

E2SHB 1336 - S COMM AMD

By Committee on Natural Resources, Energy & Water

NOT ADOPTED 04/15/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature declares and reaffirms that
4 a core principle embodied in chapter 90.82 RCW is that state agencies
5 must work cooperatively with local citizens in a process of planning
6 for future uses of water by giving local citizens and the governments
7 closest to them the ability to determine the management of water in the
8 WRIA or WRIAs being planned.

9 The legislature further finds that this process of local planning
10 must have all the tools necessary to accomplish this task and that it
11 is essential for the legislature to provide a clear statutory process
12 for implementation so that the locally developed plan will be the
13 adopted and implemented plan to the greatest extent possible.

14 **Sec. 2.** RCW 90.82.040 and 2001 c 237 s 2 are each amended to read
15 as follows:

16 (1) Once a WRIA planning unit has been initiated under RCW
17 90.82.060 and a lead agency has been designated, it shall notify the
18 department and may apply to the department for funding assistance for
19 conducting the planning and implementation. Funds shall be provided
20 from and to the extent of appropriations made by the legislature to the
21 department expressly for this purpose.

22 (2)(a) Each planning unit that has complied with subsection (1) of
23 this section is eligible to receive watershed planning grants in the
24 following amounts for the first three phases of watershed planning and
25 phase four watershed plan implementation:

26 (i) Initiating governments may apply for an initial organizing
27 grant of up to fifty thousand dollars for a single WRIA or up to
28 seventy-five thousand dollars for a multi-WRIA management area in
29 accordance with RCW 90.82.060(4);

1 (ii)(A) A planning unit may apply for up to two hundred thousand
2 dollars for each WRIA in the management area for conducting watershed
3 assessments in accordance with RCW 90.82.070, except that a planning
4 unit that chooses to conduct a detailed assessment or studies under
5 (a)(ii)(B) of this subsection or whose initiating governments choose or
6 have chosen to include an instream flow or water quality component in
7 accordance with RCW 90.82.080 or 90.82.090 may apply for up to one
8 hundred thousand additional dollars for each instream flow and up to
9 one hundred thousand additional dollars for each water quality
10 component included for each WRIA to conduct an assessment on that
11 optional component and for each WRIA in which the assessments or
12 studies under (a)(ii)(B) of this subsection are conducted.

13 (B) A planning unit may elect to apply for up to one hundred
14 thousand additional dollars to conduct a detailed assessment of
15 multipurpose water storage opportunities or for studies of specific
16 multipurpose storage projects which opportunities or projects are
17 consistent with and support the other elements of the planning unit's
18 watershed plan developed under this chapter; and

19 (iii) A planning unit may apply for up to two hundred fifty
20 thousand dollars for each WRIA in the management area for developing a
21 watershed plan and making recommendations for actions by local, state,
22 and federal agencies, tribes, private property owners, private
23 organizations, and individual citizens, including a recommended list of
24 strategies and projects that would further the purpose of the plan in
25 accordance with RCW 90.82.060 through 90.82.100.

26 (b) A planning unit may request a different amount for phase two or
27 phase three of watershed planning than is specified in (a) of this
28 subsection, provided that the total amount of funds awarded do not
29 exceed the maximum amount the planning unit is eligible for under (a)
30 of this subsection. The department shall approve such an alternative
31 allocation of funds if the planning unit identifies how the proposed
32 alternative will meet the goals of this chapter and provides a proposed
33 timeline for the completion of planning. However, the up to one
34 hundred thousand additional dollars in funding for instream flow and
35 water quality components and for water storage assessments or studies
36 that a planning unit may apply for under (a)(ii)(A) of this subsection

1 may be used only for those instream flow, water quality, and water
2 storage purposes.

3 (c) By December 1, 2001, or within one year of initiating phase one
4 of watershed planning, whichever occurs later, the initiating
5 governments for each planning unit must inform the department whether
6 they intend to have the planning unit establish or amend instream flows
7 as part of its planning process. If they elect to have the planning
8 unit establish or amend instream flows, the planning unit is eligible
9 to receive one hundred thousand dollars for that purpose in accordance
10 with (a)(ii) of this subsection. If the initiating governments for a
11 planning unit elect not to establish or amend instream flows as part of
12 the unit's planning process, the department shall retain one hundred
13 thousand dollars to carry out an assessment to support establishment of
14 instream flows and to establish such flows in accordance with RCW
15 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use
16 these funds to amend an existing instream flow unless requested to do
17 so by the initiating governments for a planning unit.

