
HOUSE BILL 2740

State of Washington

65th Legislature

2018 Regular Session

By Representatives Fitzgibbon, Springer, and Tharinger

Read first time 01/15/18. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to ensuring that water is available for permit
2 exempt and instream uses; amending RCW 19.27.097, 58.17.110,
3 90.54.010, 90.03.247, and 90.03.290; adding a new section to chapter
4 36.70A RCW; adding a new section to chapter 36.70 RCW; adding new
5 sections to chapter 90.54 RCW; adding a new chapter to Title 43 RCW;
6 creating new sections; providing an expiration date; and declaring an
7 emergency.

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

9 **PART 1**

10 **Sec. 101.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to
11 read as follows:

12 (1)(a) 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, or another form sufficient to verify the existence of an
18 adequate water supply. (~~In addition to other authorities, the county~~
19 ~~or city may impose conditions on building permits requiring~~
20 ~~connection to an existing public water system where the existing~~

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

5 (b) In the following water resource inventory areas with rules
6 adopted by the department of ecology under chapters 90.22 and 90.54
7 RCW that explicitly regulate permit-exempt groundwater withdrawals,
8 evidence of an adequate water supply must be consistent with the
9 specific rule requirements, which as of the effective date of this
10 section are the following: 5 (Stillaguamish); 17 (Quilcene-Snow); 18
11 (Elwha-Dungeness); 27 (Lewis); 28 (Salmon-Washougal); 32 (Walla
12 Walla); 45 (Wenatchee); 46 (Entiat); 48 (Methow); and 57 (Middle
13 Spokane).

14 (c) In the following water resource inventory areas with rules
15 adopted by the department of ecology under chapters 90.22 and 90.54
16 RCW that do not explicitly regulate permit-exempt groundwater
17 withdrawals, evidence of an adequate water supply for a domestic use
18 must be consistent with section 106 of this act, unless the applicant
19 provides other evidence of an adequate water supply that complies
20 with chapters 90.03 and 90.44 RCW: 1 (Whatcom); 7 (Snohomish); 8
21 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 11
22 (Nisqually); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-
23 Goldsborough); 15 (Kitsap); 22 (Lower Chehalis); 23 (Upper Chehalis);
24 49 (Okanogan); 55 (Little Spokane); 59 (Colville). In the water
25 resource inventory areas listed in this subsection, physical and
26 legal evidence of an adequate water supply for a commercial-use
27 building may be demonstrated by submittal of a water well report
28 consistent with the requirements of chapter 18.104 RCW without having
29 to comply with the requirements of section 106 of this act.

30 (d) In other areas of the state, physical and legal evidence of
31 an adequate water supply may be demonstrated by submittal of water
32 well report consistent with the requirements of chapter 18.104 RCW,
33 except that additional requirements may apply to demonstrate the
34 physical and legal existence of an adequate water supply, as
35 determined by the department of ecology, if the application is
36 within:

37 (i) An area where water rights have been adjudicated in
38 accordance with chapter 90.03 RCW and is subject to federal flow
39 regulation, including the entire Yakima river basin (water resource
40 inventory areas 37, 38, or 39);

1 (ii) An area where water rights have been adjudicated in a
2 federal court action and is subject to federal flow regulation; or
3 (iii) Water resource inventory areas 3 or 4, which were subject
4 to the supreme court of Washington's October 3, 2013, opinion in
5 *Swinomish Indian Tribal Community v. Washington State Department of*
6 *Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013).

7 (2) In addition to other authorities, the county or city may
8 impose additional requirements, including conditions on building
9 permits requiring connection to an existing public water system where
10 the existing system is willing and able to provide safe and reliable
11 potable water to the applicant with reasonable economy and
12 efficiency.

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

22 ~~((+3))~~ (4) Buildings that do not need potable water facilities
23 are exempt from the provisions of this section. The department of
24 ecology, after consultation with local governments, may adopt rules
25 to implement this section, which may recognize differences between
26 high-growth and low-growth counties.

27 (5) A groundwater withdrawal associated with a water well, as
28 defined in and constructed in accordance with chapter 18.104 RCW and
29 in compliance with RCW 90.44.050, in existence prior to the effective
30 date of this section, is exempt from the provisions of section 106 of
31 this act, and must be considered under the legal requirements for
32 groundwater withdrawals and building permits as those requirements
33 existed on October 5, 2016.

34 NEW SECTION. Sec. 102. A new section is added to chapter 36.70A
35 RCW to read as follows:

36 For the purposes of complying with the requirements of this
37 chapter relating to surface and groundwater resources, a local
38 government may rely on or refer to applicable minimum instream flow
39 rules adopted by the department of ecology under chapters 90.22 and

1 90.54 RCW. Development regulations must ensure that proposed water
2 uses are consistent with RCW 90.44.050 and with applicable rules
3 adopted pursuant to chapters 90.22 and 90.54 RCW when making
4 decisions under RCW 19.27.097 and 58.17.110.

5 NEW SECTION. **Sec. 103.** A new section is added to chapter 36.70
6 RCW to read as follows:

7 County development regulations must ensure that proposed water
8 uses are consistent with RCW 90.44.050 and with applicable rules
9 adopted pursuant to chapters 90.22 and 90.54 RCW when making
10 decisions under RCW 19.27.097 and 58.17.110.

