

HOUSE BILL REPORT

HB 2847

As Reported by House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to evaluating the performance of the state storm water program.

Brief Description: Improving water quality through sound storm water management.

Sponsors: Representatives Cooper, Roach, Berkey, Cairnes, Linville, Esser, Kirby, Reardon, Casada, Doumit, Ogden, Chase and Pearson.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/5/02, 2/8/02 [DPS];

Appropriations: 2/9/02, 2/11/02 [DP2S(w/o sub AGECE)].

Brief Summary of Second Substitute Bill

- Requires the Department of Ecology (DOE) to establish a Storm Water Advisory Committee to coordinate and assist with implementation of storm water management in Washington.
- Requires the Independent Science Panel to review the science supporting the development of the western Washington manual and any alternative watershed-based mitigation practices recommended by the committee.
- Requires the DOE to conduct a cost-benefit analysis for use of the manuals.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Linville, Chair; Hunt, Vice Chair; Schoesler, Ranking Minority Member; Cooper, Delvin, Dunshee, Grant, Holmquist, Kirby, Quall and Roach.

Minority Report: Do not pass. Signed by 2 members: Representatives Chandler and Sump.

Staff: Caroleen Dineen (786-7156).

Background:

The Department of Ecology (DOE) administers a state program for discharge of pollutants to state waters. State permits are required for anyone who discharges waste materials from a commercial or industrial operation to ground or to publicly-owned treatment plants. State permits are also required for municipalities that discharge to ground.

The DOE also provides storm water management manuals (manuals) to assist local governments and businesses to develop storm water programs. The DOE recently completed its revision of the western Washington manual and is currently working to complete the eastern Washington manual.

The federal Clean Water Act (CWA) establishes the National Pollution Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. The NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. Washington's DOE has been delegated authority by the United States Environmental Protection Agency (EPA) to administer the NPDES permits.

In the state and the NPDES permit programs, the DOE issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers). These permits include limits on the quantity and concentrations of contaminants that may be discharged. These permits also may require wastewater treatment or impose operating or other conditions.

Phase I of the NPDES storm water permit program applies to six local governments (Seattle, Tacoma, and the unincorporated areas of Clark, Pierce, King, and Snohomish Counties) and to the Washington State Department of Transportation (WSDOT) facilities within those jurisdictions. The 1999 NPDES rules (Phase II of the permit program) apply to operators of small municipal separate storm sewer systems serving fewer than 100,000. The Phase II communities are required to apply for a storm water permit by March 2003.

In 1998 the Legislature created the Independent Science Panel (panel), a five-member panel of scientists with specified expertise who are appointed by the Governor, to ensure that sound science is used in salmon recovery efforts. The panel is responsible for reviewing salmon recovery plans from the Salmon Recovery Office, recommending standardized monitoring indicators and data quality guidelines related to habitat projects and salmon recovery efforts, and recommending criteria for evaluation of monitoring data.

Summary of Substitute Bill:

Storm Water Advisory Committee

The DOE must convene a Storm Water Advisory Committee (committee) to coordinate and assist with implementation of storm water management in Washington. The committee must include no more than 18 members, be representative of storm water interests from eastern and western Washington, and include representatives from urban and rural areas and arid and wet climates. The committee must include at least one representative of DOE, Department of Natural Resources, Department of Fish and Wildlife, and Department of Transportation. The committee also must include at least one representative selected by the each of the following interest groups: counties, cities, environmental organizations, general contractors, commercial and industrial builders, agricultural organizations, and businesses. Federal agency and tribal representatives must be invited and encouraged to participate.

The committee must work with the DOE and the DOE's eastern Washington storm water steering committee to:

- improve coordination between state and local government agencies on storm water management, including the appropriate use of the new storm water management manuals and a streamlined permit process with consistent outcomes and goals;
- develop recommendations for alternative watershed-based practices for flow control and water quality treatment utilizing watershed planning to assess the use of regional storm water facilities to augment or as an alternative to site-by-site storm water controls;
- study, evaluate, and make recommendations on the feasibility of alternative storm water management approaches in highly urbanized areas;
- study the appropriate use of off-site mitigation for storm water flow and water quality impacts, including issues related to stream flow impacts on fish species;
- study, evaluate, and make recommendations on the funding needs for local governments to meet the new federal storm water regulations;
- assist in developing the cost-benefit analysis required of the DOE; and
- to the maximum extent possible, coordinate efforts with the Transportation Projects Efficiency and Accountability Committee.

In addition, the committee must build upon the: (1) 2000 Storm Water Advisory Committee report to the Legislature, (2) the panel's review, and (3) the DOE's

cost-benefit analysis.

