

SENATE BILL 5355

State of Washington 52nd Legislature 1991 Regular Session

By Senators Talmadge, Skratek and Metcalf.

Read first time January 29, 1991. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to protecting Puget Sound and other water bodies of
2 Washington; amending RCW 90.70.011, 90.70.060, 90.70.025, 90.70.070,
3 43.88.030, 82.02.090, 36.70A.070, 17.21.030, 15.58.100, 90.48.037,
4 43.21B.300, 90.48.140, 43.131.369, 43.131.370, and 90.70.902;
5 reenacting and amending RCW 70.146.060; adding a new section to chapter
6 90.70 RCW; adding new sections to chapter 90.48 RCW; adding a new
7 section to chapter 70.146 RCW; adding a new section to chapter 46.68
8 RCW; adding a new section to chapter 15.58 RCW; creating new sections;
9 making appropriations; providing an effective date; and prescribing
10 penalties.

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

12 **Sec. 1.** RCW 90.70.011 and 1990 c 115 s 2 are each amended to read
13 as follows:

14 **AUTHORITY CHAIR SELECTION.** (1) There is established the Puget
15 Sound water quality authority composed of eleven members. Nine members

1 shall be appointed by the governor and confirmed by the senate. In
2 addition, the commissioner of public lands (~~or the commissioner's~~
3 ~~designee~~) and the director of ecology (~~or the director's designee~~)
4 shall serve as ex officio members. Three of the members shall include
5 a representative from the counties, a representative from the cities,
6 and a tribal representative. The (~~director of ecology shall be~~)
7 chair of the authority shall be chosen from among the authority members
8 by the authority. The position of chair shall be rotated annually. In
9 making these appointments, the governor shall seek to include
10 representation of the variety of interested parties concerned about
11 Puget Sound water quality. Of the appointed members, at least one
12 shall be selected from each of the six congressional districts
13 surrounding Puget Sound. All votes shall be cast by members.
14 Designees or alternates may not vote. Members shall serve four-year
15 terms. Of the initial members appointed to the authority, two shall
16 serve for two years, two shall serve for three years, and two shall
17 serve for four years. Thereafter members shall be appointed to four-
18 year terms. Members representing cities, counties, and the tribes
19 shall also serve four-year staggered terms, as determined by the
20 governor. Vacancies shall be filled by appointment for the remainder
21 of the unexpired term of the position being vacated. The executive
22 director of the authority shall be selected by the governor and shall
23 serve at the pleasure of the governor. The executive director shall
24 not be a member of the authority.

25 (2) Members shall be compensated as provided in RCW 43.03.250.
26 Members shall be reimbursed for travel expenses as provided in RCW
27 43.03.050 and 43.03.060.

28 (3) The executive director of the authority shall be a full-time
29 employee responsible for the administration of all functions of the
30 authority, including hiring and terminating staff, contracting,

1 coordinating with the governor, the legislature, and other state and
2 local entities, and the delegation of responsibilities as deemed
3 appropriate. The executive director shall report to the authority and
4 shall serve to carry out the policy direction of the authority. The
5 salary of the executive director shall be comparable to those of other
6 agency directors and shall be fixed by the governor, subject to RCW
7 43.03.040.

8 (4) The authority shall prepare a budget and a work plan.

9 (5) Not more than four employees of the authority may be exempt
10 from the provisions of chapter 41.06 RCW.

11 (6) The executive director and staff of the authority shall be
12 located in the Olympia area, as space becomes available. The
13 department of general administration shall house the authority within
14 the department of ecology.

15 **Sec. 2.** RCW 90.70.060 and 1990 c 115 s 5 are each amended to read
16 as follows:

17 The plan adopted by the authority shall be a positive document
18 prescribing the needed actions for the maintenance and enhancement of
19 Puget Sound water quality. The plan shall address all the waters and
20 sediments of Puget Sound, the Strait of Juan de Fuca, and, to the
21 extent that they affect water and sediment quality in Puget Sound, all
22 waters flowing into Puget Sound, and adjacent lands. The authority may
23 define specific geographic boundaries within which the plan applies.
24 The plan shall coordinate and incorporate existing planning and
25 research efforts of state agencies and local government related to
26 Puget Sound, and shall avoid duplication of existing efforts. The plan
27 shall include:

28 (1) A statement of the goals and objectives for long and short-term
29 management of the water quality of Puget Sound;

1 (2) A schedule for achieving each goal within the plan;

2 (3) An education and public involvement program that encourages
3 public participation in the development and implementation of the plan
4 and other Puget Sound water quality programs on the state and local
5 level;

6 (4) A resource assessment which identifies critically sensitive
7 areas, key characteristics, and other factors which lead to an
8 understanding of Puget Sound as an ecosystem;

9 ~~((3))~~ (5) Demographic information and assessment as relates to
10 future water quality impacts on Puget Sound;

11 ~~((4))~~ (6) An identification and legal analysis of all existing
12 laws governing actions of government entities which may affect water
13 quality management of Puget Sound, the interrelationships of those
14 laws, and the effect of those laws on implementation of the provisions
15 of the plan;

16 ~~((5))~~ (7) Review and assessment of existing criteria and
17 guidelines for governmental activities affecting Puget Sound's
18 resources, including shoreline resources, aquatic resources, associated
19 watersheds, recreational resources and commercial resources;

20 ~~((6))~~ (8) Identification of research needs and priorities;

