
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1338

State of Washington

58th Legislature

2003 Regular Session

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

READ FIRST TIME 03/10/03.

1 AN ACT Relating to certainty and flexibility of municipal water
2 rights and efficient use of water; amending RCW 90.03.015, 90.14.031,
3 90.03.260, 90.03.386, 90.03.330, 90.48.495, 90.48.112, and 90.46.120;
4 adding new sections to chapter 90.03 RCW; adding a new section to
5 chapter 90.14 RCW; adding new sections to chapter 70.119A RCW; adding
6 a new section to chapter 90.54 RCW; adding new sections to chapter
7 43.20 RCW; and creating new sections.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that state laws have
10 long recognized that communities are dynamic entities. The legislature
11 also finds that any interpretation of its laws that would require its
12 communities to be ossified or frozen in time or would require their
13 future growth to be precisely predictable defies the needs of human
14 society. The legislature has provided numerous means and considerable
15 guidance to its communities regarding their growth and for providing
16 essential services within them as they grow. While the legislature
17 recognizes that the totality of the statutory law that governs such
18 communities is found in a wide variety of places throughout the
19 codified version of the statute laws, the Revised Code of Washington,

1 the legislature also recognizes that it has not always expressly
2 announced in the portion of those statutes generally referred to as the
3 state's water laws how the nature of water rights held by municipal
4 water suppliers accommodates the growth of and changes in communities
5 and the requirements placed on them and authorities granted to them by
6 other laws. The legislature finds that this is in part because state
7 policies in the administration of the water laws have reflected the
8 dynamic nature of human habitation and population growth from within
9 and from without the state. For a very long time, these policies
10 recognized that a water right for municipal water supply purposes is
11 "perfected" when facilities for diverting or withdrawing and
12 distributing the water are constructed but before all of the water is
13 placed to actual use within the community or communities served.

14 With the enactment of this legislation, the legislature intends to
15 provide within the water laws a curative clarification of the
16 relationship of water rights for municipal water supply purposes to the
17 requirements of other law and the realities of growth.

18 **Sec. 2.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
19 as follows:

20 ~~((As used in this chapter:))~~ The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Department" means the department of ecology(~~(+)~~).

23 (2) "Director" means the director of ecology(~~(+and)~~).

24 (3) "Municipal water supplier" means an entity that supplies water
25 for municipal water supply purposes.

26 (4) "Municipal water supply purposes" means a beneficial use of
27 water: (a) For residential purposes through fifteen or more
28 residential service connections or for providing residential use of
29 water for a nonresidential population that is, on average, at least
30 twenty-five people for at least sixty days a year; (b) for governmental
31 or governmental proprietary purposes; or (c) indirectly for the
32 purposes in (a) or (b) of this subsection through the delivery of
33 treated or raw water to a public water system for such use. If water
34 is beneficially used under a water right for the purposes listed in
35 (a), (b), or (c) of this subsection, any other beneficial use of water
36 under the right generally associated with the use of water within a
37 municipality is also for "municipal water supply purposes," including,

1 but not limited to, beneficial use for commercial, industrial,
2 irrigation of parks and open spaces, institutional, landscaping, fire
3 flow, water system maintenance and repair, or related purposes.

4 (5) "Person" means any firm, association, water users' association,
5 corporation, irrigation district, or municipal corporation, as well as
6 an individual.

7 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW
8 to read as follows:

9 Beneficial uses of water under a municipal water supply purposes
10 water right may include water for:

11 (1) Uses that benefit fish and wildlife, water quality, or other
12 instream resources or related habitat values; or

13 (2) Uses that are needed to implement environmental obligations
14 called for by a watershed plan approved under chapter 90.82 RCW or a
15 comprehensive watershed plan adopted under RCW 90.54.040(1), a
16 federally approved habitat conservation plan prepared in response to
17 the listing of a species as being endangered or threatened under the
18 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a
19 hydropower license of the federal energy regulatory commission, or a
20 comprehensive irrigation district management plan.

21 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
22 to read as follows:

23 When requested by a municipal water supplier or when processing a
24 change or amendment to the right, the department shall amend the water
25 right documents and related records to ensure that water rights that
26 are for municipal water supply purposes, as defined in RCW 90.03.015,
27 are correctly identified as being for municipal water supply purposes.

