

1 5670 AMH AMH-18

2 CRO'S AMENDMENT

3 **SB 5670 - H AMD ADOPTED 4-24-99**

4 By Representative

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6 On page 3, after line 18, insert the following:

7 "Sec. 2. RCW 90.48.010 and 1973 c 155 s 1 are each amended to read
8 as follows:

9 (1) It is declared to be the public policy of the state of
10 Washington to maintain the highest possible standards to insure the
11 purity of all waters of the state consistent with public health and
12 public enjoyment thereof, the propagation and protection of (~~wild~~
13 ~~life, birds, game,~~) fish and (~~other aquatic life~~) wildlife, and the
14 (~~industrial~~) economic development of the state, and to that end
15 require the use of all known available and reasonable methods by
16 industries and others to prevent and control the pollution of the
17 waters of the state of Washington. Consistent with this policy, the
18 state of Washington will exercise its powers, as fully and as
19 effectively as possible, to retain and secure high quality for all
20 waters of the state. Consistent with this policy, the experimental use
21 of herbicides when appropriate for controlling aquatic noxious weeds
22 such as spartina will help maintain current beneficial uses of water
23 without degrading water quality. The state of Washington in
24 recognition of the federal government's interest in the quality of the
25 navigable waters of the United States, of which certain portions
26 thereof are within the jurisdictional limits of this state, proclaims
27 a public policy of working cooperatively with the federal government in
28 a joint effort to extinguish the sources of water quality degradation,
29 while at the same time preserving and vigorously exercising state
30 powers to insure that present and future standards of water quality
31 within the state shall be determined by the citizenry, through and by
32 the efforts of state government, of the state of Washington.

33 (2) The legislature finds that while existing federal and state
34 water pollution control laws have resulted in cleaner water for
35 citizens of Washington state, too many water bodies still exceed
36 existing water quality standards. Such exceedances are caused both by
37 point and nonpoint sources of pollution. It is the policy of the state

1 of Washington to ensure the attainment of water quality standards that
2 protect and restore the ability of the state's waters to provide
3 multiple benefits as defined in RCW 90.54.020.

4 (3) Water quality standards should be attained through a variety of
5 means, including the development and implementation of total maximum
6 daily loads as provided under the federal clean water act, and the
7 implementation of other pollution controls. The legislature believes
8 that such flexibility must be available if the state is to attain water
9 quality standards as efficiently and effectively as possible. The
10 legislature also believes that many activities and programs are
11 currently being implemented in watersheds across the state that will
12 result in substantial water quality improvement, and that such
13 activities and programs should have an opportunity to demonstrate
14 success before the imposition of a total maximum daily load
15 requirement.

16 (4) The burden of changing existing practices and obtaining
17 pollutant discharge reductions as needed to attain water quality
18 standards should be shared among the various contributors to water
19 quality impairment in proportion to their contribution and in
20 consideration of other equitable factors and natural background
21 conditions. For water quality limited segments in waters that are
22 shared with, or are upstream or downstream of waters subject to the
23 jurisdiction of another state or Canada, the legislature intends that
24 the department coordinate the development of total maximum daily loads
25 with the United States environmental protection agency and with water
26 quality regulatory agencies in other jurisdictions to ensure equity for
27 dischargers in Washington.

28 (5) The legislature finds that a watershed approach to water
29 quality improvement allows the consideration of multiple factors and of
30 their interactions. It also provides a means for bringing together
31 those persons who will need to implement necessary measures to improve
32 water quality, as well as others who may be interested in water
33 quality.

34 (6) Water quality monitoring is becoming increasingly important as
35 the state makes commitments to attain water quality standards, recover
36 aquatic species, and evaluate the effectiveness of actions taken to
37 attain those goals. As a result, the legislature believes it is
38 important to enhance the quality of existing water quality monitoring
39 programs.

1 (7) While the legislature believes the state is the best manager of
2 the state's water quality, it recognizes that the federal government
3 has ultimate authority over any state total maximum daily load program
4 under the federal clean water act. Therefore, it is the intent of the
5 legislature that the department have no authority to implement or
6 enforce this act if and when the federal government assumes direct
7 responsibility for implementation of the total maximum daily load
8 program by providing written notice to the department that this act,
9 taken as a whole, is inconsistent with federal law. However, this
10 subsection does not affect the ability of the state to continue
11 implementing other programs that improve water quality.

12 **Sec. 3.** RCW 90.48.020 and 1995 c 255 s 7 are each amended to read
13 as follows:

14 (~~Whenever the word~~) Unless the context clearly requires
15 otherwise, the definitions in this section apply throughout this
16 chapter.

17 (1) "Characteristic uses" means the uses for which a water body has
18 been classified by the department under state law and the federal clean
19 water act.

20 (2) "Person" (~~is used in this chapter, it shall be construed to~~)
21 includes any political subdivision, government agency, municipality,
22 industry, public or private corporation, copartnership, association,
23 firm, individual or any other entity whatsoever.

