

# RECOMMENDATIONS FOR EFFICIENCIES IN THE COST AND MANAGEMENT OF STATE LIMITED ACCESS HIGHWAY RUNOFF WITHIN JURISDICTIONAL BOUNDARIES

## TASK 6

RCW 90.03.525 governs how cities and counties can recover stormwater costs on state highways that are within their respective jurisdictions. This assessment of the RCW 90.03.525 cost recovery process is conducted to determine opportunities for increased efficiencies in the administration of this state law as well as in the overall stormwater management practices between the Washington State Department of Transportation (WSDOT) and local jurisdictions. This report summarizes the regulatory requirements associated with stormwater and details specific areas for consideration for improvements to the state law, as well as the management practices for implementation of its requirements. Changes are suggested for increasing efficiencies for stormwater management activities between WSDOT and local stormwater utilities.

### History of the Clean Water Act

In order to understand the opportunities and limitations for interactions between WSDOT and local jurisdictions, it is necessary to understand the foundation upon which many of their common activities are based. Nationwide, the primary driver is the Clean Water Act. In Washington State, the primary driver is RCW 90.48, the State Water Pollution Control Act initially enacted in 1945.

The Clean Water Act (CWA) began in 1948 as the Federal Water Pollution Control Act (Act). It was the first major U.S. law to address water pollution, but was primarily focused on wastewater and industrial discharges. In 1969, the Cuyahoga River in Cleveland, Ohio, caught fire for the thirteenth time since 1868. The 1969 fire caught the attention of the public and helped spur an avalanche of water pollution control activities which resulted in significant modifications to the Act.

The Federal Water Pollution Control Act was amended many times beginning in 1961, leading to the eventual adoption of the Clean Water Act in 1977. Of particular interest for this report is the 1977 amendment establishing Section 402 of the Clean Water Act, which established the National Pollutant Discharge Elimination System (NPDES) and authorized the Environmental Protection Agency (EPA) to issue discharge permits. These permits are essentially legal authorization to discharge low levels of constituents per the permit language. Even up to 1972, the focus remained on wastewater, oil discharges, sanitary discharges by marine vessels, and mining activities.

Storm sewer systems were not a focus of the Act until 1977, when the courts directed EPA to include both Jurisdictional Separate Storm Sewer Systems (MS4s) and Industrial stormwater discharges in the NPDES permit program.

The 1977 Clean Water Act (P.L. 95-217) outlined the basic structure for regulating pollutant discharges into waters of the United States. The Act gave the EPA the authority

- to implement pollution control programs such as setting wastewater standards for industry;
- to set water quality standards for all contaminants in surface waters;
- made it unlawful for any person to discharge pollutants from a point source into navigable waters without a permit;

- established the construction grants program to fund sewage treatment plants; and
- recognized the need for planning to address the critical problems posed by nonpoint source pollution.

Nationwide research indicated that stormwater runoff was a significant cause of water quality impairment. Between 1979 and 1983 EPA's Nationwide Urban Runoff Program (NURP) documented this urban stormwater problem. Local jurisdictions across the country participated in this study, including Bellevue, Washington. The research found the following:

- "Heavy metals (especially copper, lead, and zinc) are by far the most prevalent priority pollutant constituents found in urban runoff;
- Coliform bacteria are present at high levels in urban runoff;
- Oxygen-demanding substances are present in urban runoff at concentrations approximating those in secondary treatment plant discharges (wastewater treatment plants); and
- Detention basins...and recharge devices are capable of providing very effective removal of pollutants in urban runoff."

The federal Water Quality Act of 1987 (P.L. 100-4) provided the most recent series of amendments to the original statute. Findings of the NURP study were cited in requiring local governments and industry to address the pollution sources. Following adopting of the Water Quality Act, EPA established a schedule for NPDES permit issuance for Phase I and Phase II jurisdictions in 1995 and 2003 respectively.

## EPA Implementation of the Clean Water Act (CWA)

The federal EPA administers the NPDES permit program. The Act allows EPA to delegate permitting authority to states provided the state can ensure compliance. EPA retains NPDES authority for federal agencies, such as for the Department of Defense, and for tribes. States may only issue permits for up to five years.

When EPA delegates authority to a state, responsibility for development of an appropriate NPDES program resides with the state with oversight by the EPA. For transportation projects, the Federal Highway Administration (FHWA) relies on the state agency to promulgate appropriate water quality criteria to be used by the Department of Transportation as well as other NPDES permit conditions. As long as the DOT is compliant with their issued NPDES permit requirements, FHWA does not further condition the design of roadway projects relative to stormwater.

## Washington State Water Pollution Control Act and NPDES Implementation

EPA delegated NPDES permit authority to Washington State's Department of Ecology in 1987. The State Water Pollution Control Act, RCW 90.48, is the foundation of the NPDES permit program in Washington State. Through this RCW, the state issues a combination State Waste Discharge Permit and NPDES permit. As authorized in RCW 90.48, the State Waste Discharge Permit includes provisions required by the CWA, and additional state-only requirements. The Department of Ecology tracks both sets of requirements – those required by the federal CWA, and the additional state-only requirements. This distinction is important as it relates to citizen lawsuits.

Section 1365 of the CWA authorizes any citizen to bring civil action against any NPDES permit holder suspected or known to be in violation of any provisions of the permit. NPDES permit holders are required to self-report violations of their permit, known as G20 letters, to the Department of Ecology. These letters are public records and subject to the Public Records Act (RCW 42.56). It is not surprising, then to find that NPDES permittees are very engaged with Ecology during the development of their permits, and often seek to limit their third-party liability exposure both during permit development, and in front of the Pollution Control Hearings Board (PCHB) once the permit is issued.

## Washington State Permit Development History

The CWA recognized the differences between small and large jurisdictions and set up different permit provisions and timelines for permit issuance. Phase I permits apply to large jurisdictions (over 100,000 in population), and were mandated first in 1995. Phase II permits are required for jurisdictions under 100,000 in population; their permits were required to be issued in 2003.

Ecology issued six NPDES Phase I permits in 1995, and a seventh in 1999. These permits required development and implementation of stormwater management programs to reduce the discharge of pollutants to the maximum extent practicable. Ecology adopted a Stormwater Design Manual in 1992 as a guideline for local jurisdictions to use in crafting development standards relative to stormwater runoff. This manual was one of the foundations for the 1995 permit and has been updated at each permit issuance. These permits were intended to only last 5 years; however, Ecology administratively extended permit coverage until they re-issued them in January of 2007. These Phase I permittees include four counties (King, Pierce, Snohomish and Clark - 1999); two cities (Seattle and Tacoma) and WSDOT.

In 1995, no local government stormwater Phase I permits were issued for eastern Washington because no cities or unincorporated counties had populations exceeding 100,000.

In 2003, CWA Phase II regulations took effect, but it wasn't until 2007 that Ecology issued any Phase II permits. The Phase II entities complied with the CWA between 2003 and 2007 by submitting a Notice of Intent to comply (NOI); this helped to avoid litigation for failure to comply with the law.

In January of 2007, Ecology issued two Phase II permits – one for eastern Washington, and one for western Washington. This action brought over 80 cities and portions of 5 counties into compliance with the stormwater provisions of the CWA. The two different permits recognized the climatic differences between western and eastern Washington, as well as the state of readiness for the permits east and west of the Cascades. Western Washington jurisdictions have been addressing stormwater management issues for decades, whereas most eastern Washington jurisdictions have not.

The western Washington Phase II permit was appealed to the Pollution Control Hearings Board (PCHB). As a result, Ecology issued an amended western Washington Municipal Stormwater NPDES and State Waste Discharge General Permit (the Permit) in 2009. One of the major changes to the permit language was the requirement to use Low Impact Development (LID) techniques, Best Management Practices (BMPs) and concepts in basin planning, site development planning, and transportation projects: “...must require non-structural preventative actions and source reduction approaches including Low Impact Development (LID) Techniques, to minimize the creation of impervious surfaces, and measures to minimize the disturbance of soils and vegetation where feasible.” This concept is pushed forward into LID techniques and BMPs now required in all Phase I and Phase II western Washington NPDES permits.

