

ESHB 2116 - S AMD 454

By Senator Rockefeller

ADOPTED 04/22/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 90.50A.020 and 1993 c 329 s 1 are each amended to
4 read as follows:

5 (1) The water pollution control revolving fund is hereby
6 established in the state treasury. Moneys in this fund may be spent
7 only after legislative appropriation. Moneys in the fund may be spent
8 only in a manner consistent with this chapter.

9 (2) The water pollution control revolving fund shall consist of:

10 (a) All capitalization grants provided by the federal government
11 under the federal water quality act of 1987;

12 (b) Other moneys provided by the federal government including funds
13 under the American recovery and reinvestment act of 2009 for water
14 pollution control facilities and related activities to achieve federal
15 water pollution requirements;

16 (c) All state matching funds appropriated or authorized by the
17 legislature;

18 ((+e)) (d) Any other revenues derived from gifts or bequests
19 pledged to the state for the purpose of providing financial assistance
20 for water pollution control projects;

21 ((+d)) (e) All repayments of moneys borrowed from the fund;

22 ((+e)) (f) All interest payments made by borrowers from the fund;

23 ((+f)) (g) Any other fee or charge levied in conjunction with
24 administration of the fund; and

25 ((+g)) (h) Any new funds as a result of leveraging.

26 (3) The state treasurer may invest and reinvest moneys in the water
27 pollution control revolving fund in the manner provided by law. All
28 earnings from such investment and reinvestment shall be credited to the
29 water pollution control revolving fund.

1 **Sec. 2.** RCW 90.50A.030 and 2007 c 341 s 38 are each amended to
2 read as follows:

3 The department shall use the moneys in the water pollution control
4 revolving fund to provide financial assistance, as provided in the
5 water quality act of 1987 and (~~as provided in~~) RCW 90.50A.040, and
6 pursuant to other federal requirements for achieving state and federal
7 water pollution control for protection of the state's waters:

8 (1) To make loans, on the condition that:

9 (a) Such loans are made at or below market interest rates,
10 including interest free loans, at terms not to exceed twenty years;

11 (b) Annual principal and interest payments will commence not later
12 than one year after completion of any project and all loans will be
13 fully amortized not later (~~then~~) than twenty years after project
14 completion;

15 (c) The recipient of a loan will establish a dedicated source of
16 revenue for repayment of loans; and

17 (d) The fund will be credited with all payments of principal and
18 interest on all loans.

19 (2) Loans, including additional subsidization to eligible
20 recipients in the form of forgiveness of principal and negative
21 interest loans or grants or any combination thereof, may be made for
22 the following purposes:

23 (a) To public bodies for the construction or replacement of water
24 pollution control facilities as defined in section 212 of the federal
25 water quality act of 1987;

26 (b) For the implementation of a management program established
27 under section 319 of the federal water quality act of 1987 relating to
28 the management of nonpoint sources of pollution, subject to the
29 requirements of that act; (~~and~~)

30 (c) For development and implementation of a conservation and
31 management plan under section 320 of the federal water quality act of
32 1987 relating to the national estuary program, subject to the
33 requirements of that act; and

34 (d) For the planning, design, and construction of publicly owned
35 wastewater treatment facilities, including publicly owned industrial
36 wastewater treatment facilities that relieve a city of the burden of
37 processing industrial wastewater.

1 (3) The department may also use the money in the water pollution
2 control revolving fund provided by congress for additional
3 subsidization to eligible recipients in the form of forgiveness of
4 principal, negative interest loans or grants or any combination
5 thereof. Uses of forgiveness of principal and negative interest loans
6 or grants include but are not limited to the following purposes:

7 (a) To public bodies for the construction or replacement of water
8 pollution control facilities as defined in section 212 of the federal
9 water quality act of 1987;

10 (b) For the implementation of a management program established
11 under section 319 of the federal water quality act of 1987 relating to
12 the management of nonpoint sources of pollution, subject to the
13 requirements of that act;

14 (c) For development and implementation of a conservation and
15 management plan under section 320 of the federal water quality act of
16 1987 relating to the national estuary program, subject to the
17 requirements of that act;

18 (d) For storm water projects; and

19 (e) For combined sewer overflow projects.

