
SENATE BILL 5091

State of Washington

56th Legislature

1999 Regular Session

By Senator Swecker

Read first time 01/12/1999. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to water resource management; amending RCW
2 90.03.330 and 90.44.090; adding new sections to chapter 90.82 RCW;
3 adding a new section to chapter 90.14 RCW; adding a new section to
4 chapter 43.27A RCW; creating a new section; and repealing RCW
5 90.03.060, 90.03.070, 90.03.090, 90.03.100, 90.08.040, 90.08.050,
6 90.08.060, and 90.08.070.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
9 establish a more effective method of water resource management in the
10 state of Washington. This process is to be administered in a manner
11 consistent with current state laws and rules concerning water rights
12 and watershed planning, and provide flexibility to adjust when changes
13 occur to those laws and rules.

14 Further, the legislature intends that this more effective method of
15 water resource management result in a reduction of the backlog of water
16 right applications, enhance the ability of the department of ecology to
17 process new water right applications, and facilitate the transfer and
18 productive use of water rights on a willing seller and willing buyer
19 basis.

1 It is further the intent of the legislature that those basins that
2 are over appropriated be identified and that instream flows be
3 established where necessary using the best available science. Where
4 over appropriation has occurred, water conservation programs during
5 critical flow periods are to be established that honor the principle of
6 first in time first in right, while facilitating a maximum level of
7 voluntary cooperation from all water users to meet stream flow needs.

8 Therefore, the legislature declares that in order to meet this
9 intent, it is necessary to create a system of locally based water
10 rights regulators, focus on water conservation, actively work to ensure
11 proper water allocation procedures are followed, and rely on a market
12 driven water transfer process.

13 **Sec. 2.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
14 as follows:

15 Upon a showing satisfactory to the department that any
16 appropriation has been perfected in accordance with the provisions of
17 this chapter, it shall be the duty of the department to issue to the
18 applicant a certificate stating such facts in a form to be prescribed
19 by him or her, and such certificate shall thereupon be recorded with
20 the department. Any original water right certificate issued, as
21 provided by this chapter, shall be recorded with the department and
22 thereafter, at the expense of the party receiving the same, be by the
23 department transmitted to the county auditor of the county or counties
24 where the distributing system or any part thereof is located, and be
25 recorded in the office of such county auditor, and thereafter be
26 transmitted to the owner thereof.

27 Any certificate or permit issued under the provisions of this
28 chapter shall include a notice clearly stating that such water rights
29 are subject to seasonal water availability.

30 **Sec. 3.** RCW 90.44.090 and 1987 c 109 s 112 are each amended to
31 read as follows:

32 Any person, firm, or corporation claiming a vested right to
33 withdraw public ground waters of the state by virtue of prior
34 beneficial use of such water shall, within three years after June 6,
35 1945, be entitled to receive from the department a certificate of
36 ground water right to that effect: PROVIDED, That the issuance by the
37 department of any such certificate of vested right shall be contingent

1 on a declaration by the claimant in a form prescribed by the
2 department, which declaration shall set forth: (1) The beneficial use
3 for which such withdrawal has been made; (2) the date or approximate
4 date of the earliest beneficial use of the water so withdrawn, and the
5 continuity of such beneficial use; (3) the amount of water claimed; (4)
6 if the beneficial use has been for irrigation, the description of the
7 land to which such water has been applied and the name of the owner
8 thereof; and (5) so far as it may be available, descriptive information
9 concerning each well or other works for the withdrawal of public ground
10 water, as required of original permittees under the provisions of RCW
11 90.44.080: PROVIDED, HOWEVER, That in case of failure to comply with
12 the provisions of this section within the three years allotted, the
13 claimant may apply to the department for a reasonable extension of
14 time, which shall not exceed two additional years and which shall be
15 granted only upon a showing of good cause for such failure.

16 Each such declaration shall be certified, either on the basis of
17 the personal knowledge of the declarant or on the basis of information
18 and belief. With respect to each such declaration there shall be
19 publication, and findings in the same manner as provided in RCW
20 90.44.060 in the case of an original application to appropriate water.
21 If the department's findings sustain the declaration, the department
22 shall approve said declaration, which then shall be recorded at length
23 with the department and may also be recorded in the office of the
24 county auditor of the county within which the claimed withdrawal and
25 beneficial use of public ground water have been made. When duly
26 approved and recorded as herein provided, each such declaration or
27 copies thereof shall have the same force and effect as an original
28 permit granted under the provisions of RCW 90.44.060, with a priority
29 as of the date of the earliest beneficial use of the water.

30 Declarations heretofore filed with the department in substantial
31 compliance with the provisions of this section shall have the same
32 force and effect as if filed after June 6, 1945.

33 The same fees shall be collected by the department in the case of
34 applications for the issuance of certificates of vested rights, as are
35 required to be collected in the case of application for permits for
36 withdrawal of ground waters and for the issuance of certificates of
37 ground water withdrawal rights under this chapter.