28 NEW SECTION. Sec. 5. A new section is added to chapter 90.14 RCW
29 to read as follows:

30 When a municipal water supplier acquires an existing water right
31 that is not a municipal water supply purpose right, that right is not
32 subject to relinquishment for nonuse occurring during the time that the
33 acquirer diligently seeks the department's approval to change the right
34 to municipal water supply purposes. Once a change to municipal water

1 supply purposes is approved by the department, the right is thereafter
2 subject to the exception from relinquishment in RCW 90.14.140(2)(d).

3 **Sec. 6.** RCW 90.14.031 and 1969 ex.s. c 284 s 12 are each amended
4 to read as follows:

5 ~~((Unless a different meaning is plainly required by the context,~~
6 ~~the following words and phrases as used in RCW 90.14.031 through~~
7 ~~90.14.121 shall have the following meanings:))~~

8 (1) The definitions in this subsection apply throughout this
9 chapter unless the context clearly requires otherwise.

10 (a) "Municipal water supplier" has the same meaning as defined in
11 RCW 90.03.015.

12 (b) "Municipal water supply purpose" has the same meaning as
13 defined in RCW 90.03.015.

14 (2) The definitions in this subsection apply throughout RCW
15 90.14.031 through 90.14.121 unless the context clearly requires
16 otherwise.

17 (a) "Person" shall mean an individual, partnership, association,
18 public or private corporation, city or other municipality, county, or
19 a state agency, and the United States of America when claiming water
20 rights established under the laws of the state of Washington.

21 ~~((+2))~~ (b) "Beneficial use" shall include, but not be limited to,
22 use for domestic water, irrigation, fish, shellfish, game and other
23 aquatic life, municipal, recreation, industrial water, generation of
24 electric power, and navigation.

25 **Sec. 7.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to read
26 as follows:

27 (1) Each application for permit to appropriate water shall set
28 forth the name and post office address of the applicant, the source of
29 water supply, the nature and amount of the proposed use, the time
30 during which water will be required each year, the location and
31 description of the proposed ditch, canal, or other work, the time
32 within which the completion of the construction and the time for the
33 complete application of the water to the proposed use.

34 (2) If for agricultural purposes, ~~((it))~~ the application shall give
35 the legal subdivision of the land and the acreage to be irrigated, as
36 near as may be, and the amount of water expressed in acre feet to be

1 supplied per season. If for power purposes, it shall give the nature
2 of the works by means of which the power is to be developed, the head
3 and amount of water to be utilized, and the uses to which the power is
4 to be applied.

5 (3) If for construction of a reservoir, ((it)) the application
6 shall give the height of the dam, the capacity of the reservoir, and
7 the uses to be made of the impounded waters.

8 (4) If for community or multiple domestic water supply, the
9 application shall give the projected number of service connections
10 sought to be served. However, for a municipal water supplier that has
11 an approved water system plan under chapter 43.20 RCW or an approval
12 from the department of health to serve a specified number of service
13 connections, the service connection figure in the application or any
14 subsequent water right document is not an attribute limiting exercise
15 of the water right as long as the number of service connections to be
16 served under the right is consistent with the approved water system
17 plan or specified number.

18 (5) If for municipal water supply, ((it)) the application shall
19 give the present population to be served, and, as near as may be
20 estimated, the future requirement of the municipality. However, for a
21 municipal water supplier that has an approved water system plan under
22 chapter 43.20 RCW or an approval from the department of health to serve
23 a specified number of service connections, the population figures in
24 the application or any subsequent water right document are not an
25 attribute limiting exercise of the water right as long as the
26 population to be provided water under the right is consistent with the
27 approved water system plan or specified number.

28 (6) If for mining purposes, ((it)) the application shall give the
29 nature of the mines to be served and the method of supplying and
30 utilizing the water; also their location by legal subdivisions.

31 (7) All applications shall be accompanied by such maps and
32 drawings, in duplicate, and such other data, as may be required by the
33 department, and such accompanying data shall be considered as a part of
34 the application.

35 **Sec. 8.** RCW 90.03.386 and 1991 c 350 s 2 are each amended to read
36 as follows:

37 (1) Within service areas established pursuant to chapter((s)) 43.20

1 ((and)) or 70.116 RCW, the department of ecology and the department of
2 health shall coordinate approval procedures to ensure compliance and
3 consistency with the approved water system plan.

