
SUBSTITUTE HOUSE BILL 1336

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Kirby, Grant, Rockefeller, Quall, Hunt, Shabro, Jarrett, Delvin, Morris and Conway; by request of Governor Locke)

READ FIRST TIME 03/04/03.

1 AN ACT Relating to watershed planning; amending RCW 90.82.040,
2 90.82.130, 90.82.060, 90.82.090, 90.82.120, and 77.85.050; reenacting
3 and amending RCW 77.85.130; adding new sections to chapter 90.82 RCW;
4 adding new sections to chapter 90.54 RCW; adding a new section to
5 chapter 90.48 RCW; and creating a new section.

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

7 **IMPLEMENTATION OF WATERSHED PLANS**

8 **Sec. 1.** RCW 90.82.040 and 2001 c 237 s 2 are each amended to read
9 as follows:

10 (1) Once a WRIA planning unit has been initiated under RCW
11 90.82.060 and a lead agency has been designated, it shall notify the
12 department and may apply to the department for funding assistance for
13 conducting the planning and providing coordination and oversight of the
14 implementation of the plan. Funds shall be provided from and to the
15 extent of appropriations made by the legislature to the department
16 expressly for this purpose.

17 (2)(a) Each planning unit that has complied with subsection (1) of

1 this section is eligible to receive watershed planning grants in the
2 following amounts for the first three phases of watershed planning and
3 phase four watershed plan implementation coordination and oversight:

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

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

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

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

33 (b) A planning unit may request a different amount for phase two or
34 phase three of watershed planning than is specified in (a) of this
35 subsection, provided that the total amount of funds awarded do not
36 exceed the maximum amount the planning unit is eligible for under (a)
37 of this subsection. The department shall approve such an alternative
38 allocation of funds if the planning unit identifies how the proposed

1 alternative will meet the goals of this chapter and provides a proposed
2 timeline for the completion of planning. However, the up to one
3 hundred thousand additional dollars in funding for instream flow and
4 water quality components and for water storage assessments or studies
5 that a planning unit may apply for under (a)(ii)(A) of this subsection
6 may be used only for those instream flow, water quality, and water
7 storage purposes.

8 (c) By December 1, 2001, or within one year of initiating phase one
9 of watershed planning, whichever occurs later, the initiating
10 governments for each planning unit must inform the department whether
11 they intend to have the planning unit establish or amend instream flows
12 as part of its planning process. If they elect to have the planning
13 unit establish or amend instream flows, the planning unit is eligible
14 to receive one hundred thousand dollars for that purpose in accordance
15 with (a)(ii) of this subsection. If the initiating governments for a
16 planning unit elect not to establish or amend instream flows as part of
17 the unit's planning process, the department shall retain one hundred
18 thousand dollars to carry out an assessment to support establishment of
19 instream flows and to establish such flows in accordance with RCW
20 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use
21 these funds to amend an existing instream flow unless requested to do
22 so by the initiating governments for a planning unit.

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

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

1 funds of up to twenty-five thousand dollars may be available for each
2 additional WRIA per year for the first three years of implementation,
3 and up to twelve thousand five hundred dollars per WRIA per year for
4 each of the fourth and fifth years.

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

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

10 (i) The planning unit meets all of the requirements of this
11 chapter;

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

14 (iii) The application and supporting information evidences a
15 readiness to proceed.

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

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

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

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

28 (B) Second, single WRIA planning;

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

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

33 (B) Second, single WRIA planning.

34 (d) Except for phase four watershed plan implementation, the
35 department may not impose any local matching fund requirement as a
36 condition for grant eligibility or as a preference for receiving a
37 grant.

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

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

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

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

11 (1)(a) Upon completing its proposed watershed plan, the planning
12 unit may approve the proposal by consensus of all of the members of the
13 planning unit or by consensus among the members of the planning unit
14 appointed to represent units of government and a majority vote of the
15 nongovernmental members of the planning unit.

