
HOUSE BILL 1885

State of Washington

65th Legislature

2017 Regular Session

By Representatives Springer, Dent, Blake, Manweller, Koster, Haler, and Muri

Read first time 02/02/17. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to clarifying the roles of state and local
2 governments in the regulation and mitigation of water resources;
3 amending RCW 19.27.097, 58.17.110, 90.03.247, 90.54.040, and
4 90.54.120; adding a new section to chapter 36.70A RCW; creating a new
5 section; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that recent court
8 decisions prevent the department of ecology and local governments
9 from managing water resources to balance the instream and out-of-
10 stream fundamentals of water resource management in chapter 90.54
11 RCW, the state's water resources act. The legislature enacts this act
12 to clarify the legislature's intent in the growth management act and
13 address the Washington state supreme court decision in *Whatcom County*
14 *v. Hirst*, 186 Wn.2d 648 (2016), which held that local governments
15 must review proposed new domestic groundwater wells for impairment
16 and that local governments may not rely on the department of
17 ecology's water resource regulations to comply with the growth
18 management act. The legislature also enacts this act to clarify the
19 legislature's intent in the water resources act of 1971 and address
20 *Foster v. City of Yelm*, 184 Wn.2d 465 (2015), which limits the
21 department of ecology's mitigation and permitting authority and also

1 held that the term "withdrawal" in RCW 90.54.020 means water rights
2 that are temporary.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A
4 RCW to read as follows:

5 In complying with the requirements of this chapter to protect
6 surface water and groundwater resources in planning for and
7 regulating development, a county or city may rely on or refer to
8 applicable water resource management rules adopted by the department
9 of ecology.

10 **Sec. 3.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to
11 read as follows:

12 (1) Each applicant for a building permit of a building
13 necessitating potable water shall provide evidence of an adequate
14 water supply for the intended use of the building. Evidence may be in
15 the form of a water right permit from the department of ecology, a
16 letter from an approved water purveyor stating the ability to provide
17 water, a water well report for a groundwater withdrawal exempt from
18 permitting under RCW 90.44.050 and not prohibited by an applicable
19 water resource management rule adopted under RCW 90.54.040 by the
20 department of ecology, or another form sufficient to verify the
21 existence of an adequate water supply. ~~((In addition to other~~
22 ~~authorities, the county or city may impose conditions on building~~
23 ~~permits requiring connection to an existing public water system where~~
24 ~~the existing system is willing and able to provide safe and reliable~~
25 ~~potable water to the applicant with reasonable economy and~~
26 ~~efficiency.))~~ An application for a water right shall not be
27 sufficient proof of an adequate water supply.

28 (2) In addition to other authorities, the county or city may
29 impose conditions on building permits requiring connection to an
30 existing public water system where the existing system is willing and
31 able to provide safe and reliable potable water to the applicant with
32 reasonable economy and efficiency.

33 (3) To support the collection and management of accurate
34 information on exempt withdrawals in basins where water management
35 rules have been adopted under RCW 90.54.040, the county or city may
36 impose a fee of up to two hundred fifty dollars for the building
37 permit for every permit for a new building necessitating potable
38 water that will rely on an exempt withdrawal for water supply. The

1 county or city shall remit the fees to the department of ecology on
2 July 1st of each year.

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

12 ~~((+3))~~ (5) Buildings that do not need potable water facilities
13 are exempt from the provisions of this section. The department of
14 ecology, after consultation with local governments, may adopt rules
15 to implement this section, which may recognize differences between
16 high-growth and low-growth counties.

17 **Sec. 4.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
18 as follows:

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

31 (2) A proposed subdivision and dedication shall not be approved
32 unless the city, town, or county legislative body makes written
33 findings that: (a) Appropriate provisions are made for the public
34 health, safety, and general welfare and for such open spaces,
35 drainage ways, streets or roads, alleys, other public ways, transit
36 stops, potable water supplies, sanitary wastes, parks and recreation,
37 playgrounds, schools and schoolgrounds and all other relevant facts,
38 including sidewalks and other planning features that assure safe
39 walking conditions for students who only walk to and from school; and

1 (b) the public use and interest will be served by the platting of
2 such subdivision and dedication. If it finds that the proposed
3 subdivision and dedication make such appropriate provisions and that
4 the public use and interest will be served, then the legislative body
5 shall approve the proposed subdivision and dedication. Dedication of
6 land to any public body, provision of public improvements to serve
7 the subdivision, and/or impact fees imposed under RCW 82.02.050
8 through 82.02.090 may be required as a condition of subdivision
9 approval. Dedications shall be clearly shown on the final plat. No
10 dedication, provision of public improvements, or impact fees imposed
11 under RCW 82.02.050 through 82.02.090 shall be allowed that
12 constitutes an unconstitutional taking of private property. The
13 legislative body shall not as a condition to the approval of any
14 subdivision require a release from damages to be procured from other
15 property owners.

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

21 (4) In approving a subdivision, dedication, or short subdivision
22 under this chapter, a city, town, or county may rely on or refer to
23 applicable water resources management rules adopted by the department
24 of ecology to determine if appropriate provisions have been made for
25 potable water supplies.

