
SENATE BILL 5687

State of Washington

56th Legislature

1999 Regular Session

By Senator Fraser

Read first time 02/03/1999. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to watershed planning; and amending RCW 90.82.010,
2 90.82.020, 90.82.030, 90.82.060, 90.82.070, 90.82.080, 90.82.090, and
3 90.82.130.

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

5 **Sec. 1.** RCW 90.82.010 and 1997 c 442 s 102 are each amended to
6 read as follows:

7 The legislature finds that the local development of watershed plans
8 for managing water resources and for protecting existing water rights
9 is vital to both state and local interests. The local development of
10 these plans serves vital local interests by placing it in the hands of
11 people: Who have the greatest knowledge of both the resources and the
12 aspirations of those who live and work in the watershed; and who have
13 the greatest stake in the proper, long-term management of the
14 resources. The development of such plans serves the state's vital
15 interests by ensuring that the state's water resources are used wisely,
16 by protecting existing water rights, by protecting instream flows for
17 fish, and by providing for the economic well-being of the state's
18 citizenry and communities. Therefore, the legislature believes it
19 necessary for the public, all water-related interests, and units of

1 local, state, federal, and tribal government throughout the state to
2 engage in the orderly development of these watershed plans.

3 **Sec. 2.** RCW 90.82.020 and 1997 c 442 s 103 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Department" means the department of ecology.

8 (2) "Implementing rules" for a WRIA plan are the rules needed to
9 give force and effect to the parts of the plan that create rights or
10 obligations for any party including a state agency or that establish
11 water management policy.

12 (3) "Minimum instream flow" means a minimum flow under chapter
13 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.

14 (4) "WRIA" means a water resource inventory area established in
15 chapter 173-500 WAC as it existed on January 1, 1997.

16 (5) "Water supply utility" means a water, combined water-sewer,
17 irrigation, reclamation, or public utility district or other supplier
18 without limitation as to the source of law under which it is organized,
19 that provides water to persons or other water users within the district
20 or a division or unit responsible for administering a publicly governed
21 water supply system on behalf of a county.

22 (6) "WRIA plan" or "plan" means the product of the planning unit
23 including any rules adopted in conjunction with the product of the
24 planning unit.

25 **Sec. 3.** RCW 90.82.030 and 1997 c 442 s 104 are each amended to
26 read as follows:

27 In order to have the best possible program for appropriating and
28 administering water use in the state, the legislature establishes the
29 following principles and criteria to carry out the purpose and intent
30 of chapter 442, Laws of 1997.

31 (1) All WRIA planning units established under this chapter shall
32 develop a process to assure that water resource user interests and
33 directly involved interest groups at the local level have the
34 opportunity, in a fair and equitable manner, to give input and
35 direction to the process.

36 (2) If a planning unit requests technical assistance from a state
37 agency as part of its planning activities under this chapter and the

1 assistance is with regard to a subject matter over which the agency has
2 jurisdiction, the state agency shall provide the technical assistance
3 to the planning unit.

4 (3) Plans developed under chapter 442, Laws of 1997 shall be
5 consistent with and not duplicative of efforts already under way in a
6 WRIA, including but not limited to water clean-up plans and activities,
7 the development and implementation of salmon recovery plans and
8 projects, regional water supply coordination plans, and watershed
9 analysis conducted under state forest practices statutes and rules.

10 **Sec. 4.** RCW 90.82.060 and 1998 c 247 s 2 are each amended to read
11 as follows:

12 (1) Planning conducted under this chapter must provide for a
13 process to allow the local citizens within a WRIA or multi-WRIA area to
14 join together in an effort to: (a) Assess the status of the water
15 resources of their WRIA or multi-WRIA area; and (b) determine how best
16 to manage the water resources of the WRIA or multi-WRIA area to balance
17 the competing resource demands for that area within the parameters
18 under RCW 90.82.120.

