
HOUSE BILL 2086

State of Washington 59th Legislature 2005 Regular Session

By Representatives McCoy, Eickmeyer, Chase, Wallace, Blake, Linville, Morrell, Upthegrove, Appleton and Hunt

Read first time 02/17/2005. Referred to Committee on Select Committee on Hood Canal.

1 AN ACT Relating to authorizing extension or expansion of sewage
2 treatment systems in rural areas when necessary to address Hood Canal
3 concerns; amending RCW 36.70A.110; adding new sections to chapter 90.--
4 RCW; creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that Hood Canal is
7 a precious aquatic resource of our state. The legislature finds that
8 Hood Canal is a rich source of recreation, fishing, aquaculture, and
9 aesthetic enjoyment for the citizens of this state. The legislature
10 also finds that Hood Canal has great cultural significance for the
11 tribes in the Hood Canal area. The legislature therefore recognizes
12 Hood Canal's substantial environmental, cultural, economic,
13 recreational, and aesthetic importance to Washington.

14 (2) The legislature finds that Hood Canal is a marine water of the
15 state at significant risk. The legislature finds that Hood Canal has
16 a "dead zone" related to low-dissolved oxygen concentrations, a
17 condition that has recurred for many years. The legislature also finds
18 this problem and various contributors to the problem were documented in
19 the May 2004 *Preliminary Assessment and Corrective Action Plan*

1 published by the state Puget Sound action team and the Hood Canal
2 coordinating council. The legislature recognizes this report
3 identifies on-site sewage systems as a prime contributor of nitrogen,
4 a nutrient linked to the low-dissolved oxygen concentrations in Hood
5 Canal.

6 (3) The legislature recognizes the state's growth management act
7 specifies in RCW 36.70A.110(4) that generally it is not appropriate to
8 extend or expand urban governmental services, such as sewer systems,
9 into rural areas. The legislature also recognizes that RCW
10 36.70A.110(4) contains an exception to this general rule in those
11 limited circumstances shown to be necessary to protect basic public
12 health and safety and the environment when the facilities are
13 financially supportable at rural densities and do not permit urban
14 development.

15 (4) The legislature recognizes the Washington supreme court in
16 *Thurston County v. The Cooper Point Association*, 148 Wn.2d 1 (2002),
17 approved a restrictive interpretation of the term "necessary" in the
18 RCW 36.70A.110(4) exception to accomplish the legislature's intent in
19 enacting these and other growth management act provisions. The court
20 in the *Cooper Point* case also noted the existing sewage treatment plant
21 and septic systems at issue in that case were not experiencing waste
22 discharge problems that threaten public health and the environment.
23 The legislature recognizes and affirms the RCW 36.70A.110(4) exception
24 specifying that extension or expansion of urban governmental services,
25 such as sewer systems, must be shown necessary to protect public health
26 and the environment.

27 (5) The legislature finds that Hood Canal's low-dissolved oxygen
28 concentrations and identification of failing septic systems as a prime
29 contributor to the problem satisfy the necessity requirement in the RCW
30 36.70A.110(4) exception. The legislature intends to authorize limited
31 extension or expansion of sewer systems in the Hood Canal area to
32 address the problems associated with failing septic systems in the Hood
33 Canal area.

34 (6) The legislature also intends to provide for an assessment of
35 the efficacy of nitrogen reduction capabilities in existing and
36 alternative on-site sewage treatment systems and an inventory of
37 existing on-site sewage treatment systems in the Hood Canal vicinity to
38 support development of sewage treatment solutions for this area.

1 **Sec. 2.** RCW 36.70A.110 and 2004 c 206 s 1 are each amended to read
2 as follows:

3 (1) Each county that is required or chooses to plan under RCW
4 36.70A.040 shall designate an urban growth area or areas within which
5 urban growth shall be encouraged and outside of which growth can occur
6 only if it is not urban in nature. Each city that is located in such
7 a county shall be included within an urban growth area. An urban
8 growth area may include more than a single city. An urban growth area
9 may include territory that is located outside of a city only if such
10 territory already is characterized by urban growth whether or not the
11 urban growth area includes a city, or is adjacent to territory already
12 characterized by urban growth, or is a designated new fully contained
13 community as defined by RCW 36.70A.350.

14 (2) Based upon the growth management population projection made for
15 the county by the office of financial management, the county and each
16 city within the county shall include areas and densities sufficient to
17 permit the urban growth that is projected to occur in the county or
18 city for the succeeding twenty-year period, except for those urban
19 growth areas contained totally within a national historical reserve.

20 Each urban growth area shall permit urban densities and shall
21 include greenbelt and open space areas. In the case of urban growth
22 areas contained totally within a national historical reserve, the city
23 may restrict densities, intensities, and forms of urban growth as
24 determined to be necessary and appropriate to protect the physical,
25 cultural, or historic integrity of the reserve. An urban growth area
26 determination may include a reasonable land market supply factor and
27 shall permit a range of urban densities and uses. In determining this
28 market factor, cities and counties may consider local circumstances.
29 Cities and counties have discretion in their comprehensive plans to
30 make many choices about accommodating growth.

