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**SUBSTITUTE HOUSE BILL 2363**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

**By** House Committee on Natural Resources & Parks (originally sponsored by Representatives Sheldon, Brumsickle, Belcher, P. Johnson, Hine, Rasmussen, Ebersole, Fraser, R. Johnson, Dorn, Jones, Heavey, Paris, J. Kohl, Spanel, May, Leonard and Pruitt; by request of Puget Sound Water Quality Authority)

Read first time 02/05/92.

1 AN ACT Relating to the reduction of nonpoint source pollution in  
2 counties with shellfish growing tidelands; amending RCW 90.72.030,  
3 90.72.040, 90.72.070, 70.146.060, 36.70A.020, and 36.70A.070; adding  
4 new sections to chapter 90.72 RCW; adding a new section to chapter  
5 90.50A RCW; adding a new section to chapter 88.36 RCW; repealing RCW  
6 90.72.010 and 90.72.050; and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.72 RCW  
9 to read as follows:

10 The legislature finds that shellfish harvesting is important to our  
11 economy and way of life. Washington state is an international leader  
12 in the cultivation and production of shellfish. However, large  
13 portions of the state's productive recreational and commercial  
14 shellfish beds are closed to harvesting, and more are threatened,

1 because of water pollution. The legislature finds that the problem of  
2 shellfish bed closures demands a public policy solution and that the  
3 state, local governments, and individuals must each take strong and  
4 swift action or this precious resource will be lost.

5 It is the goal of the legislature to prevent further closures of  
6 recreational and commercial shellfish beds, to restore water quality in  
7 saltwater tidelands to allow the reopening of at least one restricted  
8 or closed shellfish bed each year, and to ensure Washington state's  
9 commanding international position in shellfish production.

10 The legislature finds that failing on-site sewage systems and  
11 animal waste are the two most significant causes of shellfish bed  
12 closures over the past decade. Remedial actions at the local level are  
13 required to effectively address these problems.

14 The legislature finds that existing entities, including  
15 conservation districts and local health departments, should be used by  
16 counties to address the water quality problems affecting the  
17 recreational and commercial shellfish harvest.

18 The legislature finds that local action in each watershed where  
19 shellfish are harvested is required to protect this vital resource.  
20 The legislature hereby encourages all counties having saltwater  
21 tidelands within their boundaries to establish watershed protection  
22 districts and programs designed to prevent any further degradation and  
23 contamination and to allow for restoration and reopening of closed  
24 shellfish growing areas.

25 **Sec. 2.** RCW 90.72.030 and 1985 c 417 s 3 are each amended to read  
26 as follows:

27 The legislative authority of each county having ~~((shellfish))~~  
28 saltwater tidelands within its boundaries is authorized to establish a  
29 ~~((shellfish))~~ watershed protection district to include areas in which

1 nonpoint pollution threatens water quality or the continuation of  
2 shellfish farming or harvesting. The legislative authority shall  
3 constitute the governing body of the district and shall adopt a  
4 ~~((shellfish))~~ watershed protection program to be effective within the  
5 district. The legislative authority may appoint a local advisory  
6 council to advise the legislative authority in preparation and  
7 implementation of watershed protection programs. This program ~~((may))~~  
8 shall include any elements deemed appropriate to deal with the nonpoint  
9 pollution ~~((threat))~~ threatening water quality, including, but not  
10 limited to, requiring the elimination or decrease of contaminants in  
11 storm water runoff, establishing monitoring ~~((programs))~~, inspection,  
12 and repair elements to ~~((make sure that septic drainfield))~~ ensure that  
13 on-site sewage systems are adequately maintained and working properly  
14 ~~((and))~~, assuring that animal grazing and manure management practices  
15 are ~~((appropriate))~~ consistent with best management practices, and  
16 establishing educational and public involvement programs to inform  
17 citizens on the causes of the threatening nonpoint pollution and what  
18 they can do to decrease the amount of such pollution. An element may  
19 be omitted where another program is effectively addressing those  
20 sources of nonpoint water pollution. Within the limits of RCW  
21 90.72.040 and 90.72.070, the county legislative authority shall have  
22 full jurisdiction and authority to manage, regulate, and control its  
23 programs and to fix, alter, regulate, and control the fees for services  
24 provided and charges or rates as provided under those programs.  
25 Programs established under this chapter, may, but are not required to,  
26 be part of a system of sewerage as defined in RCW 36.94.010.

