
SUBSTITUTE SENATE BILL 6091

State of Washington

65th Legislature

2018 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Van De Wege, Rolfes, and Frockt)

READ FIRST TIME 01/12/18.

1 AN ACT Relating to ensuring that water is available to support
2 development; amending RCW 19.27.097, 58.17.110, 90.54.010, 90.03.247,
3 and 90.03.290; adding a new section to chapter 36.70A RCW; adding a
4 new section to chapter 36.70 RCW; adding new sections to chapter
5 90.54 RCW; creating new sections; providing an expiration date; and
6 declaring an emergency.

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

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

10 (1)(a) Each applicant for a building permit of a building
11 necessitating potable water shall provide evidence of an adequate
12 water supply for the intended use of the building. Evidence may be in
13 the form of a water right permit from the department of ecology, a
14 letter from an approved water purveyor stating the ability to provide
15 water, or another form sufficient to verify the existence of an
16 adequate water supply. (~~In addition to other authorities, the county~~
17 ~~or city may impose conditions on building permits requiring~~
18 ~~connection to an existing public water system where the existing~~
19 ~~system is willing and able to provide safe and reliable potable water~~
20 ~~to the applicant with reasonable economy and efficiency.)) An~~

1 application for a water right shall not be sufficient proof of an
2 adequate water supply.

3 (b) In a water resource inventory area with rules adopted by the
4 department of ecology pursuant to section 6 of this act and the
5 following water resource inventory areas with instream flow rules
6 adopted by the department of ecology under chapters 90.22 and 90.54
7 RCW that explicitly regulate permit-exempt groundwater withdrawals,
8 evidence of an adequate water supply must be consistent with the
9 specific applicable rule requirements: 5 (Stillaguamish); 17
10 (Quilcene-Snow); 18 (Elwha-Dungeness); 27 (Lewis); 28 (Salmon-
11 Washougal); 32 (Walla Walla); 45 (Wenatchee); 46 (Entiat); 48
12 (Methow); and 57 (Middle Spokane).

13 (c) In the following water resource inventory areas with instream
14 flow rules adopted by the department of ecology under chapters 90.22
15 and 90.54 RCW that do not explicitly regulate permit-exempt
16 groundwater withdrawals, evidence of an adequate water supply must be
17 consistent with section 6 of this act, unless the applicant provides
18 other evidence of an adequate water supply that complies with
19 chapters 90.03 and 90.44 RCW: 1 (Whatcom); 7 (Snohomish); 8 (Cedar-
20 Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 11 (Nisqually);
21 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); 15
22 (Kitsap); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55
23 (Little Spokane); 59 (Colville).

24 (d) In water resource inventory areas 37 (Lower Yakima), 38
25 (Naches), and 39 (Upper Yakima), the department of ecology may impose
26 requirements to satisfy adjudicated water rights and federal flow
27 regulations that are necessary to satisfy the adjudication and
28 federal flow regulations.

29 (e) Within water resource inventory area 54 (Lower Spokane), the
30 department of ecology may impose requirements to satisfy the federal
31 adjudication of Chamokane creek and the federal flow regulation.

32 (f) Within water resource inventory area 3 (Lower Skagit-Samish)
33 and 4 (Upper Skagit), restrictions may apply due to *Swinomish Indian*
34 *Tribal Community v. Department of Ecology*, 178 Wn.2d 571, 311 P.3d 6
35 (2013).

36 (g) In other areas of the state, physical and legal evidence of
37 an adequate water supply may be demonstrated by the submission of a
38 water well report consistent with the requirements of chapter 18.104
39 RCW.

1 (h) For the purposes of this subsection (1), "water resource
2 inventory areas" means those areas described in chapter 173-500 WAC
3 as of the effective date of this section.

4 (2) In addition to other authorities, the county or city may
5 impose additional requirements, including conditions on building
6 permits requiring connection to an existing public water system where
7 the existing system is willing and able to provide safe and reliable
8 potable water to the applicant with reasonable economy and
9 efficiency.

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

19 ~~((+3))~~ (4) Buildings that do not need potable water facilities
20 are exempt from the provisions of this section. The department of
21 ecology, after consultation with local governments, may adopt rules
22 to implement this section, which may recognize differences between
23 high-growth and low-growth counties.

24 NEW SECTION. Sec. 2. A new section is added to chapter 36.70A
25 RCW to read as follows:

26 For the purposes of complying with the requirements of this
27 chapter relating to surface and groundwater resources, a county or
28 city may rely on or refer to applicable minimum instream flow rules
29 adopted by the department of ecology under chapters 90.22 and 90.54
30 RCW. Development regulations must ensure that proposed water uses are
31 consistent with RCW 90.44.050 and with applicable rules adopted
32 pursuant to chapters 90.22 and 90.54 RCW when making decisions under
33 RCW 19.27.097 and 58.17.110.

