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**SUBSTITUTE HOUSE BILL 1793**

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**State of Washington 64th Legislature 2015 Regular Session**

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

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

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

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

(2) The legislature further finds that the use of alternative water sources is necessary to support new development and economic activity in rural areas that lack access to new legal water. To best protect human health and safety, the preferred options for water supply in these rural areas are the extension of physical piped water infrastructure or mitigation that is approved by the department of ecology, such as the transfer of an existing water right or the use of a water bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2)(a) The governing body of each county and city with jurisdiction over property that is not eligible to be served by an approved water purveyor, and for which new, unmitigated use of surface or groundwater is not legally available on a year-round basis, must develop and adopt specific local ordinances outlining when and how alternative water sources may be used to satisfy the adequate water supply requirements of RCW 19.27.097 and any other state or local potable water requirements for new construction.

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

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

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

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

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

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

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

(2) The department of ecology must report to the office of financial management, the house of representatives capital budget committee, and the senate ways and means committee by October 31, 2015, with recommendations for projects that are eligible for funding from the state capital budget that are identified through the implementation of this section.

(3) This section expires July 1, 2016.

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