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**HOUSE BILL 2766**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Stanford, Sawyer, Pollet, and Appleton

AN ACT Relating to the certification and evidence of adequate and available water; amending RCW 19.27.097 and 90.44.450; reenacting and amending RCW 36.70A.070; adding a new section to chapter 90.44 RCW; adding a new section to chapter 36.70A RCW; adding new sections to chapter 90.54 RCW; creating new sections; 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 state supreme court has affirmed that under these provisions the water supply to serve any building or subdivision must be both physically available and legally available, meaning that the withdrawal of the supply will not impair senior water rights, including senior instream flow rights established by rule, or violate closures established by state rule, and would not otherwise harm fish or other aquatic life or their habitat unless otherwise mitigated under this act. Therefore, it is the intent of this act to provide effective and timely mechanisms for counties and the department of ecology to implement these requirements, develop a means to mitigate for the withdrawal of permit exempt well water, and to require state assistance in providing technical and financial assistance as well as administering the trust.

**PART 1**

**CERTIFICATION AND EVIDENCE OF ADEQUATE AND AVAILABLE WATER**

**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 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.~~)) However, no permit may be issued that will operate to impair senior water rights, including senior instream flow rights established by rule and would not otherwise harm fish or other aquatic life or their habitat unless otherwise mitigated under this act.

(2)(a) Subject to and in addition to these conditions, evidence may be in the form of:

(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; or

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

(b) If either of these two forms of proof are not provided, then evidence of an adequate water supply for the intended use of the building must be in the form of the following:

(i) 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; and

(ii) Proof that a meter has been or will be installed, with such metered use to be recorded by the county; and

(iii) Proof that water is legally and physically available in the form of a mitigation certification stating that both the department of ecology and the county have determined that water is legally available and physically available and where the water use is fully mitigated under this act; or

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

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

(1) A groundwater withdrawal exempt from permitting under RCW 90.44.050 may receive a building permit provided that the requirements of RCW 19.27.097 and section 202 of this act are met and if the quantity of water use is limited to water for domestic use up to three hundred fifty gallons per day. Withdrawals from all permit exempt wells under RCW 90.44.050 must be metered, measured, and reported to the county and the department. This information is a matter of public record.

(2) In water resource inventory areas where rules have not been adopted under chapter 90.22 or 90.54 RCW, proof of an adequate water supply must be by certification and use under the requirements of RCW 19.27.097 and section 202 of this act.

(3) In water resource inventory areas where rules have been adopted under chapter 90.22 or 90.54 RCW after 2000 or where a federal or state administered adjudication exists or has occurred and if 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. If mitigation requirements have been met under the applicable rule, consent decree, or court order, additional withdrawals of water that exceed those requirements must follow the requirements of this act.

(4) In water resource inventory areas where rules have been adopted under chapter 90.22 or 90.54 RCW before 2000, mitigation must follow the requirements of this act.

**Sec.**  RCW 90.44.450 and 1989 c 348 s 7 are each amended to read as follows:

The department of ecology ((~~may~~)) shall require withdrawals of groundwater to be metered, or measured by other approved methods, as a condition for a new water right permit. The department ((~~may~~)) shall also require, as a condition for such permits, reports regarding such withdrawals as to the amount of water being withdrawn. These reports shall be in a form prescribed by the department.

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

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

(a) Shall 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 if the new uses are within five hundred feet of an existing public water supply delivery system.

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

(2) Appropriate 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.

**PART 2**

**MITIGATION AND CERTIFICATES**

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 an applicable rule adopted after 2000, any new domestic or industrial groundwater withdrawal exempt from permitting under RCW 90.44.050 is entitled to receive a mitigation certificate by complying with the mitigation requirements established in section 202 of this act.

(2) A mitigation certificate to withdraw water under this section may only be issued if the water withdrawal would not cause, individually or cumulatively, an impairment to senior water rights, including senior instream flow rights, established by rule and would not otherwise harm fish or other aquatic life or their habitat unless mitigated under this act.

