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**SENATE BILL 6588**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Honeyford and Warnick

AN ACT Relating to establishing the water infrastructure program; and adding a new chapter to Title 90 RCW.

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

NEW SECTION. **Sec.**  The water infrastructure program is established and must be administered by the department. The department must administer the water infrastructure program to support and fund infrastructure projects designed to reduce pollution from stormwater, prevent flooding, increase the availability of water supplies for beneficial uses, or improve fish passage.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Project" means water infrastructure that meets the criteria for funding established in this chapter.

(3) "Sponsor" means an agency as defined in RCW 42.56.010, a federally recognized Indian tribe in Washington, or a federal agency engaging in flood control or water supply activities in Washington.

NEW SECTION. **Sec.**  The department must administer the water infrastructure program established in this chapter for the purpose of supporting and funding projects that affect a broad geographic area and are consistent with the following priorities:

(1) Reducing stormwater pollution from existing infrastructure and development;

(2) Reducing the risk of flooding, protecting against damage caused by floods, and protecting or restoring naturally functioning areas where floods occur;

(3) Improving the availability and reliability of water supplies for beneficial uses; and

(4) Improving fish passage.

NEW SECTION. **Sec.**  (1) The purpose of the water infrastructure program established in this chapter is to ensure that the priorities for water infrastructure projects set forth in section 3 of this act are carried out through evaluation, ranking, and funding of projects.

(2) When administering the water infrastructure program with regard to flood-related projects, the department must, to the greatest extent practicable, implement the Chehalis basin strategy described in RCW 43.21A.732.

(3) When administering the water infrastructure program with regard to water supply projects, the department must, to the greatest extent practicable, implement the integrated plan as defined in RCW 90.38.010, and focus on projects that are consistent with satisfying the water supply needs identified in RCW 90.90.020.

(4) The department must seek assistance from advisory groups that will consult with the department to ensure that the water infrastructure program is administered with due consideration for the views and advice of organizations and individuals who demonstrate concern for water management in Washington. The department may consult with any advisory groups with which the department has consulted on similar programs. The department is further permitted to establish and convene new volunteer advisory groups to consult with the department and assist the department in the administration of the water infrastructure program. However, the department must establish or consult with at least one advisory group for each priority for water infrastructure projects as described in section 3 of this act. The department must provide for appropriate participation by designees of the Washington state conservation commission and the Puget Sound partnership on volunteer advisory groups. The department must consider the advice of each advisory group, but the department retains full authority to administer the water infrastructure program consistent with this chapter.

NEW SECTION. **Sec.**  (1) The department must administer the water infrastructure program as a competitive grant process to evaluate, rank, and fund projects proposed by project sponsors. The department must ensure that the competitive grant process established in this section promotes the priorities for water infrastructure projects as described in section 3 of this act.

(2) Project sponsors who apply for funding through the water infrastructure program must provide a minimum of twenty-five percent match of the nonfederal share of project costs, but the department must give preference to projects that provide a higher level of local or private funding, and must honor preexisting project financial agreements. The match may include funds, commitments, or contributions dedicated to the accomplishment of the project, such as: Cash on hand; the value of real property when acquired solely for the purpose of the project; the proceeds of a letter of credit or other binding loan commitment; a pledge commitment; and in-kind contributions, including private and local government funds, but must not include funds from any state or federal source unless those funds are derived from local levies, assessments, or charges upon state or federal lands. Project sponsors may receive credit for properly documented matching funds that were contributed no earlier than ten years prior to the effective date of this section and that were dedicated to the accomplishment of the project or were incurred for construction costs to remediate and recover from past damage that the project is intended to remedy where damage exceeded twenty-five million dollars, provided that the prior costs must only include local government funds. The department must develop criteria for documenting the value of the match.

(3) Although projects may be consistent with more than one priority described in section 3 of this act, a project sponsor must identify in an application which priority is the primary priority advanced by the project.

(4) Every two years, the department must evaluate all applications submitted to the water infrastructure program and create ranked lists for projects under each priority described in section 3 of this act. Before finalizing its ranked lists, the department must make preliminary ranked lists available to the public and solicit public comment for at least thirty days after the date the preliminary ranked lists are made available to the public. After considering public comments and before November 1st of each year for which projects are ranked, the department must recommend to the governor ranked lists of all projects to be funded. The same ranked lists must be concurrently provided to the appropriate fiscal and policy committees of the legislature. The governor may remove projects from the lists recommended by the department and must then submit the lists to the legislature. The governor may not add projects to any list. The legislature may remove projects from the lists recommended by the governor. The department may not sign contracts or otherwise financially obligate funds from the water infrastructure program account before the legislature has appropriated funds for specific listed projects.

NEW SECTION. **Sec.**  (1) In ranking projects that promote the priority of reducing stormwater pollution from existing infrastructure and development, the department must use the eligibility and ranking criteria the department uses for the statewide stormwater financial assistance program, as those criteria existed on the effective date of this section. Projects ranked under this section must have a high water quality or ecological benefit and address pollution from existing infrastructure. A project that relies on low-impact development retrofit techniques to reduce stormwater impacts must be preferred over projects that are otherwise rated equally but that do not include low-impact development retrofit techniques.

