

2 2SSB 6291 - S AMD - 000293

3 By Senators Sutherland, Rassmussen, Newhouse, Amondson and Morton

4 RULED WITHIN SCOPE & OBJECT; ADOPTED 3/1/94

5 On page 1, after line 18, insert the following:

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

8 In furtherance of the purpose of chapter . . . , Laws of 1994 (this
9 act) to more expeditiously make decisions regarding water right
10 applications as stated in section 1 of this act, the legislature finds
11 that the administering agency will be better enabled to make decisions
12 and be better able to assure conditions placed on permits and
13 certificates are complied with if procedures for the regulation of
14 waters and water rights are clearly established. The purpose of this
15 section is to set forth the powers of the department to regulate the
16 withdrawal or diversion of public waters and water or water rights
17 related thereto including regulation based on dates of priority or
18 other pertinent factors. Regulatory actions taken under this section
19 shall be based on examination and determination by the department or
20 the court, as applicable, of the various water rights involved
21 according to the department's records and other records and pertinent
22 facts. The powers set forth in this section may be exercised whether
23 or not a general adjudication relating to the water rights involved has
24 been conducted.

25 (1) In a regulatory situation (a) where a water right or all water
26 rights proposed for regulation by the department, as well as any right
27 or rights of a senior priority that the proposed regulation is designed
28 to protect, is or are embodied in a certificate or certificates issued
29 under RCW 90.03.240, 90.03.330, 90.38.040, 90.42.040, or 90.44.060 or
30 a permit or permits issued pursuant to RCW 90.03.290 or 90.44.060; or
31 (b) where a flow or level has been established by rule pursuant to
32 chapter 90.22 or 90.54 RCW; or (c) where it appears to the department
33 that public waters are being withdrawn without any right or other
34 appropriate authority whatsoever, the department in its discretion is
35 authorized to regulate the right or rights under either RCW 43.27A.190
36 or subsection (2) of this section.

1 (2) In a regulatory situation where one or more of the water rights
2 proposed for regulation by the department, as well as any right or
3 rights of a senior priority that the proposed regulation is designed to
4 protect, is not or are not embodied in a permit or certificate as
5 described in subsection (1) of this section, the department, as its
6 sole and exclusive power to regulate, is authorized to bring an
7 appropriate action at law or in equity, including seeking injunctive
8 relief, as it may deem necessary. Where actions are brought in a state
9 court, the actions shall be initiated in the superior court of the
10 county where the point or points of diversion of the water right or
11 rights proposed for regulation are located. If the points of diversion
12 are located in more than one county, the department may bring the
13 action in a county where a point of diversion is located.

14 (3) Nothing in this section authorizes the department to accomplish
15 a general adjudication of water rights proceeding or the substantial
16 equivalent of a general adjudication of water rights. The exclusive
17 procedure for accomplishing a general adjudication of water rights is
18 under RCW 90.03.110 through 90.03.245 or 90.44.220.

19 (4) Nothing in this section shall have an impact on RCW 90.14.130
20 or 90.14.200.

21 (5) This section does not in any way modify regulatory powers
22 previously placed with the department except as provided in subsections
23 (1) and (2) of this section."

24 Renumber the remaining sections consecutively and correct any
25 internal references accordingly.

26 **2SSB 6291** - S AMD - 000304

27 By Senators Rasmussen, Deccio, Haugen, Morton, Loveland and
28 Talmadge

29 ADOPTED 3/1/94

30 On page 9, after line 9, insert the following:

31 "(f) Implementation of water efficiency measures, including
32 conservation and reclaimed water use;"

33 Renumber the remaining subsections consecutively and correct
34 internal references accordingly.

1 **2SSB 6291** - S AMD - 000304

2 By Senators Rasmussen, Deccio, Haugen, Morton, Loveland and
3 Talmadge

4 ADOPTED 3/1/94

5 On page 12, line 21, after "department" insert ", under this
6 chapter or chapter 90.46 RCW"

7 **2SSB 6291** - S AMD 000301

8 By Senators Rasmussen, Newhouse, Loveland, Fraser, Morton,
9 Sutherland and Williams

10 ADOPTED 3/1/94

11 On page 17, beginning on line 31, strike all of section 25 and
12 insert the following:

13 "NEW SECTION. **Sec. 25.** (1) The department of ecology shall in
14 conjunction with the task force created in section 3, chapter 495, Laws
15 of 1993 develop a budget process for its water rights administration
16 program that accomplishes the following:

- 17 (a) Identifies targets for permitting activities for the biennium;
18 (b) Identifies workload standards;
19 (c) Prepares a draft budget;
20 (d) Provides for timely public review of the draft budget; and
21 (e) Circulates a final budget.

22 (2) The department of ecology shall, in conjunction with the water
23 rights programs review task force, establish and periodically review
24 the following:

- 25 (a) Workload standards and proposed incentives to improve such
26 standards;
27 (b) Program expenditure categories to account for and track costs
28 related to the water rights administration program; and
29 (c) Success measures based upon programmatic results designed to
30 evaluate program effectiveness and standards for defining the measures.

31 In establishing the initial workload standards, the legislature has
32 an expectation that the department of ecology will process a simple,
33 basic application in six months and an application of intermediate
34 difficulty in one year.

35 (3) The task force shall report annually to the legislature on the
36 success measures established, the number of water right permit

1 decisions made, and the associated costs of administering the water
2 rights program.

