
HOUSE BILL 2363

State of Washington

52nd Legislature

1992 Regular Session

By Representatives Sheldon, Brumsickle, Belcher, P. Johnson, Hine, Rasmussen, Ebersole, Fraser, R. Johnson, Dorn, Jones, Heavey, Paris, J. Kohl, Spanel, May, Leonard and Pruitt; by request of Puget Sound Water Quality Authority

Read first time 01/15/92. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to the reduction of nonpoint source pollution in
2 counties with shellfish growing tidelands; amending RCW 90.72.030,
3 90.72.040, 90.72.070, 82.49.030, 36.70A.020, 36.70A.030, and
4 36.70A.070; adding new sections to chapter 90.72 RCW; adding a new
5 section to chapter 88.36 RCW; repealing RCW 90.72.010 and 90.72.050;
6 and providing effective dates.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.72 RCW
9 to read as follows:

10 The legislature finds that shellfish harvesting is important to our
11 economy and way of life. Washington state is an international leader
12 in the cultivation and production of shellfish. However, large
13 portions of the state's productive recreational and commercial
14 shellfish beds are closed to harvesting, and more are threatened,

1 because of water pollution. The legislature finds that the problem of
2 shellfish bed closures demands a public policy solution and that the
3 state, local governments, and individuals must each take strong and
4 swift action or this precious resource will be lost.

5 It is the goal of the legislature to prevent further closures of
6 recreational and commercial shellfish beds, to restore water quality in
7 saltwater tidelands to allow the reopening of at least one restricted
8 or closed shellfish bed each year, and to ensure Washington state's
9 commanding international position in shellfish production.

10 The legislature finds that failing on-site sewage systems and
11 animal waste are the two most significant causes of shellfish bed
12 closures over the past decade. Remedial actions at the local level are
13 required to effectively address these problems.

14 The legislature finds that existing entities, including
15 conservation districts and local health departments, should be used by
16 counties to address the water quality problems affecting the
17 recreational and commercial shellfish harvest.

18 The legislature finds that local action in each watershed where
19 shellfish are harvested is required to protect this vital resource.
20 The legislature hereby encourages all counties having saltwater
21 tidelands within their boundaries to establish watershed protection
22 districts and programs designed to prevent any further degradation and
23 contamination and to allow for restoration and reopening of closed
24 shellfish growing areas.

25 **Sec. 2.** RCW 90.72.030 and 1985 c 417 s 3 are each amended to read
26 as follows:

27 The legislative authority of each county having ((shellfish))
28 saltwater tidelands within its boundaries is authorized to establish a
29 ((shellfish)) watershed protection district to include areas in which

1 nonpoint pollution threatens water quality or the continuation of
2 shellfish farming or harvesting. The legislative authority shall
3 constitute the governing body of the district and shall adopt a
4 ~~((shellfish))~~ watershed protection program to be effective within the
5 district. The legislative authority may appoint a local advisory
6 council to advise the legislative authority in preparation and
7 implementation of watershed protection programs. This program ~~((may))~~
8 shall include any elements deemed appropriate to deal with the nonpoint
9 pollution ~~((threat))~~ threatening water quality, including, but not
10 limited to, requiring the elimination or decrease of contaminants in
11 storm water runoff, establishing monitoring ~~((programs))~~, inspection,
12 and repair elements to ~~((make sure that septic drainfield))~~ ensure that
13 on-site sewage systems are adequately maintained and working properly
14 ~~((and))~~, assuring that animal grazing and manure management practices
15 are ~~((appropriate))~~ consistent with best management practices, and
16 establishing educational and public involvement programs to inform
17 citizens on the causes of the threatening nonpoint pollution and what
18 they can do to decrease the amount of such pollution. Within the
19 limits of RCW 90.72.070, the county legislative authority shall have
20 full jurisdiction and authority to manage, regulate, and control its
21 programs and to fix, alter, regulate, and control the fees for services
22 provided and charges or rates as provided under those programs.
23 Programs established under this chapter, may, but are not required to,
24 be part of a system of sewerage as defined in RCW 36.94.010.

