
SENATE BILL 5120

State of Washington

59th Legislature

2005 Regular Session

By Senators Poulsen and Fraser; by request of Governor Locke

Read first time 01/13/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to management of water resources for the mainstem
2 of the Columbia river; amending RCW 43.84.092; reenacting and amending
3 RCW 43.84.092; adding a new chapter to Title 90 RCW; providing
4 effective dates; providing an expiration date; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the Columbia
8 river is a vital economic, cultural, and natural resource to the state
9 and its residents, and that the water of the mainstem of the river
10 provides critical support for municipal and agricultural uses, fish and
11 wildlife habitat, power production, and scenic and recreational uses.
12 While conflict and competition among these uses has prevailed in recent
13 years, the legislature recognizes the need for state action and state
14 investment to reliably secure the economic and natural resource
15 benefits associated with the water of the Columbia river. It is the
16 intent of the legislature to establish a new state water resource
17 management program for the mainstem of the Columbia river in order to
18 meet the water supply needs of growing communities and the local

1 economies on which they depend, and to do so in a manner that protects
2 and enhances the quality of the natural environment, including
3 streamflows necessary for the preservation of environmental values.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

- 6 (1) "Department" means the department of ecology.
- 7 (2) "Mainstem account" means the Columbia river mainstem account.
- 8 (3) "Program" means the Columbia river mainstem water management
9 program.

10 NEW SECTION. **Sec. 3.** (1) The Columbia river mainstem water
11 management program is hereby established. The goals of this water
12 management program are to:

13 (a) Meet the water supply needs of growing communities and the
14 local economies on which they depend by providing a timely and
15 affordable supply of water that will allow for new and reliable uses of
16 water from the Columbia river mainstem; and

17 (b) Manage water to protect and enhance the quality of the natural
18 environment, including streamflows necessary for the preservation of
19 environmental values by securing and dedicating water to improve
20 streamflows in the river mainstem.

21 (2) The objectives of the program are to:

22 (a) Improve the reliability of water rights issued by the
23 department between 1980 and 2003 that are subject to minimum instream
24 flows or other mitigation conditions to protect streamflows;

25 (b) Improve streamflows during the primary period of fish
26 outmigration on the mainstem; and

27 (c) Mitigate for the streamflow impacts of future water right
28 permits as provided by the program.

29 (3) The department shall administer the program.

30 NEW SECTION. **Sec. 4.** (1) The department must implement the
31 program by:

32 (a) Acquiring water for the Columbia river mainstem through the
33 implementation of water conservation programs, changes in water
34 management with existing water storage and conveyance facilities, the
35 development of new or expanded multipurpose water storage projects, the

1 acquisition of water rights from willing sellers or donors, and other
2 means, as authorized and funded by the legislature for the purposes of
3 the program;

4 (b) Securing water acquired under (a) of this subsection in the
5 Columbia river mainstem account under the state trust water right
6 program; and

7 (c) Managing the mainstem account to make water available as
8 mitigation to willing applicants and to improve streamflows in the
9 Columbia river mainstem for the benefit of fish.

10 (2) Water may be deposited in the mainstem account in accordance
11 with applicable state laws for water right changes, amendments, and
12 transfers, or through government-to-government agreements, contracts,
13 assignments, and other instruments that ensure that a highly reliable
14 and long-term supply of water, in sufficient quantity, is available in
15 the mainstem account to meet identified needs. For the purposes of
16 this chapter, the department may secure water from Canada and other
17 governments to be deposited in, and accounted for, in the mainstem
18 account.

19 (3) Two-thirds of the water secured and deposited in the mainstem
20 account shall be allocated as mitigation water for new water uses
21 through a state mitigation program. One-third of the water shall be
22 permanently retained in the mainstem account to improve streamflows.

23 (4) The department shall manage water in the mainstem account that
24 is dedicated to improving streamflows in collaboration with the
25 department of fish and wildlife. The department of fish and wildlife
26 shall consult with natural resource managers in tribal governments and
27 federal agencies on how to maximize the benefits to fish from this
28 water.