In 2009, another major permit change was enacted. WSDOT was issued its own separate stormwater permit, which recognizes the differences between improvements to the linear (limited right-of-way) transportation system, and private development.

## Phase I and II General Permit Requirements and WSDOT Specific Permit Requirements

In order to evaluate opportunities for cities and counties and WSDOT to work together on stormwater management, it is necessary to understand permit requirements and their history. These include differences between Phase I and II permits, western and eastern Washington permits. WSDOT operates its transportation system across the state but is only held to meeting its permit requirements within specific geographic boundaries (see Figure 6.1). If WSDOT and a local jurisdiction are to explore the opportunities to share resources and/or maintenance responsibilities, it will be necessary to ensure that the more stringent NPDES permit requirement, if one exists, is utilized so as to protect both parties from claims of non-compliance and potential fines or litigation.

The issues addressed in the city and county permits include:

- 1) Public Education and Outreach
- 2) Public Involvement and Participation
- 3) Illicit Discharge Detection and Elimination
- 4) Controlling Runoff from New Development, Redevelopment, and Construction Sites
- 5) Pollution Prevention and Operation and Maintenance for Municipal Operations
- 6) Annual Reporting
- 7) Monitoring (Phase I only)
- 8) Structural Stormwater Controls (Phase I only)
- 9) Source Control for Existing Development (Phase I only)

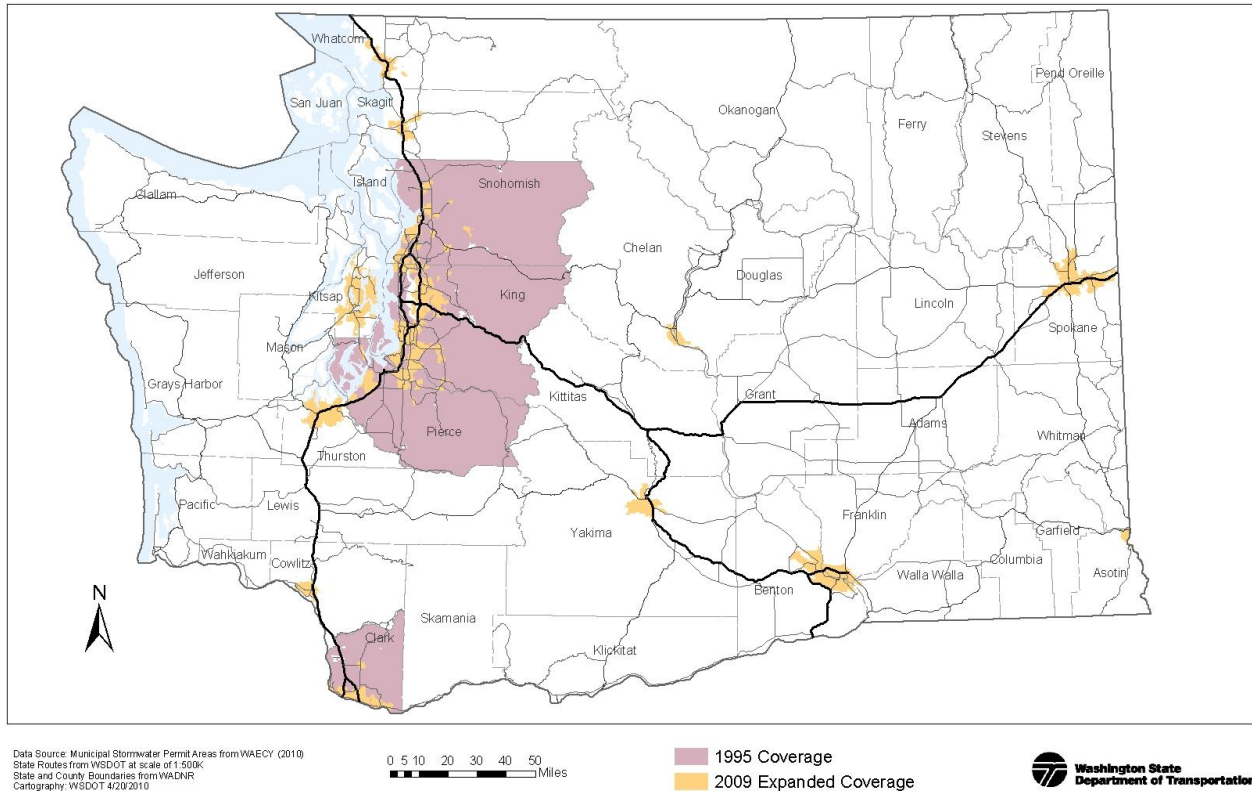
The issues addressed in the WSDOT permit include:

- 1) Implement and enforce an approved Stormwater Management Program (SWMP)
- 2) Illicit Discharge Detection and Elimination Program
- 3) Construction Stormwater Pollution Prevention Program
- 4) Stormwater BMP Retrofit Program
- 5) Highway Maintenance
- 6) Ferry Terminal Maintenance
- 7) Research and Monitoring
- 8) Education/Outreach/Involvement Program
- 9) Annual Reporting

All NPDES permittees are required to adopt the Ecology 2005 *Stormwater Management Manual for Western Washington* (or *Eastern Washington* as appropriate) or an approved Phase I permittee's manual. WSDOT has developed its own *Highway Runoff Manual*, which Ecology has determined is functionally equivalent to the 2005 Manual and is applicable in both eastern and western Washington.

WSDOT currently participates in regional efforts advancing public education and outreach, revisions to design criteria for Ecology's *Stormwater Management Manual*, and changes in construction stormwater pollution prevention measures. Further, WSDOT collaborates with the other Phase I jurisdictions on permit requirements overall, and implementation specifically through many standing meetings and professional organizations (i.e., APWA Surface Water Managers' Subcommittee).

In 2009, Ecology placed requirements in the Phase I and WSDOT permits requiring the use of low impact development (LID) where feasible and practicable. The restricted nature of WSDOT rights-of-way limits the use of LID. Local jurisdictions have greater opportunity to use LID for local roads and streets due to the availability of land adjacent to roads and streets, as well as off right-of-way.



**Figure 6.1 WSDOT 2009 NPDES Municipal Stormwater Permit Geographic Coverage**

### Overlap of NPDES permits

Figure 6.1 shows the relatively limited geographic nature of the WSDOT NPDES permit. The permit coverage was established by Ecology based on concentrations of population centers in accordance with the CWA requirements. Figure 6.2 overlays both the Phase I and Phase II permits with the WSDOT permit and reveals the extents of permit coverage along the WSDOT rights-of-way.

The CWA assigns responsibility for permit compliance to the owner and the operator of stormwater systems.

### Local Responsibility for State Rights of Way:

State RCW 47.24.020 transfers maintenance responsibility to local cities and towns but retains state ownership of the underlying land. Cities and towns are responsible for maintaining all underground utilities including storm water facilities such as catch basins and pipe systems along with many other responsibilities. Under the CWA provisions, the local city or town is operator of the storm water system and if they hold an NPDES permit, the permit requirements cover these activities. Under the

CWA provisions, WSDOT is the owner of the right of way and similarly appears to have NPDES permit responsibility for permit compliance.

Primary responsibility for compliance with the CWA resides with the city or town. However, failure on the part of the local jurisdiction to comply with its NPDES permit requirement(s) may leave WSDOT exposed to CWA compliance actions and third-party citizen lawsuits.

Overlapping NPDES Permit Responsibilities			
	Limited Access Highways within City limits (i.e. I-5, I-90)	Unlimited Access Highways within City limits* (i.e. SR 99)	<u>Study findings:</u>
<u>WSDOT</u>	Yes	Yes	WSDOT owns right of way. CWA appears to require the right of way be included in the State's permit coverage.
<u>Cities</u>	No	Yes	Cities are required by RCW 47.24 to maintain. CWA appears to require the right of way be included in the City's permit coverage.

