
SUBSTITUTE SENATE BILL 6334

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Rasmussen, Swecker, Haugen, Fraser, Morton and Sutherland)

Read first time 02/02/96.

1 AN ACT Relating to the processing of water rights; amending RCW
2 90.03.340, 90.03.270, 90.03.280, 90.03.290, 90.03.320, 90.03.260,
3 90.44.060, and 90.03.250; adding new sections to chapter 43.21B RCW;
4 and adding new sections to chapter 90.03 RCW.

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

6 **Sec. 1.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to read
7 as follows:

8 After January 1, 1997, the priority date of the right acquired by
9 appropriation ((shall relate back to)) is the date ((of filing of)) the
10 ((original)) completed application form for the right is filed with the
11 department. For the purposes of this section and RCW 90.03.270, a
12 completed application form is one that contains all of the information
13 requested on the form and is accompanied by the application fee.

14 **Sec. 2.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to read
15 as follows:

16 Upon receipt of ((an)) a completed water right application form it
17 shall be the duty of the department to ((make an endorsement thereon of
18 the)) date ((of its receipt)), stamp, and to keep a record of ((same))

1 it. If ((upon examination, the application is found to be defective,))
2 an application form is filed with the department but the information
3 requested on the application form is not complete or the form is not
4 accompanied by the proper application fee, the form and any application
5 fee filed with it shall be returned to the applicant ((for correction
6 or completion,)) and the date and the reasons for the return thereof
7 shall be ((endorsed thereon and made a record in his office. No
8 application shall lose its priority of filing on account of such
9 defects, provided acceptable maps, drawings and such data as is
10 required by the department shall be filed with the department within
11 such reasonable time as it shall require)) noted in the department's
12 records and in a letter returning the form. The department may not
13 require an applicant to provide information in support of an
14 application for a water right permit that is not necessary for the
15 department's investigations, determinations, or findings regarding that
16 particular application.

17 **Sec. 3.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read
18 as follows:

19 Upon receipt of a ((proper)) completed application, the department
20 shall instruct the applicant to publish notice ((thereof)) in a form
21 and within a time prescribed by the department in a newspaper of
22 general circulation published in the county or counties in which the
23 storage, diversion or withdrawal, and use is to be made, and in such
24 other newspapers as the department may direct, once a week for two
25 consecutive weeks. The notice shall include information pertinent to
26 the proposed appropriation, including the location, the source, the
27 purpose or purposes of use, and the quantity proposed to be diverted or
28 withdrawn. The notice shall state that persons wishing to protest the
29 proposed appropriation must do so in writing to the department within
30 thirty days of the last date of publication of the notice. In order to
31 be considered by the department, a protest must be received by the
32 department within thirty days of the last date of publication of the
33 notice. Upon receipt by the department of an application it shall send
34 notice thereof containing pertinent information to the director of fish
35 and wildlife.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.21B RCW
37 to read as follows:

1 In a proceeding before the pollution control hearings board
2 challenging a decision of the department related to the issuance,
3 conditioning, transfer, amendment, or denial of a water right permit
4 under Title 90 RCW, the burden of proof is on the person filing the
5 appeal.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03 RCW
7 to read as follows:

8 A water right applicant may appeal to the pollution control
9 hearings board a determination by the department regarding the nature
10 and extent of the information needed to make determinations regarding
11 the application for or the processing of a water right permit.

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

14 (1) In any appeals of water-related agency actions over which the
15 hearings board has jurisdiction, the chairman of the hearings board may
16 assign the case to a single member of the hearings board in lieu of the
17 entire board. In such cases, the board member assigned to the case
18 shall have all powers relating to the administration of oaths, issuance
19 of subpoenas, and taking of depositions as are granted to agencies in
20 chapter 34.05 RCW, the administrative procedure act, and shall be
21 subject to all duties imposed upon, and shall have all powers granted
22 to, an agency by those provisions of chapter 34.05 RCW relating to
23 adjudicative proceedings.

