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SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1336

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State of Washington

58th Legislature

2003 Regular Session

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

READ FIRST TIME 03/10/03.

1 AN ACT Relating to watershed planning; amending RCW 90.82.040,  
2 90.82.080, and 90.82.130; adding a new section to chapter 90.82 RCW;  
3 and creating a new section.

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

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

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

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

18 (1) Once a WRIA planning unit has been initiated under RCW

1 90.82.060 and a lead agency has been designated, it shall notify the  
2 department and may apply to the department for funding assistance for  
3 conducting the planning and implementation. Funds shall be provided  
4 from and to the extent of appropriations made by the legislature to the  
5 department expressly for this purpose.

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

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

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

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

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

1 (b) A planning unit may request a different amount for phase two or  
2 phase three of watershed planning than is specified in (a) of this  
3 subsection, provided that the total amount of funds awarded do not  
4 exceed the maximum amount the planning unit is eligible for under (a)  
5 of this subsection. The department shall approve such an alternative  
6 allocation of funds if the planning unit identifies how the proposed  
7 alternative will meet the goals of this chapter and provides a proposed  
8 timeline for the completion of planning. However, the up to one  
9 hundred thousand additional dollars in funding for instream flow and  
10 water quality components and for water storage assessments or studies  
11 that a planning unit may apply for under (a)(ii)(A) of this subsection  
12 may be used only for those instream flow, water quality, and water  
13 storage purposes.

14 (c) By December 1, 2001, or within one year of initiating phase one  
15 of watershed planning, whichever occurs later, the initiating  
16 governments for each planning unit must inform the department whether  
17 they intend to have the planning unit establish or amend instream flows  
18 as part of its planning process. If they elect to have the planning  
19 unit establish or amend instream flows, the planning unit is eligible  
20 to receive one hundred thousand dollars for that purpose in accordance  
21 with (a)(ii) of this subsection. If the initiating governments for a  
22 planning unit elect not to establish or amend instream flows as part of  
23 the unit's planning process, the department shall retain one hundred  
24 thousand dollars to carry out an assessment to support establishment of  
25 instream flows and to establish such flows in accordance with RCW  
26 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use  
27 these funds to amend an existing instream flow unless requested to do  
28 so by the initiating governments for a planning unit.

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

33 (e) A planning unit may apply for a matching grant for phase four  
34 watershed plan implementation following approval under the provisions  
35 of RCW 90.82.130. A match of ten percent is required and may include  
36 financial contributions or in-kind goods and services directly related  
37 to coordination and oversight functions. The match can be provided by  
38 the planning unit or by the combined commitments from federal agencies.

1 tribal governments, local governments, special districts, or other  
2 local organizations. The phase four grant may be up to one hundred  
3 thousand dollars for each planning unit for each of the first three  
4 years of implementation. At the end of the three-year period, a two-  
5 year extension may be available for up to fifty thousand dollars each  
6 year. For planning units that cover more than one WRIA, additional  
7 matching funds of up to twenty-five thousand dollars may be available  
8 for each additional WRIA per year for the first three years of  
9 implementation, and up to twelve thousand five hundred dollars per WRIA  
10 per year for each of the fourth and fifth years.

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

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

16 (i) The planning unit meets all of the requirements of this  
17 chapter;

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

20 (iii) The application and supporting information evidences a  
21 readiness to proceed.

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

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

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

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

34 (B) Second, single WRIA planning;

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

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

1 (B) Second, single WRIA planning.

2 (d) Except for phase four watershed plan implementation, the  
3 department may not impose any local matching fund requirement as a  
4 condition for grant eligibility or as a preference for receiving a  
5 grant.

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

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

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

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

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

21 (2) Each implementation plan must contain strategies to provide  
22 sufficient water for: (a) Production agriculture; (b) commercial,  
23 industrial, and residential use; and (c) instream flows. Each  
24 implementation plan must contain timelines to achieve these strategies  
25 and interim milestones to measure progress.

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

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

34 (5) By December 1, 2003, and by December 1st of each subsequent  
35 year, the director of the department shall report to the appropriate  
36 legislative standing committees regarding statutory changes necessary

1 to enable state agency approval or permit decision making needed to  
2 implement a plan approved under this chapter.

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

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

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

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

28 (b) The department shall undertake rule making to adopt flows under  
29 (a) of this subsection. The department may adopt the rules either by  
30 the regular rules adoption process provided in chapter 34.05 RCW, the  
31 expedited rules adoption process as set forth in RCW (~~34.05.230~~)  
32 34.05.353, or through a rules adoption process that uses public  
33 hearings and notice provided by the county legislative authority to the  
34 greatest extent possible. Such rules do not constitute significant  
35 legislative rules as defined in RCW 34.05.328, and do not require the  
36 preparation of 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 two years after funding  
16 is first received for planning in the WRIA or multi-WRIA area from the  
17 department under RCW 90.82.040 and the priority date of the portion of  
18 the minimum instream flow previously established by rule shall retain  
19 its priority date as established under RCW 90.03.345.

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

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

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

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

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

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

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

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

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

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

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

1 fulfill their obligations as soon as possible, and should annually  
2 review implementation needs with respect to budget and staffing; ((~~or~~))  
3 (b) for counties, the obligations are binding on the counties and the  
4 counties shall adopt any necessary implementing ordinances and take  
5 other actions to fulfill their obligations as soon as possible, and  
6 should annually review implementation needs with respect to budget and  
7 staffing; or (c) for an organization voluntarily accepting an  
8 obligation, the organization must adopt policies, procedures,  
9 agreements, rules, or ordinances to implement the plan, and should  
10 annually review implementation needs with respect to budget and  
11 staffing.

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

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

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

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