

SENATE BILL 5074

State of Washington 52nd Legislature 1991 Regular Session

By Senators Metcalf, Talmadge and Skratek.

Read first time January 18, 1991. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to protecting Puget Sound and other water bodies of
2 Washington; amending RCW 90.70.011, 90.70.060, 90.70.025, 90.70.070,
3 43.88.030, 82.02.090, 36.70A.070, 17.21.030, 15.58.100, 90.48.037,
4 43.21B.300, 90.48.140, 43.131.369, 43.131.370, and 90.70.902;
5 reenacting and amending RCW 70.146.060; adding new sections to chapter
6 90.48 RCW; adding a new section to chapter 70.146 RCW; adding a new
7 section to chapter 46.68 RCW; adding a new section to chapter 15.58
8 RCW; creating new sections; making appropriations; providing an
9 effective date; and prescribing penalties.

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

11 **Sec. 1.** RCW 90.70.011 and 1990 c 115 s 2 are each amended to read
12 as follows:

13 AUTHORITY CHAIR SELECTION. (1) There is established the Puget
14 Sound water quality authority composed of eleven members. Nine members
15 shall be appointed by the governor and confirmed by the senate. In

1 addition, the commissioner of public lands (~~or the commissioner's~~
2 ~~designee~~)) and the director of ecology (~~or the director's designee~~)
3 shall serve as ex officio members. Three of the members shall include
4 a representative from the counties, a representative from the cities,
5 and a tribal representative. The (~~director of ecology shall be~~)
6 chair of the authority shall be chosen from among the authority members
7 by the authority. The position of chair shall be rotated annually. In
8 making these appointments, the governor shall seek to include
9 representation of the variety of interested parties concerned about
10 Puget Sound water quality. Of the appointed members, at least one
11 shall be selected from each of the six congressional districts
12 surrounding Puget Sound. All votes shall be cast by members.
13 Designees or alternates may not vote. Members shall serve four-year
14 terms. Of the initial members appointed to the authority, two shall
15 serve for two years, two shall serve for three years, and two shall
16 serve for four years. Thereafter members shall be appointed to four-
17 year terms. Members representing cities, counties, and the tribes
18 shall also serve four-year staggered terms, as determined by the
19 governor. Vacancies shall be filled by appointment for the remainder
20 of the unexpired term of the position being vacated. The executive
21 director of the authority shall be selected by the governor and shall
22 serve at the pleasure of the governor. The executive director shall
23 not be a member of the authority.

24 (2) Members shall be compensated as provided in RCW 43.03.250.
25 Members shall be reimbursed for travel expenses as provided in RCW
26 43.03.050 and 43.03.060.

27 (3) The executive director of the authority shall be a full-time
28 employee responsible for the administration of all functions of the
29 authority, including hiring and terminating staff, contracting,
30 coordinating with the governor, the legislature, and other state and

1 local entities, and the delegation of responsibilities as deemed
2 appropriate. The executive director shall report to the authority and
3 shall serve to carry out the policy direction of the authority. The
4 salary of the executive director shall be comparable to those of other
5 agency directors and shall be fixed by the governor, subject to RCW
6 43.03.040.

7 (4) The authority shall prepare a budget and a work plan.

8 (5) Not more than four employees of the authority may be exempt
9 from the provisions of chapter 41.06 RCW.

10 (6) The executive director and staff of the authority shall be
11 located in the Olympia area, as space becomes available. The
12 department of general administration shall house the authority within
13 the department of ecology.

14 **Sec. 2.** RCW 90.70.060 and 1990 c 115 s 5 are each amended to read
15 as follows:

16 PLAN IS MANDATORY. The plan adopted by the authority shall be a
17 positive document prescribing the needed actions for the maintenance
18 and enhancement of Puget Sound water quality and shall be implemented
19 by state agencies and local governments, subject to the availability of
20 appropriated funds or other funding sources. The plan shall address
21 all the waters and sediments of Puget Sound, the Strait of Juan de
22 Fuca, and, to the extent that they affect water and sediment quality in
23 Puget Sound, all waters flowing into Puget Sound, and adjacent lands.
24 The authority may define specific geographic boundaries within which
25 the plan applies. The plan shall coordinate and incorporate existing
26 planning and research efforts of state agencies and local government
27 related to Puget Sound, and shall avoid duplication of existing
28 efforts. The plan shall include:

- 1 (1) A statement of the goals and objectives for long and short-term
2 management of the water quality of Puget Sound;
- 3 (2) A schedule for achieving each goal within the plan;
- 4 (3) An education and public involvement program that encourages
5 public participation in the development and implementation of the plan
6 and other Puget Sound water quality programs on the state and local
7 level;
- 8 (4) A resource assessment which identifies critically sensitive
9 areas, key characteristics, and other factors which lead to an
10 understanding of Puget Sound as an ecosystem;
- 11 ~~((3))~~ (5) Demographic information and assessment as relates to
12 future water quality impacts on Puget Sound;
- 13 ~~((4))~~ (6) An identification and legal analysis of all existing
14 laws governing actions of government entities which may affect water
15 quality management of Puget Sound, the interrelationships of those
16 laws, and the effect of those laws on implementation of the provisions
17 of the plan;
- 18 ~~((5))~~ (7) Review and assessment of existing criteria and
19 guidelines for governmental activities affecting Puget Sound's
20 resources, including shoreline resources, aquatic resources, associated
21 watersheds, recreational resources and commercial resources;
- 22 ~~((6))~~ (8) Identification of research needs and priorities;
- 23 ~~((7) Recommendations for guidelines, standards, and timetables for~~
24 ~~protection and clean-up activities and the establishment of priorities~~
25 ~~for major clean-up investments and nonpoint source management, and the~~
26 ~~projected costs of such priorities;~~
- 27 ~~(8))~~ (9) A procedure assuring local government initiated planning
28 for Puget Sound water quality protection;

1 ~~((9))~~ (10) Ways to better coordinate federal, state, and local
2 planning and management activities affecting Puget Sound's water
3 quality;