16 (b) If the proposal is approved by the planning unit, the unit
17 shall submit the proposal to the counties with territory within the
18 management area. If the planning unit has received funding beyond the
19 initial organizing grant under RCW 90.82.040, such a proposal approved
20 by the planning unit shall be submitted to the counties within four
21 years of the date that funds beyond the initial funding are first drawn
22 upon by the planning unit.

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

27 (2)(a) The legislative authority of each of the counties with
28 territory in the management area shall provide public notice of and
29 conduct at least one public hearing on the proposed watershed plan
30 submitted under this section. After the public hearings, the
31 legislative authorities of these counties shall convene in joint
32 session to consider the proposal. The counties may approve or reject
33 the proposed watershed plan for the management area, but may not amend
34 it. Approval of such a proposal shall be made by a majority vote of
35 the members of each of the counties with territory in the management
36 area.

1 (b) If a proposed watershed plan is not approved, it shall be
2 returned to the planning unit with recommendations for revisions.
3 Approval of such a revised proposal by the planning unit and the
4 counties shall be made in the same manner provided for the original
5 watershed plan. If approval of the revised plan is not achieved, the
6 process shall terminate.

7 (3) The planning unit shall not add an element to its watershed
8 plan that creates an obligation unless each of the governments to be
9 obligated has at least one representative on the planning unit and the
10 respective members appointed to represent those governments agree to
11 adding the element that creates the obligation. A member's agreeing to
12 add an element shall be evidenced by a recorded vote of all members of
13 the planning unit in which the members record support for adding the
14 element. If the watershed plan is approved under subsections (1) and
15 (2) of this section and the plan creates obligations: (a) For agencies
16 of state government, the agencies shall adopt by policy, procedures,
17 agreements, or rules the obligations of both state and county
18 governments and procedures or rules implementing the state obligations,
19 the obligations on state agencies are binding upon adoption of the
20 obligations (~~into rule~~), and the agencies shall take other actions to
21 fulfill their obligations as soon as possible, and should annually
22 review implementation needs with respect to budget and staffing; (~~or~~)

23 (b) for counties, the obligations are binding on the counties and the
24 counties shall adopt any necessary implementing ordinances and take
25 other actions to fulfill their obligations as soon as possible, and
26 should annually review implementation needs with respect to budget and
27 staffing; or (c) for an organization voluntarily accepting an
28 obligation, the organization must adopt policies, procedures,
29 agreements, rules, or ordinances to implement the plan, and should
30 annually review implementation needs with respect to budget and
31 staffing.

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

36 (5) The rules and policies of a state agency developed and adopted
37 under this section for a plan must be developed and adopted under the
38 negotiated rule-making provisions of RCW 34.05.310(2)(a). The state

1 agency must notify the planning unit regarding such negotiated rule
2 making. The entities to be included in the rule making as affected
3 interests must include, but are not limited to, each member of the
4 planning unit who notifies the agency in writing that he or she wishes
5 to participate in the negotiated rule making and who subsequently
6 participates in it.

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

9 (1) Upon approval of the watershed plan, the role of the planning
10 unit is to provide coordination and oversight during the implementation
11 of the plan. This may include a number of interrelated activities,
12 such as seeking funding; tracking progress towards implementation
13 milestones; making adjustments to respond to new information and
14 changing conditions; coordinating the many implementation actions being
15 performed by different organizations in the watershed; and responding
16 to local needs and concerns as expressed by elected officials,
17 stakeholders, and the public. Supporting activities also include
18 public outreach and education; long-term monitoring activities and
19 associated research; data management; and program evaluation.

20 (2) The planning unit must provide for periodic review of approved
21 watershed plans and consider recommending amendments if needed. A
22 proposed amendment to a plan must be approved by a planning unit and by
23 the county legislative authority or authorities in the same manner
24 prescribed for approving a plan under RCW 90.82.130. Once approved,
25 the obligations voluntarily accepted by implementing agencies become
26 binding as provided in RCW 90.82.130.

27 (3) No plan approved under this chapter and no amendment to such a
28 plan approved under this chapter may be amended by the department under
29 RCW 90.54.040(1). This subsection shall not be construed as limiting
30 the authority of the department to adopt instream flows by rule as
31 provided in this chapter or under chapter 90.54 RCW.