21 ~~((7) Recommendations for guidelines, standards, and timetables for~~
22 ~~protection and clean-up activities and the establishment of priorities~~
23 ~~for major clean-up investments and nonpoint source management, and the~~
24 ~~projected costs of such priorities;~~

25 (8)) (9) A procedure assuring local government initiated planning
26 for Puget Sound water quality protection;

27 ~~((9))~~ (10) Ways to better coordinate federal, state, and local
28 planning and management activities affecting Puget Sound's water
29 quality;

1 (~~(10) Public involvement strategies, including household hazardous~~
2 ~~waste education, community clean up efforts, and public participation~~
3 ~~in developing and implementing the plan;~~)

4 (11) Recommendations on protecting, preserving and, where possible,
5 restoring wetlands and wildlife habitat and shellfish beds throughout
6 Puget Sound;

7 (12) Recommendations for a comprehensive water quality and sediment
8 monitoring program;

9 (13) (~~Analysis of current industrial pretreatment programs for~~
10 ~~toxic wastes, and procedures and enforcement measures needed to enhance~~
11 ~~them;~~)

12 (~~Recommendations for a program of dredge spoil disposal,~~
13 ~~including interim measures for disposal and storage of dredge spoil~~
14 ~~material from or into Puget Sound;~~)

15 (~~Definition of major public actions subject to review and~~
16 ~~comment by the authority because of a significant impact on Puget Sound~~
17 ~~water quality and related resources, and development of criteria for~~
18 ~~review thereof;~~)

19 (16)) Recommendations ((~~for~~)) on reducing and eventually
20 eliminating harm from toxics and other contaminants entering and
21 accumulating in the Sound, including but not limited to, provisions for
22 the development of rules classifying sediments having adverse effects,
23 industrial pretreatment programs, dilution zone criteria development,
24 the setting of effluent limits in permits to eliminate harm from
25 discharges of toxics and particulates, and educational and citizen
26 awareness programs;

27 (14) A program to reduce pollution discharges from storm water and
28 combined sewer overflows throughout Puget Sound, including the
29 development of local government storm water programs in the urbanized
30 areas of the Puget Sound basin, the development of operation and

1 maintenance programs including the adoption of ordinances governing
2 storm water management in new development, plans for reducing combined
3 sewer overflow events, the control of storm water from state highways
4 facilities in the Puget Sound basin, and other necessary actions;

5 (15) A program to assure the quality and timeliness of laboratory
6 tests related to water quality and sediment quality in the Puget Sound
7 basin;

8 (16) Other programs as are deemed necessary to protect Puget Sound
9 water quality including, but not limited to, pesticides, household
10 hazardous waste, atmospheric deposition, and the prevention of oil and
11 hazardous substance spills;

12 (17) Implementation mechanisms to be used by state and local
13 government agencies in carrying out their responsibilities under the
14 plan;

15 ~~((17))~~ (18) Standards and procedures for reporting progress by
16 state and local governments in the implementation of the plan;

17 ~~((18) An analysis of resource requirements and funding mechanisms~~
18 ~~for updating of the plan and))~~ (19) A funding plan and budget for plan
19 implementation; and

20 ~~((19))~~ (20) Legislation needed to assure plan implementation.

21 The authority shall circulate and receive comments on drafts of the
22 plan mandated herein, and keep a record of all relevant comments made
23 at public hearings and in writing. These records should be made easily
24 available to interested persons.

25 As part of the plan, the authority shall prepare a strategy for
26 implementing the plan that includes, but is not limited to: (a)
27 Setting priorities for implementation of plan elements to facilitate
28 executive and legislative decision making; (b) assessment of the
29 capabilities and constraints, both internal and external to state and
30 local government, that may affect plan implementation; and (c) an

1 analysis of the strategic options in light of the resources available
2 to the state. In developing this strategy, the authority shall consult
3 and coordinate with other related environmental planning efforts.

4 Each program of the plan shall contain an analysis of the
5 activities of all state agencies and their effects on the goals of that
6 program. State agencies shall manage state-owned lands and resources
7 and carry out other state agency functions in a manner to protect and
8 enhance Puget Sound.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.70 RCW
10 to read as follows:

11 SUPPLEMENT TO AGENCY AUTHORITY. The policies and authorities set
12 forth in this chapter and the plan developed pursuant to RCW 90.70.060
13 are supplementary to the existing authorizations of all governments and
14 agencies having responsibilities for implementation of the plan. Where
15 specified in the plan, agencies may allocate responsibility for
16 implementation to different levels of government except where expressly
17 prohibited by law. Agencies may adopt rules or guidelines for the
18 purpose of plan implementation.

19 **Sec. 4.** RCW 90.70.025 and 1985 c 451 s 5 are each amended to read
20 as follows:

21 In order to carry out its responsibilities under this chapter, the
22 authority may:

23 (1) ~~((Develop interim proposals and recommendations, before the~~
24 ~~plan is adopted, concerning the elements identified in RCW 90.70.060))~~
25 Allocate responsibilities for implementation of the plan to other
26 agencies and different levels of government;

1 (2) Enter into, amend, and terminate contracts with individuals,
2 corporations, or research institutions for the purposes of this
3 chapter;

4 (3) Receive such gifts, grants, and endowments, in trust or
5 otherwise, for the use and benefit of the purposes of the authority.
6 The authority may expend the same or any income therefrom according to
7 the terms of the gifts, grants, or endowments;

8 (4) Conduct studies and research relating to Puget Sound water
9 quality;

10 (5) Obtain information relating to Puget Sound from other state and
11 local agencies;

12 (6) Conduct appropriate public hearings and otherwise seek to
13 broadly disseminate information concerning Puget Sound;

14 (7) Receive funding from other public agencies;

15 (8) Prepare a biennial budget request for consideration by the
16 governor and the legislature; and

17 (9) Adopt rules under chapter 34.05 RCW as it deems necessary for
18 the purposes of this chapter.

