

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2026

Chapter 347, Laws of 1991
(partial veto)

52nd Legislature
1991 Regular Session

WATER RESOURCE MANAGEMENT

EFFECTIVE DATE: 7/28/91 - Except Section 4 which
becomes effective on 7/1/91.

Passed by the House April 28, 1991
Yeas 97 Nays 0

JOE KING
Speaker of the
House of Representatives

Passed by the Senate April 28, 1991
Yeas 45 Nays 0

JOEL PRITCHARD
President of the Senate

Approved May 21, 1991, with
the exception of section 25,
which is vetoed.

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2026** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 21, 1991 - 11:19 a.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 2026

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1991 Regular Session

State of Washington

52nd Legislature

1991 Regular Session

By House Committee on Natural Resources & Parks (originally sponsored by Representatives Fraser, Miller, Valle, Rayburn, McLean, Belcher, Jacobsen, Nealey, Paris, Winsley and Chandler; by request of Jnt Sel Com on Water Resource Policy).

Read first time March 6, 1991.

1 AN ACT Relating to water resource management; amending RCW
2 90.54.045, 90.03.380, 19.27.170, 35.67.020, 56.16.090, 57.20.020,
3 54.24.080, 80.28.010, 80.28.025, and 90.14.140; reenacting and amending
4 RCW 35.92.010; adding a new section to chapter 90.54 RCW; adding a new
5 section to chapter 90.14 RCW; adding a new section to chapter 82.04
6 RCW; adding a new section to chapter 82.12 RCW; adding a new chapter to
7 Title 90 RCW; creating new sections; providing an effective date; and
8 declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** (1) It is the policy of the state of
11 Washington to recognize and preserve water rights in accordance with
12 RCW 90.03.010.

13 (2) The legislature finds that:

1 (a) The state of Washington is faced with a shortage of water with
2 which to meet existing and future needs, particularly during the summer
3 and fall months and in dry years when the demand is greatest;

4 (b) Consistent with RCW 90.54.180, conservation and water use
5 efficiency programs, including storage, should be the preferred methods
6 of addressing water uses because they can relieve current critical
7 water situations, provide for presently unmet needs, and assist in
8 meeting future water needs. Presently unmet needs or current needs
9 includes the water required to increase the frequency of occurrence of
10 base or minimum flow levels in streams of the state, the water
11 necessary to satisfy existing water rights, or the water necessary to
12 provide full supplies to existing water systems with current supply
13 deficiencies; and

14 (c) The interests of the state will be served by developing
15 programs and regional water resource plans, in cooperation with local
16 governments, federally recognized tribal governments, appropriate
17 federal agencies, private citizens, and the various water users and
18 water interests in the state, that increase the overall ability to
19 manage the state's waters in order to resolve conflicts and to better
20 satisfy both present and future needs for water.

21 NEW SECTION. **Sec. 2.** The purposes of this act are to:

22 (1) Improve the ability of the state to work with the United
23 States, local governments, federally recognized tribal governments,
24 water right holders, water users, and various water interests in water
25 conservation and water use efficiency programs designed to satisfy
26 existing rights, presently unmet needs, and future needs, both instream
27 and out-of-stream;

28 (2) Establish new incentives, enhance existing incentives, and
29 remove disincentives for efficient water use;

1 (3) Establish improved means to disseminate information to the
2 public and provide technical assistance regarding ways to improve the
3 efficiency of water use;

4 (4) Create a trust water rights mechanism for the acquisition of
5 water rights on a voluntary basis to be used to meet presently unmet
6 needs and future needs;

7 (5) Prohibit the sale of nonconforming plumbing fixtures and
8 require the marking and labeling of fixtures meeting state standards;

9 (6) Reduce tax disincentives to water conservation, reuse, and
10 improved water use efficiency; and

11 (7) Add achievement of water conservation as a factor to be
12 considered by water supply utilities in setting water rates.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.54 RCW
14 to read as follows:

15 (1) State funding of water resource, supply, and quality related
16 capital programs, both current and future, shall, to the maximum extent
17 possible within state or federal legal requirements, be directed to
18 assist in the resolution of current conflicts and implementation of
19 regional water resource plans with priority given to current needs over
20 new requirements.

21 (2) Consistent with RCW 90.54.180, priority shall be given, to the
22 maximum extent possible within state or federal legal requirements, to
23 those water conservation projects funded by the state that will result
24 in the greatest net water savings.

25 **Sec. 4.** RCW 90.54.045 and 1990 c 295 s 3 are each amended to read
26 as follows:

27 (1) In the development and implementation of the comprehensive
28 state water resources program required in RCW 90.54.040(1), the process

1 described therein shall involve participation of appropriate state
2 agencies, Indian tribes, local governments, and interested parties, and
3 shall be applied on a regional basis pursuant to subsection (2) of this
4 section.

5 (2) Prior to (~~January~~) July 1, 1991, the department, with advice
6 from appropriate state agencies, Indian tribes, local government, and
7 interested parties, shall identify regions and establish regional
8 boundaries for water resource planning and shall designate two regions
9 in which the process shall be initiated on a pilot basis. One region
10 shall encompass an area within the Puget Sound basin in which critical
11 water resource issues exist. A concurrent pilot process may encompass
12 a region east of the Cascade mountains.

13 (3) The department shall report to the chairs of the appropriate
14 legislative committees prior to July 1st each year summarizing the
15 progress of the pilot process in the two regions. The pilot process in
16 each region shall be completed and shall produce a regional water plan
17 by December 31, 1993.

18 (4) Appropriate state agencies, Indian tribes, local governments,
19 and interested parties in regions not selected for the pilot program
20 are strongly encouraged to commence water resource planning within
21 their regions.

