

## ESSB 6091: Section-by-Section Summary

### PART 1

#### Sec. 101 – Amends RCW 19.27.097 (State Building Code Act)

**Subsection (1)(b)** applies in WRIAs with post-2001 water management rules that explicitly regulate permit-exempt wells. In the following WRIAs, evidence of an adequate water supply must be consistent with specific applicable requirements contained in each water management rule:

WRIA 5 (Stilliguamish)	Skagit Snohomish
WRIA 17 (Quilcene-Snow)	Jefferson Clallam
WRIA 18 (Elwha-Dungeness)	Jefferson Clallam
WRIA 27 (Lewis)	Cowlitz Clark Skamania
WRIA 28 (Salmon-Washougal)	Clark Skamania
WRIA 32 (Walla Walla)	Columbia Walla Walla
WRIA 45 (Wenatchee)	Douglas Grant
WRIA 46 (Entiat)	Chelan
WRIA 48 (Methow)	Okanogan
WRIA 57 (Middle Spokane)	Spokane Pend Oreille

**Subsection (1)(c)** applies in WRIAs with pre-2001 water management rules that do not explicitly regulate permit-exempt wells, and where initiating governments have adopted watershed plans under 90.82 RCW, the Watershed Planning Act. In the following WRIAs, evidence of water supply must be consistent with section 202 of the Act:

WRIA 1 (Nooksack)	Skagit Whatcom
WRIA 11(Nisqually)	Lewis Pierce Thurston

WRIA 22 (Lower Chehalis)	Grays Harbor Jefferson Mason Pacific Thurston
WRIA 23 (Upper Chehalis)	Grays Harbor Pacific Thurston Cowlitz Lewis
WRIA 49 (Okanogan)	Okanogan
WRIA 55 (Little Spokane)	Spokane Stevens Pend Oreille
WRIA 59 (Colville)	Stevens Pend Oreille

**Subsection (1)(d)** applies in WRIAs with pre-2001 water management rules that do not explicitly regulate permit-exempt wells, and where initiating governments have not adopted watershed plans under 90.82 RCW, the Watershed Planning Act. In the following WRIAs, evidence of water supply must be consistent with section 203 of the Act:

WRIA 7 (Snohomish)	Snohomish King
WRIA 8 (Cedar-Sammamish)	Snohomish King
WRIA 9 (Duwamish-Green)	King
WRIA 10 (Puyallup-White)	King Pierce
WRIA 12 (Chambers-Clover)	Pierce
WRIA 13 (Deschutes)	Lewis Thurston
WRIA 14 (Kennedy-Goldsborough)	Mason Thurston
WRIA 15 (Kitsap)	King Kitsap Mason Pierce

**Subsection (1)(e)** applies in WRIAs where surface water rights are subject to the Ecology v. Acquavella water right adjudication. In the following WRIAs, Ecology may impose additional requirements to satisfy adjudicated water rights: Subsection (1)(f) applies in WRIAs where Ecology’s 2006 amendment to the Skagit Water Management Rule in Swinomish Tribe v. Ecology (2013). ESSB 6091 does not apply in the following watersheds:

WRIA 37 (Lower Yakima)	Yakima Klickitat Benton
WRIA 38 (Naches)	Yakima Kittitas
WRIA 39 (Upper Yakima)	Yakima Kittitas

**Subsection (1)(f)** applies in WRIAs where Ecology’s 2006 amendment to the Skagit Water Management Rule in Swinomish Tribe v. Ecology (2013). ESSB 6091 does not apply in the following watersheds:

WRIA 3 (Lower Skagit-Samish)	Skagit Snohomish Whatcom
WRIA 4 (Upper Skagit)	Skagit Snohomish Whatcom

**Subsection (1)(g)** applies in WRIAs where Ecology has not adopted a water management rule. These are listed in Appendix A. In these WRIAs, a building permit applicant may satisfy legal and physical water availability evidentiary requirements by submitting a water well report under 18.104 RCW, without demonstrating legal availability of water.

