
SENATE BILL 5145

State of Washington

52nd Legislature

1991 Regular Session

By Senators Metcalf, Skratek and Bailey.

Read first time January 22, 1991. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to storm water; amending RCW 90.70.060, 36.70A.070,
2 36.70A.150, 82.02.090, and 86.26.040; adding a new section to chapter
3 90.03 RCW; adding a new section to chapter 36.70A RCW; adding a new
4 section to chapter 36.70 RCW; adding a new section to chapter 35.63
5 RCW; adding a new section to chapter 35A.63 RCW; creating a new
6 section; and making an appropriation.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

9 (a) Washington state is characterized by high annual rainfall
10 including locally exceptional precipitation causing high flood peaks;

11 (b) Such events cause enormous property damage and personal injury
12 that are devastating to many individuals and present high costs to the
13 state for emergency services, disaster assistance, and the repair and
14 replacement of roads, bridges, utilities, and other public works;

1 (c) Inadequate storm water planning and controls contribute to the
2 magnitude of flooding events, and, additionally, cause damage on a
3 more frequent basis during lesser storm events;

4 (d) Many land uses alter the pattern of storm water runoff by
5 decreasing the ability of upstream lands to store storm waters, thus
6 increasing the rate of runoff and attendant downstream impacts; and

7 (e) Many land use developments for residential, commercial, or
8 industrial activities employ natural watercourses for storm water
9 conveyance, and if such systems are not properly designed, the capacity
10 of the watercourse may be exceeded, causing downstream damage;

11 (2) It is the intent of the legislature to:

12 (a) Define a minimum standard to guide all land use development
13 activities employing natural watercourses for storm water conveyance;

14 (b) Overrule the "common enemy" doctrine adopted by the Washington
15 courts which often works to preclude the recovery of damages by
16 landowners against upstream landowners whose actions have exceeded the
17 natural storm water conveyance capacity of a natural watercourse; and

18 (c) Integrate effective storm water management planning and
19 controls into state environmental programs and local land use planning
20 and regulatory programs.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
22 to read as follows:

23 (1) No person may divert, impound, or otherwise alter the natural
24 flow of surface waters or water flowing in a natural watercourse, or
25 permit a diversion, impounding, or alteration to continue, in a manner
26 that damages the property of another by the overflow of the water
27 diverted, impounded, or altered.

28 (2) A person unlawfully diverting, impounding, or altering the
29 natural flow of surface waters or water flowing in a natural

1 watercourse shall be liable in an action for property damages to a
2 person whose property is damaged by such unlawful diversion,
3 impoundment, or alteration.

4 (3) For purposes of this section, "natural watercourse" means a
5 channel with a defined bed and banks or a depression or swale that in
6 its natural condition acts to drain water flowing perennially or
7 intermittently.

8 (4) This section shall not apply to the diversion and collection of
9 water for irrigation of agricultural lands, including the discharge of
10 used irrigation water.

11 **Sec. 3.** RCW 90.70.060 and 1990 c 115 s 5 are each amended to read
12 as follows:

13 The plan adopted by the authority shall be a positive document
14 prescribing the needed actions for the maintenance and enhancement of
15 Puget Sound water quality. The plan shall address all the waters of
16 Puget Sound, the Strait of Juan de Fuca, and, to the extent that they
17 affect water quality in Puget Sound, all waters flowing into Puget
18 Sound, and adjacent lands. The authority may define specific
19 geographic boundaries within which the plan applies. The plan shall
20 coordinate and incorporate existing planning and research efforts of
21 state agencies and local government related to Puget Sound, and shall
22 avoid duplication of existing efforts. The plan shall include:

23 (1) A statement of the goals and objectives for long and short-
24 term management of the water quality of Puget Sound;

25 (2) A resource assessment which identifies critically sensitive
26 areas, key characteristics, and other factors which lead to an
27 understanding of Puget Sound as an ecosystem;

28 (3) Demographic information and assessment as relates to future
29 water quality impacts on Puget Sound;

1 (4) An identification and legal analysis of all existing laws
2 governing actions of government entities which may affect water quality
3 management of Puget Sound, the interrelationships of those laws, and
4 the effect of those laws on implementation of the provisions of the
5 plan;

6 (5) Review and assessment of existing criteria and guidelines for
7 governmental activities affecting Puget Sound's resources, including
8 shoreline resources, aquatic resources, associated watersheds,
9 recreational resources and commercial resources;

10 (6) Identification of research needs and priorities;

