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SENATE BILL 5333

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State of Washington

57th Legislature

2001 Regular Session

By Senators Honeyford, Hale, Morton, Hochstatter, Hewitt, Swecker and Sheahan

Read first time 01/19/2001. Referred to Committee on Environment, Energy & Water.

1 AN ACT Relating to preliminary permit timelines; and amending RCW  
2 90.03.290.

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

4 **Sec. 1.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read  
5 as follows:

6 (1) When an application complying with the provisions of this  
7 chapter and with the rules (~~and regulations~~) of the department has  
8 been filed, the same shall be placed on record with the department, and  
9 it shall be its duty to investigate the application, and determine what  
10 water, if any, is available for appropriation, and find and determine  
11 to what beneficial use or uses it can be applied. If it is proposed to  
12 appropriate water for irrigation purposes, the department shall  
13 investigate, determine and find what lands are capable of irrigation by  
14 means of water found available for appropriation. If it is proposed to  
15 appropriate water for the purpose of power development, the department  
16 shall investigate, determine and find whether the proposed development  
17 is likely to prove detrimental to the public interest, having in mind  
18 the highest feasible use of the waters belonging to the public.

1       (2)(a) If the application does not contain, and the applicant does  
2 not promptly furnish sufficient information on which to base such  
3 findings, the department may issue a preliminary permit, for a period  
4 of not to exceed three years, requiring the applicant to make such  
5 surveys, investigations, studies, and progress reports, as in the  
6 opinion of the department may be necessary. If the applicant fails to  
7 comply with the conditions of the preliminary permit, it and the  
8 application or applications on which it is based shall be automatically  
9 canceled and the applicant so notified. If the holder of a preliminary  
10 permit shall, before its expiration, file with the department a  
11 verified report of expenditures made and work done under the  
12 preliminary permit, which, in the opinion of the department,  
13 establishes the good faith, intent, and ability of the applicant to  
14 carry on the proposed development, the preliminary permit may, with the  
15 approval of the governor, be extended, but not to exceed a maximum  
16 period of five years from the date of the issuance of the preliminary  
17 permit.

18       **(b) For a preliminary permit relating to an application seeking to**  
19 **divert or withdraw water from a water source closed to further**  
20 **diversions or withdrawals by a state or federally imposed moratorium in**  
21 **effect during the time the preliminary permit is in effect, the initial**  
22 **three-year preliminary permit time frame must be extended for three**  
23 **years from the date the moratorium is lifted.**

24       **(c) For any application for which a preliminary permit was issued**  
25 **and for which the availability of water was directly affected by a**  
26 **moratorium on further diversions from the Columbia river during the**  
27 **years from 1990 to 1998, the preliminary permit is extended through**  
28 **June 30, 2002. If such an application and preliminary permit were**  
29 **cancelled by operation of this section, the application and preliminary**  
30 **permit are reinstated and the preliminary permit is extended until June**  
31 **30, 2002.**

32       (3) The department shall make and file as part of the record in the  
33 matter, written findings of fact concerning all things investigated,  
34 and if it shall find that there is water available for appropriation  
35 for a beneficial use, and the appropriation thereof as proposed in the  
36 application will not impair existing rights or be detrimental to the  
37 public welfare, it shall issue a permit stating the amount of water to  
38 which the applicant shall be entitled and the beneficial use or uses to  
39 which it may be applied: PROVIDED, That where the water applied for is

1 to be used for irrigation purposes, it shall become appurtenant only to  
2 such land as may be reclaimed thereby to the full extent of the soil  
3 for agricultural purposes. But where there is no unappropriated water  
4 in the proposed source of supply, or where the proposed use conflicts  
5 with existing rights, or threatens to prove detrimental to the public  
6 interest, having due regard to the highest feasible development of the  
7 use of the waters belonging to the public, it shall be duty of the  
8 department to reject such application and to refuse to issue the permit  
9 asked for.

10 (4) If the permit is refused because of conflict with existing  
11 rights and such applicant shall acquire same by purchase or  
12 condemnation under RCW 90.03.040, the department may thereupon grant  
13 such permit. Any application may be approved for a less amount of  
14 water than that applied for, if there exists substantial reason  
15 therefor, and in any event shall not be approved for more water than  
16 can be applied to beneficial use for the purposes named in the  
17 application. In determining whether or not a permit shall issue upon  
18 any application, it shall be the duty of the department to investigate  
19 all facts relevant and material to the application. After the  
20 department approves said application in whole or in part and before any  
21 permit shall be issued thereon to the applicant, such applicant shall  
22 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the  
23 event a permit is issued by the department upon any application, it  
24 shall be its duty to notify the director of fish and wildlife of such  
25 issuance.

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