical, chemical or biological properties, of any waters of the
11 state, including change in temperature, taste, color, turbidity, or
12 odor of the waters, or such discharge of any liquid, gaseous, solid,
13 radioactive, or other substance into any waters of the state as will
14 or is likely to create a nuisance or render such waters harmful,
15 detrimental or injurious to the public health, safety or welfare, or
16 to domestic, commercial, industrial, agricultural, recreational, or
17 other legitimate beneficial uses, or to livestock, wild animals,
18 birds, fish or other aquatic life.

19 (4) Whenever the word "department" is used in this chapter it
20 shall mean the department of ecology.

21 (5) Whenever the word "director" is used in this chapter it shall
22 mean the director of ecology.

23 (6) Whenever the words "aquatic noxious weed" are used in this
24 chapter, they have the meaning prescribed under RCW 17.26.020.

25 (7) Whenever the words "general sewer plan" are used in this
26 chapter they shall be construed to include all sewerage general
27 plans, sewer general comprehensive plans, plans for a system of
28 sewerage, and other plans for sewer systems adopted by a local
29 government entity including but not limited to cities, towns, public
30 utility districts, and water-sewer districts.

31 **Sec. 5.** RCW 90.48.030 and 1987 c 109 s 123 are each amended to
32 read as follows:

33 The department shall have the jurisdiction to control and prevent
34 the pollution of streams, lakes, rivers, ponds, inland waters, salt
35 waters, water courses, and other surface and underground waters of
36 the state of Washington. However, the authority provided in this
37 section may not be construed in any manner that leads to a result
38 that is inconsistent with section 2 of this act.

1 **Sec. 6.** RCW 90.48.035 and 1987 c 109 s 124 are each amended to
2 read as follows:

3 The department, consistent with section 2 of this act, shall have
4 the authority to, and shall (~~promulgate~~) adopt, amend, or rescind,
5 such rules (~~and regulations~~) as it shall deem necessary to carry
6 out the provisions of this chapter, including but not limited to
7 rules (~~and regulations~~) relating to standards of quality for waters
8 of the state and for substances discharged therein in order to
9 maintain the highest possible standards of all waters of the state in
10 accordance with the public policy as declared in RCW 90.48.010.

11 **Sec. 7.** RCW 90.48.153 and 1987 c 109 s 133 are each amended to
12 read as follows:

13 The department is authorized to cooperate, consistent with
14 section 2 of this act, with the federal government and to accept
15 grants of federal funds for carrying out the purposes of this
16 chapter. The department is empowered to make any application or
17 report required by an agency of the federal government as an incident
18 to receiving such grants.

19 **Sec. 8.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each
20 amended to read as follows:

21 (1)(a) The department of ecology is hereby designated as the
22 state water pollution control agency for all purposes of the federal
23 clean water act as it exists on February 4, 1987, and is hereby
24 authorized to participate fully in the programs of the act as well as
25 to take all action necessary to secure to the state the benefits and
26 to meet the requirements of that act as long as any act of
27 participation does not violate section 2 of this act.

28 (b) With regard to the national estuary program established by
29 section 320 of that act, the department shall exercise its
30 responsibility jointly with the Puget Sound partnership, created in
31 RCW 90.71.210. The department of ecology may delegate its authority
32 under this chapter, including its national pollutant discharge
33 elimination permit system authority and duties regarding animal
34 feeding operations and concentrated animal feeding operations, to the
35 department of agriculture through a memorandum of understanding.
36 Until any such delegation receives federal approval, the department
37 of agriculture's adoption or issuance of animal feeding operation and
38 concentrated animal feeding operation rules, permits, programs, and

1 directives pertaining to water quality shall be accomplished after
2 reaching agreement with the director of the department of ecology.
3 Adoption or issuance and implementation shall be accomplished so that
4 compliance with such animal feeding operation and concentrated animal
5 feeding operation rules, permits, programs, and directives will
6 achieve compliance with all federal and state water pollution control
7 laws.

