
SUBSTITUTE SENATE BILL 6435

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senator Fraser)

Read first time 02/02/96.

1 AN ACT Relating to water resource management; amending RCW
2 90.03.015, 90.03.290, 90.54.020, 90.03.380, 90.03.390, 90.44.070, and
3 90.14.140; adding new sections to chapter 90.03 RCW; creating a new
4 section; and repealing RCW 90.03.040.

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

6 **BENEFICIAL USE**

7 **Sec. 1.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
8 as follows:

9 As used in this chapter:

10 (1) "Beneficial use" means the type and quantity of use provided in
11 section 2 of this act;

12 (2) "Department" means the department of ecology;

13 ((+2)) (3) "Director" means the director of ecology; and

14 ((+3)) (4) "Person" means any firm, association, water users'
15 association, corporation, irrigation district, or municipal
16 corporation, as well as an individual.

1 NEW SECTION. **Sec. 2.** APPLICATION TO BENEFICIAL USE. (1) The

2 existence and measure of all existing rights to withdraw waters of the
3 state, and all future rights that might be acquired, shall be
4 determined based upon the beneficial use of water. All uses of water
5 that are efficient and in the public interest are beneficial uses of
6 water, except that no misuse of water shall be considered beneficial.

7 (2) The efficient use of water is that use that does not exceed the
8 rate and amount that will provide the duty of water for the type of use
9 involved plus a reasonable transportation loss where applicable. In
10 the case of existing rights, what constitutes efficient use shall be
11 adjusted to take into account any beneficial effects of return flows,
12 where alternative means of achieving the effects are not readily
13 available. The department shall adopt rules by July 1, 1997, providing
14 methods to test the efficiency of uses, including:

15 (a) The method by which the duty of water for any locality shall be
16 determined, having due regard for local differences in soil, climate,
17 topography, and other relevant factors;

18 (b) The method by which reasonable transportation losses for any
19 locality shall be determined, having due regard for the customary
20 practices in the area, and current technology available at a reasonable
21 cost; and

22 (c) Guidelines for identification of the beneficial effects of
23 return flows and for the determination on a case-by-case basis of the
24 rates and amounts of water to be allocated to the maintenance of such
25 effects, which shall be considered an efficient use. The guidelines
26 shall include criteria to determine whether alternative means of
27 achieving such beneficial effects are readily available.

28 (3) Misuse of water occurs when its use degrades water quality of
29 the source waters or waters receiving return flows below applicable
30 state water quality standards.

31 NEW SECTION. **Sec. 3.** PUBLIC INTEREST CONSIDERATIONS. In

32 evaluating whether applications for a new water right, a transfer of a
33 water right, or a modification of the use or point of diversion are in
34 the public interest, the department shall consider the following:

35 (1) The economic net benefits to the state and local region,
36 including the consideration of the opportunity costs of alternative
37 foregone uses of the water;

1 (2) The cost-effectiveness of the proposed use in comparison with
2 alternative sources of water, including costs and benefits external to
3 the applicant or transferee;

4 (3) Effects on public uses of water, including the in-stream uses
5 enumerated in RCW 90.22.010 and 90.54.020;

6 (4) Water resource plans and local comprehensive growth management
7 plans applicable to the area of the water source;

8 (5) Effects on public land and facilities and other water-related
9 public resources;

10 (6) Effects of proposed water transfers to another location upon
11 the local communities in the area of origin;

12 (7) Effects on water quality, public health, and safety;

13 (8) The extent to which the proposal maximizes water conservation
14 and efficient use;

15 (9) Effects upon public access to navigable and other waters of the
16 state; and

17 (10) Consistency with applicable water resource fundamental
18 principles of RCW 90.54.020.

19 **Sec. 4.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
20 as follows:

21 (1) When an application complying with the provisions of this
22 chapter and with the rules and regulations of the department has been
23 filed, the same shall be placed on record with the department, and it
24 shall be its duty to investigate the application, and determine what
25 water, if any, is available for appropriation, and find and determine
26 to what beneficial use or uses it can be applied. If it is proposed to
27 appropriate water for irrigation purposes, the department shall
28 investigate, determine and find what lands are capable of irrigation by
29 means of water found available for appropriation. If it is proposed to
30 appropriate water for the purpose of power development, the department
31 shall investigate, determine and find whether the proposed development
32 is ~~((likely to prove detrimental to))~~ in the public interest, ~~((having~~
33 ~~in mind the highest feasible use of the waters belonging to the~~
34 ~~public))~~ considering the factors set forth in section 3 of this act.

