

**SSB 6091 - S AMD 347**

By Senator Van De Wege

ADOPTED 01/18/2018

1 Strike everything after the enacting clause and insert the  
2 following:

3 "PART 1

4 **Sec. 101.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to  
5 read as follows:

6 (1)(a) Each applicant for a building permit of a building  
7 necessitating potable water shall provide evidence of an adequate  
8 water supply for the intended use of the building. Evidence may be in  
9 the form of a water right permit from the department of ecology, a  
10 letter from an approved water purveyor stating the ability to provide  
11 water, or another form sufficient to verify the existence of an  
12 adequate water supply. (~~In addition to other authorities, the county  
13 or city may impose conditions on building permits requiring  
14 connection to an existing public water system where the existing  
15 system is willing and able to provide safe and reliable potable water  
16 to the applicant with reasonable economy and efficiency.~~) An  
17 application for a water right shall not be sufficient proof of an  
18 adequate water supply.

19 (b) In a water resource inventory area with rules adopted by the  
20 department of ecology pursuant to section 202 or 203 of this act and  
21 the following water resource inventory areas with instream flow rules  
22 adopted by the department of ecology under chapters 90.22 and 90.54  
23 RCW that explicitly regulate permit-exempt groundwater withdrawals,  
24 evidence of an adequate water supply must be consistent with the  
25 specific applicable rule requirements: 5 (Stillaguamish); 17  
26 (Quilcene-Snow); 18 (Elwha-Dungeness); 27 (Lewis); 28 (Salmon-  
27 Washougal); 32 (Walla Walla); 45 (Wenatchee); 46 (Entiat); 48  
28 (Methow); and 57 (Middle Spokane).

29 (c) In the following water resource inventory areas with instream  
30 flow rules adopted by the department of ecology under chapters 90.22  
31 and 90.54 RCW that do not explicitly regulate permit-exempt

1 groundwater withdrawals, evidence of an adequate water supply must be  
2 consistent with section 202 of this act, unless the applicant  
3 provides other evidence of an adequate water supply that complies  
4 with chapters 90.03 and 90.44 RCW: 1 (Nooksack); 11 (Nisqually); 22  
5 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little  
6 Spokane); and 59 (Colville).

7 (d) In the following water resource inventory areas with instream  
8 flow rules adopted by the department of ecology under chapters 90.22  
9 and 90.54 RCW that do not explicitly regulate permit-exempt  
10 groundwater withdrawals, evidence of an adequate water supply must be  
11 consistent with section 203 of this act, unless the applicant  
12 provides other evidence of an adequate water supply that complies  
13 with chapters 90.03 and 90.44 RCW: 7 (Snohomish); 8 (Cedar-  
14 Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-  
15 Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).

16 (e) In water resource inventory areas 37 (Lower Yakima), 38  
17 (Naches), and 39 (Upper Yakima), the department of ecology may impose  
18 requirements to satisfy adjudicated water rights.

19 (f) Additional requirements apply in areas within water resource  
20 inventory area 3 (Lower Skagit-Samish) and 4 (Upper Skagit) regulated  
21 by chapter 173-503 WAC, as a result of *Swinomish Indian Tribal*  
22 *Community v. Department of Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013).

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

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

30 (2) In addition to other authorities, the county or city may  
31 impose additional requirements, including conditions on building  
32 permits requiring connection to an existing public water system where  
33 the existing system is willing and able to provide safe and reliable  
34 potable water to the applicant with reasonable economy and  
35 efficiency.

36 (3) Within counties not required or not choosing to plan pursuant  
37 to RCW 36.70A.040, the county and the state may mutually determine  
38 those areas in the county in which the requirements of subsection (1)  
39 of this section shall not apply. The departments of health and  
40 ecology shall coordinate on the implementation of this section.

1 Should the county and the state fail to mutually determine those  
2 areas to be designated pursuant to this subsection, the county may  
3 petition the department of enterprise services to mediate or, if  
4 necessary, make the determination.

5 ~~((3))~~ (4) Buildings that do not need potable water facilities  
6 are exempt from the provisions of this section. The department of  
7 ecology, after consultation with local governments, may adopt rules  
8 to implement this section, which may recognize differences between  
9 high-growth and low-growth counties.

