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SENATE BILL 6533

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State of Washington                      53rd Legislature                      1994 Regular Session

By Senators Fraser and Franklin; by request of Governor Lowry

Read first time 01/26/94. Referred to Committee on Energy & Utilities.

1            AN ACT Relating to water resources; amending RCW 19.27.097,  
2 70.119A.060, 90.44.050, and 58.17.110; and creating a new section.

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

4            NEW SECTION.    **Sec. 1.** The legislature finds that:

5            (1) Protection of the state's water resources, and utilization of  
6 such resources for all beneficial uses, requires more efficient and  
7 effective management than is currently provided under state law,  
8 particularly with regard to the uses of ground water that do not  
9 require application for a water right and may potentially interfere  
10 with prior rights and in-stream values.

11            (2) The provision of public water supplies to the people of the  
12 state should be undertaken in a manner that is consistent with the  
13 planning principles of the growth management act and the comprehensive  
14 plans adopted by local governments under the growth management act;

15            (3) Small water systems have a high rate of failure to comply with  
16 the state's water quality standards for public water supplies, and have  
17 inherent difficulties with proper planning, operation, financing,  
18 management and maintenance. The continuing proliferation of small  
19 public water systems has undermined effective management of the state's

1 water resources, and created concerns regarding the ability of such  
2 systems to provide safe and adequate supplies to their customers on a  
3 long-term basis;

4 (4) New water quality standards and operational requirements for  
5 public water systems will soon generate additional rates for the  
6 customers of those systems, making them financially nonviable;

7 (5) County governments are ultimately responsible to act as  
8 receivers of failing water systems within their jurisdictions; and

9 (6) State government, local governments, water suppliers, and other  
10 interested parties should work for continuing economic growth of the  
11 state by maximizing the use of existing water supply management  
12 alternatives, including regional water systems, satellite management,  
13 and coordinated water system development.

14 **Sec. 2.** RCW 19.27.097 and 1991 sp.s. c 32 s 28 are each amended to  
15 read as follows:

16 (1) Each applicant for a building permit of a building  
17 necessitating potable water shall provide evidence of an adequate water  
18 supply for the intended use of the building. Evidence may be in the  
19 form of a water right permit from the department of ecology, a letter  
20 from an approved water purveyor stating the ability to provide water,  
21 or another form sufficient to verify the existence of an adequate water  
22 supply. In addition to other authorities, the county or city (~~may~~)  
23 shall, after January 1, 1995, impose conditions on building permits  
24 requiring connection to an existing public water system approved by the  
25 state board of health, where the existing system is (~~willing and~~)  
26 new, or will be able to provide safe and reliable potable water to the  
27 applicant with reasonable economy and efficiency. An application for  
28 a water right shall not be sufficient proof of an adequate water  
29 supply.

30 (2) Within counties not required or not choosing to plan pursuant  
31 to RCW 36.70A.040, the county and the state may mutually determine  
32 those areas in the county in which the requirements of subsection (1)  
33 of this section shall not apply. The departments of health and ecology  
34 shall coordinate on the implementation of this section. Should the  
35 county and the state fail to mutually determine those areas to be  
36 designated pursuant to this subsection, the county may petition the  
37 department of community, trade, and economic development to mediate or,  
38 if necessary, make the determination.

1 (3) Buildings that do not need potable water facilities are exempt  
2 from the provisions of this section. The department of ecology, after  
3 consultation with local governments, may adopt rules to implement this  
4 section, which may recognize differences between high-growth and low-  
5 growth counties.

6 (4) By January 1, 1995, the department of health shall, in  
7 conjunction with the department of community, trade, and economic  
8 development, the utilities and transportation commission, water  
9 purveyors, and local governments develop criteria for determining what  
10 constitutes reasonable economy and efficiency under subsection (1) of  
11 this section, which shall be utilized by the county or city in  
12 implementing that subsection. In developing these criteria, the  
13 department of health shall include, but not be limited to the  
14 following: (a) Costs for system construction and operation, for at  
15 least the twenty-year planning period covered by the local  
16 comprehensive plan adopted under chapter 36.70A RCW; and (b)  
17 consistency with state guidelines and existing plans, such as  
18 coordinated water system plans adopted under chapter 70.116 RCW, that  
19 assure systematic, coordinated, and timely delivery of water supplies  
20 within the areas covered by such plans.

