

2 **SHB 2514 - H AMD 1001 FAILED 2-17-98**

3 By Representative Schoessler

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 90.82.005 and 1997 c 442 s 101 are each amended to  
8 read as follows:

9 The purpose of this chapter is to develop a ~~((more))~~ thorough and  
10 cooperative method ~~((of))~~ that provides local citizens the maximum  
11 possible input for: Determining what the current water resource  
12 situation is in each water resource inventory area of the state and  
13 ~~((to provide local citizens with the maximum possible input concerning~~  
14 ~~their))~~ establishing goals and objectives for water resource management  
15 and development; reviewing water quality problems and recommending  
16 strategies for achieving compliance with water quality standards; and  
17 coordinating with any plans for the protection and enhancement of fish  
18 habitat.

19 It is necessary for the legislature to establish processes and  
20 policies that will result in providing state agencies with more  
21 specific guidance to manage the water resources of the state consistent  
22 with current law and direction provided by local entities and citizens  
23 through the process established in accordance with this chapter.

24 It is the intent of this chapter to provide locally based groups  
25 with the opportunity to: Assess local water supplies and needs and  
26 develop strategies to provide adequate water for economic prosperity  
27 and environmental protection while protecting existing water rights;  
28 ensure that adequate water supplies are available for population and  
29 economic growth under the requirements of the state's growth management  
30 act, chapter 36.70A RCW; review water quality problems and develop a  
31 strategy for achieving compliance with water quality standards; and  
32 coordinate plans for protection and enhancement of fish habitat.

33 Chapter . . . , Laws of 1998 (this act) is enacted to: Improve the  
34 ability of local governments and citizens to be involved in the design  
35 and implementation of solutions to water quantity, water quality, and  
36 habitat needs for fish species and provide an opportunity for people in

1 all watersheds to be involved in watershed planning if they so desire;  
2 provide a flexible mechanism for conducting locally initiated watershed  
3 planning on either a single watershed basis or, if more appropriate, on  
4 a multiple watershed basis; and allow local people to determine the  
5 scope of the watershed planning process while encouraging them to  
6 consider comprehensive watershed planning that includes addressing  
7 water quantity, water quality, and habitat for fish species in concert  
8 with one another.

9 Thus it is the intent of the legislature for integrated watershed  
10 management to help produce: Adequate water quantity for the future,  
11 adequate water quality to protect and promote beneficial uses, and  
12 sufficient protection and enhancement of habitat so that fish resources  
13 thrive to be used and enjoyed by citizens of the state.

14 It is also the intent of the legislature to encourage collaboration  
15 and cooperation between the wide range of interests, and local, state,  
16 federal, and tribal governments to develop solutions to watershed  
17 problems. The state of Washington wishes to recognize and maintain  
18 formal government-to-government relationships, and it also endeavors to  
19 work cooperatively with all governmental entities and representatives  
20 of citizen groups to foster effective and practical solutions that have  
21 broad-based support. It is the intent of the legislature that all of  
22 the citizens of the state of Washington work cooperatively to ensure  
23 that the management of the state's economic destiny and environmental  
24 heritage remains in the hands of Washington's citizens as much as  
25 possible.

26 Nothing in this chapter may be construed as affecting or impairing  
27 existing water or property rights.

28 **Sec. 2.** RCW 90.82.010 and 1997 c 442 s 102 are each amended to  
29 read as follows:

30 The legislature finds that the state's vital interests are served  
31 by the wise management of the state's water resources, by protecting  
32 existing water rights and dependent economies, by protecting and  
33 enhancing instream flows and habitat for fish, and by providing for the  
34 public health and economic well-being of the state's citizenry and  
35 communities. The legislature finds that many regions of the state are  
36 facing challenges relating to water quantity, water quality, and  
37 habitat for fish species. There are a number of bodies of water in the  
38 state that do not meet federal and state water quality standards. In

1 several areas of the state, there has been a significant decrease in  
2 the number of fish returning to state waters and there is a growing  
3 sense of urgency to protect and enhance existing fishery resources.  
4 The pressures of a growing population and expanding economy have led  
5 some local communities to seek additional water supplies for present  
6 and future needs and to seek certainty that the supplies will be  
7 available for those needs.

8       The legislature finds that the local development of watershed plans  
9 for managing water resources ((and)), for protecting existing water  
10 rights and dependent economies, and for protecting and enhancing  
11 habitat for fish is vital to both state and local interests. The local  
12 development of these plans serves vital local interests by placing it  
13 in the hands of people: Who have the greatest knowledge of both the  
14 resources and the aspirations of those who live and work in the  
15 watershed; and who have the greatest stake in the proper, long-term  
16 management of the resources. The development of such plans serves the  
17 state's vital interests by ensuring that the state's water resources  
18 are used wisely, by protecting existing water rights and dependent  
19 economies, by protecting instream flows for fish, by protecting or  
20 enhancing fish habitat, and by providing for the economic well-being of  
21 the state's citizenry and communities. Therefore, the legislature  
22 believes it necessary for units of local government throughout the  
23 state to engage in the orderly development of these watershed plans.

24       The legislature finds that water resource and fish habitat  
25 challenges vary from region to region. The legislature also finds  
26 that, in many cases, addressing one water resource or fishery habitat  
27 issue can cause concerns and have effects in other areas; as a result,  
28 integrated watershed management may be needed to address the variety of  
29 these challenges simultaneously.

30       The legislature further recognizes that considerable effort for  
31 addressing many of the challenges is represented by the work, planning,  
32 projects, and activities that have already been completed by local  
33 interests regarding watershed management or have been initiated and are  
34 in various stages of completion. The legislature finds that, if new,  
35 integrated watershed management is to be initiated, it must begin with  
36 a thorough review of these completed or ongoing efforts and should  
37 incorporate their products as appropriate so as not to duplicate the  
38 work already performed or underway.

1 Although these challenges may require approaches that are  
2 integrated and comprehensive, the legislature finds that considerable  
3 authority currently exists to address these issues but that such  
4 authority is spread across an array of federal, state, tribal, and  
5 local governments. Integration and coordination of such authorities in  
6 ways that have support of state, local, and tribal interests will be  
7 needed to develop and implement multi-interest and comprehensive  
8 solutions. The legislature further finds that new state and federal  
9 regulatory regimes are by and large not necessary to develop good  
10 watershed management and that local authorities in particular provide  
11 a broad array of implementation tools to support good watershed  
12 management. However, the legislature finds that the key to meeting  
13 existing regulatory objectives is the involvement and support of local  
14 citizens and local governments working cooperatively with state,  
15 federal, and tribal governments. The legislature recognizes that it is  
16 unable to provide all the funding necessary for integrated watershed  
17 management to be developed throughout the entire state at once, and  
18 that as a result, watershed management will be phased in across the  
19 state over time, and that the state has an ongoing responsibility to  
20 provide funding for the watershed management described in this chapter.

21 **Sec. 3.** RCW 90.82.020 and 1997 c 442 s 103 are each amended to  
22 read as follows:

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

25 (1) "City" means an incorporated city, code city, or town.

26 (2) "Department" means the department of ecology.

27 ~~((+2))~~ (3) "Implementing rules" for ~~((a WRIA plan))~~ integrated  
28 watershed management developed by a planning unit are the rules needed  
29 to give force and effect to the parts of the ~~((plan))~~ integrated  
30 watershed management that create rights or obligations for ~~((any party~~  
31 including)) a state agency ~~((or that establish water management~~  
32 policy)).

33 ~~((+3))~~ (4) "Indian tribe" means any Indian tribe, band, or nation  
34 that: (a) is recognized as eligible, by the secretary of the interior,  
35 for the special programs and services provided by the United States to  
36 Indians because of their status as Indians; and (b) is recognized as  
37 possessing powers of self-government.

1 (5) "Lead agency" means the entity identified under section 9 of  
2 this act that makes provision for administrative staff support for and  
3 receives grants for a planning unit developing integrated watershed  
4 management under this chapter.

5 (6) "Management area" means the WRIA or the multiple WRIA area for  
6 which integrated watershed management is developed by a planning unit  
7 under this chapter.

8 (7) "Minimum instream flows" means ((a minimum)) flows that meet  
9 the requirements of minimum flows under chapter 90.03 or 90.22 RCW ((or  
10 a)) and base flows under chapter 90.54 RCW as adopted by rule.

11 ((+4)) (8) "Planning unit" means a planning unit established under  
12 section 10 of this act.

13 (9) "WRIA" means a water resource inventory area established in  
14 chapter 173-500 WAC as it existed on January 1, 1997.

15 ((+5)) (10) "Water supply utility" means a ((water, combined))  
16 water-sewer district, irrigation district, reclamation district, or  
17 public utility district that provides water to persons or other water  
18 users within the district or a division or unit responsible for  
19 administering a publicly governed water supply system on behalf of a  
20 county.

21 ((+6) "WRIA plan" or "plan") (11) "Integrated watershed management"  
22 means the product of the planning unit ((including)) and includes the  
23 plan of the planning unit approved under section 11 of this act, any  
24 rules adopted in conjunction with the ((product)) plan of the planning  
25 unit, and strategies of the planning unit for implementing its plan.

26 NEW SECTION. Sec. 4. ELEMENTS OF MANAGEMENT--PRIORITY PROJECTS.

27 (1) Counties, cities, and water supply utilities may, at their option,  
28 provide for the development of integrated watershed management for  
29 watersheds under this chapter. If initiated, such management shall be  
30 developed for water quantity components of water resource management  
31 under section 5 of this act, water quality components of water resource  
32 management under section 7 of this act, and the coordination of  
33 protection or enhancement of fish habitat under section 8 of this act.  
34 If integrated watershed management is initiated under this chapter,  
35 minimum instream flows shall be established for streams in the  
36 management area as provided in section 6 of this act. It is  
37 anticipated that a planning unit will not await the development of  
38 proposals for minimum instream flows under section 6 of this act to

1 begin developing other components of its integrated watershed  
2 management for a management area; rather, work on these developments  
3 will be undertaken concurrently.

4 (2) Under this chapter, integrated watershed management may be  
5 developed by a planning unit for one or more WRIAs, but may not be  
6 developed by a planning unit for less than one WRIA except for those  
7 watersheds planned as pilot projects in the Methow and  
8 Dungeness/Quilcene areas before the effective date of this section.  
9 This chapter may not be construed to prevent or delay any planning,  
10 projects, or activities that are commenced under other laws or that are  
11 authorized.

12 (3) Integrated watershed management developed and approved under  
13 this chapter shall not contain provisions that (a) are in conflict with  
14 state statutes, federal laws, or tribal treaty rights, existing on the  
15 effective date of this section; (b) impair or diminish in any manner an  
16 existing water right evidenced by a claim filed in the water rights  
17 claims registry or a water right certificate or permit; (c) require a  
18 modification in the basic operations of a federal reclamation project  
19 with a water right the priority date of which is before the effective  
20 date of this section or alter in any manner whatsoever the quantity of  
21 water available under the water right for the reclamation project,  
22 whether the project has or has not been completed before the effective  
23 date of this section; (d) affect or interfere with an ongoing general  
24 adjudication of water rights; (e) apply in an area with an acreage  
25 expansion program in effect on the effective date of this section that  
26 is an element of a ground water area or subarea management program as  
27 provided in RCW 90.44.445; (f) in any way delay the processing of  
28 requests for changes in place of water use, purpose of use, or point of  
29 diversion; (g) modify or require the modification of any waste  
30 discharge permit issued under chapter 90.48 RCW; or (h) modify or  
31 require the modification of activities or actions taken to protect or  
32 enhance fish habitat if the activities or actions are: (i) Part of a  
33 habitat conservation plan and permit, an incidental take permit or  
34 statement, a management or recovery plan, or other cooperative or  
35 conservation agreement entered into with a federal or state fish and  
36 wildlife protection agency under its statutory authority for fish and  
37 wildlife protection that addresses the affected habitat; or (ii) part  
38 of an agreement regulating forest practices, which is adopted by rule  
39 by the forest practices board under the forest practices act, chapter

1 76.09 RCW, for the affected habitat. This subsection (3)(h) applies as  
2 long as the activities or actions continue to be taken in accordance  
3 with the plan, agreement, permit, statement, or rules. Any assessment  
4 conducted under section 5, 7, or 8 of this act shall take into  
5 consideration such activities and actions.