20 (4) If additional subsidization is made available from moneys
21 provided by congress to eligible recipients in the form of forgiveness
22 of principal or negative interest loans or grants or any combination
23 thereof, the department shall accept applications consistent with this
24 chapter.

25 (5) The department may also use the moneys in the fund for the
26 following purposes:

27 (a) To buy or refinance the water pollution control facilities'
28 debt obligations of public bodies at or below market rates, if such
29 debt was incurred after March 7, 1985;

30 (b) To guarantee, or purchase insurance for, public body
31 obligations for water pollution control facility construction or
32 replacement or activities if the guarantee or insurance would improve
33 credit market access or reduce interest rates, or to provide loans to
34 a public body for this purpose;

35 (c) As a source of revenue or security for the payment of principal
36 and interest on revenue or general obligation bonds issued by the state
37 if the proceeds of the sale of such bonds will be deposited in the
38 fund;

1 (d) To earn interest on fund accounts; and

2 (e) To pay the expenses of the department in administering the
3 water pollution control revolving fund according to administrative
4 reserves authorized by federal and state law.

5 ~~((+4))~~ (6) The department shall present a biennial progress report
6 on the use of moneys from the account to the appropriate committees of
7 the legislature. The report shall consist of a list of each recipient,
8 project description, and amount of the grant, loan, or both.

9 ~~((+5) The department may not use the moneys in the water pollution
10 control revolving fund for grants.)~~

11 (7) When prioritizing project applications for loans, forgiveness
12 of principal, and negative interest loans or grants or any combination
13 thereof for water pollution control facilities, the department shall
14 consider the following:

15 (a) The protection and improvement of water quality and public
16 health;

17 (b) The cost to residential ratepayers if they must finance water
18 pollution control facilities without state assistance;

19 (c) Actions required under federal and state permits and compliance
20 orders, including projects with a history of noncompliance;

21 (d) Readiness of the project to proceed with planning, design, or
22 construction;

23 (e) The cost-effectiveness of the project based on an analysis of
24 alternatives, including regionalization;

25 (f) Whether the entity receiving assistance is a Puget Sound
26 partner, as defined in RCW 90.71.010;

27 (g) Whether the project is referenced in the action agenda
28 developed by the Puget Sound partnership under RCW 90.71.310;

29 (h) Effective one calendar year following the development and
30 statewide availability of model evergreen community management plans
31 and ordinances under RCW 35.105.050, whether the project is sponsored
32 by an entity that has been recognized, and what gradation of
33 recognition was received, in the evergreen community recognition
34 program created in RCW 35.105.030;

35 (i) The extent to which the applicant county or city, or if the
36 applicant is another public body, the extent to which the county or
37 city in which the applicant public body is located, has established

1 programs to mitigate nonpoint pollution of the surface or subterranean
2 water sought to be protected by the water pollution control facility
3 named in the application for state assistance; and

4 (j) The recommendations of the Puget Sound partnership, created in
5 RCW 90.71.210, and any other board, council, commission, or group
6 established by the legislature or a state agency to study water
7 pollution control issues in the state.

8 **Sec. 3.** RCW 90.50A.040 and 2007 c 341 s 39 are each amended to
9 read as follows:

10 Moneys deposited in the water pollution control revolving fund
11 shall be administered by the department. In administering the fund,
12 the department shall:

13 (1) Consistent with RCW 90.50A.030 and 90.50A.080, allocate funds
14 for loans, forgiveness of principal, negative interest loans or grants
15 or any combination thereof in accordance with the annual project
16 priority list in accordance with section 212 of the federal water
17 pollution control act as amended in 1987, and allocate funds under
18 sections 319 and 320 according to the provisions of that act, and
19 allocate funds for separate competitive programs relating to storm
20 water systems, sewer systems, and septic systems prioritized on a worst
21 case first need basis;

