
SUBSTITUTE HOUSE BILL 2396

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Kirby, Rockefeller, Lantz, Clibborn, Hunt, Quall, Wallace, Haigh, Miloscia, Wood and Moeller; by request of Governor Locke)

READ FIRST TIME 02/09/04.

1 AN ACT Relating to instream flow; amending RCW 90.03.247,
2 90.82.080, 47.12.330, 90.42.080, 43.21B.110, 34.05.370, and 39.34.190;
3 adding a new section to chapter 77.85 RCW; adding a new section to
4 chapter 77.15 RCW; adding a new section to chapter 47.12 RCW; adding a
5 new section to chapter 43.27A RCW; adding a new chapter to Title 90
6 RCW; and creating new sections.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the waters of the
9 state are among the most valuable and fragile of the public's natural
10 resources and that there is great concern throughout the state relating
11 to their utilization, protection, restoration, and preservation. In
12 addition, it finds that ever increasing pressures of additional
13 consumptive uses are being placed on the rivers, streams, and ground
14 waters, necessitating increased coordination in the management of the
15 waters of the state for the benefit of people, farms, and fish.

16 The legislature finds that state programs, watershed plans, and
17 similar water resource programs being developed across the state will
18 include strategies to secure adequate water to meet the needs of people
19 and the streamflow requirements for fish. It is therefore the intent

1 of the legislature to direct state agencies to ensure that watershed
2 programs are developed and implemented that achieve and protect
3 instream flows.

4 To accomplish this objective, the legislature intends to:

5 (1) Commit the state to achieving and protecting instream flows
6 statewide;

7 (2) Identify streamflows that are needed to ensure a healthy
8 watershed and establish these as instream flows;

9 (3) Require the development of instream flow programs that identify
10 and schedule the actions needed to achieve and protect instream flows;

11 (4) Build on the implementation of watershed plans and similar
12 programs where applicable, and make state agencies accountable to work
13 jointly with governments and water users to achieve and protect
14 instream flows; and

15 (5) Ensure adequate funding for state water management programs,
16 including for the public share of instream flow programs.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.85 RCW
18 to read as follows:

19 (1)(a) The independent science panel created under RCW 77.85.040
20 must provide guidance to the director of the department of ecology on
21 the following:

22 (i) Rules to be proposed by the department of ecology establishing
23 detailed policies for setting instream flows under the criteria
24 established by section 4(2) of this act;

25 (ii) Rules to be proposed by the department of ecology establishing
26 detailed requirements for instream flow programs under the criteria
27 established by section 5 of this act; and

28 (iii) Rules establishing instream flows for streams that are
29 adopted after the effective date of this section and before the
30 effective date of rules adopted under section 4(1)(b) of this act,
31 regarding the consistency of the instream flows established by those
32 rules with the detailed policies of the rules adopted under section
33 4(1)(b) of this act.

34 (b) If a rule establishing an instream flow established for a
35 mainstem river or key tributary in accordance with section 4(1)(a) of
36 this act is appealed to superior court, the independent science panel
37 must review the rule and provide an analysis of whether the rule is

1 consistent with the standards adopted by rule for instream flows under
2 section 4(1)(b) of this act. The panel must submit its analysis to the
3 department for placement in its rule-making file as authorized by RCW
4 34.05.370.

5 (c) If an instream flow program is appealed to the pollution
6 control hearings board under section 6 of this act, the independent
7 science panel must review the program and provide an analysis of
8 whether the program is consistent with the standards for such programs
9 established by rules adopted under section 5(2) of this act. The panel
10 must submit its analysis to the pollution control hearings board under
11 section 6(1)(b) of this act.

12 (d) The independent science panel must provide the guidance
13 required by (a)(i) of this subsection to the department before
14 developing any other guidance under this section.

15 (2) The independent science panel must also provide guidance to be
16 used by the department of ecology in evaluating interim progress in
17 implementing the instream flow programs approved under section 6 of
18 this act and in reviewing a program for possible revision at the end of
19 six years under section 6(4) of this act.

20 (3) The independent science panel must expand its membership to
21 provide the expertise to provide the guidance and reviews required
22 under subsections (1) and (2) of this section. The panel must, by
23 majority vote, recommend a list of up to six of the most qualified
24 scientists as candidates to provide that expertise. Candidates must
25 possess expertise in hydrology, fluvial geomorphology, fisheries
26 biology, aquatic ecology, or a similar scientific discipline that
27 confers expertise on instream flow. Among the candidates must be
28 scientists who have expertise in instream flow assessment
29 methodologies. The panel must submit any such list to the governor,
30 the speaker of the house of representatives, and the senate majority
31 leader. The speaker of the house of representatives and the senate
32 majority leader may each remove one name from the list. The governor
33 must consult with tribal representatives and must appoint two
34 scientists from the remaining names on the list. The provisions of RCW
35 77.85.040 regarding members, including their terms, apply to the
36 members appointed under this section except that these added members
37 may act only with regard to the guidance required by this section. If
38 two members are added to the independent science panel under this

1 section, the membership of the panel includes the members appointed
2 under this section only with regard to guidance to be provided under
3 this section.

4 NEW SECTION. **Sec. 3.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

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

7 (2) "Instream flow program" means a program developed or to be
8 developed under sections 5 and 6 of this act.

9 (3) "Mainstem river" and "key tributary" mean a mainstem river and
10 a key tributary identified by rule under section 4 of this act.

11 (4) "Watershed" means a water resource inventory area established
12 in chapter 173-500 WAC as it exists of the effective date of this
13 section.

14 NEW SECTION. **Sec. 4.** (1)(a) If a planning unit has received, by
15 the effective date of this section, funding assistance from the
16 department under RCW 90.82.040 for the establishment of instream flows
17 for a mainstem river or key tributary under the procedures provided in
18 RCW 90.82.080, the flows must be established by the deadlines provided
19 in RCW 90.82.080. Instream flows must be adopted by the department by
20 rule for all other mainstem rivers and their key tributaries in the
21 state by 2010.

