
ENGROSSED SUBSTITUTE HOUSE BILL 2363

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Natural Resources & Parks (originally sponsored 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 02/05/92.

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

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.72 RCW
8 to read as follows:

9 The legislature finds that shellfish harvesting is important to our
10 economy and way of life. Washington state is an international leader
11 in the cultivation and production of shellfish. However, large
12 portions of the state's productive recreational and commercial
13 shellfish beds are closed to harvesting, and more are threatened,
14 because of water pollution. The legislature finds that the problem of

1 shellfish bed closures demands a public policy solution and that the
2 state, local governments, and individuals must each take strong and
3 swift action or this precious resource will be lost.

4 It is the goal of the legislature to prevent further closures of
5 recreational and commercial shellfish beds, to restore water quality in
6 saltwater tidelands to allow the reopening of at least one restricted
7 or closed shellfish bed each year, and to ensure Washington state's
8 commanding international position in shellfish production.

9 The legislature finds that failing on-site sewage systems and
10 animal waste are the two most significant causes of shellfish bed
11 closures over the past decade. Remedial actions at the local level are
12 required to effectively address these problems.

13 The legislature finds that existing entities, including
14 conservation districts and local health departments, should be used by
15 counties to address the water quality problems affecting the
16 recreational and commercial shellfish harvest.

17 The legislature finds that local action in each watershed where
18 shellfish are harvested is required to protect this vital resource.
19 The legislature hereby encourages all counties having saltwater
20 tidelands within their boundaries to establish watershed protection
21 districts and programs designed to prevent any further degradation and
22 contamination and to allow for restoration and reopening of closed
23 shellfish growing areas.

24 **Sec. 2.** RCW 90.72.030 and 1985 c 417 s 3 are each amended to read
25 as follows:

26 The legislative authority of each county having ~~((shellfish))~~
27 saltwater tidelands within its boundaries is authorized to establish a
28 ~~((shellfish))~~ watershed protection district to include areas in which
29 nonpoint pollution threatens water quality or the continuation of

1 shellfish farming or harvesting. The legislative authority shall
2 constitute the governing body of the district and shall adopt a
3 ~~((shellfish))~~ watershed protection program to be effective within the
4 district. The legislative authority may appoint a local advisory
5 council to advise the legislative authority in preparation and
6 implementation of watershed protection programs. This program ~~((may))~~
7 shall include any elements deemed appropriate to deal with the nonpoint
8 pollution ~~((threat))~~ threatening water quality, including, but not
9 limited to, requiring the elimination or decrease of contaminants in
10 storm water runoff, establishing monitoring ~~((programs))~~, inspection,
11 and repair elements to ~~((make sure that septic drainfield))~~ ensure that
12 on-site sewage systems are adequately maintained and working properly
13 ~~((and))~~, assuring that animal grazing and manure management practices
14 are ~~((appropriate))~~ consistent with best management practices, and
15 establishing educational and public involvement programs to inform
16 citizens on the causes of the threatening nonpoint pollution and what
17 they can do to decrease the amount of such pollution. An element may
18 be omitted where another program is effectively addressing those
19 sources of nonpoint water pollution. Within the limits of RCW
20 90.72.040 and 90.72.070, the county legislative authority shall have
21 full jurisdiction and authority to manage, regulate, and control its
22 programs and to fix, alter, regulate, and control the fees for services
23 provided and charges or rates as provided under those programs.
24 Programs established under this chapter, may, but are not required to,
25 be part of a system of sewerage as defined in RCW 36.94.010.

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

28 (1) The county legislative authority may create a ~~((shellfish))~~
29 watershed protection district on its own motion or by submitting the

1 question to the voters of the proposed district and obtaining the
2 approval of a majority of those voting. The boundaries of the district
3 shall be determined by the legislative authority. The legislative
4 authority may create more than one district. A district may include
5 any area or areas within the county, whether incorporated or
6 unincorporated. Counties shall coordinate and cooperate with cities,
7 towns, and water-related special districts within their boundaries in
8 establishing watershed protection districts and carrying out watershed
9 protection programs. Where a portion of the proposed district lies
10 within an incorporated area, the county shall develop procedures for
11 the participation of the city or town in the determination of the
12 boundaries of the district and the administration of the district,
13 including funding of the district's programs. The legislative
14 authority of more than one county may by agreement provide for the
15 creation of a district including areas within each of those counties.
16 County legislative authorities are encouraged to coordinate their plans
17 and programs to protect shellfish growing areas, especially where
18 shellfish growing areas are located within the boundaries of more than
19 one county. The legislative authority or authorities creating a
20 district may abolish a ((shellfish)) watershed protection district on
21 its or their own motion or by submitting the question to the voters of
22 the district and obtaining the approval of a majority of those voting.

