

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to certain items, House Bill No. 489 entitled:

"AN ACT Relating to public employment."

This bill amends the state civil service law and the state higher education personnel law to provide that upon the request of a certified bargaining unit representative, the director of personnel will hold an election to determine if a majority of persons within the bargaining unit, who vote at such elections, desire to require membership in the certified exclusive bargaining organization, as a condition of employment. If the vote is in favor of requiring such membership, all members of the bargaining unit must join within 30 days. Further elections to remove the membership requirement may be held no more than once a year and upon petition of thirty percent of the membership of the bargaining unit.

It is not normally appropriate to allow a person to in effect cast a negative vote on an issue by failing to vote at all. However, in this case, the question of whether or not an individual bargaining unit shall adopt a mandatory membership requirement is of such critical importance that it should be clear that a majority of the membership of that bargaining unit is in favor of such action before it occurs. Accordingly, I have determined to veto those items, as they appear in sections one and two, which allow less than a majority of the total membership of a bargaining unit to adopt mandatory membership requirements as a condition of employment.

With the exception of those items, I have approved the remainder of House Bill No. 489.

CHAPTER 155

[House Bill No. 594]

DEPARTMENT OF ECOLOGY--WATER POLLUTION CONTROL--
WASTE DISCHARGE PERMIT SYSTEM

AN ACT Relating to water pollution control; amending section 1, chapter 216, Laws of 1945 and RCW 90.48.010; amending section 18, chapter 216, Laws of 1945 as amended by section 11,

chapter 13, Laws of 1967 and RCW 90.48.120; amending section 1, chapter 71, Laws of 1955 as amended by section 13, chapter 13, Laws of 1967 and RCW 90.48.160; amending section 24, chapter 13, Laws of 1967 and RCW 90.48.260; amending section 20, chapter 216, Laws of 1945 and RCW 90.48.140; amending section 14, chapter 139, Laws of 1967, ex. sess., as amended by section 13, chapter 88, Laws of 1970, 1st ex. sess., and RCW 90.48.144; adding new sections to chapter 90.48 RCW; repealing section 13, chapter 216, Laws of 1945 and RCW 90.48.070; prescribing civil and criminal penalties; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 1, chapter 216, Laws of 1945 and RCW 90.48.010 are each amended to read as follows:

It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington.

Sec. 2. Section 18, chapter 216, Laws of 1945 as amended by section 11, chapter 13, Laws of 1967 and RCW 90.48.120 are each amended to read as follows:

(1) Whenever, in the opinion of the ((commission)) department, any person shall violate or is about to violate the provisions of this chapter, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the ((commission)) department shall notify such person of its determination by registered mail. Such determination shall not constitute an order or directive under RCW 90.48.135. Within thirty

days from the receipt of notice of such determination, such person shall file with the ~~((commission))~~ department a full report stating what steps have been and are being taken to control such waste or pollution or to otherwise comply with the determination of the ~~((commission))~~ department. Whereupon the ~~((commission))~~ department shall issue such order or directive as it deems appropriate under the circumstances, and shall notify such person thereof by registered mail.

(2) Whenever the department deems immediate action is necessary to accomplish the purposes of chapter 90.48 RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed.

Sec. 3. Section 1, chapter 71, Laws of 1955 as amended by section 13, chapter 13, Laws of 1967 and RCW 90.48.160 are each amended to read as follows:

Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including commercial or industrial operators discharging solid or liquid waste material into sewerage systems operated by municipalities or public entities which discharge into public waters of the state, shall procure a permit from either the ~~((pollution control commission))~~ department or the thermal power plant site evaluation council as provided in section 5 (2) of this act before disposing of such waste material: PROVIDED, That this section shall not apply to any person discharging domestic sewage only into a sewerage system.

