

E2SHB 1336 - H AMD 579

By Representative Linville

ADOPTED 06/05/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature declares and reaffirms that
4 a core principle embodied in chapter 90.82 RCW is that state agencies
5 must work cooperatively with local citizens in a process of planning
6 for future uses of water by giving local citizens and the governments
7 closest to them the ability to determine the management of water in the
8 WRIA or WRIAs being planned.

9 The legislature further finds that this process of local planning
10 must have all the tools necessary to accomplish this task and that it
11 is essential for the legislature to provide a clear statutory process
12 for implementation so that the locally developed plan will be the
13 adopted and implemented plan to the greatest extent possible.

14 **Sec. 2.** RCW 90.82.040 and 2001 c 237 s 2 are each amended to read
15 as follows:

16 (1) Once a WRIA planning unit has been initiated under RCW
17 90.82.060 and a lead agency has been designated, it shall notify the
18 department and may apply to the department for funding assistance for
19 conducting the planning and implementation. Funds shall be provided
20 from and to the extent of appropriations made by the legislature to the
21 department expressly for this purpose.

22 (2)(a) Each planning unit that has complied with subsection (1) of
23 this section is eligible to receive watershed planning grants in the
24 following amounts for the first three phases of watershed planning and
25 phase four watershed plan implementation:

26 (i) Initiating governments may apply for an initial organizing
27 grant of up to fifty thousand dollars for a single WRIA or up to
28 seventy-five thousand dollars for a multi-WRIA management area in
29 accordance with RCW 90.82.060(4);

1 (ii)(A) A planning unit may apply for up to two hundred thousand
2 dollars for each WRIA in the management area for conducting watershed
3 assessments in accordance with RCW 90.82.070, except that a planning
4 unit that chooses to conduct a detailed assessment or studies under
5 (a)(ii)(B) of this subsection or whose initiating governments choose or
6 have chosen to include an instream flow or water quality component in
7 accordance with RCW 90.82.080 or 90.82.090 may apply for up to one
8 hundred thousand additional dollars for each instream flow and up to
9 one hundred thousand additional dollars for each water quality
10 component included for each WRIA to conduct an assessment on that
11 optional component and for each WRIA in which the assessments or
12 studies under (a)(ii)(B) of this subsection are conducted.

13 (B) A planning unit may elect to apply for up to one hundred
14 thousand additional dollars to conduct a detailed assessment of
15 multipurpose water storage opportunities or for studies of specific
16 multipurpose storage projects which opportunities or projects are
17 consistent with and support the other elements of the planning unit's
18 watershed plan developed under this chapter; and

19 (iii) A planning unit may apply for up to two hundred fifty
20 thousand dollars for each WRIA in the management area for developing a
21 watershed plan and making recommendations for actions by local, state,
22 and federal agencies, tribes, private property owners, private
23 organizations, and individual citizens, including a recommended list of
24 strategies and projects that would further the purpose of the plan in
25 accordance with RCW 90.82.060 through 90.82.100.

26 (b) A planning unit may request a different amount for phase two or
27 phase three of watershed planning than is specified in (a) of this
28 subsection, provided that the total amount of funds awarded do not
29 exceed the maximum amount the planning unit is eligible for under (a)
30 of this subsection. The department shall approve such an alternative
31 allocation of funds if the planning unit identifies how the proposed
32 alternative will meet the goals of this chapter and provides a proposed
33 timeline for the completion of planning. However, the up to one
34 hundred thousand additional dollars in funding for instream flow and
35 water quality components and for water storage assessments or studies
36 that a planning unit may apply for under (a)(ii)(A) of this subsection

1 may be used only for those instream flow, water quality, and water
2 storage purposes.

3 (c) By December 1, 2001, or within one year of initiating phase one
4 of watershed planning, whichever occurs later, the initiating
5 governments for each planning unit must inform the department whether
6 they intend to have the planning unit establish or amend instream flows
7 as part of its planning process. If they elect to have the planning
8 unit establish or amend instream flows, the planning unit is eligible
9 to receive one hundred thousand dollars for that purpose in accordance
10 with (a)(ii) of this subsection. If the initiating governments for a
11 planning unit elect not to establish or amend instream flows as part of
12 the unit's planning process, the department shall retain one hundred
13 thousand dollars to carry out an assessment to support establishment of
14 instream flows and to establish such flows in accordance with RCW
15 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use
16 these funds to amend an existing instream flow unless requested to do
17 so by the initiating governments for a planning unit.

