
SENATE BILL 6698

State of Washington **54th Legislature** **1996 Regular Session**

By Senators Swecker, Newhouse, Haugen and Rasmussen

Read first time 01/24/96. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to locally conducted basin assessments and planning
2 for watersheds; adding a new chapter to Title 90 RCW; and creating new
3 sections.

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

5 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
6 finds that in order for the state to make appropriate decisions
7 regarding the management, protection, use, and conservation of our
8 state's water and fishery resources, it must possess an authoritative
9 and accurate understanding of the water quality, water quantity, water
10 availability, and fishery habitat conditions that exist within the
11 water basins of the state. To gain such an understanding, the
12 legislature further finds that the state should properly fund, support,
13 and facilitate the preparation of basin assessments for the water
14 basins of the state.

15 It is the intent of the legislature that the information, data, and
16 analysis resulting from the preparation of basin assessments be used by
17 the department of ecology to render timely and appropriate water right
18 decisions; to clear the backlog of pending water right applications;

1 and to make sound and balanced resource management decisions affecting
2 the ground and surface waters of our state's basins. These assessments
3 should also be used to support the efforts of state, tribal, and local
4 governments, and other interested parties engaged in the initiation,
5 development, and implementation of cooperative water basin plans. The
6 preparation and use of basin assessments should not, however, be
7 subject to the initiation or funding of basin planning processes.

8 It is further the intent of the legislature that in preparing basin
9 assessments, the state take all reasonable steps to ensure that these
10 assessments are developed using data, analysis, and methodologies that
11 are scientifically sound and are subject to effective quality control
12 and peer review mechanisms.

13 (2) The legislature finds that it is in the best interests of the
14 state to plan, develop, and provide for the use, protection, and
15 management of our state's water and fishery resources through the
16 development of basin plans developed in a cooperative manner by local,
17 state, tribal, private, public, and federal interests. The purpose of
18 such plans should be to gain a better understanding of the health of
19 the basin's fish and water resources, to resolve uncertainties and
20 differences regarding the condition of these resources, and to
21 cooperatively determine the most appropriate methods by which basin
22 resources should be used, protected, managed, restored, and enhanced.

23 It is further the intent of the legislature that locally based
24 basin planning groups should at a minimum, include representatives from
25 state government, local governments, and federally recognized tribal
26 governments whose reservation or ceded areas are within the basin.
27 Basin planning groups should also include and promote the participation
28 of other interested public and private parties with a clear stake in
29 basin resource management, including representatives from business,
30 agriculture, environment, fisheries, and recreation. All reasonable
31 efforts should be made to include the participation of interested
32 parties in the development of basin plans, however, should interested
33 parties to basin planning prove unable or unwilling to engage in
34 cooperative basin planning, the state should not discourage the
35 development of basin plans involving state and local government and
36 tribal participants.

37 (3) It is the intent of the legislature that the interests and
38 rights of all persons in possession of existing water right permits,

1 certificates, valid claim declarations, and adjudicated water rights be
2 protected within the basin planning process.

3 (4) It is the intent of the legislature that existing resource
4 management plans, agreements, and facility permits and licenses,
5 relating to the management of water or fishery resources executed or
6 issued before the effective date of this section shall not be made
7 subject to reconsideration by locally based basin planning groups
8 formed as a result of this chapter except by mutual consent of the
9 parties to such plans, agreements, permits, and licenses.

10 (5) The legislature finds that it is a high priority for the state
11 to support, provide technical assistance, and fund to the maximum
12 extent possible, the preparation and implementation of basin plans.
13 These plans should be prepared in cooperation with local governments,
14 private citizens and landowners, tribal governments, federal government
15 agencies, and other parties residing within or having a clear interest
16 in the status of the basin's water and fishery resources.

17 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
18 requires otherwise, the following definitions apply throughout this
19 chapter:

20 (1) "Basin" refers to one of sixty-two areas in the state
21 containing a major watershed or river basin as established in chapter
22 173-500 WAC.

23 (2) "Basin assessment" means a review and analysis of the overall
24 environmental health, quality, water usage, and water availability of
25 part or all of a WRIA's ground and surface waters and fishery
26 resources.

