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**SUBSTITUTE SENATE BILL 5106**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Hewitt, Hale, T. Sheldon, Doumit, Sheahan, Rasmussen, Morton, Mulliken, Honeyford, Deccio and Parlette)

READ FIRST TIME 02/17/03.

1       AN ACT Relating to water rights; amending RCW 90.03.380, 90.44.100,  
2 90.14.010, 90.14.130, 90.14.160, 90.14.170, 90.14.180, and 90.14.210;  
3 and declaring an emergency.

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

5       **Sec. 1.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read  
6 as follows:

7       (1) The right to the use of water which has been applied to a  
8 beneficial use in the state shall be and remain appurtenant to the land  
9 or place upon which the same is used: PROVIDED, HOWEVER, That the  
10 right may be transferred to another or to others and become appurtenant  
11 to any other land or place of use without loss of priority of right  
12 theretofore established if such change can be made without detriment or  
13 injury to existing rights. The point of diversion of water for  
14 beneficial use or the purpose of use may be changed, if such change can  
15 be made without detriment or injury to existing rights. A change in  
16 the place of use, point of diversion, and/or purpose of use of a water  
17 right to enable irrigation of additional acreage or the addition of new  
18 uses may be permitted if such change results in no increase in the  
19 annual consumptive quantity of water used under the water right. For

1 purposes of this section, "annual consumptive quantity" means the  
2 estimated or actual annual amount of water diverted pursuant to the  
3 water right, reduced by the estimated annual amount of return flows(~~(7~~  
4 ~~averaged over the two years of greatest use within the most recent~~  
5 ~~five-year period of continuous beneficial use of the water right)~~).  
6 The annual consumptive quantity of a water right may not be deemed to  
7 be less than the actual peak historic use of a water right, even if the  
8 right is not being fully exercised at the time of change or transfer,  
9 if: (a) The reduced use is due to cropping patterns or system  
10 efficiencies; (b) the water right holder intends to fully exercise the  
11 right; and (c) the water right holder has the facilities in place to  
12 make beneficial use of the full right. Before any transfer of such  
13 right to use water or change of the point of diversion of water or  
14 change of purpose of use can be made, any person having an interest in  
15 the transfer or change, shall file a written application therefor with  
16 the department, and the application shall not be granted until notice  
17 of the application is published as provided in RCW 90.03.280. If it  
18 shall appear that such transfer or such change may be made without  
19 injury or detriment to existing rights, the department shall issue to  
20 the applicant a certificate in duplicate granting the right for such  
21 transfer or for such change of point of diversion or of use. The  
22 certificate so issued shall be filed and be made a record with the  
23 department and the duplicate certificate issued to the applicant may be  
24 filed with the county auditor in like manner and with the same effect  
25 as provided in the original certificate or permit to divert water.

26 (2) If an application for change proposes to transfer water rights  
27 from one irrigation district to another, the department shall, before  
28 publication of notice, receive concurrence from each of the irrigation  
29 districts that such transfer or change will not adversely affect the  
30 ability to deliver water to other landowners or impair the financial  
31 integrity of either of the districts.

32 (3) A change in place of use by an individual water user or users  
33 of water provided by an irrigation district need only receive approval  
34 for the change from the board of directors of the district if the use  
35 of water continues within the irrigation district, and when water is  
36 provided by an irrigation entity that is a member of a board of joint  
37 control created under chapter 87.80 RCW, approval need only be received

1 from the board of joint control if the use of water continues within  
2 the area of jurisdiction of the joint board and the change can be made  
3 without detriment or injury to existing rights.

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

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

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

15 (c) Notwithstanding any other existing authority to process  
16 applications, including but not limited to the authority to process  
17 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
18 application relating to an existing surface or ground water right may  
19 be processed ahead of a previously filed application relating to an  
20 existing right when sufficient information for a decision on the  
21 previously filed application is not available and the applicant for the  
22 previously filed application is sent written notice that explains what  
23 information is not available and informs the applicant that processing  
24 of the next application will begin. The previously filed application  
25 does not lose its priority date and if the information is provided by  
26 the applicant within sixty days, the previously filed application shall  
27 be processed at that time. This subsection (5)(c) does not affect any  
28 other existing authority to process applications.

