

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2514

Chapter 247, Laws of 1998
(partial veto)

55th Legislature
1998 Regular Session

WATERSHED MANAGEMENT

EFFECTIVE DATE: 6/11/98

Passed by the House March 10, 1998
Yeas 88 Nays 10

CLYDE BALLARD
Speaker of the
House of Representatives

Passed by the Senate March 6, 1998
Yeas 43 Nays 4

BRAD OWEN
President of the Senate

Approved April 1, 1998, with the
exception of sections 10 through 14,
which are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2514** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 1, 1998 - 2:46 p.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 2514

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Chandler, Linville, Mastin, Parlette, Koster, Anderson, Regala and Cooper)

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to watershed management; amending RCW 90.82.040,
2 43.27A.090, and 90.54.040; adding new sections to chapter 90.82 RCW;
3 adding a new section to chapter 43.27A RCW; adding a new section to
4 chapter 90.54 RCW; and creating new sections.

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

6 **Sec. 1.** RCW 90.82.040 and 1997 c 442 s 105 are each amended to
7 read as follows:

8 (1) Once a WRIA planning unit has been (~~organized~~) initiated
9 under section 2 of this act and (~~designated~~) a lead agency has been
10 designated, it shall notify the department and may apply to the
11 department for funding assistance for conducting the planning. Funds
12 shall be provided from and to the extent of appropriations made by
13 the legislature to the department expressly for this purpose.

14 (2) Each planning unit that has complied with subsection (1) of
15 this section is eligible to receive (~~fifty thousand dollars for each~~
16 ~~WRIA to initiate the planning process.~~ The department shall allocate
17 ~~additional funds to WRIA planning units based on need demonstrated by~~
18 ~~a detailed proposed budget submitted by the planning unit for~~
19 ~~carrying out the duties of the planning unit.~~ Each WRIA planning

1 ~~unit may receive up to two hundred fifty thousand dollars for each~~
2 ~~WRIA during the first two year period of planning, with a maximum~~
3 ~~allocation of five hundred thousand dollars for each WRIA. Funding~~
4 ~~provided under this section shall be considered a contractual~~
5 ~~obligation against the moneys appropriated for this purpose))~~
6 watershed planning grants in the following amounts for three phases
7 of watershed planning:

8 (a) Initiating governments may apply for an initial organizing
9 grant of up to fifty thousand dollars for a single WRIA or up to
10 seventy-five thousand dollars for a multi-WRIA management area in
11 accordance with section 2(4) of this act;

12 (b) A planning unit may apply for up to two hundred thousand
13 dollars for each WRIA in the management area for conducting watershed
14 assessments in accordance with section 3 of this act; and

15 (c) A planning unit may apply for up to two hundred fifty
16 thousand dollars for each WRIA in the management area for developing
17 a watershed plan and making recommendations for actions by local,
18 state, and federal agencies, tribes, private property owners, private
19 organizations, and individual citizens, including a recommended list
20 of strategies and projects that would further the purpose of the plan
21 in accordance with sections 2, 3, 4, 5, and 6 of this act.

22 ~~(3) ((Preference shall be given to planning units requesting~~
23 ~~funding for conducting multi WRIA planning under section 108 of this~~
24 ~~act)) (a) The department shall use the eligibility criteria in this~~
25 ~~subsection (3) instead of rules, policies, or guidelines when~~
26 ~~evaluating grant applications at each stage of the grants program.~~

27 (b) In reviewing grant applications under this subsection (3),
28 the department shall evaluate whether:

29 (i) The planning unit meets all of the requirements of this
30 chapter;

31 (ii) The application demonstrates a need for state planning funds
32 to accomplish the objectives of the planning process; and

33 (iii) The application and supporting information evidences a
34 readiness to proceed.

35 (c) In ranking grant applications submitted at each stage of the
36 grants program, the department shall give preference to applications
37 in the following order of priority:

1 (i) Applications from existing planning groups that have been in
2 existence for at least one year;

3 (ii) Applications that address protection and enhancement of fish
4 habitat in watersheds that have aquatic fish species listed or
5 proposed to be listed as endangered or threatened under the federal
6 endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which
7 there is evidence of an inability to supply adequate water for
8 population and economic growth from:

9 (A) First, multi-WRIA planning; and

10 (B) Second, single WRIA planning;

11 (iii) Applications that address protection and enhancement of
12 fish habitat in watersheds or for which there is evidence of an
13 inability to supply adequate water for population and economic growth
14 from:

15 (A) First, multi-WRIA planning; and

16 (B) Second, single WRIA planning.