22 NEW SECTION. **Sec. 5.** (1) The legislature finds that a need
23 exists to develop and test a means to facilitate the voluntary transfer
24 of water and water rights, including conserved water, to provide water
25 for presently unmet needs and emerging needs. Further, the legislature
26 finds that water conservation activities have the potential of
27 affecting the quantity of return flow waters to which existing water
28 right holders have a right to and rely upon. It is the intent of the
29 legislature that persons holding rights to water, including return

1 flows, not be adversely affected in the implementation of the
2 provisions of this chapter.

3 The purpose of this chapter is to provide the mechanism for
4 accomplishing this in a manner that will not impair existing rights to
5 water and to test the mechanism in two pilot planning areas designated
6 pursuant to RCW 90.54.045(2) and in the water resource inventory areas
7 designated under subsection (2) of this section.

8 (2) The department may designate up to four water resource
9 inventory areas west of the crest of the Cascade mountains and up to
10 four water resource inventory areas east of the crest of the Cascade
11 mountains, as identified pursuant to chapter 90.54 RCW. The areas
12 designated shall contain critical water supply problems and shall
13 provide an opportunity to test and evaluate a variety of applications
14 of sections 5 through 13 of this act, including application to
15 municipal, industrial, and agricultural use. The department shall seek
16 advice from appropriate state agencies, Indian tribes, local
17 governments, representatives of water right holders, and interested
18 parties before identifying such water resource inventory areas.

19 (3) The department shall provide to the appropriate legislative
20 committees by December 31, 1993, a written evaluation of the
21 implementation of sections 5 through 13 of this act and recommendations
22 for future application.

23 NEW SECTION. **Sec. 6.** Unless the context clearly requires
24 otherwise, the definitions in this section apply throughout this
25 chapter.

26 (1) "Department" means the department of ecology.

27 (2) "Net water savings" means the amount of water that is
28 determined to be conserved and usable within a specified stream reach
29 or reaches for other purposes without impairment or detriment to water

1 rights existing at the time that a water conservation project is
2 undertaken, reducing the ability to deliver water, or reducing the
3 supply of water that otherwise would have been available to other
4 existing water uses.

5 (3) "Trust water right" means any water right acquired by the state
6 under this chapter for management in the state's trust water rights
7 program.

8 (4) "Pilot planning areas" means the geographic areas designated
9 under RCW 90.54.045(2).

10 (5) "Water conservation project" means any project or program that
11 achieves physical or operational improvements that provide for
12 increased water use efficiency in existing systems of diversion,
13 conveyance, application, or use of water under water rights existing on
14 the effective date of this section.

15 NEW SECTION. **Sec. 7.** (1) For purposes of this chapter, the
16 state may enter into contracts to provide moneys to assist in the
17 financing of water conservation projects located within pilot planning
18 areas and in water resource inventory areas designated in accordance
19 with section 5 of this act. In consideration for the financial
20 assistance provided, the state shall obtain public benefits defined in
21 guidelines developed under section 9 of this act.

22 (2) If the public benefits to be obtained require conveyance or
23 modification of a water right, the recipient of funds shall convey to
24 the state the recipient's interest in that part of the water right or
25 claim constituting all or a portion of the resulting net water savings
26 for deposit in the trust water rights program. The amount to be
27 conveyed shall be finitely determined by the parties, in accordance
28 with the guidelines developed under section 9 of this act, before the
29 expenditure of state funds. Conveyance may consist of complete

1 transfer, lease contracts, or other legally binding agreements. When
2 negotiating for the acquisition of conserved water or net water
3 savings, or a portion thereof, the state may require evidence of a
4 valid water right.

5 (3) As part of the contract, the water right holder and the state
6 shall specify the process to determine the amount of water the water
7 right holder would continue to be entitled to once the water
8 conservation project is in place.

9 (4) The state shall cooperate fully with the United States in the
10 implementation of this chapter. Trust water rights may be acquired
11 through expenditure of funds provided by the United States and shall be
12 treated in the same manner as trust water rights resulting from the
13 expenditure of state funds.

14 (5) If water is proposed to be acquired by or conveyed to the state
15 as a trust water right by an irrigation district, evidence of the
16 district's authority to represent the water right holders shall be
17 submitted to and for the satisfaction of the department.

18 (6) The state shall not contract with any person to acquire a water
19 right served by an irrigation district without the approval of the
20 board of directors of the irrigation district. Disapproval by a board
21 shall be factually based on probable adverse effects on the ability of
22 the district to deliver water to other members or on maintenance of the
23 financial integrity of the district.

24 NEW SECTION. **Sec. 8.** (1) All trust water rights acquired by
25 the state shall be placed in the state trust water rights program to be
26 managed by the department. Trust water rights acquired by the state
27 shall be held or authorized for use by the department for instream
28 flows, irrigation, municipal, or other beneficial uses consistent with
29 applicable regional plans for pilot planning areas, or to resolve

1 critical water supply problems in water resource inventory areas
2 designated in accordance with section 5 of this act.

3 (2) The department shall issue a water right certificate in the
4 name of the state of Washington for each permanent trust water right
5 conveyed to the state indicating the reach or reaches of the stream,
6 the quantity, and the use or uses to which it may be applied. A
7 superseding certificate shall be issued that specifies the amount of
8 water the water right holder would continue to be entitled to as a
9 result of the water conservation project. The superseding certificate
10 shall retain the same priority date as the original right. For
11 nonpermanent conveyances, the department shall issue certificates or
12 such other instruments as are necessary to reflect the changes in
13 purpose or place of use or point of diversion or withdrawal. Water
14 rights for which such nonpermanent conveyances are arranged shall not
15 be subject to relinquishment for nonuse.

16 (3) A trust water right retains the same priority date as the water
17 right from which it originated, but as between them the trust right
18 shall be deemed to be inferior in priority unless otherwise specified
19 by an agreement between the state and the party holding the original
20 right.

21 (4) Exercise of a trust water right may be authorized only if the
22 department first determines that neither water rights existing at the
23 time the trust water right is established, nor the public interest will
24 be impaired. If impairment becomes apparent during the time a trust
25 water right is being exercised, the department shall cease or modify
26 the use of the trust water right to eliminate the impairment.