32 (4) Within one year of accepting funding for plan coordination and
33 oversight, the planning unit must complete a detailed implementation
34 plan. An implementation plan must clearly define coordination and
35 oversight responsibilities; any needed interlocal agreements, rules, or
36 ordinances; specific funding mechanisms; and timelines for carrying out
37 the actions included in the plan. The implementation plan must include

1 coordination of salmon recovery projects with lead entities working
2 under chapter 246, Laws of 1998. Submittal of a detailed
3 implementation plan to the department is a condition for receiving
4 grants for the second and all subsequent years of the phase four grant.

5 **Sec. 4.** RCW 90.82.060 and 2001 c 229 s 1 are each amended to read
6 as follows:

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

14 (2) Watershed planning under this chapter may be initiated for a
15 WRIA only with the concurrence of: (a) All counties within the WRIA;
16 (b) the largest city or town within the WRIA unless the WRIA does not
17 contain a city or town; and (c) the water supply utility obtaining the
18 largest quantity of water from the WRIA or, for a WRIA with lands
19 within the Columbia Basin project, the water supply utility obtaining
20 from the Columbia Basin project the largest quantity of water for the
21 WRIA. To apply for a grant for organizing the planning unit as
22 provided for under RCW 90.82.040(2)(a), these entities shall designate
23 the entity that will serve as the lead agency for the planning effort
24 and indicate how the planning unit will be staffed.

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

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

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

36 (6) The organizing grant shall be used to organize the planning
37 unit and to determine the scope of the planning to be conducted. In

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

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

26 (8) As used in this section, "lead agency" means the entity that
27 coordinates staff support of its own or of other local governments and
28 receives grants under RCW 90.82.130 for developing and for
29 implementation coordination and oversight of a watershed plan.

30 **PLANS THAT ALLOW INCHOATE RIGHT FLEXIBILITY**

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.82 RCW
32 to read as follows:

33 The state's water laws contain provisions, such as those in section
34 15, chapter . . ., Laws of 2003 (section 15 of SHB 1338), that grant
35 greater flexibility in the use of water rights in watersheds or WRIA's
36 for which certain comprehensive plans have been approved and that grant

1 further flexibility as elements of the plans are implemented and the
2 objectives of those elements are achieved. Sections 6 and 7 of this
3 act identify the components of a watershed plan approved under this
4 chapter that are needed to secure that flexibility for water use within
5 a WRIA. Developing plans that satisfy the requirements of sections 6
6 and 7 of this act is not required for all planning conducted under this
7 chapter. Developing, approving, and implementing such plans are simply
8 means of receiving the authority to use this increased flexibility
9 within a WRIA.

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

12 Each plan developed under this chapter to satisfy the objectives of
13 section 5 of this act must contain strategies for achieving the
14 following water resource objectives:

- 15 (1) Providing sufficient water for productive agriculture;
- 16 (2) Providing sufficient water for commercial, industrial, and
17 residential use; and
- 18 (3) Providing sufficient water for instream flows.

19 Such a plan must include timelines for achieving these three
20 objectives and interim milestones for measuring progress in achieving
21 the objectives. Such a plan must also identify the state and local
22 administrative approvals and permits that must be secured to achieve
23 these objectives.

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

26 The strategies developed under this chapter to satisfy the
27 objectives of section 6(3) of this act must include, but are not
28 limited to, the identification of:

- 29 (1) How stream flows that satisfy the instream flows established by
30 rule in the WRIA are to be achieved;
- 31 (2) Timelines for achieving these stream flows;
- 32 (3) How progress is to be measured for achieving the flows and
33 interim milestones for measuring that progress;
- 34 (4) How any limiting factors regarding stream flows or water supply
35 that have been identified for salmon in analyses conducted under RCW
36 77.85.060 are to be overcome;

1 (5) How progress in overcoming these limiting factors is to be
2 measured and interim milestones for measuring that progress; and

3 (6) How the strategies developed under this section are to be
4 coordinated with the activities and habitat project lists of lead
5 entities and committees conducted and developed under RCW 77.85.050.