11 **Sec. 104.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to
12 read as follows:

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

25 (2) A proposed subdivision and dedication shall not be approved
26 unless the city, town, or county legislative body makes written
27 findings that: (a) Appropriate provisions are made for the public
28 health, safety, and general welfare and for such open spaces,
29 drainage ways, streets or roads, alleys, other public ways, transit
30 stops, potable water supplies, sanitary wastes, parks and recreation,
31 playgrounds, schools and schoolgrounds and all other relevant facts,
32 including sidewalks and other planning features that assure safe
33 walking conditions for students who only walk to and from school; and
34 (b) the public use and interest will be served by the platting of
35 such subdivision and dedication. If it finds that the proposed
36 subdivision and dedication make such appropriate provisions and that
37 the public use and interest will be served, then the legislative body
38 shall approve the proposed subdivision and dedication. Dedication of

1 land to any public body, provision of public improvements to serve
2 the subdivision, and/or impact fees imposed under RCW 82.02.050
3 through 82.02.090 may be required as a condition of subdivision
4 approval. Dedications shall be clearly shown on the final plat. No
5 dedication, provision of public improvements, or impact fees imposed
6 under RCW 82.02.050 through 82.02.090 shall be allowed that
7 constitutes an unconstitutional taking of private property. The
8 legislative body shall not as a condition to the approval of any
9 subdivision require a release from damages to be procured from other
10 property owners.

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

16 (4) If water supply is to be provided by a groundwater withdrawal
17 exempt from permitting under RCW 90.44.050, the applicant's
18 compliance with RCW 90.44.050 and with applicable rules adopted
19 pursuant to chapters 90.22 and 90.54 RCW shall be sufficient in
20 determining appropriate provisions for water supply for a
21 subdivision, dedication, or short subdivision under this chapter.

22 (5) A groundwater withdrawal associated with a water well, as
23 defined in RCW 18.104.020 and constructed in accordance with chapter
24 18.104 RCW and in compliance with RCW 90.44.050, in existence prior
25 to the effective date of this section, is exempt from the provisions
26 of section 106 of this act, and must be considered under the legal
27 requirements for groundwater withdrawals and building permits as
28 those requirements existed on October 5, 2016.

29 **Sec. 105.** RCW 90.54.010 and 1990 c 295 s 1 are each amended to
30 read as follows:

31 (1) It is the intent of the legislature to protect and restore
32 healthy streamflows for instream resources, which will aid in
33 recovery of depleted salmonid populations, support properly
34 functioning ecosystems, and provide for the general welfare of the
35 citizens of the state. The legislature also intends to ensure that a
36 legal and reliable domestic water supply is available for its
37 citizens, which is essential to support the vitality of our state,
38 including rural communities.

1 (a) Healthy watersheds and streamflows ensure preservation of
2 instream resources, which include fish, wildlife, scenic, aesthetic,
3 environmental, recreational, and navigational values. These resources
4 are central to our state's identity, culture, and economy and must be
5 preserved and where possible enhanced for future generations.

6 (b) Inadequate streamflows adversely impact instream resources.
7 Out-of-stream water use, loss of wetlands and floodplains, loss of
8 vegetated cover, increase in impervious surfaces, loss of snowpack,
9 and other factors combined with naturally low flows that occur in
10 late summer and fall contribute to streamflow limitations that are
11 becoming an increasingly significant barrier to recovery of
12 threatened and endangered species, especially salmonids.

13 (2) The legislature finds that:

14 (a) Proper utilization of the water resources of this state is
15 necessary to the promotion of public health and the economic well-
16 being of the state and the preservation of its natural resources and
17 aesthetic values. Although water is a renewable resource, its supply
18 and availability are becoming increasingly limited, particularly
19 during summer and fall months and dry years when demand is greatest.
20 Growth and prosperity have significantly increased the competition
21 for this limited resource. Adequate water supplies are essential to
22 meet the needs of the state's growing population and economy. At the
23 same time instream resources and values must be preserved and
24 protected so that future generations can continue to enjoy them.

25 (b) All citizens of Washington share an interest in the proper
26 stewardship of our invaluable water resources. To ensure that
27 available water supplies are managed to best meet both instream and
28 ~~((offstream needs, a comprehensive planning process))~~ out-of-stream
29 needs, a comprehensive watershed restoration and enhancement program
30 is essential. The people of the state have the unique opportunity to
31 work together to ~~((plan and manage our water))~~ restore and enhance
32 instream resources. Through a comprehensive planning and watershed
33 restoration process that includes the state, Indian tribes, local
34 governments, and interested parties, it is possible to make better
35 use of available water supplies and achieve better management of
36 water resources. Through comprehensive planning and implementation of
37 streamflow restoration and enhancement projects, conflicts among
38 water users and interests can be reduced or resolved and instream
39 resources can be improved. It is in the best interests of the state
40 that comprehensive water resource planning and restoration be given a

1 high priority so that water resources and associated values can be
2 utilized and enjoyed today and protected for tomorrow.

3 (c) Diverse hydrologic, climatic, cultural, and socioeconomic
4 conditions exist throughout the regions of the state. Water resource
5 issues vary significantly across regions. Comprehensive water
6 resource planning is best accomplished through a regional planning
7 process sensitive to the unique characteristics and issues of each
8 region.

9 (d) Comprehensive water resource planning must provide interested
10 parties adequate opportunity to participate. Water resource issues
11 are best addressed through cooperation and coordination among the
12 state, Indian tribes, local governments, and interested parties.

13 (e) The long-term needs of the state require ongoing assessment
14 of water availability, use, and demand. A thorough inventory of
15 available resources is essential to water resource management.
16 Current state water resource data and data management is inadequate
17 to meet changing needs and respond to competing water demands.
18 Therefore, a state water resource data program is needed to support
19 an effective water resource management program. Efforts should be
20 made to coordinate and consolidate into one resource data system all
21 relevant information developed by the department of ecology and other
22 agencies relating to the use, protection, and management of the
23 state's water resources.

24 ~~((+2))~~ (3) It is the purpose of this chapter to set forth
25 fundamentals of water resource policy for the state to ~~((insure))~~
26 ensure that waters of the state are protected and fully utilized for
27 the greatest benefit to the people of the state of Washington and, in
28 relation thereto, to provide direction to the department of ecology,
29 other state agencies and officials, and local government in carrying
30 out water and related resources programs. It is the intent of the
31 legislature to work closely with the executive branch, Indian tribes,
32 local government, and interested parties to ensure that water
33 resources of the state are wisely managed.

