
HOUSE BILL 2226

State of Washington 65th Legislature 2017 2nd Special Session
By Representatives Stanford and Springer

1 AN ACT Relating to addressing permit-exempt wells to support
2 rural development while protecting groundwater and surface water
3 resources; amending RCW 19.27.097, 58.17.110, 36.70A.070, and
4 90.54.120; adding new sections to chapter 90.54 RCW; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to
8 read as follows:

9 (1)(a) Each applicant for a building permit of a building
10 necessitating potable water shall provide evidence of an adequate
11 water supply for the intended use of the building. Evidence may be in
12 the form of (~~a water right permit from the department of ecology, a~~
13 ~~letter from an approved water purveyor stating the ability to provide~~
14 ~~water, or another form sufficient to verify the existence of an~~
15 ~~adequate water supply)):~~

16 (i) A water right permit or certificate from the department of
17 ecology. An application for a water right is not sufficient proof of
18 an adequate water supply;

19 (ii) A letter from an approved water purveyor stating the ability
20 to provide water;

1 (iii) A water well report consistent with the requirements of
2 chapter 18.104 RCW from a groundwater withdrawal exempt from
3 permitting pursuant to RCW 90.44.050, under one of the following
4 provisions unless prohibited by an applicable water resources
5 management rule adopted by the department of ecology:

6 (A) In areas where rules have not been adopted under chapter
7 90.22 or 90.54 RCW, proof of an adequate water supply may rely on
8 demonstration of physical availability of a sufficient quantity of
9 potable water, which does not exceed authorized uses and quantities
10 exempt from permitting under RCW 90.44.050, provided the city or
11 county comprehensive plan and development regulations match growth
12 with available, unappropriated water supplies, and the available
13 information shows that senior water rights are not being impaired by
14 existing or planned growth, and that ground and surface water levels
15 are stable;

16 (B) In areas where rules have been adopted under chapter 90.22 or
17 90.54 RCW or where a federally administered adjudication exists and
18 those rules, consent decrees, or court orders specify mitigation
19 requirements, the proof of an adequate water supply must meet the
20 mitigation requirements specified in the applicable rule, consent
21 decree, or court order;

22 (C) In areas where rules have been adopted under chapter 90.22 or
23 90.54 RCW or where a federally administered adjudication exists but
24 the applicable rule, consent decree, or court order does not specify
25 mitigation requirements, proof of an adequate water supply may rely
26 on compliance with mitigation requirements pursuant to section 4 of
27 this act;

28 (D) In areas where rules have not been established under chapter
29 90.22 or 90.54 RCW, proof of an adequate water supply may rely on a
30 mitigation certificate issued pursuant to section 4 of this act;

31 (iv) Another form sufficient to verify the physical and legal
32 existence of an adequate water supply, such as from an alternative
33 water supply.

34 (b) Subsection (1)(a)(iii) of this section does not apply in the
35 Yakima basin, water resource inventory areas 37, 38, and 39, the
36 Skagit basin, water resource inventory areas 3 and 4, or the Methow
37 basin, water resource inventory area 48.

38 (2) In addition to other authorities, the county or city may:

39 (a) Impose conditions on building permits requiring connection to
40 an existing public water system where the existing system is willing

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

5 (b) Require additional information from an applicant needed to
6 determine that adequate potable water is available.

7 ~~((+2))~~ (3) Within counties not required or not choosing to plan
8 pursuant to RCW 36.70A.040, the county and the ~~((state))~~ department
9 of ecology may mutually determine those areas in the county in which
10 the requirements of subsections (1) and (2) of this section shall not
11 apply. ~~((The departments of health and ecology shall coordinate on~~
12 ~~the implementation of this section.))~~ Should the county and the
13 ~~((state))~~ department of ecology fail to mutually determine those
14 areas to be designated pursuant to this subsection, the county may
15 petition the department of enterprise services to mediate or, if
16 necessary, make the determination.

17 ~~((+3))~~ (4) Buildings that do not need potable water facilities
18 are exempt from the provisions of this section. The department of
19 ecology, after consultation with local governments, may adopt rules
20 to implement this section, which may recognize differences between
21 high-growth and low-growth counties.