25 **Sec. 3.** RCW 90.72.040 and 1985 c 417 s 4 are each amended to read
26 as follows:

27 The county legislative authority may create a ~~((shellfish))~~
28 watershed protection district on its own motion or by submitting the
29 question to the voters of the proposed district and obtaining the

1 approval of a majority of those voting. The boundaries of the district
2 shall be determined by the legislative authority. The legislative
3 authority may create more than one district. A district may include
4 any area or areas within the county, whether incorporated or
5 unincorporated. Counties shall coordinate and cooperate with
6 incorporated areas within their boundaries in establishing watershed
7 protection districts and carrying out watershed protection programs.
8 The legislative authority of more than one county may by agreement
9 provide for the creation of a district including areas within each of
10 those counties. County legislative authorities are encouraged to
11 coordinate their plans and programs to protect shellfish tidelands,
12 especially where shellfish growing areas are located within the
13 boundaries of more than one county. The legislative authority or
14 authorities creating a district may abolish a ((shellfish)) watershed
15 protection district on its or their own motion or by submitting the
16 question to the voters of the district and obtaining the approval of a
17 majority of those voting.

18 NEW SECTION. Sec. 4. A new section is added to chapter 90.72 RCW
19 to read as follows:

20 The county legislative authority shall create a watershed
21 protection district and establish a watershed protection program to
22 address causes of pollution within one hundred eighty days after the
23 department of health, because of water quality degradation, has closed
24 or downgraded the classification of a recreational or commercial
25 shellfish growing area within the boundaries of the county.

26 NEW SECTION. Sec. 5. A new section is added to chapter 90.72 RCW
27 to read as follows:

1 Within available funding and as specified in the watershed
2 protection program, counties creating watershed protection districts
3 shall contract with conservation districts to draft plans with
4 landowners to control pollution effects of animal waste.

5 **Sec. 6.** RCW 90.72.070 and 1985 c 417 s 7 are each amended to read
6 as follows:

7 The county legislative authority establishing a ~~((shellfish))~~
8 watershed protection district may finance the protection program
9 through (1) ~~((its))~~ county tax revenues, (2) inspection fees and
10 similar fees ~~((or))~~ for services performed, (3) charges or rates
11 specified in its protection program, or ~~((+3+))~~ (4) federal, state, or
12 private grants. Counties may collect household charges or rates in the
13 manner determined by the county legislative authority.

14 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.72 RCW
15 to read as follows:

16 Counties may issue general obligation bonds, revenue bonds, and
17 other evidences of indebtedness to assist in carrying out the programs
18 of watershed protection districts, and counties may issue revenue bonds
19 and other revenue obligations payable from fees, household charges, and
20 other revenue of districts. Any such obligations shall be issued in
21 accordance with chapter 36.67 or 36.94 RCW.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.72 RCW
23 to read as follows:

24 Counties that have formed watershed protection districts under the
25 provisions of chapter 90.72 RCW shall receive high priority for state
26 water quality grants and loans to implement shellfish protection

1 programs, including grants and loans provided under chapters 43.99F,
2 70.146, and 90.50A RCW.

3 **Sec. 9.** RCW 82.49.030 and 1991 sp.s. c 16 s 925 are each amended
4 to read as follows:

5 (1) The excise tax imposed under this chapter is due and payable to
6 the department of licensing or its agents at the time of registration
7 of a vessel. The department of licensing shall not issue or renew a
8 registration for a vessel until the tax is paid in full.

9 (2) The excise tax collected under this chapter shall be deposited
10 in the general fund.

11 (3) (~~For the 1993-95 Fiscal biennium~~) Until June 30, 1999, the
12 watercraft excise tax revenues exceeding five million dollars in each
13 fiscal year, but not exceeding six million dollars, may, subject to
14 appropriation by the legislature, be used for the purposes specified in
15 RCW 88.36.100.

16 NEW SECTION. **Sec. 10.** A new section is added to chapter 88.36 RCW
17 to read as follows:

18 The commission shall seek to provide the most cost efficient and
19 accessible facilities possible for reducing the amount of boat waste
20 entering the state's waters. The commission shall consider providing
21 funding support for portable pumpout facilities in this effort.

