

Multiple Agency Fiscal Note Summary

Bill Number: 5517 S SB	Title: 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	54,000	0	0	71,000	0	0	0
Department of Ecology	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Total \$	0	0	54,000	0	0	71,000	0	0	0

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	.4	0	0	54,000	.4	0	0	71,000	.0	0	0	0
Department of Health	.4	137,000	137,000	137,000	.5	175,000	175,000	175,000	.1	38,000	38,000	38,000
Department of Ecology	3.7	1,197,375	1,197,375	1,197,375	4.1	1,576,146	1,576,146	1,576,146	2.5	819,075	819,075	819,075
Department of Ecology	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
Department of Natural Resources	.7	232,200	232,200	232,200	1.3	434,600	434,600	434,600	1.3	407,600	407,600	407,600
Total \$	5.2	1,566,575	1,566,575	1,620,575	6.3	2,185,746	2,185,746	2,256,746	3.9	1,264,675	1,264,675	1,264,675

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
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

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Prepared by: Lisa Borkowski, OFM	Phone: (360) 742-2239	Date Published: Final 1/30/2024
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Individual State Agency Fiscal Note

Bill Number: 5517 S SB	Title: Water resource mitigation	Agency: 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	40,000	54,000	71,000	
Total \$	14,000	40,000	54,000	71,000	

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.3	0.4	0.4	0.4	0.0
Account					
Legal Services Revolving Account-State 405-1	14,000	40,000	54,000	71,000	0
Total \$	14,000	40,000	54,000	71,000	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:	Phone:	Date: 01/18/2024
Agency Preparation: Dave Merchant	Phone: 360-753-1620	Date: 01/23/2024
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 01/23/2024
OFM Review: Val Terre	Phone: (360) 280-3973	Date: 01/24/2024

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 1: Amends RCW 90.44.030 - Accounts for hydraulic continuity between surface and groundwater and allows modeling. Provides mitigation options. Enacts requirements on municipal water suppliers to obtain determination from Department of Health (DOH) regarding conservation efforts.

Section 2: Amends RCW 90.03.247 - Incorporates provisions of Section 1.

Section 3: Amends RCW 90.44.060 - Incorporates provisions of Section 1. Requires the Department of Ecology (Ecology) to evaluate and consider use of groundwater models and include determination of suitability in preliminary water use permits. An impact that is within a model's margin of error "will not be considered" an impairment.

Section 4: New Section to chapter 90.03 RCW- Ecology shall adopt a rule regarding use of groundwater models, with certain required elements to include licensing and experience requirements for modelers. As part of rulemaking, Ecology shall convene a technical advisory committee.

Section 5: Amends RCW 70A.125.170 - Incorporates provisions of Section 1.

Section 6: Amends RCW 90.03.015 - Definitions.

Section 7: Amends RCW 90.54.020 - Adds provision that appropriations that will have adverse impacts on instream flows may be authorized with mitigation measures, without reference to overriding public interest.

Section 8: New Section - Retroactive application.

Section 9: New Section - Immediate effect.

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 agencies are the Department of Ecology (Ecology) and the Department of Natural Resources (DNR). 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 agencies' fiscal note. Appropriation authority is necessary in the AGO budget.

AGO AGENCY ASSUMPTIONS:

Ecology will be billed for non-King County rates:

FY 2024: \$14,000 for 0.1 Assistant Attorney General FTE (AAG) and 0.1 Paralegal 1 FTE (PL1)

FY 2025 - FY 2027 (each FY): \$22,000 for 0.1 AAG and 0.1 PL1

DNR will be billed for non-King County rates:

FY 2025 and FY 2026: \$18,000 for 0.1 AAG and 0.1 PL1

FY 2027: \$9,000 0.1 AAG and 0.1 PL1

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.

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-King County 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. The Management Analyst 5 FTE (MA), is used as a representative classification. An example ratio is for every 1.0 Assistant Attorney General FTE (AAG), the AGO includes 0.5 Paralegal 1 FTE (PL1) and 0.4 MA.

1. Assumptions for the AGO Ecology Division (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.

FY 2024: 0.1 AAG and legal support and client advice to Ecology

FY 2025 and FY 2026: 0.1 AAG legal assistance with client advice on rulemaking and may carry over to FY 2026. Client advice related to stakeholder and tribal input on possible rule language and the model required to be developed in the rule.

