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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1336

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State of Washington

58th Legislature

2003 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Linville, Kirby, Grant, Rockefeller, Quall, Hunt, Shabro, Jarrett, Delvin, Morris and Conway; by request of Governor Locke)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to watershed planning; amending RCW 90.82.040,  
2 90.82.130, 90.82.060, 90.82.090, 90.82.120, and 77.85.050; reenacting  
3 and amending RCW 77.85.130; adding new sections to chapter 90.82 RCW;  
4 adding new sections to chapter 90.54 RCW; adding a new section to  
5 chapter 90.48 RCW; and creating new sections.

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

7 **IMPLEMENTATION OF WATERSHED PLANS**

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

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

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

3       (1) Once a WRIA planning unit has been initiated under RCW  
4 90.82.060 and a lead agency has been designated, it shall notify the  
5 department and may apply to the department for funding assistance for  
6 conducting the planning and providing coordination and oversight of the  
7 implementation of the plan. Funds shall be provided from and to the  
8 extent of appropriations made by the legislature to the department  
9 expressly for this purpose.

10       (2)(a) Each planning unit that has complied with subsection (1) of  
11 this section is eligible to receive watershed planning grants in the  
12 following amounts for the first three phases of watershed planning and  
13 phase four watershed plan implementation coordination and oversight:

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

18       (ii)(A) A planning unit may apply for up to two hundred thousand  
19 dollars for each WRIA in the management area for conducting watershed  
20 assessments in accordance with RCW 90.82.070, except that a planning  
21 unit that chooses to conduct a detailed assessment or studies under  
22 (a)(ii)(B) of this subsection or whose initiating governments choose or  
23 have chosen to include an instream flow or water quality component in  
24 accordance with RCW 90.82.080 or 90.82.090 may apply for up to one  
25 hundred thousand additional dollars for each instream flow and up to  
26 one hundred thousand additional dollars for each water quality  
27 component included for each WRIA to conduct an assessment on that  
28 optional component and for each WRIA in which the assessments or  
29 studies under (a)(ii)(B) of this subsection are conducted.

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

36       (iii) A planning unit may apply for up to two hundred fifty  
37 thousand dollars for each WRIA in the management area for developing a  
38 watershed plan and making recommendations for actions by local, state,

1 and federal agencies, tribes, private property owners, private  
2 organizations, and individual citizens, including a recommended list of  
3 strategies and projects that would further the purpose of the plan in  
4 accordance with RCW 90.82.060 through 90.82.100.

5 (b) A planning unit may request a different amount for phase two or  
6 phase three of watershed planning than is specified in (a) of this  
7 subsection, provided that the total amount of funds awarded do not  
8 exceed the maximum amount the planning unit is eligible for under (a)  
9 of this subsection. The department shall approve such an alternative  
10 allocation of funds if the planning unit identifies how the proposed  
11 alternative will meet the goals of this chapter and provides a proposed  
12 timeline for the completion of planning. However, the up to one  
13 hundred thousand additional dollars in funding for instream flow and  
14 water quality components and for water storage assessments or studies  
15 that a planning unit may apply for under (a)(ii)(A) of this subsection  
16 may be used only for those instream flow, water quality, and water  
17 storage purposes.

18 (c) By December 1, 2001, or within one year of initiating phase one  
19 of watershed planning, whichever occurs later, the initiating  
20 governments for each planning unit must inform the department whether  
21 they intend to have the planning unit establish or amend instream flows  
22 as part of its planning process. If they elect to have the planning  
23 unit establish or amend instream flows, the planning unit is eligible  
24 to receive one hundred thousand dollars for that purpose in accordance  
25 with (a)(ii) of this subsection. If the initiating governments for a  
26 planning unit elect not to establish or amend instream flows as part of  
27 the unit's planning process, the department shall retain one hundred  
28 thousand dollars to carry out an assessment to support establishment of  
29 instream flows and to establish such flows in accordance with RCW  
30 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use  
31 these funds to amend an existing instream flow unless requested to do  
32 so by the initiating governments for a planning unit.

