

HOUSE BILL REPORT

2SSB 5027

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to watershed planning.

Brief Description: Providing for locally developed watershed planning.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Morton, Rasmussen and Hale).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/28/03, 4/4/03 [DPA].

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

- Directs planning units to coordinate and oversee the implementation of watershed plans and authorizes a state grant program for these activities.
- Requires the planning units to provide for the periodic review of approved plans.
- Requires rules adopted by the Department of Ecology (DOE) for implementing its watershed obligations to be developed under negotiated rule-making and allows the DOE to amend approved plans by rule through such negotiated rule-making.
- Requires all watershed planning to include timelines and interim milestones for achieving certain water supply objectives.
- Requires instream flow requirements to be set in each water resource inventory area (WRIA).
- Requires the coordination of the development of "total maximum daily loads" by the DOE for water quality under federal law with watershed planning conducted for water quality.
- Requires the coordination of salmon recovery project list development with watershed planning conducted for habitat.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 7 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Eickmeyer, Grant, Hunt, McDermott and Quall.

Minority Report: Do not pass. Signed by 6 members: Representatives Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Orcutt and Sump.

Staff: Kenneth Hirst (786-7105).

Background:

Watershed Planning. State watershed planning laws provide a process for conducting watershed planning through a locally initiated process. If planning is conducted under this process, it must include a component on current and future water availability and use. It may include components regarding instream flows, water quality, and habitat.

Watershed planning may be conducted for one watershed or water resource inventory area (WRIA) or it may be conducted for multiple WRIs. For this purpose, the local governments that initiate the process select or create a planning unit and designate a lead agency to provide staff support for the planning unit. Grants are available from the Department of Ecology (DOE) for organizing a planning unit and establishing work schedules, for conducting assessments, studying storage opportunities, and setting instream flows, and for developing a watershed plan and making recommendations for actions to be taken. Once a plan is approved by the planning unit, it is submitted to each of the counties with territory in the watershed or watersheds for which planning was conducted. After publishing notice and conducting at least one public hearing per county, the legislative authorities of these counties are to approve or disapprove of the plan in a joint session. If approved by the counties, the plan is an approved watershed plan.

Salmon Recovery. Under the salmon recovery laws, committees evaluate and develop habitat project lists which a local "lead entity" submits to the state's Salmon Recovery Funding Board for ranking and awarding of funding.

TMDLs. The DOE is the state agency delegated authority to implement provisions of the federal Clean Water Act. Under that authority, the DOE develops total maximum daily load assessments and allocations (TMDLs) for water bodies that violate water quality standards. The TMDLs are submitted to the United States Environmental Protection Agency (EPA) for approval.

Summary of Amended Bill:

Implementation of Watershed Plans. Once a watershed plan has been approved under the state's watershed planning laws, the role of the planning unit is to provide coordination and oversight during the implementation of the plan. Some of the activities that qualify for coordination and oversight are listed, such as: seeking funding, tracking progress toward implementation milestones, and coordinating actions taken by different organizations.

Grants. State phase IV grants for watershed plan coordination and oversight are authorized. A planning unit may receive up to: \$100,000 for each of the first three years; and \$50,000 per year for each of two extension years. If planning was conducted for more than one WRIA, an additional \$25,000 per year per additional WRIA may be available for the first three years; and an additional \$12,500 per year per additional WRIA for the two extension years. A match of 10 percent to 25 percent is required for the funding. The match may include financial contributions or in-kind goods and services directly related to coordination and oversight functions. Within one year of accepting funding, the planning unit must complete a detailed implementation plan which must clearly define: coordination and oversight responsibilities, needed interlocal agreements, rules, and ordinances; funding mechanisms; and timelines. It must include coordination of salmon recovery projects with salmon recovery lead entities. Submittal of such a detailed plan is required for receiving funding for subsequent years.

Approving a Plan - Opting Out. The legislative authority of a county with less than 5 percent of the affected territory in a watershed planning area may choose to opt out of the planning with regard to its territory in the watershed. The county must notify the governments that initiated the planning. A county that opts out is not bound by obligations contained in the plan.

