

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 5517 SB	<b>Title:</b> Water resource mitigation
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## Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Office of Attorney General	0	0	34,000	0	0	40,000	0	0	0
<b>Total \$</b>	<b>0</b>	<b>0</b>	<b>34,000</b>	<b>0</b>	<b>0</b>	<b>40,000</b>	<b>0</b>	<b>0</b>	<b>0</b>

## 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	.1	0	0	34,000	.1	0	0	40,000	.0	0	0	0
Department of Health	.9	292,000	292,000	292,000	.1	40,000	40,000	40,000	.1	40,000	40,000	40,000
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
Department of Natural Resources	.0	0	0	0	.0	0	0	0	.0	0	0	0
<b>Total \$</b>	<b>3.3</b>	<b>1,065,506</b>	<b>1,065,506</b>	<b>1,099,506</b>	<b>2.9</b>	<b>928,444</b>	<b>928,444</b>	<b>968,444</b>	<b>0.8</b>	<b>251,426</b>	<b>251,426</b>	<b>251,426</b>

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	.0	0	0	.0	0	0	.0	0	0
Department of Health	.0	0	0	.0	0	0	.0	0	0
Department of Ecology	.0	0	0	.0	0	0	.0	0	0
Department of Natural Resources	.0	0	0	.0	0	0	.0	0	0
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

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

<b>Prepared by:</b> Lisa Borkowski, OFM	<b>Phone:</b> (360) 742-2239	<b>Date Published:</b> Final 2/16/2023
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# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5517 SB	<b>Title:</b> Water resource mitigation	<b>Agency:</b> 100-Office of Attorney General
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## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

ACCOUNT	FY 2024	FY 2025	2023-25	2025-27	2027-29
Legal Services Revolving Account-State 405-1	14,000	20,000	34,000	40,000	
<b>Total \$</b>	14,000	20,000	34,000	40,000	

### Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.1	0.1	0.1	0.1	0.0
<b>Account</b>					
Legal Services Revolving Account-State 405-1	14,000	20,000	34,000	40,000	0
<b>Total \$</b>	14,000	20,000	34,000	40,000	0

### 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: Allyson Bazan	Phone: 360-586-3589	Date: 02/08/2023
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 02/08/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 02/09/2023

## 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.*

Establishes that hydraulic continuity between groundwater and a surface water source with unmet minimum flows or that is closed to further appropriation is not, in and of itself, a basis on which to deny an application to withdraw groundwater. Requires the Department of Ecology (Ecology) to adopt a groundwater modeling rule. Allows Ecology to authorize a groundwater withdrawal in reliance upon water resource mitigation measures under a specific mitigation sequence. Requires municipal water suppliers to meet water conservation requirements to rely on the mitigation sequence for a groundwater withdrawal.

### 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.*

Cash receipts are assumed to equal the Legal Services Revolving Account (LSRA) cost estimates. These will be billed through the revolving account to the client agency.

The client agency is the Department of Ecology (Ecology). The Attorney General's Office (AGO) will bill all clients for legal services rendered.

These cash receipts represent the AGO's authority to bill and are not a direct appropriation to the AGO. The direct appropriation is reflected in the client agency's fiscal note. Appropriation authority is necessary in the AGO budget.

#### AGO AGENCY ASSUMPTIONS:

Ecology will be billed for non-Seattle rates:

FY 2024: \$14,000 for 0.05 Assistant Attorney General FTE (AAG) and 0.03 Legal Assistant 3 FTE (LA).

FY 2025 – FY 2027 (each FY): \$20,000 for 0.08 AAG and 0.04 LA.

### 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 Attorney General's Office (AGO) Agency Assumptions:

This bill has an emergency clause and is assumed to be effective immediately.

Location of staffing is assumed to be in a non-Seattle office building.

Total workload impact in this request includes standard assumption costs for goods & services, travel, and capital outlays for all FTE identified.

Agency administration support FTE are included in the tables, for every 1.0 Assistant Attorney General FTE (AAG), the AGO includes 0.5 FTE for a Legal Assistant 3 (LA) and 0.25 FTE of a Management Analyst 5 (MA). The MA is used as a representative classification.

Assumptions for the AGO Ecology Division's (ECY) Legal Services for the Department of Ecology (Ecology):

The AGO will bill Ecology for legal services based on the enactment of this bill. Section 4 of this bill requires Ecology to adopt rules for implementation of the act. ECY assumes the complex rulemaking will take approximately four years. Therefore, ECY assumes the following AAG workload impact:

FY 2024: 0.05 AAG for assistance with client advice on rulemaking scope and process.

FY 2025 – FY 2026 (each FY): 0.08 AAG for client advice related to stakeholder and tribal input on possible rule language and the model.

FY 2027: 0.08 AAG for client advice related to final rulemaking adoption and implementation.