\*The Department of Transportation and the Association of Washington Cities have a 1997 agreement that clarifies what cities are to maintain and it includes managing stormwater from unlimited access highways.

### Managing Runoff from State Highways:

In 1986, the State Legislature enacted RCW 90.03.525 to address how cities and counties can recover costs for managing runoff from limited access highways within their jurisdictional boundaries. The text of 90.03.525 can be found in Appendix A. In addition to this RCW, the following RCWs further identify how other state facilities such as buildings are addressed relative to stormwater utility fees.

- RCW 35.92.021 Public property subject to rates and charges for storm water control facilities.
- RCW 35.67.025 Public property subject to rates and charges for storm water control facilities
- RCW 36.89.085 Storm water control facilities – Public property subject to rates and charges
- RCW 36.94.145 Public property subject to rates and charges for storm water control facilities

Each of these RCW's states the following and only differs in the referenced RCW governing cities or counties.

Except as otherwise provided in RCW [90.03.525](#), any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for

storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by counties pursuant to RCW [36.94.140](#). In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property.

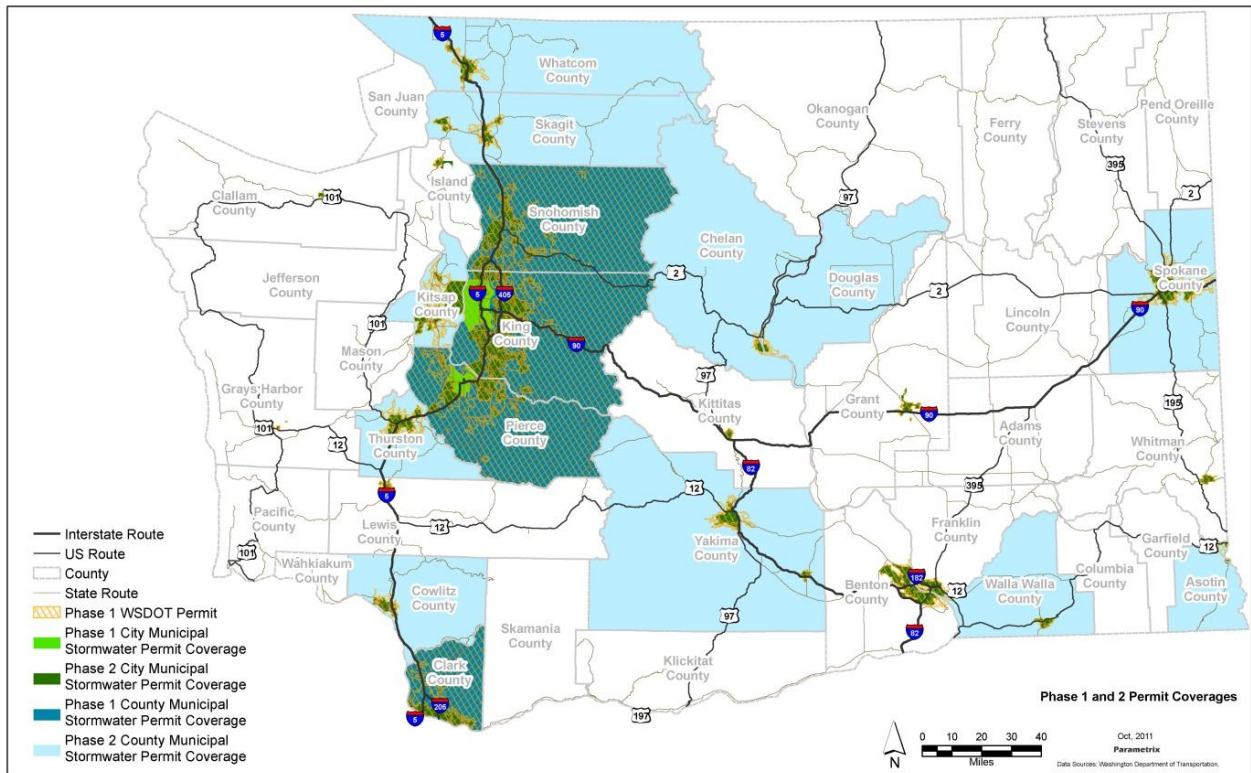


Figure 6.2. NPDES Stormwater Permit Coverages State Wide

## STORMWATER MANAGEMENT FUNDING FOR CITIES AND COUNTIES

### The Utility Concept

A stormwater utility is a stand-alone entity, usually set up as an enterprise fund, within the city or county's legislative authority. It is defined as being financially and organizationally self-sufficient and can be designed to furnish a limited or comprehensive set of services related to stormwater runoff and surface water management.

The following is a summary of the utility concept:

“A stormwater utility provides a reliable, dedicated source of revenue and an organizational structure that is dedicated to stormwater concerns. As a utility, a stormwater management program can be carried out as a “stand alone” operation, with its own budget, implementation plan, and employees dedicated solely to stormwater system operation, maintenance, administration, and education. Also, creating a utility is often more acceptable politically, as many communities tend to resist the creation of new programs using special districts. Creating a utility has the added benefit of freeing up tax dollars from the local government's general fund that would normally be used for stormwater concerns, and this “extra” money can be applied toward other needs.”<sup>1</sup>

### Legal Authorization

RCW 35.67.020, authorizes cities to “to fix, alter, regulate, and control the rates and charges for their” systems of sewerage, defined in RCW 35.67.010 to include stormwater management. Similar authorization is provided for county programs in RCW Chapters 36.89, 36.94, and 86.15.

Other important RCW sections include 35.67.025, which specifies that all public property “shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges,” and 90.03.525, which limits the imposition of stormwater rates and charges on state limited access highways.

### Stormwater Utility Rates

Most stormwater utility rates are based on impervious surface area, which is widely accepted as an appropriate measure of a property's contribution of runoff. It provides a clear relationship, or “rational nexus,” to service received from a stormwater program.

To minimize administrative and data collection costs, stormwater utilities typically develop a uniform rate for single family residential customers based on an estimated average amount of impervious surface area per developed residential parcel. For all other customer types, the charge basis typically is the actual measured impervious surface area by parcel. The charge itself is typically calculated as a dollar amount per unit of impervious surface area, or an equivalent unit of service. For example, one equivalent service unit (ESU) may equal 3,000 square feet of impervious surface area. An ESU can and does vary from jurisdiction to jurisdiction. ESUs do not include the street because the property owner does not own the street and has no control over it. Maintenance of the street's infrastructure is either paid for by the utility rate payers as an element of their base rate, paid for through a charge by the utility to the general fund or road fund, or conducted by and paid for by a different department within the city or county government.

Stormwater rates, in combination with other funding sources, pay for capital construction of stormwater systems and controls to prevent flooding and improve water quality; maintenance and operations; and implementation of NPDES permit programs.

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<sup>1</sup> Stormwater Program Guidance Manual for the Puget Sound Basin.



Alternative approaches to stormwater rates include density of development, usually distinguished by rates for different percentages of impervious coverage applied to the lot size. Both King County and the City of Bellevue utilize forms of the density of development approach.

## Other Local Funding Sources for Stormwater Management

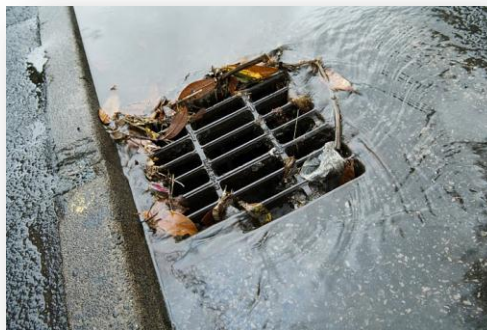
Most Washington stormwater programs subject to NPDES permitting requirements recover their costs through stormwater utility rates. Some secondary funding sources also are available, with varying degrees of applicability.

### Capital and Operations Funding:

**The Street/Road Fund:** City street funds and county road funds have historically been used to fund stormwater management activities within the rights-of-way. This includes construction and maintenance in the rights of way, and design and construction of conveyance, water quality, and flow control facilities related to the roadway.