10 (5) Any permit-exempt groundwater withdrawal authorized under RCW  
11 90.44.050 associated with a water well constructed in accordance with  
12 the provisions of chapter 18.104 RCW before the effective date of  
13 this section is deemed to be evidence of adequate water supply under  
14 this section.

15 NEW SECTION. Sec. 102. A new section is added to chapter 36.70A  
16 RCW to read as follows:

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

25 NEW SECTION. Sec. 103. A new section is added to chapter 36.70  
26 RCW to read as follows:

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

32 **Sec. 104.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to  
33 read as follows:

34 (1) The city, town, or county legislative body shall inquire into  
35 the public use and interest proposed to be served by the  
36 establishment of the subdivision and dedication. It shall determine:  
37 (a) If appropriate provisions are made for, but not limited to, the

1 public health, safety, and general welfare, for open spaces, drainage  
2 ways, streets or roads, alleys, other public ways, transit stops,  
3 potable water supplies, sanitary wastes, parks and recreation,  
4 playgrounds, schools and schoolgrounds, and shall consider all other  
5 relevant facts, including sidewalks and other planning features that  
6 assure safe walking conditions for students who only walk to and from  
7 school; and (b) whether the public interest will be served by the  
8 subdivision and dedication.

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

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

38 (4) If water supply is to be provided by a groundwater withdrawal  
39 exempt from permitting under RCW 90.44.050, the applicant's  
40 compliance with RCW 90.44.050 and with applicable rules adopted

1 pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining  
2 appropriate provisions for water supply for a subdivision,  
3 dedication, or short subdivision under this chapter.

4 **PART 2**

5 NEW SECTION. **Sec. 201.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires  
7 otherwise.

8 (1) "Department" means the department of ecology.

9 (2) "Lead agency" has the same meaning as defined in RCW  
10 90.82.060.

11 (3) "Water resource inventory area" or "WRIA" means a water  
12 resource inventory area established in chapter 173-500 WAC as it  
13 existed on the effective date of this section.

14 NEW SECTION. **Sec. 202.** (1) Unless requirements are otherwise  
15 specified in the applicable rules adopted under this chapter or under  
16 chapter 90.22 or 90.54 RCW, potential impacts on a closed water body  
17 and potential impairment to an instream flow are authorized for new  
18 domestic groundwater withdrawals exempt from permitting under RCW  
19 90.44.050 through compliance with the requirements established in  
20 this section.

21 (2) In the following water resource inventory areas with instream  
22 flow rules adopted by the department under chapters 90.22 and 90.54  
23 RCW that do not explicitly regulate permit-exempt groundwater  
24 withdrawals and that have completed a watershed plan adopted under  
25 chapter 90.82 RCW, the department shall work with the initiating  
26 governments and the planning units described in chapter 90.82 RCW to  
27 review existing watershed plans to identify the potential impacts of  
28 exempt well use, identify evidence-based conservation measures, and  
29 identify projects to improve watershed health: 1 (Nooksack); 11  
30 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan);  
31 55 (Little Spokane); and 59 (Colville).

32 (3) In the water resource inventory areas listed in subsection  
33 (2) of this section, the lead agency shall invite a representative  
34 from each federally recognized Indian tribe that has a usual and  
35 accustomed harvest area within the water resource inventory area to  
36 participate as part of the planning unit.

1 (4)(a) In collaboration with the planning unit, the initiating  
2 governments must update the watershed plan to include recommendations  
3 for projects and actions that will measure, protect, and enhance  
4 instream resources and improve watershed functions that support the  
5 recovery of threatened and endangered salmonids. Watershed plan  
6 recommendations may include, but are not limited to, acquiring senior  
7 water rights, water conservation, water reuse, stream gaging,  
8 groundwater monitoring, and developing natural and constructed  
9 infrastructure, which includes, but is not limited to, such projects  
10 as floodplain restoration, off-channel storage, and aquifer recharge.  
11 Qualifying projects must be specifically designed to enhance  
12 streamflows and not result in negative impacts to ecological  
13 functions or critical habitat.