17 (d) The department may not impose any local matching fund
18 requirement as a condition for grant eligibility or as a preference
19 for receiving a grant.

20 (4) The department may retain up to one percent of funds
21 allocated under this section to defray administrative costs.

22 (5) Planning under this chapter should be completed as
23 expeditiously as possible, with the focus being on local stakeholders
24 cooperating to meet local needs.

25 (6) Funding provided under this section shall be considered a
26 contractual obligation against the moneys appropriated for this
27 purpose.

28 NEW SECTION. Sec. 2. INITIATION OF WATERSHED PLANNING. (1)

29 Planning conducted under this chapter must provide for a process to
30 allow the local citizens within a WRIA or multi-WRIA area to join
31 together in an effort to: (a) Assess the status of the water
32 resources of their WRIA or multi-WRIA area; and (b) determine how
33 best to manage the water resources of the WRIA or multi-WRIA area to
34 balance the competing resource demands for that area within the
35 parameters under section 8 of this act.

1 (2) Watershed planning under this chapter may be initiated for a
2 WRIA only with the concurrence of: (a) All counties within the WRIA;
3 (b) the largest city or town within the WRIA unless the WRIA does not
4 contain a city or town; and (c) the water supply utility obtaining
5 the largest quantity of water from the WRIA. To apply for a grant
6 for organizing the planning unit as provided for under RCW
7 90.82.040(2)(a), these entities shall designate the entity that will
8 serve as the lead agency for the planning effort and indicate how the
9 planning unit will be staffed.

10 (3) Watershed planning under this chapter may be initiated for a
11 multi-WRIA area only with the concurrence of: (a) All counties
12 within the multi-WRIA area; (b) the largest city or town in each WRIA
13 unless the WRIA does not contain a city or town; and (c) the water
14 supply utility obtaining the largest quantity of water in each WRIA.

15 (4) If entities in subsection (2) or (3) of this section decide
16 jointly and unanimously to proceed, they shall invite all tribes with
17 reservation lands within the management area.

18 (5) The entities in subsection (2) or (3) of this section,
19 including the tribes if they affirmatively accept the invitation,
20 constitute the initiating governments for the purposes of this
21 section.

22 (6) The organizing grant shall be used to organize the planning
23 unit and to determine the scope of the planning to be conducted. In
24 determining the scope of the planning activities, consideration shall
25 be given to all existing plans and related planning activities. The
26 scope of planning must include water quantity elements as provided in
27 section 3 of this act, and may include water quality elements as
28 contained in section 5 of this act, habitat elements as contained in
29 section 6 of this act, and instream flow elements as contained in
30 section 4 of this act. The initiating governments shall work with
31 state government, other local governments within the management area,
32 and affected tribal governments, in developing a planning process.
33 The initiating governments may hold public meetings as deemed
34 necessary to develop a proposed scope of work and a proposed
35 composition of the planning unit. In developing a proposed
36 composition of the planning unit, the initiating governments shall

1 provide for representation of a wide range of water resource
2 interests.

3 (7) Each state agency with regulatory or other interests in the
4 WRIA or multi-WRIA area to be planned shall assist the local citizens
5 in the planning effort to the greatest extent practicable,
6 recognizing any fiscal limitations. In providing such technical
7 assistance and to facilitate representation on the planning unit,
8 state agencies may organize and agree upon their representation on
9 the planning unit. Such technical assistance must only be at the
10 request of and to the extent desired by the planning unit conducting
11 such planning. The number of state agency representatives on the
12 planning unit shall be determined by the initiating governments in
13 consultation with the governor's office.

14 (8) As used in this section, "lead agency" means the entity that
15 coordinates staff support of its own or of other local governments
16 and receives grants for developing a watershed plan.

