
SUBSTITUTE SENATE BILL 5517

State of Washington

68th Legislature

2024 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Warnick and Van De Wege)

READ FIRST TIME 01/12/24.

1 AN ACT Relating to enacting recommendations from the joint
2 legislative task force on water resource mitigation; amending RCW
3 90.44.030, 90.03.247, 90.44.060, 70A.125.170, 90.03.015, and
4 90.54.020; adding a new section to chapter 90.03 RCW; creating a new
5 section; and declaring an emergency.

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

7 **Sec. 1.** RCW 90.44.030 and 1945 c 263 s 2 are each amended to
8 read as follows:

9 (1) The rights to appropriate the surface waters of the state and
10 the rights acquired by the appropriation and use of surface waters
11 shall not be affected or impaired by any of the provisions of this
12 supplementary chapter and, to the extent that any underground water
13 is part of or tributary to the source of any surface stream or lake,
14 or that the withdrawal of groundwater may affect the flow of any
15 spring, water course, lake, or other body of surface water, the right
16 of an appropriator and owner of surface water shall be superior to
17 any subsequent right hereby authorized to be acquired in or to
18 groundwater.

19 (2) Hydraulic continuity between groundwater and a surface water
20 source with unmet minimum flows or that is closed to further

1 appropriation is not, in and of itself, a basis on which to deny an
2 application to withdraw groundwater.

3 (3) When the department considers a proposed appropriation of
4 public groundwater, it must determine whether such a groundwater
5 withdrawal would impair surface water rights or adversely affect
6 surface water sources closed to further appropriations, utilizing the
7 procedures and standards in this act.

8 (4) If the department relies on a groundwater model in
9 considering a proposed appropriation of public groundwater, the
10 creation and use of the model must comply with the provisions of RCW
11 90.44.060 and the rule adopted by the department under section 4 of
12 this act.

13 (5) If the department determines that any proposed groundwater
14 withdrawal would impair a minimum surface water flow or level set by
15 rule or adversely affect a surface water source closed to further
16 appropriation, the department may authorize such a groundwater
17 withdrawal in reliance upon water resource mitigation measures under
18 the following mitigation sequence:

19 (a) Avoiding impacts by: (i) Complying with mitigation required
20 in adopted rules that set forth minimum flows, levels, or closures;
21 or (ii) making the groundwater withdrawal subject to applicable
22 minimum flows or levels;

23 (b) Where avoidance of adverse impacts is not reasonably
24 attainable, minimizing impacts by providing permanent replacement
25 water supply resulting in no net annual increase in the quantity of
26 water withdrawn from the surface water body and no net detrimental
27 impacts to fish and related aquatic resources;

28 (c) Where avoidance and minimization are not reasonably
29 attainable, compensating for adverse impacts by providing in-kind or
30 out-of-kind mitigation that improves the function and productivity of
31 affected fish populations and related aquatic habitat in the water
32 resource inventory area. Out-of-kind mitigation may include instream
33 or out-of-stream measures that improve or enhance existing water
34 quality, riparian habitat, or other instream functions and values for
35 which minimum instream flows or closures were established in the
36 water resource inventory area. Out-of-kind mitigation must be
37 considered when the options identified in this subsection (5)(c),
38 including reasonable conservation measures, have been implemented, or
39 there is a capital plan approved to implement conservation measures;
40 or

1 (d) As an alternative to providing mitigation under (c) of this
2 subsection, the applicant may agree to participate in a fee in lieu
3 of mitigation program within the area where adverse impacts to
4 adopted state instream flows have been identified. The department, in
5 collaboration with the applicant, the department of fish and
6 wildlife, and tribes, may develop a mitigation agreement through
7 which the applicant agrees to provide funding for mitigation measures
8 to be implemented.

9 (6) If an applicant is defined as a municipal water supplier
10 under RCW 90.03.015 and proposes mitigation under subsection (5)(b)
11 or (c) of this section, prior to the department's evaluation the
12 applicant shall obtain a determination from the department of health
13 that the water system for which additional water rights are being
14 sought is in compliance with or is exercising appropriate effort to
15 achieve all applicable water conservation requirements under RCW
16 70A.125.170 and rules adopted by the department of health.

