

By Representative Stanford

E2SSB 5239 - H COMM AMD

By Committee on Agriculture & Natural Resources

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.27.097 and 2015 c 225 s 17 are each amended to
4 read as follows:

5 (1)(a) Each applicant for a building permit of a building
6 necessitating potable water shall provide evidence of an adequate
7 water supply for the intended use of the building. Evidence may be in
8 the form of (~~a water right permit from the department of ecology, a~~
9 ~~letter from an approved water purveyor stating the ability to provide~~
10 ~~water, or another form sufficient to verify the existence of an~~
11 ~~adequate water supply~~);

12 (i) A water right permit or certificate from the department of
13 ecology. An application for a water right is not sufficient proof of
14 an adequate water supply;

15 (ii) A letter from an approved water purveyor stating the ability
16 to provide water;

17 (iii) A water well report consistent with the requirements of
18 chapter 18.104 RCW from a groundwater withdrawal exempt from
19 permitting pursuant to RCW 90.44.050, under one of the following
20 provisions unless prohibited by an applicable water resources
21 management rule adopted by the department of ecology:

22 (A) In areas where rules have not been adopted under chapter
23 90.22 or 90.54 RCW, proof of an adequate water supply may rely on
24 demonstration of physical availability of a sufficient quantity of
25 potable water, which does not exceed authorized uses and quantities
26 exempt from permitting under RCW 90.44.050, provided the city or
27 county comprehensive plan and development regulations match growth
28 with available, unappropriated water supplies, and the available
29 information shows that senior water rights are not being impaired by
30 existing or planned growth, and that ground and surface water levels
31 are stable;

1 (B) In areas where rules have been adopted under chapter 90.22 or
2 90.54 RCW or where a federally administered adjudication exists and
3 those rules, consent decrees, or court orders specify mitigation
4 requirements, the proof of an adequate water supply must meet the
5 mitigation requirements specified in the applicable rule, consent
6 decree, or court order;

7 (C) In areas where rules have been adopted under chapter 90.22 or
8 90.54 RCW or where a federally administered adjudication exists but
9 the applicable rule, consent decree, or court order does not specify
10 mitigation requirements, proof of an adequate water supply may rely
11 on compliance with mitigation requirements pursuant to section 4 of
12 this act;

13 (D) In areas where rules have not been established under chapter
14 90.22 or 90.54 RCW, proof of an adequate water supply may rely on a
15 mitigation certificate issued pursuant to section 4(8) of this act;

16 (iv) Another form sufficient to verify the physical and legal
17 existence of an adequate water supply, such as from an alternative
18 water supply.

19 (b) Subsection (1)(a)(iii) of this section does not apply in the
20 Yakima basin, water resource inventory areas 37, 38, and 39 or the
21 Skagit basin, water resource inventory areas 3 and 4.

22 (2) In addition to other authorities, the county or city may:

23 (a) Impose conditions on building permits requiring connection to
24 an existing public water system where the existing system is willing
25 and able to provide safe and reliable potable water to the applicant
26 with reasonable economy and efficiency(~~(. An application for a water~~
27 right shall not be sufficient proof of an adequate water supply));
28 and

29 (b) Require additional information from an applicant needed to
30 determine that adequate potable water is available.

31 ~~((+2))~~ (3) Within counties not required or not choosing to plan
32 pursuant to RCW 36.70A.040, the county and the ~~((state))~~ department
33 of ecology may mutually determine those areas in the county in which
34 the requirements of subsections (1) and (2) of this section shall not
35 apply. ~~((The departments of health and ecology shall coordinate on~~
36 the implementation of this section.)) Should the county and the
37 ~~((state)) department of ecology fail to mutually determine those~~
38 areas to be designated pursuant to this subsection, the county may
39 petition the department of enterprise services to mediate or, if
40 necessary, make the determination.

1 (~~(3)~~) (4) Buildings that do not need potable water facilities
2 are exempt from the provisions of this section. The department of
3 ecology, after consultation with local governments, may adopt rules
4 to implement this section, which may recognize differences between
5 high-growth and low-growth counties.

6 (5) The departments of ecology, health, and commerce shall
7 coordinate on the implementation of this section.

8 (6) For purposes of this section, "water resource inventory area"
9 and "WRIA" have the same meaning as defined in RCW 90.54.120.