6 (4) Integrated watershed management developed and approved under  
7 this chapter shall not change existing local ordinances or existing  
8 state rules, but it may contain recommendations for changing such  
9 ordinances or rules.

10 (5) Once a planning unit has begun developing integrated watershed  
11 management under this chapter, the unit shall, as a matter of high  
12 priority:

13 (a) Review the historical geographic characteristics of the  
14 management area, and also review the planning, projects, and activities  
15 that have already been completed regarding natural resource management  
16 or enhancement in the management area and the products or status of  
17 those that have been initiated but not completed for such management in  
18 the management area, and incorporate their products as appropriate so  
19 as not to duplicate the work already performed or underway; and

20 (b) Identify projects and activities in the management area that  
21 the unit believes will likely serve short-term or long-term management  
22 goals and that warrant immediate financial assistance from state,  
23 federal, or local government. The planning unit shall prioritize these  
24 projects and activities in a manner that reflects the degree to which  
25 they serve the unit's goals and the costs and the benefits of  
26 undertaking them. The unit shall submit its prioritized list to the  
27 local governments with jurisdiction and, through the lead state  
28 representative on the planning unit designated under section 10(5)(j)  
29 of this act, to the legislature and the appropriate state agencies.

30 (6) Integrated watershed management planning conducted under  
31 sections 5, 7, and 8 of this act shall identify within the management  
32 area the actions and activities that are necessary to: Implement the  
33 provisions of the integrated watershed management, monitor the  
34 effectiveness of the implementation, and provide any needed  
35 modifications. It shall also identify the entities responsible for  
36 conducting these actions and activities. It shall also identify any  
37 entity responsible for the coordinated oversight of these  
38 responsibilities.

1        NEW SECTION.        **Sec. 5.**        WATER QUANTITY.        Integrated watershed

2 management established for water quantity in the management area shall  
3 include an assessment of water supply and use in the management area,  
4 including:

5        (1) An estimate of the surface and ground water present in the  
6 management area;

7        (2) An estimate of the surface and ground water available in the  
8 management area, taking into account seasonal and other variations;

9        (3) An estimate of the water in the management area represented by  
10 claims in the water rights claims registry, water use permits,  
11 certificated rights, rights granted under section 17 of this act,  
12 existing minimum instream flow rules, federally reserved rights, and  
13 any other rights to water;

14        (4) An estimate of the surface and ground water actually being used  
15 in the management area;

16        (5) An estimate of the water needed in the future for use in the  
17 management area;

18        (6) An identification of the location areas where aquifers are  
19 known to recharge surface bodies of water and areas known to provide  
20 for the recharge of aquifers from the surface;

21        (7) An estimate of the surface and ground water available for  
22 further appropriation, taking into account the minimum instream flows  
23 adopted by rule or to be adopted by rule for streams in the management  
24 area; and

25        (8) Strategies for increasing water supplies in the management  
26 area, which may include, but are not limited to, increasing water  
27 supplies through water conservation, water reuse, the use of reclaimed  
28 water, voluntary water transfers, aquifer recharge and recovery,  
29 additional water allocations, or water storage enhancements. The  
30 objective of these strategies is to supply water in sufficient  
31 quantities to satisfy the minimum instream flows and to provide water  
32 for future out-of-stream uses for water identified in subsection (5) of  
33 this section and to ensure that adequate water supplies are available  
34 for population and economic growth under the requirements of the  
35 state's growth management act, chapter 36.70A RCW. These strategies  
36 shall not be construed to be an allocation of water. If integrated  
37 watershed management is established by a planning unit under this  
38 section for water quantity components of water resource management in  
39 a management area and that management is approved by the counties under



1 section 11 of this act but does not contain the strategies required  
2 under this subsection, all components of integrated watershed  
3 management established by the planning unit under this chapter are  
4 void.

5 NEW SECTION. **Sec. 6.** INSTREAM FLOWS. (1)(a) Except as provided  
6 in subsection (5) of this section, minimum instream flows shall be  
7 established by rule for the principal stream or streams in the WRIA or  
8 multiple WRIA area for which integrated watershed management is  
9 developed by a planning unit under this chapter. At the time a  
10 planning unit is chosen or created under section 10 of this act or  
11 initial appointments are made by cities and counties under section 10  
12 of this act, the cities and counties in a management area may decide,  
13 as described in section 9(9) of this act, that the planning unit will  
14 not participate in identifying such flows in the management area, in  
15 which case they shall request the department to adopt rules  
16 establishing the minimum instream flows for the principle stream or  
17 streams in the management area.

18 (b) In all other management areas after considering in detail the  
19 assessment provided in section 5 of this act, identifying the flow  
20 regimes that make up the minimum instream flows shall be a  
21 collaborative effort between the department and the members of the  
22 planning unit developing the integrated watershed management. As these  
23 flows are developed, it shall be the duty of the department to attempt  
24 to achieve consensus among all of the members of the planning unit  
25 regarding the minimum flows to be adopted by rule by the department.  
26 Approval is achieved if:

27 (i) The members of the planning unit present for a recorded vote on  
28 the proposed minimum instream flows who have been appointed to  
29 represent the state through the shared ballot process described in  
30 section 10 (6) and (9) of this act, each appointed to represent tribal  
31 governments with federal Indian reservations or federally recognized  
32 ceded lands located in whole or in part within the management area or  
33 fishing rights recognized under federal case law on lands within the  
34 management area, each appointed to represent directly counties, each  
35 appointed to represent directly cities, each appointed to represent  
36 directly conservation districts, and each appointed to represent  
37 directly water supply utilities records his or her support for the

1 proposed minimum instream flows as part of the recorded vote or  
2 abstains from voting on the proposal; and

3 (ii) A majority of the members of the planning unit, other than  
4 those who have been appointed to represent the entities identified in  
5 (b)(i) of this subsection, who are present for a recorded vote on  
6 proposed minimum instream flows, records support for the proposed  
7 minimum instream flows as part of the recorded vote on the proposal.

8 That such a recorded vote will be taken on proposed minimum  
9 instream flows shall be announced at the official meeting of the  
10 planning unit immediately preceding the official meeting of the unit at  
11 which the vote is recorded and a notice regarding voting on proposed  
12 minimum instream flows shall be sent to each member appointed to the  
13 planning unit as soon as possible following the meeting at which such  
14 an announcement is made.

15 (2) If approval of the planning unit is achieved on minimum  
16 instream flows proposed for a management area under subsection (1) of  
17 this section, the department shall establish those flows by rule as  
18 described in RCW 90.82.040(8).

19 (3) If approval is not achieved under subsection (1) of this  
20 section within four years of the date the planning unit first receives  
21 funding from the department under RCW 90.82.040, the department may  
22 promptly initiate rule making under chapter 34.05 RCW to establish  
23 minimum instream flows for these streams. If the planning unit did not  
24 achieve approval on establishing minimum instream flows, the planning  
25 unit may submit the vote on instream flows to the department for its  
26 consideration. Minimum flows established under this section shall have  
27 a priority date of two years after the planning unit first received  
28 funding from the department under RCW 90.82.040.

29 (4) If minimum instream flows have been adopted by rule for a  
30 stream in the management area and the cities and counties do not, under  
31 section 9 of this act, request the planning unit or the department to  
32 modify those flows, minimum instream flows for the stream shall not be  
33 modified for the stream under this chapter. If the cities and counties  
34 request, under section 9 of this act, that the planning unit modify the  
35 minimum instream flows for the stream but approval is not achieved  
36 under this section for modifying those flows, minimum instream flows  
37 shall not be modified for the stream under this chapter.

38 (5) Nothing in this chapter either: (a) Affects the department's  
39 authority to establish flow requirements or other conditions under RCW

1 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.)  
2 for the licensing or relicensing of a hydroelectric power project under  
3 the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or  
4 impairs existing instream flow requirements and other conditions in a  
5 current license for a hydroelectric power project licensed under the  
6 federal power act.

7 (6) Minimum instream flows shall not be proposed or adopted for the  
8 main stem of the Columbia river or the main stem of the Snake river  
9 under this chapter.

10 (7) A planning unit may consider identifying how minimum instream  
11 flows could be modified in response to the successful implementation of  
12 other elements of the integrated watershed management.

13 (8) As used in this section, the "principal stream or streams" are,  
14 in a management area for which the department is requested by cities  
15 and counties to adopt minimum instream flows under subsection (1)(a) of  
16 this section, the streams determined by the department to be the  
17 principal stream or streams. In any other management area, the  
18 "principal stream or streams" are the main stem of the stream with the  
19 largest annual average flow in each WRIA in the management area; and  
20 the major tributaries to such a main stem and any other streams in the  
21 management area that are determined to be principal streams by the  
22 planning unit by a majority vote of the planning unit. "Principal  
23 stream or streams" does not include streambeds that are used as  
24 laterals for irrigation and are nonfish-bearing.

25 (9) Nothing in this chapter may be construed as affecting or  
26 impairing in any manner whatsoever water rights existing before the  
27 effective date of this section.

28 NEW SECTION. **Sec. 7.** WATER QUALITY. Integrated watershed  
29 management established for water quality in the management area shall  
30 include the following components:

31 (1) An examination based on existing studies conducted by federal,  
32 state, and local agencies of the degree to which legally established  
33 water quality standards are being met in the management area;

34 (2) An examination based on existing studies conducted by federal,  
35 state, and local agencies of the causes of water quality violations in  
36 the management area, including an examination of information regarding  
37 pollutants, point and nonpoint sources of pollution, and pollution-  
38 carrying capacities of water bodies in the management area. The

1 analysis shall take into account seasonal stream flow or level  
2 variations, natural events, and pollution from natural sources that  
3 occurs independent of human activities;

4 (3) An examination of the uses of each of the nonmarine bodies of  
5 water in the management area and an identification of the beneficial  
6 uses of each for water quality classification purposes;

7 (4) An identification of the class of use for nonmarine bodies of  
8 water and for basin-specific water quality standards that may be  
9 adopted by rule by the department and recommendations for the water  
10 quality standards to be adopted for those bodies of water;

11 (5) A recommended strategy for achieving compliance with water  
12 quality standards for the nonmarine bodies of water in the management  
13 area; and

14 (6) Recommended means of monitoring by appropriate government  
15 agencies whether actions taken to implement the strategy bring about  
16 improvements in water quality that are sufficient to achieve compliance  
17 with water quality standards.

18 This chapter does not obligate the state to undertake analysis or  
19 to develop strategies required under the federal clean water act (33  
20 U.S.C. Sec. 1251 et seq.).

21 NEW SECTION. **Sec. 8.** HABITAT. Integrated watershed management  
22 shall be coordinated, or as needed, developed to protect or enhance  
23 fish habitat in the management area by relying on existing laws and  
24 rules adopted under habitat planning processes such as the habitat work  
25 plans prepared under chapter . . . , Laws of 1998 (Substitute House Bill  
26 No. 2496) and other existing plans created for the purpose of  
27 protecting, restoring, or enhancing fish habitat, the shoreline  
28 management act, chapter 90.58 RCW, the growth management act, chapter  
29 36.70A RCW, and the forest practices act, chapter 76.09 RCW.  
30 Management established under this section shall be integrated with  
31 strategies developed under other processes to respond to potential and  
32 actual listings of salmon and other fish species as being threatened or  
33 endangered under the federal endangered species act, 16 U.S.C. Sec.  
34 1531 et seq. Integrated watershed management developed for such  
35 purposes shall include the following components:

36 (1) An analysis of the potential for protecting or enhancing fish  
37 habitat in the management area;

1 (2) An identification of fish habitat protection or enhancement  
2 activities and projects and voluntary transactions, including but not  
3 limited to those providing for the purchase of fish habitat or fish  
4 habitat easements, that would provide the greatest benefit to such  
5 habitat in the management area. Where habitat work plans developed  
6 under chapter . . . , Laws of 1998 (Substitute House Bill No. 2496) are  
7 available or are intended to be developed, the planning shall rely on  
8 those plans;

9 (3) Recommended means of ensuring that the activities, projects,  
10 and transactions identified under subsection (2) of this section will  
11 be undertaken. Where habitat work plans developed under chapter . . . ,  
12 Laws of 1998 (Substitute House Bill No. 2496) are available or are  
13 intended to be developed, the planning shall rely on those plans; and

14 (4) Recommended means of monitoring the effect of undertaking the  
15 activities, projects, and transactions identified under subsection (2)  
16 of this section on protecting or enhancing fish habitat in the  
17 management area.

