

Multiple Agency Fiscal Note Summary

Bill Number: 5517 SB	Title: Water resource mitigation
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Estimated Cash Receipts

NONE

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Office of Attorney General	Fiscal note not available											
Department of Health	Fiscal note not available											
Department of Ecology	2.3	773,506	773,506	773,506	2.7	888,444	888,444	888,444	.7	211,426	211,426	211,426
Total \$	2.3	773,506	773,506	773,506	2.7	888,444	888,444	888,444	0.7	211,426	211,426	211,426

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Office of Attorney General	Fiscal note not available								
Department of Health	Fiscal note not available								
Department of Ecology	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

Prepared by: Lisa Borkowski, OFM	Phone: (360) 742-2239	Date Published: Preliminary
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Individual State Agency Fiscal Note

Bill Number: 5517 SB	Title: Water resource mitigation	Agency: 461-Department of Ecology
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	2.3	2.3	2.3	2.7	0.7
Account					
General Fund-State 001-1	377,503	396,003	773,506	888,444	211,426
Total \$	377,503	396,003	773,506	888,444	211,426

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Karen Epps	Phone: 360-786-7424	Date: 01/28/2023
Agency Preparation: Jim Skalski	Phone: 360-584-3805	Date: 02/03/2023
Agency Approval: Erik Fairchild	Phone: 360-407-7005	Date: 02/03/2023
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 02/03/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Background: This bill's stated intent is to enact recommendations from the Joint Legislative Task Force on Water Resources Mitigation (Task Force) that was established in 2018 under ESSB 6091 and codified as RCW 90.94.090. The purpose of this Task Force was to review the treatment of surface water and groundwater appropriations as they relate to instream flows and fish habitat. The Task Force was directed to develop and recommend a mitigation sequencing process and scoring system to address such appropriations of water, and to review the Washington Supreme Court decision *Foster v. Ecology*, 184 Wn.2d 465, 362 P.3d 959 (2015). In 2022, the Task Force issued its final report to the legislature that included both majority and minority recommendations from the members.

This bill would amend chapters 70A.125, 90.03, 90.44 and 90.54 RCW to provide a pathway for mitigating impacts of new groundwater appropriations on regulated surface water flows following a sequenced mitigation approach as described in the bill. The bill modifies the statutory definition of overriding consideration of public interest (OCPI) to authorize use for both temporary and permanent appropriations.

Section 1 of the bill would amend RCW 90.44.030 to establish a mitigation sequencing process for applications seeking new groundwater appropriations that may impact already regulated surface water flows. This section directs that hydraulic continuity between groundwater and a surface water source with unmet minimum flows or that is closed to further appropriations is not in and of itself a basis on which to deny an application to withdraw groundwater. This section directs Ecology to utilize the procedures established in the act to determine impairment or adverse impact of a groundwater source on a surface water right. Ecology is directed to use a groundwater model that is in compliance with the provision of RCW 90.44.060 and the rule adopted under section 4 of this bill. If Ecology determines that surface water impairment, adverse impact or non-compliance to a flow rule from a proposed groundwater withdrawal, then the applicant must avoid impacts where possible, minimize impacts where avoidance is not reasonably attainable, or compensate for impacts through in-kind (water for water) replacement or out-of-kind mitigation projects that improve aquatic habitat function. If the applicant is a municipal water supplier that proposes mitigation under section 1(5)(b)(c), then the applicant must comply with section 5 requirements under this bill. The mitigation required under section 1(5) only applies to mitigation relating to minimum surface water flows or levels set by rule or to a surface water source closed to further appropriation. Nothing in this section is intended to affect or modify impairment or mitigation standards for impacts to appropriative water rights.

Section 2 of the bill would amend RCW 90.03.247 to include the mitigation standards defined in section 1 of the bill would establish those standards are a sufficient condition for permits issued by Ecology under RCW 90.044.030.

Section 3 of the bill would amend RCW 90.44.060 to direct that Ecology decisions on applications for permits for groundwater include the new groundwater model established under the rule adopted under section 4 of this bill. This section would also direct Ecology to review the model before using it and consider boundaries, vertical and horizontal discretization, scope, purpose and accuracy of the model. Ecology's determination of the suitability of the model must be included in any preliminary permit issued under RCW 91.03.290(2) and include any proposed revisions (by the applicant) to ensure the model performs in a scientifically suitable manner. A modeled effect on surface water shall not be considered an impairment of a minimum instream flow set by rule or an adverse impact to a surface water source closed to further appropriation if the modeled effect is within the models uncertainty or margin of error.