24 (~~Wherever the words~~) (3) "Waters of the state" (~~shall be used in~~
25 this chapter, they shall be construed to) includes lakes, rivers,
26 ponds, streams, inland waters, underground waters, salt waters and all
27 other surface waters and watercourses within the jurisdiction of the
28 state of Washington.

29 (~~Whenever the word~~) (4) "Pollution" (~~is used in this chapter, it~~
30 shall be construed to) means such contamination, or other alteration
31 of the physical, chemical or biological properties, of any waters of
32 the state, including change in temperature, taste, color, turbidity, or
33 odor of the waters, or such discharge of any liquid, gaseous, solid,
34 radioactive, or other substance into any waters of the state as will or
35 is likely to create a nuisance or render such waters harmful,
36 detrimental or injurious to the public health, safety or welfare, or to
37 domestic, commercial, industrial, agricultural, recreational, or other

1 legitimate beneficial uses, or to livestock, wild animals, birds, fish
2 or other aquatic life.

3 ~~((Wherever the word))~~ (5) "Department" ~~((is used in this chapter it
4 shall))~~ means the department of ecology.

5 ~~((Whenever the word))~~ (6) "Director" ~~((is used in this chapter it
6 shall))~~ means the director of ecology.

7 ~~((Whenever the words))~~ (7) "Clean water act" means the federal
8 water pollution control act of 1972, as amended (86 Stat. 896; 33
9 U.S.C. Sec. 1251 et seq.).

10 (8) "Aquatic noxious weed" ~~((are used in this chapter, they have))~~
11 has the meaning prescribed under RCW 17.26.020.

12 (9) "Listing cycle" means the period, as determined by the federal
13 environmental protection agency, between publication of a list of water
14 quality limited segments by the department and the publication of the
15 next list of such segments by the department.

16 (10) "Load" means an amount of matter or thermal energy that is
17 introduced into a receiving water.

18 (11) "Loading capacity" means the greatest amount of loading that
19 a water can receive without violating water quality standards.

20 (12) "Load allocation" means that portion of a receiving water's
21 loading capacity that is attributed either to one of its existing or
22 future nonpoint sources of pollution, or to natural background sources.
23 Load allocations are best estimates of the loading, which may range
24 from reasonably accurate estimates to gross allotments, depending on
25 the availability of data and appropriate techniques for predicting
26 loading. Wherever possible, natural background conditions and nonpoint
27 sources shall be distinguished. Wherever possible, loads shall be
28 allocated to categories of like sources, rather than to aggregates of
29 different categories of sources.

30 (13) "Wasteload allocation" means that portion of a receiving
31 water's loading capacity that is allocated to one of its existing or
32 future point sources of pollution. Wasteload allocations constitute a
33 type of water quality-based effluent limitation.

34 (14) "Total maximum daily loads" means the sum of the individual
35 wasteload allocations for point sources and load allocations for
36 nonpoint sources and natural background conditions. Such loads shall
37 be established at a level necessary to implement the applicable water
38 quality standards with seasonal variations and a margin of safety, and

1 may contain a reserve for growth. Total maximum daily loads may be
2 expressed in terms other than mass per volume.

3 (15) "Other pollution controls" include, but are not limited to,
4 the following list of laws, rules, regulations, programs, or
5 activities:

6 (a) Provisions related to the federal conservation reserve
7 enhancement program;

8 (b) Approved farm plans based on current field office technical
9 guides;

10 (c) The dairy nutrient management act under chapter 90.64 RCW;

11 (d) The forest practices act under chapter 76.09 RCW;

12 (e) Irrigation district water quality management plans that meet
13 the requirements of (k) of this subsection;

14 (f) Habitat conservation plans for aquatic species prepared under
15 section 10 of the federal endangered species act (16 U.S.C. 1531 et
16 seq.);

17 (g) Reasonable and prudent conditions established under a
18 biological opinion under section 7 of the federal endangered species
19 act;

20 (h) Watershed plans that implement best management practices
21 approved by the conservation commission and the department;

22 (i) Implementation of cleanup of contaminated sediments under the
23 federal comprehensive environmental response, compensation, and
24 liability act of 1980 (42 U.S.C. 9601 et seq.); the model toxics
25 control act, chapter 70.105D RCW; or other statutory authorities;

26 (j) Cooperative resource management plans administered by the
27 department of natural resources that meet the requirements of (k) of
28 this subsection; or

29 (k) Any other programs, measures, and activities that include:

30 (i) Specific methods and approaches intended to lead to water
31 quality improvement and attainment of water quality standards;

32 (ii) Water quality improvement goals or milestones for identified
33 water quality limited segments;

34 (iii) Monitoring provisions that enable the department to measure
35 progress toward attainment of water quality standards; and

36 (iv) Enforcement mechanisms or feedback and modification strategies
37 to ensure or promote compliance with the measures and goals identified
38 in this subsection.

1 This definition shall not be construed as expanding the reach of
2 existing regulatory controls.

3 (16) "Wastewater discharge permit" means an individual, model, or
4 general permit issued by the department that specifies treatment,
5 monitoring, and reporting requirements for the discharge of wastewater,
6 and that is intended to satisfy the requirements of the clean water act
7 and of this chapter.