18 NEW SECTION. **Sec. 9.** INITIATING INTEGRATED WATERSHED MANAGEMENT.  
19 The following is the procedure by which the development of integrated  
20 watershed management may be initiated under this chapter.

21 (1) The following entities may decide that integrated watershed  
22 management should be considered: (a) The county with the largest area  
23 within the boundaries of a single WRIA or multi-WRIA proposed  
24 management area; (b) the city, if there is one, within the proposed  
25 management area using the largest amount of water from within the  
26 proposed management area; (c) the city, if there is one, cumulatively  
27 diverting and withdrawing the largest amount of water from within the  
28 proposed management area; and (d) the water supply utility, if there is  
29 one, that provides the largest quantity of water in the proposed  
30 management area. However, the county with the largest area bordering  
31 on the main stem of the stream with the largest annual flow, not  
32 including the Columbia or Snake rivers, within the boundaries of a  
33 WRIA, the city obtaining the largest amount of water from the WRIA, and  
34 the largest water supply utility in the WRIA may jointly and  
35 unanimously choose to initiate watershed management for the WRIA under  
36 this chapter.

37 (2) If entities in subsection (1) of this section decide jointly an  
38 unanimously to proceed, they shall invite the Indian tribe, if there is

1 one, with the largest reservation within the proposed management area  
2 to participate in integrated watershed management.

3 (3) The entities in subsection (1) of this section, including the  
4 tribe if it affirmatively accepts the invitation, constitute the  
5 initiating governments for the purposes of this section.

6 (4) On behalf of the initiating governments, the county with the  
7 largest area within the boundaries of the proposed management area  
8 shall convene a public meeting in the affected area to discuss the  
9 appointment of a planning unit for developing integrated watershed  
10 management under this chapter. Notices of the meeting shall be sent  
11 to:

12 (a) County governments with territory in the proposed management  
13 area;

14 (b) The cities of each county located in and cities that receive  
15 water from the proposed management area;

16 (c) Tribal governments of federal Indian reservations or federally  
17 recognized ceded lands located in whole or in part within the  
18 boundaries of the proposed management area;

19 (d) Water supply utilities located in and water supply utilities  
20 that receive water from the proposed management area;

21 (e) Conservation districts with territory in the proposed  
22 management area;

23 (f) Groups and entities that have been or are currently engaged in  
24 public planning processes within the proposed management area that  
25 involve water quantity, water quality, or habitat restoration  
26 activities. In providing this notice, the county shall make a  
27 reasonable attempt to identify and notify groups and entities that  
28 within the last five years have been or are currently engaged in such  
29 planning; and

30 (g) The department, which shall notify other appropriate state  
31 agencies, appropriate Indian tribes, and appropriate federal agencies.

32 The notice shall contain the purpose, time, and location of the  
33 meeting. The notice shall also be published at least once a week for  
34 two consecutive weeks in a newspaper of general circulation in the  
35 proposed management area. The notice that is published in the  
36 newspaper shall invite members of the general public to participate.

37 (5) The purpose of the public meeting is to obtain comments  
38 regarding initiating the development of integrated watershed management  
39 under this chapter, the coordination of that process with ongoing

1 planning processes and activities in the watershed, and the creation of  
2 a planning unit to prepare the integrated watershed management.

3 (6) For developing integrated watershed management under this  
4 chapter, the county with the largest area within the boundaries of the  
5 proposed management area is the lead agency for the development of the  
6 integrated watershed management, unless the cities, counties, and  
7 Indian tribes described in subsection (8) of this section approve the  
8 designation of another governmental agency as the lead agency. Such a  
9 governmental agency shall act as the lead agency for this purpose if it  
10 agrees in writing to accept the designation.

11 (7) At or following the public meeting, the county that convened  
12 the meeting shall call for a vote of the cities, counties, and Indian  
13 tribes described in subsection (8) of this section as to whether to  
14 proceed with the development of integrated watershed management under  
15 this chapter in the proposed management area. If these cities,  
16 counties, and Indian tribes approve proceeding with the development of  
17 such management, the lead agency shall make application to the  
18 department for funding to develop integrated watershed management under  
19 this chapter.

20 (8) The cities, counties, and Indian tribes that may make decisions  
21 under subsections (6) and (7) of this section may choose the type of  
22 planning unit to be used for developing integrated watershed management  
23 under this chapter in the proposed management area under section 10 of  
24 this act.

25 (9) At the time a planning unit is chosen or created under section  
26 10 of this act or initial appointments are made by cities and counties  
27 under section 10 of this act, the cities and counties in a management  
28 area may: (a) Decide that the planning unit will not participate in  
29 identifying such flows in the management area, in which case they shall  
30 request the department to adopt rules establishing the minimum instream  
31 flows for the principal stream or streams in the management area; or  
32 (b) if minimum instream flows have been adopted by rule for a stream in  
33 the management area, request either the planning unit or the department  
34 to modify those flows. To approve an action for these purposes, the  
35 cities must approve the action by majority vote, with each city having  
36 one vote, and the counties must approve the action by unanimous vote,  
37 with each county having one vote. The vote of each city and each  
38 county shall be the vote assigned directly, in person or in writing, by  
39 the elected officials of the city and directly, in person or in

1 writing, by the members of the legislative authority of the county.  
2 For this purpose, the "elected officials" of a city are the members of  
3 the city's legislative authority and, if applicable, its elected mayor.

4 NEW SECTION. **Sec. 10.** PLANNING UNIT--APPOINTMENT--OPTIONS. (1)

5 If the initiating governments approve proceeding with the development  
6 of integrated watershed management for a management area as described  
7 in section 9(7) of this act, the development of such management will be  
8 conducted under this chapter in the single WRIA or multiple WRIA  
9 management area by one planning unit. As provided in subsections (2)  
10 and (3) of this section, the cities, counties, and tribe may choose an  
11 existing planning group as the basis for local representation on the  
12 planning unit or they may identify the composition of a new group as  
13 the basis for local representation on the planning unit. Such a choice  
14 shall be made as described in section 9(9) of this act. If the cities,  
15 counties, and tribe do not choose such an existing or new group in this  
16 manner, the planning unit to be used for developing the integrated  
17 watershed management for the management area is the planning unit  
18 specified in subsection (5) of this section.

19 (2) If the cities, counties, and tribe choose an existing planning  
20 group as the basis for local representation on a planning unit, the  
21 planning group shall have been in existence for at least one year  
22 before being so chosen. To be considered, the representation of  
23 governmental entities and interest groups on such a planning group must  
24 be generally similar to the representation identified in subsections  
25 (5)(a) through (g) and (12) of this section, or the planning group  
26 shall have a statutorily specified membership. If the cities,  
27 counties, and tribe find that the existing group has the required  
28 composition and find that the scope of the group's work is or has been  
29 appropriate considering the tasks to be given the planning unit under  
30 this chapter, the cities, counties, and tribe may designate the group  
31 as the basis for local participation on the planning unit. The  
32 existing group chosen in this manner plus the membership specified in  
33 subsection (5)(j) of this section and any membership provided under  
34 subsection (5)(i) of this section, which provide for representation by  
35 state and tribal governments, constitute the planning unit for  
36 developing integrated watershed management under this chapter in the  
37 management area.



1 (3) The cities, counties, and tribe may choose as the basis for  
2 local participation on the planning unit under this chapter a new  
3 planning group tailored to the specific geographic area for which  
4 integrated watershed management will be developed. The cities,  
5 counties, and tribe shall ensure that the members of the planning unit  
6 represent diverse interests, and shall include the interests  
7 represented by a planning unit that would be appointed under  
8 subsections (5)(a) through (g) and (12) of this section. If the  
9 cities, counties, and tribe designate a new planning group as the basis  
10 for local participation on the planning unit, the new group plus the  
11 membership specified in subsection (5)(j) of this section and any  
12 membership provided under subsection (5)(i) of this section, which  
13 provide for representation by state and tribal governments, constitute  
14 the planning unit for developing integrated watershed management under  
15 this chapter in the management area.

16 (4) If an existing or new group is designated under subsection (2)  
17 or (3) of this section as the basis for local participation on the  
18 planning unit, the group and therefore the planning unit it is a part  
19 of: Shall have membership positions that directly represent cities in  
20 whole or in part in the management area and these positions shall be  
21 clearly identified as such; and shall have membership positions that  
22 directly represent counties with territory in the WRIAs that make up  
23 the management area and these positions shall be clearly identified as  
24 such. The cities, counties, and tribe designating a new group as the  
25 basis for local participation on the planning unit may identify a  
26 subcommittee structure for the planning unit, but the authorities  
27 granted to a planning unit by this chapter may only be exercised by the  
28 full planning unit. Any of the cities or counties that are entitled to  
29 have a membership position on the planning unit may choose not to  
30 participate in the planning unit.

31 (5) Unless a planning unit is created as provided in subsection (2)  
32 or (3) of this section, the planning unit that develops integrated  
33 watershed management in a single WRIA management area under this  
34 chapter shall be composed of the following:

35 (a) One member representing each county with territory in the WRIA  
36 appointed by the county;

37 (b) One member representing cities for each county with territory  
38 in the WRIA appointed by the cities within that county;

1 (c) One member representing water supply utilities for each county  
2 with territory within the WRIA, appointed jointly by the three largest  
3 water supply utilities in the county;

4 (d) One member representing all conservation districts with  
5 territory within the WRIA appointed jointly by those districts;

6 (e) Three members representing major interests in the WRIA  
7 appointed jointly by the cities with territory within the WRIA; three  
8 members representing major interests in the WRIA appointed jointly by  
9 the counties with territory within the WRIA; and three members  
10 representing major interests in the WRIA, appointed jointly by the  
11 cities and counties with territory within the WRIA;

12 (f) One member representing the general citizenry appointed jointly  
13 by the cities with territory within the WRIA;

14 (g) One member representing the general citizenry appointed jointly  
15 by the counties with territory in the WRIA;

16 (h) Two members representing the general citizenry appointed  
17 jointly by the cities and counties, one of whom shall be a holder of a  
18 water right certificate and one of whom shall be a holder of a water  
19 right for which a statement of claim was in the state's water rights  
20 claims registry before January 1, 1997;

21 (i) If one or more federal Indian reservations, other than the  
22 initiating tribe, if there is one, are located in whole or in part  
23 within the boundaries of the management area, or if one or more Indian  
24 tribes located in this state have federally recognized ceded land  
25 within the management area or fishing rights recognized under federal  
26 case law on lands within the management area, the planning unit shall  
27 promptly extend an invitation to the tribal government of each such  
28 reservation to appoint one member representing that tribal government  
29 and to the tribal government of each such Indian tribe to appoint one  
30 member representing that tribe; and

31 (j) One member representing each of the following state agencies:  
32 The department of transportation, the department of fish and wildlife,  
33 the department of ecology, and the department of natural resources.

34 (6) The four members representing state agencies under subsection  
35 (5)(j) of this section shall have a total of two votes in any voting  
36 done by the planning unit. One of these votes shall be shared by the  
37 department of natural resources and the department of fish and  
38 wildlife; the other vote shall be shared by the department of ecology  
39 and the department of transportation. Of these members, the governor

1 shall appoint one lead state representative whose duty it is to ensure  
2 that state government ultimately speaks with one voice in developing  
3 integrated watershed management under this chapter, to coordinate the  
4 state's participation on the planning unit, and to secure and  
5 coordinate under section 15 of this act the technical assistance  
6 provided by the state to the planning unit.

7 (7) In addition, for a WRIA located within Pierce, King, Snohomish,  
8 or Spokane county, one representative of the water purveyor using the  
9 largest amount of water from the WRIA shall be a voting member of the  
10 planning unit whether the principal offices of the purveyor are or are  
11 not located within the WRIA.