34 (4) To achieve the goals of this act, significant legislative
35 action is needed to address both the impact of new development on
36 streamflows and to restore and enhance properly functioning
37 watersheds to preserve and enhance instream resources. The department
38 is directed to implement a program to restore and enhance streamflows
39 by establishing watershed restoration and enhancement committees, as
40 specified in section 106 of this act, to develop and implement plans

1 for streamflow restoration to support vibrant fish and wildlife,
2 including restoring threatened and endangered salmonids.

3 NEW SECTION. **Sec. 106.** A new section is added to chapter 90.54
4 RCW to read as follows:

5 (1) Unless requirements are otherwise specified in the applicable
6 rules adopted under this chapter or chapter 90.22 RCW, potential
7 impacts on a closed water body and potential impairment to an
8 instream flow are authorized for a new domestic or commercial
9 groundwater withdrawal exempt from permitting under RCW 90.44.050
10 through compliance with the requirements established in this act.

11 (2)(a) The department shall establish watershed restoration and
12 enhancement committees in the following water resource inventory
13 areas: 1 (Whatcom); 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-
14 Green); 10 (Puyallup-White); 11 (Nisqually); 12 (Chambers-Clover); 13
15 (Deschutes); 14 (Kennedy-Goldsborough); 15 (Kitsap); 22 (Lower
16 Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane);
17 59 (Colville).

18 (b) The department shall chair the watershed restoration and
19 enhancement committee and invite the following entities to
20 participate:

21 (i) A representative from each federally recognized Indian tribe
22 that has reservation land within the water resource inventory area;

23 (ii) A representative from each federally recognized Indian tribe
24 that has a usual and accustomed harvest area within the water
25 resource inventory area;

26 (iii) A representative from the department of fish and wildlife,
27 appointed by the director of the department of fish and wildlife;

28 (iv) A representative designated by each county within the water
29 resource inventory area; and

30 (v) A representative designated by each city within the water
31 resource inventory area.

32 (3) The department shall prepare and adopt a watershed
33 restoration and enhancement plan for each water resource inventory
34 area listed in this subsection, in collaboration with the watershed
35 restoration and enhancement committee, according to the deadlines
36 specified in (i) of this subsection. Except as described in (h) of
37 this subsection, a watershed restoration and enhancement plan must be
38 approved by all members of a watershed restoration and enhancement
39 committee prior to adoption.

1 (a) The watershed restoration and enhancement plan should include
2 recommendations for projects and actions that will measure, protect,
3 and enhance instream resources and improve watershed functions that
4 support the recovery of threatened and endangered salmonids. Plan
5 recommendations may include, but are not limited to, acquiring senior
6 water rights, water conservation, water reuse, stream gaging,
7 groundwater monitoring, and developing natural and constructed
8 infrastructure, which includes such projects as floodplain
9 restoration, off-channel storage, and aquifer recharge. Qualifying
10 projects must be specifically designed to enhance streamflows and not
11 result in negative impacts to ecological functions or critical
12 habitat.

13 (b) At a minimum, the plan must include those actions that the
14 committee determines to be necessary to offset potential consumptive
15 impacts to instream flows associated with permit-exempt domestic and
16 commercial water use. The highest priority recommendations must
17 include replacing the quantity of consumptive water use during the
18 same time periods as the impact and in the same basin or tributary.
19 Lower priority projects include projects not in the same basin or
20 tributary and projects that replace consumptive water supply impact
21 only during critical flow periods. The plan may include projects that
22 protect or improve instream resources without replacing the
23 consumptive quantity of water where such projects are in addition to
24 those actions that the committee determines to be necessary to offset
25 potential consumptive impacts to instream flows associated with
26 permit-exempt domestic water use.

27 (c) Prior to adoption of the watershed restoration and
28 enhancement plan, the department shall make a determination that
29 actions identified in the plan, after accounting for new projected
30 uses of water over the subsequent twenty years, will result in a net
31 ecological benefit to instream resources within the water resource
32 inventory area.

33 (d) The watershed restoration and enhancement plan must include
34 an evaluation or estimation of the cost of offsetting new domestic
35 and commercial water uses over the subsequent twenty years, including
36 withdrawals exempt from permitting under RCW 90.44.050.

37 (e) The watershed restoration and enhancement plan must include
38 estimates of the cumulative consumptive water use impacts over the
39 subsequent twenty years, including withdrawals exempt from permitting
40 under RCW 90.44.050.

1 (f) The watershed restoration and enhancement plan may include:
2 (i) Recommendations for modification to fees established under
3 this subsection;
4 (ii) Standards for water use quantities that are less than
5 authorized under RCW 90.44.050 for withdrawals exempt from
6 permitting;
7 (iii) Specific conservation requirements for new water users to
8 be adopted by local or state permitting authorities; or
9 (iv) Other approaches to manage water resources for a water
10 resource inventory area or a portion thereof.
11 (g) After adoption of a watershed restoration and enhancement
12 plan, the department shall evaluate the plan recommendations and
13 initiate rule making, if necessary, to incorporate recommendations
14 into rules adopted under this chapter or under chapter 90.22 RCW.
15 (h) If the watershed restoration and enhancement committee fails
16 to approve a plan by the deadlines specified in (i) of this
17 subsection, the director of the department shall submit the final
18 draft plan to the salmon recovery funding board established under RCW
19 77.85.110 and request that the salmon recovery funding board provide
20 a technical review and give recommendations to the director to amend
21 the final draft plan, if necessary, so that actions identified in the
22 plan, after accounting for new projected uses of water over the
23 subsequent twenty years, will result in a net ecological benefit to
24 instream resources within the water resource inventory area. The
25 director of the department shall consider the recommendations and may
26 amend the plan without committee approval prior to adoption. After
27 plan adoption, the director of the department shall initiate rule
28 making within six months to incorporate recommendations into rules
29 adopted under this chapter, and shall adopt amended rules within two
30 years of initiation.
31 (i) The deadline for the department to prepare and adopt a
32 watershed restoration and enhancement plan for each water resource
33 inventory area listed in this subsection, in collaboration with the
34 watershed restoration and enhancement committee, and the deadline by
35 which the director of the department shall submit the final draft
36 plan to the salmon recovery board if the watershed restoration and
37 enhancement committee fails to approve a plan, is as follows:
38 (i) Tier 1: June 30, 2021;
39 (ii) Tier 2: June 30, 2023; and
40 (iii) Tier 3: June 30, 2025.