6 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.82 RCW
7 to read as follows:

8 The department and all other state agencies shall do their utmost
9 to grant, within the discretion they have under other statutes, the
10 approvals and permits needed to implement any plan approved under this
11 chapter. State agencies and divisions within the department shall
12 identify to the director of the department instances in which granting
13 such approvals or permits is not within their authority and the changes
14 in statute that would allow them to grant the approvals. By December
15 31, 2003, and by December 31st of each year thereafter, the director of
16 the department shall report to the appropriate standing committees of
17 the legislature and to the governor on the statutory changes that would
18 be necessary to provide the state agency approvals and permits
19 identified under this section.

20 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.54 RCW
21 to read as follows:

22 (1) The state's water laws contain provisions, such as those in
23 section 15, chapter . . . , Laws of 2003 (section 15 of SHB 1338), that
24 grant greater flexibility in the use of water rights in watersheds for
25 which certain comprehensive plans have been adopted and that grant
26 further flexibility as elements of the plans are implemented and the
27 objectives of those elements are achieved. This section identifies the
28 components of a watershed plan adopted under this chapter that are
29 needed to secure that flexibility for water use within a watershed.
30 Developing plans that satisfy the requirements of this section is not
31 required for a watershed, however, developing, approving, and
32 implementing such plans are means of receiving the authority to use
33 this increased flexibility within a watershed.

34 (2) When a comprehensive water resource program is developed in
35 segments under RCW 90.54.040(1) to develop a watershed plan that
36 satisfies the objectives of subsection (1) of this section, the

1 watershed planning shall be conducted through local planning groups
2 that represent at least the diversity of interests required for
3 planning conducted under chapter 90.82 RCW. Any plan developed under
4 this section shall include, but is not limited to, the water supply and
5 use assessment and strategies for future use required for planning
6 conducted under chapter 90.82 RCW by RCW 90.82.070 and the following:

7 (a) Strategies for achieving the water resource objectives listed
8 in section 6 of this act;

9 (b) Timelines for achieving each of the objectives listed in
10 section 6 of this act and interim milestones for measuring progress in
11 achieving the objectives;

12 (c) The state and local administrative approvals and permits that
13 must be secured to achieve the objectives listed in section 6 of this
14 act;

15 (d) The elements of the strategies listed in section 7 of this act;
16 and

17 (e) An identification of the state and local administrative
18 approvals and permits that must be secured to achieve the objectives
19 listed in section 6 of this act.

20 (3) The department and all other state agencies shall do their
21 utmost to grant, within the discretion they have under other statutes,
22 the approvals and permits needed to implement any plan approved under
23 this section. State agencies and divisions within the department shall
24 identify to the director of the department instances in which granting
25 such approvals or permits is not within their authority and the changes
26 in statute that would allow them to grant the approvals. The director
27 shall include within the report required by section 8 of this act the
28 director's recommendations for changes in statutes from those
29 identified under this section.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.54 RCW
31 to read as follows:

32 The authority granted by RCW 90.54.040(1) for the department to
33 develop a comprehensive water resource program in segments shall not be
34 used to amend, rescind, or augment any plan or amendment approved under
35 chapter 90.82 RCW except with regard to establishing instream flows by
36 rule.

1 **COORDINATING WATERSHED, WATER QUALITY, AND SALMON RECOVERY PLANNING**

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

4 This section applies to any work conducted by the department for
5 determining or allocating total maximum daily loads for approval by the
6 United States environmental protection agency under the federal clean
7 water act (33 U.S.C. Sec. 1251 et seq.). The department shall design
8 its work schedule and plan for conducting such activities in a manner
9 that facilitates the involvement of watershed planning units conducting
10 planning under RCW 90.82.090. As a minimum, the department shall:

11 (1) Schedule its work so that the involvement of planning units
12 under subsection (3) of this section is possible under the work
13 schedules established or likely to be established for the units to
14 implement RCW 90.82.090;