4 ~~((10) Public involvement strategies, including household hazardous
5 waste education, community clean-up efforts, and public participation
6 in developing and implementing the plan;))~~

7 (11) ~~((Recommendations on))~~ A program for protecting, preserving
8 and((, where possible,)) restoring wetlands and wildlife habitat and
9 shellfish beds ((throughout Puget Sound)) including, but not limited
10 to, the development of local programs based on minimum state standards;

11 (12) ~~((Recommendations for))~~ A comprehensive water quality and
12 sediment monitoring program;

13 (13) ~~((Analysis of current industrial pretreatment programs for
14 toxic wastes, and procedures and enforcement measures needed to enhance
15 them;))~~

16 ~~((14) Recommendations for a program of dredge spoil disposal,
17 including interim measures for disposal and storage of dredge spoil
18 material from or into Puget Sound;))~~

19 ~~((15) Definition of major public actions subject to review and
20 comment by the authority because of a significant impact on Puget Sound
21 water quality and related resources, and development of criteria for
22 review thereof;))~~

23 ~~((16) Recommendations for))~~ A program to reduce and eventually
24 eliminate harm from toxics and other contaminants entering and
25 accumulating in the Sound, including but not limited to, provisions for
26 the development of rules classifying sediments having adverse effects,
27 industrial pretreatment programs, dilution zone criteria development,
28 the setting of effluent limits in permits to eliminate harm from
29 discharges of toxics and particulates, and educational and citizen
30 awareness programs;

1 (14) A program to reduce pollution discharges from storm water and
2 combined sewer overflows throughout Puget Sound, including the
3 development of local government storm water programs in the urbanized
4 areas of the Puget Sound basin, the development of operation and
5 maintenance programs including the adoption of ordinances governing
6 storm water management in new development, plans for reducing combined
7 sewer overflow events, the control of storm water from state highways
8 facilities in the Puget Sound basin, and other necessary actions;

9 (15) A program to assure the quality and timeliness of laboratory
10 tests related to water quality and sediment quality in the Puget Sound
11 basin;

12 (16) Other programs as are deemed necessary to protect Puget Sound
13 water quality including, but not limited to, pesticides, household
14 hazardous waste, atmospheric deposition, and the prevention of oil and
15 hazardous substance spills;

16 (17) Implementation mechanisms to be used by state and local
17 government agencies in carrying out their responsibilities under the
18 plan;

19 ~~((17))~~ (18) Standards and procedures for reporting progress by
20 state and local governments in the implementation of the plan;

21 ~~((18) An analysis of resource requirements and funding mechanisms~~
22 ~~for updating of the plan and))~~ (19) A funding plan and budget for plan
23 implementation; and

24 ~~((19))~~ (20) Legislation needed to assure plan implementation.

25 The authority shall circulate and receive comments on drafts of the
26 plan mandated herein, and keep a record of all relevant comments made
27 at public hearings and in writing. These records should be made easily
28 available to interested persons.

29 As part of the plan, the authority shall prepare a strategy for
30 implementing the plan that includes, but is not limited to: (a)

1 Setting priorities for implementation of plan elements to facilitate
2 executive and legislative decision making; (b) assessment of the
3 capabilities and constraints, both internal and external to state and
4 local government, that may affect plan implementation; and (c) an
5 analysis of the strategic options in light of the resources available
6 to the state. In developing this strategy, the authority shall consult
7 and coordinate with other related environmental planning efforts.

8 Each program of the plan shall contain an analysis of the
9 activities of all state agencies and their effects on the goals of that
10 program. State agencies shall manage state-owned lands and resources
11 and carry out other state agency functions in a manner to protect and
12 enhance Puget Sound.

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

15 SUPPLEMENT TO AGENCY AUTHORITY. The policies and authorities set
16 forth in this chapter and the plan developed pursuant to RCW 90.70.060
17 are supplementary to the existing authorizations of all governments and
18 agencies having responsibilities for implementation of the plan. Where
19 specified in the plan, agencies may allocate responsibility for
20 implementation to different levels of government except where expressly
21 prohibited by law. Agencies may adopt rules or guidelines for the
22 purpose of plan implementation.

23 **Sec. 4.** RCW 90.70.025 and 1985 c 451 s 5 are each amended to read
24 as follows:

25 In order to carry out its responsibilities under this chapter, the
26 authority may:

27 (1) ~~((Develop interim proposals and recommendations, before the~~
28 ~~plan is adopted, concerning the elements identified in RCW 90.70.060))~~

1 Allocate responsibilities for implementation of the plan to other
2 agencies and different levels of government;

3 (2) Enter into, amend, and terminate contracts with individuals,
4 corporations, or research institutions for the purposes of this
5 chapter;

6 (3) Receive such gifts, grants, and endowments, in trust or
7 otherwise, for the use and benefit of the purposes of the authority.
8 The authority may expend the same or any income therefrom according to
9 the terms of the gifts, grants, or endowments;

10 (4) Conduct studies and research relating to Puget Sound water
11 quality;

12 (5) Obtain information relating to Puget Sound from other state and
13 local agencies;

14 (6) Conduct appropriate public hearings and otherwise seek to
15 broadly disseminate information concerning Puget Sound;

16 (7) Receive funding from other public agencies;

17 (8) Prepare a biennial budget request for consideration by the
18 governor and the legislature; and

19 (9) Adopt rules under chapter 34.05 RCW as it deems necessary for
20 the purposes of this chapter.

21 **Sec. 5.** RCW 90.70.070 and 1990 c 115 s 6 are each amended to read
22 as follows:

23 (1) In conducting planning, regulatory, and appeals actions, the
24 state agencies and local governments identified in the plan must
25 evaluate, and incorporate as applicable, subject to the availability of
26 appropriated funds or other funding (~~sources~~) authority, the
27 provisions of the plan, including any guidelines, standards, and
28 timetables contained in the plan.

