

SENATE BILL REPORT

SB 5136

As of February 1, 2019

Title: An act relating to establishing the water infrastructure program.

Brief Description: Establishing the water infrastructure program.

Sponsors: Senators Honeyford, Warnick, Braun, Hawkins, Wagoner and Fortunato.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/29/19.

Brief Summary of Bill

- Establishes the water infrastructure program to provide competitive grants for projects that increase the availability of water for out-of-stream uses, reduce flood risk, improve fish passage, or reduce stormwater pollution.
- Requires the Office of Columbia River, the Office of Chehalis Basin, the Fish Barrier Removal Board, and the Department of Ecology (DOE) to review applications to ensure projects meet certain criteria.
- Directs DOE to submit ranked project lists to the Legislature before regular session begins in odd-numbered years.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: Office of the Columbia River. In 2006, the Legislature enacted the Columbia River Basin Water Supply Act relating to water resource management in the Columbia River Basin (Basin). The Office of the Columbia River (OCR) is tasked with developing water sources that includes storage and conservation for the economic and community development needs of people, as well as the instream flow needs of fish. Water supplies developed and secured through projects funded from Basin accounts must be used in specified ways. Two-thirds of this water must be dedicated to out-of-stream uses, while one-third must be used by OCR to enhance instream flows.

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.

Office of Chehalis Basin. Legislation in 2016 created the Office of Chehalis Basin (OCB) within DOE. Its purpose is to aggressively pursue implementation of an integrated strategy and administer funding for long-term flood damage reduction and aquatic species restoration in the Chehalis River Basin. A Chehalis board was created to provide oversight of strategy implementation and development of budget recommendations to the Governor. The strategy must include a detailed set of actions, an implementation schedule, and quantified measures to evaluate success.

Fish Barrier Removal Board. The Legislature established the Fish Barrier Removal Board (FBRB) in 2014 to identify and remove impediments to salmon and steelhead migration. The role of the FBRB is to adopt governing policies, set project evaluation criteria, review project scoring and recommendations from the FBRB Technical Review Team, and approve a project priority list to be submitted to the Governor's Office and the Legislature for funding consideration. The grant program is administered jointly by the Washington Department of Fish and Wildlife and the Recreation and Conservation Office.

Stormwater. Stormwater is commonly transported through separate conveyance systems than wastewater, and subsequently discharged untreated into water bodies. The federal Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which regulates stormwater discharges. NPDES permitting authority is delegated to the state, allowing DOE to issue stormwater permits. DOE, using state funds appropriated by the Legislature or federal funds allocated under the Clean Water Act, provides grants and loans to local governments to help them prevent the discharge of pollutant-containing wastewater and stormwater.

Summary of Bill: The water infrastructure program (program) is established for the purpose of providing competitive grants promoting:

- increasing the availability of water for out-of-stream beneficial uses;
- reducing flood risk, protecting against flood damage, and restoring flooded areas;
- improving fish passage; or
- reducing stormwater pollution from existing development.

DOE must accept applications from sponsors from April 1 until October 1 in even-numbered years. After the application period closes, DOE must distribute applications to OCR, OCB, or FBRB and each entity must evaluate the applications and create ranked project lists.

OCR must review proposed projects designed to increase the availability of water for out-of-stream beneficial uses. The highest priority projects are projects implementing the Yakima River Basin Integrated Water Resource Management Plan or satisfying water supply needs in the Basin. Preference must also be given to projects:

- mitigate impacts to fish and wildlife; and
- include practicable conservation measures ensuring water is used efficiently.

OCB must review proposed projects designed to reduce the risk of flooding, protect against damage possibly caused by flooding, and restore areas where flooding has occurred. The highest priority projects are those implementing the Chehalis basin strategy. Preference must be given to projects:

- located in areas historically at the greatest risk and most vulnerable to flooding; and

- eliminating or minimizing the risk of future damage or disruption to critical infrastructure.

OCR and OCB may consider whether a project helps the state prepare for climate change and preference must be given to projects providing multiple benefits.

FBRB must review proposed projects designed to improve fish passage. The highest priority projects are those satisfying the state's obligations under a court order. Preference must be given to projects sponsored by a city or county.

