
SENATE BILL 5024

State of Washington

65th Legislature

2017 Regular Session

By Senators McCoy, Hasegawa, Chase, Lias, Rolfes, Cleveland, Wellman, Frockt, Pedersen, Keiser, and Kuderer

Prefiled 01/06/17. Read first time 01/09/17. Referred to Committee on Agriculture, Water, Trade & Economic Development.

1 AN ACT Relating to groundwater supply availability in areas with
2 ground and surface water interaction; amending RCW 19.27.097,
3 58.17.110, and 90.42.110; adding a new section to chapter 36.70 RCW;
4 adding a new section to chapter 90.44 RCW; creating new sections;
5 making appropriations; providing an expiration date; and declaring an
6 emergency.

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

8 NEW SECTION. **Sec. 1.** In the 1990 growth management act, the
9 legislature directed that local governments include measures to
10 protect water resources in comprehensive land use plans and
11 development regulations and also required evidence of water supply
12 availability when issuing building permits and approving
13 subdivisions. Recently, the Washington supreme court has affirmed
14 that under these provisions the water supply to serve the building or
15 the subdivision must be both physically available and legally
16 available, meaning that the appropriation of the supply will not
17 impair senior water rights, including minimum surface water flows
18 adopted by state regulation. Therefore, it is the intent of this act
19 to provide effective and timely mechanisms for counties to implement
20 these requirements, and to require state assistance in providing
21 technical and financial assistance as well as administering the trust

1 water rights program and other water resource management programs to
2 ensure that water supplies are available to serve domestic uses in
3 rural areas while protecting senior water rights from impairment.

4 **Sec. 2.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to
5 read as follows:

6 (1) Each applicant for a building permit of a building
7 necessitating potable water shall provide evidence of an adequate
8 water supply for the intended use of the building. Evidence may be in
9 the form of a water right permit from the department of ecology, a
10 mitigation certificate issued by the county under subsection (4) of
11 this section, a letter from an approved water purveyor stating the
12 ability to provide water, or another form sufficient to verify the
13 existence of an adequate water supply. In addition to other
14 authorities, the county or city may impose conditions on building
15 permits requiring connection to an existing public water system where
16 the existing system is willing and able to provide safe and reliable
17 potable water to the applicant with reasonable economy and
18 efficiency. An application for a water right shall not be sufficient
19 proof of an adequate water supply.

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

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

34 (4) If the applicant proposes to use a groundwater withdrawal
35 that is exempt from permitting by the department of ecology under RCW
36 90.44.050, the building permitting authority may determine that water
37 is available for the proposed withdrawal where water is physically
38 available and:

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

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

8 (c) The applicant demonstrates that a provision has been made to
9 provide water in adequate quantities and at appropriate times and
10 locations to mitigate for the proposed withdrawal. A mitigation
11 certificate issued under section 4 of this act constitutes evidence
12 of adequate mitigation.

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

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

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

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

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

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

17 (4) If the applicant proposes to use a groundwater withdrawal
18 that is exempt from permitting by the department of ecology under RCW
19 90.44.050 to provide potable water within the subdivision, the
20 building permitting authority may determine that water is available
21 for the proposed withdrawal where water is physically available and:

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

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

29 (c) The applicant demonstrates that a provision has been made to
30 provide water in adequate quantities and at appropriate times and
31 locations to mitigate for the proposed withdrawal. A mitigation
32 certificate issued under section 4 of this act constitutes evidence
33 of adequate mitigation.

34 NEW SECTION. Sec. 4. A new section is added to chapter 36.70
35 RCW to read as follows:

36 (1) Each county legislative authority may choose to implement a
37 program for the mitigation of impacts upon surface waters of new
38 withdrawals from groundwaters exempt from permitting by the
39 department of ecology under RCW 90.44.050.

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

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

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

22 (b) A water right to be used as mitigation is identified and the
23 county demonstrates a preliminary, commercially reasonable, agreement
24 with the rightholder to purchase the water right for mitigation
25 purposes.

26 (4) The initial mitigation must be in place no later than five
27 years after the issuance of the first mitigation certificate. After
28 that initial five-year period, all mitigation must be in place before
29 the mitigation certificate is issued.

30 (5) A county may accept a monetary payment as an acceptable
31 mitigation measure, provided that the county commits to fully
32 mitigate for impacts associated with the landowner's well. The county
33 may also accept mitigation obtained through the state trust water
34 rights program or from a water bank established by the county, the
35 department of ecology, or by a third party, provided the bank is
36 recognized by the department of ecology and satisfies the
37 requirements of chapter 90.42 RCW. The county may also accept a
38 permanent dedication to instream flows under the state trust water
39 rights program or other change or transfer of a water right approved
40 by the department of ecology for dedication to instream flows.

1 (6) The county must issue a mitigation certificate to a
2 participant meeting the program standards. The certificate must be
3 recorded with the title to the real property. The certificate
4 recipient has no further responsibility for implementation of the
5 mitigation but may be required to pay reasonable fees to pay for
6 program operation and monitoring. These fees may not be based on the
7 amount of water used and must be the same for all participants.