1 (2) The authority shall review the progress of state agencies and
2 local governments regarding the timely implementation of the plan.
3 Where prescribed actions have not been accomplished in accordance with
4 the plan, the responsible state agencies and local governments shall,
5 at the request of the authority, submit written explanations for the
6 shortfalls, together with their proposed remedies, to the authority.

7 The results of the review and a description of the actions
8 necessary to comply with the plan shall be included in the biennial
9 state of the Sound report.

10 (3) The state agencies and local governments identified in the plan
11 shall review their activities biennially and document their consistency
12 with the plan. They shall submit written reports or updates of their
13 findings to the authority.

14 (4) The authority shall review the major actions (~~affected by the~~
15 ~~plan~~) affecting the Sound being considered by the state agencies and
16 local governments and shall comment in a timely manner regarding
17 consistency with the plan and may participate in administrative and
18 subsequent judicial proceedings with respect to such actions. Any
19 deviations from the plan, identified by the authority, shall be
20 transmitted in writing by the authority to the responsible state agency
21 or local government.

22 **Sec. 6.** RCW 43.88.030 and 1990 c 115 s 1 are each amended to read
23 as follows:

24 (1) The director of financial management shall provide all agencies
25 with a complete set of instructions for submitting biennial budget
26 requests to the director at least three months before agency budget
27 documents are due into the office of financial management. The budget
28 document or documents shall consist of the governor's budget message
29 which shall be explanatory of the budget and shall contain an outline

1 of the proposed financial policies of the state for the ensuing fiscal
2 period and shall describe in connection therewith the important
3 features of the budget. The message shall set forth the reasons for
4 salient changes from the previous fiscal period in expenditure and
5 revenue items and shall explain any major changes in financial policy.
6 Attached to the budget message shall be such supporting schedules,
7 exhibits and other explanatory material in respect to both current
8 operations and capital improvements as the governor shall deem to be
9 useful to the legislature. The budget document or documents shall set
10 forth a proposal for expenditures in the ensuing fiscal period based
11 upon the estimated revenues as approved by the economic and revenue
12 forecast council for such fiscal period from the source and at the
13 rates existing by law at the time of submission of the budget document.
14 However, the estimated revenues for use in the governor's budget
15 document may be adjusted to reflect budgetary revenue transfers and
16 revenue estimates dependent upon budgetary assumptions of enrollments,
17 workloads, and caseloads. All adjustments to the approved estimated
18 revenues must be set forth in the budget document. The governor may
19 additionally submit, as an appendix to each agency budget or to the
20 budget document or documents, a proposal for expenditures in the
21 ensuing fiscal period from revenue sources derived from proposed
22 changes in existing statutes.

23 The budget document or documents shall also contain:

24 (a) Revenues classified by fund and source for the immediately past
25 fiscal period, those received or anticipated for the current fiscal
26 period, and those anticipated for the ensuing biennium;

27 (b) The undesignated fund balance or deficit, by fund;

28 (c) Such additional information dealing with expenditures,
29 revenues, workload, performance and personnel as the legislature may
30 direct by law or concurrent resolution;

1 (d) Such additional information dealing with revenues and
2 expenditures as the governor shall deem pertinent and useful to the
3 legislature;

4 (e) Tabulations showing expenditures classified by fund, function,
5 activity and object;

6 (f) A delineation of each agency's activities, including those
7 activities funded from nonbudgeted, nonappropriated sources, including
8 funds maintained outside the state treasury; and

9 (g) Identification of all proposed direct expenditures to implement
10 the Puget Sound water quality plan under chapter 90.70 RCW, shown by
11 agency and in total and estimates submitted by each agency to fully
12 carry out the agency's responsibilities under the plan.

13 (2) The budget document or documents shall include detailed
14 estimates of all anticipated revenues applicable to proposed operating
15 or capital expenditures and shall also include all proposed operating
16 or capital expenditures. The total of beginning undesignated fund
17 balance and estimated revenues less working capital and other reserves
18 shall equal or exceed the total of proposed applicable expenditures.
19 The budget document or documents shall further include:

20 (a) Interest, amortization and redemption charges on the state
21 debt;

22 (b) Payments of all reliefs, judgments and claims;

23 (c) Other statutory expenditures;

24 (d) Expenditures incident to the operation for each agency;

25 (e) Revenues derived from agency operations;

26 (f) Expenditures and revenues shall be given in comparative form
27 showing those incurred or received for the immediately past fiscal
28 period and those anticipated for the current biennium and next ensuing
29 biennium;

1 (g) A showing and explanation of amounts of general fund
2 obligations for debt service and any transfers of moneys that otherwise
3 would have been available for general fund appropriations;

4 (h) Common school expenditures on a fiscal-year basis;

5 (i) A showing, by agency, of the value and purpose of financing
6 contracts for the lease/purchase or acquisition of personal or real
7 property for the current and ensuing fiscal periods.

8 (3) A separate budget document or schedule may be submitted
9 consisting of:

10 (a) Expenditures incident to current or pending capital projects
11 and to proposed new capital projects, relating the respective amounts
12 proposed to be raised therefor by appropriations in the budget and the
13 respective amounts proposed to be raised therefor by the issuance of
14 bonds during the fiscal period;

15 (b) A capital program consisting of proposed capital projects for
16 at least the two fiscal periods succeeding the next fiscal period. The
17 capital program shall include for each proposed project a statement of
18 the reason or purpose for the project along with an estimate of its
19 cost;

20 (c) Such other information bearing upon capital projects as the
21 governor shall deem to be useful to the legislature;

22 (d) Such other information relating to capital improvement projects
23 as the legislature may direct by law or concurrent resolution.

24 (4) No change affecting the comparability of agency or program
25 information relating to expenditures, revenues, workload, performance
26 and personnel shall be made in the format of any budget document or
27 report presented to the legislature under this section or RCW
28 43.88.160(1) relative to the format of the budget document or report
29 which was presented to the previous regular session of the legislature
30 during an odd-numbered year without prior legislative concurrence.

