

2 **SSB 6334** - H COMM AMD

3 By Committee on Agriculture & Ecology

4

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

7 **"Sec. 1.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to  
8 read as follows:

9 (1) Except as provided in RCW 90.03.345, the priority date of a  
10 right acquired by appropriation shall relate back to the date of filing  
11 of the original application with the department.

12 (2) For the purpose of vesting the priority date of an application  
13 and, therefore, any right acquired through the application, a document  
14 filed with the department on or after January 1, 1997, shall be  
15 considered to be an application for a new appropriative right to the  
16 use of water if it contains the following information: The name and  
17 address of the applicant; a general description of the proposed water  
18 withdrawal and use project; the location of the proposed withdrawal;  
19 the location of the proposed use; and the type of the proposed  
20 beneficial use. The document may, at the applicant's discretion,  
21 contain more information than is required for this purpose; however, a  
22 document filed after January 1, 1997, containing less than this minimum  
23 information shall not be considered to be an application for this  
24 purpose.

25 **Sec. 2.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to read  
26 as follows:

27 Upon receipt of an application it shall be the duty of the  
28 department to make an endorsement thereon of the date of its receipt,  
29 and to keep a record of same. If upon examination, the application is  
30 found to be defective, it shall be returned to the applicant for  
31 correction or completion, and the date and the reasons for the return  
32 thereof shall be endorsed thereon and made a record in his office. No  
33 application filed with the department before January 1, 1997, and no  
34 document that qualifies as an application under RCW 90.03.340(2) shall  
35 lose its priority of filing on account of such defects, provided

1 acceptable maps, drawings and such data as is required by the  
2 department shall be filed with the department within such reasonable  
3 time as it shall require.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW  
5 to read as follows:

6 A water right applicant may appeal to the pollution control  
7 hearings board a determination by the department regarding the nature  
8 and extent of the information needed to make determinations regarding  
9 the application for or the processing of a water right permit.

10 **Sec. 4.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to read  
11 as follows:

12 (1) Actual construction work shall be commenced on any project for  
13 which permit has been granted within such reasonable time as shall be  
14 prescribed by the department, and shall thereafter be prosecuted with  
15 diligence and completed within the time prescribed by the department.  
16 The department, in fixing the time for the commencement of the work, or  
17 for the completion thereof and the application of the water to the  
18 beneficial use prescribed in the permit, shall take into consideration  
19 the cost and magnitude of the project and the engineering and physical  
20 features to be encountered, and shall allow such time as shall be  
21 reasonable and just under the conditions then existing, having due  
22 regard for the public welfare and public interests affected: and, for  
23 good cause shown, it shall extend the time or times fixed as aforesaid,  
24 and shall grant such further period or periods as may be reasonably  
25 necessary, having due regard to the good faith of the applicant and the  
26 public interests affected.

27 (2) For the purposes of this section, "good cause" includes but is  
28 not limited to the following circumstances that prevent work completion  
29 within the prescribed period:

30 (a) Active service in the armed forces of the United States during  
31 a military crisis;

32 (b) Nonvoluntary service in the armed forces of the United States;

33 (c) A court order having the effect of stopping the construction  
34 work;

35 (d) Delays in securing other permits necessary to proceed with the  
36 development;

37 (e) A single transfer in ownership of the property;

- 1        (f) Implementation of water efficiency measures, including  
2 conservation and reclaimed water use;  
3        (g) Encountering unanticipated physical impediments to  
4 construction; and  
5        (h) Encountering generally depressed economic conditions.

6        (3) If the terms of the permit or extension thereof((~~7~~)) are not  
7 complied with, the department shall give notice by ((registered))  
8 certified mail that ((such)) the permit will be canceled unless the  
9 ((holders thereof shall)) permittee shows cause within sixty days why  
10 the ((same)) permit should not be ((so)) canceled. If cause ((be)) is  
11 not shown, ((said)) the permit shall be canceled through the  
12 department's issuance of an order of cancellation served on the holder  
13 of the permit by certified mail.