27 **Sec. 3.** RCW 90.72.040 and 1985 c 417 s 4 are each amended to read  
28 as follows:

1       (1) The county legislative authority may create a ((shellfish))  
2 watershed protection district on its own motion or by submitting the  
3 question to the voters of the proposed district and obtaining the  
4 approval of a majority of those voting. The boundaries of the district  
5 shall be determined by the legislative authority. The legislative  
6 authority may create more than one district. A district may include  
7 any area or areas within the county, whether incorporated or  
8 unincorporated. Counties shall coordinate and cooperate with cities,  
9 towns, and water-related special districts within their boundaries in  
10 establishing watershed protection districts and carrying out watershed  
11 protection programs. Where a portion of the proposed district lies  
12 within an incorporated area, the county shall develop procedures for  
13 the participation of the city or town in the determination of the  
14 boundaries of the district and the administration of the district,  
15 including funding of the district's programs. The legislative  
16 authority of more than one county may by agreement provide for the  
17 creation of a district including areas within each of those counties.  
18 County legislative authorities are encouraged to coordinate their plans  
19 and programs to protect shellfish growing areas, especially where  
20 shellfish growing areas are located within the boundaries of more than  
21 one county. The legislative authority or authorities creating a  
22 district may abolish a ((shellfish)) watershed protection district on  
23 its or their own motion or by submitting the question to the voters of  
24 the district and obtaining the approval of a majority of those voting.

25       (2) If the county legislative authority creates a watershed  
26 protection district by its own motion, any registered voter residing  
27 within the boundaries of the watershed protection district may file a  
28 referendum petition to repeal the ordinance that created the district.  
29 Any referendum petition to repeal the ordinance creating the watershed  
30 protection district shall be filed with the county auditor within seven

1 days of passage of the ordinance. Within ten days of the filing of a  
2 petition, the county auditor shall confer with the petitioner  
3 concerning form and style of the petition, issue an identification  
4 number for the petition, and write a ballot title for the measure. The  
5 ballot title shall be posed as a question so that an affirmative answer  
6 to the question and an affirmative vote on the measure results in  
7 creation of the watershed protection district and a negative answer to  
8 the question and a negative vote on the measure results in the  
9 watershed protection district not being created. The petitioner shall  
10 be notified of the identification number and ballot title within this  
11 ten-day period.

12 After this notification, the petitioner shall have thirty days in  
13 which to secure on petition forms the signatures of not less than  
14 twenty-five percent of the registered voters residing within the  
15 boundaries of the watershed protection district and file the signed  
16 petitions with the county auditor. Each petition form shall contain  
17 the ballot title and full text of the measure to be referred. The  
18 county auditor shall verify the sufficiency of the signatures on the  
19 petitions. If sufficient valid signatures are properly submitted, the  
20 county auditor shall submit the referendum measure to the registered  
21 voters residing in the watershed protection district in a special  
22 election no later than one hundred twenty days after the signed  
23 petition has been filed with the county auditor. The special election  
24 may be conducted by mail ballot as provided for in chapter 29.36 RCW.

25 (3) The county legislative authority shall not impose fees, rates,  
26 or charges for watershed protection district programs upon properties  
27 on which fees, rates, or charges are imposed to pay for another program  
28 to eliminate or decrease contamination in storm water runoff.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 90.72 RCW  
2 to read as follows:

3        The county legislative authority shall create a watershed  
4 protection district and establish a watershed protection program to  
5 address causes of pollution within one hundred eighty days after the  
6 department of health, because of water quality degradation due to  
7 ongoing nonpoint sources of pollution, has closed or downgraded the  
8 classification of a recreational or commercial shellfish growing area  
9 within the boundaries of the county.