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

37 (e) A planning unit may apply for a matching grant for phase four  
38 coordination and oversight of watershed plan implementation. A match

1 of ten to twenty-five percent is required and may include financial  
2 contributions or in-kind goods and services directly related to  
3 coordination and oversight functions. The match can be provided by the  
4 planning unit or by the combined commitments from federal agencies,  
5 tribal governments, local governments, special districts, or other  
6 local organizations. The phase four grant may be up to one hundred  
7 thousand dollars for each planning unit for each of the first three  
8 years of implementation. At the end of the three-year period, a two-  
9 year extension may be available for up to fifty thousand dollars each  
10 year. For planning units that cover more than one WRIA, additional  
11 matching funds of up to twenty-five thousand dollars may be available  
12 for each additional WRIA per year for the first three years of  
13 implementation, and up to twelve thousand five hundred dollars per WRIA  
14 per year for each of the fourth and fifth years.

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

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

20 (i) The planning unit meets all of the requirements of this  
21 chapter;

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

24 (iii) The application and supporting information evidences a  
25 readiness to proceed.

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

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

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

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

38 (B) Second, single WRIA planning;

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

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

5 (B) Second, single WRIA planning.

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

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

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

15 (6) Funding provided under this section shall be considered a  
16 contractual obligation against the moneys appropriated for this  
17 purpose.

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

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

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

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

36 (2)(a) With the exception of a county legislative authority that  
37 chooses to opt out of watershed planning as provided in (c) of this

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

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

17 (c) A legislative authority of a county with less than five percent  
18 of affected territory within a particular management area may choose to  
19 opt out of watershed planning under this chapter and the public hearing  
20 processes under (a) and (b) of this subsection, with regard to that  
21 legislative authority's affected territory within a particular  
22 management area. A county 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  
38 (2) of this section and the plan creates obligations: (a) For agencies

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

17 (4) As used in this section, "obligation" means any action required  
18 as a result of this chapter that imposes upon a tribal government,  
19 county government, or state government, either: A fiscal impact; a  
20 redeployment of resources; or a change of existing policy.

21 (5) After a plan is approved under subsection (2)(a) of this  
22 section and if the department participated in the planning process, the  
23 department shall rely on such a plan as the framework for making water  
24 resource and water quality decisions in the watershed. The department  
25 shall also rely upon the plan as a primary consideration in determining  
26 the public interest related to those decisions.

27 (6) Once a plan is approved under subsection (2)(a) of this  
28 section, the department may adopt rules under RCW 90.54.040(1) to  
29 modify the plan through a negotiated rule-making process under RCW  
30 34.05.310(2)(a) and shall adopt rules implementing its obligations  
31 imposed by the plan or modified plan through such a negotiated rule-  
32 making process. The department may not modify the plan in any other  
33 manner or under any other authority. The entities to be included in  
34 the negotiated rule making as affected interests must include, but are  
35 not limited to: Water right holders and other affected residents in a  
36 watershed or watersheds; and, to the greatest extent practicable, the  
37 members of the original planning unit for the watershed or watersheds.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 90.82 RCW  
2 to read as follows:

3        (1) Upon approval of the watershed plan, the role of the planning  
4 unit is to provide coordination and oversight during the implementation  
5 of the plan. This may include a number of interrelated activities,  
6 such as seeking funding; tracking progress towards implementation  
7 milestones; making adjustments to respond to new information and  
8 changing conditions; coordinating the many implementation actions being  
9 performed by different organizations in the watershed; and responding  
10 to local needs and concerns as expressed by elected officials,  
11 stakeholders, and the public. Supporting activities also include  
12 public outreach and education; long-term monitoring activities and  
13 associated research; data management; and program evaluation.