34 NEW SECTION. Sec. 3. A new section is added to chapter 36.70
35 RCW to read as follows:

36 For the purposes of complying with the requirements of this
37 chapter, county development regulations must ensure that proposed
38 water uses are consistent with RCW 90.44.050 and with applicable

1 rules adopted pursuant to chapters 90.22 and 90.54 RCW when making
2 decisions under RCW 19.27.097 and 58.17.110.

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

5 (1) The city, town, or county legislative body shall inquire into
6 the public use and interest proposed to be served by the
7 establishment of the subdivision and dedication. It shall determine:
8 (a) If appropriate provisions are made for, but not limited to, the
9 public health, safety, and general welfare, for open spaces, drainage
10 ways, streets or roads, alleys, other public ways, transit stops,
11 potable water supplies, sanitary wastes, parks and recreation,
12 playgrounds, schools and schoolgrounds, and shall consider all other
13 relevant facts, including sidewalks and other planning features that
14 assure safe walking conditions for students who only walk to and from
15 school; and (b) whether the public interest will be served by the
16 subdivision and dedication.

17 (2) A proposed subdivision and dedication shall not be approved
18 unless the city, town, or county legislative body makes written
19 findings that: (a) Appropriate provisions are made for the public
20 health, safety, and general welfare and for such open spaces,
21 drainage ways, streets or roads, alleys, other public ways, transit
22 stops, potable water supplies, sanitary wastes, parks and recreation,
23 playgrounds, schools and schoolgrounds and all other relevant facts,
24 including sidewalks and other planning features that assure safe
25 walking conditions for students who only walk to and from school; and
26 (b) the public use and interest will be served by the platting of
27 such subdivision and dedication. If it finds that the proposed
28 subdivision and dedication make such appropriate provisions and that
29 the public use and interest will be served, then the legislative body
30 shall approve the proposed subdivision and dedication. Dedication of
31 land to any public body, provision of public improvements to serve
32 the subdivision, and/or impact fees imposed under RCW 82.02.050
33 through 82.02.090 may be required as a condition of subdivision
34 approval. Dedications shall be clearly shown on the final plat. No
35 dedication, provision of public improvements, or impact fees imposed
36 under RCW 82.02.050 through 82.02.090 shall be allowed that
37 constitutes an unconstitutional taking of private property. The
38 legislative body shall not as a condition to the approval of any

1 subdivision require a release from damages to be procured from other
2 property owners.

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

8 (4) If water supply is to be provided by a groundwater withdrawal
9 exempt from permitting under RCW 90.44.050, the applicant's
10 compliance with RCW 90.44.050 and with applicable rules adopted
11 pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining
12 appropriate provisions for water supply for a subdivision,
13 dedication, or short subdivision under this chapter.

14 **Sec. 5.** RCW 90.54.010 and 1990 c 295 s 1 are each amended to
15 read as follows:

16 (1) It is the intent of the legislature to protect and restore
17 healthy stream flows for instream resources, which will aid in
18 recovery of depleted salmonid populations, support properly
19 functioning ecosystems, and provide for the general welfare of the
20 citizens of the state. The legislature also intends to ensure that a
21 legal and reliable domestic water supply is available for its
22 citizens, which is essential to support the vitality of our state,
23 including rural communities.

24 (a) Healthy watersheds and stream flows ensure preservation of
25 instream resources, which include fish, wildlife, scenic, aesthetic,
26 environmental, recreational, and navigational values. These resources
27 are central to our state's identity, culture, and economy and must be
28 preserved and where possible enhanced for future generations.

29 (b) Inadequate stream flows adversely impact instream resources.
30 Out-of-stream water use, loss of wetlands and floodplains, loss of
31 vegetated cover, increase in impervious surfaces, loss of snowpack,
32 and other factors combined with naturally low flows that occur in
33 late summer and fall contribute to stream flow limitations that are
34 becoming an increasingly significant barrier to recovery of
35 threatened and endangered species, especially salmonids.

36 (2) The legislature finds that:

37 (a) Proper utilization of the water resources of this state is
38 necessary to the promotion of public health and the economic well-
39 being of the state and the preservation of its natural resources and

1 aesthetic values. Although water is a renewable resource, its supply
2 and availability are becoming increasingly limited, particularly
3 during summer and fall months and dry years when demand is greatest.
4 Growth and prosperity have significantly increased the competition
5 for this limited resource. Adequate water supplies are essential to
6 meet the needs of the state's growing population and economy. At the
7 same time instream resources and values must be preserved and
8 protected so that future generations can continue to enjoy them.

9 (b) All citizens of Washington share an interest in the proper
10 stewardship of our invaluable water resources. To ensure that
11 available water supplies are managed to best meet both instream and
12 ~~((offstream needs, a comprehensive planning process))~~ out-of-stream
13 needs, a comprehensive watershed restoration and enhancement program
14 is essential. The people of the state have the unique opportunity to
15 work together to ~~((plan and manage our water))~~ restore and enhance
16 instream resources. Through a comprehensive planning and watershed
17 restoration process that includes the state, Indian tribes, local
18 governments, and interested parties, it is possible to make better
19 use of available water supplies and achieve better management of
20 water resources. Through comprehensive planning and implementation of
21 watershed restoration and enhancement projects, conflicts among water
22 users and interests can be reduced or resolved and instream resources
23 can be improved. It is in the best interests of the state that
24 comprehensive water resource planning and restoration be given a high
25 priority so that water resources and associated values can be
26 utilized and enjoyed today and protected for tomorrow.