17 (7) The mitigation sequence in subsection (5) of this section
18 applies to mitigation relating to minimum surface water flows or
19 levels set by rule or of a surface water source closed to further
20 appropriation. Nothing in this section is intended to affect or
21 modify impairment or mitigation standards for impacts to
22 appropriative water rights.

23 **Sec. 2.** RCW 90.03.247 and 2018 c 1 s 302 are each amended to
24 read as follows:

25 (1) Whenever an application for a permit to make beneficial use
26 of public waters is approved relating to a stream or other water body
27 for which minimum flows or levels have been adopted and are in effect
28 at the time of approval, the permit shall be conditioned to: (a)
29 Protect the levels or flows; ~~((\oplus))~~ (b) require water resource
30 mitigation of impacts to instream flows and closed surface water
31 bodies for water resource mitigation pilot projects authorized under
32 RCW 90.94.090; or (c) require water resource mitigation of impacts to
33 instream flows or closed surface water bodies under the procedures
34 and standards in RCW 90.44.030.

35 (2) No agency may establish minimum flows and levels or similar
36 water flow or level restrictions for any stream or lake of the state
37 other than the department of ecology whose authority to establish is
38 exclusive, as provided in this chapter ~~((90.03—RCW))~~ and RCW
39 90.22.010 and 90.54.040. The provisions of other statutes, including

1 but not limited to chapter 43.21C RCW, may not be interpreted in a
2 manner that is inconsistent with this section. In establishing such
3 minimum flows, levels, or similar restrictions, the department shall,
4 during all stages of development by the department of ecology of
5 minimum flow proposals, consult with, and carefully consider the
6 recommendations of, the department of fish and wildlife, the
7 department of commerce, the department of agriculture, and
8 representatives of the affected Indian tribes. Nothing herein shall
9 preclude the department of fish and wildlife, the department of
10 commerce, or the department of agriculture from presenting its views
11 on minimum flow needs at any public hearing or to any person or
12 agency, and the department of fish and wildlife, the department of
13 commerce, and the department of agriculture are each empowered to
14 participate in proceedings of the federal energy regulatory
15 commission and other agencies to present its views on minimum flow
16 needs.

17 **Sec. 3.** RCW 90.44.060 and 1987 c 109 s 109 are each amended to
18 read as follows:

19 (1) Applications for permits for appropriation of underground
20 water shall be made in the same form and manner provided in RCW
21 90.03.250 through 90.03.340, as amended, the provisions of which
22 sections are hereby extended to govern and to apply to groundwater,
23 or groundwater right certificates and to all permits that shall be
24 issued pursuant to such applications, and the rights to the
25 withdrawal of groundwater acquired thereby shall be governed by RCW
26 90.03.250 through 90.03.340, inclusive: PROVIDED, That each
27 application to withdraw public groundwater by means of a well or
28 wells shall set forth the following additional information:

29 ~~((1) the))~~ (a) The name and post office address of the
30 applicant;

31 ~~((2) the))~~ (b) The name and post office address of the owner of
32 the land on which such well or wells or works will be located;

33 ~~((3) the))~~ (c) The location of the proposed well or wells or
34 other works for the proposed withdrawal;

35 ~~((4) the))~~ (d) The groundwater area, sub-area, or zone from
36 which withdrawal is proposed, provided the department has designated
37 such area, sub-area, or zone in accord with RCW 90.44.130;

1 ~~((5) the)~~ (e) The amount of water proposed to be withdrawn, in
2 gallons a minute and in acre feet a year, or millions of gallons a
3 year;

4 ~~((6) the)~~ (f) The depth and type of construction proposed for
5 the well or wells or other works; and

6 (g) The new, existing, or modified groundwater model, if any,
7 proposed for evaluating the effects of the proposed withdrawal on
8 surface water flows and levels: AND PROVIDED FURTHER, That any permit
9 issued pursuant to an application for constructing a well or wells to
10 withdraw public groundwater may specify an approved type and manner
11 of construction for the purposes of preventing waste of said public
12 waters and of conserving their head.

