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**SUBSTITUTE SENATE BILL 6662**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton, Honeyford and Mulliken)

READ FIRST TIME 02/09/04.

1       AN ACT Relating to providing certainty and clarity in the  
2 administration of water rights; amending RCW 90.03.380, 90.14.010,  
3 90.14.130, 90.14.160, 90.14.170, 90.14.180, and 90.14.210; and  
4 declaring an emergency.

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

6       **Sec. 1.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read  
7 as follows:

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

1 annual consumptive quantity of water used under the water right. For  
2 purposes of this section, "annual consumptive quantity" means the  
3 estimated or actual annual amount of water diverted pursuant to the  
4 water right, reduced by the estimated annual amount of return flows,  
5 averaged over the two years of greatest use within the most recent  
6 five-year period of continuous beneficial use of the water right.  
7 Before any transfer of such right to use water or change of the point  
8 of diversion of water or change of purpose of use can be made, any  
9 person having an interest in the transfer or change, shall file a  
10 written application therefor with the department, and the application  
11 shall not be granted until notice of the application is published as  
12 provided in RCW 90.03.280. If it shall appear that such transfer or  
13 such change may be made without injury or detriment to existing rights,  
14 the department shall issue to the applicant a certificate in duplicate  
15 granting the right for such transfer or for such change of point of  
16 diversion or of use. The certificate so issued shall be filed and be  
17 made a record with the department and the duplicate certificate issued  
18 to the applicant may be filed with the county auditor in like manner  
19 and with the same effect as provided in the original certificate or  
20 permit to divert water.

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

27 (3) A change in place of use by an individual water user or users  
28 of water provided by an irrigation district need only receive approval  
29 for the change from the board of directors of the district if the use  
30 of water continues within the irrigation district, and when water is  
31 provided by an irrigation entity that is a member of a board of joint  
32 control created under chapter 87.80 RCW, approval need only be received  
33 from the board of joint control if the use of water continues within  
34 the area of jurisdiction of the joint board and the change can be made  
35 without detriment or injury to existing rights.

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

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

4 (b) Applications relating to existing surface or ground water  
5 rights may be processed and decisions on them rendered independently of  
6 processing and rendering decisions on pending applications for new  
7 water rights within the same source of supply without regard to the  
8 date of filing of the pending applications for new water rights.

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

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

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

29 (7) In revising the provisions of this section and adding  
30 provisions to this section by chapter 237, Laws of 2001, the  
31 legislature does not intend to imply legislative approval or  
32 disapproval of any existing administrative policy regarding, or any  
33 existing administrative or judicial interpretation of, the provisions  
34 of this section not expressly added or revised.

35 (8) The development and use of a small irrigation impoundment, as  
36 defined in RCW 90.03.370(8), does not constitute a change or amendment  
37 for the purposes of this section. The exemption expressly provided by

1 this subsection shall not be construed as requiring a change or  
2 transfer of any existing water right to enable the holder of the right  
3 to store water governed by the right.

4 (9) Notwithstanding any other provision of this section or RCW  
5 90.44.100, a water right to use surface or ground water that has been  
6 applied to any beneficial use within the general category of an  
7 agricultural use may be changed to another agricultural use, within the  
8 other limitations of the water right, under the following conditions:

9 (a) A change in the type of crop irrigated or from one agricultural  
10 use to another agricultural use that does not involve a change in the  
11 season of use of the water may be made without applying to the  
12 department or any other governmental entity for approval;

13 (b) A change from one agricultural use to another agricultural use  
14 that involves a change in the season of use of water may be made after  
15 providing the department with notice and an opportunity for review as  
16 follows:

17 (i) For changes under this subsection (9)(b), the water right  
18 holder shall give written notice to the department describing the  
19 proposed change and providing evidence of beneficial use of the right.  
20 The water right holder may proceed with the change unless the  
21 department notifies the water right holder within thirty calendar days  
22 that the proposed change raises concerns regarding potential impairment  
23 to other existing water rights. The director may extend the twenty-day  
24 period by an additional fifteen calendar days if notice is provided to  
25 the water right holder within the twenty-day period and the water right  
26 holder consents; and

27 (ii) The department shall operate under a rebuttable presumption of  
28 no impairment of other water rights if the season of use is proposed to  
29 be changed from a period that is more critical for other water rights  
30 and stream flows to a period that is less critical. If the department  
31 determines that the proposed change raises concerns regarding  
32 impairment to other water rights, the proposed change may not proceed  
33 under this subsection (9);