12 (8) Unless a planning unit is created as provided in subsection (2)  
13 or (3) of this section, the planning unit that develops integrated  
14 watershed management in a multi-WRIA management area under this chapter  
15 shall be composed of the following:

16 (a) One member representing each county with territory in the  
17 multi-WRIA area appointed by that county;

18 (b) One member representing cities for each county with territory  
19 in the multi-WRIA area appointed by the cities within that county;

20 (c) One member representing water supply utilities for each county  
21 with territory within the multi-WRIA area appointed jointly by the  
22 three largest water supply utilities in each county;

23 (d) Up to two members, as that number is determined by the  
24 districts, representing all conservation districts with territory  
25 within the multi-WRIA area and appointed jointly by those districts;

26 (e) Three members representing major interests in the management  
27 area appointed jointly by the cities with territory within the multi-  
28 WRIA area; three members representing major interests in the management  
29 area appointed jointly by the counties with territory within the multi-  
30 WRIA area; and three members representing major interests in the  
31 management area appointed jointly by the cities and counties with  
32 territory within the multi-WRIA area;

33 (f) One member representing the general citizenry appointed jointly  
34 by the cities with territory within the multi-WRIA area;

35 (g) One member representing the general citizenry appointed jointly  
36 by the counties with territory in the multi-WRIA area;

37 (h) Two members representing the general citizenry appointed  
38 jointly by the cities and the counties, one of whom shall be a holder  
39 of a water right certificate and one of whom shall be a holder of a

1 water right for which a statement of claim was in the state's water  
2 rights claims registry before January 1, 1997;

3 (i) If one or more federal Indian reservations, other than the  
4 initiating tribe if there is one, are located in whole or in part  
5 within the boundaries of the management area, or if one or more Indian  
6 tribes located in this state have federally recognized ceded land  
7 within the management area or fishing rights recognized under federal  
8 case law on lands within the management area, the planning unit shall  
9 promptly extend an invitation to the tribal government of each such  
10 reservation to appoint one member representing that tribal government  
11 and to the tribal government of each such Indian tribe to appoint one  
12 member representing that tribe; and

13 (j) One member representing each of the following state agencies:  
14 The department of transportation, the department of fish and wildlife,  
15 the department of ecology, and the department of natural resources.

16 (9) The four members representing state agencies under subsection  
17 (8)(j) of this section shall have a total of two votes in any voting  
18 done by the planning unit. One of these votes shall be shared by the  
19 department of natural resources and the department of fish and  
20 wildlife; the other vote shall be shared by the department of ecology  
21 and the department of transportation. Of these members, the governor  
22 shall appoint one lead state representative whose duty it is to ensure  
23 that state government ultimately speaks with one voice in developing  
24 integrated watershed management under this chapter, to coordinate the  
25 state's participation on the planning unit, and to secure and  
26 coordinate under section 15 of this act the technical assistance  
27 provided by the state to the planning unit.

28 (10) In addition, for a multi-WRIA planning unit located within  
29 Pierce, King, Snohomish, or Spokane county, one representative of the  
30 water purveyor using the largest amount of water from the multi-WRIA  
31 area shall be a voting member of the planning unit whether the  
32 principal offices of the purveyor are or are not located within the  
33 multi-WRIA area.

34 (11) Each planning unit may invite representatives of federal  
35 agencies with jurisdiction over the subject matter for which integrated  
36 watershed management is being developed by the unit and the managers of  
37 major federal lands located within the management area to assist the  
38 planning unit by participating in the development of integrated  
39 watershed management by the unit under this chapter. Such

1 representatives shall not be considered to be voting members of the  
2 planning unit.

3 (12) In appointing persons to a planning unit representing major  
4 interests in the management area, the cities and counties shall ensure  
5 that economic and environmental interests and instream and out-of-  
6 stream interests in water, in the management area are represented. In  
7 doing so, the cities and counties shall consult with each other  
8 regarding the representation each is providing and may consider  
9 industrial water users, general businesses, hydroelectric and thermal  
10 power producers, and irrigated agriculture, nonirrigated agriculture,  
11 forestry, recreation, environmental, and recreational and commercial  
12 fisheries interest groups, and other groups with interests in the  
13 management area.

14 (13) If a single WRIA or multi-WRIA management area does not  
15 contain a city within its boundaries, the county shall make all the  
16 appointments that a city would make under this section.

17 NEW SECTION. **Sec. 11.** DECISIONS--HEARINGS--APPROVAL. (1) The  
18 planning unit shall attempt to achieve consensus among the members of  
19 the planning unit in developing the components of its proposed  
20 integrated watershed management under section 5, 7, or 8 of this act.

21 (2) Decisions regarding setting minimum instream flows shall be  
22 made as described in section 6 of this act. Whether the minimum  
23 instream flows set for streams in the management area are or are not  
24 added as an express component of the planning unit's integrated  
25 watershed management for the management area may be determined by the  
26 planning unit, but adding or not adding the component does not affect  
27 the decisions made under section 6 of this act regarding minimum  
28 instream flows.

29 (3) As part of its integrated watershed management, the planning  
30 unit may choose to develop drafts of state administrative rules and  
31 local ordinances that would be needed to give force and effect to the  
32 parts of its integrated watershed management that would create rights  
33 or obligations for any party. If it so chooses, it may also request  
34 the appropriate state agencies, units of tribal government, and units  
35 of local government to assist it in drafting the rules and ordinances.  
36 If the planning unit requests a state agency to provide such  
37 assistance, the state agency shall provide the assistance.

1 (4)(a) Upon completing its proposed integrated watershed management  
2 for the management area, the planning unit shall publish notice of and  
3 conduct at least one public hearing in each county in the management  
4 area on the proposal. The planning unit shall take care to provide  
5 notice of the hearing throughout the management area. As a minimum,  
6 the notice shall be published in one or more newspapers of general  
7 circulation in the management area. After considering the public  
8 comments and making any changes in its proposal, the planning unit may  
9 approve the proposal by the process provided for in (b) and (c) of this  
10 subsection.

11 (b)(i) The department and the tribal government with federal Indian  
12 reservation land located within the management area shall provide  
13 advice as to any specific subsections or sections of the watershed  
14 management that the department or tribe believes to be in conflict with  
15 state or federal law, and may provide other recommendations regarding  
16 the watershed management. The department or tribe shall transmit its  
17 advice and recommendations within forty-five days of receiving it for  
18 review. The planning unit shall consider each recommendation provided  
19 by the department under this subsection. The planning unit may adopt  
20 the recommendation or provide changes to respond to the advice of the  
21 department or tribe by achieving approval by a vote of the members of  
22 the planning unit.

23 (ii) If the planning unit fails to adopt the department's or tribal  
24 council's recommendations regarding provisions of the watershed  
25 management that conflict with state or federal law, the department and  
26 the planning unit shall submit the dispute to mediation. If mediation  
27 does not resolve the dispute within forty-five days, the department  
28 shall file a petition for declaratory judgment in the superior court of  
29 the county with the largest area in the WRIA or multi-WRIA governed by  
30 the watershed management. The superior court shall review the dispute  
31 under the error of law standard. If the superior court finds that a  
32 component of the plan conflicts with state or federal law, that  
33 component of the plan is invalid. Decisions on such petitions are  
34 reviewable as in other civil cases. This subsection shall not be  
35 construed to establish state liability for any other element of the  
36 watershed management adopted as rules.

37 (c) Approval among the members of the planning unit is achieved if  
38 the members of the planning unit present for a recorded vote on the  
39 proposal appointed to represent the state through the shared ballot

1 process described in section 10 (6) and (9) of this act, each appointed  
2 to represent tribal government with federal Indian reservation land  
3 located in the WRIA, each appointed to represent directly counties,  
4 each appointed to represent water supply utilities, each appointed to  
5 represent conservation districts, and each appointed to represent  
6 directly cities records his or her support for the proposed integrated  
7 watershed management as part of a recorded vote on the proposal.

8 (d) Approval among the members of the planning unit appointed to  
9 represent major interests in the management area and general citizenry  
10 components of the planning unit is achieved if a majority of the  
11 members of the planning unit, other than those described in (b) of this  
12 subsection, present at the recorded vote on the proposal records  
13 support for the integrated watershed management as a part of the  
14 recorded vote.

15 (e) If the watershed management is approved by the planning unit,  
16 the unit shall submit the watershed management to the counties with  
17 territory within the management area.

18 (f) If the watershed management is not approved by the planning  
19 unit following a vote, then the planning unit shall submit the  
20 watershed management to mediation in an attempt to achieve agreement  
21 between the members of the planning unit. If the unit is unable to  
22 reach an agreement that will achieve approval within forty-five days  
23 after submitting the dispute to mediation, the planning unit may either  
24 submit the components of the watershed management in which agreement  
25 was achieved to the county for approval or terminate the process.

26 (5) The legislative authority of each of the counties with  
27 territory within the management area shall provide public notice for  
28 and conduct at least one public hearing in each county on the approved  
29 watershed management submitted to the county under this section. The  
30 counties shall take care to provide notice of the hearings throughout  
31 the management area. As a minimum, the notice shall be published in  
32 one or more newspapers of general circulation in the management area.  
33 After the public hearings, the legislative authorities of these  
34 counties shall convene in joint session to consider the watershed  
35 management. The counties may approve or reject the watershed  
36 management, but may not amend it. Approval of a watershed management  
37 or of recommendations for a watershed management that are not approved  
38 shall be made by a majority vote of the members of the legislative

1 authorities of each of the counties with territory in the management  
2 area.

3 (6) If the watershed management is not approved by the counties, it  
4 shall be returned to the planning unit with recommendations for  
5 revisions. If the revisions are approved by the planning unit, the  
6 watershed management shall be returned to the county for adoption.  
7 Approval of such a revised proposal shall be made in the same manner  
8 provided for the original integrated watershed management. If the  
9 revisions are not approved by the planning unit, the planning unit and  
10 the counties shall submit the revisions to mediation in an attempt to  
11 reach an agreement that will achieve approval by the planning unit and  
12 the counties. If approval of the planning unit is achieved after  
13 mediation, the watershed management shall be returned to the county for  
14 adoption. If the planning unit is unable to achieve agreement  
15 following mediation, it may either submit the components of the  
16 watershed management in which agreement was achieved to the county for  
17 approval or terminate the process. The department shall proceed with  
18 adopting the approved watershed management through a rules adoption  
19 process described in RCW 90.82.040(8).

20 (7) Before the adoption of the watershed management by the county  
21 legislative authority, the county shall transmit a copy of the  
22 watershed management to each city located in the WRIA. The cities  
23 shall hold a public hearing on the watershed management. The city  
24 shall publish notice of the hearing in a newspaper of general  
25 circulation in the city at least three days before the hearing. The  
26 city has forty-five days after receiving the watershed management from  
27 the county to consider passage of a resolution that expresses agreement  
28 with the watershed management or express any concerns with the  
29 watershed management with the county.

30 (8) At a minimum, the planning unit shall not add a component to  
31 its integrated watershed management that creates an obligation for  
32 state government unless the members of the planning unit appointed to  
33 represent state government agree to adding the component; it shall not  
34 add a component that creates an obligation for a tribal government  
35 unless the member or members of the planning unit appointed to  
36 represent that tribal government agree to adding the component; it  
37 shall not add a component that creates an obligation for a county,  
38 city, conservation district, or water supply utility unless the members  
39 of the planning unit appointed to represent the county, city,



1 conservation district, or water supply utility agree to adding the  
2 component. A member's agreeing to add a component shall be evidenced  
3 by a recorded vote of all members of the planning unit in which the  
4 members record support for adding the component. If integrated  
5 watershed management is approved by the planning unit and the counties  
6 for a management area under this section and that management creates  
7 obligations for agencies of state government, the obligations are  
8 binding on the state agencies and the agencies shall adopt implementing  
9 rules and take other actions to fulfill their obligations as soon as  
10 possible.

