
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0544.4/15 4th draft

ATTY/TYPIST: ML:lel

BRIEF DESCRIPTION: Providing for storm water, flood control, and
water supply infrastructure in the state.

AN ACT Relating to providing for storm water, flood control, and water supply infrastructure in the state; adding a new chapter to Title 70 RCW; creating a new section; and providing for submission of this act to a vote of the people.

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

PART ONE

NEW SECTION. **Sec. 101.** FINDINGS AND INTENT. The legislature finds that clean and abundant water is the foundation of our environment and essential for every family, community, and the economy of our state. Pollution from runoff and development, flooding from storms, and cycles of drought have created a crisis that threatens clean and abundant supplies of water across our state and the safety of our citizens and communities. The intent of this chapter is to address this crisis through immediate action. The legislature directs state and local agencies to address this crisis by: Implementing projects that reduce pollution flowing from storm water into the waters of the state; implementing floodplain by design and other flood risk reduction projects that protect property, people, and enhance habitat for aquatic species; and implementing integrated water supply projects that augment stream flows and water

1 supply for out-of-stream uses and protect and enhance aquatic species
2 and their habitat.

3 To carry out the intent of this chapter, agencies of state and
4 local government are directed to act without delay in responding to
5 this crisis in implementing the measures funded by this act. Agencies
6 are also directed to find ways to minimize costs of implementation
7 and to process related permit applications expeditiously. The
8 legislature intends that funding provided by this act achieve
9 significant and measurable reduction in storm water pollution and
10 flood damage and enhancement of aquatic species and water supply.
11 Agencies are directed to act aggressively to meet these objectives.

12 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this
13 section apply throughout this chapter unless the context clearly
14 requires otherwise.

15 (1) "Department" means the department of ecology.

16 (2) "Project" means a proposal from a sponsor for water
17 management activities or infrastructure that advances the priorities
18 provided in section 103 of this act.

19 (3) "Project sponsor" or "sponsor" means an agency as defined in
20 RCW 42.56.010, a federally recognized Indian tribe in Washington, or
21 a federal agency that operates a flood control or water supply
22 project in the state.

23 NEW SECTION. **Sec. 103.** PRIORITIES FOR WATER INFRASTRUCTURE
24 PROJECTS. The department shall administer the provisions of this
25 chapter in order to significantly reduce risks to Washington's public
26 health and safety, economy, and environmental vitality by evaluating,
27 ranking, and funding, in whole or in part, projects that affect a
28 broad geographic area and are consistent with the following
29 priorities:

30 (1) Reducing storm water pollution from existing infrastructure
31 and development;

32 (2) Reducing the risk of flooding, protecting against damage
33 caused by floods, and protecting or restoring naturally functioning
34 areas where floods occur; and

35 (3) Improving the availability and reliability of water supplies
36 for instream and out-of-stream uses.

NEW SECTION. **Sec. 104.** ROLE OF THE DEPARTMENT. (1) The department shall administer the competitive grant process established in section 105 of this act. The purpose of the competitive grant process is to ensure that the priorities for water infrastructure projects set forth in section 103 of this act are carried out through the evaluation, ranking, and funding of projects. When administering the competitive grant process with regard to flood-related projects, the department shall, to the greatest extent practicable, follow the model used by the department for administering the program established in chapter 6, Laws of 2006, and shall create a new office charged with aggressively pursuing the priority of evaluating, ranking, and funding projects that are designed to reduce the risk posed by catastrophic floods, protect against damage caused by floods, and protect or restore habitat and ecosystems where floods occur.

(2) The department must seek assistance from advisory groups that will consult with the department to ensure that the competitive grant process is administered with due consideration for the views and advice of organizations and individuals who demonstrate concern for water management in Washington. The department may consult with any advisory groups with which the department has consulted on similar projects. The department is further permitted to establish and convene new volunteer advisory groups to consult with the department and assist the department in the administration of the competitive grant process. However, the department shall establish or consult with at least one advisory group for each priority for water infrastructure projects as described in section 103 of this act. The department must provide for appropriate participation by designees of the Washington state conservation commission and the Puget Sound partnership on the volunteer advisory groups. The department must consider the advice of each advisory group, but the department retains full authority to administer the competitive grant process consistent with this chapter.

