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**SENATE BILL 5895**

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**State of Washington**                      **53rd Legislature**                      **1993 Regular Session**

**By** Senators Fraser, Deccio, Moore, Talmadge and Sutherland

Read first time 02/23/93. Referred to Committee on Ecology & Parks.

1            AN ACT Relating to the environmental science advisory board;  
2 amending RCW 70.105D.030 and 70.94.039; adding a new chapter to Title  
3 43 RCW; creating new sections; and declaring an emergency.

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

5            NEW SECTION.    **Sec. 1.**    TITLE.    This chapter shall be known as the  
6 environmental science advisory board act.

7            NEW SECTION.    **Sec. 2.**    INTENT.    The legislature intends by enacting  
8 this chapter:

9            (1) That scientific expertise be provided to guide the legislature  
10 and state agencies in the formulation of environmental quality  
11 policies, and in the adoption of program budgets, that address  
12 significant threats to environmental quality, and to ensure that the  
13 limited public and private resources available for environmental  
14 protection strategies be allocated consistently with the relative  
15 magnitude of environmental threats;

16            (2) To periodically evaluate and make recommendations to the  
17 legislature and the governor on environmental monitoring and data

1 management systems to comprehensively assess trends in different  
2 environmental parameters;

3 (3) To make recommendations for modifying existing policies and  
4 programs to address new or increased environmental threats, as well as  
5 reduced or eliminated environmental threats;

6 (4) That laws, rules, and programs for the protection of  
7 environmental quality are adopted and implemented in light of  
8 established scientific methods and information, giving due regard to  
9 the advancement of scientific learning that may affect existing or  
10 proposed regulations;

11 (5) That laws and rules for the protection of environmental quality  
12 should take into account the relative risk associated with the threat  
13 being addressed, and the nature and extent of such risk should be  
14 assessed under sound scientific review; and

15 (6) That the public, legislature, and agencies implementing  
16 environmental protection laws will be well served in these concerns by  
17 the creation of an environmental science advisory board to advise the  
18 legislature, governor, and state agencies on all scientific matters  
19 relating to the protection of environmental quality.

20 NEW SECTION. **Sec. 3.** DEFINITIONS. As used in this chapter,  
21 unless the context requires otherwise, "environmental quality" shall  
22 mean and include public health parameters associated with pollutants or  
23 contaminants to any or all environmental media, including air, water,  
24 and land. "Environmental quality" shall also include all parameters  
25 associated with sustainable ecological systems in addition to such  
26 public health parameters. The term "environmental quality" as used in  
27 this chapter generally does not include public health parameters  
28 associated with workplace safety, food safety and inspection,  
29 communicable disease and related public health concerns, or the  
30 provision of health care services.

31 NEW SECTION. **Sec. 4.** BOARD MEMBERSHIP AND MEETINGS. (1) There is  
32 created the environmental science advisory board. The board shall  
33 consist of seven members appointed by the governor. The members shall  
34 be qualified by education, training, and experience to evaluate  
35 scientific and technical issues relative to policies, programs, laws,  
36 and rules for the protection of environmental quality. Board members  
37 may possess specialized expertise in scientific disciplines such as

1 biology, chemistry, geology, hydrology, climatology, forestry, ecology,  
2 engineering, toxicology, mathematics, and statistics.

3 (2) The members of the board first appointed shall serve terms as  
4 follows:

5 (a) Three members shall serve three-year terms; and

6 (b) Four members shall serve two-year terms.

7 Thereafter, members appointed to replace members completing their terms  
8 shall be appointed to two-year terms. Upon resignation of a member the  
9 governor shall appoint a replacement within thirty days of the  
10 resignation's effective date.

11 (3) The governor shall make the initial appointments to the board  
12 within one hundred twenty days of the effective date of this act.  
13 Within one hundred fifty days of the effective date of this act, the  
14 governor shall convene the initial meeting of the board. At the  
15 initial meeting the members shall choose a chair. Thereafter, the  
16 position of chair shall be rotated annually.

17 (4) The board shall adopt procedures governing its activities and  
18 meetings, which shall be open to the public. The board shall adopt  
19 procedures allowing for public review and comment on board  
20 deliberations and reports.

21 NEW SECTION. **Sec. 5. ADMINISTRATION.** (1) The department of  
22 ecology shall provide necessary administrative and staff support to the  
23 board. Any other agency of state government, or public institution of  
24 higher education, may detail one or more employees to support the  
25 activities of the board.

26 (2) Per diem compensation shall be provided to the members pursuant  
27 to RCW 43.03.040.

28 NEW SECTION. **Sec. 6. POWERS AND DUTIES.** (1) The board shall  
29 periodically advise the legislature, governor, and state agencies  
30 implementing environmental quality laws, on matters relating to:

31 (a) Relative priorities of environmental threats, and the  
32 correspondence of laws, programs, and program budgets to address such  
33 threats;

34 (b) Methods to improve environmental parameter monitoring and data  
35 management for the purpose of assessing environmental trends and  
36 improving the response of programs to environmental threats;

1 (c) Methods to integrate scientific testing and evaluation in the  
2 assessment of risks that are considered in the adoption of  
3 environmental quality laws, rules, and policies.