21 **Sec. 3.** RCW 70.119A.060 and 1991 c 304 s 4 are each amended to  
22 read as follows:

23 (1) In order to assure safe and reliable public drinking water and  
24 to protect the public health, public water systems shall:

25 (a) Protect the water sources used for drinking water;

26 (b) Provide treatment adequate to assure that the public health is  
27 protected;

28 (c) Provide and effectively operate and maintain public water  
29 system facilities;

30 (d) Plan for future growth and assure the availability of safe and  
31 reliable drinking water;

32 (e) Provide the department with the current names, addresses, and  
33 telephone numbers of the owners, operators, and emergency contact  
34 persons for the system, including any changes to this information, and  
35 provide to users the name and twenty-four hour telephone number of an  
36 emergency contact person; and

1 (f) Take whatever investigative or corrective action is necessary  
2 to assure that a safe and reliable drinking water supply is  
3 continuously available to users.

4 (2) No new public water system may be approved or created within an  
5 urban growth area established under RCW 36.70A.110 unless it is owned  
6 by a satellite system management agency established under RCW  
7 70.116.134. No new public water system may be approved or created in  
8 other areas of the state unless it is owned by a satellite system  
9 management agency established under RCW 70.116.134, where available,  
10 and where the satellite system management system complies with  
11 financial viability requirements of the department. The department and  
12 local health jurisdictions shall enforce this requirement under any  
13 authority provided under this chapter, chapter 70.116, or 70.05 RCW, or  
14 any other authority governing the approval of new water systems by the  
15 department or a local jurisdiction.

16 (3) The department and local health jurisdictions shall carry out  
17 the rules and regulations of the state board of health adopted pursuant  
18 to RCW 43.20.050(2)(a) and other rules adopted by the department  
19 relating to public water systems.

20 **Sec. 4.** RCW 90.44.050 and 1987 c 109 s 108 are each amended to  
21 read as follows:

22 (~~After June 6, 1945,~~) (1) No withdrawal of public ground waters  
23 of the state shall be begun, nor shall any well or other works for such  
24 withdrawal be constructed, unless an application to appropriate such  
25 waters has been made to the department and a permit has been granted by  
26 it as herein provided(~~(: EXCEPT, HOWEVER, That any withdrawal of~~  
27 ~~public ground waters for stock watering purposes, or for the watering~~  
28 ~~of a lawn or of a noncommercial garden not exceeding one-half acre in~~  
29 ~~area, or for single or group domestic uses in an amount not exceeding~~  
30 ~~five thousand gallons a day, or for an industrial purpose in an amount~~  
31 ~~not exceeding five thousand gallons a day, is and shall be exempt from~~  
32 ~~the provisions of this section, but, to the extent that it is regularly~~  
33 ~~used beneficially, shall be entitled to a right equal to that~~  
34 ~~established by a permit issued under the provisions of this chapter:~~  
35 ~~PROVIDED, HOWEVER, That the department from time to time may require~~  
36 ~~the person or agency making any such small withdrawal to furnish~~  
37 ~~information as to the means for and the quantity of that withdrawal:~~  
38 ~~PROVIDED, FURTHER, That at the option of the party making withdrawals~~

1 of ground waters of the state not exceeding five thousand gallons per  
2 day, applications under this section or declarations under RCW  
3 90.44.090 may be filed and permits and certificates obtained in the  
4 same manner and under the same requirements as is in this chapter  
5 provided in the case of withdrawals in excess of five thousand gallons  
6 a day)).

7 (2) Notwithstanding the requirement for a permit set forth in  
8 subsection (1) of this section, and subject to the provisions of  
9 subsection (3) of this section, a withdrawal of public ground waters in  
10 a total amount not exceeding five thousand gallons per day for one or  
11 more of the following purposes:

12 (a) Stock watering;

13 (b) The watering of a lawn or a noncommercial garden not exceeding  
14 one-half acre in area;

15 (c) A single or group domestic use;

16 (d) Industrial purpose;

17 is and shall be exempt from the provisions of this section, but, to the  
18 extent it is beneficially used and in conformance with all other  
19 applicable laws, is entitled to a right equal to that established under  
20 the provisions of this chapter. The priority date for a right  
21 established under this section shall be the date that continuous usage  
22 of water for one or more of the exempted purposes set forth in this  
23 section is commenced.