24 (2) The environmental hearings office shall by rule determine a
25 procedure for the random selection and rotation of board members for
26 single-member cases, and shall implement this procedure in assigning an
27 appeal of a water-related agency action to a single board member for
28 review.

29 (3) In cases decided under subsection (1) of this section, a
30 decision of the single member shall have the same force and effect as
31 a decision of the full board. A party to an appeal decided by a single
32 board member may, within ten days of a decision, request rehearing en
33 banc. A request for rehearing en banc shall be granted only by
34 agreement of two members of the board. Rehearing en banc is not
35 favored and ordinarily will not be granted except (a) when
36 consideration of the full hearings board is necessary to secure or
37 maintain uniformity of its decisions, or (b) when the proceeding

1 involves a question of exceptional importance. En banc review shall be
2 limited to review of the record.

3 (4) A request for rehearing en banc under subsection (3) of this
4 section is not a prerequisite for seeking judicial review. An order
5 denying rehearing en banc is not subject to reconsideration under RCW
6 34.05.470 or by any court.

7 (5) No request for rehearing en banc may stay the effectiveness of
8 an order.

9 (6) Nothing in this section affects the rights of a party under RCW
10 34.05.470.

11 (7) For purposes of this section, a "water-related agency action"
12 includes (a) a decision to grant or deny a permit or certificate for a
13 right to the beneficial use of water or to amend, change, or transfer
14 such a right; (b) a decision to enforce the conditions of a permit for,
15 or right to, the beneficial use of water or to require any person to
16 discontinue the use of water; and (c) a decision regarding the nature
17 and extent of the information needed to make determinations regarding
18 the application for or processing of a water right permit.

19 **Sec. 7.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
20 as follows:

21 (1) When ~~((an))~~ a completed application complying with the
22 provisions of this chapter and with the rules ~~((and regulations))~~ of
23 the department has been filed, the ~~((same))~~ application shall be placed
24 on record with the department, and it shall be ~~((its))~~ the department's
25 duty to ~~((investigate the application, and))~~ determine what water, if
26 any, is available for appropriation, and find and determine to what
27 beneficial use or uses it can be applied.

28 The department shall investigate the application. The applicant
29 shall provide a completed application form. In addition to providing
30 the information requested on the form, however, the applicant shall
31 also provide such information as may be required for the department's
32 investigation, determinations, and findings regarding the application
33 and may provide additional information. The information provided by
34 the applicant shall satisfy the protocols, which are study plans and
35 criteria, established by the department for obtaining and providing the
36 information. If an applicant provides the information, and satisfies
37 the protocols set by the department for obtaining and providing it, the
38 department shall review the information and may take actions to verify

1 that the information is accurate. The department may not, except to
2 replace inaccurate information, take actions that would require the
3 applicant to obtain major portions of the information anew.

4 (2) With regard to an application:

5 (a) If it is proposed to appropriate water for irrigation purposes,
6 the department shall investigate, determine and find what lands are
7 capable of irrigation by means of water found available for
8 appropriation.

9 (b) If it is proposed to appropriate water for the purpose of power
10 development, the department shall investigate, determine and find
11 whether the proposed development is likely to prove detrimental to the
12 public interest, having in mind the highest feasible use of the waters
13 belonging to the public.

14 (3) If the application does not contain, and the applicant does not
15 promptly furnish sufficient information on which to base such findings,
16 the department may issue a preliminary permit, for a period of not to
17 exceed three years, requiring the applicant to make such surveys,
18 investigations, studies, and progress reports, as in the opinion of the
19 department may be necessary. If the applicant fails to comply with the
20 conditions of the preliminary permit, it and the application or
21 applications on which it is based shall be automatically canceled and
22 the applicant so notified. If the holder of a preliminary permit
23 shall, before its expiration, file with the department a verified
24 report of expenditures made and work done under the preliminary permit,
25 which, in the opinion of the department, establishes the good faith,
26 intent and ability of the applicant to carry on the proposed
27 development, the preliminary permit may, with the approval of the
28 governor, be extended, but not to exceed a maximum period of five years
29 from the date of the issuance of the preliminary permit.

