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SENATE BILL 6486

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State of Washington                      58th Legislature                      2004 Regular Session

By Senators Morton, Rasmussen, Honeyford, Swecker and Mulliken

Read first time 01/21/2004.                      Referred to Committee on Natural Resources, Energy & Water.

1            AN ACT Relating to water rights for agricultural uses; amending RCW  
2 90.03.380 and 90.44.050; adding new sections to chapter 90.44 RCW; and  
3 declaring an emergency.

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

5            **Sec. 1.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read  
6 as follows:

7            (1) The right to the use of water which has been applied to a  
8 beneficial use in the state shall be and remain appurtenant to the land  
9 or place upon which the same is used: PROVIDED, HOWEVER, That the  
10 right may be transferred to another or to others and become appurtenant  
11 to any other land or place of use without loss of priority of right  
12 theretofore established if such change can be made without detriment or  
13 injury to existing rights. The point of diversion of water for  
14 beneficial use or the purpose of use may be changed, if such change can  
15 be made without detriment or injury to existing rights. A change in  
16 the place of use, point of diversion, and/or purpose of use of a water  
17 right to enable irrigation of additional acreage or the addition of new  
18 uses may be permitted if such change results in no increase in the  
19 annual consumptive quantity of water used under the water right. For

1 purposes of this section, "annual consumptive quantity" means the  
2 estimated or actual annual amount of water diverted pursuant to the  
3 water right, reduced by the estimated annual amount of return flows,  
4 averaged over the two years of greatest use within the most recent  
5 five-year period of continuous beneficial use of the water right.  
6 Before any transfer of such right to use water or change of the point  
7 of diversion of water or change of purpose of use can be made, any  
8 person having an interest in the transfer or change, shall file a  
9 written application therefor with the department, and the application  
10 shall not be granted until notice of the application is published as  
11 provided in RCW 90.03.280. If it shall appear that such transfer or  
12 such change may be made without injury or detriment to existing rights,  
13 the department shall issue to the applicant a certificate in duplicate  
14 granting the right for such transfer or for such change of point of  
15 diversion or of use. The certificate so issued shall be filed and be  
16 made a record with the department and the duplicate certificate issued  
17 to the applicant may be filed with the county auditor in like manner  
18 and with the same effect as provided in the original certificate or  
19 permit to divert water.

20 (2) If an application for change proposes to transfer water rights  
21 from one irrigation district to another, the department shall, before  
22 publication of notice, receive concurrence from each of the irrigation  
23 districts that such transfer or change will not adversely affect the  
24 ability to deliver water to other landowners or impair the financial  
25 integrity of either of the districts.

26 (3) A change in place of use by an individual water user or users  
27 of water provided by an irrigation district need only receive approval  
28 for the change from the board of directors of the district if the use  
29 of water continues within the irrigation district, and when water is  
30 provided by an irrigation entity that is a member of a board of joint  
31 control created under chapter 87.80 RCW, approval need only be received  
32 from the board of joint control if the use of water continues within  
33 the area of jurisdiction of the joint board and the change can be made  
34 without detriment or injury to existing rights.

35 (4) This section shall not apply to trust water rights acquired by  
36 the state through the funding of water conservation projects under  
37 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

1 (5)(a) Pending applications for new water rights are not entitled  
2 to protection from impairment, injury, or detriment when an application  
3 relating to an existing surface or ground water right is considered.

4 (b) Applications relating to existing surface or ground water  
5 rights may be processed and decisions on them rendered independently of  
6 processing and rendering decisions on pending applications for new  
7 water rights within the same source of supply without regard to the  
8 date of filing of the pending applications for new water rights.

9 (c) Notwithstanding any other existing authority to process  
10 applications, including but not limited to the authority to process  
11 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
12 application relating to an existing surface or ground water right may  
13 be processed ahead of a previously filed application relating to an  
14 existing right when sufficient information for a decision on the  
15 previously filed application is not available and the applicant for the  
16 previously filed application is sent written notice that explains what  
17 information is not available and informs the applicant that processing  
18 of the next application will begin. The previously filed application  
19 does not lose its priority date and if the information is provided by  
20 the applicant within sixty days, the previously filed application shall  
21 be processed at that time. This subsection (5)(c) does not affect any  
22 other existing authority to process applications.