22 (2) Use accounting, audit, and fiscal procedures that conform to
23 generally accepted government accounting standards;

24 (3) Prepare any reports required by the federal government as a
25 condition to awarding federal capitalization grants;

26 (4) Adopt by rule any procedures or standards necessary to carry
27 out the provisions of this chapter;

28 (5) Enter into agreements with the federal environmental protection
29 agency;

30 (6) Cooperate with local, substate regional, and interstate
31 entities regarding state assessment reports and state management
32 programs related to the nonpoint source management programs as noted in
33 section 319(c) of the federal water pollution control act amendments of
34 1987 and estuary programs developed under section 320 of that act;

35 (7) Comply with provisions of the water quality act of 1987; and

36 (8) After January 1, 2010, not provide funding for projects

1 designed to address the restoration of Puget Sound that are in conflict
2 with the action agenda developed by the Puget Sound partnership under
3 RCW 90.71.310.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.50A RCW
5 to read as follows:

6 Any public body receiving a loan, forgiveness of principal, or
7 negative interest loan or grant or any combination thereof from the
8 fund shall:

9 (1) Appear on the annual project priority list to be identified for
10 funding under section 212 of the federal water pollution control act
11 amendments of 1987 or be eligible under sections 319 and 320 of that
12 act;

13 (2) Submit an application to the department;

14 (3) Establish and maintain a dedicated source of revenue or other
15 acceptable source of revenue for the repayment of the loan; and

16 (4) Demonstrate to the satisfaction of the department it has
17 sufficient legal authority to incur the debt for the loan that it is
18 applying for.

19 **Sec. 5.** RCW 90.50A.060 and 1988 c 284 s 7 are each amended to read
20 as follows:

21 If a public body defaults on loan payments due to the fund, the
22 state may withhold any amounts otherwise due to the public body and
23 direct that such funds be applied to the indebtedness and deposited
24 into the account.

25 **Sec. 6.** RCW 90.48.110 and 2007 c 343 s 13 are each amended to read
26 as follows:

27 (1) Except under subsection (2) of this section, all engineering
28 reports, plans, and specifications for the construction of new sewerage
29 systems, sewage treatment or disposal plants or systems, or for
30 improvements or extensions to existing sewerage systems or sewage
31 treatment or disposal plants, and the proposed method of future
32 operation and maintenance of said facility or facilities, shall be
33 submitted to and be approved by the department, before construction
34 thereof may begin. No approval shall be given until the department is

1 satisfied that said plans and specifications and the methods of
2 operation and maintenance submitted are adequate to protect the quality
3 of the state's waters as provided for in this chapter.

4 (a) The department shall require, through the development of rules,
5 that plans established in this subsection (1) include the following
6 elements:

7 (i) Reviews and updates of sewer plans on a six-year cycle,
8 including asset management and financial planning;

9 (ii) An equitable sewer user charge system for residential,
10 commercial, and industrial users to cover all financial obligation of
11 the planned sewer utility;

12 (iii) Connection fees for new connections to a sewer system that
13 reflect a fair share cost of infrastructure from which new connections
14 will benefit;

15 (iv) A capital wastewater facilities reserve fund dedicated to
16 paying for wastewater infrastructure and equipment replacement; and

17 (v) A sewer use ordinance that restricts certain connections and
18 wastes to protect a local government's investment and enhance the
19 wastewater treatment's process stability and effluent quality. The
20 ordinance must, at least:

21 (A) Require new sewers and connections to be properly designed and
22 constructed;

23 (B) Require a provision with a timeline and proximity in which
24 existing and future residences must connect to the sewer system;

25 (C) Prohibit inflow sources into the sewer system; and

26 (D) Prohibit introduction of toxic or hazardous wastes into the
27 sewer system in an amount or concentration that endangers the public's
28 safety or the physical integrity of the system which may cause
29 violations of the national pollutant discharge elimination system
30 permit or state waste discharge permit.

31 (b) Approval under this chapter is not required for large on-site
32 sewage systems permitted by the department of health under chapter
33 70.118B RCW or for on-site sewage systems regulated by local health
34 jurisdictions under rules of the state board of health.