(2) In ranking projects related to flooding, the department must aggressively pursue the completion of projects that promote the priority of reducing the risk of flooding, protecting against damage caused by floods, and protecting or restoring naturally functioning areas where floods occur. The department must rank such projects based on the following criteria, in descending order of importance.

(a) The degree to which a project achieves multiple benefits including, but not limited to: Cost-effective flood hazard reduction to people and property; flood risk reduction; recovery of salmon and other native fish; water quality improvements; habitat restoration; agricultural viability; public access; and channel migration zone protection;

(b) Projects in counties that have historically been and are projected to continue to be at greatest risk and most vulnerable to flooding, with a priority for projects that address areas that have experienced multiple emergency flood proclamations;

(c) Projects that are consistent with and recommended by a collaborative planning and approval process that involves a broad range of stakeholders, including local governments, Indian tribes, state and federal agencies, the environmental community, local landowners, and other interests that include opportunities for public comment, such as a governor's basin-wide planning process, a salmon recovery plan, a hazard mitigation plan, a comprehensive plan, a watershed plan, or other applicable plans;

(d) Projects that address both reduction and prevention of flood risks, and protection or restoration of floodplain ecosystem functions;

(e) Projects that minimize or eliminate future damage to or disruption of critical infrastructure, including transportation corridors, economic activity and jobs, and emergency response capability;

(f) Projects that prepare for the uncertain effects of climate change; and

(g) Projects that are developed using a collaborative process involving a broad range of stakeholders, including local governments, Indian tribes, state and federal agencies, environmental groups, local landowners, and other interests.

(3) In ranking projects that promote the priority of improving the availability and reliability of water supplies for beneficial uses, the department must give preference to projects that are consistent with or designed to implement an integrated plan, as defined in RCW 90.38.010, and projects that are consistent with satisfying the water supply needs identified in RCW 90.90.020. For all other projects that promote the priority of improving the availability and reliability of water supplies, the department must give preference to projects that:

(a) Improve the availability and reliability of water supplies for beneficial uses;

(b) Provide for effective management of water in order to prevent variability in water supplies and prepare for the uncertain effects of climate change;

(c) Achieve multiple benefits;

(d) Mitigate impacts to fish and wildlife caused by the project; and

(e) Include practicable conservation measures, where feasible, to ensure efficient use of water.

(4) In ranking projects that promote the priority of improving fish passage, the department must work in cooperation with the department of transportation and the fish passage barrier removal board established in RCW 77.95.160 and give preference to projects for the correction of fish barriers required to satisfy the state's obligation under a court order.

(5) Projects located in or proposed for the Puget Sound watershed must be evaluated by the Puget Sound partnership for consistency with the Puget Sound action agenda.

(6) No provision of this chapter alters or diminishes existing legal obligations to perform environmental review and obtain necessary permits for any project.

(7) The department must, to the greatest extent practicable, seek to rank projects so that, after fifteen years, approximately equal amounts of funding will have been allocated to each of the priorities for water infrastructure projects described in section 3 of this act.

(8) The department must manage available resources in the water infrastructure program in a fiscally prudent manner. In recommending projects and managing available resources, the department must consider the annual cash flow requirements of projects that receive appropriations expected to cross multiple biennia. To effectively monitor expected revenues and expenditures, the department must develop a comprehensive fifteen-year financing report that identifies long-term cash flow requirements for approved and recommended projects, projected revenues, and year-end account balances. In recommending multibiennial projects, the department must include separate budget estimates for all phases of the projects including expected future biennium appropriations.

(9) Moneys made available under this chapter may not be used to acquire property through condemnation.

(10) The department is encouraged to give additional consideration to projects under this section that would provide a benefit to economically disadvantaged communities.

NEW SECTION. **Sec.**  (1) The department must monitor progress in completing projects and achieving expected outcomes. Beginning January 1, 2020, the department must submit biennial reports to the legislature detailing the use of funds under this chapter.

(2) The joint legislative audit and review committee must conduct at least one performance audit to provide an objective and systematic assessment of whether funds provided under this act are being used in an effective and efficient manner.

(3) The joint legislative audit and review committee must work with the department to determine if appropriate and reliable benefit-cost methodologies exist that might inform the prioritization process specified in section 6 of this act. The committee must also review whether appropriate and reliable benefit-cost methodologies are used to evaluate capital budget projects proposed by the department. The committee must not recommend benefit-cost methodologies that produce intergenerational inequity by inappropriately discounting benefits that might accrue to future generations.

NEW SECTION. **Sec.**  The legislature intends to appropriate two hundred fifty million dollars for projects to achieve the goals of this act until June 30, 2033.

NEW SECTION. **Sec.**  The water infrastructure program account is created in the state treasury. All receipts of money directed to the account must be deposited in the account. Expenditures from the account may be used only for purposes set out in section 3 of this act. Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec.**  The water infrastructure program bond account is created in the state treasury. All receipts of money directed to the account must be deposited in the account. The account is intended to fund projects for the purposes set out in section 3 of this act using tax exempt bonds. Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec.**  The water infrastructure program taxable bond account is created in the state treasury. All receipts of money directed to the account must be deposited in the account. The account is intended to fund projects for the purposes set out in section 3 of this act using taxable bonds. Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec.**  Sections 1 through 11 of this act constitute a new chapter in Title 90 RCW.

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