15 (2) Arrange its longer-term work schedule in a way that allows
16 initiating governments to know that their choice to require a water
17 quality component under RCW 90.82.090 or to initiate planning under RCW
18 90.82.060(7) would include the involvement of their planning unit under
19 subsection (3) of this section; and

20 (3) Designate the planning units conducting planning under RCW
21 90.82.090 as the local advisory bodies to be used, consistent with
22 section 12 of this act, when the department conducts total maximum
23 daily load activities in any portion of the area for which the unit is
24 conducting such planning. This requirement does not apply to
25 activities regarding an allocation of total maximum daily load for a
26 body of water if the allocation is submitted by the department to the
27 United States environmental protection agency for approval under the
28 federal clean water act before or within six months of the effective
29 date of this section.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.82 RCW
31 to read as follows:

32 A planning unit conducting planning under RCW 90.82.090 may choose
33 to assign the responsibility of being the local advisory body for total
34 maximum daily load activities under section 11 of this act to: The
35 members of the planning unit, as a whole, except those representing
36 state agencies; some portion of the membership of the planning unit,
37 other than the members representing state agencies; or any combination

1 it may choose of its membership, other than state agency
2 representatives, and any additional individuals it may choose who agree
3 to participate.

4 **Sec. 13.** RCW 90.82.090 and 1998 c 247 s 5 are each amended to read
5 as follows:

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

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

11 (2) An examination based on existing studies conducted by federal,
12 state, and local agencies of the causes of water quality violations in
13 the management area, including an examination of information regarding
14 pollutants, point and nonpoint sources of pollution, and pollution-
15 carrying capacities of water bodies in the management area. The
16 analysis shall take into account seasonal stream flow or level
17 variations, natural events, and pollution from natural sources that
18 occurs independent of human activities;

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

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

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

27 (6) A recommended approach for implementing the total maximum daily
28 load established for achieving compliance with water quality standards
29 for the nonmarine bodies of water in the management area(~~(, unless a~~
30 ~~total maximum daily load process has begun in the management area as of~~
31 ~~the date the watershed planning process is initiated under RCW~~
32 ~~90.82.060)); and~~

33 (7) Recommended means of monitoring by appropriate government
34 agencies whether actions taken to implement the approach to bring about
35 improvements in water quality are sufficient to achieve compliance with
36 water quality standards.

1 This chapter does not obligate the state to undertake analysis or
2 to develop strategies required under the federal clean water act (33
3 U.S.C. Sec. 1251 et seq.). This chapter does not authorize any
4 planning unit, lead agency, or local government to adopt water quality
5 standards or total maximum daily loads under the federal clean water
6 act.

7 **Sec. 14.** RCW 90.82.120 and 1998 c 247 s 8 are each amended to read
8 as follows:

9 (1) Watershed planning developed and approved under this chapter
10 shall not contain provisions that: (a) Are in conflict with existing
11 state statutes, federal laws, or tribal treaty rights; (b) impair or
12 diminish in any manner an existing water right evidenced by a claim
13 filed in the water rights claims registry established under chapter
14 90.14 RCW or a water right certificate or permit; (c) require a
15 modification in the basic operations of a federal reclamation project
16 with a water right the priority date of which is before June 11, 1998,
17 or alter in any manner whatsoever the quantity of water available under
18 the water right for the reclamation project, whether the project has or
19 has not been completed before June 11, 1998; (d) affect or interfere
20 with an ongoing general adjudication of water rights; (e) modify or
21 require the modification of any waste discharge permit issued under
22 chapter 90.48 RCW; (f) except as provided in RCW 77.85.050(1)(c),
23 modify or require the modification of activities or actions taken or
24 intended to be taken under a habitat restoration work schedule
25 developed under chapter 246, Laws of 1998; or (g) modify or require the
26 modification of activities or actions taken to protect or enhance fish
27 habitat if the activities or actions are: (i) Part of an approved
28 habitat conservation plan and an incidental take permit, an incidental
29 take statement, a management or recovery plan, or other cooperative or
30 conservation agreement entered into with a federal or state fish and
31 wildlife protection agency under its statutory authority for fish and
32 wildlife protection that addresses the affected habitat; or (ii) part
33 of a water quality program adopted by an irrigation district under
34 chapter 87.03 RCW or a board of joint control under chapter 87.80 RCW.
35 This subsection (1)(g) applies as long as the activities or actions
36 continue to be taken in accordance with the plan, agreement, permit, or
37 statement. Any assessment conducted under RCW 90.82.070, 90.82.090, or

