

# HOUSE BILL REPORT

## ESHB 2439

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**As Passed House:**  
February 17, 2014

**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:** House Committee on Environment (originally sponsored by Representatives Takko, Fitzgibbon, Tharinger, Ryu and Roberts; by request of Department of Ecology).

**Brief History:**

**Committee Activity:**

Environment: 1/24/14, 1/31/14 [DPS].

**Floor Activity:**

Passed House: 2/17/14, 95-2.

**Brief Summary of Engrossed Substitute Bill**

- Amends programs administered by the Department of Ecology to remove inconsistencies, delete outdated provisions, and clarify local government authority.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Senn, Vice Chair; Farrell, Fey, Kagi, Morris, Ortiz-Self and Tharinger.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Harris, Nealey and Overstreet.

**Staff:** Megan Mulvihill (786-7291) and Jason Callahan (786-7117).

**Background:**

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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.*

The Department of Ecology (DOE) is responsible for managing many state policies regarding the environment. The DOE's authority includes multiple statutes managing the state's water resources, air quality, pollution, solid and hazardous wastes, toxic hazards, and the state shorelines. Many of the DOE's orders and decisions may be appealed to the Pollution Control Hearings Board (PCHB).

Some of the programs administered by the DOE include the authority to:

- adopt rules and standards for noise abatement and control;
- review and approve county comprehensive solid waste management plans along with providing technical and financial aid assistance;
- exempt solid waste permit requirements for wastes with beneficial uses;
- prepare and update a statewide master oil and hazardous substance spill prevention and contingency plan; and
- review and approve shoreline master programs, including the program's designation and oversight of critical areas.

### **Summary of Engrossed Substitute Bill:**

Programs administered by the DOE are amended to eliminate inconsistencies among statutes, clarify statutory language, make technical changes, repeal outdated provisions, harmonize statutory provisions related to the PCHB, and update the PCHB statute to reflect references to PCHB review in other environmental statutes. Local governments are also provided authority in managing noise control. Changes are made to the following statutes:

- Pollution Control Hearings Board (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 (90.58 RCW); and
- Water Pollution Control (90.48 RCW).

Specific details of the substantive changes include:

- Appeals involving a penalty of \$15,000 or less, or an appeal of a corrective action order from the local air authority, may be heard by a member of the PCHB or an administrative appeals judge employed by the PCHB.
- The use of financial aid for the preparation of county comprehensive plans for solid waste management may also be used for implementation, in addition to plan development. Transfer stations are included in disposal sites.
- Local governments must match their financial aid for planning and implementation of their solid waste management comprehensive plans. The amount is to be determined by the director up to 25 percent of the estimated cost of planning.
- The jurisdictional health department must match aid allocated by DOE. The amount is to be determined by the department up to 25 percent of the total amount spent for enforcement activity during the year.
- Proposals exempting beneficial uses of solid waste must be forwarded to all jurisdictional health departments for review and comment before the DOE's decision to adopt an exemption is made.
- The DOE's requirement to adopt maximum noise levels is struck, and a requirement added that would require the DOE to adopt rules to establish model standards for

noise control regulation. The substitute also authorizes local governments to adopt and enforce noise regulations.

In addition, the following requirements and authorizations are removed:

- deletes DOE's requirement to submit an annual state Master Oil and Hazardous Substance Spill Prevention and Contingency Plan to the Legislature;
- removes a duplicative provision regarding an effective date for updated Shoreline Master Programs;
- eliminates the Vessel Response Account (VRA), and adds language transferring any money remaining in the VRA to the Coastal Protection Account; and
- repeals provisions authorizing the Director to construct a steam electric generating plant, and repeals additional statutes in regards to noise control and solid waste management.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3 relating to the authority of the Pollution Control Hearings Board, which takes effect June 30, 2019.

**Staff Summary of Public Testimony:**

(In support) This is agency request legislation that is more directed towards local governments and agencies. It is a cleanup bill that is quite technical and makes some substantive changes. There are at least six different environmental statutes included in the bill that are assigned to the DOE. These statutes touch on other agencies, local governments, and citizens. It is believed that these changes will clarify and help all stakeholders. Some sections are confusing or contradictory while some are unnecessarily restrictive.

The solid waste grants have clutter and outdated language, and they require a match for aid that is not useful for local governments. The grants are provided to all counties in the state, and some of the small counties cannot come up with the fund match. It would benefit the operation of that fund to update how the language is used and update the match to make it more feasible. The language in the law is around the launch of the effort rather than where we are now.

There are some procedures that are cumbersome, such as a need to make beneficial use determinations for certain waste products. Formal rules have to be adopted, and this is too cumbersome. The noise management statute is embarrassing since the DOE stopped doing active work on it. Local governments are not provided support and every couple of months they come to the DOE asking about it and for assistance. Local governments need to submit their noise proposals to the DOE for review which hasn't been done for years. In reality, local governments have the authority to regulate noise and statute should reflect this.

The Vessel Response Account will be closed and the funds transferred to the Coastal Protection Account. The vessel response account is not an active account, and it is just

sitting idle in the state budget. The Coastal Protection Account provides a wide range of support for environmental projects, and the funds would be put to use rather than sitting idly.

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

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