35 (2) To promote efficiency in service delivery and intergovernmental
36 cooperation in protecting the quality of the state's waters, the
37 department may delegate the authority for review and approval of
38 engineering reports, plans, and specifications for the construction of

1 new sewerage systems, sewage treatment or disposal plants or systems,
2 or for improvements or extensions to existing sewerage system or sewage
3 treatment or disposal plants, and the proposed method of future
4 operations and maintenance of said facility or facilities and
5 industrial pretreatment systems, to local units of government
6 requesting such delegation and meeting criteria established by the
7 department.

8 (3) For any new or revised general sewer plan submitted for review
9 under this section, the department shall review and either approve,
10 conditionally approve, reject, or request amendments within ninety days
11 of the receipt of the submission of the plan. The department may
12 extend this ninety-day time limitation for new submittals by up to an
13 additional ninety days if insufficient time exists to adequately review
14 the general sewer plan. For rejections of plans or extensions of the
15 timeline, the department shall provide in writing to the local
16 government entity the reason for such action. In addition, the
17 governing body of the local government entity and the department may
18 mutually agree to an extension of the deadlines contained in this
19 section.

20 **Sec. 7.** RCW 70.146.070 and 2008 c 299 s 26 are each amended to
21 read as follows:

22 (1) When making grants or loans for water pollution control
23 facilities, the department shall consider the following:

24 (a) The protection of water quality and public health;

25 (b) The cost to residential ratepayers if they had to finance water
26 pollution control facilities without state assistance;

27 (c) Actions required under federal and state permits and compliance
28 orders;

29 (d) The level of local fiscal effort by residential ratepayers
30 since 1972 in financing water pollution control facilities;

31 (e) Except as otherwise conditioned by RCW 70.146.110, whether the
32 entity receiving assistance is a Puget Sound partner, as defined in RCW
33 90.71.010;

34 (f) Whether the project is referenced in the action agenda
35 developed by the Puget Sound partnership under RCW 90.71.310;

36 (g) Except as otherwise provided in RCW 70.146.120, and effective
37 one calendar year following the development and statewide availability

1 of model evergreen community management plans and ordinances under RCW
2 35.105.050, whether the project is sponsored by an entity that has been
3 recognized, and what gradation of recognition was received, in the
4 evergreen community recognition program created in RCW 35.105.030;

5 (h) The extent to which the applicant county or city, or if the
6 applicant is another public body, the extent to which the county or
7 city in which the applicant public body is located, has established
8 programs to mitigate nonpoint pollution of the surface or subterranean
9 water sought to be protected by the water pollution control facility
10 named in the application for state assistance; and

11 (i) The recommendations of the Puget Sound partnership, created in
12 RCW 90.71.210, and any other board, council, commission, or group
13 established by the legislature or a state agency to study water
14 pollution control issues in the state.

15 (2) Except where necessary to address a public health need or
16 substantial environmental degradation, a county, city, or town planning
17 under RCW 36.70A.040 may not receive a grant or loan for water
18 pollution control facilities unless it has adopted a comprehensive
19 plan, including a capital facilities plan element, and development
20 regulations as required by RCW 36.70A.040. This subsection does not
21 require any county, city, or town planning under RCW 36.70A.040 to
22 adopt a comprehensive plan or development regulations before requesting
23 or receiving a grant or loan under this chapter if such request is made
24 before the expiration of the time periods specified in RCW 36.70A.040.
25 A county, city, or town planning under RCW 36.70A.040 which has not
26 adopted a comprehensive plan and development regulations within the
27 time periods specified in RCW 36.70A.040 is not prohibited from
28 receiving a grant or loan under this chapter if the comprehensive plan
29 and development regulations are adopted as required by RCW 36.70A.040
30 before submitting a request for a grant or loan.