23 (2) If the county legislative authority creates a watershed
24 protection district by its own motion, any registered voter residing
25 within the boundaries of the watershed protection district may file a
26 referendum petition to repeal the ordinance that created the district.
27 Any referendum petition to repeal the ordinance creating the watershed
28 protection district shall be filed with the county auditor within seven
29 days of passage of the ordinance. Within ten days of the filing of a
30 petition, the county auditor shall confer with the petitioner

1 concerning form and style of the petition, issue an identification
2 number for the petition, and write a ballot title for the measure. The
3 ballot title shall be posed as a question so that an affirmative answer
4 to the question and an affirmative vote on the measure results in
5 creation of the watershed protection district and a negative answer to
6 the question and a negative vote on the measure results in the
7 watershed protection district not being created. The petitioner shall
8 be notified of the identification number and ballot title within this
9 ten-day period.

10 After this notification, the petitioner shall have thirty days in
11 which to secure on petition forms the signatures of not less than
12 twenty-five percent of the registered voters residing within the
13 boundaries of the watershed protection district and file the signed
14 petitions with the county auditor. Each petition form shall contain
15 the ballot title and full text of the measure to be referred. The
16 county auditor shall verify the sufficiency of the signatures on the
17 petitions. If sufficient valid signatures are properly submitted, the
18 county auditor shall submit the referendum measure to the registered
19 voters residing in the watershed protection district in a special
20 election no later than one hundred twenty days after the signed
21 petition has been filed with the county auditor. The special election
22 may be conducted by mail ballot as provided for in chapter 29.36 RCW.

23 (3) The county legislative authority shall not impose fees, rates,
24 or charges for watershed protection district programs upon properties
25 on which fees, rates, or charges are imposed to pay for another program
26 to eliminate or decrease contamination in storm water runoff.

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

1 The county legislative authority shall create a watershed
2 protection district and establish a watershed protection program to
3 address causes of pollution within one hundred eighty days after the
4 department of health, because of water quality degradation due to
5 ongoing nonpoint sources of pollution, has closed or downgraded the
6 classification of a recreational or commercial shellfish growing area
7 within the boundaries of the county.

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

10 Within available funding and as specified in the watershed
11 protection program, counties creating watershed protection districts
12 shall contract with conservation districts to draft plans with
13 landowners to control pollution effects of animal waste.

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

16 The county legislative authority establishing a ~~((shellfish))~~
17 watershed protection district may finance the protection program
18 through (1) ~~((its))~~ county tax revenues, (2) reasonable inspection fees
19 and similar fees ~~((or))~~ for services provided, (3) reasonable charges
20 or rates specified in its protection program, or ~~((+3))~~ (4) federal,
21 state, or private grants. Confined animal feeding operations subject
22 to the national pollutant discharge elimination system and implementing
23 regulations shall not be subject to fees, rates, or charges by a
24 watershed protection district. Facilities permitted and assessed fees
25 for wastewater discharge under the national pollutant discharge
26 elimination system shall not be subject to fees, rates, or charges for
27 wastewater discharge by a watershed protection district. Lands
28 classified as forest land under chapter 84.33 RCW and timber land under

1 chapter 84.34 RCW shall not be subject to fees, rates, or charges by a
2 watershed protection district. Counties may collect charges or rates
3 in the manner determined by the county legislative authority.

4 NEW SECTION. Sec. 7. A new section is added to chapter 90.72 RCW
5 to read as follows:

6 Counties may issue general obligation bonds, revenue bonds, and
7 other evidences of indebtedness to assist in carrying out the programs
8 of watershed protection districts, and counties may issue revenue bonds
9 and other revenue obligations payable from fees, charges, or rates, and
10 other revenue of districts. Any such obligations shall be issued in
11 accordance with chapter 36.67 or 36.94 RCW.

12 NEW SECTION. Sec. 8. A new section is added to chapter 90.72 RCW
13 to read as follows:

14 Counties that have formed watershed protection districts shall
15 receive high priority for state water quality financial assistance to
16 implement shellfish protection programs, including grants and loans
17 provided under chapters 43.99F, 70.146, and 90.50A RCW.

18 NEW SECTION. Sec. 9. A new section is added to chapter 88.36 RCW
19 to read as follows:

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

24 **Sec. 10.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each
25 amended to read as follows:

1 The following goals are adopted to guide the development and
2 adoption of comprehensive plans and development regulations of those
3 counties and cities that are required or choose to plan under RCW
4 36.70A.040. The following goals are not listed in order of priority
5 and shall be used exclusively for the purpose of guiding the
6 development of comprehensive plans and development regulations:

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

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

12 (3) Transportation. Encourage efficient multimodal transportation
13 systems that are based on regional priorities and coordinated with
14 county and city comprehensive plans.