**The General Fund:** Property tax and sales tax revenues have been the primary source of general fund resources in Washington cities and counties. Use of general fund money is usually unrestricted, and thus is available for stormwater management.

However, general fund resources are subject to many competing demands (such as public safety, parks, etc.) and cannot usually be considered a reliable source for ongoing funding and bond repayments on capital facility projects.



### Capital Funding:

**Special Assessments/Local Improvement Districts:** Most commonly structured as local improvement districts, these funding mechanisms assess individual properties benefited or served by a specific capital improvement for a share of the cost of that facility. Special benefit must be demonstrated by an increase in assessed valuation due to the improvement; this is often a difficult linkage to demonstrate for stormwater improvements. Local improvement districts are rarely used for stormwater management activities.

**Special Fees:** Direct charges/fees may be used to recover the direct costs for services performed for a customer or class of customers not generally related to the overall service charge, such as development inspections.

**Capital Facilities Charges:** Capital, or general, facilities charges are authorized for cities under RCW 35.92.025. Authorization is less straightforward for county stormwater utilities authorized under either RCW 36.89 or 36.94. Capital facilities charges are one-time charges imposed as a condition of development and are designed to recover an equitable share of the cost of capital investment incurred by the utility. Revenues from such charges are dependent on growth and are available for capital purposes only.

**Conventional Debt Instruments:** The most commonly used long-term debt instruments are revenue and general obligation bonds. Bond anticipation notes are available for short-term “interim” capital financing. These sources are available for capital funding only.

- Revenue bonds are the most common source of funds for construction of major utility improvements. There are no statutory limitations on the amount of revenue bonds a utility can issue; however, utilities are required to meet yearly net operating income coverage

requirements, commonly 1.25 times the annual debt service. In fact, to issue new debt, it may be necessary to demonstrate coverage in excess of this level based on a market-driven target, possibly in the range of 1.5 to 2.0.

Revenue bond debt service is paid out of rate revenues. The terms on revenue bonds are not as favorable as general obligation bonds, but carry the advantage of leaving the city's debt capacity undisturbed. Interest rates vary depending on market conditions.

- General obligation bonds are secured by the taxing power of the city, are typically paid through property tax revenues, and may be subject to a public vote. Cities and counties often instead choose to repay the debt from rate revenues, resorting to property taxes only if the rates fail to meet debt obligation.

The financing costs of general obligation bonds are lower than revenue bonds due to (1) lower interest rates available, (2) no coverage requirements, and (3) no reserve requirements.

- Short-term "interim" financing mechanisms are also available for capital costs. Bond anticipation notes can provide interim financing during construction, while allowing flexibility in the choice of long-term financing instruments. Typically, bond anticipation notes have lower interest rates than bonds, but add to issuance costs.



#### **State and Federal Assistance:**

**Special Grants and Loans:** Some state and federally administered grant and loan opportunities are available for capital funding only.

- Department of Ecology Grants and Loans: The Washington Department of Ecology (Ecology) administers an integrated funding program for three state and federal financial assistance programs to improve and protect water quality. Each funding cycle begins in the fall when Ecology accepts project applications. Ecology rates and ranks applications based on the highest-priority needs; projects include stormwater control and treatment, nonpoint pollution abatement and stream restoration activities, and water quality education and outreach. The amount of available grant and loan funding varies from year to year based on the state's biennial budget appropriation process and the annual congressional federal budget. The three sources of funding for water quality projects are:
  - Centennial Clean Water Fund Grant Program,
  - Federal Clean Water Act Section 319 Nonpoint-Source Grant Program, and
  - Washington State Water Pollution Control Revolving Fund Loan Program.
- Public Works Trust Fund (PWTF): Cities, towns, counties and special purpose districts are eligible to receive loans. Water, sewer, stormwater, roads, bridges, and solid waste/recycling are eligible, and funds may be used for repair, replacement, rehabilitation, reconstruction, and improvements including reasonable growth (generally the 20-year growth projection in the comprehensive plan).

PWTF loans are available at interest rates of 0.5 percent, 1 percent, and 2 percent with the lower interest rates given to applicants who pay a larger share of the total project costs. The

loan applicant must provide a minimum local match of funds of 5 percent towards the project cost to qualify for a 2 percent loan, 10 percent for a 1 percent loan, and 15 percent for a 0.5 percent loan. The useful life of the project determines the loan term up to a maximum of 20 years. PWTF loans are only available for capital expenditures and not for NPDES permit compliance nor maintenance and operations functions.

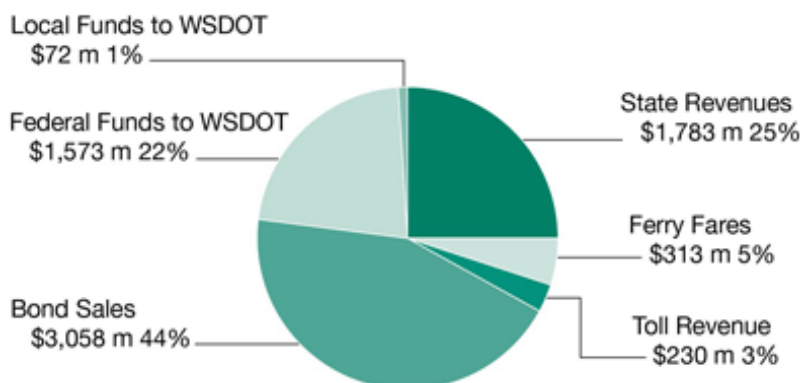
## WSDOT Funding Breakdown

WSDOT annual funding comes from a variety of sources collected at the state, federal, and local levels. According to WSDOT, the sources include taxes and fees, ferry fares, concessions, carry forward fund balances, and other miscellaneous revenues. Overall, \$9.4 billion in transportation funds is available in the 2011–2013 Transportation Budget; of this, WSDOT retains \$7.0 billion. The remaining \$2.4 billion is distributed to cities, counties, the Washington State Patrol, and other agencies, and used for debt service.

The state fuel tax generates \$2.531 billion; bond sales amount to \$3.058 billion; and federal funds amount to \$1.573 billion. Licenses, permits, and fees collect an additional \$938 million. Ferry fares and fees are another \$317 million total, with other revenue and funds adding another \$946 million. The breakdown on the actual funding available to WSDOT is shown below:

### WSDOT Funding Sources

(Dollars in millions)



### WSDOT Investment in Stormwater

The 2011–2013 biennial investment in stormwater by WSDOT consists of the following:

Program Delivery and Management Support – \$3.754 million

Highway Maintenance – \$4.530 million

Capital – \$1.25 million

Washington State Ferries – \$152,000

Information Technology – \$210,000

Retrofit Program (I4) – \$6.145 million

RCW 90.03.525 reimbursement - \$3.5 million

The total direct investment for stormwater *exclusive of funds spent through individual transportation projects* amounts to \$16.041 million. For individual transportation projects, stormwater flow control

and water quality treatment is incorporated into the overall design in accordance with the Highway Runoff Manual standards. These costs are reflected in the overall project costs and result from the states NPDES Permit requirements as well as general engineering design standards. These costs are not reflected in the \$16.041 million.

## Survey of Cities and Counties

As part of this study, the consultants conducted a survey of cities and counties that have a stormwater utility, are subject to an NPDES General Phase I or II permit, and have one or more limited access highways within their jurisdiction. A total of 81 qualified jurisdictions were invited to participate, and 45 completed the survey.

The survey questions were designed to identify successes and challenges in working with WSDOT on management of stormwater, complying with RCW 90.03.525, and in preparing documentation for cost recovery associated with managing limited access right-of-way runoff on WSDOT's behalf.

Following is a summary of key findings from the survey.

- Stormwater system capacity, costs, water quality, and staff resources are the major challenges to managing stormwater from limited access highways.
- Factors upon which the fee is based, definition of what is eligible for reimbursement, and limited staff resources are the major challenges to complying with RCW 90.03.525.
- Not charging for city streets, burdensome work plan and reporting requirements, and not tracking costs of runoff from state highways are the major reasons for not charging WSDOT.
- Working with WSDOT is okay, but could be improved.