19 **Sec. 5.** RCW 90.70.070 and 1990 c 115 s 6 are each amended to read
20 as follows:

21 (1) In conducting planning, regulatory, and appeals actions, the
22 state agencies and local governments identified in the plan must
23 evaluate, and incorporate as applicable, subject to the availability of
24 appropriated funds or other funding ((~~sources~~)) authority, the
25 provisions of the plan, including any guidelines, standards, and
26 timetables contained in the plan.

27 (2) The authority shall review the progress of state agencies and
28 local governments regarding the timely implementation of the plan.
29 Where prescribed actions have not been accomplished in accordance with

1 the plan, the responsible state agencies and local governments shall,
2 at the request of the authority, submit written explanations for the
3 shortfalls, together with their proposed remedies, to the authority.

4 The results of the review and a description of the actions
5 necessary to comply with the plan shall be included in the biennial
6 state of the Sound report.

7 (3) The state agencies and local governments identified in the plan
8 shall review their activities biennially and document their consistency
9 with the plan. They shall submit written reports or updates of their
10 findings to the authority.

11 (4) The authority shall review the major actions (~~affected by the~~
12 ~~plan~~) affecting the Sound being considered by the state agencies and
13 local governments and shall comment in a timely manner regarding
14 consistency with the plan and may participate in administrative and
15 subsequent judicial proceedings with respect to such actions. Any
16 deviations from the plan, identified by the authority, shall be
17 transmitted in writing by the authority to the responsible state agency
18 or local government.

19 **Sec. 6.** RCW 43.88.030 and 1990 c 115 s 1 are each amended to read
20 as follows:

21 (1) The director of financial management shall provide all agencies
22 with a complete set of instructions for submitting biennial budget
23 requests to the director at least three months before agency budget
24 documents are due into the office of financial management. The budget
25 document or documents shall consist of the governor's budget message
26 which shall be explanatory of the budget and shall contain an outline
27 of the proposed financial policies of the state for the ensuing fiscal
28 period and shall describe in connection therewith the important
29 features of the budget. The message shall set forth the reasons for

1 salient changes from the previous fiscal period in expenditure and
2 revenue items and shall explain any major changes in financial policy.
3 Attached to the budget message shall be such supporting schedules,
4 exhibits and other explanatory material in respect to both current
5 operations and capital improvements as the governor shall deem to be
6 useful to the legislature. The budget document or documents shall set
7 forth a proposal for expenditures in the ensuing fiscal period based
8 upon the estimated revenues as approved by the economic and revenue
9 forecast council for such fiscal period from the source and at the
10 rates existing by law at the time of submission of the budget document.
11 However, the estimated revenues for use in the governor's budget
12 document may be adjusted to reflect budgetary revenue transfers and
13 revenue estimates dependent upon budgetary assumptions of enrollments,
14 workloads, and caseloads. All adjustments to the approved estimated
15 revenues must be set forth in the budget document. The governor may
16 additionally submit, as an appendix to each agency budget or to the
17 budget document or documents, a proposal for expenditures in the
18 ensuing fiscal period from revenue sources derived from proposed
19 changes in existing statutes.

20 The budget document or documents shall also contain:

21 (a) Revenues classified by fund and source for the immediately past
22 fiscal period, those received or anticipated for the current fiscal
23 period, and those anticipated for the ensuing biennium;

24 (b) The undesignated fund balance or deficit, by fund;

25 (c) Such additional information dealing with expenditures,
26 revenues, workload, performance and personnel as the legislature may
27 direct by law or concurrent resolution;

28 (d) Such additional information dealing with revenues and
29 expenditures as the governor shall deem pertinent and useful to the
30 legislature;

1 (e) Tabulations showing expenditures classified by fund, function,
2 activity and object;

3 (f) A delineation of each agency's activities, including those
4 activities funded from nonbudgeted, nonappropriated sources, including
5 funds maintained outside the state treasury; and

6 (g) Identification of all proposed direct expenditures to implement
7 the Puget Sound water quality plan under chapter 90.70 RCW, shown by
8 agency and in total and estimates submitted by each agency to fully
9 carry out the agency's responsibilities under the plan.

10 (2) The budget document or documents shall include detailed
11 estimates of all anticipated revenues applicable to proposed operating
12 or capital expenditures and shall also include all proposed operating
13 or capital expenditures. The total of beginning undesignated fund
14 balance and estimated revenues less working capital and other reserves
15 shall equal or exceed the total of proposed applicable expenditures.
16 The budget document or documents shall further include:

17 (a) Interest, amortization and redemption charges on the state
18 debt;

19 (b) Payments of all reliefs, judgments and claims;

20 (c) Other statutory expenditures;

21 (d) Expenditures incident to the operation for each agency;

22 (e) Revenues derived from agency operations;

23 (f) Expenditures and revenues shall be given in comparative form
24 showing those incurred or received for the immediately past fiscal
25 period and those anticipated for the current biennium and next ensuing
26 biennium;

27 (g) A showing and explanation of amounts of general fund
28 obligations for debt service and any transfers of moneys that otherwise
29 would have been available for general fund appropriations;

30 (h) Common school expenditures on a fiscal-year basis;

1 (i) A showing, by agency, of the value and purpose of financing
2 contracts for the lease/purchase or acquisition of personal or real
3 property for the current and ensuing fiscal periods.