27 (c) Diverse hydrologic, climatic, cultural, and socioeconomic
28 conditions exist throughout the regions of the state. Water resource
29 issues vary significantly across regions. Comprehensive water
30 resource planning is best accomplished through a regional planning
31 process sensitive to the unique characteristics and issues of each
32 region.

33 (d) Comprehensive water resource planning must provide interested
34 parties adequate opportunity to participate. Water resource issues
35 are best addressed through cooperation and coordination among the
36 state, Indian tribes, local governments, and interested parties.

37 (e) The long-term needs of the state require ongoing assessment
38 of water availability, use, and demand. A thorough inventory of
39 available resources is essential to water resource management.
40 Current state water resource data and data management is inadequate

1 to meet changing needs and respond to competing water demands.
2 Therefore, a state water resource data program is needed to support
3 an effective water resource management program. Efforts should be
4 made to coordinate and consolidate into one resource data system all
5 relevant information developed by the department of ecology and other
6 agencies relating to the use, protection, and management of the
7 state's water resources.

8 ~~((+2))~~ (3) It is the purpose of this chapter to set forth
9 fundamentals of water resource policy for the state to ~~((insure))~~
10 ensure that waters of the state are protected and fully utilized for
11 the greatest benefit to the people of the state of Washington and, in
12 relation thereto, to provide direction to the department of ecology,
13 other state agencies and officials, and local government in carrying
14 out water and related resources programs. It is the intent of the
15 legislature to work closely with the executive branch, Indian tribes,
16 local government, and interested parties to ensure that water
17 resources of the state are wisely managed.

18 (4) To achieve the goals of this act, significant legislative
19 action is needed to address both the impact of new development on
20 stream flows and to restore and enhance properly functioning
21 watersheds to preserve and enhance instream resources. The department
22 is directed to implement a program to restore and enhance stream
23 flows by establishing watershed restoration and enhancement
24 committees, as specified in section 6 of this act, to develop and
25 implement plans for stream flow restoration to support vibrant fish
26 and wildlife, including restoring threatened and endangered
27 salmonids.

28 NEW SECTION. Sec. 6. A new section is added to chapter 90.54
29 RCW to read as follows:

30 (1) Unless requirements are otherwise specified in the applicable
31 rules adopted under this chapter or chapter 90.22 RCW, potential
32 impacts on a closed water body and potential impairment to an
33 instream flow are authorized for new domestic groundwater withdrawals
34 exempt from permitting under RCW 90.44.050 through compliance with
35 the requirements established in this section.

36 (2)(a) The department shall establish watershed restoration and
37 enhancement committees in the following water resource inventory
38 areas as those areas exist in chapter 173-500 WAC on the effective
39 date of this section with instream flow rules adopted under chapters

1 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt
2 groundwater withdrawals: 1 (Whatcom); 7 (Snohomish); 8 (Cedar-
3 Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 11 (Nisqually);
4 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); 15
5 (Kitsap); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55
6 (Little Spokane); 59 (Colville).

7 (b) The department shall chair the watershed restoration and
8 enhancement committee and invite the following entities to
9 participate:

10 (i) A representative from each federally recognized Indian tribe
11 that has reservation land within the water resource inventory area;

12 (ii) A representative from each federally recognized Indian tribe
13 that has a usual and accustomed harvest area within the water
14 resource inventory area;

15 (iii) A representative from the department of fish and wildlife,
16 appointed by the director of the department of fish and wildlife;

17 (iv) A representative designated by each county within the water
18 resource inventory area;

19 (v) A representative designated by each city within the water
20 resource inventory area;

21 (vi) A representative designated by the largest irrigation
22 district within the water resource inventory area;

23 (vii) A representative designated by the largest publicly owned
24 water purveyor providing water within the water resource inventory
25 area that is not a municipality; and

26 (viii) A representative designated by a local organization
27 representing the residential construction industry within the water
28 resource inventory area.

29 (3) By June 30, 2021, the department shall prepare and adopt a
30 watershed restoration and enhancement plan for each watershed listed
31 under subsection (2)(a) of this section, in collaboration with the
32 watershed restoration and enhancement committee. Except as described
33 in (h) of this subsection, all members of a watershed restoration and
34 enhancement committee must approve the plan prior to adoption.

35 (a) The watershed restoration and enhancement plan should include
36 recommendations for projects and actions that will measure, protect,
37 and enhance instream resources and improve watershed functions that
38 support the recovery of threatened and endangered salmonids. Plan
39 recommendations may include, but are not limited to, acquiring senior
40 water rights, water conservation, water reuse, stream gaging,

1 groundwater monitoring, and developing natural and constructed
2 infrastructure, which includes such projects as surface water
3 impoundment, floodplain restoration, off-channel storage, and aquifer
4 recharge. Qualifying projects must be specifically designed to
5 enhance stream flows and not result in negative impacts to ecological
6 functions or critical habitat. The plan may also include projects
7 that improve watershed functions and instream resources without
8 specifically replacing the consumptive quantity from projected future
9 water users.

