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**SENATE BILL 5024**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators McCoy, Hasegawa, Chase, Liias, Rolfes, Cleveland, Wellman, Frockt, Pedersen, Keiser, and Kuderer

AN ACT Relating to groundwater supply availability in areas with ground and surface water interaction; amending RCW 19.27.097, 58.17.110, and 90.42.110; adding a new section to chapter 36.70 RCW; adding a new section to chapter 90.44 RCW; creating new sections; making appropriations; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec.**  In the 1990 growth management act, the legislature directed that local governments include measures to protect water resources in comprehensive land use plans and development regulations and also required evidence of water supply availability when issuing building permits and approving subdivisions. Recently, the Washington supreme court has affirmed that under these provisions the water supply to serve the building or the subdivision must be both physically available and legally available, meaning that the appropriation of the supply will not impair senior water rights, including minimum surface water flows adopted by state regulation. Therefore, it is the intent of this act to provide effective and timely mechanisms for counties to implement these requirements, and to require state assistance in providing technical and financial assistance as well as administering the trust water rights program and other water resource management programs to ensure that water supplies are available to serve domestic uses in rural areas while protecting senior water rights from impairment.

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

(1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a mitigation certificate issued by the county under subsection (4) of this section, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.

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

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

(4) If the applicant proposes to use a groundwater withdrawal that is exempt from permitting by the department of ecology under RCW 90.44.050, the building permitting authority may determine that water is available for the proposed withdrawal where water is physically available and:

(a) The building is located in an area subject to an agreement under subsection (2) of this section;

(b) The water will be withdrawn from a source that is in hydraulic continuity with surface waters that the department of ecology has determined to have flows in excess of minimum instream flows and other senior water rights that are available for new noninterruptible withdrawals; or

(c) The applicant demonstrates that a provision has been made to provide water in adequate quantities and at appropriate times and locations to mitigate for the proposed withdrawal. A mitigation certificate issued under section 4 of this act constitutes evidence of adequate mitigation.

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

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

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

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

(4) If the applicant proposes to use a groundwater withdrawal that is exempt from permitting by the department of ecology under RCW 90.44.050 to provide potable water within the subdivision, the building permitting authority may determine that water is available for the proposed withdrawal where water is physically available and:

(a) The building is located in an area subject to an agreement under RCW 19.27.097(2);

(b) The water will be withdrawn from a source that is in hydraulic continuity with surface waters that the department of ecology has determined to have flows in excess of minimum instream flows and senior water rights that are available for new noninterruptible withdrawals; or

(c) The applicant demonstrates that a provision has been made to provide water in adequate quantities and at appropriate times and locations to mitigate for the proposed withdrawal. A mitigation certificate issued under section 4 of this act constitutes evidence of adequate mitigation.

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

(1) Each county legislative authority may choose to implement a program for the mitigation of impacts upon surface waters of new withdrawals from groundwaters exempt from permitting by the department of ecology under RCW 90.44.050.

(2) The program may be applicable to some or all areas having groundwaters in hydraulic continuity with surface waters and not served by a water distribution system available to the general public. Upon request from a county, the department of ecology shall provide the best available existing data and mapping of ground and surface water resources for each area requested by the county.

(3) In a county that adopts a mitigation program, every applicant for a building permit under RCW 19.27.097 and for subdivision approval under RCW 58.17.110 must be allowed to participate in the program if they are within the area covered by the program and the county has or reasonably anticipates having water resources available to mitigate the applicant's impact. The county may also allow additional participants seeking to mitigate impacts on surface waters of a new permit-exempt groundwater withdrawal if they are within the area covered by the program and the county has or reasonably anticipates having water resources available to mitigate the applicant's impact. A county is deemed to "reasonably anticipate" availability of mitigation water if:

(a) A source of water to be used as mitigation is identified and the department of ecology confirms that the water is reasonably likely to be available; or

(b) A water right to be used as mitigation is identified and the county demonstrates a preliminary, commercially reasonable, agreement with the rightholder to purchase the water right for mitigation purposes.

(4) The initial mitigation must be in place no later than five years after the issuance of the first mitigation certificate. After that initial five-year period, all mitigation must be in place before the mitigation certificate is issued.

(5) A county may accept a monetary payment as an acceptable mitigation measure, provided that the county commits to fully mitigate for impacts associated with the landowner's well. The county may also accept mitigation obtained through the state trust water rights program or from a water bank established by the county, the department of ecology, or by a third party, provided the bank is recognized by the department of ecology and satisfies the requirements of chapter 90.42 RCW. The county may also accept a permanent dedication to instream flows under the state trust water rights program or other change or transfer of a water right approved by the department of ecology for dedication to instream flows.

(6) The county must issue a mitigation certificate to a participant meeting the program standards. The certificate must be recorded with the title to the real property. The certificate recipient has no further responsibility for implementation of the mitigation but may be required to pay reasonable fees to pay for program operation and monitoring. These fees may not be based on the amount of water used and must be the same for all participants.

(7) All monetary compensation provided by certificate recipients and all state financial assistance for mitigation programs adopted under this section must be administered by the county solely for the costs of administering the program and for implementing mitigation measures.