22 (b) By December 2006, the department must adopt by rule the
23 standards that must be used in establishing instream flow rules that
24 satisfy the criteria established by subsection (2) of this section.
25 The department must submit any rules it intends to propose under this
26 subsection to the independent science panel for guidance under section
27 2 of this act. The department must discuss with the panel its guidance
28 and, if the panel and the department disagree as to the rules that
29 should be proposed, the department must submit the disagreement to
30 mediation. The rules implementing this subsection that are formally
31 proposed by the department for adoption under chapter 34.05 RCW must be
32 consistent with the outcome of the mediation.

33 (2) Instream flows established by rule after the effective date of
34 this section must establish flow requirements for normal, low, and high
35 water years that achieve hydrologic integrity, considering both the
36 biology and hydrology of the watershed. For the purposes of this

1 subsection, "hydrologic integrity" means a streamflow that protects
2 biologic, hydrologic, and ecological functions. In identifying the
3 flows to be established, the department must use generally accepted,
4 peer-reviewed methodologies. Such instream flows must incorporate the
5 current requirements regarding instream flows of any habitat
6 conservation plan approved under the federal endangered species act (16
7 U.S.C. Sec. 1531 et seq.) or of a federal license for a hydroelectric
8 power project issued under the federal power act (16 U.S.C. Sec. 791 et
9 seq.) within the watershed if the plan was approved or the license was
10 issued before the effective date of the rules adopted under subsection
11 (1)(b) of this section. Such instream flows must incorporate the
12 current requirements regarding instream flows of any habitat
13 conservation plan subsequently approved or revised under the federal
14 endangered species act or of a federal license for a hydroelectric
15 power project subsequently issued or reissued under the federal power
16 act within the watershed to the extent those requirements are not
17 inconsistent with the provisions of this chapter.

18 (3) By July 2005 the department must adopt by rule a list of the
19 mainstem rivers and their key tributaries for which instream flows must
20 be adopted under this section. The key tributaries for the mainstem
21 rivers include those important to the protection of fish and other
22 instream environmental values. The department of fish and wildlife
23 must develop, in consultation with affected Indian tribes, planning
24 units under chapter 90.82 RCW, and local groups conducting planning for
25 the department under RCW 90.54.040(1), a list of the key tributaries to
26 the mainstem rivers and must provide the list to the department for its
27 rule making. Following the adoption of the list and until an instream
28 flow program is approved under section 6 of this act for the watershed
29 containing a mainstem river or key tributary on the list, no water
30 right permits may be issued by the department for new withdrawals of
31 water from the mainstem river or key tributary except such permits as
32 are required for the public health or safety or for proposals that
33 benefit streamflows or have no net effect on streamflows.

34 (4) This section may not be construed as automatically requiring
35 the adoption of new instream flows for any stream for which minimum
36 instream flows are in effect under chapter 90.22 RCW or for which base
37 flows are in effect under chapter 90.54 RCW prior to the effective date
38 of this section. However, once rules have been adopted establishing

1 standards for instream flows under subsection (1) of this section, the
2 department must review by 2010 each of the existing minimum instream
3 flow or base flow rules to determine whether the streamflow
4 requirements of those rules satisfy the standards adopted under
5 subsection (1) of this section and must revise the rules as necessary
6 to bring them into conformity with the standards.

7 (5) Once the instream flow requirements established by rule for a
8 watershed have been achieved for a period of five years, the department
9 must review those requirements to determine whether the hydrologic
10 integrity sought in establishing the requirements has also been
11 achieved. If it has not, the rules must be revised. After the initial
12 review under this subsection of the instream flows established under
13 this chapter, the department must review all such flows for possible
14 revision under a schedule that will provide such a review for all
15 watersheds every ten years.

16 (6) As used in this chapter and chapters 90.22 and 90.54 RCW, the
17 terms "minimum instream flows," "base flows," and "instream flows" are
18 synonymous except that such flows adopted by the department after the
19 effective date of this section must be referred to as instream flows.

20 NEW SECTION. **Sec. 5.** (1) An instream flow program must be
21 prepared, approved, and implemented for each watershed in the state.

22 (2) The department must adopt rules establishing minimum
23 requirements for instream flow programs. The rules must require each
24 instream flow program to specify:

25 (a) The actions to be taken to achieve the instream flow
26 requirements established for mainstem rivers and their key tributaries
27 in the watershed and the estimated amount of water to be provided to
28 streamflows from each such action;

29 (b) Timelines for taking the actions and for achieving the flows;

30 (c) An entity or entities responsible for taking each action;

31 (d) Benchmarks to be used to measure the progress in achieving the
32 instream flows;

33 (e) Actions that will be taken in the near term, upon the approval
34 of the program, and actions that will be taken to make ongoing
35 improvements to secure progress over time. When instream flows are not
36 achieved, priority must be given to actions that place the most water
37 in the stream in the near term;

1 (f) How the benchmarks provided by section 10(1) of this act will
2 be met;

3 (g) Monitoring that will be conducted to measure progress;

4 (h) Actions to be taken any time a drought order is issued under
5 RCW 43.83B.405 for the watershed;

6 (i) Funding required to implement the program and the sources of
7 that funding;

8 (j) Contingency actions that are to be taken if progress in
9 achieving the instream flows established by rule is not made as
10 specified in the timelines and benchmarks; and

11 (k) How the program will be reviewed and altered as a part of
12 adaptive management as necessary.

13 (3) Each instream flow program must incorporate the current
14 requirements regarding instream flows of any habitat conservation plan
15 approved under the federal endangered species act (16 U.S.C. Sec. 1531
16 et seq.) or of a federal license for a hydroelectric power project
17 issued under the federal power act (16 U.S.C. Sec. 791 et seq.) within
18 the watershed if the plan was approved or the license was issued before
19 the effective date of the rules adopted under section 4(1)(b) of this
20 act. Such a program must incorporate the current requirements
21 regarding instream flows of any habitat conservation plan subsequently
22 approved or revised under the federal endangered species act or of a
23 federal license for a hydroelectric power project subsequently issued
24 or reissued under the federal power act within the watershed to the
25 extent those requirements are not inconsistent with the provisions of
26 this chapter.