10 **Sec. 2.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
11 as follows:

12 (1) The city, town, or county legislative body shall inquire into
13 the public use and interest proposed to be served by the
14 establishment of the subdivision and dedication. It shall determine:

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

24 (2) A proposed subdivision and dedication shall not be approved
25 unless the city, town, or county legislative body makes written
26 findings that: (a) Appropriate provisions are made for the public
27 health, safety, and general welfare and for such open spaces,
28 drainage ways, streets or roads, alleys, other public ways, transit
29 stops, potable water supplies, sanitary wastes, parks and recreation,
30 playgrounds, schools and schoolgrounds and all other relevant facts,
31 including sidewalks and other planning features that assure safe
32 walking conditions for students who only walk to and from school; and
33 (b) the public use and interest will be served by the platting of
34 such subdivision and dedication. If it finds that the proposed
35 subdivision and dedication make such appropriate provisions and that
36 the public use and interest will be served, then the legislative body
37 shall approve the proposed subdivision and dedication. Dedication of
38 land to any public body, provision of public improvements to serve
39 the subdivision, and/or impact fees imposed under RCW 82.02.050

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

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

14 (4) Adequate provisions for water supply for a subdivision,
15 dedication, or short subdivision under this chapter must be
16 consistent with applicable laws and rules adopted pursuant to
17 chapters 90.03, 90.22, 90.44, and 90.54 RCW, and RCW 19.27.097.

18 **Sec. 3.** RCW 36.70A.070 and 2015 c 241 s 2 are each amended to
19 read as follows:

20 The comprehensive plan of a county or city that is required or
21 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
22 and descriptive text covering objectives, principles, and standards
23 used to develop the comprehensive plan. The plan shall be an
24 internally consistent document and all elements shall be consistent
25 with the future land use map. A comprehensive plan shall be adopted
26 and amended with public participation as provided in RCW 36.70A.140.
27 Each comprehensive plan shall include a plan, scheme, or design for
28 each of the following:

29 (1) A land use element designating the proposed general
30 distribution and general location and extent of the uses of land,
31 where appropriate, for agriculture, timber production, housing,
32 commerce, industry, recreation, open spaces, general aviation
33 airports, public utilities, public facilities, and other land uses.
34 The land use element shall include population densities, building
35 intensities, and estimates of future population growth. The land use
36 element shall provide for protection of the quality and quantity of
37 groundwater used for public water supplies. In providing for the
38 protection of the quantity of groundwater use for public water
39 supplies under this subsection, a county or city must be consistent

1 with applicable laws and rules adopted pursuant to chapters 90.03,
2 90.22, 90.44, and 90.54 RCW. The level of planned growth in a
3 comprehensive plan must be consistent with current scientific
4 information on the availability of water within the area during the
5 twenty-year planning period. Wherever possible, the land use element
6 should consider utilizing urban planning approaches that promote
7 physical activity. Where applicable, the land use element shall
8 review drainage, flooding, and storm water run-off in the area and
9 nearby jurisdictions and provide guidance for corrective actions to
10 mitigate or cleanse those discharges that pollute waters of the
11 state, including Puget Sound or waters entering Puget Sound.

12 (2) A housing element ensuring the vitality and character of
13 established residential neighborhoods that: (a) Includes an inventory
14 and analysis of existing and projected housing needs that identifies
15 the number of housing units necessary to manage projected growth; (b)
16 includes a statement of goals, policies, objectives, and mandatory
17 provisions for the preservation, improvement, and development of
18 housing, including single-family residences; (c) identifies
19 sufficient land for housing, including, but not limited to,
20 government-assisted housing, housing for low-income families,
21 manufactured housing, multifamily housing, and group homes and foster
22 care facilities; and (d) makes adequate provisions for existing and
23 projected needs of all economic segments of the community.

24 (3) A capital facilities plan element consisting of: (a) An
25 inventory of existing capital facilities owned by public entities,
26 showing the locations and capacities of the capital facilities; (b) a
27 forecast of the future needs for such capital facilities; (c) the
28 proposed locations and capacities of expanded or new capital
29 facilities; (d) at least a six-year plan that will finance such
30 capital facilities within projected funding capacities and clearly
31 identifies sources of public money for such purposes; and (e) a
32 requirement to reassess the land use element if probable funding
33 falls short of meeting existing needs and to ensure that the land use
34 element, capital facilities plan element, and financing plan within
35 the capital facilities plan element are coordinated and consistent.
36 Park and recreation facilities shall be included in the capital
37 facilities plan element.

38 (4) A utilities element consisting of the general location,
39 proposed location, and capacity of all existing and proposed

1 utilities, including, but not limited to, electrical lines,
2 telecommunication lines, and natural gas lines.

