

# SENATE BILL REPORT

## SB 5632

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As of January 18, 2022

**Title:** An act relating to investments in critical water infrastructure projects.

**Brief Description:** Concerning investments in critical water infrastructure projects.

**Sponsors:** Senators Honeyford and Holy.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 1/18/22.

**Brief Summary of Bill**

- Establishes the Washington Water Infrastructure Program to provide competitive grants for projects that increase the availability of water for out-of-stream uses, reduce flood risk, improve fish passage, or reduce stormwater pollution.
- Requires the Office of Columbia River, the Office of Chehalis Basin, the Fish Barrier Removal Board, and the Department of Ecology (Ecology) to review applications to ensure projects meet certain criteria.
- Directs Ecology to submit ranked project lists to the Legislature before regular session begins in odd-numbered years.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Staff:** Karen Epps (786-7424)

**Background:** Office of the Columbia River. In 2006, the Legislature enacted the Columbia River Basin Water Supply Act relating to water resource management in the Columbia River Basin (Basin). The Office of the Columbia River (OCR) is tasked with developing water sources that includes storage and conservation for the economic and

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

community development needs of people, as well as the instream flow needs of fish. Water supplies developed and secured through projects funded from Basin accounts must be used in specified ways. Two-thirds of this water must be dedicated to out-of-stream uses, while one-third must be used by OCR to enhance instream flows.

Office of Chehalis Basin. Legislation in 2016 created the Office of Chehalis Basin (OCB) within the Department of Ecology (Ecology). Its purpose is to aggressively pursue implementation of an integrated strategy and administer funding for long-term flood damage reduction and aquatic species restoration in the Chehalis River Basin. A Chehalis board was created to provide oversight of strategy implementation and development of budget recommendations to the Governor. The strategy must include a detailed set of actions, an implementation schedule, and quantified measures to evaluate success.

Fish Barrier Removal Board. The Legislature established the Fish Barrier Removal Board (FBRB) in 2014 to identify and remove impediments to salmon and steelhead migration. The role of the FBRB is to adopt governing policies, set project evaluation criteria, review project scoring and recommendations from the FBRB Technical Review Team, and approve a project priority list to be submitted to the Governor's Office and the Legislature for funding consideration. The grant program is administered jointly by the Washington Department of Fish and Wildlife and the Recreation and Conservation Office.

Stormwater. Stormwater is commonly transported through separate conveyance systems than wastewater, and subsequently discharged untreated into water bodies. The federal Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which regulates stormwater discharges. NPDES permitting authority is delegated to the state, allowing Ecology to issue stormwater permits. Ecology, using state funds appropriated by the Legislature or federal funds allocated under the Clean Water Act, provides grants and loans to local governments to help them prevent the discharge of pollutant-containing wastewater and stormwater.

**Summary of Bill:** The Washington Water Infrastructure Program (Program) is established for the purpose of providing competitive grants promoting:

- increasing the availability of water for out-of-stream beneficial uses;
- reducing flood risk, protecting against flood damage, and restoring flooded areas;
- improving fish passage; or
- reducing stormwater pollution from existing development.

Ecology must apply for any federal grant, loan, or other financial assistance program in P.L. 117-58 of 2021 that meets the purposes of the Program. Any federal revenues received from P.L. 117-58 of 2021 for the Program must be deposited into the Washington Water Infrastructure Program Account. Prior to the submission of a federal grant, loan, or other financial assistance program application under P.L. 117-58 of 2021, the Office of Financial Management must review and certify the grant application meets the requirements of the Program.

Ecology must accept applications from sponsors starting April 1 until October 1 in even-numbered years. After the application period closes, Ecology must distribute applications to OCR, OCB, or FBRB and each entity must evaluate the applications and create ranked project lists.

OCR must review proposed projects designed to increase the availability of water for out-of-stream beneficial uses. The highest priority projects are projects implementing the Yakima River Basin Integrated Water Resource Management Plan or satisfying water supply needs in the Basin. Preference must also be given to projects that:

- mitigate impacts to fish and wildlife; and
- include practicable conservation measures ensuring water is used efficiently.

OCB must review proposed projects designed to reduce the risk of flooding, protect against damage possibly caused by flooding, and restore areas where flooding has occurred. The highest priority projects are those implementing the Chehalis basin strategy. Preference must be given to projects:

- located in areas historically at the greatest risk and most vulnerable to flooding; and
- eliminating or minimizing the risk of future damage or disruption to critical infrastructure.

OCR and OCB may consider whether a project helps the state prepare for climate change and preference must be given to projects providing multiple benefits.

