

2 SSB 6536 - S AMD - 000196

3 By Senators Sutherland and Newhouse

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.27A  
8 RCW to read as follows:

9 The purpose of this section is to set forth the powers of the  
10 department to regulate the withdrawal or diversion of public waters and  
11 water or water rights related thereto including regulation based on  
12 dates of priority or other pertinent factors. Regulatory actions taken  
13 under this section shall be based on examination and determination by  
14 the department or the court, as applicable, of the various water rights  
15 involved according to the department's records and other records and  
16 pertinent facts. The powers set forth in this section may be exercised  
17 whether or not a general adjudication relating to the water rights  
18 involved has been conducted.

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27 that public waters are being withdrawn without any right or other  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

31 (2) In a regulatory situation where one or more of the water rights  
32 proposed for regulation by the department, as well as any right or  
33 rights of a senior priority that the proposed regulation is designed to  
34 protect, is not or are not embodied in a permit or certificate as  
35 described in subsection (1) of this section, the department, as its  
36 sole and exclusive power to regulate, is authorized to bring an

1 appropriate action at law or in equity, including seeking injunctive  
2 relief, as it may deem necessary. Where actions are brought in a state  
3 court, the actions shall be initiated in the superior court of the  
4 county where the point or points of diversion of the water right or  
5 rights proposed for regulation are located. If the points of diversion  
6 are located in more than one county, the department may bring the  
7 action in a county where a point of diversion is located.

8 (3) Nothing in this section authorizes the department to accomplish  
9 a general adjudication of water rights proceeding or the substantial  
10 equivalent of a general adjudication of water rights. The exclusive  
11 procedure for accomplishing a general adjudication of water rights is  
12 under RCW 90.03.110 through 90.03.245 or 90.44.220.

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

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

18 NEW SECTION. **Sec. 2.** The legislature shall examine and recommend  
19 changes to state policies relating to water rights, water use, and  
20 water doctrine and report the recommendations to the 1995 legislature.

21 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of the  
23 state government and its existing public institutions, and shall take  
24 effect immediately."

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28 On page 1, line 1 of the title, after "rights;" strike the  
29 remainder of the title and insert "adding a new section to chapter  
30 43.27A RCW; creating a new section; and declaring an emergency."

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