3 (5) Rural element. Counties shall include a rural element
4 including lands that are not designated for urban growth,
5 agriculture, forest, or mineral resources. The following provisions
6 shall apply to the rural element:

7 (a) Growth management act goals and local circumstances. Because
8 circumstances vary from county to county, in establishing patterns of
9 rural densities and uses, a county may consider local circumstances,
10 but shall develop a written record explaining how the rural element
11 harmonizes the planning goals in RCW 36.70A.020 and meets the
12 requirements of this chapter.

13 (b) Rural development. The rural element shall permit rural
14 development, forestry, and agriculture in rural areas. The rural
15 element shall provide for a variety of rural densities, uses,
16 essential public facilities, and rural governmental services needed
17 to serve the permitted densities and uses. To achieve a variety of
18 rural densities and uses, counties may provide for clustering,
19 density transfer, design guidelines, conservation easements, and
20 other innovative techniques that will accommodate appropriate rural
21 densities and uses that are not characterized by urban growth and
22 that are consistent with rural character.

23 (c) Measures governing rural development. The rural element shall
24 include measures that apply to rural development and protect the
25 rural character of the area, as established by the county, by:

26 (i) Containing or otherwise controlling rural development;

27 (ii) Assuring visual compatibility of rural development with the
28 surrounding rural area;

29 (iii) Reducing the inappropriate conversion of undeveloped land
30 into sprawling, low-density development in the rural area;

31 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
32 and surface water and groundwater resources, which may include
33 measures that rely on applicable laws and rules adopted pursuant to
34 chapters 90.03, 90.22, 90.44, and 90.54 RCW, where the level of
35 planned growth is consistent with current scientific information on
36 the availability of water within the area during the twenty-year
37 planning period; and

38 (v) Protecting against conflicts with the use of agricultural,
39 forest, and mineral resource lands designated under RCW 36.70A.170.

1 (d) Limited areas of more intensive rural development. Subject to
2 the requirements of this subsection and except as otherwise
3 specifically provided in this subsection (5)(d), the rural element
4 may allow for limited areas of more intensive rural development,
5 including necessary public facilities and public services to serve
6 the limited area as follows:

7 (i) Rural development consisting of the infill, development, or
8 redevelopment of existing commercial, industrial, residential, or
9 mixed-use areas, whether characterized as shoreline development,
10 villages, hamlets, rural activity centers, or crossroads
11 developments.

12 (A) A commercial, industrial, residential, shoreline, or mixed-
13 use area are subject to the requirements of (d)(iv) of this
14 subsection, but are not subject to the requirements of (c)(ii) and
15 (iii) of this subsection.

16 (B) Any development or redevelopment other than an industrial
17 area or an industrial use within a mixed-use area or an industrial
18 area under this subsection (5)(d)(i) must be principally designed to
19 serve the existing and projected rural population.

20 (C) Any development or redevelopment in terms of building size,
21 scale, use, or intensity shall be consistent with the character of
22 the existing areas. Development and redevelopment may include changes
23 in use from vacant land or a previously existing use so long as the
24 new use conforms to the requirements of this subsection (5);

25 (ii) The intensification of development on lots containing, or
26 new development of, small-scale recreational or tourist uses,
27 including commercial facilities to serve those recreational or
28 tourist uses, that rely on a rural location and setting, but that do
29 not include new residential development. A small-scale recreation or
30 tourist use is not required to be principally designed to serve the
31 existing and projected rural population. Public services and public
32 facilities shall be limited to those necessary to serve the
33 recreation or tourist use and shall be provided in a manner that does
34 not permit low-density sprawl;

35 (iii) The intensification of development on lots containing
36 isolated nonresidential uses or new development of isolated cottage
37 industries and isolated small-scale businesses that are not
38 principally designed to serve the existing and projected rural
39 population and nonresidential uses, but do provide job opportunities
40 for rural residents. Rural counties may allow the expansion of small-

1 scale businesses as long as those small-scale businesses conform with
2 the rural character of the area as defined by the local government
3 according to RCW 36.70A.030(15). Rural counties may also allow new
4 small-scale businesses to utilize a site previously occupied by an
5 existing business as long as the new small-scale business conforms to
6 the rural character of the area as defined by the local government
7 according to RCW 36.70A.030(15). Public services and public
8 facilities shall be limited to those necessary to serve the isolated
9 nonresidential use and shall be provided in a manner that does not
10 permit low-density sprawl;