8 (17) "Water quality limited segment" means any surface water
9 segment, as defined by the department, where it is known that water
10 quality does not meet applicable water quality standards, or is not
11 expected to meet applicable water quality standards by the next listing
12 cycle, even after the application of technology-based effluent
13 limitations required by the federal clean water act.

14 (18) "Effluent trading" means a method to attain or maintain water
15 quality standards by allowing sources of pollution that can achieve
16 greater pollutant reduction than is otherwise required to sell or trade
17 the credits for their excess reduction to another source.

18 (19) "Adaptive management" means the processes and principles
19 designed to modify rules adopted under the forest practices act, and
20 their application based on cooperative research, monitoring, and
21 evaluation, and set out in Appendix L to the forestry module memorandum
22 of agreement, also known as the Forests and Fish Report (1999).

23 NEW SECTION. Sec. 4. A new section is added to chapter 90.48 RCW
24 to read as follows:

25 WATER QUALITY LIMITED SEGMENTS--DATA RELIABILITY FOR DECISIONS TO
26 LIST. (1) The list of water quality limited segments that is required
27 to be submitted to the federal environmental protection agency under
28 the clean water act shall be based upon data that are accurate and
29 reflective of current conditions and that comply with high standards of
30 quality assurance and quality control guidance as prescribed by the
31 department under this section. A water segment may be listed as water
32 quality limited under section 6 of this act only when:

33 (a) Documentation is provided showing the submitted data have met
34 the data quality objectives and other requirements of an approved
35 quality assurance program plan; or

36 (b) The department independently samples the water body segment in
37 compliance with its data quality objectives and other requirements of

1 an approved quality assurance program plan to verify the suspected
2 water quality exceedance.

3 (2) The department shall coordinate a state-wide water quality
4 monitoring network that relies upon existing water quality data
5 collected by the department and others in compliance with the data
6 quality objectives and the data quality assurance and quality control
7 guidelines prescribed by the department under this section. To the
8 extent possible and appropriate, the water quality monitoring network
9 shall include other state agencies, tribes, counties, cities, federal
10 agencies, sewer and water districts, and special purpose districts, as
11 well as private entities that wish to provide such data. The network
12 shall provide data for both ambient water quality monitoring and
13 development of the list of water quality limited segments. The
14 department shall coordinate the collection of water quality data among
15 state agencies to ensure that monitoring for the purposes of this
16 section is comprehensive without being duplicative, and that state
17 monitoring resources are directed toward filling the most critical
18 information gaps. In coordinating this network, the department shall
19 ensure state-wide consistency, provide calibration of local monitoring
20 efforts, provide data verification and validation, and assess long-term
21 water quality trends.

22 (3) By September 1, 1999, the department shall appoint an advisory
23 committee comprised of one representative selected by each of the
24 following agencies and interests: The department, the Northwest Indian
25 fisheries commission, the United States environmental protection
26 agency, the United States geological survey, the department of health,
27 the department of fish and wildlife, the department of transportation,
28 the Puget Sound action team, the Washington state association of
29 counties, the association of Washington cities, the Washington
30 association of sewer and water districts, the conservation commission,
31 the University of Washington, Washington State University, the
32 association of Washington business, the Washington state farm bureau,
33 the Washington state water resources association, and the Washington
34 state office of the national Audubon society. Each of these
35 representatives shall have experience in the collection, analysis, and
36 interpretation of environmental data. The committee shall also consist
37 of a state senator from each of the two major caucuses appointed by the
38 president of the senate, and a state representative from each of the

1 two major caucuses appointed by the speaker of the house of
2 representatives. The committee shall have the following purposes:

3 (a) Development of data quality objectives regarding the precision,
4 bias, representativeness, completeness, and comparability required for
5 water quality monitoring data to serve program purposes;

6 (b) Development of data interpretation guidelines regarding the
7 quantity and representativeness of data required to determine whether
8 water quality standards are being met, and whether a water quality
9 condition is caused by natural background or human factors;

10 (c) Development of quality assurance and quality control guidelines
11 for the collection, analysis, and interpretation of water quality data
12 for freshwater; and

13 (d) Comparison of the proposed use-based water quality standards
14 with the current classification system in terms of the protection
15 provided to characteristic uses, and the regulatory and economic
16 impacts on point and nonpoint sources.

17 (4) The committee identified in subsection (3) of this section
18 shall provide its recommendations on subsection (3)(a) through (c) of
19 this section to the legislature by December 31, 2000. The committee
20 shall provide its recommendations on subsection (3)(d) of this section
21 to the legislature by December 31, 1999.

22 (5) The department shall develop a system of water quality
23 standards, data quality objectives, data interpretation guidelines, and
24 data quality assurance and quality control guidelines based upon the
25 recommendations of the committee identified in subsection (3) of this
26 section. The water quality standards shall be adopted by rule under
27 RCW 90.48.035 and the administrative procedure act, chapter 34.05 RCW.
28 After issuance, the data quality objectives, data interpretation
29 guidelines, and data quality assurance and quality control guidelines
30 shall be updated periodically to reflect new methods and
31 instrumentation.