10       NEW SECTION.    **Sec. 5.**    A new section is added to chapter 90.72 RCW  
11 to read as follows:

12       Within available funding and as specified in the watershed  
13 protection program, counties creating watershed protection districts  
14 shall contract with conservation districts to draft plans with  
15 landowners to control pollution effects of animal waste.

16       **Sec. 6.**    RCW 90.72.070 and 1985 c 417 s 7 are each amended to read  
17 as follows:

18       The county legislative authority establishing a ~~((shellfish))~~  
19 watershed protection district may finance the protection program  
20 through (1) ~~((its))~~ county tax revenues, (2) inspection fees and  
21 similar fees ~~((or))~~ for services provided, (3) reasonable charges or  
22 rates specified in its protection program, or ~~((+3))~~ (4) federal,  
23 state, or private grants. Confined animal feeding operations subject  
24 to the national pollutant discharge elimination system and implementing  
25 regulations shall not be subject to fees, rates, or charges by a  
26 watershed protection district. Facilities permitted and assessed fees  
27 for wastewater discharge under the national pollutant discharge  
28 elimination system shall not be subject to fees, rates, or charges for

1 wastewater discharge by a watershed protection district. Lands  
2 classified as forest land under chapter 84.33 RCW and timber land under  
3 chapter 84.34 RCW shall not be subject to fees, rates, or charges by a  
4 watershed protection district. Counties may collect charges or rates  
5 in the manner determined by the county legislative authority.

6 NEW SECTION. Sec. 7. A new section is added to chapter 90.72 RCW  
7 to read as follows:

8 Counties may issue general obligation bonds, revenue bonds, and  
9 other evidences of indebtedness to assist in carrying out the programs  
10 of watershed protection districts, and counties may issue revenue bonds  
11 and other revenue obligations payable from fees, charges, or rates, and  
12 other revenue of districts. Any such obligations shall be issued in  
13 accordance with chapter 36.67 or 36.94 RCW.

14 NEW SECTION. Sec. 8. A new section is added to chapter 90.72 RCW  
15 to read as follows:

16 (1) The watershed financial assistance program is hereby created in  
17 the department of ecology. Grants and loans may be awarded only in a  
18 manner consistent with this chapter. The program shall be administered  
19 by the department of ecology in consultation with the department of  
20 health, and administrative costs shall be consistent with the  
21 limitations of RCW 70.146.030(2).

22 (2) Funds allocated to the watershed grants program shall be  
23 distributed only to counties for the purpose of creating watershed  
24 protection districts and implementing programs of such districts.

25 (3) In making grants and loans for watershed protection, the  
26 department of ecology, in consultation with the department of health,  
27 shall consider the following:

1 (a) The value and degree of threat to the recreational and  
2 commercial shellfish resource in the watershed;

3 (b) The adequacy of the watershed protection program adopted by the  
4 applicant to achieve the goal of protecting the shellfish resource; and

5 (c) The results of watershed protection efforts funded by any  
6 previous state grant to the applicant.

7 (4) Grants distributed to watershed protection districts must be  
8 matched by at least a twenty-five percent local contribution.

9 (5) The funds allocated by section 10 of this act shall be  
10 available to watershed protection districts for the purpose of  
11 establishing local government revolving loan programs to provide loans  
12 to individuals to reduce nonpoint source water pollution, including on-  
13 site septic system corrective action and the implementation of  
14 agricultural best management practices. The loans shall be on such  
15 terms and subject to such conditions as are required by chapter 90.50A  
16 RCW. The department shall follow the procedures of subsection (3) of  
17 this section in distributing loans.