29 (5) The amount of water in the mainstem account shall not govern,
30 be used to regulate, or be a determinative factor in the department's
31 water management decisions for water in rivers that are tributary to
32 the Columbia river.

33 NEW SECTION. **Sec. 5.** (1) The requirements of this section are
34 applicable to any new water uses authorized by the department under
35 this chapter.

36 (2) New water uses that would reduce the streamflows of the
37 Columbia river mainstem below Chief Joseph dam during the period of

1 April through August must be mitigated to avoid any reduction in
2 streamflows during this period. Mitigation must be secured and in
3 place before new water uses are authorized under this chapter.

4 (3) Applicants for new water right permits may develop their own
5 mitigation proposal, to be included as part of their application, or
6 they may participate in the state's mitigation program by requesting
7 water from the mainstem account. Mitigation proposals developed by an
8 applicant must meet the requirements of subsection (2) of this section.
9 Where an applicant develops their own mitigation proposal, the
10 department must allocate water from the mainstem account to benefit
11 streamflows in the amount of one-half of the mitigation amount.

12 NEW SECTION. **Sec. 6.** (1) An applicant for a new water right
13 permit, or a party seeking mitigation water for their existing water
14 right permit, from the Columbia river mainstem may request water from
15 the mainstem account. If sufficient mitigation water is available in
16 the mainstem account, the department shall enter into an agreement with
17 the requesting party to make mitigation water available consistent with
18 the requirements of this chapter.

19 (2) In exchange for mitigation water from the mainstem account, the
20 department shall require and collect an annual payment based on the
21 quantity of mitigation water specified in the agreement. For new
22 permits authorized under this chapter that will rely on mitigation from
23 the mainstem account, the department shall condition these permits to
24 require annual payment for the mitigation. The department shall
25 deposit those payments in the Columbia river mainstem investment
26 account created under section 8 of this act.

27 (3) The amount of the annual payment shall be established by rule
28 by the department. In determining the payment rates, the department
29 shall consider the following factors:

30 (a) Recovering the state's costs of acquiring water for the
31 mainstem account, including the administrative costs for managing the
32 mainstem account; and

33 (b) Ensuring an affordable supply of water to meet economic and
34 community development goals.

35 (4) In all cases, the costs of acquiring water dedicated to
36 improving streamflows shall be borne by the public and not by the water
37 user.

1 NEW SECTION. **Sec. 7.** (1) Where mitigation that meets the
2 requirements of section 5(2) of this act is secured, the department
3 must:

4 (a) Issue permits that could be exercised during periods of drought
5 in lieu of existing water right permits and certificates that are
6 subject to interruption when streamflows on the mainstem are below
7 adopted minimum instream flows; and

8 (b) Process pending and future applications for new water right
9 permits for the mainstem of the Columbia river.

10 (2) Water users seeking drought permits under subsection (1)(a) of
11 this section must submit an application by December 31, 2008.

12 (3) All applications for new water rights under this chapter will
13 be processed in accordance with RCW 90.03.250 through 90.03.330 and
14 other applicable provisions of law. For applications where mitigation
15 that meets the requirements of section 5(2) of this act is secured, the
16 department may process those applications ahead of previously filed
17 applications for which mitigation is not secured.

18 NEW SECTION. **Sec. 8.** (1) The Columbia river mainstem investment
19 account is hereby created in the state treasury. All receipts from
20 Columbia river-related mitigation agreements entered into by the
21 department under this chapter and any other money appropriated by the
22 legislature must be deposited into the account. Money in the account
23 may be spent only after appropriation.

