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SENATE BILL 6584

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State of Washington

64th Legislature

2016 Regular Session

By Senators Pearson, Bailey, and Warnick

Read first time 01/27/16. Referred to Committee on Agriculture,  
Water & Rural Economic Development.

1 AN ACT Relating to establishing a proof of water reliance  
2 application process by which any property owner who relies on legal  
3 water availability to obtain a building permit prior to the  
4 invalidation of an instream flow rule may secure proof that continued  
5 use of water at the property will not be considered to be causing  
6 impairment of minimum flows; adding a new section to chapter 90.03  
7 RCW; and creating a new section.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that it is  
10 fundamentally unfair that property owners who legally acquire  
11 building permits based on state and local government determinations  
12 of water availability may later lose the ability to use water at  
13 their property as a result of judicial action invalidating an  
14 instream flow rule or instream flow rule amendment. Property owners  
15 who have found themselves in such a position have discovered they  
16 might no longer have the ability to build on their property, sell it,  
17 or borrow against it, among other severe disadvantages. The  
18 legislature recognizes that those disadvantages are not the fault of  
19 property owners who avail themselves of permitting processes when  
20 water is legally available according to government agencies.  
21 Furthermore, the legislature finds that the exercise of enforcement

1 discretion against such property owners might not establish the  
2 necessary assurance required to allow those owners to engage in usual  
3 and expected uses of their property. The legislature also understands  
4 that, in many cases, the amount of water use represented by property  
5 owners described in this section is minimal. With this act, the  
6 legislature intends to establish an orderly process by which property  
7 owners described in this section may acquire proof from the  
8 department of ecology that their expectation to use their property  
9 established in reliance on government determinations of water  
10 availability will be recognized and supported because such owners  
11 will not be considered to be causing impairment of minimum flows.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03  
13 RCW to read as follows:

14 (1) If an instream flow rule is invalidated as a result of  
15 judicial action, a person who received a building permit for property  
16 that was subject to the instream flow rule that was invalidated is  
17 not considered to be causing impairment of minimum flows if the  
18 person acquires a proof of water reliance as established in this  
19 section. For the purposes of this section, "instream flow rule" means  
20 any rule, or any amendment to such a rule, relating to establishing  
21 minimum instream levels and flows under this chapter or chapter 90.22  
22 or 90.54 RCW.

23 (2) For the purposes of this section, "proof of water reliance"  
24 means a document issued by the department establishing that the  
25 holder is not considered to be causing impairment of minimum flows  
26 under any instream flow rule identified in the proof of water  
27 reliance. A person may apply to the department for a proof of water  
28 reliance if:

29 (a) The person received a building permit for property that was  
30 subject to an instream flow rule that was invalidated as a result of  
31 judicial action after the person obtained the building permit;

32 (b) The person who obtained the building permit is relying on a  
33 source of water that is exempt under RCW 90.44.050 to provide an  
34 adequate water supply to the property; and

35 (c) Within five years from the effective date of this section or  
36 the date of the invalidation of an instream flow rule, whichever is  
37 later, the person applies to the department for a proof of water  
38 reliance.

1           (3) The department shall provide a proof of water reliance to any  
2 person who satisfies the conditions under subsection (2) of this  
3 section. Each proof of water reliance must identify the instream flow  
4 rule or rules for which the proof of water reliance applies.

5           (4) The department shall create and provide an application form  
6 for processing applications for a proof of water reliance. The  
7 department shall expeditiously process all applications for a proof  
8 of water reliance as they are received.

9           (5) The department shall publish information on the department's  
10 web site informing the public about the process for applying for a  
11 proof of water reliance, including information about the eligibility  
12 requirements established in this section. The department shall not  
13 adopt any rule or policy that alters, limits, or restricts the  
14 eligibility criteria for a proof of water reliance established in  
15 this section.

16           (6) This section does not affect the department's enforcement  
17 authority as it applies to instream flow rules for any person who  
18 does not acquire a proof of water reliance under this section.

19           (7) This section does not affect the ability of any person to  
20 pursue any lawful action for the protection of any water right that  
21 is not a minimum flow established by an instream flow rule.

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