22 (5) The departments of ecology, health, and commerce shall
23 coordinate on the implementation of this section.

24 (6) For purposes of this section, "water resource inventory area"
25 and "WRIA" have the same meaning as defined in RCW 90.54.120.

26 **Sec. 2.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
27 as follows:

28 (1) The city, town, or county legislative body shall inquire into
29 the public use and interest proposed to be served by the
30 establishment of the subdivision and dedication. It shall determine:

31 (a) If appropriate provisions are made for, but not limited to, the
32 public health, safety, and general welfare, for open spaces, drainage
33 ways, streets or roads, alleys, other public ways, transit stops,
34 potable water supplies, sanitary wastes, parks and recreation,
35 playgrounds, schools and schoolgrounds, and shall consider all other
36 relevant facts, including sidewalks and other planning features that
37 assure safe walking conditions for students who only walk to and from
38 school; and (b) whether the public interest will be served by the
39 subdivision and dedication.

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

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

30 (4) Adequate provisions for water supply for a subdivision,
31 dedication, or short subdivision under this chapter must be
32 consistent with applicable laws and rules adopted pursuant to
33 chapters 90.03, 90.22, 90.44, and 90.54 RCW.

34 **Sec. 3.** RCW 36.70A.070 and 2015 c 241 s 2 are each amended to
35 read as follows:

36 The comprehensive plan of a county or city that is required or
37 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
38 and descriptive text covering objectives, principles, and standards
39 used to develop the comprehensive plan. The plan shall be an

1 internally consistent document and all elements shall be consistent
2 with the future land use map. A comprehensive plan shall be adopted
3 and amended with public participation as provided in RCW 36.70A.140.
4 Each comprehensive plan shall include a plan, scheme, or design for
5 each of the following:

6 (1) A land use element designating the proposed general
7 distribution and general location and extent of the uses of land,
8 where appropriate, for agriculture, timber production, housing,
9 commerce, industry, recreation, open spaces, general aviation
10 airports, public utilities, public facilities, and other land uses.
11 The land use element shall include population densities, building
12 intensities, and estimates of future population growth. The land use
13 element shall provide for protection of the quality and quantity of
14 groundwater used for public water supplies. In providing for the
15 protection of the quantity of groundwater use for public water
16 supplies under this subsection, a county or city must be consistent
17 with applicable laws and rules adopted pursuant to chapters 90.03,
18 90.22, 90.44, and 90.54 RCW. The level of planned growth in a
19 comprehensive plan must be consistent with current scientific
20 information on the availability of water within the area during the
21 twenty-year planning period. Wherever possible, the land use element
22 should consider utilizing urban planning approaches that promote
23 physical activity. Where applicable, the land use element shall
24 review drainage, flooding, and storm water run-off in the area and
25 nearby jurisdictions and provide guidance for corrective actions to
26 mitigate or cleanse those discharges that pollute waters of the
27 state, including Puget Sound or waters entering Puget Sound.

28 (2) A housing element ensuring the vitality and character of
29 established residential neighborhoods that: (a) Includes an inventory
30 and analysis of existing and projected housing needs that identifies
31 the number of housing units necessary to manage projected growth; (b)
32 includes a statement of goals, policies, objectives, and mandatory
33 provisions for the preservation, improvement, and development of
34 housing, including single-family residences; (c) identifies
35 sufficient land for housing, including, but not limited to,
36 government-assisted housing, housing for low-income families,
37 manufactured housing, multifamily housing, and group homes and foster
38 care facilities; and (d) makes adequate provisions for existing and
39 projected needs of all economic segments of the community.

1 (3) A capital facilities plan element consisting of: (a) An
2 inventory of existing capital facilities owned by public entities,
3 showing the locations and capacities of the capital facilities; (b) a
4 forecast of the future needs for such capital facilities; (c) the
5 proposed locations and capacities of expanded or new capital
6 facilities; (d) at least a six-year plan that will finance such
7 capital facilities within projected funding capacities and clearly
8 identifies sources of public money for such purposes; and (e) a
9 requirement to reassess the land use element if probable funding
10 falls short of meeting existing needs and to ensure that the land use
11 element, capital facilities plan element, and financing plan within
12 the capital facilities plan element are coordinated and consistent.
13 Park and recreation facilities shall be included in the capital
14 facilities plan element.

