

**ESSB 6312 - H AMD 1351**

By Representative Dunshee

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature has previously enacted  
4 pilot project legislation to address domestic use of permit exempt  
5 wells in diverse water resource situations and areas of the state. The  
6 intent of this act is to establish an additional pilot project in the  
7 Carpenter/Fisher, upper Nookachamps, and east Nookachamps subbasins in  
8 the Skagit river basin to provide limited amounts of water for rural  
9 domestic water use while maintaining existing instream flow protections  
10 adopted by rule, by funding and implementing water budget action plans  
11 designed to offset impacts to subbasin streamflows caused by new  
12 domestic groundwater withdrawals within each subbasin, and where  
13 possible, to enhance instream flows in the subbasin.

14 **Sec. 2.** RCW 90.44.052 and 2003 c 307 s 2 are each amended to read  
15 as follows:

16 This section includes water resource pilot projects to address  
17 domestic use of permit exempt wells in diverse situations and areas of  
18 the state.

19 (1) **Skagit river subbasins.** The pilot project in this subsection  
20 applies to the Carpenter/Fisher, upper Nookachamps, and east  
21 Nookachamps subbasins in the Skagit river basin, as follows:

22 (a) As of the effective date of this section, the owner of any  
23 legal lot of record that is located within one of these three subbasins  
24 may withdraw public groundwater in an amount of, and not exceeding,  
25 three hundred fifty gallons per day per dwelling unit if a new dwelling  
26 is proposed and the dwelling:

27 (i) Will utilize an on-site septic system for wastewater  
28 management;

1 (ii) Is unable to receive a water supply from a public water system  
2 pursuant to RCW 43.20.260 and as defined in RCW 70.116.030;

3 (iii) Complies with all county ordinances and project approval  
4 conditions and requirements;

5 (iv) Complies with any local jurisdiction provisions that require  
6 proof that water is physically available and that the water meets all  
7 applicable water quality standards; and

8 (v) Is physically located in a subbasin that has a sufficient  
9 quantity of water available in its domestic water budget to offset the  
10 impact of the withdrawal before it occurs, in accordance with the  
11 criteria in section 4 of this act, or as otherwise provided in this  
12 subsection. After the effective date of this section, domestic  
13 groundwater withdrawals may occur before a sufficient quantity of water  
14 is available in a subbasin's domestic water budget only where:

15 (A) A legal lot of record within the Carpenter/Fisher subbasin is  
16 eligible for domestic groundwater withdrawals under this section and a  
17 building permit application has been filed before the effective date of  
18 this section;

19 (B) A domestic groundwater withdrawal is obtained under and debited  
20 against the quantity of water available in a subbasin reservation; or

21 (C) Except as provided in (a)(v)(A) and (B) of this subsection (1),  
22 if the applicable subbasin reservation has been fully allocated and the  
23 applicable domestic water budget balance lacks a sufficient quantity to  
24 offset the consumptive use impact associated with the proposed dwelling  
25 and all prior impacts from permit exempt domestic groundwater  
26 withdrawals identified in section 4(2)(a) of this act, the building  
27 permit for such a dwelling is conditioned to only allow in-home  
28 domestic uses until the domestic water budget balance has a sufficient  
29 quantity of water available to fully offset such consumptive uses,  
30 consistent with the criteria provided in section 4(2) of this act.

31 (b) To the extent groundwater withdrawn under the authority  
32 established in this section is regularly used beneficially, that  
33 dwelling is entitled to a right equal to that established by a permit  
34 issued under the provisions of this chapter.

35 (c) Groundwater withdrawn under the authority established in this  
36 section must be limited to permit exempt domestic uses, as that term is  
37 defined in chapter 173-503 WAC, as it existed on the effective date of

1 this section. The department shall prioritize enforcement efforts to  
2 ensure compliance with the provisions of this section.

3 (d) Domestic groundwater withdrawals already obtained under and  
4 debited against such a subbasin reservation prior to the effective date  
5 of this section are not subject to the quantity limitations provided in  
6 this act. Domestic groundwater withdrawals obtained under and debited  
7 against such a subbasin reservation after the effective date of this  
8 section are subject to a maximum withdrawal of three hundred fifty  
9 gallons per day per dwelling unit.

10 (e) An owner of a legal lot of record may at any time secure an  
11 alternate water source, mitigate, or make water available through  
12 another option recognized under chapter 173-503 WAC, as it existed on  
13 the effective date of this section.

