S-3751.5

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 6091**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**By** Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Van De Wege, Rolfes, and Frockt)

AN ACT Relating to ensuring that water is available to support development; amending RCW 19.27.097, 58.17.110, 90.54.010, 90.03.247, and 90.03.290; adding a new section to chapter 36.70A RCW; adding a new section to chapter 36.70 RCW; adding new sections to chapter 90.54 RCW; creating new sections; providing an expiration date; 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. ((~~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.

(b) In a water resource inventory area with rules adopted by the department of ecology pursuant to section 6 of this act and the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with the specific applicable rule requirements: 5 (Stillaguamish); 17 (Quilcene-Snow); 18 (Elwha-Dungeness); 27 (Lewis); 28 (Salmon-Washougal); 32 (Walla Walla); 45 (Wenatchee); 46 (Entiat); 48 (Methow); and 57 (Middle Spokane).

(c) In the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with section 6 of this act, unless the applicant provides other evidence of an adequate water supply that complies with chapters 90.03 and 90.44 RCW: 1 (Whatcom); 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 11 (Nisqually); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); 15 (Kitsap); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); 59 (Colville).

(d) In water resource inventory areas 37 (Lower Yakima), 38 (Naches), and 39 (Upper Yakima), the department of ecology may impose requirements to satisfy adjudicated water rights and federal flow regulations that are necessary to satisfy the adjudication and federal flow regulations.

(e) Within water resource inventory area 54 (Lower Spokane), the department of ecology may impose requirements to satisfy the federal adjudication of Chamokane creek and the federal flow regulation.

(f) Within water resource inventory area 3 (Lower Skagit-Samish) and 4 (Upper Skagit), restrictions may apply due to *Swinomish Indian Tribal Community v. Department of Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013).

(g) In other areas of the state, physical and legal evidence of an adequate water supply may be demonstrated by the submission of a water well report consistent with the requirements of chapter 18.104 RCW.

(h) For the purposes of this subsection (1), "water resource inventory areas" means those areas described in chapter 173-500 WAC as of the effective date of this section.

(2) In addition to other authorities, the county or city may impose additional requirements, including 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.

(3) 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)~~)) (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.

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

For the purposes of complying with the requirements of this chapter relating to surface and groundwater resources, a county or city may rely on or refer to applicable minimum instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW. Development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under RCW 19.27.097 and 58.17.110.

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

For the purposes of complying with the requirements of this chapter, county development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under RCW 19.27.097 and 58.17.110.

**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) If water supply is to be provided by a groundwater withdrawal exempt from permitting under RCW 90.44.050, the applicant's compliance with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining appropriate provisions for water supply for a subdivision, dedication, or short subdivision under this chapter.

**Sec.**  RCW 90.54.010 and 1990 c 295 s 1 are each amended to read as follows:

(1) It is the intent of the legislature to protect and restore healthy stream flows for instream resources, which will aid in recovery of depleted salmonid populations, support properly functioning ecosystems, and provide for the general welfare of the citizens of the state. The legislature also intends to ensure that a legal and reliable domestic water supply is available for its citizens, which is essential to support the vitality of our state, including rural communities.

(a) Healthy watersheds and stream flows ensure preservation of instream resources, which include fish, wildlife, scenic, aesthetic, environmental, recreational, and navigational values. These resources are central to our state's identity, culture, and economy and must be preserved and where possible enhanced for future generations.

(b) Inadequate stream flows adversely impact instream resources. Out-of-stream water use, loss of wetlands and floodplains, loss of vegetated cover, increase in impervious surfaces, loss of snowpack, and other factors combined with naturally low flows that occur in late summer and fall contribute to stream flow limitations that are becoming an increasingly significant barrier to recovery of threatened and endangered species, especially salmonids.