4 (2) The effect of the department of health's approval of a planning
5 or engineering document that describes a municipal water supplier's
6 service area under chapter 43.20 RCW, or the local legislative
7 authority's approval of service area boundaries in accordance with
8 procedures adopted pursuant to chapter 70.116 RCW, is that the place of
9 use of a surface water right or ground water right used by the supplier
10 is equivalent to, and coexistent with, the approved service area if the
11 supplier is in compliance with the terms of the water system plan or
12 small water system management program, including those regarding water
13 conservation, and the alteration of the place of use is not
14 inconsistent, regarding an area added to the place of use, with: Any
15 comprehensive plans or development regulations adopted under chapter
16 36.70A RCW; any other comprehensive plan, land use plan, or development
17 regulation adopted by a city, town, or county; or any watershed plan
18 approved under chapter 90.82 RCW.

19 (3) A municipal water supplier must implement cost-effective water
20 conservation in accordance with the requirements of sections 10 and 11
21 of this act as part of its approved water system plan or small water
22 system management program. With regard to water diverted or withdrawn
23 by the municipal water supplier under a particular surface or ground
24 water right a portion of which is an inchoate right, a municipal
25 supplier with one thousand or more service connections must document an
26 improvement in the efficiency of water use or delivery under the right
27 over the last six years before it may divert or withdraw further
28 amounts of its inchoate right for beneficial use. When establishing or
29 extending a surface or ground water right construction schedule under
30 RCW 90.03.320, the department must take into consideration the public
31 water system's use of conserved water.

32 **Sec. 9.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
33 as follows:

34 (1) Upon a showing satisfactory to the department that any
35 appropriation has been perfected in accordance with the provisions of
36 this chapter, it shall be the duty of the department to issue to the
37 applicant a certificate stating such facts in a form to be prescribed

1 by ((him)) the director, and such certificate shall thereupon be
2 recorded with the department. Any original water right certificate
3 issued, as provided by this chapter, shall be recorded with the
4 department and thereafter, at the expense of the party receiving the
5 same, be transmitted by the department ((~~transmitted~~)) to the county
6 auditor of the county or counties where the distributing system or any
7 part thereof is located, and be recorded in the office of such county
8 auditor, and thereafter be transmitted to the owner thereof.

9 (2) Except as provided for the issuance of certificates under RCW
10 90.03.240 and for the issuance of certificates following the approval
11 of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100,
12 the department shall not revoke or diminish a certificate for a surface
13 or ground water right for municipal water supply purposes as defined in
14 RCW 90.03.015 unless the certificate was issued with ministerial errors
15 or was obtained through misrepresentation. The department may adjust
16 such a certificate under this subsection if ministerial errors are
17 discovered, but only to the extent necessary to correct the ministerial
18 errors. The department may diminish the right represented by such a
19 certificate if the certificate was obtained through a misrepresentation
20 on the part of the applicant or permit holder, but only to the extent
21 of the misrepresentation. The authority provided by this subsection
22 does not include revoking, diminishing, or adjusting a certificate
23 based on any change in policy regarding the issuance of such
24 certificates that has occurred since the certificate was issued. This
25 subsection may not be construed as providing any authority to the
26 department to revoke, diminish, or adjust a certificate for a water
27 right for any purpose other than municipal water supply purposes.

28 (3) This subsection applies to the water right represented by a
29 water right certificate issued prior to the effective date of this
30 section for municipal water supply purposes as defined in RCW 90.03.015
31 where the certificate was issued based on an administrative policy for
32 issuing such certificates once works for diverting or withdrawing and
33 distributing water for municipal supply purposes were constructed
34 rather than after the water had been placed to actual beneficial use.
35 Such a water right is a right in good standing as long as the potential
36 use and use of water under the right is consistent with the principles
37 of the administrative policy that led to its being issued, as that
38 policy existed when the certificate was issued.

1 (4) After the effective date of this section, the department must
2 issue a new certificate under subsection (1) of this section for a
3 water right represented by a water right permit only for the perfected
4 portion of a water right as demonstrated through actual beneficial use
5 of water.

6 **NEW SECTION. Sec. 10.** A new section is added to chapter 70.119A
7 RCW to read as follows:

8 (1) The purpose of this section is to establish water use
9 efficiency requirements designed to ensure efficient use of water while
10 maintaining system financial viability, improving affordability of
11 supplies, and enhancing system reliability. The requirements apply to
12 all municipal water suppliers, as defined in RCW 90.03.015, and must be
13 tailored to be appropriate for a system's size, forecasted demand, and
14 supply constraints.