14        (2) Within one year of accepting funding for plan coordination and  
15 oversight, the planning unit must complete a detailed implementation  
16 plan. An implementation plan must clearly define coordination and  
17 oversight responsibilities; any needed interlocal agreements, rules, or  
18 ordinances; specific funding mechanisms; timelines for carrying out the  
19 actions included in the plan; and an adaptive management strategy for  
20 plan amendments. The implementation plan must include coordination of  
21 salmon recovery projects with lead entities working under chapter 246,  
22 Laws of 1998. Submittal of a detailed implementation plan to the  
23 department is a condition for receiving grants for the second and all  
24 subsequent years of the phase four grant.

25        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 90.82 RCW  
26 to read as follows:

27        (1) Each plan developed under this chapter must contain strategies  
28 for achieving the following water resource objectives:

- 29        (a) Providing sufficient water for productive agriculture;
- 30        (b) Providing sufficient water for commercial, industrial, and  
31 residential use; and
- 32        (c) Providing sufficient water for instream flows.

33        (2) Such a plan must include timelines for achieving these three  
34 objectives and interim milestones for measuring progress in achieving  
35 the objectives. Such a plan must also identify the state and local  
36 administrative approvals and permits that must be secured to achieve  
37 these objectives.



1 (3) The strategies developed under this chapter to satisfy these  
2 objectives must include, but are not limited to, the identification of:

3 (a) How the objectives are to be achieved;

4 (b) Timelines for achieving these objectives;

5 (c) How progress is to be measured for achieving the objectives and  
6 interim milestones for measuring that progress;

7 (d) How any limiting factors regarding stream flows or water supply  
8 that have been identified for salmon in analyses under RCW 77.85.060  
9 are to be overcome;

10 (e) How progress in overcoming these limiting factors is to be  
11 measured and interim milestones for measuring that progress; and

12 (f) How the strategies developed under this section are to be  
13 coordinated with the activities and habitat project lists of lead  
14 entities and committees conducted and developed under RCW 77.85.050.

15 **Sec. 6.** RCW 90.82.060 and 2001 c 229 s 1 are each amended to read  
16 as follows:

17 (1) Planning conducted under this chapter must provide for a  
18 process to allow the local citizens within a WRIA or multi-WRIA area to  
19 join together in an effort to: (a) Assess the status of the water  
20 resources of their WRIA or multi-WRIA area; and (b) determine how best  
21 to manage the water resources of the WRIA or multi-WRIA area to balance  
22 the competing resource demands for that area within the parameters  
23 under RCW 90.82.120.

24 (2) Watershed planning under this chapter may be initiated for a  
25 WRIA only with the concurrence of: (a) All counties within the WRIA;  
26 (b) the largest city or town within the WRIA unless the WRIA does not  
27 contain a city or town; and (c) the water supply utility obtaining the  
28 largest quantity of water from the WRIA or, for a WRIA with lands  
29 within the Columbia Basin project, the water supply utility obtaining  
30 from the Columbia Basin project the largest quantity of water for the  
31 WRIA. To apply for a grant for organizing the planning unit as  
32 provided for under RCW 90.82.040(2)(a), these entities shall designate  
33 the entity that will serve as the lead agency for the planning effort  
34 and indicate how the planning unit will be staffed.

35 (3) Watershed planning under this chapter may be initiated for a  
36 multi-WRIA area only with the concurrence of: (a) All counties within

1 the multi-WRIA area; (b) the largest city or town in each WRIA unless  
2 the WRIA does not contain a city or town; and (c) the water supply  
3 utility obtaining the largest quantity of water in each WRIA.

4 (4) If entities in subsection (2) or (3) of this section decide  
5 jointly and unanimously to proceed, they shall invite all tribes with  
6 reservation lands within the management area.

7 (5) The entities in subsection (2) or (3) of this section,  
8 including the tribes if they affirmatively accept the invitation,  
9 constitute the initiating governments for the purposes of this section.