Three-fourths of those jurisdictions that manage stormwater from limited access highways indicated challenges in doing so. The challenges included stormwater system capacity, costs, water quality, and staff resources. Cities and counties in the Puget Sound region were more likely to report challenges in managing stormwater than those in the Western Washington or Eastern Washington regions. Those with conveyance facilities were somewhat less likely to report challenges in stormwater management than those with other stormwater management systems.

More than half of those that manage stormwater reported facing challenges complying with RCW 90.03.525. The challenges included factors upon which the fee is based, definition of what is eligible for reimbursement, limited staff resources, and working with WSDOT. Facing challenges complying with the RCW did not differ significantly between those that charge WSDOT and those that don't. Those with retention facilities were somewhat less likely to report problems in complying with RCW 90.03.525 than those with other stormwater management systems.

When those who did not charge WSDOT were asked why not, their reasons included not charging for city streets, burdensome work plan and reporting requirements, not tracking costs of runoff from state highways, and having not charged WSDOT in the past. Most reported spending \$500 to \$1,000 annually to gather the necessary reporting data and file a request. When it came to how long it takes to gather the necessary reporting documentation, many reported spending either 1 to 2 days or more than 4 days. The length of time it takes to gather the reporting documentation did not differ significantly by the number of lane miles of limited access highway in the jurisdiction.

These same jurisdictions reported that the following would motivate them to start charging WSDOT:

- If the amount of reimbursement was increased.
- If the city street charge requirement was eliminated.
- If the planning and reporting was less burdensome (if the options and process were better understood).

- If the limited access highway(s) in their jurisdiction had additional negative impact to increase their cost recovery value.

Most reported the process of working with WSDOT on stormwater management to be either somewhat efficient or neutral. The level of efficiency of working with WSDOT to manage stormwater did not differ significantly between those that charged and those that did not charge WSDOT. Those with retention facilities were more likely to report that the process between them and WSDOT for managing stormwater runoff was inefficient than those with other types of stormwater management systems. Among the jurisdictions who reported inefficiencies, the inefficiencies tended to focus on communication challenges, the regulatory process itself, documentation, and insufficient monetary incentives. In regard to the charging process specifically, the difficulties included the method used to determine charges, justifying how the reimbursed fee is used, and documentation issues.

## Case Studies

Following the survey, the consultants conducted case studies of eight survey respondents to glean additional detail to inform the assessment of RCW 90.03.525. For the purposes of this effort, jurisdictions must have charged WSDOT for stormwater under the RCW, or be eligible to do so.

Case study selections included a mix of Phase I jurisdictions, representatives of both small and medium Phase II jurisdictions from Eastern Washington, and representatives of both small and medium Phase II jurisdictions from Western Washington. They included Bellingham, Issaquah, Olympia, Puyallup, Richland, Spokane, Tukwila and Clark County.

The case studies addressed at least the following issues:

- The costs jurisdictions incur to manage stormwater runoff from state highways.
- The costs that jurisdictions incur in order to impose stormwater fees upon WSDOT.
- General challenges experienced by jurisdictions in imposing stormwater fees.
- Barriers and challenges to jurisdictions imposing stormwater fees on WSDOT.
- The jurisdictions' level of satisfaction or dissatisfaction pertaining to existing state law and the WSDOT application process to recover stormwater costs.
- Specific examples of potential improvements where WSDOT and jurisdictions may find efficiencies in the cost and management of stormwater facilities.

## Findings of Case Studies

The costs to manage runoff from limited access highways ranged significantly across the jurisdictions surveyed. The effort needed was primarily driven by the amount runoff from limited access highway to the jurisdiction's system, and any basin-specific issues. Not all respondents reported similar levels of interaction primarily due to individual drainage needs. For example, Clark County has a high level of interaction with WSDOT maintenance while the City of Puyallup has little to none. Puyallup's only limited access right-of-way is SR 512 which has a primarily self-contained WSDOT drainage system. Clark County has significantly greater opportunities to interact with WSDOT maintenance based on the overall size of their system.

### **Costs Incurred to Impose Stormwater Fees on WSDOT**

Of the jurisdictions interviewed, only Tukwila was able to identify a specific quantifiable cost of \$541 annually for submitting the necessary documentation. Based on the general survey responses, the range of costs is between \$500 and \$2,000, with the majority falling between \$500 and \$1,000

annually and one respondent greater than \$2,000. Based on the more intensive case study interviews, one respondent noted their costs could be as high as \$10,000.

### **Challenges with Imposing Fees**

The overall responses from the case studies were consistent with the findings of the general survey.

Those not currently charging WSDOT identified four primary challenges:

- the requirement to charge their own streets,
- confusion about or lack of eligibility for cost recovery,
- quantifying eligible state highway impacts, and the perceived burdens associated with application and
- reporting requirements of RCW 90.03.525.

Those currently charging WSDOT to recover costs identified challenges with providing the necessary justification and providing the annual report.

### **Satisfaction with State Law and Application Process**

For those cities and counties that do not charge WSDOT a fee, there was an overall sense of dissatisfaction with the RCW. In its current form, it prevents them from using it for cost recovery. Without a utility, without charging their own streets/roads, and with the 70 percent reduction in cost recovery claims to WSDOT, no jurisdiction indicated that they planned on changing their procedures or code to position them to be able to recover costs from WSDOT for managing limited access rights-of-way.

Those cities and counties currently charging WSDOT a fee noted three primary reasons for dissatisfaction:

- The RCW's mandated 70% discount to WSDOT. They do not understand why WSDOT gets a 70 percent reduction when no other utility rate payer gets the same significant reduction. The ability to recover just 30% of their costs from WSDOT results in marginal cost benefit to the city or county. Many expressed an interest in seeing the justification for the reduction.
- Submittal of an annual report outlining what every dollar WSDOT paid was used for. Since the application process requires outlining exactly what the WSDOT money *will* be used for, it's duplicative to say what it actually was used for as well. Some respondents suggested the reporting process could be simplified, eliminated, or required every 2 years or longer.
- More than one respondent expressed frustration with not being able to charge WSDOT for non-limited access rights-of-way.

### **Potential Improvements**

Respondents described what potential improvements they would like to see in the program's operation. For detailed descriptions of individual jurisdictional responses, see the discussion on case studies in this report. In general, the suggestions followed very closely with the overall recommendations from the general study:

- Eliminate the requirement that jurisdictions charge their own streets/roads in order to charge state limited access rights-of-way.
- Simplify the annual reporting requirements, or do away with it entirely.
- Provide outreach to inform jurisdictions of their ability to recover costs and for what activities.

- Simplify the process by developing a uniform WSDOT rate that can be applied by every jurisdiction without having to develop supporting documentation.
- Allow jurisdictions to charge non-limited access state rights-of-way.

## Identification of Inefficiencies in Stormwater Management

With a basic understanding of the regulatory drivers and limitations on both WSDOT and jurisdictions, inefficiencies in managing stormwater between local jurisdictions and WSDOT can be identified. For purposes of this report, these have been segregated into the following categories:

- RCW 90.03.525 requirements versus jurisdictional realities.
- Administration of the Cost Recovery Program.
- Physical limitations on drainage systems.
- Differences in NPDES permits.
- Funding limitations between WSDOT and local jurisdictions.

## RCW 90.03.525 Requirements vs. Jurisdictional Realities

RCW 90.03.525 was created in response to actions taken by western Washington drainage utilities in the 1970s and 1980s to charge WSDOT for its stormwater runoff. It has not been modified or updated to reflect NPDES Phase I or II permit requirements, nor how stormwater has been managed over the past decade.

The text of RCW 90.03.525 can be found in appendix A.