23 (d) Nothing in this subsection (5) is intended to stop the  
24 processing of applications for new water rights.

25 (6) No applicant for a change, transfer, or amendment of a water  
26 right may be required to give up any part of the applicant's valid  
27 water right or claim to a state agency, the trust water rights program,  
28 or to other persons as a condition of processing the application.

29 (7) In revising the provisions of this section and adding  
30 provisions to this section by chapter 237, Laws of 2001, the  
31 legislature does not intend to imply legislative approval or  
32 disapproval of any existing administrative policy regarding, or any  
33 existing administrative or judicial interpretation of, the provisions  
34 of this section not expressly added or revised.

35 (8) The development and use of a small irrigation impoundment, as  
36 defined in RCW 90.03.370(8), does not constitute a change or amendment  
37 for the purposes of this section. The exemption expressly provided by

1 this subsection shall not be construed as requiring a change or  
2 transfer of any existing water right to enable the holder of the right  
3 to store water governed by the right.

4 (9) Notwithstanding any other provision of this section or RCW  
5 90.44.100, a water right to use surface or ground water that has been  
6 applied to any beneficial use within the general category of an  
7 agricultural use may be changed to another agricultural use, within the  
8 other limitations of the water right, under the following conditions:

9 (a) A change in the type of crop irrigated or from one agricultural  
10 use to another agricultural use that does not involve a change in the  
11 season of use of the water may be made without applying to the  
12 department or any other governmental entity for approval;

13 (b) A change from one agricultural use to another agricultural use  
14 that involves a change in the season of use of water may be made after  
15 providing the department with notice and an opportunity for review as  
16 follows:

17 (i) For changes under this subsection (9)(b), the water right  
18 holder shall give written notice to the department describing the  
19 proposed change and providing evidence of beneficial use of the right.  
20 The water right holder may proceed with the change unless the  
21 department notifies the water right holder within twenty calendar days  
22 that the proposed change raises concerns regarding potential impairment  
23 to other existing water rights. The director may extend the twenty-day  
24 period by an additional fifteen calendar days if notice is provided to  
25 the water right holder within the twenty-day period and the water right  
26 holder consents; and

27 (ii) The department shall operate under a rebuttable presumption of  
28 no impairment of other water rights if the season of use is proposed to  
29 be changed from a period that is more critical for other water rights  
30 and stream flows to a period that is less critical. If the department  
31 determines that the proposed change raises concerns regarding  
32 impairment to other water rights, the proposed change may not proceed  
33 under this subsection (9);

34 (c) The department's determination under (b) of this subsection is  
35 not appealable. For a change that is not allowed under (b) of this  
36 subsection, the water right holder may subsequently apply for a change  
37 in right under subsection (1) or (2) of this section or RCW 90.03.390  
38 or 90.44.100, in which case the department shall make a full and normal

1 determination and render an appealable decision under those statutes.  
2 In making such a decision, the department is not bound by its earlier  
3 determination and the earlier determination may not result in a  
4 presumption of impairment of any water right; and

5 (d) The general category of an agricultural use of water under this  
6 subsection (9) is composed of, but not limited to: The beneficial uses  
7 of water for agricultural irrigation; frost protection; watering  
8 livestock; processing agricultural commodities; dust suppression;  
9 cleaning of agricultural animals, equipment, and facilities; and  
10 confined animal feeding operations with applicable land use and water  
11 quality permits.