1 (4) For purposes of this section, the following water resource
2 inventory areas are organized according to the following tiers:

3 (a) Tier 1: 1 (Nooksack); 7 (Snohomish); 15 (Kitsap); 8 (Cedar-
4 Sammamish); and 14 (Kennedy-Goldsborough);

5 (b) Tier 2: 23 (Upper Chehalis); 11 (Nisqually); 10 (Puyallup-
6 White); 9 (Duwamish-Green); and 13 (Deschutes); and

7 (c) Tier 3: 49 (Okanogan); 22 (Lower Chehalis); 55 (Little
8 Spokane); 12 (Chambers-Clover); and 59 (Colville).

9 (5) To rely on the provisions of this act, a city or county
10 issuing a building permit under RCW 19.27.097, or approving a
11 subdivision under chapter 58.17 RCW shall:

12 (a) Record relevant restrictions or limitations associated with
13 water supply with the property title;

14 (b) Collect applicable fees, as described under section 107 of
15 this act;

16 (c) Keep account of the number of building permits issued under
17 chapter 19.27 RCW or subdivision approvals issued under chapter 58.17
18 RCW subject to the provisions of this act;

19 (d) Annually remit to the department all state watershed
20 restoration and enhancement fees collected;

21 (e) Annually remit accounting of building permits and subdivision
22 approvals subject to the provisions of this act; and

23 (f) Until rules have been adopted that specify otherwise, require
24 the following measures for each new domestic use that relies on a
25 withdrawal exempt from permitting under RCW 90.44.050:

26 (i) An applicant shall pay a state watershed restoration and
27 enhancement fee as described in section 107(1) of this act. Where
28 assessed by a permitting authority pursuant to section 107(2) of this
29 act, an applicant shall also pay a local watershed restoration and
30 enhancement fee;

31 (ii) An applicant may obtain approval for a single domestic
32 indoor use only, with a maximum annual average withdrawal as follows:

33 (A) Tier 1: Three hundred fifty gallons per day;

34 (B) Tier 2: Six hundred gallons per day; and

35 (C) Tier 3: One thousand gallons per day;

36 (iii) An applicant shall manage stormwater runoff on-site to the
37 extent practicable by maximizing infiltration using green
38 infrastructure including low-impact development techniques, or
39 pursuant to stormwater management requirements adopted by the local

1 permitting authority, if locally adopted requirements are more
2 stringent.

3 (6) The department shall initiate rule making under this chapter
4 in at least one water resource inventory area every four years in a
5 basin in which instream flow rules do not exist, and for
6 prioritization of which areas to address, will consider:

7 (a) Population growth rates over the past ten years;

8 (b) Presence of threatened or endangered species;

9 (c) Vulnerability of instream resources to impacts from low
10 flows; and

11 (d) If the water resource inventory area is identified as a
12 salmon critical basin by the department.

13 (7) Rules adopted under this chapter may:

14 (a) Rely on watershed restoration and enhancement plan
15 recommendations and procedures established in this act to authorize
16 new withdrawals exempt from permitting under RCW 90.44.050 that would
17 potentially impact a closed waterbody or a minimum flow or level;

18 (b) Rely on projects identified in the watershed restoration and
19 enhancement plan to offset consumptive water use; and

20 (c) Include updates to fees based on the watershed restoration
21 and enhancement committee's determination of the costs for offsetting
22 consumptive water use.

23 (8) The department shall submit a report to the legislature by
24 December 31, 2022, and December 31, 2027, in compliance with RCW
25 43.01.036, that includes the following elements:

26 (a) Progress in completing and adopting watershed restoration and
27 enhancement plans;

28 (b) A description of program projects and expenditures;

29 (c) An assessment of the streamflow restoration and enhancement
30 benefits from program projects;

31 (d) A listing of other efforts or actions taken associated with
32 streamflow restoration and enhancement, projects to benefit instream
33 resources, and other directly related watershed improvements
34 conducted in coordination with the restoration and enhancement
35 planning process;

36 (e) The total number of new withdrawals exempt from permitting
37 under RCW 90.44.050 authorized in each water resource inventory area
38 under provisions of this act, and estimates of consumptive water use
39 impacts associated with the new withdrawals; and

1 (f) A description of potential or planned projects, including
2 projected costs and anticipated streamflow, water supply, and
3 watershed health benefits.

4 (9) A groundwater withdrawal associated with a water well, as
5 defined in and constructed in accordance with chapter 18.104 RCW and
6 in compliance with RCW 90.44.050, in existence prior to the effective
7 date of this section, is exempt from the provisions of this section,
8 and must be considered under the legal requirements for groundwater
9 withdrawals and building permits as those requirements existed on
10 October 5, 2016.

11 NEW SECTION. **Sec. 107.** A new section is added to chapter 90.54
12 RCW to read as follows:

13 (1) A permitting authority issuing a building permit for a
14 domestic-use building that will rely on a groundwater withdrawal
15 exempt from permitting under RCW 90.44.050 shall assess and collect
16 from the building permit applicant a state watershed restoration and
17 enhancement fee for each new domestic-use building permit issued in
18 the following water resource inventory areas: 1 (Whatcom); 7
19 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-
20 White); 11 (Nisqually); 12 (Chambers-Clover); 13 (Deschutes); 14
21 (Kennedy-Goldsborough); 15 (Kitsap); 22 (Lower Chehalis); 23 (Upper
22 Chehalis); 49 (Okanogan); 55 (Little Spokane); 59 (Colville). The fee
23 is five hundred dollars, subject to revision pursuant to section 106
24 of this act. The permitting authority shall remit the proceeds from
25 fees collected under this subsection to the department in accordance
26 with section 106 of this act. The purpose of the fee is to offset the
27 department's costs associated with implementing the requirements of
28 section 106 of this act. Proceeds from fees collected under this
29 subsection (1) may be spent only in the water resource inventory area
30 in which the fees were collected.