FY 2027: 0.1 AAG for ongoing legal support and client advice for final rule adoption and implementation

ECY total FTE workload impact for non-Seattle rates:

FY 2024: \$14,000 0.1 AAG, 0.1 PL1

FY 2025 - FY 2027: \$22,000 0.1 AAG, 0.1 PL1

2. Assumptions for the AGO Public Lands & Conservation Division (PLC) Legal Services for the Department of Natural Resources (DNR):

The AGO PLC will bill DNR for legal services based on the enactment of this bill. DNR will require legal advice and guidance on groundwater rights due to this bill. During FY 2025 and FY 2026, PLC estimates 100 AAG hours. PLC will provide legal advice concerning new provisions, and potential impacts to new groundwater right applications, or to existing groundwater rights. During FY 2027, PLC estimates 50 AAG hours. PLC will provide legal advice concerning new provisions, and potential impacts to new groundwater right applications, or to existing groundwater rights.

FY 2025 and FY 2026: \$18,000 0.1 AAG, 0.1 PL1

FY 2027: \$9,000 0.1 AAG, 0.1 PL1

3 The AGO Agriculture and Health Division (AHD) has reviewed this bill and determined that any impacts on Department of Health's (DOH) water systems work will be minimal and any resulting need for legal advice will also be minimal.

The Department of Commerce (Commerce) was assigned this fiscal note request for its role in estimating the impact of bills on local governments. Commerce itself would not be given any new authorities or responsibilities under this bill. This work by Commerce will not generate any legal work for AHD. Therefore, no costs are included in this request.

Total AGO workload impact:

FY 2024: \$14,000 for 0.1 AAG and 0.1 PL1
 FY 2025 and FY 2026: \$40,000 for 0.2 AAG and 0.1 PL1
 FY 2027: \$31,000 for 0.2 AAG and 0.1 PL1

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	State	14,000	40,000	54,000	71,000	0
	Revolving Account						
Total \$			14,000	40,000	54,000	71,000	0

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.3	0.4	0.4	0.4	
A-Salaries and Wages	9,000	27,000	36,000	48,000	
B-Employee Benefits	3,000	9,000	12,000	16,000	
E-Goods and Other Services	2,000	4,000	6,000	7,000	
Total \$	14,000	40,000	54,000	71,000	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	129,100	0.1	0.2	0.2	0.2	
Management Analyst 5	95,184	0.1	0.1	0.1	0.1	
Paralegal 1	69,072	0.1	0.1	0.1	0.1	
Total FTEs		0.3	0.4	0.4	0.4	0.0

III. D - Expenditures By Program (optional)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Ecology Division (ECY)	14,000	22,000	36,000	44,000	
Public Lands & Conservation Division (PLC)		18,000	18,000	27,000	
Total \$	14,000	40,000	54,000	71,000	

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

Bill Number: 5517 S SB	Title: Water resource mitigation	Agency: 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	0.0	0.8	0.4	0.5	0.1
Account					
General Fund-State 001-1	0	137,000	137,000	175,000	38,000
Total \$	0	137,000	137,000	175,000	38,000

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:	Phone:	Date: 01/18/2024
Agency Preparation: Katie Osete	Phone: 3602363000	Date: 01/19/2024
Agency Approval: Amy Burkel	Phone: 3602363000	Date: 01/19/2024
OFM Review: Breann Boggs	Phone: (360) 485-5716	Date: 01/21/2024

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.

The fiscal impact has not changed from the previous fiscal note on SB 5517. Although the bill narrative was updated, cost estimates are the same because the changes in this version do not impact Department of Health (DOH).

Section 5: 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 2026.

To complete this work, DOH will require 0.1 FTE starting in FY 2026 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 2026 and ongoing: 0.1 FTE and \$19,000.

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 2025 and 0.3 FTE in FY 2026 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 2025 and \$1,000 in FY 2026.

Travel required for stakeholder meetings: total \$504 in FY 2025 and \$504 in FY 2026.

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:
 - Use of state vehicles
 - Per diem lunch \$20
 - Per diem meals and lodging average of \$232 per day

Spokane:

2 staff X \$232 per diem meals and lodging = \$464

Everett:

2 staff X \$20 per diem lunch = \$40

Vancouver:

2 staff X \$20 per diem lunch = \$40

Yakima:

2 staff X \$232 per diem meals and lodging = \$464

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

DOH rulemaking costs for FY 2026: 0.3 FTE and \$57,000

Rulemaking SBOH:

SBOH will conduct rulemaking in FY 2025 and FY 2026 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 \$80,000 in FY 2025 and 0.5 FTE and \$80,000 in FY 2026. This includes Office of the Attorney General costs of \$1,000 in FY 2025 and \$1,000 in FY 2026.