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

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

35 (7) In revising the provisions of this section and adding  
36 provisions to this section by chapter 237, Laws of 2001, the  
37 legislature does not intend to imply legislative approval or

1 disapproval of any existing administrative policy regarding, or any  
2 existing administrative or judicial interpretation of, the provisions  
3 of this section not expressly added or revised.

4 (8) The right to use water for any beneficial use within the  
5 general category of an agricultural use includes the right to use the  
6 water, without applying to the department or any other governmental  
7 entity for approval, for any other beneficial use within the general  
8 category of an agricultural use. The general category of an  
9 agricultural use of water includes, but is not limited to, the  
10 beneficial use of water for stock watering, agricultural irrigation,  
11 agricultural frost control, processing agricultural commodities into  
12 agricultural products, and other agricultural uses.

13 **Sec. 2.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
14 as follows:

15 (1) After an application to, and upon the issuance by the  
16 department of an amendment to the appropriate permit or certificate of  
17 ground water right, the holder of a valid right to withdraw public  
18 ground waters may, without losing the holder's priority of right,  
19 construct wells or other means of withdrawal at a new location in  
20 substitution for or in addition to those at the original location, or  
21 the holder may change the manner or the place of use of the water.

22 (2) An amendment to construct replacement or a new additional well  
23 or wells at a location outside of the location of the original well or  
24 wells or to change the manner or place of use of the water shall be  
25 issued only after publication of notice of the application and findings  
26 as prescribed in the case of an original application. Such amendment  
27 shall be issued by the department only on the conditions that: (a) The  
28 additional or replacement well or wells shall tap the same body of  
29 public ground water as the original well or wells; (b) where a  
30 replacement well or wells is approved, the use of the original well or  
31 wells shall be discontinued and the original well or wells shall be  
32 properly decommissioned as required under chapter 18.104 RCW; (c) where  
33 an additional well or wells is constructed, the original well or wells  
34 may continue to be used, but the combined total withdrawal from the  
35 original and additional well or wells shall not enlarge the right  
36 conveyed by the original permit or certificate; and (d) other existing  
37 rights shall not be impaired. The department may specify an approved

1 manner of construction and shall require a showing of compliance with  
2 the terms of the amendment, as provided in RCW 90.44.080 in the case of  
3 an original permit.

4 (3) The construction of a replacement or new additional well or  
5 wells at the location of the original well or wells shall be allowed  
6 without application to the department for an amendment. However, the  
7 following apply to such a replacement or new additional well: (a) The  
8 well shall tap the same body of public ground water as the original  
9 well or wells; (b) if a replacement well is constructed, the use of the  
10 original well or wells shall be discontinued and the original well or  
11 wells shall be properly decommissioned as required under chapter 18.104  
12 RCW; (c) if a new additional well is constructed, the original well or  
13 wells may continue to be used, but the combined total withdrawal from  
14 the original and additional well or wells shall not enlarge the right  
15 conveyed by the original water use permit or certificate; (d) the  
16 construction and use of the well shall not interfere with or impair  
17 water rights with an earlier date of priority than the water right or  
18 rights for the original well or wells; (e) the replacement or  
19 additional well shall be located no closer than the original well to a  
20 well it might interfere with; (f) the department may specify an  
21 approved manner of construction of the well; and (g) the department  
22 shall require a showing of compliance with the conditions of this  
23 subsection (3).

24 (4) As used in this section, the "location of the original well or  
25 wells" is the area described as the point of withdrawal in the original  
26 public notice published for the application for the water right for the  
27 well.

28 (5) The right to use water for any beneficial use within the  
29 general category of an agricultural use includes the right to use the  
30 water, without applying to the department or any other governmental  
31 entity for approval, for any other beneficial use within the general  
32 category of an agricultural use. The general category of an  
33 agricultural use of water includes, but is not limited to, the  
34 beneficial use of water for stock watering, agricultural irrigation,  
35 agricultural frost control, processing agricultural commodities into  
36 agricultural products, and other agricultural uses.