31 (2) In addition to the fee authorized in subsection (1) of this
32 section, a permitting authority issuing a building permit for a
33 domestic-use building that will rely on a groundwater withdrawal
34 exempt from permitting under RCW 90.44.050 is authorized to assess
35 and collect from the building permit applicant a local watershed
36 restoration and enhancement fee for each new domestic-use building
37 permit issued in the following water resource inventory areas: 1
38 (Whatcom); 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10
39 (Puyallup-White); 11 (Nisqually); 12 (Chambers-Clover); 13

1 (Deschutes); 14 (Kennedy-Goldsborough); 15 (Kitsap); 22 (Lower
2 Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane);
3 59 (Colville). If the permitting authority assesses a local watershed
4 restoration and enhancement fee, the amount of the fee must be
5 determined by the permitting authority. The permitting authority
6 shall retain the proceeds of fees collected under this subsection.
7 The purpose of the fee is to offset the permitting authority's costs
8 associated with implementing the requirements of section 106 of this
9 act. Proceeds from fees collected under this subsection (2) may be
10 spent only in the water resource inventory area in which the fees
11 were collected.

12 NEW SECTION. **Sec. 108.** A new section is added to chapter 90.54
13 RCW to read as follows:

14 By January 1, 2019, the department shall distribute to the state
15 building code council and to each county, city, town, or other local
16 permitting authority, publish in the Washington State Register, and
17 post on its web site, a list of each of the sixty-two water resource
18 inventory areas and an identification of the statutes, rules, and
19 other legal authorities, if any, that apply to groundwater uses in
20 each of the water resource inventory areas. The purpose of the list
21 is to provide a readily accessible description of the requirements
22 that must be met in each water resource inventory area in order to
23 use a well exempt from permitting under RCW 90.44.050 as the source
24 of potable water for a building permit.

25 NEW SECTION. **Sec. 109.** A new section is added to chapter 90.54
26 RCW to read as follows:

27 (1) The department shall initiate a pilot project to measure
28 water use from all new groundwater withdrawals in water resource
29 inventory area 9 (Duwamish-Green), including withdrawals exempt from
30 permitting under RCW 90.44.050. The pilot project must be conducted
31 to determine the overall feasibility of measuring water use for all
32 new groundwater withdrawals. The pilot must be conducted in a
33 priority water resource inventory area, as determined by the director
34 of the department. At a minimum, the pilot must address the
35 following:

36 (a) Initial and on-going costs, including costs to individual
37 property owners, local government, and the department;

1 (b) Technical, practical, and legal considerations that must be
2 addressed;

3 (c) The costs and benefits of a water use measurement program
4 relying on individual meters versus a water management program that
5 estimates permit-exempt groundwater withdrawals; and

6 (d) Measures to protect the privacy of individual property owners
7 and ensure accurate data collection.

8 (2) The department shall report on the pilot project results in
9 the report to the legislature submitted under section 106 of this
10 act. The department shall include recommendations to the legislature,
11 including estimated program costs for expanding the pilot project to
12 other basins.

13 NEW SECTION. **Sec. 110.** A new section is added to chapter 90.54
14 RCW to read as follows:

15 Nothing in this chapter affects the ability of any person to
16 pursue a cause of action for the protection of any water right that
17 is not a base flow, minimum flow, minimum level, or other similar
18 standard or policy, established by the department under this chapter
19 or chapter 90.22 RCW.

20 NEW SECTION. **Sec. 111.** A new section is added to chapter 90.54
21 RCW to read as follows:

22 (1) The watershed restoration and enhancement account is created
23 in the custody of the state treasurer. All receipts from fees paid
24 pursuant to section 106 of this act must be deposited into the
25 account. The account may also receive those moneys as may be
26 appropriated by the legislature for the purpose of funding
27 restoration and enhancement projects as identified in section 106 of
28 this act. Expenditures from the account may be used only for the
29 costs of administering this act, including implementing watershed
30 restoration and enhancement projects under section 106 of this act,
31 and collecting data and completing studies necessary to develop,
32 implement, and evaluate watershed restoration and enhancement
33 projects under this act. Only the director of the department or the
34 director's designee may authorize expenditures from the account.

35 (2) Fee revenues collected under section 106 of this act must be
36 used exclusively within the water resource inventory area in which
37 the fee originated. The restriction in this subsection does not apply

1 to moneys in the watershed restoration and enhancement account that
2 do not originate from fees collected under section 106 of this act.

3 NEW SECTION. **Sec. 112.** A new section is added to chapter 90.54
4 RCW to read as follows:

5 (1) The watershed restoration and enhancement taxable bond
6 account is created in the state treasury. All receipts from direct
7 appropriations from the legislature or moneys directed to the account
8 from any other source must be deposited in the account. Moneys in the
9 account may be spent only after appropriation. The account is
10 intended to fund projects using taxable bonds. Expenditures from the
11 account may be used only as provided for in this section.

12 (2) Expenditures from the watershed restoration and enhancement
13 taxable bond account may be used to assess, plan, and develop
14 projects that include acquiring senior water rights, water
15 conservation, water reuse, stream gaging, groundwater monitoring, and
16 developing natural and constructed infrastructure, which includes
17 projects such as floodplain restoration, off-channel storage, and
18 aquifer recharge, or other actions designed to restore and enhance
19 instream resources, and to provide access to water supplies within
20 watersheds developing plans as directed by section 106 of this act.