4 (2) In addition to the duties under subsection (1) of this section,  
5 the board may, within appropriated funding, review existing and  
6 proposed environmental quality rules and policies adopted by the  
7 department of ecology or other agencies of state government. As soon  
8 as practicable after the development of proposed rules or policies, a  
9 state agency developing an environmental quality rule shall seek the  
10 board's advice and guidance to incorporate the best available  
11 scientific and technical information. The board shall establish  
12 procedures to facilitate such consultation and to provide timely and  
13 complete advice to the agency. Where the board determines not to  
14 review or provide advice on the rule or policy, it shall notify the  
15 agency in writing in an expeditious manner to avoid delays to the  
16 agency's schedule. The agency proposing the rules shall assist in the  
17 board's review by providing an explanation of the scientific and  
18 technical basis for the proposed rules or policies. The responsible  
19 official of the agency adopting the rules or policies shall give due  
20 consideration to the advice of the board.

21 (3) In providing advice on a proposed environmental quality rule or  
22 policy, the board shall apply its scientific and technical expertise in  
23 the consideration of:

24 (a) The nature of the harm to be avoided or prevented, including,  
25 but not limited to, acute or chronic damage to living organisms, loss  
26 or destruction of natural resources, aesthetic damage to the  
27 environment, or damage to public health;

28 (b) Whether the occurrence of such harm is predicted based on  
29 actual past occurrences or is based on theoretical predictions from  
30 known data; and

31 (c) The probability of occurrence of such harm and the relation of  
32 such probability to the normal risks associated with everyday life.

33 (4) Beginning July 1, 1994, the board shall assume the advisory  
34 duties of the science advisory board on hazardous waste cleanup issues  
35 required under RCW 70.105D.030(4).

36 (5) The board shall also advise the department of ecology with  
37 respect to air contaminant emissions risks as required by RCW  
38 70.94.039.

1       **Sec. 7.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read  
2 as follows:

3       (1) The department may exercise the following powers in addition to  
4 any other powers granted by law:

5       (a) Investigate, provide for investigating, or require potentially  
6 liable persons to investigate any releases or threatened releases of  
7 hazardous substances, including but not limited to inspecting,  
8 sampling, or testing to determine the nature or extent of any release  
9 or threatened release. If there is a reasonable basis to believe that  
10 a release or threatened release of a hazardous substance may exist, the  
11 department's authorized employees, agents, or contractors may enter  
12 upon any property and conduct investigations. The department shall  
13 give reasonable notice before entering property unless an emergency  
14 prevents such notice. The department may by subpoena require the  
15 attendance or testimony of witnesses and the production of documents or  
16 other information that the department deems necessary;

17       (b) Conduct, provide for conducting, or require potentially liable  
18 persons to conduct remedial actions (including investigations under (a)  
19 of this subsection) to remedy releases or threatened releases of  
20 hazardous substances. In carrying out such powers, the department's  
21 authorized employees, agents, or contractors may enter upon property.  
22 The department shall give reasonable notice before entering property  
23 unless an emergency prevents such notice. In conducting, providing for,  
24 or requiring remedial action, the department shall give preference to  
25 permanent solutions to the maximum extent practicable and shall provide  
26 for or require adequate monitoring to ensure the effectiveness of the  
27 remedial action;

28       (c) Indemnify contractors retained by the department for carrying  
29 out investigations and remedial actions, but not for any contractor's  
30 reckless or wilful misconduct;

31       (d) Carry out all state programs authorized under the federal  
32 cleanup law and the federal resource, conservation, and recovery act,  
33 42 U.S.C. Sec. 6901 et seq., as amended;

34       (e) Classify substances as hazardous substances for purposes of RCW  
35 70.105D.020(5) and classify substances and products as hazardous  
36 substances for purposes of RCW 82.21.020(1); and

37       (f) Take any other actions necessary to carry out the provisions of  
38 this chapter, including the power to adopt rules under chapter 34.05  
39 RCW.

1 (2) The department shall immediately implement all provisions of  
2 this chapter to the maximum extent practicable, including investigative  
3 and remedial actions where appropriate. The department, within nine  
4 months after March 1, 1989, shall adopt, and thereafter enforce, rules  
5 under chapter 34.05 RCW to:

6 (a) Provide for public participation, including at least (i) the  
7 establishment of regional citizen's advisory committees, (ii) public  
8 notice of the development of investigative plans or remedial plans for  
9 releases or threatened releases, and (iii) concurrent public notice of  
10 all compliance orders, enforcement orders, or notices of violation;

11 (b) Establish a hazard ranking system for hazardous waste sites;

12 (c) Establish reasonable deadlines not to exceed ninety days for  
13 initiating an investigation of a hazardous waste site after the  
14 department receives information that the site may pose a threat to  
15 human health or the environment and other reasonable deadlines for  
16 remedying releases or threatened releases at the site; and

17 (d) Publish and periodically update minimum cleanup standards for  
18 remedial actions at least as stringent as the cleanup standards under  
19 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at  
20 least as stringent as all applicable state and federal laws, including  
21 health-based standards under state and federal law.