1 Prior legislative concurrence shall consist of (a) a favorable majority
2 vote on the proposal by the standing committees on ways and means of
3 both houses if the legislature is in session or (b) a favorable
4 majority vote on the proposal by members of the legislative evaluation
5 and accountability program committee if the legislature is not in
6 session.

7 **Sec. 7.** RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each
8 amended to read as follows:

9 DEVELOPMENT IMPACT FEES FOR STORM WATER FACILITIES. Unless the
10 context clearly requires otherwise, the following definitions shall
11 apply in RCW 82.02.050 through 82.02.090:

12 (1) "Development activity" means any construction or expansion of
13 a building, structure, or use, any change in use of a building or
14 structure, or any changes in the use of land, that creates additional
15 demand and need for public facilities.

16 (2) "Development approval" means any written authorization from a
17 county, city, or town which authorizes the commencement of development
18 activity.

19 (3) "Impact fee" means a payment of money imposed upon development
20 as a condition of development approval to pay for public facilities
21 needed to serve new growth and development, and that is reasonably
22 related to the new development that creates additional demand and need
23 for public facilities, that is a proportionate share of the cost of the
24 public facilities, and that is used for facilities that reasonably
25 benefit the new development. "Impact fee" does not include a
26 reasonable permit or application fee.

27 (4) "Owner" means the owner of record of real property, although
28 when real property is being purchased under a real estate contract, the

1 purchaser shall be considered the owner of the real property if the
2 contract is recorded.

3 (5) "Proportionate share" means that portion of the cost of public
4 facility improvements that are reasonably related to the service
5 demands and needs of new development.

6 (6) "Project improvements" mean site improvements and facilities
7 that are planned and designed to provide service for a particular
8 development project and that are necessary for the use and convenience
9 of the occupants or users of the project, and are not system
10 improvements. No improvement or facility included in a capital
11 facilities plan approved by the governing body of the county, city, or
12 town shall be considered a project improvement.

13 (7) "Public facilities" means the following capital facilities
14 owned or operated by government entities: (a) Public streets and roads;
15 (b) publicly owned parks, open space, and recreation facilities; (c)
16 school facilities; ~~((and))~~ (d) fire protection facilities in
17 jurisdictions that are not part of a fire district; and (e) storm water
18 management facilities.

19 (8) "Service area" means a geographic area defined by a county,
20 city, town, or intergovernmental agreement in which a defined set of
21 public facilities provide service to development within the area.
22 Service areas shall be designated on the basis of sound planning or
23 engineering principles.

24 (9) "System improvements" mean public facilities that are included
25 in the capital facilities plan and are designed to provide service to
26 service areas within the community at large, in contrast to project
27 improvements.

28 **Sec. 8.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
29 amended to read as follows:

1 STORM WATER PROGRAMS IN LOCAL COMPREHENSIVE PLANS. The
2 comprehensive plan of a county or city that is required or chooses to
3 plan under RCW 36.70A.040 shall consist of a map or maps, and
4 descriptive text covering objectives, principles, and standards used to
5 develop the comprehensive plan. The plan shall be an internally
6 consistent document and all elements shall be consistent with the
7 future land use map. A comprehensive plan shall be adopted and amended
8 with public participation as provided in RCW 36.70A.140.

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

11 (1) A land use element designating the proposed general
12 distribution and general location and extent of the uses of land, where
13 appropriate, for agriculture, timber production, housing, commerce,
14 industry, recreation, open spaces, public utilities, public facilities,
15 and other land uses. The land use element shall include population
16 densities, building intensities, and estimates of future population
17 growth. The land use element shall provide for protection of the
18 quality and quantity of ground water used for public water supplies.
19 Where applicable, the land use element shall ~~((review drainage,~~
20 ~~flooding, and storm water run-off in the area and nearby jurisdictions~~
21 ~~and provide guidance for corrective actions to mitigate or cleanse~~
22 ~~those discharges that pollute waters of the state, including Puget~~
23 ~~Sound or waters entering Puget Sound)) incorporate storm water
24 management programs adopted pursuant to the Puget Sound water quality
25 management plan required under RCW 90.70.060.~~

26 (2) A housing element recognizing the vitality and character of
27 established residential neighborhoods that: (a) Includes an inventory
28 and analysis of existing and projected housing needs; (b) includes a
29 statement of goals, policies, and objectives for the preservation,
30 improvement, and development of housing; (c) identifies sufficient land

1 for housing, including, but not limited to, government-assisted
2 housing, housing for low-income families, manufactured housing,
3 multifamily housing, and group homes and foster care facilities; and
4 (d) makes adequate provisions for existing and projected needs of all
5 economic segments of the community.

6 (3) A capital facilities plan element consisting of: (a) An
7 inventory of existing capital facilities owned by public entities,
8 showing the locations and capacities of the capital facilities; (b) a
9 forecast of the future needs for such capital facilities; (c) the
10 proposed locations and capacities of expanded or new capital
11 facilities; (d) at least a six-year plan that will finance such capital
12 facilities within projected funding capacities and clearly identifies
13 sources of public money for such purposes; and (e) a requirement to
14 reassess the land use element if probable funding falls short of
15 meeting existing needs and to ensure that the land use element, capital
16 facilities plan element, and financing plan within the capital
17 facilities plan element are coordinated and consistent.

18 (4) A utilities element consisting of the general location,
19 proposed location, and capacity of all existing and proposed utilities,
20 including, but not limited to, electrical lines, telecommunication
21 lines, and natural gas lines.

22 (5) Counties shall include a rural element including lands that are
23 not designated for urban growth, agriculture, forest, or mineral
24 resources. The rural element shall permit land uses that are
25 compatible with the rural character of such lands and provide for a
26 variety of rural densities.