21 NEW SECTION. **Sec. 113.** A new section is added to chapter 90.54
22 RCW to read as follows:

23 (1) The watershed restoration and enhancement bond account is
24 created in the state treasury. All receipts from direct
25 appropriations from the legislature or moneys directed to the account
26 from any other source must be deposited in the account. Moneys in the
27 account may be spent only after appropriation. The account is
28 intended to fund projects using taxable bonds. Expenditures from the
29 account may be used only as provided for in this section.

30 (2) Expenditures from the watershed restoration and enhancement
31 bond account may be used to assess, plan, and develop projects that
32 include acquiring senior water rights, water conservation, water
33 reuse, stream gaging, groundwater monitoring, and developing natural
34 and constructed infrastructure, which includes projects such as
35 surface water impoundment, floodplain restoration, off-channel
36 storage, and aquifer recharge, or other actions designed to restore
37 and enhance instream resources, and to provide access to water

1 supplies within watersheds developing plans as directed by section
2 106 of this act.

3 NEW SECTION. **Sec. 114.** (1) A joint legislative task force on
4 water supply is established to review the treatment of surface water
5 and groundwater appropriations as they relate to instream flows and
6 fish habitat, to develop and recommend a mitigation sequencing
7 process and scoring system to address such appropriations, and to
8 review the Washington supreme court decision in *Foster v. Department*
9 *of Ecology*, 184 Wn.2d 465, 362 P.3d 959 (2015).

10 (2) The task force consists of the following members:

11 (a) Two members from each of the two largest caucuses of the
12 senate, appointed by the president of the senate;

13 (b) Two members from each of the two largest caucuses of the
14 house of representatives, appointed by the speaker of the house of
15 representatives;

16 (c) A representative from the department of ecology, appointed by
17 the director of the department of ecology;

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

20 (e) A representative from the department of agriculture,
21 appointed by the director of the department of agriculture;

22 (f) One representative from each of the following groups,
23 appointed by the consensus of the cochairs of the task force:

24 (i) An organization representing the farming industry in
25 Washington;

26 (ii) An organization representing Washington cities;

27 (iii) Two representatives from an environmental advocacy
28 organization or organizations;

29 (iv) An organization representing municipal water purveyors;

30 (v) An organization representing business interests;

31 (vi) Representatives of two federally recognized Indian tribes,
32 one invited by recommendation of the Northwest Indian fisheries
33 commission, and one invited by recommendation of the Columbia river
34 intertribal fish commission.

35 (3) One cochair of the task force must be a member of the
36 majority caucus of one chamber of the legislature, and one cochair
37 must be a member of the minority caucus of the other chamber of the
38 legislature, as the legislature existed as of the effective date of

1 this section. The first meeting of the task force must occur by June
2 30, 2018.

3 (4) Staff support for the task force must be provided by the
4 office of program research and senate committee services. The
5 department of ecology and the department of fish and wildlife shall
6 cooperate with the task force and provide information as the cochairs
7 reasonably request.

8 (5) Within existing appropriations, the expenses of the
9 operations of the task force, including the expenses associated with
10 the task force's meetings, must be paid jointly and in equal amounts
11 by the senate and the house of representatives. Task force
12 expenditures are subject to approval by the house of representatives
13 executive rules committee and the senate facility and operations
14 committee. Legislative members of the task force are reimbursed for
15 travel expenses in accordance with RCW 44.04.120. Nonlegislative
16 members are not entitled to be reimbursed for travel expenses if they
17 are elected officials or are participating on behalf of an employer,
18 governmental entity, or other organization. Any reimbursement for
19 other nonlegislative members is subject to chapter 43.03 RCW.

20 (6)(a) By November 15, 2019, the joint legislative task force on
21 water supply must make recommendations to the legislature.

22 (b) Recommendations of the joint legislative task force on water
23 supply must be made by a two-thirds majority of the voting members of
24 the task force. The representatives of the departments of fish and
25 wildlife, ecology, and agriculture are not eligible to vote on the
26 recommendations. Minority recommendations that achieve the support of
27 at least five of the named voting members of the task force may also
28 be submitted to the legislature.

29 (7) The department of ecology shall issue permit decisions for up
30 to five water resource mitigation pilot projects. The department of
31 ecology is authorized to issue permits in reliance upon water
32 resource mitigation of impacts to instream flows and closed surface
33 water bodies under the following mitigation sequence:

34 (a) Avoiding impacts by: (i) Complying with mitigation required
35 by adopted rules that set forth minimum flows, levels, or closures;
36 or (ii) making the water diversion or withdrawal subject to the
37 applicable minimum flows or levels; or

38 (b) Where avoidance of impacts is not reasonably attainable,
39 minimizing impacts by providing permanent new or existing trust water
40 rights or through other types of replacement water supply resulting

1 in no net annual increase in the quantity of water diverted or
2 withdrawn from the stream or surface water body and no net
3 detrimental impacts to fish and related aquatic resources; or

4 (c) Where avoidance and minimization are not reasonably
5 attainable, compensating for impacts by providing net ecological
6 benefits to fish and related aquatic resources in the water resource
7 inventory area through a combination of in-kind and out-of-kind
8 mitigation, that improves the function and productivity of affected
9 fish populations and related aquatic habitat. Out-of-kind mitigation
10 may include instream or out-of-stream measures that improve or
11 enhance existing water quality, riparian habitat, or other instream
12 functions and values for which minimum instream flows or closures
13 were established in that watershed.

14 (8) The pilot projects eligible for processing under this
15 section, based on criteria as of the effective date of this section,
16 are:

17 (a) A city operating a group A water system in Kitsap county and
18 water resource inventory area 15, with a population between 13,000
19 and 14,000;

20 (b) A city operating a group A water system in Pierce county and
21 water resource inventory area 10, with a population between 9,500 and
22 10,500;

23 (c) A city operating a group A water system in Thurston county
24 and water resource inventory area 11, with a population between 8,500
25 and 9,500;

26 (d) A nonprofit mutual water system operating a group A water
27 system in Pierce county and water resource inventory area 12, with
28 between 10,500 and 11,500 service connections;

29 (e) An irrigation district located in Whatcom county and water
30 resource inventory area 1.

