
SENATE BILL 6319

State of Washington 57th Legislature

2002 Regular Session

By Senator Fraser

Read first time 01/15/2002. Referred to Committee on Environment,
Energy & Water.

1 AN ACT Relating to numbering, placement, and division of
2 subsections; amending RCW 90.03.290 and 90.03.380; creating a new
3 section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** By this act, the legislature intends to
6 clarify how the existing elements of RCW 90.03.290 and 90.03.380 relate
7 to one another in order to facilitate consistent interpretation and
8 implementation of existing law under these sections.

9 **Sec. 2.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read
10 as follows:

11 (1) When an application complying with the provisions of this
12 chapter and with the rules of the department has been filed,

13 (a) The same shall be placed on record with the department, and

14 (b) It shall be its duty to investigate the application, and

15 (c) Determine what water, if any, is available for appropriation,

16 and

17 (d) Find and determine to what beneficial use or uses it can be
18 applied.

1 (i) If it is proposed to appropriate water for irrigation purposes,
2 the department shall investigate, determine and find what lands are
3 capable of irrigation by means of water found available for
4 appropriation.

5 (ii) If it is proposed to appropriate water for the purpose of
6 power development, the department shall investigate, determine and find
7 whether the proposed development is likely to prove detrimental to the
8 public interest, having in mind the highest feasible use of the waters
9 belonging to the public.

10 ~~(2)((a))~~ If the application does not contain, and the applicant
11 does not promptly furnish sufficient information on which to base such
12 findings,

13 (a) The department may issue a preliminary permit, for a period of
14 not to exceed three years, requiring the applicant to make such
15 surveys, investigations, studies, and progress reports, as in the
16 opinion of the department may be necessary.

17 (b) If the applicant fails to comply with the conditions of the
18 preliminary permit, it and the application or applications on which it
19 is based shall be automatically canceled and the applicant so notified.

20 (c) If the holder of a preliminary permit shall, before its
21 expiration, file with the department a verified report of expenditures
22 made and work done under the preliminary permit, which, in the opinion
23 of the department, establishes the good faith, intent, and ability of
24 the applicant to carry on the proposed development, the preliminary
25 permit may, with the approval of the governor, be extended, but not to
26 exceed a maximum period of five years from the date of the issuance of
27 the preliminary permit.

28 ~~((b))~~ (d) For any application for which a preliminary permit was
29 issued and for which the availability of water was directly affected by
30 a moratorium on further diversions from the Columbia river during the
31 years from 1990 to 1998, the preliminary permit is extended through
32 June 30, 2002.

33 (i) If such an application and preliminary permit were canceled
34 during the moratorium, the application and preliminary permit shall be
35 reinstated until June 30, 2002, if the application and permit:

36 ~~((i))~~ (A) Are for providing regional water supplies in more than
37 one urban growth area designated under chapter 36.70A RCW and in one or
38 more areas near such urban growth areas, or the application and permit
39 are modified for providing such supplies, and

1 (~~(ii)~~) (B) Provide or are modified to provide such regional
2 supplies through the use of existing intake or diversion structures.
3 The authority to modify such a canceled application and permit to
4 accomplish the objectives of (~~(b)(i)~~) (d)(i)(A) and (~~(ii)~~) (B) of
5 this subsection is hereby granted.

6 (3) In determining whether or not a permit shall issue upon any
7 application, it shall be the duty of the department to investigate all
8 facts relevant and material to the application.

9 (4) The department shall make and file as part of the record in the
10 matter, written findings of fact concerning all things investigated,
11 and

12 (a) If it shall find that there is water available for
13 appropriation for a beneficial use, and the appropriation thereof as
14 proposed in the application will not impair existing rights or be
15 detrimental to the public welfare, it shall issue a permit stating

16 (i) The amount of water to which the applicant shall be entitled
17 and

18 (ii) The beneficial use or uses to which it may be applied:

19 (A) PROVIDED, That where the water applied for is to be used for
20 irrigation purposes, it shall become appurtenant only to such land as
21 may be reclaimed thereby to the full extent of the soil for
22 agricultural purposes.

23 (b) But where there is no unappropriated water in the proposed
24 source of supply, or where the proposed use conflicts with existing
25 rights, or threatens to prove detrimental to the public interest,
26 having due regard to the highest feasible development of the use of the
27 waters belonging to the public, it shall be duty of the department to
28 reject such application and to refuse to issue the permit asked for.

29 (~~(4)~~) (i) If the permit is refused because of conflict with
30 existing rights and such applicant shall acquire same by purchase or
31 condemnation under RCW 90.03.040, the department may thereupon grant
32 such permit.

33 (c) Any application may be approved for a less amount of water than
34 that applied for, if there exists substantial reason therefor, and in
35 any event shall not be approved for more water than can be applied to
36 beneficial use for the purposes named in the application. (~~In~~
37 ~~determining whether or not a permit shall issue upon any application,~~
38 ~~it shall be the duty of the department to investigate all facts~~
39 ~~relevant and material to the application.))~~

1 (5) After the department approves said application in whole or in
2 part and before any permit shall be issued thereon to the applicant,
3 such applicant shall pay the fee provided in RCW 90.03.470:

4 (6) PROVIDED FURTHER, That in the event a permit is issued by the
5 department upon any application, it shall be its duty to notify the
6 director of fish and wildlife of such issuance.

7 **Sec. 3.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
8 as follows:

9 (1) The right to the use of water which has been applied to a
10 beneficial use in the state shall be and remain appurtenant to the land
11 or place upon which the same is used: PROVIDED, HOWEVER,

12 (a) That the right may be transferred to another or to others and
13 become appurtenant to any other land or place of use without loss of
14 priority of right theretofore established if such change can be made
15 without detriment or injury to existing rights.