15 (4) A utilities element consisting of the general location,
16 proposed location, and capacity of all existing and proposed
17 utilities, including, but not limited to, electrical lines,
18 telecommunication lines, and natural gas lines.

19 (5) Rural element. Counties shall include a rural element
20 including lands that are not designated for urban growth,
21 agriculture, forest, or mineral resources. The following provisions
22 shall apply to the rural element:

23 (a) Growth management act goals and local circumstances. Because
24 circumstances vary from county to county, in establishing patterns of
25 rural densities and uses, a county may consider local circumstances,
26 but shall develop a written record explaining how the rural element
27 harmonizes the planning goals in RCW 36.70A.020 and meets the
28 requirements of this chapter.

29 (b) Rural development. The rural element shall permit rural
30 development, forestry, and agriculture in rural areas. The rural
31 element shall provide for a variety of rural densities, uses,
32 essential public facilities, and rural governmental services needed
33 to serve the permitted densities and uses. To achieve a variety of
34 rural densities and uses, counties may provide for clustering,
35 density transfer, design guidelines, conservation easements, and
36 other innovative techniques that will accommodate appropriate rural
37 densities and uses that are not characterized by urban growth and
38 that are consistent with rural character.

1 (c) Measures governing rural development. The rural element shall
2 include measures that apply to rural development and protect the
3 rural character of the area, as established by the county, by:

4 (i) Containing or otherwise controlling rural development;

5 (ii) Assuring visual compatibility of rural development with the
6 surrounding rural area;

7 (iii) Reducing the inappropriate conversion of undeveloped land
8 into sprawling, low-density development in the rural area;

9 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
10 and surface water and groundwater resources, which may include
11 measures that rely on applicable laws and rules adopted pursuant to
12 chapters 90.03, 90.22, 90.44, and 90.54 RCW, where the level of
13 planned growth is consistent with current scientific information on
14 the availability of water within the area during the twenty-year
15 planning period; and

16 (v) Protecting against conflicts with the use of agricultural,
17 forest, and mineral resource lands designated under RCW 36.70A.170.

18 (d) Limited areas of more intensive rural development. Subject to
19 the requirements of this subsection and except as otherwise
20 specifically provided in this subsection (5)(d), the rural element
21 may allow for limited areas of more intensive rural development,
22 including necessary public facilities and public services to serve
23 the limited area as follows:

24 (i) Rural development consisting of the infill, development, or
25 redevelopment of existing commercial, industrial, residential, or
26 mixed-use areas, whether characterized as shoreline development,
27 villages, hamlets, rural activity centers, or crossroads
28 developments.

29 (A) A commercial, industrial, residential, shoreline, or mixed-
30 use area are subject to the requirements of (d)(iv) of this
31 subsection, but are not subject to the requirements of (c)(ii) and
32 (iii) of this subsection.

33 (B) Any development or redevelopment other than an industrial
34 area or an industrial use within a mixed-use area or an industrial
35 area under this subsection (5)(d)(i) must be principally designed to
36 serve the existing and projected rural population.

37 (C) Any development or redevelopment in terms of building size,
38 scale, use, or intensity shall be consistent with the character of
39 the existing areas. Development and redevelopment may include changes

1 in use from vacant land or a previously existing use so long as the
2 new use conforms to the requirements of this subsection (5);

3 (ii) The intensification of development on lots containing, or
4 new development of, small-scale recreational or tourist uses,
5 including commercial facilities to serve those recreational or
6 tourist uses, that rely on a rural location and setting, but that do
7 not include new residential development. A small-scale recreation or
8 tourist use is not required to be principally designed to serve the
9 existing and projected rural population. Public services and public
10 facilities shall be limited to those necessary to serve the
11 recreation or tourist use and shall be provided in a manner that does
12 not permit low-density sprawl;