Section 4 of the bill would add a new section to chapter 90.03 RCW directing Ecology to establish rules to define requirements for groundwater models used in the application decision making process. The rule must include a list of alternative model types and their appropriate hydrogeologic settings, guidance on the use and application of various types of modeling applications and the margin of error, professional licensing requirements for modelers, and a process for public input and the posting of preliminary permit decisions on Ecology's website in the same manner as draft and final reports of examination.

Section 5 of the bill would amend RCW 70A.125.170 to require the Department of Health to review and make a determination of whether the water system is in compliance with or is exercising appropriate effort to achieve requirements of this subsection and the rule adopted by Ecology under section 4 of the bill for any water right applicant that is a municipal water supplier utilizing mitigation under RCW 90.44.030(5)(b) or (c) as defined under section 1 of this bill. The review shall be provided to the applicant and Ecology. If Health determines that the municipal water supplier is not in compliance with this section of the appropriate rule, Health shall identify any actions that must be taken by the municipal water supplier to achieve compliance.

Section 6 of the bill would amend RCW 90.03.015 to add a new definition of “withdrawal” to mean the appropriation of water for beneficial use through the withdrawal of groundwater authorized under RCW 90.44.060 or a diversion of surface water authorized under RCW 90.03.290. The definition also declares that a withdrawal may be temporary or permanent.

Section 7 of the bill would amend RCW 90.54.020 to allow Ecology to approve new appropriations of water that would adversely impact regulated surface water flows if they demonstrate appropriate mitigation as specified under section 1 of this bill.

Section 8 of the bill would declare that this act applies to applications for withdrawals of groundwater filed both before and after the effective date of this section.

Section 9 of the bill would declare this act is necessary for the immediate preservation of the public peace, health or safety, or support of state government and its existing public institutions and takes effect immediately.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

The expenditure impact to Ecology under this bill is estimated to be greater than \$50,000 starting in FY 2024 to implement section 3 requirements for Ecology to use all elements of the rule adopted under section 4 to evaluate certain groundwater applications, and to develop and implement rulemaking required under section 4.

Section 3 would require 0.5 FTE Hydrogeologist 4 beginning in FY 2028 and beyond to review groundwater applications using the new model once the rule (under section 4 of the bill) has been adopted. Ecology anticipates that four applications per year will require additional review applying the groundwater model and require roughly 240 additional hours per application (approximately 1,000 total per year). This position would review, analyze and make a determination on new groundwater applications submitted meeting the terms and conditions of this bill.

Section 4 of the bill would direct Ecology to establish a new rule to define requirements for groundwater models used in the application decision making process. The rule must include a list of alternative model types and their appropriate hydrogeologic settings, guidance on the use and application of various types of modeling applications and the margin of error, professional licensing requirements for modelers, and a process for public input and the posting of preliminary permit decisions on Ecology’s website in the same manner as draft and final reports of examination.

Ecology assumes that rulemaking would be highly complex and generate substantial public, stakeholder, water right holder and tribal interest and input. A significant technical aspect of the rulemaking would be establishing and defining requirements for groundwater models used in the application decision making process. Establishing a model or models for determining groundwater impacts would require significant technical expertise to ensure scientific credibility for the model

used in making decisions.

Due to the complexity and interest in water law and water rights, Ecology is assuming an extended process timeline as well as an increased number of meetings and hearings to ensure all public, stakeholder and tribal comments are heard and incorporated into the rulemaking process. Ecology assumes substantial interest and possible challenges during rule development and implementation of the final rule due to the potential impact to existing water rights. Appeals are unknown and potential costs are not included in this fiscal note.

The rule is anticipated to take four years, from July 1, 2023, to approximately June 30, 2027. This type of rulemaking would include up to six preproposal meetings to gather input from the public and stakeholders. Ecology anticipates four public hearings (one in each Ecology region) to accept comments on the draft rule proposal. Ecology anticipates holding public hearings in FY 2025 and FY 2026.

