

---

SECOND SUBSTITUTE SENATE BILL 5027

---

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Morton, Rasmussen and Hale)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to watershed planning; amending RCW 90.82.040 and  
2 90.82.130; adding a new section to chapter 90.82 RCW; and creating new  
3 sections.

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

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

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

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

18 (1) Once a WRIA planning unit has been initiated under RCW

1 90.82.060 and a lead agency has been designated, it shall notify the  
2 department and may apply to the department for funding assistance for  
3 conducting the planning and implementation. Funds shall be provided  
4 from and to the extent of appropriations made by the legislature to the  
5 department expressly for this purpose.

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

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

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

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

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

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

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

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

33 (e) A planning unit may apply for a matching grant for phase four  
34 watershed plan implementation. A match of ten percent is required and  
35 may include financial contributions or in-kind goods and services  
36 directly related to coordination and oversight functions. The match  
37 can be provided by the planning unit or by the combined commitments  
38 from federal agencies, tribal governments, local governments, special

1 districts, or other local organizations. The phase four grant may be  
2 up to one hundred thousand dollars for each planning unit for each of  
3 the first three years of implementation. At the end of the three-year  
4 period, a two-year extension may be available for up to fifty thousand  
5 dollars each year. For planning units that cover more than one WRIA,  
6 additional matching funds of up to twenty-five thousand dollars may be  
7 available for each additional WRIA per year for the first three years  
8 of implementation, and up to twelve thousand five hundred dollars per  
9 WRIA per year for each of the fourth and fifth years.

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

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

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

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

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

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

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

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

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

33 (B) Second, single WRIA planning;

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

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

38 (B) Second, single WRIA planning.

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

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

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

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

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

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

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

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

31 (2)(a) With the exception of a county legislative authority that  
32 chooses to opt out of watershed planning as provided in (c) of this  
33 subsection, the legislative authority of each of the counties with  
34 territory in the management area shall provide public notice of and  
35 conduct at least one public hearing on the proposed watershed plan  
36 submitted under this section. After the public hearings, the  
37 legislative authorities of these counties shall convene in joint

1 session to consider the proposal. The counties may approve or reject  
2 the proposed watershed plan for the management area, but may not amend  
3 it. Approval of such a proposal shall be made by a majority vote of  
4 the members of each of the counties with territory in the management  
5 area.

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

12 (c) Alternatively, a legislative authority may choose to opt out of  
13 watershed planning under this chapter and the public hearing processes  
14 under (a) and (b) of this subsection, with regard to that legislative  
15 authority's affected territory within a particular management area. A  
16 county choosing to opt out shall notify the department and the other  
17 initiating governments of that choice prior to commencement of plan  
18 adoption under the provisions of (a) of this subsection. A county  
19 choosing to opt out shall not be bound by obligations contained in the  
20 watershed plan adopted for that management area under this chapter.  
21 Even if a county chooses to opt out as provided in this section, the  
22 other counties within a management area may adopt a proposed watershed  
23 plan as provided in this chapter.

24 (3) The planning unit shall not add an element to its watershed  
25 plan that creates an obligation unless each of the governments to be  
26 obligated has at least one representative on the planning unit and the  
27 respective members appointed to represent those governments agree to  
28 adding the element that creates the obligation. A member's agreeing to  
29 add an element shall be evidenced by a recorded vote of all members of  
30 the planning unit in which the members record support for adding the  
31 element. If the watershed plan is approved under subsections (1) and  
32 (2) of this section and the plan creates obligations: (a) For agencies  
33 of state government, the agencies shall adopt by rule the obligations  
34 of both state and county governments and rules implementing the state  
35 obligations, or, with the consent of the planning unit, may adopt  
36 policies, procedures, or agreements related to the obligations or  
37 implementation of the obligations. The obligations on state agencies  
38 are binding upon adoption of the obligations (~~into rule~~), and the

1 agencies shall take other actions to fulfill their obligations as soon  
2 as possible, and should annually review implementation needs with  
3 respect to budget and staffing; ((~~or~~)) (b) for counties, the  
4 obligations are binding on the counties and the counties shall adopt  
5 any necessary implementing ordinances and take other actions to fulfill  
6 their obligations as soon as possible, and should annually review  
7 implementation needs with respect to budget and staffing; or (c) for an  
8 organization voluntarily accepting an obligation, the organization must  
9 adopt policies, procedures, agreements, rules, or ordinances to  
10 implement the plan, and should annually review implementation needs  
11 with respect to budget and staffing.

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

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

28 (6) As used in this section, "obligation" means any action required  
29 as a result of this chapter that imposes upon a tribal government,  
30 county government, or state government, either: A fiscal impact; a  
31 redeployment of resources; or a change of existing policy.

32 NEW SECTION. Sec. 4. A new section is added to chapter 90.82 RCW  
33 to read as follows:

34 Within one year of accepting funding for plan coordination and  
35 oversight, the planning unit must complete a detailed implementation  
36 plan. An implementation plan must clearly define coordination and  
37 oversight responsibilities; any needed interlocal agreements, rules, or

1 ordinances; specific funding mechanisms; and timelines for carrying out  
2 the actions included in the plan. The planning unit must consider  
3 coordination of watershed planning implementation with salmon recovery  
4 efforts. Submittal of a detailed implementation plan to the department  
5 is a condition for receiving grants for the second and all subsequent  
6 years of the phase four grant.

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

--- END ---