27 (5) Before any trust water right is created or modified, the
28 department shall, at a minimum, require that a notice be published in
29 a newspaper of general circulation published in the county or counties
30 in which the storage, diversion, and use are to be made, and in other

1 newspapers as the department determines is necessary, once a week for
2 two consecutive weeks. At the same time the department shall send a
3 notice containing pertinent information to all appropriate state
4 agencies, potentially affected local governments and federally
5 recognized tribal governments, and other interested parties.

6 (6) RCW 90.14.140 through 90.14.230 have no applicability to trust
7 water rights held by the department under this chapter or exercised
8 under this section.

9 (7) RCW 90.03.380 has no applicability to trust water rights
10 acquired by the state through the funding of water conservation
11 projects.

12 NEW SECTION. **Sec. 9.** The department, in cooperation with
13 federally recognized Indian tribes, local governments, state agencies,
14 and other interested parties, shall establish guidelines by July 1,
15 1992, governing the acquisition, administration, and management of
16 trust water rights. The guidelines shall address at a minimum the
17 following:

18 (1) Methods for determining the net water savings resulting from
19 water conservation projects or programs carried out in accordance with
20 this chapter, and other factors to be considered in determining the
21 quantity or value of water available for potential designation as a
22 trust water right;

23 (2) Criteria for determining the portion of net water savings to be
24 conveyed to the state under this chapter;

25 (3) Criteria for prioritizing water conservation projects;

26 (4) A description of potential public benefits that will affect
27 consideration for state financial assistance in section 7 of this act;

28 (5) Procedures for providing notification to potentially interested
29 parties;

1 (6) Criteria for the assignment of uses of trust water rights
2 acquired in areas of the state not addressed in a regional water
3 resource plan or critical area agreement; and

4 (7) Contracting procedures and other procedures not specifically
5 addressed in this section.

6 These guidelines shall be submitted to the joint select committee
7 on water resource policy before adoption.

8 NEW SECTION. **Sec. 10.** The policies and purposes of this
9 chapter shall not be construed as replacing or amending the policies or
10 the purposes for which funds available under chapter 43.83B or 43.99E
11 RCW may be used.

12 NEW SECTION. **Sec. 11.** Nothing in this chapter authorizes the
13 involuntary impairment of any existing water rights.

14 NEW SECTION. **Sec. 12.** (1) Within the pilot planning areas, and
15 in water resource inventory areas designated in accordance with section
16 5 of this act, the state may acquire all or portions of existing water
17 rights, by purchase, gift, or other appropriate means other than by
18 condemnation, from any person or entity or combination of persons or
19 entities. Once acquired, such rights are trust water rights.

20 (2) The department may enter into leases, contracts, or such other
21 arrangements with other persons or entities as appropriate, to ensure
22 that trust water rights acquired in accordance with this chapter may be
23 exercised to the fullest possible extent.

24 (3) Trust water rights may be acquired by the state on a temporary
25 or permanent basis.

26 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to
27 transfers of water rights under this section.

1 (5) No funds may be expended for the purchase of water rights by
2 the state pursuant to this section unless specifically appropriated for
3 this purpose by the legislature.

4 NEW SECTION. **Sec. 13.** It is the intent of the legislature that
5 jurisdictional authorities that exist in law not be expanded,
6 diminished, or altered in any manner whatsoever by this chapter.

7 NEW SECTION. **Sec. 14.** A new section is added to chapter 90.14 RCW
8 to read as follows:

9 This chapter shall not apply to trust water rights held or
10 exercised by the department of ecology under chapter 90.38 or 90.-- RCW
11 (sections 1 and 5 through 13 of this act).

12 **Sec. 15.** RCW 90.03.380 and 1987 c 109 s 94 are each amended to
13 read as follows:

14 The right to the use of water which has been applied to a
15 beneficial use in the state shall be and remain appurtenant to the land
16 or place upon which the same is used: PROVIDED, HOWEVER, That said
17 right may be transferred to another or to others and become appurtenant
18 to any other land or place of use without loss of priority of right
19 theretofore established if such change can be made without detriment or
20 injury to existing rights. The point of diversion of water for
21 beneficial use or the purpose of use may be changed, if such change can
22 be made without detriment or injury to existing rights. Before any
23 transfer of such right to use water or change of the point of diversion
24 of water or change of purpose of use can be made, any person having an
25 interest in the transfer or change, shall file a written application
26 therefor with the department, and said application shall not be granted
27 until notice of said application shall be published as provided in RCW

1 90.03.280. If it shall appear that such transfer or such change may be
2 made without injury or detriment to existing rights, the department
3 shall issue to the applicant a certificate in duplicate granting the
4 right for such transfer or for such change of point of diversion or of
5 use. The certificate so issued shall be filed and be made a record
6 with the department and the duplicate certificate issued to the
7 applicant may be filed with the county auditor in like manner and with
8 the same effect as provided in the original certificate or permit to
9 divert water.

10 If an application for change proposes to transfer water rights from
11 one irrigation district to another, the department shall, before
12 publication of notice, receive concurrence from each of the irrigation
13 districts that such transfer or change will not adversely affect the
14 ability to deliver water to other land owners or impair the financial
15 integrity of either of the districts.

16 A change in place of use by an individual water user or users of
17 water provided by an irrigation district need only receive approval for
18 the change from the board of directors of the district if the use of
19 water continues within the irrigation district.

20 This section shall not apply to trust water rights acquired by the
21 state through the funding of water conservation projects under chapter
22 90.38 RCW or RCW 90.--.--- through 90.--.--- (sections 5 through 11 of
23 this 1991 act).

24 **Sec. 16.** RCW 19.27.170 and 1989 c 348 s 8 are each amended to read
25 as follows:

26 (1) The state building code council shall adopt rules under chapter
27 34.05 RCW that implement and incorporate the water conservation
28 performance standards in subsections ~~((+3))~~ (4) and ~~((+4))~~ (5) of
29 this section. These standards shall apply to all new construction and

1 all remodeling involving replacement of plumbing fixtures in all
2 residential, hotel, motel, school, industrial, commercial use, or other
3 occupancies determined by the council to use significant quantities of
4 water.

