
SENATE BILL 6086

State of Washington

59th Legislature

2005 Regular Session

By Senators Honeyford, Hewitt, Poulsen, Morton, Mulliken and Rasmussen

Read first time 03/15/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to allowing retrofitting of domestic wells to
2 maintain agricultural irrigation purposes during drought; amending RCW
3 43.83B.410; and declaring an emergency.

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

5 **Sec. 1.** RCW 43.83B.410 and 1989 c 171 s 3 are each amended to read
6 as follows:

7 Upon the issuance of an order under RCW 43.83B.405, the department
8 of ecology is empowered to:

9 (1)(a) Authorize emergency withdrawal of public surface and ground
10 waters, including dead storage within reservoirs, on a temporary basis
11 and authorize associated physical works which may be either temporary
12 or permanent. The termination date for the authority to make such an
13 emergency withdrawal may not be later than the termination date of the
14 order issued under RCW 43.83B.405 under which the power to authorize
15 the withdrawal is established. The department of ecology may issue
16 such withdrawal authorization when, after investigation and after
17 providing appropriate federal, state, and local governmental bodies an
18 opportunity to comment, the following are found:

1 (i) The waters proposed for withdrawal are to be used for a
2 beneficial use involving a previously established activity or purpose;

3 (ii) The previously established activity or purpose was furnished
4 water through rights applicable to the use of a public body of water
5 that cannot be exercised due to the lack of water arising from natural
6 drought conditions; and

7 (iii) The proposed withdrawal will not reduce flows or levels below
8 essential minimums necessary (A) to assure the maintenance of fisheries
9 requirements, and (B) to protect federal and state interests including,
10 among others, power generation, navigation, and existing water rights;

11 (b) All withdrawal authorizations issued under this section shall
12 contain provisions that allow for termination of withdrawals, in whole
13 or in part, whenever withdrawals will conflict with flows and levels as
14 provided in (a)(iii) of this subsection. Domestic and irrigation uses
15 of public surface and ground waters shall be given priority in
16 determining "beneficial ~~((uses.))~~ uses," which shall include
17 retrofitting of domestic wells to maintain agricultural purposes. As
18 to water withdrawal and associated works authorized under this
19 subsection, the requirements of chapter 43.21C RCW and public bidding
20 requirements as otherwise provided by law are waived and inapplicable.
21 All state and local agencies with authority to issue permits or other
22 authorizations for such works shall, to the extent possible, expedite
23 the processing of the permits or authorizations in keeping with the
24 emergency nature of the requests and shall provide a decision to the
25 applicant within fifteen calendar days of the date of application. All
26 state departments or other agencies having jurisdiction over state or
27 other public lands, if such lands are necessary to effectuate the
28 withdrawal authorizations issued under this subsection, shall provide
29 short-term easements or other appropriate property interest upon the
30 payment of the fair market value. This mandate shall not apply to any
31 lands of the state that are reserved for a special purpose or use that
32 cannot properly be carried out if the property interest were conveyed;

33 (2) Approve a temporary change in purpose, place of use, or point
34 of diversion, consistent with existing state policy allowing transfer
35 or lease of waters between willing parties, as provided for in RCW
36 90.03.380, 90.03.390, and 90.44.100. However, compliance with any
37 requirements of (a) notice of newspaper publication of these sections
38 or (b) the state environmental policy act, chapter 43.21C RCW, is not

1 required when such changes are necessary to respond to drought
2 conditions as determined by the department of ecology. An approval of
3 a temporary change of a water right as authorized under this subsection
4 is not admissible as evidence in either supporting or contesting the
5 validity of water claims in *State of Washington, Department of Ecology*
6 *v. Acquavella*, Yakima county superior court number 77-2-01484-5 or any
7 similar proceeding where the existence of a water right is at issue.

8 (3) Employ additional persons for specified terms of time,
9 consistent with the term of a drought condition, as are necessary to
10 ensure the successful performance of the activities associated with
11 implementing the emergency drought program of this chapter.

12 (4) Revise the drought contingency plan previously developed by the
13 department; and

14 (5) Acquire needed emergency drought-related equipment.

15 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 immediately.

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