DOE must review proposed projects designed to reduce stormwater pollution from existing development. Preference must be given to projects:

- relying on low-impact development retrofit techniques; and
- having a high water quality benefit and address stormwater pollution from existing infrastructure.

For all projects, preference must be given to those providing a higher level of sponsor funding. Consideration should be given to whether a project is consistent with the Puget Sound Action Agenda. Projects may be consistent with more than one objective, but a sponsor is required to identify the primary objective for a project.

Sponsors applying for funding are required to provide a minimum of 25 percent in sponsor funding. Sponsor funding includes funds, commitments, or contributions dedicated to the project. Sponsors may receive credit for certain funding contributed no earlier than ten years and that was dedicated to the project. A sponsor who is not approved may reapply during a subsequent application period.

Projects must be ranked so approximately equal amounts will have been allocated among each of the four project categories over the first 20 years of the program and in a manner designed to provide funding for as many projects as practicable, while attempting to ensure each project will receive sufficient funding to facilitate successful completion of the project. Condemnation may not be used on any project receiving funding through this program.

DOE must submit ranked lists to the Legislature before regular session begins in odd-numbered years, and publish a list of approved projects based on appropriations made by the Legislature. DOE must monitor progress in completing projects and achieving desired outcomes for projects funded under the program. Beginning July 1, 2021, DOE must submit biennial reports to the Legislature.

A program account, a bond account, and a taxable bond account are created. DOE may not obligate funds from the accounts before the Legislature has appropriated them, for the purpose of funding projects under this chapter. The Legislature intends to appropriate \$500 million each biennium for projects under this program, up to a total of \$5 billion.

Appropriation: None.

Fiscal Note: Requested on January 25, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill gives priority funding to those areas which already have a plan in place like Chehalis Basin, Colombia Basin, Yakima Basin. The bill would appropriate \$500 million out of the capital budget. Currently, the state is spending \$330 million roughly each biennium on water projects. Innovative water infrastructure financing is crucial and a competitive grant system is beneficial. Dedicated water funding infrastructure is very helpful when dealing with aging infrastructure. Continued reliable funding sources are important to maintain these infrastructures and keep water on the lands. It is important when doing work to improve infrastructure to also include provisions to improve instream flows for fish. This bill presents a great opportunity to bring state level water infrastructure investments together in the same place, providing investments in the state's economy, the environment, and in public safety. The bill provides for a 25 percent match component. The match requirements in place with other funding programs are being under-utilized by counties because counties do not have the resources to meet those match requirements. This bill provides funding for fish and habitat that will need water as well as infrastructure needs as our climate continues to change. This bill is a way to save the Odessa aquifer by transitioning from deep wells to canal water and help save 22 towns in the area from going dry and 200,000 people from losing their water.

OTHER: The language in the bill might limit which Yakima Integrated Plan projects can apply for funding because some individual projects will not meet requirements in the bill. This bill recognizes that a steady stream of funding is necessary for the Yakima Integrated Plan, OCR, and OCB, as well as fish barrier removals and storm water pollution remediation. The water supply and flood risk sections would benefit from more definition to ensure that they are sufficiently flexible to fund a variety of water infrastructure and ecosystem restoration elements. The fish barrier removal section needs more specificity around what is eligible for funding so that takes into account all the fish barriers on a stream. There is no explicit rule making authority in the bill and rules may be needed.

Persons Testifying: PRO: Senator Jim Honeyford, Prime Sponsor; Tom Davis, Washington Farm Bureau; Paul Jewell, Washington State Association of Counties; Mike Schwisow, Washington State Water Resources Association and Columbia Basin Development League; Scott Revell, Roza Irrigation District; Justin Harter, Manager, Naches-Selah Irrigation District; Lori Brady, Sunnyside Valley Irrigation District; James Willards, Roza Irrigation District Board; Urban Eberhart, Kittitas Reclamation District; Michele Kiesz, citizen; Heath Gimmestad, Friehe Farms.

OTHER: Michael Garrity, Washington Department of Fish and Wildlife; Lisa Pelly; Mary Verner, Washington Department of Ecology; Tom Ring, DNR—Yakima Nation; Carl Schroeder, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: No one.