22 **Sec. 11.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each
23 amended to read as follows:

24 The following goals are adopted to guide the development and
25 adoption of comprehensive plans and development regulations of those
26 counties and cities that are required or choose to plan under RCW
27 36.70A.040. The following goals are not listed in order of priority

1 and shall be used exclusively for the purpose of guiding the
2 development of comprehensive plans and development regulations:

3 (1) Urban growth. Encourage development in urban areas where
4 adequate public facilities and services exist or can be provided in an
5 efficient manner.

6 (2) Reduce sprawl. Reduce the inappropriate conversion of
7 undeveloped land into sprawling, low-density development.

8 (3) Transportation. Encourage efficient multimodal transportation
9 systems that are based on regional priorities and coordinated with
10 county and city comprehensive plans.

11 (4) Housing. Encourage the availability of affordable housing to
12 all economic segments of the population of this state, promote a
13 variety of residential densities and housing types, and encourage
14 preservation of existing housing stock.

15 (5) Economic development. Encourage economic development
16 throughout the state that is consistent with adopted comprehensive
17 plans, promote economic opportunity for all citizens of this state,
18 especially for unemployed and for disadvantaged persons, and encourage
19 growth in areas experiencing insufficient economic growth, all within
20 the capacities of the state's natural resources, public services, and
21 public facilities.

22 (6) Property rights. Private property shall not be taken for
23 public use without just compensation having been made. The property
24 rights of landowners shall be protected from arbitrary and
25 discriminatory actions.

26 (7) Permits. Applications for both state and local government
27 permits should be processed in a timely and fair manner to ensure
28 predictability.

29 (8) Natural resource industries. Maintain and enhance natural
30 resource-based industries, including productive timber, agricultural,

1 shellfish, and fisheries industries. Encourage the conservation of
2 productive forest lands and productive agricultural lands and shellfish
3 tidelands, and discourage incompatible uses.

4 (9) Open space and recreation. Encourage the retention of open
5 space and development of recreational opportunities, conserve fish and
6 wildlife habitat, increase access to natural resource lands and water,
7 and develop parks.

8 (10) Environment. Protect the environment and enhance the state's
9 high quality of life, including air and water quality, and the
10 availability of water.

11 (11) Citizen participation and coordination. Encourage the
12 involvement of citizens in the planning process and ensure coordination
13 between communities and jurisdictions to reconcile conflicts.

14 (12) Public facilities and services. Ensure that those public
15 facilities and services necessary to support development shall be
16 adequate to serve the development at the time the development is
17 available for occupancy and use without decreasing current service
18 levels below locally established minimum standards.

19 (13) Historic preservation. Identify and encourage the
20 preservation of lands, sites, and structures, that have historical or
21 archaeological significance.

22 **Sec. 12.** RCW 36.70A.030 and 1990 1st ex.s. c 17 s 3 are each
23 amended to read as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

26 (1) "Adopt a comprehensive land use plan" means to enact a new
27 comprehensive land use plan or to update an existing comprehensive land
28 use plan.

1 (2) "Agricultural land" means land primarily devoted to the
2 commercial production of horticultural, viticultural, floricultural,
3 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
4 straw, turf, seed, Christmas trees not subject to the excise tax
5 imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has
6 long-term commercial significance for agricultural production.

7 (3) "City" means any city or town, including a code city.

8 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
9 means a generalized coordinated land use policy statement of the
10 governing body of a county or city that is adopted pursuant to this
11 chapter.

12 (5) "Critical areas" include the following areas and ecosystems:
13 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
14 used for potable water; (c) fish and wildlife habitat conservation
15 areas and shellfish growing areas; (d) frequently flooded areas; and
16 (e) geologically hazardous areas.

17 (6) "Department" means the department of community development.

18 (7) "Development regulations" means any controls placed on
19 development or land use activities by a county or city, including, but
20 not limited to, zoning ordinances, official controls, planned unit
21 development ordinances, subdivision ordinances, and binding site plan
22 ordinances.

23 (8) "Forest land" means land primarily useful for growing trees,
24 including Christmas trees subject to the excise tax imposed under RCW
25 84.33.100 through 84.33.140, for commercial purposes, and that has
26 long-term commercial significance for growing trees commercially.