30 (4) The department shall make and file as part of the record in the
31 matter, written findings of fact concerning all things investigated.
32 The department shall make a summary of the record of examination, and
33 the proposed permit if the department proposes to issue the permit,
34 available to the public by any means reasonable, including using the
35 register established under section 14 of this act. The department
36 shall provide a period of at least thirty days for the public to submit
37 comments thereon. The department shall consider the comments received
38 and the entire record, and if it shall find that there is water
39 available for appropriation for a beneficial use, and the appropriation

1 thereof as proposed in the application will not impair existing rights
2 or be detrimental to the public welfare, it shall issue a permit
3 stating the amount of water to which the applicant shall be entitled
4 and the beneficial use or uses to which it may be applied: PROVIDED,
5 That where the water applied for is to be used for irrigation purposes,
6 it shall become appurtenant only to such land as may be reclaimed
7 thereby to the full extent of the soil for agricultural purposes. But
8 where there is no unappropriated water in the proposed source of
9 supply, or where the proposed use conflicts with existing rights, or
10 threatens to prove detrimental to the public interest, having due
11 regard to the highest feasible development of the use of the waters
12 belonging to the public, it shall be duty of the department to reject
13 such application and to refuse to issue the permit asked for. If the
14 permit is refused because of conflict with existing rights and such
15 applicant shall acquire same by purchase or condemnation under RCW
16 90.03.040, the department may thereupon grant such permit. Any
17 application may be approved for a less amount of water than that
18 applied for, if there exists substantial reason therefor, and in any
19 event shall not be approved for more water than can be applied to
20 beneficial use for the purposes named in the application. In
21 determining whether or not a permit shall issue upon any application,
22 it shall be the duty of the department to investigate all facts
23 relevant and material to the application. After the department
24 approves said application in whole or in part and before any permit
25 shall be issued thereon to the applicant, such applicant shall pay the
26 fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a
27 permit is issued by the department upon any application, it shall be
28 its duty to notify the director of fish and wildlife and affected
29 federally recognized Indian tribes of such issuance.

30 **Sec. 8.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to read
31 as follows:

32 (1) Actual construction work shall be commenced on any project for
33 which permit has been granted within such reasonable time as shall be
34 prescribed by the department, and shall thereafter be prosecuted with
35 diligence and completed within the time prescribed by the department.
36 The department, in fixing the time for the commencement of the work, or
37 for the completion thereof and the application of the water to the
38 beneficial use prescribed in the permit, shall take into consideration

1 the cost and magnitude of the project and the engineering and physical
2 features to be encountered, and shall allow such time as shall be
3 reasonable and just under the conditions then existing, having due
4 regard for the public welfare and public interests affected: and, for
5 good cause shown, it shall extend the time or times fixed as aforesaid,
6 and shall grant such further period or periods as may be reasonably
7 necessary, having due regard to the good faith of the applicant and the
8 public interests affected.

9 (2) For the purposes of this section, "good cause" includes but is
10 not limited to the following circumstances that prevent work completion
11 within the prescribed period:

12 (a) Active service in the armed forces of the United States during
13 a military crisis;

14 (b) Nonvoluntary service in the armed forces of the United States;

15 (c) A court order having the effect of stopping the construction
16 work;

17 (d) Delays in securing other permits necessary to proceed with the
18 development;

19 (e) A single transfer in ownership of the property;

20 (f) Implementation of water efficiency measures, including
21 conservation and reclaimed water use;

22 (g) Encountering unanticipated physical impediments to
23 construction; and

24 (h) Encountering generally depressed economic conditions.

25 (3) If the terms of the permit or extension thereof((7)) are not
26 complied with, the department shall give notice by ((registered))
27 certified mail that ((such)) the permit will be canceled unless the
28 ((holders thereof shall)) permittee shows cause within sixty days why
29 the ((same)) permit should not be ((se)) canceled. If cause ((be)) is
30 not shown, ((said)) the permit shall be canceled.