24 (3) The department shall, by emergency rule, where conditions  
25 indicate the need for immediate action, or in the absence of such  
26 condition, by permanent rule before December 31, 1995, and whenever  
27 necessary thereafter, designate those areas where it determines that  
28 use of the exemption set forth in subsection (2) of this section will  
29 be restricted or eliminated.

30 (a) In selecting areas for designation under this subsection, the  
31 department shall consult with the appropriate local governments and any  
32 federally recognized Indian tribes that could be affected by use of the  
33 exemption within the area. The department shall focus its efforts on  
34 areas where it is determined that:

35 (i) The rate or quantity of existing and proposed withdrawals will  
36 result in over appropriation of the source;

37 (ii) Additional ground water withdrawals will cause a decline in  
38 ground water levels below those necessary for the maintenance of safe  
39 sustaining yields;

1       (iii) The cumulative effect of existing and anticipated withdrawals  
2 will impair existing water rights;

3       (iv) The aquifer or aquifers that are the source of water supplies  
4 are in continuity with surface water bodies that are, or will soon  
5 become fully appropriated, including areas in which in-stream flows are  
6 reduced to the point that fish and wildlife resources are detrimentally  
7 affected;

8       (v) Additional ground water withdrawals will cause or exacerbate  
9 degradation of water quality conditions;

10       (vi) The source has water quality problems of public health  
11 significance that have been identified by the department of health or  
12 the local health authority;

13       (vii) Alternative water sources have been identified by the local  
14 government that are, or will soon be readily available and that can be  
15 used to accommodate new development;

16       (viii) Population densities have been determined by the local  
17 government to be sufficient to make the development or expansion of  
18 existing public water systems the appropriate means for providing water  
19 service for new growth; or

20       (ix) Other conditions exist in which use of the exemption will  
21 contribute to detrimental effects to existing rights, in-stream flows,  
22 or public health and safety.

23       (b) The department shall, in making its determinations and adopting  
24 its rules, use as guidance and be consistent with, where applicable,  
25 the ground water management plans created under chapter 90.44 RCW,  
26 water management plans as developed under chapter 90.54 RCW,  
27 coordinated water system plans developed under chapter 70.116 RCW, land  
28 use and growth management plans developed under chapter 36.70A RCW,  
29 aquifer protection areas created under chapter 36.36 RCW, and other  
30 relevant plans.

31       (c) In designated areas, the department, in cooperation with the  
32 local government, shall eliminate use of the exemption set forth in  
33 subsection (2) of this section or shall impose one or more of the  
34 following conditions on its use:

35       (i) Limiting use to certain purposes;

36       (ii) Limiting the amount of water that can be used for one or more  
37 purposes and the acreage that can be irrigated;

1 (iii) Limiting the total number of exempt uses or the total  
2 quantities of water that may be withdrawn from the source, regardless  
3 of purpose;

4 (iv) Limiting the term of use of the exemption to the period until  
5 water can be provided by a public water system; or

6 (v) Within a designated area require that all persons proposing to  
7 make new withdrawals of ground water, regardless of quantity, receive  
8 authorization in a form determined by the department, prior to  
9 commencing use.

10 (4) A person making a withdrawal under this section shall maintain,  
11 to the satisfaction of the department of ecology, a measuring device  
12 constructed and maintained to permit accurate measurement and practical  
13 regulation of the flow of water withdrawn regardless of the quantity of  
14 water to be withdrawn.

15 (5) The department may require the person or entity making a  
16 withdrawal under this section to furnish information as to the means  
17 for and the quantity of that withdrawal.

18 (6) At the option of the person or entity making a withdrawal under  
19 this section, applications may be filed under RCW 90.44.090.