14        NEW SECTION. Sec. 5. A new section is added to chapter 90.03 RCW  
15 to read as follows:

16        (1) The department shall establish streamlined procedures for its  
17 processing of applications for de minimis appropriations of surface  
18 water, but only if the department has reserved and set aside the water  
19 for future beneficial use under RCW 90.54.050.

20        (2) Applications for appropriating water under this section shall  
21 be made on a form provided by the department. Within sixty days of the  
22 publication of a notice in accordance with RCW 90.03.280, the  
23 department shall issue or deny a permit for the requested  
24 appropriation. If the department denies the application, it shall  
25 explain its determination in writing.

26        (3) The department shall waive the evaluation and report  
27 requirements of RCW 90.03.290 if at the time the reservation was  
28 established the department determined that use of the reserved water  
29 would not impair water rights existing before the reservation was  
30 established and would not be detrimental to the public interest.

31        (4) Unless the context clearly requires otherwise, as used in this  
32 chapter, "de minimis appropriation" means diversion and use of surface  
33 water in an amount not exceeding four hundred fifty gallons per day and  
34 not exceeding an instantaneous diversion rate of two one-hundredths  
35 cubic feet per second.

36        (5) The department shall develop, in cooperation with the  
37 department of health, informational materials regarding the risks of  
38 drinking untreated surface water. This informational material may be

1 provided to prospective applicants. The department shall attach the  
2 informational materials to any permit that is approved under this  
3 section.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW  
5 to read as follows:

6 (1) The department may authorize short-term uses of water without  
7 publication of the notice required under RCW 90.03.280 and without the  
8 report required under RCW 90.03.290. However, before approving a  
9 short-term use, the department shall determine to its satisfaction that  
10 the substantive criteria in RCW 90.03.290 are met and that a stream  
11 affected by a short-term use will be retained with minimally sufficient  
12 flows to maintain instream uses and to protect existing water rights.  
13 The department shall adopt and provide application forms for persons  
14 applying for a short-term use and shall expedite its consideration of  
15 short-term use requests to the extent practicable.

16 (2) For the purposes of this chapter, "short-term use" means a use  
17 of water that will not exceed one year in duration. Short-term uses  
18 include but are not limited to use in construction, dust control,  
19 dewatering, and short-term planned fire suppression activities.

20 **Sec. 7.** RCW 43.21B.240 and 1989 c 175 s 105 are each amended to  
21 read as follows:

22 The department and air authorities shall not have authority to hold  
23 adjudicative proceedings pursuant to the Administrative Procedure Act,  
24 chapter 34.05 RCW. ~~((Such))~~ All other hearings, except for  
25 water-related agency actions as defined in section 13 of this act that  
26 are appealed directly to a superior court as provided in section 10 of  
27 this act shall be held by the pollution control hearings board.

28 **Sec. 8.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to  
29 read as follows:

30 Notwithstanding and in addition to any other powers granted to the  
31 department of ecology, whenever it appears to the department that a  
32 person is violating or is about to violate any of the provisions of the  
33 following:

- 34 (1) Chapter 90.03 RCW; or
- 35 (2) Chapter 90.44 RCW; or
- 36 (3) Chapter 86.16 RCW; or

1 (4) Chapter 43.37 RCW; or  
2 (5) Chapter 43.27A RCW; or  
3 (6) Any other law relating to water resources administered by the  
4 department; or

5 (7) A rule or regulation adopted, or a directive or order issued by  
6 the department relating to subsections (1) through (6) of this section;  
7 the department may cause a written regulatory order to be served upon  
8 ~~((said))~~ the person either personally, or by registered or certified  
9 mail delivered to addressee only with return receipt requested and  
10 acknowledged by him or her. The order shall specify the provision of  
11 the statute, rule, regulation, directive or order alleged to be or  
12 about to be violated, and the facts upon which the conclusion of  
13 violating or potential violation is based, and shall order the act  
14 constituting the violation or the potential violation to cease and  
15 desist or, in appropriate cases, shall order necessary corrective  
16 action to be taken with regard to such acts within a specific and  
17 reasonable time. The regulation of a headgate or controlling works as  
18 provided in RCW 90.03.070, by a watermaster, stream patrolman, or other  
19 person so authorized by the department shall constitute a regulatory  
20 order within the meaning of this section. A regulatory order issued  
21 hereunder shall become effective immediately upon receipt by the person  
22 to whom the order is directed, except for regulations under RCW  
23 90.03.070 which shall become effective when a written notice is  
24 attached as provided therein. Any person aggrieved by such order may  
25 appeal the order pursuant to RCW 43.21B.310 unless the order is a  
26 water-related agency action of the department, as defined in section 13  
27 of this act, in which case it may be appealed either to the pollution  
28 control hearings board or directly to a superior court as provided in  
29 section 10 of this act.

