

HOUSE BILL REPORT

E2SHB 1336

As Amended by the Senate

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.

Brief Summary of Engrossed 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.
- 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: 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).

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 WRIAs. 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 Engrossed Second 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.

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 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% 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. 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 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 document that this consultation has been conducted for the project.

EFFECT OF SENATE AMENDMENT(S):

The amendment: requires a 10 percent (rather than a 10 to 25 percent) local match for the Phase IV grants; requires the detailed plan for implementing a watershed plan (rather than each plan itself) to contain the strategies, with timelines and milestones, for providing sufficient water for the various out-of stream uses and for instream flows and removes provisions specifying their content; requires the planning unit to identify and seek to eliminate activities that are duplicative or inconsistent, with regard to other planning being conducted in a watershed; allows a county with five percent or more of the territory in the planning area to opt out of watershed planning with the consent of the governments that initiated the planning; authorizes the DOE to develop and adopt modifications to an approved watershed plan or obligations under a plan through a form of negotiated rule-making the uses the processes that were used in developing the plan (rather than requiring the DOE to adopt its implementing rules through negotiated rule-making); states that an approved watershed plan provides the framework for making water resource (rather than water resource and water quality) decisions in the watershed; requires the consent of a planning unit for a state agency to adopt policies, procedures, or agreements for implementing a watershed plan in addition to or in lieu of adopting implementing rules; and requires the DOE to report annually to the Legislature on progress made in setting instream flows.

The amendment also strikes provisions: requiring local planning groups under the Water Resources Act to have at least the range of representation required under the watershed planning laws; requiring instream flows to be set for not less than the main stem or the principal stream or river in each WRIA; establishing certain procedures for coordinating TMDLs and salmon recovery planning with watershed planning for water quality and habitat; requiring certain consultation before funding for certain salmon recovery projects may be received; requiring other state agencies to report to the DOE on the statutory changes needed to provide the state agency approvals and permits needed to implement a

watershed plan; and requiring the bill to be implemented within existing funds.

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.