SBOH rulemaking costs for fiscal year 2025: 0.5 FTE and \$80,000

SBOH rulemaking costs for fiscal year 2026: 0.5 FTE and \$80,000

Total costs for this fiscal note:

FY 2025: 0.8 FTE and \$137,000

FY 2026: 0.9 FTE and \$156,000

FY 2027 and ongoing: 0.1 FTE and \$19,000

Total costs can include staff, associated expenses (including goods and services, travel, intra-agency, and indirect/overhead costs).

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	137,000	137,000	175,000	38,000
Total \$			0	137,000	137,000	175,000	38,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years		0.8	0.4	0.5	0.1
A-Salaries and Wages		82,000	82,000	104,000	22,000
B-Employee Benefits		28,000	28,000	36,000	8,000
E-Goods and Other Services		18,000	18,000	24,000	6,000
G-Travel		1,000	1,000	1,000	
T-Intra-Agency Reimbursements		8,000	8,000	10,000	2,000
9-					
Total \$	0	137,000	137,000	175,000	38,000

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	102,540				0.1	0.1
ENVIRONMENTAL PLANNER 4	92,868		0.1	0.1	0.1	
Fiscal Analyst 2	53,000		0.1	0.1	0.1	
MANAGEMENT ANALYST 4	86,208		0.2	0.1	0.1	
MANAGEMENT ANALYST 5	95,184		0.3	0.2	0.2	
WMS02	118,932		0.1	0.1	0.1	
Total FTEs			0.8	0.4	0.5	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

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

No Fiscal Impact

Estimated Cash Receipts to:

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

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.0	7.3	3.7	4.1	2.5
Account					
General Fund-State 001-1	14,000	1,183,375	1,197,375	1,576,146	819,075
Total \$	14,000	1,183,375	1,197,375	1,576,146	819,075

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

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:	Phone:	Date: 01/18/2024
Agency Preparation: Jim Skalski	Phone: 360-584-3805	Date: 01/25/2024
Agency Approval: Erik Fairchild	Phone: 360-407-7005	Date: 01/25/2024
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/30/2024

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.

SSB 5517 amends SB 5517 by adding language to Section 1(5) of the bill that would include a mitigation option for the applicant to participate in a fee in-lieu of mitigation program in collaboration with Ecology, the Department of Fish and Wildlife, and Tribes where the applicant agrees to provide funding for implementation of mitigation projects to the water right application. This change results in an increase to the fiscal impact for Ecology.

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 appropriate water rights.

Section 1(5)(d) would allow an applicant to participate in a fee in-lieu of mitigation program in collaboration with Ecology, the Department of Fish and Wildlife, and Tribes where the applicant agrees to provide funding for implementation of mitigation to the water right application.

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.

The cash receipts impact to Ecology under this bill is indeterminate.

Under section 1(5), an applicant would be allowed to participate in a fee in-lieu of mitigation program in collaboration with Ecology, the Department of Fish and Wildlife, and Tribes where the applicant agrees to provide funding for implementation of mitigation to the water right application.

Ecology is unable to estimate potential cash receipts from a fee in-lieu of mitigation program due to the significant variability and complexity of determining individual water rights. Each application would have unique legal, technical, scientific and geographic factors that would make a fee in-lieu of mitigation determination on each individual water right application equally unique.

The number of applications received by Ecology that would participate in the fee in-lieu of mitigation program is uncertain.

Ecology anticipates that each Ecology region would receive applications to use the fee in-lieu of mitigation option to obtain an approved water right. However, the total number of applications and the individual fee of each application to participate in the fee in-lieu of mitigation program is indeterminate.

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 2025 to implement section 1(5) requirements for a fee in-lieu mitigation program, 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 1

Under section 1(5), an applicant would be allowed to participate in a fee in-lieu of mitigation program in collaboration with Ecology, the Department of Fish and Wildlife, and Tribes where the applicant agrees to provide funding for implementation of mitigation to the water right application.

