



January 24, 2018

NEWLY ADOPTED LEGISLATION REGARDING PERMIT EXEMPT WELLS AND THE HIRST DECISION

On January 18, 2018, the Washington State Legislature approved legislation to address the water availability issues resulting from the Washington Supreme Court's 2016 decision in *Whatcom County v. Hirst* (commonly known as the Hirst Decision). The following day Governor Jay Inslee signed Engrossed Substitute Senate Bill ("ESSB") 6091. Since the Bill was designated as an emergency action, the Bill went into effect on January 19, 2018. The adopted statute resolves the water availability issue for new domestic water withdrawals from exempt wells by transferring the responsibility for determining water availability and mitigating impacts from future water withdrawals to the Washington State Department of Ecology (DOE).

The King County Department of Permitting and Environmental Review (DPER) is in the process of working out the necessary details. DPER will continue to accept building and subdivision permit applications for construction projects requiring potable water withdrawals from new exempt wells. Please note that the adopted statute requires the collection of a \$500 fee for projects involving exempt wells among other things.

Additional information will be forthcoming.

Attached: ENGROSSED SUBSTITUTE SENATE BILL 6091

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6091

Chapter 1, Laws of 2018

65th Legislature
2018 Regular Session

WATER AVAILABILITY

EFFECTIVE DATE: January 19, 2018

Passed by the Senate January 18, 2018
Yeas 35 Nays 14

CYRUS HABIB

President of the Senate

Passed by the House January 18, 2018
Yeas 66 Nays 30

FRANK CHOPP

Speaker of the House of Representatives

Approved January 19, 2018 12:12 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6091** as passed by Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

January 19, 2018

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6091

Passed Legislature - 2018 Regular Session

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)

READ FIRST TIME 01/12/18.

1 AN ACT Relating to ensuring that water is available to support
2 development; amending RCW 19.27.097, 58.17.110, 90.03.247, and
3 90.03.290; adding a new section to chapter 36.70A RCW; adding a new
4 section to chapter 36.70 RCW; adding a new chapter to Title 90 RCW;
5 creating a new section; providing an expiration date; and declaring
6 an emergency.

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

8 **PART 1**

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

11 (1)(a) Each applicant for a building permit of a building
12 necessitating potable water shall provide evidence of an adequate
13 water supply for the intended use of the building. Evidence may be in
14 the form of a water right permit from the department of ecology, a
15 letter from an approved water purveyor stating the ability to provide
16 water, or another form sufficient to verify the existence of an
17 adequate water supply. (~~In addition to other authorities, the county
18 or city may impose conditions on building permits requiring
19 connection to an existing public water system where the existing
20 system is willing and able to provide safe and reliable potable water~~)

1 ~~to the applicant with reasonable economy and efficiency.)~~ An
2 application for a water right shall not be sufficient proof of an
3 adequate water supply.

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

14 (c) In the following water resource inventory areas with instream
15 flow rules adopted by the department of ecology under chapters 90.22
16 and 90.54 RCW that do not explicitly regulate permit-exempt
17 groundwater withdrawals, evidence of an adequate water supply must be
18 consistent with section 202 of this act, unless the applicant
19 provides other evidence of an adequate water supply that complies
20 with chapters 90.03 and 90.44 RCW: 1 (Nooksack); 11 (Nisqually); 22
21 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little
22 Spokane); and 59 (Colville).

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

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

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

39 (g) In other areas of the state, physical and legal evidence of
40 an adequate water supply may be demonstrated by the submission of a

1 water well report consistent with the requirements of chapter 18.104
2 RCW.

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

6 (2) In addition to other authorities, the county or city may
7 impose additional requirements, including conditions on building
8 permits requiring connection to an existing public water system where
9 the existing system is willing and able to provide safe and reliable
10 potable water to the applicant with reasonable economy and
11 efficiency.

12 (3) Within counties not required or not choosing to plan pursuant
13 to RCW 36.70A.040, the county and the state may mutually determine
14 those areas in the county in which the requirements of subsection (1)
15 of this section shall not apply. The departments of health and
16 ecology shall coordinate on the implementation of this section.
17 Should the county and the state fail to mutually determine those
18 areas to be designated pursuant to this subsection, the county may
19 petition the department of enterprise services to mediate or, if
20 necessary, make the determination.

