
SENATE BILL 5025

State of Washington

58th Legislature

2003 Regular Session

By Senators Honeyford, Mulliken and Hale

Read first time 01/13/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to water right relinquishment; amending RCW
2 43.21B.110, 90.14.010, 90.38.040, and 90.42.040; and repealing RCW
3 90.14.130, 90.14.140, 90.14.150, 90.14.160, 90.14.170, 90.14.180,
4 90.14.190, 90.14.200, 90.14.210, and 90.14.215.

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

6 **Sec. 1.** RCW 43.21B.110 and 2001 c 220 s 2 are each amended to read
7 as follows:

8 (1) The hearings board shall only have jurisdiction to hear and
9 decide appeals from the following decisions of the department, the
10 director, local conservation districts, and the air pollution control
11 boards or authorities as established pursuant to chapter 70.94 RCW, or
12 local health departments:

13 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
14 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
15 90.56.330.

16 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
17 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
18 (~~90.14.130,~~) 90.48.120, and 90.56.330.

1 (c) Except as provided in RCW 90.03.210(2), the issuance,
2 modification, or termination of any permit, certificate, or license by
3 the department or any air authority in the exercise of its
4 jurisdiction, including the issuance or termination of a waste disposal
5 permit, the denial of an application for a waste disposal permit, the
6 modification of the conditions or the terms of a waste disposal permit,
7 or a decision to approve or deny an application for a solid waste
8 permit exemption under RCW 70.95.300.

9 (d) Decisions of local health departments regarding the grant or
10 denial of solid waste permits pursuant to chapter 70.95 RCW.

11 (e) Decisions of local health departments regarding the issuance
12 and enforcement of permits to use or dispose of biosolids under RCW
13 70.95J.080.

14 (f) Decisions of the department regarding waste-derived fertilizer
15 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
16 department regarding waste-derived soil amendments under RCW 70.95.205.

17 (g) Decisions of local conservation districts related to the denial
18 of approval or denial of certification of a dairy nutrient management
19 plan; conditions contained in a plan; application of any dairy nutrient
20 management practices, standards, methods, and technologies to a
21 particular dairy farm; and failure to adhere to the plan review and
22 approval timelines in RCW 90.64.026.

23 (h) Any other decision by the department or an air authority which
24 pursuant to law must be decided as an adjudicative proceeding under
25 chapter 34.05 RCW.

26 (2) The following hearings shall not be conducted by the hearings
27 board:

28 (a) Hearings required by law to be conducted by the shorelines
29 hearings board pursuant to chapter 90.58 RCW.

30 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
31 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

32 (c) Proceedings conducted by the department, or the department's
33 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

34 (d) Hearings conducted by the department to adopt, modify, or
35 repeal rules.

36 (3) Review of rules and regulations adopted by the hearings board
37 shall be subject to review in accordance with the provisions of the
38 Administrative Procedure Act, chapter 34.05 RCW.

1 **Sec. 2.** RCW 90.14.010 and 1967 c 233 s 1 are each amended to read
2 as follows:

3 The future growth and development of the state is dependent upon
4 effective management and efficient use of the state's water resources.
5 The purpose of this chapter is to provide adequate records for
6 efficient administration of the state's waters(~~(, and to cause a return~~
7 ~~to the state of any water rights which are no longer exercised by~~
8 ~~putting said waters to beneficial use)~~).

9 **Sec. 3.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to read
10 as follows:

11 (1) All trust water rights acquired by the department shall be
12 placed in the Yakima river basin trust water rights program to be
13 managed by the department. The department shall issue a water right
14 certificate in the name of the state of Washington for each trust water
15 right it acquires.

16 (2) Trust water rights shall retain the same priority date as the
17 water right from which they originated. Trust water rights may be
18 modified as to purpose or place of use or point of diversion, including
19 modification from a diversionary use to a nondiversionary instream use.

20 (3) Trust water rights may be held by the department for instream
21 flows, irrigation use, or other beneficial use. Trust water rights may
22 be acquired on a temporary or permanent basis. To the extent
23 practicable and subject to legislative appropriation, trust water
24 rights acquired in an area with an approved watershed plan developed
25 under chapter 90.82 RCW shall be consistent with that plan if the plan
26 calls for such acquisition.

27 (4) A schedule of the amount of net water saved as a result of
28 water conservation projects carried out in accordance with this
29 chapter, shall be developed annually to reflect the predicted
30 hydrologic and water supply conditions, as well as anticipated water
31 demands, for the upcoming irrigation season. This schedule shall serve
32 as the basis for the distribution and management of trust water rights
33 each year.

34 (5)(a) No exercise of a trust water right may be authorized unless
35 the department first determines that no existing water rights, junior
36 or senior in priority, will be impaired as to their exercise or injured
37 in any manner whatever by such authorization.

1 (b) Before any trust water right is exercised, the department shall
2 publish notice thereof in a newspaper of general circulation published
3 in the county or counties in which the storage, diversion, and use are
4 to be made, and in such other newspapers as the department determines
5 are necessary, once a week for two consecutive weeks. At the same time
6 the department may also send notice thereof containing pertinent
7 information to the director of fish and wildlife.

8 (c) Subsections (4) and (5)(b) of this section do not apply to a
9 trust water right resulting from a donation for instream flows
10 described in RCW 90.38.020(1)(b) or from the lease of a water right
11 under RCW 90.38.020(6) if the period of the lease does not exceed five
12 years. However, the department shall provide the notice described in
13 (b) of this subsection the first time the trust water right resulting
14 from the donation is exercised.

15 (6) RCW 90.03.380 (~~and 90.14.140 through 90.14.910~~) shall have no
16 applicability to trust water rights held by the department under this
17 chapter or exercised under this section.