The department may, through the adoption of rules, eliminate the permit requirements for disposing of wastes into publicly operated sewerage systems for:

(1) Categories of or individual municipalities or public corporations operating sewerage systems; or

(2) Any category of waste disposer;
if the department determines such permit requirements are no longer necessary for the effective implementation of this chapter.

Sec. 4. Section 24, chapter 13, Laws of 1967 and RCW 90.48.260 are each amended to read as follows:

The ~~((commission))~~ department of ecology is hereby designated as the State Water Pollution Control Agency for all purposes of the Federal Water Pollution Control Act as it now exists ~~((or shall hereafter be amended))~~ and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that

act. The powers granted herein include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

(1) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of section 5(2) of this 1973 amendatory act. Program elements authorized herein may include, but are not limited to: (a) Effluent treatment and limitation requirements together with timing requirements related thereto; (b) applicable receiving water quality standards requirements; (c) requirements of standards of performance for new sources; (d) pretreatment requirements; (e) termination and modification of permits for cause; (f) requirements for public notices and opportunities for public hearings; (g) appropriate relationships with the secretary of the army in the administration of his responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his duties, and with other governmental officials under the Federal Water Pollution Control Act; (h) requirements for inspection, monitoring, entry, and reporting; (i) enforcement of the program through penalties, emergency powers, and criminal sanctions; (j) a continuing planning process; and (k) user charges.

(2) The power to establish and administer state programs in a manner which will insure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(3) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

The governor shall have authority to perform those actions required of him by the Federal Water Pollution Control Act.

NEW SECTION. Sec. 5. There is added to chapter 90.48 RCW a new section to read as follows:

(1) The powers established under section 4 of this 1973 amendatory act shall be implemented by the department through the adoption of rules in every appropriate situation. The permit program authorized under section 4 (1) of this 1973 amendatory act shall constitute a continuation of the established permit program of RCW 90.48.160 and other applicable sections within chapter 90.48 RCW.

The appropriate modifications as authorized in this 1973 amendatory act are designed to avoid duplication and other wasteful practices and to insure that the state permit program contains all required elements of and is compatible with the requirements of any national permit system.

(2) Permits for thermal power plants subject to chapter 80.50 RCW shall be issued by the thermal power plant site evaluation council: PROVIDED, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to said chapter. The council shall have all powers necessary to establish and administer a point source discharge permit program pertaining to such plants, consistent with applicable receiving water quality standards established by the department, and to qualify for full participation in any national waste discharge or pollution discharge elimination permit system. The council and the department shall each adopt, by rules, procedures which will provide maximum coordination and avoid duplication between the two agencies with respect to permits in carrying out the requirements of this act including, but not limited to, monitoring and enforcement of certification agreements, and in qualifying for full participation in any such national system.

NEW SECTION. Sec. 6. There is added to chapter 90.48 RCW a new section to read as follows:

Nothing contained in sections 1 through 7 of this 1973 amendatory act shall be construed to grant the department of ecology the authority to issue permits for nonpoint sources of pollution from or regulate forest practices on forest lands.

NEW SECTION. Sec. 7. There is added to chapter 90.48 RCW a new section to read as follows:

In recognition of the broad powers granted in this 1973 amendatory act and a desire of the legislature to review actions taken by the department of ecology in the implementation thereof, the department shall, no later than the first day of the next regular session of the legislature, submit to the president of the senate and the speaker of the house of representatives all rules, adopted by the department under the provisions of this 1973 amendatory act, and proposed legislation, including suitable amendments to chapter 90.48 RCW, to make the programs administered under this 1973 amendatory act statutorily more precise and to eliminate any possible conflicts or ambiguities arising from powers granted and actions taken under this 1973 amendatory act and any other provisions of chapter 90.48 RCW. This section shall not be codified by the code reviser.