21 ~~((+3))~~ (4) Buildings that do not need potable water facilities
22 are exempt from the provisions of this section. The department of
23 ecology, after consultation with local governments, may adopt rules
24 to implement this section, which may recognize differences between
25 high-growth and low-growth counties.

26 (5) Any permit-exempt groundwater withdrawal authorized under RCW
27 90.44.050 associated with a water well constructed in accordance with
28 the provisions of chapter 18.104 RCW before the effective date of
29 this section is deemed to be evidence of adequate water supply under
30 this section.

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

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

1 pursuant to chapters 90.22 and 90.54 RCW when making decisions under
2 RCW 19.27.097 and 58.17.110.

3 NEW SECTION. **Sec. 103.** A new section is added to chapter 36.70
4 RCW to read as follows:

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

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

12 (1) The city, town, or county legislative body shall inquire into
13 the public use and interest proposed to be served by the
14 establishment of the subdivision and dedication. It shall determine:
15 (a) If appropriate provisions are made for, but not limited to, the
16 public health, safety, and general welfare, for open spaces, drainage
17 ways, streets or roads, alleys, other public ways, transit stops,
18 potable water supplies, sanitary wastes, parks and recreation,
19 playgrounds, schools and schoolgrounds, and shall consider all other
20 relevant facts, including sidewalks and other planning features that
21 assure safe walking conditions for students who only walk to and from
22 school; and (b) whether the public interest will be served by the
23 subdivision and dedication.

24 (2) A proposed subdivision and dedication shall not be approved
25 unless the city, town, or county legislative body makes written
26 findings that: (a) Appropriate provisions are made for the public
27 health, safety, and general welfare and for such open spaces,
28 drainage ways, streets or roads, alleys, other public ways, transit
29 stops, potable water supplies, sanitary wastes, parks and recreation,
30 playgrounds, schools and schoolgrounds and all other relevant facts,
31 including sidewalks and other planning features that assure safe
32 walking conditions for students who only walk to and from school; and
33 (b) the public use and interest will be served by the platting of
34 such subdivision and dedication. If it finds that the proposed
35 subdivision and dedication make such appropriate provisions and that
36 the public use and interest will be served, then the legislative body
37 shall approve the proposed subdivision and dedication. Dedication of
38 land to any public body, provision of public improvements to serve

1 the subdivision, and/or impact fees imposed under RCW 82.02.050
2 through 82.02.090 may be required as a condition of subdivision
3 approval. Dedications shall be clearly shown on the final plat. No
4 dedication, provision of public improvements, or impact fees imposed
5 under RCW 82.02.050 through 82.02.090 shall be allowed that
6 constitutes an unconstitutional taking of private property. The
7 legislative body shall not as a condition to the approval of any
8 subdivision require a release from damages to be procured from other
9 property owners.

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

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

21 **PART 2**

22 NEW SECTION. **Sec. 201.** The definitions in this section apply
23 throughout this chapter unless the context clearly requires
24 otherwise.

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

26 (2) "Lead agency" has the same meaning as defined in RCW
27 90.82.060.

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

31 NEW SECTION. **Sec. 202.** (1) Unless requirements are otherwise
32 specified in the applicable rules adopted under this chapter or under
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.

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

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

17 (4)(a) In collaboration with the planning unit, the initiating
18 governments must update the watershed plan to include recommendations
19 for projects and actions that will measure, protect, and enhance
20 instream resources and improve watershed functions that support the
21 recovery of threatened and endangered salmonids. Watershed plan
22 recommendations may include, but are not limited to, acquiring senior
23 water rights, water conservation, water reuse, stream gaging,
24 groundwater monitoring, and developing natural and constructed
25 infrastructure, which includes, but is not limited to, such projects
26 as floodplain restoration, off-channel storage, and aquifer recharge.
27 Qualifying projects must be specifically designed to enhance
28 streamflows and not result in negative impacts to ecological
29 functions or critical habitat.