20 **Sec. 5.** RCW 58.17.110 and 1990 1st ex.s. c 17 s 52 are each  
21 amended to read as follows:

22 (1) The city, town, or county legislative body shall inquire into  
23 the public use and interest proposed to be served by the establishment  
24 of the subdivision and dedication. ~~((It shall determine:—(a) If~~  
25 ~~appropriate provisions are made for, but not limited to, the public~~  
26 ~~health, safety, and general welfare, for open spaces, drainage ways,~~  
27 ~~streets or roads, alleys, other public ways, transit stops, potable~~  
28 ~~water supplies, sanitary wastes, parks and recreation, playgrounds,~~  
29 ~~schools and schoolgrounds, and shall consider all other relevant facts,~~  
30 ~~including sidewalks and other planning features that assure safe~~  
31 ~~walking conditions for students who only walk to and from school; and~~  
32 ~~(b) whether the public interest will be served by the subdivision and~~  
33 ~~dedication.~~

34 ~~(2))~~ A proposed subdivision and dedication shall not be approved  
35 unless the city, town, or county legislative body determines and makes  
36 written findings that: (a) Appropriate provisions are made for the  
37 public health, safety, and general welfare and for such open spaces,  
38 drainage ways, streets or roads, alleys, other public ways, transit

1 stops, potable water supplies, sanitary wastes, parks and recreation,  
2 playgrounds, schools and schoolgrounds and all other relevant facts,  
3 including sidewalks and other planning features that assure safe  
4 walking conditions for students who only walk to and from school; and  
5 (b) the public use and interest will be served by the platting of such  
6 subdivision and dedication.

7 (2) In making its determination and written findings that  
8 appropriate provisions have been made for potable water supplies, the  
9 city, town, or county legislative body shall promote the reliable and  
10 efficient delivery of safe and adequate water supply by ensuring that:  
11 (a) The number of new public water supply systems established is  
12 minimized; (b) the use of new individual wells for drinking water  
13 supply is limited to areas where such wells represent the only  
14 reasonable alternative available for new development, and (c) projects  
15 that will result in a total water use in excess of the exemption  
16 provided for in RCW 90.44.050 obtain the necessary water rights prior  
17 to approval. The city, town, or county may require ownership or  
18 operation by satellite management agencies or assured control of  
19 wellhead areas by those drilling wells as means of achieving the above  
20 objectives.

21 (3) If ((it)) the city, town, or county legislative body finds that  
22 the proposed subdivision and dedication make ((such)) appropriate  
23 provisions as provided in subsection (1) and (2) of this section and  
24 that the public use and interest will be served, then the legislative  
25 body shall approve the proposed subdivision and dedication. Dedication  
26 of land to any public body, provision of public improvements to serve  
27 the subdivision, and/or impact fees imposed under RCW 82.02.050 through  
28 82.02.090 may be required as a condition of subdivision approval.  
29 Dedications shall be clearly shown on the final plat. No dedication,  
30 provision of public improvements, or impact fees imposed under RCW  
31 82.02.050 through 82.02.090 shall be allowed that constitutes an  
32 unconstitutional taking of private property. The legislative body  
33 shall not as a condition to the approval of any subdivision require a  
34 release from damages to be procured from other property owners.

35 (4) The county or city shall, after August 1, 1994, impose  
36 conditions on subdivision approval requiring connection to an existing  
37 public water system where the existing system is able to provide safe  
38 and reliable potable water to the applicant with reasonable economy and  
39 efficiency.



1       (5) By January 1, 1995, the department of health shall, in  
2 conjunction with the department of community, trade, and economic  
3 development, the utilities and transportation commission, water  
4 purveyors, and local governments, develop criteria for determining what  
5 constitutes reasonable economy and efficiency under subsection (4) of  
6 this section, which shall be utilized by the county or city in  
7 implementing that subsection. In developing these criteria, the  
8 department of health shall include, but not be limited to: (a) Costs  
9 for system construction and operation for at least the twenty-year  
10 planning period covered by the appropriate local comprehensive plan  
11 adopted under chapter 36.70 RCW; and (b) consistency with state  
12 guidelines and existing plans, such as coordinated water system plans  
13 adopted under chapter 70.116 RCW, that assure systematic, coordinated,  
14 and timely delivery of water supplies within the areas covered by such  
15 plans.

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