

Multiple Agency Fiscal Note Summary

Bill Number: 2105 HB	Title: Instream resources
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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
Department of Ecology	2.9	936,625	936,625	936,625	5.2	1,697,221	1,697,221	1,697,221	4.6	1,521,192	1,521,192	1,521,192
Department of Fish and Wildlife	.7	224,000	224,000	224,000	1.0	348,000	348,000	348,000	1.0	348,000	348,000	348,000
Total \$	3.6	1,160,625	1,160,625	1,160,625	6.2	2,045,221	2,045,221	2,045,221	5.6	1,869,192	1,869,192	1,869,192

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Ecology	.0	0	0	.0	0	0	.0	0	0
Department of Fish and Wildlife	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

Prepared by: Lisa Borkowski, OFM	Phone: (360) 742-2239	Date Published: Preliminary 1/16/2024
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Individual State Agency Fiscal Note

Bill Number: 2105 HB	Title: Instream resources	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	0.0	5.8	2.9	5.2	4.6
Account					
General Fund-State 001-1	0	936,625	936,625	1,697,221	1,521,192
Total \$	0	936,625	936,625	1,697,221	1,521,192

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: Robert Hatfield	Phone: 360-786-7117	Date: 01/09/2024
Agency Preparation: Jim Skalski	Phone: 360-584-3805	Date: 01/15/2024
Agency Approval: Erik Fairchild	Phone: 360-407-7005	Date: 01/15/2024
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/15/2024

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.

Ecology manages the state's water supply to meet the needs of people and the natural environment. Waters of the state belong to the public and can't be owned by any individual or group. Chapter 90.54 RCW, also known as the Water Resources Act of 1971, guides water use in the state by outlining the general purposes of how water may be used related to the public interest, sectors of water use (domestic, agriculture, etc.), water quality, instream flows, maximum net benefit, conservation, etc. To use any waters of the state, a person or group would need to be granted a right to use a specific volume of water, for a defined purpose, in a specific place as defined under chapter 90.03 RCW.

A person or group will need a water right if they plan to use any amount of surface water (from a river, stream, spring, or lake) for any purpose or if they plan to use groundwater (from a well) beyond small quantities exempt from the permitting process as defined under RCW 90.03.050 and Title 173 WAC. If granting the water right would impair another water right, including a minimum instream flow established under chapter 90.22 or 90.54 RCW, Ecology would require mitigation (replacing the water the applicant wants to use with an equal amount of water at the same time and place) to be implemented as part of the water right decision to use water. Mitigation includes measures (water banking, trust water, etc.) that the recipient of the water right would have to implement to offset the impact of using water and to ensure no negative impact occurs on other water right holders.

Ecology also may consider “overriding considerations of public interest” (OCPI) to approve certain withdrawal applications for water use because the public benefits far outweigh any impacts on stream flows. Since the 2015 Foster decision, Ecology has been limited to use of OCPI to justify small impacts to a protected stream or river when the public benefits were high only for temporary uses of water and not for permanent appropriations.

Under current law, Ecology processes water right applications and issues decisions to conform to chapter 90.03 RCW and ensure that water rights meet the legal, technical and scientific standards established in law.

Section 1 of this bill would amend RCW 90.54.020 to authorize permanent withdrawals of water that would conflict with instream flows only if: (1) the withdrawal is in response to a public health emergency due to water quality contamination or water supply interruption; or (2) the withdrawal is approved pursuant to the mitigation standard defined in Section 2 of the bill. This section would also eliminate language allowing the authorization for withdrawals of water on the basis of overriding consideration of the public interest (OCPI).

Section 2 would amend RCW 90.03.247 to authorize approval for new surface and groundwater applications in basins with adopted instream flow rules that are not being met or surface water body closures as described in this section. The bill would direct that water resource impacts must be fully offset through replacement of water but that offsets may be provided at other times or locations other than the exact impact of the withdrawal or diversion. Ecology would be required to consult with federally recognized Tribes with treaty fishing rights in the basin in question and must consider the recommendation of the Department of Fish and Wildlife about potential impacts to fish and aquatic resources.

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 beginning in Fiscal Year 2025 and ongoing.

The fiscal impact each year would be a result of work associated with Ecology processing water right applications using the new criteria established in Section 2 of the bill.

Ecology assumes:

1. Criteria establish under section 2 of the bill would make evaluation of water right applications and decisions significantly more complex overall.
2. Ecology estimates that using the new criteria would add roughly 150 to 250 more hours of time for Ecology staff to evaluate and issue a decision for each application impacted by the criteria established in the bill.
3. Ecology estimates that 40 applications per year would be received that would require evaluation of instream impacts to already established flow rules, increased consultation with Tribes, increased coordination with the Department of Fish and Wildlife, and determination of a mitigation plan that allows approval of the application.

Section 2 of the bill would require:

- 1.0 FTE Environmental Planner 4 (EP4) in FY 2025 and FY 2026 to create guidance and process criteria for use by Ecology permitting staff to consistently apply the new standards established under section 2 of the bill. The EP4 would also train permitting staff in the use of the new guidance and process procedures. Ecology estimates that guidance and process procedure drafting and creation would take an estimated 18 months and that implementing the training program for processing staff would take 6 months.
- 4.0 FTE Hydrogeologist 3 (HG3) beginning in FY 2025 and ongoing to process applications, work with the applicant to obtain information, clarify questions from the application, assess and analyze associated mitigation measures of each application and to evaluate and make decisions on water right applications using the new criteria establish in section 2 of the bill. The HG3 positions would coordinate with the Department of Fish and Wildlife on each application to ensure no net detrimental impacts to either aquatic species or resources and no reduction in instream flow. The HG3 would also lead consultation with any federally recognized Indian Tribes on as required by the bill.
- 0.25 FTE Attorney General time in FY 2025 and ongoing (estimated at \$72,500 per year) to advise Ecology on the creation of guidance and process procedures and to review all water right decisions using the new criteria established under this bill.