(2) The legislature finds that:

(a) Proper utilization of the water resources of this state is necessary to the promotion of public health and the economic well-being of the state and the preservation of its natural resources and aesthetic values. Although water is a renewable resource, its supply and availability are becoming increasingly limited, particularly during summer and fall months and dry years when demand is greatest. Growth and prosperity have significantly increased the competition for this limited resource. Adequate water supplies are essential to meet the needs of the state's growing population and economy. At the same time instream resources and values must be preserved and protected so that future generations can continue to enjoy them.

(b) All citizens of Washington share an interest in the proper stewardship of our invaluable water resources. To ensure that available water supplies are managed to best meet both instream and ((~~offstream needs, a comprehensive planning process~~)) out-of-stream needs, a comprehensive watershed restoration and enhancement program is essential. The people of the state have the unique opportunity to work together to ((~~plan and manage our water~~)) restore and enhance instream resources. Through a comprehensive planning and watershed restoration process that includes the state, Indian tribes, local governments, and interested parties, it is possible to make better use of available water supplies and achieve better management of water resources. Through comprehensive planning and implementation of watershed restoration and enhancement projects, conflicts among water users and interests can be reduced or resolved and instream resources can be improved. It is in the best interests of the state that comprehensive water resource planning and restoration be given a high priority so that water resources and associated values can be utilized and enjoyed today and protected for tomorrow.

(c) Diverse hydrologic, climatic, cultural, and socioeconomic conditions exist throughout the regions of the state. Water resource issues vary significantly across regions. Comprehensive water resource planning is best accomplished through a regional planning process sensitive to the unique characteristics and issues of each region.

(d) Comprehensive water resource planning must provide interested parties adequate opportunity to participate. Water resource issues are best addressed through cooperation and coordination among the state, Indian tribes, local governments, and interested parties.

(e) The long-term needs of the state require ongoing assessment of water availability, use, and demand. A thorough inventory of available resources is essential to water resource management. Current state water resource data and data management is inadequate to meet changing needs and respond to competing water demands. Therefore, a state water resource data program is needed to support an effective water resource management program. Efforts should be made to coordinate and consolidate into one resource data system all relevant information developed by the department of ecology and other agencies relating to the use, protection, and management of the state's water resources.

((~~(2)~~)) (3) It is the purpose of this chapter to set forth fundamentals of water resource policy for the state to ((~~insure~~)) ensure that waters of the state are protected and fully utilized for the greatest benefit to the people of the state of Washington and, in relation thereto, to provide direction to the department of ecology, other state agencies and officials, and local government in carrying out water and related resources programs. It is the intent of the legislature to work closely with the executive branch, Indian tribes, local government, and interested parties to ensure that water resources of the state are wisely managed.

(4) To achieve the goals of this act, significant legislative action is needed to address both the impact of new development on stream flows and to restore and enhance properly functioning watersheds to preserve and enhance instream resources. The department is directed to implement a program to restore and enhance stream flows by establishing watershed restoration and enhancement committees, as specified in section 6 of this act, to develop and implement plans for stream flow restoration to support vibrant fish and wildlife, including restoring threatened and endangered salmonids.

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

(1) Unless requirements are otherwise specified in the applicable rules adopted under this chapter or chapter 90.22 RCW, potential impacts on a closed water body and potential impairment to an instream flow are authorized for new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 through compliance with the requirements established in this section.

(2)(a) The department shall establish watershed restoration and enhancement committees in the following water resource inventory areas as those areas exist in chapter 173-500 WAC on the effective date of this section with instream flow rules adopted under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals: 1 (Whatcom); 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 11 (Nisqually); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); 15 (Kitsap); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); 59 (Colville).

(b) The department shall chair the watershed restoration and enhancement committee and invite the following entities to participate:

(i) A representative from each federally recognized Indian tribe that has reservation land within the water resource inventory area;

(ii) A representative from each federally recognized Indian tribe that has a usual and accustomed harvest area within the water resource inventory area;

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

(iv) A representative designated by each county within the water resource inventory area;

(v) A representative designated by each city within the water resource inventory area;

(vi) A representative designated by the largest irrigation district within the water resource inventory area;

(vii) A representative designated by the largest publicly owned water purveyor providing water within the water resource inventory area that is not a municipality; and

(viii) A representative designated by a local organization representing the residential construction industry within the water resource inventory area.