The committee must begin its work no later than July 1, 2002, and complete its work by December 31, 2003. The DOE is required to provide a progress report to the Legislature on storm water management issues no later than December 31, 2002.

Independent Science Panel Review

The Independent Science Panel (panel) must review the DOE's western Washington manual. The panel must determine:

- what scientific information was used to develop the manual, especially with respect to development of management practices and thresholds;
- whether the manual's recommendations are supportable by the cited science and, if recommendations are based on inadequate scientific support, what specific scientific studies are needed to address any identified limitations; and
- whether any recommendations for alternative watershed-based storm water practices for flow control and water quality treatment developed by the committee are scientifically supportable and, if recommendations are based on inadequate scientific support, what specific scientific studies are needed to address any identified limitations.

The panel may contract with other experts to perform the required reviews. The panel must report its results for the western Washington manual by December 31, 2002.

Cost/Benefit Analysis

The DOE must evaluate the costs and benefits of using the manuals. The DOE evaluation must determine whether the probable benefits of the best management practices in the manuals exceed their probable costs in achieving compliance with federal and state water quality requirements. The analysis must consider both qualitative and quantitative benefits and costs. The DOE must report its results for the western Washington manual by December 31, 2002.

The DOE and other resource agencies are strongly encouraged to use flexibility in conditioning permits dealing with storm water management while an integrated storm water management process is being developed.

Substitute Bill Compared to Original Bill:

The substitute limits the Storm Water Advisory Committee (committee) to 18 members

and specifies requirements for appointment of members to reflect geographic and regional diversity and to provide for agricultural and commercial and industrial builder representation within the variety of interest groups. The substitute also directs the committee to work with the Department of Ecology's (DOE's) eastern Washington Storm Water Steering Committee and revises some of the committee's duties. In addition, the substitute requires the panel to review any committee recommendations regarding alternative watershed-based storm water mitigation practices and allows the panel to contract with experts for the required reviews. Further, the substitute focuses the DOE's cost-benefit analysis on whether the benefits of the manuals' best management practices exceed their probable costs in achieving compliance with federal and state water quality requirements. These provisions expire June 30, 2004.

Appropriation: None.

Fiscal Note: Requested February 5, 2002.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: (Original bill) Flexibility is needed for storm water management, especially when balancing public expectations for road projects to relieve congestion against funds to address transportation projects' storm water impacts. Nothing in the storm water statutes speaks to cost/benefit analysis, flexibility, alternatives, or off-site mitigation. The storm water manual is not the product of any independent regulatory authority and should not be treated as though it is a regulatory document. A process is needed to get people involved in storm water issues, and the Legislature needs to be engaged in these issues.

The bill recognizes the significant social, environmental, and economic impacts of storm water management. The bill puts the emphasis on the science and on practicality of solutions developed in the process. The bill also includes accountability.

(concerns) (Original bill) Storm water is the leading cause of pollution in urban streams and bays. Storm water management is technically challenging and very expensive. The new storm water manual for western Washington is the product of a long process.

Questions exist whether off-site mitigation works and whether it is permissible under the federal Clean Water Act. The Department of Ecology did a good job with its previous storm water advisory committee.

The cost/benefit analysis may create a large fiscal impact for the Department of Ecology. Money will be needed to do this work in the right way.

Concern exists whether the processes created in this bill would delay the issuance of National Pollution Discharge Elimination System (NPDES) permits or implementation of the storm water management manuals by local governments.

Testimony Against: None.

Testified: (In Support) Doug Levy, city of Kent and city of Everett; Tim LaPorte, city of Kent; and Dan Mathias, city of Everett; Eric Johnson, Washington Public Ports Association; Jerry Alb, Washington State Department of Transportation; Dave Williams, Association of Washington Cities; and Willy O'Neil, Associated General Contractors of Washington.

(concerns) Megan White, Department of Ecology; Bruce Wulkan, Puget Sound Water Quality Action Team; Bruce Wishart, People for Puget Sound; and Josh Baldi, Washington Environmental Council.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Ecology. Signed by 25 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Cox, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, Lisk, Mastin, McIntire, Pearson, Pflug, Ruderman, Schual-Berke, Talcott and Tokuda.

Staff: Jeff Olsen (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Ecology:

The second substitute bill adds port district representation on the Storm Water Advisory Committee. The cost-benefit analysis is revised to evaluate the probable benefits of the best management practices in the manual compared to the probable costs. Legislative findings and intent are clarified regarding storm water retention and alternative storm water management strategies.

Appropriation: None.

Fiscal Note: Requested on February 5, 2002.

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

Testimony For: None.

Testimony Against: None.

Testified: None.