11 (iv) A county shall adopt measures to minimize and contain the
12 existing areas or uses of more intensive rural development, as
13 appropriate, authorized under this subsection. Lands included in such
14 existing areas or uses shall not extend beyond the logical outer
15 boundary of the existing area or use, thereby allowing a new pattern
16 of low-density sprawl. Existing areas are those that are clearly
17 identifiable and contained and where there is a logical boundary
18 delineated predominately by the built environment, but that may also
19 include undeveloped lands if limited as provided in this subsection.
20 The county shall establish the logical outer boundary of an area of
21 more intensive rural development. In establishing the logical outer
22 boundary, the county shall address (A) the need to preserve the
23 character of existing natural neighborhoods and communities, (B)
24 physical boundaries, such as bodies of water, streets and highways,
25 and land forms and contours, (C) the prevention of abnormally
26 irregular boundaries, and (D) the ability to provide public
27 facilities and public services in a manner that does not permit low-
28 density sprawl;

29 (v) For purposes of (d) of this subsection, an existing area or
30 existing use is one that was in existence:

31 (A) On July 1, 1990, in a county that was initially required to
32 plan under all of the provisions of this chapter;

33 (B) On the date the county adopted a resolution under RCW
34 36.70A.040(2), in a county that is planning under all of the
35 provisions of this chapter under RCW 36.70A.040(2); or

36 (C) On the date the office of financial management certifies the
37 county's population as provided in RCW 36.70A.040(5), in a county
38 that is planning under all of the provisions of this chapter pursuant
39 to RCW 36.70A.040(5).

1 (e) Exception. This subsection shall not be interpreted to permit
2 in the rural area a major industrial development or a master planned
3 resort unless otherwise specifically permitted under RCW 36.70A.360
4 and 36.70A.365.

5 (6) A transportation element that implements, and is consistent
6 with, the land use element.

7 (a) The transportation element shall include the following
8 subelements:

9 (i) Land use assumptions used in estimating travel;

10 (ii) Estimated traffic impacts to state-owned transportation
11 facilities resulting from land use assumptions to assist the
12 department of transportation in monitoring the performance of state
13 facilities, to plan improvements for the facilities, and to assess
14 the impact of land-use decisions on state-owned transportation
15 facilities;

16 (iii) Facilities and services needs, including:

17 (A) An inventory of air, water, and ground transportation
18 facilities and services, including transit alignments and general
19 aviation airport facilities, to define existing capital facilities
20 and travel levels as a basis for future planning. This inventory must
21 include state-owned transportation facilities within the city or
22 county's jurisdictional boundaries;

23 (B) Level of service standards for all locally owned arterials
24 and transit routes to serve as a gauge to judge performance of the
25 system. These standards should be regionally coordinated;

26 (C) For state-owned transportation facilities, level of service
27 standards for highways, as prescribed in chapters 47.06 and 47.80
28 RCW, to gauge the performance of the system. The purposes of
29 reflecting level of service standards for state highways in the local
30 comprehensive plan are to monitor the performance of the system, to
31 evaluate improvement strategies, and to facilitate coordination
32 between the county's or city's six-year street, road, or transit
33 program and the office of financial management's ten-year investment
34 program. The concurrency requirements of (b) of this subsection do
35 not apply to transportation facilities and services of statewide
36 significance except for counties consisting of islands whose only
37 connection to the mainland are state highways or ferry routes. In
38 these island counties, state highways and ferry route capacity must
39 be a factor in meeting the concurrency requirements in (b) of this
40 subsection;

1 (D) Specific actions and requirements for bringing into
2 compliance locally owned transportation facilities or services that
3 are below an established level of service standard;

4 (E) Forecasts of traffic for at least ten years based on the
5 adopted land use plan to provide information on the location, timing,
6 and capacity needs of future growth;

7 (F) Identification of state and local system needs to meet
8 current and future demands. Identified needs on state-owned
9 transportation facilities must be consistent with the statewide
10 multimodal transportation plan required under chapter 47.06 RCW;

11 (iv) Finance, including:

12 (A) An analysis of funding capability to judge needs against
13 probable funding resources;

14 (B) A multiyear financing plan based on the needs identified in
15 the comprehensive plan, the appropriate parts of which shall serve as
16 the basis for the six-year street, road, or transit program required
17 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
18 35.58.2795 for public transportation systems. The multiyear financing
19 plan should be coordinated with the ten-year investment program
20 developed by the office of financial management as required by RCW
21 47.05.030;

22 (C) If probable funding falls short of meeting identified needs,
23 a discussion of how additional funding will be raised, or how land
24 use assumptions will be reassessed to ensure that level of service
25 standards will be met;

26 (v) Intergovernmental coordination efforts, including an
27 assessment of the impacts of the transportation plan and land use
28 assumptions on the transportation systems of adjacent jurisdictions;

29 (vi) Demand-management strategies;

30 (vii) Pedestrian and bicycle component to include collaborative
31 efforts to identify and designate planned improvements for pedestrian
32 and bicycle facilities and corridors that address and encourage
33 enhanced community access and promote healthy lifestyles.