8 (2) The powers granted herein include, among others, and
9 notwithstanding any other provisions of this chapter or otherwise,
10 the following:

11 (a) Complete authority to establish and administer a
12 comprehensive state point source waste discharge or pollution
13 discharge elimination permit program which will enable the department
14 to qualify for full participation in any national waste discharge or
15 pollution discharge elimination permit system and will allow the
16 department to be the sole agency issuing permits required by such
17 national system operating in the state of Washington subject to the
18 provisions of RCW 90.48.262(2) and section 2 of this act. Program
19 elements authorized herein may include, but are not limited to: (i)
20 Effluent treatment and limitation requirements together with timing
21 requirements related thereto; (ii) applicable receiving water quality
22 standards requirements; (iii) requirements of standards of
23 performance for new sources; (iv) pretreatment requirements; (v)
24 termination and modification of permits for cause; (vi) requirements
25 for public notices and opportunities for public hearings; (vii)
26 appropriate relationships with the secretary of the army in the
27 administration of his or her responsibilities which relate to
28 anchorage and navigation, with the administrator of the environmental
29 protection agency in the performance of his or her duties, and with
30 other governmental officials under the federal clean water act;
31 (viii) requirements for inspection, monitoring, entry, and reporting;
32 (ix) enforcement of the program through penalties, emergency powers,
33 and criminal sanctions; (x) a continuing planning process; and (xi)
34 user charges.

35 (b) The power to establish and administer state programs in a
36 manner which will ensure the procurement of moneys, whether in the
37 form of grants, loans, or otherwise; to assist in the construction,
38 operation, and maintenance of various water pollution control
39 facilities and works; and the administering of various state water
40 pollution control management, regulatory, and enforcement programs.

1 (c) The power to develop and implement appropriate programs
2 pertaining to continuing planning processes, area-wide waste
3 treatment management plans, and basin planning.

4 ((+2)) (3) The governor shall have authority to perform those
5 actions that are not precluded under section 2 of this act and that
6 are required of ((him or her)) the governor by the federal clean
7 water act.

8 ((+3)) (4) By July 31, 2012, the department shall:

9 (a) Reissue without modification and for a term of one year any
10 national pollutant discharge elimination system municipal storm water
11 general permit applicable to western Washington municipalities first
12 issued on January 17, 2007; and

13 (b) Issue an updated national pollutant discharge elimination
14 system municipal storm water general permit applicable to western
15 Washington municipalities for any permit first issued on January 17,
16 2007. An updated permit issued under this subsection shall become
17 effective beginning August 1, 2013.

18 (i) Provisions of the updated permit issued under (b) of this
19 subsection relating to new requirements for low-impact development
20 and review and revision of local development codes, rules, standards,
21 or other enforceable documents to incorporate low-impact development
22 principles must be implemented simultaneously. These requirements may
23 go into effect no earlier than December 31, 2016, or the time of the
24 scheduled update under RCW 36.70A.130(5), as existing on July 10,
25 2012, whichever is later.

26 (ii) Provisions of the updated permit issued under (b) of this
27 subsection related to increased catch basin inspection and illicit
28 discharge detection frequencies and application of new storm water
29 controls to projects smaller than one acre may go into effect no
30 earlier than December 31, 2016, or the time of the scheduled update
31 under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is
32 later.

33 ((+4)) (5) By July 31, 2012, the department shall:

34 (a) Reissue without modification and for a term of two years any
35 national pollutant discharge elimination system municipal storm water
36 general permit applicable to eastern Washington municipalities first
37 issued on January 17, 2007; and

38 (b) Issue an updated national pollutant discharge elimination
39 system municipal storm water general permit for any permit first
40 issued on January 17, 2007, applicable to eastern Washington

1 municipalities. An updated permit issued under this subsection
2 becomes effective August 1, 2014.

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