10 (6) The organizing grant shall be used to organize the planning  
11 unit and to determine the scope of the planning to be conducted. In  
12 determining the scope of the planning activities, consideration shall  
13 be given to all existing plans and related planning activities. The  
14 scope of planning must include water quantity elements as provided in  
15 RCW 90.82.070, and may include water quality elements as contained in  
16 RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and  
17 instream flow elements as contained in RCW 90.82.080. The initiating  
18 governments shall work with state government, other local governments  
19 within the management area, and affected tribal governments, in  
20 developing a planning process. The initiating governments may hold  
21 public meetings as deemed necessary to develop a proposed scope of work  
22 and a proposed composition of the planning unit. In developing a  
23 proposed composition of the planning unit, the initiating governments  
24 shall provide for representation of a wide range of water resource  
25 interests.

26 (7) Each state agency with regulatory or other interests in the  
27 WRIA or multi-WRIA area to be planned shall assist the local citizens  
28 in the planning effort to the greatest extent practicable, recognizing  
29 any fiscal limitations. In providing such technical assistance and to  
30 facilitate representation on the planning unit, state agencies may  
31 organize and agree upon their representation on the planning unit.  
32 Such technical assistance must only be at the request of and to the  
33 extent desired by the planning unit conducting such planning. The  
34 number of state agency representatives on the planning unit shall be  
35 determined by the initiating governments in consultation with the  
36 governor's office.

37 (8) As used in this section, "lead agency" means the entity that

1 coordinates staff support of its own or of other local governments and  
2 receives grants under RCW 90.82.130 for developing and for  
3 implementation coordination and oversight of a watershed plan.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.82 RCW  
5 to read as follows:

6 The department and all other state agencies, acting within the  
7 authorities, restrictions, and responsibilities of the statutes they  
8 administer and available resources, shall act on the approvals and  
9 permits needed to implement any plan approved under this chapter. In  
10 instances where granting particular approvals or permits is not  
11 consistent with those authorities and responsibilities, the agencies or  
12 divisions within the department shall identify to the director the  
13 changes in statute that would allow them to grant the approvals and  
14 permits. By December 31, 2003, and by December 31st of each year  
15 thereafter, the director of the department shall report to the  
16 appropriate standing committees of the legislature and to the governor  
17 on the statutory changes that would be necessary to provide the state  
18 agency approvals and permits identified under this section.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.54 RCW  
20 to read as follows:

21 (1) When a comprehensive water resource program is developed in  
22 segments under RCW 90.54.040(1), the watershed planning shall be  
23 conducted through local planning groups that represent at least the  
24 diversity of interests required for planning conducted under chapter  
25 90.82 RCW. Any plan developed under this section shall include, but is  
26 not limited to, the water supply and use assessment and strategies for  
27 future use required for planning conducted under chapter 90.82 RCW by  
28 RCW 90.82.070 and the following:

29 (a) Strategies for achieving the water resource objectives listed  
30 in section 5(1) of this act;

31 (b) Timelines for achieving each of the objectives listed in  
32 section 5(2) of this act and interim milestones for measuring progress  
33 in achieving the objectives; and

34 (c) An identification of the state and local administrative  
35 approvals and permits that must be secured to achieve the objectives  
36 listed in section 5(3) of this act.

1 The department and all other state agencies, acting within the  
2 authorities, restrictions, and responsibilities of the statutes they  
3 administer and available resources, shall act on the approvals and  
4 permits needed to implement any plan approved under this section. In  
5 instances where granting particular approvals or permits is not  
6 consistent with those authorities and responsibilities, the agencies or  
7 divisions within the department shall identify to the director the  
8 changes in statute that would allow them to grant the approvals and  
9 permits.

10 (2) The director shall include within the report required by  
11 section 7 of this act the director's recommendations for changes in  
12 statutes from those identified under this section.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.54 RCW  
14 to read as follows:

15 Instream flow requirements must be established for not less than  
16 the main stem of the principal stream or river in each water resource  
17 inventory area established in chapter 173-500 WAC as it exists on the  
18 effective date of this section.