32 (6) After July 1, 2001, the department shall require that any water
33 quality data submitted to the state for purposes of ambient monitoring
34 or compiling a list of water quality limited segments comply with the
35 department's data quality objectives and data quality assurance and
36 quality control guidelines.

37 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.48 RCW
38 to read as follows:

1 ACCESS TO PRIVATE PROPERTY. (1) Except as provided in subsection
2 (2) of this section, and before collecting water quality samples that
3 can only be obtained by entering upon private property, the department
4 or its designee must receive permission from either:

5 (a) The owner of the property to be entered;

6 (b) The lessee or operator of the property to be entered; or

7 (c) A superior court of the state of Washington. The superior
8 courts of the state may issue administrative search warrants to the
9 department to carry out the provisions of this chapter.

10 (2) If the department believes there is an imminent and substantial
11 threat to human health or the environment from pollution of an acute or
12 emergency nature, the department may collect such samples after first
13 having made a reasonable attempt to obtain permission from the owner,
14 lessee, or operator. The department shall subsequently inform the
15 owner, lessee, or operator of such sampling and the results thereof.

16 (3) The department or its designee shall offer to divide any water
17 sample and provide a portion to the property owner, lessee, or operator
18 in sufficient quantity that he or she may have a separate analysis
19 conducted at his or her expense.

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

22 LISTING OF WATER QUALITY LIMITED SEGMENTS. (1) After July 1, 2001,
23 the department shall prepare a revised list of water quality limited
24 segments, as required under section 303(d) of the clean water act, that
25 is based upon data that are collected and analyzed in compliance with
26 the department's data quality objectives and quality assurance and
27 quality control guidelines. The list shall include all surface water
28 segments that do not meet water quality standards, or are not expected
29 to meet water quality standards by the next listing cycle, even after
30 the application of technology-based effluent limitations required by
31 the federal clean water act. The list shall not include:

32 (a) Surface water segments that are expected to meet water quality
33 standards before the next listing cycle;

34 (b) Surface water segments for which natural background conditions
35 are the reason for not meeting the standards; or

36 (c) Ground waters.

37 (2) Surface water segments shall remain on the list until they meet
38 water quality standards and shall be removed from the list when they

1 are found to meet water quality standards. Deletions from the list
2 shall be based on monitoring data of the same quality and rigor as data
3 used for additions to the list. Additions to, and deletions from, the
4 list of water quality limited segments shall be recorded when the list
5 is updated in the next listing cycle. The list shall be submitted to
6 the federal environmental protection agency at a frequency determined
7 by the environmental protection agency.

8 (3) To ensure an opportunity for public participation in the
9 process of listing water quality limited segments, the department
10 shall:

11 (a) Provide notice in the Washington State Register that it is
12 beginning a new cycle for listing of water quality limited segments;

13 (b) Develop a proposed list of water quality limited segments, and
14 compare the proposed list to the previous list approved by the
15 environmental protection agency to identify water quality trends;

16 (c) Submit the proposed list to the environmental protection agency
17 and the general public for review;

18 (d) Develop responses to the comments received, and provide those
19 responses to those persons who have requested them;

20 (e) Develop a final list of water quality limited segments and
21 publish a notice of the availability of the final list in the
22 Washington State Register; and

23 (f) Submit the final list to the environmental protection agency
24 for approval.

25 (4) Publication of a notice of the availability of the final list
26 of water quality limited segments in the Washington State Register is
27 an agency action that may be appealed to the Thurston county superior
28 court under RCW 34.05.570(4) within thirty days of the date of
29 publication.

30 (5) Listing of water quality limited segments as required under
31 this chapter is not subject to the state environmental policy act,
32 chapter 43.21C RCW.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.21C RCW
34 to read as follows:

35 This chapter does not apply to:

36 (1) Publication by the department of a list of water quality
37 limited segments;

1 (2) The authorization of other pollution controls in lieu of total
2 maximum daily loads; and

3 (3) The development of total maximum daily loads.

4 NEW SECTION. Sec. 8. A new section is added to chapter 90.48 RCW
5 to read as follows:

6 EFFECT OF LISTING. (1) No permit may be issued to a new source or
7 to a new discharger, as these terms are defined in section 306 of the
8 federal clean water act and in 40 C.F.R. 122.2 and 40 C.F.R. 122.29 as
9 of the effective date of this section, if the discharge would cause or
10 contribute to a violation of water quality standards.

11 (2) This chapter shall not prevent any existing point source
12 discharge, or any activity that may lead to a nonpoint source discharge
13 conducted in compliance with all applicable federal, state, or local
14 laws, rules, regulations, and requirements affecting water quality,
15 solely because a total maximum daily load has not been completed.

16 (3) This chapter shall not prevent any new or expanded activity
17 that may lead to a nonpoint source discharge conducted in compliance
18 with all applicable federal, state, or local laws, rules, regulations,
19 and requirements that protect water quality, solely because a total
20 maximum daily load has not been completed.