30 (b) At a minimum, the watershed plan must include those actions
31 that the planning units determine to be necessary to offset potential
32 impacts to instream flows associated with permit-exempt domestic
33 water use. The highest priority recommendations must include
34 replacing the quantity of consumptive water use during the same time
35 as the impact and in the same basin or tributary. Lower priority
36 projects include projects not in the same basin or tributary and
37 projects that replace consumptive water supply impacts only during
38 critical flow periods. The watershed plan may include projects that
39 protect or improve instream resources without replacing the
40 consumptive quantity of water where such projects are in addition to

1 those actions that the planning unit determines to be necessary to
2 offset potential consumptive impacts to instream flows associated
3 with permit-exempt domestic water use.

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

9 (d) The watershed plan may include:

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

12 (ii) Standards for water use quantities that are less than
13 authorized under RCW 90.44.050 or more or less than authorized under
14 subsection (5) of this section for withdrawals exempt from
15 permitting;

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

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

20 (e) Any modification to fees collected under subsection (5) of
21 this section or standards for water use quantities that are less than
22 authorized under RCW 90.44.050 or more or less than authorized under
23 subsection (5) of this section for withdrawals exempt from permitting
24 may not be applied unless authorized by rules adopted under this
25 chapter or under chapter 90.54 RCW.

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

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

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

34 (c) Record the number of building permits issued under chapter
35 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW
36 subject to the provisions of this section;

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

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

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

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

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

13 (6) Rules adopted under this chapter or under chapter 90.54 RCW
14 may:

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

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

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

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

28 (b) If a watershed plan that meets the requirements of this
29 section is not adopted in water resource inventory area 11
30 (Nisqually) by February 1, 2019, the department must adopt rules for
31 that water resource inventory area that meet the requirements of this
32 section by August 1, 2020.

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

38 (8) This section only applies to new domestic groundwater
39 withdrawals exempt from permitting under RCW 90.44.050 in the
40 following water resource inventory areas with instream flow rules

1 adopted under chapters 90.22 and 90.54 RCW that do not explicitly
2 regulate permit-exempt groundwater withdrawals: 1 (Nooksack); 11
3 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan);
4 55 (Little Spokane); and 59 (Colville) and does not restrict the
5 withdrawal of groundwater for other uses that are exempt from
6 permitting under RCW 90.44.050.

7 NEW SECTION. **Sec. 203.** (1) Unless requirements are otherwise
8 specified in the applicable rules adopted under this chapter or
9 chapter 90.22 or 90.54 RCW, potential impacts on a closed water body
10 and potential impairment to an instream flow are authorized for new
11 domestic groundwater withdrawals exempt from permitting under RCW
12 90.44.050 through compliance with the requirements established in
13 this section.

14 (2)(a) In the following water resource inventory areas with
15 instream flow rules adopted by the department under chapters 90.22
16 and 90.54 RCW that do not explicitly regulate permit-exempt
17 groundwater withdrawals and that have either not adopted a watershed
18 plan, or adopted a partial watershed plan, under chapter 90.82 RCW,
19 the department shall establish watershed restoration and enhancement
20 committees in the following water resource inventory areas: 7
21 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-
22 White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-
23 Goldsborough); and 15 (Kitsap).

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

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

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

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

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

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

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

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

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

7 (ix) A representative designated by a local organization
8 representing environmental interests within the water resource
9 inventory area; and

10 (x) A representative designated by a local organization
11 representing agricultural interests within the water resource
12 inventory area.

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

19 (a) The watershed restoration and enhancement plan should include
20 recommendations for projects and actions that will measure, protect,
21 and enhance instream resources and improve watershed functions that
22 support the recovery of threatened and endangered salmonids. Plan
23 recommendations may include, but are not limited to, acquiring senior
24 water rights, water conservation, water reuse, stream gaging,
25 groundwater monitoring, and developing natural and constructed
26 infrastructure, which includes but is not limited to such projects as
27 floodplain restoration, off-channel storage, and aquifer recharge.
28 Qualifying projects must be specifically designed to enhance stream
29 flows and not result in negative impacts to ecological functions or
30 critical habitat.