1 Any certificate or permit issued under the provisions of this
2 chapter shall include a notice clearly stating that such water rights
3 are subject to seasonal water availability.

4 NEW SECTION. Sec. 4. A new section is added to chapter 90.82 RCW
5 to read as follows:

6 (1) Any county or group of counties within the state may seek to
7 establish a local water regulator to implement and administer a local
8 watershed plan established under this chapter. The local water
9 regulators shall be funded through the department. Counties seeking a
10 local water regulator may individually or collectively petition the
11 department for up to one regulator per county. The regulators may be
12 assigned to a single WRIA or a multi-WRIA area.

13 (2) Upon satisfactory showing of need for a local water regulator
14 by a county or counties, the department shall assign a local water
15 regulator to the WRIA or multi-WRIA region. The local water regulator
16 shall be housed in the county with the greatest amount of land in the
17 WRIA or multi-WRIA region to be administered by the local water
18 regulator.

19 (3) The local water regulator shall be responsible for
20 implementation and administration of any adopted local watershed
21 management plan for the region to which he or she is assigned. The
22 regulator shall: Monitor water diversions and withdrawals in the
23 region; monitor stream flows; work with local conservancy boards, the
24 department, and other local jurisdictions to help disseminate technical
25 and legal information in an effort to facilitate water transfers;
26 encourage water users in implementing water conservation measures by
27 assisting them by providing information related to efficiency measures
28 and available incentives; and in periods of insufficient water flows,
29 implement conservation measures in accordance with section 7 of this
30 act.

31 (4) Any person aggrieved by an action of the local water regulator
32 may bring an action before the pollution control hearings board.

33 Additionally, a person who is seeking relief from the pollution
34 control hearings board may petition an administrative law judge within
35 the department for immediate relief from the action of the local water
36 regulator pending a decision by the pollution control hearings board.
37 The relief shall be determined within five business days of the date of
38 filing of such a petition. Immediate relief may be granted on a

1 showing of undue hardship or an error in fact in the action taken by
2 the local water regulator.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.82 RCW
4 to read as follows:

5 Within the department there is created a water coordinator. The
6 water coordinator is responsible for overseeing the local water
7 regulators established in section 4 of this act. It is the duty of the
8 water coordinator to monitor the actions of the local water regulators
9 and ensure that actions taken by the local water regulators are
10 consistent with state law. Additionally, the water coordinator is
11 responsible for assisting local water regulators in the performance of
12 their duties. Such assistance must include sharing all pertinent water
13 resource-related information with the local water regulators.

14 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.14 RCW
15 to read as follows:

16 All claims filed under the provisions of chapter . . . , Laws of
17 1999 (this act) shall be deemed equivalent to a certificate under the
18 provisions of chapters 90.03 and 90.44 RCW. The date of priority of
19 the claim shall be the date of priority of the certificate under this
20 section. This section does not apply to claims involved in an ongoing
21 water right adjudication, or claims that have been invalidated through
22 prior adjudication or relinquished through prior agency action.

23 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.27A RCW
24 to read as follows:

25 The department shall seek to encourage the voluntary transfer of
26 water between willing parties. The department must develop strategies
27 to encourage and facilitate the transfers and the adoption of
28 conservation measures.

29 In times of inadequate stream flows, the department shall seek to
30 meet necessary flows by encouraging voluntary conservation. If
31 voluntary conservation is insufficient, the department shall encourage
32 voluntary sharing of water through water transfers and water sharing.
33 If this action still fails to provide sufficient water, the department
34 shall enforce mandatory water conservation efforts based on the
35 implementation recommendations of a watershed planning process for the
36 stream. If these measures still fail to provide sufficient water to

1 the stream, then the department shall enforce a temporary ceasing of
2 withdrawals or diversions based on the date of priority of the water
3 rights.

4 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
5 repealed:

6 (1) RCW 90.03.060 and 1987 c 109 s 69, 1967 c 80 s 1, 1947 c 123 s
7 2, & 1917 c 117 s 9;

8 (2) RCW 90.03.070 and 1987 c 109 s 70, 1967 c 80 s 2, & 1917 c 117
9 s 10;

10 (3) RCW 90.03.090 and 1987 c 202 s 250 & 1917 c 117 s 12;

11 (4) RCW 90.03.100 and 1987 c 109 s 71 & 1917 c 117 s 13;

12 (5) RCW 90.08.040 and 1977 c 22 s 1 & 1925 ex.s. c 162 s 1;

13 (6) RCW 90.08.050 and 1977 c 22 s 2, 1975-'76 2nd ex.s. c 34 s 180,
14 1947 c 123 s 1, & 1925 ex.s. c 162 s 2;

15 (7) RCW 90.08.060 and 1977 c 22 s 3 & 1925 ex.s. c 162 s 3; and

16 (8) RCW 90.08.070 and 1977 c 22 s 4 & 1925 ex.s. c 162 s 4.

--- END ---