24 (2) Expenditures from the account may be used only for the purposes
25 of this chapter, including, but not limited to, the following:

26 (a) Site evaluation, feasibility, environmental studies, design and
27 engineering, and construction of off-channel storage facilities,
28 including aquifer storage facilities;

29 (b) Activities and investments necessary to acquire water from
30 conservation projects;

31 (c) Infrastructure evaluation, feasibility, environmental
32 evaluation, design and engineering, and construction modifying existing
33 storage facilities to provide additional capacity;

34 (d) Installation and monitoring streamflow and water measurement
35 devices;

36 (e) Administration of the Columbia river water management program
37 and compliance activities associated with the program;

- 1 (f) Acquisition of water through agreements with other governments
- 2 or federal agencies;
- 3 (g) Acquisition of existing state water rights from willing
- 4 sellers; and
- 5 (h) Bond issuance, sales, and debt service.

6 **Sec. 9.** RCW 43.84.092 and 2003 c 361 s 602, 2003 c 324 s 1, 2003
7 c 150 s 2, and 2003 c 48 s 2 are each reenacted and amended to read as
8 follows:

9 (1) All earnings of investments of surplus balances in the state
10 treasury shall be deposited to the treasury income account, which
11 account is hereby established in the state treasury.

12 (2) The treasury income account shall be utilized to pay or receive
13 funds associated with federal programs as required by the federal cash
14 management improvement act of 1990. The treasury income account is
15 subject in all respects to chapter 43.88 RCW, but no appropriation is
16 required for refunds or allocations of interest earnings required by
17 the cash management improvement act. Refunds of interest to the
18 federal treasury required under the cash management improvement act
19 fall under RCW 43.88.180 and shall not require appropriation. The
20 office of financial management shall determine the amounts due to or
21 from the federal government pursuant to the cash management improvement
22 act. The office of financial management may direct transfers of funds
23 between accounts as deemed necessary to implement the provisions of the
24 cash management improvement act, and this subsection. Refunds or
25 allocations shall occur prior to the distributions of earnings set
26 forth in subsection (4) of this section.

27 (3) Except for the provisions of RCW 43.84.160, the treasury income
28 account may be utilized for the payment of purchased banking services
29 on behalf of treasury funds including, but not limited to, depository,
30 safekeeping, and disbursement functions for the state treasury and
31 affected state agencies. The treasury income account is subject in all
32 respects to chapter 43.88 RCW, but no appropriation is required for
33 payments to financial institutions. Payments shall occur prior to
34 distribution of earnings set forth in subsection (4) of this section.

35 (4) Monthly, the state treasurer shall distribute the earnings
36 credited to the treasury income account. The state treasurer shall

1 credit the general fund with all the earnings credited to the treasury
2 income account except:

3 (a) The following accounts and funds shall receive their
4 proportionate share of earnings based upon each account's and fund's
5 average daily balance for the period: The capitol building
6 construction account, the Cedar River channel construction and
7 operation account, the Central Washington University capital projects
8 account, the charitable, educational, penal and reformatory
9 institutions account, the Columbia river mainstem investment account,
10 the common school construction fund, the county criminal justice
11 assistance account, the county sales and use tax equalization account,
12 the data processing building construction account, the deferred
13 compensation administrative account, the deferred compensation
14 principal account, the department of retirement systems expense
15 account, the drinking water assistance account, the drinking water
16 assistance administrative account, the drinking water assistance
17 repayment account, the Eastern Washington University capital projects
18 account, the education construction fund, the election account, the
19 emergency reserve fund, The Evergreen State College capital projects
20 account, the federal forest revolving account, the health services
21 account, the public health services account, the health system capacity
22 account, the personal health services account, the state higher
23 education construction account, the higher education construction
24 account, the highway infrastructure account, the industrial insurance
25 premium refund account, the judges' retirement account, the judicial
26 retirement administrative account, the judicial retirement principal
27 account, the local leasehold excise tax account, the local real estate
28 excise tax account, the local sales and use tax account, the medical
29 aid account, the mobile home park relocation fund, the multimodal
30 transportation account, the municipal criminal justice assistance
31 account, the municipal sales and use tax equalization account, the
32 natural resources deposit account, the oyster reserve land account, the
33 perpetual surveillance and maintenance account, the public employees'
34 retirement system plan 1 account, the public employees' retirement
35 system combined plan 2 and plan 3 account, the public facilities
36 construction loan revolving account beginning July 1, 2004, the public
37 health supplemental account, the public works assistance account, the
38 Puyallup tribal settlement account, the regional transportation