Please note: Development of guidance and process procedures to implement Section 2 of this bill would occur concurrently with Ecology processing water right applications starting in FY 2025.

SUMMARY: THE TOTAL EXPENDITURE IMPACT to Ecology under this bill is estimated to be:

FY 2025: \$936,625 and 5.75 FTEs

FY 2026: \$936,625 and 5.75 FTEs

FY 2027 and ongoing: \$760,596 and 4.60 FTEs

Notes on costs by object:

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 34.1% of salaries.

Goods and Services are the agency average of \$6,048 per direct program FTE. \$72,500 of Object E is included for Attorney General Services in FY 2025 and ongoing.

Travel is the agency average of \$2,205 per direct program FTE.

Equipment is the agency average of \$1,286 per direct program FTE.

Agency Administrative Overhead is calculated at the federally approved agency indirect rate of 29.8% 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	0	936,625	936,625	1,697,221	1,521,192
Total \$			0	936,625	936,625	1,697,221	1,521,192

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years		5.8	2.9	5.2	4.6
A-Salaries and Wages		469,046	469,046	842,442	746,792
B-Employee Benefits		159,945	159,945	287,273	254,656
E-Goods and Other Services		102,740	102,740	199,432	193,384
G-Travel		11,025	11,025	19,845	17,640
J-Capital Outlays		6,430	6,430	11,574	10,288
9-Agency Administrative Overhead		187,439	187,439	336,655	298,432
Total \$	0	936,625	936,625	1,697,221	1,521,192

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 PLANNER 4	95,650		1.0	0.5	0.5	
FISCAL ANALYST 2			0.5	0.3	0.5	0.4
HYDROGEOLOGIST 3	93,349		4.0	2.0	4.0	4.0
IT APP DEV-JOURNEY			0.3	0.1	0.2	0.2
Total FTEs			5.8	2.9	5.2	4.6

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.

Individual State Agency Fiscal Note

Bill Number: 2105 HB	Title: Instream resources	Agency: 477-Department of Fish and Wildlife
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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	0.3	1.0	0.7	1.0	1.0
Account					
General Fund-State 001-1	50,000	174,000	224,000	348,000	348,000
Total \$	50,000	174,000	224,000	348,000	348,000

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: Robert Hatfield	Phone: 360-786-7117	Date: 01/09/2024
Agency Preparation: Tiffany Hicks	Phone: (360) 902-2544	Date: 01/12/2024
Agency Approval: Tiffany Hicks	Phone: (360) 902-2544	Date: 01/12/2024
OFM Review: Matthew Hunter	Phone: (360) 529-7078	Date: 01/12/2024

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 2(3)(b): requires Ecology to carefully consider the recommendation of WDFW on water right applications that impair instream flows to determine whether a net detrimental impact to fish and aquatic resources would occur if the application were approved.

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.

WDFW currently has 1.0 FTE Natural Resource Scientist 3 working statewide to review water right applications determined by Ecology to have potential impacts to fish and wildlife. For each application, this FTE must research site details/application components, connect with regional WDFW staff, and potentially conduct site visits and fish sampling. Single user water rights can be reviewed in 1-3 months and multi-user water rights usually take longer. In FY 2023, 139 applications were reviewed, three of which were from municipalities that required mitigation packages.

Section 2(3)(b) requires review of water right applications from municipalities that often take the longest and require additional staff support because they request large amounts of water, are more likely to impact fish and wildlife, and usually contain complex mitigation packages with numerous projects. These projects could be geographically dispersed and take years to negotiate with the applicant and other stakeholders.

This will require an additional 0.3 FTE Natural Resources Scientist 3 (NRS3) in FY 2024 and 1.0 FTE in FY 2025 and ongoing to review the additional complex water right applications and associated mitigation packages that would likely result if this bill were to pass. This NRS3 position would make recommendations to the Department of Ecology regarding whether a net detrimental impact would result from the approval of the application.

Salaries and benefits total \$35,000 in FY 2024 and \$121,000 in FY 2025 and ongoing.

Goods and services, Object E, includes \$7,000 per FTE, per year, for WDFW standard costs, which cover an average employee's supplies, communications, training, and subscription costs per year. An infrastructure and program support rate of 36.03% is included in object T and is calculated based on WDFW's federally approved indirect rate.

Total costs are \$50,000 in FY 2024 and \$174,000 in FY 2025 and ongoing.

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	50,000	174,000	224,000	348,000	348,000
Total \$			50,000	174,000	224,000	348,000	348,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.3	1.0	0.7	1.0	1.0
A-Salaries and Wages	26,000	89,000	115,000	178,000	178,000
B-Employee Benefits	9,000	32,000	41,000	64,000	64,000
C-Professional Service Contracts					
E-Goods and Other Services	2,000	7,000	9,000	14,000	14,000
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	13,000	46,000	59,000	92,000	92,000
9-					
Total \$	50,000	174,000	224,000	348,000	348,000

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
NATURAL RESOURCE SCIENTIST	88,208	0.3	1.0	0.7	1.0	1.0
Total FTEs		0.3	1.0	0.7	1.0	1.0

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.