
SUBSTITUTE SENATE BILL 6312

State of Washington

62nd Legislature

2012 Regular Session

By Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Haugen, Hobbs, Honeyford, Hatfield, Hargrove, and Shin)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to promoting job creation by ensuring access to
2 human domestic water for home construction; amending RCW 90.54.120,
3 90.54.020, and 19.27.097; reenacting and amending RCW 90.54.050; and
4 creating new sections.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the water
7 resources act of 1971, chapter 90.54 RCW, contains a list of water
8 policy fundamentals that are to guide the state's water management
9 agency in adopting basin rules to allocate the water resources of the
10 state. In effect since 1971, the unprioritized list of water policy
11 fundamentals include: (a) The allocation of water among potential uses
12 and users is to be based on securing the maximum net benefits to the
13 state; and (b) that adequate supplies of water are to be preserved and
14 protected to satisfy human domestic needs. The legislature finds that
15 ready access to sufficient water to fulfill human domestic needs has
16 been and continues to be a fundamental public value. The legislature
17 finds that some basin rules adopted after 2001 for areas in the state
18 with moderate to heavy rainfall do not provide adequate water to
19 fulfill the directive of providing adequate water to satisfy human

1 domestic needs in rural areas, and instead constrain water use more
2 restrictively than in other basins with similar conditions and levels
3 of precipitation.

4 (2) The legislature finds that RCW 36.70A.103 provides that state
5 agencies comply with local comprehensive plans and development
6 regulations adopted by local governments under the 1990 growth
7 management act. The legislature finds that RCW 36.70A.106 provided
8 state agencies the opportunity to formally comment to a county or city
9 on the proposed comprehensive plans and development regulations before
10 their adoption including designation of rural areas. It is the intent
11 of the legislature to ensure that the department of ecology's water
12 resource rules be harmonized with the rural zoning elements adopted
13 pursuant to the growth management act.

14 (3) Further, the legislature finds that state and local governments
15 have established and fund a vast array of environmental and habitat
16 improvement and acquisition programs that provide environmental
17 benefits that far exceed any impact from de minimis uses of groundwater
18 in rural areas for essential human domestic needs. The legislature
19 acknowledges that the availability of state and local funding for these
20 environmental and habitat programs is dependent on the tax revenues
21 generated by the home construction industry and that available funding
22 has dropped as home construction has declined dramatically in recent
23 years.

24 (4) The purpose of this legislation is to reaffirm statutory policy
25 that in rural areas not served by a public water system, water for
26 homes be readily available and thereby encourage jobs in, and stimulus
27 to, the home construction industry, which produces revenues to support
28 state and local governmental programs and services, including
29 environmental and habitat improvements funded by state and local
30 governments.

31 (5) For the reasons stated in this section, the intent of the
32 legislature is for this act to be remedial in nature and apply
33 retroactively and prospectively to basin rules under chapter 90.54 RCW
34 adopted after January 1, 2001, for rivers and streams that discharge
35 into Puget Sound as defined in RCW 90.71.010.

36 **Sec. 2.** RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended
37 to read as follows:

1 For the purposes of this chapter, unless the context is clearly to
2 the contrary, the following definitions shall be used:

3 (1) "Department" means department of ecology.

4 (2) "Human domestic water use" means potable water to satisfy the
5 needs of a household, including water used for drinking, bathing,
6 sanitary purposes, cooking, laundering, maintenance of vegetation, care
7 of household pets, and other incidental uses.

8 (3) "Nonconsumptive water use" means water used for a beneficial
9 purpose that is returned to the source or pool from which it came and
10 that there is no appreciable loss in the amount that is returned.

11 "Nonconsumptive water uses" include, but are not limited to, water
12 diverted by fish hatcheries, fish rearing ponds, beautification ponds,
13 hydroelectric generation facilities, water reservoirs, and indoor water
14 uses in homes that utilize on-site septic systems.