5 (2) The legislature recognizes that a phasing-in approach to these
6 new standards is appropriate. Therefore, standards in subsection
7 (~~((3))~~) (4) of this section shall take effect on July 1, 1990. The
8 standards in subsection (~~((4))~~) (5) of this section shall take effect
9 July 1, 1993.

10 (3) No individual, public or private corporation, firm, political
11 subdivision, government agency, or other legal entity may, for purposes
12 of use in this state, distribute, sell, offer for sale, import,
13 install, or approve for installation any plumbing fixtures unless the
14 fixtures meet the standards as provided for in this section.

15 (4) Standards for water use efficiency effective July 1, 1990.

16 (a) Standards for waterclosets. The guideline for maximum water
17 use allowed in gallons per flush (gpf) for any of the following
18 waterclosets is the following:

19 Tank-type toilets..... 3.5 gpf.

20 Flushometer-valve toilets..... 3.5 gpf.

21 Flushometer-tank toilets..... 3.5 gpf.

22 Electromechanical hydraulic toilets..... 3.5 gpf.

23 (b) Standard for urinals. The guideline for maximum water use
24 allowed for any urinal is 3.0 gallons per flush.

25 (c) Standard for showerheads. The guideline for maximum water use
26 allowed for any showerhead is 3.0 gallons per minute.

27 (d) Standard for faucets. The guideline for maximum water use
28 allowed in gallons per minute (gpm) for any of the following faucets
29 and replacement aerators is the following:

30 Bathroom faucets..... 3.0 gpm.

- 1 Lavatory faucets..... 3.0 gpm.
- 2 Kitchen faucets..... 3.0 gpm.
- 3 Replacement aerators..... 3.0 gpm.

4 (e) Except where designed and installed for use by the physically
5 handicapped, lavatory faucets located in restrooms intended for use by
6 the general public must be equipped with a metering valve designed to
7 close by spring or water pressure when left unattended (self-closing).

8 (f) No urinal or watercloset that operates on a continuous flow or
9 continuous flush basis shall be permitted.

10 ((+4)) (5) Standards for water use efficiency effective July 1,
11 1993.

12 (a) Standards for waterclosets. The guideline for maximum water
13 use allowed in gallons per flush (gpf) for any of the following
14 waterclosets is the following:

- 15 Tank-type toilets..... 1.6 gpf.
- 16 Flushometer-tank toilets..... 1.6 gpf.
- 17 Electromechanical hydraulic toilets..... 1.6 gpf.

18 (b) Standards for urinals. The guideline for maximum water use
19 allowed for any urinal is 1.0 gallons per flush.

20 (c) Standards for showerheads. The guideline for maximum water use
21 allowed for any showerhead is 2.5 gallons per minute.

22 (d) Standards for faucets. The guideline for maximum water use
23 allowed in gallons per minute for any of the following faucets and
24 replacement aerators is the following:

- 25 Bathroom faucets..... 2.5 gpm.
- 26 Lavatory faucets..... 2.5 gpm.
- 27 Kitchen faucets..... 2.5 gpm.
- 28 Replacement aerators..... 2.5 gpm.

29 (e) Except where designed and installed for use by the physically
30 handicapped, lavatory faucets located in restrooms intended for use by

1 the general public must be equipped with a metering valve designed to
2 close by water pressure when unattended (self-closing).

3 (f) No urinal or watercloset that operates on a continuous flow or
4 continuous basis shall be permitted.

5 ~~((5) The building code council shall make an assessment regarding
6 the low volume fixtures required under subsection (4) of this section.
7 The assessment shall consider the availability of low volume fixtures
8 which are technologically feasible, will operate effectively, and are
9 economically justified. The council shall also assess the potential
10 impact on the necessary flow or water required to insure sewerage or
11 septic lines and treatment plants will effectively operate.~~

12 ~~The council shall submit a report to the chief clerk of the house
13 of representatives and the secretary of the senate by October 30, 1992,
14 setting forth its conclusions, and any recommendations for legislative
15 action.))~~

16 (6) The building code council shall establish methods and
17 procedures for testing and identifying fixtures that meet the standards
18 established in subsection (5) of this section. The council shall use
19 the testing standards designated as American national standards,
20 written under American national standards institute procedures or other
21 widely recognized national testing standards. The council shall either
22 review test results from independent testing laboratories that are
23 submitted by manufacturers of plumbing fixtures or accept data
24 submitted to and evaluated by the international association of plumbing
25 and mechanical officials. The council shall publish and widely
26 distribute a current list of fixtures that meet the standards
27 established in subsection (5) of this section.

28 (7) The building code council shall adopt rules for marking and
29 labeling fixtures meeting the standards established in subsection (5)
30 of this section.

1 (8) This section shall not apply to fixtures installed before the
2 effective date of this section that are removed and relocated to
3 another room or area of the same building after the effective date of
4 this section, nor shall it apply to fixtures, as determined by the
5 council, that in order to perform a specialized function, cannot meet
6 the standards specified in this section.

7 (9) The water conservation performance standards shall supersede
8 all local government codes. After July 1, 1990, cities, towns, and
9 counties shall not amend the code revisions and standards established
10 under subsection ~~((3) or~~) (4) or (5) of this section.

11 **Sec. 17.** RCW 35.67.020 and 1965 c 7 s 35.67.020 are each amended
12 to read as follows:

13 Every city and town may construct, condemn and purchase, acquire,
14 add to, maintain, conduct, and operate systems of sewerage and systems
15 and plants for refuse collection and disposal together with additions,
16 extensions, and betterments thereto, within and without its limits,
17 with full jurisdiction and authority to manage, regulate, and control
18 them and to fix, alter, regulate, and control the rates and charges for
19 the use thereof: PROVIDED, That the rates charged must be uniform for
20 the same class of customers or service.