17 NEW SECTION. **Sec. 3. WATER QUANTITY.** Watershed planning under
18 this chapter shall address water quantity in the management area by
19 undertaking an assessment of water supply and use in the management
20 area and developing strategies for future use.

21 (1) The assessment shall include:

22 (a) An estimate of the surface and ground water present in the
23 management area;

24 (b) An estimate of the surface and ground water available in the
25 management area, taking into account seasonal and other variations;

26 (c) An estimate of the water in the management area represented
27 by claims in the water rights claims registry, water use permits,
28 certificated rights, existing minimum instream flow rules, federally
29 reserved rights, and any other rights to water;

30 (d) An estimate of the surface and ground water actually being
31 used in the management area;

32 (e) An estimate of the water needed in the future for use in the
33 management area;

34 (f) An identification of the location of areas where aquifers are
35 known to recharge surface bodies of water and areas known to provide
36 for the recharge of aquifers from the surface; and

1 (g) An estimate of the surface and ground water available for
2 further appropriation, taking into account the minimum instream flows
3 adopted by rule or to be adopted by rule under this chapter for
4 streams in the management area including the data necessary to
5 evaluate necessary flows for fish.

6 (2) Strategies for increasing water supplies in the management
7 area, which may include, but are not limited to, increasing water
8 supplies through water conservation, water reuse, the use of
9 reclaimed water, voluntary water transfers, aquifer recharge and
10 recovery, additional water allocations, or additional water storage
11 and water storage enhancements. The objective of these strategies is
12 to supply water in sufficient quantities to satisfy the minimum
13 instream flows for fish and to provide water for future out-of-stream
14 uses for water identified in subsection (1)(e) and (g) of this
15 section and to ensure that adequate water supplies are available for
16 agriculture, energy production, and population and economic growth
17 under the requirements of the state's growth management act, chapter
18 36.70A RCW. These strategies, in and of themselves, shall not be
19 construed to confer new water rights. The watershed plan must
20 address the strategies required under this subsection.

21 NEW SECTION. **Sec. 4.** INSTREAM FLOWS. (1)(a) If the initiating
22 governments choose, by majority vote, to include an instream flow
23 component, it shall be accomplished in the following manner:

24 (i) If minimum instream flows have already been adopted by rule
25 for a stream within the management area, unless the members of the
26 local governments and tribes on the planning unit by a recorded
27 unanimous vote request the department to modify those flows, the
28 minimum instream flows shall not be modified under this chapter. If
29 the members of local governments and tribes request the planning unit
30 to modify instream flows and unanimous approval of the decision to
31 modify such flow is not achieved, then the instream flows shall not
32 be modified under this section;

33 (ii) If minimum stream flows have not been adopted by rule for a
34 stream within the management area, setting the minimum instream flows
35 shall be a collaborative effort between the department and members of
36 the planning unit. The department must attempt to achieve consensus

1 and approval among the members of the planning unit regarding the
2 minimum flows to be adopted by the department. Approval is achieved
3 if all government members and tribes that have been invited and
4 accepted on the planning unit present for a recorded vote unanimously
5 vote to support the proposed minimum instream flows, and all
6 nongovernmental members of the planning unit present for the recorded
7 vote, by a majority, vote to support the proposed minimum instream
8 flows.

9 (b) The department shall undertake rule making to adopt flows
10 under (a) of this subsection. The department may adopt the rules
11 either by the regular rules adoption process provided in chapter
12 34.05 RCW, the expedited rules adoption process as set forth in RCW
13 34.05.230, or through a rules adoption process that uses public
14 hearings and notice provided by the county legislative authority to
15 the greatest extent possible. Such rules do not constitute
16 significant legislative rules as defined in RCW 34.05.328, and do not
17 require the preparation of small business economic impact statements.

18 (c) If approval is not achieved within four years of the date the
19 planning unit first receives funds from the department for conducting
20 watershed assessments under RCW 90.82.040, the department may
21 promptly initiate rule making under chapter 34.05 RCW to establish
22 flows for those streams and shall have two additional years to
23 establish the instream flows for those streams for which approval is
24 not achieved.