18 (d) In administering funds appropriated for supplemental funding
19 for optional plan components under (a)(ii) of this subsection, the
20 department shall give priority in granting the available funds to
21 proposals for setting or amending instream flows.

22 (e) A planning unit may apply for a matching grant for phase four
23 watershed plan implementation. A match of ten percent is required and
24 may include financial contributions or in-kind goods and services
25 directly related to coordination and oversight functions. The match
26 can be provided by the planning unit or by the combined commitments
27 from federal agencies, tribal governments, local governments, special
28 districts, or other local organizations. The phase four grant may be
29 up to one hundred thousand dollars for each planning unit for each of
30 the first three years of implementation. At the end of the three-year
31 period, a two-year extension may be available for up to fifty thousand
32 dollars each year. For planning units that cover more than one WRIA,
33 additional matching funds of up to twenty-five thousand dollars may be
34 available for each additional WRIA per year for the first three years
35 of implementation, and up to twelve thousand five hundred dollars per
36 WRIA per year for each of the fourth and fifth years.

1 (f) Within one year of accepting funding under (e) of this
2 subsection, the planning unit must complete a detailed implementation
3 plan. An implementation plan must clearly define coordination and
4 oversight responsibilities; any needed interlocal agreements, rules, or
5 ordinances; specific funding mechanisms; and timelines for carrying out
6 the actions included in the plan. The planning unit must consider
7 coordination of watershed planning implementation with salmon recovery
8 efforts. Submittal of a detailed implementation plan to the department
9 is a condition for receiving grants for the second and all subsequent
10 years of the phase four grant.

11 (3)(a) The department shall use the eligibility criteria in this
12 subsection (3) instead of rules, policies, or guidelines when
13 evaluating grant applications at each stage of the grants program.

14 (b) In reviewing grant applications under this subsection (3), the
15 department shall evaluate whether:

16 (i) The planning unit meets all of the requirements of this
17 chapter;

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

20 (iii) The application and supporting information evidences a
21 readiness to proceed.

22 (c) In ranking grant applications submitted at each stage of the
23 grants program, the department shall give preference to applications in
24 the following order of priority:

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

27 (ii) Applications that address protection and enhancement of fish
28 habitat in watersheds that have aquatic fish species listed or proposed
29 to be listed as endangered or threatened under the federal endangered
30 species act, 16 U.S.C. Sec. 1531 et seq. and for which there is
31 evidence of an inability to supply adequate water for population and
32 economic growth from:

33 (A) First, multi-WRIA planning; and

34 (B) Second, single WRIA planning;

35 (iii) Applications that address protection and enhancement of fish
36 habitat in watersheds or for which there is evidence of an inability to
37 supply adequate water for population and economic growth from:

1 (A) First, multi-WRIA planning; and

2 (B) Second, single WRIA planning.

3 (d) Except for phase four watershed plan implementation, the
4 department may not impose any local matching fund requirement as a
5 condition for grant eligibility or as a preference for receiving a
6 grant.

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

9 (5) Planning under this chapter should be completed as
10 expeditiously as possible, with the focus being on local stakeholders
11 cooperating to meet local needs.

12 (6) Funding provided under this section shall be considered a
13 contractual obligation against the moneys appropriated for this
14 purpose.

15 **Sec. 3.** RCW 90.82.130 and 2001 c 237 s 4 are each amended to read
16 as follows:

17 (1)(a) Upon completing its proposed watershed plan, the planning
18 unit may approve the proposal by consensus of all of the members of the
19 planning unit or by consensus among the members of the planning unit
20 appointed to represent units of government and a majority vote of the
21 nongovernmental members of the planning unit.

22 (b) If the proposal is approved by the planning unit, the unit
23 shall submit the proposal to the counties with territory within the
24 management area. If the planning unit has received funding beyond the
25 initial organizing grant under RCW 90.82.040, such a proposal approved
26 by the planning unit shall be submitted to the counties within four
27 years of the date that funds beyond the initial funding are first drawn
28 upon by the planning unit.

29 (c) If the watershed plan is not approved by the planning unit, the
30 planning unit may submit the components of the plan for which agreement
31 is achieved using the procedure under (a) of this subsection, or the
32 planning unit may terminate the planning process.