(3) By June 30, 2021, the department shall prepare and adopt a watershed restoration and enhancement plan for each watershed listed under subsection (2)(a) of this section, in collaboration with the watershed restoration and enhancement committee. Except as described in (h) of this subsection, all members of a watershed restoration and enhancement committee must approve the plan prior to adoption.

(a) The watershed restoration and enhancement plan should include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids. Plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes such projects as surface water impoundment, floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance stream flows and not result in negative impacts to ecological functions or critical habitat. The plan may also include projects that improve watershed functions and instream resources without specifically replacing the consumptive quantity from projected future water users.

(b) At a minimum, the plan must include those actions that the committee determines to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary, projects that replace consumptive water supply impacts only during critical flow periods, and projects that protect or improve instream resources without replacing the consumptive quantity of water.

(c) Prior to adoption of the watershed restoration and enhancement plan, the department must determine that actions identified in the plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area.

(d) The watershed restoration and enhancement plan must include an evaluation or estimation of the cost of offsetting new domestic water uses over the subsequent twenty years, including withdrawals exempt from permitting under RCW 90.44.050.

(e) The watershed restoration and enhancement plan must include estimates of the cumulative consumptive water use impacts over the subsequent twenty years, including withdrawals exempt from permitting under RCW 90.44.050.

(f) The watershed restoration and enhancement plan may include:

(i) Recommendations for modification to fees established under this subsection;

(ii) Standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than authorized under subsection (4) of this section for withdrawals exempt from permitting;

(iii) Specific conservation requirements for new water users to be adopted by local or state permitting authorities; or

(iv) Other approaches to manage water resources for a water resource inventory area or a portion thereof.

(g) After adoption of a watershed restoration and enhancement plan, the department shall evaluate the plan recommendations and initiate rule making, if necessary, to incorporate recommendations into rules adopted under this chapter or under chapter 90.22 RCW. Any modification to fees collected under subsection (4) of this section or standards for water use quantities that are less than authorized under RCW 90.44.050 or more than authorized under subsection (4) of this section for withdrawals exempt from permitting may not be applied unless authorized by rules adopted under this chapter.

(h) If the watershed restoration and enhancement committee fails to approve a plan by June 30, 2021, the director of the department shall submit the final draft plan to the salmon recovery funding board established under RCW 77.85.110 and request that the salmon recovery funding board provide a technical review and provide recommendations to the director to amend the final draft plan, if necessary, so that actions identified in the plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area. The director of the department shall consider the recommendations and may amend the plan without committee approval prior to adoption. After plan adoption, the director of the department shall initiate rule making within six months to incorporate recommendations into rules adopted under this chapter, and shall adopt amended rules within two years of initiation of rule making.

(4)(a) Until a watershed restoration and enhancement plan is approved and rules are adopted under subsection (3) of this section, a city or county issuing a building permit under RCW 19.27.097(1)(c), or approving a subdivision under chapter 58.17 RCW in a watershed listed in subsection (2)(a) of this section must:

(i) Record relevant restrictions or limitations associated with water supply with the property title;

(ii) Collect applicable fees, as described under this section;

(iii) Record the number of building permits issued under chapter 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW subject to the provisions of this section;

(iv) Annually transmit to the department three hundred fifty dollars of each fee collected under this subsection;

(v) Annually transmit an accounting of building permits and subdivision approvals subject to the provisions of this section to the department;

(vi) Until rules have been adopted that specify otherwise, require the following measures for each new domestic use that relies on a withdrawal exempt from permitting under RCW 90.44.050:

(A) An applicant shall pay a fee of five hundred dollars to the permitting authority;

(B) Except as provided in (b) of this subsection, an applicant may obtain approval for a withdrawal exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of nine hundred fifty gallons per day per connection; and

(C) An applicant shall manage stormwater runoff on-site to the extent practicable by maximizing infiltration, including using low-impact development techniques, or pursuant to stormwater management requirements adopted by the local permitting authority, if locally adopted requirements are more stringent.