13 (iii) The intensification of development on lots containing
14 isolated nonresidential uses or new development of isolated cottage
15 industries and isolated small-scale businesses that are not
16 principally designed to serve the existing and projected rural
17 population and nonresidential uses, but do provide job opportunities
18 for rural residents. Rural counties may allow the expansion of small-
19 scale businesses as long as those small-scale businesses conform with
20 the rural character of the area as defined by the local government
21 according to RCW 36.70A.030(15). Rural counties may also allow new
22 small-scale businesses to utilize a site previously occupied by an
23 existing business as long as the new small-scale business conforms to
24 the rural character of the area as defined by the local government
25 according to RCW 36.70A.030(15). Public services and public
26 facilities shall be limited to those necessary to serve the isolated
27 nonresidential use and shall be provided in a manner that does not
28 permit low-density sprawl;

29 (iv) A county shall adopt measures to minimize and contain the
30 existing areas or uses of more intensive rural development, as
31 appropriate, authorized under this subsection. Lands included in such
32 existing areas or uses shall not extend beyond the logical outer
33 boundary of the existing area or use, thereby allowing a new pattern
34 of low-density sprawl. Existing areas are those that are clearly
35 identifiable and contained and where there is a logical boundary
36 delineated predominately by the built environment, but that may also
37 include undeveloped lands if limited as provided in this subsection.
38 The county shall establish the logical outer boundary of an area of
39 more intensive rural development. In establishing the logical outer
40 boundary, the county shall address (A) the need to preserve the

1 character of existing natural neighborhoods and communities, (B)
2 physical boundaries, such as bodies of water, streets and highways,
3 and land forms and contours, (C) the prevention of abnormally
4 irregular boundaries, and (D) the ability to provide public
5 facilities and public services in a manner that does not permit low-
6 density sprawl;

7 (v) For purposes of (d) of this subsection, an existing area or
8 existing use is one that was in existence:

9 (A) On July 1, 1990, in a county that was initially required to
10 plan under all of the provisions of this chapter;

11 (B) On the date the county adopted a resolution under RCW
12 36.70A.040(2), in a county that is planning under all of the
13 provisions of this chapter under RCW 36.70A.040(2); or

14 (C) On the date the office of financial management certifies the
15 county's population as provided in RCW 36.70A.040(5), in a county
16 that is planning under all of the provisions of this chapter pursuant
17 to RCW 36.70A.040(5).

18 (e) Exception. This subsection shall not be interpreted to permit
19 in the rural area a major industrial development or a master planned
20 resort unless otherwise specifically permitted under RCW 36.70A.360
21 and 36.70A.365.

22 (6) A transportation element that implements, and is consistent
23 with, the land use element.

24 (a) The transportation element shall include the following
25 subelements:

26 (i) Land use assumptions used in estimating travel;

27 (ii) Estimated traffic impacts to state-owned transportation
28 facilities resulting from land use assumptions to assist the
29 department of transportation in monitoring the performance of state
30 facilities, to plan improvements for the facilities, and to assess
31 the impact of land-use decisions on state-owned transportation
32 facilities;

33 (iii) Facilities and services needs, including:

34 (A) An inventory of air, water, and ground transportation
35 facilities and services, including transit alignments and general
36 aviation airport facilities, to define existing capital facilities
37 and travel levels as a basis for future planning. This inventory must
38 include state-owned transportation facilities within the city or
39 county's jurisdictional boundaries;

1 (B) Level of service standards for all locally owned arterials
2 and transit routes to serve as a gauge to judge performance of the
3 system. These standards should be regionally coordinated;

4 (C) For state-owned transportation facilities, level of service
5 standards for highways, as prescribed in chapters 47.06 and 47.80
6 RCW, to gauge the performance of the system. The purposes of
7 reflecting level of service standards for state highways in the local
8 comprehensive plan are to monitor the performance of the system, to
9 evaluate improvement strategies, and to facilitate coordination
10 between the county's or city's six-year street, road, or transit
11 program and the office of financial management's ten-year investment
12 program. The concurrency requirements of (b) of this subsection do
13 not apply to transportation facilities and services of statewide
14 significance except for counties consisting of islands whose only
15 connection to the mainland are state highways or ferry routes. In
16 these island counties, state highways and ferry route capacity must
17 be a factor in meeting the concurrency requirements in (b) of this
18 subsection;

