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**SENATE BILL 5157**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Torres, Fortunato, Warnick, and Wellman

AN ACT Relating to investments in critical water infrastructure projects; adding a new chapter to Title 90 RCW; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that Washington's water infrastructure is inadequate to meet the needs of fish, families, and employers due to age, design limitations, and a shortage of storage capacity.

(2) The legislature further finds the lack of a secure water supply and adequate infrastructure exacerbates natural disasters, such as flooding and drought, and that Washington's rivers, lakes, and streams are threatened by pollution from existing development.

(3) The legislature, with this act, will make a historic $5,000,000,000 investment in critical water infrastructure projects using available federal funds and dedicating a constant portion of the omnibus capital appropriations act for water infrastructure needs. It is the intent of the legislature to enhance water security for the diverse inhabitants of Washington by making fiscally responsible investments in infrastructure projects that: Promote increased availability of water for out-of-stream beneficial uses; reduce the risk of flooding, protect against damage that may be caused by flooding, and restore areas where flooding has occurred; improve fish passage; and reduce stormwater pollution from existing development.

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

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

(2) "Preference" means, when referring to a project, that the project should be ranked more favorably than other projects that lack preferred characteristics. However, "preference" does not mean that the department must reject projects that lack preferred characteristics.

(3) "Priority" means, when referring to a project, that the project must be ranked more favorably than other projects.

(4) "Project" means infrastructure that meets the criteria for funding established in this chapter.

(5) "Sponsor" means a Washington state agency, a local government or other public entity in Washington, an agency of the United States government engaged in water supply or flood control activities in Washington, or a federally recognized Indian tribe with a reservation in Washington.

NEW SECTION. **Sec.**  The Washington water infrastructure program is established and must be administered in accordance with this chapter.

NEW SECTION. **Sec.**  The Washington water infrastructure program must be administered for the purpose of funding projects that promote the following objectives:

(1) Increasing the availability of water for out-of-stream beneficial uses;

(2) Reducing the risk of flooding, protecting against damage that may be caused by flooding, and restoring areas where flooding has occurred;

(3) Improving fish passage; or

(4) Reducing stormwater pollution from existing development.

NEW SECTION. **Sec.**  (1) The department must apply for any federal grant, loan, or other financial assistance program appropriated in P.L. 117-58 of 2021 that meets the purposes of section 3 of this act. Any federal revenues received from P.L. 117-58 of 2021 for the purposes of section 3 of this act, must be deposited into the Washington water infrastructure program account created in section 15 of this act.

(2) Prior to the submission of any application for a federal grant, loan, or other financial assistance program under P.L. 117-58 of 2021, the office of financial management must review and certify that the grant application meets the requirements of this chapter.

NEW SECTION. **Sec.**  (1) The Washington water infrastructure program must be administered as a competitive grant program to evaluate and rank projects proposed by sponsors.

(2) The department shall begin accepting applications from sponsors on April 1st in each even-numbered year. The application submission period must remain open until October 1st of the same year.

(3) After the application submission period closes, the department shall distribute applications to the office of Columbia river, office of Chehalis basin, or fish passage barrier removal board, as appropriate, which must evaluate the applications and create ranked lists of projects for the objectives under section 4 of this act. The department must provide the ranked lists to the appropriate standing committees of the legislature before the commencement of the regular session of the legislature in each odd-numbered year.

(4) The department shall publish a list of approved projects based on appropriations made by the legislature and shall notify sponsors of approved projects after the adjournment sine die of the regular or special sessions of the legislature in each odd-numbered year.

(5) The department shall publish a list of approved projects after the adjournment sine die of the regular or special sessions of the legislature in an even-numbered year if the legislature makes an appropriation resulting in the funding of projects in an even-numbered year.

(6) Subject to the availability of amounts appropriated for this specific purpose, the department is authorized to provide funding to sponsors for projects that were approved. The department may not obligate funds from the Washington water infrastructure program account, Washington water infrastructure program bond account, or Washington water infrastructure program taxable bond account before the legislature has appropriated funds from these accounts for the purpose of funding projects under this chapter.

(7) A sponsor that is not approved may reapply during a subsequent application submission period in accordance with this section.

NEW SECTION. **Sec.**  The office of Columbia river shall review proposed projects designed to increase the availability of water for out-of-stream beneficial uses. The following criteria apply to these projects:

(1) A project must increase the availability of water for out-of-stream beneficial uses;

(2) The highest priority projects are those projects that implement the integrated plan, as defined under RCW 90.38.010, or satisfy the water supply needs identified under RCW 90.90.020;

(3) Preference must be given to projects that provide multiple benefits;

(4) Preference must be given to projects that mitigate impacts to fish and wildlife caused by the project;

(5) Preference must be given to projects that include practicable conservation measures to ensure that water is used efficiently; and

(6) The office of Columbia river may consider whether a project helps the state prepare for the effects of climate change.