15 (2) By December 31, 2005, the department must adopt rules that:

16 (a) Establish performance measures to be used in measuring the
17 progress a municipal water supplier is making in achieving its water
18 conservation objectives under section 11 of this act which include, but
19 are not limited to, those regarding water distribution system leakage,
20 collection and reporting of source production and water consumption
21 data, and timelines for setting and achieving cost-effective
22 conservation objectives over time;

23 (b) Establish criteria that identify how the department will
24 determine whether municipal water suppliers are fulfilling the
25 obligations established for them in section 11 of this act when the
26 department reviews the conservation elements of water system plans and
27 small water system management programs, submitted to it under chapter
28 43.20 RCW or submitted as part of coordinated water system planning
29 under chapter 70.116 RCW. The criteria must take into consideration
30 the historic conservation performance and conservation investment of
31 the supplier, regional climate variations, and the supplier's customer
32 base demographics, forecasted demand, and system supply constraints;

33 (c) Establish minimum requirements for water demand forecast
34 methodologies to be used by municipal water suppliers; and

35 (d) Ensure compliance with the provisions of this section and
36 section 11 of this act. The compliance processes established under

1 this section must incorporate the graduated approach specified for the
2 enforcement of water laws in RCW 90.03.605(1) (a) through (c).

3 (3) The rules adopted by the department under subsection (2) of
4 this section must not establish state conservation requirements that
5 are less stringent than those in effect on the effective date of this
6 section. For the reporting required by subsection (2)(a) of this
7 section, the rules shall require that municipal water suppliers
8 document that they are maintaining or improving conservation
9 performance at the water system level.

10 (4) The department must establish an advisory committee to assist
11 it in developing rules under this section. The advisory committee must
12 include representatives from public water system customers,
13 environmental interest groups, business interest groups, a
14 representative cross-section of municipal water suppliers, a person
15 employed by a municipal water supplier as a water conservation expert,
16 tribal governments, the department of ecology, and any other members
17 determined necessary by the department.

18 (5) The department must provide, upon request, technical assistance
19 to public water systems and local governments regarding water
20 conservation. The assistance must be available regarding, but is not
21 limited to, the development of best management practices for water
22 conservation programs, conservation landscape ordinances, conservation
23 rate structures for public water systems, and general public education
24 programs on water conservation.

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.119A
26 RCW to read as follows:

27 A municipal water supplier, as defined in RCW 90.03.015, must
28 integrate conservation planning into its overall system operation and
29 management and must appropriately fund conservation activities. A
30 municipal water supplier must adopt and achieve water conservation
31 objectives as part of its water system plan or small water system
32 management program developed under chapter 43.20 RCW or as part of a
33 coordinated water system plan under chapter 70.116 RCW. A municipal
34 water supplier must improve the efficiency of its water system or
35 systems over time, relative to past performance, and must assist the
36 users of its water in improving the efficiency of their water use.

1 Prior to the date by which the department must adopt rules under
2 section 10(2) of this act and for the purposes of chapter 90.03 RCW, a
3 municipal water supplier with one thousand or more service connections
4 is in compliance with the terms of its water system plan regarding
5 water conservation if the supplier is in compliance with the
6 conservation elements of its current plan and it can document an
7 improvement in the efficiency of water use or delivery in the system
8 over the last six years and there is no loss of conservation
9 performance prior to the adoption of the rules.

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.54 RCW
11 to read as follows:

12 The department shall prioritize the expenditure of funds and other
13 resources for programs related to streamflow restoration in watersheds
14 where the exercise of inchoate water rights may have a larger effect on
15 streamflows and other water uses.

16 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.20 RCW
17 to read as follows:

18 The department shall consult with the departments of ecology, fish
19 and wildlife, and community, trade, and economic development when it
20 approves water system plans of public water systems. In approving such
21 a plan, the department shall ensure that water service to be provided
22 by the system under the plan for any new industrial, commercial, or
23 residential use is consistent with the requirements of any
24 comprehensive plans or development regulations adopted under chapter
25 36.70A RCW or any other comprehensive plan, land use plan, or
26 development regulation adopted by a city, town, or county for the
27 service area. The department shall also ensure that the plan
28 accommodates the duty of the public water system to provide water for
29 new residential use within its service area as described in section 14
30 of this act.

