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HOUSE BILL 2363

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State of Washington

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**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 01/15/92. Referred to Committee on Natural Resources & Parks.

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, 82.49.030, 36.70A.020, 36.70A.030, and  
4 36.70A.070; adding new sections to chapter 90.72 RCW; adding a new  
5 section to chapter 88.36 RCW; repealing RCW 90.72.010 and 90.72.050;  
6 and providing effective dates.

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. Within the  
19 limits of RCW 90.72.070, the county legislative authority shall have  
20 full jurisdiction and authority to manage, regulate, and control its  
21 programs and to fix, alter, regulate, and control the fees for services  
22 provided and charges or rates as provided under those programs.  
23 Programs established under this chapter, may, but are not required to,  
24 be part of a system of sewerage as defined in RCW 36.94.010.

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

27 The county legislative authority may create a ~~((shellfish))~~  
28 watershed protection district on its own motion or by submitting the  
29 question to the voters of the proposed district and obtaining the

1 approval of a majority of those voting. The boundaries of the district  
2 shall be determined by the legislative authority. The legislative  
3 authority may create more than one district. A district may include  
4 any area or areas within the county, whether incorporated or  
5 unincorporated. Counties shall coordinate and cooperate with  
6 incorporated areas within their boundaries in establishing watershed  
7 protection districts and carrying out watershed protection programs.  
8 The legislative authority of more than one county may by agreement  
9 provide for the creation of a district including areas within each of  
10 those counties. County legislative authorities are encouraged to  
11 coordinate their plans and programs to protect shellfish tidelands,  
12 especially where shellfish growing areas are located within the  
13 boundaries of more than one county. The legislative authority or  
14 authorities creating a district may abolish a ((shellfish)) watershed  
15 protection district on its or their own motion or by submitting the  
16 question to the voters of the district and obtaining the approval of a  
17 majority of those voting.

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

20 The county legislative authority shall create a watershed  
21 protection district and establish a watershed protection program to  
22 address causes of pollution within one hundred eighty days after the  
23 department of health, because of water quality degradation, has closed  
24 or downgraded the classification of a recreational or commercial  
25 shellfish growing area within the boundaries of the county.

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

1        Within available funding and as specified in the watershed  
2 protection program, counties creating watershed protection districts  
3 shall contract with conservation districts to draft plans with  
4 landowners to control pollution effects of animal waste.

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

7        The county legislative authority establishing a ~~((shellfish))~~  
8 watershed protection district may finance the protection program  
9 through (1) ~~((its))~~ county tax revenues, (2) inspection fees and  
10 similar fees ~~((or))~~ for services performed, (3) charges or rates  
11 specified in its protection program, or ~~((+3+))~~ (4) federal, state, or  
12 private grants. Counties may collect household charges or rates in the  
13 manner determined by the county legislative authority.

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

16        Counties may issue general obligation bonds, revenue bonds, and  
17 other evidences of indebtedness to assist in carrying out the programs  
18 of watershed protection districts, and counties may issue revenue bonds  
19 and other revenue obligations payable from fees, household charges, and  
20 other revenue of districts. Any such obligations shall be issued in  
21 accordance with chapter 36.67 or 36.94 RCW.

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

24        Counties that have formed watershed protection districts under the  
25 provisions of chapter 90.72 RCW shall receive high priority for state  
26 water quality grants and loans to implement shellfish protection

1 programs, including grants and loans provided under chapters 43.99F,  
2 70.146, and 90.50A RCW.

3 **Sec. 9.** RCW 82.49.030 and 1991 sp.s. c 16 s 925 are each amended  
4 to read as follows:

5 (1) The excise tax imposed under this chapter is due and payable to  
6 the department of licensing or its agents at the time of registration  
7 of a vessel. The department of licensing shall not issue or renew a  
8 registration for a vessel until the tax is paid in full.

9 (2) The excise tax collected under this chapter shall be deposited  
10 in the general fund.

