

HOUSE BILL REPORT

HB 1336

As Reported by House Committee On:
Agriculture & Natural Resources
Appropriations

Title: An act relating to watershed planning.

Brief Description: Concerning watershed planning grants and implementation lead agencies.

Sponsors: Representatives Linville, Kirby, Grant, Rockefeller, Quall, Hunt, Shabro, Jarrett, Delvin, Morris and Conway; by request of Governor Locke.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/29/03, 2/4/03, 2/28/03 [DPS];
Appropriations: 3/6/03, 3/8/03 [DP2S(w/o sub AGNR)].

Brief Summary of Second Substitute Bill

- 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 and to consider adopting amendments to the plans for approval by the counties.
- Requires rules and policies adopted by state agencies for implementing watershed plans to be developed under negotiated rule-making.
- Authorizes the optional development of watershed plans with timelines and interim milestones for achieving objectives.
- Requires the coordination of the development of "total maximum daily loads" by the Department of Ecology 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: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Chandler, Eickmeyer, Grant, Hunt, McDermott and Quall.

Minority Report: Do not pass. Signed by 5 members: Representatives Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; 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 U. S. Environmental Protection Agency (EPA) for approval.

Summary of Substitute 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. Some of the alternatives that planning units should consider during implementation are listed.

Grants. State phase IV grants for watershed plan coordination and oversight are authorized. A planning unit may receive up to: \$100,000 for 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 first 3 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.

Revising Adopted Watershed Plans. The planning unit must provide for the periodic review of approved watershed plans and consider recommending amendments if needed. Any approval of amendments must be approved following the procedures for approving the original watershed plan.

Negotiated Rule-making. State agencies and organizations with obligations under an adopted watershed plan are to fulfill them by adopting policies, procedures, and agreements, not just rules. The rules and policies adopted by state agencies must be adopted under negotiated rule-making procedures which must involve at least each local member of a planning unit who desires to participate. All implementing agencies and organizations should annually review implementation needs as to budget and staffing.

A plan approved under the state's watershed planning laws cannot be amended under the basin planning portion of the Water Resources Act, except with regard to setting instream flows.

Criteria for watershed planning that would allow greater flexibility in the use of the inchoate (unused) portions of municipal water rights are specified. Such planning is not required. 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.

State agencies are directed, within their statutory discretion, to grant the approvals and permits needed to implement watershed plans that have been approved under the watershed planning laws. This obligation also applies regarding enhanced planning that meets these criteria that is adopted under the Water Resources Act. In instances where the agencies cannot grant the approvals or permits, they are to report to the Director of the DOE (Director) and the changes in statute that would allow the approval or permit to be granted. The Director must report these to the Governor and the Legislature annually.

Coordination of Planning. In determining or allocating TMDLs for approval by the U. S. 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 certify that this consultation has been conducted for the project.

Substitute Bill Compared to Original Bill:

Provided by the substitute bill are the provisions that: designate the planning unit as the entity that is to provide coordination and oversight of plan implementation and that may apply for the new phase IV grants; requires implementing rules and policies of state agencies to be developed and adopted using negotiated rule-making that involves, as a minimum, the members of the planning unit who wish to participate; in allowing amendments to approved watershed plans, requires them to be approved by the planning unit and counties as provided for the plans themselves; prohibits the DOE from amending plans developed under the watershed planning laws by using the basin planning portion of the Water Resources Act; establishes criteria for optional watershed plans that establish timelines and interim milestones for achieving watershed planning objectives; requires the DOE to use local members of the planning unit and others identified by the planning unit as the local advisory body for its TMDL process under the federal Clean Water Act; and requires coordination of salmon recovery list development and funding with watershed planning for habitat.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Original bill) 1) Planning under state laws for locally initiated planning is being conducted in 42 of the 62 WRIAs in the state and six to eight of the plans will be completed this year. This bill implements the recommendations of a group required by the Legislature to look at what to do with these plans. 2) The bill uses existing institutions and requires those implementing habitat provisions to talk to their salmon recovery counterparts to increase efficiency. 3) The Governor's proposed budget contains funding for the grants authorized by the bill. 4) The bill keeps the process begun under the planning going on into implementation. It provides a means of updating the plans. Planning needs to be ongoing to reflect current science. 5) Planning has been conducted in the Dungeness watershed for 15 years. If the lack of implementation monies causes a disruption in the organization that conducted the planning, it will take time to allow new people to become knowledgeable of the complex issues involved. With such a disruption, the new plan will join the others on the shelf. 6) The bill requires watershed planning and salmon recovery planning to be coordinated. 7) Although Seattle is not planning under the laws amended in the bill, it is planning under the salmon recovery laws; the coordination required between the two sets of laws is appreciated. 8) The underlying law should be further amended to reduce the number of counties needed to approve watershed plans where some have very little land in the planning area 9) Funding for implementation of watershed plans is very important.