**Subsection (h)** contains definitions, consultation requirements for non-GMA counties, and an exemption from the Act for buildings that don’t need potable water. Subsection (h)(5) deems a permit-exempt groundwater use associated with a well constructed before the effective date of the Act to constitute evidence of an adequate water supply for purposes of the State Building Code Act.

**Sec. 102 – New section in 36.70A RCW (Growth Management Act)**

Authorizes Counties to rely on Ecology water management rules for purposes of GMA compliance relating to water resources. Counties and cities must ensure, when making decisions under RCW 19.27.097 (building permits) and RCW 58.17.110 (subdivisions) that new water uses are

consistent with RCW 90.44.050 (groundwater permit exemption) and any applicable water management rules.

### **Sec. 103 – New section in 36.70 RCW**

Counties and cities must ensure, when making decisions under RCW 19.27.097 (building permits) and RCW 58.17.110 (subdivisions) that new water uses are consistent with RCW 90.44.050 (groundwater permit exemption) and any applicable water management rules.

### **Sec. 104 – Amends RCW 58.17**

to declare that compliance with RCW 90.44.050 and applicable Ecology rules satisfies water availability requirements in the Subdivision Act.

## **PART 2**

### **Sec. 201 – New section**

Includes definitions applicable to Part 2 of ESSB 6091.

**Subsection (2)** requires Ecology to work with initiating governments and planning units to review existing watershed plans to –

- Identify potential impacts of exempt well use
- Identify evidence-based conservation measures
- Identify projects to improve watershed health

**Subsection (3)** requires the lead agency to invite a representative of each federally-recognized Indian tribe that has a usual and accustomed harvest area within a WRIA to participate as part of the planning unit.

**Subsection (4)(a)** requires initiating governments to update watershed plans to include recommendations for projects and actions that measure, protect and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids. Projects must be specifically designed to enhance streamflows and not cause negative impacts to ecological functions or critical habitat.

**Subsection (4)(b)** requires a watershed planning unit to include in a watershed plan update, at a minimum, those actions necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. Highest priority recommendations must include replacing consumptive water quantities during the same time as the impact and in the same watershed (in place, in time). Lower priority projects include those in a different watershed or that only offset consumptive use during critical flow periods ("critical flow period" not defined in ESSB 6091 or

elsewhere in the water code). Projects that do not offset consumptive water uses must be in addition to actions to offset consumptive uses.

**Subsection (4)(c)** requires Ecology to determine, after accounting for 20-year growth projections, that actions identified in a watershed plan will result in a net ecological benefit to instream resources.

**Subsection (4)(d)** allows a planning unit to include the following elements in a watershed plan update:

- Recommendations to modify fees
- Standards for reduced water quantities
- Specific conservation requirements

**Subsection (4)(e)** prohibits cities and counties from modifying fees or allowable water quantities until authorized by Ecology rulemaking.

**Subsection (5)** includes interim measures until initiating governments approve a watershed plan update and Ecology adopts a water management rule update. Subsection (5) requires cities and counties to –

- Record applicable use restrictions on property title
- Collect fees from permit applicants
- Report annually to Ecology on the number of building permits issued and subdivisions approved that rely on permit-exempt groundwater withdrawals
- Annually transmit to Ecology \$350 of each fee collected from a permit applicant.

**Subsection (5)** also includes the following provisions applicable to permit applicants:

- Payment of a \$500 fee
- Approval for a permit-exempt water withdrawal, for domestic use only, with a maximum annual average withdrawal of 3,000 gpd per connection

**Subsection (6)** authorizes Ecology to rely on watershed plan updates to authorize new permit-exempt groundwater withdrawals in updated watershed management rules, and on projects identified in the updated watershed plan to offset consumptive use impacts. Ecology may include updates to fees based on the planning unit's cost estimates to offset consumptive use impacts.

