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**ENGROSSED SUBSTITUTE SENATE BILL 6312**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Haugen, Hobbs, Honeyford, Hatfield, Hargrove, and Shin)

READ FIRST TIME 02/03/12.

1       AN ACT Relating to promoting job creation by ensuring access to  
2 domestic water for home construction; amending RCW 90.54.120,  
3 90.54.020, and 19.27.097; reenacting and amending RCW 90.54.050; adding  
4 a new section to chapter 90.44 RCW; adding a new section to chapter  
5 90.54 RCW; and creating new sections.

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

7       NEW SECTION. **Sec. 1.** (1) The legislature finds that the water  
8 resources act of 1971, chapter 90.54 RCW, contains a list of water  
9 policy fundamentals that are to guide the state's water management  
10 agency in adopting basin rules to allocate the water resources of the  
11 state. In effect since 1971, the unprioritized list of water policy  
12 fundamentals include: (a) The allocation of water among potential uses  
13 and users is to be based on securing the maximum net benefits to the  
14 state; and (b) that adequate supplies of water are to be preserved and  
15 protected to satisfy domestic needs. The legislature finds that ready  
16 access to sufficient water to fulfill domestic needs has been and  
17 continues to be a fundamental public value. The legislature finds that  
18 some basin rules adopted or amended after 2006 for areas in the state  
19 with moderate to heavy rainfall do not provide adequate water to

1 fulfill the directive of providing adequate water to satisfy domestic  
2 needs in rural areas, and instead constrain water use more  
3 restrictively than in other basins with similar conditions and levels  
4 of precipitation.

5 (2) Further, the legislature finds that state and local governments  
6 have established and funded a vast array of environmental and habitat  
7 improvement and acquisition programs and that these programs can and  
8 should provide environmental, habitat, and instream flow benefits where  
9 needed. The legislature acknowledges that the availability of state  
10 and local funding for these environmental and habitat programs is  
11 dependent on the tax revenues generated by the home construction  
12 industry and that available funding has dropped as home construction  
13 has declined dramatically in recent years.

14 (3) The purpose of this legislation is to promote reasonable use by  
15 the public of the public's water to ensure that sufficient water to  
16 serve essential domestic needs be readily available for homes in rural  
17 areas where public water service is not readily available. An  
18 additional purpose of this legislation is to encourage jobs in, and  
19 stimulus to, the home construction industry, in order to produce  
20 revenues to support state and local governmental programs and services,  
21 including environmental and habitat improvements funded by state and  
22 local governments.

23 (4) The legislature finds that the Columbia river basin water  
24 supply program, chapter 90.90 RCW, has provided a successful model to  
25 addressing the needs of both instream and out-of-stream water needs in  
26 that basin. It is the intent of the legislature to establish a similar  
27 approach to addressing water supply needs in rural areas within the  
28 Skagit river basin.

29 (5) For the reasons stated in this section, the intent of the  
30 legislature is for this act to be remedial in nature and apply  
31 retroactively and prospectively to basin rules adopted or amended under  
32 chapters 90.22 and 90.54 RCW after January 1, 2006, for the Skagit  
33 river basin. It is also the intent of the legislature for this act to  
34 allow people in rural areas in the Skagit river basin to move forward  
35 with construction of their homes in a manner that is sufficiently  
36 protective of instream resources and water right holders. It is also  
37 the intent of the legislature to provide funding for more coordinated

1 and effective mechanism to protect and, where possible, enhance impacts  
2 to stream flows for fish.

3 **Sec. 2.** RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended  
4 to read as follows:

5 For the purposes of this chapter, unless the context is clearly to  
6 the contrary, the following definitions shall be used:

7 (1) "Department" means department of ecology.

8 (2) "Domestic water use" means potable water to satisfy the needs  
9 of a household, including water used for drinking, bathing, sanitary  
10 purposes, cooking, laundering, watering a lawn and noncommercial  
11 garden, care of household pets, and other incidental uses.

12 (3) "Skagit river basin" means water resource inventory areas  
13 numbers 3 and 4 established under chapter 173-500 WAC.

