

---

**SENATE BILL 6717**

---

**State of Washington 57th Legislature**

**2002 Regular Session**

**By** Senators Fraser and Morton

Read first time 01/28/2002. Referred to Committee on Environment, Energy & Water.

1 AN ACT Relating to clarifying amendatory language of chapter 237,  
2 Laws of 2001; amending RCW 90.82.040, 90.82.085, and 90.03.380; and  
3 adding a new section to chapter 90.82 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.82 RCW  
6 to read as follows:

7 The legislature reaffirms the intent of chapter 237, Laws of 2001  
8 to meet the needs of fish and healthy watersheds statewide and the  
9 finding of chapter 237, Laws of 2001 that clarifying the authorities  
10 for instream flows is an important step to providing a better future  
11 for our state. The legislature also reaffirms the policy enacted in  
12 chapter 90.22 RCW and RCW 90.54.020(3)(a) and 77.55.050 for state  
13 protection of instream flows. By this act, the legislature intends to  
14 clarify amendatory language of chapter 237, Laws of 2001 to assure  
15 implementation of the intent and findings of that act.

16 **Sec. 2.** RCW 90.82.040 and 2001 c 237 s 2 are each amended to read  
17 as follows:

1 (1) Once a WRIA planning unit has been initiated under RCW  
2 90.82.060 and a lead agency has been designated, it shall notify the  
3 department and may apply to the department for funding assistance for  
4 conducting the planning. Funds shall be provided from and to the  
5 extent of appropriations made by the legislature to the department  
6 expressly for this purpose.

7 (2)(a) Each planning unit that has complied with subsection (1) of  
8 this section is eligible to receive watershed planning grants in the  
9 following amounts for three phases of watershed planning:

10 (i) Initiating governments may apply for an initial organizing  
11 grant of up to fifty thousand dollars for a single WRIA or up to  
12 seventy-five thousand dollars for a multi-WRIA management area in  
13 accordance with RCW 90.82.060(4);

14 (ii)(A) A planning unit may apply for up to two hundred thousand  
15 dollars for each WRIA in the management area for conducting watershed  
16 assessments in accordance with RCW 90.82.070, except that a planning  
17 unit that chooses to conduct a detailed assessment or studies under  
18 (a)(ii)(B) of this subsection or whose initiating governments choose or  
19 have chosen to include an instream flow or water quality component in  
20 accordance with RCW 90.82.080 or 90.82.090 may apply for up to one  
21 hundred thousand additional dollars for each instream flow and up to  
22 one hundred thousand additional dollars for each water quality  
23 component included for each WRIA to conduct an assessment on that  
24 optional component and for each WRIA in which the assessments or  
25 studies under (a)(ii)(B) of this subsection are conducted.

26 (B) A planning unit may elect to apply for up to one hundred  
27 thousand additional dollars to conduct a detailed assessment of  
28 multipurpose water storage opportunities or for studies of specific  
29 multipurpose storage projects which opportunities or projects are  
30 consistent with and support the other elements of the planning unit's  
31 watershed plan developed under this chapter; and

32 (iii) A planning unit may apply for up to two hundred fifty  
33 thousand dollars for each WRIA in the management area for developing a  
34 watershed plan and making recommendations for actions by local, state,  
35 and federal agencies, tribes, private property owners, private  
36 organizations, and individual citizens, including a recommended list of  
37 strategies and projects that would further the purpose of the plan in  
38 accordance with RCW 90.82.060 through 90.82.100.

1 (b) A planning unit may request a different amount for phase two or  
2 phase three of watershed planning than is specified in (a) of this  
3 subsection, provided that the total amount of funds awarded do not  
4 exceed the maximum amount the planning unit is eligible for under (a)  
5 of this subsection. The department shall approve such an alternative  
6 allocation of funds if the planning unit identifies how the proposed  
7 alternative will meet the goals of this chapter and provides a  
8 ~~((proposed))~~ timeline for ~~((the completion of))~~ completing planning in  
9 accordance with RCW 90.82.130. However, the up to one hundred thousand  
10 additional dollars in funding for instream flow and water quality  
11 components and for water storage assessments or studies that a planning  
12 unit may apply for under (a)(ii)(A) of this subsection may be used only  
13 for those instream flow, water quality, and water storage purposes.

