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ENGROSSED SUBSTITUTE SENATE BILL 6445

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State of Washington

54th Legislature

1996 Regular Session

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

Read first time 01/26/96.

1 AN ACT Relating to water supply regulation; and adding a new  
2 section to chapter 43.27A RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.27A RCW  
5 to read as follows:

6 The purpose of this section is to set forth the powers of the  
7 department to regulate the withdrawal or diversion of public waters and  
8 water or water rights related thereto including regulation based on  
9 dates of priority or other pertinent factors. Regulatory actions taken  
10 under this section shall be based on examination and determination by  
11 the department or the court, as applicable, of the various water rights  
12 involved according to the department's records and other records and  
13 pertinent facts. The powers set forth in this section may be exercised  
14 whether or not a general adjudication relating to the water rights  
15 involved has been conducted.

16 (1) In a regulatory situation (a) where a water right or all water  
17 rights proposed for regulation by the department, as well as any right  
18 or rights of a senior priority that the proposed regulation is designed  
19 to protect, is or are embodied in a certificate or certificates issued

1 under RCW 90.03.240, 90.03.330, 90.38.040, 90.42.040, or 90.44.060 or  
2 a permit or permits issued pursuant to RCW 90.03.290 or 90.44.060; or  
3 (b) where a flow or level has been established by rule pursuant to  
4 chapter 90.22 or 90.54 RCW; or (c) where it appears to the department  
5 that public waters are being withdrawn without any right or other  
6 appropriate authority whatsoever, the department in its discretion is  
7 authorized to regulate the right or rights under either RCW 43.27A.190  
8 or subsection (2) of this section.

9 (2) In a regulatory situation where one or more of the water rights  
10 proposed for regulation by the department, as well as any right or  
11 rights of a senior priority that the proposed regulation is designed to  
12 protect, is not or are not embodied in a permit or certificate as  
13 described in subsection (1) of this section, the department is only  
14 authorized to bring an appropriate action at law or in equity,  
15 including seeking injunctive relief, as it may deem necessary. Where  
16 actions are brought in a state court, the actions shall be initiated in  
17 the superior court of the county where the point or points of diversion  
18 of the water right or rights proposed for regulation are located. If  
19 the points of diversion are located in more than one county, the  
20 department may bring the action in a county where a point of diversion  
21 is located.

22 (3) Nothing in this section authorizes the department to accomplish  
23 a general adjudication of water rights proceeding or the substantial  
24 equivalent of a general adjudication of water rights. The exclusive  
25 procedure for accomplishing a general adjudication of water rights is  
26 under RCW 90.03.110 through 90.03.245 or 90.44.220.

27 (4) Nothing in this section shall amend, revise, or repeal RCW  
28 90.14.130 or 90.14.200.

29 (5) This section does not in any way modify regulatory powers  
30 previously placed with the department except as provided in subsections  
31 (1) and (2) of this section.

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