27 (9) "Geologically hazardous areas" means areas that because of
28 their susceptibility to erosion, sliding, earthquake, or other
29 geological events, are not suited to the siting of commercial,

1 residential, or industrial development consistent with public health or
2 safety concerns.

3 (10) "Long-term commercial significance" includes the growing
4 capacity, productivity, and soil composition of the land for long-term
5 commercial production, in consideration with the land's proximity to
6 population areas, and the possibility of more intense uses of the land.

7 (11) "Minerals" include gravel, sand, and valuable metallic
8 substances.

9 (12) "Public facilities" include streets, roads, highways,
10 sidewalks, street and road lighting systems, traffic signals, domestic
11 water systems, storm and sanitary sewer systems, parks and recreational
12 facilities, and schools.

13 (13) "Public services" include fire protection and suppression, law
14 enforcement, public health, education, recreation, environmental
15 protection, and other governmental services.

16 (14) "Shellfish growing areas" means those areas used for
17 commercial or recreational growing and harvesting of bivalve shellfish,
18 including oysters, clams, mussels, and scallops.

19 (15) "Urban growth" refers to growth that makes intensive use of
20 land for the location of buildings, structures, and impermeable
21 surfaces to such a degree as to be incompatible with the primary use of
22 such land for the production of food, other agricultural products, or
23 fiber, or the extraction of mineral resources. When allowed to spread
24 over wide areas, urban growth typically requires urban governmental
25 services. "Characterized by urban growth" refers to land having urban
26 growth located on it, or to land located in relationship to an area
27 with urban growth on it as to be appropriate for urban growth.

28 ((+15+)) (16) "Urban growth areas" means those areas designated by
29 a county pursuant to RCW 36.70A.110.

1 (~~(16)~~) (17) "Urban governmental services" include those
2 governmental services historically and typically delivered by cities,
3 and include storm and sanitary sewer systems, domestic water systems,
4 street cleaning services, fire and police protection services, public
5 transit services, and other public utilities associated with urban
6 areas and normally not associated with nonurban areas.

7 (~~(17)~~) (18) "Wetland" or "wetlands" means areas that are
8 inundated or saturated by surface water or ground water at a frequency
9 and duration sufficient to support, and that under normal circumstances
10 do support, a prevalence of vegetation typically adapted for life in
11 saturated soil conditions. Wetlands generally include swamps, marshes,
12 bogs, and similar areas. Wetlands do not include those artificial
13 wetlands intentionally created from nonwetland sites, including, but
14 not limited to, irrigation and drainage ditches, grass-lined swales,
15 canals, detention facilities, wastewater treatment facilities, farm
16 ponds, and landscape amenities. However, wetlands may include those
17 artificial wetlands intentionally created from nonwetland areas created
18 to mitigate conversion of wetlands, if permitted by the county or city.

19 **Sec. 13.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
20 amended to read as follows:

21 The comprehensive plan of a county or city that is required or
22 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
23 and descriptive text covering objectives, principles, and standards
24 used to develop the comprehensive plan. The plan shall be an
25 internally consistent document and all elements shall be consistent
26 with the future land use map. A comprehensive plan shall be adopted
27 and amended with public participation as provided in RCW 36.70A.140.

28 Each comprehensive plan shall include a plan, scheme, or design for
29 each of the following:

1 (1) A land use element designating the proposed general
2 distribution and general location and extent of the uses of land, where
3 appropriate, for agriculture, timber production, housing, commerce,
4 industry, recreation, open spaces, public utilities, public facilities,
5 and other land uses. The land use element shall include population
6 densities, building intensities, and estimates of future population
7 growth. The land use element shall provide for protection of the
8 quality and quantity of ground water used for public water supplies and
9 quality of marine water in shellfish growing areas. Where applicable,
10 the land use element shall review drainage, flooding, and storm water
11 run-off in the area and nearby jurisdictions and provide guidance for
12 corrective actions to mitigate or cleanse those discharges that pollute
13 waters of the state, including Puget Sound or waters entering Puget
14 Sound.

15 (2) A housing element recognizing the vitality and character of
16 established residential neighborhoods that: (a) Includes an inventory
17 and analysis of existing and projected housing needs; (b) includes a
18 statement of goals, policies, and objectives for the preservation,
19 improvement, and development of housing; (c) identifies sufficient land
20 for housing, including, but not limited to, government-assisted
21 housing, housing for low-income families, manufactured housing,
22 multifamily housing, and group homes and foster care facilities; and
23 (d) makes adequate provisions for existing and projected needs of all
24 economic segments of the community.