15 (4) "Utilize" or "utilization" shall not only mean use of water for
16 such long recognized consumptive or nonconsumptive beneficial purposes
17 as domestic, stock watering, industrial, commercial, agricultural,
18 irrigation, hydroelectric power production, thermal power production,
19 mining, recreational, maintenance of wildlife and fishlife purposes,
20 but includes the retention of water in lakes and streams for the
21 protection of environmental, scenic, aesthetic and related purposes,
22 upon which economic values have not been placed historically and are
23 difficult to quantify.

24 **Sec. 3.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to read
25 as follows:

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

28 (1) Uses of water for domestic, stock watering, industrial,
29 commercial, agricultural, irrigation, hydroelectric power production,
30 mining, fish and wildlife maintenance and enhancement, recreational,
31 and thermal power production purposes, and preservation of
32 environmental and aesthetic values, and all other uses compatible with
33 the enjoyment of the public waters of the state, are declared to be
34 beneficial.

35 (2) Allocation of waters among potential uses and users shall be
36 based generally on the securing of the maximum net benefits for the

1 people of the state. Maximum net benefits shall constitute total
2 benefits less costs including opportunities lost.

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

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

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

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

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

32 (4) The development of multipurpose water storage facilities shall
33 be a high priority for programs of water allocation, planning,
34 management, and efficiency. The department, other state agencies, and
35 local governments(~~(, and planning units formed under section 107 or 108~~
36 ~~of this act)~~) shall evaluate the potential for the development of new
37 storage projects and the benefits and effects of storage in reducing
38 damage to stream banks and property, increasing the use of land,

1 providing water for municipal, industrial, agricultural, power
2 generation, and other beneficial uses, and improving stream flow
3 regimes for fisheries and other instream uses.

4 (5) Adequate and safe supplies of water shall be preserved and
5 protected in potable condition to satisfy human domestic needs. Basin
6 rules adopted under this chapter after January 1, 2001, for basins that
7 discharge into Puget Sound as defined in RCW 90.71.010, may not
8 constrain groundwater withdrawals per day per dwelling unit to less
9 than three hundred fifty gallons to satisfy human domestic water needs
10 if the dwelling utilizes an on-site septic system and a water supply
11 from a public water system is not readily available.

12 (6) Multiple-purpose impoundment structures are to be preferred
13 over single-purpose structures. Due regard shall be given to means and
14 methods for protection of fishery resources in the planning for and
15 construction of water impoundment structures and other artificial
16 obstructions.

17 (7) Federal, state, and local governments, individuals,
18 corporations, groups, and other entities shall be encouraged to carry
19 out practices of conservation as they relate to the use of the waters
20 of the state. The department may quantify in each water resource
21 inventory area the environmental benefits that result from investments
22 by federal, state, and local governments in tax-supported
23 environmental, water use efficiency, and habitat programs. The
24 department may apply for funding from state and federal sources for
25 projects and activities that enhance flow and habitat conditions in
26 rivers and streams in areas of concern. In addition to traditional
27 development approaches, improved water use efficiency, conservation,
28 and use of reclaimed water shall be emphasized in the management of the
29 state's water resources and in some cases will be a potential new
30 source of water with which to meet future needs throughout the state.
31 Use of reclaimed water shall be encouraged through state and local
32 planning and programs with incentives for state financial assistance
33 recognizing programs and plans that encourage the use of conservation
34 and reclaimed water use, and state agencies shall continue to review
35 and reduce regulatory barriers and streamline permitting for the use of
36 reclaimed water where appropriate.

37 (8) Development of water supply systems, whether publicly or
38 privately owned, which provide water to the public generally in

1 regional areas within the state shall be encouraged. Development of
2 water supply systems for multiple domestic use which will not serve the
3 public generally shall be discouraged where water supplies are
4 available from water systems serving the public.

5 (9) (~~Full~~) Proper and pragmatic recognition shall be given in the
6 administration of water allocation and use programs to the natural
7 interrelationships of surface and groundwaters including: (a)
8 Providing recognition for the recharge of groundwaters by home septic
9 systems for indoor water uses; (b) providing recognition that there are
10 widely varying degrees of potential impact to surface water from
11 groundwater withdrawals that are generally less than a one-to-one ratio
12 depending on a number of factors including, but not limited to, the
13 geology and porosity of underground formations, well depth, withdrawing
14 water from deeper aquifers rather than shallow aquifers, distance of
15 the well from surface water bodies, season of use, rainfall, and
16 temperature; and (c) authorizing the reestablishment of the management
17 policy of de minimis impact to limit excessive costs to the state and
18 its citizens to allow reasonable use by the public of the public's
19 water.