1 investment district account, the resource management cost account, the
2 site closure account, the special wildlife account, the state
3 employees' insurance account, the state employees' insurance reserve
4 account, the state investment board expense account, the state
5 investment board commingled trust fund accounts, the supplemental
6 pension account, the Tacoma Narrows toll bridge account, the teachers'
7 retirement system plan 1 account, the teachers' retirement system
8 combined plan 2 and plan 3 account, the tobacco prevention and control
9 account, the tobacco settlement account, the transportation
10 infrastructure account, the tuition recovery trust fund, the University
11 of Washington bond retirement fund, the University of Washington
12 building account, the volunteer fire fighters' and reserve officers'
13 relief and pension principal fund, the volunteer fire fighters' and
14 reserve officers' administrative fund, the Washington fruit express
15 account, the Washington judicial retirement system account, the
16 Washington law enforcement officers' and fire fighters' system plan 1
17 retirement account, the Washington law enforcement officers' and fire
18 fighters' system plan 2 retirement account, the Washington school
19 employees' retirement system combined plan 2 and 3 account, the
20 Washington state health insurance pool account, the Washington state
21 patrol retirement account, the Washington State University building
22 account, the Washington State University bond retirement fund, the
23 water pollution control revolving fund, and the Western Washington
24 University capital projects account. Earnings derived from investing
25 balances of the agricultural permanent fund, the normal school
26 permanent fund, the permanent common school fund, the scientific
27 permanent fund, and the state university permanent fund shall be
28 allocated to their respective beneficiary accounts. All earnings to be
29 distributed under this subsection (4)(a) shall first be reduced by the
30 allocation to the state treasurer's service fund pursuant to RCW
31 43.08.190.

32 (b) The following accounts and funds shall receive eighty percent
33 of their proportionate share of earnings based upon each account's or
34 fund's average daily balance for the period: The aeronautics account,
35 the aircraft search and rescue account, the county arterial
36 preservation account, the department of licensing services account, the
37 essential rail assistance account, the ferry bond retirement fund, the
38 grade crossing protective fund, the high capacity transportation

1 account, the highway bond retirement fund, the highway safety account,
2 the motor vehicle fund, the motorcycle safety education account, the
3 pilotage account, the public transportation systems account, the Puget
4 Sound capital construction account, the Puget Sound ferry operations
5 account, the recreational vehicle account, the rural arterial trust
6 account, the safety and education account, the special category C
7 account, the state patrol highway account, the transportation 2003
8 account (nickel account), the transportation equipment fund, the
9 transportation fund, the transportation improvement account, the
10 transportation improvement board bond retirement account, and the urban
11 arterial trust account.

12 (5) In conformance with Article II, section 37 of the state
13 Constitution, no treasury accounts or funds shall be allocated earnings
14 without the specific affirmative directive of this section.

15 **Sec. 10.** RCW 43.84.092 and 2004 c 242 s 60 are each amended to
16 read as follows:

17 (1) All earnings of investments of surplus balances in the state
18 treasury shall be deposited to the treasury income account, which
19 account is hereby established in the state treasury.

20 (2) The treasury income account shall be utilized to pay or receive
21 funds associated with federal programs as required by the federal cash
22 management improvement act of 1990. The treasury income account is
23 subject in all respects to chapter 43.88 RCW, but no appropriation is
24 required for refunds or allocations of interest earnings required by
25 the cash management improvement act. Refunds of interest to the
26 federal treasury required under the cash management improvement act
27 fall under RCW 43.88.180 and shall not require appropriation. The
28 office of financial management shall determine the amounts due to or
29 from the federal government pursuant to the cash management improvement
30 act. The office of financial management may direct transfers of funds
31 between accounts as deemed necessary to implement the provisions of the
32 cash management improvement act, and this subsection. Refunds or
33 allocations shall occur prior to the distributions of earnings set
34 forth in subsection (4) of this section.

