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**HOUSE BILL 1982**

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

**By** Representatives Maycumber, Walsh, Kretz, Chapman, Ybarra, and Eslick

AN ACT Relating to waiving fees related to groundwater withdrawals for low-income housing units; and amending RCW 36.70A.540, 90.94.020, 90.94.030, and 18.104.055.

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

**Sec.**  RCW 36.70A.540 and 2009 c 80 s 1 are each amended to read as follows:

(1)(a) Any city or county planning under RCW 36.70A.040 may enact or expand affordable housing incentive programs providing for the development of low‑income housing units through development regulations or conditions on rezoning or permit decisions, or both, on one or more of the following types of development: Residential; commercial; industrial; or mixed-use. An affordable housing incentive program may include, but is not limited to, one or more of the following:

(i) Density bonuses within the urban growth area;

(ii) Height and bulk bonuses;

(iii) Fee waivers or exemptions, including for any governmental fees authorized under RCW 90.94.020 and 90.94.030;

(iv) Parking reductions; or

(v) Expedited permitting.

(b) The city or county may enact or expand such programs whether or not the programs may impose a tax, fee, or charge on the development or construction of property.

(c) If a developer chooses not to participate in an optional affordable housing incentive program adopted and authorized under this section, a city, county, or town may not condition, deny, or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent incentive provisions of this program.

(2) Affordable housing incentive programs enacted or expanded under this section shall comply with the following:

(a) The incentives or bonuses shall provide for the development of low‑income housing units;

(b) Jurisdictions shall establish standards for low‑income renter or owner occupancy housing, including income guidelines consistent with local housing needs, to assist low‑income households that cannot afford market‑rate housing. Low‑income households are defined for renter and owner occupancy program purposes as follows:

(i) Rental housing units to be developed shall be affordable to and occupied by households with an income of fifty percent or less of the county median family income, adjusted for family size;

(ii) Owner occupancy housing units shall be affordable to and occupied by households with an income of eighty percent or less of the county median family income, adjusted for family size. The legislative authority of a jurisdiction, after holding a public hearing, may establish lower income levels; and

(iii) The legislative authority of a jurisdiction, after holding a public hearing, may also establish higher income levels for rental housing or for owner occupancy housing upon finding that higher income levels are needed to address local housing market conditions. The higher income level for rental housing may not exceed eighty percent of the county area median family income. The higher income level for owner occupancy housing may not exceed one hundred percent of the county area median family income. These established higher income levels are considered "low‑income" for the purposes of this section;

(c) The jurisdiction shall establish a maximum rent level or sales price for each low‑income housing unit developed under the terms of a program and may adjust these levels or prices based on the average size of the household expected to occupy the unit. For renter‑occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low‑income housing unit;

(d) Where a developer is utilizing a housing incentive program authorized under this section to develop market rate housing, and is developing low-income housing to satisfy the requirements of the housing incentive program, the low‑income housing units shall be provided in a range of sizes comparable to those units that are available to other residents. To the extent practicable, the number of bedrooms in low‑income units must be in the same proportion as the number of bedrooms in units within the entire development. The low‑income units shall generally be distributed throughout the development and have substantially the same functionality as the other units in the development;

(e) Low‑income housing units developed under an affordable housing incentive program shall be committed to continuing affordability for at least fifty years. A local government, however, may accept payments in lieu of continuing affordability. The program shall include measures to enforce continuing affordability and income standards applicable to low‑income units constructed under this section that may include, but are not limited to, covenants, options, or other agreements to be executed and recorded by owners and developers;

(f) Programs authorized under subsection (1) of this section may apply to part or all of a jurisdiction and different standards may be applied to different areas within a jurisdiction or to different types of development. Programs authorized under this section may be modified to meet local needs and may include provisions not expressly provided in this section or RCW 82.02.020;

(g) Low‑income housing units developed under an affordable housing incentive program are encouraged to be provided within developments for which a bonus or incentive is provided. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided; and

(h) Affordable housing incentive programs may allow a payment of money or property in lieu of low‑income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site, as long as the payment does not exceed the approximate cost of developing the same number and quality of housing units that would otherwise be developed. Any city or county shall use these funds or property to support the development of low‑income housing, including support provided through loans or grants to public or private owners or developers of housing.

(3) Affordable housing incentive programs enacted or expanded under this section may be applied within the jurisdiction to address the need for increased residential development, consistent with local growth management and housing policies, as follows:

(a) The jurisdiction shall identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies;

(b) The jurisdiction shall provide increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives;

(c) The jurisdiction shall determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to consideration of other regulatory controls on development; and

(d) The jurisdiction may establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations, consistent with the requirements of this section.