4 (3) A separate budget document or schedule may be submitted
5 consisting of:

6 (a) Expenditures incident to current or pending capital projects
7 and to proposed new capital projects, relating the respective amounts
8 proposed to be raised therefor by appropriations in the budget and the
9 respective amounts proposed to be raised therefor by the issuance of
10 bonds during the fiscal period;

11 (b) A capital program consisting of proposed capital projects for
12 at least the two fiscal periods succeeding the next fiscal period. The
13 capital program shall include for each proposed project a statement of
14 the reason or purpose for the project along with an estimate of its
15 cost;

16 (c) Such other information bearing upon capital projects as the
17 governor shall deem to be useful to the legislature;

18 (d) Such other information relating to capital improvement projects
19 as the legislature may direct by law or concurrent resolution.

20 (4) No change affecting the comparability of agency or program
21 information relating to expenditures, revenues, workload, performance
22 and personnel shall be made in the format of any budget document or
23 report presented to the legislature under this section or RCW
24 43.88.160(1) relative to the format of the budget document or report
25 which was presented to the previous regular session of the legislature
26 during an odd-numbered year without prior legislative concurrence.
27 Prior legislative concurrence shall consist of (a) a favorable majority
28 vote on the proposal by the standing committees on ways and means of
29 both houses if the legislature is in session or (b) a favorable
30 majority vote on the proposal by members of the legislative evaluation

1 and accountability program committee if the legislature is not in
2 session.

3 **Sec. 7.** RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each
4 amended to read as follows:

5 DEVELOPMENT IMPACT FEES FOR STORM WATER FACILITIES. Unless the
6 context clearly requires otherwise, the following definitions shall
7 apply in RCW 82.02.050 through 82.02.090:

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

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

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

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

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

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

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

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

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

23 **Sec. 8.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
24 amended to read as follows:

25 STORM WATER PROGRAMS IN LOCAL COMPREHENSIVE PLANS. The
26 comprehensive plan of a county or city that is required or chooses to
27 plan under RCW 36.70A.040 shall consist of a map or maps, and
28 descriptive text covering objectives, principles, and standards used to
29 develop the comprehensive plan. The plan shall be an internally

1 consistent document and all elements shall be consistent with the
2 future land use map. A comprehensive plan shall be adopted and amended
3 with public participation as provided in RCW 36.70A.140.

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

6 (1) A land use element designating the proposed general
7 distribution and general location and extent of the uses of land, where
8 appropriate, for agriculture, timber production, housing, commerce,
9 industry, recreation, open spaces, public utilities, public facilities,
10 and other land uses. The land use element shall include population
11 densities, building intensities, and estimates of future population
12 growth. The land use element shall provide for protection of the
13 quality and quantity of ground water used for public water supplies.
14 Where applicable, the land use element shall ~~((review drainage,
15 flooding, and storm water run-off in the area and nearby jurisdictions
16 and provide guidance for corrective actions to mitigate or cleanse
17 those discharges that pollute waters of the state, including Puget
18 Sound or waters entering Puget Sound))~~ incorporate storm water
19 management programs adopted pursuant to the Puget Sound water quality
20 management plan required under RCW 90.70.060.

21 (2) A housing element recognizing the vitality and character of
22 established residential neighborhoods that: (a) Includes an inventory
23 and analysis of existing and projected housing needs; (b) includes a
24 statement of goals, policies, and objectives for the preservation,
25 improvement, and development of housing; (c) identifies sufficient land
26 for housing, including, but not limited to, government-assisted
27 housing, housing for low-income families, manufactured housing,
28 multifamily housing, and group homes and foster care facilities; and
29 (d) makes adequate provisions for existing and projected needs of all
30 economic segments of the community.

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

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

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

22 (6) A transportation element that implements, and is consistent
23 with, the land use element. The transportation element shall include
24 the following subelements:

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

26 (b) Facilities and services needs, including:

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

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

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

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

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

12 (c) Finance, including:

13 (i) An analysis of funding capability to judge needs against
14 probable funding resources;

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

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

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

27 (e) Demand-management strategies.

28 (7) The land use, capital facilities, and transportation elements
29 of comprehensive plans shall incorporate and be consistent with

1 applicable provisions of watershed management plans adopted pursuant to
2 the Puget Sound water quality management plan.

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

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

21 NEW SECTION. Sec. 9. A new section is added to chapter 70.146 RCW
22 to read as follows:

23 STORM WATER PROGRAMS AS CONDITION FOR STATE FUNDS. After July 1,
24 1993, no grant or loan may be made under this chapter to a county or
25 city that has not adopted a storm water management program as part of
26 its comprehensive plan as required by section 8 of this act.

27 NEW SECTION. Sec. 10. A new section is added to chapter 46.68 RCW
28 to read as follows:

1 STORM WATER CONTROLS IN TRANSPORTATION PROJECTS. (1) Beginning
2 July 1, 1993, a county, city, town, or special district receiving
3 moneys from the motor vehicle fund or an account in the motor vehicle
4 fund for the purpose of constructing a new transportation project shall
5 incorporate all known, available, and reasonable methods of storm water
6 controls.

