

1 5411-S Not Adopted 3/12/91.391

2 **SSB 5411** - S AMD

3 By Senators Metcalf and Skratek

4 Ruled Out of Order - 3/12/91

5 On page 38, after line 25, insert the following:

6 "NEW SECTION. **Sec. 32.** (1) The legislature finds that:

7 (a) Washington state is characterized by high annual rainfall
8 including locally exceptional precipitation causing high flood
9 peaks;

10 (b) Such events cause enormous property damage and personal
11 injury that are devastating to many individuals and present high
12 costs to the state for emergency services, disaster assistance, and
13 the repair and replacement of roads, bridges, utilities, and other
14 public works;

15 (c) Inadequate storm water planning and controls contribute to
16 the magnitude of flooding events, and, additionally, cause damage
17 on a more frequent basis during lesser storm events;

18 (d) Many land uses alter the pattern of storm water runoff by
19 decreasing the ability of upstream lands to store storm waters,
20 thus increasing the rate of runoff and attendant downstream
21 impacts; and

1 (e) Many land use developments for residential, commercial, or
2 industrial activities employ natural watercourses for storm water
3 conveyance, and if such systems are not properly designed, the
4 capacity of the watercourse may be exceeded, causing downstream
5 damage;

6 (2) It is the intent of the legislature to:

7 (a) Define a minimum standard to guide all land use
8 development activities employing natural watercourses for storm
9 water conveyance; and

10 (b) Overrule the "common enemy" doctrine adopted by the
11 Washington courts which often works to preclude the recovery of
12 damages by landowners against upstream landowners whose actions
13 have exceeded the natural storm water conveyance capacity of a
14 natural watercourse."

15 "NEW SECTION. **Sec. 33.** A new section is added to chapter
16 90.03 RCW to read as follows:

17 (1) No person may divert, impound, or otherwise alter the
18 natural flow of surface waters or water flowing in a natural
19 watercourse, or permit a diversion, impounding, or alteration to
20 continue, in a manner that damages the property of another by the
21 overflow of the water diverted, impounded, or altered.

22 (2) A person unlawfully diverting, impounding, or altering the
23 natural flow of surface waters or water flowing in a natural
24 watercourse shall be liable in an action for property damages to a
25 person whose property is damaged by such unlawful diversion,
26 impoundment, or alteration. Such person shall not be liable under

1 this section where the action was taken in compliance with a permit
2 issued by a state agency or local government that includes
3 requirements for management of storm water.

4 (3) For purposes of this section, "natural watercourse" means
5 a channel with a defined bed and banks or a depression or swale
6 that in its natural condition acts to drain water flowing
7 perennially or intermittently.

8 (4) This section shall not apply to the diversion and
9 collection of water for irrigation of agricultural lands, including
10 the discharge of used irrigation water.

11 (5) This section shall apply only to actions taken subsequent
12 to the effective date of this act."

13 "Sec. 34. RCW 36.70A.150 and 1990 1st ex.s. c 17 s 15 are
14 each amended to read as follows:

15 Each county and city that is required or chooses to prepare a
16 comprehensive land use plan under RCW 36.70A.040 shall identify
17 lands useful for public purposes such as utility corridors,
18 transportation corridors, landfills, sewage treatment facilities,
19 storm water retention, recreation, schools, and other public uses.
20 The county shall work with the state and the cities within its
21 borders to identify areas of shared need for public facilities.
22 The jurisdictions within the county shall prepare a prioritized
23 list of lands necessary for the identified public uses including an
24 estimated date by which the acquisition will be needed.

25 The respective capital acquisition budgets for each
26 jurisdiction shall reflect the jointly agreed upon priorities and

1 time schedule."

2 "Sec. 35. RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each
3 amended to read as follows:

4 Unless the context clearly requires otherwise, the following
5 definitions shall apply in RCW 82.02.050 through 82.02.090:

6 (1) "Development activity" means any construction or expansion
7 of a building, structure, or use, any change in use of a building
8 or structure, or any changes in the use of land, that creates
9 additional demand and need for public facilities.

10 (2) "Development approval" means any written authorization
11 from a county, city, or town which authorizes the commencement of
12 development activity.

13 (3) "Impact fee" means a payment of money imposed upon
14 development as a condition of development approval to pay for
15 public facilities needed to serve new growth and development, and
16 that is reasonably related to the new development that creates
17 additional demand and need for public facilities, that is a
18 proportionate share of the cost of the public facilities, and that
19 is used for facilities that reasonably benefit the new development.
20 "Impact fee" does not include a reasonable permit or application
21 fee.

22 (4) "Owner" means the owner of record of real property,
23 although when real property is being purchased under a real estate
24 contract, the purchaser shall be considered the owner of the real
25 property if the contract is recorded.

26 (5) "Proportionate share" means that portion of the cost of

1 public facility improvements that are reasonably related to the
2 service demands and needs of new development.

3 (6) "Project improvements" mean site improvements and
4 facilities that are planned and designed to provide service for a
5 particular development project and that are necessary for the use
6 and convenience of the occupants or users of the project, and are
7 not system improvements. No improvement or facility included in a
8 capital facilities plan approved by the governing body of the
9 county, city, or town shall be considered a project improvement.

10 (7) "Public facilities" means the following capital facilities
11 owned or operated by government entities: (a) Public streets and
12 roads; (b) publicly owned parks, open space, and recreation
13 facilities; (c) storm water management facilities; (d) school
14 facilities; and ~~((+d+))~~ (e) fire protection facilities in
15 jurisdictions that are not part of a fire district.

16 (8) "Service area" means a geographic area defined by a
17 county, city, town, or intergovernmental agreement in which a
18 defined set of public facilities provide service to development
19 within the area. Service areas shall be designated on the basis of
20 sound planning or engineering principles.

21 (9) "System improvements" mean public facilities that are
22 included in the capital facilities plan and are designed to provide
23 service to service areas within the community at large, in contrast
24 to project improvements."

25 "NEW SECTION. Sec. 36. A new section is added to chapter
26 36.70A RCW to read as follows:

1 Within one year of the adoption of comprehensive plans by
2 jurisdictions required to plan or who choose to plan under RCW
3 36.70A.040, such jurisdictions shall adopt ordinances that require
4 the provision of storm water management facilities concurrently
5 with development approval and that meet the standards for level of
6 service provided in the comprehensive plan."

7 "NEW SECTION. **Sec. 37.** Sections 32, 33, 34, 35, and 36
8 of this act shall apply only to actions and jurisdictions west of
9 the crest of the Cascade Mountains, and shall not apply within any
10 portion of Skamania county."