31 (3) Whenever the department is considering awarding grants or loans
32 for public facilities to special districts requesting funding for a
33 proposed facility located in a county, city, or town planning under RCW
34 36.70A.040, it shall consider whether the county, city, or town
35 planning under RCW 36.70A.040 in whose planning jurisdiction the
36 proposed facility is located has adopted a comprehensive plan and
37 development regulations as required by RCW 36.70A.040.

1 (4) When making grants or loans for water pollution control
2 facilities, the department may award grants or provide loans to
3 publicly owned industrial wastewater treatment facilities that relieve
4 a city of the burden of processing industrial wastewater.

5 (5) After January 1, 2010, any project designed to address the
6 effects of water pollution on Puget Sound may be funded under this
7 chapter only if the project is not in conflict with the action agenda
8 developed by the Puget Sound partnership under RCW 90.71.310.

9 **Sec. 8.** RCW 90.48.290 and 1987 c 109 s 145 are each amended to
10 read as follows:

11 The department is authorized to make and administer grants within
12 appropriations authorized by the legislature to any municipal or public
13 corporation, or political subdivision within the state for the purpose
14 of aiding in the construction of water pollution control projects
15 necessary to prevent the discharge of untreated or inadequately treated
16 sewage or other waste into the waters of the state including, but not
17 limited to, projects for the control of storm or surface waters which
18 will provide for the removal of waste or polluting materials therefrom.

19 Grants so made by the department shall be subject to the following
20 limitations:

21 (1) No grant shall be made in an amount which exceeds the
22 recipient's contribution to the estimated cost of the project:
23 PROVIDED, That the following shall be considered a part of the
24 recipient's contribution:

25 (a) Any grant received by the recipient from the federal government
26 pursuant to section 8(f) of the Federal Water Pollution Control Act (33
27 U.S.C. 466) for the project;

28 (b) Any expenditure which is made by any municipal or public
29 corporation, or political subdivision within the state as a part of a
30 joint effort with the recipient to carry out the project and which has
31 not been used as a matching contribution for another grant made
32 pursuant to this chapter, and

33 (c) Any expenditure for the project made by the recipient out of
34 moneys advanced by the department from a revolving fund and repayable
35 to said fund.

36 (2) No grant shall be made for any project which does not qualify
37 for and receive a grant of federal funds under the provisions of the

1 Federal Water Pollution Control Act as now or hereafter amended:
2 PROVIDED, That this restriction shall not apply to state grants made in
3 any biennium over and above the amount of such grants required to match
4 all federal funds allocated to the state for such biennium. As such,
5 grants may be made for the planning, design, and construction of any
6 publicly owned wastewater treatment facilities, including publicly
7 owned industrial wastewater treatment facilities that relieve a city of
8 the burden of processing industrial wastewater.

9 (3) No grant shall be made to any municipal or public corporation,
10 or political subdivision for any project located within a drainage
11 basin unless the department shall have previously adopted a
12 comprehensive water pollution control and abatement plan and unless the
13 project is found by the department to conform with such basin
14 comprehensive plan: PROVIDED, That the requirement for a project to
15 conform to a comprehensive water pollution control and abatement plan
16 may be waived by the department for any grant application filed with
17 the department prior to July 1, 1974, in those situations where the
18 department finds the public interest would be served better by approval
19 of any grant application made prior to adoption of such plan than by
20 its denial.

21 (4) Recipients of grants shall meet such qualifications and follow
22 such procedures in applying for grants as shall be established by the
23 department.

24 (5) Grants may be made to reimburse recipients for expenditures
25 made after July 1, 1967, for projects which meet the requirements of
26 this section and were commenced after the recipient had filed a grant
27 application with the department.

28 NEW SECTION. Sec. 9. The department of ecology may adopt rules to
29 implement this act.

30 NEW SECTION. Sec. 10. This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 immediately."

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ADOPTED 04/22/2009

1 On page 1, line 1 of the title, after "control;" strike the
2 remainder of the title and insert "amending RCW 90.50A.020, 90.50A.030,
3 90.50A.040, 90.50A.060, 90.48.110, 70.146.070, and 90.48.290; adding a
4 new section to chapter 90.50A RCW; creating a new section; and
5 declaring an emergency."

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