7 (2) The department of transportation, in consultation with the
8 department of ecology and the Puget Sound water quality authority,
9 shall adopt rules to implement this section. The rules shall include
10 guidance and design standards for storm water management facilities
11 constructed by local governments as a part of transportation
12 improvement projects.

13 **Sec. 11.** RCW 70.146.060 and 1987 c 527 s 1 and 1987 c 436 s 7 are
14 each reenacted and amended to read as follows:

15 WATER QUALITY ACCOUNT DISTRIBUTIONS--LIMITATIONS--COMBINED SEWER
16 OVERFLOW REDUCTION FUNDING. During the period from July 1, 1987, until
17 June 30, 1995, the following limitations shall apply to the
18 department's total distribution of funds appropriated from the water
19 quality account:

20 (1) Not more than fifty percent for water pollution control
21 facilities which discharge directly into marine waters, including
22 projects to reduce combined sewer overflows;

23 (2) Not more than twenty percent for water pollution control
24 activities that prevent or mitigate pollution of underground waters and
25 facilities that protect federally designated sole source aquifers with
26 at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;

27 (3) Not more than ten percent for water pollution control
28 activities that protect freshwater lakes and rivers including but not
29 limited to Lake Chelan and the Yakima and Columbia rivers;

1 (4) Not more than ten percent for activities which control nonpoint
2 source water pollution;

3 (5) Ten percent and such sums as may be remaining from the
4 categories specified in subsections (1) through (4) of this section for
5 water pollution control activities or facilities as determined by the
6 department; and

7 (6) Two and one-half percent of the total amounts of moneys under
8 subsections (1) through (5) of this section from February 21, 1986,
9 until December 31, 1995, shall be appropriated biennially to the state
10 conservation commission for the purposes of this chapter. Not less
11 than ten percent of the moneys received by the state conservation
12 commission under the provisions of this section shall be expended on
13 research activities.

14 The distribution under this section shall not be required to be met
15 in any single fiscal year.

16 Funds provided for facilities and activities under this chapter may
17 be used for payments to a service provider under a service agreement
18 pursuant to RCW 70.150.060. If funds are to be used for such payments,
19 the department may make periodic disbursements to a public body or may
20 make a single lump sum disbursement. Disbursements of funds with
21 respect to a facility owned or operated by a service provider shall be
22 equivalent in value to disbursements that would otherwise be made if
23 that facility were owned or operated by a public body. Payments under
24 this chapter for waste disposal and management facilities made to
25 public bodies entering into service agreements pursuant to RCW
26 70.150.060 shall not exceed amounts paid to public bodies not entering
27 into service agreements.

28 Until January 1, 1997, the department shall place a priority upon
29 providing assistance to projects for the reduction of combined sewer
30 overflows that are otherwise eligible under this chapter. Beginning

1 January 1, 1992, the department may not distribute funds from the water
2 quality account to a local government not in compliance with the
3 following requirements: (a) Plans and compliance schedules for the
4 reduction of combined sewer overflows pursuant to RCW 90.48.480; and
5 (b) adoption of storm water management plans and ordinances under the
6 Puget Sound water quality management plan.

7 NEW SECTION. Sec. 12. A new section is added to chapter 90.48 RCW
8 to read as follows:

9 SELLER DISCLOSURE OF SEPTIC SYSTEM IN SENSITIVE AREAS. Before the
10 closing of the sale of real property located within a sensitive area
11 designated under section 13 of this act, the seller shall provide a
12 report to the purchaser that discloses whether the property being sold
13 is served by a public or private sewer system, an on-site sewage
14 disposal system, other means of waste disposal, or is undeveloped
15 property. If the property is served by an on-site sewage disposal
16 system, the report shall include:

17 (1) The location of the system and, if known, the location of
18 drainfields identified on a scale drawing;

19 (2) Drawings of the system as it was built, if available from
20 either the seller or the local health agency; and

21 (3) A statement of the most recent pumping of the system and a
22 description of the most recent inspection of the system by a certified
23 professional, if known.

24 NEW SECTION. Sec. 13. A new section is added to chapter 90.48 RCW
25 to read as follows:

26 RULEMAKING. (1) On or before January 1, 1992, the department of
27 health shall propose rules for adoption by the state board of health to
28 implement section 12 of this act. The rules shall:

1 (a) Specify the contents of the report to be provided by the
2 seller; and

3 (b) Specify criteria to guide local health agencies in the
4 designation of sensitive areas under subsection (2) of this section.
5 The criteria may include, but are not limited to, the number and
6 density of on-site sewage disposal systems within an area, the presence
7 of other potential contaminant sources, and the presence of unique or
8 important marine or environmental resources that may be adversely
9 impacted.

10 (2) Before July 1, 1992, each local health agency having
11 jurisdiction within counties whose waters drain into Puget Sound shall
12 designate sensitive areas within which the requirements of section 12
13 of this act shall apply.

14 NEW SECTION. **Sec. 14.** WASTE OIL DEMONSTRATION PROJECTS. The
15 department of ecology shall establish a pilot two-year grant program,
16 beginning July 1, 1991, for local governments to conduct demonstration
17 projects for the purpose of encouraging the proper disposal and
18 recycling of household waste motor oil. The department shall award a
19 minimum of three grants for this purpose.

20 NEW SECTION. **Sec. 15.** APPROPRIATION. The sum of two hundred
21 thousand dollars, or as much thereof as may be necessary, is
22 appropriated for the biennium ending June 30, 1993, from the state
23 toxics control account to the department of ecology to be used for
24 grants to local governments to implement section 14 of this act.