19 (D) Specific actions and requirements for bringing into
20 compliance locally owned transportation facilities or services that
21 are below an established level of service standard;

22 (E) Forecasts of traffic for at least ten years based on the
23 adopted land use plan to provide information on the location, timing,
24 and capacity needs of future growth;

25 (F) Identification of state and local system needs to meet
26 current and future demands. Identified needs on state-owned
27 transportation facilities must be consistent with the statewide
28 multimodal transportation plan required under chapter 47.06 RCW;

29 (iv) Finance, including:

30 (A) An analysis of funding capability to judge needs against
31 probable funding resources;

32 (B) A multiyear financing plan based on the needs identified in
33 the comprehensive plan, the appropriate parts of which shall serve as
34 the basis for the six-year street, road, or transit program required
35 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
36 35.58.2795 for public transportation systems. The multiyear financing
37 plan should be coordinated with the ten-year investment program
38 developed by the office of financial management as required by RCW
39 47.05.030;

1 (C) If probable funding falls short of meeting identified needs,
2 a discussion of how additional funding will be raised, or how land
3 use assumptions will be reassessed to ensure that level of service
4 standards will be met;

5 (v) Intergovernmental coordination efforts, including an
6 assessment of the impacts of the transportation plan and land use
7 assumptions on the transportation systems of adjacent jurisdictions;

8 (vi) Demand-management strategies;

9 (vii) Pedestrian and bicycle component to include collaborative
10 efforts to identify and designate planned improvements for pedestrian
11 and bicycle facilities and corridors that address and encourage
12 enhanced community access and promote healthy lifestyles.

13 (b) After adoption of the comprehensive plan by jurisdictions
14 required to plan or who choose to plan under RCW 36.70A.040, local
15 jurisdictions must adopt and enforce ordinances which prohibit
16 development approval if the development causes the level of service
17 on a locally owned transportation facility to decline below the
18 standards adopted in the transportation element of the comprehensive
19 plan, unless transportation improvements or strategies to accommodate
20 the impacts of development are made concurrent with the development.
21 These strategies may include increased public transportation service,
22 ride-sharing programs, demand management, and other transportation
23 systems management strategies. For the purposes of this subsection
24 (6), "concurrent with the development" means that improvements or
25 strategies are in place at the time of development, or that a
26 financial commitment is in place to complete the improvements or
27 strategies within six years. If the collection of impact fees is
28 delayed under RCW 82.02.050(3), the six-year period required by this
29 subsection (6)(b) must begin after full payment of all impact fees is
30 due to the county or city.

31 (c) The transportation element described in this subsection (6),
32 the six-year plans required by RCW 35.77.010 for cities, RCW
33 36.81.121 for counties, and RCW 35.58.2795 for public transportation
34 systems, and the ten-year investment program required by RCW
35 47.05.030 for the state, must be consistent.

36 (7) An economic development element establishing local goals,
37 policies, objectives, and provisions for economic growth and vitality
38 and a high quality of life. The element shall include: (a) A summary
39 of the local economy such as population, employment, payroll,
40 sectors, businesses, sales, and other information as appropriate; (b)

1 a summary of the strengths and weaknesses of the local economy
2 defined as the commercial and industrial sectors and supporting
3 factors such as land use, transportation, utilities, education,
4 workforce, housing, and natural/cultural resources; and (c) an
5 identification of policies, programs, and projects to foster economic
6 growth and development and to address future needs. A city that has
7 chosen to be a residential community is exempt from the economic
8 development element requirement of this subsection.

9 (8) A park and recreation element that implements, and is
10 consistent with, the capital facilities plan element as it relates to
11 park and recreation facilities. The element shall include: (a)
12 Estimates of park and recreation demand for at least a ten-year
13 period; (b) an evaluation of facilities and service needs; and (c) an
14 evaluation of intergovernmental coordination opportunities to provide
15 regional approaches for meeting park and recreational demand.