21 NEW SECTION. Sec. 9. A new section is added to chapter 90.48 RCW
22 to read as follows:

23 WATER QUALITY LIMITED SEGMENTS--LIST--MANAGEMENT. (1) After a list
24 of water quality limited segments has been submitted to the federal
25 environmental protection agency, the department shall sort the list of
26 water quality limited segments by WRIA as defined in RCW 90.82.020 for
27 management purposes.

28 (2) By June 30, 2001, the department shall determine:

29 (a) Whether other pollution controls exist in each WRIA that
30 address the causes of the problems that led to the listing of segments
31 as water quality limited in 1996 and in 1998;

32 (b) Whether such measures are being implemented; and

33 (c) Whether such measures are expected to result in attainment of
34 water quality standards within a reasonable period of time based upon
35 the nature of the problem.

36 (3) For water quality limited segments on lists approved after
37 January 1, 2000, the department shall make the determinations

1 identified under subsection (2) of this section within two years of the
2 approval of the list by the environmental protection agency.

3 (4) To make the determinations under subsections (2) and (3) of
4 this section, the department:

5 (a) May request information and recommendations from other state
6 and federal agencies, local governments, tribes, conservation
7 districts, and other sources; and

8 (b) Shall gather available data and information on the other
9 pollution controls being used to address water quality in the relevant
10 WRIAs. If entities implementing other pollution controls collect water
11 quality data, they shall provide such data to the department. The
12 department shall conduct independent sampling to obtain any additional
13 data or information necessary to make its determination.

14 (5) Where a planning group has chosen to address water quality
15 under RCW 90.82.090, the group shall perform a preliminary evaluation
16 as described in subsection (2) of this section within one year of
17 receiving the first grant to conduct watershed assessments under RCW
18 90.82.040(2)(b), or within one year of the effective date of this
19 section, whichever is later, and shall forward its findings and
20 recommendations to the department. The department shall consider the
21 planning group's findings and recommendations, if any, in making its
22 initial determinations as to the existence and adequacy of the proposed
23 other pollution controls.

24 (6) The department shall obtain public comment on its draft initial
25 determinations, and shall finalize its determinations after considering
26 the available information and comments received.

27 (7) If the department determines that other pollution controls in
28 a WRIA are expected to result in attainment of water quality standards
29 within a reasonable period of time, the department shall allow the use
30 of those other pollution controls and shall not establish total maximum
31 daily loads, except as provided under subsection (11) of this section.

32 (8) The department shall refer those dischargers who may not have
33 fully implemented other pollution controls to appropriate agencies for
34 technical assistance, or shall offer such assistance directly. The
35 department's goal shall be to encourage the broad use of other
36 pollution controls.

37 (9) For waters where the department determines that other pollution
38 controls are available and are expected to attain water quality
39 standards within a reasonable period of time, the department shall

1 evaluate ambient water quality data at no greater than five-year
2 intervals to determine whether substantial progress in water quality
3 improvement has been achieved relative to specific listed segments,
4 except that other pollution controls approved under subsection (7) of
5 this section shall be allowed to perform for at least five years before
6 their effectiveness is evaluated. The department may use its watershed
7 approach to water quality management to focus and rotate its resources
8 through succeeding areas of the state. Entities implementing other
9 pollution controls shall provide any available monitoring data to the
10 department so that it may determine the effectiveness of the controls
11 in correcting the water quality problem. The department shall conduct
12 independent sampling to obtain any additional information needed to
13 determine the effectiveness of the other pollution controls.

14 (10) If the evaluation of ambient water quality data in a given
15 WRIA as provided under subsection (9) of this section demonstrates
16 other pollution controls have not made substantial progress toward the
17 attainment of water quality standards within a reasonable period of
18 time, the department shall enter into discussions with representatives
19 selected by users of other pollution controls in that WRIA to revise
20 the controls so that their implementation results in substantial
21 progress toward the attainment of water quality standards. Such
22 proposed revisions shall be submitted to the department within ninety
23 days of the start of discussions under this subsection.

24 (11) The department shall develop total maximum daily loads for
25 those water segments where:

26 (a) Other pollution controls do not exist, have not been
27 implemented, or are not expected to attain water quality standards
28 within a reasonable period of time based upon the nature of the
29 problem;

30 (b) Discussions under subsection (10) of this section to revise
31 other pollution controls are not successful within ninety days;

32 (c) Substantial progress toward meeting water quality standards has
33 not been made five years after other pollution controls have been
34 revised through discussions initiated under subsection (10) of this
35 section; or

36 (d) The complexity of the problems and sources precludes a
37 determination under subsection (2) of this section.