22 (3) Before November 1st of each even-numbered year, the department  
23 shall develop, with public notice and hearing, and submit to the ways  
24 and means and appropriate standing environmental committees of the  
25 senate and house of representatives a ranked list of projects and  
26 expenditures recommended for appropriation from both the state and  
27 local toxics control accounts. The department shall also provide the  
28 legislature and the public each year with an accounting of the  
29 department's activities supported by appropriations from the state  
30 toxics control account, including a list of known hazardous waste sites  
31 and their hazard rankings, actions taken and planned at each site, how  
32 the department is meeting its top two management priorities under RCW  
33 70.105.150, and all funds expended under this chapter.

34 (4) (~~The department shall establish a scientific~~) The  
35 environmental science advisory board (~~(to)~~) created by section 4 of  
36 this act shall render advice to the department with respect to the  
37 hazard ranking system, cleanup standards, remedial actions, deadlines  
38 for remedial actions, monitoring, the classification of substances as  
39 hazardous substances for purposes of RCW 70.105D.020(5) and the

1 classification of substances or products as hazardous substances for  
2 purposes of RCW 82.21.020(1). ~~((The board shall consist of five  
3 independent members to serve staggered three year terms. No members  
4 may be employees of the department. Members shall be reimbursed for  
5 travel expenses as provided in RCW 43.03.050 and 43.03.060.))~~

6 (5) The department shall establish a program to identify potential  
7 hazardous waste sites and to encourage persons to provide information  
8 about hazardous waste sites.

9 **Sec. 8.** RCW 70.94.039 and 1991 c 199 s 314 are each amended to  
10 read as follows:

11 (1) The environmental science advisory board ~~((is hereby))~~ created  
12 ~~((to))~~ by section 4 of this act shall advise the department on  
13 procedures for assessing and managing the risks associated with air  
14 contaminant emissions. ~~((The board shall consist of five members  
15 knowledgeable in the fields of risk assessment or risk management.  
16 Members shall be appointed by the director of the department. The  
17 board shall be staffed by the department.))~~

18 (2) The board shall:

19 (a) Advise the department on the most appropriate methods for  
20 identifying and measuring cancer risks or other chronic health effects  
21 resulting from exposure to air contaminant emissions; and

22 (b) Identify, evaluate, and recommend procedures relating to  
23 managing the risks associated with exposure to air contaminant  
24 emissions.

25 (3) In fulfilling its duties under subsection (2) of this section,  
26 the board shall consider all appropriate studies and reports relating  
27 to risk assessment or risk management including but not limited to  
28 reports authorized by the federal clean air act from the national  
29 academy of sciences and the risk assessment and risk management  
30 commission.

31 (4) ~~((Members shall be compensated as provided in RCW 43.03.250 and  
32 shall be reimbursed for travel expenses as provided in RCW 43.03.050  
33 and 43.03.060.~~

34 ~~(5))~~ The duties of the board under this section shall terminate on  
35 July 1, 1996.

36 NEW SECTION. **Sec. 9.** BOARD WORK PLAN. Within sixty days of its  
37 initial meeting, the board shall develop a work plan that sets

1 priorities for carrying out the duties required by section 6 of this  
2 act and RCW 70.105D.030 and 70.94.039. To assist in developing the  
3 work plan and setting priorities, all agencies scheduling the potential  
4 adoption of an environmental quality rule for the succeeding two years  
5 shall provide to the board a description of the proposed subject matter  
6 and intended timeline for rule development and adoption. Minor  
7 amendments to existing rules need not be included. The work plan shall  
8 set higher priority for review upon those rules with substantial impact  
9 upon regulated entities and that are addressed to substantial  
10 environmental risks. The work plan shall be submitted to the fiscal  
11 and environmental standing committees of the legislature, and to the  
12 office of financial management, not later than December 31, 1993.

13 NEW SECTION. **Sec. 10.** CAPTIONS. Captions as used in this act  
14 constitute no part of the law.

15 NEW SECTION. **Sec. 11.** CODIFICATION. Sections 1 through 6 of this  
16 act shall constitute a new chapter in Title 43 RCW.

17 NEW SECTION. **Sec. 12.** REPEALERS. The following acts or parts of  
18 acts are each repealed, effective June 30, 1999:

- 19 (1) Section 1 of this act;
- 20 (2) Section 2 of this act;
- 21 (3) Section 3 of this act;
- 22 (4) Section 4 of this act;
- 23 (5) Section 5 of this act; and
- 24 (6) Section 6 of this act.

25 NEW SECTION. **Sec. 13.** EMERGENCY CLAUSE. This act is necessary  
26 for the immediate preservation of the public peace, health, or safety,  
27 or support of the state government and its existing public  
28 institutions, and shall take effect immediately.

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