27 (4) Each instream flow program must also contain: A summary of
28 current information and an analysis of the effect of land use on
29 streamflows, an identification of gaps in the information, and an
30 assessment program to fill those gaps; a summary of existing and
31 planned water use conservation and efficiency programs and projects;
32 and an assessment program for determining the water conservation
33 potential within the watershed.

34 (5) The department must identify how such progress in achieving the
35 instream flows for a stream is to be reported to the department.
36 Beginning in 2008, the department must report to the governor and
37 legislature by December 31st of each even-numbered year on the progress
38 made in achieving and maintaining instream flows in the watersheds of

1 the state and whether the timelines and benchmarks identified in the
2 instream flow programs are being met. For any watersheds in which such
3 timelines and benchmarks are not being met, the report must identify
4 the actions that will be taken to meet those timelines and benchmarks.
5 Reports through 2012 must identify the watersheds for which such
6 programs have been developed and adopted and those for which they have
7 not.

8 (6) The departments of ecology and fish and wildlife must jointly
9 develop a programmatic environmental impact statement under chapter
10 43.21C RCW for the rules required under this section. The statement
11 must include an environmental review of the various types of actions
12 that might be proposed in an instream flow program.

13 NEW SECTION. **Sec. 6.** (1)(a) An instream flow program that
14 satisfies the requirements of section 5 of this act and this section
15 must be approved for a watershed within one year of the date instream
16 flows are established by rule for all of the mainstem rivers and their
17 key tributaries in the watershed under this chapter. If a minimum
18 instream flow or base flow has been adopted by rule under chapter 90.54
19 or 90.22 RCW prior to the effective date of this section for a mainstem
20 river or its key tributaries, such a program for the watershed
21 containing the stream must be developed within one year of the date
22 rules for establishing instream flows are adopted under section 4(1) of
23 this act unless the flow adopted by rule is to be revised under section
24 4(3) of this act. If the instream flows are to be revised, an instream
25 flow program that satisfies the requirements of section 5 of this act
26 and this section must be approved within one year of the effective date
27 they are revised.

28 (b) Each instream flow program developed under section 5 of this
29 act and this section must be submitted to the department of ecology and
30 to the department of fish and wildlife. The departments must review,
31 in consultation with the departments of health and community, trade,
32 and economic development, the programs for compliance with the
33 requirements established by rule for the programs by the department of
34 ecology. Activities and actions that are consistent with natural
35 hydraulic conditions and that minimize the disruption of those
36 conditions must be preferred over those that do not. The key elements
37 of the review must be the answers to the following questions: Is the

1 deadline for achieving streamflows that satisfy the instream flow rule
2 requirements reasonable; and will conducting the activities specified
3 in the program result in achieving those flows by the deadline? When
4 approving or conditionally approving a program, the departments must
5 identify the activities and actions specific to the watershed governed
6 by the program that the departments will take to assist in the
7 implementation of the program. By an action taken jointly, the
8 department of ecology and the department of fish and wildlife must
9 approve, conditionally approve, or disapprove such a program based on
10 its compliance with the department of ecology's rules. The failure of
11 the departments to take such an action jointly within ninety days of
12 the date a program is submitted to the department of fish and wildlife
13 under this subsection constitutes a disapproval of the program. Each
14 approval, conditional approval, or disapproval is subject to appeal to
15 the pollution control hearings board under chapter 43.21B RCW. In
16 addition to the appeal requirements of chapter 43.21B RCW, a copy of
17 the notice of such an appeal must be submitted to the independent
18 science panel created under RCW 77.85.040. The panel must review the
19 appealed program as provided in section 2(1) of this act and submit its
20 analysis to the pollution control hearings board.

21 (c) As part of their review of each instream program submitted to
22 the departments of ecology and fish and wildlife, the departments must,
23 following public notice, jointly conduct a public hearing on the
24 program.

25 (d) For purposes of compliance with chapter 43.21C RCW, the
26 departments of ecology and fish and wildlife are designated as colead
27 agencies for conducting environmental review of proposed instream flow
28 programs.

29 (2)(a) A planning unit that has conducted planning in a watershed
30 under chapter 90.82 RCW may choose to develop an instream flow program
31 for the watershed jointly with the department under this chapter. To
32 jointly develop the program, the planning unit must notify the
33 department within three months of the date instream flows are
34 established by rule for a mainstem river or its key tributaries in the
35 watershed of its intention to do so. If an instream flow program is
36 not to be developed jointly by the department and such a planning unit
37 for a watershed, such a program must be developed for the watershed

1 under this chapter as a segment of a comprehensive state water
2 resources program under RCW 90.54.040(1) and this chapter.

3 (b) An instream flow program developed under RCW 90.54.040(1) must
4 be developed by the department jointly with or through the advice of a
5 local group of citizens that represents at least the wide range of
6 interests referred to for conducting planning under chapter 90.82 RCW.
7 The department may select such a local group to develop an instream
8 flow program for a watershed jointly with the department from among the
9 groups that have petitioned it to do so within three months of the date
10 instream flows are established by rule for a mainstem river and its key
11 tributaries in the watershed. If no qualifying local group so
12 petitions for a watershed, the department must develop the instream
13 flow program and must appoint such a local group to advise the
14 department in its development.

15 (3) If a planning unit notified the department of its intention to
16 jointly develop an instream flow program for a watershed or if a local
17 group of citizens was, as the result of a petition, designated by the
18 department to jointly develop a program for a watershed, but a program
19 that satisfies the requirements of section 5 of this act is not
20 developed and submitted to the department and the department of fish
21 and wildlife within one year of the date instream flows are adopted by
22 rule for a mainstem river and its key tributaries within the watershed,
23 the department must develop an instream flow program for the watershed
24 with the advice of a local group of citizens within the following year.

25 (4) Each instream flow program must be reviewed and modified as
26 needed every six years after it is initially approved. However,
27 beginning in 2017, reviews and updates of programs must be done in
28 concert with land use plan updates in a watershed.

