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**HOUSE BILL 2772**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Kretz, Maycumber, Walsh, Dent, Buys, Schmick, Van Werven, Manweller, Condotta, Hayes, Smith, Stokesbary, Haler, Barkis, and Griffey

AN ACT Relating to addressing the ecological effects of large-scale water withdrawals for urban domestic purposes; amending RCW 19.27.097, 90.03.386, and 43.20.260; adding a new section to chapter 43.21C RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec.**  The discussion surrounding the implications of the 2016 Washington supreme court decision in *Whatcom County v. Western Washington Growth Management Hearings Board*, also known as the *Hirst* decision, has revealed a vast misunderstanding of the ecological impacts of water consumption in our state. Farmers and residents of rural Washington have a unique and stewardship-based connection to the land that makes them intimately aware of natural water and wildlife cycles. Rural residents, many of whom provide agricultural products that feed Washington's residents and fuel Washington's economy, recognize the critical importance of wise water usage. They struggle with the real risks of financial peril and the loss of life and property when water resources are scarce.

Water users in rural areas are direct participants in a tightly drawn and highly localized water cycle, withdrawing water from the aquifer for the needs of their household, then returning the vast majority of that water to the same aquifer through infiltration from on-site septic systems. By contrast, the water consumed by many urban water users is piped in from sources located high in the watershed, oftentimes many miles from the home in which it is consumed. It is then flushed away as wastewater, ultimately discharged much further from its original source.

The *Hirst* decision has generated a robust discussion concerning the impact that the withdrawal of groundwater for domestic purposes can have on salmon populations, instream resources, watershed function, and other ecological values. Unfortunately, this discussion has focused primarily on perceived ecological impacts that result from individual wells used as a source of water for single-family homes while ignoring the much larger withdrawals of water for urban areas. In particular, the discussions surrounding the *Hirst* decision do not examine the impact on instream flows that stem from the large-scale water withdrawals made in order to provide a water supply for the major metropolitan areas of the state.

In light of the claims that have been made concerning the seriousness of the threat to salmon populations and other instream resources posed by permit exempt wells serving single-family homes, and in the spirit of the one Washington ethic, the legislature declares the need to establish the impacts that water withdrawals from major metropolitan areas can have on the ecosystem, and to require a thorough analysis of the environmental impacts associated with the large-scale water withdrawals that are used as a source of water for Washington's largest cities.

NEW SECTION. **Sec.**  A new section is added to chapter 43.21C RCW to read as follows:

(1) Before a city with a population greater than one hundred thousand may issue a building permit for a building necessitating potable water after the effective date of this section, the city shall prepare an environmental impact statement in order to evaluate the past, present, and future environmental impacts of water withdrawals associated with domestic water consumption by the inhabitants of the city.

(2) The impacts addressed by the environmental impact statement prepared under this section must include, but are not limited to:

(a) Impacts on instream flows in any water resource inventory areas in which the source or sources for the city's domestic water supply may be located;

(b) Impacts on Pacific salmon populations;

(c) Impacts on water availability in any water resource inventory areas in which the source or sources for the city's domestic water supply may be located; and

(d) Impacts on tribal treaty fishing rights.

(3) A city preparing an environmental impact statement under this section may not issue a final environmental impact statement under this section until the city has obtained approval for the draft environmental impact statement from each federally recognized Indian tribe that has either reservation land or a usual and accustomed harvest area in any water resource inventory area in which the source or sources for the city's domestic water supply may be located.

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

(1) Each applicant for a building permit of 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 a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. 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. 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.

(4) After the effective date of this section, no city with a population greater than one hundred thousand may issue a building permit for a building necessitating potable water until the city has prepared and issued a final environmental impact statement as described in section 2 of this act.

**Sec.**  RCW 90.03.386 and 2003 1st sp.s. c 5 s 5 are each amended to read as follows:

(1) Within service areas established pursuant to chapter 43.20 or 70.116 RCW, the department of ecology and the department of health shall coordinate approval procedures to ensure compliance and consistency with the approved water system plan or small water system management program.

(2) The effect of the department of health's approval of a planning or engineering document that describes a municipal water supplier's service area under chapter 43.20 RCW, or the local legislative authority's approval of service area boundaries in accordance with procedures adopted pursuant to chapter 70.116 RCW, is that the place of use of a surface water right or groundwater right used by the supplier includes any portion of the approved service area that was not previously within the place of use for the water right if the supplier is in compliance with the terms of the water system plan or small water system management program, including those regarding water conservation, and the alteration of the place of use is not inconsistent, regarding an area added to the place of use, with: Any comprehensive plans or development regulations adopted under chapter 36.70A RCW; any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county; or any watershed plan approved under chapter 90.82 RCW, or a comprehensive watershed plan adopted under RCW 90.54.040(1) after September 9, 2003, if such a watershed plan has been approved for the area.

(3) A municipal water supplier must implement cost-effective water conservation in accordance with the requirements of RCW 70.119A.180 as part of its approved water system plan or small water system management program. In preparing its regular water system plan update, a municipal water supplier with one thousand or more service connections must describe: (a) The projects, technologies, and other cost-effective measures that comprise its water conservation program; (b) improvements in the efficiency of water system use resulting from implementation of its conservation program over the previous six years; and (c) projected effects of delaying the use of existing inchoate rights over the next six years through the addition of further cost-effective water conservation measures before it may divert or withdraw further amounts of its inchoate right for beneficial use. When establishing or extending a surface or ground water right construction schedule under RCW 90.03.320, the department must take into consideration the public water system's use of conserved water.

(4)(a) A municipal water supplier that supplies water to a city with a population greater than one hundred thousand may not deliver more than three hundred fifty gallons per day to a single family residence located within such a city, and no more than one hundred fifty gallons per day per residence to an apartment building, townhome, condominium, or other multifamily residential building located within such a city, except as provided in (b) of this subsection.

(b) A municipal water supplier that supplies water to a city with a population greater than one hundred thousand shall assess and collect a fee of one dollar per gallon for every gallon over three hundred fifty gallons per day delivered to a single-family residence located within such a city, and for every gallon over one hundred fifty gallons per day per residence delivered to an apartment building, townhome, condominium, or other multifamily residential building located within such a city.

(c) A municipal water supplier that collects fees under (b) of this subsection shall remit the proceeds from any such fees on a quarterly basis to the Washington state recreation and conservation office to be deposited into the habitat conservation account for the purpose of habitat restoration and enhancement.

**Sec.**  RCW 43.20.260 and 2003 1st sp.s. c 5 s 8 are each amended to read as follows:

In approving the water system plan of a public water system, the department shall ensure that water service to be provided by the system under the plan for any new industrial, commercial, or residential use is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area. A municipal water supplier, as defined in RCW 90.03.015, has a duty to provide retail water service within its retail service area if: (1) Its service can be available in a timely and reasonable manner; (2) the municipal water supplier has sufficient water rights to provide the service; (3) the municipal water supplier has sufficient capacity to serve the water in a safe and reliable manner as determined by the department of health; and (4) it is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area and, for water service by the water utility of a city or town, with the utility service extension ordinances of the city or town. A municipal water supplier, as defined in RCW 90.03.015, that supplies water to a city with a population greater than one hundred thousand may not supply water in a way that results in the water being discharged from a publicly owned treatment works into a water resource inventory area that is different from the water resource inventory area in which the water originated.

NEW SECTION. **Sec.**  This act may be known and cited as the one Washington water 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.

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