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

13 (8) The department must provide assistance to counties choosing
14 to adopt a mitigation program, including:

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

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

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

22 (d) Information on alternative water supply programs that utilize
23 cisterns to avoid or mitigate for new wells;

24 (e) Information regarding existing and potential water banks to
25 provide mitigation;

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

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

29 (h) Financial assistance for creating and implementing the
30 program, which should cover at least one-half of the costs of the
31 program.

32 **Sec. 5.** RCW 90.42.110 and 2003 c 144 s 3 are each amended to
33 read as follows:

34 (1) The department, with the consent of the water right holder,
35 may identify trust water rights for administration for water banking
36 purposes, including trust water rights established before May 7,
37 2003.

38 (2) An application to transfer a water right to the trust water
39 (~~(rights)~~) rights program shall be reviewed under RCW 90.03.380 at

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

17 (3) The department shall expedite the processing of all
18 applications to transfer a water right to the trust water program for
19 water banking purposes, where the bank will serve to provide
20 mitigation for small groundwater withdrawals under a county
21 mitigation program adopted under section 4 of this act.

22 NEW SECTION. Sec. 6. (1) The permit-exempt well withdrawal
23 mitigation committee is created. The committee is composed of seven
24 members appointed by the governor, as follows:

- 25 (a) A chair of the committee;
26 (b) A representative of counties;
27 (c) A representative of tribal governments;
28 (d) A representative of rural property owners;
29 (e) A representative of rural property development interests;
30 (f) A representative of environmental and conservation interests;
31 and

32 (g) A representative of the department of commerce, who shall
33 coordinate with other appropriate agencies including the departments
34 of health, ecology, and fish and wildlife in fulfilling its
35 responsibilities on the committee.

36 (2) The committee's purpose is to review and make recommendations
37 for integrating groundwater supply availability into land use
38 planning and approvals and ensuring that groundwater and surface

1 water continuity is considered in determinations of water
2 availability.

3 (3) The committee shall serve as a forum for the exchange of
4 information and experiences around the state in developing mitigation
5 programs under section 4 of this act.

6 (4) By January 1, 2018, the committee shall provide a report to
7 the governor and to the appropriate committees of the senate and
8 house of representatives that includes, but is not limited, to:

9 (a) A summary of actions by counties to incorporate
10 considerations of water supply availability and ground and surface
11 water interactions into comprehensive land use plans, development
12 regulations, and building permit and land division reviews;

13 (b) A review of county mitigation programs authorized under
14 section 4 of this act;

15 (c) A summary of the hydrological data and mapping resources
16 provided by the state and other sources to assist counties in
17 assessing water supply availability for permit-exempt wells in areas
18 with groundwater and surface water continuity;

19 (d) An estimate of additional hydrological assessments needed and
20 recommendations for state financial and technical assistance to
21 obtain such assessments, with a priority placed upon high growth
22 areas with adopted minimum flows and closures of further surface
23 water appropriations;

24 (e) Recommendations for necessary policy and budgetary measures
25 to provide for alternative water supplies and mitigation projects
26 when water banks providing mitigation water-for-water in time and
27 place is not available; and

28 (f) Recommendations for guidance to counties for integrating
29 water supply availability considerations into comprehensive land use
30 plans and development regulations, including recommendations for more
31 effective mitigation programs.

32 (5) By January 1, 2019, the committee shall provide a report to
33 the governor and to the appropriate committees of the senate and
34 house of representatives that includes, but is not limited to,
35 recommendations for:

36 (a) Improving local and state coordination and funding of
37 integrating water supply availability into land use planning,
38 including allocation of responsibility for funding and operating
39 mitigation programs;

1 (b) State funding to cover the costs of mitigation that exceed
2 monetary compensation received in the issuance of mitigation
3 certificates; and

4 (c) The protection and restoration of streamflows necessary to
5 support fisheries and all other instream resources, including the
6 adoption of regulatory minimum flows in the remaining watersheds of
7 the state.

8 (6) The department of ecology shall provide necessary staffing
9 for the committee. At the request of the chair, the departments of
10 commerce and ecology shall provide information in their possession
11 that will assist the committee in carrying out its responsibilities
12 under this section.

13 (7) This section and all duties and responsibilities of the
14 committee expire June 30, 2019.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.44
16 RCW to read as follows:

17 The water withdrawal mitigation assistance account is created in
18 the state treasury. All receipts from moneys directed to the account
19 by the legislature must be deposited into the account. Moneys in the
20 account may be spent only after appropriation. Expenditures from the
21 account may be used only for implementing mitigation programs
22 authorized by RCW 19.27.097, 58.17.110, 90.42.110, and section 4 of
23 this act.

24 NEW SECTION. **Sec. 8.** (1) The sum of five million dollars, or as
25 much thereof as may be necessary, is appropriated for the fiscal year
26 ending June 30, 2018, from the water withdrawal mitigation assistance
27 account created in section 7 of this act to the department of ecology
28 for the purposes of this act.

29 (2) The sum of five million dollars, or as much thereof as may be
30 necessary, is appropriated for the fiscal year ending June 30, 2019,
31 from the water withdrawal mitigation assistance account created in
32 section 7 of this act to the department of ecology for the purposes
33 of this act.

34 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

--- END ---