25 (2)(a) Notwithstanding RCW 90.03.345, minimum instream flows set
26 under this section for rivers or streams that do not have existing
27 minimum instream flow levels set by rule of the department shall have
28 a priority date of two years after funding is first received from the
29 department under RCW 90.82.040, unless determined otherwise by a
30 unanimous vote of the members of the planning unit but in no instance
31 may it be later than the effective date of the rule adopting such
32 flow.

33 (b) Any increase to an existing minimum instream flow set by rule
34 of the department shall have a priority date of two years after
35 funding is first received for planning in the WRIA or multi-WRIA area
36 from the department under RCW 90.82.040 and the priority date of the

1 portion of the minimum instream flow previously established by rule
2 shall retain its priority date as established under RCW 90.03.345.

3 (c) Any existing minimum instream flow set by rule of the
4 department that is reduced shall retain its original date of priority
5 as established by RCW 90.03.345 for the revised amount of the minimum
6 instream flow level.

7 (3) Before setting minimum instream flows under this section, the
8 department shall engage in government-to-government consultation with
9 affected tribes in the management area regarding the setting of such
10 flows.

11 (4) Nothing in this chapter either: (a) Affects the department's
12 authority to establish flow requirements or other conditions under
13 RCW 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et
14 seq.) for the licensing or relicensing of a hydroelectric power
15 project under the federal power act (16 U.S.C. Sec. 791 et seq.); or
16 (b) affects or impairs existing instream flow requirements and other
17 conditions in a current license for a hydroelectric power project
18 licensed under the federal power act.

19 (5) If the planning unit is unable to obtain unanimity under
20 subsection (1) of this section, the department may adopt rules
21 setting such flows.

22 NEW SECTION. **Sec. 5. WATER QUALITY.** If the initiating
23 governments choose to include a water quality component, the
24 watershed plan shall include the following elements:

25 (1) An examination based on existing studies conducted by
26 federal, state, and local agencies of the degree to which legally
27 established water quality standards are being met in the management
28 area;

29 (2) An examination based on existing studies conducted by
30 federal, state, and local agencies of the causes of water quality
31 violations in the management area, including an examination of
32 information regarding pollutants, point and nonpoint sources of
33 pollution, and pollution-carrying capacities of water bodies in the
34 management area. The analysis shall take into account seasonal
35 stream flow or level variations, natural events, and pollution from
36 natural sources that occurs independent of human activities;

1 (3) An examination of the legally established characteristic uses
2 of each of the nonmarine bodies of water in the management area;

3 (4) An examination of any total maximum daily load established
4 for nonmarine bodies of water in the management area, unless a total
5 maximum daily load process has begun in the management area as of the
6 date the watershed planning process is initiated under section 2 of
7 this act.

8 (5) An examination of existing data related to the impact of
9 fresh water on marine water quality;

10 (6) A recommended approach for implementing the total maximum
11 daily load established for achieving compliance with water quality
12 standards for the nonmarine bodies of water in the management area,
13 unless a total maximum daily load process has begun in the management
14 area as of the date the watershed planning process is initiated under
15 section 2 of this act; and

16 (7) Recommended means of monitoring by appropriate government
17 agencies whether actions taken to implement the approach to bring
18 about improvements in water quality are sufficient to achieve
19 compliance with water quality standards.

20 This chapter does not obligate the state to undertake analysis or
21 to develop strategies required under the federal clean water act (33
22 U.S.C. Sec. 1251 et seq.). This chapter does not authorize any
23 planning unit, lead agency, or local government to adopt water
24 quality standards or total maximum daily loads under the federal
25 clean water act.

26 NEW SECTION. **Sec. 6.** HABITAT. If the initiating governments
27 choose to include a habitat component, the watershed plan shall be
28 coordinated or developed to protect or enhance fish habitat in the
29 management area. Such planning must rely on existing laws, rules, or
30 ordinances created for the purpose of protecting, restoring, or
31 enhancing fish habitat, including the shoreline management act,
32 chapter 90.58 RCW, the growth management act, chapter 36.70A RCW, and
33 the forest practices act, chapter 76.09 RCW. Planning established
34 under this section shall be integrated with strategies developed
35 under other processes to respond to potential and actual listings of
36 salmon and other fish species as being threatened or endangered under

1 the federal endangered species act, 16 U.S.C. Sec. 1531 et seq.
2 Where habitat restoration activities are being developed under
3 chapter . . ., Laws of 1998 (Engrossed Substitute House Bill No.
4 2496), such activities shall be relied on as the primary
5 nonregulatory habitat component for fish habitat under this chapter.

