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**HOUSE BILL 1918**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Stanford, Lytton, Blake, Fitzgibbon, Pettigrew, Robinson, and Doglio

AN ACT Relating to addressing treatment of groundwater under state water codes to support rural development while protecting instream flows; amending RCW 19.27.097, 19.27.040, 58.17.110, 90.42.110, and 90.44.050; adding a new section to chapter 19.27 RCW; adding a new section to chapter 36.70A RCW; adding a new section to chapter 90.44 RCW; creating a new section; and declaring an emergency.

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

**Sec.**  RCW 19.27.097 and 2015 c 225 s 17 are each amended to read as follows:

(1)(a) Each applicant for a building permit ((~~of~~)) for a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of:

(i) A water right permit from the department of ecology((~~,~~)). However, an application for a water right is not sufficient proof of an adequate water supply;

(ii) A mitigation certificate issued by the county under section 5 of this act;

(iii) A letter from an approved water purveyor stating the ability to provide water((~~,~~)); or

(iv) Another form sufficient to verify the existence of an adequate water supply such as, where allowed under RCW 19.27.040 or other state rules, a well that satisfies subsection (5) of this section, a rainwater collection and treatment system, or a system that allows potable water to be received from trucks or other conveyances other than traditional water infrastructure piping and to be treated and stored.

(b) In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. ((~~An application for a water right shall not be sufficient proof of an adequate water supply.~~))

(2) Within counties not required or not choosing to plan pursuant to RCW 36.70A.040, the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section. Should the county and the state fail to mutually determine those areas to be designated pursuant to this subsection, the county may petition the department of enterprise services to mediate or, if necessary, make the determination.

(3) Buildings that do not need potable water facilities are exempt from the provisions of this section.

(4) The department of ecology, after consultation with local governments, may adopt rules to implement this section, which may recognize differences between high-growth and low-growth counties.

(5) If the applicant proposes to use a groundwater withdrawal that is exempt from permitting by the department of ecology under RCW 90.44.050, the building permitting authority must determine that water is available for the proposed withdrawal where water is physically available and the:

(a) Building is located in an area subject to an agreement under subsection (2) of this section;

(b) Water will be withdrawn from a source that is in hydraulic continuity with surface waters that the department of ecology has determined to have flows in excess of minimum instream flows and other senior water rights that are available for new noninterruptible withdrawals; or

(c) Applicant demonstrates that water will be provided in adequate quantities and at appropriate times and locations to mitigate for the proposed withdrawal. A mitigation certificate issued under section 5 of this act constitutes evidence of adequate mitigation.

(6) The department of ecology must make information available to landowners who are unable to rely on an approved water purveyor or on new, unmitigated use of surface or groundwaters on a year-round basis to satisfy the adequate water supply requirements of this section that explains any available mitigation options and provides information on alternative water sources allowed under local ordinances adopted pursuant to RCW 19.27.040. When appropriate, the information required under this section must be developed and distributed in cooperation with any affected local governing bodies.

**Sec.**  RCW 19.27.040 and 1990 c 2 s 11 are each amended to read as follows:

(1) The governing body of each county or city is authorized to amend the state building code as it applies within the jurisdiction of the county or city. The minimum performance standards of the codes and the objectives enumerated in RCW 19.27.020 shall not be diminished by any county or city amendments.

(2)(a) The governing body of each county and city with jurisdiction over property that is not eligible to be served by an approved water purveyor, and for which new, unmitigated use of surface or groundwater is not legally available on a year-round basis, must develop and adopt specific local ordinances outlining when and how alternative water sources may be used to satisfy the adequate water supply requirements of RCW 19.27.097 and any other state or local potable water requirements for new construction.

(b) All local ordinances adopted under this subsection must, subject to any limitations and conditions adopted by the local governing body, include systems that allow potable water to be received from trucks or other conveyances other than traditional water infrastructure piping and be treated and stored. Local ordinances may also include other alternative water sources, such as rainwater collection and treatment systems.

(3) Nothing in this chapter ((~~shall authorize~~)):

(a) Authorizes any modifications of the requirements of chapter 70.92 RCW;

(b) Prohibits or limits local governing bodies that do meet the conditions of subsection (2) of this section from adopting, consistent with state and federal law, local ordinances allowing alternative water sources to satisfy the potable water requirements of RCW 19.27.097 and any other state or local potable water requirements for new construction;

(c) Requires any building applicant to include an alternative water source allowed under a local ordinance specifically adopted under subsection (2) of this section in the building applicant's application for a building permit; or

(d) Overrides any requirements of local governments to protect health or safety.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27 RCW to read as follows:

(1) Irrespective of requirements related to the availability of an adequate water supply imposed pursuant to chapter 36.70A RCW, a county, or city as defined in RCW 19.27.015, may issue building permits for projects that were substantively active on or before October 26, 2016**.**

(a) In order for a project to be considered substantively active for purposes of this section, an applicant must have submitted a building permit application prior to October 26, 2016, or have invested a total of five hundred dollars or more in some combination of one or more of the following activities that were completed by the applicant in anticipation of obtaining a building permit:

(i) Delineating wetlands and buffers, performing a natural resources assessment, or performing an archaeological study prior to October 26, 2016;

(ii) Establishment of a state-approved private water system to serve the property prior to October 26, 2016; or

(iii) Installation of a designed, approved septic system on the property prior to October 26, 2016.