21 In classifying customers served or service furnished by such system
22 of sewerage, the city or town legislative body may in its discretion
23 consider any or all of the following factors: The difference in cost
24 of service to the various customers; the location of the various
25 customers within and without the city or town; the difference in cost
26 of maintenance, operation, repair, and replacement of the various parts
27 of the system; the different character of the service furnished various
28 customers; the quantity and quality of the sewage delivered and the
29 time of its delivery; the achievement of water conservation goals and

1 the discouragement of wasteful water use practices; capital
2 contributions made to the system, including but not limited to,
3 assessments; and any other matters which present a reasonable
4 difference as a ground for distinction.

5 **Sec. 18.** RCW 35.92.010 and 1985 c 445 s 4 and 1985 c 444 s 2 are
6 each reenacted and amended to read as follows:

7 A city or town may construct, condemn and purchase, purchase,
8 acquire, add to, alter, maintain and operate waterworks, within or
9 without its limits, for the purpose of furnishing the city and its
10 inhabitants, and any other persons, with an ample supply of water for
11 all purposes, public and private, including water power and other power
12 derived therefrom, with full power to regulate and control the use,
13 distribution, and price thereof: PROVIDED, That the rates charged must
14 be uniform for the same class of customers or service. Such waterworks
15 may include facilities for the generation of electricity as a byproduct
16 and such electricity may be used by the city or town or sold to an
17 entity authorized by law to distribute electricity. Such electricity
18 is a byproduct when the electrical generation is subordinate to the
19 primary purpose of water supply.

20 In classifying customers served or service furnished, the city or
21 town governing body may in its discretion consider any or all of the
22 following factors: The difference in cost of service to the various
23 customers; location of the various customers within and without the
24 city or town; the difference in cost of maintenance, operation, repair,
25 and replacement of the various parts of the system; the different
26 character of the service furnished various customers; the quantity and
27 quality of the water furnished; the time of its use; the achievement of
28 water conservation goals and the discouragement of wasteful water use
29 practices; capital contributions made to the system including, but not

1 limited to, assessments; and any other matters which present a
2 reasonable difference as a ground for distinction. No rate shall be
3 charged that is less than the cost of the water and service to the
4 class of customers served.

5 For such purposes any city or town may take, condemn and purchase,
6 purchase, acquire, and retain water from any public or navigable lake
7 or watercourse, surface or ground, and, by means of aqueducts or pipe
8 lines, conduct it to the city or town; and it may erect and build dams
9 or other works across or at the outlet of any lake or watercourse in
10 this state for the purpose of storing and retaining water therein up to
11 and above high water mark; and for all the purposes of erecting such
12 aqueducts, pipe lines, dams, or waterworks or other necessary
13 structures in storing and retaining water, or for any of the purposes
14 provided for by this chapter, the city or town may occupy and use the
15 beds and shores up to the high water mark of any such watercourse or
16 lake, and acquire the right by purchase, or by condemnation and
17 purchase, or otherwise, to any water, water rights, easements or
18 privileges named in this chapter, or necessary for any of said
19 purposes, and the city or town may acquire by purchase or condemnation
20 and purchase any properties or privileges necessary to be had to
21 protect its water supply from pollution. Should private property be
22 necessary for any such purposes or for storing water above high water
23 mark, the city or town may condemn and purchase, or purchase and
24 acquire such private property. For the purposes of waterworks which
25 include facilities for the generation of electricity as a byproduct,
26 nothing in this section may be construed to authorize a city or town
27 that does not own or operate an electric utility system to condemn
28 electric generating, transmission, or distribution rights or facilities
29 of entities authorized by law to distribute electricity, or to acquire
30 such rights or facilities without the consent of the owner.

1 **Sec. 19.** RCW 56.16.090 and 1974 ex.s. c 58 s 3 are each amended to
2 read as follows:

3 The sewer commissioners of any sewer district, in the event that
4 such sewer revenue bonds are issued, shall provide for revenues by
5 fixing rates and charges for the furnishing of sewerage disposal
6 service to those to whom such service is available. Such rates and
7 charges may be combined for the furnishing of more than one type of
8 sewer service such as but not limited to storm or surface water and
9 sanitary. Such rates and charges are to be fixed as deemed necessary
10 by such sewer commissioners, so that uniform charges will be made for
11 the same class of customer or service.

12 In classifying customers served or service furnished by such system
13 of sewerage, the board of commissioners may in its discretion consider
14 any or all of the following factors: The difference in cost of service
15 to the various customers; the location of the various customers within
16 and without the district; the difference in cost of maintenance,
17 operation, repair, and replacement of the various parts of the system;
18 the different character of the service furnished various customers; the
19 quantity and quality of the sewage delivered and the time of its
20 delivery; the achievement of water conservation goals and the
21 discouragement of wasteful water use practices; capital contributions
22 made to the system including but not limited to assessments; and any
23 other matters which present a reasonable difference as a ground for
24 distinction. Such rates are to be made on a monthly basis and shall
25 produce revenues sufficient to take care of the costs of maintenance
26 and operation, revenue bond and warrant interest and principal
27 amortization requirements, and all other charges necessary for
28 efficient and proper operation of the system.

1 **Sec. 20.** RCW 57.20.020 and 1983 c 167 s 164 are each amended to
2 read as follows:

3 (1) Whenever any issue or issues of water revenue bonds have been
4 authorized in compliance with the provisions of RCW 57.16.010 through
5 57.16.040, said bonds shall be in bearer form or registered as to
6 principal or interest or both, as provided in RCW 39.46.030, and may
7 provide for conversion between registered and coupon bonds; shall be in
8 such denominations, shall be numbered, shall bear such date, and shall
9 be payable at such time or times up to a maximum period of not to
10 exceed thirty years as shall be determined by the board of water
11 commissioners of the district; shall bear interest at such rate or
12 rates payable at such time or times as authorized by the board; shall
13 be payable at the office of the county treasurer of the county in which
14 the water district is located and may also be payable at such other
15 place or places as the board of water commissioners may determine;
16 shall be executed by the president of the board of water commissioners
17 and attested and sealed by the secretary thereof, one of which
18 signatures may, with the written permission of the signator whose
19 facsimile signature is being used, be a facsimile; and may have
20 facsimile signatures of said president or secretary imprinted on any
21 interest coupons in lieu of original signatures.

