

SSB 5083 - S AMD 508  
By Senator Warnick

ADOPTED 03/30/2021

1 On page 331, after line 31, insert the following:

2 "Sec. 7036. RCW 90.94.090 and 2019 c 413 s 7035 are each  
3 reenacted and amended to read as follows:

4 (1) A joint legislative task force on water resource mitigation  
5 is established to review the treatment of surface water and  
6 groundwater appropriations as they relate to instream flows and fish  
7 habitat, to develop and recommend a mitigation sequencing process and  
8 scoring system to address such appropriations, and to review the  
9 Washington supreme court decision in *Foster v. Department of Ecology*,  
10 184 Wn.2d 465, 362 P.3d 959 (2015).

11 (2) The task force must consist of the following members:

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

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

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

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

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

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

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

27 (ii) An organization representing Washington cities;

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

30 (iv) An organization representing municipal water purveyors;

31 (v) An organization representing business interests;

1 (vi) Representatives of two federally recognized Indian tribes,  
2 one invited by recommendation of the Northwest Indian fisheries  
3 commission, and one invited by recommendation of the Columbia river  
4 intertribal fish commission.

5 (3) If a member has not been designated for a position set forth  
6 in subsection (2) of this section, that position may not be counted  
7 for purposes of determining a quorum.

8 (4) One cochair of the task force must be a member of the  
9 majority caucus of one chamber of the legislature, and one cochair  
10 must be a member of the minority caucus of the other chamber of the  
11 legislature, as those caucuses existed as of January 19, 2018.

12 (5) The first meeting of the task force must occur by June 30,  
13 2018.

14 (6) Staff support for the task force must be provided by the  
15 office of program research and senate committee services. The  
16 department and the department of fish and wildlife shall cooperate  
17 with the task force and provide information as the cochairs  
18 reasonably request.

19 (7) Within existing appropriations, the expenses of the  
20 operations of the task force, including the expenses associated with  
21 the task force's meetings, must be paid jointly and in equal amounts  
22 by the senate and the house of representatives. Task force  
23 expenditures are subject to approval by the house executive rules  
24 committee and the senate facility and operations committee.  
25 Legislative members of the task force are reimbursed for travel  
26 expenses in accordance with RCW 44.04.120. Nonlegislative members are  
27 not entitled to be reimbursed for travel expenses if they are elected  
28 officials or are participating on behalf of an employer, governmental  
29 entity, or other organization. Any reimbursement for other  
30 nonlegislative members is subject to chapter 43.03 RCW.

31 (8)(a) By November 15, 2019, and November 15, 2022, the joint  
32 legislative task force must make recommendations to the legislature  
33 in compliance with RCW 43.01.036. (~~The task force may update its  
34 November 15, 2019, recommendations by November 15, 2020, if a  
35 majority of the members of the task force determine that such an  
36 update is appropriate based on additional information developed as a  
37 result of the pilot projects established under subsection (9) of this  
38 section.~~)

39 (b) Recommendations of the joint legislative task force must be  
40 made by a sixty percent majority of the appointed members of the task

1 force. The representatives of the departments of fish and wildlife,  
2 ecology, and agriculture are not eligible to vote on the  
3 recommendations. Minority recommendations that achieve the support of  
4 at least five of the appointed voting members of the task force may  
5 also be submitted to the legislature.

6 (9) The department shall issue permit decisions for up to five  
7 water resource mitigation pilot projects. It is the intent of the  
8 legislature to use the pilot projects to inform the legislative task  
9 force process while also enabling the processing of water right  
10 applications that address water supply needs. The department is  
11 authorized to issue permits in reliance upon water resource  
12 mitigation of impacts to instream flows and closed surface water  
13 bodies under the following mitigation sequence:

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

18 (b) Where avoidance of impacts is not reasonably attainable,  
19 minimizing impacts by providing permanent new or existing trust water  
20 rights or through other types of replacement water supply resulting  
21 in no net annual increase in the quantity of water diverted or  
22 withdrawn from the stream or surface water body and no net  
23 detrimental impacts to fish and related aquatic resources; or

24 (c) Where avoidance and minimization are not reasonably  
25 attainable, compensating for impacts by providing net ecological  
26 benefits to fish and related aquatic resources in the water resource  
27 inventory area through in-kind or out-of-kind mitigation or a  
28 combination thereof, that improves the function and productivity of  
29 affected fish populations and related aquatic habitat. Out-of-kind  
30 mitigation may include instream or out-of-stream measures that  
31 improve or enhance existing water quality, riparian habitat, or other  
32 instream functions and values for which minimum instream flows or  
33 closures were established in that watershed.

34 (10) The department must monitor the implementation of the pilot  
35 projects, including all mitigation associated with each pilot  
36 project, approved under this section at least annually through  
37 December 31, 2028.

38 (11) The pilot projects eligible for processing under this  
39 section, based on criteria as of January 19, 2018, include:

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

4 (b) A city operating a group A water system in Pierce county and  
5 water resource inventory area 10, with a population between 9,500 and  
6 10,500;

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

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

13 (e) An irrigation district located in Whatcom county and water  
14 resource inventory area 1, solely for the purpose of processing  
15 changes of water rights from surface water to groundwater, and  
16 implementing flow augmentation to benefit instream flows.

17 (12) Water right applicants eligible to be processed under this  
18 pilot project authority must elect to be included in the pilot  
19 project review by notifying the department by July 1, 2018. Once an  
20 applicant notifies the department of its intent to be processed under  
21 this pilot project authority, subsection (9) of this section applies  
22 to final decisions issued by the department, even if such a final  
23 decision is issued after the expiration of this section.

24 (13) By November 15, 2018, the department must furnish the task  
25 force with information on conceptual mitigation plans for each water  
26 resource mitigation pilot project application. By November 15, 2019,  
27 and November 15, 2022, the department must provide the task force  
28 with an update on the mitigation plans based on additional  
29 information developed after November 15, 2018.

30 (14) To ensure that the processing of pilot project applications  
31 can inform the task force process in a timely manner, the department  
32 must expedite processing of applications for water resource  
33 mitigation pilot projects. The applicant for each pilot project must  
34 reimburse the department for the department's costs of processing the  
35 applicant's application.

36 (15) The water resource mitigation pilot project authority  
37 granted to the department does not affect or modify any other  
38 procedural requirements of chapter 90.03, 90.44, or 90.54 RCW that  
39 apply to the processing of such applications.

1 (16) The joint legislative task force expires December 31,  
2 ((2020)) 2022. During the period from November 16, 2019, through  
3 December 31, ((2020)) 2022, the work of the task force is limited to:

4 (a) A review of any additional information that may be developed  
5 after November 15, 2019, as a result of the pilot projects  
6 established under subsection (9) of this section; and

7 (b) An update of the task force's November 15, 2019,  
8 recommendations ((under subsection (8) of this section)).

9 (17) This section expires January 1, 2029."

10 Renumber the remaining sections consecutively and correct any  
11 internal references accordingly.

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**ADOPTED 03/30/2021**

12 On page 1, line 10 of the title, after "43.155.050" insert "and  
13 90.94.090"

EFFECT: Adds a report for the joint legislative task force on  
water resource mitigation of November 15, 2022; the report will make  
recommendations to the legislature in compliance with RCW 43.01.036.

FISCAL IMPACT: None.

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