25 **Sec. 16.** RCW 17.21.030 and 1989 c 380 s 34 are each amended to
26 read as follows:

1 PESTICIDE APPLICATION GUIDELINES TO PROTECT WATER QUALITY. The
2 director shall administer and enforce the provisions of this chapter
3 and rules adopted hereunder.

4 (1) The director shall adopt rules:

5 (a) Governing the application and use, or prohibiting the use, or
6 possession for use, of any pesticide;

7 (b) Governing the time when, and the conditions under which
8 restricted use pesticides shall or shall not be used in different
9 areas, which areas may be prescribed by the director, in the state;

10 (c) Providing that any or all restricted use pesticides shall be
11 purchased, possessed or used only under permit of the director and
12 under the director's direct supervision in certain areas and/or under
13 certain conditions or in certain quantities or concentrations; however,
14 any person licensed to sell such pesticides may purchase and possess
15 such pesticides without a permit;

16 (d) Establishing recordkeeping requirements for licensees,
17 permittees, and certified applicators;

18 (e) Fixing and collecting examination fees;

19 (f) Establishing testing procedures, licensing classifications, and
20 requirements for licenses and permits as provided by this chapter;

21 (~~and~~)

22 (g) Fixing and collecting permit fees; and

23 (h) Establishing use and application guidelines for pesticides that
24 can cause adverse environmental impacts through concentration in marine
25 waters, sediment, or biota.

26 (2) The director may adopt any other rules necessary to carry out
27 the purpose and provisions of this chapter.

28 NEW SECTION. Sec. 17. A new section is added to chapter 15.58 RCW
29 to read as follows:

1 By January 1, 1993, the director shall adopt rules establishing
2 requirements for the denial of new registration, and schedules for the
3 cancellation of existing registration, of active and inert ingredients
4 of pesticides that pose a substantial risk of adverse effects upon
5 public health, water quality, sediment, or biota.

6 **Sec. 18.** RCW 15.58.100 and 1979 c 146 s 2 are each amended to read
7 as follows:

8 (1) The director shall require the information required under RCW
9 15.58.060 and shall register the label or labeling for such pesticide
10 if ~~((he))~~ the director determines that:

11 (a) Its composition is such as to warrant the proposed claims for
12 it;

13 (b) Its labeling and other material required to be submitted comply
14 with the requirements of this chapter;

15 (c) It will perform its intended function without unreasonable
16 adverse effects on the environment;

17 (d) When used in accordance with widespread and commonly recognized
18 practice it will not generally cause unreasonable adverse effects on
19 the environment;

20 (e) Denial of registration is not required by section 17 of this
21 act;

22 (f) In the case of any pesticide subject to section 24(c) of FIFRA,
23 it meets (1) (a), (b), (c), and (d) of this section and the following
24 criteria:

25 (i) The proposed classification for general use, for restricted
26 use, or for both is in conformity with section 3(d) of FIFRA;

27 (ii) A special local need exists.

28 (2) The director shall not make any lack of essentiality a
29 criterion for denying registration of any pesticide.

1 **Sec. 19.** RCW 90.48.037 and 1987 c 109 s 125 are each amended to
2 read as follows:

3 JUDICIAL CIVIL PENALTIES. (1) The department, with the assistance
4 of the attorney general, is authorized to bring any appropriate action
5 at law or in equity, including action for injunctive relief, in the
6 name of the people of the state of Washington as may be necessary to
7 carry out the provisions of this chapter.

8 (2) In a civil action brought pursuant to this chapter, the court
9 may assess a civil penalty in an amount not to exceed ten thousand
10 dollars a day for each violation of a provision of this chapter, or of
11 a rule, permit, or order of the department pursuant to the authority of
12 this chapter. Each day of such violation shall constitute a separate
13 violation. In determining the penalty amount to be assessed, the court
14 shall be guided by the considerations enumerated in RCW 43.21B.300(2).

15 NEW SECTION. **Sec. 20.** A new section is added to chapter 90.48 RCW
16 to read as follows:

17 CIVIL PENALTIES DEDICATED TO WATER QUALITY PURPOSES. All penalties
18 collected under RCW 90.48.144 and section 19 of this act shall be
19 deposited in the water pollution control account, which is hereby
20 created in the state treasury. Moneys in the account shall be expended
21 exclusively by the department of ecology for the purposes of this
22 chapter, subject to legislative appropriation. All earnings of
23 balances in the water pollution control account shall be credited to
24 the general fund.

25 **Sec. 21.** RCW 43.21B.300 and 1987 c 109 s 5 are each amended to
26 read as follows:

27 PENALTY DISPOSITION. (1) Any civil penalty provided in RCW
28 70.94.431, 70.105.080, 70.107.050, 90.03.600, 90.48.144, and 90.48.350

1 shall be imposed by a notice in writing, either by certified mail with
2 return receipt requested or by personal service, to the person
3 incurring the penalty from the department or the local air authority,
4 describing the violation with reasonable particularity. Within fifteen
5 days after the notice is received, the person incurring the penalty may
6 apply in writing to the department or the authority for the remission
7 or mitigation of the penalty. Upon receipt of the application, the
8 department or authority may remit or mitigate the penalty upon whatever
9 terms the department or the authority in its discretion deems proper.
10 The department or the authority may ascertain the facts regarding all
11 such applications in such reasonable manner and under such rules as it
12 may deem proper and shall remit or mitigate the penalty only upon a
13 demonstration of extraordinary circumstances such as the presence of
14 information or factors not considered in setting the original penalty.