22 The water district commissioners shall have power and are required
23 to create a special fund or funds for the sole purpose of paying the
24 interest and principal of such bonds into which special fund or funds
25 the said water district commissioners shall obligate and bind the water
26 district to set aside and pay a fixed proportion of the gross revenues
27 of the water supply system or any fixed amount out of and not exceeding
28 a fixed proportion of such revenues, or a fixed amount or amounts
29 without regard to any fixed proportion and such bonds and the interest
30 thereof shall be payable only out of such special fund or funds, but

1 shall be a lien and charge against all revenues and payments received
2 from any utility local improvement district or districts pledged to
3 secure such bonds, subject only to operating and maintenance expenses.

4 In creating any such special fund or funds the water district
5 commissioners of such water district shall have due regard to the cost
6 of operation and maintenance of the plant or system as constructed or
7 added to and to any proportion or part of the revenue previously
8 pledged as a fund for the payment of bonds, warrants or other
9 indebtedness, and shall not set aside into such special fund a greater
10 amount or proportion of the revenue and proceeds than in their judgment
11 will be available over and above such cost of maintenance and operation
12 and the amount or proportion, if any, of the revenue so previously
13 pledged. Any such bonds and interest thereon issued against any such
14 fund as herein provided shall be a valid claim of the owner thereof
15 only as against the said special fund and its fixed proportion or
16 amount of the revenue pledged to such fund, and shall not constitute an
17 indebtedness of such water district within the meaning of the
18 constitutional provisions and limitations. Each such bond shall state
19 upon its face that it is payable from a special fund, naming the said
20 fund and the resolution creating it. Said bonds shall be sold in such
21 manner, at such price and at such rate or rates of interest as the
22 water district commissioners shall deem for the best interests of the
23 water district, either at public or private sale, and the said
24 commissioners may provide in any contract for the construction and
25 acquirement of the proposed improvement (and for the refunding of
26 outstanding local improvement district obligations, if any) that
27 payment therefor shall be made in such bonds at par value thereof.

28 When any such special fund shall have been heretofore or shall be
29 hereafter created and any such bonds shall have been heretofore or
30 shall hereafter be issued against the same a fixed proportion or a

1 fixed amount out of and not to exceed such fixed proportion, or a fixed
2 amount or amounts without regard to any fixed proportion, of revenue
3 shall be set aside and paid into said special fund as provided in the
4 resolution creating such fund or authorizing such bonds, and in case
5 any water district shall fail thus to set aside and pay said fixed
6 proportion or amount as aforesaid, the owner of any bond payable from
7 such special fund may bring suit or action against the water district
8 and compel such setting aside and payment.

9 (2) Notwithstanding subsection (1) of this section, such bonds may
10 be issued and sold in accordance with chapter 39.46 RCW.

11 (3) The water district commissioners of any water district, in the
12 event that such water revenue bonds are issued, shall provide for
13 revenues by fixing rates and charges for the furnishing of water supply
14 to those receiving such service, such rates and charges to be fixed as
15 deemed necessary by such water district commissioners, so that uniform
16 charges will be made for the same class of customer or service.

17 In classifying customers served or service furnished by such water
18 supply system, the board of water commissioners may in its discretion
19 consider any or all of the following factors: The difference in cost
20 of service to the various customers; the location of the various
21 customers within and without the district; the difference in cost of
22 maintenance, operation, repair and replacement of the various parts of
23 the system; the different character of the service furnished various
24 customers; the quantity and quality of the water furnished; the time of
25 its use; the achievement of water conservation goals and the
26 discouragement of wasteful practices; capital contributions made to the
27 system including but not limited to assessments; and any other matters
28 which present a reasonable difference as a ground for distinction.
29 Such rates shall be made on a monthly basis as may be deemed proper by
30 such commissioners and as fixed by resolution and shall produce

1 revenues sufficient to take care of the costs of maintenance and
2 operation, revenue bond and warrant interest and principal amortization
3 requirements and all other charges necessary for efficient and proper
4 operation of the system.

5 **Sec. 21.** RCW 54.24.080 and 1959 c 218 s 9 are each amended to read
6 as follows:

7 (1) The commission of each district which shall have revenue
8 obligations outstanding shall have the power and shall be required to
9 establish, maintain, and collect rates or charges for electric energy
10 and water and other services, facilities, and commodities sold,
11 furnished, or supplied by the district which shall be fair and
12 nondiscriminatory and adequate to provide revenues sufficient for the
13 payment of the principal of and interest on such revenue obligations
14 for which the payment has not otherwise been provided and all payments
15 which the district is obligated to set aside in any special fund or
16 funds created for such purpose, and for the proper operation and
17 maintenance of the public utility and all necessary repairs,
18 replacements, and renewals thereof.

19 (2) In establishing rates or charges for water service,
20 commissioners may in their discretion consider the achievement of water
21 conservation goals and the discouragement of wasteful water use
22 practices.

23 **Sec. 22.** RCW 80.28.010 and 1990 1st ex.s. c 1 s 5 are each amended
24 to read as follows:

25 (1) All charges made, demanded or received by any gas company,
26 electrical company or water company for gas, electricity or water, or
27 for any service rendered or to be rendered in connection therewith,
28 shall be just, fair, reasonable and sufficient.

1 (2) Every gas company, electrical company and water company shall
2 furnish and supply such service, instrumentalities and facilities as
3 shall be safe, adequate and efficient, and in all respects just and
4 reasonable.