35 (2) If the application does not contain, and the applicant does not
36 promptly furnish sufficient information on which to base such findings,
37 the department may issue a preliminary permit, for a period of not to
38 exceed three years, requiring the applicant to make such surveys,

1 investigations, studies, and progress reports, as in the opinion of the
2 department may be necessary. However, construction of any works for
3 the diversion of water may not be authorized under a preliminary
4 permit. If the applicant fails to comply with the conditions of the
5 preliminary permit, it and the application or applications on which it
6 is based shall be automatically canceled and the applicant so notified.
7 If the holder of a preliminary permit shall, before its expiration,
8 file with the department a verified report of expenditures made and
9 work done under the preliminary permit, which, in the opinion of the
10 department, establishes the good faith, intent and ability of the
11 applicant to carry on the proposed development, the preliminary permit
12 may, with the approval of the governor, be extended, but not to exceed
13 a maximum period of five years from the date of the issuance of the
14 preliminary permit.

15 (3) Following its investigation and the receipt of all necessary
16 information in the application, the department shall make and file as
17 part of the record in the matter, written findings of fact concerning
18 all ((things)) issues and facts investigated(, and if it shall find
19 that there is water available for appropriation for a beneficial use,
20 and the appropriation thereof as proposed in the application will not
21 impair existing rights or be detrimental to the public welfare, it
22 shall issue a permit stating the amount of water to which the applicant
23 shall be entitled and the beneficial use or uses to which it may be
24 applied: PROVIDED, That where)). The department may issue the permit
25 if it determines that:

26 (a) There is water available for appropriation for a beneficial use
27 as defined in section 2 of this act;

28 (b) The appropriation as proposed in the application will not
29 impair existing rights, including rights to the discharge of wastewater
30 in compliance with a permit issued under chapter 90.48 RCW; and

31 (c) The appropriation is consistent with the public interest,
32 considering the factors set forth in section 3 of this act.

33 (4) Where the water applied for is to be used for irrigation
34 purposes, it shall become appurtenant only to such land as may be
35 reclaimed thereby to the full extent of the soil for agricultural
36 purposes. ((But where there is no unappropriated water in the proposed
37 source of supply, or where the proposed use conflicts with existing
38 rights, or threatens to prove detrimental to the public interest,
39 having due regard to the highest feasible development of the use of the

1 waters belonging to the public, it shall be duty of the department to
2 reject such application and to refuse to issue the permit asked for.))

3 (5) If the permit is refused because of conflict with existing
4 rights and such applicant shall acquire same by purchase or
5 condemnation under RCW 90.03.040, the department may thereupon grant
6 such permit.

7 (6) Any application may be approved for a less amount of water than
8 that applied for, if there exists substantial reason therefor, and in
9 any event shall not be approved for more water than can be applied to
10 beneficial use for the purposes named in the application. ((In
11 determining whether or not a permit shall issue upon any application,
12 it shall be the duty of the department to investigate all facts
13 relevant and material to the application.))

14 (7) After the department approves said application in whole or in
15 part and before any permit shall be issued thereon to the applicant,
16 such applicant shall pay the fee provided in RCW 90.03.470(=:PROVIDED
17 FURTHER, That)).

18 (8) In the event a permit is issued by the department upon any
19 application, it shall be its duty to notify the director of fish and
20 wildlife of such issuance.

21 **Sec. 5.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to read
22 as follows:

23 Utilization and management of the waters of the state shall be
24 guided by the following general declaration of fundamentals:

25 (1) All uses of water for domestic, stock watering, industrial,
26 commercial, agricultural, irrigation, hydroelectric power production,
27 mining, fish and wildlife maintenance and enhancement, recreational,
28 and thermal power production purposes, and preservation of
29 environmental and aesthetic values, and all other uses compatible with
30 the enjoyment of the public waters of the state, that are consistent
31 with the limitations of section 2 of this act, and that are consistent
32 with the public interest factors set forth in section 3 of this act,
33 are declared to be beneficial.

34 (2) Allocation of waters among potential uses and users shall be
35 based generally on the securing of the maximum net benefits for the
36 people of the state. Maximum net benefits shall constitute total
37 benefits less costs including opportunities lost.

1 (3) The quality of the natural environment shall be protected and,
2 where possible, enhanced as follows:

3 (a) Perennial rivers and streams of the state shall be retained
4 with base flows necessary to provide for preservation of wildlife,
5 fish, scenic, aesthetic and other environmental values, and
6 navigational values. Lakes and ponds shall be retained substantially
7 in their natural condition. Withdrawals of water which would conflict
8 therewith shall be authorized only in those situations where it is
9 clear that overriding considerations of the public interest will be
10 served.