This would create an alternate mitigation pathway in which permit applicants may pay a fee to Ecology to cover the impacts of their withdrawal on an impacted regulated surface water body. Under this authority, the applicant would be responsible only for funding the cost of mitigation, leaving implementation of mitigation measures to Ecology and/or other partners (subject to a mitigation agreement).

Ecology assumes we would need to establish a methodology to determine a mitigation fee-in-lieu program that would be used in the application decision making process. The permanent process and methodology would be conducted as part of the rulemaking process described under section 4 below, with an estimated completion of June 30, 2028. Ecology would establish interim guidance to make a mitigation fee-in-lieu program while the rulemaking process is conducted.

The number of applications received by Ecology that would participate in the fee in-lieu of mitigation program is uncertain. Ecology anticipates that each Ecology region would receive applications to use the fee in-lieu of mitigation option to obtain an approved water right. However, the total number of applications and the individual fee of each application to participate in the fee in-lieu of mitigation program is indeterminate.

Ecology estimates 1.5 FTE Environmental Planner 4 would be required for each 15 to 20 applications seeking to use the fee in-lieu of mitigation program. 1.0 FTE EP4 would be for project management of agreements required to implement the mitigation requirements and 0.5 FTE would be for financial management and oversight of those same agreements. Because the number of applications received and the value of the fee to participate in the fee in-lieu of mitigation program is indeterminate, the number of FTE to provide ongoing project and financial management services is also indeterminate.

Interim Guidance - Ecology estimates section 1(5)(d) would require 1.0 FTE Environmental Planner 4, 1.0 FTE Natural Resource Scientist 4 and 1.0 FTE Economic Analyst 3 for 12 months in FY 2025 to evaluate and describe the scientific, biological, financial, and technical requirements necessary establish interim guidance to begin processing applications for the fee in-lieu of mitigation program. The EP4 would provide overall coordination to develop interim guidance, draft documents and coordinate with Tribes and the Department of Fish and Wildlife as needed to make decisions within the fee in-lieu of mitigation program. The Natural Resource Scientist would evaluate the biological impacts to species that would require further economic analysis, while the Economic Analyst would evaluate and determine the economic impacts and potential fee amount to participate in the fee in-lieu of mitigation program.

Section 3

Section 3 would require 0.5 FTE Hydrogeologist 4 beginning in FY 2029 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 would 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

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. There are two significant technical aspects of the rulemaking that would occur concurrently. The first 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. The second would be establishing a methodology to determine a mitigation fee-in-lieu program that would be used in the application decision making process. Defining a methodology to determine mitigation fee assessments would require significant scientific, technical and economic expertise to ensure the full cost of any mitigation fee adequately covered the instream flow, habitat and species impacts from the water right decision.

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 species and/or impairment of 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, 2024, to approximately June 30, 2028. This type of rulemaking would include up to six preproposal meetings to gather input from the public and stakeholders, and develop the Environmental Justice Assessment. 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 2026 and FY 2027.

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 2025 thru FY 2028) 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 0.85 FTE Environmental Planner 5 each fiscal year (FY 2025 thru FY 2028) of rule development coordinating the rulemaking effort.

Ecology estimates that 1.0 FTE Hydrogeologist 4 each fiscal year (FY 2025 thru FY 2028) 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 2029 and ongoing to provide continued oversight for professional licensing and the groundwater model.

Ecology estimates that 0.5 FTE Natural Resource Scientist 3 and 0.5 FTE Environmental Planner 4 would be required to

provide subject matter expertise to support development of a mitigation fee-in-lieu methodology. These two positions would provide SME support to both the Ecology Rules Unit as well as the consultant contracted to develop methodology.

Ecology estimates that 0.25 FTE Communications Consultant 5 each fiscal year (FY 2025 thru FY 2028) 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 2027 and FY 2028 to provide economic analysis, economic impacts, etc.

Contracts estimates include \$100,000 in FY 2026 and \$100,000 in FY 2027 for consultant services to advise and develop a mitigation fee-in-lieu methodology that would be incorporated into the final Ecology rule.

Goods and services estimates include facility rental costs estimated at \$1,000 per meeting / hearing for a total of \$5,000 in FY 2026 and \$5,000 in FY 2027 for hearing and meeting space.