**Subsection (7)** establishes deadlines for Ecology to initiate and, in certain WRIAs, to complete rulemaking, as follows:

In the following WRIAs, Ecology must initiate and, by August 1, 2020, complete rulemaking, if the initiating governments do not adopt an updated watershed plan by February 1, 2019:

- WRIA 1 (Nooksack)
- WRIA 11 (Nisqually)

In the following WRIAs, Ecology must initiate rulemaking if the initiating governments do not adopt updated watershed plans by February 1, 2021:

- WRIA 22 (Lower Chehalis)
- WRIA 23 (Upper Chehalis)
- WRIA 49 (Okanogan)
- WRIA 55 (Little Spokane)
- WRIA 59 (Colville)

**Subsection (8)** limits the applicability of section 202 to new permit-exempt domestic uses. The subsection explicitly disclaims the applicability of section 202 to other permit-exempt uses.

### **Sec. 203 – New section**

**Subsection (1)** subordinates Ecology water management rules by authorizing new permit-exempt groundwater uses that otherwise conflict with closures or impair instream flows, provided new water uses comply with section 203.

**Subsection (2)(a)** requires Ecology to establish watershed restoration and enhancement committees in the following WRIAs (where Ecology has adopted instream flow rules that do not explicitly regulate permit-exempt wells, and where initiating governments did not complete watershed plans under 90.82 RCW):

- WRIA 7 (Snohomish)
- WRIA 8 (Cedar-Sammamish)
- WRIA 9 (Duwamish-Green)
- WRIA 10 (Puyallup-White)
- WRIA 12 (Chambers-Clover)
- WRIA 13 (Deschutes)
- WRIA 14 (Kennedy-Goldsborough)
- WRIA 15 (Kitsap)

**Subsection (2)(b)** directs Ecology to chair the Watershed Restoration and Enhancement Committee and to invite representatives the following entities to participate:

- Each Indian tribe with a reservation within WRIA2 (Indian Reservations within each WRIA, see Appendix B)
- Each Indian tribe with a usual and accustomed harvest area within the WRIA
- WDFW
- Each County in the WRIA
- Each City in the WRIA

- The largest irrigation district in the WRIA
- Largest publicly-owned water purveyor in the WRIA that is not a municipality
- Local organization representing the construction industry
- Local organization representing environmental interests
- Local organization representing agricultural interests

**Subsection (3)** requires Ecology to prepare and adopt a Watershed Restoration and Enhancement Plan for each WRIA listed in Section 203 by June 30, 2021, in collaboration with the Watershed Restoration and Enhancement Committee. All members of the Committee must approve the plan prior to adoption.

**Subsection (4)(a)** includes interim measures that apply in a WRIA until Ecology approves a watershed restoration and enhancement plan and adopts an updated water management rule. Subsection (4)(a) requires cities and counties to –

- Record applicable use restrictions on property title
- Collect fees from permit applicants
- Report annually to Ecology on the number of building permits issued and subdivisions approved that rely on permit-exempt groundwater withdrawals
- Annually transmit to Ecology \$350 of each fee collected from a permit applicant

**Subsection 4(a)** also includes the following provisions applicable to permit applicants:

- Payment of a \$500 fee
- Approval for a permit-exempt water withdrawal, for domestic use only, with a maximum annual average withdrawal of 950 gpd per connection
- Manage stormwater runoff to maximize infiltration, including using low-impact development (LID) techniques

**Subsection (4)(b)** allows Ecology, in a declared drought, to limit new permit-exempt groundwater withdrawals to 350 gpd for indoor use only.

**Subsection (5)** authorizes Ecology to rely on a Watershed Restoration and Enhancement Plan to authorize new permit-exempt groundwater withdrawals in updated watershed management rules, and on projects identified in the updated watershed restoration and enhancement plan to offset consumptive use impacts. Ecology may include updates to fees based on the watershed restoration and enhancement committee's cost estimates to offset consumptive use impacts.

**Subsection (6)** limits the applicability of section 203 to new permit-exempt domestic uses. The subsection explicitly disclaims the applicability of section 203 to other permit-exempt uses.