35 (3) Except for the provisions of RCW 43.84.160, the treasury income
36 account may be utilized for the payment of purchased banking services
37 on behalf of treasury funds including, but not limited to, depository,

1 safekeeping, and disbursement functions for the state treasury and
2 affected state agencies. The treasury income account is subject in all
3 respects to chapter 43.88 RCW, but no appropriation is required for
4 payments to financial institutions. Payments shall occur prior to
5 distribution of earnings set forth in subsection (4) of this section.

6 (4) Monthly, the state treasurer shall distribute the earnings
7 credited to the treasury income account. The state treasurer shall
8 credit the general fund with all the earnings credited to the treasury
9 income account except:

10 (a) The following accounts and funds shall receive their
11 proportionate share of earnings based upon each account's and fund's
12 average daily balance for the period: The capitol building
13 construction account, the Cedar River channel construction and
14 operation account, the Central Washington University capital projects
15 account, the charitable, educational, penal and reformatory
16 institutions account, the Columbia river mainstem investment account,
17 the common school construction fund, the county criminal justice
18 assistance account, the county sales and use tax equalization account,
19 the data processing building construction account, the deferred
20 compensation administrative account, the deferred compensation
21 principal account, the department of retirement systems expense
22 account, the drinking water assistance account, the drinking water
23 assistance administrative account, the drinking water assistance
24 repayment account, the Eastern Washington University capital projects
25 account, the education construction fund, the election account, the
26 emergency reserve fund, The Evergreen State College capital projects
27 account, the federal forest revolving account, the health services
28 account, the public health services account, the health system capacity
29 account, the personal health services account, the state higher
30 education construction account, the higher education construction
31 account, the highway infrastructure account, the industrial insurance
32 premium refund account, the judges' retirement account, the judicial
33 retirement administrative account, the judicial retirement principal
34 account, the local leasehold excise tax account, the local real estate
35 excise tax account, the local sales and use tax account, the medical
36 aid account, the mobile home park relocation fund, the multimodal
37 transportation account, the municipal criminal justice assistance
38 account, the municipal sales and use tax equalization account, the

1 natural resources deposit account, the oyster reserve land account, the
2 perpetual surveillance and maintenance account, the public employees'
3 retirement system plan 1 account, the public employees' retirement
4 system combined plan 2 and plan 3 account, the public facilities
5 construction loan revolving account beginning July 1, 2004, the public
6 health supplemental account, the public works assistance account, the
7 Puyallup tribal settlement account, the regional transportation
8 investment district account, the resource management cost account, the
9 site closure account, the special wildlife account, the state
10 employees' insurance account, the state employees' insurance reserve
11 account, the state investment board expense account, the state
12 investment board commingled trust fund accounts, the supplemental
13 pension account, the Tacoma Narrows toll bridge account, the teachers'
14 retirement system plan 1 account, the teachers' retirement system
15 combined plan 2 and plan 3 account, the tobacco prevention and control
16 account, the tobacco settlement account, the transportation
17 infrastructure account, the tuition recovery trust fund, the University
18 of Washington bond retirement fund, the University of Washington
19 building account, the volunteer fire fighters' and reserve officers'
20 relief and pension principal fund, the volunteer fire fighters' and
21 reserve officers' administrative fund, the Washington fruit express
22 account, the Washington judicial retirement system account, the
23 Washington law enforcement officers' and fire fighters' system plan 1
24 retirement account, the Washington law enforcement officers' and fire
25 fighters' system plan 2 retirement account, the Washington public
26 safety employees' plan 2 retirement account, the Washington school
27 employees' retirement system combined plan 2 and 3 account, the
28 Washington state health insurance pool account, the Washington state
29 patrol retirement account, the Washington State University building
30 account, the Washington State University bond retirement fund, the
31 water pollution control revolving fund, and the Western Washington
32 University capital projects account. Earnings derived from investing
33 balances of the agricultural permanent fund, the normal school
34 permanent fund, the permanent common school fund, the scientific
35 permanent fund, and the state university permanent fund shall be
36 allocated to their respective beneficiary accounts. All earnings to be
37 distributed under this subsection (4)(a) shall first be reduced by the

1 allocation to the state treasurer's service fund pursuant to RCW
2 43.08.190.

