

1 **SHB 1689 - H AMD 0302 ADOPTED 3-18-03**
2 By Representative _____

3 Strike everything after the enacting clause and insert the
4 following:

5 "NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds that
6 the federal clean water act (33 U.S.C. Sec. 1251 et seq.) required
7 large counties and cities in Washington to obtain municipal
8 separate storm sewer system permits under phase one of the national
9 pollutant discharge elimination system permit program. The
10 legislature also finds that under phase two of this program, many
11 other counties and cities in Washington will be required to obtain
12 permits for their systems. The legislature recognizes that the
13 department, as the state agency delegated authority to administer
14 the federal permit program in Washington, is responsible for
15 renewal of the phase one permits and issuance of the phase two
16 permits. The legislature also recognizes that the department must
17 determine whether it is in the state's interest to integrate these
18 two permit programs and, if so, how to accomplish the integration.

19 (2) The legislature acknowledges and encourages the appropriate
20 use of flexibility in storm water management. The legislature
21 finds that storm water management must satisfy state and federal
22 water quality requirements while also providing state and local
23 agencies, development interests, and others with a flexible set of
24 tools and alternatives that can help ensure cost-effective storm
25 water management.

26 (3) The legislature finds that significant fragmentation in
27 authority exists among local, state, and federal agencies in
28 managing storm water and that these agencies can better coordinate
29 standards, practices, and approaches for managing storm water. The
30 legislature believes state agencies and local governments and,
31 where appropriate, federal and tribal governments should identify
32 streamlining opportunities to address and improve coordination of

1 storm water management authority exercised by local, state, and
2 federal jurisdictions.

3 (4) The legislature further finds that the federal permit
4 programs and the state water pollution control laws provide
5 numerous environmental and public health benefits to the citizens
6 of Washington and to the state. The legislature also finds that
7 storm water runoff can cause or increase pollution in our state's
8 waters. The legislature further finds that failure to prevent and
9 control pollution discharges, including those associated with storm
10 water runoff, can damage public health and industries, such as
11 shellfish production, for which water quality is a critical
12 component of their existence.

13 (5) The legislature also finds that implementing these programs
14 involves great effort and significant costs for municipalities.
15 The legislature recognizes that under federal law, municipalities
16 required to obtain permits under phase two of the national
17 pollutant discharge elimination system have up to five years after
18 permit issuance to develop and implement the permit requirements.
19 The legislature finds that as these permits are being developed,
20 the department needs to identify mechanisms by which the state can
21 best achieve environmental benefits from storm water management and
22 satisfy the federal clean water act permit requirements in the most
23 cost-effective manner to address the impacts on municipalities in
24 implementing these permit programs.

25 (6) The legislature finds that coordinated permit programs and
26 cooperative storm water management programs between and among local
27 governments may reduce costs and enhance program effectiveness.

28 (7) The legislature finds that a municipal separate storm sewer
29 system faces different challenges than other types of storm sewer
30 systems. The legislature recognizes the difficulty of predicting
31 and sampling storm water pollutants in these systems. The
32 legislature also recognizes the problems inherent in identifying
33 the sources of and controlling the introduction of pollutants that
34 may contribute to the contamination of storm water discharged
35 through municipal separate storm sewer systems. Further, the
36 legislature finds that municipal separate storm sewer systems have
37 distinct characteristics that must be considered when the
38 department develops permit programs to control storm water runoff,
39 including that these systems may:

1 (a) Consist of complex, widely dispersed conveyance networks
2 that drain public roads and other key elements of infrastructure;

3 (b) Include numerous inlets and outfalls that can be difficult
4 to locate and maintain;

5 (c) Receive large volumes of diffuse storm water on an
6 intermittent and unpredictable basis; and

7 (d) Receive storm water that has been polluted from a variety
8 of sources.

9 (8) The legislature recognizes that in 2001 the department
10 developed a stormwater management manual for western Washington.
11 The legislature also recognizes that the department has established
12 a stakeholder process in eastern Washington to develop a stormwater
13 manual for that area of the state. The legislature finds that
14 issues associated with storm water management in eastern Washington
15 are significantly different from those in western Washington. The
16 legislature also finds that the federal phase two permits developed
17 by the department must recognize these differences.