27 (6) A transportation element that implements, and is consistent
28 with, the land use element. The transportation element shall include
29 the following subelements:

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

1 (b) Facilities and services needs, including:

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

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

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

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

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

16 (c) Finance, including:

17 (i) An analysis of funding capability to judge needs against
18 probable funding resources;

19 (ii) A multiyear financing plan based on the needs identified in
20 the comprehensive plan, the appropriate parts of which shall serve as
21 the basis for the six-year street, road, or transit program required by
22 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
23 35.58.2795 for public transportation systems;

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

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

1 (e) Demand-management strategies.

2 (7) The land use, capital facilities, and transportation elements
3 of comprehensive plans shall incorporate and be consistent with
4 applicable provisions of watershed management plans adopted pursuant to
5 the Puget Sound water quality management plan.

6 After adoption of the comprehensive plan by jurisdictions required
7 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
8 must adopt and enforce ordinances which prohibit development approval
9 if the development causes the level of service on a transportation
10 facility to decline below the standards adopted in the transportation
11 element of the comprehensive plan, unless transportation improvements
12 or strategies to accommodate the impacts of development are made
13 concurrent with the development. These strategies may include
14 increased public transportation service, ride sharing programs, demand
15 management, and other transportation systems management strategies.
16 For the purposes of this (~~subsection (6)~~) section "concurrent with
17 the development" shall mean that improvements or strategies are in
18 place at the time of development, or that a financial commitment is in
19 place to complete the improvements or strategies within six years.

20 The transportation element described in this subsection, and the
21 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
22 counties, and RCW 35.58.2795 for public transportation systems, must be
23 consistent.

24 NEW SECTION. Sec. 9. A new section is added to chapter 70.146 RCW
25 to read as follows:

26 STORM WATER PROGRAMS AS CONDITION FOR STATE FUNDS. After July 1,
27 1993, no grant or loan may be made under this chapter to a county or
28 city that has not adopted a storm water management program as part of
29 its comprehensive plan as required by section 8 of this act.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.68 RCW
2 to read as follows:

3 STORM WATER CONTROLS IN TRANSPORTATION PROJECTS. (1) Beginning
4 July 1, 1993, a county, city, town, or special district receiving
5 moneys from the motor vehicle fund or an account in the motor vehicle
6 fund for the purpose of constructing a new transportation project shall
7 incorporate all known, available, and reasonable methods of storm water
8 controls.

9 (2) The department of transportation, in consultation with the
10 department of ecology and the Puget Sound water quality authority,
11 shall adopt rules to implement this section. The rules shall include
12 guidance and design standards for storm water management facilities
13 constructed by local governments as a part of transportation
14 improvement projects.

15 **Sec. 11.** RCW 70.146.060 and 1987 c 527 s 1 and 1987 c 436 s 7 are
16 each reenacted and amended to read as follows:

17 WATER QUALITY ACCOUNT DISTRIBUTIONS--LIMITATIONS--COMBINED SEWER
18 OVERFLOW REDUCTION FUNDING. During the period from July 1, 1987, until
19 June 30, 1995, the following limitations shall apply to the
20 department's total distribution of funds appropriated from the water
21 quality account:

22 (1) Not more than fifty percent for water pollution control
23 facilities which discharge directly into marine waters, including
24 projects to reduce combined sewer overflows;

25 (2) Not more than twenty percent for water pollution control
26 activities that prevent or mitigate pollution of underground waters and
27 facilities that protect federally designated sole source aquifers with
28 at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;

1 (3) Not more than ten percent for water pollution control
2 activities that protect freshwater lakes and rivers including but not
3 limited to Lake Chelan and the Yakima and Columbia rivers;

4 (4) Not more than ten percent for activities which control nonpoint
5 source water pollution;

6 (5) Ten percent and such sums as may be remaining from the
7 categories specified in subsections (1) through (4) of this section for
8 water pollution control activities or facilities as determined by the
9 department; and

10 (6) Two and one-half percent of the total amounts of moneys under
11 subsections (1) through (5) of this section from February 21, 1986,
12 until December 31, 1995, shall be appropriated biennially to the state
13 conservation commission for the purposes of this chapter. Not less
14 than ten percent of the moneys received by the state conservation
15 commission under the provisions of this section shall be expended on
16 research activities.

17 The distribution under this section shall not be required to be met
18 in any single fiscal year.

19 Funds provided for facilities and activities under this chapter may
20 be used for payments to a service provider under a service agreement
21 pursuant to RCW 70.150.060. If funds are to be used for such payments,
22 the department may make periodic disbursements to a public body or may
23 make a single lump sum disbursement. Disbursements of funds with
24 respect to a facility owned or operated by a service provider shall be
25 equivalent in value to disbursements that would otherwise be made if
26 that facility were owned or operated by a public body. Payments under
27 this chapter for waste disposal and management facilities made to
28 public bodies entering into service agreements pursuant to RCW
29 70.150.060 shall not exceed amounts paid to public bodies not entering
30 into service agreements.

1 Until January 1, 1997, the department shall place a priority upon
2 providing assistance to projects for the reduction of combined sewer
3 overflows that are otherwise eligible under this chapter. Beginning
4 January 1, 1992, the department may not distribute funds from the water
5 quality account to a local government not in compliance with the
6 following requirements: (a) Plans and compliance schedules for the
7 reduction of combined sewer overflows pursuant to RCW 90.48.480; and
8 (b) adoption of storm water management plans and ordinances under the
9 Puget Sound water quality management plan.

10 NEW SECTION. Sec. 12. A new section is added to chapter 90.48 RCW
11 to read as follows:

12 SELLER DISCLOSURE OF SEPTIC SYSTEM IN SENSITIVE AREAS. Before the
13 closing of the sale of real property located within a sensitive area
14 designated under section 13 of this act, the seller shall provide a
15 report to the purchaser that discloses whether the property being sold
16 is served by a public or private sewer system, an on-site sewage
17 disposal system, other means of waste disposal, or is undeveloped
18 property. If the property is served by an on-site sewage disposal
19 system, the report shall include:

20 (1) The location of the system and, if known, the location of
21 drainfields identified on a scale drawing;

22 (2) Drawings of the system as it was built, if available from
23 either the seller or the local health agency; and

24 (3) A statement of the most recent pumping of the system and a
25 description of the most recent inspection of the system by a certified
26 professional, if known.