(b) Upon the issuance of a drought emergency order under RCW 43.83B.405, the department may curtail withdrawal of groundwater exempt from permitting under RCW 90.44.050 and approved under this subsection (4) to no more than three hundred fifty gallons per day per connection for indoor use only.

(5) Rules adopted under this chapter may:

(a) Rely on watershed restoration and enhancement plan recommendations and procedures established in this section to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or a minimum flow or level;

(b) Rely on projects identified in the watershed restoration and enhancement plan to offset consumptive water use; and

(c) Include updates to fees based on the watershed restoration and enhancement committee's determination of the costs for offsetting consumptive water use.

(6) The department shall submit a report to the legislature by December 31, 2020, and December 31, 2027, in compliance with RCW 43.01.036, that includes the following elements:

(a) Progress in completing and adopting watershed restoration and enhancement plans;

(b) A description of program projects and expenditures;

(c) An assessment of the streamflow restoration and enhancement benefits from program projects;

(d) A listing of other efforts or actions taken associated with streamflow restoration and enhancement, projects to benefit instream resources, and other directly related watershed improvements conducted in coordination with the restoration and enhancement planning process;

(e) The total number of new withdrawals exempt from permitting under RCW 90.44.050 authorized in each water resource inventory area under provisions of this section, and estimates of consumptive water use impacts associated with the new withdrawals; and

(f) A description of potential or planned projects, including projected costs and anticipated streamflow, water supply, and watershed health benefits.

(7) This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas as those areas exist in chapter 173-500 WAC on the effective date of this section with instream flow rules adopted under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals: 1 (Whatcom); 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 11 (Nisqually); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); 15 (Kitsap); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); 59 (Colville) and does not restrict the withdrawal of groundwater for other uses that are exempt from permitting under RCW 90.44.050.

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

(1) The department shall initiate a pilot project to measure water use from all new groundwater withdrawals, including withdrawals exempt from permitting under RCW 90.44.050. The pilot project must be conducted to determine the overall feasibility of measuring water use for all new groundwater withdrawals. The department must purchase and provide meters to be used in the pilot project. The pilot project must be conducted in a priority water resource inventory area, as determined by the director of the department. At a minimum, the pilot project must address the following:

(a) Initial and on-going costs, including costs to local government and the department;

(b) Technical, practical, and legal considerations that must be addressed;

(c) The costs and benefits of a water use measurement program relying on individual meters versus a water management program that estimates permit-exempt groundwater withdrawals; and

(d) Measures to protect the privacy of individual property owners and ensure accurate data collection.

(2) The department shall report on the pilot project results in the report to the legislature submitted under section 6 of this act. The department shall include recommendations to the legislature, including estimated program costs for expanding the pilot project to other basins.

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 that is not a base flow, minimum flow, minimum level, or other similar standard or policy, established by the department under this chapter or chapter 90.22 RCW.

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

(1) The watershed restoration and enhancement account is created in the state treasury. All receipts from fees paid pursuant to section 6 of this act must be deposited into the account. The account may also receive those moneys as may be appropriated by the legislature for the purpose of funding restoration and enhancement projects as identified in section 6 of this act. Moneys from the account may only be spent after appropriation. Expenditures from the account may be used only for the costs of administering this act, including implementing watershed restoration and enhancement projects under section 6 of this act, and collecting data and completing studies necessary to develop, implement, and evaluate watershed restoration and enhancement projects under this act.

(2) Fee revenues collected under section 6 of this act must be used exclusively within the water resource inventory area in which the fee originated. The restriction in this subsection does not apply to moneys in the watershed restoration and enhancement account that do not originate from fees collected under section 6 of this act.