29 (5) A local group of citizens developing or providing advice for
30 the development of an instream flow program under this chapter must
31 consider any recommendations for priority actions provided by the
32 department of fish and wildlife under section 13 of this act.

33 NEW SECTION. **Sec. 7.** If an instream flow program has been
34 approved or conditionally approved for a watershed under section 6 of
35 this act, the department of transportation may expend funds for
36 environmental mitigation as provided in section 17 of this act.

1 NEW SECTION. **Sec. 8.** (1) To achieve instream flows or otherwise
2 to implement the provisions of an instream flow program, the department
3 may:

4 (a) Provide departmental resources for and adopt rules facilitating
5 voluntary agreements for sharing the use of water that have been
6 developed through or as part of watershed plans developed and approved
7 under chapter 90.82 RCW, regional water initiatives conducted under RCW
8 90.54.040(1), habitat conservation plans approved under the federal
9 endangered species act (16 U.S.C. Sec. 1531 et seq.), trust water
10 agreements under chapter 90.38 or 90.42 RCW, or watershed agreements
11 under RCW 90.03.590;

12 (b) Expend funds to purchase or lease water rights or to secure low
13 water easements or other interests in water rights;

14 (c) Provide financial assistance to water right holders for
15 projects or activities that conserve the use of water under a water
16 right as long as the portion of the net water savings, as defined in
17 RCW 90.38.010, derived from the portion of the funding provided by the
18 department for the project or activity is placed in the trust water
19 program of chapter 90.38 or 90.42 RCW and dedicated to instream flows
20 for the life of the project or activity;

21 (d) Provide funding for water conveyance infrastructure projects
22 that benefit instream flows, including but not limited to those
23 projects that substitute one source of water for another or provide for
24 the conjunctive use of water rights;

25 (e) Provide funding for multipurpose water storage projects.

26 (2) The department may redirect or prioritize the use of any
27 capital or operating moneys appropriated to the department for
28 administrative purposes or for the department's water resources
29 program, not including water quality programs, to use for establishing
30 instream flows or developing or approving instream flow programs.

31 (3) The department may prioritize its compliance activity regarding
32 water rights and the unauthorized use of water to emphasize compliance
33 in areas governed by a drought emergency order issued under RCW
34 43.83B.405 or in a watershed for which instream flows are required
35 under section 4 of this act but have not yet been established by rule.

36 (4) By December 1, 2004, the department must recommend to the
37 legislature and the governor tax incentives for water conservation

1 projects or activities. The recommendation must include the
2 implementing legislation in bill form.

3 NEW SECTION. **Sec. 9.** (1) In determining where to concentrate the
4 use of departmental resources for reviewing and approving applications
5 for permits for new appropriations of water, the department must give
6 priority to such applications in watersheds for which an instream flow
7 program has been approved under section 6 of this act and in which the
8 timelines and milestones identified in the program are being met.

9 (2) The variations in the flow level requirements in an instream
10 flow rule for a stream that reflect seasonal and climatic variations
11 must be used by the department in determining whether to approve
12 applications for new water use permits or for transfers, changes, or
13 amendments of existing water rights in the watersheds.

14 NEW SECTION. **Sec. 10.** (1) The department, in consultation with
15 the department of fish and wildlife, must review each approved or
16 conditionally approved instream flow program every two years to assess
17 whether there is reasonable progress in complying with the requirements
18 of the program and the timelines established in the program. In
19 watersheds currently meeting the instream flows established by rule for
20 the watershed, the program must describe those actions that will be
21 taken to ensure that the required instream flow will continue to be
22 met. In watersheds not currently meeting the instream flows
23 established by rule for the watershed, the instream flows must be
24 achieved as soon as practicable, but no later than eight years after
25 the approval of the instream flow program for the watershed, unless
26 this deadline is extended under subsection (2) of this section.
27 Reasonable progress in achieving instream flows is demonstrated by the
28 following benchmarks:

29 (a) At year two of implementation, scheduled actions have been
30 taken, pending actions are on schedule for implementation, and initial
31 improvement to instream flows has occurred;

32 (b) At years four and six of implementation, significant progress
33 in achieving and protecting instream flows has occurred, and it is
34 determined that current and planned actions are likely to achieve the
35 instream flows established by rule within the established timeline. If

1 it is determined that current and planned actions are not likely to
2 achieve the instream flows, supplemental actions must be identified to
3 achieve the instream flows; and

4 (c) At year eight of the program, instream flows have been
5 achieved, except as provided in subsection (2) of this section.

6 (2) Extensions to the eight-year deadline provided by subsection
7 (1)(c) of this section may be granted by the department, but are not
8 favored and may be granted only under extraordinary circumstances.
9 Extensions may not be granted where watershed or stream conditions are
10 poor, which includes but is not limited to situations where water
11 quality standards as established under chapter 90.48 RCW are not being
12 met, aquatic species are listed under the federal endangered species
13 act, or aquatic species are listed on the state salmon and stock
14 inventory as critical or depressed. Further, it must be demonstrated
15 at the time of initial approval by the state, and at the required two,
16 four, and six-year reviews, that there is a high likelihood that the
17 proposed actions being relied on to achieve instream flows will be
18 fully funded and effective.

19 (3) If the instream flow program for a watershed does not achieve
20 the instream flows established by rule for the watershed by the eight-
21 year deadline provided by subsection (1)(c) of this section or the
22 extended deadline provided by subsection (2) of this section, or if,
23 during the two, four, or six-year review of the program, the department
24 finds that the timelines and benchmarks in the program are not met, the
25 department and the department of fish and wildlife must take such
26 supplementary actions as are needed to satisfy the timelines and
27 benchmarks to achieve and protect such flows through the use of any and
28 all tools available under law, including but not limited to the
29 following legal authorities:

30 (a) Chapters 43.27A, 90.03, 90.14, 90.22, 90.44, and 90.54 RCW;

31 (b) Chapter 90.48 RCW; and

32 (c) Chapters 43.21C, 36.70A, and 90.58 RCW.