FBRB must review proposed projects designed to improve fish passage. The highest priority projects are those satisfying the state's obligations under a court order. Preference must be given to projects sponsored by a city or county.

Ecology must review proposed projects designed to reduce stormwater pollution from existing development. Preference must be given to projects:

- relying on low-impact development retrofit techniques; and
- having a high water quality benefit and address stormwater pollution from existing infrastructure.

For all projects, preference must be given to those providing a higher level of sponsor funding. Consideration should be given to whether a project is consistent with the Puget Sound Action Agenda.

Projects may be consistent with more than one objective, but a sponsor is required to identify the primary objective for a project.

Sponsors applying for funding are required to provide a minimum of 25 percent in sponsor funding. Sponsor funding includes funds, commitments, or contributions dedicated to the project. Sponsors may receive credit for certain funding contributed no earlier than ten

years and was dedicated to the project. A sponsor who is not approved may reapply during a subsequent application period.

Projects must be ranked so approximately equal amounts will have been allocated among each of the four project categories over the first 20 years of the Program and in a manner designed to provide funding for as many projects as practicable, while attempting to ensure each project will receive sufficient funding to facilitate successful completion of the project. Condemnation may not be used on any project receiving funding through this Program.

Ecology must submit ranked lists to the Legislature before regular session begins in odd-numbered years, and publish a list of approved projects based on appropriations made by the Legislature. Ecology must monitor progress in completing projects and achieving desired outcomes for projects funded under the Program. Beginning July 1, 2023, Ecology must submit biennial reports to the Legislature.

The Washington Water Infrastructure Program Account is created, as well as a bond account, and a taxable bond account. Ecology may not obligate funds from the accounts before the Legislature has appropriated them, for the purpose of funding projects under this chapter. The Legislature intends to appropriate a minimum of 10 percent of all bonds authorized each biennium in addition to federal funds received under P.L. 117-58 of 2021 for projects under this chapter, up to a total of \$5 billion.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 2022.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: The goal of the bill is to establish a reliable source of funding for critical water projects. This bill provides a funding solution for water supply, flood control, and other water-related projects. It is important to make the investments necessary for today and for future generations and this bill establishes a predictable and reliable program for investing in water-related infrastructure. The bill creates a competitive grant program for projects to receive grants in each of the different categories. This bill will help maximize the state's use of federal funds for water supply, flood prevention, fish passage, and stormwater projects and help the state meet the financial match needed for federal funds. This bill will help provide funding for diverse projects around the state, projects in the Yakima Basin, Chehalis Basin, and the Columbia Basin, and also address flooding issues like what just occurred in Whatcom County. This bill provides a holistic way to fund the long-term fish barrier removal needs. Water projects take a long time to bring to fruition and this bill will provide stable long-term funding for

those projects. Grant funding is needed for mitigation projects against flooding, drought, and pollution to rivers, lakes, and streams. Projects take years and need to be supported by a reliable funding source to be feasible at the local level. There is great value in establishing a new competitive grant program that can help support completion of critical projects.

CON: There is concern with the bill because it requires an even distribution of the funds, rather than having entities qualifying their projects through the legislative process. The bill could be used to fund environmentally damaging dams in Washington State. Projects at Bumping Lake and Kachess Lake will flood ancient forests, adversely impact bull trout habitat, and flood sage grouse habitat. This bill will fund water projects that do not pencil out. The bill could provide funding for projects that could cause great harm to salmon and critical habitat and weights projects in some areas to out of stream uses. This bill should also provide funding to address stream temperature and stream flows.

OTHER: There are concerns about how the bill is structured, how projects are prioritized and the bill's impacts to existing programs. The water supply, flood risks, and fish passage sections of the bill would benefit from more definition to ensure they are flexible to fund a variety of projects, provide funding to projects throughout the state, and address all fish barriers on a stream. Coordination at the state level in the pursuit of federal infrastructure funding is critical, however the role that federal funding would play in the bill is not clear.

**Persons Testifying:** PRO: Senator Jim Honeyford, Prime Sponsor; Paul Jewell, Washington State Association of Counties; Urban Eberhart, Kittitas Reclamation District; Peter Dykstra, Trout Unlimited; Mike Schwisow, WA State Water Resources Assn & Columbia Basin Development League; Amanda McKinney, Yakima County; Marian Dacca, Cities of Aberdeen & Hoquiam.

CON: Jay Schwartz; Ann Lewis; Bruce Wishart, Sierra Club / CELP; David E. Ortman.

OTHER: Justin Allegro, The Nature Conservancy; Tom Tebb, Department of Ecology; Michael Garrity, Washington Dept. of Fish & Wildlife.

**Persons Signed In To Testify But Not Testifying:** No one.