**Sec.**  RCW 90.94.020 and 2018 c 1 s 202 are each amended to read as follows:

(1) Unless requirements are otherwise specified in the applicable rules adopted under this chapter or under chapter 90.22 or 90.54 RCW, potential impacts on a closed water body and potential impairment to an instream flow are authorized for new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 through compliance with the requirements established in this section.

(2) In the following water resource inventory areas with instream flow rules adopted by the department under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals and that have completed a watershed plan adopted under chapter 90.82 RCW, the department shall work with the initiating governments and the planning units described in chapter 90.82 RCW to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health: 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(3) In the water resource inventory areas listed in subsection (2) of this section, the lead agency shall invite a representative from each federally recognized Indian tribe that has a usual and accustomed harvest area within the water resource inventory area to participate as part of the planning unit.

(4)(a) In collaboration with the planning unit, the initiating governments must update the watershed plan to include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids. Watershed plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

(b) At a minimum, the watershed plan must include those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that the planning unit determines to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

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

(d) The watershed plan may include:

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

(ii) Standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than authorized under subsection (5) of this section for withdrawals exempt from permitting;

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

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

(e) Any modification to fees collected under subsection (5) of this section or standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than authorized under subsection (5) of this section for withdrawals exempt from permitting may not be applied unless authorized by rules adopted under this chapter or under chapter 90.54 RCW.

(5) Until an updated watershed plan is approved and rules are adopted under this chapter or chapter 90.54 RCW, a city or county issuing a building permit under RCW 19.27.097(1)(c), or approving a subdivision under chapter 58.17 RCW in a watershed listed in subsection (2) of this section must:

(a) Record relevant restrictions or limitations associated with water supply with the property title;

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

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

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

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

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

(i) An applicant shall pay a fee of five hundred dollars to the permitting authority, except as provided in subsection (9) of this section;

(ii) An applicant may obtain approval for a withdrawal exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.

(6) Rules adopted under this chapter or under chapter 90.54 RCW may:

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

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

(c) Include updates to fees based on the planning unit's determination of the costs for offsetting consumptive water use.

(7)(a) If a watershed plan that meets the requirements of this section is not adopted in water resource inventory area 1 (Nooksack) by February 1, 2019, the department must adopt rules for that water resource inventory area that meet the requirements of this section by August 1, 2020.

(b) If a watershed plan that meets the requirements of this section is not adopted in water resource inventory area 11 (Nisqually) by February 1, 2019, the department must adopt rules for that water resource inventory area that meet the requirements of this section by August 1, 2020.

(c) The department must adopt rules that meet the requirements of this section for any of the following water resource inventory areas that do not adopt a watershed plan that meets the requirements of this section by February 1, 2021: 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(8) This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas with instream flow rules adopted under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals: 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville) and does not restrict the withdrawal of groundwater for other uses that are exempt from permitting under RCW 90.44.050.

(9)(a) Upon request by a low-income person, the permitting authority must waive any fee imposed upon the low-income person under this section. The permitting authority may also initiate waiver of the fees for a low-income person.

(b) For purposes of this subsection "low-income person" includes:

(i) Any property owner when providing affordable housing units to be occupied by households with an income of two hundred percent or less of the federal poverty level, adjusted for family size;

(ii) Any property owner when providing a manufactured/mobile home as defined in RCW 59.30.020;

(iii) Any property owner when providing housing for migrant farmworkers; or

(iv) A housing authority governed by chapter 35.82 RCW.

**Sec.**  RCW 90.94.030 and 2018 c 1 s 203 are each amended to read as follows:

(1) Unless requirements are otherwise specified in the applicable rules adopted under this chapter or chapter 90.22 or 90.54 RCW, potential impacts on a closed water body and potential impairment to an instream flow are authorized for new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 through compliance with the requirements established in this section.

(2)(a) In the following water resource inventory areas with instream flow rules adopted by the department under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals and that have either not adopted a watershed plan, or adopted a partial watershed plan, under chapter 90.82 RCW, the department shall establish watershed restoration and enhancement committees in the following water resource inventory areas: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).

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

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

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

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

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

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

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

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

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

(ix) A representative designated by a local organization representing environmental interests within the water resource inventory area; and

(x) A representative designated by a local organization representing agricultural interests within the water resource inventory area.