ECY total FTE workload impact for non-Seattle rates:

FY 2024: \$14,000 for 0.05 AAG and 0.03 LA.

FY 2025 – FY 2027 (each FY): \$20,000 for 0.08 AAG and 0.04 LA.

### Part III: Expenditure Detail

#### III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
405-1	Legal Services Revolving Account	State	14,000	20,000	34,000	40,000	0
<b>Total \$</b>			14,000	20,000	34,000	40,000	0

#### III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.1	0.1	0.1	0.1	
A-Salaries and Wages	9,000	14,000	23,000	28,000	
B-Employee Benefits	3,000	4,000	7,000	8,000	
E-Goods and Other Services	2,000	2,000	4,000	4,000	
<b>Total \$</b>	14,000	20,000	34,000	40,000	0

#### 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
Assistant Attorney General	118,700	0.1	0.1	0.1	0.1	
Legal Assistant 3	55,872	0.0	0.0	0.0	0.0	
Management Analyst 5	91,524	0.0	0.0	0.0	0.0	
<b>Total FTEs</b>		0.1	0.1	0.1	0.1	0.0

#### III. D - Expenditures By Program (optional)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Ecology Division (ECY)	14,000	20,000	34,000	40,000	
<b>Total \$</b>	14,000	20,000	34,000	40,000	

### 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.*

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5517 SB	<b>Title:</b> Water resource mitigation	<b>Agency:</b> 303-Department of Health
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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	0.8	0.9	0.9	0.1	0.1
<b>Account</b>					
General Fund-State      001-1	134,000	158,000	292,000	40,000	40,000
<b>Total \$</b>	134,000	158,000	292,000	40,000	40,000

### 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: Katie Osete	Phone: 3602363000	Date: 02/08/2023
Agency Approval: Kristin Bettridge	Phone: 3607911657	Date: 02/08/2023
OFM Review: Breann Boggs	Phone: (360) 485-5716	Date: 02/13/2023

## 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.*

Section 5: The Department of Health (DOH) and the State Board of Health (SBOH) shall adopt rules requiring municipal water systems to comply with water conservation requirements.

DOH will review municipal water system applications to ensure the system is compliant with water conservation requirements.

### 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.*

None

### 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.*

Section 5:

DOH Compliance Review:

Assumptions:

- DOH will review twelve water system applications per year. This is based on current applications received by the Department of Ecology (ECY).
- Each review will take approximately 16 hours for an Environmental Engineer 3 starting in FY 2025.

To complete this work, DOH will require 0.1 FTE starting in FY 2025 and ongoing to:

- Review annual water system reports.
- Review water loss action plans.
- Determine compliance with metering leakage.
- Work with ECY on findings.

DOH annual compliance review costs starting in FY 2025 and ongoing: 0.1 FTE and \$20,000.

Rulemaking:

Rulemaking is needed to amend the Group A Public Water Systems WAC to requiring municipal water systems to comply with water conservation requirements. DOH and SBOH will conduct this work on these WACS, respectively and with cooperation with each other. Costs are listed out separately here.

Rulemaking DOH:

Assumptions:

- DOH will need to amend chapter 246-290 WAC to include the required compliance for water conservation efforts.
- Due to the potentially challenging aspects associated with the development of this rule extensive stakeholder work will be needed and will take two years.

To complete this one-time work, DOH will require 0.3 FTE in FY 2024 and 0.3 FTE in FY 2025 to:



- Provide guidance and rule writing.
- Coordinate with stakeholders (including waters systems, state agency staff, local agency staff, local decision makers, and effected constituent groups), facilitate and participate in stakeholder meetings, and lead development of policy-heavy components of the rule.
- Arrange meeting rooms, take notes during stakeholder meetings, and deal with other logistical and communication issues associated with the rulemaking.

Attorney General time to review and advise on rulemaking will be \$1,000 in FY 2024 and \$1,000 in FY 2025.

Travel required for stakeholder meetings: total \$396 in FY 2024 and \$396 in FY 2025

Assumptions:

- Two subject matter experts from DOH will meet with stakeholders four times during the rulemaking process.
- Meeting space will be provided by local health partners at no cost.
- Meetings will be held in four locations: Spokane, Everett, Vancouver, and Yakima.
- Staff will carpool in state vehicles.
- All assumptions for costs in the fiscal note are based on similar rulemaking with similar work that the DOH has completed in the past.
- Travel is based on:
  - o Use of state vehicles
  - o Per diem lunch \$22
  - o Per diem meals and lodging average of \$176 per day

Spokane:

2 staff X \$176 per diem meals and lodging = \$352

Everett:

2 staff X \$22 per diem lunch = \$44

Vancouver:

2 staff X \$22 per diem lunch = \$44

Yakima:

2 staff X \$176 per diem meals and lodging = \$352

DOH rulemaking costs for FY 2024: 0.3 FTE and \$56,000

DOH rulemaking costs for FY 2025: 0.3 FTE and \$57,000

Rulemaking SBOH:

SBOH will conduct rulemaking in FY 2024 and FY 2025 to adopt rules in chapter 246-290 WAC (Group A Public Water Supplies) to include compliance with water use efficiency requirements. SBOH will work closely with DOH to coordinate the update of these rules along with DOH's rule updates to chapter 246-290 WAC.