1 90.82.100 shall take into consideration such activities and actions and
2 those taken under the forest practices rules, including watershed
3 analysis adopted under the forest practices act, chapter 76.09 RCW.

4 (2) Watershed planning developed and approved under this chapter
5 shall not change existing local ordinances or existing state rules or
6 permits, but may contain recommendations for changing such ordinances
7 or rules.

8 (3) Notwithstanding any other provision of this chapter, watershed
9 planning shall take into account forest practices rules under the
10 forest practices act, chapter 76.09 RCW, and shall not create any
11 obligations or restrictions on forest practices additional to or
12 inconsistent with the forest practices act and its implementing rules,
13 whether watershed planning is approved by the counties or the
14 department.

15 **Sec. 15.** RCW 77.85.050 and 1999 sp.s. c 13 s 11 are each amended
16 to read as follows:

17 (1)(a) Counties, cities, and tribal governments must jointly
18 designate, by resolution or by letters of support, the area for which
19 a habitat project list is to be developed and the lead entity that is
20 to be responsible for submitting the habitat project list. No project
21 included on a habitat project list shall be considered mandatory in
22 nature and no private landowner may be forced or coerced into
23 participation in any respect. The lead entity may be a county, city,
24 conservation district, special district, tribal government, or other
25 entity.

26 (b) The lead entity shall establish a committee that consists of
27 representative interests of counties, cities, conservation districts,
28 tribes, environmental groups, business interests, landowners, citizens,
29 volunteer groups, regional fish enhancement groups, and other habitat
30 interests. The purpose of the committee is to provide a citizen-based
31 evaluation of the projects proposed to promote salmon habitat. The
32 technical review team may provide the lead entity with organizational
33 models that may be used in establishing the committees.

34 (c) The committee shall compile a list of habitat projects,
35 establish priorities for individual projects, define the sequence for
36 project implementation, and submit these activities as the habitat
37 project list. In any WRIA for which watershed planning is being

1 conducted by a planning unit under RCW 90.82.100, the committee and the
2 lead entity shall share their information regarding the WRIA with the
3 planning unit, and the committee and the lead entity shall consult with
4 the planning unit in preparing and in adding activities to the habitat
5 project list for that WRIA. The committee shall also identify
6 potential federal, state, local, and private funding sources.

7 (2) The area covered by the habitat project list must be based, at
8 a minimum, on a WRIA, combination of WRIAs, or any other area as agreed
9 to by the counties, cities, and tribes in resolutions or in letters of
10 support meeting the requirements of this subsection. Preference will
11 be given to projects in an area that contain a salmon species that is
12 listed or proposed for listing under the federal endangered species
13 act.

14 (3) The lead entity shall submit the habitat project list to the
15 technical review team in accordance with procedures adopted by the
16 board.

17 **Sec. 16.** RCW 77.85.130 and 2000 c 107 s 102 and 2000 c 15 s 1 are
18 each reenacted and amended to read as follows:

19 (1) The salmon recovery funding board shall develop procedures and
20 criteria for allocation of funds for salmon habitat projects and salmon
21 recovery activities on a statewide basis to address the highest
22 priorities for salmon habitat protection and restoration. To the
23 extent practicable the board shall adopt an annual allocation of
24 funding. The allocation should address both protection and restoration
25 of habitat, and should recognize the varying needs in each area of the
26 state on an equitable basis. The board has the discretion to partially
27 fund, or to fund in phases, salmon habitat projects. The board may
28 annually establish a maximum amount of funding available for any
29 individual project, subject to available funding. No projects required
30 solely as a mitigation or a condition of permitting are eligible for
31 funding.