27 NEW SECTION. Sec. 13. A new section is added to chapter 90.48 RCW
28 to read as follows:

1 RULEMAKING. (1) On or before January 1, 1992, the department of
2 health shall propose rules for adoption by the state board of health to
3 implement section 12 of this act. The rules shall:

4 (a) Specify the contents of the report to be provided by the
5 seller; and

6 (b) Specify criteria to guide local health agencies in the
7 designation of sensitive areas under subsection (2) of this section.
8 The criteria may include, but are not limited to, the number and
9 density of on-site sewage disposal systems within an area, the presence
10 of other potential contaminant sources, and the presence of unique or
11 important marine or environmental resources that may be adversely
12 impacted.

13 (2) Before July 1, 1992, each local health agency having
14 jurisdiction within counties whose waters drain into Puget Sound shall
15 designate sensitive areas within which the requirements of section 12
16 of this act shall apply.

17 NEW SECTION. **Sec. 14.** WASTE OIL DEMONSTRATION PROJECTS. The
18 department of ecology shall establish a pilot two-year grant program,
19 beginning July 1, 1991, for local governments to conduct demonstration
20 projects for the purpose of encouraging the proper disposal and
21 recycling of household waste motor oil. The department shall award a
22 minimum of three grants for this purpose.

23 NEW SECTION. **Sec. 15.** APPROPRIATION. The sum of two hundred
24 thousand dollars, or as much thereof as may be necessary, is
25 appropriated for the biennium ending June 30, 1993, from the state
26 toxics control account to the department of ecology to be used for
27 grants to local governments to implement section 14 of this act.

1 **Sec. 16.** RCW 17.21.030 and 1989 c 380 s 34 are each amended to
2 read as follows:

3 PESTICIDE APPLICATION GUIDELINES TO PROTECT WATER QUALITY. The
4 director shall administer and enforce the provisions of this chapter
5 and rules adopted hereunder.

6 (1) The director shall adopt rules:

7 (a) Governing the application and use, or prohibiting the use, or
8 possession for use, of any pesticide;

9 (b) Governing the time when, and the conditions under which
10 restricted use pesticides shall or shall not be used in different
11 areas, which areas may be prescribed by the director, in the state;

12 (c) Providing that any or all restricted use pesticides shall be
13 purchased, possessed or used only under permit of the director and
14 under the director's direct supervision in certain areas and/or under
15 certain conditions or in certain quantities or concentrations; however,
16 any person licensed to sell such pesticides may purchase and possess
17 such pesticides without a permit;

18 (d) Establishing recordkeeping requirements for licensees,
19 permittees, and certified applicators;

20 (e) Fixing and collecting examination fees;

21 (f) Establishing testing procedures, licensing classifications, and
22 requirements for licenses and permits as provided by this chapter;
23 (~~and~~)

24 (g) Fixing and collecting permit fees; and

25 (h) Establishing use and application guidelines for pesticides that
26 can cause adverse environmental impacts through concentration in marine
27 waters, sediment, or biota.

28 (2) The director may adopt any other rules necessary to carry out
29 the purpose and provisions of this chapter.

1 NEW SECTION. **Sec. 17.** A new section is added to chapter 15.58 RCW
2 to read as follows:

3 By January 1, 1993, the director shall adopt rules establishing
4 requirements for the denial of new registration, and schedules for the
5 cancellation of existing registration, of active and inert ingredients
6 of pesticides that pose a substantial risk of adverse effects upon
7 public health, water quality, sediment, or biota.

8 **Sec. 18.** RCW 15.58.100 and 1979 c 146 s 2 are each amended to read
9 as follows:

10 (1) The director shall require the information required under RCW
11 15.58.060 and shall register the label or labeling for such pesticide
12 if ((he)) the director determines that:

13 (a) Its composition is such as to warrant the proposed claims for
14 it;

15 (b) Its labeling and other material required to be submitted comply
16 with the requirements of this chapter;

17 (c) It will perform its intended function without unreasonable
18 adverse effects on the environment;

19 (d) When used in accordance with widespread and commonly recognized
20 practice it will not generally cause unreasonable adverse effects on
21 the environment;

22 (e) Denial of registration is not required by section 17 of this
23 act;

24 (f) In the case of any pesticide subject to section 24(c) of FIFRA,
25 it meets (1) (a), (b), (c), and (d) of this section and the following
26 criteria:

27 (i) The proposed classification for general use, for restricted
28 use, or for both is in conformity with section 3(d) of FIFRA;

29 (ii) A special local need exists.

1 (2) The director shall not make any lack of essentiality a
2 criterion for denying registration of any pesticide.

3 **Sec. 19.** RCW 90.48.037 and 1987 c 109 s 125 are each amended to
4 read as follows:

5 JUDICIAL CIVIL PENALTIES. (1) The department, with the assistance
6 of the attorney general, is authorized to bring any appropriate action
7 at law or in equity, including action for injunctive relief, in the
8 name of the people of the state of Washington as may be necessary to
9 carry out the provisions of this chapter.

10 (2) In a civil action brought pursuant to this chapter, the court
11 may assess a civil penalty in an amount not to exceed ten thousand
12 dollars a day for each violation of a provision of this chapter, or of
13 a rule, permit, or order of the department pursuant to the authority of
14 this chapter. Each day of such violation shall constitute a separate
15 violation. In determining the penalty amount to be assessed, the court
16 shall be guided by the considerations enumerated in RCW 43.21B.300(2).

17 NEW SECTION. **Sec. 20.** A new section is added to chapter 90.48 RCW
18 to read as follows:

19 CIVIL PENALTIES DEDICATED TO WATER QUALITY PURPOSES. All penalties
20 collected under RCW 90.48.144 and section 19 of this act shall be
21 deposited in the water pollution control account, which is hereby
22 created in the state treasury. Moneys in the account shall be expended
23 exclusively by the department of ecology for the purposes of this
24 chapter, subject to legislative appropriation. All earnings of
25 balances in the water pollution control account shall be credited to
26 the general fund.