5 (3) All rules and regulations issued by any gas company, electrical
6 company or water company, affecting or pertaining to the sale or
7 distribution of its product, shall be just and reasonable.

8 (4) Until June 30, 1991:

9 (a) Utility service for residential space heating shall not be
10 terminated between November 15 through March 15 if the customer:

11 (i) Notifies the utility of the inability to pay the bill,
12 including a security deposit. This notice should be provided within
13 five business days of receiving a payment overdue notice unless there
14 are extenuating circumstances. If the customer fails to notify the
15 utility within five business days and service is terminated, the
16 customer can, by paying reconnection charges, if any, and fulfilling
17 the requirements of this section, receive the protections of this
18 chapter;

19 (ii) Provides self-certification of household income for the prior
20 twelve months to a grantee of the department of community development
21 which administers federally funded energy assistance programs. The
22 grantee shall determine that the household income does not exceed the
23 maximum allowed for eligibility under the state's plan for low-income
24 energy assistance under 42 U.S.C. 8624 and shall provide a dollar
25 figure that is seven percent of household income. The grantee may
26 verify information provided in the self-certification;

27 (iii) Has applied for home heating assistance from applicable
28 government and private sector organizations and certifies that any
29 assistance received will be applied to the current bill and future
30 utility bills;

1 (iv) Has applied for low-income weatherization assistance to the
2 utility or other appropriate agency if such assistance is available for
3 the dwelling;

4 (v) Agrees to a payment plan and agrees to maintain the payment
5 plan. The plan will be designed both to pay the past due bill by the
6 following October 15 and to pay for continued utility service. If the
7 past due bill is not paid by the following October 15, the customer
8 shall not be eligible for protections under this chapter until the past
9 due bill is paid. The plan shall not require monthly payments in
10 excess of seven percent of the customer's monthly income plus one-
11 twelfth of any arrearage accrued from the date application is made and
12 thereafter during November 15 through March 15. A customer may agree
13 to pay a higher percentage during this period, but shall not be in
14 default unless payment during this period is less than seven percent of
15 monthly income plus one-twelfth of any arrearage accrued from the date
16 application is made and thereafter. If assistance payments are
17 received by the customer subsequent to implementation of the plan, the
18 customer shall contact the utility to reformulate the plan; and

19 (vi) Agrees to pay the moneys owed even if he or she moves.

20 (b) The utility shall:

21 (i) Include in any notice that an account is delinquent and that
22 service may be subject to termination, a description of the customer's
23 duties in this section;

24 (ii) Assist the customer in fulfilling the requirements under this
25 section;

26 (iii) Be authorized to transfer an account to a new residence when
27 a customer who has established a plan under this section moves from one
28 residence to another within the same utility service area;

29 (iv) Be permitted to disconnect service if the customer fails to
30 honor the payment program. Utilities may continue to disconnect

1 service for those practices authorized by law other than for nonpayment
2 as provided for in this subsection. Customers who qualify for payment
3 plans under this section who default on their payment plans and are
4 disconnected can be reconnected and maintain the protections afforded
5 under this chapter by paying reconnection charges, if any, and by
6 paying all amounts that would have been due and owing under the terms
7 of the applicable payment plan, absent default, on the date on which
8 service is reconnected; and

9 (v) Advise the customer in writing at the time it disconnects
10 service that it will restore service if the customer contacts the
11 utility and fulfills the other requirements of this section.

12 (c) A payment plan implemented under this section is consistent
13 with RCW 80.28.080.

14 (5) Every gas company and electrical company shall offer
15 residential customers the option of a budget billing or equal payment
16 plan. The budget billing or equal payment plan shall be offered low-
17 income customers eligible under the state's plan for low-income energy
18 assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without
19 limiting availability to certain months of the year, without regard to
20 the length of time the customer has occupied the premises, and without
21 regard to whether the customer is the tenant or owner of the premises
22 occupied.

23 (6) Every gas company, electrical company and water company shall
24 construct and maintain such facilities in connection with the
25 manufacture and distribution of its product as will be efficient and
26 safe to its employees and the public.

27 (7) An agreement between the customer and the utility, whether oral
28 or written, shall not waive the protections afforded under this
29 chapter.

1 (8) In establishing rates or charges for water service, water
2 companies as defined in RCW 80.04.010 may consider the achievement of
3 water conservation goals and the discouragement of wasteful water use
4 practices.

5 **Sec. 23.** RCW 80.28.025 and 1980 c 149 s 2 are each amended to read
6 as follows:

7 (1) In establishing rates for each gas and electric company
8 regulated by this chapter, the commission shall adopt policies to
9 encourage meeting or reducing energy demand through cogeneration as
10 defined in RCW 82.35.020, measures which improve the efficiency of
11 energy end use, and new projects which produce or generate energy from
12 renewable resources, such as solar energy, wind energy, hydroelectric
13 energy, geothermal energy, wood, wood waste, municipal wastes,
14 agricultural products and wastes, and end-use waste heat. These
15 policies shall include but are not limited to allowing a return on
16 investment in measures to improve the efficiency of energy end use,
17 cogeneration, or projects which produce or generate energy from
18 renewable resources which return is established by adding an increment
19 of two percent to the rate of return on common equity permitted on the
20 company's other investment. Measures or projects encouraged under this
21 section are those for which construction or installation is begun after
22 June 12, 1980, and before January 1, 1990, and which, at the time they
23 are placed in the rate base, are reasonably expected to save, produce,
24 or generate energy at a total incremental system cost per unit of
25 energy delivered to end use which is less than or equal to the
26 incremental system cost per unit of energy delivered to end use from
27 similarly available conventional energy resources which utilize nuclear
28 energy or fossil fuels and which the gas or electric company could
29 acquire to meet energy demand in the same time period. The rate of

1 return increment shall be allowed for a period not to exceed thirty
2 years after the measure or project is first placed in the rate base.