Ecology staffing to develop the new rule would include:

Management Oversight: Ecology estimates that 0.25 FTE Washington Management Service 2 each fiscal year (FY 2024 thru FY 2027) of rule development to provide executive oversight and coordination of Ecology programs during the rulemaking effort. This position would also provide agency level expertise on municipal water law, water rights and rule development.

Rulemaking Lead: Ecology estimates that 0.5 FTE Environmental Planner 5 each fiscal year (FY 2024 thru FY 2027) of rule development coordinating the rulemaking effort.

Ecology estimates that 1.0 FTE Hydrogeologist 4 each fiscal year (FY 2024 thru FY 2027) of rule development to develop and coordinate the professional licensing requirements required in the bill. Ecology assumes this would lower to 0.1 FTE Hydrogeologist 4 in FY 2028 and ongoing to provide continued oversight for professional licensing and the groundwater model.

Ecology estimates that 0.25 FTE Communications Consultant 5 each fiscal year (FY 2024 thru FY 2027) of rule development to provide public outreach coordination during the rulemaking effort. This FTE would manage and coordinate public outreach and comments on all aspects of rule development.

Ecology estimates that 0.25 FTE Economic Analyst 3 and 0.1 FTE Regulatory Analyst 2 in FY 2026 and FY 2027 to provide economic analysis, economic impacts, etc.

Goods and services estimates include facility rental costs estimated at \$1,000 per meeting / hearing for a total of \$5,000 in FY 2025 and \$5,000 in FY 2026 for hearing and meeting space.

Facilitation: Ecology estimates that \$25,000 total (for duration of rulemaking from FY 2024 thru FY 2027) would be required to contract with a facilitator highly versed in water rights and water law to facilitate public meetings and hearings.

Attorney General Review: In consultation with the Attorney General's Office (AGO), Ecology would require 0.05 FTE (\$14,000) in FY 2024 and 0.08 FTE (\$20,000) each year in FY 2025 thru FY 2027. The work required of the AGO would include the following: FY 2024 - assistance with client advice on rulemaking scope and process; FY 2025 and FY 2026 - client advice related to stakeholder and tribal input on possible rule language and the model; and FY 2027 - client advice related to final rulemaking adoption and implementation.

SUMMARY: The expenditure impact to Ecology under this bill is described below.

Section 3:

FY 2028 and ongoing: \$88,094 and 0.6 FTE

Section 4:

FY 2024: \$377,503 and 2.3 FTE

FY 2025: \$396,003 and 2.3 FTE

FY 2026: \$450,472 and 2.7 FTE

FY 2027: \$437,972 and 2.7 FTE

FY 2028 and ongoing: \$17,619 and 0.1 FTE

Total Expenditure Impact:

FY 2024: \$377,503 and 2.3 FTE

FY 2025: \$396,003 and 2.3 FTE

FY 2026: \$450,472 and 2.7 FTE

FY 2027: \$437,972 and 2.7 FTE

FY 2028 and ongoing: \$105,713 and 0.7 FTE

Notes on costs by object:

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 36% of salaries.

Contracts include facilitation services estimated at \$2,500 in FY 2024, \$10,000 in FY 2025, \$10,000 in FY 2026, and \$2,500 in FY 2027.

Goods and Services are the agency average of \$5,224 per direct program FTE. Goods and Services also includes \$10,000 for meeting / hearing room rental, and AGO services of \$14,000 in FY 2024 and \$20,000 each year for FY 2025 through FY 2027.

Travel is the agency average of \$1,563 per direct program FTE.

Equipment is the agency average of \$1,031 per direct program FTE.

Agency Administrative Overhead is calculated at the federally approved agency indirect rate of 28.75% of direct program salaries and benefits, and is shown as object 9. Agency Administrative Overhead FTEs are included at 0.15 FTE per direct program FTE, and are identified as Fiscal Analyst 2 and IT App Development - Journey.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	377,503	396,003	773,506	888,444	211,426
Total \$			377,503	396,003	773,506	888,444	211,426