30 **Sec. 9.** RCW 90.66.080 and 1979 c 3 s 8 are each amended to read as  
31 follows:

32 The department is hereby empowered to promulgate such rules as may  
33 be necessary to carry out the provisions of this chapter. Decisions of  
34 the department, other than rule making, shall be subject to review by  
35 the pollution control hearings board or a superior court in accordance  
36 with ~~((chapter 43.21B RCW))~~ section 13 of this act.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 43.21B  
2    RCW to read as follows:

3        A person who is aggrieved or adversely affected by a water-related  
4    agency action as defined by section 13 of this act may appeal the  
5    decision either to the pollution control hearings board pursuant to RCW  
6    43.21B.310 or directly to a superior court. Any direct appeal to a  
7    superior court as authorized by this section shall be de novo. An  
8    appeal of a decision regarding a withdrawal shall be filed in the  
9    county in which the water withdrawal would or does take place.

10       NEW SECTION.    **Sec. 11.**    A new section is added to chapter 43.21B  
11    RCW to read as follows:

12       In all appeals of water-related agency actions by the department,  
13    as defined in section 13 of this act, over which the hearings board has  
14    jurisdiction, a party taking an appeal may elect either a formal or an  
15    informal hearing. The election shall be made according to rules of  
16    practice and procedure adopted by the hearings board. This section  
17    shall not be construed to modify RCW 43.21B.190. In the event that  
18    appeals are taken from the same decision, order, or determination, as  
19    the case may be, by different parties and only one of such parties  
20    elects an informal hearing, an informal hearing shall be granted.

21       NEW SECTION.    **Sec. 12.**    A new section is added to chapter 43.21B  
22    RCW to read as follows:

23       In all appeals involving a decision or an order of the hearings  
24    board after an informal hearing of a water-related agency action by the  
25    department, as defined in section 13 of this act, the appeal to  
26    superior court shall be de novo. The petition shall be filed in the  
27    superior court specified in section 10 of this act. Such appeal may be  
28    perfected by filing with the clerk of the superior court a notice of  
29    appeal, and by serving a copy thereof by mail, or personally on the  
30    director or on the board as the case may be. The hearings board shall  
31    serve upon the appealing party, the director, and on any other party  
32    appearing at the hearings board's proceeding, and file with the clerk  
33    of the court before trial, a certified copy of the hearings board's  
34    decision and order. Appellate review of a decision of the superior  
35    court may be sought as in other civil cases. No bond may be required  
36    on appeals to the superior court or on review by the supreme court  
37    unless specifically required by the judge of the superior court.

1        NEW SECTION.    **Sec. 13.**    A new section is added to chapter 43.21B  
2 RCW to read as follows:

3        Unless the context clearly requires otherwise, as used in this  
4 chapter "water-related agency action" includes (1) a decision to grant  
5 or deny a permit or certificate for a right to the beneficial use of  
6 water or to amend, change, or transfer such a right; (2) a decision to  
7 enforce the conditions of a permit for, or right to, the beneficial use  
8 of water or to require any person to discontinue the use of water; and  
9 (3) a decision regarding the nature and extent of the information  
10 needed to make determinations regarding the application for or  
11 processing of a water right permit."

12    **SSB 6334** - H COMM AMD  
13        By Committee on Agriculture & Ecology

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15        On page 1, line 1 of the title, after "rights;" strike the  
16 remainder of the title and insert "amending RCW 90.03.340, 90.03.270,  
17 90.03.320, 43.21B.240, 43.27A.190, and 90.66.080; adding new sections  
18 to chapter 90.03 RCW; and adding new sections to chapter 43.21B RCW."

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