11 (7) Recommendations for guidelines, standards, and timetables for
12 protection and clean-up activities and the establishment of priorities
13 for major clean-up investments and nonpoint source management, and the
14 projected costs of such priorities;

15 (8) A procedure assuring local government initiated planning for
16 Puget Sound water quality protection;

17 (9) Ways to better coordinate federal, state, and local planning
18 and management activities affecting Puget Sound's water quality;

19 (10) Public involvement strategies, including household hazardous
20 waste education, community clean-up efforts, and public participation
21 in developing and implementing the plan;

22 (11) Recommendations on protecting, preserving and, where possible,
23 restoring wetlands and wildlife habitat and shellfish beds throughout
24 Puget Sound;

25 (12) Recommendations for a comprehensive water quality and sediment
26 monitoring program;

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

1 (14) Recommendations for a program of dredge spoil disposal,
2 including interim measures for disposal and storage of dredge spoil
3 material from or into Puget Sound;

4 (15) A program for the management of storm water quality;

5 (16) Definition of major public actions subject to review and
6 comment by the authority because of a significant impact on Puget Sound
7 water quality and related resources, and development of criteria for
8 review thereof;

9 (~~(16)~~) (17) Recommendations for implementation mechanisms to be
10 used by state and local government agencies;

11 (~~(17)~~) (18) Standards and procedures for reporting progress by
12 state and local governments in the implementation of the plan;

13 (~~(18)~~) (19) An analysis of resource requirements and funding
14 mechanisms for updating of the plan and plan implementation; and

15 (~~(19)~~) (20) Legislation needed to assure plan implementation.

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

20 As part of the plan, the authority shall prepare a strategy for
21 implementing the plan that includes, but is not limited to: (a)
22 Setting priorities for implementation of plan elements to facilitate
23 executive and legislative decision making; (b) assessment of the
24 capabilities and constraints, both internal and external to state and
25 local government, that may affect plan implementation; and (c) an
26 analysis of the strategic options in light of the resources available
27 to the state. In developing this strategy, the authority shall consult
28 and coordinate with other related environmental planning efforts.

1 **Sec. 4.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
2 amended to read as follows:

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

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

12 (1) A land use element designating the proposed general
13 distribution and general location and extent of the uses of land, where
14 appropriate, for agriculture, timber production, housing, commerce,
15 industry, recreation, open spaces, public utilities, public facilities,
16 and other land uses. The land use element shall include population
17 densities, building intensities, and estimates of future population
18 growth. The land use element shall provide for protection of the
19 quality and quantity of ground water used for public water supplies.
20 (~~Where applicable, the land use element shall review drainage,~~
21 ~~flooding, and storm water run-off in the area and nearby jurisdictions~~
22 ~~and provide guidance for corrective actions to mitigate or cleanse~~
23 ~~those discharges that pollute waters of the state, including Puget~~
24 ~~Sound or waters entering Puget Sound.)) The land use element shall
25 provide for the prevention and management of storm waters caused by
26 land uses, including the prevention of water quality degradation of
27 Puget Sound and other major water bodies from storm water discharges.
28 The plan shall include level of service standards for storm water
29 management that incorporate the minimum standard provided in section 2
30 of this act. The storm water portion of the land use element shall be~~

1 consistent with applicable provisions of the Puget Sound water quality
2 management plan adopted under RCW 90.70.060.

3 (2) A housing element recognizing the vitality and character of
4 established residential neighborhoods that: (a) Includes an inventory
5 and analysis of existing and projected housing needs; (b) includes a
6 statement of goals, policies, and objectives for the preservation,
7 improvement, and development of housing; (c) identifies sufficient land
8 for housing, including, but not limited to, government-assisted
9 housing, housing for low-income families, manufactured housing,
10 multifamily housing, and group homes and foster care facilities; and
11 (d) makes adequate provisions for existing and projected needs of all
12 economic segments of the community.

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

25 (4) A utilities element consisting of the general location,
26 proposed location, and capacity of all existing and proposed utilities,
27 including, but not limited to, electrical lines, telecommunication
28 lines, and natural gas lines.

29 (5) Counties shall include a rural element including lands that are
30 not designated for urban growth, agriculture, forest, or mineral

1 resources. The rural element shall permit land uses that are
2 compatible with the rural character of such lands and provide for a
3 variety of rural densities.