34 (b) After adoption of the comprehensive plan by jurisdictions
35 required to plan or who choose to plan under RCW 36.70A.040, local
36 jurisdictions must adopt and enforce ordinances which prohibit
37 development approval if the development causes the level of service
38 on a locally owned transportation facility to decline below the
39 standards adopted in the transportation element of the comprehensive
40 plan, unless transportation improvements or strategies to accommodate

1 the impacts of development are made concurrent with the development.
2 These strategies may include increased public transportation service,
3 ride-sharing programs, demand management, and other transportation
4 systems management strategies. For the purposes of this subsection
5 (6), "concurrent with the development" means that improvements or
6 strategies are in place at the time of development, or that a
7 financial commitment is in place to complete the improvements or
8 strategies within six years. If the collection of impact fees is
9 delayed under RCW 82.02.050(3), the six-year period required by this
10 subsection (6)(b) must begin after full payment of all impact fees is
11 due to the county or city.

12 (c) The transportation element described in this subsection (6),
13 the six-year plans required by RCW 35.77.010 for cities, RCW
14 36.81.121 for counties, and RCW 35.58.2795 for public transportation
15 systems, and the ten-year investment program required by RCW
16 47.05.030 for the state, must be consistent.

17 (7) An economic development element establishing local goals,
18 policies, objectives, and provisions for economic growth and vitality
19 and a high quality of life. The element shall include: (a) A summary
20 of the local economy such as population, employment, payroll,
21 sectors, businesses, sales, and other information as appropriate; (b)
22 a summary of the strengths and weaknesses of the local economy
23 defined as the commercial and industrial sectors and supporting
24 factors such as land use, transportation, utilities, education,
25 workforce, housing, and natural/cultural resources; and (c) an
26 identification of policies, programs, and projects to foster economic
27 growth and development and to address future needs. A city that has
28 chosen to be a residential community is exempt from the economic
29 development element requirement of this subsection.

30 (8) A park and recreation element that implements, and is
31 consistent with, the capital facilities plan element as it relates to
32 park and recreation facilities. The element shall include: (a)
33 Estimates of park and recreation demand for at least a ten-year
34 period; (b) an evaluation of facilities and service needs; and (c) an
35 evaluation of intergovernmental coordination opportunities to provide
36 regional approaches for meeting park and recreational demand.

37 (9) It is the intent that new or amended elements required after
38 January 1, 2002, be adopted concurrent with the scheduled update
39 provided in RCW 36.70A.130. Requirements to incorporate any such new
40 or amended elements shall be null and void until funds sufficient to

1 cover applicable local government costs are appropriated and
2 distributed by the state at least two years before local government
3 must update comprehensive plans as required in RCW 36.70A.130.

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

6 (1) Unless mitigation requirements are otherwise specified in the
7 applicable rule, impacts on closed water bodies, and potential
8 impairment to instream flows adopted pursuant to chapter 90.22 RCW or
9 this chapter, of new domestic or commercial groundwater withdrawals
10 exempt from permitting under RCW 90.44.050 are deemed mitigated by
11 participation in and compliance with the mitigation program
12 established in this section.

13 (2) The department shall establish a mitigation program for
14 permit-exempt domestic and commercial water use.

15 (a) The department shall create a mitigation committee for each
16 WRIA in which instream flows have been adopted under chapter 90.22
17 RCW or this chapter. Each committee shall convene at least twice per
18 year to review, prioritize, approve, and oversee implementation of
19 mitigation projects. The department shall adopt rules to govern the
20 activities and procedures of mitigation committees established under
21 this section. The department shall invite the following to
22 participate on the committee:

23 (i) A representative from each tribe that has reservation land
24 within the WRIA;

25 (ii) A representative from each tribe that has a usual and
26 accustomed harvest area within the WRIA;

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

29 (iv) A representative from the department, appointed by the
30 director of the department; and

31 (v) A representative designated by each county within the WRIA.

32 (b) The department shall use funds collected under this program
33 solely for the costs of administering requirements under this section
34 and implementing mitigation projects. The department may not
35 authorize expenditure of funds until appropriated by the legislature
36 and projects have been approved by the mitigation committee. For
37 approval, mitigation projects must be consented to by all parties on
38 the mitigation committee. Funds collected under this section must be
39 used exclusively within the WRIA in which the property is located,

1 unless the mitigation committee established under this subsection
2 authorizes expenditures outside of the WRIA.

