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SENATE BILL 5018

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State of Washington

64th Legislature

2015 Regular Session

By Senators Honeyford and Ericksen

Prefiled 12/16/14. Read first time 01/12/15. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to underground artificial storage and recovery  
2 projects; and amending RCW 90.03.370.

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

4 **Sec. 1.** RCW 90.03.370 and 2003 c 329 s 1 are each amended to  
5 read as follows:

6 (1)(a) All applications for reservoir permits are subject to the  
7 provisions of RCW 90.03.250 through 90.03.320. But the party or  
8 parties proposing to apply to a beneficial use the water stored in  
9 any such reservoir shall also file an application for a permit, to be  
10 known as the secondary permit, which shall be in compliance with the  
11 provisions of RCW 90.03.250 through 90.03.320. Such secondary  
12 application shall refer to such reservoir as its source of water  
13 supply and shall show documentary evidence that an agreement has been  
14 entered into with the owners of the reservoir for a permanent and  
15 sufficient interest in said reservoir to impound enough water for the  
16 purposes set forth in said application. When the beneficial use has  
17 been completed and perfected under the secondary permit, the  
18 department shall take the proof of the water users under such permit  
19 and the final certificate of appropriation shall refer to both the  
20 ditch and works described in the secondary permit and the reservoir  
21 described in the primary permit. The department may accept for

1 processing a single application form covering both a proposed  
2 reservoir and a proposed secondary permit or permits for use of water  
3 from that reservoir.

4 (b) The department shall expedite processing applications for the  
5 following types of storage proposals:

6 (i) Development of storage facilities that will not require a new  
7 water right for diversion or withdrawal of the water to be stored;

8 (ii) Adding or changing one or more purposes of use of stored  
9 water;

10 (iii) Adding to the storage capacity of an existing storage  
11 facility; and

12 (iv) Applications for secondary permits to secure use from  
13 existing storage facilities.

14 (c) A secondary permit for the beneficial use of water shall not  
15 be required for use of water stored in a reservoir where the water  
16 right for the source of the stored water authorizes the beneficial  
17 use.

18 (2)(a) For the purposes of this section, "reservoir" includes, in  
19 addition to any surface reservoir, any naturally occurring  
20 underground geological formation where water is collected and stored  
21 for subsequent use as part of an underground artificial storage and  
22 recovery project. To qualify for issuance of a reservoir permit an  
23 underground geological formation must meet standards for review and  
24 mitigation of adverse impacts identified, for the following issues:

25 (i) Aquifer vulnerability and hydraulic continuity;

26 (ii) Potential impairment of existing water rights;

27 (iii) Geotechnical impacts and aquifer boundaries and  
28 characteristics;

29 (iv) Chemical compatibility of surface waters and groundwater;

30 (v) Recharge and recovery treatment requirements;

31 (vi) System operation;

32 (vii) Water rights and ownership of water stored for recovery;

33 and

34 (viii) Environmental impacts.

35 (b) Standards for review and standards for mitigation of adverse  
36 impacts for an underground artificial storage and recovery project  
37 shall be established by the department by rule. Notwithstanding the  
38 provisions of RCW 90.03.250 through 90.03.320, analysis of each  
39 underground artificial storage and recovery project and each  
40 underground geological formation for which an applicant seeks the

1 status of a reservoir shall be through applicant-initiated studies  
2 reviewed by the department.

3 (c) Water that meets drinking water standards may be stored in an  
4 underground artificial storage and recovery project and subsequently  
5 put to beneficial use as drinking water, or other beneficial uses for  
6 which compliance with drinking water standards will ensure that such  
7 uses will not endanger public health, as long as the water continues  
8 to meet drinking water standards after extraction from the  
9 underground artificial storage and recovery project. Storage in an  
10 underground artificial storage and recovery project of water that  
11 meets drinking water standards may not be construed as violating the  
12 state's water quality standards for groundwater, including  
13 antidegradation policies. The department shall ensure that rules  
14 regulating groundwater quality and establishing standards for review  
15 and mitigation of adverse impacts for underground artificial storage  
16 and recovery projects reflect that storage in such projects of water  
17 that meets drinking water standards is in compliance with the state's  
18 water quality standards for groundwater, including antidegradation  
19 policies, without need for additional treatment prior to entry of the  
20 water into the underground artificial storage and recovery project.

21 (3) For the purposes of this section, "underground artificial  
22 storage and recovery project" means any project in which it is  
23 intended to artificially store water in the ground through injection,  
24 surface spreading and infiltration, or other department-approved  
25 method, and to make subsequent use of the stored water. However, (a)  
26 this subsection does not apply to irrigation return flow, or to  
27 operational and seepage losses that occur during the irrigation of  
28 land, or to water that is artificially stored due to the  
29 construction, operation, or maintenance of an irrigation district  
30 project, or to projects involving water reclaimed in accordance with  
31 chapter 90.46 RCW; and (b) RCW 90.44.130 applies to those instances  
32 of claimed artificial recharge occurring due to the construction,  
33 operation, or maintenance of an irrigation district project or  
34 operational and seepage losses that occur during the irrigation of  
35 land, as well as other forms of claimed artificial recharge already  
36 existing at the time a groundwater subarea is established.

37 (4) Nothing in chapter 98, Laws of 2000 changes the requirements  
38 of existing law governing issuance of permits to appropriate or  
39 withdraw the waters of the state.

1 (5) The department shall report to the legislature by December  
2 31, 2001, on the standards for review and standards for mitigation  
3 developed under subsection (3) of this section and on the status of  
4 any applications that have been filed with the department for  
5 underground artificial storage and recovery projects by that date.

6 (6) Where needed to ensure that existing storage capacity is  
7 effectively and efficiently used to meet multiple purposes, the  
8 department may authorize reservoirs to be filled more than once per  
9 year or more than once per season of use.

10 (7) This section does not apply to facilities to recapture and  
11 reuse return flow from irrigation operations serving a single farm  
12 under an existing water right as long as the acreage irrigated is not  
13 increased beyond the acreage allowed to be irrigated under the water  
14 right.

15 (8) In addition to the facilities exempted under subsection (7)  
16 of this section, this section does not apply to small irrigation  
17 impoundments. For purposes of this section, "small irrigation  
18 impoundments" means lined surface storage ponds less than ten acre  
19 feet in volume used to impound irrigation water under an existing  
20 water right where use of the impoundment: (a)(i) Facilitates  
21 efficient use of water; or (ii) promotes compliance with an approved  
22 recovery plan for endangered or threatened species; and (b) does not  
23 expand the number of acres irrigated or the annual consumptive  
24 quantity of water used. Such ponds must be lined unless a licensed  
25 engineer determines that a liner is not needed to retain water in the  
26 pond and to prevent groundwater contamination. Although it may also  
27 be composed of other materials, a properly maintained liner may be  
28 composed of bentonite. Water remaining in a small irrigation  
29 impoundment at the end of an irrigation season may be carried over  
30 for use in the next season. However, the limitations of this  
31 subsection (8) apply. Development and use of a small irrigation  
32 impoundment does not constitute a change or amendment for purposes of  
33 RCW 90.03.380 or 90.44.055.

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