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

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

8 (b) Facilities and services needs, including:

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

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

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

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

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

23 (c) Finance, including:

24 (i) An analysis of funding capability to judge needs against
25 probable funding resources;

26 (ii) A multiyear financing plan based on the needs identified in
27 the comprehensive plan, the appropriate parts of which shall serve as
28 the basis for the six-year street, road, or transit program required by
29 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
30 35.58.2795 for public transportation systems;

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

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

8 (e) Demand-management strategies.

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

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

27 **Sec. 5.** RCW 36.70A.150 and 1990 1st ex.s. c 17 s 15 are each
28 amended to read as follows:

1 Each county and city that is required or chooses to prepare a
2 comprehensive land use plan under RCW 36.70A.040 shall identify lands
3 useful for public purposes such as utility corridors, transportation
4 corridors, landfills, sewage treatment facilities, storm water
5 retention, recreation, schools, and other public uses. The county
6 shall work with the state and the cities within its borders to identify
7 areas of shared need for public facilities. The jurisdictions within
8 the county shall prepare a prioritized list of lands necessary for the
9 identified public uses including an estimated date by which the
10 acquisition will be needed.

11 The respective capital acquisition budgets for each jurisdiction
12 shall reflect the jointly agreed upon priorities and time schedule.

13 **Sec. 6.** RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each
14 amended to read as follows:

15 Unless the context clearly requires otherwise, the following
16 definitions shall apply in RCW 82.02.050 through 82.02.090:

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

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

24 (3) "Impact fee" means a payment of money imposed upon development
25 as a condition of development approval to pay for public facilities
26 needed to serve new growth and development, and that is reasonably
27 related to the new development that creates additional demand and need
28 for public facilities, that is a proportionate share of the cost of the
29 public facilities, and that is used for facilities that reasonably

1 benefit the new development. "Impact fee" does not include a
2 reasonable permit or application fee.

3 (4) "Owner" means the owner of record of real property, although
4 when real property is being purchased under a real estate contract, the
5 purchaser shall be considered the owner of the real property if the
6 contract is recorded.

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

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

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

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

28 (9) "System improvements" mean public facilities that are included
29 in the capital facilities plan and are designed to provide service to

1 service areas within the community at large, in contrast to project
2 improvements.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.70A RCW
4 to read as follows:

5 Within one year of the adoption of comprehensive plans by
6 jurisdictions required to plan or who choose to plan under RCW
7 36.70A.040, such jurisdictions shall adopt ordinances that require the
8 provision of storm water management facilities concurrently with
9 development approval and that meet the standards for level of service
10 provided in the comprehensive plan.

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70 RCW
12 to read as follows:

13 (1) Each board of county commissioners shall provide procedures for
14 the preparation of basin storm water drainage plans in accordance with
15 this section.

16 (2) The procedures shall authorize the filing of a petition by a
17 person or persons residing within an area in which a natural
18 watercourse provides for storm water conveyance with the county to
19 prepare a drainage plan for the basin. The county shall grant the
20 petition if it determines that land use developments within the basin
21 that are proposed or reasonably anticipated to occur within the next
22 five years will total ten percent or more of the land area within the
23 basin. The petition may be denied where a drainage plan already exists
24 for the basin that includes the developments proposed or reasonably
25 anticipated for the next five years.

26 (3) The county shall determine the boundaries of each drainage
27 basin under its jurisdiction pursuant to rules adopted by the
28 department of ecology.

1 (4) The drainage plan shall:

2 (a) Provide for the conveyance of storm waters in a manner that
3 meets the standards of section 2 of this act and any other applicable
4 local or state storm water management standards;

5 (b) Assess and provide for all facilities to be used for storm
6 water conveyance, including artificial detention and retention
7 facilities, natural watercourses, natural wetlands used for storm water
8 management, and other measures;

9 (c) Provide for an equitable distribution of the costs of storm
10 water management by placing the greatest costs upon those activities
11 having the greatest impact upon storm water volume and degradation of
12 water quality; and

13 (d) Describe land use regulatory measures to mitigate storm water
14 impacts.

15 (5) The county shall adopt such ordinances and take such other
16 actions as are necessary to implement an adopted drainage plan.

17 (6) A drainage plan adopted under this section must be combined
18 with a watershed plan covering the drainage basin that has been
19 approved by the department of ecology. The county need not address
20 issues already addressed in an applicable watershed plan.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 35.63 RCW
22 to read as follows:

23 (1) Each legislative authority shall provide procedures for the
24 preparation of basin storm water drainage plans in accordance with this
25 section.

