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**Agriculture & Natural Resources  
Committee**

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**HB 2207**

**Brief Description:** Establishing a system of standards and procedures concerning water quality data.

**Sponsors:** Representative Hatfield.

**Brief Summary of Bill**

- Allows only credible data to be used when the Department of Ecology (DOE) takes certain water quality assessment actions required by the federal Clean Water Act.
- Identifies criteria for data to be deemed credible data.
- Specifies additional requirements for assessing whether a water body is impaired.
- Requires the DOE to add or remove water bodies from the impaired water body list under certain circumstances.

**Hearing Date:** 2/13/04

**Staff:** Caroleen Dineen (786-7156).

**Background:**

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA sets effluent limitations for discharges of pollutants to navigable waters. "Pollutant" is defined to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods.

Washington law requires all pollution dischargers to use all known, available, and reasonable methods of waste water treatment before discharge to prevent pollution. The Washington Department of Ecology (DOE) is delegated federal CWA authority by the United States Environmental Protection Agency (EPA). The DOE also is the agency authorized by state law to implement state water quality programs.

The CWA requires states to adopt standards to protect fish and other aquatic life and to protect humans using water for recreation, drinking water, and fish. These water quality standards are

rules specifying the desired water quality to be achieved or maintained and protecting existing water quality from degradation. Washington's water quality standards consist of designated uses, criteria necessary to protect those uses, and the Antidegradation Policy, which establishes procedures for regulating an activity that might affect a particular water body.

The CWA requires states to periodically assess the water quality of their water bodies in both general and specific ways. First, Section 305(b) of the federal CWA requires states to prepare a state-wide assessment every two years of the health of the state's water bodies (the "305(b) report"). Second, Section 303(d) of the federal CWA requires states to prepare a list every two years of the specific water bodies (or segments) that do not meet the state water quality standards (the "303(d) list"). The DOE's policy for assessing whether water bodies are impaired for purposes of the 303(d) list includes criteria for data submitted by interested parties, quality assurance requirements, and other assessment considerations.

The DOE must develop water cleanup plans for all water bodies included on the 303(d) list. These plans known as "total maximum daily loads" or "TMDLs" are developed to address the pollutants in the impaired water body that do not meet state water quality standards and to restore water quality to the impaired water body. A TMDL includes a technical assessment of the impaired water body, an analysis of the amount that pollution needs to be reduced to meet water quality standards, an implementation plan to control pollution from various sources, and a monitoring plan to assess effectiveness.

As a result of a legal challenge, the DOE entered into a settlement in 1998 regarding TMDL development. The settlement agreement requires the DOE to develop, by 2013, TMDLs for approximately 1,500 listings applicable to 650 impaired water bodies in the state. The schedule in the settlement agreement includes interim five-year targets for completing these TMDLs. The DOE reports it completed 249 TMDLs pursuant to the schedule as of June 30, 2003.

### **Summary of Bill:**

The DOE must use only credible data when taking certain actions to comply with federal CWA requirements. Specifically, the DOE must use only credible data when developing and reviewing water quality standards, establishing a TMDL, or determining whether any: (1) water body is to be placed on or removed from the 303(d) list; (2) water body is supporting its designated use or other classification; or (3) degradation of a water body has occurred. "Credible data" is data collected by the DOE or its professional designee for which the DOE has determined:

- appropriate quality assurance and quality control procedures were followed and documented for data analysis and collection;
- samples or analyses are representative of water quality conditions at the time the data was collected;
- the data consists of an adequate number of samples based on the nature of the water body and the parameters being analyzed; and
- the sampling and analysis method is generally accepted and validated in the scientific community as appropriate for the assessment.

Credible data is not required for preparation of a 305(b) report or for establishment of a water body's designated uses or other classifications. These provisions may not be construed to require

credible data for a DOE action for violation of state water quality laws or for water quality monitoring or data collection for purposes not specifically identified in these provisions.

Additional requirements are specified for assessing whether a water body is impaired. The DOE must consider the available data in light of the nature of the water body, including whether the water body is ephemeral. The DOE may not list a water body as impaired if pollutant loadings from naturally occurring conditions alone are sufficient to violate water quality standards. In addition, for any pollutant not exceeding an adopted numeric water quality standard, the DOE may not list a water body as impaired based on violation of a narrative or biological standard unless the DOE has: (1) determined the numeric standard is not sufficient to protect water quality; and (2) identified specific reasons supporting the DOE's decision that are appropriate for the water body and based on generally accepted scientific principles.

The DOE must add or remove a water body from the 303(d) list outside the normal listing cycle if the DOE collects or receives credible data demonstrating the current water quality warrants the change. Changes in the applicable water quality standards, implementation procedures, designated uses, or water quality may warrant such a change.

Legislative findings recognize a need for proper collection and review of credible water quality data. Legislative findings also recognize the significant financial and regulatory financial impacts of decisions based on analysis of water quality data. In addition, legislative intent is specified to establish a system of standards and procedures to ensure only credible water quality data is used as the basis for specific state water quality programs. Further, definitions are included for purposes of these provisions.

**Appropriation:** None.

**Fiscal Note:** Available.

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