3 (2) In establishing rates for water companies regulated by this
4 chapter, the commission may consider the achievement of water
5 conservation goals and the discouragement of wasteful water use
6 practices.

7 NEW SECTION. Sec. 24. A new section is added to chapter 82.04 RCW
8 to read as follows:

9 The tax imposed by RCW 82.04.240 shall not apply to the treatment
10 or processing of effluent water purchased for commercial use directly
11 from a sewage treatment facility operated by any county, city, town,
12 political subdivision, or municipal or quasi-municipal corporation of
13 this state. This section shall expire December 31, 1993, unless
14 extended by the legislature.

15 **Sec. 25. RCW 90.14.140 and 1987 c 125 s 1 are each amended to read*
16 *as follows:*

17 *(1) For the purposes of RCW 90.14.130 through 90.14.180,*
18 *"sufficient cause" shall be defined as the nonuse of all or a portion*
19 *of the water by the owner of a water right for a period of five or more*
20 *consecutive years where such nonuse occurs as a result of:*

21 *(a) Drought, or other unavailability of water;*

22 *(b) Active service in the armed forces of the United States during*
23 *military crisis;*

24 *(c) Nonvoluntary service in the armed forces of the United States;*

25 *(d) The operation of legal proceedings;*

26 *(e) Federal laws imposing land or water use restrictions either*
27 *directly or through the voluntary enrollment of a landowner in a*
28

1 federal program implementing those laws, or acreage limitations, or
2 production quotas.

3 (2) Notwithstanding any other provisions of RCW 90.14.130 through
4 90.14.180, there shall be no relinquishment of any water right:

5 (a) If such right is claimed for power development purposes under
6 chapter 90.16 RCW and annual license fees are paid in accordance with
7 chapter 90.16 RCW, or

8 (b) If such right is used for a standby or reserve water supply to
9 be used in time of drought or other low flow period so long as
10 withdrawal or diversion facilities are maintained in good operating
11 condition for the use of such reserve or standby water supply, or

12 (c) If such right is claimed for a determined future development to
13 take place either within fifteen years of July 1, 1967, or the most
14 recent beneficial use of the water right, whichever date is later, or

15 (d) If such right is claimed for municipal water supply purposes
16 under chapter 90.03 RCW, or

17 (e) If the nonuse occurs after the effective date of this section,
18 where such right is claimed by an irrigation district for the benefit
19 of lands lying within such district, or

20 (f) If such waters are not subject to appropriation under the
21 applicable provisions of RCW 90.40.030 as now or hereafter amended.

22 *Sec. 25 was vetoed, see message at end of chapter.

23 NEW SECTION. Sec. 26. A new section is added to chapter 82.12 RCW
24 to read as follows:

25 This chapter shall not apply with respect to the use of treated or
26 processed effluent water purchased for commercial use directly from a
27 sewage treatment facility operated by any county, city, town, political
28 subdivision, or municipal or quasi-municipal corporation of this state.

1 This section shall expire December 31, 1993, unless extended by the
2 legislature.

3 NEW SECTION. **Sec. 27.** Sections 1 and 5 through 13 of this act
4 shall constitute a new chapter in Title 90 RCW.

5 NEW SECTION. **Sec. 28.** Section 4 of this act is necessary for
6 the immediate preservation of the public peace, health, or safety, or
7 support of the state government and its existing public institutions,
8 and shall take effect July 1, 1991.

9 NEW SECTION. **Sec. 29.** If specific funding for the purposes of
10 this act, referencing this act by bill number, is not provided by June
11 30, 1991, in the omnibus appropriations act, this act shall be null and
12 void.

13 NEW SECTION. **Sec. 30.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

Passed the House April 28, 1991.

Passed the Senate April 28, 1991.

Approved by the Governor May 21, 1991, with the exception of
certain items which were vetoed.

Filed in Office of Secretary of State May 21, 1991.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 25,
3 Engrossed Substitute House Bill No. 2026 entitled:

4 "AN ACT Relating to water resource management."

5 Engrossed Substitute House Bill No. 2026 is the product of more
6 than a year of work by many groups and individuals. First, as part of
7 the Environment 2010 project, and secondly, as part of the Chelan
8 Agreement. The bill is heading the state in the right direction
9 regarding water use and conservation. This bill is good public policy
10 because, among other things, it addresses inevitable water problems in

1 advance of a crisis. Without some creative tools, such as the trust
2 provisions contained in this bill, reallocation of waters may occur in
3 the courts or by federal actions. Hopefully, the tools contained in
4 this bill will help resolve critical water situations by allowing those
5 within the state to direct the future use and management of our
6 precious water resource.

7 Numerous groups and individuals have invested a great deal of time
8 and energy in developing, drafting, and supporting this legislation.
9 During the legislative process, however, a provision was added which
10 unnecessarily creates new legal issues and institutional barriers to
11 water conservation. The provision I am vetoing needs more public
12 dialogue and debate by the Joint Select Committee on Water Resource
13 Policy.

14 Section 25 is troubling in that it exempts irrigation districts
15 from one of the basic tenets of water law -- "use it or lose it."
16 Although this amendment would have placed irrigation districts in the
17 same category as municipal water supply purveyors, it does so without
18 sufficient discussion as to its impact on water conservation.
19 Additional concern has been raised that adding irrigation districts to
20 the exemption list will only compound the problem of speculation in
21 water rights.

22 Irrigation districts have a vast potential for water use efficiency
23 improvements. As technological improvements become available,
24 irrigation will require less water to meet the increased levels of
25 production. By codifying outdated water requirements as a measure of
26 a water right, this section would frustrate our efforts to encourage
27 water conservation and to locate water for presently unmet and future
28 needs. As such, this section deserves a more comprehensive review by
29 the Joint Select Committee on Water Resource Policy.

30 For the reasons stated above, I have vetoed section 25 of Engrossed
31 Substitute House Bill No. 2026.

32 With the exception of section 25, Engrossed Substitute House Bill
33 No. 2026 is approved."