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**SUBSTITUTE SENATE BILL 5276**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Agriculture & Environment (originally sponsored by Senators Swecker, Roach and Oke)

Read first time 03/05/97.

1 AN ACT Relating to water withdrawals and diversions; amending RCW  
2 90.03.255 and 90.44.055; adding new sections to chapter 90.03 RCW;  
3 adding new sections to chapter 90.44 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that in many basins in  
6 the state there is water available on a seasonal basis that is in  
7 excess of the needs of either existing water right holders or instream  
8 resources. The legislature finds that excess waters often result in  
9 significant flooding and damage to public and private resources.  
10 Further, it is in the public interest to encourage the impoundment of  
11 excess water and other measures that can be used to offset the impact  
12 of withdrawals and diversions on existing rights and instream  
13 resources. Further, in some areas of the state additional supplies of  
14 water are needed to meet the needs of a growing economy and population.  
15 The legislature finds there is a range of alternatives that offset the  
16 impacts that should be encouraged including the creation, restoration,  
17 enhancement, or enlargement of ponds, wetlands, and reservoirs and the  
18 artificial recharge of aquifers.

1 The purpose of this act is to foster the improvement in the water  
2 supplies available to meet the needs of the state. It is the goal of  
3 this act to strengthen the state's economy while maintaining and  
4 improving the overall quality of the state's environment.

5 **Sec. 2.** RCW 90.03.255 and 1996 c 306 s 1 are each amended to read  
6 as follows:

7 The department shall, when evaluating an application for a water  
8 right, transfer, or change filed pursuant to RCW 90.03.250 or 90.03.380  
9 (~~that includes provision for any water impoundment~~), take into  
10 consideration the benefits of ~~((the))~~ any water impoundment or other  
11 resource management technique that is included as a component of the  
12 application. The department's consideration shall extend to any  
13 increased water supply that results from the impoundment or other  
14 resource management technique including, but not limited to, any  
15 recharge of ground water that may occur. Including cases where the  
16 department determines that water from the proposed source may be  
17 unavailable for appropriation, or that the proposed diversion of  
18 surface water would cause impairment of an existing water right  
19 including an instream flow established under chapter 90.22 or 90.54  
20 RCW, the department shall take into consideration the impoundment and  
21 release of water, the recharge of ground water from such impoundment,  
22 or other resource management technique as a means to offset the impact  
23 of the diversion of surface water. Provision for an impoundment or  
24 other resource management technique in an application shall be made  
25 solely at the discretion of the applicant and shall not otherwise be  
26 made by the department as a condition for approving an application that  
27 does not include such provision (~~for impoundment~~)).

28 This section does not lessen, enlarge, or modify the rights of any  
29 riparian owner, or any existing water right acquired by appropriation  
30 or otherwise.

31 **Sec. 3.** RCW 90.44.055 and 1996 c 306 s 2 are each amended to read  
32 as follows:

33 The department shall, when evaluating an application for a water  
34 right or an amendment filed pursuant to RCW 90.44.050 or 90.44.100  
35 (~~that includes provision for any water impoundment~~), take into  
36 consideration the benefits of ~~((the))~~ any water impoundment or other  
37 resource management technique that is included as a component of the

1 application. The department's consideration shall extend to any  
2 increased water supply that results from the impoundment or other  
3 resource management technique including, but not limited to, any  
4 recharge of ground water that may occur. Including cases where the  
5 department determines that water from the proposed source may be  
6 unavailable for appropriation, or that the proposed appropriation of  
7 ground water would cause impairment of an existing water right  
8 including an instream flow established under chapter 90.22 or 90.54  
9 RCW, the department shall take into consideration the impoundment and  
10 release of water, the recharge of ground water from such impoundment,  
11 or other resource management technique as a means to offset the impact  
12 of the withdrawal of ground water in the same water resource inventory  
13 area. Provision for an impoundment or other resource management  
14 technique in an application shall be made solely at the discretion of  
15 the applicant and shall not be made by the department as a condition  
16 for approving an application that does not include such provision (~~for~~  
17 ~~impoundment~~)).

18 This section does not lessen, enlarge, or modify the rights of any  
19 riparian owner, or any existing water right acquired by appropriation  
20 or otherwise.

21 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW  
22 to read as follows:

23 (1) The department may place a priority on processing applications  
24 for water rights filed pursuant to RCW 90.03.250 or 90.03.380 that  
25 include a means of offsetting the impact of the diversion or otherwise  
26 constitutes a nonconsumptive use of water. However, this section does  
27 not modify the priority date of a permit issued under the authority of  
28 this chapter or chapter 90.44 RCW.

29 (2) Applicants who are denied permits or who have permits  
30 conditioned due to impact on existing water rights or established  
31 instream flows may submit a revised application for reconsideration by  
32 the department that includes a means to offset the impact of the  
33 diversion, provided that the revised application is submitted within  
34 the same time period as that specified for the filing of an appeal as  
35 prescribed by RCW 43.21B.310. Revised applications that are submitted  
36 for reconsideration by the department under this section retain the  
37 same date of priority as the original application.

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

3        Upon the request of the applicant, the department shall, when  
4 evaluating an application for a water right, transfer, or change filed  
5 pursuant to RCW 90.03.250 or 90.03.380, take into account the recharge  
6 of ground water from septic tanks in an amount not to exceed the  
7 proposed use of water for indoor purposes. The department shall, based  
8 upon hydrogeologic data for the area in which the application is  
9 located, determine the amount of recharge to the aquifer that is likely  
10 to occur and factor that amount into the decision it makes on the  
11 application. Any water right permit, transfer, or change that is  
12 authorized under this section shall be conditioned to state that the  
13 water right permit, transfer, or change shall remain in effect only so  
14 long as the water use, including the discharge of water used for indoor  
15 purposes through a septic tank, remains unchanged from that proposed in  
16 the original application.

17        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 90.44 RCW  
18 to read as follows:

19        (1) The department may place a priority on processing applications  
20 for water rights filed pursuant to RCW 90.44.050 or 90.44.100 that  
21 include provisions to offset the impact of the withdrawal or otherwise  
22 constitutes a nonconsumptive use of water. However, this section does  
23 not modify the priority date of a permit issued under the authority of  
24 this chapter or chapter 90.03 RCW.

25        (2) Applicants who are denied permits or who have permits  
26 conditioned due to impact on existing water rights or established  
27 instream flows may submit a revised application for reconsideration by  
28 the department that includes a means to offset the impact of the  
29 withdrawal, provided that the revised application is submitted within  
30 the same time period as that specified for the filing of an appeal as  
31 prescribed by RCW 43.21B.310. Revised applications that are submitted  
32 for reconsideration by the department under this section retain the  
33 same date of priority as the original application.

34        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 90.44 RCW  
35 to read as follows:

36        Upon the request of the applicant, the department shall, when  
37 evaluating an application for a water right, transfer, or change filed

1 pursuant to RCW 90.44.050 or 90.44.100, take into account the recharge  
2 of ground water from septic tanks in an amount not to exceed the  
3 proposed use of water for indoor purposes. The department shall, based  
4 upon hydrogeologic data for the area in which the application is  
5 located, determine the amount of recharge to the aquifer that is likely  
6 to occur and factor that amount into the decision it makes on the  
7 application. Any water right permit, transfer, or change that is  
8 authorized under this section shall be conditioned to state that the  
9 water right permit, transfer, or change shall remain in effect only so  
10 long as the water use, including the discharge of water used for indoor  
11 purposes through a septic tank, remains unchanged from that proposed in  
12 the original application.

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