33 (4) Any person may file an action in Thurston county superior court
34 or the superior court for the county in which the affected watershed
35 exists against the director of the department or the director of the
36 department of fish and wildlife, or both such directors, for the
37 director's department's alleged failure to perform any of the
38 following:

- 1 (a) Meet the deadlines provided by this chapter or chapter 90.82
- 2 RCW for establishing instream flows by rule;
- 3 (b) Meet the deadline provided by this chapter for approving or
- 4 developing an instream flow program for a watershed;
- 5 (c) Implement the responsibilities of the department specified in
- 6 an approved instream flow program; and
- 7 (d) Implement the provisions of this section or section 11 of this
- 8 act.

9 NEW SECTION. **Sec. 11.** (1) By 2006, the department, in
10 consultation with the departments of fish and wildlife and health, must
11 implement the following programs on a statewide basis to support the
12 successful implementation of instream flow programs:

- 13 (a) Publicly accessible information including access to a web site
- 14 providing data on streamflows and water use;
- 15 (b) Water rights acquisition, water conservation funding, and
- 16 changes in water conveyance to benefit instream flows, including those
- 17 authorized by section 8(1) of this act;
- 18 (c) Drought response;
- 19 (d) A water code compliance program; and
- 20 (e) A mediation program and other means to facilitate voluntary
- 21 shared use agreements and other cooperative mechanisms to achieve
- 22 instream flows.

23 (2) If the department finds as part of a two-year review under
24 section 10(1) of this act that interim timelines and benchmarks are not
25 being met in a watershed, the department must, as its initial response,
26 prepare and distribute technical assistance and educational information
27 to the general public in the watershed to assist the public in
28 complying with the requirements of their water rights and applicable
29 water laws and to the general public and the units of local government
30 in the watershed to assist them in implementing adaptive management
31 strategies for meeting future timelines and benchmarks.

32 **Sec. 12.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read
33 as follows:

34 Whenever an application for a permit to make beneficial use of
35 public waters is approved relating to a stream or other water body for
36 which minimum flows or levels have been adopted and are in effect at

1 the time of approval, the permit shall be conditioned to protect the
2 levels or flows. No agency may establish minimum flows and levels or
3 similar water flow or level restrictions for any stream or lake of the
4 state other than the department of ecology whose authority to establish
5 is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
6 90.54.040. The provisions of other statutes, including but not limited
7 to RCW 77.55.100 and chapter 43.21C RCW, may not be interpreted in a
8 manner that is inconsistent with this section. In establishing such
9 minimum flows, levels, or similar restrictions, the department shall,
10 during all stages of development by the department of ecology of
11 minimum flow proposals, consult with, and carefully consider the
12 recommendations of, the department of fish and wildlife, the department
13 of community, trade, and economic development, and the department of
14 agriculture, and, regarding such flows and instream flow programs
15 proposed for approval under section 6 of this act, representatives of
16 the affected Indian tribes. Nothing herein shall preclude the
17 department of fish and wildlife, the department of community, trade,
18 and economic development, or the department of agriculture from
19 presenting its views on minimum flow needs at any public hearing or to
20 any person or agency, and the department of fish and wildlife, the
21 department of community, trade, and economic development, and the
22 department of agriculture are each empowered to participate in
23 proceedings of the federal energy regulatory commission and other
24 agencies to present its views on minimum flow needs.

25 NEW SECTION. **Sec. 13.** A new section is added to chapter 77.15 RCW
26 to read as follows:

27 The department must recommend to a planning unit or local group of
28 citizens preparing an instream flow program for a watershed under
29 section 6 of this act and to the department of ecology the priority
30 watersheds, tributaries, and stream reaches that require earlier
31 attention in an instream flow program.

32 NEW SECTION. **Sec. 14.** Sections 3 through 11 of this act
33 constitute a new chapter in Title 90 RCW.

34 **Sec. 15.** RCW 90.82.080 and 2003 1st sp.s. c 4 s 4 are each amended
35 to read as follows:

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

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

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

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

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

1 establish the instream flows for those streams for which approval is
2 not achieved.

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

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

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

20 (3) Before setting minimum instream flows under this section, the
21 department shall engage in government-to-government consultation with
22 affected tribes in the management area regarding the setting of such
23 flows.

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

32 (5) If the planning unit is unable to obtain unanimity under
33 subsection (1) of this section, the department (~~may~~) must adopt rules
34 setting such flows.

35 (6) The department shall report annually to the appropriate
36 legislative standing committees on the progress of instream flows being
37 set under this chapter, as well as progress toward setting instream

1 flows in those watersheds not being planned under this chapter. The
2 report shall be made by December 1, 2003, and by December 1st of each
3 subsequent year.

4 **Sec. 16.** RCW 47.12.330 and 1998 c 181 s 2 are each amended to read
5 as follows:

6 For the purpose of environmental mitigation of transportation
7 projects, the department may acquire or develop, or both acquire and
8 develop, environmental mitigation sites and water management programs
9 in advance of the construction of programmed projects. The term
10 "advanced environmental mitigation" means mitigation of adverse impacts
11 upon the environment from transportation projects before their design
12 and construction. Advanced environmental mitigation consists of the
13 acquisition of property; the acquisition of property, water, or air
14 rights; the development of property for the purposes of improved
15 environmental management; engineering costs necessary for such purchase
16 and development; and the use of advanced environmental mitigation sites
17 and water management programs to fulfill project environmental permit
18 requirements. Advanced environmental mitigation must be conducted in
19 a manner that is consistent with the definition of mitigation found in
20 the council of environmental quality regulations (40 C.F.R. Sec.
21 1508.20) and the governor's executive order on wetlands (EO 90-04).
22 Advanced environmental mitigation is for projects approved by the
23 transportation commission as part of the state's six-year plan or
24 included in the state highway system plan. Advanced environmental
25 mitigation must give consideration to activities related to fish
26 passage((τ)) and fish habitat including but not limited to instream
27 flows for streams in the watershed in which the project is in whole or
28 in part located, wetlands, and flood management.