38 (12) Notwithstanding any other provisions of this chapter:

1 (a) Total maximum daily loads for water quality limited segments
2 impaired by sediment, habitat degradation, flow, turbidity, or
3 temperature caused by forest practices subject to regulation under the
4 forest practices act, chapter 76.09 RCW, or covered in the forestry
5 module memorandum of agreement, also known as the Forests and Fish
6 Report (1999), are a lower priority for the department and need not be
7 initiated before July 1, 2009;

8 (b) The department shall not require more stringent forest
9 practices in a total maximum daily load or its implementation before
10 July 1, 2009, except through adaptive management as defined in this
11 act; and

12 (c) If the achievement of the total maximum daily load allocations
13 cannot be met through forest practices rules, the adjustment of those
14 management practices shall be through adaptive management as defined in
15 this act.

16 (13) This section does not prohibit the department from completing
17 the total maximum daily loads already in development upon the effective
18 date of this section. Nothing in this act authorizes a shift in
19 emphasis to point sources that would be inconsistent with the
20 priorities established under this section.

21 **Sec. 10.** RCW 90.82.090 and 1998 c 247 s 5 are each amended to read
22 as follows:

23 If the initiating governments choose to include a water quality
24 component, the watershed plan shall include the following elements:

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

28 (2) An examination based on existing studies conducted by federal,
29 state, and local agencies of the causes of water quality violations in
30 the management area, including an examination of information regarding
31 pollutants, point and nonpoint sources of pollution, and pollution-
32 carrying capacities of water bodies in the management area. The
33 analysis shall take into account seasonal stream flow or level
34 variations, natural events, and pollution from natural sources that
35 occurs independent of human activities;

36 (3) An identification and evaluation of the existence of other
37 pollution controls as defined in chapter 90.48 RCW in use in the
38 management area, of the extent of implementation of such measures, and

1 of the effectiveness of such measures in attaining water quality
2 standards within a reasonable period of time, as well as any
3 recommendations for improving the effectiveness of other pollution
4 controls in the management area;

5 (4) An examination of the legally established characteristic uses
6 of each of the nonmarine bodies of water in the management area;

7 ~~((4))~~ (5) An examination of any total maximum daily load
8 established for nonmarine bodies of water in the management area,
9 unless a total maximum daily load process has begun in the management
10 area as of the date the watershed planning process is initiated under
11 RCW 90.82.060;

12 ~~((5))~~ (6) An examination of existing data related to the impact
13 of fresh water on marine water quality;

14 ~~((6))~~ (7) A recommended approach for implementing the total
15 maximum daily load established for achieving compliance with water
16 quality standards for the nonmarine bodies of water in the management
17 area, unless a total maximum daily load process has begun in the
18 management area as of the date the watershed planning process is
19 initiated under RCW 90.82.060; and

20 ~~((7))~~ (8) Recommended means of monitoring by appropriate
21 government agencies whether actions taken to implement the approach to
22 bring about improvements in water quality are sufficient to achieve
23 compliance with water quality standards.

24 This chapter does not obligate the state to undertake analysis or
25 to develop strategies required under the federal clean water act (33
26 U.S.C. Sec. 1251 et seq.). This chapter does not authorize any
27 planning unit, lead agency, or local government to adopt water quality
28 standards or total maximum daily loads under the federal clean water
29 act.

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

32 TOTAL MAXIMUM DAILY LOADS. (1) Total maximum daily loads shall
33 only be established for surface waters and shall include the following
34 elements:

35 (a) A determination of the pollutant of concern and a
36 quantification of the target or desired end point of the total maximum
37 daily load process that indicates compliance with water quality

1 standards taking into account the assimilative capacity of the water
2 segment;

3 (b) A quantification of the reduction in total pollutant load that
4 must be achieved to meet water quality standards;

5 (c) Identification of the responsible sources, or categories of
6 sources, of the pollutant that causes water quality standards not to be
7 met, and a quantification of the degree to which each source or source
8 category contributes to the failure to meet water quality standards;
9 and

10 (d) Establishment of the wasteload and load allocations for
11 identified sources, including categories of nonpoint sources, along
12 with a quantified margin of safety, and any allocations for natural
13 background and future growth.

14 (2) The department shall control sources of pollution to ground
15 water as otherwise provided for in this chapter or under other state
16 and federal programs and authorities. In identifying the responsible
17 source or categories of sources, as set forth in subsection (1)(c) of
18 this section, and in establishing wasteload and load allocations for
19 identified sources, as set forth in subsection (1)(d) of this section,
20 the department shall not attempt to identify sources of pollutants
21 within ground water, nor shall the department allocate loads or
22 wasteloads to ground water.

23 (3) Each total maximum daily load shall be implemented through a
24 plan that includes the following elements:

25 (a) Identification and quantification of control actions and
26 implementation tools, methods, and authorities that will be used to
27 achieve the allocations, in addition to schedules, milestones, and
28 funding options for implementing the identified actions;

29 (b) A determination of the degree to which uses are being
30 supported, remaining variance from the target, compliance with
31 implementation plans, and the accuracy of sources and source
32 contributions identified in the total maximum daily load; and

33 (c) A description of how the implementation plan will be modified
34 or revised to ensure water quality standards are met in response to
35 follow-up monitoring and evaluation results.