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

(1) The watershed restoration and enhancement taxable bond account is created in the state treasury. All receipts from direct appropriations from the legislature or moneys directed to the account from any other source must be deposited in the account. Moneys in the account may be spent only after appropriation. The account is intended to fund projects using taxable bonds. Expenditures from the account may be used only as provided for in this section.

(2) Expenditures from the watershed restoration and enhancement taxable bond account may be used to assess, plan, and develop projects that include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes projects such as surface water impoundment, floodplain restoration, off-channel storage, and aquifer recharge, or other actions designed to provide access to new water supplies with priority given to projects in watersheds developing plans as directed by section 6 of this act.

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

(1) The watershed restoration and enhancement bond account is created in the state treasury. All receipts from direct appropriations from the legislature or moneys directed to the account from any other source must be deposited in the account. Moneys in the account may be spent only after appropriation. The account is intended to fund projects using tax exempt bonds. Expenditures from the account may be used only as provided for in this section.

(2) Expenditures from the watershed restoration and enhancement bond account may be used to assess, plan, and develop projects that include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes projects such as surface water impoundment, floodplain restoration, off-channel storage, and aquifer recharge, or other actions designed to provide access to new water supplies with priority given to projects in watersheds developing plans as directed by section 6 of this act.

NEW SECTION. **Sec.**  (1) A joint legislative task force on water resource mitigation is established to review the treatment of surface water and groundwater appropriations as they relate to instream flows and fish habitat, to develop and recommend a mitigation sequencing process and scoring system to address such appropriations, and to review the Washington supreme court decision in *Foster v. Department of Ecology*, 184 Wn.2d 465, 362 P.3d 959 (2015).

(2) The task force must consist of the following members:

(a) Two members from each of the two largest caucuses of the senate, appointed by the president of the senate;

(b) Two members from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(c) A representative from the department of ecology, appointed by the director of the department of ecology;

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

(e) A representative from the department of agriculture, appointed by the director of the department of agriculture;

(f) One representative from each of the following groups, appointed by the consensus of the cochairs of the task force:

(i) An organization representing the farming industry in Washington;

(ii) An organization representing Washington cities;

(iii) Two representatives from an environmental advocacy organization or organizations;

(iv) An organization representing municipal water purveyors;

(v) An organization representing business interests;

(vi) Representatives of two federally recognized Indian tribes, one invited by recommendation of the Northwest Indian fisheries commission, and one invited by recommendation of the Columbia river intertribal fish commission.

(3) One cochair of the task force must be a member of the majority caucus of one chamber of the legislature, and one cochair must be a member of the minority caucus of the other chamber of the legislature, as those caucuses existed as of the effective date of this section.

(4) The first meeting of the task force must occur by June 30, 2018.

(5) Staff support for the task force must be provided by the office of program research and senate committee services. The department of ecology and the department of fish and wildlife shall cooperate with the task force and provide information as the cochairs reasonably request.

(6) Within existing appropriations, the expenses of the operations of the task force, including the expenses associated with the task force's meetings, must be paid jointly and in equal amounts by the senate and the house of representatives. Task force expenditures are subject to approval by the house executive rules committee and the senate facility and operations committee. Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(7)(a) By November 15, 2019, the joint legislative task force must make recommendations to the legislature in compliance with RCW 43.01.036.

(b) Recommendations of the joint legislative task force must be made by a sixty percent majority of the members of the committee. The representatives of the departments of fish and wildlife, ecology, and agriculture are not eligible to vote on the recommendations. Minority recommendations that achieve the support of at least five of the named voting members of the task force may also be submitted to the legislature.