31 **Sec. 9.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to read
32 as follows:

33 ~~((Each application for permit to appropriate water shall set forth~~
34 ~~the name and post office address of the applicant, the source of water~~
35 ~~supply, the nature and amount of the proposed use, the time during~~
36 ~~which water will be required each year, the location and description of~~
37 ~~the proposed ditch, canal, or other work, the time within which the~~
38 ~~completion of the construction and the time for the complete~~

1 application of the water to the proposed use. If for agricultural
2 purposes, it shall give the legal subdivision of the land and the
3 acreage to be irrigated, as near as may be, and the amount of water
4 expressed in acre feet to be supplied per season. If for power
5 purposes, it shall give the nature of the works by means of which the
6 power is to be developed, the head and amount of water to be utilized,
7 and the uses to which the power is to be applied. If for construction
8 of a reservoir, it shall give the height of the dam, the capacity of
9 the reservoir, and the uses to be made of the impounded waters. If for
10 municipal water supply, it shall give the present population to be
11 served, and, as near as may be, the future requirement of the
12 municipality. If for mining purposes, it shall give the nature of the
13 mines to be served and the method of supplying and utilizing the water;
14 also their location by legal subdivisions. All applications shall be
15 accompanied by such maps and drawings, in duplicate, and such other
16 data, as may be required by the department, and such accompanying data
17 shall be considered as a part of the application.)) The department
18 shall adopt rules in accordance with chapter 34.05 RCW by January 1,
19 1997, that specify the contents of completed water right application
20 forms. The rules shall include specific timelines for the department
21 to follow in making a determination as to whether an application is
22 complete and notifying the applicant of its determination. The rules
23 shall also identify the kinds of inaccuracies that render an
24 application incomplete.

25 **Sec. 10.** RCW 90.44.060 and 1987 c 109 s 109 are each amended to
26 read as follows:

27 Applications for permits for appropriation of underground water
28 shall be made in the same form and manner provided in RCW 90.03.250
29 through 90.03.340, as amended, the provisions of which sections are
30 hereby extended to govern and to apply to ground water, or ground water
31 right certificates and to all permits that shall be issued pursuant to
32 such applications, and the rights to the withdrawal of ground water
33 acquired thereby shall be governed by RCW 90.03.250 through 90.03.340,
34 inclusive(~~(: PROVIDED, That each application to withdraw public ground~~
35 ~~water by means of a well or wells shall set forth the following~~
36 ~~additional information: (1) the name and post office address of the~~
37 ~~applicant; (2) the name and post office address of the owner of the~~
38 ~~land on which such well or wells or works will be located; (3) the~~

1 location of the proposed well or wells or other works for the proposed
2 withdrawal; (4) the ground water area, sub-area, or zone from which
3 withdrawal is proposed, provided the department has designated such
4 area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of
5 water proposed to be withdrawn, in gallons a minute and in acre feet a
6 year, or millions of gallons a year; (6) the depth and type of
7 construction proposed for the well or wells or other works: AND
8 ~~PROVIDED FURTHER, That~~). The department shall adopt rules in
9 accordance with chapter 34.05 RCW by January 1, 1997, that specify the
10 contents of completed water right application forms. The rules shall
11 include specific timelines for the department to follow in making a
12 determination as to whether an application is complete and notifying
13 the applicant of its determination. The rules shall also identify the
14 kinds of inaccuracies that render an application incomplete. Any
15 permit issued pursuant to an application for constructing a well or
16 wells to withdraw public ground water may specify an approved type and
17 manner of construction for the purposes of preventing waste of said
18 public waters and of conserving their head.

19 **Sec. 11.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to
20 read as follows:

21 Any person, municipal corporation, firm, irrigation district,
22 association, corporation or water users' association hereafter desiring
23 to appropriate water for a beneficial use shall make an application to
24 the department for a permit to make such appropriation, and shall not
25 use or divert such waters until he has received a permit from the
26 department as in this chapter provided. The construction of any ditch,
27 canal or works, or performing any work in connection with said
28 construction or appropriation, or the use of any waters, shall not be
29 an appropriation of such water nor an act for the purpose of
30 appropriating water unless a permit to make said appropriation has
31 first been granted by the department: PROVIDED, That a temporary
32 permit may be granted upon a proper showing made to the department to
33 be valid only during the pendency of such application for a permit
34 unless sooner revoked by the department: PROVIDED, FURTHER, That
35 nothing in this chapter contained shall be deemed to affect RCW
36 90.40.010 through 90.40.080 except that the notice and certificate
37 therein provided for in RCW 90.40.030 shall be addressed to the

1 department, and the department shall exercise the powers and perform
2 the duties prescribed by RCW 90.40.030.

