
SENATE BILL 6504

State of Washington

53rd Legislature

1994 Regular Session

By Senators M. Rasmussen, Newhouse, Loveland, Morton, Snyder, Haugen and Winsley

Read first time 01/25/94. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to procedures regarding the enforcement of water
2 rights; amending RCW 90.03.010, 43.21A.064, 43.27A.090, 43.27A.190, and
3 43.21B.110; and adding a new section to chapter 43.21B RCW.

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

5 **Sec. 1.** RCW 90.03.010 and 1917 c 117 s 1 are each amended to read
6 as follows:

7 The power of the state to regulate and control the waters within
8 the state shall be exercised as hereinafter in this chapter provided
9 and as provided in the water administration act of 1994, chapter ...,
10 Laws of 1994 (this act). Subject to existing rights all waters within
11 the state belong to the public, and any right thereto, or to the use
12 thereof, shall be hereafter acquired only by appropriation for a
13 beneficial use and in the manner provided and not otherwise; and, as
14 between appropriations, the first in time shall be the first in right.
15 Nothing contained in this chapter shall be construed to lessen,
16 enlarge, or modify the existing rights of any riparian owner, or any
17 existing right acquired by appropriation, or otherwise. They shall,
18 however, be subject to condemnation as provided in RCW 90.03.040, and

1 the amount and priority thereof may be determined by the procedure set
2 out in RCW 90.03.110 through 90.03.240.

3 **Sec. 2.** RCW 43.21A.064 and 1977 c 75 s 46 are each amended to read
4 as follows:

5 The director of the department of ecology shall have the following
6 powers and duties:

7 (1) The supervision of public waters within the state and their
8 appropriation, diversion, and use, and of the various officers
9 connected therewith;

10 (2) Insofar as may be necessary to assure safety to life or
11 property, he or she shall inspect the construction of all dams, canals,
12 ditches, irrigation systems, hydraulic power plants, and all other
13 works, systems, and plants pertaining to the use of water, and he or
14 she may require such necessary changes in the construction or
15 maintenance of said works, to be made from time to time, as will
16 reasonably secure safety to life and property;

17 (3) He or she shall regulate and control the diversion and
18 withdrawal of water in accordance with the rights thereto whether or
19 not the rights have been adjudicated conclusively pursuant to a
20 determination of water rights authorized by RCW 90.03.110 through
21 90.03.245, but only as authorized under the water administration act of
22 1994, chapter ..., Laws of 1994 (this act);

23 (4) He or she shall determine the discharge of streams and springs
24 and other sources of water supply, and the capacities of lakes and of
25 reservoirs whose waters are being or may be utilized for beneficial
26 purposes;

27 (5) He or she shall keep such records as may be necessary for the
28 recording of the financial transactions and statistical data thereof,
29 and shall procure all necessary documents, forms, and blanks. He or
30 she shall keep a seal of the office, and all certificates by him or her
31 covering any of his or her acts or the acts of his or her office, or
32 the records and files of his or her office, under such seal, shall be
33 taken as evidence thereof in all courts;

34 (6) He or she shall render when required by the governor, a full
35 written report of the work of his or her office with such
36 recommendations for legislation as he or she may deem advisable for the
37 better control and development of the water resources of the state;

38 (7) The director and duly authorized deputies may administer oaths;

1 (8) He or she shall establish and (~~promulgate~~) adopt rules
2 governing the administration of chapter 90.03 RCW;

3 (9) He or she shall perform such other duties as may be prescribed
4 by law.

5 **Sec. 3.** RCW 43.27A.090 and 1988 c 127 s 25 are each amended to
6 read as follows:

7 The department shall be empowered as follows:

8 (1) To represent the state at, and fully participate in, the
9 activities of any basin or regional commission, interagency committee,
10 or any other joint interstate or federal-state agency, committee or
11 commission, or publicly financed entity engaged in the planning,
12 development, administration, management, conservation or preservation
13 of the water resources of the state.

