
HOUSE BILL 1918

State of Washington

65th Legislature

2017 Regular Session

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

Read first time 02/02/17. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to addressing treatment of groundwater under
2 state water codes to support rural development while protecting
3 instream flows; amending RCW 19.27.097, 19.27.040, 58.17.110,
4 90.42.110, and 90.44.050; adding a new section to chapter 19.27 RCW;
5 adding a new section to chapter 36.70A RCW; adding a new section to
6 chapter 90.44 RCW; creating a new section; and declaring an
7 emergency.

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

9 **Sec. 1.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to
10 read as follows:

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

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

18 (ii) A mitigation certificate issued by the county under section
19 5 of this act;

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

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

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

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

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

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

28 (5) If the applicant proposes to use a groundwater withdrawal
29 that is exempt from permitting by the department of ecology under RCW
30 90.44.050, the building permitting authority must determine that
31 water is available for the proposed withdrawal where water is
32 physically available and the:

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

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

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

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

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

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

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

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

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

38 (a) Authorizes any modifications of the requirements of chapter
39 70.92 RCW;

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

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

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

13 NEW SECTION. Sec. 3. A new section is added to chapter 19.27
14 RCW to read as follows:

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

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

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

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

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

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

34 (i) Costs associated with purchasing property;

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

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

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

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

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

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

10 **Sec. 4.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
11 as follows:

12 (1) The city, town, or county legislative body shall inquire into
13 the public use and interest proposed to be served by the
14 establishment of the subdivision and dedication. It shall determine:

15 (a) If appropriate provisions are made for, but not limited to, the
16 public health, safety, and general welfare, for open spaces, drainage
17 ways, streets or roads, alleys, other public ways, transit stops,
18 potable water supplies, sanitary wastes, parks and recreation,
19 playgrounds, schools and schoolgrounds, and shall consider all other
20 relevant facts, including sidewalks and other planning features that
21 assure safe walking conditions for students who only walk to and from
22 school; and (b) whether the public interest will be served by the
23 subdivision and dedication.

24 (2) A proposed subdivision and dedication shall not be approved
25 unless the city, town, or county legislative body makes written
26 findings that: (a) Appropriate provisions are made for the public
27 health, safety, and general welfare and for such open spaces,
28 drainage ways, streets or roads, alleys, other public ways, transit
29 stops, potable water supplies, sanitary wastes, parks and recreation,
30 playgrounds, schools and schoolgrounds and all other relevant facts,
31 including sidewalks and other planning features that assure safe
32 walking conditions for students who only walk to and from school; and
33 (b) the public use and interest will be served by the platting of
34 such subdivision and dedication. If it finds that the proposed
35 subdivision and dedication make such appropriate provisions and that
36 the public use and interest will be served, then the legislative body
37 shall approve the proposed subdivision and dedication. Dedication of
38 land to any public body, provision of public improvements to serve
39 the subdivision, and/or impact fees imposed under RCW 82.02.050

1 through 82.02.090 may be required as a condition of subdivision
2 approval. Dedications shall be clearly shown on the final plat. No
3 dedication, provision of public improvements, or impact fees imposed
4 under RCW 82.02.050 through 82.02.090 shall be allowed that
5 constitutes an unconstitutional taking of private property. The
6 legislative body shall not as a condition to the approval of any
7 subdivision require a release from damages to be procured from other
8 property owners.

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

14 (4) If the applicant proposes to use a groundwater withdrawal
15 that is exempt from permitting by the department of ecology under RCW
16 90.44.050 to provide potable water within the subdivision, the
17 building permitting authority may determine that water is available
18 for the proposed withdrawal where water is physically available and:

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

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

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

31 NEW SECTION. Sec. 5. A new section is added to chapter 36.70A
32 RCW to read as follows:

33 (1) A county legislative authority may choose to implement a
34 program or programs for the mitigation of impacts upon surface waters
35 of new withdrawals from groundwaters exempt from permitting by the
36 department of ecology under RCW 90.44.050. In consultation with the
37 department of ecology, a county mitigation program must be scaled to
38 encompass a single WRIA as defined in RCW 90.82.020, or subbasin
39 within a WRIA as necessary to avoid the impairment of senior water

1 rights. A county legislative authority that chooses to implement a
2 mitigation program for a WRIA or subbasin that crosses county lines
3 must coordinate with other county legislative authorities in the
4 establishment of a mitigation program for that WRIA or subbasin.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 NEW SECTION. **Sec. 6.** By December 1, 2020, the department of
11 ecology must evaluate and publish maps of the legal availability of
12 water in each water resource inventory area. To facilitate county
13 mitigation programs authorized in section 5 of this act, the
14 department of ecology must prioritize the mapping of water supplies
15 in watersheds or aquifers for which the greatest number of
16 developments relying on permit-exempt wells is anticipated to occur
17 over the twenty year planning horizons contemplated in chapter 36.70A
18 RCW.

19 **Sec. 7.** RCW 90.42.110 and 2003 c 144 s 3 are each amended to
20 read as follows:

21 (1) The department, with the consent of the water right holder,
22 may identify trust water rights for administration for water banking
23 purposes, including trust water rights established before May 7,
24 2003.

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

1 at the time of the transfer into the trust water (~~(rights)~~) rights
2 program, another review under RCW 90.03.380 will be necessary at the
3 time of a proposed transfer from the trust water (~~(rights)~~) rights
4 program.

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

10 NEW SECTION. Sec. 8. A new section is added to chapter 90.44
11 RCW to read as follows:

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

19 **Sec. 9.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to
20 read as follows:

21 (1) After June 6, 1945, no withdrawal of public groundwaters of
22 the state shall be begun, nor shall any well or other works for such
23 withdrawal be constructed, unless an application to appropriate such
24 waters has been made to the department and a permit has been granted
25 by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of
26 public groundwaters for stock-watering purposes, or for the watering
27 of a lawn or of a noncommercial garden not exceeding one-half acre in
28 area, or for single or group domestic uses in an amount not exceeding
29 five thousand gallons a day, or as provided in RCW 90.44.052, or for
30 an industrial purpose in an amount not exceeding five thousand
31 gallons a day, is and shall be exempt from the provisions of this
32 section, but, to the extent that it is regularly used beneficially,
33 shall be entitled to a right equal to that established by a permit
34 issued under the provisions of this chapter: PROVIDED, HOWEVER, That
35 the department from time to time may require the person or agency
36 making any such small withdrawal to furnish information as to the
37 means for and the quantity of that withdrawal: PROVIDED, FURTHER,
38 That at the option of the party making withdrawals of groundwaters of

1 the state not exceeding five thousand gallons per day, applications
2 under this section or declarations under RCW 90.44.090 may be filed
3 and permits and certificates obtained in the same manner and under
4 the same requirements as is in this chapter provided in the case of
5 withdrawals in excess of five thousand gallons a day.

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

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

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

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

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

27 NEW SECTION. Sec. 10. This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of
29 the state government and its existing public institutions, and takes
30 effect immediately.

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