16 (b) The point of diversion of water for beneficial use or the
17 purpose of use may be changed, if such change can be made without
18 detriment or injury to existing rights.

19 (c) A change in the place of use, point of diversion, and/or
20 purpose of use of a water right to enable irrigation of additional
21 acreage or the addition of new uses may be permitted if such change
22 results in no increase in the annual consumptive quantity of water used
23 under the water right. For purposes of this section, "annual
24 consumptive quantity" means the estimated or actual annual amount of
25 water diverted pursuant to the water right, reduced by the estimated
26 annual amount of return flows, averaged over the two years of greatest
27 use within the most recent five-year period of continuous beneficial
28 use of the water right.

29 (2) Before any transfer of such right to use water or change of the
30 point of diversion of water or change of purpose of use can be made,

31 (a) Any person having an interest in the transfer or change, shall
32 file a written application therefor with the department, and

33 (b) The application shall not be granted until notice of the
34 application is published as provided in RCW 90.03.280.

35 (i) If an application for change proposes to transfer water rights
36 from one irrigation district to another, the department shall, before
37 publication of notice, receive concurrence from each of the irrigation
38 districts that such transfer or change will not adversely affect the

1 ability to deliver water to other landowners or impair the financial
2 integrity of either of the districts.

3 (3) If it shall appear that such transfer or such change may be
4 made without injury or detriment to existing rights, the department
5 shall issue to the applicant a certificate in duplicate granting the
6 right for such transfer or for such change of point of diversion or of
7 use.

8 (a) Pending applications for new water rights are not entitled to
9 protection from impairment, injury, or detriment when an application
10 relating to an existing surface or ground water right is considered.

11 (b) Applications relating to existing surface or ground water
12 rights may be processed and decisions on them rendered independently of
13 processing and rendering decisions on pending applications for new
14 water rights within the same source of supply without regard to the
15 date of filing of the pending applications for new water rights.

16 (c) Notwithstanding any other existing authority to process
17 applications, including but not limited to the authority to process
18 applications under WAC 173-152-050 as it existed on January 1, 2001, an
19 application relating to an existing surface or ground water right may
20 be processed ahead of a previously filed application relating to an
21 existing right when

22 (i) Sufficient information for a decision on the previously filed
23 application is not available and

24 (ii) The applicant for the previously filed application is sent
25 written notice that explains what information is not available and
26 informs the applicant that processing of the next application will
27 begin.

28 The previously filed application does not lose its priority date
29 and if the information is provided by the applicant within sixty days,
30 the previously filed application shall be processed at that time.

31 This subsection (3)(c) does not affect any other existing authority
32 to process applications.

33 (d) Nothing in this subsection (3) is intended to stop the
34 processing of applications for new water rights.

35 (e) No applicant for a change, transfer, or amendment of a water
36 right may be required to give up any part of the applicant's valid
37 water right or claim to a state agency, the trust water rights program,
38 or to other persons as a condition of processing the application.

1 The certificate so issued shall be filed and be made a record with
2 the department and the duplicate certificate issued to the applicant
3 may be filed with the county auditor in like manner and with the same
4 effect as provided in the original certificate or permit to divert
5 water.

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

12 ~~(3))~~ (4) A change in place of use by an individual water user or
13 users of water provided by an irrigation district need only receive
14 approval for the change from the board of directors of the district if
15 the use of water continues within the irrigation district, and when
16 water is provided by an irrigation entity that is a member of a board
17 of joint control created under chapter 87.80 RCW, approval need only be
18 received from the board of joint control if the use of water continues
19 within the area of jurisdiction of the joint board and the change can
20 be made without detriment or injury to existing rights.

21 ~~((4))~~ (5) This section shall not apply to trust water rights
22 acquired by the state through the funding of water conservation
23 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

24 ~~((5)(a)) Pending applications for new water rights are not entitled
25 to protection from impairment, injury, or detriment when an application
26 relating to an existing surface or ground water right is considered.~~

27 ~~(b) Applications relating to existing surface or ground water
28 rights may be processed and decisions on them rendered independently of
29 processing and rendering decisions on pending applications for new
30 water rights within the same source of supply without regard to the
31 date of filing of the pending applications for new water rights.~~

32 ~~(c) Notwithstanding any other existing authority to process
33 applications, including but not limited to the authority to process
34 applications under WAC 173-152-050 as it existed on January 1, 2001, an
35 application relating to an existing surface or ground water right may
36 be processed ahead of a previously filed application relating to an
37 existing right when sufficient information for a decision on the
38 previously filed application is not available and the applicant for the
39 previously filed application is sent written notice that explains what~~

1 information is not available and informs the applicant that processing
2 of the next application will begin. The previously filed application
3 does not lose its priority date and if the information is provided by
4 the applicant within sixty days, the previously filed application shall
5 be processed at that time. This subsection (5)(c) does not affect any
6 other existing authority to process applications.

7 (d) Nothing in this subsection (5) is intended to stop the
8 processing of applications for new water rights.

9 (6) No applicant for a change, transfer, or amendment of a water
10 right may be required to give up any part of the applicant's valid
11 water right or claim to a state agency, the trust water rights program,
12 or to other persons as a condition of processing the application.

13 (7)) (6) In revising the provisions of this section and adding
14 provisions to this section by chapter 237, Laws of 2001, the
15 legislature does not intend to imply legislative approval or
16 disapproval of any existing administrative policy regarding, or any
17 existing administrative or judicial interpretation of, the provisions
18 of this section not expressly added or revised.

19 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 immediately.

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