15 (2) Any penalty imposed under this section may be appealed to the
16 pollution control hearings board in accordance with this chapter if the
17 appeal is filed with the hearings board and served on the department or
18 authority thirty days after receipt by the person penalized of the
19 notice imposing the penalty or thirty days after receipt of the notice
20 of disposition of the application for relief from penalty.

21 (3) A penalty shall become due and payable on the later of:

22 (a) Thirty days after receipt of the notice imposing the penalty;

23 (b) Thirty days after receipt of the notice of disposition on
24 application for relief from penalty, if such an application is made; or

25 (c) Thirty days after receipt of the notice of decision of the
26 hearings board if the penalty is appealed.

27 (4) If the amount of any penalty is not paid to the
28 department within thirty days after it becomes due and payable, the
29 attorney general, upon request of the department, shall bring an action
30 in the name of the state of Washington in the superior court of

1 Thurston county, or of any county in which the violator does business,
2 to recover the penalty. If the amount of the penalty is not paid to
3 the authority within thirty days after it becomes due and payable, the
4 authority may bring an action to recover the penalty in the superior
5 court of the county of the authority's main office or of any county in
6 which the violator does business. In these actions, the procedures and
7 rules of evidence shall be the same as in an ordinary civil action.

8 (5) All penalties recovered shall be paid into the state treasury
9 and credited to the general fund except those penalties imposed
10 pursuant to RCW 70.94.431, the disposition of which shall be governed
11 by that provision, RCW 70.105.080, which shall be credited to the
12 hazardous waste control and elimination account, created by RCW
13 70.105.180, RCW 90.48.144, which shall be credited to the water
14 pollution control account, created by section 20 of this act, and RCW
15 90.48.350, which shall be credited to the coastal protection fund
16 created by RCW 90.48.390.

17 **Sec. 22.** RCW 90.48.140 and 1973 c 155 s 8 are each amended to read
18 as follows:

19 CRIMINAL PENALTIES. Any person (~~found guilty of wilfully~~
20 ~~violating~~) who knowingly violates any of the provisions of this
21 chapter, or any final written orders or directive of the department or
22 a court in pursuance thereof, except for those violations enumerated in
23 section 23 of this act, shall be (~~deemed~~) guilty of a (~~crime~~) gross
24 misdemeanor, and upon conviction thereof shall be punished (~~by a fine~~
25 ~~of up to ten thousand dollars and costs of prosecution, or by~~
26 ~~imprisonment in the county jail for not more than one year, or by both~~
27 ~~such fine and imprisonment in the discretion of the court~~) as provided
28 in RCW 9A.20.021. Each day upon which a (~~wilful~~) knowing violation

1 of the provisions of this chapter occurs may be deemed a separate and
2 additional violation.

3 NEW SECTION. **Sec. 23.** A new section is added to chapter 90.48 RCW
4 to read as follows:

5 CRIMINAL PENALTIES. (1) A person who knowingly commits any of the
6 following shall be guilty of a class C felony and upon conviction shall
7 be punished as provided in RCW 9A.20.021. Each day upon which a
8 violation of this section occurs may be deemed a separate and
9 additional violation.

10 (a) Omitting or falsifying records, reports, information, plans, or
11 specifications required by the department under this chapter;

12 (b) Falsifying, tampering with, or rendering inaccurate a
13 monitoring device or method, or tampering with a portion of a treatment
14 or conveyance system resulting in the discharge of untreated waste or
15 waste not meeting permit standards;

16 (c) Discharging after a permit has been revoked, or discharging in
17 violation of a final written order or directive of the department, or
18 discharging without a permit;

19 (d) Failure to report a discharge that violates or exceeds permit
20 conditions or limitations; and

21 (e) Failure to comply with a final written order or directive of
22 the department.

23 (2) No person is in violation of this section where the discharge
24 of waste constitutes only a minor statistical exceedance of effluent
25 limitations.

26 NEW SECTION. **Sec. 24.** A new section is added to chapter 90.48 RCW
27 to read as follows:

1 DEFINITIONS. The following definitions apply to RCW 90.48.140 and
2 section 23 of this act.

3 (1) "Knowingly" shall be defined in the same manner as that term is
4 defined in RCW 9A.08.010.

5 (2) "Final written order or directive of the department" means a
6 department order or directive that has been fully adjudicated with all
7 available administrative and judicial reviews having been exhausted.

8 (3) "Person" shall have the meaning given in RCW 9A.04.110(17).

9 NEW SECTION. **Sec. 25.** A new section is added to chapter 90.48 RCW
10 to read as follows:

11 (1) By July 1, 1992, the department shall establish a schedule
12 ensuring inspection of facilities subject to discharge permits with at
13 least the following frequency:

14 (a) Twice per year for class I inspections of major dischargers;

15 (b) Once per year for class II inspections of major dischargers,
16 class I inspections of significant minor dischargers, and minor NPDES
17 dischargers;

18 (c) Once every two years for class II inspections of significant
19 minor dischargers;

20 (d) Once every ten years for class II inspections of significant
21 state and minor NPDES dischargers.

22 (2) The department shall include toxic limits, sediment quality
23 limits, and monitoring requirements in all permits issued. In the
24 Puget Sound region, such requirements shall be at least as stringent as
25 those specified in the Puget Sound water quality management plan.