19 **COORDINATING WATERSHED, WATER QUALITY, AND SALMON RECOVERY PLANNING**

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

22 This section applies to any work conducted by the department for  
23 determining or allocating total maximum daily loads for approval by the  
24 United States environmental protection agency under the federal clean  
25 water act (33 U.S.C. Sec. 1251 et seq.). The department shall design  
26 its work schedule and plan for conducting such activities in a manner  
27 that facilitates the involvement of watershed planning units conducting  
28 planning under RCW 90.82.090. As a minimum, the department shall:

29 (1) Schedule its work so that the involvement of planning units  
30 under subsection (3) of this section is possible under the work  
31 schedules established or likely to be established for the units to  
32 implement RCW 90.82.090;

33 (2) Arrange its longer-term work schedule in a way that allows  
34 initiating governments to know that their choice to require a water

1 quality component under RCW 90.82.090 or to initiate planning under RCW  
2 90.82.060(7) would include the involvement of their planning unit under  
3 subsection (3) of this section; and

4 (3) Designate the planning units conducting planning under RCW  
5 90.82.090 as the local advisory bodies to be used, consistent with  
6 section 11 of this act, when the department conducts total maximum  
7 daily load activities in any portion of the area for which the unit is  
8 conducting such planning. This requirement does not apply to  
9 activities regarding an allocation of total maximum daily load for a  
10 body of water if the allocation is submitted by the department to the  
11 United States environmental protection agency for approval under the  
12 federal clean water act before or within six months of the effective  
13 date of this section.

14 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.82 RCW  
15 to read as follows:

16 A planning unit conducting planning under RCW 90.82.090 may choose  
17 to assign the responsibility of being the local advisory body for total  
18 maximum daily load activities under section 10 of this act to: The  
19 members of the planning unit, as a whole, except those representing  
20 state agencies; some portion of the membership of the planning unit,  
21 other than the members representing state agencies; or any combination  
22 it may choose of its membership, other than state agency  
23 representatives, and any additional individuals it may choose who agree  
24 to participate.

25 **Sec. 12.** RCW 90.82.090 and 1998 c 247 s 5 are each amended to read  
26 as follows:

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

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

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

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

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

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

10 (5) An examination of existing data related to the impact of fresh  
11 water on marine water quality;

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

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

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

28 **Sec. 13.** RCW 90.82.120 and 1998 c 247 s 8 are each amended to read  
29 as follows:

30 (1) Watershed planning developed and approved under this chapter  
31 shall not contain provisions that: (a) Are in conflict with existing  
32 state statutes, federal laws, or tribal treaty rights; (b) impair or  
33 diminish in any manner an existing water right evidenced by a claim  
34 filed in the water rights claims registry established under chapter  
35 90.14 RCW or a water right certificate or permit; (c) require a  
36 modification in the basic operations of a federal reclamation project  
37 with a water right the priority date of which is before June 11, 1998,

1 or alter in any manner whatsoever the quantity of water available under  
2 the water right for the reclamation project, whether the project has or  
3 has not been completed before June 11, 1998; (d) affect or interfere  
4 with an ongoing general adjudication of water rights; (e) modify or  
5 require the modification of any waste discharge permit issued under  
6 chapter 90.48 RCW; (f) except as provided in RCW 77.85.050(1)(c),  
7 modify or require the modification of activities or actions taken or  
8 intended to be taken under a habitat restoration work schedule  
9 developed under chapter 246, Laws of 1998; or (g) modify or require the  
10 modification of activities or actions taken to protect or enhance fish  
11 habitat if the activities or actions are: (i) Part of an approved  
12 habitat conservation plan and an incidental take permit, an incidental  
13 take statement, a management or recovery plan, or other cooperative or  
14 conservation agreement entered into with a federal or state fish and  
15 wildlife protection agency under its statutory authority for fish and  
16 wildlife protection that addresses the affected habitat; or (ii) part  
17 of a water quality program adopted by an irrigation district under  
18 chapter 87.03 RCW or a board of joint control under chapter 87.80 RCW.  
19 This subsection (1)(g) applies as long as the activities or actions  
20 continue to be taken in accordance with the plan, agreement, permit, or  
21 statement. Any assessment conducted under RCW 90.82.070, 90.82.090, or  
22 90.82.100 shall take into consideration such activities and actions and  
23 those taken under the forest practices rules, including watershed  
24 analysis adopted under the forest practices act, chapter 76.09 RCW.