(8) The department must provide assistance to counties choosing to adopt a mitigation program, including:

(a) The best available information regarding ground and surface waters in the areas to be covered by a program, including surface water impact risk relative to well locations;

(b) Information regarding potential water rights that may serve as mitigation;

(c) Information on how to design potential mitigation projects, such as offstream storage or flow augmentation;

(d) Information on alternative water supply programs that utilize cisterns to avoid or mitigate for new wells;

(e) Information regarding existing and potential water banks to provide mitigation;

(f) Assistance in creating a county-sponsored water bank;

(g) Entering a memorandum of agreement upon request by a county to administer all or portions of a mitigation program; and

(h) Financial assistance for creating and implementing the program, which should cover at least one-half of the costs of the program.

**Sec.**  RCW 90.42.110 and 2003 c 144 s 3 are each amended to read as follows:

(1) The department, with the consent of the water right holder, may identify trust water rights for administration for water banking purposes, including trust water rights established before May 7, 2003.

(2) An application to transfer a water right to the trust water ((~~[rights]~~)) rights program shall be reviewed under RCW 90.03.380 at the time the water right is transferred to the trust water ((~~[rights]~~)) rights program for administration for water banking purposes, and notice of the application shall be published by the applicant as provided under RCW 90.03.280. The application must indicate the reach or reaches of the stream where the trust water right will be established before the transfer of the water right or portion thereof from the trust water ((~~[rights]~~)) rights program, and identify reasonably foreseeable future temporary or permanent beneficial uses for which the water right or portion thereof may be used by a third party upon transfer from the trust water ((~~right[s]~~)) rights program. In the event the future place of use, period of use, or other elements of the water right are not specifically identified at the time of the transfer into the trust water ((~~[rights]~~)) rights program, another review under RCW 90.03.380 will be necessary at the time of a proposed transfer from the trust water ((~~[rights]~~)) rights program.

(3) The department shall expedite the processing of all applications to transfer a water right to the trust water program for water banking purposes, where the bank will serve to provide mitigation for small groundwater withdrawals under a county mitigation program adopted under section 4 of this act.

NEW SECTION. **Sec.**  (1) The permit-exempt well withdrawal mitigation committee is created. The committee is composed of seven members appointed by the governor, as follows:

(a) A chair of the committee;

(b) A representative of counties;

(c) A representative of tribal governments;

(d) A representative of rural property owners;

(e) A representative of rural property development interests;

(f) A representative of environmental and conservation interests; and

(g) A representative of the department of commerce, who shall coordinate with other appropriate agencies including the departments of health, ecology, and fish and wildlife in fulfilling its responsibilities on the committee.

(2) The committee's purpose is to review and make recommendations for integrating groundwater supply availability into land use planning and approvals and ensuring that groundwater and surface water continuity is considered in determinations of water availability.

(3) The committee shall serve as a forum for the exchange of information and experiences around the state in developing mitigation programs under section 4 of this act.

(4) By January 1, 2018, the committee shall provide a report to the governor and to the appropriate committees of the senate and house of representatives that includes, but is not limited, to:

(a) A summary of actions by counties to incorporate considerations of water supply availability and ground and surface water interactions into comprehensive land use plans, development regulations, and building permit and land division reviews;

(b) A review of county mitigation programs authorized under section 4 of this act;

(c) A summary of the hydrological data and mapping resources provided by the state and other sources to assist counties in assessing water supply availability for permit-exempt wells in areas with groundwater and surface water continuity;

(d) An estimate of additional hydrological assessments needed and recommendations for state financial and technical assistance to obtain such assessments, with a priority placed upon high growth areas with adopted minimum flows and closures of further surface water appropriations;

(e) Recommendations for necessary policy and budgetary measures to provide for alternative water supplies and mitigation projects when water banks providing mitigation water-for-water in time and place is not available; and

(f) Recommendations for guidance to counties for integrating water supply availability considerations into comprehensive land use plans and development regulations, including recommendations for more effective mitigation programs.

(5) By January 1, 2019, the committee shall provide a report to the governor and to the appropriate committees of the senate and house of representatives that includes, but is not limited to, recommendations for:

(a) Improving local and state coordination and funding of integrating water supply availability into land use planning, including allocation of responsibility for funding and operating mitigation programs;

(b) State funding to cover the costs of mitigation that exceed monetary compensation received in the issuance of mitigation certificates; and

(c) The protection and restoration of streamflows necessary to support fisheries and all other instream resources, including the adoption of regulatory minimum flows in the remaining watersheds of the state.

(6) The department of ecology shall provide necessary staffing for the committee. At the request of the chair, the departments of commerce and ecology shall provide information in their possession that will assist the committee in carrying out its responsibilities under this section.

(7) This section and all duties and responsibilities of the committee expire June 30, 2019.

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

The water withdrawal mitigation assistance account is created in the state treasury. All receipts from moneys directed to the account by the legislature must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for implementing mitigation programs authorized by RCW 19.27.097, 58.17.110, 90.42.110, and section 4 of this act.

NEW SECTION. **Sec.**  (1) The sum of five million dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2018, from the water withdrawal mitigation assistance account created in section 7 of this act to the department of ecology for the purposes of this act.

(2) The sum of five million dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2019, from the water withdrawal mitigation assistance account created in section 7 of this act to the department of ecology for the purposes of this act.

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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