14 (2) **Whitman county.** The pilot project in this subsection applies  
15 to Whitman county, as follows:

16 (a) On a pilot project basis, the use of water for domestic use in  
17 clustered residential developments is exempt as described in (b) of  
18 this subsection (~~((2) of this section))~~) from the permit requirements of  
19 RCW 90.44.050 in Whitman county. The department must review the use of  
20 water under this section and its impact on water resources in the  
21 county and report to the legislature by December 31st of each even-  
22 numbered year through 2016 regarding its review.

23 ~~((2))~~ (b) For the pilot project, the domestic use of water for a  
24 clustered residential development is exempt from the permit  
25 requirements of RCW 90.44.050 for an amount of water that is not more  
26 than one thousand two hundred gallons a day per residence for a  
27 residential development that has an overall density equal to or less  
28 than one residence per ten acres and a minimum of six homes.

29 ~~((3))~~ (c) No new right to use water may be established for a  
30 clustered development under this section where the first residential  
31 use of water for the development begins after December 31, 2015.

32 (3) For the purposes of this section:

33 (a) "Subbasin domestic water budget" has the same meaning as  
34 defined in section 4(3) of this act; and

35 (b) "Subbasin reservation" has the same meaning as defined in  
36 section 4(4) of this act.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 90.44 RCW  
2 to read as follows:

3        (1) The department shall develop domestic water budget action plans  
4 for the Carpenter/Fisher, upper Nookachamps, and the east Nookachamps  
5 subbasins of the Skagit river basin in accordance with this act.

6        (2) In developing plans under this section, the department must  
7 first confer with all parties to the 1996 Skagit river basin water  
8 resources memorandum of agreement, which included the Swinomish Indian  
9 tribal community, Skagit county, the upper Skagit Indian tribe, the  
10 Sauk-Suiattle Indian tribe, the city of Anacortes, public utility  
11 district number one of Skagit county, and the department of fish and  
12 wildlife. Before finalizing a subbasin's domestic water budget action  
13 plan under section 4 of this act, the department shall also consult  
14 with all affected federally recognized tribes within the Skagit river  
15 basin area.

16        (3) A domestic water budget action plan developed and approved  
17 under this act may include any of the following implementing actions to  
18 protect and, where possible, enhance summer streamflows:

19        (a) Acquiring water rights;

20        (b) Incentivizing: Water conservation; collection, retention, and  
21 release of rainwater; or low-impact development practices;

22        (c) Pursuing any alternate water sources or actions to make water  
23 available, as provided under the provisions of chapter 173-503 WAC; or

24        (d) Promoting any other instream flow protection or enhancement  
25 projects, including but not limited to: Source exchanges; aquifer  
26 recharge; infiltration of storm water; or construction of ponds,  
27 wetlands, and other offstream water impoundments designed to capture  
28 and retine water from times of relative surplus to benefit streamflows  
29 in times of relative scarcity.

30        (4) The department shall dedicate water rights acquired to protect  
31 or enhance summer streamflows to the state's trust water program. Such  
32 trust water rights, and any other water supplies developed by the  
33 department and credited to a subbasin's domestic water budget under  
34 this act, shall include reasonable assurance of success in benefiting  
35 instream flows on a permanent and ongoing basis.

36        (5) The department must pursue funding required for successful  
37 implementation of subbasin domestic water budget action plans. If the  
38 department cannot secure sufficient funding, or a subbasin domestic

1 water budget action plan is otherwise unable to meet the criteria for  
2 a successful plan as provided in section 4(2) of this act, by the time  
3 provided in section 4(1) of this act, the department must report that  
4 fact and the reasons behind it to appropriate committees of the  
5 legislature, consistent with RCW 43.01.036. Consistent with RCW  
6 43.01.036, the department shall report to the appropriate committees of  
7 the legislature by January 1, 2014, regarding the status of the pilot  
8 project authorized under this act and make recommendations for  
9 sustainable funding needed for the ongoing implementation of this act.

10 (6) For the purposes of this section, "subbasin domestic water  
11 budget" has the same meaning as defined in section 4(3) of this act.

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.44 RCW  
13 to read as follows:

14 (1) The department must, consistent with this act, approve and  
15 implement domestic water budget action plans for specified Skagit river  
16 subbasins as follows:

17 (a) For the Carpenter/Fisher subbasin: A domestic water budget  
18 action plan must be approved by the department and implemented by  
19 January 1, 2014.

