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**SUBSTITUTE SENATE BILL 5965**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Warnick, Hatfield, Pearson, Hobbs, and Bailey)

1       AN ACT Relating to evaluating mitigation options for impacts to  
2 base flows and minimum instream flows; creating new sections; and  
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION.   **Sec. 1.** The legislature finds that rural economic  
6 development is threatened when access to uninterrupted water  
7 supplies is restricted as a result of rules that establish base flows  
8 and minimum instream flows. The problem is acute when state agencies  
9 fail to provide reasonable mitigation options for landowners who rely  
10 on permit-exempt groundwater withdrawals as a source of water. The  
11 legislature recognizes that inhibiting economic opportunities in  
12 rural areas is not an acceptable policy for the people of Washington  
13 and that options may exist whereby a broader range of mitigation  
14 choices could be made available to landowners whose ability to access  
15 water has been curtailed by rules that establish base flows and  
16 minimum instream flows.

17       NEW SECTION.   **Sec. 2.** (1) The department of ecology must produce  
18 a report evaluating options for mitigating the effects of permit-  
19 exempt groundwater withdrawals on base flows and minimum instream  
20 flows. The department must consult with the office of the attorney

1 general when preparing the report. The department must make available  
2 a draft of the report on its web site for at least twenty-one days  
3 for public review prior to the completion of the report to allow  
4 sufficient opportunity to consider input that may be received. The  
5 report must include:

6 (a) An examination of scientific methodologies for establishing  
7 base flows and minimum instream flows, including a discussion of  
8 methodologies regularly used by the department of ecology;

9 (b) An analysis of whether requiring mitigation for new permit-  
10 exempt groundwater withdrawals would in fact result in meeting base  
11 flows or minimum instream flows;

12 (c) A description of mitigation techniques the department of  
13 ecology has employed in the last ten years to mitigate the impacts of  
14 permit-exempt groundwater withdrawals on base flows and minimum  
15 instream flows, including the location, cost, and legal authority for  
16 each type of mitigation technique;

17 (d) A discussion of out-of-kind mitigation techniques the  
18 department of ecology has employed in the last ten years, or may seek  
19 to employ, to mitigate the impacts of permit-exempt groundwater  
20 withdrawals on base flows and minimum instream flows, including the  
21 location, cost, and legal authority for each type of out-of-kind  
22 mitigation technique. For the purposes of this section, out-of-kind  
23 mitigation techniques are mitigation techniques that seek to manage  
24 broader hydrologic effects that may be associated with rural  
25 development rather than focusing on regulating the consumptive impact  
26 of new groundwater withdrawals. Out-of-kind mitigation techniques may  
27 include, but are not limited to, land development practices, habitat  
28 restoration, and best management practices;

29 (e) A survey of in-kind streamflow enhancement strategies, other  
30 than regulation of permit-exempt groundwater withdrawals, that would  
31 improve streamflow levels in a cost-effective manner;

32 (f) An assessment of the effectiveness of each type of mitigation  
33 technique, including out-of-kind mitigation techniques, that may be  
34 available to the department of ecology to mitigate the impacts of  
35 permit-exempt groundwater withdrawals on base flows and minimum  
36 instream flows;

37 (g) An evaluation of all mitigation options that may be available  
38 for permit-exempt groundwater withdrawals in the areas covered under  
39 the instream resources protection program for the lower and upper  
40 Skagit river basin, water resource inventory areas 3 and 4, and a

1 discussion of the advantages and disadvantages of employing each type  
2 of mitigation technique in those areas; and

3 (h) Recommendations for legislative action to ensure reasonable  
4 mitigation options, including out-of-kind mitigation techniques, will  
5 be available to landowners who are required to mitigate the impacts  
6 of permit-exempt groundwater withdrawals on base flows and minimum  
7 instream flows.

8 (2) By November 1, 2015, the department of ecology must submit  
9 the final report to the appropriate committees of the legislature  
10 having oversight over water resource issues.

11 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of  
13 the state government and its existing public institutions, and takes  
14 effect immediately.

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