3 (c) In collaboration with the mitigation committee established in
4 this subsection, the department shall create a mitigation plan within
5 two years of the effective date of this section for each WRIA in
6 which mitigation fees are being collected under this section. The
7 plan must prioritize mitigation of the total consumptive quantity of
8 water expected to be associated with all withdrawals authorized under
9 this section, with the highest priority being mitigation that
10 replaces water during the same time periods as the consumptive impact
11 and in the same basin or tributary. Lower priority projects include
12 projects not in the same basin or tributary, projects that do not
13 replace consumptive impact during critical flow periods, and projects
14 that improve instream resources without replacing the consumptive
15 quantity of water.

16 (3) To issue a mitigation certificate under this section, a city,
17 town, or county issuing a permit or approval under RCW 19.27.097 or
18 chapter 58.17 RCW shall:

19 (a) Record a mitigation certificate with the property title for
20 each property that complies with the provisions of this section;

21 (b) Collect applicable fees under subsection (5) of this section;
22 and

23 (c) Remit all fees collected to the department quarterly.

24 (4) Mitigation projects must fully replace the annual total
25 consumptive quantity of new domestic and commercial permit-exempt
26 groundwater withdrawals, as measured at regulated control points
27 within the WRIA as identified by the department. Mitigation funds may
28 be spent on supplemental mitigation projects that benefit instream
29 resources, as approved by the mitigation committee.

30 (5) To obtain a mitigation certificate under this section, an
31 applicant for a building permit for a building necessitating potable
32 water that will rely on a new permit-exempt groundwater withdrawal
33 for domestic or commercial use:

34 (a)(i) Shall pay a mitigation fee to the local permitting
35 authority, as follows:

36	Water use	One-time fee
37	Single domestic or commercial	\$1,500
38	indoor use only, up to three	
39	hundred fifty gallons per day	

1	Single domestic or commercial	\$2,500
2	indoor use, up to three hundred	
3	fifty gallons per day, plus	
4	outdoor irrigation of up to two	
5	thousand five hundred square	
6	feet of lawn or noncommercial	
7	garden	
8	Single domestic or commercial	\$7,500
9	indoor use, up to three hundred	
10	fifty gallons per day, plus	
11	outdoor irrigation of up to one-	
12	half acre of lawn or	
13	noncommercial garden	

14 (ii) Each July 1st, the mitigation fees established in this
15 subsection must increase by the rate of inflation, as determined by
16 the consumer price index for Washington state compiled by the United
17 States department of labor, bureau of labor statistics.

18 (b) May obtain a modified mitigation certificate to change
19 authorized water use through application to the permitting authority
20 for a mitigation certificate change. The county shall grant a
21 mitigation certificate for increased water use upon receipt of
22 payment for the remaining money due. Once a mitigation certificate is
23 issued, a landowner may not obtain a refund associated with
24 authorization for decreased water use;

25 (c) Shall sign an affidavit agreeing to not exceed the level of
26 water use authorized in the mitigation certificate issued by the
27 local permitting authority;

28 (d) Shall install and maintain a water meter. The property owner
29 must report water use if requested by the local permitting authority
30 or the department;

31 (e) Shall pay a reasonable annual administrative fee which shall
32 only be used to administer the mitigation program including the
33 reporting requirements. Ecology may not base any fee charged to water
34 users under this section on the quantity of water used.

35 (6) The department shall review water use reported by the
36 property owner and, if water use exceeds the amount allowed by the
37 mitigation certificate, shall take appropriate enforcement action.

38 (7) Mitigation program reporting and evaluation is as follows:

1 (a) By January 31st of each year, each permitting authority
2 issuing mitigation certificates shall provide the department with the
3 total number of mitigation certificates issued for each category of
4 use and a summary of total fees collected for each WRIA for the
5 previous calendar year.

6 (b) Beginning on July 1, 2022, and every five years thereafter,
7 and in compliance with RCW 43.01.036, the department shall submit a
8 report to the legislature that includes the following information:

9 (i) Total number of mitigation certificates issued for each
10 category of use;

11 (ii) A summary of total fees collected for each WRIA;

12 (iii) A description of each mitigation project initiated,
13 including the location, cost, and status of each project;

14 (iv) The total amount of consumptive water use to be mitigated;

15 (v) A description of challenges faced in implementation of the
16 program, including recommendations to the legislature for changes to
17 improve mitigation for groundwater withdrawals exempt from permitting
18 under RCW 90.44.050; and

19 (vi) Whether the department has been able to obtain at least one-
20 half of the mitigation necessary to fully address the water
21 consumption associated with new groundwater withdrawals exempt from
22 permitting under RCW 90.44.050.