1 **Sec. 21.** RCW 43.21B.300 and 1987 c 109 s 5 are each amended to
2 read as follows:

3 PENALTY DISPOSITION. (1) Any civil penalty provided in RCW
4 70.94.431, 70.105.080, 70.107.050, 90.03.600, 90.48.144, and 90.48.350
5 shall be imposed by a notice in writing, either by certified mail with
6 return receipt requested or by personal service, to the person
7 incurring the penalty from the department or the local air authority,
8 describing the violation with reasonable particularity. Within fifteen
9 days after the notice is received, the person incurring the penalty may
10 apply in writing to the department or the authority for the remission
11 or mitigation of the penalty. Upon receipt of the application, the
12 department or authority may remit or mitigate the penalty upon whatever
13 terms the department or the authority in its discretion deems proper.
14 The department or the authority may ascertain the facts regarding all
15 such applications in such reasonable manner and under such rules as it
16 may deem proper and shall remit or mitigate the penalty only upon a
17 demonstration of extraordinary circumstances such as the presence of
18 information or factors not considered in setting the original penalty.

19 (2) Any penalty imposed under this section may be appealed to the
20 pollution control hearings board in accordance with this chapter if the
21 appeal is filed with the hearings board and served on the department or
22 authority thirty days after receipt by the person penalized of the
23 notice imposing the penalty or thirty days after receipt of the notice
24 of disposition of the application for relief from penalty.

25 (3) A penalty shall become due and payable on the later of:

26 (a) Thirty days after receipt of the notice imposing the penalty;

27 (b) Thirty days after receipt of the notice of disposition on
28 application for relief from penalty, if such an application is made; or

29 (c) Thirty days after receipt of the notice of decision of the
30 hearings board if the penalty is appealed.

1 (4) If the amount of any penalty is not paid to the
2 department within thirty days after it becomes due and payable, the
3 attorney general, upon request of the department, shall bring an action
4 in the name of the state of Washington in the superior court of
5 Thurston county, or of any county in which the violator does business,
6 to recover the penalty. If the amount of the penalty is not paid to
7 the authority within thirty days after it becomes due and payable, the
8 authority may bring an action to recover the penalty in the superior
9 court of the county of the authority's main office or of any county in
10 which the violator does business. In these actions, the procedures and
11 rules of evidence shall be the same as in an ordinary civil action.

12 (5) All penalties recovered shall be paid into the state treasury
13 and credited to the general fund except those penalties imposed
14 pursuant to RCW 70.94.431, the disposition of which shall be governed
15 by that provision, RCW 70.105.080, which shall be credited to the
16 hazardous waste control and elimination account, created by RCW
17 70.105.180, RCW 90.48.144, which shall be credited to the water
18 pollution control account, created by section 20 of this act, and RCW
19 90.48.350, which shall be credited to the coastal protection fund
20 created by RCW 90.48.390.

21 **Sec. 22.** RCW 90.48.140 and 1973 c 155 s 8 are each amended to read
22 as follows:

23 CRIMINAL PENALTIES. Any person (~~found guilty of wilfully~~
24 ~~violating~~) who knowingly violates any of the provisions of this
25 chapter, or any final written orders or directive of the department or
26 a court in pursuance thereof, except for those violations enumerated in
27 section 23 of this act, shall be (~~deemed~~) guilty of a (~~crime~~) gross
28 misdemeanor, and upon conviction thereof shall be punished (~~by a fine~~
29 ~~of up to ten thousand dollars and costs of prosecution, or by~~

1 ~~imprisonment in the county jail for not more than one year, or by both~~
2 ~~such fine and imprisonment in the discretion of the court))~~ as provided
3 in RCW 9A.20.021. Each day upon which a ~~((wilful))~~ knowing violation
4 of the provisions of this chapter occurs may be deemed a separate and
5 additional violation.

6 NEW SECTION. Sec. 23. A new section is added to chapter 90.48 RCW
7 to read as follows:

8 CRIMINAL PENALTIES. (1) A person who knowingly commits any of the
9 following shall be guilty of a class C felony and upon conviction shall
10 be punished as provided in RCW 9A.20.021. Each day upon which a
11 violation of this section occurs may be deemed a separate and
12 additional violation.

13 (a) Omitting or falsifying records, reports, information, plans, or
14 specifications required by the department under this chapter;

15 (b) Falsifying, tampering with, or rendering inaccurate a
16 monitoring device or method, or tampering with a portion of a treatment
17 or conveyance system resulting in the discharge of untreated waste or
18 waste not meeting permit standards;

19 (c) Discharging after a permit has been revoked, or discharging in
20 violation of a final written order or directive of the department, or
21 discharging without a permit;

22 (d) Failure to report a discharge that violates or exceeds permit
23 conditions or limitations; and

24 (e) Failure to comply with a final written order or directive of
25 the department.

26 (2) No person is in violation of this section where the discharge
27 of waste constitutes only a minor statistical exceedance of effluent
28 limitations.

1 NEW SECTION. **Sec. 24.** A new section is added to chapter 90.48 RCW
2 to read as follows:

3 DEFINITIONS. The following definitions apply to RCW 90.48.140 and
4 section 23 of this act.

5 (1) "Knowingly" shall be defined in the same manner as that term is
6 defined in RCW 9A.08.010.

7 (2) "Final written order or directive of the department" means a
8 department order or directive that has been fully adjudicated with all
9 available administrative and judicial reviews having been exhausted.

10 (3) "Person" shall have the meaning given in RCW 9A.04.110(17).