13 (2) The department shall consider the use of new analytical or
14 numerical models in the groundwater application process under the
15 rule adopted pursuant to section 4 of this act.

16 (3) Before the department uses an existing regional groundwater
17 model for predicting the effects of a proposed groundwater withdrawal
18 on surface water flows and levels, the department shall review the
19 model and determine that the model's:

20 (a) Boundaries, vertical and horizontal discretization, scope,
21 and purpose are suitable for determining the effects of the proposed
22 withdrawal on surface water flows and levels; and

23 (b) Accuracy for its intended use, which may be defined as the
24 model's margin of error, is clearly identified by the model creator
25 or a licensed hydrogeologist familiar with the model.

26 (4) The department's determination of model suitability must be
27 included in any preliminary permit issued under RCW 90.03.290(2) and
28 must reflect any model revisions proposed on behalf of the applicant
29 by a licensed hydrogeologist in order to make an existing regional
30 groundwater model perform in a scientifically suitable manner for
31 evaluation of the proposed withdrawals.

32 (5) A modeled effect on surface water shall not be considered an
33 impairment of a minimum instream flow set by rule or an adverse
34 impact to a surface water source closed to further appropriation if
35 the modeled effect is within the model's uncertainty or margin of
36 error.

37 NEW SECTION. Sec. 4. A new section is added to chapter 90.03
38 RCW to read as follows:

1 (1) The department shall adopt a rule establishing requirements
2 for the creation, modification, and use of groundwater models used in
3 groundwater application decisions. The rule must incorporate the
4 standard that a modeled effect on surface water may not be considered
5 an impairment of a minimum instream flow set by rule or an adverse
6 impact to a surface water source closed to further appropriation if
7 it is within the model uncertainty or its margin of error. The rule
8 must include:

9 (a) A list of alternative model types and their appropriate
10 hydrogeologic settings;

11 (b) Guidance on the use and application of various types of
12 modeling applications and calculation of margin of error;

13 (c) Professional license and experience requirements for
14 modelers;

15 (d) A process for public input and transparency for the creation
16 and application of models through the posting of preliminary permit
17 decisions on the department's website in the same manner as draft and
18 final reports of examination.

19 (2) As part of the rule-making process, the department shall
20 convene a technical advisory committee. The technical advisory
21 committee consists of individuals with expertise in developing and
22 applying groundwater models in the water right permitting and
23 mitigation process. A majority of the members of the technical
24 advisory committee must be licensed hydrogeologists employed by firms
25 that are on the department's list of prequalified firms for cost-
26 reimbursement work under RCW 90.03.265.

27 **Sec. 5.** RCW 70A.125.170 and 2010 1st sp.s. c 7 s 121 are each
28 amended to read as follows:

29 (1) It is the intent of the legislature that the department
30 establish water use efficiency requirements designed to ensure
31 efficient use of water while maintaining water system financial
32 viability, improving affordability of supplies, and enhancing system
33 reliability.

34 (2) The requirements of this section shall apply to all municipal
35 water suppliers and shall be tailored to be appropriate to system
36 size, forecasted system demand, and system supply characteristics.

37 (3) For the purposes of this section:

1 (a) Water use efficiency includes conservation planning
2 requirements, water distribution system leakage standards, and water
3 conservation performance reporting requirements; and

4 (b) "Municipal water supplier" and "municipal water supply
5 purposes" have the meanings provided by RCW 90.03.015.