27 (3) "Basin plan" means a locally developed plan that provides a
28 comprehensive approach to the future management, use, conservation,
29 protection, and allocation of water resources within a WRIA, river
30 basin, or subbasin, and the means by which associated water quality and
31 fisheries will be protected, conserved, restored, used, and managed.

32 (4) "Department" means the department of ecology.

33 (5) "Person" means a firm, association, corporation, general
34 purpose local government, special district, or other municipal
35 corporation, governmental agency, as well as an individual.

36 (6) "Qualified governmental entity" means a general purpose local
37 government, county, federally recognized tribe, special district, or
38 consortium of local government and special districts that presently

1 serves, is intended to serve, or has the authority to serve water or
2 engage in water resource planning and management on a regional basis.

3 (7) "Tribe" or "tribes" means Indian tribes within Washington state
4 that are formally recognized by the federal government.

5 (8) "WRIA" or "water resource inventory area" is one of sixty-two
6 areas in the state containing a major watershed or river basin as
7 established in chapter 173-500 WAC.

8 **PART I**

9 **BASIN ASSESSMENTS**

10 NEW SECTION. **Sec. 101.** BASIN ASSESSMENTS--PURPOSES. It is the
11 intent of the legislature that basin assessments be employed by the
12 department to achieve the following purposes:

13 (1) To render timely and appropriate decisions on pending and
14 future water right applications using information and data that are
15 based on sound hydraulic and hydrogeologic methodology and analysis;

16 (2) To determine the conditions under which water rights should be
17 issued and fishery resources and associated habitat protected;

18 (3) To support and coordinate the data-related study and
19 information collection efforts of the state, local governments, special
20 districts, tribes, and other interested parties that have initiated
21 cooperative basin planning for the purpose of developing a basin plan
22 or would like to commence cooperative basin planning within their
23 basin; and

24 (4) To enable the state, local government, tribes, and other
25 persons to make sound and well-informed decisions relative to future
26 land use plans and policies, capital facility plans and projects, and
27 water resource plans and management within a basin.

28 NEW SECTION. **Sec. 102.** PREPARATION BY QUALIFIED GOVERNMENTAL
29 ENTITIES. (1) Basin assessments may be prepared for an entire WRIA,
30 multiple WRIsAs, or less than an entire WRIA, by the department, or by
31 a qualified governmental entity, which may include counties, city-
32 operated utilities, federally recognized tribes whose reservation and
33 or ceded areas are within the WRIA, or special districts, that are
34 acting as lead agencies in the development of cooperative basin plans
35 or authorized under statute or interlocal agreement, to undertake
36 regional studies and water supply activities. In the event a qualified

1 governmental entity is willing to undertake a basin assessment prior in
2 time to the department, the department shall defer to the qualified
3 governmental entity and provide all appropriate technical assistance
4 and funding support.

5 (2) The department shall develop a standardized memorandum of
6 agreement that it may execute with qualified governmental entities
7 willing to undertake basin assessments. The memorandum of agreement
8 shall describe the terms under which these entities may perform basin
9 assessments for the department, including the appropriate data
10 collection, scientific methodology, analytical tools, and quality
11 control approach to be employed.

12 NEW SECTION. **Sec. 103.** PROCESS FOR PREPARATION. (1) The
13 preparation of basin assessments may occur in two stages, a first stage
14 which shall be described as a level I assessment, and a second stage
15 which shall be described as a level II assessment. A level I
16 assessment shall at a minimum, include the following:

17 (a) A comprehensive collection of available data relating to a
18 basin's ground water and surface water quantities, water availability,
19 water quality, the health of associated fishery resources and habitat,
20 climatic variables, including precipitation, and land use
21 characteristics;

22 (b) A determination of whether the data available is sufficient for
23 the department to declare water is available for further appropriation
24 or insufficient to render such decisions absent additional data
25 collection and study efforts;

26 (c) An identification or determination of environmental trends
27 affecting water and fishery resources, to the extent existing data is
28 sufficient to perform this task;

29 (d) An identification of data-related gaps that require further
30 study and information before decisions can or should be made with
31 regard to water right and resource management matters;

32 (e) A determination of those areas where the data collected is
33 sufficient for the agency to make informed and authoritative water
34 right decisions; and

35 (f) A recommendation regarding priority areas, issues, data,
36 analysis, and resource issues that warrant further study in a level II
37 assessment.