14 (b) At a minimum, the watershed plan must include those actions  
15 that the planning units determine to be necessary to offset potential  
16 impacts to instream flows associated with permit-exempt domestic  
17 water use. The highest priority recommendations must include  
18 replacing the quantity of consumptive water use during the same time  
19 as the impact and in the same basin or tributary. Lower priority  
20 projects include projects not in the same basin or tributary and  
21 projects that replace consumptive water supply impacts only during  
22 critical flow periods. The watershed plan may include projects that  
23 protect or improve instream resources without replacing the  
24 consumptive quantity of water where such projects are in addition to  
25 those actions that the planning unit determines to be necessary to  
26 offset potential consumptive impacts to instream flows associated  
27 with permit-exempt domestic water use.

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

33 (d) The watershed plan may include:

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

36 (ii) Standards for water use quantities that are less than  
37 authorized under RCW 90.44.050 or more or less than authorized under  
38 subsection (5) of this section for withdrawals exempt from  
39 permitting;

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

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

5 (e) Any modification to fees collected under subsection (5) of  
6 this section or standards for water use quantities that are less than  
7 authorized under RCW 90.44.050 or more or less than authorized under  
8 subsection (5) of this section for withdrawals exempt from permitting  
9 may not be applied unless authorized by rules adopted under this  
10 chapter or under chapter 90.54 RCW.

11 (5) Until an updated watershed plan is approved and rules are  
12 adopted under this chapter or chapter 90.54 RCW, a city or county  
13 issuing a building permit under RCW 19.27.097(1)(c), or approving a  
14 subdivision under chapter 58.17 RCW in a watershed listed in  
15 subsection (2) of this section must:

16 (a) Record relevant restrictions or limitations associated with  
17 water supply with the property title;

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

19 (c) Record the number of building permits issued under chapter  
20 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW  
21 subject to the provisions of this section;

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

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

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

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

32 (ii) An applicant may obtain approval for a withdrawal exempt  
33 from permitting under RCW 90.44.050 for domestic use only, with a  
34 maximum annual average withdrawal of three thousand gallons per day  
35 per connection.

36 (6) Rules adopted under this chapter or under chapter 90.54 RCW  
37 may:

38 (a) Rely on watershed plan recommendations and procedures  
39 established in this section to authorize new withdrawals exempt from

1 permitting under RCW 90.44.050 that would potentially impact a closed  
2 waterbody or a minimum flow or level;

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

5 (c) Include updates to fees based on the planning unit's  
6 determination of the costs for offsetting consumptive water use.

7 (7)(a) If a watershed plan that meets the requirements of this  
8 section is not adopted in water resource inventory area 1 (Nooksack)  
9 by February 1, 2019, the department must adopt rules for that water  
10 resource inventory area that meet the requirements of this section by  
11 August 1, 2020.

12 (b) If a watershed plan that meets the requirements of this  
13 section is not adopted in water resource inventory area 11  
14 (Nisqually) by February 1, 2019, the department must adopt rules for  
15 that water resource inventory area that meet the requirements of this  
16 section by August 1, 2020.

17 (c) The department must adopt rules that meet the requirements of  
18 this section for any of the following water resource inventory areas  
19 that do not adopt a watershed plan that meets the requirements of  
20 this section by February 1, 2021: 22 (Lower Chehalis); 23 (Upper  
21 Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

22 (8) This section only applies to new domestic groundwater  
23 withdrawals exempt from permitting under RCW 90.44.050 in the  
24 following water resource inventory areas with instream flow rules  
25 adopted under chapters 90.22 and 90.54 RCW that do not explicitly  
26 regulate permit-exempt groundwater withdrawals: 1 (Nooksack); 11  
27 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan);  
28 55 (Little Spokane); and 59 (Colville) and does not restrict the  
29 withdrawal of groundwater for other uses that are exempt from  
30 permitting under RCW 90.44.050.

31 NEW SECTION. **Sec. 203.** (1) Unless requirements are otherwise  
32 specified in the applicable rules adopted under this chapter or  
33 chapter 90.22 or 90.54 RCW, potential impacts on a closed water body  
34 and potential impairment to an instream flow are authorized for new  
35 domestic groundwater withdrawals exempt from permitting under RCW  
36 90.44.050 through compliance with the requirements established in  
37 this section.

38 (2)(a) In the following water resource inventory areas with  
39 instream flow rules adopted by the department under chapters 90.22



1 and 90.54 RCW that do not explicitly regulate permit-exempt  
2 groundwater withdrawals and that have either not adopted a watershed  
3 plan, or adopted a partial watershed plan, under chapter 90.82 RCW,  
4 the department shall establish watershed restoration and enhancement  
5 committees in the following water resource inventory areas: 7  
6 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-  
7 White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-  
8 Goldsborough); and 15 (Kitsap).

