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**HOUSE BILL 1979**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Maycumber, Dent, Walsh, and Eslick

AN ACT Relating to the establishment of reasonable surface water flow levels; amending RCW 90.22.010 and 90.22.020; adding a new section to chapter 90.22 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds that the department of ecology adopted rules establishing water levels for surface waters that were aspirational and have not been met in recent history. In some situations, the flow level in the rule has never been met by the natural flows. These unattainable levels have caused hardship for many people. The legislature declares that these rules are contrary to legislative intent and demands the department of ecology repeal the rules immediately.

**Sec.**  RCW 90.22.010 and 1997 c 32 s 4 are each amended to read as follows:

(1) The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall, when requested by the department of fish and wildlife to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality described in the request or determination. Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level. When the department acts to preserve water quality, it shall include a similar statement with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

(2) The minimum water flows or levels established pursuant to this section must not exceed the highest nonflood documented flow during the same month that has occurred at any time in the previous fifty years as reported by the United States geologic survey.

NEW SECTION. **Sec.**  A new section is added to chapter 90.22 RCW to read as follows:

(1) The director of the department of ecology must immediately repeal any rule established pursuant to RCW 90.22.010 where the minimum water flows for streams, lakes, or other public waters exceed the highest, nonflood documented flow during the same month that has occurred at any time in the previous fifty years as reported by the United States geologic survey.

(2) The department of ecology must report to the legislature the status of the repeal of the rules by November 1, 2019.

**Sec.**  RCW 90.22.020 and 1994 c 264 s 87 are each amended to read as follows:

(1) Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the department shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

((~~(1)~~)) (a) The name of each stream, lake, or other water source under consideration;

((~~(2)~~)) (b) The place and time of the hearing;

((~~(3)~~)) (c) A statement that any person, including any private citizen or public official, may present his or her views either orally or in writing.

(2) Notice of the hearing shall also be served upon the administrators of the departments of social and health services, natural resources, fish and wildlife, and transportation.

(3) Prior to the repeal of any rule pursuant to section 3 of this act, the department of ecology shall hold a public hearing in Thurston county, but is not required to hold a public hearing in the county where the stream, lake, or other public water is located. The commissioners for any county impacted by the rule repeal must be notified by electronic mail of the public hearing.

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

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