

# ANALYSIS OF HB 1866

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*House Agriculture & Ecology Committee  
1997*

*February 20,*

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## **BACKGROUND:**

*Project XL is a federal initiative designed to provide regulated entities with flexibility in meeting environmental requirements while reducing pollution at the same time. The projects submitted for approval must be technically and administratively feasible, the proponents must have the financial capability to carry it out, and it must have stakeholder support.*

*Project XL agreements have been put into place in Georgia, Florida, and Arizona. No such agreements have been adopted in Washington.*

## **SUMMARY:**

*Environmental excellence program agreements may be entered into to: (1) reduce emissions, waste discharge, or environmental risk that achieve better overall environmental results for the facility than otherwise is required by law; or (2) achieve compliance with environmental standards or limits in a manner that is superior to the method of compliance, or the method to demonstrate compliance, when compared to the methods required by the applicable statutes, regulations, or permit provisions. A superior method can be demonstrated by an innovative approach or cost-effective results.*

*The Governor may enter into an environmental excellence program agreement (environmental agreement) with any person regulated under the environmental laws of the state. Environmental laws— is defined as meaning the chapters of law regulating the Clean Air Act, solid waste management, hazardous waste management, hydraulic permits, water pollution, air and water pollution disclosure, oil and hazardous substance spills, Shorelines Management Act, dairy waste management, Puget Sound water quality protection, and other responsibilities assigned to the Department of Ecology.*

*The Governor may delegate responsibility to one or more agency directors to enter into these environmental agreements. The Governor may provide that the environmental agreement is effective only to the extent that it is approved by the director of the state agency administering the requirements affected by the agreement. The director of a regional agency has the same authority as the Governor to enter into these agreements.*

*An environmental agreement may be proposed by anyone owning or operating a facility subject to regulation under environmental laws, or a trade association or other authorized representatives of owners or operators of such facilities. A proposal for an environmental agreement must include information on: (1) how the proposal is consistent with the purposes of the environmental excellence program and project approval criteria; (2) a description of the project including how results will be achieved; (3) an environmental checklist to inform the public; (4) a draft environmental agreement; (5) a description of the stakeholder process; and (6) preliminary identification of permit amendments or modifications that are needed to implement the environmental agreement.*

*The proposal for an environmental agreement must include a plan to identify and contact stakeholders, advise stakeholders of the facts and nature of the project, and to request stakeholder participation and review in the development and implementation of the environmental agreement. Notice must also be provided to the federal agency responsible for administering a program under which the legal requirements will be affected.*

*The environmental agreement must contain: (1) an identification of all legal requirements that are affected by the agreement; (2) a description of any alternatives or innovations to existing legal requirements, including a statement of any enforceable requirements that differ from existing ones; (3) a statement that the penalties for violations of requirements established under the environmental agreement are the same as would apply for a violation of existing requirements that are superceded; (4) a statement of any goals for the project; (5) an implementation schedule; (6) a statement that the environmental agreement will not increase overall worker safety risks or impose unjust or disproportionate environmental impacts; (7) a statement that the stakeholder plan was implemented; (8) a description of the methods that will be used to monitor performance; (9) a description for public participation in the implementation of the environmental agreement; (10) a schedule of periodic performance review; (11) provisions for voluntary and involuntary termination; (12) the duration of the environmental agreement; (13) statements approving the agreement by the sponsor and Governor; (14) and additional terms requested by the Governor.*

*At least 30 days before an environmental agreement is entered into or modified, the Governor's designee must publish notice of the proposed agreement in a newspaper of general circulation in the vicinity of the facility covered by the proposed agreement. Notice must also be published in the Washington State Register. The notice must describe the agreement and announce that the public has an opportunity to comment. A federal agency that is given responsibility for administering a program affected by the environmental agreement must also be notified and has 30 days to raise objections.*

*Legal provisions in permits that are affected by the environmental agreement are to be revised to conform with the provisions of the environmental agreement. Other permit provisions remain in effect.*

*An environmental agreement may be terminated in whole or in part by written notice from the Governor if the facility fails to perform a term or condition in the agreement. The notice must specify the basis for the termination and provide a description of the available judicial review for the decision to terminate the agreement. The sponsor of the project has 60 days to apply for any permit or approval affected by the termination.*

*The authority of the Attorney General or prosecuting attorneys to initiate suits for violations of applicable legal requirements is unaffected, except no action may be initiated for any legal requirement superceded by the environmental agreement. No action may be initiated for failure to meet goals that were set forth in the agreement.*

*Environmental agreements may contain reduced fee schedules with respect to covered facilities. A decision to approve an environmental agreement is not subject to the State Environmental Protection Act (SEPA).*

*The director of the Department of Ecology must appoint an advisory committee to review the effectiveness of the environmental excellence program and makes its recommendations concerning the Legislature. The advisory committee consists of two state agency representatives, two representatives of the regulated community, and two representatives of environmental organizations. The advisory committee must submit a report by October 31, 2001. Staff support for the advisory committee is provided by the Department of Ecology. The environmental excellence program sunsets on June 30, 2002.*

*State, local, and regional agencies may assess a fee to cover the costs of processing environmental agreement proposals. The fee must be graduated to account for different size businesses. Sponsors may voluntarily contribute funds to administer the program.*

***Appropriation:*** *The Department of Ecology is appropriated a total of \$360,000 for the environmental excellence program in the following manner: \$120,000 from the state toxics control account, \$120,000 from the air pollution control account, and \$120,000 from the water quality permit account.*