11 (3) (~~For the 1993-95 Fiscal biennium~~) Until June 30, 1999, the  
12 watercraft excise tax revenues exceeding five million dollars in each  
13 fiscal year, but not exceeding six million dollars, may, subject to  
14 appropriation by the legislature, be used for the purposes specified in  
15 RCW 88.36.100.

16 NEW SECTION. **Sec. 10.** A new section is added to chapter 88.36 RCW  
17 to read as follows:

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

22 **Sec. 11.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each  
23 amended to read as follows:

24 The following goals are adopted to guide the development and  
25 adoption of comprehensive plans and development regulations of those  
26 counties and cities that are required or choose to plan under RCW  
27 36.70A.040. The following goals are not listed in order of priority

1 and shall be used exclusively for the purpose of guiding the  
2 development of comprehensive plans and development regulations:

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

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

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

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

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

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

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

29 (8) Natural resource industries. Maintain and enhance natural  
30 resource-based industries, including productive timber, agricultural,

1 shellfish, and fisheries industries. Encourage the conservation of  
2 productive forest lands and productive agricultural lands and shellfish  
3 tidelands, and discourage incompatible uses.

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

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

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

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

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

22 **Sec. 12.** RCW 36.70A.030 and 1990 1st ex.s. c 17 s 3 are each  
23 amended to read as follows:

24 Unless the context clearly requires otherwise, the definitions in  
25 this section apply throughout this chapter.

26 (1) "Adopt a comprehensive land use plan" means to enact a new  
27 comprehensive land use plan or to update an existing comprehensive land  
28 use plan.

1 (2) "Agricultural land" means land primarily devoted to the  
2 commercial production of horticultural, viticultural, floricultural,  
3 dairy, apiary, vegetable, or animal products or of berries, grain, hay,  
4 straw, turf, seed, Christmas trees not subject to the excise tax  
5 imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has  
6 long-term commercial significance for agricultural production.

7 (3) "City" means any city or town, including a code city.

8 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"  
9 means a generalized coordinated land use policy statement of the  
10 governing body of a county or city that is adopted pursuant to this  
11 chapter.

12 (5) "Critical areas" include the following areas and ecosystems:  
13 (a) Wetlands; (b) areas with a critical recharging effect on aquifers  
14 used for potable water; (c) fish and wildlife habitat conservation  
15 areas and shellfish growing areas; (d) frequently flooded areas; and  
16 (e) geologically hazardous areas.

17 (6) "Department" means the department of community development.

18 (7) "Development regulations" means any controls placed on  
19 development or land use activities by a county or city, including, but  
20 not limited to, zoning ordinances, official controls, planned unit  
21 development ordinances, subdivision ordinances, and binding site plan  
22 ordinances.

23 (8) "Forest land" means land primarily useful for growing trees,  
24 including Christmas trees subject to the excise tax imposed under RCW  
25 84.33.100 through 84.33.140, for commercial purposes, and that has  
26 long-term commercial significance for growing trees commercially.

27 (9) "Geologically hazardous areas" means areas that because of  
28 their susceptibility to erosion, sliding, earthquake, or other  
29 geological events, are not suited to the siting of commercial,

1 residential, or industrial development consistent with public health or  
2 safety concerns.

3 (10) "Long-term commercial significance" includes the growing  
4 capacity, productivity, and soil composition of the land for long-term  
5 commercial production, in consideration with the land's proximity to  
6 population areas, and the possibility of more intense uses of the land.

7 (11) "Minerals" include gravel, sand, and valuable metallic  
8 substances.

9 (12) "Public facilities" include streets, roads, highways,  
10 sidewalks, street and road lighting systems, traffic signals, domestic  
11 water systems, storm and sanitary sewer systems, parks and recreational  
12 facilities, and schools.

13 (13) "Public services" include fire protection and suppression, law  
14 enforcement, public health, education, recreation, environmental  
15 protection, and other governmental services.

