
SUBSTITUTE SENATE BILL 6467

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senators Fraser, Hochstatter, Morton and M. Rasmussen)

Read first time 02/04/94.

1 AN ACT Relating to water rights for municipal purposes; amending
2 RCW 90.03.320, 90.03.330, and 90.03.380; adding a new section to
3 chapter 90.03 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
6 public interest for public water systems water rights to be managed and
7 regulated in a manner that:

8 (1) Allows the systems to prolong and maximize the use of water
9 rights applied to municipal purposes consistent with the population
10 demand projections established in state-approved water system plans and
11 adopted growth management plans;

12 (2) Promotes water conservation, with enhanced efforts occurring in
13 water critical areas, promotes water system efficiencies, and
14 eliminates disincentives for investments in water efficient
15 technologies; and

16 (3) Delays, and where possible, avoids the need for new water
17 sources to be developed.

18 The department of ecology is therefore directed to administer
19 public water system rights consistent with this act.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 For the purposes of this chapter "municipal purpose" and "municipal
4 water supply purposes" mean water distributed by a public water system
5 purveyor as defined by chapter 70.116 RCW, and includes domestic,
6 commercial, and industrial water uses provided as an integral element
7 of the public water system. This definition does not apply to
8 independent commercial, industrial, irrigation, or other water systems
9 that are not designated as a public water system for potable water use
10 recognized by a state-approved public water system plan.

11 **Sec. 3.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to read
12 as follows:

13 Actual construction work shall be commenced on any project for
14 which permit has been granted within such reasonable time as shall be
15 prescribed by the department, and shall thereafter be prosecuted with
16 diligence and completed within the time prescribed by the department.
17 The department, in fixing the time for the commencement of the work, or
18 for the completion thereof and the application of the water to the
19 beneficial use prescribed in the permit, shall take into consideration
20 the cost and magnitude of the project and the engineering and physical
21 features to be encountered, and shall allow such time as shall be
22 reasonable and just under the conditions then existing, having due
23 regard for the public welfare and public interests affected: and, for
24 good cause shown, it shall extend the time or times fixed as aforesaid,
25 and shall grant such further period or periods as may be reasonably
26 necessary, having due regard to the good faith of the applicant and the
27 public interests affected. In fixing public water system construction
28 schedules and the time, or extension of time, for application of water
29 to beneficial use for municipal use, the department shall also take
30 into consideration the term and amount of financing required to
31 complete the project, delays that may result from planned and existing
32 conservation and water use efficiency measures installed by the public
33 water system, and the supply needs of the public water system's service
34 area, consistent with an approved comprehensive plan under chapter
35 36.70A RCW, or in the absence of such a plan, a county-approved
36 comprehensive plan under 36.70 RCW or a plan approved under chapter
37 35.63 RCW, and related demand projections prepared by public water
38 systems in accordance with state law. If the terms of the permit or

1 extension thereof, are not complied with the department shall give
2 notice by registered mail that such permit will be canceled unless the
3 holders thereof shall show cause within sixty days why the same should
4 not be so canceled. If cause be not shown, said permit shall be
5 canceled.

6 **Sec. 4.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
7 as follows:

8 (1) Upon a showing satisfactory to the department that any
9 appropriation has been perfected in accordance with the provisions of
10 this chapter, it shall be the duty of the department to issue to the
11 applicant a certificate stating such facts in a form to be prescribed
12 by ((him)) the director, and such certificate shall thereupon be
13 recorded with the department.

14 (2) For those public water supplies designed to accommodate future
15 growth as defined by a state-approved water system plan, the amount of
16 instantaneous diversion considered to be applied to beneficial use at
17 the time of perfection of the certificate shall be based upon the
18 capacity of the diversion structure or structures installed at such
19 time. Further, the amount of annual appropriation considered to be
20 applied to beneficial use at the time of perfection shall be based on
21 the growth projection contained in the most current state-approved
22 water system plan, provided, the department may not issue a certificate
23 for quantities of water in excess of those contained in a permit if a
24 permit has been issued.

25 (3) Any original water right certificate issued, as provided by
26 this chapter, shall be recorded with the department and thereafter, at
27 the expense of the party receiving the same, be by the department
28 transmitted to the county auditor of the county or counties where the
29 distributing system or any part thereof is located, and be recorded in
30 the office of such county auditor, and thereafter be transmitted to the
31 owner thereof.

32 **Sec. 5.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read
33 as follows:

34 The right to the use of water which has been applied to a
35 beneficial use in the state shall be and remain appurtenant to the land
36 or place upon which the same is used: PROVIDED, HOWEVER, That said
37 right may be transferred to another or to others and become appurtenant

1 to any other land or place of use without loss of priority of right
2 theretofore established if such change can be made without detriment or
3 injury to existing rights. The point of diversion of water for
4 beneficial use or the purpose of use may be changed, if such change can
5 be made without detriment or injury to existing rights. Before any
6 transfer of such right to use water or change of the point of diversion
7 of water or change of purpose of use can be made, any person having an
8 interest in the transfer or change, shall file a written application
9 therefor with the department, and said application shall not be granted
10 until notice of said application shall be published as provided in RCW
11 90.03.280. If it shall appear that such transfer or such change may be
12 made without injury or detriment to existing rights, the department
13 shall issue to the applicant a certificate in duplicate granting the
14 right for such transfer or for such change of point of diversion or of
15 use. The certificate so issued shall be filed and be made a record
16 with the department and the duplicate certificate issued to the
17 applicant may be filed with the county auditor in like manner and with
18 the same effect as provided in the original certificate or permit to
19 divert water.

20 If an application is submitted by a public water system for change
21 in place or purpose of use of its water right to be applied to
22 municipal purposes, and the purveyor has shown that the proposed use is
23 consistent with an approved comprehensive plan under chapter 36.70A
24 RCW, or in the absence of such a plan, a county-approved comprehensive
25 plan under chapter 36.70 RCW or a plan approved under chapter 35.63
26 RCW, the department shall within ninety days of receipt of application
27 either: (1) Approve the application and issue an amended permit or
28 certificate, provided, the department determines the change does not
29 constitute a detriment or injury to existing rights, or (2) inform the
30 applicant of the date by which the decision shall be made. An increase
31 in annual withdrawal for a municipal purpose that falls within the
32 instantaneous and annual quantity established in right shall not in
33 itself be considered sufficient grounds to constitute a finding of
34 detriment or injury to a junior water right.

35 When the department determines and quantitatively documents that a
36 proposed change in place or purpose of use of all or a portion of a
37 municipal purpose water right to be transferred from one public water
38 system to another, will adversely impact instream flows necessary to
39 support existing fish populations and habitat, and such flows have not

1 been established as a water right by regulation at the time of the
2 transfer, the departments of ecology and fish and wildlife, and the
3 public water system agree to develop and implement a consensus-based
4 process to review and resolve issues related to the departmental
5 determination as it relates to the diversion facilities and the reach
6 of the river affected by the change, the findings and conclusions of
7 which shall be made available for public review and comment. The
8 instantaneous and annual quantity of water put to use prior to the date
9 of transfer and any portion of a right not proposed for change shall
10 not be subject to this provision.

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

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

21 This section shall not apply to trust water rights acquired by the
22 state through the funding of water conservation projects under chapter
23 90.38 RCW or RCW 90.42.010 through 90.42.070.

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