
Environment Committee

HB 2486

Brief Description: Updating specified environmental statutes of the department of ecology to improve efficiency and provide for increased flexibility for local governments.

Sponsors: Representatives Fitzgibbon, Tharinger, Ryu, Van De Wege and McBride; by request of Department of Ecology.

Brief Summary of Bill

- Eliminates conflicting provisions in statutes that authorize programs administered by the Department of Ecology (ECY).
- Changes the ECY's beneficial use determination processes for solid wastes, the ECY's scope of authority to regulate noise, and the ECY's statewide oil spill planning duties.
- Expands and clarifies the scope of decisions, orders, and penalties issued by the ECY that are appealable to the Pollution Control Hearings Board (PCHB).

Hearing Date: 1/21/16

Staff: Jacob Lipson (786-7196).

Background:

The Department of Ecology (ECY) is responsible for managing many of the state's environmental programs and policies. The ECY's authority derives from multiple statutes that direct it to manage the state's water resources, air quality, pollution, solid and hazardous wastes, toxic hazards, and the state shorelines. Some of the programs administered by the ECY include the authority to:

- adopt rules and standards for noise abatement and control;
- adopt rules that establish statewide exemptions from local solid waste permitting requirements for certain solid wastes with beneficial uses;
- prepare and update a statewide master oil and hazardous substance spill prevention and contingency plan;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- enforce the requirements of the Children's Safe Products Act, which establishes restrictions on the amount of certain chemicals in children's products and requires manufacturers to provide information to the ECY about their use of other chemicals of concern; and
- review and approve shoreline master programs submitted by local governments.

Aggrieved parties may appeal many types of ECY administrative decisions, orders, and penalties to the Pollution Control Hearings Board (PCHB), which is a quasi-judicial state agency. Appeals to the PCHB are usually heard by the full three-person PCHB membership. However, penalties of less than \$15,000 or involving derelict or abandoned vessels may be heard by a single member of the PCHB. In addition, appeals related to derelict or abandoned vessels may also be heard by an administrative law judge employed by the PCHB.

Summary of Bill:

Programs administered by the ECY are amended to consolidate program implementation, eliminate inconsistencies among statutes, clarify statutory language, make technical changes, and repeal provisions that do not reflect current agency program administrative practices. The jurisdiction of the PCHB is expanded, and the PCHB statute is also updated to mirror existing references to PCHB review in other environmental statutes. Changes are made to the following statutes:

- Pollution Control Hearings Board enabling statute (chapter 43.21B RCW);
- Solid Waste Management (chapter 70.95 RCW);
- Noise Control (chapter 70.107 RCW);
- Oil and Hazardous Substance Spill Prevention and Response (chapter 90.56 RCW);
- Shoreline Management Act (chapter 90.58 RCW); and
- Department of Ecology enabling statute (chapter RCW 43.21A).

Specific details of the substantive changes to ECY programs and PCHB appeals include:

Pollution Control Hearings Board.

- A single member of the PCHB or an administrative appeals judge employed by the PCHB may hear appeals to the PCHB involving a penalty of \$15,000 or less. A single PCHB member or administrative appeals judge may also hear appeals of a corrective action order issued by a local air authority.
- Makes the following actions by the ECY appealable to the PCHB:
 - Penalties issued for violations of laws restricting the use of mercury in certain consumer products, such as thermometers and automotive mercury switches;
 - Penalties issued for violations of the Children's Safe Products Act; and
 - Penalties for failure to take appropriate action in response to a corrective action order for dangerous waste management violations.

Solid Waste.

- The authority for the ECY to issue exemptions from solid waste permitting requirements specifically for waste-derived soil amendments is eliminated.
- The requirement that the ECY adopt a rule for each beneficial use determination to exempt a solid waste from permitting requirements is eliminated. Instead, the ECY may

adopt a rule establishing a process for the ECY to propose or approve beneficial use applications.

- Any aggrieved party is allowed to appeal beneficial use determinations, rather than limiting beneficial use appeals to local health departments or permit applicants.
- Biosolids and sewage sludge are clarified to not be subject to the ECY's general beneficial use determination process to exempt a waste from solid waste permitting requirements, and are instead subject to beneficial use determination procedures and use restrictions that are specific to biosolids and sewage sludge.

Noise Control.

- The requirement that local governments submit local noise ordinances to the ECY for approval is eliminated.
- The direction to the ECY to adopt maximum noise levels for the state and associated rules to ensure achievement of those levels is eliminated, and instead the ECY is directed to adopt model standards for use in noise regulation by local governments.

Oil Spill Planning.

- The requirement that the ECY submit an annual state Master Oil and Hazardous Substance Spill Prevention and Contingency Plan to the Legislature is eliminated.
- The Vessel Response Account (VRA) used for rescue tug deployment is eliminated, and any money remaining in the VRA is transferred to the Coastal Protection Fund for natural resource restoration.

Shoreline Management Act.

- Shoreline master program amendments addressing critical areas must be approved by the ECY if the amendment ensures no net loss of ecological function, instead of requiring the shoreline master program amendment to provide a level of protection for critical areas that is at least as high as the protections afforded by the critical area ordinance; and
- The effective date of a local government's amendment to a shoreline master program occurs 14 days after amendment approval by the ECY, rather than the shoreline master program amendments taking effect upon either approval by the ECY or upon decision by the Growth Management Hearings Board or Shoreline Hearings Board to approve the amendment.

Other Programs.

- The authority for the ECY to site, construct, and sell power from a steam electric generating plant is eliminated.

Appropriation: None.

Fiscal Note: Requested on 1/13/16.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 15 relating to the authority of the Pollution Control Hearings Board, which takes effect June 30, 2019.