29 Advanced environmental mitigation may also be conducted in
30 partnership with federal, state, or local government agencies, tribal
31 governments, interest groups, or private parties. Partnership
32 arrangements may include joint acquisition and development of
33 mitigation sites, purchasing and selling mitigation bank credits among
34 participants, and transfer of mitigation site title from one party to
35 another. Water rights secured for instream flows must be placed in the
36 trust water rights program of chapter 90.38 or 90.42 RCW and dedicated

1 to instream flows. Specific conditions of partnership arrangements
2 will be developed in written agreements for each other form of
3 mitigation for each applicable environmental mitigation site.

4 As used in this section, a "water management program" includes
5 water rights, water infrastructure, and other water programs that
6 mitigate the project's effects and helps to implement an instream flow
7 program approved under section 6 of this act.

8 NEW SECTION. Sec. 17. A new section is added to chapter 47.12 RCW
9 to read as follows:

10 If an instream flow program has been approved or conditionally
11 approved under section 6 of this act for a watershed and the department
12 is to provide mitigation or advanced mitigation for a project that is
13 located in the watershed, the department shall provide that mitigation
14 in a manner that implements or assists in implementing the instream
15 flow program. If the department is to provide mitigation or advanced
16 mitigation for a project that is located in more than one watershed,
17 the department shall, to the maximum extent possible, concentrate its
18 mitigation efforts for the project as a whole by providing mitigation
19 that implements or assists in implementing the instream flow program or
20 programs that have been approved or conditionally approved under
21 section 6 of this act for any of the watersheds in which the project is
22 located.

23 As used in this section, "watershed" means a water resource
24 inventory area established in chapter 173-500 WAC as it exists of the
25 effective date of this section.

26 NEW SECTION. Sec. 18. A new section is added to chapter 43.27A
27 RCW to read as follows:

28 (1) In order to prevent or remedy the impairment of a water right
29 embodied in an instream flow rule or held by the state as a trust water
30 right, the department is authorized to bring an appropriate action at
31 law or in equity, including seeking injunctive relief, in a state
32 superior court, as it may deem necessary. Such an action must be
33 initiated in the superior court of the county where the point or points
34 of diversion or withdrawal of the water right or rights are located.
35 If the points of diversion or withdrawal are located in more than one
36 county, the department may bring the action in a county where a point

1 of diversion or withdrawal is located. Notwithstanding the general
2 adjudication procedures in RCW 90.03.110 through 90.03.245 and
3 90.44.220, the superior court shall make findings and a determination
4 of the validity and priority of the water rights held by the parties as
5 needed to address any impairment of water rights. The superior court
6 shall issue any necessary orders to implement its findings and
7 determination, including injunctive relief, that it determines is
8 necessary to regulate among the water rights.

9 (2) Nothing in this section authorizes the department or the
10 superior court to accomplish a general adjudication of water rights
11 proceeding or the substantial equivalent of a general adjudication of
12 water rights. The exclusive procedure for accomplishing a general
13 adjudication of water rights is under RCW 90.03.110 through 90.03.245
14 or 90.44.220.

15 (3) This section does not in any way modify regulatory powers
16 previously placed with the department before the effective date of this
17 section.

18 **Sec. 19.** RCW 90.42.080 and 2002 c 329 s 9 are each amended to read
19 as follows:

20 (1)(a) The state may acquire all or portions of existing water
21 rights, by purchase, gift, or other appropriate means other than by
22 condemnation, from any person or entity or combination of persons or
23 entities. Once acquired, such rights are trust water rights. A water
24 right acquired by the state that is expressly conditioned to limit its
25 use to instream purposes shall be administered as a trust water right
26 in compliance with that condition.

27 (b) If the holder of a right to water from a body of water chooses
28 to donate all or a portion of the person's water right to the trust
29 water system to assist in providing instream flows on a temporary or
30 permanent basis, the department shall accept the donation on such terms
31 as the person may prescribe as long as the donation satisfies the
32 requirements of subsection (4) of this section and the other applicable
33 requirements of this chapter and the terms prescribed are relevant and
34 material to protecting any interest in the water right retained by the
35 donor. Once accepted, such rights are trust water rights within the
36 conditions prescribed by the donor.

1 (2) The department may enter into leases, contracts, or such other
2 arrangements with other persons or entities as appropriate, to ensure
3 that trust water rights acquired in accordance with this chapter may be
4 exercised to the fullest possible extent.

5 (3) Trust water rights may be acquired by the state on a temporary
6 or permanent basis.

7 (4) A water right donated under subsection (1)(b) of this section
8 shall not exceed the extent to which the water right was exercised
9 during the five years before the donation nor may the total of any
10 portion of the water right remaining with the donor plus the donated
11 portion of the water right exceed the extent to which the water right
12 was exercised during the five years before the donation. A water right
13 holder who believes his or her water right has been impaired by a trust
14 water right donated under subsection (1)(b) of this section may request
15 that the department review the impairment claim. If the department
16 determines that exercising the trust water right resulting from the
17 donation or exercising a portion of that trust water right donated
18 under subsection (1)(b) of this section is impairing existing water
19 rights in violation of RCW 90.42.070, the trust water right shall be
20 altered by the department to eliminate the impairment. Any decision of
21 the department to alter or not to alter a trust water right donated
22 under subsection (1)(b) of this section is appealable to the pollution
23 control hearings board under RCW 43.21B.230. A donated water right's
24 status as a trust water right under this subsection is not evidence of
25 the validity or quantity of the water right.

26 (5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to
27 donations for instream flows described in subsection (1)(b) of this
28 section, but do apply to other transfers of water rights under this
29 section.

30 ~~(6) ((No funds may be expended for the purchase of water rights by
31 the state pursuant to this section unless specifically appropriated for
32 this purpose by the legislature.~~

33 ~~(7))~~ Any water right conveyed to the trust water right system as
34 a gift that is expressly conditioned to limit its use to instream
35 purposes shall be managed by the department for public purposes to
36 ensure that it qualifies as a gift that is deductible for federal
37 income taxation purposes for the person or entity conveying the water
38 right.