#### **Sec. 204 – New section**

Directs Ecology to establish two pilot projects to determine feasibility of measuring all new groundwater withdrawals using water meters, in the following areas:

- Dungeness Basin
- Kittitas County water bank program

#### **Sec. 205 – New section**

Directs Ecology to submit reports to the Legislature by December 31, 2020, and December 31, 2027, on the following:

- Progress in completing watershed plans under section 202 and watershed restoration and enhancement plans under section 203
- Assessment of streamflow restoration and enhancement projects
- Number of new withdrawals in areas covered under sections 202 and 203
- Description of projected costs and anticipated streamflow, water supply and watershed health benefits for potential or planned projects.

#### **Sec. 206 – New section**

Establishes a watershed restoration and enhancement account for fee revenues collected under sections 202 and 203. All fee revenues must be used exclusively within the WRIA where the fee originated.

#### **Sec. 207 – New section**

Establishes a watershed restoration and enhancement taxable bond account for direct legislative appropriations, to be used to fund projects using taxable bonds.

#### **Sec. 208 – New section**

Establishes a watershed restoration and enhancement bond account for direct legislative appropriations, to be used to fund projects using tax exempt bonds.

### **PART 3**

#### **Sec. 301 – New section**

Establishes a 19-member Groundwater Mitigation Task Force, with membership as follows:

- Two legislators from each caucus of each chamber (8 total)

- One representative each from the departments of Ecology, Fish and Wildlife, and Agriculture (3 total)
- One representative representing each of the following interest groups (4 total):
  - An organization representing the farming industry
  - An organization representing Washington cities
  - An organization representing municipal water purveyors
- An organization representing business interests
- Two representatives from environmental advocacy organizations (2 total)
- Two representatives from federally-recognized Indian tribes, one each recommended by the
- Columbia River Intertribal Fish Commission and the Northwest Indian Fish Commission (2 total)
- Two legislators will co-chair the Task Force, one from the majority caucus of one legislative chamber, and the other from the minority caucus of the other legislative chamber

**Subsections (8)-(14)** authorize five pilot projects, sponsored by the following entities:

- City of Port Orchard (Kitsap County)
- City of Sumner (Pierce County)
- City of Yelm (Thurston County)
- Spanaway Water Company (Pierce County)
- Bertram Irrigation District (Whatcom County)

**Sec. 302 – Amends RCW 90.03.247 (State Water Code)**

Authorizes Ecology to require mitigation for groundwater mitigation pilot projects.

**Sec. 303 – Amends RCW 90.03.290**

Exempts pilot projects from Ecology investigation and publication of its Report of Examination (i.e., four-part test).

**Sec. 304 – New section**

Expresses the Legislature’s intent to appropriate \$300 million over 15 years to restore and enhance stream flows.

**Sec. 305 – New section**

Directs the Code Reviser to codify sections 201 through 208 and 301 as a new chapter in Title 90 RCW (State Water Code).

**Sec. 306 – New section**

Includes a Severance Clause, which preserves unaffected sections of the Act if any other provision is invalidated.

**Sec. 307 – New section**

Includes an Emergency Clause, which declares that the Act takes effect immediately upon enactment.

## APPENDIX A-- WRIAs without Ecology Water Management Rules

WRIA 2 (San Juan)	San Juan
WRIA 6 (Island)	Island
WRIA 16 (Skokomish- Dosewallips)	Jefferson Mason
WRIA 19 (Lyre-Hoko)	Clallam
WRIA 20 (Sol Duc-Hoh)	Clallam Jefferson
WRIA 21 (Queeets Quinault)	Grays Harbor Jefferson Mason
WRIA 24 (Willapa)	Cowlitz Grays Harbor Lewis Pacific Thurston Wahkiakum
WRIA 25 (Grays-Elochoman)	Grays Harbor Lewis Pacific Wahkiakum
WRIA 26 (Cowlitz)	Cowlitz Lewis Klickitat Pierce Skamania
WRIA 29 (Wind-White Salmon)	Skamania Klickitat Yakima
WRIA 30 (Klickitat)	Klickitat Yakima
WRIA 31 (Rock-Glade)	Klickitat Benton Yakima
WRIA 33 (Lower Snake)	Franklin Columbia Walla Walla
WRIA 34 (Palouse)	Spokane Lincoln Adams Whitman Franklin
WRIA 35 (Middle Snake)	Whitman Columbia Garfield Asotin

