

2 **2SHB 2054** - S AMD to S AMD (S3322.1) - 524  
3 By Senator Fraser

4 NOT ADOPTED 4/25/97

5 On page 31, after line 18, insert the following:

6 "PART VII  
7 REGULATORY AUTHORITY

8 NEW SECTION. **Sec. 701.** A new section is added to chapter 43.27A  
9 RCW to read as follows:

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

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28 that public waters are being withdrawn without any right or other  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

32 (2) In a regulatory situation where one or more of the water rights  
33 proposed for regulation by the department, as well as any right or  
34 rights of a senior priority that the proposed regulation is designed to  
35 protect, is not or are not embodied in a permit or certificate as

1 described in subsection (1) of this section, the department, as its  
2 sole and exclusive power to regulate, is authorized to bring an  
3 appropriate action at law or in equity, including seeking injunctive  
4 relief, as it may deem necessary. Where actions are brought in a state  
5 court, the actions shall be initiated in the superior court of the  
6 county where the point or points of diversion of the water right or  
7 rights proposed for regulation are located. If the points of diversion  
8 are located in more than one county, the department may bring the  
9 action in a county where a point of diversion is located.

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

15 (4) Nothing in this section shall amend, revise, or repeal RCW  
16 90.14.130 or 90.14.200.

17 (5) This section does not in any way modify regulatory powers  
18 previously placed with the department except as provided in subsections  
19 (1) and (2) of this section."  
20

21 Renumber the sections consecutively and correct any internal  
22 references accordingly.

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26 On page 42, on line 10 of the title, after "43.21B RCW;", insert  
27 "adding a new section to chapter 43.27A RCW;"

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