SB 5778 - H AMD **567**
By Representative Upthegrove

WITHDRAWN 4/6/2007

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 90.72.020 and 1985 c 417 s 2 are each amended to read as follows:

((~~For purposes of this chapter,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Nonspecified county" means all counties in the state of Washington except for those counties listed as specified counties, as defined in subsection (2) of this section;

(2) "Specified county" means Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom counties.

(3) "Shellfish threatened area" means:

(a) Those commercial shellfish areas classified by the department of health as approved or conditionally approved that meet the following conditions:

(i) Are compliant with existing health standards; and

(ii) Have at least one additional water-quality sampling station in the area that the department of health determines exceeds the ninetieth percentile value of thirty fecal coliforms per one hundred milliliters of water using the department of health's bacterial standards; and

(iii) Have been classified for at least one year; or

(b) Those recreational shellfish areas classified as open by the department of health that meet the same conditions as specified in (a)(i), (ii) and (iii) of this subsection.

(4) "Shellfish tidelands" means all saltwater tidelands on which shellfish are grown or harvested for human consumption.

Sec. 2. RCW 90.72.030 and 1992 c 100 s 2 are each amended to read as follows:

For specified counties, the following applies to the legislative authority of each county having shellfish areas within its boundaries:

(1) The legislative authority ((~~of each county having shellfish tidelands within its boundaries~~)) is authorized to establish a shellfish protection district to include areas in which nonpoint pollution threatens the water quality upon which the continuation or restoration of shellfish farming or harvesting is dependent, or when the department of health identifies a shellfish threatened area as defined in this chapter.

(2) The legislative authority shall constitute the governing body of the district and shall adopt a shellfish protection program to be effective within the district.

(3) The legislative authority may appoint a local advisory council to advise the legislative authority in preparation and implementation of shellfish protection programs.

(4) ((~~This~~)) The shellfish protection program shall include any elements deemed appropriate to deal with the nonpoint pollution threatening water quality, including, but not limited to, the following:

(a) Requiring the elimination or decrease of contaminants in storm water runoff((~~,~~));

(b) Establishing monitoring, inspection, and repair elements to ensure that on-site sewage systems are adequately maintained and working properly((~~, assuring~~));

(c) Ensuring that animal grazing and manure management practices are consistent with best management practices((~~,~~)); and

(d) Establishing educational and public involvement programs to inform citizens on the causes of the ((~~threatening~~)) nonpoint pollution and what they can do to decrease the amount of such pollution. ((~~An element may be omitted where another program is effectively addressing those sources of nonpoint water pollution~~.))

(5) The legislative authority shall consult with the department of health, the department of ecology, the department of agriculture, the department of natural resources, or the

conservation commission as appropriate to the elements of the program.

(6) If the legislative authority is effectively addressing failing on-site sewage systems within an existing marine recovery area, as provided in RCW 70.118A.040, then such effective actions satisfy the corresponding element requirement in the shellfish protection district.

(7) Within the limits of RCW 90.72.040 and 90.72.070, the ((~~county~~)) legislative authority shall have full jurisdiction and authority to:

(a) Manage, regulate, and control its ((~~programs and to fix~~)) shellfish protection program; and

(b) Fix, alter, regulate, and control the fees for services provided and charges or rates as provided under those programs.

(8) Programs established under this chapter, may, but are not required to, be part of a system of sewerage as defined in RCW 36.94.010.

(9) The department of health shall grant funds to legislative authorities, as available, to assist with the costs of creating, establishing, implementing, and enforcing the provisions of shellfish protection programs formed for shellfish threatened areas within the specified counties.

Sec. 3. RCW 90.72.045 and 1992 c 100 s 4 are each amended to read as follows:

(1) The county legislative authority in a specified county shall create a shellfish protection district and establish a shellfish protection program developed under RCW 90.72.030 or an equivalent program to address the causes, or suspected causes identified by evidence, of pollution. The shellfish protection district and shellfish protection program must be created within one hundred eighty days after the department of health, because of water quality degradation due to ongoing nonpoint sources of pollution, has((~~, after June 11, 1992,~~)) closed or downgraded the classification of a recreational or commercial shellfish growing area within the boundaries of the county.