14 (4) "Utilize" or "utilization" shall not only mean use of water for  
15 such long recognized consumptive or nonconsumptive beneficial purposes  
16 as domestic, stock watering, industrial, commercial, agricultural,  
17 irrigation, hydroelectric power production, thermal power production,  
18 mining, recreational, maintenance of wildlife and fishlife purposes,  
19 but includes the retention of water in lakes and streams for the  
20 protection of environmental, scenic, aesthetic and related purposes,  
21 upon which economic values have not been placed historically and are  
22 difficult to quantify.

23 **Sec. 3.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to read  
24 as follows:

25 Utilization and management of the waters of the state shall be  
26 guided by the following general declaration of fundamentals:

27 (1) Uses of water for domestic, stock watering, industrial,  
28 commercial, agricultural, irrigation, hydroelectric power production,  
29 mining, fish and wildlife maintenance and enhancement, recreational,  
30 and thermal power production purposes, and preservation of  
31 environmental and aesthetic values, and all other uses compatible with  
32 the enjoyment of the public waters of the state, are declared to be  
33 beneficial.

34 (2) Allocation of waters among potential uses and users shall be  
35 based generally on the securing of the maximum net benefits for the

1 people of the state. Maximum net benefits shall constitute total  
2 benefits less costs including opportunities lost.

3 (3) The quality of the natural environment shall be protected and,  
4 where possible, enhanced as follows:

5 (a) Perennial rivers and streams of the state shall be retained  
6 with base flows necessary to provide for preservation of wildlife,  
7 fish, scenic, aesthetic and other environmental values, and  
8 navigational values. Lakes and ponds shall be retained substantially  
9 in their natural condition. Withdrawals of water which would conflict  
10 therewith shall be authorized only in those situations where it is  
11 clear that overriding considerations of the public interest will be  
12 served.

13 (b) Waters of the state shall be of high quality. Regardless of  
14 the quality of the waters of the state, all wastes and other materials  
15 and substances proposed for entry into said waters shall be provided  
16 with all known, available, and reasonable methods of treatment prior to  
17 entry. Notwithstanding that standards of quality established for the  
18 waters of the state would not be violated, wastes and other materials  
19 and substances shall not be allowed to enter such waters which will  
20 reduce the existing quality thereof, except in those situations where  
21 it is clear that overriding considerations of the public interest will  
22 be served. Technology-based effluent limitations or standards for  
23 discharges for municipal water treatment plants located on the  
24 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted  
25 to reflect credit for substances removed from the plant intake water  
26 if:

27 (i) The municipality demonstrates that the intake water is drawn  
28 from the same body of water into which the discharge is made; and

29 (ii) The municipality demonstrates that no violation of receiving  
30 water quality standards or appreciable environmental degradation will  
31 result.

32 (4) The development of multipurpose water storage facilities shall  
33 be a high priority for programs of water allocation, planning,  
34 management, and efficiency. The department, other state agencies, and  
35 local governments(~~(, and planning units formed under section 107 or 108~~  
36 ~~of this act)~~) shall evaluate the potential for the development of new  
37 storage projects and the benefits and effects of storage in reducing  
38 damage to stream banks and property, increasing the use of land,

1 providing water for municipal, industrial, agricultural, power  
2 generation, and other beneficial uses, and improving stream flow  
3 regimes for fisheries and other instream uses.

4 (5)(a) Adequate and safe supplies of water shall be preserved and  
5 protected in potable condition to satisfy (~~human~~) domestic water use  
6 needs.

7 (b) Rules adopted by the department under this chapter for the  
8 Skagit river basin may not constrain new groundwater withdrawals for  
9 domestic uses to less than three hundred fifty gallons per day per  
10 dwelling unit, if the dwelling utilizes an on-site septic system and a  
11 water supply from a public water system cannot be provided pursuant to  
12 RCW 43.20.260.

13 (6) Multiple-purpose impoundment structures are to be preferred  
14 over single-purpose structures. Due regard shall be given to means and  
15 methods for protection of fishery resources in the planning for and  
16 construction of water impoundment structures and other artificial  
17 obstructions.