1       **Sec. 3.** 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. 4.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to read  
10 as follows:

11       (1) Until the effective date of this section, when it appears to  
12 the department of ecology that a person entitled to the use of water  
13 has not beneficially used his or her water right or some portion  
14 thereof, and it appears that said right has or may have reverted to the  
15 state because of such nonuse, as provided by RCW 90.14.160, 90.14.170,  
16 or 90.14.180, the department of ecology shall notify such person by  
17 order: PROVIDED, That where a company, association, district, or the  
18 United States has filed a blanket claim under the provisions of RCW  
19 90.14.060 for the total benefits of those served by it, the notice  
20 shall be served on such company, association, district or the United  
21 States and not upon any of its individual water users who may not have  
22 used the water or some portion thereof which they were entitled to use.  
23 The order shall contain: ~~((+1))~~ (a) A description of the water right,  
24 including the approximate location of the point of diversion, the  
25 general description of the lands or places where such waters were used,  
26 the water source, the amount involved, the purpose of use, and the  
27 apparent authority upon which the right is based; ~~((+2))~~ (b) a  
28 statement that unless sufficient cause be shown on appeal the water  
29 right will be declared relinquished; and ~~((+3))~~ (c) a statement that  
30 such order may be appealed to the pollution control hearings board.  
31 Any person aggrieved by such an order may appeal it to the pollution  
32 control hearings board pursuant to RCW 43.21B.310. The order shall be  
33 served by registered or certified mail to the last known address of the  
34 person and be posted at the point of division or withdrawal. The order  
35 by itself shall not alter the recipient's right to use water, if any.

36       (2) After the effective date of this section, the department of

1 ecology has no authority to issue by order a notice of reversion or  
2 otherwise limit a water right under this chapter.

3 **Sec. 5.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to read  
4 as follows:

5 (1) Any person entitled to divert or withdraw waters of the state  
6 through any appropriation authorized by enactments of the legislature  
7 prior to enactment of chapter 117, Laws of 1917, or by custom, or by  
8 general adjudication, who abandons the same, or who voluntarily fails,  
9 without sufficient cause, to beneficially use all or any part of said  
10 right to divert or withdraw for any period of five successive years  
11 after July 1, 1967, shall relinquish such right or portion thereof, and  
12 said right or portion thereof shall revert to the state, and the waters  
13 affected by said right shall become available for appropriation in  
14 accordance with RCW 90.03.250.

15 (2) Subsection (1) of this section does not apply to any person  
16 after the effective date of this section.

17 **Sec. 6.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to read  
18 as follows:

19 (1) Any person entitled to divert or withdraw waters of the state  
20 by virtue of his or her ownership of land abutting a stream, lake, or  
21 watercourse, who abandons the same, or who voluntarily fails, without  
22 sufficient cause, to beneficially use all or any part of said right to  
23 withdraw or divert said water for any period of five successive years  
24 after July 1, 1967, shall relinquish such right or portion thereof, and  
25 such right or portion thereof shall revert to the state, and the waters  
26 affected by said right shall become available for appropriation in  
27 accordance with the provisions of RCW 90.03.250.

28 (2) Subsection (1) of this section does not apply to any person  
29 after the effective date of this section.

30 **Sec. 7.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to  
31 read as follows:

32 (1) Any person hereafter entitled to divert or withdraw waters of  
33 the state through an appropriation authorized under RCW 90.03.330,  
34 90.44.080, or 90.44.090 who abandons the same, or who voluntarily  
35 fails, without sufficient cause, to beneficially use all or any part of

1 said right to withdraw for any period of five successive years shall  
2 relinquish such right or portion thereof, and such right or portion  
3 thereof shall revert to the state, and the waters affected by said  
4 right shall become available for appropriation in accordance with RCW  
5 90.03.250. (~~All certificates hereafter issued by the department of  
6 ecology pursuant to RCW 90.03.330 shall expressly incorporate this  
7 section by reference.~~)

8 (2) Subsection (1) of this section does not apply to any person  
9 after the effective date of this section.

10 **Sec. 8.** RCW 90.14.210 and 1967 c 233 s 21 are each amended to read  
11 as follows:

12 Until the effective date of this section, the provisions of this  
13 chapter shall apply to all rights to withdraw ground waters of the  
14 state, whether authorized by chapter 90.44 RCW or otherwise.

15 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of the  
17 state government and its existing public institutions, and takes effect  
18 immediately.

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