(8) The department shall issue permit decisions for up to five water resource mitigation pilot projects. It is the intent of the legislature to use the pilot projects to inform the legislative task force process while also enabling the processing of water right applications that address water supply needs. The department is authorized to issue permits in reliance upon water resource mitigation of impacts to instream flows and closed surface water bodies under the following mitigation sequence:

(a) Avoiding impacts by: (i) Complying with mitigation required by adopted rules that set forth minimum flows, levels, or closures; or (ii) making the water diversion or withdrawal subject to the applicable minimum flows or levels; or

(b) Where avoidance of impacts is not reasonably attainable, minimizing impacts by providing permanent new or existing trust water rights or through other types of replacement water supply resulting in no net annual increase in the quantity of water diverted or withdrawn from the stream or surface water body and no net detrimental impacts to fish and related aquatic resources; or

(c) Where avoidance and minimization are not reasonably attainable, compensating for impacts by providing net ecological benefits to fish and related aquatic resources in the water resource inventory area through in-kind or out-of-kind mitigation or a combination thereof, that improves the function and productivity of affected fish populations and related aquatic habitat. Out-of-kind mitigation may include instream or out-of-stream measures that improve or enhance existing water quality, riparian habitat, or other instream functions and values for which minimum instream flows or closures were established in that watershed.

(9) The pilot projects eligible for processing under this section, based on criteria as of the effective date of this section, include:

(a)A city operating a group A water system in Kitsap county and water resource inventory area 15, with a population between 13,000 and 14,000;

(b) A city operating a group A water system in Pierce county and water resource inventory area 10, with a population between 9,500 and 10,500;

(c) A city operating a group A water system in Thurston county and water resource inventory area 11, with a population between 8,500 and 9,500;

(d) A nonprofit mutual water system operating a group A water system in Pierce county and water resource inventory area 12, with between 10,500 and 11,500 service connections; and

(e) An irrigation district located in Whatcom county and water resource inventory area 1, solely for the purpose of processing changes of water rights from surface water to groundwater, and implementing flow augmentation to benefit instream flows.

(10) Water right applicants eligible to be processed under this pilot project authority must elect to be included in the pilot project review by notifying the department of ecology by July 1, 2018. Once an applicant notifies the department of ecology of its intent to be processed under this pilot project authority, subsection (8) of this section applies to final decisions issued by the department of ecology, even if such a final decision is issued after the expiration of this section.

(11) By November 15, 2018, the department of ecology must furnish the task force with information on conceptual mitigation plans for each water resource mitigation pilot project application.

(12) To ensure that the processing of pilot project applications can inform the task force process in a timely manner, the department of ecology must expedite processing of applications for water resource mitigation pilot projects. The applicant for each pilot project must reimburse the department of ecology for the department's costs of processing the applicant's application.

(13) The water resource mitigation pilot project authority granted to the department of ecology does not affect or modify any other procedural requirements of chapter 90.03, 90.44, or 90.54 RCW that apply to the processing of such applications.

(14) The joint legislative task force expires December 31, 2019.

(15) This section expires January 1, 2020.

**Sec.**  RCW 90.03.247 and 2003 c 39 s 48 are each amended to read as follows:

(1) Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to: (a) Protect the levels or flows; or (b) require water resource mitigation of impacts to instream flows and closed surface water bodies for water resource mitigation pilot projects authorized under section 12 of this act.

(2) No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to ((~~RCW 77.55.100 and~~)) chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fish and wildlife, the department of ((~~community, trade, and economic development~~)) commerce, the department of agriculture, and representatives of the affected Indian tribes. Nothing herein shall preclude the department of fish and wildlife, the department of ((~~community, trade, and economic development~~)) commerce, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of ((~~community, trade, and economic development~~)) commerce, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.

**Sec.**  RCW 90.03.290 and 2001 c 239 s 1 are each amended to read as follows:

(1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2)(a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diversion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance.

(5) The requirements of subsections (1) and (3) of this section do not apply to water resource mitigation pilot projects for which permits are issued in reliance upon water resource mitigation of impacts to instream flows and closed surface water bodies under section 12 of this act.

NEW SECTION. **Sec.**  The legislature intends to appropriate three hundred million dollars for projects to achieve the goals of this act until June 30, 2033. The department of ecology is directed to implement a program to restore and enhance stream flows by fulfilling obligations under this act to develop and implement plans to restore stream flows to levels necessary to support robust, healthy, and sustainable salmon populations.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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 ---**