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

(a) The watershed restoration and enhancement plan should include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids. Plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes but is not limited to such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

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

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

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

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

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

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

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

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

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

(g) After adoption of a watershed restoration and enhancement plan, the department shall evaluate the plan recommendations and initiate rule making, if necessary, to incorporate recommendations into rules adopted under this chapter or under chapter 90.22 or 90.54 RCW. Any modification to fees collected under subsection (4) of this section or standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than authorized under subsection (4) of this section for withdrawals exempt from permitting may not be applied unless authorized by rules adopted under this chapter or under chapter 90.54 RCW.

(h) If the watershed restoration and enhancement committee fails to approve a plan by June 30, 2021, the director of the department shall submit the final draft plan to the salmon recovery funding board established under RCW 77.85.110 and request that the salmon recovery funding board provide a technical review and provide recommendations to the director to amend the final draft plan, if necessary, so that actions identified in the plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area. The director of the department shall consider the recommendations and may amend the plan without committee approval prior to adoption. After plan adoption, the director of the department shall initiate rule making within six months to incorporate recommendations into rules adopted under this chapter or under chapter 90.22 or 90.54 RCW, and shall adopt amended rules within two years of initiation of rule making.

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

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

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

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

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

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

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

(A) An applicant shall pay a fee of five hundred dollars to the permitting authority, except as provided in subsection (7) of this section;

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

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

(b) Upon the issuance of a drought emergency order under RCW 43.83B.405, the department may curtail withdrawal of groundwater exempt from permitting under RCW 90.44.050 and approved under this subsection (4) to no more than three hundred fifty gallons per day per connection for indoor use only. Notwithstanding the limitation to no more than three hundred fifty gallons per day per connection for indoor use only, an applicant may use groundwater exempt from permitting to maintain a fire control buffer during a drought emergency order.

(5) Rules adopted under this chapter or chapter 90.54 RCW may:

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

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

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

(6) This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas with instream flow rules adopted under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap) and does not restrict the withdrawal of groundwater for other uses that are exempt from permitting under RCW 90.44.050.

(7)(a) Upon request by a low-income person, the permitting authority must waive any fee imposed upon the low-income person under this section. The permitting authority may also initiate waiver of the fees for a low-income person.

(b) For the purposes of this section "low-income person" includes:

(i) Any property owner when providing affordable housing units to be occupied by households with an income of two hundred percent or less of the federal poverty level, adjusted for family size;

(ii) Any property owner when providing a manufactured/mobile home as defined in RCW 59.30.020;

(iii) Any property owner when providing housing for migrant farmworkers; or

(iv) A housing authority governed by chapter 35.82 RCW.

**Sec.**  RCW 18.104.055 and 2005 c 84 s 4 are each amended to read as follows:

(1) A fee is hereby imposed on each well constructed in this state on or after July 1, 2005.

(2)(a) The fee for one water well, other than a dewatering well, with a minimum top casing diameter of less than twelve inches is two hundred dollars. This fee does not apply to a ground source heat pump boring or a grounding well.

(b) The fee for one water well, other than a dewatering well, with a minimum top casing diameter of twelve inches or greater is three hundred dollars.

(c) The fee for a resource protection well, except for an environmental investigation well, a ground source heat pump boring, or a grounding well, is forty dollars for each well.

(d) The fee for an environmental investigation well in which groundwater is sampled or measured is forty dollars for construction of up to four environmental investigation wells per project, ten dollars for each additional environmental investigation well constructed on a project with more than four wells. There is no fee for soil or vapor sampling purposes.

(e) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(f) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion thereof, of the dewatering well system.

(g) The fee to decommission a water well is fifty dollars.

(h) The fee to decommission a resource protection well, except for an environmental investigation well, is twenty dollars. There is no fee to decommission an environmental investigation well or a geotechnical soil boring.

(i) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars.

(3) The fees imposed by this section shall be paid at the time the notice of well construction is submitted to the department as provided by RCW 18.104.048. The department by rule may adopt procedures to permit the fees required for resource protection wells to be paid after the number of wells actually constructed has been determined. The department shall refund the amount of any fee collected for wells, borings, probes, or excavations as long as construction has not started and the department has received a refund request within one hundred eighty days from the time the department received the fee. The refund request shall be made on a form provided by the department.

(4)(a) Upon request by a low-income person, the department must waive any fee in this section. The department may initiate waiver of the fees for a low-income person.

(b) For the purposes of this section "low-income person" includes:

(i) Any property owner when providing affordable housing units to be occupied by households with an income of two hundred percent or less of the federal poverty level, adjusted for family size;

(ii) Any property owner when providing a manufactured/mobile home as defined in RCW 59.30.020; or

(iii) Any property owner when providing housing for migrant farmworkers.

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