18 (9) The legislature intends to:

19 (a) Provide direction to the department and to municipalities
20 regarding the development and implementation of phase two of the
21 federal clean water act's national pollutant discharge elimination
22 system permit program in Washington;

23 (b) Recognize the eastern Washington stakeholder process for
24 developing a stormwater manual and direct the department to work
25 within that process when implementing the phase two program in
26 eastern Washington; and

27 (c) Establish a stakeholder process to assist the department in
28 identifying and addressing issues related to developing and
29 implementing the federal national pollutant discharge elimination
30 system permit programs in western Washington and to advise and
31 assist the department as it drafts these permits.

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

34 STANDARDS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS.

35 (1) In accordance with federal and state law, permits for municipal
36 separate storm sewer systems shall require the development,
37 implementation and enforcement of stormwater management programs
38 designed to reduce the discharge of pollutants to the maximum

1 extent practicable, to protect water quality, and to satisfy the
2 appropriate water quality requirements of the federal clean water
3 act and this chapter. Permits issued to municipalities subject to
4 federal regulations implementing phase two of the national
5 pollutant discharge elimination system permit program shall include
6 the following minimum control measures established according to the
7 federal regulations implementing the federal national pollutant
8 discharge elimination system permit program:

9 (a) Public education and outreach on stormwater impacts;

10 (b) Public involvement and participation;

11 (c) Illicit discharge detection and elimination;

12 (d) Construction site storm water runoff control;

13 (e) Post-construction stormwater management in new development
14 and redevelopment;

15 (f) Pollution prevention/good housekeeping for municipal
16 operations, including:

17 (i) Compliance with any more stringent effluent limitations
18 that modify or are in addition to the federal minimum control
19 measures based on an approved total maximum daily load (TMDL) or
20 equivalent analysis; and

21 (ii) evaluation of program compliance, the appropriateness of
22 identified best management practices, and progress toward achieving
23 identified measurable goals; and

24 (g) Appropriate recordkeeping and reporting requirements.

25 (2) For municipal separate storm sewer system permits, the
26 reduction of pollutants to the maximum extent practicable (MEP)
27 shall be equivalent to all known available and reasonable methods
28 of prevention control and treatment (AKART). In interpreting and
29 implementing these standards with respect to municipal separate
30 storm sewer system permits, the department shall consider:

31 (a) Factors such as on-site practicability analysis,
32 innovations, incentives for alternative storm water management
33 strategies, and retrofit strategies for existing impervious
34 surfaces within project boundaries; and

35 (b) Whether the probable benefits are greater than the probable
36 costs, in a manner similar to that required for adoption of
37 significant legislative rules according to RCW 34.05.328(1)(c).

38 (3) For the purposes of this section, narrative effluent
39 limitations requiring the implementation of best management

1 practices are generally the most appropriate form of effluent
2 limitations when designed to satisfy the requirements of subsection
3 (1) of this section.

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

6 WATERSHED-BASED PERMITS. The department is encouraged to
7 consider the development and issuance of permits for municipal
8 separate storm sewer systems on a watershed basis. In determining
9 whether to issue a general permit for municipal separate storm
10 sewer systems by watershed, the department should consider the:

11 (1) Physical interconnections between and among municipal
12 separate storm sewer systems;

13 (2) Location of discharges from municipalities required to
14 obtain permits under phase two of the federal national pollutant
15 discharge elimination system permit program relative to discharges
16 from municipalities permitted and operating under phase one of the
17 federal permit system;

18 (3) Potential for integrating municipalities permitted and
19 operating under phase one of the federal national pollutant
20 discharge elimination system permit program and those that will
21 obtain permits and implement permit requirements under phase two of
22 the federal permit system; and

23 (3) Relationships between and among municipalities and the
24 potential to encourage and facilitate cooperative and cost-
25 efficient programs for storm water management.