Facilitation: Ecology estimates that \$25,000 total (for duration of rulemaking from FY 2025 thru FY 2028) 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 0.1 FTE AAG (\$14,000) in FY 2024, 0.1 FTE AAG (\$15,000) in FY 2025, and 0.1 FTE (\$22,000) each year in FY 2026 thru FY 2028. The work required of the AGO would include the following: FY 2024 - legal support and client advice; FY 2025 - assistance with client advice on rulemaking scope and process; FY 2026 and FY 2027 - client advice related to stakeholder and tribal input on possible rule language and the model; and, FY 2028 - client advice related to final rulemaking adoption and implementation.

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

Section 1: Partially Indeterminate
FY 2025: \$545,007 and 3.5 FTE

Section 3:
FY 2029 and ongoing: \$94,414 and 0.6 FTE

Section 4:
FY 2024: \$14,000
FY 2025: \$638,368 and 3.9 FTE
FY 2026: \$757,868 and 3.9 FTE
FY 2027: \$818,278 and 4.3 FTE
FY 2028: \$705,778 and 4.3 FTE
FY 2029 and ongoing: \$18,883 and 0.1 FTE

Total Expenditure Impact: Partially Indeterminate
FY 2024: \$14,000
FY 2025: \$1,183,375 and 7.3 FTE
FY 2026: \$757,868 and 3.85 FTE
FY 2027: \$818,278 and 4.26 FTE
FY 2028: \$705,778 and 4.26 FTE
FY 2029 and ongoing: \$113,297 and 0.69 FTE

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.

Contracts include facilitation services estimated at \$2,500 in FY 2025, \$10,000 in FY 2026, \$10,000 in FY 2027, and \$2,500 in FY 2028.

Contracts include consultant services contract at \$100,000 in FY 2026 and \$100,000 in FY 2027.

Goods and Services are the agency average of \$6,048 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, \$15,000 in FY 2025, and \$22,000 each year for FY 2026 through FY 2028.

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	14,000	1,183,375	1,197,375	1,576,146	819,075
Total \$			14,000	1,183,375	1,197,375	1,576,146	819,075

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years		7.3	3.7	4.1	2.5
A-Salaries and Wages		635,004	635,004	709,453	432,921
B-Employee Benefits		216,537	216,537	241,924	147,626
C-Professional Service Contracts		2,500	2,500	220,000	2,500
E-Goods and Other Services	14,000	53,405	67,405	96,639	48,007
G-Travel		14,002	14,002	15,546	9,483
J-Capital Outlays		8,167	8,167	9,069	5,532
9-Agency Administrative Overhead		253,760	253,760	283,515	173,006
Total \$	14,000	1,183,375	1,197,375	1,576,146	819,075

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

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	93,349		0.3	0.1	0.3	0.1
ECONOMIC ANALYST 3	95,627		1.0	0.5	0.1	0.1
ENVIRONMENTAL PLANNER 4	95,650		1.5	0.8	0.5	0.3
ENVIRONMENTAL PLANNER 5	105,612		0.9	0.4	0.9	0.4
FISCAL ANALYST 2			0.6	0.3	0.4	0.2
HYDROGEOLOGIST 4	103,002		1.0	0.5	1.0	0.8
IT APP DEV-JOURNEY			0.3	0.2	0.2	0.1
NATURAL RES SCIENTIST 3	88,798		0.5	0.3	0.5	0.3
NATURAL RES SCIENTIST 4	105,394		1.0	0.5		
REGULATORY ANALYST 2	88,798				0.1	0.1
WMS BAND 2	120,000		0.3	0.1	0.3	0.1
Total FTEs			7.3	3.7	4.1	2.5

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 the department's website in the same manner as draft and final reports of examination. Ecology estimates rulemaking would occur from July 1, 2024, to approximately June 30, 2028.

Individual State Agency Fiscal Note

Bill Number: 5517 S SB	Title: Water resource mitigation	Agency: 490-Department of Natural Resources
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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	1.3	0.7	1.3	1.3
Account					
General Fund-State 001-1	0	232,200	232,200	434,600	407,600
Total \$	0	232,200	232,200	434,600	407,600

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:	Phone:	Date: 01/18/2024
Agency Preparation: Andrew Hills	Phone: /	Date: 01/24/2024
Agency Approval: Angela Konen	Phone: 360-902-2165	Date: 01/24/2024
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/24/2024

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 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. This Substitute bill adds additional exceptions and alternatives to mitigation on in stream flows, but it is unknown to what level this will impact the Department of Natural Resources. Department of Ecology will need to define out of kind mitigation, and how this impacts water rights junior to the instream flow rules.

