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**SUBSTITUTE SENATE BILL 5100**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Environment, Energy & Water (originally sponsored by Senators Fraser, Swecker, Regala, Eide, Rasmussen, Gardner, Haugen, Franklin, McAuliffe, Jacobsen and Fairley)

READ FIRST TIME 02/21/01.

1       AN ACT Relating to expediting the processing of pending  
2 applications relating to existing water rights by clarifying when  
3 pending applications for new water rights are not existing rights,  
4 allowing pending applications relating to existing water rights to be  
5 processed independently of pending applications for new water rights,  
6 allowing applications to be processed ahead of previously filed  
7 applications that have insufficient information, and calculating annual  
8 consumptive quantity using the average of the two years of greatest use  
9 within the most recent five years; amending RCW 90.03.380; adding a new  
10 section to chapter 90.03 RCW; creating a new section; and declaring an  
11 emergency.

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

13       NEW SECTION.   **Sec. 1.** The legislature finds that the current  
14 backlog of pending water rights applications is unacceptable and that  
15 it is essential to facilitate more expeditious processing and eliminate  
16 the backlog as soon as possible. Agriculture, business, and  
17 individuals are unable to carry out plans and are suffering economic  
18 harm because of the delay in processing water rights applications. By  
19 this act, the legislature intends to remove some of the complexity in

1 the processing of water rights applications that is the result of  
2 judicial interpretations of existing law and, thereby, to make  
3 processing itself more expeditious and, also, to make the law more  
4 clear and, thereby, to help avoid additional delay caused by  
5 litigation. The legislature intends to allow pending applications for  
6 changes, transfers, or amendments of existing water rights to be  
7 processed independently of pending applications for new water rights  
8 and without regard to possible impairment of pending applications for  
9 new water rights for the same source of supply. The legislature  
10 intends to address both surface water and ground water and does not  
11 intend to divert resources away from or in any other way to deter the  
12 processing of applications for new water rights.

13 **Sec. 2.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to  
14 read as follows:

15 (1) The right to the use of water which has been applied to a  
16 beneficial use in the state shall be and remain appurtenant to the land  
17 or place upon which the same is used: PROVIDED, HOWEVER, That the  
18 right may be transferred to another or to others and become appurtenant  
19 to any other land or place of use without loss of priority of right  
20 theretofore established if such change can be made without detriment or  
21 injury to existing rights. The point of diversion of water for  
22 beneficial use or the purpose of use may be changed, if such change can  
23 be made without detriment or injury to existing rights. A change in  
24 the place of use, point of diversion, and/or purpose of use of a water  
25 right to enable irrigation of additional acreage or the addition of new  
26 uses may be permitted if such change results in no increase in the  
27 annual consumptive quantity of water used under the water right. For  
28 purposes of this section, "annual consumptive quantity" means the  
29 estimated or actual annual amount of water diverted pursuant to the  
30 water right, reduced by the estimated annual amount of return flows,  
31 averaged over the two years of greatest use within the most recent  
32 five-year period of continuous beneficial use of the water right.  
33 Before any transfer of such right to use water or change of the point  
34 of diversion of water or change of purpose of use can be made, any  
35 person having an interest in the transfer or change, shall file a  
36 written application therefor with the department, and the application  
37 shall not be granted until notice of the application is published as  
38 provided in RCW 90.03.280. If it shall appear that such transfer or

1 such change may be made without injury or detriment to existing rights,  
2 the department shall issue to the applicant a certificate in duplicate  
3 granting the right for such transfer or for such change of point of  
4 diversion or of use. The certificate so issued shall be filed and be  
5 made a record with the department and the duplicate certificate issued  
6 to the applicant may be filed with the county auditor in like manner  
7 and with the same effect as provided in the original certificate or  
8 permit to divert water.

9 (2) If an application for change proposes to transfer water rights  
10 from one irrigation district to another, the department shall, before  
11 publication of notice, receive concurrence from each of the irrigation  
12 districts that such transfer or change will not adversely affect the  
13 ability to deliver water to other landowners or impair the financial  
14 integrity of either of the districts.

15 (3) A change in place of use by an individual water user or users  
16 of water provided by an irrigation district need only receive approval  
17 for the change from the board of directors of the district if the use  
18 of water continues within the irrigation district, and when water is  
19 provided by an irrigation entity that is a member of a board of joint  
20 control created under chapter 87.80 RCW, approval need only be received  
21 from the board of joint control if the use of water continues within  
22 the area of jurisdiction of the joint board and the change can be made  
23 without detriment or injury to existing rights.

24 (4) This section shall not apply to trust water rights acquired by  
25 the state through the funding of water conservation projects under  
26 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

27 (5) Beginning on the effective date of this section and until June  
28 30, 2005, pending applications for new water rights are not entitled to  
29 protection from impairment, injury, or detriment when an application  
30 for a change, transfer, or amendment of an existing surface or ground  
31 water right is considered.

32 (6) Beginning on the effective date of this section and until June  
33 30, 2005, applications relating to existing surface or ground water  
34 rights may be processed and decisions on them rendered independently of  
35 processing and rendering decisions on pending applications for new  
36 water rights within the same source of supply without regard to the  
37 date of filing of the pending applications for new water rights.

38 (7) Beginning on the effective date of this section and until June  
39 30, 2005, notwithstanding any other existing authority to process

1 applications, an application relating to an existing surface or ground  
2 water right may be processed ahead of a previously filed application,  
3 when sufficient information necessary to the investigations,  
4 determinations, and findings required under RCW 90.03.290 on the  
5 previously filed application, when sufficient information for a  
6 decision on the previously filed application is not available and the  
7 applicant for the previously filed application is sent written notice  
8 that explains what information is not available and why and informs the  
9 applicant that processing of the next application in order of filing  
10 will begin. No such previously filed application shall lose its  
11 priority date.

12 (8) Beginning January 1, 2002, and ending January 1, 2004, the  
13 department shall report to the legislature by January 1st of each year  
14 on the results of processing applications under subsections (5) through  
15 (7) of this section and, in the report due on January 1, 2004, shall  
16 provide an evaluation and make recommendations regarding modification  
17 of any of the provisions of these subsections.

18 (9) Any right acquired or liability or obligation incurred or any  
19 rule or order adopted or decision made under subsections (5) through  
20 (8) of this section survive after June 30, 2005, in any proceeding  
21 instituted under or with regard to those subsections.

22 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW  
23 to read as follows:

24 Nothing in this chapter authorizes the processing of applications  
25 relating to existing water rights to stop the processing of  
26 applications for new water rights. The processing of applications  
27 assigned priority by rule shall not stop the processing of other  
28 applications, and at least half of the resources available to the  
29 department for processing applications shall be devoted to the  
30 processing of nonpriority applications.

31 NEW SECTION. Sec. 4. This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the  
33 state government and its existing public institutions, and takes effect  
34 immediately.

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