19 (2) Watershed planning under this chapter may be initiated for a
20 WRIA only with the concurrence of: (a) All counties within the WRIA;
21 (b) the largest city or town within the WRIA unless the WRIA does not
22 contain a city or town; ~~((and))~~ (c) the water supply utility obtaining
23 the largest quantity of water from the WRIA; and (d) all tribal
24 governments with reservation lands or fishing rights within the WRIA.
25 To apply for a grant for organizing the planning unit as provided for
26 under RCW 90.82.040(2)(a), these entities shall designate the entity
27 that will serve as the lead agency for the planning effort and indicate
28 how the planning unit will be staffed.

29 (3) Watershed planning under this chapter may be initiated for a
30 multi-WRIA area only with the concurrence of: (a) All counties within
31 the multi-WRIA area; (b) the largest city or town in each WRIA unless
32 the WRIA does not contain a city or town; ~~((and))~~ (c) the water supply
33 utility obtaining the largest quantity of water in each WRIA; and (d)
34 all tribal governments with reservation lands or fishing rights within
35 the multi-WRIA area.

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

1 ~~(5))~~ The entities in subsection (2) or (3) of this section(~~(7~~
2 ~~including the tribes if they affirmatively accept the invitation,~~)
3 constitute the initiating governments for the purposes of this section.

4 ~~((6))~~ (5) The organizing grant shall be used to organize the
5 planning unit and to determine the scope of the planning to be
6 conducted. In determining the scope of the planning activities,
7 consideration shall be given to all existing plans and related planning
8 activities. The scope of planning must include water quantity elements
9 as provided in RCW 90.82.070, and may include water quality elements as
10 contained in RCW 90.82.090, habitat elements as contained in RCW
11 90.82.100, and instream flow elements as contained in RCW 90.82.080.
12 The initiating governments shall work with state government, other
13 local governments within the management area, and affected tribal
14 governments, in developing a planning process. The initiating
15 governments may hold public meetings as deemed necessary to develop a
16 proposed scope of work and a proposed composition of the planning unit.
17 In developing a proposed composition of the planning unit, the
18 initiating governments shall provide for representation of a wide range
19 of water resource interests.

20 ~~((7))~~ (6) Each state agency with regulatory or other interests in
21 the WRIA or multi-WRIA area to be planned shall assist the local
22 citizens in the planning effort to the greatest extent practicable,
23 recognizing any fiscal limitations. In providing such technical
24 assistance and to facilitate representation on the planning unit, state
25 agencies may organize and agree upon their representation on the
26 planning unit. Such technical assistance must only be at the request
27 of and to the extent desired by the planning unit conducting such
28 planning. The number of state agency representatives on the planning
29 unit shall be determined by the initiating governments in consultation
30 with the governor's office.

31 ~~((8))~~ (7) As used in this section, "lead agency" means the entity
32 that coordinates staff support of its own or of other local governments
33 and receives grants for developing a watershed plan.

34 **Sec. 5.** RCW 90.82.070 and 1998 c 247 s 3 are each amended to read
35 as follows:

36 Watershed planning under this chapter shall address water quantity
37 in the management area by undertaking an assessment of water supply and
38 use in the management area and developing strategies for future use.

1 (1) The assessment shall include:

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

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

6 (c) An estimate of the water in the management area represented by
7 claims in the water rights claims registry, water use permits,
8 certificated rights, existing minimum instream flow rules, federally
9 reserved rights, and any other rights to water. An estimate of water
10 quantity for planning purposes under this chapter is not a
11 quantification of water rights and shall not be used to formally
12 determine or resolve any legal dispute regarding water rights, without
13 regard to the source of law of those rights;

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

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

18 (f) An identification of the location of areas where aquifers are
19 known to recharge surface bodies of water and areas known to provide
20 for the recharge of aquifers from the surface; and

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

26 (2) Strategies for increasing water supplies in the management
27 area, which may include, but are not limited to, increasing water
28 supplies through water conservation, water reuse, the use of reclaimed
29 water, voluntary water transfers, aquifer recharge and recovery,
30 additional water allocations, or additional water storage and water
31 storage enhancements. The objective of these strategies is to supply
32 water in sufficient quantities to satisfy the minimum instream flows
33 for fish and to provide water for future out-of-stream uses for water
34 identified in subsection (1)(e) and (g) of this section and to ensure
35 that adequate water supplies are available for agriculture, energy
36 production, and population and economic growth under the requirements
37 of the state's growth management act, chapter 36.70A RCW. These
38 strategies, in and of themselves, shall not be construed to confer new
39 water rights. The watershed plan must address the strategies required

1 under this subsection, except that the strategy shall not address
2 surface or ground water use or rights within reservation lands unless
3 the tribal government consents to its inclusion.