(b) The following costs are not eligible under this section:

(i) Costs associated with purchasing property;

(ii) Taxes paid on the property pursuant to Title 84 RCW;

(iii) Any cost for permitting, consultations, or assessments paid prior to January 1, 2012.

(c) In order to be eligible for a building permit under this section, an applicant must provide records documenting substantive project activity or completion.

(2) A permit issued under this section does not grant the applicant water rights.

(3) A permit issued under this section does not authorize construction activities that have not commenced by July 1, 2019.

(4) This section does not apply in basins that the department of ecology has closed to groundwater withdrawals.

**Sec.**  RCW 58.17.110 and 1995 c 32 s 3 are each amended to read as follows:

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name.

(4) If the applicant proposes to use a groundwater withdrawal that is exempt from permitting by the department of ecology under RCW 90.44.050 to provide potable water within the subdivision, the building permitting authority may determine that water is available for the proposed withdrawal where water is physically available and:

(a) The building is located in an area subject to an agreement under RCW 19.27.097(2);

(b) The water will be withdrawn from a source that is in hydraulic continuity with surface waters that the department of ecology has determined to have flows in excess of minimum instream flows and senior water rights that are available for new noninterruptible withdrawals; or

(c) The applicant demonstrates that a provision has been made to provide water in adequate quantities and at appropriate times and locations to mitigate for the proposed withdrawal. A mitigation certificate issued under section 5 of this act constitutes evidence of adequate mitigation.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70A RCW to read as follows:

(1) A county legislative authority may choose to implement a program or programs for the mitigation of impacts upon surface waters of new withdrawals from groundwaters exempt from permitting by the department of ecology under RCW 90.44.050. In consultation with the department of ecology, a county mitigation program must be scaled to encompass a single WRIA as defined in RCW 90.82.020, or subbasin within a WRIA as necessary to avoid the impairment of senior water rights. A county legislative authority that chooses to implement a mitigation program for a WRIA or subbasin that crosses county lines must coordinate with other county legislative authorities in the establishment of a mitigation program for that WRIA or subbasin.

(2) The program may be applicable to some or all areas having groundwaters in hydraulic continuity with surface waters and not served by a water distribution system available to the general public. Upon request from a county, the department of ecology shall provide the best available existing data and mapping of ground and surface water resources for each area requested by the county, consistent with section 6 of this act.

(3) In a county that adopts a mitigation program, every applicant for a building permit under RCW 19.27.097 and for subdivision approval under RCW 58.17.110 must be allowed to participate in the program if they are within the area covered by the program and the county has or reasonably anticipates having water resources available to mitigate the applicant's impact. The county may also allow additional participants seeking to mitigate impacts on surface waters of a new permit-exempt groundwater withdrawal if they are within the area covered by the program and the county has or reasonably anticipates having water resources available to mitigate the applicant's impact. A county is deemed to "reasonably anticipate" availability of mitigation water if:

(a) A source of water to be used as mitigation is identified and the department of ecology confirms that the water is reasonably likely to be available;

(b) A water right to be used as mitigation is identified and the county demonstrates a preliminary, commercially reasonable, agreement with the right holder to purchase the water right for mitigation purposes; or

(c) A mitigation project, such as offstream storage or flow augmentation, has been designed, and the department of ecology confirms that the project would fully mitigate the applicant's impact.

(4) The initial mitigation must be in place no later than five years after the issuance of the first mitigation certificate. After that initial five-year period, all water rights and other projects to be used for mitigation must be available and complete in order for a mitigation certificate to be issued.

(5) A county may accept a monetary payment as an acceptable mitigation measure, provided that the county applies all mitigation payments towards the acquisition of water rights and other measures that fully mitigate for impacts to groundwater supplies associated with the landowner's well. The county may also accept mitigation obtained through the state trust water rights program or from a water bank established by the county, the department of ecology, or by a third party, provided the bank is recognized by the department of ecology and satisfies the requirements of chapter 90.42 RCW. The county may also accept a permanent dedication to instream flows under the state trust water rights program or other change or transfer of a water right approved by the department of ecology for dedication to instream flows.