1 (2) In the event the department determines that a level I
2 assessment does not contain data, analysis, and other findings
3 sufficient to make authoritative decisions with regard to water
4 availability, water quality, the status of fishery resources, and the
5 environmental impacts of further ground or surface water
6 appropriations, the department, or a qualified local government or
7 utility, may undertake a level II assessment to provide the additional
8 data, analysis, and findings necessary for the department to make
9 timely water right and resource management decisions. The scope of
10 work and overall study effort of a level II assessment should be guided
11 by the data, analytical findings, and recommendations developed within
12 a level I assessment.

13 (3) The department shall develop a process and procedures whereby
14 the data, analysis, findings, and recommendations contained within
15 level I and level II assessments are subject to effective and objective
16 quality control standards, including but not limited to the creation of
17 an independent peer review panel comprised of qualified persons with
18 expertise in hydrology, hydrogeology, engineering, water quality,
19 fishery biology, and related environmental sciences.

20 NEW SECTION. Sec. 104. FORMAT AND ACCESS TO DATA. The department
21 shall develop a uniform system of procedures for the entry and
22 distribution of all data and information relating to basin assessments
23 in all regions of the state. The procedures shall be designed to
24 ensure that data collected by the state or qualified local governments
25 is prepared and stored on a common software system that is easily
26 accessible to state agencies, local governments, tribal governments,
27 and other interested parties. It shall also be designed to ensure that
28 basin assessments operate as open file documents that may be enhanced
29 by new or additional data that has been reviewed and approved by the
30 peer review mechanism cited in section 103(3) of this act. Upon the
31 completion of a basin assessment, the department shall make electronic
32 and hard copies of the basin assessment reports and supporting data and
33 make such copies available for public review at the department's
34 regional offices and department headquarters.

35 NEW SECTION. Sec. 105. TIMELINE FOR PREPARATION. The timeline
36 for the preparation and completion of a level I or level II basin

1 assessment by the state or a qualified local government using any state
2 funds or grants shall not exceed eighteen months each.

3 **PART II**
4 **BASIN PLANNING**

5 NEW SECTION. **Sec. 201.** BASIN PLANNING. The legislature finds
6 that locally based basin planning should be the preferred approach to
7 determine the policy, regulatory, and management approaches necessary
8 for the protection, conservation, restoration, use, and allocation of
9 our state's water resources. In advancing cooperative basin planning,
10 the legislature further finds that the development and implementation
11 of basin plans can best be achieved by dividing the planning process
12 into two phases, phase I and phase II. Under phase I, which may also
13 be described as prescoping, state, local, and tribal governments shall
14 identify and undertake basic data collection and coordination, needs
15 assessments, and public education tasks necessary to prepare and
16 proceed to a second phase. The second phase shall involve the
17 development of a comprehensive basin plan, including to the extent
18 possible, the participation of those parties with a clear stake in the
19 management, protection, and conservation of a basin's water and fishery
20 resources.

21 NEW SECTION. **Sec. 202.** NOTICE OF INTENT TO PLAN. Phase I, or the
22 prescoping phase of a basin planning process, shall be initiated by
23 filing with the department a notice of intent to plan. The notice of
24 intent shall be initiated and signed by two local governments
25 responsible for water resource management or delivery, or one such
26 local government and a tribe residing or asserting treaty-based
27 interests within the basin.

28 NEW SECTION. **Sec. 203.** CONTENTS OF NOTICE. The initiating
29 entities shall prepare the notice of intent filed under section 202 of
30 this act and include the following in the notice:

31 (1) A basic description of the portion of the water resource
32 inventory area, which may be a subWRIA, WRIA, or multiple WRIsAs,
33 proposed to be included within the regional planning area, and where
34 appropriate, an explanation for the inclusion of more than one water
35 resource inventory area; and

1 (2) Identification of public and private groups and tribal entities
2 with a known interest in the proposed WRIA planning area and the
3 methods by which they will be contacted and invited to participate.