31 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.20 RCW
32 to read as follows:

33 The first choice of water supply for a new residential use of water
34 within the service area of public water system, for which a public
35 water system plan is required under this chapter, is water service from

1 the public water system. The public water system has a duty to provide
2 the water service within its service area if its service can be
3 available in a timely and cost-effective manner and it has sufficient
4 water rights to provide the service. Any water service provided shall
5 be consistent with the requirements of any comprehensive plans or
6 development regulations adopted under chapter 36.70A RCW or any other
7 comprehensive plan, land use plan, or development regulation adopted by
8 a city, town, or county for the service area and, for water service by
9 the water utility of a city or town, with the utility service extension
10 ordinances of the city or town. The service is available in a timely
11 manner if the water can be provided within one hundred twenty days of
12 the date the request for water service is made to the system by the
13 party representing the new residential use, unless the party requests
14 a longer period. The service is available in a cost- effective manner
15 if the total cost to obtain the water from the public water system,
16 including but not limited to construction and engineering costs,
17 connection fees, and operating costs, does not exceed one hundred
18 twenty percent of the total cost of providing water service from a well
19 for the new residential use under the permit exemption of RCW
20 90.44.050.

21 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.20 RCW
22 to read as follows:

23 When a water system plan is regularly submitted to the department
24 for review and approval, which on the effective date of this section
25 occurs every six years, the plan must demonstrate that any new use of
26 the inchoate water right of the system under the plan will be
27 consistent with meeting the timelines and interim milestones
28 established under section 5, chapter . . . , Laws of 2003 (section 5,
29 Engrossed Substitute House Bill No. 2336) or section 8, chapter . . . ,
30 Laws of 2003 (section 8, Engrossed Substitute House Bill No. 1336) for
31 achieving instream flows in the watershed in which water is diverted or
32 withdrawn under the right. Public water systems shall provide public
33 notice before submitting a water system plan or major revisions to a
34 water system plan for approval under this chapter or under chapter
35 70.116 RCW. This section applies only to water systems for which a
36 water system plan must be approved under this chapter or chapter 70.116
37 RCW.

1 **Sec. 16.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to
2 read as follows:

3 The department of ecology shall require sewer plans to include a
4 discussion of water conservation measures considered or underway that
5 would reduce flows to the sewerage system and an analysis of their
6 anticipated impact on public sewer service and treatment capacity.

7 **Sec. 17.** RCW 90.48.112 and 1997 c 444 s 9 are each amended to read
8 as follows:

9 The evaluation of any plans submitted under RCW 90.48.110 must
10 include consideration of opportunities for the use of reclaimed water
11 as defined in RCW 90.46.010. Wastewater plans submitted under RCW
12 90.48.110 must include a statement describing how applicable
13 reclamation and reuse elements will be coordinated as required under
14 RCW 90.46.120(2).

15 **Sec. 18.** RCW 90.46.120 and 1997 c 444 s 1 are each amended to read
16 as follows:

17 (1) The owner of a wastewater treatment facility that is reclaiming
18 water with a permit issued under this chapter has the exclusive right
19 to any reclaimed water generated by the wastewater treatment facility.
20 Use and distribution of the reclaimed water by the owner of the
21 wastewater treatment facility is exempt from the permit requirements of
22 RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water
23 facility shall be used only to offset the cost of operation of the
24 wastewater utility fund or other applicable source of system-wide
25 funding.

26 (2) If the proposed use or uses of reclaimed water are intended to
27 augment or replace potable water supplies or create the potential for
28 the development of additional potable water supplies, such use or uses
29 shall be considered in the development of the regional water supply
30 plan or plans addressing potable water supply service by multiple water
31 purveyors. The owner of a wastewater treatment facility that proposes
32 to reclaim water shall be included as a participant in the development
33 of such regional water supply plan or plans.

34 (3) Where opportunities for the use of reclaimed water exist within
35 the period of time addressed by a water supply plan or coordinated
36 water system plan developed under chapter 43.20 or 70.116 RCW, these

1 plans must be developed and coordinated to ensure that opportunities
2 for reclaimed water are evaluated. The requirements of this subsection
3 (3) do not apply to water system plans developed under chapter 43.20
4 RCW for utilities serving less than one thousand service connections.

5 NEW SECTION. Sec. 19. A new section is added to chapter 90.03 RCW
6 to read as follows:

7 To be considered a failing public water system for the purposes of
8 section 19 of this act, the department of health, in consultation with
9 the department and the local health authority, must make a
10 determination that the system meets one or more of the following
11 conditions:

12 (1) A public water system has failed, or is in danger of failing
13 within two years, to meet state board of health standards for the
14 delivery of potable water to existing users in adequate quantity or
15 quality to meet basic human drinking, cooking, and sanitation needs or
16 to provide adequate fire protection flows;

17 (2) The current water source has failed or will fail so that the
18 public water system is or will become incapable of exercising its
19 existing water rights to meet existing needs for drinking, cooking, and
20 sanitation purposes after all reasonable conservation efforts have been
21 implemented; or

22 (3) A change in source is required to meet drinking water quality
23 standards and avoid unreasonable treatment costs, or the state
24 department of health determines that the existing source of supply is
25 unacceptable for human use.

