
SENATE BILL 5546

State of Washington

56th Legislature

1999 Regular Session

By Senator Fraser

Read first time 01/27/1999. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to water resources; amending RCW 90.03.290,
2 43.27A.190, 43.21A.064, and 90.14.130; and adding a new section to
3 chapter 90.03 RCW.

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

5 **Sec. 1.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
6 as follows:

7 (1) When an application complying with the provisions of this
8 chapter and with the rules and regulations of the department has been
9 filed, the same shall be placed on record with the department, and it
10 shall be its duty to investigate the application, and determine what
11 water, if any, is available for appropriation, and find and determine
12 to what beneficial use or uses it can be applied. If it is proposed to
13 appropriate water for irrigation purposes, the department shall
14 investigate, determine and find what lands are capable of irrigation by
15 means of water found available for appropriation. If it is proposed to
16 appropriate water for the purpose of power development, the department
17 shall investigate, determine and find whether the proposed development
18 is likely to prove detrimental to the public interest, having in mind
19 the highest feasible use of the waters belonging to the public.

1 (2) If the application does not contain, and the applicant does not
2 promptly furnish sufficient information on which to base such findings,
3 the department may issue a preliminary permit, for a period of not to
4 exceed three years, requiring the applicant to make such surveys,
5 investigations, studies, and progress reports, as in the opinion of the
6 department may be necessary. If the applicant fails to comply with the
7 conditions of the preliminary permit, it and the application or
8 applications on which it is based shall be automatically canceled and
9 the applicant so notified. If the holder of a preliminary permit
10 shall, before its expiration, file with the department a verified
11 report of expenditures made and work done under the preliminary permit,
12 which, in the opinion of the department, establishes the good faith,
13 intent and ability of the applicant to carry on the proposed
14 development, the preliminary permit may, with the approval of the
15 governor, be extended, but not to exceed a maximum period of five years
16 from the date of the issuance of the preliminary permit.

17 (3) The department shall make and file as part of the record in the
18 matter, written findings of fact concerning all things investigated,
19 and if it shall find that there is water available for appropriation
20 for a beneficial use, and the appropriation thereof as proposed in the
21 application will not impair existing rights or be detrimental to the
22 public welfare, it shall issue a permit stating the amount of water to
23 which the applicant shall be entitled and the beneficial use or uses to
24 which it may be applied: PROVIDED, That where the water applied for is
25 to be used for irrigation purposes, it shall become appurtenant only to
26 such land as may be reclaimed thereby to the full extent of the soil
27 for agricultural purposes. But where there is no unappropriated water
28 in the proposed source of supply, or where the proposed use conflicts
29 with existing rights, or threatens to prove detrimental to the public
30 interest, having due regard to the highest feasible development of the
31 use of the waters belonging to the public, it shall be duty of the
32 department to reject such application and to refuse to issue the permit
33 asked for. If the permit is refused because of conflict with existing
34 rights and such applicant shall acquire same by purchase or
35 condemnation under RCW 90.03.040, the department may thereupon grant
36 such permit.

37 (4) Any application may be approved for a less amount of water than
38 that applied for, if there exists substantial reason therefor, and in

1 any event shall not be approved for more water than can be applied to
2 beneficial use for the purposes named in the application.

3 (5) In determining whether or not a permit shall issue upon any
4 application, it shall be the duty of the department to investigate all
5 facts relevant and material to the application. The department shall
6 make a summary of the record of investigation and the proposed permit,
7 if the department proposes to issue the permit, available to the public
8 and provide a period of at least sixty days for the public to submit
9 comments on it. The department shall consider the comments received
10 and the entire record.

11 (6) After the department approves said application in whole or in
12 part and before any permit shall be issued thereon to the applicant,
13 such applicant shall pay the fee provided in RCW 90.03.470: PROVIDED
14 FURTHER, That in the event a permit is issued by the department upon
15 any application, it shall be its duty to notify the director of fish
16 and wildlife of such issuance.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
18 to read as follows:

19 The department may establish and maintain a stream keeper volunteer
20 program. Stream keeper volunteers shall be appointed by the director
21 to assist with administration and enforcement of the water code and be
22 assigned to any water resource in the state, including but not limited
23 to designated water master districts. The duties of stream keeper
24 volunteers shall be limited to providing information and assistance
25 regarding water use, facilitating cooperative arrangements among water
26 right holders during periods of shortage, making visual inspections and
27 documenting and reporting perceived potential violations of the water
28 code, collecting and reporting data from metering and measuring
29 devices, and other duties as determined by the department. The
30 department may consult with the Washington State University cooperative
31 extension service regarding recruitment of stream keeper volunteers, as
32 well as enter into agreements for education and training of volunteers.