20 (10) Expressions of the public interest will be sought at all
21 stages of water planning and allocation discussions.

22 (11) Water management programs, including but not limited to, water
23 quality, flood control, drainage, erosion control and storm runoff are
24 deemed to be in the public interest.

25 **Sec. 4.** RCW 90.54.050 and 1997 c 439 s 2 and 1997 c 32 s 3 are
26 each reenacted and amended to read as follows:

27 In conjunction with the programs provided for in RCW 90.54.040(1),
28 whenever it appears necessary to the director in carrying out the
29 policy of this chapter, the department may by rule adopted pursuant to
30 chapter 34.05 RCW:

31 (1) Reserve and set aside waters for beneficial utilization in the
32 future, and

33 (2) When sufficient information and data are lacking to allow for
34 the making of sound decisions, withdraw various waters of the state
35 from additional appropriations until such data and information are
36 available.

1 (3) In reserving and setting aside water in accordance with
2 subsection (1) of this section, and in withdrawing waters of the state
3 from additional appropriation under this title, any action under this
4 section shall be consistent with the directive in RCW 90.54.020(5).
5 Before proposing the adoption of rules to withdraw waters of the state
6 from additional appropriation, the department shall consult with the
7 standing committees of the house of representatives and the senate
8 having jurisdiction over water resource management issues.

9 Prior to the adoption of a rule under this section, the department
10 shall conduct a public hearing in each county in which waters relating
11 to the rule are located. The public hearing shall be preceded by a
12 notice placed in a newspaper of general circulation published within
13 each of said counties. Rules adopted hereunder shall be subject to
14 review in accordance with the provisions of RCW 34.05.240.

15 **Sec. 5.** RCW 19.27.097 and 2010 c 271 s 302 are each amended to
16 read as follows:

17 (1) Each applicant for a building permit of a building
18 necessitating potable water shall provide evidence of an adequate water
19 supply for the intended use of the building. Evidence may be in the
20 form of a water right permit from the department of ecology, a letter
21 from an approved water purveyor stating the ability to provide water,
22 or another form sufficient to verify the existence of an adequate water
23 supply. In addition to other authorities, the county or city may
24 impose conditions on building permits requiring connection to an
25 existing public water system where the existing system is willing and
26 able to provide safe and reliable potable water to the applicant with
27 reasonable economy and efficiency. For building permits for single-
28 family dwellings not readily served by an existing public water system
29 that will utilize on-site septic systems, the applicant satisfies the
30 requirement to show that water is legally available by submitting a
31 signed declaration of intent to comply with RCW 90.54.020(5). In
32 addition, the local jurisdiction may require proof that water is
33 physically available and that it meets applicable drinking water
34 quality standards. For other building permits that require a water
35 right permit, an application for a water right shall not be sufficient
36 proof of an adequate water supply.

1 (2) Within counties not required or not choosing to plan pursuant
2 to RCW 36.70A.040, the county and the state may mutually determine
3 those areas in the county in which the requirements of subsection (1)
4 of this section shall not apply. The departments of health and ecology
5 shall coordinate on the implementation of this section. Should the
6 county and the state fail to mutually determine those areas to be
7 designated pursuant to this subsection, the county may petition the
8 department of (~~general administration~~) enterprise services to mediate
9 or, if necessary, make the determination.

10 (3) Buildings that do not need potable water facilities are exempt
11 from the provisions of this section. The department of ecology, after
12 consultation with local governments, may adopt rules to implement this
13 section, which may recognize differences between high-growth and low-
14 growth counties.

15 NEW SECTION. **Sec. 6.** Sections 3(5) and 4(3) of this act apply
16 retroactively to January 1, 2001, as well as prospectively.

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