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

28 INTERLOCAL COOPERATION. Local governments are encouraged to
29 cooperate with each other, share resources and coordinate actions
30 to develop and implement programs and activities to satisfy the
31 requirements of permits issued to them according to this chapter.
32 This section shall not be interpreted as a requirement for local
33 governments. Nothing in this section shall be construed to alter
34 or create exemptions to the requirements of chapter 39.04 RCW.

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

1 WESTERN WASHINGTON PERMIT DEVELOPMENT ADVISORY GROUP. (1) The
2 department shall establish a permit development advisory group for
3 western Washington to advise and assist the department regarding
4 permits for municipal separate storm sewer systems. The advisory
5 group shall work within a facilitated process according to
6 subsection (5) of this section to review the issues identified in
7 section 7 of this act and to make recommendations and submit
8 reports to the legislature according to sections 7 and 8 of this
9 act. The permit development advisory group shall:

10 (a) Review and address the issues specified in section 7 of
11 this act and any other issues regarding municipal separate storm
12 sewer systems for which the department requests advice and
13 assistance; and

14 (b) Advise and assist the department in drafting a permit or
15 permits for municipal separate storm sewer systems in western
16 Washington as required by federal regulations implementing phase
17 two of the national pollutant discharge elimination system permit
18 program under the federal clean water act (33 U.S.C. Sec. 1251 et
19 seq.).

20 (2) The permit development advisory group may include up to 18
21 members selected according to this subsection and any members
22 electing to participate as provided in subsections (3) and (4) of
23 this section. The permit development advisory group shall include
24 a representative from the department of transportation and from the
25 puget sound action team. In addition, the permit development
26 advisory group shall include at least one representative of each of
27 the following interests, selected by the associations representing
28 those interests:

29 (a) Counties and cities that have obtained and are operating
30 under a municipal separate storm sewer system permit issued under
31 phase one of the federal national pollutant discharge elimination
32 system permit program;

33 (b) Counties and cities that will be required to obtain a
34 municipal separate storm sewer system permit issued under phase two
35 of the federal national pollutant discharge elimination system
36 permit program;

37 (c) General contractors;

38 (d) Ports;

39 (e) Realtors;

- 1 (f) Residential contractors;
- 2 (g) Business;
- 3 (h) Shellfish growers;
- 4 (i) Agricultural and timber organizations; and
- 5 (j) Environmental organizations.

6 (3) The department shall invite and encourage members of the
7 legislature with interest in storm water management to participate
8 in the permit development advisory group. Legislative members who
9 do participate shall be reimbursed for travel expenses as provided
10 in RCW 44.04.120.

11 (4) The department shall invite and encourage representatives
12 of appropriate federal agencies and representatives of tribes
13 located in western Washington to participate in the permit
14 development advisory group.

15 (5) (a) No later than ten days after the effective date of this
16 act, the agencies and interests identified in subsection (2) of
17 this section shall submit to the department the names of their
18 representatives for the permit development advisory group. The
19 department shall schedule the first meeting of the permit
20 development advisory group to occur no later than thirty days after
21 the effective date of this act.

22 (b) At its first meeting the permit development advisory group
23 shall establish an executive committee with a minimum of three and
24 a maximum of five members. The executive committee shall include
25 representatives of local government, business associations, and
26 environmental organizations. The executive committee shall advise
27 and assist the department to develop a request for proposals for a
28 facilitator to work with and facilitate the advisory group's review
29 of the issues identified in section 7 of this act and to develop
30 recommendations and submit reports to the legislature according to
31 sections 7 and 8 of this act. The executive committee also shall
32 review the responses to the request for proposals and select the
33 facilitator. The department and the executive committee shall work
34 expeditiously to select a facilitator who can begin working with
35 the permit development advisory group by June 1, 2003.