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

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

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

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

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

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

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

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

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

31 (ix) A representative designated by a local organization  
32 representing environmental interests within the water resource  
33 inventory area; and

34 (x) A representative designated by a local organization  
35 representing agricultural interests within the water resource  
36 inventory area.

37 (3) By June 30, 2021, the department shall prepare and adopt a  
38 watershed restoration and enhancement plan for each watershed listed  
39 under subsection (2)(a) of this section, in collaboration with the  
40 watershed restoration and enhancement committee. Except as described

1 in (h) of this subsection, all members of a watershed restoration and  
2 enhancement committee must approve the plan prior to adoption.

3 (a) The watershed restoration and enhancement plan should include  
4 recommendations for projects and actions that will measure, protect,  
5 and enhance instream resources and improve watershed functions that  
6 support the recovery of threatened and endangered salmonids. Plan  
7 recommendations may include, but are not limited to, acquiring senior  
8 water rights, water conservation, water reuse, stream gaging,  
9 groundwater monitoring, and developing natural and constructed  
10 infrastructure, which includes but is not limited to such projects as  
11 floodplain restoration, off-channel storage, and aquifer recharge.  
12 Qualifying projects must be specifically designed to enhance stream  
13 flows and not result in negative impacts to ecological functions or  
14 critical habitat.

15 (b) At a minimum, the plan must include those actions that the  
16 committee determines to be necessary to offset potential impacts to  
17 instream flows associated with permit-exempt domestic water use. The  
18 highest priority recommendations must include replacing the quantity  
19 of consumptive water use during the same time as the impact and in  
20 the same basin or tributary. Lower priority projects include projects  
21 not in the same basin or tributary and projects that replace  
22 consumptive water supply impacts only during critical flow periods.  
23 The plan may include projects that protect or improve instream  
24 resources without replacing the consumptive quantity of water where  
25 such projects are in addition to those actions that the committee  
26 determines to be necessary to offset potential consumptive impacts to  
27 instream flows associated with permit-exempt domestic water use.

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

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

38 (e) The watershed restoration and enhancement plan must include  
39 estimates of the cumulative consumptive water use impacts over the

1 subsequent twenty years, including withdrawals exempt from permitting  
2 under RCW 90.44.050.

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

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

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

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

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

14 (g) After adoption of a watershed restoration and enhancement  
15 plan, the department shall evaluate the plan recommendations and  
16 initiate rule making, if necessary, to incorporate recommendations  
17 into rules adopted under this chapter or under chapter 90.22 or 90.54  
18 RCW. Any modification to fees collected under subsection (4) of this  
19 section or standards for water use quantities that are less than  
20 authorized under RCW 90.44.050 or more or less than authorized under  
21 subsection (4) of this section for withdrawals exempt from permitting  
22 may not be applied unless authorized by rules adopted under this  
23 chapter or under chapter 90.54 RCW.

24 (h) If the watershed restoration and enhancement committee fails  
25 to approve a plan by June 30, 2021, the director of the department  
26 shall submit the final draft plan to the salmon recovery funding  
27 board established under RCW 77.85.110 and request that the salmon  
28 recovery funding board provide a technical review and provide  
29 recommendations to the director to amend the final draft plan, if  
30 necessary, so that actions identified in the plan, after accounting  
31 for new projected uses of water over the subsequent twenty years,  
32 will result in a net ecological benefit to instream resources within  
33 the water resource inventory area. The director of the department  
34 shall consider the recommendations and may amend the plan without  
35 committee approval prior to adoption. After plan adoption, the  
36 director of the department shall initiate rule making within six  
37 months to incorporate recommendations into rules adopted under this  
38 chapter or under chapter 90.22 or 90.54 RCW, and shall adopt amended  
39 rules within two years of initiation of rule making.