25 (2) Watershed planning developed and approved under this chapter  
26 shall not change existing local ordinances or existing state rules or  
27 permits, but may contain recommendations for changing such ordinances  
28 or rules.

29 (3) Notwithstanding any other provision of this chapter, watershed  
30 planning shall take into account forest practices rules under the  
31 forest practices act, chapter 76.09 RCW, and shall not create any  
32 obligations or restrictions on forest practices additional to or  
33 inconsistent with the forest practices act and its implementing rules,  
34 whether watershed planning is approved by the counties or the  
35 department.

36 **Sec. 14.** RCW 77.85.050 and 1999 sp.s. c 13 s 11 are each amended  
37 to read as follows:

1 (1)(a) Counties, cities, and tribal governments must jointly  
2 designate, by resolution or by letters of support, the area for which  
3 a habitat project list is to be developed and the lead entity that is  
4 to be responsible for submitting the habitat project list. No project  
5 included on a habitat project list shall be considered mandatory in  
6 nature and no private landowner may be forced or coerced into  
7 participation in any respect. The lead entity may be a county, city,  
8 conservation district, special district, tribal government, or other  
9 entity.

10 (b) The lead entity shall establish a committee that consists of  
11 representative interests of counties, cities, conservation districts,  
12 tribes, environmental groups, business interests, landowners, citizens,  
13 volunteer groups, regional fish enhancement groups, and other habitat  
14 interests. The purpose of the committee is to provide a citizen-based  
15 evaluation of the projects proposed to promote salmon habitat. The  
16 technical review team may provide the lead entity with organizational  
17 models that may be used in establishing the committees.

18 (c) The committee shall compile a list of habitat projects,  
19 establish priorities for individual projects, define the sequence for  
20 project implementation, and submit these activities as the habitat  
21 project list. In any WRIA for which watershed planning is being  
22 conducted by a planning unit under RCW 90.82.100, the committee and the  
23 lead entity shall share their information regarding the WRIA with the  
24 planning unit, and the committee and the lead entity shall consult with  
25 the planning unit in preparing and in adding activities to the habitat  
26 project list for that WRIA. The committee shall also identify  
27 potential federal, state, local, and private funding sources.

28 (2) The area covered by the habitat project list must be based, at  
29 a minimum, on a WRIA, combination of WRIsAs, or any other area as agreed  
30 to by the counties, cities, and tribes in resolutions or in letters of  
31 support meeting the requirements of this subsection. Preference will  
32 be given to projects in an area that contain a salmon species that is  
33 listed or proposed for listing under the federal endangered species  
34 act.

35 (3) The lead entity shall submit the habitat project list to the  
36 technical review team in accordance with procedures adopted by the  
37 board.



1       **Sec. 15.** RCW 77.85.130 and 2000 c 107 s 102 and 2000 c 15 s 1 are  
2 each reenacted and amended to read as follows:

3       (1) The salmon recovery funding board shall develop procedures and  
4 criteria for allocation of funds for salmon habitat projects and salmon  
5 recovery activities on a statewide basis to address the highest  
6 priorities for salmon habitat protection and restoration. To the  
7 extent practicable the board shall adopt an annual allocation of  
8 funding. The allocation should address both protection and restoration  
9 of habitat, and should recognize the varying needs in each area of the  
10 state on an equitable basis. The board has the discretion to partially  
11 fund, or to fund in phases, salmon habitat projects. The board may  
12 annually establish a maximum amount of funding available for any  
13 individual project, subject to available funding. No projects required  
14 solely as a mitigation or a condition of permitting are eligible for  
15 funding.

16       (2)(a) In evaluating, ranking, and awarding funds for projects and  
17 activities the board shall give preference to projects that:

18       (i) Are based upon the limiting factors analysis identified under  
19 RCW 77.85.060;

20       (ii) Provide a greater benefit to salmon recovery based upon the  
21 stock status information contained in the department of fish and  
22 wildlife salmonid stock inventory (SASSI), the salmon and steelhead  
23 habitat inventory and assessment project (SSHIAP), and any comparable  
24 science-based assessment when available;

25       (iii) Will benefit listed species and other fish species; and

26       (iv) Will preserve high quality salmonid habitat.

