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**HOUSE BILL 2226**

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**State of Washington 65th Legislature 2017 2nd Special Session**

**By** Representatives Stanford, Springer, McBride, and Fitzgibbon

AN ACT Relating to addressing permit-exempt wells to support rural development while protecting groundwater and surface water resources; amending RCW 19.27.097, 58.17.110, 36.70A.070, and 90.54.120; adding new sections to chapter 90.54 RCW; and declaring an emergency.

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

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

(1)(a) 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 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~~)):

(i) A water right permit or certificate from the department of ecology. An application for a water right is not sufficient proof of an adequate water supply;

(ii) A letter from an approved water purveyor stating the ability to provide water;

(iii) A water well report consistent with the requirements of chapter 18.104 RCW from a groundwater withdrawal exempt from permitting pursuant to RCW 90.44.050, under one of the following provisions unless prohibited by an applicable water resources management rule adopted by the department of ecology:

(A) In areas where rules have not been adopted under chapter 90.22 or 90.54 RCW, proof of an adequate water supply may rely on demonstration of physical availability of a sufficient quantity of potable water, which does not exceed authorized uses and quantities exempt from permitting under RCW 90.44.050, provided the city or county comprehensive plan and development regulations match growth with available, unappropriated water supplies, and the available information shows that senior water rights are not being impaired by existing or planned growth, and that ground and surface water levels are stable;

(B) In areas where rules have been adopted under chapter 90.22 or 90.54 RCW or where a federally administered adjudication exists and those rules, consent decrees, or court orders specify mitigation requirements, the proof of an adequate water supply must meet the mitigation requirements specified in the applicable rule, consent decree, or court order;

(C) In areas where rules have been adopted under chapter 90.22 or 90.54 RCW or where a federally administered adjudication exists but the applicable rule, consent decree, or court order does not specify mitigation requirements, proof of an adequate water supply may rely on compliance with mitigation requirements pursuant to section 4 of this act;

(D) In areas where rules have not been established under chapter 90.22 or 90.54 RCW, proof of an adequate water supply may rely on a mitigation certificate issued pursuant to section 4 of this act;

(iv) Another form sufficient to verify the physical and legal existence of an adequate water supply, such as from an alternative water supply.

(b) Subsection (1)(a)(iii) of this section does not apply in the Yakima basin, water resource inventory areas 37, 38, and 39, the Skagit basin, water resource inventory areas 3 and 4, or the Methow basin, water resource inventory area 48.

(2) In addition to other authorities, the county or city may:

(a) 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~~)); and

(b) Require additional information from an applicant needed to determine that adequate potable water is available.

((~~(2)~~)) (3) Within counties not required or not choosing to plan pursuant to RCW 36.70A.040, the county and the ((~~state~~)) department of ecology may mutually determine those areas in the county in which the requirements of subsections (1) and (2) 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~~)) department of ecology 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)~~)) (4) 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.

(5) The departments of ecology, health, and commerce shall coordinate on the implementation of this section.

(6) For purposes of this section, "water resource inventory area" and "WRIA" have the same meaning as defined in RCW 90.54.120.

**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 schoolgrounds, 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 schoolgrounds 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) Adequate provisions for water supply for a subdivision, dedication, or short subdivision under this chapter must be consistent with applicable laws and rules adopted pursuant to chapters 90.03, 90.22, 90.44, and 90.54 RCW.

**Sec.**  RCW 36.70A.070 and 2015 c 241 s 2 are each amended to read as follows:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140. Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. In providing for the protection of the quantity of groundwater use for public water supplies under this subsection, a county or city must be consistent with applicable laws and rules adopted pursuant to chapters 90.03, 90.22, 90.44, and 90.54 RCW. The level of planned growth in a comprehensive plan must be consistent with current scientific information on the availability of water within the area during the twenty-year planning period. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources, which may include measures that rely on applicable laws and rules adopted pursuant to chapters 90.03, 90.22, 90.44, and 90.54 RCW, where the level of planned growth is consistent with current scientific information on the availability of water within the area during the twenty-year planning period; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary, the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries, such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride-sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. If the collection of impact fees is delayed under RCW 82.02.050(3), the six-year period required by this subsection (6)(b) must begin after full payment of all impact fees is due to the county or city.

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

NEW SECTION. **Sec.**  A new section is added to chapter 90.54 RCW to read as follows:

(1) Unless mitigation requirements are otherwise specified in the applicable rule, impacts on closed water bodies, and potential impairment to instream flows adopted pursuant to chapter 90.22 RCW or this chapter, of new domestic or commercial groundwater withdrawals exempt from permitting under RCW 90.44.050 are deemed mitigated by participation in and compliance with the mitigation program established in this section.

(2) The department shall establish a mitigation program for permit-exempt domestic and commercial water use. The department shall work in collaboration with affected tribes and affected counties to establish the mitigation program.