3 The department shall encourage the filing of a consolidated
4 application for a complex project under a single ownership that
5 proposes to divert or withdraw water from more than one source,
6 including a combination of surface and ground water sources. The
7 filing of a consolidated application for transfer or change of one or
8 more water rights involving multiple sources shall also be encouraged
9 if all of the affected diversions or withdrawals are intended to serve
10 a single project with a single ownership. The department shall adopt
11 and provide forms for consolidated applications.

12 NEW SECTION. Sec. 12. A new section is added to chapter 90.03 RCW
13 to read as follows:

14 (1) The department shall establish streamlined procedures for its
15 processing of applications for de minimis appropriations of surface
16 water, but only if the department has reserved and set aside the water
17 for future beneficial use under RCW 90.54.050.

18 (2) Applications for appropriating water under this section shall
19 be made on a form provided by the department. Within sixty days of the
20 publication of a notice in accordance with RCW 90.03.280, the
21 department shall issue or deny a permit for the requested
22 appropriation. If the department denies the application, it shall
23 explain its determination in writing.

24 (3) The department shall waive the evaluation and report
25 requirements of RCW 90.03.290 if during the establishment of the
26 reservation it was conclusively determined that water is available and
27 that no impairment of existing water rights or the public interest will
28 occur.

29 (4) This section may not be used in areas that are within urban
30 growth areas as designated under RCW 36.70A.110 or within the service
31 areas of a public water system as defined in chapter 70.119A RCW that
32 has an available water supply.

33 (5) Unless the context clearly requires otherwise, as used in this
34 chapter, "de minimis appropriation" means diversion and use of surface
35 water in an amount not exceeding four hundred fifty gallons per day and
36 not exceeding an instantaneous diversion rate of two one-hundredths
37 cubic feet per second.

1 (6) The department shall develop, in cooperation with the
2 department of health, informational materials regarding the risks of
3 drinking untreated surface water. This informational material may be
4 provided to prospective applicants. The department shall attach the
5 informational materials to any permit that is approved under this
6 section.

7 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.03 RCW
8 to read as follows:

9 (1) The department may authorize short-term uses of water without
10 publication of the notice required under RCW 90.03.280 and without the
11 report required under RCW 90.03.290. However, before approving a
12 short-term use, the department shall determine to its satisfaction that
13 the substantive criteria in RCW 90.03.290 are met and that a stream
14 affected by a short-term use will be retained with sufficient flows to
15 maintain instream uses and to protect existing water rights. The
16 department shall adopt and provide application forms for persons
17 applying for a short-term use and shall expedite its consideration of
18 short-term use requests to the extent practicable.

19 (2) For the purposes of this chapter, "short-term use" means a use
20 of water that will not exceed one year in duration. Short-term uses
21 include but are not limited to use in construction, dust control,
22 dewatering, and short-term planned fire suppression activities.

23 NEW SECTION. **Sec. 14.** A new section is added to chapter 90.03 RCW
24 to read as follows:

25 The department shall establish a register that identifies, by water
26 resource inventory area, applications for new water rights and
27 applications for water right transfers and changes. The register shall
28 identify: The location of the proposed use, change, or transfer;
29 whether the application is for surface or ground water; and for ground
30 or surface water applications, the water source. The department shall
31 produce the register once every two weeks and shall make the register
32 available to interested parties for a fee that is based on the cost of
33 making the register available. One year after the effective date of
34 this section, the department may cease production of the register if

1 the number of requests for the register are not adequate to cover the
2 costs of producing it.

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