14 (2) To prepare the views and recommendations of the state of
15 Washington on any project, plan or program relating to the planning,
16 development, administration, management, conservation and preservation
17 of any waters located in or affecting the state of Washington,
18 including any federal permit or license proposal, and appear on behalf
19 of, and present views and recommendations of the state at any
20 proceeding, negotiation or hearing conducted by the federal government,
21 interstate agency, state or other agency.

22 (3) To cooperate with, assist, advise and coordinate plans with the
23 federal government and its officers and agencies, and serve as a state
24 liaison agency with the federal government in matters relating to the
25 use, conservation, preservation, quality, disposal or control of water
26 and activities related thereto.

27 (4) To cooperate with appropriate agencies of the federal
28 government and/or agencies of other states, to enter into contracts,
29 and to make appropriate contributions to federal or interstate projects
30 and programs and governmental bodies to carry out the provisions of
31 this chapter.

32 (5) To apply for, accept, administer and expend grants, gifts and
33 loans from the federal government or any other entity to carry out the
34 purposes of this chapter and make contracts and do such other acts as
35 are necessary insofar as they are not inconsistent with other
36 provisions hereof.

37 (6) To develop and maintain a coordinated and comprehensive state
38 water and water resources related development plan, and adopt, with

1 regard to such plan, such policies as are necessary to insure that the
2 waters of the state are used, conserved and preserved for the best
3 interest of the state. There shall be included in the state plan a
4 description of developmental objectives and a statement of the
5 recommended means of accomplishing these objectives. To the extent the
6 director deems desirable, the plan shall integrate into the state plan,
7 the plans, programs, reports, research and studies of other state
8 agencies.

9 (7) To assemble and correlate information relating to water supply,
10 power development, irrigation, watersheds, water use, future
11 possibilities of water use and prospective demands for all purposes
12 served through or affected by water resources development.

13 (8) To assemble and correlate state, local and federal laws,
14 regulations, plans, programs and policies affecting the beneficial use,
15 disposal, pollution, control or conservation of water, river basin
16 development, flood prevention, parks, reservations, forests, wildlife
17 refuges, drainage and sanitary systems, waste disposal, water works,
18 watershed protection and development, soil conservation, power
19 facilities and area and municipal water supply needs, and recommend
20 suitable legislation or other action to the legislature, the congress
21 of the United States, or any city, municipality, or to responsible
22 state, local or federal executive departments or agencies.

23 (9) To cooperate with federal, state, regional, interstate and
24 local public and private agencies in the making of plans for drainage,
25 flood control, use, conservation, allocation and distribution of
26 existing water supplies and the development of new water resource
27 projects.

28 (10) To encourage, assist and advise regional, and city and
29 municipal agencies, officials or bodies responsible for planning in
30 relation to water aspects of their programs, and coordinate local water
31 resources activities, programs, and plans.

32 (11) To promulgate such rules and regulations as are necessary to
33 carry out the purposes of this chapter.

34 (12) To hold public hearings, and make such investigations, studies
35 and surveys as are necessary to carry out the purposes of the chapter.

36 (13) To subpoena witnesses, compel their attendance, administer
37 oaths, take the testimony of any person under oath and require the
38 production of any books or papers when the department deems such
39 measures necessary in the exercise of its rule-making power or in

1 determining whether or not any license, certificate, or permit shall be
2 granted or extended.

3 (14) To protect and regulate uses of water authorized or recognized
4 by statute, consistent with chapter ..., Laws of 1994 (this act).

5 **Sec. 4.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
6 read as follows:

7 Notwithstanding and in addition to any other powers granted to the
8 department of ecology, whenever it appears to the department that a
9 person is violating or is about to violate any of the provisions of the
10 following:

11 (1) Chapter 90.03 RCW; or

12 (2) Chapter 90.44 RCW; or

13 (3) Chapter 86.16 RCW; or

14 (4) Chapter 43.37 RCW; or

15 (5) Chapter 43.27A RCW; or

16 (6) Any other law relating to water resources administered by the
17 department; or