Sec. 8. Section 20, chapter 216, Laws of 1945 and RCW 90.48.140 are each amended to read as follows:

Any person found guilty of wilfully violating any of the

provisions of this chapter, or any final written orders or directive of the ((commission)) department or a court in pursuance thereof shall be deemed guilty of a ((gross misdemeanor)) crime, and upon conviction thereof shall be punished by a fine of ((not more than one hundred dollars)) up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a wilful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

Sec. 9. Section 14, chapter 139, Laws of 1967, ex. sess., as amended by section 13, chapter 88, Laws of 1970, 1st ex. sess., and RCW 90.48.144 are each amended to read as follows:

Every person who:

(1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 or this amendatory act, or

(2) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW 90.48.160 or this amendatory act, or

(3) Violates the provisions of RCW 90.48.080, shall incur, in addition to any other penalty as provided by law, a penalty in ((the)) an amount of ((one hundred dollars)) up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall ((become due and payable when the person incurring the same receives)) be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the director of the ((commission)) department or his authorized delegate describing such violation with reasonable particularity ((and advising such person that the penalty is due)). The director or his authorized delegate may, upon written application therefor ((7)) received within fifteen days ((7)) after notice imposing any penalty is received by the person incurring the penalty, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section ((or discontinue any prosecution to recover the same)) upon such terms as he in his discretion shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper. Any person incurring any penalty hereunder may appeal the

same to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or his authorized delegate setting forth the disposition of the application. Any penalty imposed hereunder shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the amount of ((such)) any penalty is not paid to the ((commission)) department within ((fifteen)) thirty days after ((receipt of notice imposing the same or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of such application)) it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any ((other)) county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

NEW SECTION. Sec. 10. Section 13, chapter 216, Laws of 1945 and RCW 90.48.070 are each repealed.

NEW SECTION. Sec. 11. This act is necessary for the immediate preservation of the public peace, health and safety, the support of state government and its existing institutions and shall take effect immediately.

Passed the House March 6, 1973.

Passed the Senate March 1, 1973.

Approved by the Governor March 20, 1973, with the exception of Section six which is vetoed.

Filed in Office of Secretary of State March 20, 1973.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to

one section House Bill No. 594 entitled:

"AN ACT Relating to water pollution control."

Actions of the electorate and elected officials over the past several decades, especially the last six years, have shown the dedication of the State of Washington to a policy of attaining and retaining high quality for its waters. Passage of Engrossed House Bill No. 594 continues the state's dedication to the extinguishment of water pollution from its boundaries by accepting the challenge of the Federal Water Pollution Control Act Amendments of 1972 which was passed late last year. I am, therefore, most pleased to sign Engrossed House Bill No. 594.

Veto
Message

One of the principal reasons for the passage of Engrossed House Bill No. 594 at this time is to insure that the State of Washington is in a posture which allows the state to administer the sole waste discharge permit system operating within its boundaries through the operation of such a permit program as a part of the National Pollution Discharge Elimination System established by section 402 of the new Federal Act. An examination of that act, as it pertains to the criteria to be utilized by the administrator of the United States Environmental Protection Agency in approving requests by states to operate these programs within the national system reveals an ambiguity in the criteria in respect to problems of nonpoint sources of pollution. To eliminate any possibility that Engrossed House Bill No. 594 is deficient in providing statutory authority to state government to satisfy the criteria for approval of the state permit program under the national system, I have determined it advisable to veto section 6 of Engrossed House Bill No. 594 which provides that the act does not authorize the Department of Ecology to regulate forest practices on forest lands to protect water quality.

In removing this section, I was aware of the discussions presently being carried on in the legislature pertaining to regulation of forest practices. A bill to control forest practices is needed. I am both hopeful and confident that the legislature can develop a bill which will provide for water quality and point and non-point pollution sources regulation programs under our pollution control agency to continue, while at the same time allowing

any new program pertaining to forest management regulation to be conducted by the Department of Natural Resources. I am further confident that the two programs can be administered in a coordinated manner to insure that no undue burdens are placed on forest land owners.

With the exception of section six, I have approved Engrossed House Bill No. 594."