11 (b) Waters of the state shall be of high quality. Regardless of
12 the quality of the waters of the state, all wastes and other materials
13 and substances proposed for entry into said waters shall be provided
14 with all known, available, and reasonable methods of treatment prior to
15 entry. Notwithstanding that standards of quality established for the
16 waters of the state would not be violated, wastes and other materials
17 and substances shall not be allowed to enter such waters which will
18 reduce the existing quality thereof, except in those situations where
19 it is clear that overriding considerations of the public interest will
20 be served. Technology-based effluent limitations or standards for
21 discharges for municipal water treatment plants located on the
22 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted
23 to reflect credit for substances removed from the plant intake water
24 if:

25 (i) The municipality demonstrates that the intake water is drawn
26 from the same body of water into which the discharge is made; and

27 (ii) The municipality demonstrates that no violation of receiving
28 water quality standards or appreciable environmental degradation will
29 result.

30 (4) Adequate and safe supplies of water shall be preserved and
31 protected in potable condition to satisfy human domestic needs.

32 (5) Multiple-purpose impoundment structures are to be preferred
33 over single-purpose structures. Due regard shall be given to means and
34 methods for protection of fishery resources in the planning for and
35 construction of water impoundment structures and other artificial
36 obstructions.

37 (6) Federal, state, and local governments, individuals,
38 corporations, groups and other entities shall be encouraged to carry
39 out practices of conservation as they relate to the use of the waters

1 of the state. In addition to traditional development approaches,
2 improved water use efficiency and conservation shall be emphasized in
3 the management of the state's water resources and in some cases will be
4 a potential new source of water with which to meet future needs
5 throughout the state.

6 (7) Development of water supply systems, whether publicly or
7 privately owned, which provide water to the public generally in
8 regional areas within the state shall be encouraged. Development of
9 water supply systems for multiple domestic use which will not serve the
10 public generally shall be discouraged where water supplies are
11 available from water systems serving the public.

12 (8) Full recognition shall be given in the administration of water
13 allocation and use programs to the natural interrelationships of
14 surface and ground waters.

15 (9) Expressions of the public interest will be sought at all stages
16 of water planning and allocation discussions.

17 (10) Water management programs, including but not limited to, water
18 quality, flood control, drainage, erosion control and storm runoff are
19 deemed to be in the public interest.

20

WATER TRANSFERS

21 NEW SECTION. **Sec. 6.** LEGISLATIVE FINDING. The legislature finds
22 that water transfers meeting the standards and procedural requirements
23 of this chapter are an important means of satisfying existing and
24 future water demands in the state. While allowed under state law for
25 decades, the state previously has not adopted an affirmative policy
26 encouraging water transfers and providing assistance in accomplishing
27 such transfers. To this end the legislature declares that it is the
28 policy of the state to facilitate water transfers through the provision
29 of information on water transfers and the timely processing of water
30 transfer applications.

31 NEW SECTION. **Sec. 7.** PROCESSING PRIORITY. To further the policy
32 set forth in section 6 of this act, the department shall accord
33 priority to the processing of applications for transfers and changes
34 under RCW 90.03.380 and 90.03.390. The department shall adopt a goal
35 of making decisions upon applications for seasonal changes within sixty
36 days of receipt and other changes within ninety days of receipt. Only

1 in exceptional circumstances may a decision be made later than one
2 hundred eighty days of receipt of a complete application. As among
3 applications within the same watershed area, the department shall
4 provide processing priority to applications that are consistent with
5 any water resource plan adopted under chapter 90.54 RCW applicable to
6 such watershed. The processing time periods provided in this section
7 shall not include the following: (1) The time during which a public
8 notice of the proposed transfer or change has been provided by the
9 applicant and an opportunity for filing of protests; and (2) any period
10 during which an environmental impact statement is being prepared
11 following a determination of significance under chapter 43.21C RCW.

12 NEW SECTION. **Sec. 8.** DATA COMPILATION. (1) The department shall
13 compile data on water transfers and changes, including the
14 consideration paid, for the purpose of making such information
15 available to prospective sellers, purchasers, brokers, and others
16 participating in water marketing transactions. Other state and local
17 agencies receiving information pertinent to such transactions, such as
18 tax affidavits, are directed to cooperate with the department in
19 compiling such information and making such information available
20 locally to prospective water marketing participants.

21 (2) This section is intended to make accessible information which
22 is otherwise in the public domain and does not require the disclosure
23 of proprietary information which is protected from disclosure under any
24 other law or authority.