NEW SECTION. **Sec.**  The office of Chehalis basin shall review proposed projects designed to reduce the risk of flooding, protect against damage that may be caused by flooding, and restore areas where flooding has occurred. The following criteria apply to these projects:

(1) A project must reduce the risk of flooding, protect against damage that may be caused by flooding, or restore areas where flooding has occurred;

(2) The highest priority projects are those that implement the Chehalis basin strategy under RCW 43.21A.732;

(3) Preference must be given to projects that provide multiple benefits;

(4) Preference must be given to projects located in areas that historically have been at the greatest risk and most vulnerable to flooding;

(5) Preference must be given to projects that eliminate or minimize the risk of future damage or disruption to critical infrastructure, such as centers of commerce, emergency response systems, hospitals, and transportation corridors; and

(6) The office of Chehalis basin may consider whether a project helps the state prepare for the effects of climate change.

NEW SECTION. **Sec.**  The fish passage barrier removal board shall review proposed projects designed to improve fish passage. The following criteria apply to these projects:

(1) A project must improve fish passage;

(2) The highest priority projects are those that satisfy the state's obligations under a court order; and

(3) Preference must be given to projects sponsored by a city or county.

NEW SECTION. **Sec.**  The department shall review proposed projects designed to reduce stormwater pollution from existing development. The following criteria apply to these projects:

(1) A project must reduce stormwater pollution from existing development;

(2) Preference must be given to projects that rely on low-impact development retrofit techniques; and

(3) Preference must be given to projects that have a high water quality benefit and address stormwater pollution from existing infrastructure.

NEW SECTION. **Sec.**  (1) Projects may be consistent with more than one objective under section 4 of this act, but a sponsor is required to identify which objective is the primary objective for a project. The reviewing authorities shall, to the greatest extent practicable, rank projects so that approximately equal amounts will have been allocated among each of the project objective categories under section 4 of this act over the first 20 years of the Washington water infrastructure program.

(2) The reviewing authorities shall rank projects in a manner designed to provide funding for as many projects as practicable, while attempting to ensure that each project will receive sufficient funding to facilitate successful completion of the project.

(3) The reviewing authorities shall consider whether each project is consistent with the action agenda as defined under RCW 90.71.010, if applicable.

(4) Moneys made available under this chapter may not be used to acquire property through condemnation.

NEW SECTION. **Sec.**  Sponsors that apply for funding through the Washington water infrastructure program are required to provide a minimum of 25 percent of project costs in sponsor funding. The reviewing authorities shall give preference to projects that provide a higher level of sponsor funding. Sponsor funding may include funds, commitments, or contributions dedicated to the accomplishment of the project, such as cash on hand, the value of real property when acquired solely for the purpose of the project, the proceeds of a letter of credit or other binding loan commitment, or similar commitments. Sponsors may receive credit for properly documented funding that was contributed no earlier than 10 years prior to the effective date of this section and that was dedicated to the accomplishment of the project.

NEW SECTION. **Sec.**  The department may establish advisory committees to ensure that the Washington water infrastructure program is administered with due consideration for the views of individuals and organizations that have demonstrated their interest in water management in Washington.

NEW SECTION. **Sec.**  The department shall monitor progress in completing projects and achieving desired outcomes for projects funded under the Washington water infrastructure program. Beginning July 1, 2024, the department shall submit biennial reports to the legislature describing the use of funds under this chapter.

NEW SECTION. **Sec.**  The Washington water infrastructure program account is created in the state treasury. All receipts of money directed to the account must be deposited in the account. Expenditures from the account may be used only for purposes relating to the Washington water infrastructure program established in this chapter. Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec.**  The Washington water infrastructure program bond account is created in the state treasury. All receipts of money directed to the account must be deposited in the account. The account is intended to fund projects for purposes relating to the Washington water infrastructure program established in this chapter using tax exempt bonds. Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec.**  The Washington water infrastructure program taxable bond account is created in the state treasury. All receipts of money directed to the account must be deposited in the account. The account is intended to fund projects for purposes relating to the Washington water infrastructure program established in this chapter using taxable bonds. Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec.**  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 $5,000,000,000.

NEW SECTION. **Sec.**  This act may be known and cited as the Washington water act.

NEW SECTION. **Sec.**  Sections 1 through 19 and 21 of this act constitute a new chapter in Title 90 RCW.

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.

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