26 NEW SECTION. **Sec. 26.** A new section is added to chapter 90.48 RCW
27 to read as follows:

1 INCREASED ENFORCEMENT AGAINST UNPERMITTED DISCHARGERS. For the
2 biennium ending June 30, 1993, the department shall initiate no fewer
3 than twenty-five enforcement actions against persons discharging
4 pollutants to state waters without a permit as required by this
5 chapter. The department shall place primary emphasis upon initiating
6 enforcement against large dischargers having significant adverse
7 impacts upon water quality. A minimum of fifteen of such actions shall
8 be initiated against persons discharging to Puget Sound or to waters
9 which drain into Puget Sound.

10 NEW SECTION. **Sec. 27.** A new section is added to chapter 90.48 RCW
11 to read as follows:

12 CITIZEN SUITS FOR WATER QUALITY ENFORCEMENT. (1) A person having
13 an interest that is or may be affected may commence an action against:

14 (a) A person alleged to be in violation of a permit or order issued
15 by the department;

16 (b) A person alleged to be discharging waste without a permit
17 issued by the department; or

18 (c) The department where there is alleged a failure of the
19 department to perform an act or duty under this chapter that is not
20 discretionary with the department.

21 (2) No action may be commenced under subsection (1) (a) and (b) of
22 this section:

23 (a) Prior to sixty days after the plaintiff has given notice of the
24 alleged violation to the department and an alleged violator; or

25 (b) If the department has commenced and is diligently prosecuting
26 or negotiating an administrative or judicial enforcement action.

27 (3) No action may be commenced under subsection (1)(c) of this
28 section prior to sixty days after the plaintiff has given notice of
29 such action to the department.

1 (4) In an action commenced under subsection (1) (a) and (b) of this
2 section the plaintiff shall serve a copy of the complaint on the
3 attorney general and the department. The department may intervene as
4 a matter of right in the action. A consent judgment shall not be
5 entered in an action in which the department is not a party prior to
6 forty-five days following the receipt of a copy of the proposed consent
7 judgment by the attorney general and the department.

8 (5) The court, in issuing a final order in an action brought
9 pursuant to this section, may award costs of litigation, including
10 reasonable attorney and expert witness fees, to a prevailing or
11 substantially prevailing party, wherever the court determines such
12 award is appropriate.

13 (6) Nothing in this section restricts:

14 (a) The department or a unit of state or local government from
15 bringing an enforcement action under any other provision of law; or

16 (b) A right that a person may have under statute or common law to
17 seek enforcement of a water quality standard or limitation or to seek
18 other relief.

19 **Sec. 28.** RCW 43.131.369 and 1990 c 115 s 11 are each amended to
20 read as follows:

21 AUTHORITY SUNSET EXTENDED. The Puget Sound water quality authority
22 and its powers and duties shall be terminated on June 30, ((1995))
23 1997, as provided in RCW 43.131.370. On or before November 15, 1996,
24 the legislative budget committee shall prepare a report to the
25 legislature on the means for future implementation of the Puget Sound
26 water quality management plan.

27 **Sec. 29.** RCW 43.131.370 and 1990 c 115 s 12 are each amended to
28 read as follows:

1 REPEALERS. The following acts or parts of acts, as now existing or
2 hereafter amended, are each repealed, effective June 30, (~~1996~~) 1998:

3 (1) RCW 90.70.001 and 1985 c 451 s 1;

4 (2) RCW 90.70.005 and 1985 c 451 s 2;

5 (3) RCW 90.70.011 and 1990 c 115 s 2 & 1985 c 451 s 3;

6 (4) RCW 90.70.025 and 1985 c 451 s 5;

7 (5) RCW 90.70.035 and 1985 c 451 s 6;

8 (6) RCW 90.70.045 and 1990 c 115 s 3, 1988 c 36 s 72, & 1985 c 451
9 s 7;

10 (7) RCW 90.70.055 and 1990 c 115 s 4 and 1985 c 451 s 4;

11 (8) RCW 90.70.060 and 1990 c 115 s 5, 1989 c 11 s 31, & 1985 c 451
12 s 8;

13 (9) RCW 90.70.070 and 1990 c 115 s 6 and 1985 c 451 s 9;

14 (10) RCW 90.70.080 and 1990 c 115 s 7 and 1985 c 451 s 10;

15 (11) RCW 90.70.901 and 1985 c 451 s 14; and

16 (12) RCW 90.70.... and 1991 c ... s 3 (section 3 of this act).

17 **Sec. 30.** RCW 90.70.902 and 1990 c 115 s 13 are each amended to
18 read as follows:

19 SAVINGS. Nothing in RCW 43.131.370 shall affect the implementation
20 and requirements of the Puget Sound water quality management plan
21 existing on June 30, (~~1995~~) 1997, or such other effective date of
22 repeal of the laws referenced in RCW 43.131.370. The implementation of
23 the plan on and after that date shall be the responsibility of such
24 entities as are provided by the legislature.

25 NEW SECTION. **Sec. 31.** EFFECTIVE DATE. Section 12 of this act
26 shall take effect July 1, 1992.

1 NEW SECTION. **Sec. 32.** CAPTIONS. Captions as used in this act are
2 no part of the law.

3 NEW SECTION. **Sec. 33.** APPROPRIATION. The sum of
4 dollars, or as much thereof as may be necessary, is appropriated for
5 the biennium ending June 30, 1993, from the account to the
6 department of ecology to implement section 26 of this act.