6 NEW SECTION. **Sec. 7.** IDENTIFICATION OF PROJECTS AND ACTIVITIES.

7 The planning unit shall review historical data such as fish runs,
8 weather patterns, land use patterns, seasonal flows, and geographic
9 characteristics of the management area, and also review the planning,
10 projects, and activities that have already been completed regarding
11 natural resource management or enhancement in the management area and
12 the products or status of those that have been initiated but not
13 completed for such management in the management area, and incorporate
14 their products as appropriate so as not to duplicate the work already
15 performed or underway.

16 The planning group is encouraged to identify projects and
17 activities that are likely to serve both short-term and long-term
18 management goals and that warrant immediate financial assistance from
19 the state, federal, or local government. If there are multiple
20 projects, the planning group shall give consideration to ranking
21 projects that have the greatest benefit and schedule those projects
22 that should be implemented first.

23 NEW SECTION. **Sec. 8.** PLAN PARAMETERS. (1) Watershed planning

24 developed and approved under this chapter shall not contain
25 provisions that: (a) Are in conflict with existing state statutes,
26 federal laws, or tribal treaty rights; (b) impair or diminish in any
27 manner an existing water right evidenced by a claim filed in the
28 water rights claims registry established under chapter 90.14 RCW or
29 a water right certificate or permit; (c) require a modification in
30 the basic operations of a federal reclamation project with a water
31 right the priority date of which is before the effective date of this
32 section or alter in any manner whatsoever the quantity of water
33 available under the water right for the reclamation project, whether
34 the project has or has not been completed before the effective date
35 of this section; (d) affect or interfere with an ongoing general

1 adjudication of water rights; (e) modify or require the modification
2 of any waste discharge permit issued under chapter 90.48 RCW; (f)
3 modify or require the modification of activities or actions taken or
4 intended to be taken under a habitat restoration work schedule
5 developed under chapter . . . , Laws of 1998 (Engrossed Substitute
6 House Bill No. 2496); or (g) modify or require the modification of
7 activities or actions taken to protect or enhance fish habitat if the
8 activities or actions are: (i) Part of an approved habitat
9 conservation plan and an incidental take permit, an incidental take
10 statement, a management or recovery plan, or other cooperative or
11 conservation agreement entered into with a federal or state fish and
12 wildlife protection agency under its statutory authority for fish and
13 wildlife protection that addresses the affected habitat; or (ii) part
14 of a water quality program adopted by an irrigation district under
15 chapter 87.03 RCW or a board of joint control under chapter 87.80
16 RCW. This subsection (1)(g) applies as long as the activities or
17 actions continue to be taken in accordance with the plan, agreement,
18 permit, or statement. Any assessment conducted under section 3, 5,
19 or 6 of this act shall take into consideration such activities and
20 actions and those taken under the forest practices rules, including
21 watershed analysis adopted under the forest practices act, chapter
22 76.09 RCW.

23 (2) Watershed planning developed and approved under this chapter
24 shall not change existing local ordinances or existing state rules or
25 permits, but may contain recommendations for changing such ordinances
26 or rules.

27 (3) Notwithstanding any other provision of this chapter,
28 watershed planning shall take into account forest practices rules
29 under the forest practices act, chapter 76.09 RCW, and shall not
30 create any obligations or restrictions on forest practices additional
31 to or inconsistent with the forest practices act and its implementing
32 rules, whether watershed planning is approved by the counties or the
33 department.

34 NEW SECTION. **Sec. 9.** DECISIONS--HEARINGS--APPROVAL. (1)(a)
35 Upon completing its proposed watershed plan, the planning unit may
36 approve the proposal by consensus of all of the members of the

1 planning unit or by consensus among the members of the planning unit
2 appointed to represent units of government and a majority vote of the
3 nongovernmental members of the planning unit.