11 NEW SECTION. **Sec. 12.** MEMBERSHIP--OTHER RULES. (1) A vacancy on  
12 a planning unit shall be filled by appointment in the same manner  
13 prescribed for appointing the position that has become vacant. The  
14 planning unit shall not interrupt its work to await additional original  
15 appointments or appointments to fill any vacancies that may occur in  
16 its membership.

17 (2) No person who is a member of a planning unit for a management  
18 area under this chapter may designate another to act on behalf of the  
19 person as a member or to attend as a member a meeting of the unit on  
20 behalf of the person. If a member of such a planning unit is absent  
21 from more than five meetings of the planning unit that constitute  
22 twenty percent or more of the meetings that have been conducted by the  
23 planning unit while the person is a member of the unit.

24 (3) For the purposes of this chapter, a county or conservation  
25 district is considered to have territory within a management area only  
26 if the territory of the county or district located in one of the WRIA's  
27 in the management area constitutes at least fifteen percent of the area  
28 of the WRIA.

29 **Sec. 13.** RCW 90.82.040 and 1997 c 442 s 105 are each amended to  
30 read as follows:

31 ~~(1) ((Once a WRIA planning unit has been organized and designated~~  
32 ~~a lead agency, it shall notify the department and may apply to the~~  
33 ~~department for funding assistance for conducting the planning. Funds~~  
34 ~~shall be provided from and to the extent of appropriations made by the~~  
35 ~~legislature to the department expressly for this purpose.~~

36 ~~(2) Each planning unit that has complied with subsection (1) of~~  
37 ~~this section is eligible to receive fifty thousand dollars for each~~

1 WRIA to initiate the planning process. The department shall allocate  
2 additional funds to WRIA planning units based on need demonstrated by  
3 a detailed proposed budget submitted by the planning unit for carrying  
4 out the duties of the planning unit. Each WRIA planning unit may  
5 receive up to two hundred fifty thousand dollars for each WRIA during  
6 the first two year period of planning, with a maximum allocation of  
7 five hundred thousand dollars for each WRIA.) The department shall  
8 develop and administer a grant program to provide direct financial  
9 assistance to planning units for the preparation of integrated  
10 watershed management under this chapter. Three separate grants may be  
11 awarded pursuant to this section. These grants are initial organizing  
12 grants, grants for watershed assessments and establishment of instream  
13 flows, and grants for the development of integrated watershed  
14 management and implementation. The total amount of the grants may not  
15 exceed five hundred thousand dollars for each WRIA. The department may  
16 not impose any local matching fund requirement as a condition for grant  
17 eligibility or as a preference for receiving a grant.

18 (2) An initial organizing grant of up to fifty thousand dollars may  
19 be awarded to a lead agency that applies to the department and  
20 indicates that integrated watershed management is to be developed under  
21 this chapter. Organizing grants may be expended for any purpose  
22 authorized by the department, including but not limited to determining  
23 the scope of work to be addressed by the integrated watershed  
24 management for the management area; collecting and reviewing relevant  
25 studies and plans that already exist for the watershed, including  
26 growth management related plans in which critical areas have been  
27 designated pursuant to chapter 36.70A RCW; determining how the  
28 integrated watershed management for a management area can be  
29 coordinated with existing studies and plans; and baseline monitoring of  
30 water within the watershed.

31 (3)(a) A watershed assessment grant of up to two hundred thousand  
32 dollars for each WRIA may be awarded to a planning unit that certifies  
33 to the department that it adequately represents a broad range of  
34 interests within the watershed, and that it is willing to undertake the  
35 following as part of its integrated watershed management for its  
36 management area: Integrated watershed management for the protection or  
37 enhancement of habitat, integrated watershed management for water  
38 quantity, or integrated watershed management for water quality. The

1 planning unit must submit a detailed proposed budget that demonstrates  
2 the need for the grant.

3 (b) Grants awarded pursuant to this subsection (3) shall be awarded  
4 for a four-year period. The four-year time period shall begin to run  
5 when the lead agency for the planning unit first received the initial  
6 organizing grant under subsection (2) of this section. For a planning  
7 unit that did not submit an application for an initial organizing  
8 grant, the four-year time period shall begin to run when the planning  
9 unit receives a grant under this subsection (3).

10 (4) A management development, instream flow, and implementation  
11 grant in an amount of up to two hundred fifty thousand dollars for each  
12 WRIA may be awarded to a planning unit that submits evidence that an  
13 assessment of the watershed has been adequately prepared in sufficient  
14 detail for the purposes for which the watershed assessment grant was  
15 awarded; the integrated watershed management that will be developed for  
16 the management area will not be in conflict with federal laws, state  
17 statutes, or tribal treaty rights; and its development will be  
18 coordinated with adjacent jurisdictions for purposes of minimum  
19 instream flows and water quality, if water quality was addressed as  
20 part of the watershed assessment. The planning unit must submit a  
21 detailed proposed budget that demonstrates the need for the grant. Any  
22 moneys awarded from the remaining grant balance for implementation in  
23 a management area under this section are available only for  
24 implementation that commences after integrated watershed management has  
25 been adopted for the area under section 11 of this act.

26 (5)(a) The department shall use the following eligibility criteria  
27 instead of rules when evaluating grant applications at each stage of  
28 the grants program:

29 (i) The application has documented that the planning unit meets all  
30 of the requirements of this chapter;

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

33 (iii) The application and supporting information evidences a  
34 readiness to proceed.

35 (b) In ranking grant applications submitted at each stage of the  
36 grants program except for the initial organizing grant under subsection  
37 (2) of this section, the department shall give preference to  
38 applications in the following order of priority:

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

3 (ii) Applications from multi-WRIAs that propose to address  
4 protection and enhancement of fish habitat in watersheds that have  
5 aquatic species listed as endangered or threatened under the federal  
6 endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which there  
7 is evidence of an inability to supply adequate water for population and  
8 economic growth;

9 (iii) Applications from single WRIAs that propose to address  
10 protection and enhancement of fish habitat in watersheds that have  
11 aquatic species listed as endangered or threatened under the federal  
12 endangered species act, and for which there is evidence of an inability  
13 to supply adequate water for population and economic growth;

14 (iv) Applications from multi-WRIAs that propose to address  
15 protection and enhancement of fish habitat in watersheds that have  
16 aquatic species listed as endangered or threatened under the federal  
17 endangered species act; and

18 (v) Applications from single WRIAs that propose to address  
19 protection and enhancement of fish habitat in watersheds that have  
20 aquatic species listed under the federal endangered species act.

21 (6) Funding provided under this section shall be considered a  
22 contractual obligation against the moneys appropriated for this  
23 purpose.

24 ~~((3) Preference shall be given to planning units requesting~~  
25 ~~funding for conducting multi-WRIA planning under section 108 of this~~  
26 ~~act.~~

27 ~~(4))~~ (7) The department may retain up to one percent of funds  
28 allocated under this section to defray administrative costs.

29 (8) The department may adopt its implementing rules for an  
30 integrated watershed management that have been approved by counties as  
31 part of integrated watershed management and may adopt rules when  
32 necessary to implement this section or section 6(2) of this act either  
33 by the regular rules adoption process provided in chapter 34.05 RCW,  
34 the expedited rules adoption process as set forth in RCW 34.05.230, or  
35 through a rules adoption process that uses the public hearings and  
36 notice provided by the planning unit and the county legislative  
37 authority as a substitute for the rules adoption requirements of  
38 chapter 34.05 RCW. If the planning unit and county legislative  
39 authority hearings and notice are used as a substitute for the regular

1 rules adoption process, the rules do not take effect until they are  
2 published in the Washington state register as provided in chapter 34.05  
3 RCW. Such rules do not constitute significant legislative rules as  
4 defined in RCW 34.05.328, and do not require the preparation of small  
5 business economic impact statements.

6 NEW SECTION. Sec. 14. A new section is added to chapter 34.05 RCW  
7 to read as follows:

8 Rules adopted by the department of ecology pursuant to RCW  
9 90.82.040(8) are exempt from the requirements of this chapter to the  
10 extent provided in RCW 90.82.040(8).

11 NEW SECTION. Sec. 15. TECHNICAL ASSISTANCE. (1) The lead state  
12 representative on a planning unit designated under section 10(5)(j) of  
13 this act shall establish a program to provide technical assistance to  
14 planning units and local governments to encourage and facilitate the  
15 adoption and implementation of integrated watershed management for  
16 management areas developed under this chapter. The program shall use  
17 existing requirements or standards that must be satisfied by the  
18 integrated watershed management developed under this chapter and no  
19 part of the program may have the effect of a rule adopted under chapter  
20 34.05 RCW.

21 (2) The program shall use any staff assigned by the governor for  
22 this task, the staff of state agencies, and staff from institutions of  
23 higher education to assist in the development of integrated watershed  
24 management under this chapter, including but not limited to assistance  
25 in determining and explaining how best available science will be  
26 incorporated into integrated watershed management for a management  
27 area, developing methods for effectively monitoring performance,  
28 providing the criteria that represents acceptable performance for key  
29 elements of the integrated watershed management for a management area,  
30 and the method of reporting performance to the public, local  
31 communities, and the state. In providing assistance under this  
32 section, the lead state representative shall recognize regional and  
33 local variations that exist in different parts of the state.

34 (3) The lead state representative on a planning unit shall assist  
35 planning units in ensuring that integrated watershed management  
36 developed under this chapter is coordinated with, and consistent with,  
37 the integrated watershed management of other planning units that share

1 common borders or major stream basins. The state shall provide  
2 mediation services to resolve disputes between planning units.

3 (4) The department may contract out technical assistance if the  
4 lead state representative finds that it is cost-effective and will  
5 assist in implementing the intent of this chapter.

6 (5) The department shall conduct an annual workshop for planning  
7 units to share successful approaches, as well as difficulties, in  
8 addressing specific problems within watersheds.

9 (6) All state agencies with rule-making authority for programs that  
10 affect the development and implementation of integrated watershed  
11 management developed under this chapter shall review those rules and  
12 programs for consistency with this chapter and make recommendations to  
13 the legislature for any necessary statutory changes.

14 **Sec. 16.** RCW 90.03.345 and 1979 ex.s. c 216 s 7 are each amended  
15 to read as follows:

16 (1) The establishment of reservations of water for agriculture,  
17 hydroelectric energy, municipal, industrial, and other beneficial uses  
18 under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010  
19 or 90.54.040 shall constitute appropriations within the meaning of this  
20 chapter with priority dates as of the effective dates of their  
21 establishment. Whenever an application for a permit to make beneficial  
22 use of public waters embodied in a reservation, established after  
23 September 1, 1979, is filed with the department of ecology after the  
24 effective date of such reservation, the priority date for a permit  
25 issued pursuant to an approval by the department of ecology of the  
26 application shall be the effective date of the reservation.

27 (2) Minimum flows established under section 6 of this act shall  
28 have a priority date as specified in that section.

29 NEW SECTION. **Sec. 17.** A new section is added to chapter 90.03 RCW  
30 to read as follows:

31 If a person placed surface or ground water to beneficial use for  
32 irrigation or stock watering purposes before January 1, 1993, for which  
33 a permit or certificate was not issued by the department or its  
34 predecessors, the person or the person's successor holds a water right  
35 for that use in the amount beneficially used and with a priority date  
36 that is the date a statement of claim is filed for the right under this  
37 section if:

1 (1) The person or the person's successor files with the department  
2 a statement of claim for the right during the period beginning  
3 September 1, 1998, and ending midnight June 30, 1999, using the  
4 standard form prescribed by RCW 90.14.051;

5 (2) The person or the person's successor has used the water to the  
6 full extent stated in the statement of claim during at least each of  
7 three of the five years preceding the date the statement is filed and  
8 the person attests to having done so on the statement; and

9 (3) The person or the person's successor files with the statement  
10 of claim evidence that the water described in the claim was used  
11 beneficially before January 1, 1993, in the form of any two of the  
12 following:

13 (a) A statement signed by two persons other than the person filing  
14 the statement of claim verifying that the water was beneficially used  
15 by the claimant before January 1, 1993, as described in the statement  
16 of claim;

17 (b) A copy of a dated photograph clearly demonstrating the presence  
18 of grass or a crop requiring irrigation in the amounts asserted in the  
19 statement of claim or of livestock requiring water in such amounts; or  
20 records of receipts of the sale of crops by the person or the person's  
21 successor indicating that irrigation in the amount claimed was required  
22 to produce the crops;

23 (c) Receipts or records of irrigation or stockwatering equipment  
24 purchases or repairs associated with the water use specified in the  
25 statement of claim;

26 (d) Water well construction records identifying the date the well  
27 specified in the statement of claim as the point of withdrawal was  
28 constructed;

29 (e) Records of electricity bills directly associated with the  
30 withdrawal of water as specified in the statement of claim;

31 (f) Personal records such as photographs, journals, or  
32 correspondence indicating the use of water as asserted in the statement  
33 of claim.