6 (4) To accomplish the purposes of this section, the department
7 shall adopt rules necessary to implement this section by December 31,
8 2005. The department shall:

9 (a) Develop conservation planning requirements that ensure
10 municipal water suppliers are: (i) Implementing programs to integrate
11 conservation with water system operation and management; and (ii)
12 identifying how to appropriately fund and implement conservation
13 activities. Requirements shall apply to the conservation element of
14 water system plans and small water system management programs
15 developed pursuant to chapter 43.20 RCW. In establishing the
16 conservation planning requirements the department shall review the
17 current department conservation planning guidelines and include those
18 elements that are appropriate for rule. Conservation planning
19 requirements shall include but not be limited to:

20 (A) Selection of cost-effective measures to achieve a system's
21 water conservation objectives. Requirements shall allow the municipal
22 water supplier to select and schedule implementation of the best
23 methods for achieving its conservation objectives;

24 (B) Evaluation of the feasibility of adopting and implementing
25 water delivery rate structures that encourage water conservation;

26 (C) Evaluation of each system's water distribution system leakage
27 and, if necessary, identification of steps necessary for achieving
28 water distribution system leakage standards developed under (b) of
29 this subsection;

30 (D) Collection and reporting of water consumption and source
31 production and/or water purchase data. Data collection and reporting
32 requirements shall be sufficient to identify water use patterns among
33 utility customer classes, where applicable, and evaluate the
34 effectiveness of each system's conservation program. Requirements,
35 including reporting frequency, shall be appropriate to system size
36 and complexity. Reports shall be available to the public; and

37 (E) Establishment of minimum requirements for water demand
38 forecast methodologies such that demand forecasts prepared by
39 municipal water suppliers are sufficient for use in determining
40 reasonably anticipated future water needs;

1 (b) Develop water distribution system leakage standards to ensure
2 that municipal water suppliers are taking appropriate steps to reduce
3 water system leakage rates or are maintaining their water
4 distribution systems in a condition that results in leakage rates in
5 compliance with the standards. Limits shall be developed in terms of
6 percentage of total water produced and/or purchased and shall not be
7 lower than ten percent. The department may consider alternatives to
8 the percentage of total water supplied where alternatives provide a
9 better evaluation of the water system's leakage performance. The
10 department shall institute a graduated system of requirements based
11 on levels of water system leakage. A municipal water supplier shall
12 select one or more control methods appropriate for addressing leakage
13 in its water system;

14 (c) Establish minimum requirements for water conservation
15 performance reporting to assure that municipal water suppliers are
16 regularly evaluating and reporting their water conservation
17 performance. The objective of setting conservation goals is to
18 enhance the efficient use of water by the water system customers.
19 Performance reporting shall include:

20 (i) Requirements that municipal water suppliers adopt and achieve
21 water conservation goals. The elected governing board or governing
22 body of the water system shall set water conservation goals for the
23 system. In setting water conservation goals the water supplier may
24 consider historic conservation performance and conservation
25 investment, customer base demographics, regional climate variations,
26 forecasted demand and system supply characteristics, system financial
27 viability, system reliability, and affordability of water rates.
28 Conservation goals shall be established by the municipal water
29 supplier in an open public forum;

30 (ii) Requirements that the municipal water supplier adopt
31 schedules for implementing conservation program elements and
32 achieving conservation goals to ensure that progress is being made
33 toward adopted conservation goals;

34 (iii) A reporting system for regular reviews of conservation
35 performance against adopted goals. Performance reports shall be
36 available to customers and the public. Requirements, including
37 reporting frequency, shall be appropriate to system size and
38 complexity;

39 (iv) Requirements that any system not meeting its water
40 conservation goals shall develop a plan for modifying its

1 conservation program to achieve its goals along with procedures for
2 reporting performance to the department;

3 (v) If a municipal water supplier determines that further
4 reductions in consumption are not reasonably achievable, it shall
5 identify how current consumption levels will be maintained;

6 (d) Adopt rules that, to the maximum extent practical, utilize
7 existing mechanisms and simplified procedures in order to minimize
8 the cost and complexity of implementation and to avoid placing
9 unreasonable financial burden on smaller municipal systems.

10 (5) The department shall provide technical assistance upon
11 request to municipal water suppliers and local governments regarding
12 water conservation, which may include development of best management
13 practices for water conservation programs, conservation landscape
14 ordinances, conservation rate structures for public water systems,
15 and general public education programs on water conservation.

16 (6) To ensure compliance with this section, the department shall
17 establish a compliance process that incorporates a graduated approach
18 employing the full range of compliance mechanisms available to the
19 department.