WRIA 36 (Esquatzel Coulee)	Adams Franklin Grant
WRIA 40 (Alkali- Squilchuck)	Chelan Kittitas Yakima Benton
WRIA 41 (Lower Crab)	Grant Adams Lincoln Douglas
WRIA 42 (Grand Coulee)	Grant Lincoln Douglas
WRIA 43 (Upper Crab-Wilson)	Spokane Lincoln Grant Adams
WRIA 44 (Moses Coulee)	Spokane Lincoln Grant Adams
WRIA 47 (Chelan)	Chelan Okanogan
WRIA 50 (Foster)	Douglas Okanogan
WRIA 51 (Nespelem)	Ferry Okanogan
WRIA 52 (Sanpoil)	Ferry Okanogan
WRIA 53 (Lower Lake Roosevelt)	Ferry Lincoln Okanogan
WRIA 54 (Lower Spokane)	Spokane Lincoln Stevens
WRIA 56 (Hangman)	Spokane Whitman
WRIA 58 (Middle Lake Roosevelt)	Stevens Ferry
WRIA 60 (Kettle)	Okanogan Ferry Stevens
WRIA 61 (Upper Lake Roosevelt)	Stevens Pend Oreille
WRIA 62 (Pend Oreille)	Stevens Pend Oreille

## APPENDIX B-- Indian Reservations by WRIA

WRIA 1 (Nooksack)	Lummi Reservation Nooksack Reservation
WRIA 3 (Lower Skagit/Samish)	Upper Skagit Reservation Swinomish Reservation
WRIA 4 (Upper Skagit)	Sauk-Suiattle Reservation
WRIA 5 (Stilliguamish)	Tulalip Reservation Stillaguamish Reservation
WRIA 6 (Island)	Tulalip Reservation Swinomish Reservation
WRIA 7 (Snohomish)	Snoqualmie Reservation Tulalip Reservation
WRIA 9 (Duwamish-Green)	Muckleshoot Reservation
WRIA 10 (Puyallup White)	Puyallup Reservation Muckleshoot Reservation
WRIA 11 (Nisqually)	Nisqually Reservation
WRIA 14 (Kennedy-Goldsborough)	Squaxin Island Reservation
WRIA 15 (Kitsap)	Port Madison Reservation Port Gamble Reservation
WRIA 16 (Skokomish-Dosewallips)	Skokomish Reservation
WRIA 17 (Quilcene-Snow)	Jamestown S'Klallam Reservation
WRIA 18 (Elwha-Dungeness)	Lower Elwha Reservation
WRIA 19 ( Lyre-Hoko)	Makah Indian Reservation Lower Elwha Reservation
WRIA 20 (Sol Duc-Hoh)	Makah Indian Reservation Hoh Indian Reservation Quileute Reservation
WRIA 21 (Queets- Quinault)	Quinault Reservation
WRIA 23 (Upper Chehalis)	Chehalis Reservation
WRIA 24 (Willapa)	Shoalwater Bay Indian Reservation
WRIA 26 (Cowlitz)	Yakima Nation Reservation
WRIA 29 (Wind-White Salmon)	Yakima Nation Reservation
WRIA 30 (Klickitat)	Yakima Nation Reservation
WRIA 31 (Rock-Glade)	Yakima Nation Reservation
WRIA 37 (Lower Yakima)	Yakima Nation Reservation
WRIA 38 (Naches)	Yakima Nation Reservation
WRIA 42 (Grand Coulee)	Colville Reservation
WRIA 49 (Okanogan)	Colville Reservation
WRIA 50 (Foster)	Colville Reservation
WRIA 51 (Nespelem)	Colville Reservation
WRIA 52 (Sanpoil)	Colville Reservation
WRIA 53 (Lower Lake Roosevelt)	Colville Reservation

WRIA 54 (Lower Spokane)	Kalispel Reservation Spokane Reservation Colville Reservation
WRIA 58 (Middle Lake Roosevelt)	Spokane Reservation Colville Reservation
WRIA 62 (Pend Oreille)	Kalispel Reservation