1 ~~((+8))~~ (7) If the department acquires a trust water right by
2 lease, the amount of the trust water right shall not exceed the extent
3 to which the water right was exercised during the five years before the
4 acquisition was made nor may the total of any portion of the water
5 right remaining with the original water right holder plus the portion
6 of the water right leased by the department exceed the extent to which
7 the water right was exercised during the five years before the
8 acquisition. A water right holder who believes his or her water right
9 has been impaired by a trust water right leased under this subsection
10 may request that the department review the impairment claim. If the
11 department determines that exercising the trust water right resulting
12 from the leasing or exercising of a portion of that trust water right
13 leased under this subsection is impairing existing water rights in
14 violation of RCW 90.42.070, the trust water right shall be altered by
15 the department to eliminate the impairment. Any decision of the
16 department to alter or not to alter a trust water right leased under
17 this subsection is appealable to the pollution control hearings board
18 under RCW 43.21B.230. The department's leasing of a trust water right
19 under this subsection is not evidence of the validity or quantity of
20 the water right.

21 ~~((+9))~~ (8) For a water right donated to or acquired by the trust
22 water rights program on a temporary basis, the full quantity of water
23 diverted or withdrawn to exercise the right before the donation or
24 acquisition shall be placed in the trust water rights program and shall
25 revert to the donor or person from whom it was acquired when the trust
26 period ends.

27 **Sec. 20.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
28 read as follows:

29 (1) The hearings board shall only have jurisdiction to hear and
30 decide appeals from the following decisions of the department, the
31 director, local conservation districts, and the air pollution control
32 boards or authorities as established pursuant to chapter 70.94 RCW, or
33 local health departments:

34 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
35 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
36 90.56.330.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
3 90.14.130, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,
5 modification, or termination of any permit, certificate, or license by
6 the department or any air authority in the exercise of its
7 jurisdiction, including the issuance or termination of a waste disposal
8 permit, the denial of an application for a waste disposal permit, the
9 modification of the conditions or the terms of a waste disposal permit,
10 or a decision to approve or deny an application for a solid waste
11 permit exemption under RCW 70.95.300.

12 (d) Decisions of local health departments regarding the grant or
13 denial of solid waste permits pursuant to chapter 70.95 RCW.

14 (e) Decisions of local health departments regarding the issuance
15 and enforcement of permits to use or dispose of biosolids under RCW
16 70.95J.080.

17 (f) Decisions of the department regarding waste-derived fertilizer
18 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
19 department regarding waste-derived soil amendments under RCW 70.95.205.

20 (g) Decisions of local conservation districts related to the denial
21 of approval or denial of certification of a dairy nutrient management
22 plan; conditions contained in a plan; application of any dairy nutrient
23 management practices, standards, methods, and technologies to a
24 particular dairy farm; and failure to adhere to the plan review and
25 approval timelines in RCW 90.64.026.

26 (h) Actions taken by the departments of ecology and fish and
27 wildlife to approve, conditionally approve, or disapprove an instream
28 flow program under section 6 of this act. In reviewing such an action
29 regarding such a program, the board must consider any analysis
30 submitted by the independent science panel under section 6(1)(b) of
31 this act regarding the program.

32 (i) Any other decision by the department or an air authority which
33 pursuant to law must be decided as an adjudicative proceeding under
34 chapter 34.05 RCW.

35 (2) The following hearings shall not be conducted by the hearings
36 board:

37 (a) Hearings required by law to be conducted by the shorelines
38 hearings board pursuant to chapter 90.58 RCW.

1 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
2 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

3 (c) Proceedings conducted by the department, or the department's
4 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

5 (d) Hearings conducted by the department to adopt, modify, or
6 repeal rules.

7 (e) Appeals of decisions by the department as provided in chapter
8 43.21L RCW.

9 (3) Review of rules and regulations adopted by the hearings board
10 shall be subject to review in accordance with the provisions of the
11 Administrative Procedure Act, chapter 34.05 RCW.

12 **Sec. 21.** RCW 34.05.370 and 1998 c 280 s 7 are each amended to read
13 as follows:

14 (1) Each agency shall maintain an official rule-making file for
15 each rule that it (a) proposes by publication in the state register, or
16 (b) adopts. The file and materials incorporated by reference shall be
17 available for public inspection.

18 (2) The agency rule-making file shall contain all of the following:

19 (a) A list of citations to all notices in the state register with
20 respect to the rule or the proceeding upon which the rule is based;

21 (b) Copies of any portions of the agency's public rule-making
22 docket containing entries relating to the rule or the proceeding on
23 which the rule is based;

24 (c) All written petitions, requests, submissions, and comments
25 received by the agency and all other written material regarded by the
26 agency as important to adoption of the rule or the proceeding on which
27 the rule is based;

28 (d) Any official transcript of oral presentations made in the
29 proceeding on which the rule is based or, if not transcribed, any tape
30 recording or stenographic record of them, and any memorandum prepared
31 by a presiding official summarizing the contents of those
32 presentations;

33 (e) All petitions for exceptions to, amendment of, or repeal or
34 suspension of, the rule;

35 (f) Citations to data, factual information, studies, or reports on
36 which the agency relies in the adoption of the rule, indicating where
37 such data, factual information, studies, or reports are available for

1 review by the public, but this subsection (2)(f) does not require the
2 agency to include in the rule-making file any data, factual
3 information, studies, or reports gathered pursuant to chapter 19.85 RCW
4 or RCW 34.05.328 that can be identified to a particular business;

5 (g) The concise explanatory statement required by RCW 34.05.325(6);
6 (~~and~~))

7 (h) Any analysis provided by the independent science panel
8 regarding the rule under section 2(1)(b) of this act; and

9 (i) Any other material placed in the file by the agency.

10 (3) Internal agency documents are exempt from inclusion in the
11 rule-making file under subsection (2) of this section to the extent
12 they constitute preliminary drafts, notes, recommendations, and intra-
13 agency memoranda in which opinions are expressed or policies formulated
14 or recommended, except that a specific document is not exempt from
15 inclusion when it is publicly cited by an agency in connection with its
16 decision.