10 (b) At a minimum, the plan must include those actions that the
11 committee determines to be necessary to offset potential impacts to
12 instream flows associated with permit-exempt domestic water use. The
13 highest priority recommendations must include replacing the quantity
14 of consumptive water use during the same time as the impact and in
15 the same basin or tributary. Lower priority projects include projects
16 not in the same basin or tributary, projects that replace consumptive
17 water supply impacts only during critical flow periods, and projects
18 that protect or improve instream resources without replacing the
19 consumptive quantity of water.

20 (c) Prior to adoption of the watershed restoration and
21 enhancement plan, the department must determine that actions
22 identified in the plan, after accounting for new projected uses of
23 water over the subsequent twenty years, will result in a net
24 ecological benefit to instream resources within the water resource
25 inventory area.

26 (d) The watershed restoration and enhancement plan must include
27 an evaluation or estimation of the cost of offsetting new domestic
28 water uses over the subsequent twenty years, including withdrawals
29 exempt from permitting under RCW 90.44.050.

30 (e) The watershed restoration and enhancement plan must include
31 estimates of the cumulative consumptive water use impacts over the
32 subsequent twenty years, including withdrawals exempt from permitting
33 under RCW 90.44.050.

34 (f) The watershed restoration and enhancement plan may include:

35 (i) Recommendations for modification to fees established under
36 this subsection;

37 (ii) Standards for water use quantities that are less than
38 authorized under RCW 90.44.050 or more or less than authorized under
39 subsection (4) of this section for withdrawals exempt from
40 permitting;

1 (iii) Specific conservation requirements for new water users to
2 be adopted by local or state permitting authorities; or

3 (iv) Other approaches to manage water resources for a water
4 resource inventory area or a portion thereof.

5 (g) After adoption of a watershed restoration and enhancement
6 plan, the department shall evaluate the plan recommendations and
7 initiate rule making, if necessary, to incorporate recommendations
8 into rules adopted under this chapter or under chapter 90.22 RCW. Any
9 modification to fees collected under subsection (4) of this section
10 or standards for water use quantities that are less than authorized
11 under RCW 90.44.050 or more than authorized under subsection (4) of
12 this section for withdrawals exempt from permitting may not be
13 applied unless authorized by rules adopted under this chapter.

14 (h) If the watershed restoration and enhancement committee fails
15 to approve a plan by June 30, 2021, the director of the department
16 shall submit the final draft plan to the salmon recovery funding
17 board established under RCW 77.85.110 and request that the salmon
18 recovery funding board provide a technical review and provide
19 recommendations to the director to amend the final draft plan, if
20 necessary, so that actions identified in the plan, after accounting
21 for new projected uses of water over the subsequent twenty years,
22 will result in a net ecological benefit to instream resources within
23 the water resource inventory area. The director of the department
24 shall consider the recommendations and may amend the plan without
25 committee approval prior to adoption. After plan adoption, the
26 director of the department shall initiate rule making within six
27 months to incorporate recommendations into rules adopted under this
28 chapter, and shall adopt amended rules within two years of initiation
29 of rule making.

30 (4)(a) Until a watershed restoration and enhancement plan is
31 approved and rules are adopted under subsection (3) of this section,
32 a city or county issuing a building permit under RCW 19.27.097(1)(c),
33 or approving a subdivision under chapter 58.17 RCW in a watershed
34 listed in subsection (2)(a) of this section must:

35 (i) Record relevant restrictions or limitations associated with
36 water supply with the property title;

37 (ii) Collect applicable fees, as described under this section;

38 (iii) Record the number of building permits issued under chapter
39 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW
40 subject to the provisions of this section;

1 (iv) Annually transmit to the department three hundred fifty
2 dollars of each fee collected under this subsection;

3 (v) Annually transmit an accounting of building permits and
4 subdivision approvals subject to the provisions of this section to
5 the department;

6 (vi) Until rules have been adopted that specify otherwise,
7 require the following measures for each new domestic use that relies
8 on a withdrawal exempt from permitting under RCW 90.44.050:

9 (A) An applicant shall pay a fee of five hundred dollars to the
10 permitting authority;

11 (B) Except as provided in (b) of this subsection, an applicant
12 may obtain approval for a withdrawal exempt from permitting under RCW
13 90.44.050 for domestic use only, with a maximum annual average
14 withdrawal of nine hundred fifty gallons per day per connection; and

15 (C) An applicant shall manage stormwater runoff on-site to the
16 extent practicable by maximizing infiltration, including using low-
17 impact development techniques, or pursuant to stormwater management
18 requirements adopted by the local permitting authority, if locally
19 adopted requirements are more stringent.