The RCW establishes restrictive requirements on local jurisdictions seeking cost recovery for managing WSDOT highway runoff. In order to fully interpret RCW 90.03.525, one has to look to RCW 90.03.520 first which defines “State highway right-of-way” to mean only state limited-access highways inside or outside of a city or town. It excludes city or town streets forming a part of the route of state highways that are not limited access highways. Further, it defines “storm water control facility” to mean “any facility, improvement, development, property, or interest therein, made, constructed, or acquired for the purpose of controlling, or protecting life or property from, any storm, waste, flood, or surplus waters.” Since these terms are integral in the interpretation of RCW 90.03.525, this second RCW has to be referenced to fully evaluate RCW 90.03.525.

The RCW 90.03.525 limits cost recovery to those jurisdictions that have a stormwater utility even though jurisdictions may be managing WSDOT runoff from limited access rights-of-way with other funding means. Local jurisdictions must also charge their own roads and streets in order to request cost recovery funds. Few jurisdictions charge their own streets a stormwater rate through their utility as it would effectively be a “charge” from the general fund to the utility. Based on discussions with survey respondents, operation and maintenance of their stormwater systems is being done either through their general fund, road fund or stormwater utility and paid for by the local community. This requirement limits many jurisdictions from using RCW 90.03.525 for cost recovery.

Another obstacle to use of RCW 90.03.525 is the limitation on rates to 30 percent of the rate for comparable property. This is a significant reduction that coupled with the requirement to charge their own streets and roads may be perceived as eliminating the benefits of submitting for cost recovery for many jurisdictions. No documentation to base a 70 percent exemption of WSDOT stormwater charges was found in the course of this study which remains a point of contention with many jurisdictions.

The RCW requires that the cost recovery request be associated with construction, operation, and maintenance of stormwater control facilities. Many jurisdictions have taken this to mean a physical structure or improvement receiving runoff from WSDOT highways, which appears to be substantiated by RCW 90.03.520. This is further clarified in the RCW that the funds are to be “*used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities.*” Jurisdictions have struggled to identify specific elements of their projects and/or programs that will meet this requirement. A literal interpretation of storm water control facilities based on RCW 90.03.520 would severely limit jurisdictional ability to submit for cost recovery.

Best Management Practices (BMPs) in this context are not defined in RCW 90.03.525 but have been liberally interpreted by WSDOT in the administration of the cost recovery program.

“Solely” has been interpreted in many ways by local jurisdictions. Stormwater utility Capital Facility Plans rarely identify facilities intended to mitigate from only one property owner such as WSDOT. As such, determination of what portion of a facility is “solely” for mitigation from state highway runoff can be extremely difficult.

The RCW has a section referring to RCW 90.78.010 which used to establish the objectives of an annual plan to be submitted by January 1<sup>st</sup> of each year. RCW 90.78.010 expired July 1, 2003 without replacement. Therefore, local jurisdictions are left without direction on what needs to be in the plan. For those new to the process, this can be confusing and potentially result in avoidance of the process.

Requiring a plan to be submitted annually is often seen as an unnecessary burden by local jurisdictions. Further, as there is no standard format for these plans, jurisdictions are left to their own devices in developing a plan. A review of the 2010 submittals revealed submittals from a few pages to those in excess of 40 pages. This results in WSDOT having to evaluate multiple different formats resulting in an inefficient review process. Establishing a standard format would save cities and counties and WSDOT time and money administering the annual plan submittal, review, and approval process.

The RCW provides a mechanism for imposing a higher charge on WSDOT with concurrence by WSDOT relative to the construction, operation, or maintenance of specific storm water control facilities. Due to the specific language, it is unlikely this provision would extend to activities not related to storm water control facilities. Further language limits this rate to no more than 100 percent of the allowable rate prior to application of the 70 percent exemption. While imposition of a higher rate appears to be possible, the local jurisdiction is left in a position of proposing it, and if rejected, proceeding with a potentially costly mediation and court process with uncertain outcomes. Comparing the cost difference of new construction to maintenance and operation of existing facilities, the larger cost recovery would likely be for new facility construction not maintenance and operational based on the scale of costs. As such, it is likely that only jurisdictions that are relying primarily on facility construction costs for justification on cost recovery would pursue this path, further limiting the number of potential jurisdictions.

RCW 90.03.525 states:

*(4) The legislature finds that the federal clean water act (national pollutant discharge elimination system, 40 C.F.R. parts 122-124), the state water pollution control act, chapter 90.48 RCW, and the highway runoff program under chapter 90.71 RCW, mandate the treatment and control of storm water runoff from state highway rights-of-way owned by the department of transportation. Appropriations made by the legislature to the department of transportation for the construction, operation, and maintenance of storm water control facilities are intended to address applicable federal and state mandates related to storm*



*water control and treatment. This section is not intended to limit opportunities for sharing the costs of storm water improvements between cities, counties, and the state.*

The CWA as implemented through RCW 90.48 carries with it the specter of third-party litigation, a.k.a. citizen suits. Provisions of the NPDES permits issued under RCW 90.48 do allow for sharing of permit requirement responsibilities, including operation and maintenance of stormwater control facilities, but this is not the standard operating procedure when designing project-specific facilities.

The 2008 WSDOT *Highway Runoff Manual* specifically directs designers to "...identify all off-site flows coming to the site, including streams, seeps, and stormwater discharges. The transportation facility must allow for passage of all off-site flows; however, every effort should be made to keep off-site flows separate (via bypass) from the highway runoff" (page 2-5).

Based on this, it appears typical project costs presented for legislative funding would not include comingling of city and county and WSDOT stormwater in new facilities. Based on conversations with the cities and counties through the survey and case studies, smaller projects or activities conducted out of regional maintenance facilities appear to take a more practical approach to storm water management. Maintenance supervisors appear to be more willing to collaborate on smaller facilities and allow for mixing of flows. This may be due in part to the inability of smaller projects to separate out flows from a purely physical sense. It may also be due to the higher costs associated with building two separate conveyance systems, one for jurisdictional stormwater, one for WSDOT right-of-way water.

For facilities located within state rights-of-way, WSDOT would appear to remain the ultimate responsible party for violations of any NPDES permit requirements related to operation and maintenance. Similarly, should facilities be constructed outside of state rights-of-way by local jurisdictions, NPDES permit compliance would reside with the local city or county.

<b>RCW Requirement</b>	<b>Jurisdictional Perspective</b>
Must have storm water utility	Non-limiting as most have a utility
Only applies to limited access rights of way	Feel this should be applicable to non-limited access rights of way.
“Storm water control facilities” is limited by RCW. BMPs are undefined	Definition limits cost recovery to physical structures. Allows for discretion on part of WSDOT in approval of annual reports and cost recovery
Must charge own streets/roads	Rational is not understood. Local roadways are maintained, source of funding should not be limiting factor. Seventeen cities and counties currently charge themselves. Of eligible cities, remaining 51 do not.
Cost recovery limited by 70 percent exemption	No justification. Desire 100 percent recovery.
Recovery limited to “solely” mitigation for WSDOT runoff	Difficult to identify project or management costs for “solely” managing impacts from WSDOT
Must submit annual plan	No value and is costly to develop and produce
Provides mechanism for greater cost recovery, up to 100 percent.	Process is uncertain and potentially costly. Limited application.

Provides for collaboration with local cities and counties	Highway Runoff Manual directs designers to separate flows – no joint facilities
RCW states legislative funding is to enable WSDOT to meet its NPDES obligations for all state owned rights of way.	Based on the limited definition of “state right of way” in RCW 90.03.520, this provision does not allow for full funding of WSDOT’s obligation of all state rights of way (non-limited access) and therefore requires local cities and counties to bear the burden of NPDES compliance as operators of the storm water infrastructure.
RCW does not limit collaboration.	Does not recognize the third party lawsuit provision of the Clean Water Act which is limiting collaboration on joint facilities.

## Physical Limitations on Drainage Systems

Opportunities for cross collaboration on design, construction, operation, and maintenance of stormwater control facilities exist throughout the state, both within and adjacent to limited access rights-of-way depending on individual site constraints. RCW 90.03.540 directs WSDOT to coordinate with adjacent local governments, ports, and other public and private organizations to determine opportunities for cost-effective joint stormwater treatment facilities for both new and existing impervious surfaces.

