
SENATE BILL 5260

State of Washington

58th Legislature

2003 Regular Session

By Senators Fraser, T. Sheldon, Oke, Regala, Prentice and Winsley

Read first time 01/20/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to private owners of public water systems not
2 regulated as public utilities; amending RCW 90.03.040; and adding a new
3 chapter to Title 19 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) The owner of a public water system, as
6 the term public water system is defined in RCW 70.119A.020, that is not
7 subject to regulation or jurisdiction under Title 80 RCW and that is
8 not a municipal corporation or special purpose district and does not
9 meet conditions adopted by the department of health for excluding pass-
10 through systems as currently established in WAC 246-290-020(2), must
11 provide potable water to every connection indicated in the approved
12 subdivision, short subdivision, or other applicable land use action in
13 which the public water system was indicated as the means of meeting
14 requirements to provide potable water supplies.

15 (2) The owner of property that is harmed by the failure of an owner
16 of a public water system, as identified in subsection (1) of this
17 section, to provide potable water supply under subsection (1) of this
18 section may bring a civil action for either injunctive relief or to

1 recover the actual damages sustained, or both, together with reasonable
2 costs, including but not limited to investigative costs and reasonable
3 attorneys' fees and other litigation-related costs.

4 NEW SECTION. **Sec. 2.** (1) The owner of a public water system, as
5 the term public water system is defined in RCW 70.119A.020, that is not
6 subject to regulation or jurisdiction under Title 80 RCW and that is
7 not a municipal corporation or special purpose district and does not
8 meet conditions adopted by the department of health for excluding pass-
9 through systems as currently established in WAC 246-290-020(2), must
10 comply with all requirements imposed under chapters 43.20, 70.116,
11 70.119, and 70.119A RCW.

12 (2) The owner of property that is harmed by the failure of an owner
13 of a public water system, as identified in subsection (1) of this
14 section, to comply with the requirements of subsection (1) of this
15 section may bring a civil action for either injunctive relief or to
16 recover the actual damages sustained, or both, together with reasonable
17 costs including but not limited to investigative costs and reasonable
18 attorneys' fees and other litigation-related costs.

19 NEW SECTION. **Sec. 3.** (1) All moneys paid to the owner of a public
20 water system, as identified in sections 1(1) and 2(1) of this act, for
21 providing potable water supply or for construction or maintenance of
22 the public water system must promptly be deposited by the owner in a
23 trust account, maintained for the purpose of holding the moneys, in a
24 bank, savings and loan association, mutual savings bank, or licensed
25 escrow agent located in Washington. Any interest paid to the trust
26 account accrues to the account. The owner may act as trustee.
27 Expenditures from the account must be for legitimate and reasonable
28 water system expenses. Records of such expenditures must be kept and
29 be available for inspection by customers of the system.

30 (2) The owner must provide written notice of the name, address, and
31 location of the depository and any subsequent change thereof. If
32 ownership of the public water system is transferred to another, any
33 moneys in the trust account affected by the transfer are simultaneously
34 transferred to an equivalent trust account of the successor owner, and
35 the successor owner must promptly provide notice of the transfer and
36 the name, address, and location of the new depository.

1 NEW SECTION. **Sec. 4.** The remedies provided under this chapter are
2 cumulative and are in addition to any other remedies provided by law.

3 NEW SECTION. **Sec. 5.** Every duty under this chapter and every act
4 that must be performed as a condition precedent to the exercise of a
5 right or remedy under this chapter imposes an obligation of good faith
6 in its performance or enforcement.

7 **Sec. 6.** RCW 90.03.040 and 1917 c 117 s 4 are each amended to read
8 as follows:

9 The beneficial use of water is hereby declared to be a public use,
10 and any person may exercise the right of eminent domain to acquire any
11 property or rights now or hereafter existing when found necessary for
12 the storage of water for, or the application of water to, any
13 beneficial use, including the right to enlarge existing structures
14 employed for the public purposes mentioned in this chapter and use the
15 same in common with the former owner, and including operation of a
16 public water system upon a showing that property served by the system
17 is being harmed as established by sections 1 and 2 of this act, and
18 including the right and power to condemn an inferior use of water for
19 a superior use. In condemnation proceedings the court shall determine
20 what use will be for the greatest public benefit, and that use shall be
21 deemed a superior one: PROVIDED, That no property right in water or
22 the use of water shall be acquired hereunder by condemnation for
23 irrigation purposes, which shall deprive any person of such quantity of
24 water as may be reasonably necessary for the irrigation of his or her
25 land then under irrigation to the full extent of the soil, by the most
26 economical method of artificial irrigation applicable to such land
27 according to the usual methods of artificial irrigation employed in the
28 vicinity where such land is situated. In any case, the court shall
29 determine what is the most economical method of irrigation. Such
30 property or rights shall be acquired in the manner provided by law for
31 the taking of private property for public use by private corporations.

32 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute
33 a new chapter in Title 19 RCW.

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