4 NEW SECTION. **Sec. 204.** FORMATION OF BASIN PLANNING UNIT--
5 PRESCOPING. (1) Within sixty days of submittal of the notice of intent
6 to the department, the initiating entities shall call an invitational
7 meeting of all general purpose local governments, all special districts
8 providing water and waste water service, including those districts
9 engaged in hydropower, industrial, or irrigation supply, state agencies
10 with natural resource or water resource management responsibilities,
11 and affected tribes.

12 (2) Representatives from the state, local, and tribal governmental
13 units shall be selected to form a basin planning unit. Once
14 constituted, members of the basic planning unit shall designate one or
15 more of the governmental agencies to act as lead or colead agencies.
16 Once designated, the lead agency or agencies may administer all tasks
17 associated with the prescoping phase and the subsequent full planning
18 phase in sections 201 and 205 of this act, enter into contracts agreed
19 to by the basin planning unit, coordinate intergovernmental agreements
20 among the participating entities, and undertake basic data collection
21 tasks, including level I and II basin assessments, for the purpose of
22 assisting the basin planning unit to define its overall planning
23 objectives and recommended scope of work. The lead agency shall draw
24 upon those staff resources made available from the state, in addition
25 to local and tribal governments participating in the planning unit, to
26 support its role and the work of the basin planning unit and expanded
27 planning unit.

28 (3) The basic planning unit is responsible for evaluating the
29 preliminary administrative, organizational, data collection, and
30 coordination tasks necessary to proceed with basin planning and has one
31 year to complete its tasks. These tasks shall include, but not be
32 limited to the following:

33 (a) Identifying persons and organizations with a clear interest or
34 stake in a comprehensive basin planning effort, including agriculture,
35 business, environment, fisheries, and recreational interests;

36 (b) Identifying the potential range of policy, technical, and
37 treaty-based issues, interests, and concerns held by the basin planning
38 unit and other potential members of a basin planning process;

1 (c) Identifying, collecting, and cataloging available data relating
2 to water quality, water quantity, current and projected water usage,
3 and fishery resources. This task may include initiating a level I
4 basin assessment in conjunction and cooperation with a qualified local
5 government participating in the basin planning unit or the department
6 or developing preliminary findings with regard to the status of water
7 availability, the health and status of fishery resources and habitat,
8 and the status of water quality within the planning area;

9 (d) Identifying water quality, quantity, water use, and fishery-
10 related data gaps requiring further data collection, analysis, and
11 study in a level II assessment effort and developing preliminary scopes
12 of work for level II assessment tasks that may be reviewed, evaluated,
13 and implemented during phase II of the basin planning process;

14 (e) Developing an interim scope of work that identifies data
15 collection and administrative tasks that can be funded and implemented
16 before the commencement of full basin planning; and

17 (f) Developing a recommended scope of work for the expanded
18 planning unit to consider including planning objectives, schedule for
19 performance, data, studies, modeling, analytical work products, funding
20 requirements and potential sources, and other planning elements
21 necessary to comply with this chapter.

22 (4) The basic planning unit shall establish its own decision-making
23 process.

24 NEW SECTION. **Sec. 205.** COMMENCEMENT OF FULL BASIN PLANNING--
25 FORMATION OF EXPANDED PLANNING UNIT. (1) Upon completion of the
26 prescoping phase tasks and activities described in section 202 of this
27 act, the basin planning unit shall call an invitational meeting of all
28 local governments and special districts not participating in the basin
29 planning unit, in addition to all other interest groups and
30 stakeholders identified in the prescoping phase including agriculture,
31 business, environment, sport and commercial fisheries, and recreation.