(6) The county must issue a mitigation certificate to a participant meeting the program standards. The certificate must be recorded with the title to the real property. Except for any consumptive use metering responsibilities associated with a determination of the quantity of mitigation necessary consistent with RCW 90.44.050(2)(b)(iii), the certificate recipient has no further responsibility for implementation of the mitigation but may be assessed reasonable annual fees for program operation and monitoring.

(7) All monetary compensation provided by certificate recipients and all state financial assistance for mitigation programs adopted under this section must be administered by the county solely for the costs of administering the program and for implementing mitigation measures.

(8) Subject to the availability of amounts appropriated for this specific purpose, the department of ecology must provide assistance to counties choosing to adopt a mitigation program, including:

(a) The best available information regarding ground and surface waters in the areas to be covered by a program, including surface water impact risk relative to well locations;

(b) Information regarding potential water rights that may serve as mitigation;

(c) Information on how to design potential mitigation projects, such as offstream storage or flow augmentation;

(d) Design of potential mitigation projects, such as offstream storage or flow augmentation, in subbasins where the county and the department of ecology determine that a water bank is not feasible;

(e) Information on alternative water supply programs that utilize cisterns or other methods to avoid or mitigate for new wells;

(f) Information regarding existing and potential water banks to provide mitigation;

(g) Assistance in creating a county-sponsored water bank;

(h) Entering a memorandum of agreement upon request by a county to administer all or portions of a mitigation program; and

(i) Financial assistance for creating and implementing the program.

NEW SECTION. **Sec.**  By December 1, 2020, the department of ecology must evaluate and publish maps of the legal availability of water in each water resource inventory area. To facilitate county mitigation programs authorized in section 5 of this act, the department of ecology must prioritize the mapping of water supplies in watersheds or aquifers for which the greatest number of developments relying on permit-exempt wells is anticipated to occur over the twenty year planning horizons contemplated in chapter 36.70A RCW.

**Sec.**  RCW 90.42.110 and 2003 c 144 s 3 are each amended to read as follows:

(1) The department, with the consent of the water right holder, may identify trust water rights for administration for water banking purposes, including trust water rights established before May 7, 2003.

(2) An application to transfer a water right to the trust water ((~~[rights]~~)) rights program shall be reviewed under RCW 90.03.380 at the time the water right is transferred to the trust water ((~~[rights]~~)) rights program for administration for water banking purposes, and notice of the application shall be published by the applicant as provided under RCW 90.03.280. The application must indicate the reach or reaches of the stream where the trust water right will be established before the transfer of the water right or portion thereof from the trust water ((~~[rights]~~)) rights program, and identify reasonably foreseeable future temporary or permanent beneficial uses for which the water right or portion thereof may be used by a third party upon transfer from the trust water ((~~right[s]~~)) rights program. In the event the future place of use, period of use, or other elements of the water right are not specifically identified at the time of the transfer into the trust water ((~~[rights]~~)) rights program, another review under RCW 90.03.380 will be necessary at the time of a proposed transfer from the trust water ((~~[rights]~~)) rights program.

(3) The department shall give priority to the processing of applications to transfer a water right to the trust water rights program for water banking purposes if the water right will be used to provide mitigation for small groundwater withdrawals under a county mitigation program adopted under section 5 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 90.44 RCW to read as follows:

The water withdrawal mitigation assistance account is created in the state treasury. All receipts from moneys directed to the account by the legislature must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for implementing mitigation programs authorized by RCW 19.27.097, 58.17.110, 90.42.110, and section 5 of this act.

**Sec.**  RCW 90.44.050 and 2003 c 307 s 1 are each amended to read as follows:

(1) After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of groundwaters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.

(2)(a) The department may by rule establish quantity and acreage limits for new noncommercial garden and domestic uses of water that are lower than those provided in subsection (1) of this section. The rules, which may include rules adopted under RCW 90.54.050, must be specific to a watershed or aquifer that the department believes is at or close to being fully appropriated and that lower limits on new uses of groundwater are needed in the interest of conservation and stretching the beneficial use of remaining waters as far as possible. The rules must include mechanisms to verify that the limits are not being violated.

(b) In instances for which mitigation associated with a new permit-exempt well is necessary in order to avoid impairment to a senior water right, the amount of mitigation must be based upon the lesser of:

(i) The amount established in subsection (1) of this section;

(ii) The amount established by the department by rule under (a) of this subsection; or

(iii) The consumptive use associated with the new permit-exempt well, if the new permit-exempt well is metered and consumptive use data from the metering is provided to a county consistent with the terms of a mitigation certificate issued under section 5 of this act.

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

**--- END ---**