18 (6) Counties that have formed watershed protection districts shall  
19 receive high priority for state water quality financial assistance to  
20 implement shellfish protection programs, including grants and loans  
21 provided under chapters 43.99F, 70.146, and 90.50A RCW.

22 **Sec. 9.** RCW 70.146.060 and 1987 c 527 s 1 are each amended to read  
23 as follows:

24 During the period from July 1, 1987, until June 30, 1995, the  
25 following limitations shall apply to the department's total  
26 distribution of funds appropriated from the water quality account:

27 (1) Not more than fifty percent for water pollution control  
28 facilities which discharge directly into marine waters;

1 (2) Not more than twenty percent for water pollution control  
2 activities that prevent or mitigate pollution of underground waters and  
3 facilities that protect federally designated sole source aquifers with  
4 at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;

5 (3) Not more than ten percent for water pollution control  
6 activities that protect freshwater lakes and rivers including but not  
7 limited to Lake Chelan and the Yakima and Columbia rivers;

8 (4) Not more than ten percent for activities which control nonpoint  
9 source water pollution, of which at least twenty percent shall be  
10 available for distribution pursuant to section 8 of this act;

11 (5) Ten percent and such sums as may be remaining from the  
12 categories specified in subsections (1) through (4) of this section for  
13 water pollution control activities or facilities as determined by the  
14 department; and

15 (6) Two and one-half percent of the total amounts of moneys under  
16 subsections (1) through (5) of this section from February 21, 1986,  
17 until December 31, 1995, shall be appropriated biennially to the state  
18 conservation commission for the purposes of this chapter. Not less  
19 than ten percent of the moneys received by the state conservation  
20 commission under the provisions of this section shall be expended on  
21 research activities.

22 With the exception of subsection (4) of this section, the  
23 distribution under this section shall not be required to be met in any  
24 single fiscal year.

25 Funds provided for facilities and activities under this chapter may  
26 be used for payments to a service provider under a service agreement  
27 pursuant to RCW 70.150.060. If funds are to be used for such payments,  
28 the department may make periodic disbursements to a public body or may  
29 make a single lump sum disbursement. Disbursements of funds with  
30 respect to a facility owned or operated by a service provider shall be

1 equivalent in value to disbursements that would otherwise be made if  
2 that facility were owned or operated by a public body. Payments under  
3 this chapter for waste disposal and management facilities made to  
4 public bodies entering into service agreements pursuant to RCW  
5 70.150.060 shall not exceed amounts paid to public bodies not entering  
6 into service agreements.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.50A  
8 RCW to read as follows:

9 For the period July 1, 1992, through June 30, 1995, five percent of  
10 the funds available annually shall be allocated for loans to local  
11 governments pursuant to section 8(5) of this act.

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 88.36 RCW  
13 to read as follows:

14 The commission shall seek to provide the most cost efficient and  
15 accessible facilities possible for reducing the amount of boat waste  
16 entering the state's waters. The commission shall consider providing  
17 funding support for portable pumpout facilities in this effort.

18 **Sec. 12.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each  
19 amended to read as follows:

20 The following goals are adopted to guide the development and  
21 adoption of comprehensive plans and development regulations of those  
22 counties and cities that are required or choose to plan under RCW  
23 36.70A.040. The following goals are not listed in order of priority  
24 and shall be used exclusively for the purpose of guiding the  
25 development of comprehensive plans and development regulations:

1 (1) Urban growth. Encourage development in urban areas where  
2 adequate public facilities and services exist or can be provided in an  
3 efficient manner.

4 (2) Reduce sprawl. Reduce the inappropriate conversion of  
5 undeveloped land into sprawling, low-density development.

6 (3) Transportation. Encourage efficient multimodal transportation  
7 systems that are based on regional priorities and coordinated with  
8 county and city comprehensive plans.

9 (4) Housing. Encourage the availability of affordable housing to  
10 all economic segments of the population of this state, promote a  
11 variety of residential densities and housing types, and encourage  
12 preservation of existing housing stock.