18 (7) Federal, state, and local governments, individuals,  
19 corporations, groups, and other entities shall be encouraged to carry  
20 out practices of conservation as they relate to the use of the waters  
21 of the state. The department may list or quantify by water resource  
22 inventory area the instream flow, groundwater recharge, and fish  
23 habitat improvements that result from investments by federal, state,  
24 and local governments in tax-supported programs. The department may  
25 apply for funding from state and federal sources for projects and  
26 activities that enhance flow and habitat conditions in rivers and  
27 streams to address areas of concern including those that arise from the  
28 use of water authorized under subsection (5)(b) of this section.

29 (8)(a) Funding provided to the department's water acquisition  
30 program to offset impacts to stream flows in rural areas, including  
31 those that result from subsection (5)(b) of this section, must be used  
32 to protect, and where possible enhance, instream flows in rural areas  
33 by acquiring water rights, incentivizing water conservation, and low  
34 impact development practices, and promoting any other instream flow  
35 enhancement projects, including but not limited to collection,  
36 retention, and release of rainwater, constructing ponds, wetlands, and  
37 other water impoundments, and storm water infiltration.

1        (b) The department shall permanently dedicate water developed or  
2 acquired for the purposes in (a) of this subsection to the state's  
3 trust water rights program, chapter 90.42 RCW. The department shall  
4 give preference to instream flow improvement proposals in the Skagit  
5 river basin.

6        (9) In addition to traditional development approaches, improved  
7 water use efficiency, conservation, and use of reclaimed water shall be  
8 emphasized in the management of the state's water resources and in some  
9 cases will be a potential new source of water with which to meet future  
10 needs throughout the state. Use of reclaimed water shall be encouraged  
11 through state and local planning and programs with incentives for state  
12 financial assistance recognizing programs and plans that encourage the  
13 use of conservation and reclaimed water use, and state agencies shall  
14 continue to review and reduce regulatory barriers and streamline  
15 permitting for the use of reclaimed water where appropriate.

16        ~~((+8+))~~ (10) Development of water supply systems, whether publicly  
17 or privately owned, which provide water to the public generally in  
18 regional areas within the state shall be encouraged. Development of  
19 water supply systems for multiple domestic use which will not serve the  
20 public generally shall be discouraged where water supplies are  
21 available from water systems serving the public.

22        ~~((+9) Full)~~ (11) Proper and pragmatic recognition shall be given  
23 in the administration of water allocation and use programs to the  
24 natural interrelationships of surface and groundwaters including: (a)  
25 Providing recognition for the recharge of groundwaters by home septic  
26 systems for indoor water uses; and (b) providing recognition that there  
27 are widely varying degrees of potential impact to surface water from  
28 groundwater withdrawals that are generally less than a one-to-one ratio  
29 depending on a number of factors including, but not limited to, the  
30 geology and porosity of underground formations, well depth, withdrawing  
31 water from deeper aquifers rather than shallow aquifers, distance of  
32 the well from surface water bodies, season of use, rainfall, and  
33 temperature.

34        ~~((+10+))~~ (12) Expressions of the public interest will be sought at  
35 all stages of water planning and allocation discussions.

36        ~~((+11+))~~ (13) Water management programs, including but not limited  
37 to, water quality, flood control, drainage, erosion control and storm  
38 runoff are deemed to be in the public interest.

1       **Sec. 4.** RCW 90.54.050 and 1997 c 439 s 2 and 1997 c 32 s 3 are  
2 each reenacted and amended to read as follows:

3       (1)(a) In conjunction with the programs provided for in RCW  
4 90.54.040(1), whenever it appears necessary to the director in carrying  
5 out the policy of this chapter, the department may by rule adopted  
6 pursuant to chapter 34.05 RCW:

7       ~~((1))~~ (i) Reserve and set aside waters for beneficial utilization  
8 in the future, and

9       ~~((2))~~ (ii) When sufficient information and data are lacking to  
10 allow for the making of sound decisions, withdraw various waters of the  
11 state from additional appropriations until such data and information  
12 are available.

