S-3629.1

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**SENATE BILL 6390**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Wellman and Honeyford

AN ACT Relating to integration of reclaimed water, water system planning, and groundwater source protection; amending RCW 90.46.220; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature reaffirms its findings that reclaimed water represents an important new water supply source for meeting the state's objectives in protecting and preserving potable supplies for drinking water purposes and meeting the future water requirements of the state. The legislature further finds that reclaimed water development should occur by integrating the development, sale, distribution, and use of reclaimed water with the objectives of regional and local watershed and water system plans. It is therefore the intent of the legislature to:

(1) Advance state, regional, and local water supply objectives, including those objectives stated in local watershed, water system, and growth management plans, through integration of reclaimed water to help achieve those objectives;

(2) Avoid or minimize duplicative or inefficient infrastructure and adverse impacts on public water systems affected by the distribution and use of reclaimed water within their service areas;

(3) Enable public water systems to provide affordable, equitable, and sustainable rate structures for their customers, including over successive planning horizons as reclaimed water is substituted for potable or fresh water where suitable;

(4) Protect the financial integrity of public water systems, including consistency with long-term financial planning and ensuring the capacity to meet municipal bond obligations; and

(5) Encourage the use of reclaimed water for environmental purposes, including discharge to wetlands and streamflow augmentation, where consistent with appropriate measures that foster and protect drinking water sources.

**Sec.**  RCW 90.46.220 and 2009 c 456 s 9 are each amended to read as follows:

(1) Any person proposing to generate any type of reclaimed water for a use regulated under this chapter shall obtain a permit from the lead agency prior to distribution or use of that water. The permittee may then distribute and use the water, subject to the provisions in the permit. The permit must include provisions that protect human health and the environment. At a minimum, the permit must:

(a) Assure adequate and reliable treatment; and

(b) Govern the water quality, location, rate, and purpose of use.

(2) A permit under this chapter may be issued only to:

(a) A municipal, quasi-municipal, or other governmental entity;

(b) A private utility as defined in RCW 36.94.010;

(c) The holder of a waste disposal permit issued under chapter 90.48 RCW; or

(d) The owner of an agricultural processing facility that is generating agricultural industrial process water for agricultural use, or the owner of an industrial facility that is generating industrial process water for reuse.

(3) Before deciding whether to issue a permit under this section to a private utility, the lead agency may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility.

(4) Permits shall be issued for a fixed term specified by the rules adopted under RCW 90.46.015. A permittee shall apply for permit renewal prior to the end of the term. The rules adopted under RCW 90.46.015 shall specify the process of renewal, modification, change of ownership, suspension, and termination.

(5)(a) Before a permit applicant or permittee may distribute, supply, use, or otherwise make available reclaimed water for use or distribution at one or more locations within the retail or wholesale service area of any group A public water system, the permit applicant or permittee must enter into a written agreement with the group A public water system. The written agreement must include reasonable terms and conditions, as necessary, to address the following matters:

(i) The identification of areas within the service area where reclaimed water may be served and the proposed uses;

(ii) The location, schedule, and responsibility for construction and maintenance of facilities to treat, convey, or deliver reclaimed water within the service area;

(iii) The protection of water resources, including current and future public drinking water sources, and other environmental concerns;

(iv) Rates and charges applicable to reclaimed water customers;

(v) Potential financial impacts to public water system ratepayers and bondholders;

(vi) Coordination and integration of proposed reclaimed water use into the group A public water system comprehensive planning process, including financial planning; and

(vii) Other subjects the parties determine merit coordination.

(b) A group A public water system may waive the agreement requirement in (a) of this subsection for a period of time not to exceed the term of the reclaimed water permit.

(6) Before a permit applicant or permittee may convey, distribute, store, supply, or use reclaimed water at one or more locations within, or in hydrologic connection to, an aquifer or groundwater source covered by a critical aquifer recharge area, a wellhead protection area, or a sole source aquifer area, the permit applicant or permittee and the affected group A public water system must enter into a written agreement that contains terms and conditions to protect groundwater quality. An affected group A public water system may waive this agreement requirement for a period of time not to exceed the term of the reclaimed water permit.

(7) Notwithstanding the written agreement required in subsections (5) and (6) of this section, existing and permitted beneficial uses of reclaimed water in operation before the effective date of this section are not subject to the requirements of subsections (5) and (6) of this section until the permit for such existing beneficial uses expires or is renewed. Any expansion or increase of an existing beneficial use of reclaimed water is subject to the written agreement requirement in subsections (5) and (6) of this section.

(8) The lead agency may deny an application for a permit or modify, suspend, or revoke a permit for good cause, including but not limited to, any case in which it finds that the permit was obtained by fraud or misrepresentation, or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or the rules adopted under this chapter.

((~~(6)~~)) (9) The lead agency shall provide for adequate public notice and opportunity for review and comment on all initial permit applications and renewal applications. Methods for providing notice may include ((~~electronic mail~~)) email, posting on the lead agency's internet site, publication in a local newspaper, press releases, mailings, or other means of notification the lead agency determines appropriate. The lead agency shall also publicize notice of final permitting decisions.

((~~(7)~~)) (10) Any person aggrieved by a permitting decision has the right to an adjudicative proceeding. An adjudicative proceeding conducted under this subsection is governed by chapter 34.05 RCW. For any permit decision for which the department of ecology is the lead agency under this chapter, any appeal shall be in accordance with chapter 43.21B RCW. For any permit decision for which department of health is the lead agency under this chapter, any application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the department of health within twenty-eight days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt.

((~~(8)~~)) (11) In the event that a permit applicant or permittee and a group A public water system are not able to reach agreement on a written agreement required by subsection (5) or (6) of this section, then the permit applicant, permittee, or group A public water system may petition the secretary of the department of health, or the secretary's designee, who will issue a decision. However, the parties must have first: (a) Engaged in good faith efforts to negotiate the terms of a written agreement; and (b) undertaken good faith efforts to resolve the issues through mediation, consistent with chapter 7.07 RCW, or other facilitated negotiations, with each party bearing its own costs and a pro rata share of mediation costs. Upon request of the department of health, the parties to the dispute must reimburse the department's costs of responding to a petition and issuing a decision.

(12) Permit requirements for the distribution and use of greywater will be established in rules adopted by the department of health under RCW 90.46.015.

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