34 (c) The department's determination under (b) of this subsection is  
35 not appealable. For a change that is not allowed under (b) of this  
36 subsection, the water right holder may subsequently apply for a change  
37 in right under subsection (1) or (2) of this section or RCW 90.03.390  
38 or 90.44.100, in which case the department shall make a full and normal

1 determination and render an appealable decision under those statutes.  
2 In making such a decision, the department is not bound by its earlier  
3 determination and the earlier determination may not result in a  
4 presumption of impairment of any water right; and

5 (d) The general category of an agricultural use of water under this  
6 subsection (9) is composed of, but not limited to: The beneficial uses  
7 of water for agricultural irrigation; frost protection; watering  
8 livestock; processing agricultural commodities; dust suppression;  
9 cleaning of agricultural animals, equipment, and facilities; and  
10 confined animal feeding operations with applicable land use and water  
11 quality permits.

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

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

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

22 (1) Until the effective date of this section, when it appears to  
23 the department of ecology that a person entitled to the use of water  
24 has not beneficially used his or her water right or some portion  
25 thereof, and it appears that said right has or may have reverted to the  
26 state because of such nonuse, as provided by RCW 90.14.160, 90.14.170,  
27 or 90.14.180, the department of ecology shall notify such person by  
28 order: PROVIDED, That where a company, association, district, or the  
29 United States has filed a blanket claim under the provisions of RCW  
30 90.14.060 for the total benefits of those served by it, the notice  
31 shall be served on such company, association, district or the United  
32 States and not upon any of its individual water users who may not have  
33 used the water or some portion thereof which they were entitled to use.  
34 The order shall contain: ((+1)) (a) A description of the water right,  
35 including the approximate location of the point of diversion, the  
36 general description of the lands or places where such waters were used,

1 the water source, the amount involved, the purpose of use, and the  
2 apparent authority upon which the right is based; (~~(+2)~~) (b) a  
3 statement that unless sufficient cause be shown on appeal the water  
4 right will be declared relinquished; and (~~(+3)~~) (c) a statement that  
5 such order may be appealed to the pollution control hearings board.  
6 Any person aggrieved by such an order may appeal it to the pollution  
7 control hearings board pursuant to RCW 43.21B.310. The order shall be  
8 served by registered or certified mail to the last known address of the  
9 person and be posted at the point of division or withdrawal. The order  
10 by itself shall not alter the recipient's right to use water, if any.

11 (2) After the effective date of this section, the department of  
12 ecology has no authority to issue by order a notice of reversion or  
13 otherwise limit a water right under this chapter.

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

16 (1) Any person entitled to divert or withdraw waters of the state  
17 through any appropriation authorized by enactments of the legislature  
18 prior to enactment of chapter 117, Laws of 1917, or by custom, or by  
19 general adjudication, who abandons the same, or who voluntarily fails,  
20 without sufficient cause, to beneficially use all or any part of said  
21 right to divert or withdraw for any period of five successive years  
22 after July 1, 1967, shall relinquish such right or portion thereof, and  
23 said right or portion thereof shall revert to the state, and the waters  
24 affected by said right shall become available for appropriation in  
25 accordance with RCW 90.03.250.

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

28 **Sec. 5.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to read  
29 as follows:

30 (1) Any person entitled to divert or withdraw waters of the state  
31 by virtue of his or her ownership of land abutting a stream, lake, or  
32 watercourse, who abandons the same, or who voluntarily fails, without  
33 sufficient cause, to beneficially use all or any part of said right to  
34 withdraw or divert said water for any period of five successive years  
35 after July 1, 1967, shall relinquish such right or portion thereof, and

1 such right or portion thereof shall revert to the state, and the waters  
2 affected by said right shall become available for appropriation in  
3 accordance with the provisions of RCW 90.03.250.

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

6 **Sec. 6.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to  
7 read as follows:

8 (1) Any person hereafter entitled to divert or withdraw waters of  
9 the state through an appropriation authorized under RCW 90.03.330,  
10 90.44.080, or 90.44.090 who abandons the same, or who voluntarily  
11 fails, without sufficient cause, to beneficially use all or any part of  
12 said right to withdraw for any period of five successive years shall  
13 relinquish such right or portion thereof, and such right or portion  
14 thereof shall revert to the state, and the waters affected by said  
15 right shall become available for appropriation in accordance with RCW  
16 90.03.250. ~~((All certificates hereafter issued by the department of  
17 ecology pursuant to RCW 90.03.330 shall expressly incorporate this  
18 section by reference.))~~

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

21 **Sec. 7.** RCW 90.14.210 and 1967 c 233 s 21 are each amended to read  
22 as follows:

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

26 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 immediately.

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