

CERTIFICATION OF ENROLLMENT

SENATE BILL 6609

Chapter 364, Laws of 2002

(partial veto)

57th Legislature
2002 Regular Session

DEPARTMENT OF ECOLOGY--STUDIES

EFFECTIVE DATE: 6/13/02

Passed by the Senate March 12, 2002
YEAS 31 NAYS 14

BRAD OWEN

President of the Senate

Passed by the House March 5, 2002
YEAS 71 NAYS 26

FRANK CHOPP

**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6609** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK

Secretary

Approved April 4, 2002, with the exception of subsection 2(c), which is vetoed.

FILED

April 4, 2002 - 3:09 p.m.

GARY LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6609

AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature

2002 Regular Session

By Senators Snyder, Deccio, T. Sheldon, Morton, Rasmussen, Honeyford,
Hale and Hargrove

Read first time 01/23/2002. Referred to Committee on State & Local
Government.

1 AN ACT Relating to studies conducted by the department of ecology;
2 and amending RCW 43.21A.130.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 *Sec. 1. RCW 43.21A.130 and 1987 c 505 s 28 are each amended to
5 read as follows:

6 (1) In addition to any other powers granted the director, the
7 director may undertake studies dealing with all aspects of
8 environmental problems involving land, water, or air(~~(:—PROVIDED,~~
9 ~~That))~~); however, in the absence of specific legislative authority, such
10 studies shall be limited to investigations of particular problems, and
11 shall not be implemented by positive action.

12 (2)(a) Any studies conducted by the department to establish the
13 total maximum daily load of a water body under chapter 90.48 RCW must
14 involve meaningful participation and opportunities to comment by the
15 local watershed planning group established in chapter 90.82 RCW, the
16 local governments whose jurisdictions are within the affected
17 watershed, and any affected or concerned citizen who notifies the
18 department of his or her interest in participating. Technical or
19 procedural disputes or disagreements that arise during the

1 participation and comment process may be presented to the director for
2 review. The director shall conduct a review of the disputed items and
3 issue written findings and conclusions to all interested participants.

4 (b) If a study conducted on the total maximum daily load of a water
5 body may affect a new or renewed national pollution discharge
6 elimination permit under chapter 90.48 RCW, the department must
7 disclose prior to the finalization of the study the precision and
8 accuracy of data collected, computer models developed, and assumptions
9 used.

10 (c) Any party that participated in a study under this subsection
11 (2) and disagrees with the director's written findings under (a) of
12 this subsection may request an administrative hearing presided over by
13 an administrative law judge. The hearing shall be conducted in
14 accordance with chapter 34.05 RCW. If the administrative law judge
15 finds that the department's conclusions were based on erroneous
16 information or data, the administrative law judge may order that the
17 study be disregarded. The administrative law judge may also order the
18 department to reimburse the party or parties requesting the hearing for
19 any costs associated with hiring professional outside assistance that
20 was reasonably necessary to prove that party's position at the hearing.
21 These costs include attorney and consultant fees. The administrative
22 law judge's determination or order shall be final and not subject to
23 further appeal.

24 *Sec. 1 was partially vetoed. See message at end of chapter.

Passed the Senate March 12, 2002.

Passed the House March 5, 2002.

Approved by the Governor April 4, 2002, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 4, 2002.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to subsection
3 2(c), Senate Bill No. 6609 entitled:

4 "AN ACT Relating to studies conducted by the department of
5 ecology;"

6 Senate Bill No. 6609 provides for public participation and comment
7 on studies conducted by the Department of Ecology (DOE) in the
8 implementation of chapter 90.48 RCW. It also provides for review of
9 disputes by the DOE director, and requires disclosure of the
10 underpinnings of studies and the data used in them, prior to
11 finalization of the studies.

12 Subsection 2(c) of this bill would have set an undesirable
13 precedent by barring appeal of administrative law judges' decisions,

1 and potentially requiring DOE to pay for the costs of studies conducted
2 by an aggrieved party. It is a basic principle of our system of law
3 that parties who disagree with administrative law judges have a right
4 to appeal the judges' determinations in court. Requiring an agency to
5 pay a challenger's costs could have significant unforeseeable budget
6 consequences.

7 For these reasons, I have vetoed subsection 2(c) of Senate Bill No.
8 6609.

9 With the exception of subsection 2(c), Senate Bill No. 6609 is
10 approved."