16 (9) It is the intent that new or amended elements required after
17 January 1, 2002, be adopted concurrent with the scheduled update
18 provided in RCW 36.70A.130. Requirements to incorporate any such new
19 or amended elements shall be null and void until funds sufficient to
20 cover applicable local government costs are appropriated and
21 distributed by the state at least two years before local government
22 must update comprehensive plans as required in RCW 36.70A.130.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.54
24 RCW to read as follows:

25 (1) Unless mitigation requirements are otherwise specified in the
26 applicable rule, impacts on closed water bodies, and potential
27 impairment to instream flows adopted pursuant to chapter 90.22 RCW or
28 this chapter, of new domestic or commercial groundwater withdrawals
29 exempt from permitting under RCW 90.44.050 are deemed mitigated by
30 participation in and compliance with the mitigation program
31 established in this section.

32 (2) The department shall establish a mitigation program for
33 permit-exempt domestic and commercial water use. The department shall
34 work in collaboration with affected tribes and affected counties to
35 establish the mitigation program.

36 (a) Within two years of the effective date of this section, the
37 department shall, in each WRIA in which mitigation fees are being
38 collected under this section, attempt to identify and purchase or
39 otherwise secure senior water rights that are sufficient to fully

1 mitigate in time and in place withdrawals of water associated with
2 mitigation certificates issued under this section.

3 (b) Within two years of the effective date of this section, in
4 any WRIA in which the department is unable to secure senior water
5 rights sufficient to fully mitigate in time and in place withdrawals
6 of water associated with mitigation certificates issued under this
7 section, the department shall create a mitigation committee. Each
8 mitigation committee must convene at least twice per year to review,
9 prioritize, approve, and oversee implementation of mitigation work
10 within the WRIA. For approval, mitigation projects must be consented
11 to by all parties on the mitigation committee. The department shall
12 adopt rules to govern the activities and procedures of mitigation
13 committees established under this section. The department shall
14 invite the following to participate on the mitigation committee:

15 (i) A representative from each tribe that has either reservation
16 land or a usual and accustomed harvest area within the WRIA;

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

19 (iii) A representative from the department, appointed by the
20 director of the department; and

21 (iv) A representative designated by each county within the WRIA.

22 (c) For each WRIA identified in (b) of this subsection, the
23 department, in collaboration with the mitigation committee for that
24 WRIA, shall create a mitigation plan within two years of the
25 effective date of this section. The mitigation plan must prioritize
26 mitigation of the total consumptive quantity of water expected to be
27 associated with withdrawals authorized under this section as near as
28 possible to the area of direct impact, with the highest priority
29 being mitigation that replaces water during the same time periods as
30 the consumptive impact and in the same basin or tributary. When such
31 higher priority projects are not feasible, the mitigation plan may
32 include projects not in the same basin or tributary and projects that
33 do not replace consumptive impact during critical flow periods.

34 (d) The department shall adopt two tiers of mitigation fees to be
35 assessed by the local permitting authority in exchange for the
36 issuance of a mitigation certificate.

37 (i) The tier one fee applies to residential units that withdraw
38 an average of three hundred fifty gallons of water per day for indoor
39 use, with only incidental outdoor use. The tier two fee applies to
40 single dwelling units that withdraw an average of five hundred

1 gallons per day for a combination of indoor use and up to two
2 thousand five hundred square feet of lawn or noncommercial garden.

3 (ii) The fees shall be based on a rolling five-year average of
4 the department's actual average costs to acquire water rights
5 throughout the state.

6 (iii) Within one month of the effective date of this section, the
7 department shall submit a report to the legislature that identifies
8 the department's actual costs to acquire water rights throughout the
9 state and that specifies the initial tier one and tier two fees to be
10 assessed by the local permitting authority in exchange for the
11 issuance of a mitigation certificate.

12 (iv) Beginning July 1, 2020, and every five years thereafter, the
13 department must adjust the mitigation fees established in this
14 subsection according to the most recent five-year average of the
15 department's actual average cost to acquire water rights throughout
16 the state.