34 A right granted under this section shall not affect or impair in  
35 any respect whatsoever a water right existing prior to September 1,  
36 1998. A right granted under this section shall be junior in every  
37 respect to a right with a more senior date of priority. No right  
38 granted under this section may be exercised in a manner that impairs or  
39 interferes with a water right that is senior to it. The filing of a

1 statement of claim under this section does not constitute an  
2 adjudication of any claim to the right to the use of waters as between  
3 the claimant and the state, or as between one or more water use  
4 claimants and another or others. A statement of claim filed under this  
5 section shall be admissible in a general adjudication of water rights  
6 as prima facie evidence of the times of use and the quantity of water  
7 the claimant was withdrawing or diverting to the same extent as is  
8 provided by RCW 90.14.081 for a statement of claim in the water rights  
9 claims registry on the effective date of this section.

10 The department shall establish a registry of claims for rights  
11 conferred under this section. Statements of claim filed under this  
12 section shall be filed in the registry alphabetically, consecutively by  
13 date of filing, and by such other manner as the department deems  
14 appropriate.

15 This section does not apply to ground water withdrawn in an area  
16 that is, during the period established by subsection (3) of this  
17 section, the subject of a general adjudication proceeding for water  
18 rights in superior court under RCW 90.03.110 through 90.03.245 and the  
19 proceeding applies to ground water rights. This section does not apply  
20 to surface water withdrawn in an area that is, during the period  
21 established by subsection (3) of this section, the subject of a general  
22 adjudication proceeding for water rights in superior court under RCW  
23 90.03.110 through 90.03.245 and the proceeding applies to surface water  
24 rights.

25 This section does not apply to rights embodied in a water right  
26 permit or certificate issued by the department or its predecessors, a  
27 water right represented by a claim in the water rights claims registry,  
28 created under RCW 90.14.111, prior to September 1, 1998, or a water  
29 right exempted from permit and application requirements by RCW  
30 90.44.050.

31 This section does not apply to claims for the use of water in a  
32 ground water area or subarea for which a management program adopted by  
33 the department by rule and in effect on the effective date of this  
34 section establishes acreage expansion limitations for the use of ground  
35 water.

36 **Sec. 18.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to  
37 read as follows:



1       (1) The right to the use of water which has been applied to a  
2 beneficial use in the state shall be and remain appurtenant to the land  
3 or place upon which the same is used: PROVIDED, HOWEVER, That the  
4 right may be transferred to another or to others and become appurtenant  
5 to any other land or place of use without loss of priority of right  
6 theretofore established if such change can be made without detriment or  
7 injury to existing rights. The point of diversion of water for  
8 beneficial use or the purpose of use may be changed, if such change can  
9 be made without detriment or injury to existing rights. A change in  
10 the place of use, point of diversion, and/or purpose of use of a water  
11 right to enable irrigation of additional acreage or the addition of new  
12 uses may be permitted if such change results in no increase in the  
13 annual consumptive quantity of water used under the water right. For  
14 purposes of this section, "annual consumptive quantity" means the  
15 estimated or actual annual amount of water diverted pursuant to the  
16 water right, reduced by the estimated annual amount of return flows,  
17 averaged over the most recent five-year period of continuous beneficial  
18 use of the water right. Before any transfer of such right to use water  
19 or change of the point of diversion of water or change of purpose of  
20 use can be made, any person having an interest in the transfer or  
21 change, shall file a written application therefor with the department,  
22 and the application shall not be granted until notice of the  
23 application is published as provided in RCW 90.03.280. If it shall  
24 appear that such transfer or such change may be made without injury or  
25 detriment to existing rights, the department shall issue to the  
26 applicant a certificate in duplicate granting the right for such  
27 transfer or for such change of point of diversion or of use. The  
28 certificate so issued shall be filed and be made a record with the  
29 department and the duplicate certificate issued to the applicant may be  
30 filed with the county auditor in like manner and with the same effect  
31 as provided in the original certificate or permit to divert water.

32       (2) If an application for change proposes to transfer water rights  
33 from one irrigation district to another, the department shall, before  
34 publication of notice, receive concurrence from each of the irrigation  
35 districts that such transfer or change will not adversely affect the  
36 ability to deliver water to other landowners or impair the financial or  
37 operational integrity of either of the districts.

38       (3) A change in place of use by an individual water user or users  
39 of water provided by an irrigation district need only receive approval

1 for the change from the board of directors of the district if the use  
2 of water continues within the irrigation district, and when water is  
3 provided by an irrigation entity that is a member of a board of joint  
4 control created under chapter 87.80 RCW, approval need only be received  
5 from the board of joint control if the use of water continues within  
6 the area of jurisdiction of the joint board and the change can be made  
7 without detriment or injury to existing rights. The board of directors  
8 of an irrigation district may approve such a change if the board  
9 determines that the change: Will not adversely affect the district's  
10 ability to deliver water to other landowners; will not require the  
11 construction by the district of diversion or drainage facilities unless  
12 the board finds that the construction by the district is in the  
13 interest of the district; will not impair the financial or operational  
14 integrity of the district; and is consistent with the contractual  
15 obligations of the district.

16 (4) Subsections (1), (2), and (3) of this section do not apply to  
17 a transfer or change governed by section 19 of this act.

18 (5) This section shall not apply to trust water rights acquired by  
19 the state through the funding of water conservation projects under  
20 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

21 (6) Any right represented by an application for a water right for  
22 which a permit for water use has not been issued by the time a transfer  
23 or change is approved under this section may not be construed as being  
24 injured or detrimentally affected by the transfer or change.

25 (7) The department may not initiate relinquishment proceedings  
26 under chapter 90.14 RCW regarding a water right for which an  
27 application for a transfer or change is filed under this section during  
28 the period beginning on the date the department receives the  
29 application and ending two years after the date the department approves  
30 or denies the application.

31 **NEW SECTION. Sec. 19.** A new section is added to chapter 90.03 RCW  
32 to read as follows:

33 (1)(a) If a portion of the water governed by a water right is made  
34 surplus to the beneficial uses exercised under the right through the  
35 implementation of practices or technologies, including but not limited  
36 to conveyance practices or technologies, which are more efficient or  
37 more water-use efficient than those under which the right was

1 perfected, the right to use the surplus water may be changed as  
2 provided by subsection (2), (3), (4), or (5) of this section.

3 (b) If a portion of the water governed by a water right is made  
4 surplus to the beneficial uses exercised under the right through a  
5 change in the crops grown under the water right, the right to use the  
6 surplus water may be changed as provided by subsection (3) of this  
7 section. This subsection (1)(b) does not apply to water supplied by an  
8 irrigation district.

9 (c) This section applies only to a change of an agricultural use or  
10 portion of an agricultural use of water to an agricultural use of  
11 water.

12 (2) The use within an irrigation district of water supplied by the  
13 district and made surplus as provided in subsection (1)(a) of this  
14 section shall be regulated solely as provided by the board of directors  
15 of the irrigation district. Such a use requires the approval of the  
16 board of directors of the irrigation district or must otherwise be  
17 authorized by the board. The board may approve or authorize such a use  
18 only if the use does not impair the financial or operational integrity  
19 of the district. Water supplied by an irrigation district and made  
20 surplus as provided in subsection (1)(a) of this section through  
21 actions taken by an individual water user served by the district is not  
22 available for use as a matter of right by that individual water user,  
23 but may be used by the board for the benefit of the district generally.  
24 The district's board of directors may approve or otherwise authorize  
25 under this subsection uses of such surplus water that result in the  
26 total irrigated acreage within the district exceeding the irrigated  
27 acreage recorded with the department for the district's water right if  
28 the board notifies the department of the change in the irrigated  
29 acreage within the district. Except as provided in subsection (5) of  
30 this section, such a notification provides a change in the district's  
31 water right and, upon receiving the notification, the department shall  
32 revise its records for the district's right to reflect the change.

33 If an irrigation district is within a federal reclamation project  
34 and the district's board of directors approves or otherwise authorizes  
35 under this subsection uses of such surplus water that result in the  
36 total irrigated acreage within the federal project exceeding the  
37 irrigated acreage recorded with the department for the federal  
38 project's water right, the board shall notify the department of the  
39 change in the irrigated acreage within the federal project. Except as

1 provided by this subsection and subsection (5) of this section, such a  
2 notification provides a change in the federal reclamation project's  
3 water right and, upon receiving the notification, the department shall  
4 revise its records for the federal project's right to reflect the  
5 change except that the total irrigable acreage for a water right for a  
6 federal reclamation project may not exceed the total irrigable acreage  
7 authorized for the project by the United States and related repayment  
8 contracts.

9 (3) The right to use water made surplus as provided in subsection  
10 (1)(a) or (b) of this section but not supplied by an irrigation  
11 district may be changed to use on other parcels of land owned by the  
12 holder of the water right that are contiguous to the parcel or parcels  
13 of land upon which the use of the water was authorized by the right  
14 before such a change. The holder of the water right shall notify the  
15 department of such a change. Except as provided in subsection (5) of  
16 this section, the notification provides a change in the holder's water  
17 right and, upon receiving the notification, the department shall revise  
18 its records for the water right to reflect the change.

19 (4) If a notification is provided to the department under  
20 subsection (2) or (3) of this section with regard to water made surplus  
21 and subsequently used before the effective date of this section, the  
22 change in the water right shall be made without loss of priority of the  
23 right.

24 (5) If a notification is provided to the department under  
25 subsection (2) or (3) of this section with regard to water made surplus  
26 and subsequently used, and that use begins after the effective date of  
27 this section, the priority date for the use of the water made surplus  
28 under this section is the date the notification is filed with the  
29 department. When the department is notified regarding such a use under  
30 this subsection (5), the notification does not automatically provide a  
31 change in the water right holder's, irrigation district's, or  
32 reclamation project's water right. The department shall issue the  
33 holder, district, or project a temporary water use permit for the use.  
34 The term of the permit shall be for fifteen years. It is presumed that  
35 the use of water under the temporary water use permit does not impair  
36 or interfere with water rights that are senior to the water right  
37 represented by the permit. However, if at any time within the fifteen-  
38 year term of the permit the department determines that the change would  
39 impair or interfere with the use of such a senior water right, the

1 department shall notify the holder of the temporary permit and shall  
2 file a notice of its decision with the superior court of the county in  
3 which the withdrawal of water under the right takes place. The notice  
4 provided by the department shall not stay the use of water under the  
5 temporary permit. The superior court shall review the determination of  
6 the department de novo. In such a review, the burden of proof in  
7 overcoming the presumption provided by this subsection is on the  
8 department. The presumption can be overcome only through the  
9 application of scientific data supporting the department's  
10 determination. At the conclusion of its review, the superior court  
11 shall enter a ruling canceling the temporary permit, modifying the  
12 conditions of water use under the permit, or affirming that the use of  
13 water under the permit does not interfere with water rights senior to  
14 the water rights represented by the permit. The decision of the  
15 superior court may be appealed as provided for other decisions of the  
16 court. If a court's decision modifies the conditions of water use  
17 under the permit or affirms that the use of water under the permit does  
18 not interfere with senior water rights or if the department does not  
19 provide a notice under this subsection within the fifteen-year term of  
20 the permit, the use of the water is changed as provided by the  
21 temporary permit or the court's decision and the department shall  
22 revise its records regarding the right.

23 The presumption provided by this subsection does not apply with  
24 regard to a claim made by any person with a water right in superior  
25 court or on appeal of a decision of the superior court that a temporary  
26 permit or change in a water right made under this subsection impairs or  
27 interferes with the use of the person's senior water right.