NEW SECTION. **Sec. 105.** COMPETITIVE GRANT PROCESS. (1) The department shall administer a competitive grant process to evaluate, rank, and fund projects proposed by project sponsors. The department shall ensure that the competitive grant process established in this section promotes the priorities for water infrastructure projects as described in section 103 of this act.

1 (2) Project sponsors who apply for funding through the
2 competitive grant process must provide a minimum of twenty percent
3 match of the nonfederal share of project costs, but the department
4 must give a preference to projects that provide a higher level of
5 local or private funding, and must honor pre-existing project
6 financial agreements. The match may include funds, commitments, or
7 contributions dedicated to the accomplishment of the project, such
8 as: Cash on hand; the value of real property when acquired solely for
9 the purpose of the project; the proceeds of a letter of credit or
10 other binding loan commitment; a pledge commitment; and in-kind
11 contributions, including private and local government funds. Project
12 sponsors may receive credit for properly documented matching funds
13 that were contributed no earlier than ten years prior to the
14 effective date of this section and that were dedicated to the
15 accomplishment of the project or were incurred for remediation and
16 recovery from past damage that the project is intended to remedy
17 where damage exceeded fifty million dollars. The department shall
18 develop criteria for documenting the value of the match.

19 (3) Although projects may be consistent with more than one
20 priority described in section 103 of this act, project sponsors must
21 identify in an application which priority is the primary priority
22 advanced by the project.

23 (4) Every two years the department shall evaluate all
24 applications submitted for the competitive grant process and create
25 ranked lists for projects under each priority described in section
26 103 of this act. Before finalizing its ranked lists, the department
27 shall make preliminary ranked lists available to the public and
28 solicit public comment for at least thirty days after the date the
29 preliminary ranked lists are made available to the public. After
30 considering public comments and before November 1st of each year for
31 which projects are ranked, the department shall recommend to the
32 governor ranked lists of all projects to be funded. The ranked lists
33 must be concurrently provided to the appropriate fiscal and policy
34 committees of the legislature. The governor may remove projects from
35 the list recommended by the department and must submit the project
36 list to the legislature. The governor may not add projects to the
37 list. The legislature may remove projects from the list recommended
38 by the governor. The department may not sign contracts or otherwise
39 financially obligate funds from the water infrastructure account,

1 created in section 108 of this act, before the legislature has
2 appropriated funds for specific listed projects.

3 (5) No provision of chapter, Laws of 2015 (this act) alters
4 or diminishes existing legal obligations to complete environmental
5 review and obtain necessary permits for any project.

6 (6)(a) In ranking projects that promote the priority of reducing
7 storm water pollution from existing infrastructure and development
8 under section 103 of this act, the department shall use the
9 eligibility and ranking criteria the department uses for the
10 statewide storm water financial assistance program, as those criteria
11 existed on the effective date of this section. In order to receive
12 funding under chapter, Laws of 2015 (this act), projects and
13 activities must have a high water quality or ecological benefit and
14 address pollution from existing infrastructure. A project that relies
15 on low-impact development retrofit techniques to reduce storm water
16 impacts must be preferred over projects that are otherwise rated
17 equally but that do not include low-impact development retrofit
18 techniques.

19 (b) Consistent with section 104(1) of this act, the department
20 shall aggressively pursue the implementation of projects that promote
21 the priority of reducing the risk of flooding, protecting against
22 damage caused by floods, and protecting or restoring naturally
23 functioning areas where floods occur, as required by section 103 of
24 this act. The department must rank these projects based on the
25 following criteria, in descending order of importance.