18 **Sec. 4.** RCW 90.42.040 and 2002 c 329 s 8 are each amended to read
19 as follows:

20 (1) All trust water rights acquired by the state shall be placed in
21 the state trust water rights program to be managed by the department.
22 Trust water rights acquired by the state shall be held or authorized
23 for use by the department for instream flows, irrigation, municipal, or
24 other beneficial uses consistent with applicable regional plans for
25 pilot planning areas, or to resolve critical water supply problems. To
26 the extent practicable and subject to legislative appropriation, trust
27 water rights acquired in an area with an approved watershed plan
28 developed under chapter 90.82 RCW shall be consistent with that plan if
29 the plan calls for such acquisition.

30 (2) The department shall issue a water right certificate in the
31 name of the state of Washington for each permanent trust water right
32 conveyed to the state indicating the reach or reaches of the stream,
33 the quantity, and the use or uses to which it may be applied. A
34 superseding certificate shall be issued that specifies the amount of
35 water the water right holder would continue to be entitled to as a
36 result of the water conservation project. The superseding certificate
37 shall retain the same priority date as the original right. For

1 nonpermanent conveyances, the department shall issue certificates or
2 such other instruments as are necessary to reflect the changes in
3 purpose or place of use or point of diversion or withdrawal.

4 (3) A trust water right retains the same priority date as the water
5 right from which it originated, but as between them the trust right
6 shall be deemed to be inferior in priority unless otherwise specified
7 by an agreement between the state and the party holding the original
8 right.

9 (4) Exercise of a trust water right may be authorized only if the
10 department first determines that neither water rights existing at the
11 time the trust water right is established, nor the public interest will
12 be impaired. If impairment becomes apparent during the time a trust
13 water right is being exercised, the department shall cease or modify
14 the use of the trust water right to eliminate the impairment.

15 (5) Before any trust water right is created or modified, the
16 department shall, at a minimum, require that a notice be published in
17 a newspaper of general circulation published in the county or counties
18 in which the storage, diversion, and use are to be made, and in other
19 newspapers as the department determines is necessary, once a week for
20 two consecutive weeks. At the same time the department shall send a
21 notice containing pertinent information to all appropriate state
22 agencies, potentially affected local governments and federally
23 recognized tribal governments, and other interested parties.

24 ~~(6) ((RCW 90.14.140 through 90.14.230 have no applicability to~~
25 ~~trust water rights held by the department under this chapter or~~
26 ~~exercised under this section.~~

27 ~~(7))~~ RCW 90.03.380 has no applicability to trust water rights
28 acquired by the state through the funding of water conservation
29 projects.

30 ~~((8))~~ (7) Subsections (4) and (5) of this section do not apply to
31 a trust water right resulting from a donation for instream flows
32 described in RCW 90.42.080(1)(b) or to a trust water right leased under
33 RCW 90.42.080(8) if the period of the lease does not exceed five years.
34 However, the department shall provide the notice described in
35 subsection (5) of this section the first time the trust water right
36 resulting from the donation is exercised.

37 ~~((9))~~ (8) Where a portion of an existing water right that is
38 acquired or donated to the trust water rights program will assist in

1 achieving established instream flows, the department shall process the
2 change or amendment of the existing right without conducting a review
3 of the extent and validity of the portion of the water right that will
4 remain with the water right holder.

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

7 (1) RCW 90.14.130 (Reversion of rights to state due to nonuse--
8 Notice by order--Relinquishment determinations--Appeal) and 1987 c 109
9 s 13 & 1967 c 233 s 13;

10 (2) RCW 90.14.140 ("Sufficient cause" for nonuse defined--Rights
11 exempted) and 2001 c 240 s 1, 2001 c 237 s 27, 2001 c 69 s 5, 1998 c
12 258 s 1, 1987 c 125 s 1, & 1967 c 233 s 14;

13 (3) RCW 90.14.150 (Rights arising from permit to withdraw public
14 waters not affected--Extensions) and 1987 c 109 s 100 & 1967 c 233 s
15 15;

16 (4) RCW 90.14.160 (Relinquishment of right for abandonment or
17 failure to beneficially use without sufficient cause--Prior rights
18 acquired through appropriation, custom or general adjudication) and
19 1981 c 291 s 1, 1979 ex.s. c 216 s 5, & 1967 c 233 s 16;

20 (5) RCW 90.14.170 (Relinquishment of right for abandonment or
21 failure to beneficially use without sufficient cause--Rights acquired
22 due to ownership of land abutting stream, lake, or watercourse) and
23 1967 c 233 s 17;

24 (6) RCW 90.14.180 (Relinquishment of right for abandonment or
25 failure to beneficially use without sufficient cause--Future rights
26 acquired through appropriation) and 1987 c 109 s 101 & 1967 c 233 s 18;

27 (7) RCW 90.14.190 (Water resources decisions--Appeals--Attorneys'
28 fees) and 1987 c 109 s 14 & 1967 c 233 s 19;

29 (8) RCW 90.14.200 (Implementation and enforcement of chapter--
30 Proceedings under RCW 90.14.130 deemed adjudicative--Application of RCW
31 sections to specific proceedings) and 1989 c 175 s 180, 1979 ex.s. c
32 216 s 6, & 1967 c 233 s 20;

33 (9) RCW 90.14.210 (Chapter applies to all rights to withdraw ground
34 waters) and 1967 c 233 s 21; and

35 (10) RCW 90.14.215 (Chapter not applicable to trust water rights
36 under chapter 90.38 or 90.42 RCW) and 1991 c 347 s 14.

--- END ---