31 (9) Water right applicants eligible to be processed under this
32 pilot project authority must elect to be included in the pilot
33 project review by notifying the department of ecology by July 1,
34 2018. Once an applicant notifies the department of ecology of its
35 intent to be processed under this pilot project authority, subsection
36 (7) of this section applies to final decisions issued by the
37 department of ecology, even if such a final decision is issued after
38 the expiration of this section.

1 (10) By November 15, 2018, the department of ecology must furnish
2 the task force with information on conceptual mitigation plans for
3 each water resource mitigation pilot project application.

4 (11) To ensure that the processing of pilot project applications
5 can inform the task force process in a timely manner, the department
6 of ecology shall expedite processing of applications for water
7 resource mitigation pilot projects. The applicant for each pilot
8 project shall reimburse the department of ecology for the
9 department's costs of processing the applicant's application.

10 (12) The water resource mitigation pilot project authority
11 granted to the department of ecology does not affect or modify any
12 other procedural requirements of chapters 90.03, 90.44, or 90.54 RCW
13 that apply to the processing of such applications.

14 (13) This section expires January 1, 2020.

15 **Sec. 115.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to
16 read as follows:

17 (1) Whenever an application for a permit to make beneficial use
18 of public waters is approved relating to a stream or other water body
19 for which minimum flows or levels have been adopted and are in effect
20 at the time of approval, the permit shall be conditioned to: (a)
21 protect the levels or flows; or (b) require water resource mitigation
22 of impacts to instream flows and closed surface water bodies for
23 water resource mitigation pilot projects authorized under section 114
24 of this act.

25 (2) No agency may establish minimum flows and levels or similar
26 water flow or level restrictions for any stream or lake of the state
27 other than the department of ecology whose authority to establish is
28 exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
29 90.54.040. The provisions of other statutes, including but not
30 limited to ((~~RCW 77.55.100~~ and)) chapter 43.21C RCW, may not be
31 interpreted in a manner that is inconsistent with this section. In
32 establishing such minimum flows, levels, or similar restrictions, the
33 department shall, during all stages of development by the department
34 of ecology of minimum flow proposals, consult with, and carefully
35 consider the recommendations of, the department of fish and wildlife,
36 the department of ((~~community, trade, and economic development~~))
37 commerce, the department of agriculture, and representatives of the
38 affected Indian tribes. Nothing herein shall preclude the department
39 of fish and wildlife, the department of ((~~community, trade, and~~

1 ~~economic development~~) commerce, or the department of agriculture
2 from presenting its views on minimum flow needs at any public hearing
3 or to any person or agency, and the department of fish and wildlife,
4 the department of (~~community, trade, and economic development~~)
5 commerce, and the department of agriculture are each empowered to
6 participate in proceedings of the federal energy regulatory
7 commission and other agencies to present its views on minimum flow
8 needs.

9 **Sec. 116.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to
10 read as follows:

11 (1) When an application complying with the provisions of this
12 chapter and with the rules of the department has been filed, the same
13 shall be placed on record with the department, and it shall be its
14 duty to investigate the application, and determine what water, if
15 any, is available for appropriation, and find and determine to what
16 beneficial use or uses it can be applied. If it is proposed to
17 appropriate water for irrigation purposes, the department shall
18 investigate, determine and find what lands are capable of irrigation
19 by means of water found available for appropriation. If it is
20 proposed to appropriate water for the purpose of power development,
21 the department shall investigate, determine and find whether the
22 proposed development is likely to prove detrimental to the public
23 interest, having in mind the highest feasible use of the waters
24 belonging to the public.

25 (2)(a) If the application does not contain, and the applicant
26 does not promptly furnish sufficient information on which to base
27 such findings, the department may issue a preliminary permit, for a
28 period of not to exceed three years, requiring the applicant to make
29 such surveys, investigations, studies, and progress reports, as in
30 the opinion of the department may be necessary. If the applicant
31 fails to comply with the conditions of the preliminary permit, it and
32 the application or applications on which it is based shall be
33 automatically canceled and the applicant so notified. If the holder
34 of a preliminary permit shall, before its expiration, file with the
35 department a verified report of expenditures made and work done under
36 the preliminary permit, which, in the opinion of the department,
37 establishes the good faith, intent, and ability of the applicant to
38 carry on the proposed development, the preliminary permit may, with
39 the approval of the governor, be extended, but not to exceed a

1 maximum period of five years from the date of the issuance of the
2 preliminary permit.

3 (b) For any application for which a preliminary permit was issued
4 and for which the availability of water was directly affected by a
5 moratorium on further diversions from the Columbia river during the
6 years from 1990 to 1998, the preliminary permit is extended through
7 June 30, 2002. If such an application and preliminary permit were
8 canceled during the moratorium, the application and preliminary
9 permit shall be reinstated until June 30, 2002, if the application
10 and permit: (i) Are for providing regional water supplies in more
11 than one urban growth area designated under chapter 36.70A RCW and in
12 one or more areas near such urban growth areas, or the application
13 and permit are modified for providing such supplies, and (ii) provide
14 or are modified to provide such regional supplies through the use of
15 existing intake or diversion structures. The authority to modify such
16 a canceled application and permit to accomplish the objectives of
17 (b)(i) and (ii) of this subsection is hereby granted.