26 NEW SECTION. Sec. 20. A new section is added to chapter 90.03 RCW
27 to read as follows:

28 (1) On a pilot project basis, the department may enter into
29 watershed agreements with one or more municipal water suppliers in a
30 watershed to meet the objectives established in a water resource
31 management program approved or being developed under chapter 90.82 RCW.
32 The term of an agreement may not exceed ten years, but the agreement
33 may be renewed or amended upon agreement of the parties.

34 (2) Watershed agreements must be consistent with:

35 (a) Growth management plans developed under chapter 36.70A RCW
36 where these plans are adopted and in effect;

1 (b) Water supply plans and small water system management programs
2 approved under chapter 43.20 or 70.116 RCW;

3 (c) Coordinated water supply plans approved under chapter 70.116
4 RCW; and

5 (d) Water use efficiency and conservation requirements and
6 standards established by the state department of health or such
7 requirements and standards as are provided in an approved watershed
8 plan, whichever are the more stringent.

9 (3) A watershed agreement must:

10 (a) Require the public water system operated by the participating
11 municipal water supplier to meet obligations under the watershed plan;

12 (b) Establish performance measures and timelines for measures to be
13 completed;

14 (c) Provide for monitoring of stream flows and metering of water
15 use as needed to ensure that the terms of the agreement are met; and

16 (d) Require annual reports from the water users regarding
17 performance under the agreement.

18 (4) As needed to implement watershed agreement activities, the
19 department may provide or receive funding, or both, under its existing
20 authorities.

21 (5) The department must provide opportunity for public review of a
22 proposed agreement before it is executed. The department must make
23 proposed and executed watershed agreements and annual reports available
24 on the department's internet web site.

25 (6) The department must consult with affected local governments and
26 the state departments of health and fish and wildlife before executing
27 an agreement.

28 (7) Before executing a watershed agreement, the department must
29 conduct a government-to-government consultation with affected tribal
30 governments. The municipal water suppliers operating the public water
31 systems that are proposing to enter the agreements must be invited to
32 participate in the consultations. During these consultations, the
33 department and the municipal water suppliers shall explore the
34 potential interest of the tribal governments or governments in
35 participating in the agreement.

36 (8) Any person aggrieved by the department's failure to satisfy the
37 requirements in subsection (3) of this section as embodied in the
38 department's decision to enter a watershed agreement under this section

1 may, within thirty days of the execution of such an agreement, appeal
2 the department's decision to the pollution control hearings board under
3 chapter 43.21B RCW.

4 (9) Any projects implemented by a municipal water system under the
5 terms of an agreement reached under this section may be continued and
6 maintained by the municipal water system after the agreement expires or
7 is terminated as long as the conditions of the agreement under which
8 they were implemented continue to be met.

9 (10) The departments of ecology and fish and wildlife must select,
10 with the approval of the county legislative authorities of the counties
11 involved, up to two areas engaged in watershed planning under this
12 chapter to participate on a voluntary basis in the pilot project. The
13 pilot areas selected should be planning areas that are relatively
14 advanced in the development and adoption of their plans.

15 (11) Before December 31, 2003, and December 31, 2004, the
16 department must report to the appropriate committees of the legislature
17 the results of the pilot projects provided for in this section. Based
18 on the experience of the pilot project areas, the department must offer
19 any suggested changes in law that would improve, facilitate, and
20 maximize the implementation of watershed plans adopted under this
21 chapter.

22 NEW SECTION. **Sec. 21.** A new section is added to chapter 90.03 RCW
23 to read as follows:

24 The department may not enter into new watershed agreements under
25 section 20 of this act after July 1, 2008. This section does not apply
26 to the renewal of agreements in effect prior to that date.

27 NEW SECTION. **Sec. 22.** The legislature does not intend to
28 appropriate additional funds for the implementation of this act and
29 expects all affected state agencies to implement this act's provisions
30 within existing funds.

31 NEW SECTION. **Sec. 23.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

--- END ---