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	2.3	2.3	2.3	2.7	0.7
A-Salaries and Wages	197,238	197,238	394,476	453,566	115,388
B-Employee Benefits	71,006	71,006	142,012	163,284	41,540
C-Professional Service Contracts	2,500	10,000	12,500	12,500	
E-Goods and Other Services	24,448	35,448	59,896	69,552	6,268
G-Travel	3,127	3,127	6,254	7,348	1,876
J-Capital Outlays	2,063	2,063	4,126	4,848	1,238
9-Agency Administrative Overhead	77,121	77,121	154,242	177,346	45,116
Total \$	377,503	396,003	773,506	888,444	211,426

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
COMM CONSULTANT 5	87,144	0.3	0.3	0.3	0.3	
ECONOMIC ANALYST 3	85,020				0.3	
ENVIRONMENTAL PLANNER 5	98,592	0.5	0.5	0.5	0.5	
FISCAL ANALYST 2		0.2	0.2	0.2	0.2	0.1
HYDROGEOLOGIST 4	96,156	1.0	1.0	1.0	1.0	0.6
IT APP DEV-JOURNEY		0.1	0.1	0.1	0.1	0.0
REGULATORY ANALYST 2	82,896				0.1	
WMS BAND 2	120,000	0.3	0.3	0.3	0.3	
Total FTEs		2.3	2.3	2.3	2.7	0.7

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Section 4 of the bill would add a new section to chapter 90.03 RCW directing Ecology to establish a new rule to define requirements for groundwater models used in the application decision making process. The rule must include a list of alternative model types and their appropriate hydrogeologic settings, guidance on the use and application of various types of modeling applications and the margin of error, professional licensing requirements for modelers, and a process for public input and the posting of preliminary permit decisions on Ecology's website in the same manner as draft and final reports of examination. Ecology estimates rulemaking would occur from July 1, 2023, to approximately June 30, 2027.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5517 SB

Title: Water resource mitigation

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: Cities that operate water utilities.
- Counties: Counties that operate water utilities.
- Special Districts: Special districts that provide water utility services.
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Costs a municipal water purveyor would incur to come into compliance with water use efficiency requirements, and the number of municipal water suppliers that would need to take actions to achieve compliance with these requirements.

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: Chelsea Mickel	Phone: 518-727-3478	Date: 02/03/2023
Leg. Committee Contact: Karen Epps	Phone: 360-786-7424	Date: 01/28/2023
Agency Approval: Allan Johnson	Phone: 360-725-5033	Date: 02/03/2023
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 02/03/2023

Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

This bill creates a new pathway to mitigating impacts associated with new groundwater rights, specifically regarding streamflow impacts to regulated or closed surface water bodies through hydraulic continuity.

Section 1 creates a new mitigation standard for groundwater applications wherein applicants must address impacts through the following mitigation sequence:

- Avoid impacts, where possible;
- Minimize remaining impacts; and
- Compensate for remaining impacts through mitigation projects.

Section 5: For a water right applicant that is a municipal water supplier seeking to utilize mitigation under RCW 90.44.03, the department of Ecology (Ecology) will review and make a determination of whether the water system for which additional water rights are being sought is in compliance with or is making a concerted effort to achieve the requirements of this subsection and of the rule adopted by Ecology. If Ecology determines that the municipal water supplier is not in compliance with this section or the appropriate rule, it shall identify any actions that must be taken by the municipal water supplier to achieve compliance.

Section 8 states that this bill applies to water right applications filed both before and after the bill is enacted.

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

This bill would have an indeterminate expenditure impact on local governments.

According to Ecology, this bill would open a new pathway for obtaining groundwater rights that are not permissible under current standards due to surface flow impacts. Municipal purveyors may incur additional costs associated with the application process under the new standard, however applying for new water rights is voluntary. The application process may become more expensive, and it would allow for approval of some applications that would not be possible under the current standard.

If the Department of Health determines that a municipal water supplier is required to achieve compliance with RCW 70A.125.170 under the provisions of this bill, those costs would vary based on the project, the degree to which that impairment of a minimum surface water flow or level was caused, and how to mitigate these issues. Water districts and other municipal water purveyors would incur costs from taking the necessary actions to come into compliance with water use efficiency rules, but would not incur additional water right processing costs.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

This bill would not have revenue impacts on local governments.

SOURCES

Department of Commerce

Department of Ecology

Municipal Resource Services Center

Revised Code of Washington: RCW 90.44.030; RCW 70A.125.170; 90.03 RCW

Washington State Water Resources Association