20 (b) Upon the issuance of a drought emergency order under RCW
21 43.83B.405, the department may curtail withdrawal of groundwater
22 exempt from permitting under RCW 90.44.050 and approved under this
23 subsection (4) to no more than three hundred fifty gallons per day
24 per connection for indoor use only.

25 (5) Rules adopted under this chapter may:

26 (a) Rely on watershed restoration and enhancement plan
27 recommendations and procedures established in this section to
28 authorize new withdrawals exempt from permitting under RCW 90.44.050
29 that would potentially impact a closed waterbody or a minimum flow or
30 level;

31 (b) Rely on projects identified in the watershed restoration and
32 enhancement plan to offset consumptive water use; and

33 (c) Include updates to fees based on the watershed restoration
34 and enhancement committee's determination of the costs for offsetting
35 consumptive water use.

36 (6) The department shall submit a report to the legislature by
37 December 31, 2020, and December 31, 2027, in compliance with RCW
38 43.01.036, that includes the following elements:

39 (a) Progress in completing and adopting watershed restoration and
40 enhancement plans;

1 (b) A description of program projects and expenditures;

2 (c) An assessment of the streamflow restoration and enhancement
3 benefits from program projects;

4 (d) A listing of other efforts or actions taken associated with
5 streamflow restoration and enhancement, projects to benefit instream
6 resources, and other directly related watershed improvements
7 conducted in coordination with the restoration and enhancement
8 planning process;

9 (e) The total number of new withdrawals exempt from permitting
10 under RCW 90.44.050 authorized in each water resource inventory area
11 under provisions of this section, and estimates of consumptive water
12 use impacts associated with the new withdrawals; and

13 (f) A description of potential or planned projects, including
14 projected costs and anticipated streamflow, water supply, and
15 watershed health benefits.

16 (7) This section only applies to new domestic groundwater
17 withdrawals exempt from permitting under RCW 90.44.050 in the
18 following water resource inventory areas as those areas exist in
19 chapter 173-500 WAC on the effective date of this section with
20 instream flow rules adopted under chapters 90.22 and 90.54 RCW that
21 do not explicitly regulate permit-exempt groundwater withdrawals: 1
22 (Whatcom); 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10
23 (Puyallup-White); 11 (Nisqually); 12 (Chambers-Clover); 13
24 (Deschutes); 14 (Kennedy-Goldsborough); 15 (Kitsap); 22 (Lower
25 Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane);
26 59 (Colville) and does not restrict the withdrawal of groundwater for
27 other uses that are exempt from permitting under RCW 90.44.050.

28 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.54
29 RCW to read as follows:

30 (1) The department shall initiate a pilot project to measure
31 water use from all new groundwater withdrawals, including withdrawals
32 exempt from permitting under RCW 90.44.050. The pilot project must be
33 conducted to determine the overall feasibility of measuring water use
34 for all new groundwater withdrawals. The department must purchase and
35 provide meters to be used in the pilot project. The pilot project
36 must be conducted in a priority water resource inventory area, as
37 determined by the director of the department. At a minimum, the pilot
38 project must address the following:

1 (a) Initial and on-going costs, including costs to local
2 government and the department;

3 (b) Technical, practical, and legal considerations that must be
4 addressed;

5 (c) The costs and benefits of a water use measurement program
6 relying on individual meters versus a water management program that
7 estimates permit-exempt groundwater withdrawals; and

8 (d) Measures to protect the privacy of individual property owners
9 and ensure accurate data collection.

10 (2) The department shall report on the pilot project results in
11 the report to the legislature submitted under section 6 of this act.
12 The department shall include recommendations to the legislature,
13 including estimated program costs for expanding the pilot project to
14 other basins.

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.54
16 RCW to read as follows:

17 Nothing in this chapter affects the ability of any person to
18 pursue a cause of action for the protection of any water right that
19 is not a base flow, minimum flow, minimum level, or other similar
20 standard or policy, established by the department under this chapter
21 or chapter 90.22 RCW.

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.54
23 RCW to read as follows:

24 (1) The watershed restoration and enhancement account is created
25 in the state treasury. All receipts from fees paid pursuant to
26 section 6 of this act must be deposited into the account. The account
27 may also receive those moneys as may be appropriated by the
28 legislature for the purpose of funding restoration and enhancement
29 projects as identified in section 6 of this act. Moneys from the
30 account may only be spent after appropriation. Expenditures from the
31 account may be used only for the costs of administering this act,
32 including implementing watershed restoration and enhancement projects
33 under section 6 of this act, and collecting data and completing
34 studies necessary to develop, implement, and evaluate watershed
35 restoration and enhancement projects under this act.

36 (2) Fee revenues collected under section 6 of this act must be
37 used exclusively within the water resource inventory area in which
38 the fee originated. The restriction in this subsection does not apply

1 to moneys in the watershed restoration and enhancement account that
2 do not originate from fees collected under section 6 of this act.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.54
4 RCW to read as follows:

5 (1) The watershed restoration and enhancement taxable bond
6 account is created in the state treasury. All receipts from direct
7 appropriations from the legislature or moneys directed to the account
8 from any other source must be deposited in the account. Moneys in the
9 account may be spent only after appropriation. The account is
10 intended to fund projects using taxable bonds. Expenditures from the
11 account may be used only as provided for in this section.