13 (5) Economic development. Encourage economic development  
14 throughout the state that is consistent with adopted comprehensive  
15 plans, promote economic opportunity for all citizens of this state,  
16 especially for unemployed and for disadvantaged persons, and encourage  
17 growth in areas experiencing insufficient economic growth, all within  
18 the capacities of the state's natural resources, public services, and  
19 public facilities.

20 (6) Property rights. Private property shall not be taken for  
21 public use without just compensation having been made. The property  
22 rights of landowners shall be protected from arbitrary and  
23 discriminatory actions.

24 (7) Permits. Applications for both state and local government  
25 permits should be processed in a timely and fair manner to ensure  
26 predictability.

27 (8) Natural resource industries. Maintain and enhance natural  
28 resource-based industries, including productive timber, agricultural,  
29 shellfish, and fisheries industries. Encourage the conservation of

1 productive forest lands and productive agricultural lands and shellfish  
2 tidelands, and discourage incompatible uses.

3 (9) Open space and recreation. Encourage the retention of open  
4 space and development of recreational opportunities, conserve fish and  
5 wildlife habitat, increase access to natural resource lands and water,  
6 and develop parks.

7 (10) Environment. Protect the environment and enhance the state's  
8 high quality of life, including air and water quality, and the  
9 availability of water.

10 (11) Citizen participation and coordination. Encourage the  
11 involvement of citizens in the planning process and ensure coordination  
12 between communities and jurisdictions to reconcile conflicts.

13 (12) Public facilities and services. Ensure that those public  
14 facilities and services necessary to support development shall be  
15 adequate to serve the development at the time the development is  
16 available for occupancy and use without decreasing current service  
17 levels below locally established minimum standards.

18 (13) Historic preservation. Identify and encourage the  
19 preservation of lands, sites, and structures, that have historical or  
20 archaeological significance.

21 **Sec. 13.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each  
22 amended to read as follows:

23 The comprehensive plan of a county or city that is required or  
24 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
25 and descriptive text covering objectives, principles, and standards  
26 used to develop the comprehensive plan. The plan shall be an  
27 internally consistent document and all elements shall be consistent  
28 with the future land use map. A comprehensive plan shall be adopted  
29 and amended with public participation as provided in RCW 36.70A.140.

1 Each comprehensive plan shall include a plan, scheme, or design for  
2 each of the following:

3 (1) A land use element designating the proposed general  
4 distribution and general location and extent of the uses of land, where  
5 appropriate, for agriculture, timber production, housing, commerce,  
6 industry, recreation, open spaces, public utilities, public facilities,  
7 and other land uses. The land use element shall include population  
8 densities, building intensities, and estimates of future population  
9 growth. The land use element shall provide for protection of the  
10 quality and quantity of ground water used for public water supplies and  
11 quality of marine water in shellfish growing areas. Where applicable,  
12 the land use element shall review drainage, flooding, and storm water  
13 run-off in the area and nearby jurisdictions and provide guidance for  
14 corrective actions to mitigate or cleanse those discharges that pollute  
15 waters of the state, including Puget Sound or waters entering Puget  
16 Sound.

17 (2) A housing element recognizing the vitality and character of  
18 established residential neighborhoods that: (a) Includes an inventory  
19 and analysis of existing and projected housing needs; (b) includes a  
20 statement of goals, policies, and objectives for the preservation,  
21 improvement, and development of housing; (c) identifies sufficient land  
22 for housing, including, but not limited to, government-assisted  
23 housing, housing for low-income families, manufactured housing,  
24 multifamily housing, and group homes and foster care facilities; and  
25 (d) makes adequate provisions for existing and projected needs of all  
26 economic segments of the community.