(2) The department of health may grant an extension to the one hundred and eighty-day time limit to create a shellfish protection

district and establish a shellfish protection program, provided that all of the following conditions are met:

(a) Each extension may not be more than thirty days;

(b) No more than two extensions may be granted for each shellfish area; and

(c) The legislative authority requires additional time to establish a taxing or fee district, or a funding account or source, to pay for the cost of creating, implementing, or enforcing the shellfish protection program.

(3) The county legislative authority shall initiate implementation of the shellfish protection program within sixty days after it is established.

(4) A copy of the program must be provided to the departments of health, ecology, and agriculture, to the applicable local conservation districts, and to the conservation commission. An agency that has regulatory authority for any of the sources of nonpoint pollution covered by the program shall cooperate with the county in its implementation. The county legislative authority shall submit a written report to the department of health annually that describes the status and progress of the program.

(5) If water-quality sampling or shoreline sanitary surveys conducted by the department of health indicate that nonpoint sources of pollution that are causing the closure of, or have caused the downgraded classification or status of, a shellfish threatened area have been corrected prior to the deadline for creating a shellfish protection district, then the requirement to form the district is waived.

(6) The county legislative authority shall enforce the provisions of shellfish protection programs upon implementation.

(7) The department of health, in consultation with appropriate county legislative authorities and other entities or persons concerned with shellfish protection districts and areas, shall develop recommendations to determine whether and when shellfish threatened areas should have mandatory shellfish protection districts and shellfish protection programs. The department of health shall analyze the feasibility of, and potential ecological and economic impacts associated with, requiring the creation of shellfish protection districts and establishment of shellfish protection programs for shellfish threatened areas. The department

of health shall submit the recommendations and analysis to the appropriate legislative committees by December 1, 2007.

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

The department of health shall allocate available funding from the shellfish contamination prevention and protection account with the following conditions:

(1) Funding to the specified counties must be restricted to the creation, establishment, implementation, and enforcement of shellfish protection districts for shellfish areas that have been identified as shellfish threatened areas for greater than one year.

(2) Specified counties that apply for one-time funding from the department of health are eligible to receive matching funds. For these matching funds, the department of health shall contribute one dollar for every one dollar spent by the county.

(3) Specified counties that establish ongoing funding through a taxing or fee district are eligible to receive matching funds from the department of health. For these matching funds, the department of health shall contribute two dollars for every one dollar spent by the county.

(4) Specified counties that demonstrate, to the department of health, an economic hardship and an inability to afford the county's matching share under:

(a) Subsection (2) of this section, are eligible, and may apply for, full one-time funding from the department of health; and

(b) Subsection (3) of this section, are eligible, and may apply for, full ongoing funding from the department of health.

(5) Applications for full one-time funding and for full ongoing funding, as provided in this section, must be separate applications. Economic hardship must be demonstrated separately for each application.

(6) The department of health may reimburse itself for administrative and technical assistance costs incurred under sections 2 and 3 of this act.

(7) Reimbursement to the department of health, as specified in subsection (6) of this section, may be no more than ten percent of the total funds provided for the purposes of sections 2 through 4 of this act.

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

The shellfish contamination prevention and protection account is created in the state treasury. Moneys from the aquatic lands enhancement account that are directed for deposit to the shellfish contamination prevention and protection account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this act.

NEW SECTION. **Sec. 6.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2007, in the omnibus appropriations act or other legislation, this act is null and void."

Correct the title.

EFFECT: Requires that county legislative authorities: initiate implementation of shellfish protection programs within 60 days after the programs are established; submit copies of the programs to appropriate state agencies and local conservation districts; and consult with appropriate state agencies. Requires the Department of Health to conduct a feasibility analysis of requiring shellfish protection districts and programs for threatened shellfish areas, and submit the analysis and accompanying recommendations to the Legislature. Appropriates one million dollars from the aquatic lands enhancement account.