

# SENATE BILL REPORT

## E2SHB 1866

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As Reported By Senate Committee On:  
Agriculture & Environment, April 3, 1997

**Title:** An act relating to the establishment of voluntary programs creating environmental excellence program agreements.

**Brief Description:** Allowing for the creation of environmental excellence program agreements.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Chandler, Linville, Lisk, Delvin and Schoesler).

**Brief History:**

**Committee Activity:** Agriculture & Environment: 3/27/97, 4/3/97 [DPA-WM, DNP].

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### SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.  
Signed by Senators Morton, Chair; Swecker, Vice Chair; Oke and Rasmussen.

**Minority Report:** Do not pass.  
Signed by Senators Fraser and McAuliffe.

**Staff:** Kari Guy (786-7437)

**Background:** Project XL is a federal pilot program introduced in 1995 to give industries greater flexibility in environmental permitting. Under a Project XL agreement, the federal Environmental Protection Agency will provide considerable flexibility in the existing regulatory structure, in exchange for "superior environmental performance" by the facility. Agreements are negotiated between a facility, regulators, and members of the general public.

Three Project XL agreements have been put in place, in Arizona, Florida, and Georgia. No agreements have been proposed in Washington. Critics of the federal program contend that the lack of statutory authority for the projects leaves the agreements vulnerable to legal challenges. In addition, a lack of dedicated staff and unclear program goals have made negotiation of XL agreements time consuming and uncertain.

**Summary of Amended Bill:** The director of a state, regional, or local agency may enter into an environmental excellence program agreement (environmental agreement) with any person regulated under the environmental laws of the state. Existing legal requirements inconsistent with the environmental agreement are superseded by the agreement. If multiple agencies administer environmental laws that would be affected by the agreement, the Department of Ecology must designate or act as the coordinating agency. Environmental laws— includes the chapters of law regulating clean air, solid waste management, public water system operation, hazardous waste management, hydraulic project approvals, water pollution control, air and water pollution disclosure, the Shoreline Management Act, dairy

waste management, and Puget Sound water quality protection, as well as the water resource fundamentals defined in statute.

An environmental agreement must achieve either better overall environmental results or more efficient environmental results. More efficient environmental results are results that are achieved at less costs but do not decrease the overall environmental results at the facility. An agreement may not authorize the release of pollutants that will cause ambient air or water quality standards to be exceeded.

An environmental agreement may be proposed for an individual facility by the owner of the facility, or a programmatic agreement may be proposed for multiple facilities by an authorized representative of the facilities. The proposal for the environmental agreement must include a statement describing the project, an environmental checklist and analysis, a draft environmental agreement, and a description of the stakeholder process.

The stakeholder process must involve communities near the project, employees at the facility, and business, environmental or other public interest groups. Stakeholder participation and review must occur during the development, consideration, and implementation stages of the environmental agreement.

The final environmental agreement includes a description of all legal requirements that are superseded by the agreement, all enforceable legal requirements created by the agreement and additional voluntary goals to be pursued by the sponsor. In addition, the environmental agreement must define the agreement implementation, public participation, monitoring, and performance review. All environmental agreements are for a set term, and include provisions for renewal and voluntary or involuntary termination. The environmental agreement must be signed by the sponsor and the directors of each agency administering legal requirements that will be affected by the agreement.

Notice of a proposed environmental agreement must be provided to the public and to federal agencies. After a 30-day comment period, agencies must prepare a responsiveness summary on all comments. The state may not enter into an environmental agreement if a federal agency objects to provisions of the agreement that relate to a federal regulatory program. A local or regional agency may not enter into an environmental agreement if a state agency objects to provisions of the agreement that relate to a state regulatory program.

Approval of an environmental agreement may be appealed to superior court. Denial of an environmental agreement is not subject to appeal. The superior court may grant relief from the decision to enter an environmental agreement only if the agreement violates constitutional provisions, exceeds the statutory authority of the agency, was arbitrary and capricious, or does not comply with the procedures in statute.

Once the final environmental agreement is signed, the agencies have 120 days to revise the permits that will be superceded by the environmental agreement. The legal requirements contained in a permit that will be superceded by the environmental agreement remain in place until the permit is revised. Any permit revision must include the normally applicable public notice and comment provisions.

A programmatic environmental agreement will become applicable to an individual facility when the owner or operator commits to comply with the agreement. The method for identifying and documenting the commitments of individual participants in a programmatic agreement must be included in the agreement. A programmatic agreement will not apply to an individual facility until notice and an opportunity to comment has been provided for the individual facility.

An environmental agreement may be terminated by the director of an agency if the facility has repeatedly violated requirements in the agreement, if operation of the facility has caused endangerment to public health or the environment, or if the facility has failed to make progress in achieving the voluntary goals of the agreement. The decision to terminate an agreement may be appealed to superior court. After the agreement is terminated, the sponsor must re-apply for any permits affected by the termination. Unless the director specifies interim requirements for the facility in the termination order, the environmental agreement remains in effect until the new permits are issued.

Agencies authorized to enter into environmental agreements may collect a fee to recover the costs of processing the proposal, defending an appeal and monitoring implementation of the agreement. An environmental agreement may contain a reduced fee schedule for permits covered by the agreement.

An advisory committee consisting of two representatives of state agencies, two representatives of the business community, and two representatives of environmental organizations is created to review the environmental excellence agreement program. The committee must submit a report to the Legislature by October 31, 2001.

No state agency may enter into a new environmental agreement after June 30, 2002. Agreements in effect prior to June 30, 2002 shall remain in effect.

**Amended Bill Compared to Substitute Bill:** The striking amendment specifies that an environmental agreement may not allow ambient air or water quality standards to be exceeded. Agencies may recover the costs associated with defending the appeal of an environmental agreement, and monitoring implementation of an agreement. A local agency may not enter into an environmental agreement if a state agency objects to provisions of the agreement that relate to a state regulatory program.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** This bill will encourage innovative approaches to accomplish the same or better environmental results. The bill focuses on results rather than on process. The state or local agencies will have ultimate veto power over any agreement. There is an extensive stakeholder involvement process, and a full analysis of environmental impacts. The bill will provide needed regulatory flexibility.

**Testimony Against:** The idea of greater flexibility is positive, but concerns about health risks and environmental protection have not been addressed in this bill. Environmental agreements should not be exempt from SEPA. The program should be limited to a few pilot projects initially, with a full program developed based on the results of those pilots. Stakeholders will not have meaningful participation without funding for technical assistance.

**Testified:** PRO: Eric Bergman, Washington State Association of Counties; Mike Ryherd, Puget Sound Air Pollution Control Agency; Jerry Smedes, Washington Environmental Industry Association; Scott Hazelgrove, AWB; Kris Holm, NWPPA; CON: Forest V. Russell; Gerald Pollet, Heart of America Northwest; Dawn Vyvyan, Yakama Indian Nation; Bruce Wishart, People for Puget Sound; Scott Merriman, Washington Environmental Council; NEUTRAL: Ed Thorpe, Coalition for Clean Water.