

HOUSE BILL REPORT

E2SSB 5957

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to the collection and use of water quality data.

Brief Description: Establishing a system of standards and procedures concerning water quality data.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Rasmussen, Morton, Swecker, Doumit, Sheahan, Oke and Brandland).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/25/04, 2/27/04 [DPA].

Brief Summary of Engrossed Second Substitute Bill
(As Amended by House Committee)

- Requires the Department of Ecology (DOE) to use credible data when taking certain actions required by the federal Clean Water Act.
- Identifies criteria for data to be deemed credible data.
- Requires the DOE to develop policy regarding use of scientific research and literature, credible data criteria, and data collectors' training and experience.
- Makes knowing falsification of data a gross misdemeanor.
- Requires the DOE to provide reports to the appropriate committees of the Legislature.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 11 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

Staff: Caroleen Dineen (786-7156).

Background:

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA sets effluent limitations for discharges of pollutants to navigable waters. The Washington Department of Ecology (DOE) is delegated federal CWA authority by the United States Environmental Protection Agency (EPA) and also is the agency authorized by state law to implement state water quality programs.

The CWA requires states to adopt standards to protect fish and other aquatic life and to protect humans using water for recreation, drinking water, and fish. These water quality standards are rules that specify the desired water quality to be achieved or maintained and protect existing water quality from degradation. Washington's water quality standards consist of designated uses, criteria necessary to protect those uses, and the Antidegradation Policy, which establishes procedures for regulating an activity that might affect a water body.

The CWA requires states to periodically assess the water quality of their water bodies in both general and specific ways. First, Section 305(b) of the federal CWA requires states to prepare a state-wide assessment every two years of the health of the state's water bodies (the "305(b) report"). Second, Section 303(d) of the federal CWA requires states to prepare a list every two years of the specific water bodies (or segments) that do not meet the state water quality standards (the "303(d) list"). The DOE's policy for assessing whether water bodies are impaired for purposes of the 303(d) list includes criteria for data submitted by interested parties, quality assurance requirements, and other assessment considerations.

The DOE must develop water cleanup plans for all water bodies included on the 303(d) list. These plans (known as "total maximum daily loads" or "TMDLs") are developed to address the pollutants in the impaired water body that do not meet state water quality standards and to restore water quality to the impaired water body. A TMDL includes a technical assessment of the impaired water body, an analysis of the amount that pollution needs to be reduced to meet water quality standards, an implementation plan to control pollution from various sources, and a monitoring plan to assess effectiveness.

Summary of Amended Bill:Credible Data

The DOE must use credible information and literature when developing and reviewing a surface water quality standard or technical model used to establish a TMDL for any surface water in the state. The DOE must use credible data when: (1) determining

whether any water body is to be placed on or removed from the 303(d) list; (2) establishing a TMDL; or (3) determining whether any surface water is supporting its designated use or other classification. Data is considered credible data if:

- appropriate quality assurance and quality control procedures were followed and documented for analysis and collection of water quality samples;
- the samples or measurements are representative of water quality conditions at the time the data was collected;
- the data consists of an adequate number of samples based on the sampling objectives, nature of the water body, and the parameters being analyzed; and
- the sampling and analysis conform to methods and protocols generally acceptable in the scientific community as appropriate for assessing the condition of the water.

Data interpretation, statistical, and modeling methods must be generally acceptable in the scientific community as appropriate for these assessments.

Definitions are included for purposes of the credible data provisions.

Policy and Information Requests

Requirements for data policy development and response to data inquiries are specified. The DOE must develop policy:

- explaining how it uses scientific research and literature for developing and reviewing any water quality standard or TMDL technical model;
- describing the specific criteria determining data credibility; and
- defining the appropriate training and experience for collection of credible data.

In addition, the DOE must respond to questions regarding the data, literature, and other information it uses for these types of water quality actions. The DOE must reply to such requests within five business days, acknowledging receipt of the request and providing a reasonable estimate of the time needed to respond.

Data Accuracy

Any person who knowingly falsifies data is guilty of a gross misdemeanor.

Reports

The DOE must provide a status report regarding activities conducted to comply with these provisions to the appropriate committees of the Legislature by December 31, 2005. The DOE also must provide a report by December 31, 2006, on any rulemaking or policy development required to implement these provisions, including changes to listings from the use of credible data.

Findings and Intent

Legislative findings recognize a need for proper collection and review of credible water quality data and the need to collect and evaluate all existing and readily available water quality data. Legislative findings also recognize the importance of developing and implementing water quality protection measures based on credible data to ensure financial resources are prioritized to address the state's most important water quality issues. Legislative intent is specified to ensure credible water quality data is used for assessment of the status of a water body relative to surface water quality standards. Legislative intent also is specified to not list as impaired any water body in which pollutant loadings from naturally occurring conditions are the sole cause of the applicable water quality standard violation.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amendment requires the DOE to use credible scientific information and literature for developing and reviewing a surface water quality standard or TMDL technical model, removes the credible data requirement for developing and reviewing a water quality standard and for determining degradation, and revises the criteria for determining whether data is credible data. The amendment also eliminates authority to require credible data for other purposes. In addition, the amendment removes the requirement to evaluate prior actions with respect to credible data requirements. Further, the amendment requires the DOE to respond to requests regarding data and information used and to develop policy regarding the use of scientific literature and data credibility criteria. The amendment also replaces the requirement to adopt rules regarding qualified data collectors with a requirement to develop policy regarding the appropriate training and experience for data collectors. The amendment eliminates the specific requirement to consider data in light of the nature of the water body and revises provisions regarding misrepresentation of data to apply to any person who falsifies data. Finally, the amendment changes deadlines for legislative reports, revises legislative findings and intent, changes some definitions, and includes technical revisions.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: There are serious consequences and substantial costs when a water body is determined to be impaired; an incorrect listing can have a significant impact. We need to use scientific, defensible data when making these decisions. This bill is funded in the Senate budget proposal.

(Support for striking amendment) The use of credible data is an important issue, and public support is needed for the state to move forward on water quality issues. The striking amendment was negotiated by the DOE and interested parties. Other states have credible data requirements; this bill (with the amendment) is a step in the right direction. The amendment is primarily aimed at the listing and TMDL processes. The amendment clarifies definitions and ensures data that is submitted will meet the requirements.

Testimony Against: The Senate version of this bill would result in significant costs. The striking amendment will reduce the fiscal impact. The Puyallup Tribe is concerned this bill will affect its ability to ensure compliance with federally approved water quality standards on their trust properties.

Persons Testifying: (In support) Senator Hargrove, prime sponsor.

(In support for striking amendment) Llewellyn Matthews, Northwest Pulp and Paper Association; Ivy Sager-Rosenthal, Washington Public Interest Research Group; and Hertha Lund, Washington State Farm Bureau.

(Opposed to Senate version; in support of striking amendment) Dave Peeler, Washington State Department of Ecology.

(Opposed) Dawn Vyvyan, Puyallup Tribe of Indians and Yakama Nation.

Persons Signed In To Testify But Not Testifying: None.