4 (b) If the proposal is approved by the planning unit, the unit
5 shall submit the proposal to the counties with territory within the
6 management area. If the planning unit has received funding beyond
7 the initial fifty thousand dollars under RCW 90.82.040, such a
8 proposal approved by the planning unit shall be submitted to the
9 counties within four years of the date the funding was first received
10 by the planning unit.

11 (c) If the watershed plan is not approved by the planning unit,
12 the planning unit may submit the components of the plan for which
13 agreement is achieved using the procedure under (a) of this
14 subsection, or the planning unit may terminate the planning process.

15 (2)(a) The legislative authority of each of the counties with
16 territory in the management area shall provide public notice of and
17 conduct at least one public hearing on the proposed watershed plan
18 submitted under this section. After the public hearings, the
19 legislative authorities of these counties shall convene in joint
20 session to consider the proposal. The counties may approve or reject
21 the proposed watershed plan for the management area, but may not
22 amend it. Approval of such a proposal shall be made by a majority
23 vote of the members of each of the counties with territory in the
24 management area.

25 (b) If a proposed watershed plan is not approved, it shall be
26 returned to the planning unit with recommendations for revisions.
27 Approval of such a revised proposal by the planning unit and the
28 counties shall be made in the same manner provided for the original
29 watershed plan. If approval of the revised plan is not achieved, the
30 process shall terminate.

31 (3) The planning unit shall not add an element to its watershed
32 plan that creates an obligation unless each of the governments to be
33 obligated has at least one representative on the planning unit and
34 the respective members appointed to represent those governments agree
35 to adding the element that creates the obligation. A member's
36 agreeing to add an element shall be evidenced by a recorded vote of
37 all members of the planning unit in which the members record support

1 for adding the element. If the watershed plan is approved under
2 subsections (1) and (2) of this section and the plan creates
3 obligations: (a) For agencies of state government, the agencies
4 shall adopt by rule the obligations of both state and county
5 governments and rules implementing the state obligations, the
6 obligations on state agencies are binding upon adoption of the
7 obligations into rule, and the agencies shall take other actions to
8 fulfill their obligations as soon as possible; or (b) for counties,
9 the obligations are binding on the counties and the counties shall
10 adopt any necessary implementing ordinances and take other actions to
11 fulfill their obligations as soon as possible.

12 (4) As used in this section, "obligation" means any action
13 required as a result of this chapter that imposes upon a tribal
14 government, county government, or state government, either: A fiscal
15 impact; a redeployment of resources; or a change of existing policy.

16 ****NEW SECTION. Sec. 10. PERMIT PROCESSING. Nothing in this***
17 *chapter may be interpreted as authorizing or directing the department*
18 *to establish a moratorium on the investigation of and decisions on*
19 *applications for permits for the withdrawal of surface water or*
20 *ground water, or changes or transfers of water rights under existing*
21 *permits.*

22 *Sec. 10 was vetoed. See message at end of chapter.

23 ****NEW SECTION. Sec. 11. A new section is added to chapter 43.27A***
24 *RCW to read as follows:*

25 *If planning is being conducted under chapter 90.82 RCW or a plan*
26 *has been adopted under section 9 of this act, the department shall*
27 *not conduct planning under this chapter that conflicts with the*
28 *planning being conducted under chapter 90.82 RCW or a plan that has*
29 *been adopted under section 9 of this act.*

30 *Sec. 11 was vetoed. See message at end of chapter.

31 ****NEW SECTION. Sec. 12. A new section is added to chapter 90.54***
32 *RCW to read as follows:*

33 *If planning is being conducted under chapter 90.82 RCW or a plan*
34 *has been adopted under section 9 of this act, the department shall*
35 *not conduct planning under this chapter that conflicts with the*

1 *planning being conducted under chapter 90.82 RCW or a plan that has*
2 *been adopted under section 9 of this act.*

3 **Sec. 12 was vetoed. See message at end of chapter.*

4 **Sec. 13. RCW 43.27A.090 and 1988 c 127 s 25 are each amended to*
5 *read as follows:*

6 *The department shall be empowered as follows:*

7 *(1) To represent the state at, and fully participate in, the*
8 *activities of any basin or regional commission, interagency*
9 *committee, or any other joint interstate or federal-state agency,*
10 *committee or commission, or publicly financed entity engaged in the*
11 *planning, development, administration, management, conservation or*
12 *preservation of the water resources of the state.*