15 (4) Housing. Encourage the availability of affordable housing to
16 all economic segments of the population of this state, promote a
17 variety of residential densities and housing types, and encourage
18 preservation of existing housing stock.

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

26 (6) Property rights. Private property shall not be taken for
27 public use without just compensation having been made. The property
28 rights of landowners shall be protected from arbitrary and
29 discriminatory actions.

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

4 (8) Natural resource industries. Maintain and enhance natural
5 resource-based industries, including productive timber, agricultural,
6 shellfish, and fisheries industries. Encourage the conservation of
7 productive forest lands and productive agricultural lands and shellfish
8 tidelands, and discourage incompatible uses.

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

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

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

19 (12) Public facilities and services. Ensure that those public
20 facilities and services necessary to support development shall be
21 adequate to serve the development at the time the development is
22 available for occupancy and use without decreasing current service
23 levels below locally established minimum standards.

24 (13) Historic preservation. Identify and encourage the
25 preservation of lands, sites, and structures, that have historical or
26 archaeological significance.

27 **Sec. 11.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
28 amended to read as follows:

1 The comprehensive plan of a county or city that is required or
2 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
3 and descriptive text covering objectives, principles, and standards
4 used to develop the comprehensive plan. The plan shall be an
5 internally consistent document and all elements shall be consistent
6 with the future land use map. A comprehensive plan shall be adopted
7 and amended with public participation as provided in RCW 36.70A.140.

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

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

24 (2) A housing element recognizing the vitality and character of
25 established residential neighborhoods that: (a) Includes an inventory
26 and analysis of existing and projected housing needs; (b) includes a
27 statement of goals, policies, and objectives for the preservation,
28 improvement, and development of housing; (c) identifies sufficient land
29 for housing, including, but not limited to, government-assisted
30 housing, housing for low-income families, manufactured housing,

1 multifamily housing, and group homes and foster care facilities; and
2 (d) makes adequate provisions for existing and projected needs of all
3 economic segments of the community.

4 (3) A capital facilities plan element consisting of: (a) An
5 inventory of existing capital facilities owned by public entities,
6 showing the locations and capacities of the capital facilities; (b) a
7 forecast of the future needs for such capital facilities; (c) the
8 proposed locations and capacities of expanded or new capital
9 facilities; (d) at least a six-year plan that will finance such capital
10 facilities within projected funding capacities and clearly identifies
11 sources of public money for such purposes; and (e) a requirement to
12 reassess the land use element if probable funding falls short of
13 meeting existing needs and to ensure that the land use element, capital
14 facilities plan element, and financing plan within the capital
15 facilities plan element are coordinated and consistent.

16 (4) A utilities element consisting of the general location,
17 proposed location, and capacity of all existing and proposed utilities,
18 including, but not limited to, electrical lines, telecommunication
19 lines, and natural gas lines.

20 (5) Counties shall include a rural element including lands that are
21 not designated for urban growth, agriculture, forest, or mineral
22 resources. The rural element shall permit land uses that are
23 compatible with the rural character of such lands and provide for a
24 variety of rural densities.

25 (6) A transportation element that implements, and is consistent
26 with, the land use element. The transportation element shall include
27 the following subelements:

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

29 (b) Facilities and services needs, including:

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

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

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

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

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

15 (c) Finance, including:

16 (i) An analysis of funding capability to judge needs against
17 probable funding resources;

18 (ii) A multiyear financing plan based on the needs identified in
19 the comprehensive plan, the appropriate parts of which shall serve as
20 the basis for the six-year street, road, or transit program required by
21 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
22 35.58.2795 for public transportation systems;

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

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

30 (e) Demand-management strategies.

1 After adoption of the comprehensive plan by jurisdictions required
2 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
3 must adopt and enforce ordinances which prohibit development approval
4 if the development causes the level of service on a transportation
5 facility to decline below the standards adopted in the transportation
6 element of the comprehensive plan, unless transportation improvements
7 or strategies to accommodate the impacts of development are made
8 concurrent with the development. These strategies may include
9 increased public transportation service, ride sharing programs, demand
10 management, and other transportation systems management strategies.
11 For the purposes of this subsection (6) "concurrent with the
12 development" shall mean that improvements or strategies are in place at
13 the time of development, or that a financial commitment is in place to
14 complete the improvements or strategies within six years.

15 The transportation element described in this subsection, and the
16 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
17 counties, and RCW 35.58.2795 for public transportation systems, must be
18 consistent.

19 NEW SECTION. **Sec. 12.** The following acts or parts of acts are
20 each repealed:

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

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

23 NEW SECTION. **Sec. 13.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 14.** Sections 10 and 11 of this act shall
2 take effect July 1, 1994.