11 NEW SECTION. **Sec. 25.** A new section is added to chapter 90.48 RCW
12 to read as follows:

13 (1) By July 1, 1992, the department shall establish a schedule
14 ensuring inspection of facilities subject to discharge permits with at
15 least the following frequency:

16 (a) Twice per year for major class I permits;

17 (b) Once per year for major class II permits, class I significant
18 minor state, and minor NPDES permits;

19 (c) Once every two years for class II significant minor permits;

20 (d) Once every ten years for class II significant state and minor
21 NPDES permits.

22 (2) The department shall include toxic limits, sediment quality
23 limits, and monitoring requirements in all permits issued. In the
24 Puget Sound region, such requirements shall be at least as stringent as
25 those specified in the Puget Sound water quality management plan.

26 NEW SECTION. **Sec. 26.** A new section is added to chapter 90.48 RCW
27 to read as follows:

1 INCREASED ENFORCEMENT AGAINST UNPERMITTED DISCHARGERS. For the
2 biennium ending June 30, 1993, the department shall initiate no fewer
3 than twenty-five enforcement actions against persons discharging
4 pollutants to state waters without a permit as required by this
5 chapter. The department shall place primary emphasis upon initiating
6 enforcement against large dischargers having significant adverse
7 impacts upon water quality. A minimum of fifteen of such actions shall
8 be initiated against persons discharging to Puget Sound or to waters
9 which drain into Puget Sound.

10 NEW SECTION. **Sec. 27.** A new section is added to chapter 90.48 RCW
11 to read as follows:

12 CITIZEN SUITS FOR WATER QUALITY ENFORCEMENT. (1) A person having
13 an interest that is or may be affected may commence an action against:

14 (a) A person alleged to be in violation of a permit or order issued
15 by the department;

16 (b) A person alleged to be discharging waste without a permit
17 issued by the department; or

18 (c) The department where there is alleged a failure of the
19 department to perform an act or duty under this chapter that is not
20 discretionary with the department.

21 (2) No action may be commenced under subsection (1) (a) and (b) of
22 this section:

23 (a) Prior to sixty days after the plaintiff has given notice of the
24 alleged violation to the department and an alleged violator; or

25 (b) If the department has commenced and is diligently prosecuting
26 or negotiating an administrative or judicial enforcement action.

27 (3) No action may be commenced under subsection (1)(c) of this
28 section prior to sixty days after the plaintiff has given notice of
29 such action to the department.

1 (4) In an action commenced under subsection (1) (a) and (b) of this
2 section the plaintiff shall serve a copy of the complaint on the
3 attorney general and the department. The department may intervene as
4 a matter of right in the action. A consent judgment shall not be
5 entered in an action in which the department is not a party prior to
6 forty-five days following the receipt of a copy of the proposed consent
7 judgment by the attorney general and the department.

8 (5) The court, in issuing a final order in an action brought
9 pursuant to this section, may award costs of litigation, including
10 reasonable attorney and expert witness fees, to a prevailing or
11 substantially prevailing party, wherever the court determines such
12 award is appropriate.

13 (6) Nothing in this section restricts:

14 (a) The department or a unit of state or local government from
15 bringing an enforcement action under any other provision of law; or

16 (b) A right that a person may have under statute or common law to
17 seek enforcement of a water quality standard or limitation or to seek
18 other relief.

19 **Sec. 28.** RCW 43.131.369 and 1990 c 115 s 11 are each amended to
20 read as follows:

21 AUTHORITY SUNSET EXTENDED. The Puget Sound water quality authority
22 and its powers and duties shall be terminated on June 30, ((1995))
23 1997, as provided in RCW 43.131.370. On or before November 15, 1996,
24 the legislative budget committee shall prepare a report to the
25 legislature on the means for future implementation of the Puget Sound
26 water quality management plan.

27 **Sec. 29.** RCW 43.131.370 and 1990 c 115 s 12 are each amended to
28 read as follows:

1 REPEALERS. The following acts or parts of acts, as now existing or
2 hereafter amended, are each repealed, effective June 30, (~~(1996)~~) 1998:

3 (1) RCW 90.70.001 and 1985 c 451 s 1;

4 (2) RCW 90.70.005 and 1985 c 451 s 2;

5 (3) RCW 90.70.011 and 1990 c 115 s 2 & 1985 c 451 s 3;

6 (4) RCW 90.70.025 and 1985 c 451 s 5;

7 (5) RCW 90.70.035 and 1985 c 451 s 6;

8 (6) RCW 90.70.045 and 1990 c 115 s 3, 1988 c 36 s 72, & 1985 c 451
9 s 7;

10 (7) RCW 90.70.055 and 1990 c 115 s 4 and 1985 c 451 s 4;

11 (8) RCW 90.70.060 and 1990 c 115 s 5, 1989 c 11 s 31, & 1985 c 451
12 s 8;

13 (9) RCW 90.70.070 and 1990 c 115 s 6 and 1985 c 451 s 9;

14 (10) RCW 90.70.080 and 1990 c 115 s 7 and 1985 c 451 s 10; and

15 (11) RCW 90.70.901 and 1985 c 451 s 14.

16 **Sec. 30.** RCW 90.70.902 and 1990 c 115 s 13 are each amended to
17 read as follows:

18 SAVINGS. Nothing in RCW 43.131.370 shall affect the implementation
19 and requirements of the Puget Sound water quality management plan
20 existing on June 30, (~~(1995)~~) 1997, or such other effective date of
21 repeal of the laws referenced in RCW 43.131.370. The implementation of
22 the plan on and after that date shall be the responsibility of such
23 entities as are provided by the legislature.

24 NEW SECTION. **Sec. 31.** EFFECTIVE DATE. Section 12 of this act
25 shall take effect July 1, 1992.

26 NEW SECTION. **Sec. 32.** CAPTIONS. Captions as used in this act are
27 no part of the law.

1 NEW SECTION. **Sec. 33.** APPROPRIATION. The sum of

2 dollars, or as much thereof as may be necessary, is appropriated for

3 the biennium ending June 30, 1993, from the account to the

4 department of ecology to implement section 26 of this act.