25 (3) A capital facilities plan element consisting of: (a) An
26 inventory of existing capital facilities owned by public entities,
27 showing the locations and capacities of the capital facilities; (b) a
28 forecast of the future needs for such capital facilities; (c) the
29 proposed locations and capacities of expanded or new capital
30 facilities; (d) at least a six-year plan that will finance such capital

1 facilities within projected funding capacities and clearly identifies
2 sources of public money for such purposes; and (e) a requirement to
3 reassess the land use element if probable funding falls short of
4 meeting existing needs and to ensure that the land use element, capital
5 facilities plan element, and financing plan within the capital
6 facilities plan element are coordinated and consistent.

7 (4) A utilities element consisting of the general location,
8 proposed location, and capacity of all existing and proposed utilities,
9 including, but not limited to, electrical lines, telecommunication
10 lines, and natural gas lines.

11 (5) Counties shall include a rural element including lands that are
12 not designated for urban growth, agriculture, forest, or mineral
13 resources. The rural element shall permit land uses that are
14 compatible with the rural character of such lands and provide for a
15 variety of rural densities.

16 (6) A transportation element that implements, and is consistent
17 with, the land use element. The transportation element shall include
18 the following subelements:

19 (a) Land use assumptions used in estimating travel;

20 (b) Facilities and services needs, including:

21 (i) An inventory of air, water, and land transportation facilities
22 and services, including transit alignments, to define existing capital
23 facilities and travel levels as a basis for future planning;

24 (ii) Level of service standards for all arterials and transit
25 routes to serve as a gauge to judge performance of the system. These
26 standards should be regionally coordinated;

27 (iii) Specific actions and requirements for bringing into
28 compliance any facilities or services that are below an established
29 level of service standard;

1 (iv) Forecasts of traffic for at least ten years based on the
2 adopted land use plan to provide information on the location, timing,
3 and capacity needs of future growth;

4 (v) Identification of system expansion needs and transportation
5 system management needs to meet current and future demands;

6 (c) Finance, including:

7 (i) An analysis of funding capability to judge needs against
8 probable funding resources;

9 (ii) A multiyear financing plan based on the needs identified in
10 the comprehensive plan, the appropriate parts of which shall serve as
11 the basis for the six-year street, road, or transit program required by
12 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
13 35.58.2795 for public transportation systems;

14 (iii) If probable funding falls short of meeting identified needs,
15 a discussion of how additional funding will be raised, or how land use
16 assumptions will be reassessed to ensure that level of service
17 standards will be met;

18 (d) Intergovernmental coordination efforts, including an assessment
19 of the impacts of the transportation plan and land use assumptions on
20 the transportation systems of adjacent jurisdictions;

21 (e) Demand-management strategies.

22 After adoption of the comprehensive plan by jurisdictions required
23 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
24 must adopt and enforce ordinances which prohibit development approval
25 if the development causes the level of service on a transportation
26 facility to decline below the standards adopted in the transportation
27 element of the comprehensive plan, unless transportation improvements
28 or strategies to accommodate the impacts of development are made
29 concurrent with the development. These strategies may include
30 increased public transportation service, ride sharing programs, demand

1 management, and other transportation systems management strategies.
2 For the purposes of this subsection (6) "concurrent with the
3 development" shall mean that improvements or strategies are in place at
4 the time of development, or that a financial commitment is in place to
5 complete the improvements or strategies within six years.

6 The transportation element described in this subsection, and the
7 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
8 counties, and RCW 35.58.2795 for public transportation systems, must be
9 consistent.

10 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
11 each repealed:

12 (1) RCW 90.72.010 and 1985 c 417 s 1; and

13 (2) RCW 90.72.050 and 1985 c 417 s 5.

14 NEW SECTION. **Sec. 15.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 16.** Section 9 of this act shall take effect
19 July 1, 1993.

20 NEW SECTION. **Sec. 17.** Sections 11 through 13 of this act shall
21 take effect July 1, 1994.