17 (e) The department shall deposit all revenues collected under
18 this section in the water resources mitigation account created in
19 section 7 of this act. The department shall use fee revenues
20 collected under this program solely for the costs of administering
21 requirements under this section and implementing mitigation projects.
22 Fee revenues collected under this section must be used exclusively
23 within the WRIA in which the fee originated, unless the appropriate
24 mitigation committee authorizes expenditures outside of the WRIA.
25 This restriction does not apply to moneys in the water resources
26 mitigation account that do not originate from fees collected under
27 this section. Upon the approval of a mitigation project by the
28 appropriate mitigation committee, the department shall authorize such
29 expenditures from the water resources mitigation account as are
30 necessary to carry out the mitigation project.

31 (3) To issue a mitigation certificate under this section, a city,
32 town, or county issuing a permit or approval under RCW 19.27.097 or
33 chapter 58.17 RCW shall:

34 (a) Record a mitigation certificate with the property title for
35 each property that complies with the provisions of this section;

36 (b) Collect applicable fees under subsection (4) of this section;
37 and

38 (c) Remit all fees collected to the department quarterly.

39 (4) To obtain a mitigation certificate under this section, an
40 applicant for a building permit for a building necessitating potable

1 water that will rely on a new permit-exempt groundwater withdrawal
2 for domestic or commercial use:

3 (a) Shall pay a mitigation fee, as established by the department
4 pursuant to subsection (2)(d) of this section, to the local
5 permitting authority, as follows:

6	Water use	One-time fee
7	(i) Single domestic or	Tier One
8	commercial indoor use	
9	only, up to three hundred	
10	fifty gallons per day	
11	(ii) Single domestic or	Tier Two
12	commercial indoor use,	
13	plus outdoor irrigation of	
14	up to two thousand five	
15	hundred square feet of	
16	lawn or noncommercial	
17	garden, up to five hundred	
18	gallons per day	

19 (b) May obtain a modified mitigation certificate at a later time
20 to change authorized water use from tier one to tier two through
21 application to the permitting authority for a mitigation certificate
22 change. The county shall grant a mitigation certificate for increased
23 water use upon receipt of payment for the difference in fees between
24 the amount of the tier one fee originally paid by the applicant and
25 the amount of the tier two fee as it exists at the time the change
26 application is made;

27 (c) Shall sign an affidavit agreeing to not exceed the level of
28 water use authorized in the mitigation certificate issued by the
29 local permitting authority;

30 (d) Shall install and maintain a water meter. The property owner
31 must report water use annually to the department in a manner to be
32 determined by the department by rule.

33 (5) Mitigation program reporting and evaluation is as follows:

34 (a) By January 31st of each year, each permitting authority
35 issuing mitigation certificates shall provide the department with the
36 total number of mitigation certificates issued and a summary of total
37 fees collected for each WRIA for the previous calendar year.

1 (b) Beginning July 1, 2022, and every two years thereafter, and
2 in compliance with RCW 43.01.036, the department shall submit a
3 report to the legislature that includes the following information for
4 each WRIA:

5 (i) Total number of mitigation certificates issued;

6 (ii) A summary of total fees collected;

7 (iii) A description of each mitigation project initiated,
8 including the location, cost, and status of each project;

9 (iv) The total amount of consumptive water use to be mitigated;

10 (v) The total amount of mitigation that has been obtained;

11 (vi) A description of challenges faced in implementation of the
12 program, including recommendations to the legislature for changes to
13 improve mitigation for groundwater withdrawals exempt from permitting
14 under RCW 90.44.050; and

15 (vii) Whether the department has been able to obtain at least
16 one-half of the mitigation necessary to fully address the water
17 consumption associated with new groundwater withdrawals exempt from
18 permitting under RCW 90.44.050.

19 (6) In any WRIA in which the department has been unable to obtain
20 at least one-half of the necessary mitigation as of July 1, 2022, or
21 as of July 1st of every even-numbered year thereafter, the department
22 must provide notice to the local permitting authority of a two-year
23 deadline to achieve the minimum mitigation level. If the minimum
24 mitigation level is not achieved in the subsequent two-year period,
25 the local permitting authority is no longer authorized to issue a
26 mitigation certificate pursuant to this section until such time as
27 the department certifies that the WRIA has achieved at least one-half
28 of the necessary mitigation.