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

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

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

9 (iii) Record the number of building permits issued under chapter  
10 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW  
11 subject to the provisions of this section;

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

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

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

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

22 (B) Except as provided in (b) of this subsection, an applicant  
23 may obtain approval for a withdrawal exempt from permitting under RCW  
24 90.44.050 for domestic use only, with a maximum annual average  
25 withdrawal of nine hundred fifty gallons per day per connection; and

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

31 (b) Upon the issuance of a drought emergency order under RCW  
32 43.83B.405, the department may curtail withdrawal of groundwater  
33 exempt from permitting under RCW 90.44.050 and approved under this  
34 subsection (4) to no more than three hundred fifty gallons per day  
35 per connection for indoor use only. Notwithstanding the limitation to  
36 no more than three hundred fifty gallons per day per connection for  
37 indoor use only, an applicant may use groundwater exempt from  
38 permitting to maintain a fire control buffer during a drought  
39 emergency order.

40 (5) Rules adopted under this chapter or chapter 90.54 RCW may:

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

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

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

11 (6) This section only applies to new domestic groundwater  
12 withdrawals exempt from permitting under RCW 90.44.050 in the  
13 following water resource inventory areas with instream flow rules  
14 adopted under chapters 90.22 and 90.54 RCW that do not explicitly  
15 regulate permit-exempt groundwater withdrawals: 7 (Snohomish); 8  
16 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12  
17 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15  
18 (Kitsap) and does not restrict the withdrawal of groundwater for  
19 other uses that are exempt from permitting under RCW 90.44.050.

20 NEW SECTION. **Sec. 204.** (1) The department shall initiate two  
21 pilot projects to measure water use from all new groundwater  
22 withdrawals for domestic purposes exempt from permitting under RCW  
23 90.44.050 in the areas described in this section. The pilot projects  
24 must be conducted to determine the overall feasibility of measuring  
25 water use for all new groundwater withdrawals. The department must  
26 purchase and provide meters to be used in the pilot projects. The  
27 pilot projects must be conducted in the area under the Dungeness  
28 water rule, chapter 173-518 WAC, within water resource inventory area  
29 18 and the area in which the Kittitas county water bank program  
30 operates within water resource inventory area 39.

31 (2) At a minimum, the pilot project must address the following:

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

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

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

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

3 (3) The department shall report on the pilot project results in  
4 the report to the legislature submitted under section 205 of this  
5 act. The department shall include recommendations to the legislature,  
6 including estimated program costs for expanding the pilot projects to  
7 other basins.

8 NEW SECTION. **Sec. 205.** The department shall submit a report to  
9 the legislature by December 31, 2020, and December 31, 2027, in  
10 compliance with RCW 43.01.036, that includes the following elements:

11 (1) Progress in completing and adopting watershed plans under  
12 section 202 of this act and watershed restoration and enhancement  
13 plans under section 203 of this act;

14 (2) A description of program projects and expenditures;

15 (3) An assessment of the streamflow restoration and enhancement  
16 benefits from program projects;

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

22 (5) The total number of new withdrawals exempt from permitting  
23 under RCW 90.44.050 authorized in each water resource inventory area  
24 under provisions of sections 202 and 203 of this act, and estimates  
25 of consumptive water use impacts associated with the new withdrawals;  
26 and

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

30 NEW SECTION. **Sec. 206.** (1) The watershed restoration and  
31 enhancement account is created in the custody of the state treasurer.  
32 All receipts from fees paid pursuant to sections 202 and 203 of this  
33 act must be deposited into the account. The account may also receive  
34 those moneys as may be appropriated by the legislature for the  
35 purpose of funding restoration and enhancement projects as identified  
36 in sections 202 and 203 of this act. Expenditures from the account  
37 may be used only for the costs of administering this act, including  
38 implementing watershed planning projects under section 202 of this

1 act and watershed restoration and enhancement projects under section  
2 203 of this act, and collecting data and completing studies necessary  
3 to develop, implement, and evaluate watershed restoration and  
4 enhancement projects under this act. Only the director or the  
5 director's designee may authorize expenditures from the account. The  
6 account is subject to allotment procedures under chapter 43.88 RCW,  
7 but an appropriation is not required for expenditures.

8 (2) Fee revenues collected under sections 202 and 203 of this act  
9 must be used exclusively within the water resource inventory area in  
10 which the fee originated. The restriction in this subsection does not  
11 apply to moneys in the watershed restoration and enhancement account  
12 that do not originate from fees collected under sections 202 and 203  
13 of this act.

