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## **OLR Bill Analysis**

**sHB 5344**

### ***AN ACT CONCERNING STREAMLINING THE STATE'S STORMWATER GENERAL PERMITTING PROCESS***

#### **SUMMARY:**

This bill allows the Department of Energy and Environmental Protection (DEEP) commissioner to have independent professionals certify whether stormwater general permits meet state and federal requirements. Under current law, DEEP reviews and certifies the permits, which address activities causing pollution of rain and melted snow that runs off into streams, rivers, lakes, and other water bodies.

The bill requires the permit to specify the criteria a professional must meet. The professional must be licensed to engage in any profession or occupation needed to certify the permit.

The bill specifies the professional's duties and obligations, which include certifying permits based on accurate and complete information. It allows the commissioner to audit a certification, specifies the grounds for rejection, and specifies how he can enforce the bill's provisions.

EFFECTIVE DATE: Upon passage

#### **CONDITIONS FOR USING PROFESSIONALS**

##### ***Criteria***

If the DEEP commissioner allows a professional to certify a permit, he must specify in the permit the conditions and criteria the professional must meet. The permit must specify:

1. the professional's qualifications, including relevant education, training, experience, certifications, and licenses;
2. the information that the professional must review and inspect as

part of the certification; and

3. the documents he or she must retain supporting the certification.

The permit must also specify the criteria the commissioner must use to determine if the professional has no connection with the permitted activity or project and has no financial stake in it beyond compensation for the certification services.

The permit must require the professional to affirm that the activity or project meets the permit's requirements. The affirmation applies to plans or other documents; the design, installation, and functioning of the wastewater collection and treatment systems; and the method or equipment used for waste water monitoring. The permit must also require the professional to sign a certification statement based on the bill's requirements and any conditions the permit imposes.

Lastly, the permit may indicate whether certification is required when the permittee is a government agency.

### ***Professionals' Duties and Obligations***

A certified professional must (1) meet the permit's criteria and (2) base the certification on accurate and complete information. He or she cannot base the certification on information that is (1) materially inaccurate, incomplete, or misleading or (2) fails to meet the permit's requirements and has not been disclosed.

After certifying the permit, the professional must notify the permittee and the commissioner about any information the professional learns or should have learned in the course of his or her practice that would have prevented the permit's certification or significantly changed it.

## **ENFORCEMENT**

### ***Grounds for Rejection***

The bill requires the commissioner to accept the certification unless (1) he is auditing the certification (see below), (2) has reason to believe

the professional did not satisfy the bill's requirements, or (3) the certification does not comply with federal or state law or the general permit's requirements.

### ***Enforcement Powers***

The bill specifies the steps the commissioner may take if a professional (1) bases the certification on materially incomplete or misleading information, including omitted information, or (2) fails to cooperate with an audit. In such cases, the commissioner may deny the permit application or revoke, suspend, or modify the actions it authorizes, including the approval of any registration he issued. He can do these things even if the permittee was not involved in preparing or reviewing the certification or was unaware that it was based on inaccurate or incomplete information or other error.

The bill allows the commissioner to take any disciplinary action against the professional in addition to any penalty or sanction the law imposes. If the law requires the professional to maintain a license, the commissioner can refer the professional to the appropriate licensing board or department, issue a reprimand or warning to the professional, or temporarily or permanently prohibit him or her from submitting certifications for stormwater general permits.

When taking action against a professional's license, the commissioner must provide notice to the professional of the facts supporting his intended action and allow the professional to show he or she is in compliance.

## **AUDITING**

### ***Scope***

The bill allows the commissioner to audit each certification. When doing so, he can request in writing any information he needs to conduct the audit, including information supporting the certification and documenting the professional's qualifications.

As part of the audit, the commissioner can have another qualified professional independently certify the information supporting the

certification. This professional must also meet the permit's qualifications and have no financial stake in the activity or project other than being compensated for his or her services. Further, the professional must have played no role in certifying the permit or be employed by the professional who initially certified it. The commissioner must charge the permittee for this independent certification.

He may also charge the permittee for the audit if it finds that the certification was based on materially inaccurate, incomplete, and misleading information.

### ***Compliance Report***

The bill imposes the goal that the commissioner audit at least 10% of the permits. It also requires him to report specific information based on these audits by January 1, 2014, but does not specify to whom he must submit the report. The report must:

1. indicate the number of certifications he audited,
2. the degree to which the permits complied with the bill's requirements,
3. the degree to which the permits meet the law's purposes, and
4. the steps and resources needed to maintain or increase compliance.

### **COMMITTEE ACTION**

Commerce Committee

Joint Favorable

Yea 18 Nay 0 (03/22/2012)