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**SUBSTITUTE SENATE BILL 5145**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senate Committee on Environment & Natural Resources (originally sponsored by Senators Metcalf, Skratek and Bailey).

Read first time February 25, 1991.

1       AN ACT Relating to storm water; amending RCW 36.70A.150 and  
2 82.02.090; adding a new section to chapter 90.03 RCW; adding a new  
3 section to chapter 36.70A RCW; and creating a new section.

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

5       NEW SECTION.   **Sec. 1.**       (1) The legislature finds that:

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

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

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

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

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

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

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

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

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW  
17 to read as follows:

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

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

1 by a state agency or local government that includes requirements for  
2 management of storm water.

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

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

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

12 **Sec. 3.** RCW 36.70A.150 and 1990 1st ex.s. c 17 s 15 are each  
13 amended to read as follows:

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

24 The respective capital acquisition budgets for each jurisdiction  
25 shall reflect the jointly agreed upon priorities and time schedule.

26 **Sec. 4.** RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each  
27 amended to read as follows:

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

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

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

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

18 (4) "Owner" means the owner of record of real property, although  
19 when real property is being purchased under a real estate contract, the  
20 purchaser shall be considered the owner of the real property if the  
21 contract is recorded.

22 (5) "Proportionate share" means that portion of the cost of public  
23 facility improvements that are reasonably related to the service  
24 demands and needs of new development.

25 (6) "Project improvements" mean site improvements and facilities  
26 that are planned and designed to provide service for a particular  
27 development project and that are necessary for the use and convenience  
28 of the occupants or users of the project, and are not system  
29 improvements. No improvement or facility included in a capital

1 facilities plan approved by the governing body of the county, city, or  
2 town shall be considered a project improvement.

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

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

14 (9) "System improvements" mean public facilities that are included  
15 in the capital facilities plan and are designed to provide service to  
16 service areas within the community at large, in contrast to project  
17 improvements.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW  
19 to read as follows:

20 Within one year of the adoption of comprehensive plans by  
21 jurisdictions required to plan or who choose to plan under RCW  
22 36.70A.040, such jurisdictions shall adopt ordinances that require the  
23 provision of storm water management facilities concurrently with  
24 development approval and that meet the standards for level of service  
25 provided in the comprehensive plan.