28 (6) If a notification is filed with the department regarding the  
29 use of water made surplus under subsection (2) or (3) of this section  
30 and that use begins after the effective date of this section, the  
31 notification shall identify the date that the use of the water made  
32 surplus begins.

33 (7) The authority provided by this section to change a water right  
34 shall not be construed as authorizing the use of a junior water right  
35 in a manner that impairs or interferes with the use of a senior water  
36 right.

37 (8) If a water right changed under this section is a right  
38 represented by a statement of claim in the water rights claims  
39 registry, the department's obligation to revise its records to reflect

1 the change shall be accomplished by providing an amendment to the  
2 statement of claim to reflect the change.

3 (9) This section does not apply in an area with an acreage  
4 expansion program in effect on the effective date of this section that  
5 is an element of a ground water area or subarea management program as  
6 provided in RCW 90.44.445.

7 (10) Nothing in this section authorizes a change in a water right  
8 or a portion of a water right that has not been perfected through  
9 beneficial use before the change.

10 **Sec. 20.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
11 as follows:

12 (1) After an application to, and upon the issuance by the  
13 department of an amendment to the appropriate permit or certificate of  
14 ground water right, the holder of a valid right to withdraw public  
15 ground waters may, without losing the holder's priority of right,  
16 construct wells or other means of withdrawal at a new location in  
17 substitution for or in addition to those at the original location, or  
18 the holder may change the manner or the place of use of the water.

19 (2) An amendment to construct replacement or a new additional well  
20 or wells at a location outside of the location of the original well or  
21 wells or to change the manner or place of use of the water shall be  
22 issued only after publication of notice of the application and findings  
23 as prescribed in the case of an original application. Such amendment  
24 shall be issued by the department only on the conditions that: (a) The  
25 additional or replacement well or wells shall tap the same body of  
26 public ground water as the original well or wells; (b) where a  
27 replacement well or wells is approved, the use of the original well or  
28 wells shall be discontinued and the original well or wells shall be  
29 properly decommissioned as required under chapter 18.104 RCW; (c) where  
30 an additional well or wells is constructed, the original well or wells  
31 may continue to be used, but the combined total withdrawal from the  
32 original and additional well or wells shall not enlarge the right  
33 conveyed by the original permit or certificate; and (d) other existing  
34 rights shall not be impaired. The department may specify an approved  
35 manner of construction and shall require a showing of compliance with  
36 the terms of the amendment, as provided in RCW 90.44.080 in the case of  
37 an original permit.

1 (3) The construction of a replacement or new additional well or  
2 wells at the location of the original well or wells shall be allowed  
3 without application to the department for an amendment. However, the  
4 following apply to such a replacement or new additional well: (a) The  
5 well shall tap the same body of public ground water as the original  
6 well or wells; (b) if a replacement well is constructed, the use of the  
7 original well or wells shall be discontinued and the original well or  
8 wells shall be properly decommissioned as required under chapter 18.104  
9 RCW; (c) if a new additional well is constructed, the original well or  
10 wells may continue to be used, but the combined total withdrawal from  
11 the original and additional well or wells shall not enlarge the right  
12 conveyed by the original water use permit or certificate; (d) the  
13 construction and use of the well shall not interfere with or impair  
14 water rights with an earlier date of priority than the water right or  
15 rights for the original well or wells; (e) the replacement or  
16 additional well shall be located no closer than the original well to a  
17 well it might interfere with; (f) the department may specify an  
18 approved manner of construction of the well; and (g) the department  
19 shall require a showing of compliance with the conditions of this  
20 subsection (3).

21 (4) This section does not apply to a transfer or change governed by  
22 section 19 of this act.

23 (5) Any right represented by an application for a water right for  
24 which a permit for water use has not been issued by the time an  
25 amendment is approved under this section may not be construed as being  
26 impaired by the amendment.

27 (6) The department may not initiate relinquishment proceedings  
28 under chapter 90.14 RCW regarding a water right for which an  
29 application for an amendment is filed under this section during the  
30 period beginning on the date the department receives the application  
31 and ending two years after the date the department makes a decision on  
32 the application.

33 (7) As used in this section, the "location of the original well or  
34 wells" is the area described as the point of withdrawal in the original  
35 public notice published for the application for the water right for the  
36 well.

37 **Sec. 21.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to  
38 read as follows:

1       When an application complying with the provisions of this chapter  
2 and with the rules (~~and regulations~~) of the department has been  
3 filed, the same shall be placed on record with the department, and it  
4 shall be its duty to investigate the application, and determine what  
5 water, if any, is available for appropriation, and find and determine  
6 to what beneficial use or uses it can be applied. If it is proposed to  
7 appropriate water for irrigation purposes, the department shall  
8 investigate, determine and find what lands are capable of irrigation by  
9 means of water found available for appropriation. If it is proposed to  
10 appropriate water for the purpose of power development, the department  
11 shall investigate, determine and find whether the proposed development  
12 is likely to prove detrimental to the public interest, having in mind  
13 the highest feasible use of the waters belonging to the public. If the  
14 application does not contain, and the applicant does not promptly  
15 furnish sufficient information on which to base such findings, the  
16 department may issue a preliminary permit, for a period of not to  
17 exceed three years, requiring the applicant to make such surveys,  
18 investigations, studies, and progress reports, as in the opinion of the  
19 department may be necessary. If the applicant fails to comply with the  
20 conditions of the preliminary permit, it and the application or  
21 applications on which it is based shall be automatically canceled and  
22 the applicant so notified. If the holder of a preliminary permit  
23 shall, before its expiration, file with the department a verified  
24 report of expenditures made and work done under the preliminary permit,  
25 which, in the opinion of the department, establishes the good faith,  
26 intent and ability of the applicant to carry on the proposed  
27 development, the preliminary permit may, with the approval of the  
28 governor, be extended, but not to exceed a maximum period of five years  
29 from the date of the issuance of the preliminary permit. The  
30 department shall make and file as part of the record in the matter,  
31 written findings of fact concerning all things investigated, and if it  
32 shall find that there is water available for appropriation for a  
33 beneficial use, and the appropriation thereof as proposed in the  
34 application will not impair existing rights or be detrimental to the  
35 public welfare, it shall issue a permit stating the amount of water to  
36 which the applicant shall be entitled and the beneficial use or uses to  
37 which it may be applied: PROVIDED, That where the water applied for is  
38 to be used for irrigation purposes, it shall become appurtenant only to  
39 such land as may be reclaimed thereby to the full extent of the soil



1 for agricultural purposes. But where there is no unappropriated water  
2 in the proposed source of supply, or where the proposed use conflicts  
3 with existing rights, or threatens to prove detrimental to the public  
4 interest, having due regard to the highest feasible development of the  
5 use of the waters belonging to the public, it shall be duty of the  
6 department to reject such application and to refuse to issue the permit  
7 asked for. If the permit is refused because of conflict with existing  
8 rights and such applicant shall acquire same by purchase or  
9 condemnation under RCW 90.03.040, the department may thereupon grant  
10 such permit. Any application may be approved for a less amount of  
11 water than that applied for, if there exists substantial reason  
12 therefor, and in any event shall not be approved for more water than  
13 can be applied to beneficial use for the purposes named in the  
14 application. In determining whether or not a permit shall issue upon  
15 any application, it shall be the duty of the department to investigate  
16 all facts relevant and material to the application. If the applicant  
17 is a public water system that is a party to an existing intertie  
18 agreement, the department shall also consider the existence, nature,  
19 economics, and terms of the agreement between the intertied public  
20 water systems when making a determination on the application for new  
21 water rights by the public water system. After the department approves  
22 ((said)) the application in whole or in part and before any permit  
23 shall be issued thereon to the applicant, such applicant shall pay the  
24 fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a  
25 permit is issued by the department upon any application, it shall be  
26 its duty to notify the director of fish and wildlife of such issuance.  
27 This section does not apply to transfers or changes made under  
28 section 19 of this act or to applications for transfers or changes made  
29 under RCW 90.03.380 or 90.44.100.

30 **Sec. 22.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read  
31 as follows:

32 In any acreage expansion program adopted by the department as an  
33 element of a ground water management program, the authorization for a  
34 water right certificate holder to participate in the program shall be  
35 on an annual basis for the first two years. After the two-year period,  
36 the department may authorize participation for ten-year periods. The  
37 department may authorize participation for ten-year periods for  
38 certificate holders who have already participated in an acreage

1 expansion program for two years. The department may require annual  
2 certification that the certificate holder has complied with all  
3 requirements of the program. The department may terminate the  
4 authority of a certificate holder to participate in the program for one  
5 calendar year if the certificate holder fails to comply with the  
6 requirements of the program.

7 This section applies only in an area with an acreage expansion  
8 program in effect on the effective date of this amendatory section that  
9 has been adopted by the department as an element of a ground water area  
10 or subarea management program. The provisions of section 19 of this  
11 act, RCW 90.03.380, and 90.44.100 apply to transfers, changes, and  
12 amendments to permits or rights for the beneficial use of ground water  
13 in any other area.

14 **Sec. 23.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read  
15 as follows:

16 (1) The legislature recognizes the value of interties for improving  
17 the reliability of public water systems, enhancing their management,  
18 and more efficiently utilizing the increasingly limited resource.  
19 Given the continued growth in the most populous areas of the state, the  
20 increased complexity of public water supply management, and the trend  
21 toward regional planning and regional solutions to resource issues,  
22 interconnections of public water systems through interties provide a  
23 valuable tool to ensure reliable public water supplies for the citizens  
24 of the state. Public water systems have been encouraged in the past to  
25 utilize interties to achieve public health and resource management  
26 objectives. The legislature finds that it is in the public interest to  
27 recognize interties existing and in use as of January 1, 1991, and to  
28 have associated water rights modified by the department of ecology to  
29 reflect current use of water through those interties, pursuant to  
30 subsection (3) of this section. The legislature further finds it in  
31 the public interest to develop a coordinated process to review  
32 proposals for interties commencing use after January 1, 1991.

33 (2) For the purposes of this section, the following definitions  
34 shall apply:

35 (a) "Interties" are interconnections between public water systems  
36 permitting exchange, acquisition, or delivery of wholesale and/or  
37 retail water between those systems for other than emergency supply  
38 purposes, where such exchange, acquisition, or delivery is within

1 established instantaneous and annual withdrawal rates specified in the  
2 (~~systems~~) supplying system's existing water right permits or  
3 certificates, or contained in claims filed pursuant to chapter 90.14  
4 RCW, and which results in better management of public water supply  
5 consistent with existing rights and obligations. Interties include  
6 interconnections between public water systems permitting exchange,  
7 acquisition, or delivery of water to serve as primary or secondary  
8 sources of supply, but do not include development of new sources of  
9 supply to meet future demand requiring new water right applications to  
10 and appropriations by the department of ecology. Interties also  
11 include the development of new sources of supply to meet future demands  
12 if the water system or systems receiving water through such an intertie  
13 make efficient use of existing sources of water supply and the  
14 provision of water through such an intertie is consistent with local  
15 land use plans. For this purpose, a system's full compliance with the  
16 state department of health's conservation guidelines for such systems  
17 is deemed efficient use. As referred to in this section, changes of  
18 points of use for existing water right permits, certificates, or claims  
19 are not within the meaning of a development of new sources of supply.

20 (b) "Service area" is the area designated as the wholesale and/or  
21 retail area in a water system plan or a coordinated water system plan  
22 pursuant to chapter 43.20 or 70.116 RCW respectively. When a public  
23 water system does not have a designated service area subject to the  
24 approval process of those chapters, the service area shall be the  
25 designated place of use contained in the water right permit or  
26 certificate, or contained in the claim filed pursuant to chapter 90.14  
27 RCW.