4 **Sec. 6.** RCW 90.82.080 and 1998 c 247 s 4 are each amended to read
5 as follows:

6 (1)(a) If the initiating governments choose, by majority vote, to
7 include an instream flow component, it shall be accomplished in the
8 following manner and consistent with the timelines established for
9 those streams subject to subsection (6) of this section:

10 (i) If minimum instream flows have already been adopted by rule for
11 a stream within the management area, unless the members of the local
12 governments and tribes on the planning unit by a recorded unanimous
13 vote request the department to modify those flows, the minimum instream
14 flows shall not be modified under this chapter. If the members of
15 local governments and tribes request the planning unit to modify
16 instream flows and unanimous approval of the decision to modify such
17 flow is not achieved, then the instream flows shall not be modified
18 under this section;

19 (ii) If minimum stream flows have not been adopted by rule for a
20 stream within the management area, setting the minimum instream flows
21 shall be a collaborative effort between the department and members of
22 the planning unit. The department must attempt to achieve consensus
23 and approval among the members of the planning unit regarding the
24 minimum flows to be adopted by the department. Approval is achieved if
25 all government members and tribes that have been invited and accepted
26 on the planning unit present for a recorded vote unanimously vote to
27 support the proposed minimum instream flows, and all nongovernmental
28 members of the planning unit present for the recorded vote, by a
29 majority, vote to support the proposed minimum instream flows.

30 (b) The department shall undertake rule making to adopt flows under
31 (a) of this subsection. The department may adopt the rules either by
32 the regular rules adoption process provided in chapter 34.05 RCW, the
33 expedited rules adoption process as set forth in RCW 34.05.230, or
34 through a rules adoption process that uses public hearings and notice
35 provided by the county legislative authority to the greatest extent
36 possible. Such rules do not constitute significant legislative rules
37 as defined in RCW 34.05.328, and do not require the preparation of
38 small business economic impact statements.

1 (c) If approval is not achieved within four years of the date the
2 planning unit first receives funds from the department for conducting
3 watershed assessments under RCW 90.82.040, the department may promptly
4 initiate rule making under chapter 34.05 RCW to establish flows for
5 those streams and shall have two additional years to establish the
6 instream flows for those streams for which approval is not achieved.

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

14 (b) Any increase to an existing minimum instream flow set by rule
15 of the department shall have a priority date of the earlier of the
16 effective date of the rule establishing the flow or two years after
17 funding is first received for planning in the WRIA or multi-WRIA area
18 from the department under RCW 90.82.040 and the priority date of the
19 portion of the minimum instream flow previously established by rule
20 shall retain its priority date as established under RCW 90.03.345.

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

25 (3) Before setting minimum instream flows under this section, the
26 department shall engage in government-to-government consultation with
27 affected tribes in the management area regarding the setting of such
28 flows.

29 (4) Nothing in this chapter either: (a) Affects the department's
30 authority to establish flow requirements or other conditions under RCW
31 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.)
32 for the licensing or relicensing of a hydroelectric power project under
33 the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or
34 impairs existing instream flow requirements and other conditions in a
35 current license for a hydroelectric power project licensed under the
36 federal power act.

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

1 (6) The department shall inform the planning unit of stream
2 segments that:

3 (a) Lack adopted flow rules or have adopted flows that may require
4 revision;

5 (b) Support salmon or trout populations listed or candidates for
6 listing under the federal endangered species act (16 U.S.C. Sec. 1531
7 et seq.); and

8 (c) Have inadequate flows or levels identified as a limiting factor
9 on recovery of salmon or trout populations. When the planning unit has
10 elected under subsection (1) of this section to make recommendations
11 regarding flows for such a stream or streams, the department and the
12 planning unit shall develop a schedule for finalizing those
13 recommendations before the scheduled adoption or revision of a flow
14 rule that shall be consistent with the state's salmon recovery
15 strategy.