20 (b) For each of the upper Nookachamps and east Nookachamps  
21 subbasins, a domestic water budget action plan must be approved by the  
22 department and implemented by the time the applicable subbasin's  
23 reservation of groundwater is fully allocated.

24 (c) Subbasin domestic water budget action plans approved and  
25 implemented consistent with the provisions of this act fulfill the  
26 mitigation plan requirements of chapter 173-503 WAC and may be  
27 implemented in phases relative to the number and impact of new domestic  
28 uses within the subbasin.

29 (2) In approving and implementing a subbasin's domestic water  
30 budget action plan under this section, the department shall ensure that  
31 the plan meets the following criteria for plan success, and is designed  
32 to:

33 (a) Augment summer subbasin streamflows with water quantities  
34 sufficient to offset total summer consumptive use impacts from permit  
35 exempt domestic groundwater withdrawals occurring within the subbasin  
36 and commenced after April 14, 2001;

1 (b) Protect and, where possible, enhance summer streamflows by  
2 acquiring or developing water supplies as far up subbasin tributaries  
3 as practicable and feasible;

4 (c) Quantify total consumptive water use from all domestic  
5 groundwater withdrawals identified in (a) of this subsection,  
6 cumulative summer impacts to streamflows within the subbasin resulting  
7 from such withdrawals, and the benefits derived from actions taken  
8 within the subbasin to offset impacts or benefit subbasin streamflows;  
9 and

10 (d) Account for credits and debits within each subbasin domestic  
11 water budget. Offsetting water supplies acquired or developed and  
12 dedicated as trust water within a subbasin must be credited as deposits  
13 to the applicable domestic water budget. Debits against the water  
14 budget balance for new domestic groundwater withdrawals occurring  
15 within the subbasin must be based on a standard quantity calculated by  
16 the department to reflect the average summer daily consumptive use  
17 associated with the maximum withdrawal of three hundred fifty gallons  
18 per day per dwelling as authorized under this act. Unless otherwise  
19 provided in this act, permit exempt domestic withdrawals debited  
20 against a subbasin's domestic water budget must be made available,  
21 administered, enforced, and accounted for in a manner consistent with  
22 domestic water withdrawals obtained under a subbasin reservation.

23 (3) For the purposes of this section, "subbasin domestic water  
24 budget" means a mechanism of tracking debits and credits for subbasin  
25 water supplies acquired or developed by the department to offset  
26 cumulative consumptive use impacts from permit exempt domestic  
27 groundwater withdrawals and to protect and, where possible, enhance  
28 subbasin summer streamflows as authorized and provided under this act.

29 (4) For the purposes of this section, "subbasin reservation" means  
30 a reservation of groundwater that has been established under chapter  
31 173-503 WAC as it existed on the effective date of this section.

32 (5) The development, approval, and implementation of subbasin  
33 domestic water budget action plans under this act may be funded, in  
34 part or in whole, by state capital budget or omnibus appropriations  
35 funding. Nothing in this chapter prohibits a county, public utility  
36 district, or any other special purpose district recognized under RCW  
37 39.34.190 from participating in or contributing public funds to support  
38 development, approval, and implementation of such plans.

1        NEW SECTION.    **Sec. 5.**    The provisions of this act override any  
2 conflicting provisions contained in chapter 173-503 WAC as it existed  
3 on the effective date of this section, and the department of ecology  
4 shall commence expedited rule making as needed to ensure consistency  
5 with this act.

6        NEW SECTION.    **Sec. 6.**    In enacting this act, the legislature does  
7 not intend to imply legislative approval or disapproval of any judicial  
8 interpretation or existing administrative rule or policy regarding the  
9 provisions of this act not expressly added or revised.

10       NEW SECTION.    **Sec. 7.**    If specific funding for the purposes of this  
11 act, referencing this act by bill or chapter number, is not provided by  
12 June 30, 2012, in either the omnibus appropriations act or the capital  
13 budget, this act is null and void."

14        Correct the title.

EFFECT:    Provides an avenue for domestic groundwater withdrawals  
within specified subbasins of the Skagit river basin of 350 gallons a  
day and requires the department of ecology to develop and implement a  
domestic water budget action plan for specified subbasins of the Skagit  
river basin.

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