20 (7) Prior to completion of rule making required in subsection (4)
21 of this section, municipal water suppliers shall continue to meet the
22 existing conservation requirements of the department and shall
23 continue to implement their current water conservation programs.

24 (8) For a water right applicant that is a municipal water
25 supplier seeking to utilize mitigation under RCW 90.44.030(5) (b) or
26 (c), the department shall review and make a determination of whether
27 the water system for which additional water rights are being sought
28 is in compliance with or is exercising appropriate effort to achieve
29 the requirements of this subsection and of the rule adopted by the
30 department. Such a review and determination must be provided to the
31 applicant and the department of ecology. If the department determines
32 that the municipal water supplier is not in compliance with this
33 section or the appropriate rule, it shall identify any actions that
34 must be taken by the municipal water supplier to achieve compliance.

35 **Sec. 6.** RCW 90.03.015 and 2003 1st sp.s. c 5 s 1 are each
36 amended to read as follows:

37 The definitions in this section apply throughout this chapter
38 unless the context clearly requires otherwise.

39 (1) "Department" means the department of ecology.

1 (2) "Director" means the director of ecology.

2 (3) "Municipal water supplier" means an entity that supplies
3 water for municipal water supply purposes.

4 (4) "Municipal water supply purposes" means a beneficial use of
5 water: (a) For residential purposes through (~~(fifteen)~~) 15 or more
6 residential service connections or for providing residential use of
7 water for a nonresidential population that is, on average, at least
8 (~~(twenty-five)~~) 25 people for at least (~~(sixty)~~) 60 days a year; (b)
9 for governmental or governmental proprietary purposes by a city,
10 town, public utility district, county, sewer district, or water
11 district; or (c) indirectly for the purposes in (a) or (b) of this
12 subsection through the delivery of treated or raw water to a public
13 water system for such use. If water is beneficially used under a
14 water right for the purposes listed in (a), (b), or (c) of this
15 subsection, any other beneficial use of water under the right
16 generally associated with the use of water within a municipality is
17 also for "municipal water supply purposes," including, but not
18 limited to, beneficial use for commercial, industrial, irrigation of
19 parks and open spaces, institutional, landscaping, fire flow, water
20 system maintenance and repair, or related purposes. If a governmental
21 entity holds a water right that is for the purposes listed in (a),
22 (b), or (c) of this subsection, its use of water or its delivery of
23 water for any other beneficial use generally associated with the use
24 of water within a municipality is also for "municipal water supply
25 purposes," including, but not limited to, beneficial use for
26 commercial, industrial, irrigation of parks and open spaces,
27 institutional, landscaping, fire flow, water system maintenance and
28 repair, or related purposes.

29 (5) "Person" means any firm, association, water users'
30 association, corporation, irrigation district, or municipal
31 corporation, as well as an individual.

32 (6) "Withdrawal" means the appropriation of water for beneficial
33 use through withdrawal of groundwater authorized under RCW 90.44.060
34 or diversion of surface water authorized under RCW 90.03.290. A
35 withdrawal may be either temporary or permanent.

36 **Sec. 7.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to
37 read as follows:

38 Utilization and management of the waters of the state shall be
39 guided by the following general declaration of fundamentals:

1 (1) Uses of water for domestic, stock watering, industrial,
2 commercial, agricultural, irrigation, hydroelectric power production,
3 mining, fish and wildlife maintenance and enhancement, recreational,
4 and thermal power production purposes, and preservation of
5 environmental and aesthetic values, and all other uses compatible
6 with the enjoyment of the public waters of the state, are declared to
7 be beneficial.

8 (2) Allocation of waters among potential uses and users shall be
9 based generally on the securing of the maximum net benefits for the
10 people of the state. Maximum net benefits shall constitute total
11 benefits less costs including opportunities lost.