(3) Impairment or harm means any reduction in flow whether measured or modeled, that will impair a senior water right, including senior instream flow rights, established by rule and would not otherwise harm fish or other aquatic life or their habitat unless mitigated under this act.

(4) A mitigation certificate may only be issued once mitigation has been implemented as agreed upon by the government entities and as provided in section 202 of this act.

(5) Appeals of the department's issuance of all mitigation certificates, and the pollution control hearings board review thereof, are subject to de novo review by a superior court.

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

(1) Mitigation certificates may be provided to applicants by the department for projects developed through the collaboration and mutual agreement of the following government entities: The county, the department of ecology, the department of fish and wildlife, and any federally recognized tribe or tribes whose reservation, usual and accustomed fishing areas, or areas that support tribal treaty fisheries may be impaired by the withdrawal. An applicant may provide additional methods for mitigation if mutually approved by the government entities.

(2) Mitigation projects must be completed before withdrawal or after withdrawal by the mutual agreement of the government entities identified in subsection (1) of this section.

(3) Mitigation certificates may only be issued once the department has certified that the applicant has achieved one hundred percent mitigation for the total annual increased consumptive uses of proposed withdrawals and if other requirements of this section are met, unless other mitigation is approved by the governmental entities as prescribed in this section.

**PART 3**

**ELEMENTS OF COMPREHENSIVE PLANS**

**Sec.**  RCW 36.70A.070 and 2017 3rd sp.s. c 18 s 4 and 2017 3rd sp.s. c 16 s 4 are each reenacted and 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 used for public water supplies, a county or city must ensure stream flow monitoring, measuring, and reporting in all subbasins where mitigation or new permit exempt wells are proposed. Local governments may, at their discretion, work with the department of ecology to fulfill these requirements. Additionally, in providing for the protection of the quantity of groundwater used for public water supplies, a county or city must require physical and legal water availability be determined and be consistent with best available science and applicable laws and rules adopted pursuant to chapters 90.03, 90.22, 90.44, and 90.54 RCW, provided that the portions of such rules that were adopted before 2000 that purport to exempt certain consumptive uses shall not be relied upon by counties or cities, and scientifically supportable water resource data, including water quantity, water quality, and instream flow assessments, to evaluate water resource impacts from projected growth. This information must include groundwater modeling representing recent conditions. 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. In counties and cities subject to the review and evaluation requirements of RCW 36.70A.215, any revision to the housing element shall include consideration of prior review and evaluation reports and any reasonable measures identified.

(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 economic advancement, 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 in a manner that must be consistent with applicable laws, applicable rules adopted pursuant to chapters 90.03, 90.22, 90.44, and 90.54 RCW, although the portions of such rules that were adopted before 2000 that purport to exempt certain consumptive uses shall not be relied upon by counties or cites, and scientifically supportable water resource data, including water quantity, water quality, and instream flow assessments, using best available science to evaluate water resource impacts from projected growth; 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(16). 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(16). 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. 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.

**PART 4**

**WATERSHED RESTORATION ACCOUNT**

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

The watershed restoration account is created in the custody of the state treasurer. The account may receive such moneys as may be appropriated by the legislature for the purpose of funding water availability assessment and mitigation projects as approved by governmental entities listed in section 202 of this act. Expenditures from the account may be used only for the costs of administering this act, including implementing mitigation projects as developed by governmental entities listed in section 202 of this act, and collecting data and completing studies necessary to develop, implement, and evaluate mitigation projects under this act. Only the director of the department or the director's designee may authorize expenditures from the account. Fees or any additional appropriated revenues must be used exclusively within the water resource inventory area in which the withdrawals and the agreed upon mitigation originated. Moneys appropriated may not supplant state and federally appropriated salmon recovery moneys. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  This act does not apply in the Yakima basin, water resource inventory areas 37, 38, and 39, those portions of water resource inventory areas 3 and 4 located in the Skagit river basin, or the Methow basin, water resource inventory area 48.

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

Nothing in this chapter affects the ability of any person to pursue a cause of action for the protection of any water right.

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 ---**