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SECOND SUBSTITUTE HOUSE BILL 1735

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State of Washington

59th Legislature

2006 Regular Session

**By** House Committee on Economic Development, Agriculture & Trade  
(originally sponsored by Representatives Hunt, Buck, Williams,  
Linville, Kenney, Walsh, Wallace, B. Sullivan, Dickerson, McCoy,  
Chase, Simpson and Roach)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to exempting limited water storage facilities from  
2 permit requirements; amending RCW 90.03.250 and 90.03.370; adding a new  
3 section to chapter 90.03 RCW; and creating a new section.

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

5 **Sec. 1.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to read  
6 as follows:

7 (1) Any person, municipal corporation, firm, irrigation district,  
8 association, corporation, or water users' association hereafter  
9 desiring to appropriate water for a beneficial use shall make an  
10 application to the department for a permit to make such appropriation,  
11 and shall not use or divert such waters until he or she has received a  
12 permit from the department as in this chapter provided. The  
13 construction of any ditch, canal or works, or performing any work in  
14 connection with said construction or appropriation, or the use of any  
15 waters, shall not be an appropriation of such water nor an act for the  
16 purpose of appropriating water unless a permit to make said  
17 appropriation has first been granted by the department(~~(:—PROVIDED,~~  
18 ~~That)~~).

1       (2) A temporary permit may be granted upon a proper showing made to  
2 the department to be valid only during the pendency of such application  
3 for a permit unless sooner revoked by the department(~~(+—PROVIDED,~~  
4 ~~FURTHER, That))~~).

5       (3) Nothing in this chapter (~~(contained)~~) shall be deemed to affect  
6 RCW 90.40.010 through 90.40.080 except that the notice and certificate  
7 (~~(therein)~~) provided for in RCW 90.40.030 shall be addressed to the  
8 department, and the department shall exercise the powers and perform  
9 the duties prescribed by RCW 90.40.030.

10       (4) This section does not apply to rain barrels, cisterns, and  
11 other similar facilities for capturing runoff from roofs, paved areas,  
12 and other hard surfaces on a single residential, commercial, or  
13 industrial property or public facility when used in accordance with  
14 section 3 of this act.

15       **Sec. 2.** RCW 90.03.370 and 2003 c 329 s 1 are each amended to read  
16 as follows:

17       (1)(a) All applications for reservoir permits are subject to the  
18 provisions of RCW 90.03.250 through 90.03.320. But the party or  
19 parties proposing to apply to a beneficial use the water stored in any  
20 such reservoir shall also file an application for a permit, to be known  
21 as the secondary permit, which shall be in compliance with the  
22 provisions of RCW 90.03.250 through 90.03.320. Such secondary  
23 application shall refer to such reservoir as its source of water supply  
24 and shall show documentary evidence that an agreement has been entered  
25 into with the owners of the reservoir for a permanent and sufficient  
26 interest in said reservoir to impound enough water for the purposes set  
27 forth in said application. When the beneficial use has been completed  
28 and perfected under the secondary permit, the department shall take the  
29 proof of the water users under such permit and the final certificate of  
30 appropriation shall refer to both the ditch and works described in the  
31 secondary permit and the reservoir described in the primary permit.  
32 The department may accept for processing a single application form  
33 covering both a proposed reservoir and a proposed secondary permit or  
34 permits for use of water from that reservoir.

35       (b) The department shall expedite processing applications for the  
36 following types of storage proposals:

1 (i) Development of storage facilities that will not require a new  
2 water right for diversion or withdrawal of the water to be stored;

3 (ii) Adding or changing one or more purposes of use of stored  
4 water;

5 (iii) Adding to the storage capacity of an existing storage  
6 facility; and

7 (iv) Applications for secondary permits to secure use from existing  
8 storage facilities.

9 (c) A secondary permit for the beneficial use of water shall not be  
10 required for use of water stored in a reservoir where the water right  
11 for the source of the stored water authorizes the beneficial use.

12 (2)(a) For the purposes of this section, "reservoir" includes, in  
13 addition to any surface reservoir, any naturally occurring underground  
14 geological formation where water is collected and stored for subsequent  
15 use as part of an underground artificial storage and recovery project.  
16 To qualify for issuance of a reservoir permit an underground geological  
17 formation must meet standards for review and mitigation of adverse  
18 impacts identified, for the following issues:

19 (i) Aquifer vulnerability and hydraulic continuity;

20 (ii) Potential impairment of existing water rights;

21 (iii) Geotechnical impacts and aquifer boundaries and  
22 characteristics;

23 (iv) Chemical compatibility of surface waters and ground water;

24 (v) Recharge and recovery treatment requirements;

25 (vi) System operation;

26 (vii) Water rights and ownership of water stored for recovery; and

27 (viii) Environmental impacts.

28 (b) Standards for review and standards for mitigation of adverse  
29 impacts for an underground artificial storage and recovery project  
30 shall be established by the department by rule. Notwithstanding the  
31 provisions of RCW 90.03.250 through 90.03.320, analysis of each  
32 underground artificial storage and recovery project and each  
33 underground geological formation for which an applicant seeks the  
34 status of a reservoir shall be through applicant-initiated studies  
35 reviewed by the department.

36 (3) For the purposes of this section, "underground artificial  
37 storage and recovery project" means any project in which it is intended  
38 to artificially store water in the ground through injection, surface

1 spreading and infiltration, or other department-approved method, and to  
2 make subsequent use of the stored water. However, (a) this subsection  
3 does not apply to irrigation return flow, or to operational and seepage  
4 losses that occur during the irrigation of land, or to water that is  
5 artificially stored due to the construction, operation, or maintenance  
6 of an irrigation district project, or to projects involving water  
7 reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130  
8 applies to those instances of claimed artificial recharge occurring due  
9 to the construction, operation, or maintenance of an irrigation  
10 district project or operational and seepage losses that occur during  
11 the irrigation of land, as well as other forms of claimed artificial  
12 recharge already existing at the time a ground water subarea is  
13 established.

