

SENATE BILL REPORT

SB 5647

As Reported by Senate Committee On:
Environment, Water & Energy, February 06, 2009

Title: An act relating to establishing a pilot local water management program in one qualified jurisdiction.

Brief Description: Establishing a pilot local water management program in one qualified jurisdiction.

Sponsors: Senators Hatfield, Hewitt, Delvin and Fraser.

Brief History:

Committee Activity: Environment, Water & Energy: 2/03/09, 2/06/09 [DPS-WM].

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5647 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Fraser, Hatfield, Holmquist, Marr, Morton, Ranker and Sheldon.

Staff: Karen Epps (786-7424)

Background: The Watershed Planning Act establishes a process for local groups to develop and implement plans to manage and protect local water resources and rights. The process requires watershed planning to include an assessment of water supply and use in the planning area and development of strategies for future water use. Watershed planning may include water quality, habitat, and in-stream flow elements. Local governments initiating watershed planning create a planning unit and designate a lead agency to provide staff support. The local groups authorized to develop watershed plans are organized by water resource inventory areas (WRIA). A WRIA is an area determined to be a distinct watershed or river basin. The Department of Ecology (Ecology) identifies 62 WRIsAs.

In 2008 the Legislature authorized Ecology to spend \$195,000 to design a comprehensive water management structure for the Walla Walla River Basin. The Legislature requested that the structure address the allocation of functions, authorities, resource requirements, and issues associated with interstate watershed management of the basin. A report was written to

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 Legislature outlining the proposed governance and water management structure in December 2008.

Summary of Bill (Recommended Substitute): The initiating entities, consisting of the county boards of commissioners within the planning area, the city council of the largest Washington city in the planning area, a water right holder in the planning area, and all federally recognized tribes owning land within the planning area, may collectively petition Ecology to establish a Water Management Board (Board). The initiating entities must demonstrate that there is community support for the development of a local water management plan, commitment to enhance in-stream flows for fish, and an adequate monitoring network in place. An in-stream flow rule must be in place in the planning area, the planning area is within a fish critical basin with severely impaired flows, and the watershed planning unit has completed watershed and salmon recovery implementation plans before Ecology can approve creation of a Board.

The Board must be composed of (1) a representative from each of the counties within the planning area, (2) a representative from the largest city in the planning area, (3) a representative of the largest water user in the planning area, (4) a representative appointed by the conservation districts in the planning area, (5) a representative of the planning area water users, (6) a representative of environmental interests in the planning area, and (7) a representative of citizens at large. In addition, all federally recognized tribes within the planning area must be invited to participate and are able to appoint one member to the Board. Each Board member serves a two-year term and may be reappointed.

The Board then creates a policy advisory group to assist and advise the Board in, among other things, coordinating and developing water resource programs, planning, and activities within the planning area. The Board will also create a water resource panel that must provide technical assistance for the development of the local water plan; advice to the Board on the criteria for establishment of local water plans; and suggestions for the approval, denial, or modification of the local water plans.

The Board must assume all duties, responsibilities, and activities of the watershed planning unit, as well as develop strategic actions for the planning area, administer the local water plan process, manage the water bank, acquire rights, represent the interests of the planning area, and enter into agreements with water right holders to not divert water. Additionally, the Board must oversee local plan implementation.

The Board may provide for its own funding by adopting fees for services it provides or soliciting or accepting grants, loans, or donations. In consultation with Ecology, the Board may establish a plan that determines and sets priorities for implementation of the Board's duties if sufficient funding is not available.

The Board may establish a mechanism to bank water within the planning area. The Board may accept a surface water or groundwater right on a permanent or temporary basis. Temporary deposits remain in the ownership of the water right holder, and permanent deposits must be transferred to the state as a trust water right. The water rights or portions of water rights that are banked as mitigation are available under the local water plan for stream flow enhancement. The Board must accept water rights to be banked for in-stream flow

without doing an extent and validity review and the right may not be authorized for other purposes. However, a water right that does not undergo an extent and validity review is not protected from impairment by another water right.

In addition, a water right or a portion of a water right that is banked is not subject to loss by forfeiture. When a temporary deposit is withdrawn from the water bank, the time period that the water right was banked in this manner may not be included in the five years of prior water use review under the relinquishment statute.

The local water plan may be submitted by a water user or group of water users to the Board for approval by the Board and Ecology. The local plan must include a determination by the Board of the baseline water use for all water rights involved in the local water plan. Additionally, the local plan must include a clearly defined set of practices that provide for flexibility of water use; an estimate of the amount of water that would remain in the stream; performance measures and options for achieving reductions in total water use; performance measures for tracking improved stream flows either long term or during critical flow periods for fish; and measurement, tracking, and monitoring measures.

The Board must provide a 30-day public notice period on the proposed local water plan. The final decision of Ecology on the local water plan is appealable to the Pollution Control Hearings Board. The water users must submit annual reports to Ecology and the Board. Water rights in the local water plan are not subject to a review of the extent and validity of the water right, nor subject to loss by forfeiture.

The local water plan may be effective for a term of one to ten years. A local water plan expires by its own terms, by withdrawal of one or more water users to the local water plan, or upon agreement by all parties to the contract. If the local water plan operates for more than five years and then expires, the water users may request that the elements of the local water plan involving authorizations and conditions for use of the water rights be made permanent.

A planning unit is dissolved when Ecology approves a water management board. The pilot plan of the local water management program is WRIA 32, the Walla Walla watershed.

The Board, in collaboration with Ecology, must provide reports to the Legislature every three years beginning in 2012. The reports must summarize the actions, funding, and accomplishments of the Board, as well as any recommendations for improvement of the local water plan process.

This act expires June 30, 2019.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute): Requires that one member of the Board be an area water rights holder. Requires the policy advisory group to assist and advise the board in coordinating and developing water resource-related programs, planning, and activities within the planning area. Requires the Board to oversee local plan implementation. Modifies the language concerning when and how the Board may manage banked water. Requires a local plan to include performance measures for tracking improved stream flows either long term or

during critical flow periods for fish. Establishes that a planning unit is dissolved when Ecology approves a water management board. Makes technical changes.

Appropriation: None.

Fiscal Note: Requested on January 28, 2009.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: This bill is the product of consensus building and collaboration in the Walla Walla basin. This bill establishes a local governance structure on a pilot basis in the Walla Walla basin. This bill allows the Board to manage water with Ecology in unique and flexible ways. This bill is deemed to be the best option available to protect both fish and farms in the basin. This is the evolution of watershed planning. This bill provides a solid framework that can lead to solutions for instream flows and agriculture. There is a concern that an exempt well user needs to be on the Board to represent those interests. This bill benefits both instream and out-of-stream uses. This approach is the opportunity for the state to take a step forward in finding new ways to manage water.

Persons Testifying: PRO: Cathy Schaefer, Greg Tomkins, Walla Walla County; Hedia Adelman, Ecology; Norman MacLeod, citizen; Mike Moran, Confederated Tribe of the Umatilla Indian Reservation; Glen Smith, Washington State Groundwater Association; Mo McBroom, Washington Environmental Council; Darcy Nonemacher, American Rivers.