12 (2) Expenditures from the watershed restoration and enhancement
13 taxable bond account may be used to assess, plan, and develop
14 projects that include acquiring senior water rights, water
15 conservation, water reuse, stream gaging, groundwater monitoring, and
16 developing natural and constructed infrastructure, which includes
17 projects such as surface water impoundment, floodplain restoration,
18 off-channel storage, and aquifer recharge, or other actions designed
19 to provide access to new water supplies with priority given to
20 projects in watersheds developing plans as directed by section 6 of
21 this act.

22 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.54
23 RCW to read as follows:

24 (1) The watershed restoration and enhancement bond account is
25 created in the state treasury. All receipts from direct
26 appropriations from the legislature or moneys directed to the account
27 from any other source must be deposited in the account. Moneys in the
28 account may be spent only after appropriation. The account is
29 intended to fund projects using tax exempt bonds. Expenditures from
30 the account may be used only as provided for in this section.

31 (2) Expenditures from the watershed restoration and enhancement
32 bond account may be used to assess, plan, and develop projects that
33 include acquiring senior water rights, water conservation, water
34 reuse, stream gaging, groundwater monitoring, and developing natural
35 and constructed infrastructure, which includes projects such as
36 surface water impoundment, floodplain restoration, off-channel
37 storage, and aquifer recharge, or other actions designed to provide

1 access to new water supplies with priority given to projects in
2 watersheds developing plans as directed by section 6 of this act.

3 NEW SECTION. **Sec. 12.** (1) A joint legislative task force on
4 water resource mitigation is established to review the treatment of
5 surface water and groundwater appropriations as they relate to
6 instream flows and fish habitat, to develop and recommend a
7 mitigation sequencing process and scoring system to address such
8 appropriations, and to review the Washington supreme court decision
9 in *Foster v. Department of Ecology*, 184 Wn.2d 465, 362 P.3d 959
10 (2015).

11 (2) The task force must consist of the following members:

12 (a) Two members from each of the two largest caucuses of the
13 senate, appointed by the president of the senate;

14 (b) Two members from each of the two largest caucuses of the
15 house of representatives, appointed by the speaker of the house of
16 representatives;

17 (c) A representative from the department of ecology, appointed by
18 the director of the department of ecology;

19 (d) A representative from the department of fish and wildlife,
20 appointed by the director of the department of fish and wildlife;

21 (e) A representative from the department of agriculture,
22 appointed by the director of the department of agriculture;

23 (f) One representative from each of the following groups,
24 appointed by the consensus of the cochair of the task force:

25 (i) An organization representing the farming industry in
26 Washington;

27 (ii) An organization representing Washington cities;

28 (iii) Two representatives from an environmental advocacy
29 organization or organizations;

30 (iv) An organization representing municipal water purveyors;

31 (v) An organization representing business interests;

32 (vi) Representatives of two federally recognized Indian tribes,
33 one invited by recommendation of the Northwest Indian fisheries
34 commission, and one invited by recommendation of the Columbia river
35 intertribal fish commission.

36 (3) One cochair of the task force must be a member of the
37 majority caucus of one chamber of the legislature, and one cochair
38 must be a member of the minority caucus of the other chamber of the

1 legislature, as those caucuses existed as of the effective date of
2 this section.

3 (4) The first meeting of the task force must occur by June 30,
4 2018.

5 (5) Staff support for the task force must be provided by the
6 office of program research and senate committee services. The
7 department of ecology and the department of fish and wildlife shall
8 cooperate with the task force and provide information as the cochairs
9 reasonably request.

10 (6) Within existing appropriations, the expenses of the
11 operations of the task force, including the expenses associated with
12 the task force's meetings, must be paid jointly and in equal amounts
13 by the senate and the house of representatives. Task force
14 expenditures are subject to approval by the house executive rules
15 committee and the senate facility and operations committee.
16 Legislative members of the task force are reimbursed for travel
17 expenses in accordance with RCW 44.04.120. Nonlegislative members are
18 not entitled to be reimbursed for travel expenses if they are elected
19 officials or are participating on behalf of an employer, governmental
20 entity, or other organization. Any reimbursement for other
21 nonlegislative members is subject to chapter 43.03 RCW.

22 (7)(a) By November 15, 2019, the joint legislative task force
23 must make recommendations to the legislature in compliance with RCW
24 43.01.036.

25 (b) Recommendations of the joint legislative task force must be
26 made by a sixty percent majority of the members of the committee. The
27 representatives of the departments of fish and wildlife, ecology, and
28 agriculture are not eligible to vote on the recommendations. Minority
29 recommendations that achieve the support of at least five of the
30 named voting members of the task force may also be submitted to the
31 legislature.