Section 3 requires ECY to create ground water modeling.

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.

Based on current practices the Department of Natural Resources (DNR) assumes that the applicant will provide all necessary information including modeling that the Department of Ecology needs to conduct their assessment. Section 8 applies this requirement retroactively, current DNR has several dozens of pending applications that will now require modeling under this new assessment process.

Section 1

Staffing

- Natural Resource Scientist 4 – 0.92 FTE in FY 25 and 0.92 FTE in biennium 2025-2027 (ongoing) – This position reviews ground water rights applications using approved models, to evaluate impacts to existing surface water rights and instream flow rules. If impacts are identified, mitigation steps will be required to minimize or negate impacts.

Professional Contractual Services

- Ground water modeling (ongoing) at \$50,000 per fiscal year. DNR estimates that, based on complexity, the contracted work for ground water modeling would be \$2,000 to \$10,000 per application. The number of applications will vary based on the basin where Ecology is conducting assessments. DNR uses \$10,000 per application in contracted costs and estimates 5 applications per year.

Computers - \$3,445 (one-time)

Workstation - \$7,000 (one time)

Total Costs for this section:

FY 2025 - \$201,400

2025-27 - \$382,000 (ongoing)

Section 3

Staffing

- Natural Resource Scientist 4 – 0.08 FTE in FY 25 and 0.08 FTE in biennium 2025-2027 (ongoing) – This position ensures the ground water models meet the minimum requirements for use and suitability to be included in each application. Ensures minimum standards are completed and reviews any work completed under outside contract.

Total Costs for this section:
 FY 2025 - \$12,800
 2025-27 - \$25,600 (ongoing)

Additionally, the Attorney General's Office (AGO) Public Lands & Conservation Division (PLC) will bill DNR for legal services based on the enactment of this bill. DNR will require legal advice and guidance on groundwater rights due to this bill. During FY 2025 and FY 2026, PLC estimates 100 AAG hours at a cost of \$18,000 per FY. PLC will provide legal advice concerning new provisions, and potential impacts to new groundwater right applications, or to existing groundwater rights. During FY 2027, PLC estimates 50 AAG hours at a cost of \$9,000. PLC will provide legal advice concerning new provisions, and potential impacts to new groundwater right applications, or to existing groundwater rights.

Goods and services and travel are calculated on actual program averages per person.

Administrative costs are calculated at 31% of staff salary and benefits and staff-related goods and services and travel. For fiscal note purposes, this cost is represented as a Fiscal Analyst 2 position (0.31 FTE).

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	232,200	232,200	434,600	407,600
Total \$			0	232,200	232,200	434,600	407,600

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years		1.3	0.7	1.3	1.3
A-Salaries and Wages		77,000	77,000	154,000	154,000
B-Employee Benefits		28,900	28,900	57,800	57,800
C-Professional Service Contracts		50,000	50,000	100,000	100,000
E-Goods and Other Services		34,600	34,600	46,200	19,200
G-Travel		3,700	3,700	7,400	7,400
J-Capital Outlays		3,400	3,400		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements		34,600	34,600	69,200	69,200
9-					
Total \$	0	232,200	232,200	434,600	407,600

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
Fiscal Analyst 2	58,107		0.3	0.2	0.3	0.3
Natural Resource Specialist 4	77,028		1.0	0.5	1.0	1.0
Total FTEs			1.3	0.7	1.3	1.3

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 S 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: Same as above.

Special Districts: Same as above.

Specific jurisdictions only:

Variance occurs due to:

Part II: Estimates

No fiscal impacts.

Expenditures represent one-time costs:

Legislation provides local option: Participation in the fee in lieu of mitigation program.

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: Jordan Laramie	Phone: 360-725-5044	Date: 01/22/2024
Leg. Committee Contact:	Phone:	Date: 01/18/2024
Agency Approval: Allan Johnson	Phone: 360-725-5033	Date: 01/22/2024
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/24/2024

Part IV: Analysis

A. SUMMARY OF BILL

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

This fiscal note reflects language in S SB 5517, 2024 Legislative Session. The amendments to this bill do not change the indeterminate nature of the prior bill.