18 (3) The department shall make and file as part of the record in
19 the matter, written findings of fact concerning all things
20 investigated, and if it shall find that there is water available for
21 appropriation for a beneficial use, and the appropriation thereof as
22 proposed in the application will not impair existing rights or be
23 detrimental to the public welfare, it shall issue a permit stating
24 the amount of water to which the applicant shall be entitled and the
25 beneficial use or uses to which it may be applied: PROVIDED, That
26 where the water applied for is to be used for irrigation purposes, it
27 shall become appurtenant only to such land as may be reclaimed
28 thereby to the full extent of the soil for agricultural purposes. But
29 where there is no unappropriated water in the proposed source of
30 supply, or where the proposed use conflicts with existing rights, or
31 threatens to prove detrimental to the public interest, having due
32 regard to the highest feasible development of the use of the waters
33 belonging to the public, it shall be duty of the department to reject
34 such application and to refuse to issue the permit asked for.

35 (4) If the permit is refused because of conflict with existing
36 rights and such applicant shall acquire same by purchase or
37 condemnation under RCW 90.03.040, the department may thereupon grant
38 such permit. Any application may be approved for a less amount of
39 water than that applied for, if there exists substantial reason
40 therefor, and in any event shall not be approved for more water than

1 can be applied to beneficial use for the purposes named in the
2 application. In determining whether or not a permit shall issue upon
3 any application, it shall be the duty of the department to
4 investigate all facts relevant and material to the application. After
5 the department approves said application in whole or in part and
6 before any permit shall be issued thereon to the applicant, such
7 applicant shall pay the fee provided in RCW 90.03.470: PROVIDED
8 FURTHER, That in the event a permit is issued by the department upon
9 any application, it shall be its duty to notify the director of fish
10 and wildlife of such issuance.

11 (5) The requirements of subsections (1) and (3) of this section
12 do not apply to water resource mitigation pilot projects for which
13 permits are issued in reliance upon water resource mitigation of
14 impacts to instream flows and closed surface water bodies under
15 section 114 of this act.

16 NEW SECTION. Sec. 117. The legislature intends to appropriate
17 two hundred million dollars for projects to achieve the goals of this
18 act until January 1, 2028. The department of ecology is directed to
19 implement a program to restore and enhance streamflows by fulfilling
20 obligations under this act to develop and implement plans to restore
21 streamflows to levels necessary to support robust, healthy, and
22 sustainable salmon populations.

23 **PART 2**

24 NEW SECTION. Sec. 201. For the purpose of providing funds for
25 the watershed restoration and enhancement program created in this
26 act, the state finance committee is authorized to issue general
27 obligation bonds of the state of Washington in the sum of two hundred
28 million dollars, or as much thereof as may be required, to finance
29 the projects and all costs incidental thereto. Bonds authorized in
30 this section may be sold at such price as the state finance committee
31 shall determine. No bonds authorized in this section may be offered
32 for sale without prior legislative appropriation of the net proceeds
33 of the sale of the bonds.

34 NEW SECTION. Sec. 202. It is the intent of the legislature that
35 the proceeds of the new bonds authorized in section 201 of this act
36 will be appropriated in phases over five biennia, beginning with the

1 2017-2019 biennium. This is not intended to limit the legislature's
2 ability to appropriate bond proceeds if the full amount authorized in
3 section 201 of this act has not been appropriated after five biennia.
4 The authorization to issue bonds contained in section 201 of this act
5 does not expire until the full authorization has been appropriated
6 and issued.

7 NEW SECTION. **Sec. 203.** The proceeds from the sale of the bonds
8 authorized in section 201 of this act must be deposited in the
9 watershed restoration and enhancement bond account created in section
10 113 of this act. If the state finance committee deems it necessary to
11 issue the bonds authorized in section 201 of this act as taxable
12 bonds in order to comply with federal internal revenue service rules
13 and regulations pertaining to the use of nontaxable bond proceeds,
14 the proceeds of such taxable bonds must be deposited into the
15 watershed restoration and enhancement taxable bond account created in
16 section 112 of this act. The state treasurer shall submit written
17 notice to the director of financial management if it is determined
18 that any such transfer to the state taxable building construction
19 account is necessary. Moneys in the account may be spent only after
20 appropriation. The proceeds shall be used exclusively for the
21 purposes specified in section 201 of this act and for the payment of
22 expenses incurred in the issuance and sale of the bonds. These
23 proceeds shall be administered by the office of financial management,
24 subject to legislative appropriation.

25 NEW SECTION. **Sec. 204.** The debt-limit general fund bond
26 retirement account shall be used for the payment of the principal of
27 and interest on the bonds authorized in section 201 of this act. The
28 state finance committee shall, on or before June 30th of each year,
29 certify to the state treasurer the amount needed in the ensuing
30 twelve months to meet the bond retirement and interest requirements.
31 On each date on which any interest or principal and interest payment
32 is due, the state treasurer shall withdraw from any general state
33 revenues received in the state treasury and deposit in the debt-limit
34 general fund bond retirement account an amount equal to the amount
35 certified by the state finance committee to be due on the payment
36 date. Bonds issued under section 201 of this act shall state that
37 they are a general obligation of the state of Washington, shall
38 pledge the full faith and credit of the state to the payment of the

1 principal thereof and the interest thereon, and shall contain an
2 unconditional promise to pay the principal and interest as the same
3 shall become due.

4 The owner and holder of each of the bonds or the trustee for the
5 owner and holder of any of the bonds may by mandamus or other
6 appropriate proceeding require the transfer and payment of funds as
7 directed in this section.

8 NEW SECTION. **Sec. 205.** The legislature may provide additional
9 means for raising moneys for the payment of the principal of and
10 interest on the bonds authorized in section 201 of this act, and
11 section 204 of this act shall not be deemed to provide an exclusive
12 method for the payment.

13 NEW SECTION. **Sec. 206.** The bonds authorized in section 201 of
14 this act shall be a legal investment for all state funds or funds
15 under state control and for all funds of any other public body.

16 NEW SECTION. **Sec. 207.** Sections 201 through 206 of this act
17 constitute a new chapter in Title 43 RCW.

18 **PART 3**

19 NEW SECTION. **Sec. 301.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 302.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of
25 the state government and its existing public institutions, and takes
26 effect immediately.

--- END ---