18 (d) In administering funds appropriated for supplemental funding
19 for optional plan components under (a)(ii) of this subsection, the
20 department shall give priority in granting the available funds to
21 proposals for setting or amending instream flows.

22 (e) A planning unit may apply for a matching grant for phase four
23 watershed plan implementation following approval under the provisions
24 of RCW 90.82.130. A match of ten percent is required and may include
25 financial contributions or in-kind goods and services directly related
26 to coordination and oversight functions. The match can be provided by
27 the planning unit or by the combined commitments from federal agencies,
28 tribal governments, local governments, special districts, or other
29 local organizations. The phase four grant may be up to one hundred
30 thousand dollars for each planning unit for each of the first three
31 years of implementation. At the end of the three-year period, a two-
32 year extension may be available for up to fifty thousand dollars each
33 year. For planning units that cover more than one WRIA, additional
34 matching funds of up to twenty-five thousand dollars may be available
35 for each additional WRIA per year for the first three years of
36 implementation, and up to twelve thousand five hundred dollars per WRIA
37 per year for each of the fourth and fifth years.

1 (3)(a) The department shall use the eligibility criteria in this
2 subsection (3) instead of rules, policies, or guidelines when
3 evaluating grant applications at each stage of the grants program.

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

6 (i) The planning unit meets all of the requirements of this
7 chapter;

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

10 (iii) The application and supporting information evidences a
11 readiness to proceed.

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

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

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

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

24 (B) Second, single WRIA planning;

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

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

29 (B) Second, single WRIA planning.

30 (d) Except for phase four watershed plan implementation, the
31 department may not impose any local matching fund requirement as a
32 condition for grant eligibility or as a preference for receiving a
33 grant.

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

36 (5) Planning under this chapter should be completed as

1 expeditiously as possible, with the focus being on local stakeholders
2 cooperating to meet local needs.

3 (6) Funding provided under this section shall be considered a
4 contractual obligation against the moneys appropriated for this
5 purpose.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.82 RCW
7 to read as follows:

8 (1) Within one year of accepting funding under RCW 90.82.040(2)(e),
9 the planning unit must complete a detailed implementation plan.
10 Submittal of a detailed implementation plan to the department is a
11 condition of receiving grants for the second and all subsequent years
12 of the phase four grant.

13 (2) Each implementation plan must contain strategies to provide
14 sufficient water for: (a) Production agriculture; (b) commercial,
15 industrial, and residential use; and (c) instream flows. Each
16 implementation plan must contain timelines to achieve these strategies
17 and interim milestones to measure progress.

18 (3) The implementation plan must clearly define coordination and
19 oversight responsibilities; any needed interlocal agreements, rules, or
20 ordinances; any needed state or local administrative approvals and
21 permits that must be secured; and specific funding mechanisms.

22 (4) In developing the implementation plan, the planning unit must
23 consult with other entities planning in the watershed management area
24 and identify and seek to eliminate any activities or policies that are
25 duplicative or inconsistent.

26 (5) By December 1, 2003, and by December 1st of each subsequent
27 year, the director of the department shall report to the appropriate
28 legislative standing committees regarding statutory changes necessary
29 to enable state agency approval or permit decision making needed to
30 implement a plan approved under this chapter.

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

33 (1)(a) If the initiating governments choose, by majority vote, to
34 include an instream flow component, it shall be accomplished in the
35 following manner:

1 (i) If minimum instream flows have already been adopted by rule for
2 a stream within the management area, unless the members of the local
3 governments and tribes on the planning unit by a recorded unanimous
4 vote request the department to modify those flows, the minimum instream
5 flows shall not be modified under this chapter. If the members of
6 local governments and tribes request the planning unit to modify
7 instream flows and unanimous approval of the decision to modify such
8 flow is not achieved, then the instream flows shall not be modified
9 under this section;

10 (ii) If minimum stream flows have not been adopted by rule for a
11 stream within the management area, setting the minimum instream flows
12 shall be a collaborative effort between the department and members of
13 the planning unit. The department must attempt to achieve consensus
14 and approval among the members of the planning unit regarding the
15 minimum flows to be adopted by the department. Approval is achieved if
16 all government members and tribes that have been invited and accepted
17 on the planning unit present for a recorded vote unanimously vote to
18 support the proposed minimum instream flows, and all nongovernmental
19 members of the planning unit present for the recorded vote, by a
20 majority, vote to support the proposed minimum instream flows.