CHANGES BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

The proposed substitute legislation amends Sec. 1(5) to establish that out-of-kind mitigation measures must be considered when a proposed groundwater withdrawal would compensate for adverse impacts through implemented or planned conservation measures. These measures would improve the function and productivity of an affected fish population and related aquatic habitat.

As an alternative to in-kind or out-of-kind mitigation measures, an applicant may participate in a fee in lieu of mitigation program that would be developed by the departments of Ecology and Fish and Wildlife, tribes, and the applicant.

SUMMARY OF CURRENT BILL VERSION:

Section 1 amends RCW 90.44.030 to ensure that rights to surface waters are not impaired by groundwater appropriations. It mandates that the Department of Ecology (Ecology) assess the impact of proposed groundwater withdrawals on surface water rights and utilize mitigation measures if necessary. Requires municipal water suppliers to meet water conservation requirements to be able to rely on the mitigation process for groundwater withdrawal.

Section 2 amends RCW 90.03.247, stating that water withdrawal permits must protect minimum flow levels or require mitigation for impacts to instream flows.

Section 3 amends RCW 90.44.060, outlining detailed requirements for applications to withdrawal groundwater. Local governments involved in groundwater withdrawals must adhere to the detailed application process and consider the impact on surface water resources. This section emphasizes the use of groundwater models in evaluating the impact on surface water levels.

Section 4 adds a new chapter to RCW 90.03 establishing Ecology's authority to create rules and using groundwater models.

Section 5 amends RCW 70A.125.170, focusing on water use efficiency. It applies to all municipal water suppliers and includes conservation planning, leakage standards, and reporting requirements. Compliance enforcement measures may be taken by the Department of Health against water suppliers that do not achieve compliance with these rules.

Section 6 amends RCW 90.03.015, providing definitions that is relevant to water rights and supplies, including a new definition for, "withdrawal."

Section 7 amends RCW 90.54.020, outlines general principles for water utilization and management in the state. Including the protect of environmental values, efficient water use, and is amended such that permanent or temporary appropriations of water may be allowed only with appropriate mitigation or in overriding considerations of public interest.

Section 8 and 9 are partial retroactivity and immediate implementation clauses, respectively.

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.

CHANGES IN EXPENDITURE IMPACTS BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

This substitute Senate bill would provide greater flexibility for local governments who are seeking to withdrawal groundwater than the prior bill. The expenditures associated with these amendments remain indeterminate and would vary

by application depending on the in-kind and out-of-kind measures that are proposed.

This substitute legislation also introduces a local option for whether a local government would participate in the fee in lieu of mitigation program that would be developed by the departments of Ecology and Fish and Wildlife, affected tribes, and the applicant. Whether a water supplier or purvey would participate in the fee in lieu of mitigation program or what the scope and scale of that program's cost may be, cannot be determined in advance.

SUMMARY OF CURRENT BILL VERSION:

This proposed substitute bill would have an indeterminate expenditure impact on local governments and allow for greater flexibility to comply with the requirements of the prior act through a new local option for a fee in lieu of mitigation program.

NEW COMPLIANCE PATHWAYS:

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. Under this substitute legislation, the application process may become more expensive, but it would allow for approval of some applications that would not be possible under the current standard. This substitute bill would allow for more compliance pathways for applicants to receive groundwater withdrawal permits.

ENFORCEMENT COSTS:

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.

NEW COMPLIANCE MEASURES FOR WATER SUPPLIERS AND PURVEYORS:

To conform to the new regulations set forth in this act, municipal water suppliers and local government departments of environment, health, water management and utility may need to:

--Update internal policies and procedures to align with these regulations. This may extend to incorporating the new statutory requirements of Sec. 1 into future water system plans and water right mitigation plans.

--Municipal water suppliers or purveyors would be responsible for conducting reviews and reports on the practices and performance of the jurisdiction's water resource management. If the jurisdiction is seeking new water rights under Sec. 5 of this act from the Department of Health, a review and determination of compliance must be provided by the applicant and the Department of Ecology.

--Engage in intergovernmental coordination with impacted stakeholders, especially local tribes who have state and federally protected water rights. Under the substitute bill, jurisdictions that choose the fee in lieu of mitigation would be required to conduct consultations with affected tribes, and applicable state agencies to determine the appropriate amount of the fee.

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.

CHANGES IN REVENUE IMPACTS BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

No change in revenue impacts.

SUMMARY OF CURRENT BILL VERSION:

This bill would not have revenue impacts on local governments.