3 (b) The following accounts and funds shall receive eighty percent
4 of their proportionate share of earnings based upon each account's or
5 fund's average daily balance for the period: The aeronautics account,
6 the aircraft search and rescue account, the county arterial
7 preservation account, the department of licensing services account, the
8 essential rail assistance account, the ferry bond retirement fund, the
9 grade crossing protective fund, the high capacity transportation
10 account, the highway bond retirement fund, the highway safety account,
11 the motor vehicle fund, the motorcycle safety education account, the
12 pilotage account, the public transportation systems account, the Puget
13 Sound capital construction account, the Puget Sound ferry operations
14 account, the recreational vehicle account, the rural arterial trust
15 account, the safety and education account, the special category C
16 account, the state patrol highway account, the transportation 2003
17 account (nickel account), the transportation equipment fund, the
18 transportation fund, the transportation improvement account, the
19 transportation improvement board bond retirement account, and the urban
20 arterial trust account.

21 (5) In conformance with Article II, section 37 of the state
22 Constitution, no treasury accounts or funds shall be allocated earnings
23 without the specific affirmative directive of this section.

24 NEW SECTION. **Sec. 11.** (1) The department shall adopt rules as
25 necessary to implement the program. Rules must be consistent with this
26 chapter and with other applicable laws.

27 (2) The department shall establish a monitoring program to track
28 conditions relevant to the effectiveness of the program, including, but
29 not limited to, the condition of streamflows in the mainstem, and the
30 number, types, and quantities of water uses approved under this
31 chapter.

32 (3) The department shall implement a compliance program, consistent
33 with RCW 90.03.605, to ensure compliance with the requirements of this
34 chapter. The department shall appoint one or more water masters for
35 the Columbia river mainstem to provide local technical assistance, and
36 to conduct other necessary compliance actions.

1 NEW SECTION. **Sec. 12.** The department shall prepare a biennial
2 report on the status of the program. The report shall be transmitted
3 to the appropriate standing committees of the legislature and the
4 governor by December 31st of even-numbered years. The report shall
5 include, but not be limited to, information and evaluation of the
6 status of the mainstem account, the number, types, and quantities of
7 authorized new uses of water, the number and amount of payments
8 collected under the program, a summary of compliance monitoring and
9 enforcement activities on the Columbia river mainstem, including water
10 use measurement and reporting, the streamflow conditions in the
11 mainstem and in the primary tributaries to the Columbia river, and the
12 current and anticipated future conditions of water supplies in the
13 mainstem account and how those water supplies correspond to current and
14 anticipated future water needs.

15 NEW SECTION. **Sec. 13.** Ten years after the effective date of this
16 section, and every ten years thereafter, the department shall conduct
17 a formal review of the effectiveness of the program. The review shall
18 include independent evaluations of the economic and scientific
19 information that provide the premises of the program. As part of the
20 biennial report required by section 12 of this act, the department
21 shall notify the governor and legislature of the timing and proposed
22 process for the formal review and shall request funding to conduct the
23 necessary independent reviews as part of their biennial budget request
24 to the governor. Upon completion of the review, the department shall
25 prepare and transmit a report of the findings of the review, including
26 any recommendations for legislative changes to the program.

27 NEW SECTION. **Sec. 14.** Nothing in this act may be interpreted or
28 administered in a manner that impairs or diminishes a valid water
29 right, including rights established under state law and rights
30 established under federal law.

31 NEW SECTION. **Sec. 15.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately, except for section 9 of this act which takes effect July
5 1, 2005, and section 10 of this act which takes effect July 1, 2006.

6 NEW SECTION. **Sec. 17.** Section 9 of this act expires July 1, 2006.

7 NEW SECTION. **Sec. 18.** Sections 1 through 8 and 11 through 16 of
8 this act constitute a new chapter in Title 90 RCW.

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