33 (2)(a) With the exception of a county legislative authority that
34 chooses to opt out of watershed planning as provided in (c) of this
35 subsection, the legislative authority of each of the counties with
36 territory in the management area shall provide public notice of and

1 conduct at least one public hearing on the proposed watershed plan
2 submitted under this section. After the public hearings, the
3 legislative authorities of these counties shall convene in joint
4 session to consider the proposal. The counties may approve or reject
5 the proposed watershed plan for the management area, but may not amend
6 it. Approval of such a proposal shall be made by a majority vote of
7 the members of each of the counties with territory in the management
8 area.

9 (b) If a proposed watershed plan is not approved, it shall be
10 returned to the planning unit with recommendations for revisions.
11 Approval of such a revised proposal by the planning unit and the
12 counties shall be made in the same manner provided for the original
13 watershed plan. If approval of the revised plan is not achieved, the
14 process shall terminate.

15 (c) A county legislative authority may choose to opt out of
16 watershed planning under this chapter and the public hearing processes
17 under (a) and (b) of this subsection if the county's affected territory
18 within a particular management area is: (i) Less than five percent of
19 the total territory within the management area; or (ii) five percent or
20 more of the total territory within the management area and all other
21 initiating governments within the management area consent. A county
22 meeting these conditions and choosing to opt out shall notify the
23 department and the other initiating governments of that choice prior to
24 commencement of plan adoption under the provisions of (a) of this
25 subsection. A county choosing to opt out shall not be bound by
26 obligations contained in the watershed plan adopted for that management
27 area under this chapter. Even if a county chooses to opt out as
28 provided in this section, the other counties within a management area
29 may adopt a proposed watershed plan as provided in this chapter.

30 (3) The planning unit shall not add an element to its watershed
31 plan that creates an obligation unless each of the governments to be
32 obligated has at least one representative on the planning unit and the
33 respective members appointed to represent those governments agree to
34 adding the element that creates the obligation. A member's agreeing to
35 add an element shall be evidenced by a recorded vote of all members of
36 the planning unit in which the members record support for adding the
37 element. If the watershed plan is approved under subsections (1) and

1 (2) of this section and the plan creates obligations: (a) For agencies
2 of state government, the agencies shall adopt by rule the obligations
3 of both state and county governments and rules implementing the state
4 obligations, or, with the consent of the planning unit, may adopt
5 policies, procedures, or agreements related to the obligations or
6 implementation of the obligations. The obligations on state agencies
7 are binding upon adoption of the obligations (~~into rule~~), and the
8 agencies shall take other actions to fulfill their obligations as soon
9 as possible, and should annually review implementation needs with
10 respect to budget and staffing; (~~or~~) (b) for counties, the
11 obligations are binding on the counties and the counties shall adopt
12 any necessary implementing ordinances and take other actions to fulfill
13 their obligations as soon as possible, and should annually review
14 implementation needs with respect to budget and staffing; or (c) for an
15 organization voluntarily accepting an obligation, the organization must
16 adopt policies, procedures, agreements, rules, or ordinances to
17 implement the plan, and should annually review implementation needs
18 with respect to budget and staffing.

19 (4) After a plan is adopted in accordance with subsection (3) of
20 this section, and if the department participated in the planning
21 process, the plan shall be deemed to satisfy the watershed planning
22 authority of the department with respect to the components included
23 under the provisions of RCW 90.82.070 through 90.82.100 for the
24 watershed or watersheds included in the plan. The department shall
25 rely on such a plan in making all future water resource decisions for
26 the planned watershed or watersheds. The department shall also rely
27 upon the plan as a primary consideration in determining the public
28 interest related to such decisions.

29 (5) Once a plan is adopted under the provisions of RCW 90.82.130,
30 the department may only modify the plan or obligations imposed by the
31 plan through a negotiated rule-making process conducted among water
32 right holders and other affected residents in a watershed or group of
33 watersheds, and must include the members of the original planning unit,
34 to the greatest extent practicable.

35 (6) As used in this section, "obligation" means any action required
36 as a result of this chapter that imposes upon a tribal government,

1 county government, or state government, either: A fiscal impact; a
2 redeployment of resources; or a change of existing policy.

3 NEW SECTION. **Sec. 4.** If specific funding for the purposes of this
4 act, referencing this act by bill or chapter number, is not provided by
5 June 30, 2003, in the omnibus appropriations act, this act is null and
6 void."

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7 On page 1, line 1 of the title, after "planning;" strike the
8 remainder of the title and insert "amending RCW 90.82.040 and
9 90.82.130; and creating new sections."

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