25 NEW SECTION. **Sec. 9.** DELEGATION OF AUTHORITY. (1) The department
26 may delegate to the governing body of a county the authority to approve
27 transfers and changes under RCW 90.03.380 and 90.03.390 within a
28 watershed resource inventory area as delineated by the department,
29 where such area lies wholly within the county. Where an area lies in
30 more than one county, the department may delegate such authority
31 jointly to all of the counties in which such watershed area lies, and
32 the exercise of such authority shall be conducted by interlocal
33 agreement of all of such counties.

34 (2) Such delegation may only be made when the department determines
35 that all of the following conditions exist:

1 (a) The county or counties will exercise such authority in
2 compliance with the requirements of this chapter, any rules adopted
3 under this chapter, and other applicable requirements of law;

4 (b) A regional water resource plan applicable to such watershed
5 area has been adopted pursuant to chapter 90.54 RCW;

6 (c) Minimum stream flows have been adopted by rule for all fish-
7 bearing stream segments within the watershed area; and

8 (d) The county or counties have sufficient personnel and resources
9 for timely and thorough processing of such applications.

10 (3) The department shall provide technical assistance to counties
11 obtaining delegated authority under this section, and shall provide all
12 available water resources information applicable to the watershed area,
13 including existing water rights and claimants.

14 (4) The term of the delegation shall be for a period not to exceed
15 two years. The delegation may thereafter be renewed upon two year
16 intervals upon a determination of the department as made for the
17 initial determination.

18 (5) Counties receiving delegated authority shall provide periodic
19 reports to the department, upon a schedule determined by the
20 department, regarding applications received and the disposition of such
21 applications.

22 **Sec. 10.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to
23 read as follows:

24 (1) The right to the use of water which has been applied to a
25 beneficial use in the state shall be and remain appurtenant to the land
26 or place upon which the same is used~~((: PROVIDED, HOWEVER, That said))~~
27 except as provided in this section. The right may be transferred to
28 another or to others and become appurtenant to any other land or place
29 of use without loss of priority of right theretofore established if
30 ((such change can be made without detriment or injury to existing
31 rights)) approved as provided in this section. The point of diversion
32 of water for beneficial use or the purpose of use may be changed~~((, if~~
33 ~~such change can be made without detriment or injury to existing~~
34 ~~rights))~~ as provided in this section.

35 (2) Before any transfer of such right to use water or change of the
36 point of diversion of water or change of purpose of use can be made,
37 any person having an interest in the transfer or change, shall file a
38 written application therefor with the department, and ~~((said))~~

1 application shall not be granted until notice of ~~((said))~~ the
2 application ~~((shall be))~~ is published as provided in RCW 90.03.280.
3 ~~((If it shall appear that such transfer or such change may be made~~
4 ~~without injury or detriment to existing rights, the department shall~~
5 ~~issue to the applicant a certificate in duplicate granting the right~~
6 ~~for such transfer or for such change of point of diversion or of use.))~~
7 The department may grant an authorization for the transfer or change if
8 it determines that:

9 (a) The transfer or change can be made without detriment or injury
10 to existing rights, considering the limitations of subsection (7) of
11 this section; and

12 (b) The transfer or change is consistent with the public interest,
13 considering the factors set forth in section 3 of this act. A transfer
14 or change consistent with a watershed plan adopted under chapter 90.54
15 RCW shall be accorded substantial weight by the department in making
16 such public interest determination.

17 (3) Upon a showing that the transfer or change has been completed
18 in accordance with the department's authorization, the department shall
19 issue an amended certificate of water right. The certificate so issued
20 shall be filed and be made a record with the department and ~~((the))~~ a
21 duplicate certificate issued to the applicant ~~((may))~~ shall be filed
22 with the county auditor in like manner and with the same effect as
23 provided in the original certificate or permit to divert water.

24 (4) If an application for change proposes to transfer water rights
25 from one irrigation district to another, the department shall, before
26 publication of notice, receive concurrence from each of the irrigation
27 districts that such transfer or change will not adversely affect the
28 ability to deliver water to other landowners or impair the financial
29 integrity of either of the districts.

30 (5) A change in place of use by an individual water user or users
31 of water provided by an irrigation district need only receive approval
32 for the change from the board of directors of the district if the use
33 of water continues within the irrigation district.

34 (6) This section shall not apply to trust water rights acquired by
35 the state through the funding of water conservation projects under
36 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

37 (7) In determining whether a proposed change will cause an injury
38 or detriment to existing rights, the department may determine that none
39 will occur if the application contains enforceable provisions to fully

1 mitigate the impairment by the provision of substitute water or other
2 measures allowing maintenance of the full beneficial uses of existing
3 rights holders.