32 (2) Within sixty days after the invitational meeting, an expanded
33 basin planning unit shall be formed consisting of three representatives
34 each from the state governments, local governments, including special
35 districts, and tribes participating in the basin planning unit, and one
36 representative from each of the interest groups identified in this
37 section. Each interest group shall select its representatives to the
38 expanded basin planning unit. Governmental representatives shall

1 constitute a majority of the total number of representatives
2 participating in the expanded planning unit. An interest group not
3 granted voting status may petition the planning unit members to secure
4 voting status ninety days after the invitational meeting described in
5 this section. Decisions to add additional interest groups with voting
6 status shall be made by a two-thirds vote of the original planning unit
7 members. Groups not requesting voting status may participate in an ex-
8 officio capacity at the invitation of the planning unit.

9 (3) If a designated group chooses not to participate in the basin
10 planning unit, the planning process shall continue and the
11 nonparticipating group's position within the planning unit shall remain
12 vacant for the duration of the planning period. If no groups, other
13 than the governmental entities that constitute the basic planning unit,
14 are either willing or able to proceed at the time of the invitational
15 meeting, the full planning process may proceed in their absence and the
16 basic planning unit should attempt to limit its scope of work to those
17 issues, interests, resources, priorities, and water rights that are
18 directly held by or associated with participating basin planning unit
19 members.

20 (4) The period allowed for the expanded basin planning process
21 shall not exceed two years if adequate funding is available.

22 (5) Participants in the expanded planning unit shall seek to reach
23 decisions by consensus. If consensus cannot be achieved, decisions
24 shall be made by a simple majority vote of the nongovernmental
25 interests, and a three-quarters vote of the governmental participants.

26 NEW SECTION. **Sec. 206.** INSTREAM FLOWS. A basin planning unit, as
27 part of the planning process, may review and recommend changes to
28 existing instream flow levels established by regulation within the
29 WRIA. A planning unit shall submit to the department for rule
30 adoption, recommended instream flow levels for those rivers and streams
31 within the WRIA where minimum flows have not been established. These
32 recommendations shall be included in a basin plan.

33 NEW SECTION. **Sec. 207.** SCOPE OF WORK. Within one hundred twenty
34 days after the expanded basin planning unit has been formed, it shall
35 review the scope of work recommended by the original basin planning
36 unit for the purpose of making changes, additions, or deletions to the
37 scope of work and associated work plans.

1 NEW SECTION. **Sec. 208.** PUBLIC INVOLVEMENT--SCOPE OF WORK. (1)

2 The basin planning unit shall establish a public involvement advisory
3 committee that is responsible for providing information and receiving
4 comments and suggestions regarding the scope of work, the projects,
5 plans, and action of the basin planning unit, and the goals, findings,
6 and progress of the basin planning process.

7 (2) The basin planning unit shall conduct at least two public
8 hearings within the WRIA planning area on the planning objectives, work
9 plans, and scope of work before their adoption and commencement of
10 related work.

11 NEW SECTION. **Sec. 209.** PLAN CONTENTS. (1) Before the adoption of
12 a draft basin plan, the basin planning unit shall conduct at least two
13 public hearings.

14 (2) The plan may include, but is not limited to the following:

15 (a) A quantitative determination of how much surface and ground
16 water exists within the WRIA or basin;

17 (b) A quantitative determination of how much surface and ground
18 water is available to meet instream and out-of-stream demands,
19 including agricultural, fisheries, industrial, municipal, recreational,
20 and residential uses, and the conditions and procedures under which
21 future allocations may be made for those uses;

22 (c) An analysis of surface and ground water quality conditions
23 within the WRIA or basin;

24 (d) A determination of approximately when and how much water is
25 claimed, used, permitted, and certificated, including instream flows;

26 (e) Measures and plans to improve the water quality of the ground
27 and surface water sources;

28 (f) Water supply planning requirements for future needs in
29 accordance with adopted local government land use plans;

30 (g) Fisheries restoration and enhancement objectives and plans;

31 (h) Instream flow recommendations;

32 (i) Options and opportunities for the potential storage, recharge,
33 and reuse of water;

34 (j) Land use management controls and incentives for habitat
35 preservation and restoration;

36 (k) Conservation and water use efficiency measures applicable to
37 the basin;

1 (1) Identification of potential interbasin issues of importance and
2 recommended methods for resolution; and

3 (m) A plan for implementation, including responsible parties,
4 funding, and schedule.