32 (8) The department shall issue permit decisions for up to five
33 water resource mitigation pilot projects. It is the intent of the
34 legislature to use the pilot projects to inform the legislative task
35 force process while also enabling the processing of water right
36 applications that address water supply needs. The department is
37 authorized to issue permits in reliance upon water resource
38 mitigation of impacts to instream flows and closed surface water
39 bodies under the following mitigation sequence:

1 (a) Avoiding impacts by: (i) Complying with mitigation required
2 by adopted rules that set forth minimum flows, levels, or closures;
3 or (ii) making the water diversion or withdrawal subject to the
4 applicable minimum flows or levels; or

5 (b) Where avoidance of impacts is not reasonably attainable,
6 minimizing impacts by providing permanent new or existing trust water
7 rights or through other types of replacement water supply resulting
8 in no net annual increase in the quantity of water diverted or
9 withdrawn from the stream or surface water body and no net
10 detrimental impacts to fish and related aquatic resources; or

11 (c) Where avoidance and minimization are not reasonably
12 attainable, compensating for impacts by providing net ecological
13 benefits to fish and related aquatic resources in the water resource
14 inventory area through in-kind or out-of-kind mitigation or a
15 combination thereof, that improves the function and productivity of
16 affected fish populations and related aquatic habitat. Out-of-kind
17 mitigation may include instream or out-of-stream measures that
18 improve or enhance existing water quality, riparian habitat, or other
19 instream functions and values for which minimum instream flows or
20 closures were established in that watershed.

21 (9) The pilot projects eligible for processing under this
22 section, based on criteria as of the effective date of this section,
23 include:

24 (a) A city operating a group A water system in Kitsap county and
25 water resource inventory area 15, with a population between 13,000
26 and 14,000;

27 (b) A city operating a group A water system in Pierce county and
28 water resource inventory area 10, with a population between 9,500 and
29 10,500;

30 (c) A city operating a group A water system in Thurston county
31 and water resource inventory area 11, with a population between 8,500
32 and 9,500;

33 (d) A nonprofit mutual water system operating a group A water
34 system in Pierce county and water resource inventory area 12, with
35 between 10,500 and 11,500 service connections; and

36 (e) An irrigation district located in Whatcom county and water
37 resource inventory area 1, solely for the purpose of processing
38 changes of water rights from surface water to groundwater, and
39 implementing flow augmentation to benefit instream flows.

1 (10) Water right applicants eligible to be processed under this
2 pilot project authority must elect to be included in the pilot
3 project review by notifying the department of ecology by July 1,
4 2018. Once an applicant notifies the department of ecology of its
5 intent to be processed under this pilot project authority, subsection
6 (8) of this section applies to final decisions issued by the
7 department of ecology, even if such a final decision is issued after
8 the expiration of this section.

9 (11) By November 15, 2018, the department of ecology must furnish
10 the task force with information on conceptual mitigation plans for
11 each water resource mitigation pilot project application.

12 (12) To ensure that the processing of pilot project applications
13 can inform the task force process in a timely manner, the department
14 of ecology must expedite processing of applications for water
15 resource mitigation pilot projects. The applicant for each pilot
16 project must reimburse the department of ecology for the department's
17 costs of processing the applicant's application.

18 (13) The water resource mitigation pilot project authority
19 granted to the department of ecology does not affect or modify any
20 other procedural requirements of chapter 90.03, 90.44, or 90.54 RCW
21 that apply to the processing of such applications.

22 (14) The joint legislative task force expires December 31, 2019.

23 (15) This section expires January 1, 2020.

24 **Sec. 13.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to
25 read as follows:

26 (1) Whenever an application for a permit to make beneficial use
27 of public waters is approved relating to a stream or other water body
28 for which minimum flows or levels have been adopted and are in effect
29 at the time of approval, the permit shall be conditioned to: (a)
30 protect the levels or flows; or (b) require water resource mitigation
31 of impacts to instream flows and closed surface water bodies for
32 water resource mitigation pilot projects authorized under section 12
33 of this act.

34 (2) No agency may establish minimum flows and levels or similar
35 water flow or level restrictions for any stream or lake of the state
36 other than the department of ecology whose authority to establish is
37 exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
38 90.54.040. The provisions of other statutes, including but not
39 limited to ((RCW 77.55.100 and)) chapter 43.21C RCW, may not be

1 interpreted in a manner that is inconsistent with this section. In
2 establishing such minimum flows, levels, or similar restrictions, the
3 department shall, during all stages of development by the department
4 of ecology of minimum flow proposals, consult with, and carefully
5 consider the recommendations of, the department of fish and wildlife,
6 the department of ((~~community, trade, and economic development~~))
7 commerce, the department of agriculture, and representatives of the
8 affected Indian tribes. Nothing herein shall preclude the department
9 of fish and wildlife, the department of ((~~community, trade, and~~
10 ~~economic development~~)) commerce, or the department of agriculture
11 from presenting its views on minimum flow needs at any public hearing
12 or to any person or agency, and the department of fish and wildlife,
13 the department of ((~~community, trade, and economic development~~))
14 commerce, and the department of agriculture are each empowered to
15 participate in proceedings of the federal energy regulatory
16 commission and other agencies to present its views on minimum flow
17 needs.

