

# HOUSE BILL REPORT

## 2E2SHB 1336

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### As Passed House

June 5, 2003

**Title:** An act relating to watershed planning.

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

**Sponsors:** By House Committee on Appropriations (originally sponsored by 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)].

#### **Floor Activity:**

Passed House: 3/18/03, 56-41.

Senate Amended.

Passed Senate: 4/15/03, 37-11.

#### **First Special Session**

#### **Floor Activity:**

Passed House: 6/5/03, 73-24.

### **Brief Summary of Second Engrossed Second Substitute Bill**

- Authorizes planning units to coordinate and oversee the implementation of watershed plans and authorizes a state grant program for these activities.
- Requires grant recipients to develop detailed implementation plans to provide sufficient water for certain purposes, with deadlines and interim milestones for measuring progress.
- Identifies the effect of an approved watershed plan and allows the Department of Ecology (DOE) to amend such a plan through a form of negotiated rule-making that uses the same processes that applied in developing the watershed plan.

- Allows counties to opt out of watershed planning under certain conditions.
- Requires planning units to identify and seek to eliminate inconsistent or duplicative planning activities and policies in its watershed.

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## 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).

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## 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).

### **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 WRIsAs. 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 Second Engrossed Second Substitute Bill:**

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 first 3 years; and an additional \$12,500 per year per additional WRIA for the two extension years. A match of 10 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.

Detailed Implementation Plans. Within one year of accepting phase IV funding, the planning unit must complete a detailed implementation plan. Submitting a detailed implementation plan to the DOE is a condition for receiving grants for the second and all subsequent years of the phase IV grant. The implementation plan must contain strategies to provide sufficient water for: production agriculture; commercial, industrial, and residential use; and instream flows. It must contain time-lines to achieve these strategies and interim milestones to measure progress. It must also clearly define: coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms. The planning unit must consult with other entities planning

in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent. By December 1, 2003, and by December 1st of each subsequent year, the DOE must report to the Legislature regarding: statutory changes necessary to enable state agency approval or permit decision making needed to implement an approved plan; and on the progress of setting instream flows as part of watershed planning and otherwise.

Approving a Plan - Opting Out. A county legislative authority may choose to opt out of watershed planning if the county's affected territory within a watershed planning area is less than five percent of the total territory within the area. It may also opt out if its part of the planning area is five percent or more with the consent of all other governments that initiated planning in the area. The county must notify the DOE and the other initiating governments of that choice prior to the beginning of the process to adopt the plan. Such a county is not bound by obligations contained in the watershed plan.

Effect of a Plan. If the DOE participated in the planning process leading to the adoption of a watershed plan under the watershed planning laws, the plan is deemed to satisfy the watershed planning authority of the DOE with respect to the components included in the plan for the watershed. The DOE must such a plan as the framework for making future water resource decisions for the watershed and must rely upon the plan as a primary consideration in determining the public interest related to those decisions. Once a watershed plan has been approved under these laws for a watershed, the DOE may develop and adopt modifications to the plan or obligations imposed by the plan only through a form of negotiated rule making that uses the same processes that applied in that watershed for developing the plan.

Other. A state agency may adopt may adopt policies, procedures, or agreements related to the obligations or implementation of the obligations in addition to or in lieu of adopting implementing rules if the agency has the consent of the planning unit to do so. Entities carrying out their obligations under a watershed plan should annually review implementation needs with respect to budget and staffing and organizations voluntarily accepting such an obligation must additionally adopt policies, procedures, agreements, rules, or ordinances for carrying out those obligations.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** (Agriculture & Natural Resources) (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 For:** (Appropriations) 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:** (Agriculture & Natural Resources) (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.

**Testimony Against:** (Appropriations) None.

**Testified:** (Agriculture & Natural Resources) (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.

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