26 **Sec. 5.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to
27 read as follows:

28 (1) Whenever an application for a permit to make beneficial use
29 of public waters is approved relating to a stream or other water body
30 for which minimum flows or levels have been adopted and are in effect
31 at the time of approval, the permit shall be conditioned to: (a)
32 protect the levels or flows; or (b) mitigate impacts to fish or
33 aquatic resources.

34 (2) No agency may establish minimum flows and levels or similar
35 water flow or level restrictions for any stream or lake of the state
36 other than the department of ecology whose authority to establish is
37 exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
38 90.54.040. The provisions of other statutes, including but not
39 limited to ((RCW 77.55.100 and)) chapter 43.21C RCW, may not be

1 interpreted in a manner that is inconsistent with this section. In
2 establishing such minimum flows, levels, or similar restrictions, the
3 department shall, during all stages of development by the department
4 of ecology of minimum flow proposals, consult with, and carefully
5 consider the recommendations of, the department of fish and wildlife,
6 the department of ((~~community, trade, and economic development~~))
7 commerce, the department of agriculture, and representatives of the
8 affected Indian tribes. Nothing herein shall preclude the department
9 of fish and wildlife, the department of ((~~community, trade, and~~
10 ~~economic development~~)) commerce, or the department of agriculture
11 from presenting its views on minimum flow needs at any public hearing
12 or to any person or agency, and the department of fish and wildlife,
13 the department of ((~~community, trade, and economic development~~))
14 commerce, and the department of agriculture are each empowered to
15 participate in proceedings of the federal energy regulatory
16 commission and other agencies to present its views on minimum flow
17 needs.

18 **Sec. 6.** RCW 90.54.040 and 1997 c 32 s 2 are each amended to read
19 as follows:

20 (1) The department, through the adoption of appropriate rules, is
21 directed, as a matter of high priority to insure that the waters of
22 the state are utilized for the best interests of the people, to
23 develop and implement in accordance with the policies of this chapter
24 a comprehensive state water resources program which will provide a
25 process for making decisions on future water resource allocation and
26 use. The department may develop the program in segments so that
27 immediate attention may be given to waters of a given physioeconomic
28 region of the state or to specific critical problems of water
29 allocation and use.

30 (2) In relation to the management and regulatory programs
31 relating to water resources vested in it, the department is further
32 directed to modify existing regulations and adopt new regulations,
33 when needed and possible, to insure that existing regulatory programs
34 are in accord with the water resource policy of this chapter and the
35 program established in subsection (1) of this section.

36 (3) The department is directed to review all statutes relating to
37 water resources which it is responsible for implementing. When any of
38 the same appear to the department to be ambiguous, unclear,
39 unworkable, unnecessary, or otherwise deficient, it shall make

1 recommendations to the legislature including appropriate proposals
2 for statutory modifications or additions. Whenever it appears that
3 the policies of any such statutes are in conflict with the policies
4 of this chapter, and the department is unable to fully perform as
5 provided in subsection (2) of this section, the department is
6 directed to submit statutory modifications to the legislature which,
7 if enacted, would allow the department to carry out such statutes in
8 harmony with this chapter.

9 (4)(a) In basins where the department has adopted a minimum
10 instream flow rule under this chapter and the requirements of (b) of
11 this subsection are met, the department is directed to establish a
12 program to mitigate the cumulative impacts of domestic withdrawals
13 that are exempt from permit review under RCW 90.44.050. Such a
14 program must address the cumulative impacts of domestic exempt
15 withdrawals on a watershed or sub-basin basis.

16 (i) The watershed-based domestic exempt well mitigation program
17 may not require individual mitigation in connection with each permit-
18 exempt domestic withdrawal, except where a groundwater mitigation
19 program is required by a county through an adopted mitigation
20 program.

21 (ii) Acceptable watershed-based cumulative impact mitigation must
22 either (a) protect the levels or flows; or (b) mitigate impacts to
23 fish or aquatic resources.

24 (b) The department may develop exempt well mitigation programs
25 where (i) domestic exempt withdrawals are causing significant adverse
26 cumulative impact to fish species of concern; or (ii) land use and
27 growth projections establish a strong likelihood of significant
28 adverse cumulative impacts.

29 (c) Upon written request by a county legislative authority, the
30 department shall allow a county with jurisdiction over a water
31 resource inventory area to administer the watershed-based exempt well
32 mitigation program for that area. The watershed-based exempt well
33 mitigation program may be administered by another entity through an
34 interlocal cooperation agreement under chapter 39.34 RCW or other
35 contracting authority, as long as both the county and department are
36 parties to the agreement.

37 **Sec. 7.** RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended
38 to read as follows:

1 (~~For the purposes of this chapter, unless the context is clearly~~
2 ~~to the contrary, the following definitions shall be used:~~) The
3 definitions in this section apply throughout this chapter unless the
4 context clearly requires otherwise.

5 (1) "Department" means department of ecology.

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

15 (3) "Withdrawal of water" means the removal of water from any
16 source for a beneficial use.

17 NEW SECTION. **Sec. 8.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of
23 the state government and its existing public institutions, and takes
24 effect immediately.

--- END ---