14 (4) Nothing in chapter 98, Laws of 2000 changes the requirements of  
15 existing law governing issuance of permits to appropriate or withdraw  
16 the waters of the state.

17 (5) The department shall report to the legislature by December 31,  
18 2001, on the standards for review and standards for mitigation  
19 developed under subsection (3) of this section and on the status of any  
20 applications that have been filed with the department for underground  
21 artificial storage and recovery projects by that date.

22 (6) Where needed to ensure that existing storage capacity is  
23 effectively and efficiently used to meet multiple purposes, the  
24 department may authorize reservoirs to be filled more than once per  
25 year or more than once per season of use.

26 (7) This section does not apply to facilities to recapture and  
27 reuse return flow from irrigation operations serving a single farm  
28 under an existing water right as long as the acreage irrigated is not  
29 increased beyond the acreage allowed to be irrigated under the water  
30 right.

31 (8) In addition to the facilities exempted under subsection (7) of  
32 this section, this section does not apply to small irrigation  
33 impoundments. For purposes of this section, "small irrigation  
34 impoundments" means lined surface storage ponds less than ten acre feet  
35 in volume used to impound irrigation water under an existing water  
36 right where use of the impoundment: (a)(i) Facilitates efficient use  
37 of water; or (ii) promotes compliance with an approved recovery plan  
38 for endangered or threatened species; and (b) does not expand the

1 number of acres irrigated or the annual consumptive quantity of water  
2 used. Such ponds must be lined unless a licensed engineer determines  
3 that a liner is not needed to retain water in the pond and to prevent  
4 ground water contamination. Although it may also be composed of other  
5 materials, a properly maintained liner may be composed of bentonite.  
6 Water remaining in a small irrigation impoundment at the end of an  
7 irrigation season may be carried over for use in the next season.  
8 However, the limitations of this subsection (8) apply. Development and  
9 use of a small irrigation impoundment does not constitute a change or  
10 amendment for purposes of RCW 90.03.380 or 90.44.055.

11 (9) Rain barrels, cisterns, and other similar facilities for  
12 capturing runoff from roofs, paved areas, and other hard surfaces on a  
13 single residential, commercial, or industrial property or public  
14 facility are exempt from the reservoir and secondary permit  
15 requirements of this chapter when used in accordance with section 3 of  
16 this act.

17 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW  
18 to read as follows:

19 (1) In order to qualify for the exemptions created in RCW 90.03.250  
20 and 90.03.370, the owner of a rain barrel, cistern, or other similar  
21 water storage facility that has a storage capacity of less than one  
22 thousand gallons must intend to put the stored water to beneficial use  
23 on the property where the rainwater was collected.

24 (2) In order to qualify for the exemptions created in RCW 90.03.250  
25 and 90.03.370, the owner of a rain barrel, cistern, or other similar  
26 water storage facility that has a storage capacity of greater than one  
27 thousand gallons must intend to put the stored water to beneficial use  
28 on the property where the rainwater was collected and manage the water  
29 stored in the facility in compliance with rules developed by the  
30 department under this section.

31 (3)(a) The department shall work with the representatives of a  
32 broad group of interested parties, individuals with technical  
33 expertise, and proponents of rainwater capture and use systems to adopt  
34 rules, consistent with chapter 34.05 RCW, that allow for pilot areas to  
35 use rainwater collection and use systems with a capacity greater than  
36 one thousand gallons, including one pilot area where the use of  
37 rainwater collection and use systems is a proposed means of

1 contributing to storm water runoff control and one pilot area located  
2 on an island where ground water and surface water availability is  
3 limited due to saltwater intrusion. The intent of the pilot areas is  
4 to gauge the feasibility of adopting area-specific permits by rule and  
5 the impact of rainwater storage and use facilities on the natural  
6 hydrologic system.

7 (b) The department must take into consideration annual rainfall and  
8 population density when selecting pilot areas. The department shall  
9 also, when selecting the pilot rule areas, give preference to those  
10 areas that can most benefit because of local hydrologic conditions and  
11 to areas in which local watershed plans or similar efforts have  
12 identified the use of rainwater collection systems as a source of  
13 beneficial water supply.

14 (c) Upon completion of the pilot projects authorized by this  
15 section, the department shall adopt permanent rules that govern the use  
16 of rainwater storage and use facilities eligible for exemptions under  
17 RCW 90.03.250 and 90.03.370.

18 (d) The pilot rules and any subsequent permanent rules adopted  
19 under this section must establish procedures for making applications  
20 for inclusion under the exemption, must specify the criteria under  
21 which an application may qualify for the exemption, and must contain a  
22 mechanism for the department to regulate the storage of water by  
23 rainwater collection systems if necessary to prevent the impairment of  
24 water rights senior to the rainwater project. The rules may also  
25 specify conditions regarding the storage capacity of individual rain  
26 collection systems, the times of the year when it is permissible to  
27 store rainwater, and locations within the area in which rainwater  
28 systems are and are not appropriate due to local hydrologic conditions  
29 and potential interference with existing water rights.

30 (4) Rainwater collected under this exemption does not result in a  
31 water right under this chapter.

32 NEW SECTION. **Sec. 4.** The department of ecology shall report to  
33 the appropriate committees of the legislature no later than December  
34 31, 2007, regarding the implementation of section 3 of this act. After  
35 June 1, 2008, the department of ecology shall proceed with permanent  
36 rule making to establish exemptions by rule for rainwater systems

1 consistent with section 3 of this act unless the legislature acts to  
2 direct otherwise.

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