(Comments) (Original bill) 1) The bill needs changes. 2) The planning unit should be the one to authorize a state agency to implement watershed plan provisions by something other than the rule, as is currently required. 3) Coordinating salmon and watershed planning processes in some areas is more difficult than it might seem. 4) Counties with little territory in a WRIA should be allowed to bow out of the formal approval process.

Testimony Against: (Original bill) 1) These watershed plans do not adequately address instream flow needs. 2) The provisions for implementation and revisions should be altered to require negotiated rule-making with the private land-owners if anything is going to be required for those lands. 3) A new government layer with an implementation lead agency is not needed. The governments involved can do all that is required for implementation through inter-local agreements. 4) The bill just adds another layer of government. Three quarters of Salmon Recovery Board funding goes to assessments. Funding should be spent for on-the-ground projects, such as replacing culverts, not on more planning and assessments.

Testified: (In support) (Original bill) Jim Waldo, Office of the Governor; Richard Price, Stevens County P.U.D.; Mike Jeldness, Dungeness Water Users Association; Denise Smith, League of Women Voters of Washington; Paul Fleming, Seattle Public Utilities; Bob Beerbower, Grays Harbor County; and Dick McKinley, City of Bellingham.

(In support with specific changes) (Original bill) Mike Schwisow, Washington Water Resources Association; Scott Barr; and Paul Parker, Washington State Association of Counties.

(Commented) (Original bill) Dave Monthie, King County; and J. Roach.

(Opposed) (Original bill) Dawn Vyvyan, Yakama Nation; and Willy O'Neil, Association of General Contractors.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 19 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Cox, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke and Talcott.

Minority Report: Do not pass. Signed by 8 members: Representatives Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, DeBolt and Sump.

Staff: Patricia Linehan (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Natural Resources:

The costs associated with the implementation of this bill are to be absorbed by the state agency affected, from within the agencies available appropriation.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill was prepared in response to the recommendations of the Watershed Implementation Committee which was created by legislative proviso. The

Governor requested this bill for further implementation of the watershed plans that have been developed by local watershed planning units to better manage the state's water resources. The fiscal note on the underlying bill is valid and indicates a need of \$2.5 million for watershed implementation grants in the 2003-05 biennium. The Governor's budget proposes to have sufficient money for these grants from the Water Quality Account.

Five years ago, the Legislature gave the counties, cities, tribes, and local businesses an opportunity to plan for their water future, rather than waiting for decisions from the Department of Ecology (DOE). This summer, the phase four implementation plan was created. Forty-two of the 62- water resource inventory areas are now engaged in planning. State investment is necessary to help move forward. The fiscal note indicates significant impact for local spending. This is discretionary spending, not mandated. However, many planning units will go on to the implementation phase and some will consider it too expensive and stop. If the process is abandoned now, the state will need to put at least the same amount of money into the DOE for different water resource decisions and both cities and the state will be working this out in court, rather than sitting around the table as they have been. It is hoped that the Appropriations Committee will look at other planning and assessment efforts as a part of the budget process in order to put definitive time limits on planning efforts and get them done within a reasonable amount of time and funding.

Testimony Against: None.

Testified: Nancy Stevenson, Department of Ecology; Willy O'Neil, Association of General Contractors of Washington; and Paul Parker, Washington State Association of Counties.