5 (3) The basin planning unit may prepare an environmental impact
6 statement, if required by the county or other local legislative
7 authority, to address the provisions of the plan. If an environmental
8 impact statement is required, it shall be developed subsequent to the
9 public hearing process for the plan.

10 (4) The basin planning unit shall submit the draft basin plan to
11 all local governments with land use authority within the WRIA or basin
12 planning area for their review and determination that the plan as
13 submitted is consistent with adopted land use plans and shoreline
14 development policies within ninety days of receipt. If found
15 inconsistent, reviewing local governments shall remand the basin plan
16 to the expanded planning unit and basin planning unit and identify
17 those provisions requiring change or conformance to local government
18 plans and policies. Lack of available water may require local
19 governments to modify land use or water supply plans.

20 (5) The basin planning unit shall submit the draft basin plan to
21 the department, which shall coordinate plan distribution and receipt of
22 comments from other state agencies. The department shall review the
23 plan to determine consistency with existing state laws and rules. In
24 its review capacity, the department may not reject or modify the plan,
25 but may remand it back to the basin planning unit with comments if
26 sections are found to be inconsistent with state or federal law.
27 Sections that are consistent with state and federal law may be
28 implemented immediately. Should the department determine the plan is
29 not consistent with existing state laws or rules, it shall notify in
30 writing the basin planning unit of the following within ninety days of
31 receipt:

32 (a) Plan inconsistencies with either or both rules and laws; and

33 (b) Recommendations regarding changes, to either or both the laws
34 and rules, required for plan implementation.

35 (6) Upon completion of review by the department, members of the
36 basin planning unit shall formally adopt and implement those
37 provisions, policies, and obligations of the plan consistent with
38 existing laws or rules within one hundred twenty days through legally
39 binding procedures. The adoption process by state, local governments,

1 and tribes shall occur through the adoption of resolutions, ordinances,
2 or other methods that legally bind the parties to the terms of the plan
3 and its provisions. State laws or ordinances found in conflict with
4 plan provisions shall be submitted to the legislature or local
5 government for review to determine if amendment or repeal of such laws
6 or ordinances is in the public interest.

7 (7) Following adoption of the plan by the basin planning unit, the
8 department shall, within one hundred twenty days, prepare a rule for
9 incorporation into the Washington administrative code that:

10 (a) Reflects state approval of the plan; and

11 (b) Makes, where possible, all appropriate changes to existing
12 rules that would otherwise preclude plan implementation.

13 (8) The department and other state agencies shall take all
14 appropriate action and make program and policy changes to implement the
15 plan.

16 NEW SECTION. **Sec. 210.** GRANTS, FUNDS, AND TECHNICAL ASSISTANCE.

17 (1) Basic planning units and expanded planning units engaged in basin
18 planning efforts may accept state, federal, and local government
19 grants, funds, and other financing, as well as enter into cooperative
20 agreements with private and public entities for the purpose of
21 developing basin plans, conducting level I and level II basin
22 assessments, water quality and fishery data collection and analysis,
23 facilitation, and plan implementation.

24 (2) The department shall support, though the provision of all
25 possible technical and funding assistance, the efforts of a basin
26 planning unit and qualified governmental entities to undertake level I
27 or level II basin assessment in WRIAs where no such assessments have
28 been prepared.

29 NEW SECTION. **Sec. 211.** ADMINISTRATIVE RULE. The department
30 shall, within one hundred twenty days of the effective date of this
31 section, prepare an administrative rule for implementation of basin
32 planning process in this chapter.

33

PART III

34

MISCELLANEOUS

1 NEW SECTION. **Sec. 301.** PART HEADINGS AND CAPTIONS NOT LAW. Part
2 headings and captions used in this act do not constitute any part of
3 the law.

4 NEW SECTION. **Sec. 302.** Sections 2, 101 through 105, and 201
5 through 211 of this act shall constitute a new chapter in Title 90 RCW.

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