13 *(2) To prepare the views and recommendations of the state of*
14 *Washington on any project, plan or program relating to the planning,*
15 *development, administration, management, conservation and*
16 *preservation of any waters located in or affecting the state of*
17 *Washington, including any federal permit or license proposal, and*
18 *appear on behalf of, and present views and recommendations of the*
19 *state at any proceeding, negotiation or hearing conducted by the*
20 *federal government, interstate agency, state or other agency.*

21 *(3) To cooperate with, assist, advise and coordinate plans with*
22 *the federal government and its officers and agencies, and serve as a*
23 *state liaison agency with the federal government in matters relating*
24 *to the use, conservation, preservation, quality, disposal or control*
25 *of water and activities related thereto.*

26 *(4) To cooperate with appropriate agencies of the federal*
27 *government and/or agencies of other states, to enter into contracts,*
28 *and to make appropriate contributions to federal or interstate*
29 *projects and programs and governmental bodies to carry out the*
30 *provisions of this chapter.*

31 *(5) To apply for, accept, administer and expend grants, gifts and*
32 *loans from the federal government or any other entity to carry out*
33 *the purposes of this chapter and make contracts and do such other*
34 *acts as are necessary insofar as they are not inconsistent with other*
35 *provisions hereof.*

1 (6) To develop and maintain a coordinated and comprehensive state
2 water and water resources related development plan, and adopt, with
3 regard to such plan, such policies as are necessary to insure that
4 the waters of the state are used, conserved and preserved for the
5 best interest of the state. There shall be included in the state
6 plan a description of developmental objectives and a statement of the
7 recommended means of accomplishing these objectives. To the extent
8 the director deems desirable, the plan shall integrate into the state
9 plan, the plans, programs, reports, research and studies of other
10 state agencies. A plan adopted under chapter 90.82 RCW satisfies the
11 requirements of planning under this section.

12 (7) To assemble and correlate information relating to water
13 supply, power development, irrigation, watersheds, water use, future
14 possibilities of water use and prospective demands for all purposes
15 served through or affected by water resources development.

16 (8) To assemble and correlate state, local and federal laws,
17 regulations, plans, programs and policies affecting the beneficial
18 use, disposal, pollution, control or conservation of water, river
19 basin development, flood prevention, parks, reservations, forests,
20 wildlife refuges, drainage and sanitary systems, waste disposal,
21 water works, watershed protection and development, soil conservation,
22 power facilities and area and municipal water supply needs, and
23 recommend suitable legislation or other action to the legislature,
24 the congress of the United States, or any city, municipality, or to
25 responsible state, local or federal executive departments or
26 agencies.

27 (9) To cooperate with federal, state, regional, interstate and
28 local public and private agencies in the making of plans for
29 drainage, flood control, use, conservation, allocation and
30 distribution of existing water supplies and the development of new
31 water resource projects.

32 (10) To encourage, assist and advise regional, and city and
33 municipal agencies, officials or bodies responsible for planning in
34 relation to water aspects of their programs, and coordinate local
35 water resources activities, programs, and plans.

36 (11) To promulgate such rules and regulations as are necessary to
37 carry out the purposes of this chapter.

1 (12) To hold public hearings, and make such investigations,
2 studies and surveys as are necessary to carry out the purposes of the
3 chapter.

4 (13) To subpoena witnesses, compel their attendance, administer
5 oaths, take the testimony of any person under oath and require the
6 production of any books or papers when the department deems such
7 measures necessary in the exercise of its rule-making power or in
8 determining whether or not any license, certificate, or permit shall
9 be granted or extended.

10 *Sec. 13 was vetoed. See message at end of chapter.

11 *Sec. 14. RCW 90.54.040 and 1997 c 32 s 2 are each amended to
12 read as follows:

13 (1) The department, through the adoption of appropriate rules, is
14 directed, as a matter of high priority to insure that the waters of
15 the state are utilized for the best interests of the people, to
16 develop and implement in accordance with the policies of this chapter
17 a comprehensive state water resources program which will provide a
18 process for making decisions on future water resource allocation and
19 use. The department may develop the program in segments so that
20 immediate attention may be given to waters of a given physioeconomic
21 region of the state or to specific critical problems of water
22 allocation and use. A plan adopted under chapter 90.82 RCW satisfies
23 the requirements of planning under this section.