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

38 EASTERN WASHINGTON PERMIT DEVELOPMENT. The department shall

1 develop a municipal separate storm sewer system permit or permits
2 that addresses the issues and needs of municipalities operating
3 these systems in eastern Washington. The department shall use the
4 advisory group it has established in eastern Washington to develop
5 a storm water management manual to advise and assist the department
6 regarding permits for municipal separate storm sewer systems to be
7 issued in eastern Washington. The eastern Washington advisory
8 group shall:

9 (1) Review and address the issues specified in section 7 of
10 this act as they pertain to eastern Washington and any other issues
11 regarding municipal separate storm sewer systems for which the
12 department requests advice and assistance; and

13 (2) Assist and advise the department in drafting a permit or
14 permits for municipal separate storm sewer systems in eastern
15 Washington as required by federal regulations implementing phase
16 two of the national pollutant discharge elimination system permit
17 program under the federal clean water act (33 U.S.C. Sec. 1251 et
18 seq.).

19 (4) The department shall invite and encourage representatives
20 of the department of transportation, department of fish and
21 wildlife, business associations, general and residential
22 contractors, environmental organizations, appropriate federal
23 agencies, and representatives of tribes located in eastern
24 Washington to participate in the permit development advisory group.

25 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.48
26 RCW to read as follows:

27 PERMIT DEVELOPMENT ISSUES. (1) No later than March 1, 2004,
28 the permit development advisory group for western Washington
29 established in section 5 of this act and the eastern Washington
30 storm water management group identified in section 6 of this act
31 shall review and make recommendations to the department regarding
32 the development of permits for municipal separate storm sewer
33 systems. Issues considered by these groups shall include the:

34 (a) Types of discharges being regulated under these permits;

35 (b) Areas being regulated by these permits under phases one and
36 two of the federal national pollutant discharge elimination system
37 permit program as they relate to municipal borders;

38 (c) Issuance of these permits on a watershed basis;

1 (d) Coordination of permits and permit requirements for phase
2 one and phase two of the federal national pollutant discharge
3 elimination system permit program;

4 (e) Application of these permits to ground water discharges;

5 (f) Level of effort required of municipalities to satisfy
6 federal requirements regarding:

7 (i) Public education and outreach;

8 (ii) Public participation and public involvement;

9 (iii) Illicit discharge detection and elimination;

10 (iv) Construction site runoff control;

11 (v) Post-construction runoff control;

12 (vi) Pollution prevention and good housekeeping, including
13 implementation of applicable total maximum daily loads and program
14 evaluation and reporting;

15 (g) Protection for shellfish areas;

16 (h) The use of land use planning and existing land use plans
17 and regulations as a best management practice for storm water
18 management and to protect water quality; and

19 (i) Potential funding sources for implementation of permit
20 requirements.

21 (2) During the development of permits according to this
22 chapter, the permit development advisory group for western
23 Washington established in section 5 of this act and the eastern
24 Washington advisory group identified in section 6 of this act shall
25 advise and assist the department to develop a menu of best
26 management practices as required under the federal clean water act
27 (33 U.S.C. Sec. 1251 et seq.). These groups also shall review and
28 provide advice and assistance on the draft permits as they are
29 developed.

30 (3) In addition, these groups shall consider the requirements
31 of federal and state water pollution control laws and identify
32 whether the elements of these permits are required by federal law,
33 by state law, or by both federal and state law. These groups shall
34 consider the costs and benefits associated with each permit element
35 not required under federal law and make recommendations to the
36 legislature regarding these elements.

37 (4) These groups shall coordinate efforts with the
38 transportation permit efficiency and accountability committee
39 established by RCW 47.06C.030. These groups also shall build upon

1 the 2000 storm water advisory committee report to the legislature.
2 In addition, these groups shall determine and make recommendations
3 regarding whether the probable benefits of the permits developed
4 according to this chapter are greater than the probable costs in a
5 manner similar to that required for adoption of significant
6 legislative rules according to RCW 34.05.328(1)(c).

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

9 REPORTS TO THE LEGISLATURE. (1) No later than December 1, 2003,
10 the department shall submit a progress report regarding the work of
11 the western Washington permit development advisory group
12 established in section 5 of this act and the eastern Washington
13 advisory group identified in section 6 of this act to the
14 appropriate committees of the legislature.