36 (4) Department hearings and other public proceedings to initiate
37 total maximum daily loads shall be held in the town or city nearest to
38 the location of the water quality limited segment in order to
39 facilitate participation by affected persons. Those persons who would

1 be affected by an allocation of loads must be given an opportunity to
2 be involved in the total maximum daily load development process from
3 the outset.

4 (5) Allocations should be developed through consensus among those
5 discharging or releasing pollutants into the relevant watershed. If
6 consensus is not achievable, a mediator may be retained at the
7 dischargers' expense to negotiate an allocation. If an agreement on
8 allocations has not been developed within one hundred eighty days from
9 the start of negotiations on allocations, the department shall allocate
10 loads.

11 (6) To encourage public participation in the process of developing
12 total maximum daily loads, the department shall provide an opportunity
13 for public comment on any total maximum daily load that meets all of
14 the requirements of this section before its adoption by the department.

15 (7) A notice and summary of a total maximum daily load that meets
16 all of the requirements of this section shall be published in the
17 Washington State Register. A total maximum daily load may be
18 implemented only through wastewater discharge permits or through
19 regulatory and nonregulatory programs that address nonpoint sources.

20 (8) Publication of a notice and summary of a total maximum daily
21 load in the Washington State Register is an agency action that may be
22 appealed to Thurston county superior court pursuant to RCW 34.05.570(4)
23 within thirty days of the date of publication in the Washington State
24 Register.

25 (9) Publications of total maximum daily loads as required under
26 this chapter are not subject to the state environmental policy act,
27 chapter 43.21C RCW.

28 (10) When information is available, load allocations for those
29 nonpoint sources that have not made substantial progress toward water
30 quality improvement as described in section 9 of this act shall be
31 based on the following considerations:

32 (a) Loads shall first be reduced in proportion to the reductions
33 made by others in the same source category for those sources that have
34 not made expected reductions in their loads, either because they have
35 failed to implement other pollution controls, or because the measures
36 are not effective in making such reductions;

37 (b) Loads shall next be reduced proportionally, or as the
38 department deems appropriate, across all sources in order to achieve
39 the pollutant reductions necessary to achieve water quality standards.

1 (11) The department shall provide a report to the legislature by
2 December 31, 2001, regarding the implementation of this act and its
3 effects on the attainment of water quality standards for surface
4 waters.

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

7 **EFFLUENT TRADING.** (1) By July 1, 2001, the department shall
8 investigate, develop, and implement a procedure for effluent trading.
9 The procedure shall enable persons discharging or releasing pollutants
10 to enter into contracts or other enforceable agreements with each
11 other, appropriately overseen and administered by the department, to
12 offset or trade quantifiable amounts of pollutants so as to efficiently
13 and effectively attain or maintain water quality standards.

14 (2) Reductions in pollutant units from amounts or quantities
15 authorized under a total maximum daily load as implemented through a
16 federal clean water act discharge permit or a state wastewater
17 discharge permit, or through nonpoint sources, may be freely exchanged
18 with other persons within the same receiving watershed subject to the
19 procedures and rules of the department.

20 (3) In developing the mechanisms and procedures required by this
21 section, the department shall not:

22 (a) Compel or require any person to engage in effluent trading as
23 an alternative to other means or mechanisms to attain or maintain water
24 quality standards; or

25 (b) Set or determine the price or payment made, if any, in any
26 effluent trade.

27 (4) The department shall seek any approvals, waivers, or
28 authorizations from the environmental protection agency or other state
29 and federal agencies needed to implement or to facilitate effluent
30 trading to its fullest extent. However, such effluent trading shall
31 not affect or restrict the authority of the department to implement
32 categorical effluent limits or treatment requirements adopted by the
33 department or the federal environmental protection agency, nor shall
34 any effluent trade create any property rights of any sort.

35 (5) The department shall adopt rules as necessary implementing
36 effluent trading. Such rules shall allow pollutant trading and other
37 procedures to receive any necessary approvals with the minimum of

1 administrative processing consistent with federal and state laws and
2 rules.

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

5 MARINE WATERS--TOTAL MAXIMUM DAILY LOADS. Because of their
6 location downstream of most human activities, marine sediments tend to
7 be the final repository of many pollutants generated by human activity.
8 Sediment cleanup alone, however, may be insufficient to attain water
9 quality standards, unless the record of decision issued under a cleanup
10 under the federal comprehensive environmental response, compensation,
11 and liability act of 1980, or chapter 70.105D RCW, or other cleanup
12 authority also includes a plan for controlling ongoing pollutant
13 sources.

14 For water quality limited segments caused by contaminated sediments
15 in marine waters where a sediment cleanup has been planned or
16 completed, but no source control plan has been adopted; a total maximum
17 daily load shall be developed and implemented.

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

20 LIMITATIONS ON COMPLIANCE ACTIONS. (1) Except as provided in
21 subsections (2) and (3) of this section, the department shall not take
22 compliance actions against persons causing exceedances of water quality
23 standards identified as limiting for salmonids, other aquatic life, or
24 other water-dependent wildlife that are listed as threatened or
25 endangered under the federal endangered species act, or that are
26 candidates for such listing, if such persons have entered into binding
27 agreements with the national marine fisheries service or the United
28 States fish and wildlife service to implement mechanisms that:

29 (a) Have been designed to meet water quality standards as
30 identified in this subsection (1);

31 (b) Have been designed to conserve listed species; and

32 (c) Contain provisions for monitoring and adaptive management.