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

1 such projects are in addition to those actions that the committee
2 determines to be necessary to offset potential consumptive impacts to
3 instream flows associated with permit-exempt domestic water use.

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

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

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

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

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

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

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

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

29 (g) After adoption of a watershed restoration and enhancement
30 plan, the department shall evaluate the plan recommendations and
31 initiate rule making, if necessary, to incorporate recommendations
32 into rules adopted under this chapter or under chapter 90.22 or 90.54
33 RCW. Any modification to fees collected under subsection (4) of this
34 section or standards for water use quantities that are less than
35 authorized under RCW 90.44.050 or more or less than authorized under
36 subsection (4) of this section for withdrawals exempt from permitting
37 may not be applied unless authorized by rules adopted under this
38 chapter or under chapter 90.54 RCW.

39 (h) If the watershed restoration and enhancement committee fails
40 to approve a plan by June 30, 2021, the director of the department

1 shall submit the final draft plan to the salmon recovery funding
2 board established under RCW 77.85.110 and request that the salmon
3 recovery funding board provide a technical review and provide
4 recommendations to the director to amend the final draft plan, if
5 necessary, so that actions identified in the plan, after accounting
6 for new projected uses of water over the subsequent twenty years,
7 will result in a net ecological benefit to instream resources within
8 the water resource inventory area. The director of the department
9 shall consider the recommendations and may amend the plan without
10 committee approval prior to adoption. After plan adoption, the
11 director of the department shall initiate rule making within six
12 months to incorporate recommendations into rules adopted under this
13 chapter or under chapter 90.22 or 90.54 RCW, and shall adopt amended
14 rules within two years of initiation of rule making.

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

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

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

23 (iii) Record the number of building permits issued under chapter
24 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW
25 subject to the provisions of this section;

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

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

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

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

36 (B) Except as provided in (b) of this subsection, an applicant
37 may obtain approval for a withdrawal exempt from permitting under RCW
38 90.44.050 for domestic use only, with a maximum annual average
39 withdrawal of nine hundred fifty gallons per day per connection; and

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

6 (b) Upon the issuance of a drought emergency order under RCW
7 43.83B.405, the department may curtail withdrawal of groundwater
8 exempt from permitting under RCW 90.44.050 and approved under this
9 subsection (4) to no more than three hundred fifty gallons per day
10 per connection for indoor use only. Notwithstanding the limitation to
11 no more than three hundred fifty gallons per day per connection for
12 indoor use only, an applicant may use groundwater exempt from
13 permitting to maintain a fire control buffer during a drought
14 emergency order.

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

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

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

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

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

35 NEW SECTION. **Sec. 204.** (1) The department shall initiate two
36 pilot projects to measure water use from all new groundwater
37 withdrawals for domestic purposes exempt from permitting under RCW
38 90.44.050 in the areas described in this section. The pilot projects
39 must be conducted to determine the overall feasibility of measuring

1 water use for all new groundwater withdrawals. The department must
2 purchase and provide meters to be used in the pilot projects. The
3 pilot projects must be conducted in the area under the Dungeness
4 water rule, chapter 173-518 WAC, within water resource inventory area
5 18 and the area in which the Kittitas county water bank program
6 operates within water resource inventory area 39.

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

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

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

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

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

17 (3) The department shall report on the pilot project results in
18 the report to the legislature submitted under section 205 of this
19 act. The department shall include recommendations to the legislature,
20 including estimated program costs for expanding the pilot projects to
21 other basins.

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

25 (1) Progress in completing and adopting watershed plans under
26 section 202 of this act and watershed restoration and enhancement
27 plans under section 203 of this act;

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

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

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

36 (5) The total number of new withdrawals exempt from permitting
37 under RCW 90.44.050 authorized in each water resource inventory area
38 under provisions of sections 202 and 203 of this act, and estimates

1 of consumptive water use impacts associated with the new withdrawals;
2 and

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

6 NEW SECTION. **Sec. 206.** (1) The watershed restoration and
7 enhancement account is created in the custody of the state treasurer.
8 All receipts from fees paid pursuant to sections 202 and 203 of this
9 act must be deposited into the account. The account may also receive
10 those moneys as may be appropriated by the legislature for the
11 purpose of funding restoration and enhancement projects as identified
12 in sections 202 and 203 of this act. Expenditures from the account
13 may be used only for the costs of administering this act, including
14 implementing watershed planning projects under section 202 of this
15 act and watershed restoration and enhancement projects under section
16 203 of this act, and collecting data and completing studies necessary
17 to develop, implement, and evaluate watershed restoration and
18 enhancement projects under this act. Only the director or the
19 director's designee may authorize expenditures from the account. The
20 account is subject to allotment procedures under chapter 43.88 RCW,
21 but an appropriation is not required for expenditures.

22 (2) Fee revenues collected under sections 202 and 203 of this act
23 must be used exclusively within the water resource inventory area in
24 which the fee originated. The restriction in this subsection does not
25 apply to moneys in the watershed restoration and enhancement account
26 that do not originate from fees collected under sections 202 and 203
27 of this act.

28 NEW SECTION. **Sec. 207.** (1) The watershed restoration and
29 enhancement taxable bond account is created in the custody of the
30 state treasurer. All receipts from direct appropriations from the
31 legislature or moneys directed to the account from any other source
32 must be deposited in the account. The account is intended to fund
33 projects using taxable bonds. Expenditures from the account may be
34 used only as provided for in this section. Only the director or the
35 director's designee may authorize expenditures from the account. The
36 account is subject to allotment procedures under chapter 43.88 RCW,
37 but an appropriation is not required for expenditures.

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

12 NEW SECTION. **Sec. 208.** (1) The watershed restoration and
13 enhancement bond account is created in the custody of the state
14 treasurer. All receipts from direct appropriations from the
15 legislature or moneys directed to the account from any other source
16 must be deposited in the account. The account is intended to fund
17 projects using tax exempt bonds. Expenditures from the account may be
18 used only as provided for in this section. Only the director or the
19 director's designee may authorize expenditures from the account. The
20 account is subject to allotment procedures under chapter 43.88 RCW,
21 but an appropriation is not required for expenditures.

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

33 **PART 3**

34 NEW SECTION. **Sec. 301.** (1) A joint legislative task force on
35 water resource mitigation is established to review the treatment of
36 surface water and groundwater appropriations as they relate to
37 instream flows and fish habitat, to develop and recommend a

1 mitigation sequencing process and scoring system to address such
2 appropriations, and to review the Washington supreme court decision
3 in *Foster v. Department of Ecology*, 184 Wn.2d 465, 362 P.3d 959
4 (2015).

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

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

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

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

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

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

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

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

21 (ii) An organization representing Washington cities;

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

24 (iv) An organization representing municipal water purveyors;

25 (v) An organization representing business interests;

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

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

35 (4) The first meeting of the task force must occur by June 30,
36 2018.

37 (5) Staff support for the task force must be provided by the
38 office of program research and senate committee services. The
39 department and the department of fish and wildlife shall cooperate

1 with the task force and provide information as the cochairs
2 reasonably request.

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

15 (7)(a) By November 15, 2019, the joint legislative task force
16 must make recommendations to the legislature in compliance with RCW
17 43.01.036.

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

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

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

37 (b) Where avoidance of impacts is not reasonably attainable,
38 minimizing impacts by providing permanent new or existing trust water
39 rights or through other types of replacement water supply resulting
40 in no net annual increase in the quantity of water diverted or

1 withdrawn from the stream or surface water body and no net
2 detrimental impacts to fish and related aquatic resources; or

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

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

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

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

23 (b) A city operating a group A water system in Pierce county and
24 water resource inventory area 10, with a population between 9,500 and
25 10,500;

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

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

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

36 (11) Water right applicants eligible to be processed under this
37 pilot project authority must elect to be included in the pilot
38 project review by notifying the department by July 1, 2018. Once an
39 applicant notifies the department of its intent to be processed under
40 this pilot project authority, subsection (8) of this section applies

1 to final decisions issued by the department, even if such a final
2 decision is issued after the expiration of this section.