Efforts for cross collaboration can be constrained by the physical settings of the state’s limited access rights-of-way within a drainage basin. Land availability both within and outside of the right-of-way can limit the size of facilities either by limited acreage or by extensive adjacent improvements that would cost too much to remove (i.e., downtown Seattle). Further physical constraints to WSDOT participation may well lie in the contributing drainage basin sizes and physical size of the resulting treatment facility. With limited land available, WSDOT may be constrained on the size of the facility that can be constructed. Further, long-term maintenance and operation of the facility may be significant with insufficient assurances from the jurisdiction on cost sharing.

WSDOT will also be incurring the increased liability under its NPDES permit for managing waters and pollutant loadings from others. This issue should be resolved with Ecology to ensure WSDOT does not take on unnecessary liability. If this can be resolved, WSDOT should be encouraged to develop joint facilities with adjacent jurisdictions and document the process and efforts to that end

## Differences in NPDES Permits

Differences between the WSDOT permit and the Phase I and II permits (both Eastern and Western Washington) will have little impact on the design parameters of new facilities or on the operations and maintenance of such facilities. Both Phase I and Phase II permittees are required to adopt either the 2005 *Ecology Stormwater Design Manual* or an equivalent Ecology-approved manual. The design requirements for both water quality treatment facilities, as well as flow attenuation (detention and retention) facilities, are equivalent across all design manuals. Maintenance and operations requirements are also the same and do not differ based on facility ownership. The NPDES permits will not be an impediment to co-development or co-location of facilities excluding the issue of third-party liability. The WSDOT Highway Runoff Manual is more constraining than the 2005 Ecology Manual as it does not allow the use of some BMPs approved of under Ecology’s Manual due to the nature of the linear transportation system.

## Funding Limitations Between WSDOT and Local Jurisdictions

Unlike with a dedicated stormwater utility, WSDOT's funding is subject to legislative action, and in some instances, a vote of the public for transportation improvement packages. Coordination with local jurisdictions has to occur prior to funding packages being proposed which is often many years ahead of local planning efforts. Some funding sources, such as the ferry fares, toll revenue, and bond sales, can also be limited to specific projects or activities or for the duration of the tolling.

City and county stormwater utilities conduct rate analyses on a highly variable frequency across the state. There are no mandated requirements that utilities conduct a rate analysis on a routine schedule. This is left to the jurisdiction to determine based on funding needs. Typically, included in this process is an evaluation of the utility's capital facility needs. Due to the variable nature of the timing of this process across the state, it can be difficult to coordinate jurisdictional stormwater capital facility plans with WSDOT transportation project needs.

Aligning WSDOT's stormwater retrofit facility needs with city and county capital facility planning and utility rate analysis processes would benefit both WSDOT and the local governments by identifying collaborative projects with mutual benefit and funding. WSDOT has a subprogram which in part funds stormwater retrofits called the I4 Subprogram. This subprogram is described in greater detail in the following sections. Of importance to note is that a concerted effort to coordinate the WSDOT I4 retrofit subprogram needs with jurisdictions would further enhance the ability of WSDOT to address legacy drainage problems in areas with the greatest environmental benefits.

According to the Local Government Financial Reporting System (<http://www2.sao.wa.gov/applications/lgfrs/>) cities collected \$254 million in stormwater fees and charges in 2010. This does not include the additional \$25 million distributed by the state through grants from Ecology. Counties collected \$54 million in stormwater fees and charges and received approximately \$10 million in grants from Ecology for stormwater. Collectively, local governments spent more than \$340 million addressing stormwater in 2010.

## Administration of Cost Recovery Under 90.03.525

Administration of the cost recovery aspects of RCW 90.03.525 is a very small part of the WSDOT mission. With a total allocation of between \$2.5 and \$3.8 million per year being funded to cities and counties, WSDOT has assigned one person part time to this effort. WSDOT estimates their cost for administering the program at \$11,707 per year.

## Recommendations for Consideration

### Regulatory Changes

The consultants propose two alternatives to create efficiencies in the process by which cities and counties recover costs from WSDOT for managing stormwater from limited access facilities. Each option has fiscal implications for both the jurisdictions as well as WSDOT. A more in-depth assessment of the potential cost implications will be covered in the final full report to the Joint Transportation Committee. Option A modifies the existing framework outlined in RCW 90.03.525, and Option B creates a new framework.

#### Option A:

1. Retain requirement that to charge WSDOT a jurisdiction must have a stormwater utility. No fiscal impact to jurisdictions or WSDOT.
2. Eliminate the requirement that a jurisdiction charge its own streets in order to recover the costs of State highway runoff management. Potentially increases the number of cities and

counties charging cost recovery from 17 to 80. Potentially increase of \$13 M per year to WSDOT.

3. Modify the requirement for submittal of an annual plan to a semi-annual plan or longer. Streamline application and reporting processes. Cost savings of approximately \$1,500 per jurisdiction per year. Cost savings of approximately \$4,000 per year for WSDOT.
4. Clarify/change what is eligible for cost recovery to be contemporary or flexible enough to recognize the requirements of the Phase I and II NPDES permits. If only physical structures or construction projects are eligible, develop a list of such facilities and distribute to all jurisdictions. Develop a list of BMPs eligible for cost recovery and require it be updated at the re-issuance of the Phase I and II NPDES permits. Clarify what “solely” is intended to mean for cost recovery submittals or eliminate this provision. Develop training and outreach to cities and counties. Negligible fiscal impacts beyond first effort to establish list. First efforts likely to cost WSDOT \$5,000 for meeting with cities and counties to set up agreed upon list and \$2,500 for training and outreach..
5. Revisit the 70 percent exemption. If a reduction for state limited access highway runoff is to be maintained, it is recommended that efforts be undertaken to establish the foundation for such a cost reduction. If no other changes are made, cost recovery for those already receiving funds would increase by approximately \$8 M. Increased fiscal impact to WSDOT is \$8 M.
6. References to RCW 90.78.010 should be eliminated and suitable language on the objectives for any plan submittals included in RCW 90.03.525. As stated previously, this provision of the RCW sunset leaving jurisdictions without a foundation for their annual report preparation.
7. RCW 90.03.525 Section (3) would benefit from expansion to clarify that costs for construction of stormwater control facilities, including design, permitting, land acquisition, construction, and construction oversight, should be based on proportional shares of runoff volumes contributory to the facility. It could be assumed that runoff volumes sufficiently capture all appropriate cost sharing responsibilities.
8. RCW 90.03.525 Section (4) would benefit from requiring WSDOT to explore options for sharing facility size and location with adjacent jurisdictions when planning transportation improvement projects and including documentation of such in the project file.

#### Option B:

1. Retain requirement that to charge WSDOT a jurisdiction must have a stormwater utility. No fiscal impacts.
2. Eliminate the requirement that a jurisdiction charge its own streets in order to recover the costs of State highway runoff management. Potentially increases the number of cities and counties charging cost recovery from 17 to 80. Potentially increase of \$13 M per year to WSDOT.
3. Consider establishing a uniform rate for limited access rights-of-way for inclusion in all utility rate structures statewide. Consider separate rates for Western and Eastern Washington. Establishment of a consistent utility rate provides certainty to local jurisdictions and WSDOT for budgeting of future work. Use of a standard rate will negate the need for an annual plan, justification of any cost reduction for the state, and negotiations over what is or is not cost recoverable. This rate would need to be updated periodically, perhaps with each renewed NPDES permit issuance. Fiscal impact to WSDOT would need to be developed but likely not to exceed \$50,000 for the initial study and rate establishment. Final impacts would depend on the rates established.