Revising an Approved Plan; Implementing Rules. The planning unit must provide for the periodic review of an approved watershed plan and must develop an adaptive management strategy for amending the plan. The DOE may adopt rules under the Water Resources Act to amend an adopted watershed plan through negotiated rule-making. The entities to be included as affected interests in that rule-making must include water right holders and other affected residents in the watershed and, to the greatest extent practicable, the members of the original planning unit. The DOE must adopt rules implementing its obligations under a approved watershed plan through such a negotiated rule-making process.

State agencies and organizations with obligations under an adopted watershed plan are to fulfill them by adopting policies, procedures, and agreements, not just rules. All implementing agencies and organizations should annually review implementation needs as to budget and staffing. State agencies must identify for the Director of the DOE (Director) changes in statutes that would allow them to issue permits or approvals needed to implement a watershed plan but which cannot be issued. The Director must report these to the Governor and the Legislature annually.

Effect of a Plan. If the DOE participated in the planning process for a watershed and the resulting plan is approved by the counties, the DOE must rely on the plan as the framework for making water resource and water quality decisions in the watershed. It must give primary consideration to the plan in determining the public interest regarding those decisions.

New Watershed Planning Requirements. New requirements are established for any planning conducted under the laws for locally initiated watershed planning or under the state's Water Resources Act. Groups planning under the Water Resources Act must represent at least the diversity of interests required for planning units. The planning must include timelines for achieving and interim milestones for measuring progress in achieving sufficient water for agriculture, for commercial, industrial, and residential use, and for instream flows. The portion of the planning regarding instream flows also requires such planning for overcoming any water supply elements of limiting factors for streams that have been identified regarding salmon recovery and coordination with salmon recovery planning.

Instream Flows Required. Instream flow requirements must be established for not less than the main stem of the principal stream or river in each WRIA.

Coordination of Planning. In determining or allocating TMDLs for approval by the United States EPA under the federal Clean Water Act, the DOE must design its work schedule and plan for conducting such activities in a manner that facilitates the involvement of watershed planning units conducting water quality planning under the state's watershed planning laws. For a particular area, the DOE is to designate the local members of the planning unit as the local advisory body to be used for such TMDLs. The planning unit may identify the portion of its membership to be used and may identify additional persons to be used for this purpose. This requirement does not apply to TMDLs submitted to the EPA within six months of the effective date of the bill.

For a WRIA for which habitat planning is being conducted by a planning unit, the salmon recovery committee and lead entity for that area must share their information with and consult with the planning unit in developing a project list for the WRIA. After January 1, 2004, the Salmon Recovery Funding Board cannot provide funding for a project in a WRIA unless the lead entity and the planning unit document that this consultation has been conducted for the project.

The bill must be implemented within existing funds.

Amended Bill Compared to Second Substitute Bill:

The striking amendment: requires a 10 to 25 percent (rather than a 10 percent) local match for the Phase IV grants; requires the DOE to adopt its implementing rules through negotiated rule-making (rather than modifying obligations under a plan through such

rule-making) and broadens the "affected interests" who may participate in the rule-making; allows a county to opt out of watershed planning only if it has less than 5 percent of the territory contained in the planning area; states that an approved watershed plan provides the framework for making water resource and water quality decisions in the watershed (rather than guide the DOE's decisions); requires local planning groups under the Water Resources Act to have at least the range of representation required under the watershed planning laws; requires enhanced planning with timelines and milestones for achieving objectives; requires instream flows to be set for not less than the main stem or the principal stream or river in each WRIA; requires the coordination of TMDLs and salmon recovery planning with watershed planning for water quality and habitat; deletes provisions allowing a planning unit to allow a state agency to adopt policies, procedures, or agreements in lieu of implementing rules; and requires the bill to be implemented within existing funds (rather than requiring specific funding for it in the omnibus appropriations act).

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: (Original bill) (1) This bill is important for: carrying forward the watershed plans into Phase IV implementation; and for addressing the differences between local needs and designs and state agency desires. (2) The bill designates one percentage figure for the local match requirement rather than a range because the DOE requested the Senate to choose a figure. (3) The House version of this bill is too ambitious, will interrupt planning, and will be very expensive.

Testimony Against: (Original bill) The bill places the cart before the horse. Let local entities adopt their plans before we see what implementation needs there are. Do not require watershed planning and salmon recovery processes to be coordinated.

Testified: (In support) Senator Morton, prime sponsor; Senator Honeyford; and Bill Hahn, Washington PUD Association and Kitsap County PUD.

(Opposed) Max Golladay, Kittitas County Commissioner.