3 (4) The legislature may provide for another state entity or an
4 independent contractor to conduct periodic performance audits or
5 evaluations of the effectiveness and efficiency of the department of
6 ecology in meeting its workload standards and achieving programmatic
7 success.

8 (5) This section shall expire on June 30, 1998.

9 **Sec. 26.** 1993 c 495 s 3 (uncodified) is amended to read as
10 follows:

11 (1) There is created a water rights ~~((fees))~~ programs review task
12 force. The task force shall be comprised of ~~((fourteen))~~ fifteen
13 members, who are appointed as follows:

14 (a) Two members of the Washington state house of representatives,
15 one from each major caucus, to be appointed by the speaker of the house
16 of representatives;

17 (b) Two members of the Washington state senate, one from each major
18 caucus, to be appointed by the president of the senate;

19 (c) ~~((Ten))~~ Eleven members, to be appointed jointly by the speaker
20 of the house of representatives and the president of the senate, to
21 represent the following interests: Agriculture, aquaculture, business,
22 cities, counties, the state department of ecology, environmentalists,
23 water recreation interests, water utilities, rural residential
24 interests, and hydropower interests. ~~((The task force may establish
25 technical advisory committees as necessary to complete its tasks.))~~

26 (2) In addition to the functions established in section 25 of this
27 act, the task force shall conduct a ~~((comprehensive))~~ review ~~((of water~~
28 ~~rights fees. The task force's tasks shall include))~~, including but not
29 ~~((be))~~ limited to the following matters:

30 ~~((Identification of the costs associated with the various~~
31 ~~activities and services provided by the water rights program and~~
32 ~~examination of how these costs compare with the fees charged for these~~
33 ~~activities and services;~~

34 ~~((b) Identification of appropriate accountability measures for the~~
35 ~~department of ecology to employ in administration of the water rights~~
36 ~~program. Recommendations of accountability requirements and~~
37 ~~measurements shall take into account the distinctive characteristics of~~
38 ~~the water rights program, that is, that the department receives a large~~

1 number of applications on a one-time basis and that the department of
2 ecology must meet its legal obligations under the doctrine of prior
3 appropriation;

4 (c) Identification of which program activities should be eligible
5 for cost recovery from fees, as well as which direct and indirect costs
6 of program administration;

7 (d) Review of the application, examination, and water rights permit
8 requirements for marine water users to determine if these users should
9 receive special fee consideration;

10 (e) Review of the definition and treatment of nonconsumptive water
11 uses to determine if special fee consideration should be given to these
12 users;

13 (f) Review of the fees and accounting methods for the dam safety
14 program;

15 (g) Identification of the appropriate distribution of
16 responsibility between the applicant and the department of ecology for
17 provision of technical information and analysis; and

18 (h) Establishment of a reasonable time framework for completion of
19 new and pending water rights applications, and an analysis of the staff
20 and funding levels required to meet the established time framework))
21 Implementation of the development and maintenance of the water resource
22 data management system, monitored on an annual basis; and

23 (b) The use and amount of funds available for the water right
24 permit processing and data management programs and the transition
25 between fiscal year 1998 and fiscal year 1999.

26 (3) Before December 1, ((1993)) 1997, the task force shall provide
27 recommendations to the legislature regarding:

28 (a) ((Provide recommendations to the department of ecology on ways
29 to improve the efficiency and accountability of the water rights
30 program;

31 (b) Provide recommendations to the legislature on statutory changes
32 necessary to make these efficiency and accountability improvements; and

33 (c) Propose a new fee schedule for the water rights program which
34 incorporates the results of the task force's work and which funds
35 through fees fifty percent of the cost of the activities and services
36 provided by the program)) The efficiency and accountability of the
37 water right permit processing program and the need for change to the
38 level of funding in fiscal year 1999;

1 Renumber the remaining sections consecutively and correct any
2 internal references accordingly.

3 On page 28, line 33, after "29 through" strike "31" and insert "32"

4 **2SSB 6291** - S AMD - 000294

5 By Senators Sutherland, Rasmussen, Talmadge, Fraser, Morton and
6 Sellar

7 ADOPTED 3/1/94

8 On page 28, after line 26, insert the following:

9 "NEW SECTION. **Sec. 31.** The legislature shall examine and
10 recommend state policies relating to water rights, water use, and water
11 doctrine and report the recommendations to the appropriate standing
12 committees of the 1995 legislature."

13 Renumber the remaining sections consecutively and correct any
14 internal references accordingly.

15 **2SSB 6291** - S AMD - 000304

16 By Senators Rasmussen, Deccio, Haugen, Morton, Loveland and
17 Talmadge

18 ADOPTED 3/1/94

19 On page 1, line 4 of the title, after "89.30.001," strike "and
20 90.40.090" and insert "90.40.090, and 90.46.020"

21 **2SSB 6291** - S AMD

22 By Senators Rasmussen, Newhouse, Loveland, Fraser, Morton,
23 Sutherland and Williams

24 ADOPTED 3/1/94

25 On page 1, line 4 of the title, after "90.40.090;" insert "amending
26 1993 c 495 s 3 (uncodified);"

27 **2SSB 6291** - S AMD - 000293

28 By Senators Sutherland, Rasmussen, Newhouse, Amondson and Morton

29 ADOPTED 3/1/94