15 (2) The department shall submit a report regarding the
16 recommendations of the western Washington permit development
17 advisory group established in section 5 of this act and the eastern
18 Washington advisory group identified in section 6 of this act to
19 the appropriate committees of the legislature. In reporting on
20 these groups' progress, the department shall identify the
21 recommendations made by these groups, list the issues upon which
22 the members of these groups were not able to reach agreement, and
23 reflect the comments of all members of these groups. The
24 department also shall identify any legislative recommendations from
25 these groups or from the department based on the work of these
26 groups.

27 (3) After the permits are developed according to the process
28 specified in sections 5 and 6 of this act, the department shall
29 submit a final report to the appropriate committees of the
30 legislature regarding these permits and the work of the advisory
31 groups. The department also shall identify any legislative
32 recommendations from these groups or from the department based on
33 the work of these groups.

34 NEW SECTION. **Sec. 9.** EXPIRATION. Sections 5 through 8 of this
35 act expire June 30, 2006.

36 NEW SECTION. **Sec. 10.** CAPTIONS. As used in this act,

1 captions constitute no part of the law.

2 NEW SECTION. **Sec. 11.** SEVERABILITY. If any provision of this
3 act or its application to any person or circumstance is held
4 invalid, the remainder of the act or the application of the
5 provision to other persons or circumstances is not affected.

6 NEW SECTION. **Sec. 12.** EMERGENCY. This act is necessary for
7 the immediate preservation of the public peace, health, or safety,
8 or support of the state government and its existing public
9 institutions, and takes effect immediately."

Correct the title.

EFFECT: Permit Standards. (1) Specifies standards for municipal separate storm sewer system (MS4) permits and permit development issues in terms of the federal minimum control measures. (2) Adds requirements for the Department of Ecology (DOE) to consider certain factors and to perform cost/benefit analysis in interpreting and implementing the "maximum extent practicable" (MEP) and "all known available and reasonable methods of prevention control and treatment" (AKART) standards. (3) Adds provision specifying narrative effluent limitations requiring implementation of best management practices are generally the most appropriate for purposes of MS4 standards.

Permit Development. (4) Encourages the DOE to consider MS4 permit development on a watershed basis. (5) Encourages local governments to cooperate, share resources, and coordinate regarding permit programs and activities.

Advisory Groups. (6) Adds membership provisions for the western Washington permit development advisory group [Sec. 5(2)]. (7) Requires the western Washington advisory group to work within a facilitated process and includes provisions regarding creation of an executive committee and selection of a facilitator. (8) Requires the DOE to invite specified agencies and interests to participate in the eastern Washington advisory group. (9) Requires the advisory groups to: (a) coordinate with the Transportation Permit Efficiency and Accountability Committee (TPEAC); (b) build upon the report of the 2000 report of the Storm Water Advisory Committee; and (c) determine and make recommendations regarding costs and benefits similar to the process for significant legislative rules. (10) Includes some revisions of issues the groups must consider. (11) Requires the DOE to submit a progress report by December 1, 2003, a report regarding the advisory groups' recommendations,

and a final report after permits are developed. (12) Expires provisions in 2006 (rather than 2005).

Findings and Intent. (1) Adds legislative findings regarding: (a) federal municipal storm sewer system permit requirements under Phases I and II of the Clean Water Act's National Pollutant Discharge Elimination Systems (NPDES) permit program; (b) fragmentation in federal, state, and local storm water management authority and the need to coordinate activities; (c) environmental and health benefits of federal permit programs; (d) local governments' efforts and costs related to implementing storm water permit programs; (e) flexibility in storm water management and coordination of permit and storm water management programs to reduce costs and enhance program effectiveness; (f) characteristics of and challenges associated with municipal separate storm sewer systems; and (g) development of storm water management manuals for eastern and western Washington and the different storm water management issues in these areas of the state. (2) Retains legislative intent to provide direction to the DOE and local governments regarding Phase II NPDES permit development and adds legislative intent to: (a) direct the DOE to work within the existing eastern Washington stakeholder process to develop Phase II NPDES permits for eastern Washington; and (b) establish a stakeholder process for western Washington for Phase II NPDES permit development.

Other. Adds severability, caption headings, and emergency clauses.