14 (c) By December 1, 2001, or within one year of initiating phase one  
15 of watershed planning, whichever occurs later, the initiating  
16 governments for each planning unit must inform the department whether  
17 they ~~((intend to have the planning unit establish or amend instream~~  
18 ~~flows as part of its planning process))~~ choose to include an instream  
19 flow component in accordance with RCW 90.82.080. If they ~~((elect to~~  
20 ~~have the planning unit establish or amend instream flows))~~ choose to  
21 include an instream flow component in accordance with RCW 90.82.080,  
22 the planning unit is eligible to receive one hundred thousand dollars  
23 for that purpose in accordance with (a)(ii) of this subsection. If the  
24 initiating governments for a planning unit ~~((elect not to establish or~~  
25 ~~amend instream flows as part of the unit's planning process))~~ choose to  
26 include an instream flow component in accordance with RCW 90.82.080,  
27 the department shall retain one hundred thousand dollars to carry out  
28 an assessment to support establishment of instream flows and to  
29 establish such flows in accordance with RCW 90.54.020(3)(a) and chapter  
30 90.22 RCW. Except as provided in RCW 90.82.080, the department shall  
31 not use these funds to amend an existing instream flow unless requested  
32 to do so by the initiating governments for a planning unit.

33 (d) In administering funds appropriated for supplemental funding  
34 for optional plan components under (a)(ii) of this subsection, the  
35 department shall give priority in granting the available funds to  
36 ~~((proposals for setting or amending))~~ instream flows components.

37 (3)(a) The department shall use the eligibility criteria in this  
38 subsection (3) instead of rules, policies, or guidelines when  
39 evaluating grant applications at each stage of the grants program.

1 (b) In reviewing grant applications under this subsection (3), the  
2 department shall evaluate whether:

3 (i) The planning unit meets all of the requirements of this  
4 chapter;

5 (ii) The application demonstrates a need for state planning funds  
6 to accomplish the objectives of the planning process; and

7 (iii) The application and supporting information evidences a  
8 readiness to proceed.

9 (c) In ranking grant applications submitted at each stage of the  
10 grants program, the department shall give preference to applications in  
11 the following order of priority:

12 (i) Applications from existing planning groups that have been in  
13 existence for at least one year;

14 (ii) Applications that address protection and enhancement of fish  
15 habitat in watersheds that have aquatic fish species listed or proposed  
16 to be listed as endangered or threatened under the federal endangered  
17 species act, 16 U.S.C. Sec. 1531 et seq. and for which there is  
18 evidence of an inability to supply adequate water for population and  
19 economic growth from:

20 (A) First, multi-WRIA planning; and

21 (B) Second, single WRIA planning;

22 (iii) Applications that address protection and enhancement of fish  
23 habitat in watersheds or for which there is evidence of an inability to  
24 supply adequate water for population and economic growth from:

25 (A) First, multi-WRIA planning; and

26 (B) Second, single WRIA planning.

27 (d) The department may not impose any local matching fund  
28 requirement as a condition for grant eligibility or as a preference for  
29 receiving a grant.

30 (4) The department may retain up to one percent of funds allocated  
31 under this section to defray administrative costs.

32 (5) Planning under this chapter should be completed as  
33 expeditiously as possible, with the focus being on local stakeholders  
34 cooperating to meet local needs.

35 (6) Funding provided under this section shall be considered a  
36 contractual obligation against the moneys appropriated for this  
37 purpose.