33 **Sec. 3.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
34 read as follows:

35 (1) Except as provided in subsection (2) of this section,
36 notwithstanding and in addition to any other powers granted to the
37 department of ecology, whenever it appears to the department that a

1 person is violating or is about to violate any of the provisions of the
2 following:

3 ~~((1))~~ (a) Chapter 90.03 RCW; or

4 ~~((2))~~ (b) Chapter 90.44 RCW; or

5 ~~((3))~~ (c) Chapter 86.16 RCW; or

6 ~~((4))~~ (d) Chapter 43.37 RCW; or

7 ~~((5))~~ (e) Chapter 43.27A RCW; or

8 ~~((6))~~ (f) Any other law relating to water resources administered
9 by the department; or

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

30 (2) If the department finds that a person is adversely affecting
31 rights senior to that person, the department shall issue a regulatory
32 order according to this subsection.

33 (a) If there is no existing water rights determination decree, the
34 department shall find seniority based on the relevant facts and
35 records.

36 (b) Before issuing a regulatory order the department shall notify
37 the person alleged to be in violation. The notice shall specify the
38 provision of the law alleged to be or about to be violated, the facts
39 upon which the conclusion of a violation or potential violation is

1 based, and any necessary corrective action to be taken to avoid the
2 entry of a regulatory order. The notice shall state that the order
3 shall be issued no sooner than five days after receipt of the notice,
4 unless the recipient notifies the department that it intends to contest
5 the order and requests a hearing before the department before its
6 issuance.

7 (c) The order shall be effective immediately upon issuance, unless
8 otherwise stated in the order.

9 (3) Any person aggrieved by such order may appeal the order
10 pursuant to RCW 43.21B.310.

11 **Sec. 4.** RCW 43.21A.064 and 1997 c 443 s 2 are each amended to read
12 as follows:

13 Subject to RCW 43.21A.068, the director of the department of
14 ecology shall have the following powers and duties:

15 (1) The supervision of public waters within the state and their
16 appropriation, diversion, and use, and of the various officers
17 connected therewith;

18 (2) Insofar as may be necessary to assure safety to life or
19 property, the director shall inspect the construction of all dams,
20 canals, ditches, irrigation systems, hydraulic power plants, and all
21 other works, systems, and plants pertaining to the use of water, and
22 may require such necessary changes in the construction or maintenance
23 of said works, to be made from time to time, as will reasonably secure
24 safety to life and property;

25 (3) The director shall regulate and control the diversion of water
26 in accordance with the rights thereto and in accordance with RCW
27 43.27A.190;

28 (4) The director shall determine the discharge of streams and
29 springs and other sources of water supply, and the capacities of lakes
30 and of reservoirs whose waters are being or may be utilized for
31 beneficial purposes;

32 (5) The director shall, if requested, provide assistance to an
33 applicant for a water right in obtaining or developing an adequate and
34 appropriate supply of water consistent with the land use permitted for
35 the area in which the water is to be used and the population forecast
36 for the area under RCW 43.62.035. If the applicant is a public water
37 supply system, the supply being sought must be used in a manner

1 consistent with applicable land use, watershed and water system plans,
2 and the population forecast for that area provided under RCW 43.62.035;

3 (6) The director shall keep such records as may be necessary for
4 the recording of the financial transactions and statistical data
5 thereof, and shall procure all necessary documents, forms, and blanks.
6 The director shall keep a seal of the office, and all certificates
7 covering any of the director's acts or the acts of the director's
8 office, or the records and files of that office, under such seal, shall
9 be taken as evidence thereof in all courts;

10 (7) The director shall render when required by the governor, a full
11 written report of the office's work with such recommendations for
12 legislation as the director deems advisable for the better control and
13 development of the water resources of the state;

14 (8) The director and duly authorized deputies may administer oaths;

15 (9) The director shall establish and promulgate rules governing the
16 administration of chapter 90.03 RCW;

17 (10) The director shall perform such other duties as may be
18 prescribed by law.

19 **Sec. 5.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to read
20 as follows:

21 When it appears to the department of ecology that a person entitled
22 to the use of water has ~~((not))~~ failed to beneficially ~~((used his))~~ use
23 the water right or some portion thereof~~((r))~~ through nonuse or waste
24 and it appears that said right has or may have reverted to the state
25 because of such ~~((nonuse))~~ failure, as provided by RCW 90.14.160,
26 90.14.170, or 90.14.180, the department of ecology shall notify such
27 person by order: PROVIDED, That where a company, association,
28 district, or the United States has filed a blanket claim under the
29 provisions of RCW 90.14.060 for the total benefits of those served by
30 it, the notice shall be served on such company, association, district
31 or the United States and not upon any of its individual water users who
32 may not have used the water or some portion thereof which they were
33 entitled to use. The order shall contain: (1) A description of the
34 water right, including the approximate location of the point of
35 diversion, the general description of the lands or places where such
36 waters were used, the water source, the amount involved, the purpose of
37 use, and the apparent authority upon which the right is based; (2) a
38 statement that unless sufficient cause be shown on appeal the water

1 right will be declared relinquished; and (3) a statement that such
2 order may be appealed to the pollution control hearings board. Any
3 person aggrieved by such an order may appeal it to the pollution
4 control hearings board pursuant to RCW 43.21B.310. The order shall be
5 served by registered or certified mail to the last known address of the
6 person and be posted at the point of division or withdrawal. The order
7 by itself shall not alter the recipient's right to use water, if any.

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