32 (2)(a) In evaluating, ranking, and awarding funds for projects and
33 activities the board shall give preference to projects that:

34 (i) Are based upon the limiting factors analysis identified under
35 RCW 77.85.060;

36 (ii) Provide a greater benefit to salmon recovery based upon the
37 stock status information contained in the department of fish and

1 wildlife salmonid stock inventory (SASSI), the salmon and steelhead
2 habitat inventory and assessment project (SSHIAP), and any comparable
3 science-based assessment when available;

- 4 (iii) Will benefit listed species and other fish species; and
- 5 (iv) Will preserve high quality salmonid habitat.

6 (b) In evaluating, ranking, and awarding funds for projects and
7 activities the board shall also give consideration to projects that:

- 8 (i) Are the most cost-effective;
- 9 (ii) Have the greatest matched or in-kind funding; and
- 10 (iii) Will be implemented by a sponsor with a successful record of
11 project implementation.

12 (3) The board may reject, but not add, projects from a habitat
13 project list submitted by a lead entity for funding. After January 1,
14 2004, the board shall not provide funding for any project in a WRIA for
15 which planning is being conducted under RCW 90.82.100 unless the lead
16 entity as well as the planning unit for the WRIA under chapter 90.82
17 RCW both certify that the consultation required by RCW 77.85.050(1)(c)
18 has been conducted for the project.

19 (4) For fiscal year 2000, the board may authorize the interagency
20 review team to evaluate, rank, and make funding decisions for
21 categories of projects or activities or from funding sources provided
22 for categories of projects or activities. In delegating such authority
23 the board shall consider the review team's staff resources, procedures,
24 and technical capacity to meet the purposes and objectives of this
25 chapter. The board shall maintain general oversight of the team's
26 exercise of such authority.

27 (5) The board shall seek the guidance of the technical review team
28 to ensure that scientific principles and information are incorporated
29 into the allocation standards and into proposed projects and
30 activities. If the technical review team determines that a habitat
31 project list complies with the critical pathways methodology under RCW
32 77.85.060, it shall provide substantial weight to the list's project
33 priorities when making determinations among applications for funding of
34 projects within the area covered by the list.

35 (6) The board shall establish criteria for determining when block
36 grants may be made to a lead entity or other recognized regional
37 recovery entity consistent with one or more habitat project lists
38 developed for that region. Where a lead entity has been established

1 pursuant to RCW 77.85.050, the board may provide grants to the lead
2 entity to assist in carrying out lead entity functions under this
3 chapter, subject to available funding. The board shall determine an
4 equitable minimum amount of funds for each region, and shall distribute
5 the remainder of funds on a competitive basis.

6 (7) The board may waive or modify portions of the allocation
7 procedures and standards adopted under this section in the award of
8 grants or loans to conform to legislative appropriations directing an
9 alternative award procedure or when the funds to be awarded are from
10 federal or other sources requiring other allocation procedures or
11 standards as a condition of the board's receipt of the funds. The
12 board shall develop an integrated process to manage the allocation of
13 funding from federal and state sources to minimize delays in the award
14 of funding while recognizing the differences in state and legislative
15 appropriation timing.

16 (8) The board may award a grant or loan for a salmon recovery
17 project on private or public land when the landowner has a legal
18 obligation under local, state, or federal law to perform the project,
19 when expedited action provides a clear benefit to salmon recovery, and
20 there will be harm to salmon recovery if the project is delayed. For
21 purposes of this subsection, a legal obligation does not include a
22 project required solely as a mitigation or a condition of permitting.

23 (9) The board may condition a grant or loan to include the
24 requirement that property may only be transferred to a federal agency
25 if the agency that will acquire the property agrees to comply with all
26 terms of the grant or loan to which the project sponsor was obligated.
27 Property acquired or improved by a project sponsor may be conveyed to
28 a federal agency, but only if the agency agrees to comply with all
29 terms of the grant or loan to which the project sponsor was obligated.

30 NEW SECTION. **Sec. 17.** Headings used in this act are not any part
31 of the law.

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