14 NEW SECTION. **Sec. 207.** (1) The watershed restoration and  
15 enhancement taxable bond account is created in the custody of the  
16 state treasurer. All receipts from direct appropriations from the  
17 legislature or moneys directed to the account from any other source  
18 must be deposited in the account. The account is intended to fund  
19 projects using taxable bonds. Expenditures from the account may be  
20 used only as provided for in this section. Only the director or the  
21 director's designee may authorize expenditures from the account. The  
22 account is subject to allotment procedures under chapter 43.88 RCW,  
23 but an appropriation is not required for expenditures.

24 (2) Expenditures from the watershed restoration and enhancement  
25 taxable bond account may be used to assess, plan, and develop  
26 projects that include acquiring senior water rights, water  
27 conservation, water reuse, stream gaging, groundwater monitoring, and  
28 developing natural and constructed infrastructure, which includes,  
29 but is not limited to, projects such as floodplain restoration, off-  
30 channel storage, and aquifer recharge, or other actions designed to  
31 provide access to new water supplies with priority given to projects  
32 in watersheds developing plans as directed by sections 202 and 203 of  
33 this act and watersheds participating in the pilot project in section  
34 204 of this act.

35 NEW SECTION. **Sec. 208.** (1) The watershed restoration and  
36 enhancement bond account is created in the custody of the state  
37 treasurer. All receipts from direct appropriations from the  
38 legislature or moneys directed to the account from any other source

1 must be deposited in the account. The account is intended to fund  
2 projects using tax exempt bonds. Expenditures from the account may be  
3 used only as provided for in this section. Only the director or the  
4 director's designee may authorize expenditures from the account. The  
5 account is subject to allotment procedures under chapter 43.88 RCW,  
6 but an appropriation is not required for expenditures.

7 (2) Expenditures from the watershed restoration and enhancement  
8 bond account may be used to assess, plan, and develop projects that  
9 include acquiring senior water rights, water conservation, water  
10 reuse, stream gaging, groundwater monitoring, and developing natural  
11 and constructed infrastructure, which includes, but is not limited  
12 to, projects such as floodplain restoration, off-channel storage, and  
13 aquifer recharge, or other actions designed to provide access to new  
14 water supplies with priority given to projects in watersheds  
15 developing plans as directed by sections 202 and 203 of this act and  
16 watersheds participating in the pilot project in section 204 of this  
17 act.

### 18 PART 3

19 NEW SECTION. **Sec. 301.** (1) A joint legislative task force on  
20 water resource mitigation is established to review the treatment of  
21 surface water and groundwater appropriations as they relate to  
22 instream flows and fish habitat, to develop and recommend a  
23 mitigation sequencing process and scoring system to address such  
24 appropriations, and to review the Washington supreme court decision  
25 in *Foster v. Department of Ecology*, 184 Wn.2d 465, 362 P.3d 959  
26 (2015).

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

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

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

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

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

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



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

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

5 (ii) An organization representing Washington cities;

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

8 (iv) An organization representing municipal water purveyors;

9 (v) An organization representing business interests;

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

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

19 (4) The first meeting of the task force must occur by June 30,  
20 2018.

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

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

38 (7)(a) By November 15, 2019, the joint legislative task force  
39 must make recommendations to the legislature in compliance with RCW  
40 43.01.036.

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

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

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

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

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

36 (9) The department must monitor the implementation of the pilot  
37 projects, including all mitigation associated with each pilot  
38 project, approved under this section at least annually through  
39 December 31, 2028.

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

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

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

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

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

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

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

27 (12) By November 15, 2018, the department must furnish the task  
28 force with information on conceptual mitigation plans for each water  
29 resource mitigation pilot project application.

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

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

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

1 (16) This section expires January 1, 2029.

2 **Sec. 302.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to  
3 read as follows:

4 (1) Whenever an application for a permit to make beneficial use  
5 of public waters is approved relating to a stream or other water body  
6 for which minimum flows or levels have been adopted and are in effect  
7 at the time of approval, the permit shall be conditioned to: (a)  
8 protect the levels or flows; or (b) require water resource mitigation  
9 of impacts to instream flows and closed surface water bodies for  
10 water resource mitigation pilot projects authorized under section 301  
11 of this act.