23 (c) In any WRIA in which the department has been unable to obtain
24 at least one-half of the necessary mitigation, the department must
25 provide notice to the local permitting authority of a two-year
26 deadline to achieve the minimum mitigation level. If the minimum
27 mitigation level is not achieved in the subsequent two-year period,
28 the local permitting authority is no longer authorized to issue a
29 mitigation certificate pursuant to this section.

30 (8) In a WRIA where instream flow rules have not been adopted
31 pursuant to either this chapter or chapter 90.22 RCW, a local
32 government may develop a mitigation plan for impacts of new permit-
33 exempt water use on senior water users. Once the mitigation plan is
34 approved by the department, the local government entity may issue
35 mitigation certificates based on payment of the mitigation fee as
36 specified in subsection (5)(a)(i) of this section.

37 **Sec. 5.** RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended
38 to read as follows:

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

5 (1) "Commercial water use" means potable water to satisfy the
6 normal needs of a commercial business, including water used for
7 drinking, bathing, sanitary purposes, cooking, laundering, and
8 cleaning of the interior or exterior of the business.

9 (2) "Department" means the department of ecology.

10 (~~(2)~~) (3) "Domestic water use" means potable water to satisfy
11 the normal needs of a household, including water used for drinking,
12 bathing, sanitary purposes, cooking, laundering, care of household
13 parts, and other incidental uses.

14 (4) "Utilize" or "utilization" shall not only mean use of water
15 for such long recognized consumptive or nonconsumptive beneficial
16 purposes as domestic, stock watering, industrial, commercial,
17 agricultural, irrigation, hydroelectric power production, thermal
18 power production, mining, recreational, maintenance of wildlife and
19 fishlife purposes, but includes the retention of water in lakes and
20 streams for the protection of environmental, scenic, aesthetic and
21 related purposes, upon which economic values have not been placed
22 historically and are difficult to quantify.

23 (5) "WRIA" means a water resource inventory area established
24 under WAC 173-500-040, as it existed as of January 1, 2017.

25 NEW SECTION. Sec. 6. A new section is added to chapter 90.54
26 RCW to read as follows:

27 (1) Nothing in this chapter affects the ability of any person to
28 pursue a cause of action for the protection of any water right that
29 is not a base flow, minimum flow, minimum level, or other similar
30 standard or policy, established by the department.

31 (2) However, if a person is required to divert, consume, or
32 withdraw less water than his or her water right or permit allows
33 because of the requirement to comply with a senior base flow, minimum
34 flow, minimum level, or other similar standard or policy, established
35 by the department while persons with junior water rights or junior
36 permit-exempt wells are allowed to continue to divert or withdraw
37 water, the senior water right holder may enforce the base flow,

1 minimum flow, minimum level, or other similar standard or policy
2 against the junior water right holder."

3 Correct the title.

EFFECT: (1) **Building Permit Applications.** Building permit applicants may demonstrate evidence of an adequate water supply through the provision of a water right permit or certificate from the department of ecology (ECY), a letter from an approved water purveyor, a water well report for a permit-exempt groundwater withdrawal unless prohibited by an applicable water resource management rule adopted by ECY, or other sufficient demonstrations of the physical and legal availability of water.

Water well reports for building permit applications in areas not subject to a minimum flow or level, base flow or level, or water reservation adopted by ECY rule, must demonstrate the physical availability of a sufficient quantity of potable water, as long as: (a) Any applicable comprehensive plans and development regulations match growth with available, unappropriated water supplies; (b) the available information shows that senior water rights are not being impaired by existing or planned growth; and (c) ground and surface water levels are stable.

Water well reports for building permit applications in areas subject either to an ECY rule establishing a minimum flow or level, base flow or level, or water reservation that specifies mitigation requirements, or to a federally administered water rights adjudication, must demonstrate compliance with the mitigation requirements established by rule or through the adjudication process.

Water well reports for building permit applications in areas subject either to an ECY rule establishing a minimum flow or level, base flow or level, or water reservation, but that does not specify mitigation, or to a federally administered water rights adjudication in which mitigation is not specified, must include proof of mitigation under new water resource inventory area (WRIA)-specific mitigation processes established in the bill.