28 (3)(a) Public water systems with interties existing and in use as  
29 of January 1, 1991, or that have received written approval from the  
30 department of health prior to that date, shall file written notice of  
31 those interties with the department of health and the department of  
32 ecology. The notice may be incorporated into the public water system's  
33 five-year update of its water system plan, but shall be filed no later  
34 than June 30, 1996. The notice shall identify the location of the  
35 intertie; the dates of its first use; the purpose, capacity, and  
36 current use; the intertie agreement of the parties and the service  
37 areas assigned; and other information reasonably necessary to modify  
38 the public water system's water right (~~permit~~). Notwithstanding the  
39 provisions of RCW 90.03.380 and 90.44.100, for public water systems

1 with interties existing and in use or with written approval as of  
2 January 1, 1991, the department of ecology, upon receipt of notice  
3 meeting the requirements of this subsection, shall, as soon as  
4 practicable, modify the place of use descriptions in the water right  
5 permits, certificates, or claims to reflect the actual use through such  
6 interties, provided that the place of use is within service area  
7 designations established in a water system plan approved pursuant to  
8 chapter 43.20 RCW, or a coordinated water system plan approved pursuant  
9 to chapter 70.116 RCW, and further provided that the water used is  
10 within the instantaneous and annual withdrawal rates specified in the  
11 water rights ~~((permit))~~ and that no outstanding complaints of  
12 impairment to existing water rights have been filed with the department  
13 of ecology prior to September 1, 1991. Where such complaints of  
14 impairment have been received, the department of ecology shall make all  
15 reasonable efforts to resolve them in a timely manner through agreement  
16 of the parties or through available administrative remedies.

17 (b) An intertie meeting the requirements of this subsection (3) for  
18 modifying the place of use description in a water right permit,  
19 certificate, or claim may be used to its full design or built capacity  
20 within the most recently approved retail or wholesale or retail and  
21 wholesale service area, without further approval under this section and  
22 without regard to the capacity actually used before January 1, 1991.  
23 Any intertie meeting the requirements of this section, however, must be  
24 reviewed, analyzed, and approved by the department of health in  
25 collaboration with the department of ecology, and in accordance with  
26 coordinated water system plan requirements under chapter 70.116 RCW.  
27 In addition, any intertie meeting the requirements of this subsection  
28 must undergo environmental review in accordance with chapter 43.21C  
29 RCW.

30 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,  
31 exchange, acquisition, or delivery of water through interties approved  
32 by the department of health commencing use after January 1, 1991, shall  
33 be permitted when the intertie improves overall system reliability,  
34 enhances the manageability of the systems, provides opportunities for  
35 conjunctive use, or delays or avoids the need to develop new water  
36 sources, and otherwise meets the requirements of this section, provided  
37 that ((each)) a supplying public water system's water use shall not  
38 exceed the instantaneous or annual withdrawal rate specified in its  
39 water right authorization, shall not adversely affect existing water

1 rights, and shall not be inconsistent with state-approved plans such as  
2 water system plans or other plans which include specific proposals for  
3 construction of interties. A receiving public water system's use may  
4 exceed its water right authorization if the receiving public water  
5 system's withdrawal does not exceed the instantaneous or annual  
6 withdrawal rate specified in the receiving public water system's water  
7 right authorization. Interties commencing use after January 1, 1991,  
8 (~~shall not be inconsistent~~) must be deemed consistent with regional  
9 water resource plans developed pursuant to chapter 90.54 RCW or chapter  
10 90.82 RCW.

11 (5) For public water systems subject to the approval process of  
12 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties  
13 commencing use after January 1, 1991, shall be incorporated into water  
14 system plans pursuant to chapter 43.20 RCW or coordinated water system  
15 plans pursuant to chapter 70.116 RCW and submitted to the department of  
16 health and the department of ecology for review and approval as  
17 provided for in subsections (5) through (9) of this section. The plan  
18 shall state how the proposed intertie will improve overall system  
19 reliability, enhance the manageability of the systems, provide  
20 opportunities for conjunctive use, or delay or avoid the need to  
21 develop new water sources.

22 (6) The department of health shall be responsible for review and  
23 approval of proposals for new interties. In its review the department  
24 of health shall determine whether the intertie satisfies the criteria  
25 of subsection (4) of this section, with the exception of water rights  
26 considerations, which are the responsibility of the department of  
27 ecology, (~~and~~) shall determine whether the intertie is necessary to  
28 address emergent public health or safety concerns associated with  
29 public water supply, and shall determine whether long-term supply is  
30 addressed in the intertie agreement between the systems.

31 (7) If the intertie is determined by the department of health to be  
32 necessary to address emergent public health or safety concerns  
33 associated with public water supply, the public water system shall  
34 amend its water system plan as required and shall file an application  
35 with the department of ecology to change its existing water right to  
36 reflect the proposed use of the water as described in the approved  
37 water system plan. The department of ecology shall process the  
38 application for change pursuant to RCW 90.03.380 or 90.44.100 as  
39 appropriate, except that, notwithstanding the requirements of those

1 sections regarding notice and protest periods, applicants shall be  
2 required to publish notice one time, and the comment period shall be  
3 fifteen days from the date of publication of the notice. Within sixty  
4 days of receiving the application, the department of ecology shall  
5 issue findings and advise the department of health if existing water  
6 rights are determined to be adversely affected. If no determination is  
7 provided by the department of ecology within the sixty-day period, the  
8 department of health shall proceed as if existing rights are not  
9 adversely affected by the proposed intertie. The department of ecology  
10 may obtain an extension of the sixty-day period by submitting written  
11 notice to the department of health and to the applicant indicating a  
12 definite date by which its determination will be made. No additional  
13 extensions shall be granted, and in no event shall the total review  
14 period for the department of ecology exceed one hundred eighty days.

15 (8) If the department of health determines the proposed intertie  
16 appears to meet the requirements of subsection (4) of this section but  
17 is not necessary to address emergent public health or safety concerns  
18 associated with public water supply, the department of health shall  
19 instruct the applicant to submit to the department of ecology an  
20 application for change to the underlying water right or claim as  
21 necessary to reflect the new place of use. The department of ecology  
22 shall consider the applications pursuant to the provisions of RCW  
23 90.03.380 and 90.44.100 as appropriate. The department of ecology  
24 shall not deny or limit a change of place of use for an intertie on the  
25 grounds that the holder of a permit has not yet put all of the water  
26 authorized in the permit to beneficial use. If in its review of  
27 proposed interties and associated water rights the department of  
28 ecology determines that additional information is required to act on  
29 the application, the department may request applicants to provide  
30 information necessary for its decision, consistent with agency rules  
31 and written guidelines. Parties disagreeing with the decision of the  
32 department of ecology ((œ)) to approve or deny the application for  
33 change in place of use may appeal the decision to the pollution control  
34 hearings board.

35 (9) The department of health may approve plans containing intertie  
36 proposals prior to the department of ecology's decision on the water  
37 right application for change in place of use. However, notwithstanding  
38 such approval, construction work on the intertie shall not begin until

1 the department of ecology issues the appropriate water right document  
2 to the applicant consistent with the approved plan.

3 (10) An intertie shall not be used to deliver a primary or  
4 secondary supply of water to a receiving system on a temporary basis  
5 unless the terms of the intertie agreement specify the source of the  
6 water that will be used by the receiving system to replace the water  
7 delivered on the temporary basis and provide that replacement water  
8 will be available for delivery to or use by the receiving system before  
9 delivery by the supplying system under the agreement is terminated.  
10 However, if a primary or secondary supply of water is delivered to a  
11 receiving system on a temporary basis by means of an intertie on the  
12 effective date of this subsection and the agreement between the  
13 supplying system and receiving system does not contain such provision  
14 for such a replacement supply of water for the receiving system, the  
15 delivery of the water by the supplying system to the receiving system  
16 shall not be terminated until the agreement is modified to establish  
17 such provisions and such replacement water is available for delivery to  
18 or use by the receiving system.

19 **Sec. 24.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to  
20 read as follows:

21 (1) Upon a showing satisfactory to the department that any  
22 appropriation has been perfected in accordance with the provisions of  
23 this chapter, it shall be the duty of the department to issue to the  
24 applicant a certificate stating such facts in a form to be prescribed  
25 by him, and such certificate shall thereupon be recorded with the  
26 department. Any original water right certificate issued, as provided  
27 by this chapter, shall be recorded with the department and thereafter,  
28 at the expense of the party receiving the same, be by the department  
29 transmitted to the county auditor of the county or counties where the  
30 distributing system or any part thereof is located, and be recorded in  
31 the office of such county auditor, and thereafter be transmitted to the  
32 owner thereof.

33 (2) If a public water system is providing water for municipal  
34 supply purposes under a certificated water right, the instantaneous and  
35 annual withdrawal rates specified in the certificate are deemed valid  
36 and perfected.

37 (3) If a federal reclamation project is providing water for  
38 reclamation purposes under a certificated water right, the

1 instantaneous and annual withdrawal rates specified in the certificate  
2 are deemed valid and perfected.

3 (4) If an irrigation district is providing water for the purposes  
4 authorized by chapter 87.03 RCW under a certificated water right, the  
5 instantaneous and annual withdrawal rates specified in the certificate  
6 are deemed valid and perfected.

7 (5) Notwithstanding any other provisions of this section, the  
8 public water system, federal reclamation project, or irrigation  
9 district must demonstrate to the department of ecology in accordance  
10 with water system plans and reviews pursuant to chapter 70.119A or  
11 87.03 RCW, that the instantaneous and annual withdrawal rates will be  
12 necessary in order to accommodate the needs of its users during the  
13 most recent projection for a fifty-year period.

14 **Sec. 25.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read  
15 as follows:

16 (1) For the purposes of RCW 90.14.130 through 90.14.180,  
17 "sufficient cause" shall be defined as the nonuse of all or a portion  
18 of the water by the owner of a water right for a period of five or more  
19 consecutive years where such nonuse occurs as a result of:

20 (a) Drought, or other unavailability of water;

21 (b) Active service in the armed forces of the United States during  
22 military crisis;

23 (c) Nonvoluntary service in the armed forces of the United States;

24 (d) The operation of legal proceedings;

25 (e) Federal laws imposing land or water use restrictions either  
26 directly or through the voluntary enrollment of a landowner in a  
27 federal program implementing those laws, or acreage limitations, or  
28 production quotas;

29 (f) An elapse of time occurring while a request or application is  
30 processed for transferring or changing a water right;

31 (g) The implementation of practices or technologies or the  
32 installation or repair of facilities, including but not limited to  
33 water conveyance practices, technologies, or facilities, that are more  
34 efficient or more water use efficient than practices, technologies, or  
35 facilities previously used under the water right.

36 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
37 90.14.180, there shall be no relinquishment of any water right:



1 (a) If such right is claimed for power development purposes under  
2 chapter 90.16 RCW and annual license fees are paid in accordance with  
3 chapter 90.16 RCW, or

4 (b) If such right is used for a standby or reserve water supply to  
5 be used in time of drought or other low flow period so long as  
6 withdrawal or diversion facilities are maintained in good operating  
7 condition for the use of such reserve or standby water supply, or

8 (c) If such right is claimed for a determined future development to  
9 take place ((either)) at any time within fifteen years of either July  
10 1, 1967, or the most recent beneficial use of the water right,  
11 whichever date is later, or

12 (d) If such right is claimed for municipal water supply purposes  
13 under chapter 90.03 RCW, or

14 (e) If such waters are not subject to appropriation under the  
15 applicable provisions of RCW 90.40.030 as now or hereafter amended.

16 NEW SECTION. **Sec. 26.** Captions used in this act are not part of  
17 the law.

18 NEW SECTION. **Sec. 27.** Sections 4 through 12, and 15 of this act  
19 are each added to chapter 90.82 RCW.

20 NEW SECTION. **Sec. 28.** This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and takes effect  
23 immediately."

24 **SHB 2514** - H AMD  
25 By Representative Schoessler

26  
27 On page 1, line 1 of the title, after "management;" strike the  
28 remainder of the title and insert "amending RCW 90.82.005, 90.82.010,  
29 90.82.020, 90.82.040, 90.03.345, 90.03.380, 90.44.100, 90.03.290,  
30 90.44.445, 90.03.383, 90.03.330, and 90.14.140; adding a new section to  
31 chapter 34.05 RCW; adding new sections to chapter 90.82 RCW; adding new

1 sections to chapter 90.03 RCW; creating a new section; and declaring an  
2 emergency."

--- END ---