21 (b) The department shall undertake rule making to adopt flows under
22 (a) of this subsection. The department may adopt the rules either by
23 the regular rules adoption process provided in chapter 34.05 RCW, the
24 expedited rules adoption process as set forth in RCW (~~(34.05.230)~~)
25 34.05.353, or through a rules adoption process that uses public
26 hearings and notice provided by the county legislative authority to the
27 greatest extent possible. Such rules do not constitute significant
28 legislative rules as defined in RCW 34.05.328, and do not require the
29 preparation of small business economic impact statements.

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

36 (2)(a) Notwithstanding RCW 90.03.345, minimum instream flows set
37 under this section for rivers or streams that do not have existing

1 minimum instream flow levels set by rule of the department shall have
2 a priority date of two years after funding is first received from the
3 department under RCW 90.82.040, unless determined otherwise by a
4 unanimous vote of the members of the planning unit but in no instance
5 may it be later than the effective date of the rule adopting such flow.

6 (b) Any increase to an existing minimum instream flow set by rule
7 of the department shall have a priority date of two years after funding
8 is first received for planning in the WRIA or multi-WRIA area from the
9 department under RCW 90.82.040 and the priority date of the portion of
10 the minimum instream flow previously established by rule shall retain
11 its priority date as established under RCW 90.03.345.

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

16 (3) Before setting minimum instream flows under this section, the
17 department shall engage in government-to-government consultation with
18 affected tribes in the management area regarding the setting of such
19 flows.

20 (4) Nothing in this chapter either: (a) Affects the department's
21 authority to establish flow requirements or other conditions under RCW
22 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.)
23 for the licensing or relicensing of a hydroelectric power project under
24 the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or
25 impairs existing instream flow requirements and other conditions in a
26 current license for a hydroelectric power project licensed under the
27 federal power act.

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

31 (6) The department shall report annually to the appropriate
32 legislative standing committees on the progress of instream flows being
33 set under this chapter, as well as progress toward setting instream
34 flows in those watersheds not being planned under this chapter. The
35 report shall be made by December 1, 2003, and by December 1st of each
36 subsequent year.

1 **Sec. 5.** RCW 90.82.130 and 2001 c 237 s 4 are each amended to read
2 as follows:

3 (1)(a) Upon completing its proposed watershed plan, the planning
4 unit may approve the proposal by consensus of all of the members of the
5 planning unit or by consensus among the members of the planning unit
6 appointed to represent units of government and a majority vote of the
7 nongovernmental members of the planning unit.

8 (b) If the proposal is approved by the planning unit, the unit
9 shall submit the proposal to the counties with territory within the
10 management area. If the planning unit has received funding beyond the
11 initial organizing grant under RCW 90.82.040, such a proposal approved
12 by the planning unit shall be submitted to the counties within four
13 years of the date that funds beyond the initial funding are first drawn
14 upon by the planning unit.

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

19 (2)(a) With the exception of a county legislative authority that
20 chooses to opt out of watershed planning as provided in (c) of this
21 subsection, the legislative authority of each of the counties with
22 territory in the management area shall provide public notice of and
23 conduct at least one public hearing on the proposed watershed plan
24 submitted under this section. After the public hearings, the
25 legislative authorities of these counties shall convene in joint
26 session to consider the proposal. The counties may approve or reject
27 the proposed watershed plan for the management area, but may not amend
28 it. Approval of such a proposal shall be made by a majority vote of
29 the members of each of the counties with territory in the management
30 area.

31 (b) If a proposed watershed plan is not approved, it shall be
32 returned to the planning unit with recommendations for revisions.
33 Approval of such a revised proposal by the planning unit and the
34 counties shall be made in the same manner provided for the original
35 watershed plan. If approval of the revised plan is not achieved, the
36 process shall terminate.

1 (c) A county legislative authority may choose to opt out of
2 watershed planning under this chapter and the public hearing processes
3 under (a) and (b) of this subsection if the county's affected territory
4 within a particular management area is: (i) Less than five percent of
5 the total territory within the management area; or (ii) five percent or
6 more of the total territory within the management area and all other
7 initiating governments within the management area consent. A county
8 meeting these conditions and choosing to opt out shall notify the
9 department and the other initiating governments of that choice prior to
10 commencement of plan adoption under the provisions of (a) of this
11 subsection. A county choosing to opt out under the provisions of this
12 section shall not be bound by obligations contained in the watershed
13 plan adopted for that management area under this chapter. Even if a
14 county chooses to opt out under the provisions of this section, the
15 other counties within a management area may adopt a proposed watershed
16 plan as provided in this chapter.