27       (b) In evaluating, ranking, and awarding funds for projects and  
28 activities the board shall also give consideration to projects that:

29       (i) Are the most cost-effective;

30       (ii) Have the greatest matched or in-kind funding; and

31       (iii) Will be implemented by a sponsor with a successful record of  
32 project implementation.

33       (3) The board may reject, but not add, projects from a habitat  
34 project list submitted by a lead entity for funding. After January 1,  
35 2004, the board shall not provide funding for any project in a WRIA for  
36 which planning is being conducted under RCW 90.82.100 unless the lead  
37 entity as well as the planning unit for the WRIA under chapter 90.82

1 RCW both document that the consultation required by RCW 77.85.050(1)(c)  
2 has been conducted for the project.

3 (4) For fiscal year 2000, the board may authorize the interagency  
4 review team to evaluate, rank, and make funding decisions for  
5 categories of projects or activities or from funding sources provided  
6 for categories of projects or activities. In delegating such authority  
7 the board shall consider the review team's staff resources, procedures,  
8 and technical capacity to meet the purposes and objectives of this  
9 chapter. The board shall maintain general oversight of the team's  
10 exercise of such authority.

11 (5) The board shall seek the guidance of the technical review team  
12 to ensure that scientific principles and information are incorporated  
13 into the allocation standards and into proposed projects and  
14 activities. If the technical review team determines that a habitat  
15 project list complies with the critical pathways methodology under RCW  
16 77.85.060, it shall provide substantial weight to the list's project  
17 priorities when making determinations among applications for funding of  
18 projects within the area covered by the list.

19 (6) The board shall establish criteria for determining when block  
20 grants may be made to a lead entity or other recognized regional  
21 recovery entity consistent with one or more habitat project lists  
22 developed for that region. Where a lead entity has been established  
23 pursuant to RCW 77.85.050, the board may provide grants to the lead  
24 entity to assist in carrying out lead entity functions under this  
25 chapter, subject to available funding. The board shall determine an  
26 equitable minimum amount of funds for each region, and shall distribute  
27 the remainder of funds on a competitive basis.

28 (7) The board may waive or modify portions of the allocation  
29 procedures and standards adopted under this section in the award of  
30 grants or loans to conform to legislative appropriations directing an  
31 alternative award procedure or when the funds to be awarded are from  
32 federal or other sources requiring other allocation procedures or  
33 standards as a condition of the board's receipt of the funds. The  
34 board shall develop an integrated process to manage the allocation of  
35 funding from federal and state sources to minimize delays in the award  
36 of funding while recognizing the differences in state and legislative  
37 appropriation timing.

1 (8) The board may award a grant or loan for a salmon recovery  
2 project on private or public land when the landowner has a legal  
3 obligation under local, state, or federal law to perform the project,  
4 when expedited action provides a clear benefit to salmon recovery, and  
5 there will be harm to salmon recovery if the project is delayed. For  
6 purposes of this subsection, a legal obligation does not include a  
7 project required solely as a mitigation or a condition of permitting.

8 (9) The board may condition a grant or loan to include the  
9 requirement that property may only be transferred to a federal agency  
10 if the agency that will acquire the property agrees to comply with all  
11 terms of the grant or loan to which the project sponsor was obligated.  
12 Property acquired or improved by a project sponsor may be conveyed to  
13 a federal agency, but only if the agency agrees to comply with all  
14 terms of the grant or loan to which the project sponsor was obligated.

15 NEW SECTION. **Sec. 16.** The legislature does not intend to  
16 appropriate additional funds for the implementation of this act and  
17 expects all affected state agencies to implement this act's provisions  
18 within existing funds.

19 NEW SECTION. **Sec. 17.** Headings used in this act are not any part  
20 of the law.

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