33 Such mechanisms may include, but are not limited to, the pollution
34 controls identified in RCW 90.48.020.

35 (2) The immunity provided under subsection (1) of this section
36 shall be provided:

1 (a) Only as long as substantial measurable progress toward
2 attainment of water quality standards can be demonstrated at five-year
3 intervals after adoption of the mechanisms described under subsection
4 (2) of this section for up to fifteen years;

5 (b) Only for activities and facilities that are specifically
6 addressed in the mechanisms described under subsection (1) of this
7 section; and

8 (c) Only for pollutants that are specifically addressed in the
9 mechanisms described in subsection (1) of this section.

10 (3) The immunity provided under subsection (1) of this section
11 shall lapse:

12 (a) If substantial measurable progress cannot be demonstrated in
13 each five-year period for up to fifteen years; or

14 (b) Following any violation of or failure to implement any of the
15 terms of the binding agreements identified in subsection (1) of this
16 section.

17 (4) Except as provided in subsections (1), (2), and (3) of this
18 section, the authority of any regulatory agency to take any enforcement
19 action authorized by law shall not be limited. This section shall not
20 limit a regulatory agency's authority to take any compliance actions as
21 authorized by law based upon a person's failure to comply with specific
22 terms and conditions of any permit or license issued by the agency to
23 that person, failure to obtain a permit for discharges requiring a
24 permit under the federal clean water act, or knowing or willful
25 violations of this chapter and implementing rules.

26 NEW SECTION. **Sec. 15.** STORM WATER ADVISORY COMMITTEE. (1) The
27 department of ecology shall convene a storm water advisory committee
28 for the purpose of updating the department's storm water management
29 plan and the Puget Sound storm water management manual. The advisory
30 committee shall include, but not be limited to, one representative
31 selected by each of the following agencies and associations: The
32 department of ecology; the department of natural resources; the
33 department of community, trade, and economic development; the
34 department of fish and wildlife; the department of transportation; the
35 Puget Sound action team; the Washington state association of counties;
36 the association of Washington cities; the Washington association of
37 sewer and water districts; the American public works association; the
38 national association of industrial and office properties; the American

1 society of civil engineers; the association of Washington business; the
2 Washington state farm bureau; people for Puget Sound; and the
3 Washington environmental council.

4 (2) The advisory committee shall be appointed no later than
5 September 1, 1999, and shall complete its work by June 30, 2001. The
6 department of ecology shall provide a progress report to the
7 legislature on storm water management issues and the approach to these
8 issues taken by the advisory committee no later than December 31, 1999.

9 (3) This section expires December 31, 2001.

10 NEW SECTION. **Sec. 16.** A new section is added to chapter 90.48 RCW
11 to read as follows:

12 CONFLICT WITH FEDERAL LAW--RESOLUTION. If notified by responsible
13 officials of any conflict of this chapter with federal law or program
14 requirements or with federal requirements that are a prescribed
15 condition to the allocation of federal funds to the state, the
16 regulatory agency notified of the conflict shall actively seek to
17 resolve the conflict. If the agency determines that the conflict
18 cannot be resolved without the loss of benefits or authority to the
19 state, the agency shall notify the governor, the president of the
20 senate, and the speaker of the house of representatives in writing
21 within thirty days of making that determination.

22 NEW SECTION. **Sec. 17.** CAPTIONS NOT LAW. Captions used in this
23 act are not any part of the law.

24 NEW SECTION. **Sec. 18.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 19.** If specific funding for the purposes of
29 sections 2 through 18 of this act, referencing this act by bill or
30 chapter and section numbers, is not provided by June 30, 1999, in the
31 omnibus appropriations act, sections 2 through 18 of this act are null
32 and void."

33 Renumber the remaining section consecutively and correct any
34 internal references accordingly.

1 On page 3, beginning on line 19, strike all of section 2 and insert
2 the following:

3 "NEW SECTION. **Sec. 20.** Section 1 of this act is necessary for the
4 immediate preservation of the public peace, health, or safety, or
5 support of the state government and its existing public institutions,
6 and takes effect immediately."

7 Correct the title.

8 NOT CRO'S AMENDMENT

9 **SB 5670** - H COMM AMD

10 By Committee on Agriculture & Ecology

11 On page 1, line 11, after "as" strike "defined in 40 C.F.R. Sec.
12 172.3" and insert "described in 40 C.F.R. Sec. 172.3(c)(2)"

13 On page 2, line 23, after "as" strike "defined in 40 C.F.R. Sec.
14 172.3" and insert "described in 40 C.F.R. Sec. 172.3(c)(2)"

15 On page 3, line 14, after "as" strike "defined in 40 C.F.R. Sec.
16 172.3" and insert "described in 40 C.F.R. Sec. 172.3(c)(2)"

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