## Recommendations for Stormwater Management Efficiencies

### WSDOT I4 Subprogram

As a part of WSDOT's NPDES permit under the Stormwater Management Plan provision, the Department has developed a program for stormwater BMP retrofits for existing transportation corridors that potentially could be partnered with local jurisdictions. WSDOT acknowledges that extensive portions of the state's limited access highways were developed without either water quality treatment or flow attenuation facilities, or have facilities that no longer meet current standards and so the I4 subprogram is an effort to address this deficiency. The program consists of three elements:

1. Stand-Alone: The amount the State Legislature appropriates for stand-alone stormwater retrofits.
2. Project Triggered: Stormwater retrofit to existing and replaced pavement as part of transportation improvement projects per requirement triggers in the Highway Runoff Manual (HRM).
3. Opportunity Based: Retrofit of existing and replaced pavement that occurs as a part of projects when WSDOT determines that it is cost effective to provide retrofits beyond that required in the HRM.

WSDOT looks at new projects with an eye to providing treatment equal to 120 percent of that required in the HRM as a result of negotiations with Ecology to address historic untreated roadways. Through this means, retrofitting older roadway sections can be funded, albeit slowly, leading to overall improvements to the roadway system and the Puget Sound. If retrofitting existing or newly replaced surfaces is feasible and cost effective at the project location, it is conducted as a part of a project. If it is not feasible or cost effective at the project location, the project must either provide the 20 percent treatment or flow control somewhere else on a similar highway section in close proximity to the project site or provide an equivalent amount of funding to the I4 subprogram to fund a stand-alone retrofit project elsewhere in a high priority basin. A second means of funding the I4 subprogram is through specific allocations from the Legislature for projects identified by WSDOT.

This program offers an opportunity for cooperation between WSDOT and local jurisdictions to fund, design, and build stormwater facilities with a more regional objective, and this cooperation is specifically called for in RCW 90.03.540, Highway Construction Improvement Projects – Joint Stormwater Treatment Facilities.

To make WSDOT's I4 program more collaborative with local governments, WSDOT would need:

- To conduct outreach to local jurisdictions to identify and prioritize facility construction opportunities, and
- evaluate existing facilities to determine what effect they have on reducing runoff to downstream systems, as well as what proportion of the impervious surfaces are receiving treatment to current standards. This will enable WSDOT to develop a needs assessment state-wide for the retrofit program, and
- be involved in jurisdictional comprehensive basin planning efforts and watershed plan development to ensure that collaboration on surface water facilities occurs early in the plan preparation process. This is often where city and county Capital Facility Plans draw projects from for utility rate analysis efforts.

### Maintenance and Operations

Currently WSDOT provides contract service to a number of smaller jurisdictions for various maintenance functions along state rights-of-way outside of limited access. Agreements for this work could be revisited with each jurisdiction to determine if additional functions can be performed by the

State for the jurisdiction. These agreements could potentially be expanded to include work outside of the state right-of-way, such as adjacent pond or water quality facility maintenance. WSDOT will need to continually assess its capacity to conduct this work with increasing demands within its limited access rights of way and decreasing state staffing.

Due to the nature of working within limited access highways, it is unlikely many local jurisdictions will have the staff, training, and equipment to meet the strict safety needs for working within many of the limited access rights of way. However, this should be explored further as larger jurisdictions may be able to supplement WSDOT workforce needs in teaming arrangements or with additional equipment rented to WSDOT for infrequent work. This may well reduce capital and operating costs for both parties.

WSDOT may wish to consider looking for expanded partnership arrangements with local jurisdictions on facilities such as sand and deicing storage facilities, vector truck decant facilities, transfer stations for street wastes, and supplemental storage facilities for supplies and vehicles.

According to the JLARC Stormwater Permit Requirements Report 11-2, January, 5, 2011, WSDOT has agreement with local jurisdictions for the funding and construction of four new decant facilities but needs state funding to move forward.

#### **Potential Enhancements to M&O Programs:**

1. Explore opportunities for expanding WSDOT contract maintenance activities within local jurisdictions on state non-limited access rights-of-way as well as off right-of-way work. Expansion of work would be fully funded by the contract with the city or county.
2. Review existing maintenance agreements to ensure they are current with existing NPDES Permit requirements and maintenance procedures.
3. Evaluate potential teaming arrangements with jurisdictions for sharing resources such as equipment, personnel, and maintenance facilities both long-term as well as during short-term climatic events (e.g., snowfall and flooding events).
4. Evaluate additional teaming arrangements for cost sharing joint use facilities such as transfer stations for vector decant materials, street sweeping wastes, and housing personnel and equipment.

#### **Other Approaches for Consideration**

In addition to regulatory changes, consideration for other changes that modify the way the State conducts cost recovery include:

1. Cost recovery is contingent upon the jurisdiction being in compliance with its general stormwater NPDES permit if it has one. A brief statement to that effect would be submitted with any billing information submitted to the state. Failure to be in permit compliance would prevent cost recovery until such time as the jurisdiction is compliant. Payment would be for full cost recovery claims found to be in accordance with the program requirements and not reduced based on being out of compliance for a time.
2. The issue of liability in co-mingled facilities may continue to be a detriment to co-managing runoff. WSDOT and Ecology should seek a solution to remedy the actual and perceived liability risks to enable closer collaboration between jurisdictions and WSDOT on stormwater facilities and BMPs.

## APPENDIX A

Text for RCW 90.03.525

## RCW 90.03.525

90.03.525 Storm water control facilities — Imposition of rates and charges with respect to state highway rights-of-way — Annual plan for expenditure of charges.

(1) The rate charged by a local government utility to the department of transportation with respect to state highway right-of-way or any section of state highway right-of-way for the construction, operation, and maintenance of storm water control facilities under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and 86.15 RCW, shall be thirty percent of the rate for comparable real property, except as otherwise provided in this section. The rate charged to the department with respect to state highway right-of-way or any section of state highway right-of-way within a local government utility's jurisdiction shall not, however, exceed the rate charged for comparable city street or county road right-of-way within the same jurisdiction. The legislature finds that the aforesaid rates are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights-of-way.

(2) Charges paid under subsection (1) of this section by the department of transportation must be used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities. By January 1st of each year, beginning with calendar year 1997, the local government utility, in coordination with the department, shall develop a plan for the expenditure of the charges for that calendar year. The plan must be consistent with the objectives identified in \*RCW 90.78.010. In addition, beginning with the submittal for 1998, the utility shall provide a progress report on the use of charges assessed for the prior year. No charges may be paid until the plan and report have been submitted to the department.

(3) The utility imposing the charge and the department of transportation may, however, agree to either higher or lower rates with respect to the construction, operation, or maintenance of any specific storm water control facilities based upon the annual plan prescribed in subsection (2) of this section. If, after mediation, the local government utility and the department of transportation cannot agree upon the proper rate, either may commence an action in the superior court for the county in which the state highway right-of-way is located to establish the proper rate. The court in establishing the proper rate shall take into account the extent and adequacy of storm water control facilities constructed by the department and the actual benefits to the sections of state highway rights-of-way from storm water control facilities constructed, operated, and maintained by the local government utility. Control of surface water runoff and storm water runoff from state highway rights-of-way shall be deemed an actual benefit to the state highway rights-of-way. The rate for sections of state highway right-of-way as determined by the court shall be set forth in terms of the percentage of the rate for comparable real property, but shall in no event exceed the rate charged for comparable city street or county road right-of-way within the same jurisdiction.

(4) The legislature finds that the federal clean water act (national pollutant discharge elimination system, 40 C.F.R. parts 122-124), the state water pollution control act, chapter 90.48 RCW, and the highway runoff program under chapter 90.71 RCW, mandate the treatment and control of storm water runoff from state highway rights-of-way owned by the department of transportation. Appropriations made by the legislature to the department of transportation for the construction, operation, and maintenance of storm water control facilities are intended to address applicable federal and state mandates related to storm water control and treatment. This section is not intended to limit opportunities for sharing the costs of storm water improvements between cities, counties, and the state.

[2005 c 319 § 140. Prior: 1996 c 285 § 1; 1996 c 230 § 1617; 1986 c 278 § 54.]

\*Reviser's note: RCW 90.78.010 expired July 1, 2003 pursuant to 1996 c 285 § 5.