12 **Sec. 2.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read  
13 as follows:

14 After June 6, 1945, no withdrawal of public ground waters of the  
15 state shall be begun, nor shall any well or other works for such  
16 withdrawal be constructed, unless an application to appropriate such  
17 waters has been made to the department and a permit has been granted by  
18 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public  
19 ground waters for stock((-)watering purposes, or for the watering of  
20 a lawn or of a noncommercial garden not exceeding one-half acre in  
21 area, or for single or group domestic uses in an amount not exceeding  
22 five thousand gallons a day as a daily average over the period of a  
23 year, or as provided in RCW 90.44.052, or for an industrial purpose in  
24 an amount not exceeding five thousand gallons a day as a daily average  
25 over the period of a year, is and shall be exempt from the provisions  
26 of this section, but, to the extent that it is regularly used  
27 beneficially, shall be entitled to a right equal to that established by  
28 a permit issued under the provisions of this chapter: PROVIDED,  
29 HOWEVER, That the department from time to time may require the person  
30 or agency making any such small withdrawal to furnish information as to  
31 the means for and the quantity of that withdrawal: PROVIDED, FURTHER,  
32 That at the option of the party making withdrawals of ground waters of  
33 the state not exceeding five thousand gallons per day as a daily  
34 average over the period of a year, applications under this section or  
35 declarations under RCW 90.44.090 may be filed and permits and  
36 certificates obtained in the same manner and under the same

1 requirements as is in this chapter provided in the case of withdrawals  
2 in excess of five thousand gallons a day.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.44 RCW  
4 to read as follows:

5 Any withdrawal of water for stock watering purposes begun before  
6 the effective date of this section that is not otherwise embodied in a  
7 water right permit, certificate, or claim shall be deemed a water right  
8 in good standing and shall receive an agricultural water permit under  
9 this chapter if:

10 (1) The use of water exceeding five thousand gallons per day as a  
11 daily average over the period of a year is filed by the water user with  
12 the department by July 1, 2006, and the filing is accompanied by proof  
13 of beneficial water use based on meter records, livestock numbers, or  
14 other appropriate means of demonstrating water use at the time of  
15 filing;

16 (2) The water used under a filing made under subsection (1) of this  
17 section does not exceed the quantity or rate listed in a permit granted  
18 under the provisions of this section; and

19 (3) The water use remains as an agricultural use. For the purposes  
20 of this section, "agricultural use" includes, but is not limited to:  
21 The beneficial uses of water for agricultural irrigation; frost  
22 protection; watering livestock; processing agricultural commodities;  
23 dust suppression; cleaning of agricultural animals, equipment, and  
24 facilities; and confined animal feeding operations with applicable land  
25 use and water quality permits.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.44 RCW  
27 to read as follows:

28 The stock water account is created in the custody of the state  
29 treasurer. All receipts from legislative appropriations to the  
30 account, lease fees under section 6 of this act, or federal or local  
31 funds provided to the account must be deposited into the account.  
32 Expenditures from the account may only be used to acquire, lease, or  
33 otherwise obtain water for stock watering purposes in accordance with  
34 sections 5 and 6 of this act. Only the director of ecology or the  
35 director's designee may authorize expenditures from the account. The

1 account is subject to allotment procedures under chapter 43.88 RCW, but  
2 an appropriation is not required for expenditures.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.44 RCW  
4 to read as follows:

5 (1)(a) The department may acquire, lease, or otherwise obtain water  
6 for stock watering purposes in watersheds when: (i) Local economics  
7 and the cost of water do not allow agricultural interests to compete  
8 with other interests for the purchase or lease of water rights; or (ii)  
9 the further diversion or withdrawal of water for stock watering  
10 purposes cannot be accomplished without significant instream flow  
11 impacts.

12 (b) Acquisitions made under (a)(ii) of this subsection must be made  
13 such that the acquisition will provide for stock watering purposes and  
14 help meet instream flow needs.

15 (2) Acquisitions may only be made under the provisions of this  
16 section with funds from the stock water account created in section 4 of  
17 this act.

18 (3) A water right acquired by the department under this section  
19 must be held in the state trust water rights program under chapter  
20 90.42 RCW until the water right is leased for stock watering purposes.

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

23 The department may lease or sell water rights acquired under  
24 section 5 of this act to users who may put the water to beneficial use  
25 for stock watering purposes on a first-come, first-served basis.

26 Revenue derived from the lease of waters under this section must be  
27 placed in the stock water account created in section 4 of this act.

28 The department shall seek federal and local funds to augment state  
29 funding for the account.

30 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of the  
32 state government and its existing public institutions, and takes effect  
33 immediately.

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