(a) Within two years of the effective date of this section, the department shall, in each WRIA in which mitigation fees are being collected under this section, attempt to identify and purchase or otherwise secure senior water rights that are sufficient to fully mitigate in time and in place withdrawals of water associated with mitigation certificates issued under this section.

(b) Within two years of the effective date of this section, in any WRIA in which the department is unable to secure senior water rights sufficient to fully mitigate in time and in place withdrawals of water associated with mitigation certificates issued under this section, the department shall create a mitigation committee. Each mitigation committee must convene at least twice per year to review, prioritize, approve, and oversee implementation of mitigation work within the WRIA. For approval, mitigation projects must be consented to by all parties on the mitigation committee. The department shall adopt rules to govern the activities and procedures of mitigation committees established under this section. The department shall invite the following to participate on the mitigation committee:

(i) A representative from each tribe that has either reservation land or a usual and accustomed harvest area within the WRIA;

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

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

(iv) A representative designated by each county within the WRIA.

(c) For each WRIA identified in (b) of this subsection, the department, in collaboration with the mitigation committee for that WRIA, shall create a mitigation plan within two years of the effective date of this section. The mitigation plan must prioritize mitigation of the total consumptive quantity of water expected to be associated with withdrawals authorized under this section as near as possible to the area of direct impact, with the highest priority being mitigation that replaces water during the same time periods as the consumptive impact and in the same basin or tributary. When such higher priority projects are not feasible, the mitigation plan may include projects not in the same basin or tributary and projects that do not replace consumptive impact during critical flow periods.

(d) The department shall adopt two tiers of mitigation fees to be assessed by the local permitting authority in exchange for the issuance of a mitigation certificate.

(i) The tier one fee applies to residential units that withdraw an average of three hundred fifty gallons of water per day for indoor use, with only incidental outdoor use. The tier two fee applies to single dwelling units that withdraw an average of five hundred gallons per day for a combination of indoor use and up to two thousand five hundred square feet of lawn or noncommercial garden.

(ii) The fees shall be based on a rolling five-year average of the department's actual average costs to acquire water rights throughout the state.

(iii) Within one month of the effective date of this section, the department shall submit a report to the legislature that identifies the department's actual costs to acquire water rights throughout the state and that specifies the initial tier one and tier two fees to be assessed by the local permitting authority in exchange for the issuance of a mitigation certificate.

(iv) Beginning July 1, 2020, and every five years thereafter, the department must adjust the mitigation fees established in this subsection according to the most recent five-year average of the department's actual average cost to acquire water rights throughout the state.

(e) The department shall deposit all revenues collected under this section in the water resources mitigation account created in section 7 of this act. The department shall use fee revenues collected under this program solely for the costs of administering requirements under this section and implementing mitigation projects. Fee revenues collected under this section must be used exclusively within the WRIA in which the fee originated, unless the appropriate mitigation committee authorizes expenditures outside of the WRIA. This restriction does not apply to moneys in the water resources mitigation account that do not originate from fees collected under this section. Upon the approval of a mitigation project by the appropriate mitigation committee, the department shall authorize such expenditures from the water resources mitigation account as are necessary to carry out the mitigation project.

(3) To issue a mitigation certificate under this section, a city, town, or county issuing a permit or approval under RCW 19.27.097 or chapter 58.17 RCW shall:

(a) Record a mitigation certificate with the property title for each property that complies with the provisions of this section;

(b) Collect applicable fees under subsection (4) of this section; and

(c) Remit all fees collected to the department quarterly.

(4) To obtain a mitigation certificate under this section, an applicant for a building permit for a building necessitating potable water that will rely on a new permit-exempt groundwater withdrawal for domestic or commercial use:

(a) Shall pay a mitigation fee, as established by the department pursuant to subsection (2)(d) of this section, to the local permitting authority, as follows:

|  |  |
| --- | --- |
| **Water use** | **One-time fee** |
| (i) Single domestic or commercial indoor use only, up to three hundred fifty gallons per day | Tier One |
| (ii) Single domestic or commercial indoor use, plus outdoor irrigation of up to two thousand five hundred square feet of lawn or noncommercial garden, up to five hundred gallons per day | Tier Two |

(b) May obtain a modified mitigation certificate at a later time to change authorized water use from tier one to tier two through application to the permitting authority for a mitigation certificate change. The county shall grant a mitigation certificate for increased water use upon receipt of payment for the difference in fees between the amount of the tier one fee originally paid by the applicant and the amount of the tier two fee as it exists at the time the change application is made;

(c) Shall sign an affidavit agreeing to not exceed the level of water use authorized in the mitigation certificate issued by the local permitting authority;

(d) Shall install and maintain a water meter. The property owner must report water use annually to the department in a manner to be determined by the department by rule.