24 (2) In relation to the management and regulatory programs
25 relating to water resources vested in it, the department is further
26 directed to modify existing regulations and adopt new regulations,
27 when needed and possible, to insure that existing regulatory programs
28 are in accord with the water resource policy of this chapter and the
29 program established in subsection (1) of this section.

30 (3) The department is directed to review all statutes relating to
31 water resources which it is responsible for implementing. When any
32 of the same appear to the department to be ambiguous, unclear,
33 unworkable, unnecessary, or otherwise deficient, it shall make
34 recommendations to the legislature including appropriate proposals
35 for statutory modifications or additions. Whenever it appears that
36 the policies of any such statutes are in conflict with the policies

1 *of this chapter, and the department is unable to fully perform as*
2 *provided in subsection (2) of this section, the department is*
3 *directed to submit statutory modifications to the legislature which,*
4 *if enacted, would allow the department to carry out such statutes in*
5 *harmony with this chapter.*

6 *Sec. 14 was vetoed. See message at end of chapter.

7 NEW SECTION. **Sec. 15.** CAPTIONS. As used in this act, captions
8 constitute no part of the law.

9 NEW SECTION. **Sec. 16.** Sections 2 through 10 of this act are
10 each added to chapter 90.82 RCW.

11 NEW SECTION. **Sec. 17.** If specific funding for the purposes of
12 this act, referencing this act by bill or chapter number, is not
13 provided by June 30, 1998, in the omnibus appropriations act, this
14 act is null and void.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 1, 1998, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 10
3 through 14, Engrossed Substitute House Bill No. 2514 entitled:

4 "AN ACT Relating to watershed management;"

5 ESHB 2514 establishes a watershed management process to develop
6 in-stream flow levels, water quality and habitat plans. A primary
7 purpose of the watershed management planning under this bill is to
8 address listed and soon-to-be listed salmon stocks under the federal
9 Endangered Species Act, as well as finding ways to meet the needs of
10 those who rely upon out-of-stream uses of water.

11 This bill has the potential to resolve the long-standing
12 stalemate over setting in-stream flow levels in Washington and to
13 resolve other important issues dealing with water quality and fish
14 habitat. I commend the Legislature for its leadership in this
15 regard.

16 ESHB 2514 makes a strong choice to rely on watershed planning
17 processes to resolve these issues. Primary responsibility lies with
18 the planning units authorized by this bill to meet the requirements
19 of state and federal law. Given the status of our water and

1 fisheries resources, we cannot afford to approach these problems
2 without a sense of urgency and determination. If progress is not
3 being made in this area, I am prepared to utilize existing authority
4 to protect our water and fish habitat, and will be prepared to
5 propose further legislative changes next year.

6 ESHB 2514 has one problem in that tribal governments are
7 relegated to a secondary role throughout the planning process,
8 despite treaty rights and fishery co-management responsibilities. To
9 address that problem, I am directing the Department of Ecology to
10 consult with affected tribes, including those with usual and
11 accustomed territory or ceded lands, before committing to obligate
12 the state on any particular in-stream flow levels or other issues
13 that affect tribal treaty rights and co-management responsibilities.
14

15 Section 10 of this bill would prohibit the Department from
16 establishing a moratorium on water right processing while planning is
17 underway. In some select instances, the Department of Ecology may
18 need to impose a moratorium on water right processing in order to
19 preserve options for future water allocations by the watershed
20 planning unit.

21 Sections 11 through 14 would require that plans developed under
22 this bill preempt water-related planning processes established under
23 other statutes. This language would remove any flexibility of the
24 state to use other authorities to correct any deficiencies that
25 emerge from plans adopted under the process provided in this bill.
26 If such plans turn out to be inadequate due to new information and
27 situations, the state would be prohibited by these sections from
28 correcting the problems.

29 For these reasons, I have vetoed sections 10 through 14 of
30 Engrossed Substitute House Bill No. 2514.

31 With the exception of sections 10 through 14, Engrossed
32 Substitute House Bill No. 2514 is approved."