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**Agriculture & Natural Resources  
Committee**

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**HB 1793**

**Brief Description:** 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.

**Sponsors:** Representatives Lytton, Stanford, Fitzgibbon, Tharinger and Morris.

**Brief Summary of Bill**

- Requires counties and cities to adopt ordinances that outline when and how alternative water systems may be used to satisfy the potable water requirements for new construction if the city or county has, as part of its jurisdiction, an area which is not served by a water purveyor and is subject to a limitation on new, unmitigated surface or groundwater withdrawals.

**Hearing Date:** 2/3/15

**Staff:** Jason Callahan (786-7117).

**Background:**

Instream Flows.

The Department of Ecology (Department) has the authority to adopt rules establishing a minimum water flow for streams, lakes, or other public water bodies for the purposes of protecting fish, game, birds, and the recreational and aesthetic values of the waterways (chapter 90.22 RCW). These levels, commonly called "instream flows," essentially function as water rights with a priority date set at the adoption date of the corresponding rule.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Per statute, the instream flow cannot affect an existing water right with a senior time priority date. The Department may not allow any subsequent water withdrawals with a junior priority date to the instream flow that conflicts with the established flow level unless the withdrawals clearly serve to satisfy an overriding consideration of the public interest (RCW 90.54.020(3)(a)). In 2013, the state Supreme Court found that the exemption for withdrawals that effect an instream flow to address an overriding considerations of the public interest is narrow and requires extraordinary circumstances before the minimum flow water right can be impaired (*Swinomish Indian Tribal Community v. Department of Ecology*, 178 Wn.2d 571; considering a Department rule that established 27 reservations of water for domestic, municipal, commercial/ industrial, agricultural irrigation, and stock watering out-of-stream uses beyond the instream flow set for the Skagit River basin).

As of today, there is an instream flow rule in place for almost half of the state's 64 identified watersheds.

### Groundwater Exempt Wells.

All groundwater withdrawals require an application and permit from the Department. However, there is a class of lawful, unpermitted wells, often referred to as "permit exempt wells," which may be constructed and used without first obtaining a permit from the Department.

Exemptions from the permitting requirement include any withdrawal of public groundwater for stock-watering purposes, or for watering a lawn or a noncommercial garden less than one-half acre. Single or group domestic uses or industrial purposes in an amount not exceeding 5,000 gallons a day are also included in the class of permit exempt wells [RCW 90.44.050].

The Department has exercised authority in certain regions of the state to limit the availability of new permit exempt wells. This includes agency rules applicable to portions of Skagit, Kittitas, Clallam, and Jefferson counties.

### State Building Code and Potable Water.

The State Building Code requires that all building permit applicants must provide evidence that an adequate supply of potable water will be available for the building being proposed. Adequate evidence of a potable water supply can include possession of a water right or a letter from a water purveyor stating the ability to provide water to the building (RCW 19.27.097). All public water systems must provide an adequate quantity and quality of water in a reliable manner at all times (WAC 246-290-420).

In most cases, adequate and reliable potable water is supplied either from a source located off of the property by an approved water purveyor or a permit exempt well located on the property. Certain counties do allow building permits to be issued when the potable water supply is to be provided from a source other than a traditional, piped water purveyor or a permit exempt well. These alternative sources include rainwater collection and on-site cisterns filled with water delivered by a truck. The counties that allow some form of alternative water supply to satisfy the potable water condition of a building permit include Kittitas, San Juan, King, and Jefferson.

### **Summary of Bill:**

Certain counties and cities are required to adopt ordinances that outline when and how alternative water systems may be used to satisfy the potable water requirements for new construction. These ordinances must be developed by any city or county that has, as part of its jurisdiction, an area which is not served by a water purveyor and is subject to a limitation on new, unmitigated surface or groundwater withdrawals.

Cities and counties required to adopt alternative water system ordinances must adopt an ordinance allowing, but addressing the appropriate limits and conditions of, alternative water systems based on trucked delivery of water. The local ordinances may also allow and address other alternative systems such as cisterns and rainwater collection and sanitization systems.

The local ordinances relating to alternative water supplies may not require any landowner to use the allowed alternative water supplies or override any public health and safety duties of the local government.

The Department must make information available to landowners who qualify for an alternative water system relating to alternative water and mitigation options in their area. When appropriate, this information must be distributed in cooperation with any affected counties.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.