13       (b) In reserving and setting aside water in accordance with (a)(i)  
14 of this subsection, and in withdrawing waters of the state from  
15 additional appropriation under this title, any action under this  
16 section shall be consistent with the directive in RCW 90.54.020(5)(b).  
17 Before proposing the adoption of rules to withdraw waters of the state  
18 from additional appropriation, the department shall consult with the  
19 standing committees of the house of representatives and the senate  
20 having jurisdiction over water resource management issues.

21       (2) Prior to the adoption of a rule under this section, the  
22 department shall conduct a public hearing in each county in which  
23 waters relating to the rule are located. The public hearing shall be  
24 preceded by a notice placed in a newspaper of general circulation  
25 published within each of said counties. Rules adopted hereunder shall  
26 be subject to review in accordance with the provisions of RCW  
27 34.05.240.

28       NEW SECTION. **Sec. 5.** A new section is added to chapter 90.44 RCW  
29 to read as follows:

30       (1) Each parcel of property that is located within the Skagit river  
31 basin is entitled to a withdrawal of public groundwater for domestic  
32 uses in an amount not less than three hundred fifty gallons per day per  
33 dwelling unit, if the dwelling utilizes an on-site septic system and a  
34 water supply from a public water system cannot be provided pursuant to  
35 RCW 43.20.260, and, to the extent it is regularly used beneficially,  
36 shall be entitled to a right equal to that established by a permit  
37 issued under the provisions of this chapter.

1 (2) Nothing in chapter . . ., Laws of 2012 (this act) is intended  
2 to alter, limit, impair, or amend the ability to withdraw water  
3 otherwise allowed under the exemption provided in RCW 90.44.050.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.54 RCW  
5 to read as follows:

6 (1) Each parcel of property that is located within the Skagit river  
7 basin is entitled to a withdrawal of public groundwater for domestic  
8 uses in an amount not less than three hundred fifty gallons per day per  
9 dwelling unit, if the dwelling utilizes an on-site septic system and a  
10 water supply from a public water system cannot be provided pursuant to  
11 RCW 43.20.260, and, to the extent it is regularly used beneficially,  
12 shall be entitled to a right equal to that established by a permit  
13 issued under the provisions of chapter 90.44 RCW.

14 (2) Nothing in chapter . . ., Laws of 2012 (this act) is intended  
15 to alter, limit, impair, or amend the ability to withdraw water  
16 otherwise allowed under the exemption provided in RCW 90.44.050.

17 **Sec. 7.** RCW 19.27.097 and 2010 c 271 s 302 are each amended to  
18 read as follows:

19 (1)(a) Each applicant for a building permit of a building  
20 necessitating potable water shall provide evidence of an adequate water  
21 supply for the intended use of the building. Evidence may be in the  
22 form of a water right permit from the department of ecology, a letter  
23 from an approved water purveyor stating the ability to provide water,  
24 or another form sufficient to verify the existence of an adequate water  
25 supply. In addition to other authorities, the county or city may  
26 impose conditions on building permits requiring connection to an  
27 existing public water system where the existing system is willing and  
28 able to provide safe and reliable potable water to the applicant with  
29 reasonable economy and efficiency. An application for a water right  
30 shall not be sufficient proof of an adequate water supply.

31 (b) For building permits in the Skagit river basin, for single-  
32 family dwellings that will utilize an on-site septic system and where  
33 water supply from a public water system cannot be provided pursuant to  
34 RCW 43.20.260, the applicant satisfies the requirement to show that  
35 water is legally available by submitting a signed declaration of intent



1 to comply with RCW 90.54.020(5)(b). In addition, the local  
2 jurisdiction may require proof that water is physically available and  
3 that it meets applicable drinking water quality standards.

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

13 (3) Buildings that do not need potable water facilities are exempt  
14 from the provisions of this section. The department of ecology, after  
15 consultation with local governments, may adopt rules to implement this  
16 section, which may recognize differences between high-growth and low-  
17 growth counties.

18 NEW SECTION. Sec. 8. Sections 3(5) and 4(3) of this act apply  
19 retroactively to January 1, 2001, as well as prospectively.

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