16 **Sec. 7.** RCW 90.82.090 and 1998 c 247 s 5 are each amended to read
17 as follows:

18 If the initiating governments choose to include a water quality
19 component, the watershed plan shall include the following elements:

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

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

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

33 (4) An examination of any total maximum daily load established for
34 nonmarine bodies of water in the management area, unless a total
35 maximum daily load process has begun in the management area as of the
36 date the watershed planning process is initiated under RCW 90.82.060;

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

1 (6) A recommended approach for implementing the total maximum daily
2 load established for achieving compliance with water quality standards
3 for the nonmarine bodies of water in the management area(~~(, unless a~~
4 ~~total maximum daily load process has begun in the management area as of~~
5 ~~the date the watershed planning process is initiated under RCW~~
6 ~~90.82.060)~~). When the department has scheduled activities for
7 assessing a water body and developing a total maximum daily load for a
8 water body whose water quality is being considered by the planning
9 unit, the department shall inform the planning unit and develop a
10 schedule by which the planning unit's recommendations may be submitted
11 in a timely manner to the department; and

12 (7) Recommended means of monitoring by appropriate government
13 agencies whether actions taken to implement the approach to bring about
14 improvements in water quality are sufficient to achieve compliance with
15 water quality standards.

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

22 **Sec. 8.** RCW 90.82.130 and 1998 c 247 s 9 are each amended to read
23 as follows:

24 (1)(a) Upon completing its proposed watershed plan, the planning
25 unit may approve the proposal by consensus of all of the members of the
26 planning unit or by consensus among the members of the planning unit
27 appointed to represent units of government and a majority vote of the
28 nongovernmental members of the planning unit. Approval of the proposal
29 requires the unanimous vote of all initiating governments under RCW
30 90.82.060(2).

31 (b) If the proposal is approved by the planning unit, the unit
32 shall submit the proposal to the counties with territory within the
33 management area. If the planning unit has received funding beyond the
34 initial fifty thousand dollars under RCW 90.82.040, such a proposal
35 approved by the planning unit shall be submitted to the counties within
36 four years of the date the funding was first received by the planning
37 unit.

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

5 (2)(a) The legislative authority of each of the counties with
6 territory in the management area shall provide public notice of and
7 conduct at least one public hearing on the proposed watershed plan
8 submitted under this section. After the public hearings, the
9 legislative authorities of these counties shall convene in joint
10 session to consider the proposal. The counties may approve or reject
11 the proposed watershed plan for the management area, but may not amend
12 it. Approval of such a proposal shall be made by a majority vote of
13 the members of each of the counties with territory in the management
14 area.

15 (b) If a proposed watershed plan is not approved, it shall be
16 returned to the planning unit with recommendations for revisions.
17 Approval of such a revised proposal by the planning unit and the
18 counties shall be made in the same manner provided for the original
19 watershed plan. If approval of the revised plan is not achieved, the
20 process shall terminate.

21 (3) The planning unit shall not add an element to its watershed
22 plan that creates an obligation unless each of the governments to be
23 obligated has at least one representative on the planning unit and the
24 respective members appointed to represent those governments agree to
25 adding the element that creates the obligation. A member's agreeing to
26 add an element shall be evidenced by a recorded vote of all members of
27 the planning unit in which the members record support for adding the
28 element. If the watershed plan is approved under subsections (1) and
29 (2) of this section and the plan creates obligations: (a) For agencies
30 of state government, the agencies shall adopt by rule the obligations
31 of both state and county governments and rules implementing the state
32 obligations, the obligations on state agencies are binding upon
33 adoption of the obligations into rule, and the agencies shall take
34 other actions to fulfill their obligations as soon as possible; or (b)
35 for counties, the obligations are binding on the counties and the
36 counties shall adopt any necessary implementing ordinances and take
37 other actions to fulfill their obligations as soon as possible.

38 (4) As used in this section, "obligation" means any action required
39 as a result of this chapter that imposes upon a tribal government,

1 county government, or state government, either: A fiscal impact; a
2 redeployment of resources; or a change of existing policy.

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