26 (i) The degree to which projects achieve multiple benefits,
27 including, but not limited to: Cost-effective flood hazard reduction
28 to people and property; flood risk reduction; recovery of salmon and
29 other native fish; water quality improvements; habitat restoration;
30 agricultural viability; public access; and channel migration zone
31 protection;

32 (ii) Projects in counties that have historically been and are
33 projected to continue to be at greatest risk and most vulnerable to
34 flooding, with a priority for projects that address areas that have
35 experienced multiple emergency flood proclamations;

36 (iii) Projects that are consistent with and recommended by a
37 collaborative planning and approval process that involves a broad
38 range of stakeholders, including local governments, Indian tribes,
39 state and federal agencies, the environmental community, local
40 landowners, and other interests that include opportunities for public

comment, such as a governor's basin-wide planning process, a salmon recovery plan, a hazard mitigation plan, a comprehensive plan, a watershed plan, or other applicable plans;

(iv) Projects that address both reduction and prevention of flood risks, and protections or restoration of floodplain ecosystem functions;

(v) Projects that minimize or eliminate future damage to or disruption of critical infrastructure, including transportation corridors, economic activity and jobs, and emergency response capability;

(vi) Projects that prepare for the uncertain effects of climate change; and

(vii) Projects that are developed using a collaborative process involving a broad range of stakeholders, including local governments, Indian tribes, state and federal agencies, the environmental community, local landowners, and other interests.

(c) In ranking projects that promote the priority of improving the availability and reliability of water supplies under section 103 of this act, the department shall prefer projects that are consistent with or designed to implement an integrated plan, as defined in RCW 90.38.010, and projects that are consistent with satisfying the water supply needs identified in RCW 90.90.020. For all other projects that promote the priority of improving the availability and reliability of water supplies, the department shall prefer projects that:

(i) Improve the availability and reliability of water supplies for beneficial uses;

(ii) Provide for effective management of water in order to prevent variability in water supplies and prepare for the uncertain effects of climate change;

(iii) Achieve multiple benefits;

(iv) Mitigate impacts to fish and wildlife caused by the project; and

(v) Include practicable conservation measures, where feasible, to ensure efficient use of water.

(7) Projects located in or proposed for the Puget Sound watershed must be evaluated by the Puget Sound partnership for consistency with the Puget Sound action agenda.

(8) The department shall, to the greatest extent practicable, seek to rank projects so that after twenty years, approximately equal amounts of funding will have been allocated to each of the priorities

for water infrastructure projects described in section 103 of this act.

(9) The department must manage available resources in the water infrastructure account, created in section 108 of this act, in a fiscally prudent manner. In recommending projects and managing available resources, the department must consider the annual cash flow requirements of major projects that receive appropriations expected to cross multiple biennia. To effectively monitor expected revenues and expenditures, the department must develop a comprehensive ten-year financing report that identifies long-term cash flow requirements for approved and recommended projects, projected revenues, and year-end account balances. In recommending major multibiennial projects, the department must include separate budget estimates for all phases of the projects including expected future biennium appropriations.

NEW SECTION. **Sec. 106.** CONDEMNATION. Moneys made available under this act may not be used to acquire land through condemnation.

NEW SECTION. **Sec. 107.** ACCOUNTABILITY, REPORTS, AND AUDITS. (1) The department must monitor progress in completing projects and achieving expected outcomes. The department shall submit biennial reports to the legislature detailing the use of funds under this act.

(2) The joint legislative audit and review committee shall conduct at least one performance audit every ten years to provide an objective and systematic assessment of whether funds provided under this act are being used in an effective and efficient manner.

(3) The joint legislative audit and review committee must work with the department to determine if appropriate and reliable benefit/cost methodologies exist that might inform the prioritization process specified in section 105 of this act. The committee must also review whether appropriate and reliable benefit/cost methodologies are used to evaluate capital budget projects proposed by the department.