29 (7) In a WRIA where instream flow rules have not been adopted
30 pursuant to either this chapter or chapter 90.22 RCW, a local
31 government may develop a mitigation plan for impacts of new permit-
32 exempt water use on senior water users. Once the mitigation plan is
33 approved by the department, the local governmental entity may issue
34 mitigation certificates based on payment of the mitigation fee as
35 specified in subsection (2)(d) of this section.

36 **Sec. 5.** RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended
37 to read as follows:

38 ~~((For the purposes of this chapter, unless the context is clearly~~
39 ~~to the contrary, the following definitions shall be used:)) The~~

1 definitions in this section apply throughout this chapter unless the
2 context clearly requires otherwise.

3 (1) "Commercial water use" means potable water to satisfy the
4 normal needs of a commercial business, including water used for
5 drinking, bathing, sanitary purposes, cooking, laundering, and
6 cleaning of the interior or exterior of the business.

7 (2) "Department" means the department of ecology.

8 ~~((+2))~~ (3) "Domestic water use" means potable water to satisfy
9 the normal needs of a household, including water used for drinking,
10 bathing, sanitary purposes, cooking, laundering, care of household
11 parts, and other incidental uses.

12 (4) "Utilize" or "utilization" shall not only mean use of water
13 for such long recognized consumptive or nonconsumptive beneficial
14 purposes as domestic, stock watering, industrial, commercial,
15 agricultural, irrigation, hydroelectric power production, thermal
16 power production, mining, recreational, maintenance of wildlife and
17 fishlife purposes, but includes the retention of water in lakes and
18 streams for the protection of environmental, scenic, aesthetic and
19 related purposes, upon which economic values have not been placed
20 historically and are difficult to quantify.

21 (5) "WRIA" means a water resource inventory area established
22 under WAC 173-500-040, as it existed as of January 1, 2017.

23 NEW SECTION. Sec. 6. A new section is added to chapter 90.54
24 RCW to read as follows:

25 (1) Nothing in this chapter affects the ability of any person to
26 pursue a cause of action for the protection of any water right that
27 is not a base flow, minimum flow, minimum level, or other similar
28 standard or policy, established by the department.

29 (2) However, if a person is required to divert, consume, or
30 withdraw less water than his or her water right or permit allows
31 because of the requirement to comply with a senior base flow, minimum
32 flow, minimum level, or other similar standard or policy, established
33 by the department while persons with junior water rights or junior
34 permit-exempt wells are allowed to continue to divert or withdraw
35 water, the senior water right holder may enforce the base flow,
36 minimum flow, minimum level, or other similar standard or policy
37 against the junior water right holder.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.54
2 RCW to read as follows:

3 The water resources mitigation account is created in the custody
4 of the state treasurer. All receipts from mitigation fees paid
5 pursuant to section 4 of this act must be deposited into the account.
6 The account may also receive such moneys as are appropriated by the
7 legislature for the purpose of funding mitigation projects as
8 identified in section 4 of this act. Expenditures from the account
9 may be used only for the costs of administering requirements under
10 section 4 of this act and implementing mitigation projects under
11 section 4 of this act. Only the director of the department or the
12 director's designee may authorize expenditures from the account. No
13 expenditure of funds that originate from fees collected under section
14 4 of this act may be made for the purpose of implementing a
15 mitigation project under section 4 of this act until the mitigation
16 project has been approved by the appropriate mitigation committee
17 created in section 4 of this act. The approval of a mitigation
18 committee is not required for the expenditure of funds in the account
19 that do not originate from fees collected under section 4 of this
20 act. Fee revenues collected under section 4 of this act must be used
21 exclusively within the WRIA in which the fee originated, unless the
22 appropriate mitigation committee authorizes expenditures outside of
23 the WRIA. This restriction does not apply to moneys in the water
24 resources mitigation account that do not originate from fees
25 collected under section 4 of this act. The account is subject to
26 allotment procedures under chapter 43.88 RCW, but an appropriation is
27 not required for expenditures. Upon the approval of a mitigation
28 project by the appropriate mitigation committee, the department shall
29 authorize such expenditures from the water resources mitigation
30 account as are necessary to carry out the mitigation project.

31 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of
33 the state government and its existing public institutions, and takes
34 effect immediately.

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