Water well reports for building permit applications in areas not subject to a minimum flow or level, base flow or level, or water reservation adopted by ECY by rule, may rely, for proof of an adequate water supply, on the mitigation processes established in the bill.

The three separate circumstances, listed above, in which a water well report may serve as evidence of an adequate water supply do not apply in WRIAs 37, 38, and 39 (Yakima basin), or WRIAs 3 and 4 (Skagit basin).

(2) **Other Land Use Approvals.** City, town, or county approval of a subdivision, dedication, or short subdivision must rely on the provision of a water supply that is consistent with the requirements of the state water code and water rules adopted by ECY, as well as with the building permit application requirements established in the bill.

(3) **Growth Management Act Elements.**

To ensure the protection of the quantity of groundwater as required in the land use element of the growth management act (GMA), a comprehensive plan must be consistent with the state water code and water rules adopted by ECY, including new mitigation processes established in the bill. The level of planned growth in a comprehensive plan must be consistent with current scientific

information on the availability of water within the area during the 20-year planning period.

The protection of surface and groundwater resources under the rural element of the GMA may include measures that rely on the state water code and ECY water rules, including new mitigation processes established in the bill, as long as the level of planned growth is consistent with current scientific information on the availability of water within the area during the 20-year planning period.

(4) **New Mitigation Program.** ECY must establish a new mitigation program for domestic and commercial permit-exempt groundwater use. Unless mitigation requirements are otherwise specified in ECY minimum flow, base flow or level, or water reservation rules, impacts to closed water bodies and impairment to instream flows are authorized for new domestic and commercial permit-exempt groundwater withdrawals as a result of participation in and compliance with the ECY-established mitigation program.

Mitigation projects must fully replace the annual total consumptive quantity of new permit-exempt groundwater withdrawals, as determined by ECY at regulated control points within each WRIA.

Local permitting authorities must issue mitigation certificates associated with new building permits or subdivision, dedication, or short subdivision approvals. Applicants for mitigation certificates must pay one-time fees that range from \$1,500 to \$7,500 depending on whether the withdrawal is only for up to 350 gallons per day of indoor water use, or includes outdoor noncommercial irrigation. Mitigation fee amounts are adjusted each year for inflation. Fees collected by counties in conjunction with mitigation certificates must be remitted quarterly to ECY. In addition to the mitigation fee, applicants must also pay a reasonable, flat annual administrative fee to pay for the cost of administering the mitigation program.

All applicants for a building permit that would rely on permit-exempt groundwater withdrawals would be required to install and maintain a water meter and to report their water use if requested by either ECY or the local permitting authority. ECY must review water use reported by property owners and take appropriate enforcement action if water use exceeds the allowed amount.

In each WRIA for which instream flows have been adopted, ECY must form and chair a committee to review, prioritize, approve, and oversee mitigation projects. Representatives from tribes, the department of fish and wildlife, and counties within the WRIA must be invited to participate on the committee. Mitigation projects must be consented to by all mitigation committee members.

ECY, in collaboration with mitigation committees, must create a mitigation plan by 2019 for each WRIA in which mitigation fees are collected. The plan must prioritize mitigation of the total consumptive quantity of water associated with withdrawals, with the highest priority being mitigation that replaces water during the same time periods and in the same basin or tributary as the withdrawal. When such projects are not feasible, the plan may include projects not in the same basin or tributary or that do not replace consumptive impacts during critical flow periods, and other instream resource improvement projects.

Local permitting authorities must report each year to ECY regarding the total mitigation certificates and fees in each WRIA, and ECY must report every five years to the legislature with WRIA-specific mitigation program details. If ECY has not been able to obtain at least one-half of the necessary mitigation in a WRIA, ECY must notify the relevant permitting authority of a two-year deadline to achieve minimum mitigation levels; local permitting authorities may not issue mitigation certificates if minimum mitigation levels

are not achieved in the two-year period after ECY issues a notice of a failure to achieve minimum mitigation levels.

In a WRIA where instream flows have not been established, a local government may develop a mitigation plan for impacts of permit-exempt wells on senior water users. Once the mitigation program is approved by ECY, the local government may issue mitigation certificates based on payment of the mitigation fee.

(5) **Definitions.** New definitions are created for domestic water use, commercial water use, and WRIAs.

(6) **Causes of Action.**

The ability of a person to pursue a cause of action for the protection of any water right that is not a base or minimum flow or similar ECY policy is not affected.

A senior water rights holder who curtails his or her water consumption in order to comply with senior instream flows, while junior water rights holders continue to divert or withdraw water, may enforce the instream flows against the junior water right holder.

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