NEW SECTION. **Sec. 108.** CREATION OF THE WATER INFRASTRUCTURE ACCOUNT. The water infrastructure account is created in the state treasury. All receipts of money directed to the account must be deposited in the account. Expenditures from the account may be used only for the purposes set out in section 103 of this act. Moneys in the account may be spent only after appropriation.

PART TWO

NEW SECTION. **Sec. 201.** SPECIAL BENEFIT ASSESSMENT DEDICATED TO THE WATER INFRASTRUCTURE ACCOUNT. (1) A statewide annual special benefit assessment is created for the purposes of providing storm water, flood control, and water supply infrastructure throughout the state. The rate of the benefit assessment on each parcel of property in the state is as follows:

 (a) For residential parcels and undeveloped parcels the rate is:

 (i) Thirty-five dollars for parcels less than or equal to one acre;

 (ii) Sixty dollars for parcels greater than one acre and less than or equal to five acres; and

 (iii) Ninety dollars for parcels greater than five acres.

 (b) For nonresidential developed parcels the rate is:

 (i) One hundred twenty-five dollars for parcels less than or equal to one acre;

 (ii) Two hundred fifty dollars for parcels greater than one acre and less than or equal to five acres;

 (iii) Three hundred seventy-five dollars for parcels greater than five acres and less than or equal to ten acres; and

 (iv) Five hundred dollars for parcels greater than ten acres.

(2) A property owner who owns multiple parcels of undeveloped parcels in the same county must be assessed as if the multiple parcels were one parcel.

(3) A property owner who owns a residential parcel and who owns a contiguous undeveloped parcel or parcels must be assessed as if the parcels were one residential parcel.

(4) Parcels that are classified as designated forest land under chapter 84.33 RCW and timber land under chapter 84.34 RCW are exempt from the benefit assessment imposed in this section.

(5) Parcels that are classified as designated agriculture land under chapter 84.34 RCW in counties in which irrigation services are not provided in the county by irrigation districts established under chapter 87.03 RCW are exempt from the benefit assessment imposed in this section.

(6) The amount of the benefit assessment constitutes a lien against the property. The assessment is subject to the same provisions as those for property tax collections, as provided in RCW

1 84.56.020 and must be collected by the county treasurer under the
2 authority in RCW 84.56.035.

3 (7) Each January, the rates under subsection (1) of this section
4 must be increased by the year over year percentage change in the
5 implicit price deflator for the United States as published for the
6 most recent twelve-month period.

7 (8) All revenues generated under this section must be transferred
8 to the state treasurer to be deposited into the water infrastructure
9 account. The revenues are intended to be in addition to current
10 appropriation levels and must not supplant current appropriation
11 levels for similar water infrastructure projects.

12 (9) The definitions in this subsection apply throughout this
13 section unless the context clearly requires otherwise.

14 (a) "Nonresidential developed parcel" means all private and
15 public parcels that have one or more useful structures.

16 (b) "Residential parcel" means a parcel with inhabitable
17 residences with one to four units.

18 (c) "Undeveloped parcel" means all parcels that do not meet the
19 definitions in (a) and (b) of this subsection.

20 (d) "Useful structures" means inhabitable residential structures
21 with either more than four units or other improvements with a total
22 assessed value greater than twenty-five thousand dollars, or both.

23 **PART THREE**

24 NEW SECTION. **Sec. 301.** SHORT TITLE. This act may be known and
25 cited as the Washington waters act.

26 NEW SECTION. **Sec. 302.** REFERENDUM CLAUSE. The secretary of
27 state shall submit this act to the people for their adoption and
28 ratification, or rejection, at the next general election to be held
29 in this state, in accordance with Article II, section 1 of the state
30 Constitution and the laws adopted to facilitate its operation.

31 NEW SECTION. **Sec. 303.** Sections 101 through 201 of this act
32 constitute a new chapter in Title 70 RCW.

33 NEW SECTION. **Sec. 304.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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