26 (2) The procedures shall authorize the filing of a petition by a
27 person or persons residing within an area in which a natural
28 watercourse provides for storm water conveyance with the legislative
29 authority to prepare a drainage plan for the basin. The legislative

1 authority shall grant the petition if it determines that land use
2 developments within the basin that are proposed or reasonably
3 anticipated to occur within the next five years will total ten percent
4 or more of the land area within the basin. The petition may be denied
5 where a drainage plan already exists for the basin that includes the
6 developments proposed or reasonably anticipated for the next five
7 years.

8 (3) The legislative authority shall determine the boundaries of
9 each drainage basin under its jurisdiction pursuant to rules adopted by
10 the department of ecology.

11 (4) The drainage plan shall:

12 (a) Provide for the conveyance of storm waters in a manner that
13 meets the standards of section 2 of this act and any other applicable
14 local or state storm water management standards;

15 (b) Assess and provide for all facilities to be used for storm
16 water conveyance, including artificial detention and retention
17 facilities, natural watercourses, natural wetlands used for storm water
18 management, and other measures;

19 (c) Provide for an equitable distribution of the costs of storm
20 water management by placing the greatest costs upon those activities
21 having the greatest impact upon storm water volume and degradation of
22 water quality; and

23 (d) Describe land use regulatory measures to mitigate storm water
24 impacts.

25 (5) The legislative authority shall adopt such ordinances and take
26 such other actions as are necessary to implement an adopted drainage
27 plan.

28 (6) A drainage plan adopted under this section must be combined
29 with a watershed plan covering the drainage basin that has been

1 approved by the department of ecology. The legislative authority need
2 not address issues already addressed in an applicable watershed plan.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 35A.63
4 RCW to read as follows:

5 (1) Each legislative authority shall provide procedures for the
6 preparation of basin storm water drainage plans in accordance with this
7 section.

8 (2) The procedures shall authorize the filing of a petition by a
9 person or persons residing within an area in which a natural
10 watercourse provides for storm water conveyance with the legislative
11 authority to prepare a drainage plan for the basin. The legislative
12 authority shall grant the petition if it determines that land use
13 developments within the basin that are proposed or reasonably
14 anticipated to occur within the next five years will total ten percent
15 or more of the land area within the basin. The petition may be denied
16 where a drainage plan already exists for the basin that includes the
17 developments proposed or reasonably anticipated for the next five
18 years.

19 (3) The legislative authority shall determine the boundaries of
20 each drainage basin under its jurisdiction pursuant to rules adopted by
21 the department of ecology.

22 (4) The drainage plan shall:

23 (a) Provide for the conveyance of storm waters in a manner that
24 meets the standards of section 2 of this act and any other applicable
25 local or state storm water management standards;

26 (b) Assess and provide for all facilities to be used for storm
27 water conveyance, including artificial detention and retention
28 facilities, natural watercourses, natural wetlands used for storm water
29 management, and other measures;

1 (c) Provide for an equitable distribution of the costs of storm
2 water management by placing the greatest costs upon those activities
3 having the greatest impact upon storm water volume and degradation of
4 water quality; and

5 (d) Describe land use regulatory measures to mitigate storm water
6 impacts.

7 (5) The legislative authority shall adopt such ordinances and take
8 such other actions as are necessary to implement an adopted drainage
9 plan.

10 (6) A drainage plan adopted under this section must be combined
11 with a watershed plan covering the drainage basin that has been
12 approved by the department of ecology. The legislative authority need
13 not address issues already addressed in an applicable watershed plan.

14 **Sec. 11.** RCW 86.26.040 and 1988 c 36 s 63 are each amended to read
15 as follows:

16 Whenever state grants under this chapter are used in a flood
17 control maintenance project, the engineer of the county within the
18 project is located shall approve all plans for the specific project and
19 shall supervise the work. The approval of such plans, construction,
20 and expenditures by the department of ecology, in consultation with the
21 department of fisheries and the department of wildlife, shall be a
22 condition precedent to state participation in the cost of any project
23 beyond planning and designing the specific project.

24 Additionally, state grants may be made to counties for preparation
25 of a comprehensive flood management plan required to be prepared under
26 RCW 86.26.050 and to counties and cities for the preparation of
27 drainage basin plans pursuant to section 8 of this act.

1 NEW SECTION. **Sec. 12.** The sum of four hundred thousand
2 dollars, or as much thereof as may be necessary, is appropriated for
3 the biennium ending June 30, 1993, from the flood control assistance
4 account to the department of ecology for the purposes of making grants
5 to cities and counties for the preparation of drainage basin plans
6 pursuant to sections 8, 9, and 10 of this act.