17 (3) The planning unit shall not add an element to its watershed
18 plan that creates an obligation unless each of the governments to be
19 obligated has at least one representative on the planning unit and the
20 respective members appointed to represent those governments agree to
21 adding the element that creates the obligation. A member's agreeing to
22 add an element shall be evidenced by a recorded vote of all members of
23 the planning unit in which the members record support for adding the
24 element. If the watershed plan is approved under subsections (1) and
25 (2) of this section and the plan creates obligations: (a) For agencies
26 of state government, the agencies shall adopt by rule the obligations
27 of both state and county governments and rules implementing the state
28 obligations, or, with the consent of the planning unit, may adopt
29 policies, procedures, or agreements related to the obligations or
30 implementation of the obligations in addition to or in lieu of rules.
31 The obligations on state agencies are binding upon adoption of the
32 obligations ((~~into rule~~)), and the agencies shall take other actions to
33 fulfill their obligations as soon as possible, and should annually
34 review implementation needs with respect to budget and staffing; ((~~or~~))
35 (b) 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, and

1 should annually review implementation needs with respect to budget and
2 staffing; or (c) for an organization voluntarily accepting an
3 obligation, the organization must adopt policies, procedures,
4 agreements, rules, or ordinances to implement the plan, and should
5 annually review implementation needs with respect to budget and
6 staffing.

7 (4) After a plan is adopted in accordance with subsection (3) of
8 this section, and if the department participated in the planning
9 process, the plan shall be deemed to satisfy the watershed planning
10 authority of the department with respect to the components included
11 under the provisions of RCW 90.82.070 through 90.82.100 for the
12 watershed or watersheds included in the plan. The department shall use
13 the plan as the framework for making future water resource decisions
14 for the planned watershed or watersheds. Additionally, the department
15 shall rely upon the plan as a primary consideration in determining the
16 public interest related to such decisions.

17 (5) Once a WRIA plan has been approved under subsection (2) of this
18 section for a watershed, the department may develop and adopt
19 modifications to the plan or obligations imposed by the plan only
20 through a form of negotiated rule making that uses the same processes
21 that applied in that watershed for developing the plan.

22 (6) As used in this section, "obligation" means any action required
23 as a result of this chapter that imposes upon a tribal government,
24 county government, or state government, either: A fiscal impact; a
25 redeployment of resources; or a change of existing policy."

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ADOPTED 06/05/2003

26 On page 1, line 1 of the title, after "planning;" strike the
27 remainder of the title and insert "amending RCW 90.82.040, 90.82.080,
28 and 90.82.130; adding a new section to chapter 90.82 RCW; and creating
29 a new section."

EFFECT: The amendment: requires a 10 percent (rather than a 10 to 25 percent) local match for the Phase IV grants; requires the detailed plan for implementing a watershed plan (rather than each plan itself) to contain the strategies, with timelines and milestones, for providing sufficient water for the various out-of stream uses and for instream flows and removes provisions specifying their content; requires the planning unit to identify and seek to eliminate activities that are duplicative or inconsistent, with regard to other planning being conducted in a watershed; allows a county with five percent or more of the territory in the planning area to opt out of watershed planning with the consent of the governments that initiated the planning; authorizes the DOE to develop and adopt modifications to an approved watershed plan or obligations under a plan through a form of negotiated rule-making the uses the processes that were used in developing the plan (rather than requiring the DOE to adopt its implementing rules through negotiated rule-making); states that an approved watershed plan provides the framework for making water resource (rather than water resource and water quality) decisions in the watershed; requires the consent of a planning unit for a state agency to adopt policies, procedures, or agreements for implementing a watershed plan in addition to or in lieu of adopting implementing rules; and requires the DOE to report annually to the Legislature on progress made in setting instream flows.

The amendment also strikes provisions: requiring local planning groups under the Water Resources Act to have at least the range of representation required under the watershed planning laws; requiring instream flows to be set for not less than the main stem or the principal stream or river in each WRIA; establishing certain procedures for coordinating TMDLs and salmon recovery planning with watershed planning for water quality and habitat; requiring certain consultation before funding for certain salmon recovery projects may be received; requiring other state agencies to report to the DOE on the statutory changes needed to provide the state agency approvals and permits needed to implement a watershed plan; and requiring the bill to be implemented within existing funds.

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