27 (3) A capital facilities plan element consisting of: (a) An  
28 inventory of existing capital facilities owned by public entities,  
29 showing the locations and capacities of the capital facilities; (b) a  
30 forecast of the future needs for such capital facilities; (c) the

1 proposed locations and capacities of expanded or new capital  
2 facilities; (d) at least a six-year plan that will finance such capital  
3 facilities within projected funding capacities and clearly identifies  
4 sources of public money for such purposes; and (e) a requirement to  
5 reassess the land use element if probable funding falls short of  
6 meeting existing needs and to ensure that the land use element, capital  
7 facilities plan element, and financing plan within the capital  
8 facilities plan element are coordinated and consistent.

9 (4) A utilities element consisting of the general location,  
10 proposed location, and capacity of all existing and proposed utilities,  
11 including, but not limited to, electrical lines, telecommunication  
12 lines, and natural gas lines.

13 (5) Counties shall include a rural element including lands that are  
14 not designated for urban growth, agriculture, forest, or mineral  
15 resources. The rural element shall permit land uses that are  
16 compatible with the rural character of such lands and provide for a  
17 variety of rural densities.

18 (6) A transportation element that implements, and is consistent  
19 with, the land use element. The transportation element shall include  
20 the following subelements:

21 (a) Land use assumptions used in estimating travel;

22 (b) Facilities and services needs, including:

23 (i) An inventory of air, water, and land transportation facilities  
24 and services, including transit alignments, to define existing capital  
25 facilities and travel levels as a basis for future planning;

26 (ii) Level of service standards for all arterials and transit  
27 routes to serve as a gauge to judge performance of the system. These  
28 standards should be regionally coordinated;

1 (iii) Specific actions and requirements for bringing into  
2 compliance any facilities or services that are below an established  
3 level of service standard;

4 (iv) Forecasts of traffic for at least ten years based on the  
5 adopted land use plan to provide information on the location, timing,  
6 and capacity needs of future growth;

7 (v) Identification of system expansion needs and transportation  
8 system management needs to meet current and future demands;

9 (c) Finance, including:

10 (i) An analysis of funding capability to judge needs against  
11 probable funding resources;

12 (ii) A multiyear financing plan based on the needs identified in  
13 the comprehensive plan, the appropriate parts of which shall serve as  
14 the basis for the six-year street, road, or transit program required by  
15 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW  
16 35.58.2795 for public transportation systems;

17 (iii) If probable funding falls short of meeting identified needs,  
18 a discussion of how additional funding will be raised, or how land use  
19 assumptions will be reassessed to ensure that level of service  
20 standards will be met;

21 (d) Intergovernmental coordination efforts, including an assessment  
22 of the impacts of the transportation plan and land use assumptions on  
23 the transportation systems of adjacent jurisdictions;

24 (e) Demand-management strategies.

25 After adoption of the comprehensive plan by jurisdictions required  
26 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions  
27 must adopt and enforce ordinances which prohibit development approval  
28 if the development causes the level of service on a transportation  
29 facility to decline below the standards adopted in the transportation  
30 element of the comprehensive plan, unless transportation improvements

1 or strategies to accommodate the impacts of development are made  
2 concurrent with the development. These strategies may include  
3 increased public transportation service, ride sharing programs, demand  
4 management, and other transportation systems management strategies.  
5 For the purposes of this subsection (6) "concurrent with the  
6 development" shall mean that improvements or strategies are in place at  
7 the time of development, or that a financial commitment is in place to  
8 complete the improvements or strategies within six years.

9 The transportation element described in this subsection, and the  
10 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for  
11 counties, and RCW 35.58.2795 for public transportation systems, must be  
12 consistent.

13 NEW SECTION. **Sec. 14.** The following acts or parts of acts are  
14 each repealed:

15 (1) RCW 90.72.010 and 1985 c 417 s 1; and

16 (2) RCW 90.72.050 and 1985 c 417 s 5.

17 NEW SECTION. **Sec. 15.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 16.** Sections 12 and 13 of this act shall  
22 take effect July 1, 1994.