12 (2) No agency may establish minimum flows and levels or similar  
13 water flow or level restrictions for any stream or lake of the state  
14 other than the department of ecology whose authority to establish is  
15 exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and  
16 90.54.040. The provisions of other statutes, including but not  
17 limited to ((~~RCW 77.55.100 and~~)) chapter 43.21C RCW, may not be  
18 interpreted in a manner that is inconsistent with this section. In  
19 establishing such minimum flows, levels, or similar restrictions, the  
20 department shall, during all stages of development by the department  
21 of ecology of minimum flow proposals, consult with, and carefully  
22 consider the recommendations of, the department of fish and wildlife,  
23 the department of ((~~community, trade, and economic development~~))  
24 commerce, the department of agriculture, and representatives of the  
25 affected Indian tribes. Nothing herein shall preclude the department  
26 of fish and wildlife, the department of ((~~community, trade, and~~  
27 ~~economic development~~)) commerce, or the department of agriculture  
28 from presenting its views on minimum flow needs at any public hearing  
29 or to any person or agency, and the department of fish and wildlife,  
30 the department of ((~~community, trade, and economic development~~))  
31 commerce, and the department of agriculture are each empowered to  
32 participate in proceedings of the federal energy regulatory  
33 commission and other agencies to present its views on minimum flow  
34 needs.

35 **Sec. 303.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to  
36 read as follows:

37 (1) When an application complying with the provisions of this  
38 chapter and with the rules of the department has been filed, the same

1 shall be placed on record with the department, and it shall be its  
2 duty to investigate the application, and determine what water, if  
3 any, is available for appropriation, and find and determine to what  
4 beneficial use or uses it can be applied. If it is proposed to  
5 appropriate water for irrigation purposes, the department shall  
6 investigate, determine and find what lands are capable of irrigation  
7 by means of water found available for appropriation. If it is  
8 proposed to appropriate water for the purpose of power development,  
9 the department shall investigate, determine and find whether the  
10 proposed development is likely to prove detrimental to the public  
11 interest, having in mind the highest feasible use of the waters  
12 belonging to the public.

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

30 (b) For any application for which a preliminary permit was issued  
31 and for which the availability of water was directly affected by a  
32 moratorium on further diversions from the Columbia river during the  
33 years from 1990 to 1998, the preliminary permit is extended through  
34 June 30, 2002. If such an application and preliminary permit were  
35 canceled during the moratorium, the application and preliminary  
36 permit shall be reinstated until June 30, 2002, if the application  
37 and permit: (i) Are for providing regional water supplies in more  
38 than one urban growth area designated under chapter 36.70A RCW and in  
39 one or more areas near such urban growth areas, or the application  
40 and permit are modified for providing such supplies, and (ii) provide

1 or are modified to provide such regional supplies through the use of  
2 existing intake or diversion structures. The authority to modify such  
3 a canceled application and permit to accomplish the objectives of  
4 (b)(i) and (ii) of this subsection is hereby granted.

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

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

38 (5) The requirements of subsections (1) and (3) of this section  
39 do not apply to water resource mitigation pilot projects for which  
40 permits are issued in reliance upon water resource mitigation of

1 impacts to instream flows and closed surface water bodies under  
2 section 301 of this act.

3 NEW SECTION. **Sec. 304.** The legislature intends to appropriate  
4 three hundred million dollars for projects to achieve the goals of  
5 this act until June 30, 2033. The department of ecology is directed  
6 to implement a program to restore and enhance stream flows by  
7 fulfilling obligations under this act to develop and implement plans  
8 to restore stream flows to levels necessary to support robust,  
9 healthy, and sustainable salmon populations.

10 NEW SECTION. **Sec. 305.** Sections 201 through 208 and 301 of this  
11 act constitute a new chapter in Title 90 RCW.

12 NEW SECTION. **Sec. 306.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 307.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of  
18 the state government and its existing public institutions, and takes  
19 effect immediately."

**SSB 6091 - S AMD 347**  
By Senator Van De Wege

**ADOPTED 01/18/2018**

20 On page 1, beginning on line 2 of the title, after "development;"  
21 strike the remainder of the title and insert "amending RCW 19.27.097,  
22 58.17.110, 90.03.247, and 90.03.290; adding a new section to chapter  
23 36.70A RCW; adding a new section to chapter 36.70 RCW; adding a new  
24 chapter to Title 90 RCW; creating a new section; providing an  
25 expiration date; and declaring an emergency."

--- END ---