(5) Mitigation program reporting and evaluation is as follows:

(a) By January 31st of each year, each permitting authority issuing mitigation certificates shall provide the department with the total number of mitigation certificates issued and a summary of total fees collected for each WRIA for the previous calendar year.

(b) Beginning July 1, 2022, and every two years thereafter, and in compliance with RCW 43.01.036, the department shall submit a report to the legislature that includes the following information for each WRIA:

(i) Total number of mitigation certificates issued;

(ii) A summary of total fees collected;

(iii) A description of each mitigation project initiated, including the location, cost, and status of each project;

(iv) The total amount of consumptive water use to be mitigated;

(v) The total amount of mitigation that has been obtained;

(vi) A description of challenges faced in implementation of the program, including recommendations to the legislature for changes to improve mitigation for groundwater withdrawals exempt from permitting under RCW 90.44.050; and

(vii) Whether the department has been able to obtain at least one-half of the mitigation necessary to fully address the water consumption associated with new groundwater withdrawals exempt from permitting under RCW 90.44.050.

(6) In any WRIA in which the department has been unable to obtain at least one-half of the necessary mitigation as of July 1, 2022, or as of July 1st of every even-numbered year thereafter, the department must provide notice to the local permitting authority of a two-year deadline to achieve the minimum mitigation level. If the minimum mitigation level is not achieved in the subsequent two-year period, the local permitting authority is no longer authorized to issue a mitigation certificate pursuant to this section until such time as the department certifies that the WRIA has achieved at least one-half of the necessary mitigation.

(7) In a WRIA where instream flow rules have not been adopted pursuant to either this chapter or chapter 90.22 RCW, a local government may develop a mitigation plan for impacts of new permit-exempt water use on senior water users. Once the mitigation plan is approved by the department, the local governmental entity may issue mitigation certificates based on payment of the mitigation fee as specified in subsection (2)(d) of this section.

**Sec.**  RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended to read as follows:

((~~For the purposes of this chapter, unless the context is clearly to the contrary, the following definitions shall be used:~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial water use" means potable water to satisfy the normal needs of a commercial business, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and cleaning of the interior or exterior of the business.

(2) "Department" means the department of ecology.

((~~(2)~~)) (3) "Domestic water use" means potable water to satisfy the normal needs of a household, including water used for drinking, bathing, sanitary purposes, cooking, laundering, care of household parts, and other incidental uses.

(4) "Utilize" or "utilization" shall not only mean use of water for such long recognized consumptive or nonconsumptive beneficial purposes as domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, thermal power production, mining, recreational, maintenance of wildlife and fishlife purposes, but includes the retention of water in lakes and streams for the protection of environmental, scenic, aesthetic and related purposes, upon which economic values have not been placed historically and are difficult to quantify.

(5) "WRIA" means a water resource inventory area established under WAC 173-500-040, as it existed as of January 1, 2017.

NEW SECTION. **Sec.**  A new section is added to chapter 90.54 RCW to read as follows:

(1) Nothing in this chapter affects the ability of any person to pursue a cause of action for the protection of any water right that is not a base flow, minimum flow, minimum level, or other similar standard or policy, established by the department.

(2) However, if a person is required to divert, consume, or withdraw less water than his or her water right or permit allows because of the requirement to comply with a senior base flow, minimum flow, minimum level, or other similar standard or policy, established by the department while persons with junior water rights or junior permit-exempt wells are allowed to continue to divert or withdraw water, the senior water right holder may enforce the base flow, minimum flow, minimum level, or other similar standard or policy against the junior water right holder.

NEW SECTION. **Sec.**  A new section is added to chapter 90.54 RCW to read as follows:

The water resources mitigation account is created in the custody of the state treasurer. All receipts from mitigation fees paid pursuant to section 4 of this act must be deposited into the account. The account may also receive such moneys as are appropriated by the legislature for the purpose of funding mitigation projects as identified in section 4 of this act. Expenditures from the account may be used only for the costs of administering requirements under section 4 of this act and implementing mitigation projects under section 4 of this act. Only the director of the department or the director's designee may authorize expenditures from the account. No expenditure of funds that originate from fees collected under section 4 of this act may be made for the purpose of implementing a mitigation project under section 4 of this act until the mitigation project has been approved by the appropriate mitigation committee created in section 4 of this act. The approval of a mitigation committee is not required for the expenditure of funds in the account that do not originate from fees collected under section 4 of this act. Fee revenues collected under section 4 of this act must be used exclusively within the WRIA in which the fee originated, unless the appropriate mitigation committee authorizes expenditures outside of the WRIA. This restriction does not apply to moneys in the water resources mitigation account that do not originate from fees collected under section 4 of this act. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Upon the approval of a mitigation project by the appropriate mitigation committee, the department shall authorize such expenditures from the water resources mitigation account as are necessary to carry out the mitigation project.

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.

**--- END ---**