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**HOUSE BILL 1979**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Representatives Maycumber, Dent, Walsh, and Eslick

Read first time 02/08/19. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

1 AN ACT Relating to the establishment of reasonable surface water  
2 flow levels; amending RCW 90.22.010 and 90.22.020; adding a new  
3 section to chapter 90.22 RCW; creating a new section; and declaring  
4 an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the department  
7 of ecology adopted rules establishing water levels for surface waters  
8 that were aspirational and have not been met in recent history. In  
9 some situations, the flow level in the rule has never been met by the  
10 natural flows. These unattainable levels have caused hardship for  
11 many people. The legislature declares that these rules are contrary  
12 to legislative intent and demands the department of ecology repeal  
13 the rules immediately.

14 **Sec. 2.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read  
15 as follows:

16 (1) The department of ecology may establish minimum water flows  
17 or levels for streams, lakes or other public waters for the purposes  
18 of protecting fish, game, birds or other wildlife resources, or  
19 recreational or aesthetic values of said public waters whenever it  
20 appears to be in the public interest to establish the same. In

1 addition, the department of ecology shall, when requested by the  
2 department of fish and wildlife to protect fish, game or other  
3 wildlife resources under the jurisdiction of the requesting state  
4 agency, or if the department of ecology finds it necessary to  
5 preserve water quality, establish such minimum flows or levels as are  
6 required to protect the resource or preserve the water quality  
7 described in the request or determination. Any request submitted by  
8 the department of fish and wildlife shall include a statement setting  
9 forth the need for establishing a minimum flow or level. When the  
10 department acts to preserve water quality, it shall include a similar  
11 statement with the proposed rule filed with the code reviser. This  
12 section shall not apply to waters artificially stored in reservoirs,  
13 provided that in the granting of storage permits by the department of  
14 ecology in the future, full recognition shall be given to downstream  
15 minimum flows, if any there may be, which have theretofore been  
16 established hereunder.

17 (2) The minimum water flows or levels established pursuant to  
18 this section must not exceed the highest nonflood documented flow  
19 during the same month that has occurred at any time in the previous  
20 fifty years as reported by the United States geologic survey.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.22  
22 RCW to read as follows:

23 (1) The director of the department of ecology must immediately  
24 repeal any rule established pursuant to RCW 90.22.010 where the  
25 minimum water flows for streams, lakes, or other public waters exceed  
26 the highest, nonflood documented flow during the same month that has  
27 occurred at any time in the previous fifty years as reported by the  
28 United States geologic survey.

29 (2) The department of ecology must report to the legislature the  
30 status of the repeal of the rules by November 1, 2019.

31 **Sec. 4.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to  
32 read as follows:

33 (1) Flows or levels authorized for establishment under RCW  
34 90.22.010, or subsequent modification thereof by the department shall  
35 be provided for through the adoption of rules. Before the  
36 establishment or modification of a water flow or level for any stream  
37 or lake or other public water, the department shall hold a public  
38 hearing in the county in which the stream, lake, or other public

1 water is located. If it is located in more than one county the  
2 department shall determine the location or locations therein and the  
3 number of hearings to be conducted. Notice of the hearings shall be  
4 given by publication in a newspaper of general circulation in the  
5 county or counties in which the stream, lake, or other public waters  
6 is located, once a week for two consecutive weeks before the hearing.  
7 The notice shall include the following:

8 ~~((1))~~ (a) The name of each stream, lake, or other water source  
9 under consideration;

10 ~~((2))~~ (b) The place and time of the hearing;

11 ~~((3))~~ (c) A statement that any person, including any private  
12 citizen or public official, may present his or her views either  
13 orally or in writing.

14 (2) Notice of the hearing shall also be served upon the  
15 administrators of the departments of social and health services,  
16 natural resources, fish and wildlife, and transportation.

17 (3) Prior to the repeal of any rule pursuant to section 3 of this  
18 act, the department of ecology shall hold a public hearing in  
19 Thurston county, but is not required to hold a public hearing in the  
20 county where the stream, lake, or other public water is located. The  
21 commissioners for any county impacted by the rule repeal must be  
22 notified by electronic mail of the public hearing.

23 NEW SECTION. **Sec. 5.** 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.

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