17 (4) Upon judicial review, the file required by this section
18 constitutes the official agency rule-making file with respect to that
19 rule. Unless otherwise required by another provision of law, the
20 official agency rule-making file need not be the exclusive basis for
21 agency action on that rule.

22 **Sec. 22.** RCW 39.34.190 and 2003 c 327 s 2 are each amended to read
23 as follows:

24 (1) The legislative authority of a city or county and the governing
25 body of any special purpose district enumerated in subsection (2) of
26 this section may (~~authorize up to ten percent of its~~) expend water-
27 related revenues to (~~be expended in the implementation of~~) implement
28 watershed management plan projects or activities that are in addition
29 to the county's, city's, or district's existing water-related services
30 or activities. (~~Such limitation on expenditures shall not apply to~~
31 ~~additional revenues for watershed plan implementation that are~~
32 ~~authorized by voter approval under section 5 of this act or to water-~~
33 ~~related revenues of a public utility district organized according to~~
34 ~~Title 54 RCW.~~) Water-related revenues include rates, charges, and
35 fees for the provision of services relating to water supply, treatment,
36 distribution, and management generally, and those general revenues of
37 the local government that are expended for water management purposes.

1 A local government may not expend for this purpose any revenues that
2 were authorized by voter approval for other specified purposes or that
3 are specifically dedicated to the repayment of municipal bonds or other
4 debt instruments.

5 (2) The following special purpose districts may exercise the
6 authority provided by this section:

7 (a) Water districts, sewer districts, and water-sewer districts
8 organized under Title 57 RCW;

9 (b) Public utility districts organized under Title 54 RCW;

10 (c) Irrigation, reclamation, conservation, and similar districts
11 organized under Titles 87 and 89 RCW;

12 (d) Port districts organized under Title 53 RCW;

13 (e) Diking, drainage, and similar districts organized under Title
14 85 RCW;

15 (f) Flood control and similar districts organized under Title 86
16 RCW;

17 (g) Lake management districts organized under chapter 36.61 RCW;

18 (h) Aquifer protection areas organized under chapter 36.36 RCW; and

19 (i) Shellfish protection districts organized under chapter 90.72
20 RCW.

21 (3) The authority for expenditure of local government revenues
22 provided by this section shall be applicable broadly to the
23 implementation of watershed management plans addressing water supply,
24 water transmission, water quality treatment or protection, or any other
25 water-related purposes. Such plans include but are not limited to
26 plans developed under the following authorities:

27 (a) Watershed plans developed under chapter 90.82 RCW;

28 (b) Salmon recovery plans developed under chapter 77.85 RCW;

29 (c) Watershed management elements of comprehensive land use plans
30 developed under the growth management act, chapter 36.70A RCW;

31 (d) Watershed management elements of shoreline master programs
32 developed under the shoreline management act, chapter 90.58 RCW;

33 (e) Nonpoint pollution action plans developed under the Puget Sound
34 water quality management planning authorities of chapter 90.71 RCW and
35 chapter 400-12 WAC;

36 (f) Other comprehensive management plans addressing watershed
37 health at a WRIA level or sub-WRIA basin drainage level;

1 (g) Coordinated water system plans under chapter 70.116 RCW and
2 similar regional plans for water supply; and

3 (h) Any combination of the foregoing plans in an integrated
4 watershed management plan.

5 (4) The authority provided by this section to expend revenues for
6 watershed management plan implementation shall be construed broadly to
7 include, but not be limited to:

8 (a) The coordination and oversight of plan implementation,
9 including funding a watershed management partnership for this purpose;

10 (b) Technical support, monitoring, and data collection and
11 analysis;

12 (c) The design, development, construction, and operation of
13 projects included in the plan; and

14 (d) Conducting activities and programs included as elements in the
15 plan.

16 NEW SECTION. **Sec. 23.** A task force composed of representatives of
17 the department of ecology, the department of community, trade, and
18 economic development, and the conservation commission must conduct a
19 study of the feasibility and practical effects of storing storm water
20 on farm lands and of designating areas into which flood waters may be
21 diverted or allowed access for the purposes of both: Enhancing the
22 recharge of aquifers for the release of waters to streams at times that
23 would assist in securing needed streamflows; and as a means of reducing
24 potential flood damage from a storm or flood event in this state. If
25 the task force finds that such activities if taken in this state would
26 likely reduce flood damage, the task force must also identify actions
27 that the state should take to encourage and permit the activities,
28 including incentives the state should provide to promote such
29 activities. The task force must report its findings, recommendations,
30 and proposed legislation to implement its recommendations to the
31 governor and the appropriate committees of the legislature by December
32 31, 2005, at which time the task force expires.

33 NEW SECTION. **Sec. 24.** (1) The department of ecology must convene
34 and provide staff support for a water resources administration and
35 funding task force. The task force must review the administrative
36 organization and activities of the departments of ecology and fish and

1 wildlife regarding their water resources functions and the statutory
2 requirements and authorities for those functions, including those
3 directing the department of ecology's enforcement activities and
4 authorizing the redirection of the use of department of ecology funding
5 and resources. Based on its review, the task force must identify
6 administrative policies and an organizational structure that it
7 believes would provide an efficient and effective water resources
8 program under current law. Once the task force has identified that
9 structure and those policies, the task force shall develop proposals
10 for and recommend several options for funding the state's water
11 resource programs, including both operating programs and capital costs
12 for water program implementation. The task force must report its
13 findings and its recommendations to the governor and the appropriate
14 committees of the legislature by September 15, 2004.

15 (2) The task force must consist of:

16 (a) One representative from each of the following interests:
17 Agriculture, industry, environmental, fisheries, water utilities, and
18 power utilities;

19 (b) One representative of cities and one representative of
20 counties;

21 (c) Two representatives of Indian tribes, one from eastern
22 Washington and one from western Washington; and

23 (d) Three representatives of the executive branch of state
24 government.

25 (3) The department of ecology must invite a representative of the
26 United States bureau of reclamation to participate as a member of the
27 task force.

--- END ---