SOURCES:

City of Olympia, Water System Plan (2021)

City of Yelm, Water System Plan Chapter 4 Appendix, Water Rights Mitigation Plan

Department of Ecology, “Foster Decision”

Department of Ecology, FN SB 5517 (2024)

Joint Legislative Task Force on Water Resource Mitigation Report (Nov. 2022)

Local Government Fiscal Note Program, FN SB 5517 (2023)

Municipal Resource Services Center, “Water Rights”

Washington State Association of Counties

Washington Water Utilities Council

Washington State Water Resources Association



Multiple Agency Ten-Year Analysis Summary

Bill Number 5517 S SB	Title Water resource mitigation
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This ten-year analysis is limited to the estimated cash receipts associated with the proposed tax or fee increases.

Estimated Cash Receipts

Office of Attorney General	0	0	0	0	0	0	0	0	0	0	0
Department of Health	0	0	0	0	0	0	0	0	0	0	0
Department of Ecology Indeterminate Impact	0	0	0	0	0	0	0	0	0	0	0
Department of Natural Resources	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0	0



Ten-Year Analysis

Bill Number 5517 S SB	Title Water resource mitigation	Agency 100 Office of Attorney General
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts

 Partially Indeterminate Cash Receipts

 Indeterminate Cash Receipts

Estimated Cash Receipts

Name of Tax or Fee	Acct Code											
Total												

Biennial Totals

Agency Preparation: Dave Merchant	Phone: 360-753-1620	Date: 1/23/2024 6:37:02 pm
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 1/23/2024 6:37:02 pm
OFM Review:	Phone:	Date:



Ten-Year Analysis

Bill Number 5517 S SB	Title Water resource mitigation	Agency 303 Department of Health
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts

 Partially Indeterminate Cash Receipts

 Indeterminate Cash Receipts

Estimated Cash Receipts

Name of Tax or Fee	Acct Code												
Total													

Biennial Totals

Agency Preparation: Katie Osete	Phone: 3602363000	Date: 1/19/2024 3:35:39 pm
Agency Approval: Amy Burkel	Phone: 3602363000	Date: 1/19/2024 3:35:39 pm
OFM Review:	Phone:	Date:



Ten-Year Analysis

Bill Number 5517 S SB	Title Water resource mitigation	Agency 461 Department of Ecology
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts

 Partially Indeterminate Cash Receipts

 Indeterminate Cash Receipts

Estimated Cash Receipts

Name of Tax or Fee	Acct Code											
Total												

Biennial Totals

Narrative Explanation (Required for Indeterminate Cash Receipts)

Under section 1(5), an applicant would be allowed to participate in a fee in-lieu of mitigation program in collaboration with Ecology, the Department of Fish and Wildlife, and Tribes where the applicant agrees to provide funding for implementation of mitigation to the water right application.

Ecology is unable to estimate potential cash receipts from a fee in-lieu of mitigation program due to the significant variability and complexity of determining individual water rights. Each application would have unique legal, technical, scientific and geographic factors that would make a fee in-lieu of mitigation determination on each individual water right application equally unique.

The number of applications received by Ecology that would participate in the fee in-lieu of mitigation program is uncertain. Ecology anticipates that each Ecology region would receive applications to use the fee in-lieu of mitigation option to obtain an approved water right. However, the total number of applications and the individual fee of application to participate in the fee in-lieu of mitigation program is indeterminate.

Agency Preparation: Jim Skalski	Phone: 360-584-3805	Date: 1/25/2024 11:24:08 am
Agency Approval: Erik Fairchild	Phone: 360-407-7005	Date: 1/25/2024 11:24:08 am
OFM Review:	Phone:	Date:



Ten-Year Analysis

Bill Number 5517 S SB	Title Water resource mitigation	Agency 490 Department of Natural Resources
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This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at <http://www.ofm.wa.gov/tax/default.asp>.

Estimates

No Cash Receipts

 Partially Indeterminate Cash Receipts

 Indeterminate Cash Receipts

Estimated Cash Receipts

Name of Tax or Fee	Acct Code												
Total													

Biennial Totals

Agency Preparation: Andrew Hills	Phone: /	Date: 1/24/2024 12:02:02 pm
Agency Approval: Angela Konen	Phone: 360-902-2165	Date: 1/24/2024 12:02:02 pm
OFM Review:	Phone:	Date: