

---

**SUBSTITUTE HOUSE BILL 1793**

---

**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Lytton, Stanford, Fitzgibbon, Tharinger, and Morris)

1 AN ACT Relating to working within the existing in-stream flow  
2 rules adopted by the department of ecology to provide a suite of  
3 tools, applicable to property owners located in areas with limited  
4 access to legal new water withdrawals, for alternative water  
5 procurement that does not result in a net loss to area surface  
6 waters; amending RCW 19.27.097 and 19.27.040; creating new sections;  
7 and providing an expiration date.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that new,  
10 unmitigated, adequate, and reliable legal water supplies are not  
11 available on a year-round basis in many rural areas in the state at a  
12 quantity that satisfies the water supply requirements of RCW  
13 19.27.097 and other state and local potable water requirements for  
14 new construction.

15 (2) The legislature further finds that the use of alternative  
16 water sources is necessary to support new development and economic  
17 activity in rural areas that lack access to new legal water. To best  
18 protect human health and safety, the preferred options for water  
19 supply in these rural areas are the extension of physical piped water  
20 infrastructure or mitigation that is approved by the department of

1 ecology, such as the transfer of an existing water right or the use  
2 of a water bank.

3 (3) The legislature further finds that since the preferred  
4 options of offsetting mitigation, water bank use, or extended  
5 physical piped water infrastructure are not always available or  
6 practicable, cities and counties should work with local landowners to  
7 develop safe and reliable alternative water sources for supplying  
8 potable water. Although not preferred or appropriate in every  
9 instance, a local portfolio of legally allowable alternative water  
10 sources, such as trucked water or rainwater collection systems that  
11 are used in conjunction with cisterns and treatment systems, can  
12 provide a suite of options to assist landowners with matching their  
13 water needs with the physical location and limitations of their  
14 geographic location.

15 (4) The legislature further finds that any alternative water  
16 source to an approved water purveyor is less preferable than a  
17 physical piped water infrastructure system. Whenever possible, and  
18 consistent with any limitations under chapter 36.70A RCW, local  
19 governments should prioritize investments and improvements in  
20 constructing or extending water systems to supply water to rural  
21 areas and rural water users when that option is legally available.

22 **Sec. 2.** RCW 19.27.097 and 2010 c 271 s 302 are each amended to  
23 read as follows:

24 (1)(a) Each applicant for a building permit ((~~of~~)) for a building  
25 necessitating potable water shall provide evidence of an adequate  
26 water supply for the intended use of the building. Evidence may be in  
27 the form of:

28 (i) A water right permit from the department of ecology((~~r~~)).  
29 However, an application for a water right is not sufficient proof of  
30 an adequate water supply;

31 (ii) A letter from an approved water purveyor stating the ability  
32 to provide water((~~r~~)); or

33 (iii) Another form sufficient to verify the existence of an  
34 adequate water supply, such as, where allowed under RCW 19.27.040 or  
35 other state regulations, a well, a rainwater collection and treatment  
36 system, or a system that allows potable water to be received from  
37 trucks or other conveyances other than traditional water  
38 infrastructure piping and be treated and stored.

1       **(b)** In addition to other authorities, the county or city may  
2 impose conditions on building permits requiring connection to an  
3 existing public water system where the existing system is willing and  
4 able to provide safe and reliable potable water to the applicant with  
5 reasonable economy and efficiency. (~~An application for a water right~~  
6 ~~shall not be sufficient proof of an adequate water supply.~~)

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

16       (3) Buildings that do not need potable water facilities are  
17 exempt from the provisions of this section.

18       **(4)** The department of ecology, after consultation with local  
19 governments, may adopt rules to implement this section, which may  
20 recognize differences between high-growth and low-growth counties.

21       **(5)** The department of ecology must make information available to  
22 landowners who are unable to rely on an approved water purveyor or on  
23 new, unmitigated use of surface or groundwaters on a year-round basis  
24 to satisfy the adequate water supply requirements of this section  
25 that explains any available mitigation options and provides  
26 information on alternative water sources allowed under local  
27 ordinances adopted pursuant to RCW 19.27.040. When appropriate, the  
28 information required under this section must be developed and  
29 distributed in cooperation with any affected local governing bodies.

30       **Sec. 3.** RCW 19.27.040 and 1990 c 2 s 11 are each amended to read  
31 as follows:

32       **(1)** The governing body of each county or city is authorized to  
33 amend the state building code as it applies within the jurisdiction  
34 of the county or city. The minimum performance standards of the codes  
35 and the objectives enumerated in RCW 19.27.020 shall not be  
36 diminished by any county or city amendments.

37       **(2)(a)** The governing body of each county and city with  
38 jurisdiction over property that is not eligible to be served by an  
39 approved water purveyor, and for which new, unmitigated use of

1 surface or groundwater is not legally available on a year-round  
2 basis, must develop and adopt specific local ordinances outlining  
3 when and how alternative water sources may be used to satisfy the  
4 adequate water supply requirements of RCW 19.27.097 and any other  
5 state or local potable water requirements for new construction.

6 (b) All local ordinances adopted under this subsection must,  
7 subject to any limitations and conditions adopted by the local  
8 governing body, include systems that allow potable water to be  
9 received from trucks or other conveyances other than traditional  
10 water infrastructure piping and be treated and stored. Local  
11 ordinances may also include other alternative water sources such as  
12 rainwater collection and treatment systems.

13 (3) Nothing in this chapter ((shall authorize)):

14 (a) Authorizes any modifications of the requirements of chapter  
15 70.92 RCW:

16 (b) Prohibits or limits local governing bodies that do meet the  
17 conditions of subsection (2) of this section from adopting,  
18 consistent with state and federal law, local ordinances allowing  
19 alternative water sources to satisfy the potable water requirements  
20 of RCW 19.27.097 and any other state or local potable water  
21 requirements for new construction;

22 (c) Requires any building applicant to include an alternative  
23 water source allowed under a local ordinance specifically adopted  
24 under subsection (2) of this section in his or her application for a  
25 building permit; or

26 (d) Overrides any requirements of local governments to protect  
27 health or safety.

28 NEW SECTION. Sec. 4. (1) The department of ecology must  
29 coordinate with the appropriate local governmental entities and  
30 utility districts to identify possible capital projects that may  
31 assist in the legal provision of water to any properties using water  
32 in potential violation of the supreme court of Washington's October  
33 3, 2013, opinion in *Swinomish Indian Tribal Community v. Washington*  
34 *State Department of Ecology* as of January 1, 2015.

35 (2) The department of ecology must report to the office of  
36 financial management, the house of representatives capital budget  
37 committee, and the senate ways and means committee by October 31,  
38 2015, with recommendations for projects that are eligible for funding

1 from the state capital budget that are identified through the  
2 implementation of this section.

3 (3) This section expires July 1, 2016.

--- END ---