4 **Sec. 11.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
5 as follows:

6 RCW 90.03.380 shall not be construed to prevent water users from
7 making a seasonal or temporary change of point of diversion or place of
8 use of water when such change can be made without detriment to existing
9 rights, considering the criteria in RCW 90.03.380(7), but in no case
10 shall such change be made without the permission of the water master of
11 the district in which such proposed change is located, or of the
12 department. Nor shall RCW 90.03.380 be construed to prevent
13 construction of emergency interties between public water systems to
14 permit exchange of water during short-term emergency situations, or
15 rotation in the use of water for bringing about a more economical use
16 of the available supply, provided however, that the department of
17 health in consultation with the department of ecology shall adopt rules
18 or develop written guidelines setting forth standards for determining
19 when a short-term emergency exists and the circumstances in which
20 emergency interties are permitted. The rules or guidelines shall be
21 consistent with the procedures established in RCW 43.83B.400 through
22 43.83B.420. Water users owning lands to which water rights are
23 attached may rotate in the use of water to which they are collectively
24 entitled, or an individual water user having lands to which are
25 attached water rights of a different priority, may in like manner
26 rotate in use when such rotation can be made without detriment to other
27 existing water rights, and has the approval of the water master or
28 department.

29 **Sec. 12.** RCW 90.44.070 and 1987 c 109 s 110 are each amended to
30 read as follows:

31 (1) No permit shall be granted for the development or withdrawal of
32 public ground waters beyond the capacity of the underground bed or
33 formation in the given basin, district, or locality to yield such water
34 within a reasonable or feasible pumping lift in case of pumping
35 developments, or within a reasonable or feasible reduction of pressure
36 in the case of artesian developments.

1 (2) The department ((shall have the power to determine whether the
2 granting of any such permit will injure or damage any vested or
3 existing right or rights under prior permits and)) may grant the permit
4 if it determines that:

5 (a) No injury or damage to any vested or existing right or rights
6 under prior permits will occur;

7 (b) The permit is consistent with the public interest, considering
8 the factors set forth in section 3 of this act; and

9 (c) The permit will not cause a depletion of waters beyond the rate
10 of recharge of the underground bed or formation as measured over a
11 period of no less than five years.

12 (3) The department may in addition to the records of the
13 department, require further evidence, proof, and testimony before
14 granting or denying any such permits.

15 **Sec. 13.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read
16 as follows:

17 (1) For the purposes of RCW 90.14.130 through 90.14.180,
18 "sufficient cause" shall be defined ~~((as))~~ to include either the
19 failure to beneficially use water as defined in section 2 of this act,
20 or the nonuse of all or a portion of the water by the owner of a water
21 right for a period of five or more consecutive years where ~~((such))~~ the
22 failure or nonuse occurs as a result of:

23 (a) Drought, or other unavailability of water;

24 (b) Active service in the armed forces of the United States during
25 military crisis;

26 (c) Nonvoluntary service in the armed forces of the United States;

27 ~~((The operation of legal proceedings))~~ An administrative order
28 or court order that temporarily prevents the use of the right;

29 (e) Federal laws imposing land or water use restrictions either
30 directly or through the voluntary enrollment of a landowner in a
31 federal program implementing those laws, or acreage limitations, or
32 production quotas; or

33 (f) Compliance with a permit to discharge wastes issued under
34 chapter 90.48 RCW.

35 (2) Notwithstanding any other provisions of RCW 90.14.130 through
36 90.14.180, there shall be no relinquishment of any water right:

1 (a) If such right is claimed for power development purposes under
2 chapter 90.16 RCW and annual license fees are paid in accordance with
3 chapter 90.16 RCW, or

4 (b) If such right is used for a standby or reserve water supply to
5 be used in time of drought or other low flow period so long as
6 withdrawal or diversion facilities are maintained in good operating
7 condition for the use of such reserve or standby water supply, or

8 ~~(c) ((If such right is claimed for a determined future development
9 to take place either within fifteen years of July 1, 1967, or the most
10 recent beneficial use of the water right, whichever date is later, or~~

11 ~~(d))~~ (d) If such right is claimed for municipal water supply purposes
12 under chapter 90.03 RCW, or

13 ~~((e))~~ (d) If such waters are not subject to appropriation under
14 the applicable provisions of RCW 90.40.030 as now or hereafter amended.

15 NEW SECTION. **Sec. 14.** RCW 90.03.040 and 1917 c 117 s 4 are each
16 repealed.

17 NEW SECTION. **Sec. 15.** CAPTIONS. Subheadings and captions as used
18 in this act constitute no part of the law.

19 NEW SECTION. **Sec. 16.** CODIFICATION. Sections 2, 3, and 6 through
20 9 of this act are each added to chapter 90.03 RCW.

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