12 (3) The quality of the natural environment shall be protected
13 and, where possible, enhanced as follows:

14 (a) Perennial rivers and streams of the state shall be retained
15 with base flows necessary to provide for preservation of wildlife,
16 fish, scenic, aesthetic and other environmental values, and
17 navigational values. Lakes and ponds shall be retained substantially
18 in their natural condition. (~~Withdrawals of water which would~~
19 ~~conflict therewith shall be authorized only in those situations~~
20 ~~where~~) Permanent or temporary appropriations of water that would
21 have adverse impacts on instream values protected by rules adopted
22 pursuant to this chapter or chapter 90.22 RCW may be authorized only
23 with appropriate mitigation, or where it is clear that overriding
24 considerations of the public interest will be served.

25 (b) Waters of the state shall be of high quality. Regardless of
26 the quality of the waters of the state, all wastes and other
27 materials and substances proposed for entry into said waters shall be
28 provided with all known, available, and reasonable methods of
29 treatment prior to entry. Notwithstanding that standards of quality
30 established for the waters of the state would not be violated, wastes
31 and other materials and substances shall not be allowed to enter such
32 waters which will reduce the existing quality thereof, except in
33 those situations where it is clear that overriding considerations of
34 the public interest will be served. Technology-based effluent
35 limitations or standards for discharges for municipal water treatment
36 plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit
37 river shall be adjusted to reflect credit for substances removed from
38 the plant intake water if:

39 (i) The municipality demonstrates that the intake water is drawn
40 from the same body of water into which the discharge is made; and

1 (ii) The municipality demonstrates that no violation of receiving
2 water quality standards or appreciable environmental degradation will
3 result.

4 (4) The development of multipurpose water storage facilities
5 shall be a high priority for programs of water allocation, planning,
6 management, and efficiency. The department, other state agencies, and
7 local governments (~~(, and planning units formed under section 107 or~~
8 ~~108 of this act)~~) shall evaluate the potential for the development of
9 new storage projects and the benefits and effects of storage in
10 reducing damage to stream banks and property, increasing the use of
11 land, providing water for municipal, industrial, agricultural, power
12 generation, and other beneficial uses, and improving streamflow
13 regimes for fisheries and other instream uses.

14 (5) Adequate and safe supplies of water shall be preserved and
15 protected in potable condition to satisfy human domestic needs.

16 (6) Multiple-purpose impoundment structures are to be preferred
17 over single-purpose structures. Due regard shall be given to means
18 and methods for protection of fishery resources in the planning for
19 and construction of water impoundment structures and other artificial
20 obstructions.

21 (7) Federal, state, and local governments, individuals,
22 corporations, groups and other entities shall be encouraged to carry
23 out practices of conservation as they relate to the use of the waters
24 of the state. In addition to traditional development approaches,
25 improved water use efficiency, conservation, and use of reclaimed
26 water shall be emphasized in the management of the state's water
27 resources and in some cases will be a potential new source of water
28 with which to meet future needs throughout the state. Use of
29 reclaimed water shall be encouraged through state and local planning
30 and programs with incentives for state financial assistance
31 recognizing programs and plans that encourage the use of conservation
32 and reclaimed water use, and state agencies shall continue to review
33 and reduce regulatory barriers and streamline permitting for the use
34 of reclaimed water where appropriate.

35 (8) Development of water supply systems, whether publicly or
36 privately owned, which provide water to the public generally in
37 regional areas within the state shall be encouraged. Development of
38 water supply systems for multiple domestic use which will not serve
39 the public generally shall be discouraged where water supplies are
40 available from water systems serving the public.

1 (9) Full recognition shall be given in the administration of
2 water allocation and use programs to the natural interrelationships
3 of surface and groundwaters.

4 (10) Expressions of the public interest will be sought at all
5 stages of water planning and allocation discussions.

6 (11) Water management programs, including but not limited to,
7 water quality, flood control, drainage, erosion control and storm
8 runoff are deemed to be in the public interest.

9 NEW SECTION. **Sec. 8.** This act applies to applications for
10 withdrawals of groundwater filed both before and after the effective
11 date of this section. To this extent, this act applies retroactively,
12 but in all other respects it applies prospectively.

13 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of
15 the state government and its existing public institutions, and takes
16 effect immediately.

--- END ---