To complete this rulemaking including analyses required by the Administrative Procedures Act and Regulatory Fairness Act as well as interested party and community outreach coordination, SBOH will require 0.5 FTE and \$78,000 in FY 2024 and 0.5 FTE and \$81,000 in FY 2025. This includes Office of the Attorney General costs of \$1,000 in FY 2024 and \$1,000 in FY 2025.

SBOH rulemaking costs for fiscal year 2024: 0.5 FTE and \$78,000

SBOH rulemaking costs for fiscal year 2025: 0.5 FTE and \$81,000

Total costs for this fiscal note:

FY 2024: 0.8 FTE and \$134,000

FY 2025: 0.9 FTE and \$158,000

FY 2026 and ongoing: 0.1 FTE and \$20,000

**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	134,000	158,000	292,000	40,000	40,000
<b>Total \$</b>			134,000	158,000	292,000	40,000	40,000

**III. B - Expenditures by Object Or Purpose**

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.8	0.9	0.9	0.1	0.1
A-Salaries and Wages	76,000	89,000	165,000	22,000	22,000
B-Employee Benefits	26,000	31,000	57,000	8,000	8,000
E-Goods and Other Services	26,000	31,000	57,000	8,000	8,000
T-Intra-Agency Reimbursements	6,000	7,000	13,000	2,000	2,000
9-					
<b>Total \$</b>	134,000	158,000	292,000	40,000	40,000

**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
ENVIRONMENTAL ENGINEER 3	98,592		0.1	0.1	0.1	0.1
ENVIRONMENTAL PLANNER 3	80,952	0.1	0.1	0.1		
ENVIRONMENTAL PLANNER 4	91,524	0.1	0.1	0.1		
MANAGEMENT ANALYST 4	82,896	0.2	0.2	0.2		
MANAGEMENT ANALYST 5	91,524	0.3	0.3	0.3		
WMS02	114,360	0.1	0.1	0.1		
<b>Total FTEs</b>		0.8	0.9	0.9	0.1	0.1

**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

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 5: Requires DOH and the SBOH to adopt and update rules requiring municipal water systems to comply with water conservation requirements.

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5517 SB	<b>Title:</b> Water resource mitigation	<b>Agency:</b> 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
<b>Account</b>					
General Fund-State      001-1	377,503	396,003	773,506	888,444	211,426
<b>Total \$</b>	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:

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- 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
<b>Total \$</b>			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
<b>Total \$</b>	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	
<b>Total FTEs</b>		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.

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5517 SB	<b>Title:</b> Water resource mitigation	<b>Agency:</b> 490-Department of Natural Resources
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Operating Expenditures from:**

NONE

**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: Angela Konen	Phone: 360-902-2165	Date: 02/16/2023
Agency Approval: Nicole Dixon	Phone: 360-902-1155	Date: 02/16/2023
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 02/16/2023

## 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.*

No fiscal impact for this 2023-2025 biennium or 2025-2027 biennia due to lead agency assumptions of four fiscal years required for rulemaking. Anticipated indeterminate fiscal impact once new rules are enacted.

Section 1 establishes a new process to determine whether groundwater withdrawal would impair surface water rights or adversely affect surface water sources. This requires the Department of Ecology (ECY) to rely on a ground water model (created in section 3) for assessing water applications.

Section 8 requires ground water modeling on all pending applications both before and after the effective date of this section

### 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 Department of Natural Resources (DNR) assumes no fiscal impact with indeterminate costs in future biennia. Based on assumptions provided by ECY, DNR assumes rule-making will take four years to establish necessary models for groundwater. It is assumed that the groundwater modeling proposed in this bill to evaluate impacts to surface water would be completed by staff and each groundwater application would require extensive research and review in order to comply with the new groundwater modeling requirements. Based on current practices DNR, as the applicant and owner of the water rights, assumes we will provide all necessary information including modeling that ECY needs to conduct their assessment. As the water right applicant, DNR's obligation to the Trust is to maximize DNR owned water rights. As current practice, providing that information to Ecology is in DNR's best interest and should be continued. Section 8 applies this requirement retroactively, affecting dozens of pending DNR applications that would now require modeling under this new assessment process. DNR anticipates submitting a decision package for future biennia resulting from rule-making for ECY's groundwater modeling.

## Part III: Expenditure Detail

### III. A - Operating Budget Expenditures

NONE

### III. B - Expenditures by Object Or Purpose

NONE

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

NONE

### 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.*

# 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