16 (14) "Shellfish growing areas" means those areas used for  
17 commercial or recreational growing and harvesting of bivalve shellfish,  
18 including oysters, clams, mussels, and scallops.

19 (15) "Urban growth" refers to growth that makes intensive use of  
20 land for the location of buildings, structures, and impermeable  
21 surfaces to such a degree as to be incompatible with the primary use of  
22 such land for the production of food, other agricultural products, or  
23 fiber, or the extraction of mineral resources. When allowed to spread  
24 over wide areas, urban growth typically requires urban governmental  
25 services. "Characterized by urban growth" refers to land having urban  
26 growth located on it, or to land located in relationship to an area  
27 with urban growth on it as to be appropriate for urban growth.

28 ((+15+)) (16) "Urban growth areas" means those areas designated by  
29 a county pursuant to RCW 36.70A.110.

1       (~~(16)~~)   (17) "Urban governmental services" include those  
2 governmental services historically and typically delivered by cities,  
3 and include storm and sanitary sewer systems, domestic water systems,  
4 street cleaning services, fire and police protection services, public  
5 transit services, and other public utilities associated with urban  
6 areas and normally not associated with nonurban areas.

7       (~~(17)~~)   (18) "Wetland" or "wetlands" means areas that are  
8 inundated or saturated by surface water or ground water at a frequency  
9 and duration sufficient to support, and that under normal circumstances  
10 do support, a prevalence of vegetation typically adapted for life in  
11 saturated soil conditions. Wetlands generally include swamps, marshes,  
12 bogs, and similar areas. Wetlands do not include those artificial  
13 wetlands intentionally created from nonwetland sites, including, but  
14 not limited to, irrigation and drainage ditches, grass-lined swales,  
15 canals, detention facilities, wastewater treatment facilities, farm  
16 ponds, and landscape amenities. However, wetlands may include those  
17 artificial wetlands intentionally created from nonwetland areas created  
18 to mitigate conversion of wetlands, if permitted by the county or city.

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

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

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

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

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

25 (3) A capital facilities plan element consisting of: (a) An  
26 inventory of existing capital facilities owned by public entities,  
27 showing the locations and capacities of the capital facilities; (b) a  
28 forecast of the future needs for such capital facilities; (c) the  
29 proposed locations and capacities of expanded or new capital  
30 facilities; (d) at least a six-year plan that will finance such capital

1 facilities within projected funding capacities and clearly identifies  
2 sources of public money for such purposes; and (e) a requirement to  
3 reassess the land use element if probable funding falls short of  
4 meeting existing needs and to ensure that the land use element, capital  
5 facilities plan element, and financing plan within the capital  
6 facilities plan element are coordinated and consistent.

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

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

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

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

20 (b) Facilities and services needs, including:

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

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

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

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

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

6 (c) Finance, including:

7 (i) An analysis of funding capability to judge needs against  
8 probable funding resources;

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

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

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

21 (e) Demand-management strategies.

22 After adoption of the comprehensive plan by jurisdictions required  
23 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions  
24 must adopt and enforce ordinances which prohibit development approval  
25 if the development causes the level of service on a transportation  
26 facility to decline below the standards adopted in the transportation  
27 element of the comprehensive plan, unless transportation improvements  
28 or strategies to accommodate the impacts of development are made  
29 concurrent with the development. These strategies may include  
30 increased public transportation service, ride sharing programs, demand

1 management, and other transportation systems management strategies.  
2 For the purposes of this subsection (6) "concurrent with the  
3 development" shall mean that improvements or strategies are in place at  
4 the time of development, or that a financial commitment is in place to  
5 complete the improvements or strategies within six years.

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

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

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

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

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

18 NEW SECTION. **Sec. 16.** Section 9 of this act shall take effect  
19 July 1, 1993.

20 NEW SECTION. **Sec. 17.** Sections 11 through 13 of this act shall  
21 take effect July 1, 1994.