1       **Sec. 3.** RCW 90.82.085 and 2001 c 237 s 3 are each amended to read  
2 as follows:

3       By October 1, 2001, the department of ecology shall complete a  
4 final nonproject environmental impact statement that evaluates stream  
5 flows to meet the alternative goals of maintaining, preserving, or  
6 enhancing instream resources and the technically defensible  
7 methodologies for determining these stream flows. Planning units  
8 engaged in a collaborative effort with the department under RCW  
9 90.82.080 and state agencies assessing and setting or amending instream  
10 flows must, as a minimum, consider the goals and methodologies  
11 addressed in the nonproject environmental impact statement. A planning  
12 unit engaged in a collaborative effort with the department under RCW  
13 90.82.080 or state agency may assess, set, or amend instream flows in  
14 a manner that varies from the final nonproject environmental impact  
15 statement if consistent with applicable instream flow laws.

16       **Sec. 4.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read  
17 as follows:

18       (1) The right to the use of water which has been applied to a  
19 beneficial use in the state shall be and remain appurtenant to the land  
20 or place upon which the same is used: PROVIDED, HOWEVER, That the  
21 right may be transferred to another or to others and become appurtenant  
22 to any other land or place of use without loss of priority of right  
23 theretofore established if such change can be made without detriment or  
24 injury to existing rights. The point of diversion of water for  
25 beneficial use or the purpose of use may be changed, if such change can  
26 be made without detriment or injury to existing rights. A change in  
27 the place of use, point of diversion, and/or purpose of use of a water  
28 right to enable irrigation of additional acreage or the addition of new  
29 uses may be permitted if such change results in no increase in the  
30 annual consumptive quantity of water used under the water right. For  
31 purposes of this section, "annual consumptive quantity" means the  
32 estimated or actual annual amount of water diverted pursuant to the  
33 water right, reduced by the estimated annual amount of return flows,  
34 averaged over the two years of greatest use within the most recent  
35 five-year period of continuous beneficial use of the water right.  
36 Before any transfer of such right to use water or change of the point  
37 of diversion of water or change of purpose of use can be made, any  
38 person having an interest in the transfer or change, shall file a

1 written application therefor with the department, and the application  
2 shall not be granted until notice of the application is published as  
3 provided in RCW 90.03.280. If it shall appear that such transfer or  
4 such change may be made without injury or detriment to existing rights,  
5 the department shall issue to the applicant a certificate in duplicate  
6 granting the right for such transfer or for such change of point of  
7 diversion or of use. The certificate so issued shall be filed and be  
8 made a record with the department and the duplicate certificate issued  
9 to the applicant may be filed with the county auditor in like manner  
10 and with the same effect as provided in the original certificate or  
11 permit to divert water.

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

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

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

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

33 (b) 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 (c) Notwithstanding any other existing authority to process  
39 applications, including but not limited to the authority to process

1 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
2 application relating to an existing surface or ground water right may  
3 be processed ahead of a previously filed application relating to an  
4 existing right when sufficient information for a decision on the  
5 previously filed application is not available and the applicant for the  
6 previously filed application is sent written notice that explains what  
7 information is not available and informs the applicant that processing  
8 of the next application will begin. The previously filed application  
9 does not lose its priority date and if the information is provided by  
10 the applicant within sixty days, the previously filed application shall  
11 be processed at that time. This subsection (5)(c) does not affect any  
12 other existing authority to process applications.

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

15 (6) No applicant for a change, transfer, or amendment of a water  
16 right may be required to give up any part of the applicant's valid  
17 water right or claim to a state agency, the trust water rights program,  
18 or to other persons as a (~~condition~~) precondition of obtaining  
19 processing of the application.

20 (7) In revising the provisions of this section and adding  
21 provisions to this section by chapter 237, Laws of 2001, the  
22 legislature does not intend to imply legislative approval or  
23 disapproval of any existing administrative policy regarding, or any  
24 existing administrative or judicial interpretation of, the provisions  
25 of this section not expressly added or revised.

--- END ---