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**SUBSTITUTE SENATE BILL 5965**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Warnick, Hatfield, Pearson, Hobbs, and Bailey)

AN ACT Relating to evaluating mitigation options for impacts to base flows and minimum instream flows; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds that rural economic development is threatened when access to uninterruptible water supplies is restricted as a result of rules that establish base flows and minimum instream flows. The problem is acute when state agencies fail to provide reasonable mitigation options for landowners who rely on permit-exempt groundwater withdrawals as a source of water. The legislature recognizes that inhibiting economic opportunities in rural areas is not an acceptable policy for the people of Washington and that options may exist whereby a broader range of mitigation choices could be made available to landowners whose ability to access water has been curtailed by rules that establish base flows and minimum instream flows.

NEW SECTION. **Sec.**  (1) The department of ecology must produce a report evaluating options for mitigating the effects of permit-exempt groundwater withdrawals on base flows and minimum instream flows. The department must consult with the office of the attorney general when preparing the report. The department must make available a draft of the report on its web site for at least twenty-one days for public review prior to the completion of the report to allow sufficient opportunity to consider input that may be received. The report must include:

(a) An examination of scientific methodologies for establishing base flows and minimum instream flows, including a discussion of methodologies regularly used by the department of ecology;

(b) An analysis of whether requiring mitigation for new permit-exempt groundwater withdrawals would in fact result in meeting base flows or minimum instream flows;

(c) A description of mitigation techniques the department of ecology has employed in the last ten years to mitigate the impacts of permit-exempt groundwater withdrawals on base flows and minimum instream flows, including the location, cost, and legal authority for each type of mitigation technique;

(d) A discussion of out-of-kind mitigation techniques the department of ecology has employed in the last ten years, or may seek to employ, to mitigate the impacts of permit-exempt groundwater withdrawals on base flows and minimum instream flows, including the location, cost, and legal authority for each type of out-of-kind mitigation technique. For the purposes of this section, out-of-kind mitigation techniques are mitigation techniques that seek to manage broader hydrologic effects that may be associated with rural development rather than focusing on regulating the consumptive impact of new groundwater withdrawals. Out-of-kind mitigation techniques may include, but are not limited to, land development practices, habitat restoration, and best management practices;

(e) A survey of in-kind streamflow enhancement strategies, other than regulation of permit-exempt groundwater withdrawals, that would improve streamflow levels in a cost-effective manner;

(f) An assessment of the effectiveness of each type of mitigation technique, including out-of-kind mitigation techniques, that may be available to the department of ecology to mitigate the impacts of permit-exempt groundwater withdrawals on base flows and minimum instream flows;

(g) An evaluation of all mitigation options that may be available for permit-exempt groundwater withdrawals in the areas covered under the instream resources protection program for the lower and upper Skagit river basin, water resource inventory areas 3 and 4, and a discussion of the advantages and disadvantages of employing each type of mitigation technique in those areas; and

(h) Recommendations for legislative action to ensure reasonable mitigation options, including out-of-kind mitigation techniques, will be available to landowners who are required to mitigate the impacts of permit-exempt groundwater withdrawals on base flows and minimum instream flows.

(2) By November 1, 2015, the department of ecology must submit the final report to the appropriate committees of the legislature having oversight over water resource issues.

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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