18 **Sec. 14.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to
19 read as follows:

20 (1) When an application complying with the provisions of this
21 chapter and with the rules of the department has been filed, the same
22 shall be placed on record with the department, and it shall be its
23 duty to investigate the application, and determine what water, if
24 any, is available for appropriation, and find and determine to what
25 beneficial use or uses it can be applied. If it is proposed to
26 appropriate water for irrigation purposes, the department shall
27 investigate, determine and find what lands are capable of irrigation
28 by means of water found available for appropriation. If it is
29 proposed to appropriate water for the purpose of power development,
30 the department shall investigate, determine and find whether the
31 proposed development is likely to prove detrimental to the public
32 interest, having in mind the highest feasible use of the waters
33 belonging to the public.

34 (2)(a) If the application does not contain, and the applicant
35 does not promptly furnish sufficient information on which to base
36 such findings, the department may issue a preliminary permit, for a
37 period of not to exceed three years, requiring the applicant to make
38 such surveys, investigations, studies, and progress reports, as in
39 the opinion of the department may be necessary. If the applicant

1 fails to comply with the conditions of the preliminary permit, it and
2 the application or applications on which it is based shall be
3 automatically canceled and the applicant so notified. If the holder
4 of a preliminary permit shall, before its expiration, file with the
5 department a verified report of expenditures made and work done under
6 the preliminary permit, which, in the opinion of the department,
7 establishes the good faith, intent, and ability of the applicant to
8 carry on the proposed development, the preliminary permit may, with
9 the approval of the governor, be extended, but not to exceed a
10 maximum period of five years from the date of the issuance of the
11 preliminary permit.

12 (b) For any application for which a preliminary permit was issued
13 and for which the availability of water was directly affected by a
14 moratorium on further diversions from the Columbia river during the
15 years from 1990 to 1998, the preliminary permit is extended through
16 June 30, 2002. If such an application and preliminary permit were
17 canceled during the moratorium, the application and preliminary
18 permit shall be reinstated until June 30, 2002, if the application
19 and permit: (i) Are for providing regional water supplies in more
20 than one urban growth area designated under chapter 36.70A RCW and in
21 one or more areas near such urban growth areas, or the application
22 and permit are modified for providing such supplies, and (ii) provide
23 or are modified to provide such regional supplies through the use of
24 existing intake or diversion structures. The authority to modify such
25 a canceled application and permit to accomplish the objectives of
26 (b)(i) and (ii) of this subsection is hereby granted.

27 (3) The department shall make and file as part of the record in
28 the matter, written findings of fact concerning all things
29 investigated, and if it shall find that there is water available for
30 appropriation for a beneficial use, and the appropriation thereof as
31 proposed in the application will not impair existing rights or be
32 detrimental to the public welfare, it shall issue a permit stating
33 the amount of water to which the applicant shall be entitled and the
34 beneficial use or uses to which it may be applied: PROVIDED, That
35 where the water applied for is to be used for irrigation purposes, it
36 shall become appurtenant only to such land as may be reclaimed
37 thereby to the full extent of the soil for agricultural purposes. But
38 where there is no unappropriated water in the proposed source of
39 supply, or where the proposed use conflicts with existing rights, or
40 threatens to prove detrimental to the public interest, having due

1 regard to the highest feasible development of the use of the waters
2 belonging to the public, it shall be duty of the department to reject
3 such application and to refuse to issue the permit asked for.

4 (4) If the permit is refused because of conflict with existing
5 rights and such applicant shall acquire same by purchase or
6 condemnation under RCW 90.03.040, the department may thereupon grant
7 such permit. Any application may be approved for a less amount of
8 water than that applied for, if there exists substantial reason
9 therefor, and in any event shall not be approved for more water than
10 can be applied to beneficial use for the purposes named in the
11 application. In determining whether or not a permit shall issue upon
12 any application, it shall be the duty of the department to
13 investigate all facts relevant and material to the application. After
14 the department approves said application in whole or in part and
15 before any permit shall be issued thereon to the applicant, such
16 applicant shall pay the fee provided in RCW 90.03.470: PROVIDED
17 FURTHER, That in the event a permit is issued by the department upon
18 any application, it shall be its duty to notify the director of fish
19 and wildlife of such issuance.

20 (5) The requirements of subsections (1) and (3) of this section
21 do not apply to water resource mitigation pilot projects for which
22 permits are issued in reliance upon water resource mitigation of
23 impacts to instream flows and closed surface water bodies under
24 section 12 of this act.

25 NEW SECTION. Sec. 15. The legislature intends to appropriate
26 three hundred million dollars for projects to achieve the goals of
27 this act until June 30, 2033. The department of ecology is directed
28 to implement a program to restore and enhance stream flows by
29 fulfilling obligations under this act to develop and implement plans
30 to restore stream flows to levels necessary to support robust,
31 healthy, and sustainable salmon populations.

32 NEW SECTION. Sec. 16. If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

36 NEW SECTION. Sec. 17. This act is necessary for the immediate
37 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.

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