31 Within one year of July 1, 1990, each county that as of June 1,
32 1991, was required or chose to plan under RCW 36.70A.040, shall begin
33 consulting with each city located within its boundaries and each city
34 shall propose the location of an urban growth area. Within sixty days
35 of the date the county legislative authority of a county adopts its
36 resolution of intention or of certification by the office of financial
37 management, all other counties that are required or choose to plan
38 under RCW 36.70A.040 shall begin this consultation with each city

1 located within its boundaries. The county shall attempt to reach
2 agreement with each city on the location of an urban growth area within
3 which the city is located. If such an agreement is not reached with
4 each city located within the urban growth area, the county shall
5 justify in writing why it so designated the area an urban growth area.
6 A city may object formally with the department over the designation of
7 the urban growth area within which it is located. Where appropriate,
8 the department shall attempt to resolve the conflicts, including the
9 use of mediation services.

10 (3) Urban growth should be located first in areas already
11 characterized by urban growth that have adequate existing public
12 facility and service capacities to serve such development, second in
13 areas already characterized by urban growth that will be served
14 adequately by a combination of both existing public facilities and
15 services and any additional needed public facilities and services that
16 are provided by either public or private sources, and third in the
17 remaining portions of the urban growth areas. Urban growth may also be
18 located in designated new fully contained communities as defined by RCW
19 36.70A.350.

20 (4) In general, cities are the units of local government most
21 appropriate to provide urban governmental services. In general, it is
22 not appropriate that urban governmental services be extended to or
23 expanded in rural areas except in those limited circumstances shown to
24 be necessary to protect basic public health and safety and the
25 environment and when such services are financially supportable at rural
26 densities and do not permit urban development. Extensions or
27 expansions of sewer systems consistent with the requirements of section
28 3 of this act satisfy the requirements of this section.

29 (5) On or before October 1, 1993, each county that was initially
30 required to plan under RCW 36.70A.040(1) shall adopt development
31 regulations designating interim urban growth areas under this chapter.
32 Within three years and three months of the date the county legislative
33 authority of a county adopts its resolution of intention or of
34 certification by the office of financial management, all other counties
35 that are required or choose to plan under RCW 36.70A.040 shall adopt
36 development regulations designating interim urban growth areas under
37 this chapter. Adoption of the interim urban growth areas may only
38 occur after public notice; public hearing; and compliance with the

1 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
2 Such action may be appealed to the appropriate growth management
3 hearings board under RCW 36.70A.280. Final urban growth areas shall be
4 adopted at the time of comprehensive plan adoption under this chapter.

5 (6) Each county shall include designations of urban growth areas in
6 its comprehensive plan.

7 (7) An urban growth area designated in accordance with this section
8 may include within its boundaries urban service areas or potential
9 annexation areas designated for specific cities or towns within the
10 county.

11 NEW SECTION. **Sec. 3.** Sewer systems may be extended to or expanded
12 in rural areas within aquatic rehabilitation zone one according to the
13 requirements of this section.

14 (1) Municipal sewer systems and community sewage collection and
15 treatment facilities may be constructed in or extended to areas in
16 which:

- 17 (a) Clusters of high-density development are present;
- 18 (b) Water quality problems associated with discharge of nutrients
19 from on-site sewage treatment systems have been documented; and
- 20 (c) The treatment efficiency of existing on-site sewage treatment
21 systems is poor.

22 (2) Systems and facilities constructed in or extended into rural
23 areas shall include nitrogen removal treatment capability when
24 practicable.

25 (3) Consistent with the requirements of RCW 36.70A.110(4), any
26 system or facility constructed or expanded to serve residences in rural
27 areas of aquatic rehabilitation zone one shall be:

- 28 (a) Financially supportable at rural densities; and
- 29 (b) Conditioned to prohibit service of urban development.

30 NEW SECTION. **Sec. 4.** (1) The Puget Sound action team shall assess
31 the effectiveness of nitrogen treatment provided by currently approved
32 and alternative on-site sewage treatment technologies. The Puget Sound
33 action team may consult with other federal, state, tribal, and local
34 agencies in conducting this assessment. The Puget Sound action team
35 shall submit a report documenting the findings of this assessment to
36 the appropriate committees of the legislature by December 1, 2005.

1 (2) The Puget Sound action team, in consultation with local and
2 state health agencies, shall conduct an inventory of on-site sewage
3 systems operating in the Hood Canal watershed. The Puget Sound action
4 team shall submit the inventory to the appropriate committees of the
5 legislature by December 1, 2005.

6 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act are each added
7 to chapter 90.-- RCW (the new chapter created in House Bill No. . . .
8 (H-1766.1/05).

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

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