

2 2SSB 6291 - S AMD

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

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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33 that public waters are being withdrawn without any right or other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.

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29 On page 1, line 4 of the title, after "90.40.090;" insert "adding
30 new sections to chapter 90.03 RCW;"

31 On page 1, beginning on line 5 of the title, after "43.21B RCW;"
32 strike "adding new sections to chapter 90.03 RCW;"

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