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

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

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

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

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

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

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

28 (2) No agency may establish minimum flows and levels or similar
29 water flow or level restrictions for any stream or lake of the state
30 other than the department of ecology whose authority to establish is
31 exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
32 90.54.040. The provisions of other statutes, including but not
33 limited to ((RCW 77.55.100 and)) chapter 43.21C RCW, may not be
34 interpreted in a manner that is inconsistent with this section. In
35 establishing such minimum flows, levels, or similar restrictions, the
36 department shall, during all stages of development by the department
37 of ecology of minimum flow proposals, consult with, and carefully
38 consider the recommendations of, the department of fish and wildlife,
39 the department of ((community, trade, and economic development))

1 commerce, the department of agriculture, and representatives of the
2 affected Indian tribes. Nothing herein shall preclude the department
3 of fish and wildlife, the department of (~~community, trade, and~~
4 ~~economic development~~) commerce, or the department of agriculture
5 from presenting its views on minimum flow needs at any public hearing
6 or to any person or agency, and the department of fish and wildlife,
7 the department of (~~community, trade, and economic development~~)
8 commerce, and the department of agriculture are each empowered to
9 participate in proceedings of the federal energy regulatory
10 commission and other agencies to present its views on minimum flow
11 needs.

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

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

28 (2)(a) If the application does not contain, and the applicant
29 does not promptly furnish sufficient information on which to base
30 such findings, the department may issue a preliminary permit, for a
31 period of not to exceed three years, requiring the applicant to make
32 such surveys, investigations, studies, and progress reports, as in
33 the opinion of the department may be necessary. If the applicant
34 fails to comply with the conditions of the preliminary permit, it and
35 the application or applications on which it is based shall be
36 automatically canceled and the applicant so notified. If the holder
37 of a preliminary permit shall, before its expiration, file with the
38 department a verified report of expenditures made and work done under
39 the preliminary permit, which, in the opinion of the department,

1 establishes the good faith, intent, and ability of the applicant to
2 carry on the proposed development, the preliminary permit may, with
3 the approval of the governor, be extended, but not to exceed a
4 maximum period of five years from the date of the issuance of the
5 preliminary permit.

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

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

38 (4) If the permit is refused because of conflict with existing
39 rights and such applicant shall acquire same by purchase or
40 condemnation under RCW 90.03.040, the department may thereupon grant

1 such permit. Any application may be approved for a less amount of
2 water than that applied for, if there exists substantial reason
3 therefor, and in any event shall not be approved for more water than
4 can be applied to beneficial use for the purposes named in the
5 application. In determining whether or not a permit shall issue upon
6 any application, it shall be the duty of the department to
7 investigate all facts relevant and material to the application. After
8 the department approves said application in whole or in part and
9 before any permit shall be issued thereon to the applicant, such
10 applicant shall pay the fee provided in RCW 90.03.470: PROVIDED
11 FURTHER, That in the event a permit is issued by the department upon
12 any application, it shall be its duty to notify the director of fish
13 and wildlife of such issuance.

14 (5) The requirements of subsections (1) and (3) of this section
15 do not apply to water resource mitigation pilot projects for which
16 permits are issued in reliance upon water resource mitigation of
17 impacts to instream flows and closed surface water bodies under
18 section 301 of this act.

19 NEW SECTION. Sec. 304. The legislature intends to appropriate
20 three hundred million dollars for projects to achieve the goals of
21 this act until June 30, 2033. The department of ecology is directed
22 to implement a program to restore and enhance stream flows by
23 fulfilling obligations under this act to develop and implement plans
24 to restore stream flows to levels necessary to support robust,
25 healthy, and sustainable salmon populations.

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

28 NEW SECTION. Sec. 306. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. Sec. 307. This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of
34 the state government and its existing public institutions, and takes
35 effect immediately.

Passed by the Senate January 18, 2018.
Passed by the House January 18, 2018.
Approved by the Governor January 19, 2018.
Filed in Office of Secretary of State January 19, 2018.

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