18 (7) A rule or regulation adopted, or a directive or order issued by
19 the department relating to subsections (1) through (6) of this section;
20 the department may cause a written regulatory order to be served upon
21 said person either personally, or by registered or certified mail
22 delivered to addressee only with return receipt requested and
23 acknowledged by him or her. The order shall be issued only when an
24 existing right to the use of water is immediately threatened to be
25 impaired by the violation that is the subject of the order, and only
26 after the department (a) has given said person adequate notice of, and
27 time to remedy, the alleged violation that will be the subject of the
28 order, and (b) has attempted mediation of the issues that give rise to
29 the potential order. The order shall specify the provision of the
30 statute, rule, regulation, directive or order alleged to be or about to
31 be violated, and the facts upon which the conclusion of violating or
32 potential violation is based, and shall order the act constituting the
33 violation or the potential violation to cease and desist or, in
34 appropriate cases, shall order necessary corrective action to be taken
35 with regard to such acts within a specific and reasonable time. The
36 regulation of a headgate or controlling works as provided in RCW
37 90.03.070, by a watermaster, stream patrolman, or other person so
38 authorized by the department shall constitute a regulatory order within

1 the meaning of this section. A regulatory order issued hereunder shall
2 become effective immediately upon receipt by the person to whom the
3 order is directed, except for orders described in section 6 of this
4 act, and regulations under RCW 90.03.070 which shall become effective
5 when a written notice is attached as provided therein. Any person
6 aggrieved by such order may appeal the order pursuant to RCW
7 43.21B.310. No regulatory order issued under this section shall be
8 deemed or interpreted to be an adjudication, general or otherwise, of
9 water rights, nor shall it be considered as evidence of the validity or
10 invalidity of a water right in any general adjudication brought under
11 the terms of RCW 90.03.110 through 90.03.245.

12 **Sec. 5.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
13 read as follows:

14 (1) The hearings board shall only have jurisdiction to hear and
15 decide appeals from the following decisions of the department, the
16 director, the administrator of the office of marine safety, and the air
17 pollution control boards or authorities as established pursuant to
18 chapter 70.94 RCW, or local health departments:

19 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
20 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
21 90.56.330.

22 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
23 (~~(43.27A.190)~~) 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
24 90.14.130, and 90.48.120.

25 (c) The issuance, modification, or termination of any permit,
26 certificate, or license by the department or any air authority in the
27 exercise of its jurisdiction, including the issuance or termination of
28 a waste disposal permit, the denial of an application for a waste
29 disposal permit, or the modification of the conditions or the terms of
30 a waste disposal permit.

31 (d) Decisions of local health departments regarding the grant or
32 denial of solid waste permits pursuant to chapter 70.95 RCW.

33 (e) Decisions of local health departments regarding the issuance
34 and enforcement of permits to use or dispose of biosolids under RCW
35 70.95J.080.

36 (f) Any other decision by the department, the administrator of the
37 office of marine safety, or an air authority which pursuant to law must
38 be decided as an adjudicative proceeding under chapter 34.05 RCW.

1 (2) The following hearings shall not be conducted by the hearings
2 board:

3 (a) Hearings required by law to be conducted by the shorelines
4 hearings board pursuant to chapter 90.58 RCW.

5 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
6 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

7 (c) Proceedings by the department relating to general adjudications
8 of water rights pursuant to chapter 90.03 or 90.44 RCW.

9 (d) Hearings conducted by the department to adopt, modify, or
10 repeal rules.

11 (3) Review of rules and regulations adopted by the hearings board
12 shall be subject to review in accordance with the provisions of the
13 Administrative Procedure Act, chapter 34.05 RCW.

14 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.21B RCW
15 to read as follows:

16 An order issued by the department of ecology pursuant to RCW
17 43.27A.190 shall be stayed immediately on its issuance for a period of
18 twenty-one days, and be appealable by an aggrieved party to the
19 superior court for the county in which lies the property that is the
20 subject of the order. No later than the end of the twenty-one day
21 period, the superior court shall enter an order sustaining, reversing,
22 or modifying the department order. A party directly affected by the
23 order shall be given speedy notice of the order's issuance. The
24 superior court order may be appealed to an appellate court, and the
25 record for such an appeal shall be that record made before the superior
26 court.

27 NEW SECTION. **Sec. 7.** This act may be known and cited as the water
28 administration act of 1994.

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